U.S. COMMODITY FUTURES TRADING COMMISSION

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OPEN MEETING

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THURSDAY,
JUNE 25, 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, Commissioner
DAN M. BERKOVITZ, Commissioner
BRIAN D. QUINTENZ, Commissioner
DAWN DEBERRY STUMP, Commissioner

CFTC STAFF PRESENT:

MARILEE DAHLMAN, DMO
MELISSA D'ARCY, DCR
DOROTHY DEWITT, DMO
ISRAEL J. GOODMAN, DMO
WARREN GORLICK, DSIO
CLARK HUTCHISON, DCR
SARAH E. JOSEPHSON, DCR
VINCENT A. MCGONAGLE, DMO
CARMEN MONCADA-TERRY, DSIO
JOSEPH OTCHIN, DMO
ROGER SMITH, DMO
ALEKO STAMOULIS, DMO
JOSHUA B. STERLING, DSIO

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

10:00 a.m.

OPERATOR: Thank you everyone for standing by. Guests are in a listen-only mode throughout today's event. The conference is being recorded. If you have any objections, please disconnect. I now would very much like to turn it over to your host today, Mr. Heath Tarbert, and thank you sir. You may begin.

CHAIR TARBERT: Good morning everyone, and thank you Operator. This is Chairman Heath 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 or coronavirus 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 via conference call, Commissioner Quintenz, Commissioner Behnam, Commissioner Stump and Commissioner Berkovitz.

We assembled today to consider five matters on which we'll be voting. First, a proposed rule on Electronic Trading Risk Principles. Second, a vote on the Withdrawal of a Previously-Issued Proposed Rule and Supplemental Proposal for Regulation AT. Third, a Final Rule on Post-Trade Name Give Up on Swap Execution Facilities. Fourth, a Final Rule on Alternative Compliance With Anti-Evasionary Measures of the Inter-affiliate Swap Clearing Exemption, and then finally a Proposed Rule to Extend Phase 6 Compliance Date for Initial Margin Requirements for Uncleared Swaps, in response to the COVID-19 pandemic.

And then finally I'll make an announcement regarding our vote via seriatim yesterday on the Volcker Rule covered funds final rule before we close the meeting. 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 of course for those who may listen at some point in the future to this recording.

First, when you're about to speak, please ensure your phone line is unmuted. Second, as you begin speaking, please identify yourself. Finally, when you're not speaking, please keep your phone line muted. As is now a CFTC tradition, we'll start with the pledge of allegiance. I know these are trying times, but I hope reciting the pledge will help us affirm our commitment to liberty and justice for all.

I again want to thank Commissioner Berkovitz for his reflections on the pledge during our last open meeting, and as I said in the beginning of my tenure, one thing I like about the pledge is that it essentially affirms that all of us in this together. It's the only pledge I know of that starts with "I" and ends with "all." So if I could ask all Commissioners, as well as any other members of the staff who'd like to participate, to go ahead and unmute your lines now so we can say the pledge together, and I will begin it.

(Pledge of Allegiance.)

CHAIR TARBERT: Well thank you very much everyone. We're now going to go ahead and move to opening statements for anyone that has them in order of seniority. Commissioners are free to reserve their time to make a longer closing statement if they wish. Since we've got a lot to cover to today, I'm just going to reserve the bulk of my remarks for the individual matters to be addressed and possibly for the end.

I just want to thank everyone for again holding this open meeting, for all of the work that the staff has done since our last open meeting, and also the Commissioners and all the Commissioners' offices. This is a tremendous amount of work to be voting on these items today. So with that, I am pleased to move on to Commissioner Quintenz for any opening statement he'd like to make.

COMMISSIONER QUINTENZ: Good morning

Mr. Chairman. Thank you very much. This is Commissioner Quintenz. I, like you, I think, will skip, forego making an opening statement and probably use some of that time possibly in the discussion of the individual rules. Thank you again to you and your staff and the agency for the open meeting this morning.

CHAIR TARBERT: Thank you very much, Commissioner Quintenz. Commissioner Behnam.

COMMISSIONER BEHNAM: Good morning Mr. Chairman, and good morning to my fellow Commissioners, staff and everyone who's had a chance or has a chance to join us this morning. I will also forego my opening statement and share some of my views and questions throughout the morning as we discuss these few rules. But I do want to, you know, send a welcome of course to everyone who's listening this morning, and hope everyone's doing well and staying safe in these trying times. Again Mr. Chairman, thanks for bringing up these rules and I look forward to the discussion.

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

COMMISSIONER STUMP: Thank you Mr. Chairman. I too am going to reserve my comments for later in the morning as we discuss the specific rules. I am pleased to be here today, and I hope that everyone's doing well. As Commissioner Behnam said, I hope everyone's staying safe in these trying times. I want to thank staff who worked on these rules before us today. They involve three different divisions, and many, many people worked on these rules over the course of months and years. A lot of work went into this, even in the last few days.

So I wanted to thank them and recognize them. So I'll reserve the rest of my comments for the specifics later.

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

COMMISSIONER BERKOVITZ: Thank you Mr. Chairman, and I will simply echo pretty much everything that's been said so far, welcoming everybody to this meeting and thanking my colleagues on the Commission, thanking you Mr. Chairman and thanking my staff, thanking the Commission staff. As I said before, a 5 to nothing vote oftentimes can mean a lot more work than a split vote, and we'll have -- that reflects a lot of the work that's gone into some of these that we'll be voting on today.

I just want to express appreciation for everybody that's worked hard to get where we are today, and I look forward to the discussion. Thank you.

CHAIR TARBERT: Thank you very much Commissioner Berkovitz. Well, for each of the items on today's agenda, staff will make presentations to the Commission. After each staff presentation, the floor will be open for questions and comments from each Commissioner. Following the close of discussion, the Commission will vote on the recommendation.

All final votes conducted in a public meeting will be recorded votes. The results of votes approving issuance of rulemaking documents will be included with those documents in the Federal Register. To facilitate preparation of approved documents for publication in the Federal Register, I now ask the Commission to grant unanimous consent for staff to make the necessary technical corrections prior to submitting them to the Federal Register.

COMMISSIONER BERKOVITZ: So moved.

PARTICIPANT: Second.

CHAIR TARBERT: Thank you very much. Without objection, so ordered. Well, at this time I would like to invite a combined staff presentation that will focus primarily on the proposed rule on electronic trading principles. The staff will also briefly note the separate proposal that we'll be voting on regarding the withdrawal of the previously issued proposed rule and supplemental proposal for Regulation AT.

From the Division of Market Oversight, on the phone are Dorothy DeWitt, our director, Marilee Dahlman, special counsel, and Joseph

Otchin, special counsel. I will now hand it over to the DMO team to go ahead and present.

MS. DeWITT: Good morning Mr. Chairman and good morning Commissioners. Thank you all for the opportunity to present today. My name is Dorothy DeWitt, and I'm the director of the Division of Market Oversight or DMO. Today, we present for consideration by the Commission a Notice of Proposed Rulemaking or NPRM entitled "Risk Principles," or "Electronic Trading Risk Principles." We will refer to that NPRM as Risk Principles today.

These risk principles reflect the CFTC's mission to promote the integrity, resilience and vibrancy of the U.S. derivatives market through sound principles-based regulation. These risk principles build on prior work by the Commission, Commission staff, industry and other market participants to ensure market integrity. In addition, they reflect numerous conversation between -- sorry, the prior work was by the Commission, Commission staff and industry to ensure market integrity, and in addition they reflect numerous conversations between staff, the Commission, Commission staff and exchanges with a variety of market participants regarding how best to address the risk principles posed by electronic trading.

These risk principles are designed to ensure that moving forward, designated contract markets or DCMs continue to take reasonable measures to address the risk of market disruption as technology and the markets evolve. We look forward to industry comment and feedback during the comment period for this proposal.

I would like to thank the DMO team who lead this project, Marilee Dahlman and Joe Otchin. The Risk Principles team also included our DMO colleagues, Jeanette Curtis, David Steinberg and Rachel Berdansky, as well as our colleagues from multiple areas at the CFTC. They include our colleagues from the Office of the Chief Economist or OCE, Esen Onur; Eleni Gousgounis; Carlin Metzger from the Division of Enforcement or DOE, Greg

Scopino. Apologies. Greg Scopino is with the Division of Swap Dealer and Intermediate Oversight. Jeff Burns is from the Office of the General Counsel.

We would like to thank them for their tireless work and willingness to pitch in in any way helpful. We also thank the Chairman, each of the Commissioners and their staffs for their constructive comments as we prepare this proposal. Those comments serve to improve the final product that we present today. I will now turn it over to Marilee Dahlman, who will discuss the purpose and background of the risk principles.

MS. DAHLMAN: Thank you Dorothy, and thank you Mr. Chairman and Commissioners for the opportunity to present. This NPRM proposes a set of principles for DCM to address the prevention, detection and mitigation of market disruptions and system anomalies associated with the entry of electronic orders and messages into DCMs, the electronic trading platforms.

Such disruptions or anomalies may

negatively impact the proper functioning of the trading platforms and the ability of other market participants to trade and manage their own risk. These disruptions and anomalies can arise from excessive messaging caused by malfunctioning systems, fat finger orders or erroneous messages manually entered that result in unintentionally large or off price orders, and the loss of connection between an order management system and the trading platform.

DCMs have an interest in the effective prevention, detection and mitigation of market disruptions and system anomalies associated with electronic trading activity. DCMs are addressing most if not all of the electronic trading risks currently presented to their trading platforms. DCMs have implemented pre-trade risk controls including messaging throttles, order size maximums and heartbeat messages concerning connectivity.

DCMs also conduct due diligence and testing before participants can use certain connectivity methods. DCMs have developed risk mitigation measures in response to actual or potential disruptions to their markets, as well as in response to existing rules such as those promulgated pursuant to DCM Core Principle 4 and codified in Part 38 of the Commission's regulations.

Because DCMs have developed processes for identifying and managing risk, the risk principles may not require DCMs to adopt additional controls or rules. However, the proposed risk principles will help ensure that DCMs continue to monitor risk as they evolve, along with the markets, and make reasonable modifications as appropriate. The risk principles reflect a flexible framework under which DCM can adapt evolving technology and markets.

There are three risk principles. The first risk principle, proposed 38.251(e), requires each DCM to adopt rules governing participants subject to its jurisdiction to prevent, detect and mitigate market disruptions or system anomalies associated with electronic trading. The second risk principle, proposed 38.251(f) requires DCMs to implement adequate list controls designed to address the potential threat of market disruption and system anomalies associated with electronic trading. The third risk principle, 38.251(g), requires DCMs to notify CFTC staff in the event of a market disruption.

The risk principles supplement existing Commission regulations governing DCMs by directly addressing certain requirements in DCM Core Principle 4 and its implementing regulations. First, this principle provides for prospective action by DCM to take steps to prevent market disruption and system anomalies, building on existing requirements to conduct real time monitoring and resolve conditions that are disruptive to the market.

Second, the risk principles explicitly focus on disruptions or system anomalies associated with electronic trading. While existing Commission regulations focus on market disruption more generally caused by sudden price movements, market disruptions or system anomalies also can be the result of excessive messaging or the loss of connection between an order management system and the trading platform.

Such events could impact the systems accepting messages or matching phase at the DCM. These events can impact market participants and the integrity of the market as a whole. In recent years, electronic trading has become increasingly prevalent on DCMs. At the same time, DCM electronic trading platforms have been faced with actual and potential disruptions.

Such instances highlight the risk that DCMs face from the interaction of their own systems with those of market participants. The risk principles attempt to balance the need for flexibility in a rapidly changing technological landscape, with the need for a clear regulatory requirement that DCMs establish rules governing electronic orders, as well as on market participants themselves to prevent and mitigate market disruptions and system anomalies associated with electronic trading activities.

Importantly, the risk principles would not create any form of strict liability for the DCMs in the event that such disruptions or anomalies occur, notwithstanding such rules or risk controls. The risk principles also do not require any specifically designed sets of rules or risk controls.

As provided in the proposed acceptable practices for implementing the risk principles, DCMs will satisfy the risk principles if they have rules and free trade risk controls that are reasonably designed to prevent, detect and mitigate market disruptions or system anomalies associated with the electronic trading.

Reasonably designed means that a DCM's rules and risk controls are objectively reasonable. Several existing regulations in Part 38 generally govern the DCM's role in monitoring for and mitigating the effects of market disruptions and system anomalies. These includes Regulation 38.157 and 38.251(c) requiring a DCM to conduct real-time monitoring; Regulation 38.255 requiring a DCM to implement risk control mechanisms; and Regulation 38.607, requiring a DCM that permits direct electronic access to have systems and controls reasonably designed to facilitate an FCM’s management of financial risk.

Industry itself has also taken steps to address the risk of market disruption. For example, in October 2019 the Futures Industry Association presented to the CFTC Technology Advisory Committee certain best practices for exchange risk control. As Joe will discuss, FIA has conducted numerous surveys which found a substantial increase in the implementation of market integrity controls since 2010.

At that same TAC meeting, ICE reported that its controls were consistent with the FIA's findings. At a TAC meeting the previous year, CME had reported that its risk controls were consistent with recent recommendations made by IOSCO. While the proposed risk principles apply to DCMs, all participants in Commission-regulated markets have a responsibility to take steps to prevent market disruptions.

We noted that as the FCMs, for example, the National Futures Association is in the early stages of updating its guidance to members in this area. Now I'll turn it over to Joe Otchin, who will describe the risk principles in more detail.

MR. OTCHIN: Thank you, Marilee, and thank you Mr. Chairman and Commissioners. I will now discuss the three risk principles set forth in proposed Commission Regulations 38.251(e), (f) and (g), as well as proposed acceptable practices for Risk Principles 1 and 2, to be added to Appendix B to Part 38 of the Commission's regulations.

First, proposed Regulation 38.251(e), Risk Principle 1, provides that a DCM must adopt and implement rules governing market participants subject to its jurisdiction, to prevent, detect, and mitigate market disruptions or system anomalies associated with electronic trading. Staff believes that various DCM practices in place today are consistent with Risk principle 1, such as exchange-provided risk controls primarily addressing financial risk or market risk that also address preventing or mitigating market disruptions caused by electronic trading.

For example, FIA has indicated that since 2010, it has conducted various surveys of exchanges, as well as a sampling of its members. These surveys reflect clearing firms' broad use of: message and execution throttles; price collars; maximum order sizes; order, trade and position drop copy; and order cancellation capabilities.

FIA's October 2019 TAC presentation noted that initiatives are underway at most exchanges to develop Application Programming Interface (or API) access to various risk controls, and to improve the functionality available in exchange certification and conformance testing environments.

Staff believes that current industry practices serve as examples of measures that all DCMs could adopt as rules, as appropriate, to address the potential for electronic trading activities to cause market disruptions or system anomalies. Risk Principle 1 will help ensure that DCMs continue to monitor these risks as they evolve along with the markets, and make reasonable changes as appropriate to address those evolving risks.

Staff acknowledges that it may not be possible for a DCM to prevent all market disruptions and system anomalies. A DCM would not necessarily have violated this principle if a market disruption or a system anomaly does occur, despite its having rules in place. To that end, staff is proposing Acceptable Practices providing that a DCM can comply with Risk Principle 1 by adopting rules "reasonably designed to prevent, detect, and mitigate market disruptions or system anomalies associated with electronic trading."

These Acceptable Practices provide DCMs with discretion to determine what rules to impose on market participants, to address electronic trading risks, subject to Commission action. The Acceptable Practices are intended to provide DCMs with reasonable discretion to impose rules to prevent, detect and mitigate market disruptions. Consistent with existing DCM practices, this could include requiring market participants to implement exchange-provided risk controls and order cancellation functionality, and requiring testing in advance of exchange access. In developing a framework to address these risks, DCMs should take into account industry best practices and what risk controls and testing practices are technologically feasible.

Turning now to Risk Principle 2, proposed Regulation 38.251(f) provides that a DCM must subject all electronic orders to exchange-based pre-trade risk controls to prevent, detect and mitigate market disruptions or systems anomalies associated with electronic trading. Staff believes that the existing Acceptable Practices for DCM Core Principle 4 list appropriate DCM-implemented risk controls. Including pre-trade limits on order size, price collars or bands around the current price; message throttles; and daily price limits.

The existing acceptable practices further provide that the DCM must set the parameters for these controls, so long as the controls and their parameters are reasonably likely to prevent market disruptions and price distortions. Risk Principle 2 does not change existing acceptable practices for Commission Regulation 38.255, which remain in effect.

The purpose of Risk Principle 2 is to require DCMs to consider market participants' trading activity when designing and implementing exchange-based risk controls to address market disruptive events. Existing guidance provides that such controls "must be adapted to the unique characteristics of the markets to which they apply and must be designed to avoid market disruptions without unduly interfering with that market's price discovery function."

In contrast, proposed Risk Principle 2 more explicitly requires DCMs to consider risk controls that address market disruptions associated with electronic trading. This Risk

Principle provides flexibility for technological progress-- For example, while a control called “message throttle” may be appropriate now, industry measures to address this excessive messaging could change in the future.

It also allows DMO to assess compliance risk controls as part of its rule enforcement review program, comparing all DCMs to a baseline of controls on electronic trading and order entry that are prevalent and effective across all DCMs.

FIA's October 2019 TAC presentation illustrates measures that DCMs could consider adopting to address risks posed by electronic trading. The presentation listed specific pre-trade risk controls that are critical in preventing market disruptions including fat finger (or maximum size); market data reasonability checks; repeatable execution limits; and messaging limits and throttles. Given the prevalence of existing exchange-based risk controls, staff expects that many DCM practices are consistent with Risk Principle 2. Depending on the circumstances, it may be possible for a DCM to appropriately conclude that its existing pre-trade risk controls satisfy the acceptable practices for Risk Principle 2.

Turning to Risk Principle 3, proposed Regulation 38.251(g) provides that a DCM must promptly notify Commission staff of any significant disruptions to its electronic trading platform(s), and provide timely information on the causes and the remediation.

Risk Principle 3 includes a “significant” threshold for notification. An internal disruption in a market participant's own trading system should not be considered significant, unless it causes a market disruption materially affecting the DCM's trading platform and other market participants. A significant disruption is a situation where the ability of other market participants to execute trades, engage in price discovery, or manage their risks is materially impacted by a malfunction of a market participant's trading system. Risk Principle 3 would obligate the DCM to notify Commission staff of the event promptly after the DCM becomes aware of it.

Risk Principle 3 is to be distinguished from existing Commission regulation 38.1051(e), which requires DCMs to notify the Commission in the event of significant system malfunctions. Risk Principle 3 addresses market disruptive events, as opposed to incidents that impact the integrity of a DCM's internal technological systems.

Staff believes that Risk Principle 3's notification requirement will assist the Commission's oversight and its ability to monitor and assess market disruptions across all DCMs. Staff expects that notification under Risk Principle 3 would take a similar form to the current notification process for electronic trading halts, cybersecurity incidents, or activation of a DCM’s business continuity-disaster recovery plan under existing regulation 38.1051(e).

At this time, I will turn it back to Dorothy to discuss staff's recommendation that the Commission withdrawal Regulation AT.

MS. DeWITT: Thank you, Joe. Given that among other things, given among other things the significant time that has elapsed since Reg AT was composed, the complexity of the issues and the inconsistency of the comments, as well as the vast majority of which were negative, we do not consider it practicable to go final with those proposed rules at this time or in the foreseeable future.

This is especially true given that technology, market structure, risk and industry standards have evolved so significantly in the past four or five years in this fast-developing area. Staff believes that withdrawal of the rule, which is now stale, is appropriate. That concludes the staff's presentation on the Risk Principles Notice of Proposed Rulemaking, and the withdrawal of Regulation Automated Trading. We're happy to answer your questions.

CHAIR TARBERT: This is Chairman Heath

Tarbert again. I want to sincerely thank you Dorothy, Marilee and Joe for an outstanding presentation, and to begin the Commission's discussion and consideration of these matters, I'll first entertain a motion to approve the Notice of Proposed Rulemaking on Electronic Trading Principles.

PARTICIPANT: So moved.

PARTICIPANT: Second.

CHAIR TARBERT: Thank you very much. Now I'll entertain a motion to approve the issuance of the notice withdrawing the December 17th, 2015 Notice of Proposed Rulemaking and the November 25th, 2016 Supplemental Notice of Proposed Rulemaking on Regulation Automated Trading.

PARTICIPANT: So moved.

PARTICIPANT: Second.

CHAIR TARBERT: Thank you. I'd now like to open up the floor for two rounds of Commissioner questions and statements, in order of seniority, and the thought here is that obviously we'll want to ask questions of our staff. But by having a second round, we can also facilitate some discussion among Commissioners, because I know that this is an important area that a lot of people have a number of different views on.

So I will begin, but before I get into the substance of my questions and comments, I want to extend my thanks to so many people that made today possible. First of all, DMO staff, Marilee Dahlman of course, Joe. But also David Steinberg, Rachel Berdansky, Jeanette Curtis and then of course Dorothy, who leads the Division. I want to thank them not only for their work in the past few months on this, but also the tireless work over the past several years, almost seven years in fact from the concept release to Reg AT to today.

They've worked with all stakeholders to develop a real understanding of electronic markets, and how best to address the novel issues raised by the evolution to what we see today in these markets. This team has been instrumental in the agency's own evolution, as we address this fundamental shift in our markets. But it's not just DMO; this was really a whole of CFTC effort.

So therefore I'd like to thank in our Office of Chief Economist, in particular Esen Onur, Eleni Gousgounis, as well as Jeff Burns and Carleen Kim in the Office of General Counsel. But it doesn't stop there. Carlin Metzger of the Enforcement Division and Greg Scopino of DSIO also had input into this proposal.

So this proposal and all the development that went into it, again as I stress was a cross-functional team effort that has raised the understanding of electronic markets across our agency. So I think as far as the presentation itself went, Dorothy, Marilee and Joe, I think you did a fabulous job outlining it.

I think it's very clear from your presentation that this proposal provides reasonable discretion and flexibility to providing two exchanges. So my question is really what tools are available to the Commission to determine whether an exchange's rules and pre-trade risk controls are in fact reasonably designed to prevent, detect and mitigate market disruptions or system anomalies?

MS. DAHLMAN: Thank you Mr. Chairman for that question. This is Marilee. There are several tools. So with respect to an application for a designation as a contract market, if the Commission finds that the applicant's rules are not reasonably designed to prevent, detect and mitigate market disruption or system anomalies associated with the electronic trading, or that pre-trade risk controls were not reasonably designed, the entity would not be in compliance with core principles, specifically Core Principle 4, and the Commission would not issue an order of designation.

Another tool is that if a DCM certifies rules or pre-trade risk controls as being in compliance with the Act or Commission regulation, the Commission can object or deny certification, or could stay the certification for 90 days to conduct a review on the grounds that the proposed rule or rule amendment is potentially inconsistent with the CDA or Commission regulation.

Another tool that a DCM would request that the Commission approve a new rule or rule amendment under 40.5, and under that regulation the Commission only approves the new rule or rule amendment if it's not inconsistent with the CDA or Commission regulation. So a DCM rule adopted to comply with the proposed 38.251 regulation that is not reasonable would not be -- excuse me it would be inconsistent with the Commission regulations.

Sorry. I was just going to add one more thing. A DMO rule enforcement review could also find an exchange rule or its control is not reasonable, and in that case the examination would issue a deficiency finding that the exchange is not in compliance with the rule, and the deficiency would then be referred to DOE. Then if DOE takes action, the Commission would have to approve that.

CHAIR TARBERT: Terrific, well good. Well that, no. That really I think rounds out the idea that, you know, we're providing a lot of reasonable discretion here, but it's not completely open-ended. That's an important point to note. I don't have any further questions. I thought I would just spend a few minutes, this is Chairman Tarbert, maybe just putting all of this in a larger context and why we're pushing this forward today if there's members of the public sort of tuning in, what this is all about, the big picture.

As Dorothy mentioned, you know, the mission of the CFTC is to promote the integrity, resilience and vibrancy of U.S. derivatives markets through sound regulation. Now we can't achieve that mission if we rest on our laurels, particularly given the ever-evolving technology that makes our derivative markets, the U.S. derivatives markets, the envy of the world.

What sound regulation is today may not be what sound regulation is tomorrow. I was reminded of a novel that I read a few years back called "The Leopard." It later was made into a movie with Burt Lancaster about 19th century Italy. But there was a paradoxical observation that really lies at the heart of both the novel and the movie itself, and the famous quote is as follows:

"If we want things to stay as they are, things will have to change." So the novel "The Leopard" focuses on the role of the aristocracy amid the social turbulence of 19th century Italy, but its central thesis that achieving stability in changing times itself requires change I think can be applied equally to the regulation of rapidly-changing financial markets.

And so why is this proposal before us today? Well, it's before us today because 20-30 years ago a floor trader, if they came back and were magically transported into the 21st century, would scarcely recognize the futures exchange. The screaming and the shouting of buy and sell orders reminiscent of the film "Trading Places" that we've all seen has largely been replaced with silence or at best, let's say, the monotonous humming of large data centers.

So since the last two or three decades, 96 percent of our trading now occurs on electronic systems. The important point to note at the outset is that I think this shift to electronic trading has greatly benefited market participants, and we have a number of academic studies that essentially provide evidence, if not prove that fact.

Spreads have narrowed, liquidity has improved and transaction costs have dropped. But I think there's something even far more practical when I think about it that demonstrates to me that this was the right move, and that's the last few months. With social distancing due to coronavirus lockdowns, places like the New York Stock Exchange, which still had some floor trading, had to shut down. But our futures markets remained open, and were able to have their highest effectively sort of trading volumes ever because people needed them the most to hedge their risk. If we had not had electronic trading, we may very well have had to close down our futures markets.

So that's a really important point. But the bottom line, of course is look, electronic trading is here, and this is something that the CFTC has recognized now for at least a decade. In electronic trading though, while I mentioned all of its attributes, all of its reasons why I think it is ultimately superior, there are also potential risks that weren't around 30 years ago that are in fact unique to electronics trading systems.

And these can be human errors like fat fingers, but they can also be errors that derive from automated or algorithmic trading like order matching engines and messaging and all those sorts of things. So the Commission is not recognizing that for the first time today of course. It's thought about this for quite some time. Seven years ago, a different set of Commissioners issued a concept release, asking the public for changes to be made to our regulations in light of electronic trading. Ultimately, they later proposed Reg AT and a supplement to Reg AT.

I think, I'm not sure if there's any Commissioner sitting on the Commission today that would vote for Reg AT as is. Everybody recognizes to some degree that it's not perfect, and I think the DMO staff sort of outlined that well. But I do think that Reg AT drove a very helpful discussion about the risk that should be considered and what the Commission should start thinking about in terms of a response.

You know, from my point of view, Reg AT, I think the biggest issue there is that, you know, ultimately it's pretty prescriptive and it would have frozen in time a set of controls that levels of market operators and market participants would have required to place on trading. Since that time, we've even seen tremendous more changes, improvements in technology and computing power.

Moore's Law, for those of you that are familiar with it, alone would predict that computing power would have increased tenfold during that time period. So I want to commend everyone on the CFTC and all of our former Commissioners on focusing on these risks in the last decade. But times change, and Reg AT would not have changed with them. And so the CFTC, I think, has to think about that carefully, and rather than swim against the tide and say no electronic trading, the only real course of action is to have our regulatory framework evolve with it.

So how does the regulator change with the times while still fulfilling our statutory role in overseeing the derivatives markets? Well my view in a case like this is the use of principle-based regulation. I'll talk about that a little later, but again my view is that principles-based regulation is not light touch. It's not toothless. It is very important, but at the same time it will allow the flexibility we need, both our exchanges as well as the CFTC, to evolve as the risks themselves evolve.

So I think today, the way I see this proposal, is that not only will it address the potential concerns arising from electronic trading, but my hope is that it may also serve as a framework for how we think about other areas where there's attributes that lead us to a more principles-based approach, as opposed to a more prescriptive-based approach. When things are constantly rapidly, we need to change with it.

So in sum, I think this proposal that you all have worked on, that I've worked on closely with my fellow Commissioners, as we go back to that novel that I mentioned, "The Leopard" recognizes that things will have to change if effectively we want things to stay as they are. So with that, I will conclude my remarks and hand it over to Commissioner Quintenz.

COMMISSIONER QUINTENZ: Thank you Mr. Chairman. This is Commissioner Quintenz. I think I will focus the comments in this round on the withdrawal of Reg AT and maybe address some specifics in the proposal in the second round. I think about the conversation that Reg AT provoked possibly a little differently.

At least I think it was a very high stakes conversation around exactly the things that the Chairman mentioned, which were in my view a prescriptive approach that I don't think adequately recognized the incentive structures in the market to continually address these risks and evolve that response.

Let me first say that I would like to acknowledge how much time and effort and thinking by the staff goes into the development and writing and the putting forward of proposals, regardless of the criticism that those proposals may generate with the opposition they may provoke. So I just would always like to recognize how hard people work in putting things before us to consider.

I do have to acknowledge that I feel as though I've been fairly outspoken in my criticism of Reg AT and the policy proposals in it. I feel like it is long overdue for the Commission to withdraw both the initial proposal and the supplemental proposal, because they would have required certain types of market participants based purely on their trading functionality, on their strategies or the market access methods, to register for the first time that the Commission, notwithstanding that they did not act as intermediaries in the markets or even hold customer funds.

Moreover, the NPRMs proposed in my view extremely prescriptive requirements for the types of risk controls that exchanges and FCMs and trading firms would be required to implement. I would like to acknowledge that the motion before us to withdraw these NPRMs specifically reject those policy responses to the perceived risks of electronic trading, which I believe is appropriate.

Lastly, by withdrawing these NPRMs, the market and the public I believe can finally consider as dead the prior Commission's significant and in my view likely unconstitutional overreach on accessing a firm's proprietary source code and protected intellectual property without a subpoena. As I've said before, the Reg AT NPRMs were poorly crafted and flawed public policy that failed to understand the true risks of the electronic trading environment, and the intrinsic incentives that exchanges and market participants have to mitigate and address those risks, which come down to them being going concerns and their own solvency.

So I'm pleased the Commission is officially rejecting the policy rationales and the regulatory requirements proposed in the Regulation AT NPRMs, and instead embracing the principles approach before us today. With that Mr. Chairman, I'll conclude my first round of comments. Thank you.

CHAIR TARBERT: Thank you very much Commissioner Quintenz. Commissioner Behnam.

COMMISSIONER BEHNAM: Thank you Mr. Chairman. I will -- I have a number of questions for the team, but I do want to just take a moment to thank Dorothy DeWitt and everyone in DMO, specifically Marilee and Joe for your presentations today. They were excellent.

Mr. Chairman, you did a great job in listing all the other individuals, Commission staff past and present, and I do want to echo the individuals that you named and listed because everyone deserves credit for the work that went into both the risk-principled proposal before us today and both the Reg AT original NPRM and supplemental.

Before I get into my questions though, I do want to address some matter, and I'll do this in part I think in my second round as well, the Reg AT withdrawal. You know, in my view it's pretty unconventional and unusual that a Commission, a current Commission would withdraw a former proposal that was voted on in a bipartisan fashion.

I will say that, you know, if you look back at the vote, it was one, a bipartisan vote that was made at the time by our former Chairman, Chris Giancarlo. If you read his statement, he was quite critical of Reg AT. He was quite critical of Reg AT when he became chairman a few years later.

I think it's important to sort of think about what that product reflected at the time and how it evolved, and the fact that the Commission going from the original NPRM to the supplemental was willing to adjust to adapt to both criticism and critiques from the marketplace, but also an evolving market structure.

Mr. Chairman, you pointed this out very elegantly, that we do need to adapt. Derivatives markets have always been the most innovative, the most technologically advanced, and the market that I think attracts the greatest minds in terms of thinking about risk management and price discovery.

Although, and I will confirm this openly and I've said this in the past as well, Reg AT, the original proposal and the supplemental were far from perfect. There was a lot of policy ideas that were introduced as a result of market events that had occurred, you know, going back to the 2010 flash crash and a number of events in the Treasury market, and Knight Capital and what-not.

So this was a response, a policy response as many of the things we do and actions we take as policymakers are. Although markets have from a sort of incidents standpoint remained relatively stable and I knock on wood while I'm saying this, despite going from very turbulent market events including the COVID pandemic in March and April, it's I think hard to suggest that we're not going to continue to have such volatility and potentially technological errors or issues that may arise in the future.

The point being here is that I have an issue with withdrawing the proposal, especially one that was voted on in a bipartisan fashion, as opposed to taking a fresh look at what was introduced, learning from the comments and potentially amending what was originally laid out as a policy framework for the Commission to consider, obviously in conjunction with market participants and the public as we all think, as we all seek, I think, and I am pretty confident in this, a shared goal, in a transparent, fair and orderly market.

So I will be opposing the withdrawal and not certainly because I think Reg AT was perfect as I said before, but because I think it sets a dangerous precedent for the Commission, and one that really does not reflect well on what we do in a collegial way as a Commission, and that we've done historically. I hope going forward that we look at these documents as precedent and as a mark of the past of how we need to be better at our jobs and improve on the work we've done, not just wholeheartedly pushing them aside, an error and then something that was a mistake, full stop.

So with that, I'm going to pivot and if Dorothy and team could just take a few minutes to answer my questions in this first round I would appreciate it, and again thanks to all of you for your time and your commitment to this. It's extremely helpful and I am grateful to you, Mr. Chairman, for bringing up this issue.

It certainly would be easy not to, but I recognize the point you made that we have to remain fluid in our policy and that we have to move with the markets. With the technology advancing so quickly, we need to be moving with it to the extent that we can.

So first question for the team, I'm just curious from a current DCM practice, current DMO rules. Do the current DCM practices as we generally know them sort of meet the proposed principles? Marilee, I think you sort of suggested this, so I don't want to waste time or be redundant. But from my reading of the proposal, it seems like a lot of the principles are not going to necessarily require new action out of the DCMs, because many of the principles that we're going to be voting on later are either being matched or sort of ingrained in the rulebooks of the DCMs.

MS. DeWITT: Thank you Commissioner Behnam. This is Dorothy. Normally we present these rules with our team sitting together at the table, and can easily turn to one another. So for the purposes of all the Q&As, we've asked Marilee if she'll act as the central person who can take the question, and then ask the appropriate person within our team to answer it.

That will allow us to ensure that we have smooth answers to your questions. So I'll turn it over to you Marilee to conduct the -- to oversee the Q&A. Thank you.

MS. DAHLMAN: That sounds good,

Dorothy. So thank you very much for that question, Commissioner. I'll turn it over to Joe, who can respond to that.

MR. OTCHIN: Thanks Marilee. This is Joe Otchin. So we do think it's possible that DCMs may determine, upon review of the risk principle, that they do not need to update their current rules or controls at this time. We believe that DCMs are addressing the electronic trading risks currently presented to their trading platforms. DCMs have developed pre-trade risk controls including message throttles, order size maximums, and heartbeat messages that confirm connectivity.

DCMs also conduct due diligence and testing before participants can utilize connectivity methods. However, a formal analysis of DCM compliance with the risk principles would have to be done through the rule enforcement review process. We note that pursuant to the proposed Acceptable Practices, DCMs have reasonable discretion in terms of what rules and controls are sufficient, so they will have flexibility and discretion to determine appropriate rules and controls for their markets.

COMMISSIONER BEHNAM: Thanks Joe, I appreciate that. I'm going to turn to the acceptable practices that are in the NPRM, and I'm trying to get a -- I think it would be good for the public to get a better sense on the division's intent behind acceptable practices.

Legally, you know, and let's just use the reasonably designed risk principle, sort of in the DCM's requirement to sort of implement rules and risk controls that are, you know, "reasonably designed to meet the risk principles," what was the conversation or what was the sort of legal analysis to put the reasonably designed in acceptable practices as opposed to the text of the rule? Are there any I guess legal ramifications from having some of these statements put into the acceptable practices bucket as opposed to the text of the rule itself?

MS. DAHLMAN: Thank you Commissioner for that question. So the legal significance is that DCMs will satisfy their requirements under the risk principles if they have established and implemented rules and controls that are reasonably designed to prevent and detect and mitigate disruptions, associated with the electronic trading.

So as we noted during the presentation, "reasonably designed" means that rules and controls need to be objectively reasonable. So rules and controls that are not reasonably designed would not satisfy the acceptable practices and therefore may be subject to Commission action. We, you know, expect that the Commission would monitor DCMs to ensure compliance with the risk principles.

One thing to note also is that the risk principles don't create a strict liability for the DCMs if exceptions do occur, notwithstanding reasonable controls and rules. So this an area where DCMs have the best understanding of the risks presented and have full control over how their own systems operate.

We do believe that DCMs have the incentive and the ability to address risk and should have reasonable discretion to do that. And then I guess getting at the heart of your question as to why the reasonableness standard is located in the Appendix as opposed to the rule text, there's really not a difference in terms of how it operates with respect to the placement of that language.

We're striving for a flexible and a clear approach in this rulemaking, and we believe that the relatively brief rule text, combined with some further detail in the acceptable practices, serves that goal.

COMMISSIONER BEHNAM: Thanks Marilee. Can we do a quick follow-up on the objectively reasonable standard? Do we have a thought in mind of how that determination is -- who is going to make the determination of what constitutes "objectively reasonable"? Is the Commission going to be involved? Is it going to be a delegated out to a division, or are we just going to as an agency sort of require that the DCM meet the standard on its own?

MS. DEWITT: I am sorry to interrupt, Commissioner. This is Dorothy again and I would like to amplify what Marilee said in response to your clarification question. Objectively reasonable is ultimately determined by the Commission. There are ways that that happens, for example, in rule enforcement reviews.

There are examinations, and if the staff believes something is objectively unreasonable as described before, it will find a -- issue a deficiency finding that is subject to Commission -- that is part of rule efficiency review report subject to Commission review and approval through, potentially, different types of processes. There is currently one in place.

In addition, if the staff feels that something is objectively reasonable it can refer that over to enforcement and, again, it's the Commission's decision as to whether to pursue an enforcement action. So the Commission has the ultimate determination in both paths as to what is objectively reasonable.

COMMISSIONER BEHNAM: Thanks, Dorothy. That's extremely helpful.

I want to turn quickly to the significant disruptions reporting to the Commission and I think, Joe, you mentioned this in your presentation. I guess as a general matter, are there -- is there current in the sort of status quo what we do right now from the DMO perspective? Are there instances where a, you know, significant disruption that may occur within a trading system or at a DCM is not reported to the Commission?

So are we adding anything in this proposal that we don't otherwise do with respect to significant disruptions in the marketplace?

MR. OTCHIN: Thank you, Commissioner. This is Joe Otchin again.

So, the proposed rule is in some ways analogous to the current existing regulation with respect to system safeguards that requires DCMs to report, you know, significant system safeguards incidents to the Commission. So the proposed rule, you know, is different in that it requires reporting of significant market disruptions.

And so, you know, I am not sure. You know, in terms of factually, you know, I think that we do have a fairly good, you know, back and forth with DCMs in terms of them alerting us to significant incidents that happen. But in terms of sort of the rules and the requirements of Part 38, you would use the rule doc. You know, while it's analogous to the system safeguard rules, you know, we do feel that it's clearly distinguishable and that, clearly, would be, you know, an addition to Part 38 in terms of the rule text.

COMMISSIONER BEHNAM: Thanks, Joe. And if we can quickly follow up on that or at least pivot a little bit but staying close to significant disruptions, has the division thought about the differences between significant disruptions and market disruptions?

And I maybe carelessly used those words interchangeably in my previous question. But I think it'd be helpful to understand how the division is thinking about the differences, if there are any, between those two concepts -- significant and market.

MR. OTCHIN: Commissioner, this is Joe Otchin again. So a significant market disruption would include a situation where the ability of other market participants to execute trades, engage in price discovery, or otherwise manage the risk is materially impacted by the -- by a malfunction of a participant's trading system.

So, certainly, we could envision, you know, a given market participant having a technological issue, you know, that doesn't rise, you know, to that level of a significant disruption that impinges upon other market participants in the market. So, you know, market volatility by itself would not necessarily constitute a significant market disruption.

So, for example, the fact of a limit -- upper limit down being reached on its own, you know, that would necessarily constitute a significant market disruption. So yeah. So I do think that, you know, under the proposal it would have to meet a certain threshold in terms of its impact, you know, on the DCM's trading platform and on other market participants accessing it before it reaches the level of a significant disruption.

COMMISSIONER BEHNAM: Thanks, Joe. And I'll wrap up here, Mr. Chairman. I apologize. Have I gone way over my 10 minutes here? Should I reserve this last question or wrap up now?

CHAIRMAN TARBERT: No. No. Feel free to continue.

COMMISSIONER BEHNAM: Okay. So just this one last question. Thanks, Mr. Chairman.

The division decided not to define expressly market disruptions, system anomaly, electronic trading, and I think that, you know, dovetails sort of consistently with what the Chairman said about principles-based regulation. And in many ways, I understand that and appreciate the decision to not define these terms sort of in a static way.

But if, Dorothy, you or the team could share sort of what was the thinking behind having more of a Commission view on what these terms mean -- again, market disruption, system anomaly, electronic trading -- as opposed to expressly defining them.

And I point this out just because, on the one hand, I, again, appreciate the benefit of principles-based regulation in many circumstances. But do we run the risk in this particular circumstance where there is reserved many authorities for the agency to act in an enforcement capacity or an oversight capacity through rule enforcement reviews or otherwise, that by leaving it up to the Commission to sort of describe or, you know, share our view of what these terms mean it creates a little bit more uncertainty for registrants about what our view is and, potentially, an evolving view depending on the Commission in place at the time. Thanks.

MR. OTCHIN: Thank you, Commissioner. This is Joe Otchin again.

So various terms, as you note, including market disruption, system anomaly, are not defined in the proposed rule text and they are not defined so that the application of the risk principles by both DCMs and the Commission can evolve over time, along with market developments.

However, we do note that the NPRM does include a general discussion of those terms in the context of today's electronic markets to provide the public and, in particular, DCMs with guidance for applying the risk principles. And I will also note that the NPRM asks questions for the public regarding the preamble's discussions of those terms and, certainly, we look forward to seeing the comments that come in.

COMMISSIONER BEHNAM: Thank you, sir. I appreciate that. And, again, thanks to Dorothy, Joe, for your presentation. Marilee, as well yours. And thanks to the entire DMO staff (audio interference) who participated. I'll probably have a question or two and read a statement in the second round.

But thanks, Mr. Chairman and my fellow commissioners, for being patient.

CHAIRMAN TARBERT: Thank you very much, Commissioner Behnam.

Commissioner Stump?

COMMISSIONER STUMP: Thank you, Mr. Chairman, and I will be very brief. I actually have no questions. I just want to make a very brief statement.

It's a fact that the markets we regulate have become increasingly electronic, much like everything else in our modern lives, and I believe, as has been recognized by others, that the market infrastructure providers have already implemented a host of measures pursuant to our existing regulations and their self-regulatory responsibilities to account for this transition and the associated risks.

I will vote favorably to seek public comment on the need for additional Commission—prescribed risk principles expected to be applied by all DCMs and I will reserve judgment on any final rule accordingly.

But I have reservations about any suggestion that adequate attention has not already been invested in responding to those lessons that the exchanges and the Commission have already learned and applied as electronic trading has become more prevalent in these markets.

With that, I will turn it back to you, Mr. Chairman, and I look forward to the rest of the discussion. Thank you.

CHAIRMAN TARBERT: Thank you very much, Commissioner Stump.

Commissioner Berkovitz?

COMMISSIONER BERKOVITZ: Thank you, Mr. Chairman. This is Commissioner Berkovitz, and I have a few questions. Some of them the discussion has already started by the questions and answers of other commissioners. And so that -- I'll build off those.

I do want to say at the outset, just echoing what -- something that others have said and Commissioner Stump has just preceded me -- I want to make it clear that my discussion and my consideration of this issue, I first came to this -- I was at the Commission during the flash crash and that was a big event in those days.

And I wasn't at the Commission for Reg AT and now I am back at the Commission. So I have seen through my time at the Commission and involvement with these markets the significant evolution in the market's ability to deal with electronic trading and there have been significant advances in electronic trading.

So a lot -- as others have noted, there's been a significant evolution in electronic trading. There has been a significant evolution in the Commission's understanding of electronic trading and I think we need to recognize that there has been a significant evolution in the exchanges, response to it, and then the controls that they have put on.

They have learned a lot and they have put in a number of measures that have -- that have -- the staff has in the preamble noted, have taken steps -- have taken significant steps to address the risks posed by electronic trading.

So the question is today, going forward, what additional needs to be done, what are the risks and how should the Commission approach it.

So I want to -- I want to recognize that as the base. There have -- what we are talking about, as Commission Behnam said, is different from what the Commission was dealing with in 2014, 2015, 2016, et cetera, as Reg AT was being evolved.

There's always -- there's a several year lag actually between the time a serious problem is identified and you get proposed regulation on the books, you get comments on it, you re-propose it, consider those comments. So that easily can chew up four to five years, and meanwhile the market has developed.

So I also believe Reg AT, what was proposed three or four years ago, may not be timely right now. But I do not agree with the concept that is in the Reg AT withdrawal. That there's absolutely nothing in that document that's worthy of our consideration at all.

I think that's a much too strong rejection of all the work and all the thought that went into that and many of the ideas that were put forth, and let's also not forget that that went through an iteration where the Commission proposed. The industry responded. The Commission changed its proposal in response to those comments. And I find benefit in that discussion and I think the Commission's -- the Commission's total withdrawal of that and rejection of absolutely anything in that document is too much.

So I think some of the things in Reg AT are not appropriate in today's market but other things in Reg AT may be, and I think the Commission should be considering a number of those things or at least get public comment on it.

So I am not supporting -- I am not supportive of the withdrawal of Reg AT. Reg AT in that form can't be adopted by the Commission today.

But I don't think we should dismiss all consideration of everything that was -- all the work that was done that went into that at this time.

But, moving forward, this debate today is not about Reg AT. It's about where do we go from here. I want to ask -- I think some of the questions are -- some of the statements that have been made is that DCMs currently addressing most if not all the risks encompassed by the risk principles that may not accept DCMs to adopt new rules that are currently addressing many of these risks, existing practices today consistent with risk principle one, existing acceptable practices for the core principle four would satisfy risk principle two.

So I am wondering, you know, if the exchanges are already in compliance pretty much with this, and this isn't going to require anything new, then what is the -- what are we getting at here and what difference will this make.

Are we just putting another reg on the books? So let me ask, again, just to clarify, what is the delta -- what are we getting under this -- under these risk principles that we don't have under current law? What is the regulatory delta, so to speak, between current law and these risk principles?

STAFF: Thank you for that question, Commissioner. And so it's definitely a good question. I think one existing regulation that's somewhat -- perhaps most relevant here would be existing 38.255, which also requires risk controls.

Under that regulation, a DCM is required to have risk controls on its own system to address market disruptions including restrictions that pause or halt trading. So with the risk principle number two provides is that it really gives additional clarity to DCMs. So it also specifically addresses electronic trading.

In addition, we make very clear in the preamble that we now consider market disruptions very broadly to address not only extreme price movements but other disruptive behavior that might impair the ability of market participants to access the market and manage the risk.

So, hopefully, that answers, you know, your question that, you know, while there may be a bit of overlap and, you know, we do certainly require risk controls already, these rules -- these principles get more specifically at electronic trading. We want to make very clear we are getting at more than extreme price movements and, hopefully, these risk principles will provide, you know, increased clarity to DCMs on what our expectations are in terms of presenting and mitigating risk.

COMMISSIONER BERKOVITZ: Okay. So I guess is it fair or is it obvious to characterize what we are doing as a principles-based approach?

STAFF: I would call this principles-based. You know, we do call them risk principles and we did strive to be flexible and offer the DCMs, you know, reasonable discretion in terms of how to comply with them.

We do know that they have done a lot of

work in this area already to address risk and they really are, you know, well aware of what the risks are to their markets and how to best address those risks. And so these are our principles and, hopefully, they will work to prevent risk and also, you know, be flexible enough to allow for continued evolution in terms of technology and the market.

COMMISSIONER BERKOVITZ: So let me just for the listeners clarity's sake, we have talked about Regulation 38.255 and the current regulation, and that's the basis for this discussion.

But I think it helps to be explicit in comparing the new proposed risk principles one and two with where we are. So the new proposed risk principle one, which would be 38.255 -- 38.251(e), which is risk principle one, which says the DCM must: "(e) adopt and implement rules governing market participants subject to its jurisdiction to prevent, detect, and mitigate market disruptions or system anomalies associated with electronic trading."

I am not sure everybody who's listening would have these exact words. So I think it's helpful for me to specify the words.

"Adopt and implement rules governing market participants subject to its jurisdiction to prevent, detect, and mitigate market disruptions or system anomalies associated with electronic trading."

38.251(f), which is risk principle two, says "subject all electronic orders to exchange pre-trade risk controls to prevent, detect, and mitigate market disruptions or system anomalies associated with electronic trading."

So one goes to adopt and implement rules governing market participants, and two is subject to all electronic orders. So there's one governing market participants. The other is electronic orders. And they both seek to prevent, detect, and mitigate market disruptions or system anomalies associated with electronic trading.

38.255, the existing regulation, says the designated contract market must "establish and maintain risk control mechanisms to prevent and reduce the potential risk of price distortions and market disruptions, including but not limited to market restrictions that pause or halt trading and market conditions prescribed by the designated contract market."

So we have already got a risk -- a principles-based regulation, 38.255, based on core principle four. 38.255 says they must establish and maintain risk control mechanisms to prevent and reduce potential risk, price distortions and market disruptions.

Now, in implementing two more, one is for market participants to prevent, detect, and mitigate market disruptions, and then electronic orders, the risk controls adopted -- excuse me, DCM must subject all electronic orders to exchange based pre-risk controls to prevent, detect and mitigate market disruptions.

And the reason -- the reason we are doing this is to get more explicitly the answer was to get more explicitly at electronic orders. It more explicitly covers market participants and there was concern that the current regulation might be too focused on sudden price movements, although I don't read it that way. But that concern was -- is reflected to a certain degree in the preamble.

So, basically, what we are saying is we need more specificity. But there's a lack of prescriptivity in the current regulation. We have a very, very broad principles-based regulation. But we need to be more prescriptive. We need to say it specifically is subject to electronic orders. We specifically say that it governs market participants.

So we have a principles-based regulation already. But what we are saying here today is we need more specificity in our regulations. We need to be more specific as to how this applies and to whom it applies. And I fully agree with that. I couldn't agree more with the position the Commission is taking today that its current principles-based approach is too high level and it needs more specificity.

My concern is or my question is are we specific enough, and specificity and prescriptivity, you know, we can talk philosophically about it's this or it's that. But it's really getting it right, and so in some cases you want specificity. In other cases, you don't want specificity. But here, what we are saying is the market has evolved since 38.255 was put in initially.

The market's evolved and we have learned more. So we want -- we want the DCMs to have rules governing market participants and we want them to have rules specifically and explicitly dealing with electronic orders, and that specificity and that prescriptivity is not in the current regulations. So let's get -- let's be more specific.

So, you know, we can talk about principles-based whatever. But they can't be too high and they can't be too general and they can't be too broad. There has to be some level of specificity in these things to make them meaningful.

It would be meaningless for the Commission to pass a regulation that would say, basically, the DCM shall address all the risks before it. Well, that's a pretty high-level principles-based regulation. DCM should address all the risks before it and do it in a reasonable way, and we will just, you know, figure out whether you were being reasonable or not.

We could throw out the whole CFR on that basis and intermediaries, too. Reasonably address the risks coming before you. But we don't do that. Some areas -- some areas we give the DCMs discretion. Some areas we give the DCMs guidance, and that's appropriate, too.

And the chairman is actually -- you know, the chairman -- you've written an excellent article going into where and when the different types of approaches are appropriate.

I commend you on 23 single-spaced pages in the Harvard Business Review for spelling all these circumstances out and when one approach would be appropriate and another approach -- a more prescriptive approach would be appropriate.

But on the subject that we are dealing with today, I think we have to be balanced in our view as to how much specificity and how much prescriptivity is appropriate and not take a general overall philosophical view one way or the other. But let's see what's particularly appropriate to the circumstances.

I am reminded -- I was reminded of those -- thinking about this issue of the movie that I saw a number of years ago, the movie Amadeus.

And there's the great scene in Amadeus where -- it's about Mozart and his -- Mozart and his feud or his rivalry, I should say, with the other great composer at the time, Salieri.

And I am not a -- I love the classical music but I am not a classic music, you know, expert or historian or whatever, and I might have heard music like Salieri. But he was another great composer. He just had the misfortune of being in Vienna at the same time Mozart was there and so

Mozart totally overshadowed him. And in another time, Salieri -- everybody might know who Salieri is. But Mozart was such a prodigy and got all the attention and it was about -- the movie's about the jealousy of and the rivalry between Salieri and Mozart.

But there's a famous scene in the movie when Mozart premiers a symphony for the Emperor Joseph and the emperor -- and it's reportedly a true story -- the emperor said to Mozart, too many notes, dear Mozart. Too many notes. And Mozart's reply was, Just as many as necessary, your Majesty.

So the degree of prescriptivity and degree of specificity, I would think, is just as much as necessary, Mr. Chairman. Just as much as necessary. So I've got some more specific questions in a less philosophical vein. I'll leave those for the second round. So thanks.

CHAIRMAN TARBERT: Thank you very much, Commissioner Berkovitz.

Well, let me just simply sort of I guess -- so we will start round two now and I think I am going to be very quick. But let me just sort of respond to some of the things that others have said, particularly my colleagues.

So I do agree that, first of all, this is additive, and when I espouse a principles-based approach, again, I don't mean we just have vacuous statements that are entirely meaningless.

You need to have principles with a certain degree of specificity so market participants actually know what they are doing. How could you be -- how can you reasonably design something to achieve something if you don't know that which you wish to achieve or what you're directed to achieve.

So I do think we are providing greater specificity. But at the same time, we are not being totally prescriptive. You know, we could give -- have 25 pages of regulations saying, you know, thou shall do these 28 things or something like that. We are not doing that here. So I would agree that what we have right now is sort of broad and some could argue so broad that it's somewhat vacuous.

And so what we are doing here is we are keeping and advancing a principles-based approach. But those principles are meaningful and they are specific enough that market participants are able to make reasonable decisions as to whether they are complying or not.

So I think it's a step forward in that direction and I agree with your overall analysis.

As for the movie Amadeus, which I think won Best Picture in 1984, I am going to admit that I am a big fan of that movie as well. And in a thrift shop about six weeks ago I actually found the entire soundtrack on CD and purchased it. You know, I think it's from 1984. And so a great movie, great reference, and getting rules right may not be as hard as writing the great operas of Don Giovanni or The Magic Flute or even as arduous as writing The Requiem.

But it is -- we are trying to sort of get it right and I think you hit it spot on that, you know, it's more of an art in many ways than just the science. In my article I tried to sort of at least provide some kind of framework for -- these are kind of areas where they tend to be more principle and these are others where they should be more rule based.

But at the end of the day, regulation is probably as much of an art. Sound regulation is about much of it being an art as it is about being a science. So we move forward today on that basis.

And then, finally, on Reg AT, you know, first of all, I think there are three points in the Reg AT withdrawal, three attributes or three things that Reg AT does. But I think, you know, we say we are not -- we do reject, but only three and not necessarily everything in Reg AT as proposed.

My biggest reason for supporting to withdrawal is the fact that, you know, I don't believe we can move final or finalize anything. I think even if people wanted to move forward on aspects of AT it would have to be reproposed.

And so my litmus test for this is not, you know, who voted for it and, you know, was it partisan, was it bipartisan. But really, you know, is it something that needs to be proposed, reproposed. And if the answer is yes, then my view is it should be withdrawn.

When I got to this job last summer, there were probably 20 different things that were laying out there that were kind of unopened or unfinished, I should say, and really my focus has been on giving the market the clarity. And my view is if we are not going to move forward with it and finalize it, then I believe it should be withdrawn.

And to your point, Commissioner, or your concern, Commissioner Behnam, which I totally understand that it was done in a bipartisan fashion, you have my word that I will withdraw things in a bipartisan fashion as well or ask the Commission to withdraw things.

So this AT happened to be under a Democratic Party -- you know, someone with a Democratic affiliation as chair. But I fully intend to withdraw things that have also been proposed under a Republican chair, which it's become clear, perhaps, that the Commission is not going to move forward with finalizing.

So that is -- so I share the concern. But my view is we will withdraw everything that meets the test that I laid out. If we don't plan on finalizing it and we'd have to repropose it even if we wanted to finalize aspects of it, then my view is we will -- I will put it before the Commission to withdraw so we have a clean slate.

So with that, I am happy to turn it back over to you, Commission Quintenz.

COMMISSIONER QUINTENZ: Thank you, Mr. Chairman. This is Commissioner Quintenz. I think I am going to go through my statement. I don't have any questions for the staff, and I would like to acknowledge their work. But I'll do that towards the end. I hope everyone can forgive me for not including Amadeus references in my statement. But it's a little too late to try to change it to be consistent.

Let me just say that I support today's proposal that will require designated contract markets to adopt rules that are reasonably designed to prevent, detect, and mitigate market disruptions or system anomalies associated with electronic trading.

And as we have heard, it will also require DCM to subject all electronic orders to pre-trade risk controls that are reasonably designed to prevent, detect, and mitigate market disruptions and to provide prompt notice to the Commission in the event the platform experience has any significant market disruptions.

I believe that all DCMs have already adopted regulations and pre-trade risk controls designed to address the risks posed by electronic trading. As I noted previously today and many other times, I think many if not all of the risks posed by electronic trading are already being effectively addressed through the market's incentive structure, including exchanges in firms' own self interests in implementing best practices.

Therefore, today's proposal, in my view, merely codifies the existing market practice of DCMs to understand their markets, have reasonable controls in place to mitigate electronic trading risks, and to continue to evolve in their thinking in how those should be reasonably applied.

Significantly, the proposal puts forth what is, in my view, a truly principles-based approach, allowing DCM trading and risk management controls to continue to evolve with the trading technology itself.

As we have witnessed over the past decade, risk controls are constantly being updated and improved to respond to market developments.

It's my view that these continuous enhancements are made possible because exchanges and firms have both the flexibility and the incentives to evolve and hold themselves to an ever higher set of standards rather than being held to a set of prescriptive regulatory requirements which can quickly become obsolete or calibrated inappropriately to begin with.

By adopting a principles-based

approach, the proposal would provide exchanges and market participants with the flexibility they need to innovate and evolve with technological developments.

As the preamble to this proposal states explicitly, quote, DCMs are well positioned to determine and implement the rules and risk controls most effective for their markets. And under the proposed rule, DCMs would be required to adopt and implement rules and risk controls that are objectively reasonable, and reasonableness is a generous concept.

The Commission would monitor DCMs for compliance and take action if it determines that DCMs' rules and risk controls are objectively unreasonable. And as was mentioned by the staff and as is mentioned throughout the preamble, the Technology Advisory Committee, which I am very honored to sponsor over the last two years, has explored the risks posed by electronic trading at length as well as the responses to those risks by exchanges.

And in each of those discussions, it's become obvious that both DCMs and market participants take the risks of electronic trading seriously and have expended enormous effort and resources to address those risks.

As I think Marilee described, or maybe Joe, we heard how CME -- at one TAC meeting how the CME group has implemented trading and volatility controls that complement and in some cases exceed the eight recommendations published by IOSCO regarding practices to manage volatility and preserve orderly trading.

We heard from the FIA about current best practices for electronic trading risk controls. FIA also reported that through its survey of exchanges and clearing firms and trading firms it has found widespread adoption of market integrity controls since 2010 including price banding and exchange market halts.

FIA also previewed some of the next-generation controls and best practices currently being developed by exchanges and firms to further refine and improve electronic trading systems, all of which were happening in absence of the proposal that we have before us today.

The Intercontinental Exchange presented on the risk controls that they currently implement across all of ICE's exchanges, noting how its implementation of controls was fully consistent with FIA's best practices.

These presentations emphasize how critical it is for the Commission to adopt principles-based approaches that enable best practice to evolve over time. I believe the proposal issued today adopts such an approach and provides DCMs with the flexibility to continue to improve their risk controls in response to technological and market advancements.

I look forward to the comments on this proposal. And lastly, I would like very much to thank the staff, to Dorothy, to Marilee, to Joe, and Rachel from DMO for the time that they took in speaking to me and to my staff about this proposal and their thinking.

I would also like to specifically thank the chairman, Andrew Ridenour and the rest of his staff for their tireless and constant communication on this proposal. But I would particularly like to acknowledge and thank Kevin Webb of my staff for the intense amount of work and attention to detail and brainstorming on this proposal over the past month.

Thank you very much, Mr. Chairman. I look forward to supporting a proposal today.

CHAIRMAN TARBERT: Thank you very much, Commissioner Quintenz.

Commissioner Behnam?

COMMISSIONER BEHNAM: Thank you, Mr. Chairman. I will also reserve my time in the second round for my statement. But before I do, just, again, a quick thank you to the entire staff for their work, for working with my office and, in particular, John Dunfee, who helped me work through these issues and as we discussed them, and as always, division staff and in this case DMOs were receptive, worked well and was very frank in sort of sharing their views so that we could work through this in a positive way.

I strongly support thoughtful and meaningful policy that addresses the use of automated systems in our markets. As Chris Clearfield with System Logic, a research and consulting firm focusing on issues of risk and complexity, remarked, quote, in every situation, a trader or a piece of technology might fail or a shock might trigger a liquidity event.

What's important is that structures are in place to limit, not amplify, the impact on the overall system. Any rule that we put forward should both minimize the potential for market disruptions and other operational problems that may arise from the automation or -- of or order origination, transmission or execution and create structures to absorb and buffer breakdowns when they occur.

Unfortunately, today's proposal regarding electronic trading risk principles does not meaningfully achieve this and, thus, I respectfully dissent.

A little over 10 years ago on May 6th, 2010, the flash crash shook our markets. The prices of many U.S.-based products including stock index futures experienced an extraordinarily rapid decline and recovery. After this event, the staffs of the U.S. Securities and Exchange Commission and CFTC issued a report to the joint CFTC SEC Advisory Committee on emerging regulatory issues.

The report noted that, quote, one key lesson is that under stressed market conditions, the automated execution of a large sell order can trigger extreme price movements, especially if the automated execution algorithm does not take prices into account.

Moreover, the interaction between automated execution programs and algorithmic trading strategies can quickly erode liquidity and result in disorderly markets.

In 2012, Knight Capital, a securities trading firm, suffered losses of more than $460 million due to a trading software coding error. Other volatility events related to automated trading have followed with increasing regularity.

Since 2016, the Commission has not advanced policy designed to prevent or restrain the impact of these market disruptions resulting from automated trading. While the Commission has not acted these events have continued to occur. In September and October 2019, the euro dollar futures market experienced a significant increase in messaging.

According to reports, the volume of data generated by activity in euro dollar futures increased tenfold. The DCM responded by changing its rules to increase penalties for exceeding certain messaging thresholds and cutting off connections for repeat violators.

The DCM acted appropriately in such a situation and strengthened its rules for its participants. However, Commission policy could well have prevented this event by requiring pre-trade risk controls including messaging thresholds.

Given the importance of the issue, I would like to commend, again, the chairman for stepping forward with a proposal today. However, as I considered this proposal, I found myself questioning what the proposed risk principles do differently than the current status quo.

The preamble seems to go to great lengths to make it clear that the Commission is not actually asking DCMs to do anything differently than they do today. The preamble states that the Commission, quote, believes that DCMs are addressing most if not all of the electronic trading risks currently presented to their trading platforms, closed quote.

As the preamble discusses each of the three new risk principles, it goes on to describe all the actions taken by DCMs today that meet the principles. The fact that the Commission is not asking DCMs to do anything new is clearest in the cost benefit analysis, which states that DCMs' current risk management practices, particularly those implemented to comply with existing regulations, already may comply with the requirements of the proposed rules.

If the appropriate structures are in place and we have dutifully conducted our DCM rule enforcement reviews and have found neither deficiencies nor areas for improvement, then is this exercise before us today anything more than creating a box to check?

The only potentially new aspect of this proposal is that the preamble suggests different application in the future as circumstances change.

The Commission seems to want it both ways. We want to reassure DCMs that what they do now is enough, but at the same time, the new risk principles potentially provide a blank check for the Commission to apply them differently in the future or, perhaps, view differently when there is a technology failure, and there will be one. Will the Commission stand by its principles or will it fashion an enforcement action around a black swan event so that everyone walks away a little bruised but not harmed?

For the market participants, this may be extremely confusing. What precisely are DCMs being asked to do and what will they be asked to do in the future? Frankly, I am not sure. But it could be more than they bargained for.

The first risk principle requires DCMs to, quote, adopt and implement rules to prevent, detect, and mitigate market disruptions or system anomalies associated with electronic trading.

None of the key terms in this principle are defined in the regulation or the preamble. DCMs are left some clues, but they are not told precisely what a market disruption or system anomaly is.

Perhaps most importantly, they are not told what it means for something to be, quote, reasonably designed to prevent these things.

This lack of clarity continues through the other two new risk principles, and while the Commission provides some clues by stating that current practice may meet the new principles, it then goes on to say that future circumstances may require future action by DCMs in order to comply with the principles.

As a recent article by our chairman in the Harvard Business Law Review points out, the CFTC has a long tradition of principles-based regulation. The concept runs through our core principles, which form the framework for much of what we do now and how we regulate. It certainly is tempting to promulgate broad rules that provide the CFTC with flexibility to react to changes in the marketplace. The problem is that this flexibility comes at a number of costs.

It potentially denies market participants the certainty they need to make business decisions, and if the principles are too flexible, it denies market participants the notice and opportunity to comment as required by the Administrative Procedures Act.

These costs become too high, whereas today we promulgate rules that are too broad in their terms and too vague in application.

There is reason why the core principles for swap execution facilities and derivatives clearing organizations in our rules, that are extensive, and why the regulations include appendices explaining Commission interpretation and acceptable practices.

Without sufficient clarity, principles actually can become a vehicle for government overreach, a sort of blank check for broad government action and that includes enforcement action. There is a saying in basketball that a good zone defense looks a lot like a man-to-man defense, and a good man-to-man defense looks a lot like a good zone defense.

I think the same can be said of principles-based regulation and rules-based regulation. Good principles-based regulation should look a lot like rules-based regulation. It should have enough clarity to provide market participants with certainty and the opportunity to provide comment regarding what regulation will look like.

It's worth noting that the Commission described and unanimously approved the Reg AT proposal as principles-based. Multiple comments in the staff proposal noted that it was too principles-based.

I suspect that each of us on the Commission believes that the CFTC has a tradition of principles-based regulation and that tradition should continue. However, I think there is a disagreement precisely what that means.

Finally, I want to make a few comments on the vote regarding the withdrawal of Reg AT. On the one hand, the risk principles proposal today expressly is not about automated or algorithmic trading. This applies to electronic trading, generally.

Yet, there seems to be a perception that this is a replacement for Reg AT and that is already reflected in some media accounts of our action today. And if there is any question the Commission is separately voting on withdrawal of Reg AT at the same time it's issuing this NPRM, separate votes specifically to withdraw a prior Commission proposal is highly unusual, particularly in a situation whereas here, the original proposal was unanimously issued.

Mr. Chairman, separately I recognize your comments that you made in response to my point earlier and I appreciate them, and I appreciate the opportunity to vote as this will sort of display the differences we have which, hopefully, as we continue to have a healthy relationship we will work through.

I believe that this action establishes a dangerous precedent for a Commission that has historically prided itself on its collegiality and its efforts to work in a bipartisan fashion.

I've followed in a tradition of some of my predecessors on the Commission, at times voting for proposals that I would not have supported as final rules solely for the purpose of advancing the conversation.

I worry that the withdrawal of Reg AT

could lead to future withdrawals of Commission proposals and a loss of this historic collegiality.

We should be standing on the shoulders of those who came before us, not tearing down what came before us.

Market participants express valid concerns to the original Reg AT and I share some of those concerns, as I do with many of our proposals.

But market displeasure with just one or even a few of those original policy concepts is not a reason to throw away the rest of the proposal and rejecting it full stop. Let's revisit, let's review, and let's refresh sound policy to better reflect modern market structure and a healthy relationship between market participant and the market regulator.

I firmly believe we collectively strive for the same goal in this circumstance and others: safe, transparent, orderly, and fair markets.

Unfortunately, today's proposal does not advance the conversation and, as such, I cannot support it.

Thank you, again, Mr. Chairman, for your time and my fellow Commissioners and, of course, thanks to DMO and all the staff who have put a lot of time and work into this. I appreciate your efforts, as always. Thank you, Mr. Chairman.

CHAIRMAN TARBERT: Thank you very much, Commissioner Behnam.

Commissioner Stump?

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

I do not have a formal closing statement or statement with regard to this rule. I have listened with great interest and I think for anyone who has tuned into this meeting who might not spend a lot of time with the CFTC, it is probably obvious that to get this proposal to where it is today has been the result of a very spirited debate behind the scenes among all of the five commissioners as well as a tremendous number of the agency's staff.

So I just want to commend, again, the staff for handling that situation in a very -- in a remarkable way, quite frankly, and in a very respectful way, and I very much appreciate the time and energy that has been put into this proposal.

But with that, I will turn it back to you, Mr. Chairman.

CHAIRMAN TARBERT: Thank you very much, Commissioner Stump.

Commissioner Berkovitz?

COMMISSIONER BERKOVITZ: Thank you, Mr. Chairman.

I have one additional question and then I have my prepared statement and also some additional remarks I'll add to that.

And this goes to the significant disruption. Now, is it correct that principle three requires the DCMs to report significant disruptions but that the rules don't need to be designed just to prevent disruptions?

Is that correct? That we are not permitting -- we are not only -- the rule and the principles address all types of disruptions, not just significant disruptions. Is that correct?

Risk principle one and two?

MS. DAHLMAN: Thank you. This is Marilee. Marilee Dahlman. Thank you for that question. The first two principles do not have that qualifier. So yeah, they are geared more generally to disruptions.

The notification requirement it does -- it does have that significant threshold for notice. So it is -- it is slightly different. But in terms of disruptions, the key element is that really what's significant for us is that the disruption in some way impacts the ability of other participants to trade or, you know, in some other way manage their risk.

COMMISSIONER BERKOVITZ: Okay. Okay. Thank you.

So I will -- I have my remarks and I want to -- I will add on to this.

So I am going to vote in favor of issuing the -- for public comment the proposed rule on electronic trading principles.

The proposal is a limited step to

address potential market disruptions arising from system errors or malfunctions of electronic trading. Although it leaves important issues unaddressed, the proposal recognizes the need to update our regulations to keep pace with the speed, interconnection, and automation of modern markets.

I support the Commission's long overdue reengagement in this area. While I support issuing the proposed rule for comment, I do not support withdrawing Regulation AT. As I said, the notice of withdrawal reflects a belief that there is nothing of value in Reg AT, and that is simply not true.

Reg AT was a comprehensive approach for addressing automated trading Commission-regulated markets. Certain elements may have been a bridge too far. However, I applaud that proposal's efforts to identify the sources of the risk and implement meaningful risk controls. I believe the comments received on Reg AT are worth evaluating, going forward.

In terms of the risk principles in the

proposal, while worthwhile as statements of principles, these proposed requirements are drafted in terms that might ultimately prove too high level to achieve the goal of effectively preventing, detecting, and mitigating market disruptions and system anomalies.

This concern is discussed in greater detail in my written statement and I look forward to public comment on this issue.

The proposed rule includes acceptable practices in Appendix B to Part 38, which provides that the DCM can comply with the risk principles through risk -- to rules and risk controls that are reasonably designed to prevent, detect, and mitigate market disruptions and system anomalies.

The proposed rules specify that reasonableness is an objective measure and that a DCM rule or risk control that is not reasonably designed would not satisfy the acceptable practices or the risk principles.

As the proposal indicates, the Commission will monitor the DCM's compliance with risk principles, and as the staff has explained in the presentation, the Commission has multiple oversight activities at its disposal including market surveillance activities, review of new rules certifications, and approval requests and rule enforcement reviews.

And for me, one very significant aspect of this proposal is that it's clear on the fundamental provision of authority under the Commodity Exchange Act between DCMs and the Commission, and this is a point that is sometimes lost or not fully appreciated when we are talking about principles-based regulation.

Amendments to the Commodity Exchange Act made through the Commodity Futures Modernization Act in 2000 introduced the core principle regime and provided DCMs with flexibility in establishing how they comply with the core principles.

Ten years later, learning from the 2008 financial crisis and the excesses of deregulation, the Dodd-Frank Act overhauled the CEA including in its treatment of the core principle regime.

Specifically, Section 735 of the Dodd-Frank Act made clear that a DCM's discretion with respect to core principle compliance was circumscribed by any rule or regulation that the Commission might adopt pursuant to the core principle.

I am able to support today's proposed rule for publication in the Federal Register because of improvements that clarify the respective authorities between the DCM and the Commission.

Under the CEA, the Commission is the ultimate arbiter of whether a DCM's rules and risk controls are reasonably designed under objective standards.

I want to thank the chairman and my colleagues for working on this issue and arriving at consensus in this regard.

And let me just give some slight additional history on this. When I was at the Commission the first time in -- I was at the

Commission for about a year before the Dodd-Frank Act was enacted into law. We were working on it then, and this issue -- the core principles under the CFMA were the operative regime.

And there were a number of instances where the staff felt really under the existing CFMA where at that time the CFMA says the exchange shall have reasonable discretion in establishing the manner in which the Board of Trade complies with the core principles.

So the exchanges -- the DCMs were given reasonable discretion and, basically, to find that the DCM was not complying with the core principles you had to, essentially, find a violation of the Commodity Exchange Act. It was an extremely high standard and there were a number of instances, and the exchanges -- I don't think the CFTC ever was able to tell an exchange that its practices were unacceptable under the core principles.

In 2009, the CFTC and the SEC prepared a joint report on harmonization of SEC and CFTC regulations, and sent that report to Congress.

And the -- in that report the CFTC recommended that this authority be clarified. The report that CFTC sent up to Congress -- I am just going to quote briefly from it. So the Commodity Futures Modernization Act significantly limited the CFTC's authority over the rules of exchanges and clearinghouses subject to its oversight.

"The CFTC does not have clear authority, for example, to set rules for risk management for exchanges and clearinghouses. The CFTC's authority contrasts with the authority of other regulators such as SEC or regulators in foreign jurisdictions.

In the near future, the CFTC will be expected to regulate not only the futures market but also a large section of what currently is the over-the-counter market for derivatives and possibly emissions trading.

Absent clear rulemaking authority, the CFTC is limited in its ability to enforce core principles to adapt to market conditions and international standards and to protect the public.

To provide the CFTC with sufficient ability to ensure that exchanges and clearinghouses regulated under is authority are operating within the principles, rules, and regulations established under the CEA, the CEA should be amended to provide the CFTC with clear authority with respect to exchanges and clearinghouse rules that the CFTC finds are necessary for them to comply with the CEA.

The CEA should be amended to, one, clarify the CFTC's rulemaking authority to determine the appropriate manner by which an exchange or clearinghouse may comply with the CEA."

So those are the recommendations that were adopted by Congress, and that's why -- that's why the Commodity Exchange Act today, if you look at the core principles that exist for DCMs and SEC and others, when in the provisions saying reasonable discretion of contract market, there's the introductory clause that says, unless otherwise determined by the Commission by rule or regulation a board of trade shall have reasonable discretion in establishing the manner in which complies with the core principles.

So this is something that CFTC back in those days felt very strongly about, recommended to Congress to include in the Dodd-Frank Act. Congress clarified the CFTC's authority that we have the authority by rule or regulation to set the manner.

So to have a rule or regulation that would just say the DCMs have reasonable discretion to do X would go back to the pre-Dodd-Frank -- in my view, would go back to the pre-Dodd-Frank world where it just said the exchanges have reasonable discretion and CFTC, based on that experience, felt it had inadequate authority.

So how do you have a principles-based regime that ties this together? And I think that I've worked to have many discussions with the chairman on this issue about the respective authorities of the Commission and the exchanges.

And I am very pleased to see in this document that we are setting forth a -- the standard that -- we believe that we set forth an objective standard of reasonableness.

And, you know, and we talk about prescriptivity or nonprescriptivity, you can put it in a regulation. You can put it in acceptable practices or you can put it in a preamble. How are we going to say what's objectively reasonable?

Well, you know, if you start talking and we make references to current industry standards and we talk about IOSCO standards, we talk about technical -- the TAC recommendations and the best practices in the industry and say we are going to look for that as to what's reasonable, we can build in -- we can build in what objectively reasonable is and, effectively -- I believe we can effectively get there.

At the same time recognizing that, you know, exactly how the controls are set up. They have to have some discretion. We're not going to set the numbers and the throttle limits and all of that. They have to have some discretion in that area.

But, you know, the types of throttle limits, you know, look to the TAC recommendations, look to best practices, and that will determine what the objective standard is. But ultimately we have the final say, and that's appropriate and that reflects the congressional intent.

So that -- this approach and this structure, this sort of being I think one of the first revisions of the core principle approach, in my view this is a -- the correct approach, and it's one significant reason that I'm supporting this today, because I think it appropriately balances the respective authorities here.

Now obviously, you know, what is objectively reasonable, you know, exchanges will have their views and we will have our views. And if we disagree, a court will decide it. Hopefully it doesn't get there, but I think it sets the parameters of the debate very well.

So to me this is a critical component of this rule. When we talk about principal space, sometimes the authority -- like who decides, when we talk about reasonable discretion, who is going to be the ultimate decision maker? And I'm very pleased to see that this recognizes the Commission as the ultimate decision maker.

I thank the Chairman and my colleagues for all of the work that went into this issue over the past several weeks.

In that regard, I thank the Chairman -- the Chairman and his staff and other Commissioners and their staff who worked on this, and the Division of Market Oversight, as well as my staff, Sebastian Pujol for his -- I don't know. Sebastian would get my emails at midnight, and then I see his at 5:39 in the morning, so I hope you got some sleep the past few weeks.

So, anyway, that is a significant factor in my determination to put this out for a proposal. As I've said, I am still concerned that it's not specific enough. But I look forward to public comments on that.

Thank you, Mr. Chairman.

CHAIRMAN TARBERT: Thank you,

Commissioner Berkovitz. And, again, thank you to everyone that played a role in this proposal. I do think, out of all of our proposals, more time has been spent on the 60 pages of Commissioners' principal level engagement, than perhaps even some of our other rules. So very grateful for everyone.

So with that, is there any Commissioner who is not prepared to vote? Okay.

MS. BERDANSKY: Mr. Chairman, this is -- Mr. Chairman, I am so sorry to interrupt. This is Rachel Berdansky. Can I just clarify one -- an answer to one question that was raised during the Q&A period?

CHAIRMAN TARBERT: Sure. Please go ahead.

MS. BERDANSKY: I'm sorry. There was a question -- I think it was regarding the significant disruption, and I just -- I think we may have answered incorrectly. I mean, our view is that the term, market disruptions, for purposes of the risk principles generally would include an event originating with a market participant that significantly disrupts the operation of the DCM, on which such participant is trading. So I just wanted to clarify that point.

CHAIRMAN TARBERT: Great. Thank you so much, Rachel, and thank you for all of your input as the head of our Exams Branch on this rule.

So with that, is there any Commissioner who is not prepared to vote?

COMMISSIONER BERKOVITZ: Sorry, Mr. Chairman, this is Commissioner Berkovitz, again, I just want to make sure I understand. So the rule -- the rule text reads that it prevents -- they are supposed to have rules that prevent market disruptions. But is what we're saying is that only -- and then one and two talk about market disruptions. Principle 3 says they have to notify us of significant disruptions.

So do they not have to have rules that prevent disruptions, or the rules -- are they only required to have rules that prevent significant disruptions, and those would be defined as something that materially affect other market participants?

CHAIRMAN TARBERT: Who would like to respond from DMO staff?

MS. DAHLMAN: Yeah. This is Marilee Dahlman, again. So certainly we do want the DCM to be considering market disruption fairly broadly. But it does -- their rules and their controls do need to apply specifically to significant disruptions.

So, in that regard, you know, the significant standards, you know, will apply to principles 1 and 2.

COMMISSIONER BERKOVITZ: And then again, a significant disruption is defined as something that materially affects another market participant.

MS. DAHLMAN: Yeah, yeah. So if you have a malfunction that, you know, doesn't materially affect other participants, then, you know, it wouldn't be considered a disruption. So volatility, on its own, you know, is not disruptive. There has to be, you know, something

-- some kind of malfunction that also in some way materially affects the ability of other participants to trade.

COMMISSIONER BERKOVITZ: Okay. Thank you.

CHAIRMAN TARBERT: Okay. I will take that final question and answer as an indication that everyone, now, with the benefit of what I think has been a great presentation followed by a great Q&A period and discussion among Commissioners, that everyone is ready to vote.

So, Mr. Kirkpatrick, again, we're going to have two separate votes here. Would you please call the roll for the first vote, which is the motion on the Notice of Proposed Rulemaking on electronic trading principles.

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

The particular motion now before the Commission is on the approval of the Notice of Proposed Rulemaking on electronic trading risk principles.

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 no.

MR. KIRKPATRICK: Commissioner Behnam votes no. 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 four, the no's have one.

CHAIRMAN TARBERT: Thank you very much, Mr. Kirkpatrick. This is Chairman Tarbert. I am pleased to say that the ayes have it, and the motion on the issuance of the Notice of Proposed Rulemaking on electronic risk principles is hereby approved.

Are the Commissioners prepared to -- is there any Commissioner that is not prepared to vote on the second matter?

Okay. Mr. Kirkpatrick, would you please call the roll for the motion to approve the issuance of the notice withdrawing the Regulation AT proposed rule and supplemental proposal.

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

Now the motion before the Commission is on the issuance of the notice, withdrawing the December 17, 2015, Notice of Proposed Rulemaking, and the November 25, 2016, Supplemental Notice of

Proposed Rulemaking on regulation automated trading.

Commissioner Berkovitz?

COMMISSIONER BERKOVITZ: Commissioner Berkovitz votes no.

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

COMMISSIONER STUMP: Commissioner Stump votes aye.

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

COMMISSIONER BEHNAM: Commissioner Behnam votes no.

MR. KIRKPATRICK: Commissioner Behnam votes no. 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 three, the no's have two.

CHAIRMAN TARBERT: Thank you very much, Mr. Kirkpatrick. The ayes have it, and the motion to issue the notice withdrawing the prior proposed rule and supplemental proposal on Regulation AT is hereby approved.

At this time, we will switch to our third vote, second big topical area, which is the final rule on post-trade name give-up on swap execution facilities.

From the Division of Market Oversight, we have Dorothy DeWitt, once again, who is the Director of the division. We also have Vince McGonagle, who is both Principal Deputy Director of the Division of Enforcement and the former Acting Director of DMO. And then we have three special counsel from the Division of Market Oversight, Aleko Stamoulis, Roger Smith, and Israel Goodman.

With that, I will go ahead and hand over to DMO for the presentation on post-trade name give-up.

MS. DeWITT: Good morning. Thank you again, Mr. Chairman, for the opportunity to present the post-trade name give-up final rule to the Commission. Before starting, I would like to introduce my colleagues who will also be present.

I want to thank them, before introducing them, for their efforts in drafting the final rule, which we believe is well-crafted to achieve the post-trade anonymity key to achieving the two key statutory roles of the swap -- of swap execution facility, or SEF, regime. One, promoting staff -- swaps trading on SEFs. And, two, promoting fair competition among the market participants, including through impartial access to SEF trading platforms.

Turning to the team, the team was led by Aleko Stamoulis, and includes Roger Smith, Israel Goodman, and Vince McGonagle.

I would like to note that this rule contains a number of complex terms that are not found in common parlance. While the Commission speaks the language of post-trade name give-up fluently, we seek today in our presentation to provide basic context to the public.

By way of background, in general, most financial exchange-like trading systems offer anonymity to the buyer and seller, in order to help counterparties of all sizes and types, and allow traders to enter into and exit the market without exposing their trading positions and strategies.

Such trading position exposure could lead to information leakage, to the detriment of one or more counterparty. As a result, markets with pre- and post-trade anonymity are generally not only fair, but they also reflect greater liquidity provided by a more diverse set of market participants, as well as enhanced competition.

In the swaps market, a number of -- in the swaps markets, a number of SEFs provide for post-trade disclosure of the name of the counterparties -- a practice that is known as name give-up. It can also be known as post-trade name give-up, or we may refer to it today as PTNGU.

This protocol is a remnant of the pre-Dodd-Frank era, when the vast majority of swaps were traded over the counter, or OTC.

In trading swaps OTC, counterparties needed to know each other's identity to manage associated credit risks. In the pre-Dodd-Frank era, very few swaps were centrally cleared. However, post-trade name give-up has continued to be required on centrally-cleared swaps, since -- as a result of the Dodd-Frank changes, even though those central clearinghouses are the counterparties to each cleared swap party -- for each cleared swap for both parties.

Given the advent of central clearing, many have appropriately questioned the continuing need for post-trade name give-up for cleared swaps. Others have gone further, criticizing this practice as anti-competitive, an obstacle to broad and diverse participation on SEFs, and potentially inconsistent with numerous provisions of the Commodity Exchange Act, sometimes we'll refer to as CEA here, and Commission regulations.

Many of these parties have focused on, among other things, their fear of information leakage about, if they trade, their positions on SEF and to be cleared. And those concerns focus our attention on a practice that is no longer required for a large category of centrally-cleared swaps.

We believe the final -- this final rule that we are proposing reflects a balanced approach that is functional. My colleagues will provide the details, but in summary, the final PTNGU rule prohibits name give-up for swaps executed anonymously and intended to be cleared.

However, it does not apply to swaps that are not intended to be executed anonymously, such as trades done via name-disclosed request for quote; we will sometimes call that RFQ.

The result also includes a limited exception for package transactions, with at least one component that it is an uncleared swap or a non-swap instrument. This exception reflects current technological and operational realities that require counterparty disclosure of names for the other component of such trades that are not cleared or not swaps.

In addition, the rule includes a phased implementation schedule to allow SEFs and market participants time to adjust to the changes.

The goal is for this rule to attract a diverse set of additional market participants who have expressed concerns regarding their avoidance of SEFs as a result of concerns of information leakage, among other things, resulting from the practice of post-trade name give-up. As well as interests in bringing liquidity and competition to SEFs once anonymity is provided.

This rule provides that anonymity with limited practical exceptions, as my colleagues will explain in a few minutes.

Procedurally, the Commission has undergone two rounds of public comments pertaining to this rulemaking. In November of 2018, the Commission issued a request for comment on post-trade name give-up. After considering public comments received in response to that request, the Commission issued a proposed rule last December.

In response to the proposed rule, the Commission received comment letters from 20 different respondents, and staff participated in meetings and phone calls with the various industry participants.

Comments and feedback on the proposal were received from a variety of public interest and industry groups, global banks with affiliated swap dealers, non-bank market makers, asset managers, SEF operators, and third-party providers of trade processing services.

Staff also consulted with the U.S. Securities and Exchange Commission, or SEC, and foreign regulators.

Before I turn to my colleagues, I would like to thank all of the CFTC colleagues, both current and former, who worked and consulted with all -- with us on this effort within the Division of Market Oversight.

I would like to also -- I would like to thank our colleagues from outside the Division of Market Oversight right now, having already introduced the colleagues within the Division of Market Oversight, and those include, within the Office of the Chief Economist, Eleni Gousgounis, Mike Penick, and Scott Mixon, who were integral in reviewing and analyzing the various studies in academic literature discussed in this final rule, and developing the rule's cost-benefit considerations.

In addition, I want to thank our colleagues from the Office of General Counsel, or OGC, Office of International Affairs, or OIA, the Division of Clearing and Risk, or DCR, and the Division of Swap Dealer and Intermediary Oversight, or DSIO, for their help with this rulemaking, as well as our colleagues from the SEC who consulted with us.

Finally, I want to say thank you to the Commissioners and their staff for their thoughtful and considerate feedback on this rulemaking and leading up to today's meeting.

I will now turn it over to Aleko Stamoulis to give more information.

MR. STAMOULIS: Thank you, Dorothy, and thank you, Mr. Chairman and Commissioners. This is Aleko Stamoulis.

And this final rule before the Commission amends Part 37 of the CFTC's regulations in order to prohibit post-trade name give-up for swaps that are executed on or pursuant to the rules of a SEF and intended to be cleared.

As Dorothy has explained, the term, post-trade name give-up, refers to the practice of disclosing the names of swap counterparties to one another after a trade is matched anonymously. The ban on post-trade name give-up applies only to execution methods that are pre-trade anonymous.

Therefore, the final rule does not prohibit name-disclosed trading such as request for quote systems commonly used for dealer-to-client SEF trades. Furthermore, the post-trade name give-up will continue to be permitted for any swap that is not intended to be cleared.

The final rule before the Commission today will adopt the proposed regulation with two notable modifications. First, the final regulation has been revised from the proposal to clarify that the ban on post-trade name give-up will apply to swaps that are pre-arranged or pre-negotiated anonymously, including by participant of the SEF.

This modification was made at the suggestion of commenters in order to ensure that the ban will be applied in cases where, for example, a voice broker arranges or negotiates a trade anonymously and then gives up the counterparty names prior to formally entering the trade on a SEF.

Therefore, the final regulation prohibits name give-up for SEF trades that are executed, pre-arranged, or pre-negotiated on an anonymous basis, and intended to be cleared.

The regulation itself prohibits a SEF

from directly or indirectly disclosing the identity of a counterparty to any such swaps, and also requires SEFs to establish and enforce and rules that prohibit any other person from doing so.

The ban is thereby intended to cover anyone that might have access to counterparty names, such as SEF employees, introducing brokers, and third-party service providers.

Second, the final regulation has been revised from the proposal to provide a limited exception for certain package transactions. This exception will apply if the package includes an uncleared swap or a non-swap instrument. So this exception will include U.S. Treasury swaps spreads.

Commenters on the proposal generally agreed that the Commission should not prohibit post-trade name give-up for uncleared swaps or non-swap instruments, such as securities.

However, components of a packaged trade are priced and quoted together as one economic transaction. So giving up the names of any component of a package would indirectly give up the name for all components of that package. And because the regulation would otherwise prohibit such indirect disclosure of counterparty names, the final regulation provides this limited exception that will permit name give-up if the package includes an instrument that is not an intended-to-be-cleared swap.

Finally, with respect to implementation, the final rule provides for two separate phases of compliance, beginning with swaps that are subject to the trade execution requirement.

For swaps subject to the trade execution requirement, compliance with the final rule must begin no later than November 1st of this year. For all other swaps that are intended to be cleared, compliance must begin no later than July 5th of 2021.

This concludes the staff opening remarks, and at this time we are happy to answer any questions. Thank you.

CHAIRMAN TARBERT: Well, this is Chairman Tarbert, let me thank you so much to the DMO team for that outstanding presentation and your hard work on this rule.

To begin the Commission's discussion and consideration of this rulemaking, I will now entertain a motion to adopt the final rule prohibiting certain post-trade name give-up practices on swap execution facilities.

COMMISSIONER QUINTENZ: So moved.

COMMISSIONER BERKOVITZ: Second.

CHAIRMAN TARBERT: Thank you very much.

I would now like to open the floor for Commissioners to ask questions and give statements. Myself, I don't have any questions for the team. We obviously introduced this proposal in the fall when I was here, and I said then, and I'll say now, that it's a fundamental principle of exchange trading systems that the buyer and seller of a given instrument, you know, have no reason to know, and do not know, each other's identity.

In other words, anonymity is really important. It levels the playing field for counterparties of all sizes, and I think the studies have shown that post-trade and pre-trade anonymity in our markets are generally not only fairer, but also feature greater liquidity, a more diverse set of market participants, and greater competition.

And as the team said, the name give-up was a vestige of the post-Dodd-Frank -- the pre-Dodd-Frank era, where people needed to know what their counterparty was for purposes of counterparty credit risk. But now that we are in a post -- a system where these trades are cleared, there is no longer a counterparty credit risk rationale.

And so I'll leave it there and just say that we have listened to comments over the last six months or so, and you'll see those comments reflected in this proposal. And I also want to thank, well, all of my fellow Commissioners, but particularly Commissioners Behnam and Berkovitz, for issuing another joint statement with me that will be available after this meeting.

And whatever time I have I will cede to them for any further comments they would like to make.

So with that, I will -- I will go ahead and turn it over to Commissioner Quintenz.

COMMISSIONER QUINTENZ: Thank you, Mr. Chairman. This is Commissioner Quintenz. I don't have any questions myself for the team, but I would like to thank them for their work on this proposal and the number of conversations that they have had with me and with my staff.

I would also like to thank the commenters on the proposal for, I think, candidly articulating their views and their positions, and giving the Commission a lot to think about in moving from the proposal to a final rule.

That's all I have, Mr. Chairman. Thank you.

CHAIRMAN TARBERT: Thank you very

much, Commissioner Quintenz.

Commissioner Behnam?

COMMISSIONER BEHNAM: Thanks, Mr. Chairman. I will be brief as well. And I do want to thank, again, the team for all of their work, DMO, obviously specifically given their role in this, but as Dorothy pointed out –- the other Divisions that (audio interference) -- the regulators, both domestic and international.

Mr. Chairman, you pointed out that we will be writing a joint concurring statement together with Commissioner Berkovitz, which we did, but a proposal as well, and I am appreciative of you and your team for working with my staff to get to a place where we can agree to this.

These opportunities are rare, but I enjoy them, and I think we all strive to achieve them and get to places as frequently as possible. So it is a good day for the three of us, certainly, and the Commission as well.

And I do just want to point out, you know, this is, I think -- Dorothy talked about market structures, issues and liquidity. This is a good direction -- a good step in the right direction for, I think, market structure, and I think for the sort of compliance period will allow the CFTC to remain vigilant in terms of overseeing and monitoring these markets as they continue to evolve. As they continue to evolve and as we, you know, work past Dodd-Frank and some of the requirements of overseeing previously unregulated OTC derivatives.

One quick question about package transactions. Aleko, you mentioned appreciating the comments that we got and the changes that were made, some quite recently. Any thoughts or concerns about sort of the evasion, or the prohibition and the exceptions to the prohibition, within the context of a package transaction that may have one leg that is uncleared?

And if you have thought about it, are there any plans for the Commission to sort of remedy that -- mitigate those risks?

MS. DeWITT: So thank you,

Commissioner Behnam. Again, in response to your first question, I will just let you know that Aleko Stamoulis will be our MC. And so I'm going to turn it over to him to MC the various questions, and ask that the team make sure that, given how many acronyms there are in this rule -- and kind of non-customary parlance words -- that the team try to make sure they are explaining the various elements as they answer.

MR. STAMOULIS: Thank you, Dorothy. This is Aleko Stamoulis.

And thank you, Commissioner Behnam. I think the question of evasion is an important one, and I would like to refer it to Vince McGonagle, in the Division of Enforcement, to address that question.

So please go ahead, Vince.

MR. McGONAGLE: Great. Thank you, Aleko.

Thank you, Commissioner Behnam, for the question. And I do think, though, when I'm done it will probably make sense to defer back over to

Roger to talk just a little bit about the package framework and how we see the encouragement for facilities going forward to find ways to reach anonymity, as opposed to finding ways to go away from anonymity.

So within the proposed final rule, we do make reference a few times to the Commission's broad anti-evasion authority. And we certainly -- we do that in connection, first, with the commentary that Aleko mentioned in his opening statement, in connection with introduced transactions. So we want to make sure that the trade that starts anonymous stays anonymous.

And then we also saw and had questions concerning those circumstances where a package transaction that involved a swap, which would otherwise have applicable anonymity requirements apply, how that swap would interact with a non-anonymous -- either a non-anonymous swap or a non-anonymous component that for operational legal reasons would require disclosure.

And so I think Roger can fine-tune the

discussion around our thinking on the processes, operationally, for the package.

So taking those two ideas first, we talk about that the Commission has brought anti-evasion authority. And so not only will it apply in those two instances but it also applies into the entire rule set.

And as it relates to enforcement, because we are in a situation where we would not know until the facts and circumstances of any particular activity are evaluated, which provisions may or may not apply. Sort of broadly speaking, the Commission's anti-evasion authority, first, is contained in Regulation 1.3, which talks about execution of transactions that would otherwise be subject to Title 7.

Potentially, other anti-evasion provisions could be implicated, including, for example, interactions with clearing requirements that would pull in the anti-evasion authority under the Commodity Exchange Act, Section 2(h) (70029), or regulations in Part 50.

We would also evaluate anti-evasion authority for any component or functionality that involved extraterritoriality transactions, and that would be Regulation 1.6.

Then, there are particular anti-evasion provisions that apply to swap dealers and major swap participants under Section 6E.

So in the evasion framework, those are an example of some of the enforcement provisions that the market is aware of in order to make sure that they are structuring their transactions in a way that is in compliance with the Act and the regulations.

Other provisions of the Commodity Exchange Act certainly could also apply using, for example, a reference to Section 4C(7), which is within the prohibited transactions section of the Commodity Exchange Act and talks about the use of swaps to defraud. So that may be another particular area that is available.

And as importantly, the exchanges have the responsibility -- the swap execution facilities have the responsibility to put forward the rules, and so they will have their own disciplinary processes available.

Sort of with that fact and circumstance framework, Commissioner, these are the types of obligations and responsibilities that we see market participants having, or having to react to, in order to make sure that they are trading in a manner that is consistent with their obligations under the Act.

Aleko, can I turn it to Roger?

MR. STAMOULIS: This is Aleko Stamoulis. I would like to turn it back to the Commissioner just for a minute to see if we answered his question and if he has a follow-up question. So please go ahead, Commissioner.

COMMISSIONER BEHNAM: Aleko, thanks. Vince, thanks for that response. That's perfect; exactly what I was looking for. And I guess most importantly, it's good for me to hear that you guys are, obviously, as always, on top of this and thinking about how we're going to manage this particularly unique situation, I think, with the package transactions where, you know, we have to be flexible, given the uniqueness of the derivatives markets and how some of these transactions are packaged and the sort of order flow that goes through, but staying consistent with the rule's core principles and what we are trying to accomplish.

So that's all for me. If Roger would like to step in, certainly we would welcome that. Otherwise, I look forward to supporting this rule today. Thanks again to the team.

MR. STAMOULIS: Thank you, Commissioner. I think given that we answered the question, we will just go ahead and turn it back to the Chairman.

CHAIRMAN TARBERT: Thank you very much, Commissioner Behnam, and the DMO team.

Commissioner Stump?

COMMISSIONER STUMP: Thank you, Mr. Chairman. I don't have any questions, but I wouldn't want that to be interpreted as an indication that advancing this rule was without a great deal of consideration for the many good questions that the public presented on this topic.

I am supporting the rule. I've said it before: building an entirely new market structure is challenging, especially so for tools such as swaps, where legacy markets have existed long prior to the structure we are applying today.

While consideration for this legacy question is warranted, as the Chair pointed out, we are today required to fulfill new obligations, imposed by Congress, to promote the trading of swaps on swap execution facilities. That is the goal that is spelled out in the statute -- to promote the trading of swaps on swap execution facilities.

So the debate surrounding this rule has brought to light many divergent views on how the goal is best achieved, and some unknowns relative to how the rule will impact liquidity. Not surprising, the proponents and the opponents of this rule have differing views on how this measure might impact liquidity, leaving the community of derivative end users unable to fully ascertain whether the impact will be positive or negative.

So perhaps overused, the term, liquidity, is nonetheless critical to the viability of the new market structure we have been tasked with helping to build. And after reading the comments, I have requested that a study be conducted as to how the changes we are making today are impacting liquidity and market access in the future.

We will conduct such a study within a year of the first phase of this rule, which involves the largest set of transactions: those that are commonly known as made available to trade. And a subsequent study, 24 months after all phases of implementation are complete.

Only we, as the CFTC, have access to the requisite data, and we must utilize it to confirm that the course we chart today is indeed contributing to the goals spelled out by Congress to promote the trading of swaps on SEFs.

With that, I will turn it back to you, Mr. Chairman.

Thanks to the team. I know this was another very challenging and complex rulemaking, and I am very pleased to support it. And I look forward to having the results of the study once we begin to implement it.

CHAIRMAN TARBERT: Thank you very much, Commissioner Stump.

Commissioner Berkovitz?

COMMISSIONER BERKOVITZ: Thank you, Mr. Chairman. And thank you for your work on this and I am very pleased to join with you and Commissioner Behnam on the joint statement, and I thank all of the Commissioners and the staff for their work on this proposal.

This is an issue that has been very important to me, ever since I joined the Commission a couple of years ago, and I am tremendously pleased to see the progress that we have made recently on this.

I think this is, hopefully, a

significant improvement to the transparency and principles of fair and equitable trading in our swaps market, and so I want to thank everybody who has worked on this, and my staff as well.

With respect to the study that Commissioner Stump referred to, the compliance dates are independent of the results of that study. Is that correct?

MR. STAMOULIS: Thanks for the question, Commissioner. This is Aleko Stamoulis. That is correct. The phase 2 compliance date, for example, is July 5, 2021. That is entirely independent of the Commission's plans to complete the studies you're referring to.

COMMISSIONER BERKOVITZ: Okay. So we have these staggered compliance dates. First date for name -- for MAT swaps made available to trade, November 1, 2020. For the intended-to-be-cleared swaps the compliance date is July 5, 2021. So that's a seven-month difference there.

Do we have any indication of whether the staggered compliance dates for -- the later compliance dates will be any inhibition to providing -- you know, to liquidity providers who may favor name give-up who want to continue that as long as possible from, you know, having liquidity provided for the MAT swaps earlier?

In other words, is the trading -- the participation in these markets sufficiently distinct so that -- or integrated, so like if you're trading swaps, you know, you've got to -- providing liquidity, you can't have some that you've gotten that, and, I mean, some that you've got name give-up, and some that you don't have name give-up.

Do you think operationally -- do we think operationally that staggered compliance dates can be done in the industry and that it won't -- having a later compliance date for some, won't be an impediment to the effectiveness of the compliance date for the earlier MAT swaps?

MR. STAMOULIS: Yes. This is Aleko Stamoulis again. Thanks, Commissioner. I'll just note that we did talk to a lot of our participants, in particular SEF operators, and we talked to them about issues relating to potential challenges of implementation. And where the rule lands in terms of compliance schedule is largely informed by those types of discussions.

And some of the thinking behind, beginning with MAT swaps really involves the idea that the methods of execution for MAT swaps are limited. For example, Part 37 requires SEFs to limit the methods of execution for those swaps to either an order book or an RFQ to three.

What we would note is once you include other intended-to-be-cleared swaps, SEFs can offer a variety of other execution methods. So in terms of implementation, and after talking to SEF operators, we thought it made sense to start with MAT swaps, insofar as implementation would be simpler.

And there may be more challenges involved with other types of swaps, which is why we decided to delay the implementation schedule to a phase 2 for non-MAT swaps and provide more time for SEFs to sort out operational issues and figure out how they are going to comply.

COMMISSIONER BERKOVITZ: Oh. So that's -- so your conversations with the SEFs lead you to believe that this is -- that practically this is without -- you know, whether it's exactly this number of months, or that number of months, but essentially this type of staggered compliance date structure makes sense from the SEF operator's perspective, in terms of operationalizing how we make the transition. That's what I gather you're saying.

MR. STAMOULIS: Yes, Commissioner. That was an important part of the consideration of sort of spreading it out. And I will notice -- you know, the comment letters did reflect some of the same concerns about operationally.

In particular, there are some concerns expressed by SEFs, regarding voluntarily-cleared swaps and that SEFs they may need to change some of their processes in order to able to comply with the rule.

And, really, the message that we got was that it may take longer for voluntarily-cleared swaps, and for swaps that are required to be cleared it may be a little bit easier. And so, that does reflect some of the challenges for non-MAT swaps with implementation, insofar as stretching that out into a second phase. (Inaudible due to sound system failure.)

COMMISSIONER BERKOVITZ: Commissioner Berkovitz asked about percentage of dealer-to-dealer transactions that are package transactions.

MR. SMITH: According to publicly available data, nearly seventy percent of U.S. Dollar interest rate swaps trading in the inter-dealer swap market were carried out as spreadover treasury package transactions. In addition, there are material amounts of trading and risk transfer in curves – which ae two-leg package transactions – and butterflies – which are three-leg package transactions. Curves and butterfly package transactions. Curves and butterfly package transactions made up of intended-to-be-cleared swaps are not subject to the package transaction exception in the final rule.

COMMISSIONER BERKOVITZ: Commissioner Berkovitz asked if package transactions traded on dealer-to-dealer SEFs are used to hedge dealer-to-customer outright IRS and CDS transactions entered into via RFQ.

MR. SMITH: Staff is aware that market participants use package transactions as part of their hedging programs, but it is worth noting that market participants enter into package transactions for a variety of reasons. Certain package transactions are utilized as tools within market participants' portfolio management and hedging programs, while other types of package transactions are used by market participants to express views of the market. Different market participants have different reasons for entering into package transactions.

COMMISSIONER BERKOVITZ: Commissioner Berkovitz asked about the extent of trading that would be subject to the post-trade name give-up prohibition.

MR. SMITH: While the seventy percent number for USD swaps was in spreadover Treasuries as previously mentioned, there is still a significant amount of transactions, including package transactions, that are going to be subject to the prohibition of post-trade name give-up.

COMMISSIONER BERKOVITZ: And we are very highly dependent upon a few dealers for a lot of liquidity. And it's good that the dealers are providing that liquidity, and I don't want to discourage dealers from providing liquidity. That is very important, and they are a critical part of the market.

But to have the markets so reliant on so few dealers is a systemic risk issue, as well as a competitiveness issue. And so removing this regulatory barrier is -- to more greater competition, in my view, is important.

But, obviously, removing regulatory barriers is not the only thing. You know, somebody has got to provide the liquidity that -- you know, additional sources of liquidity that we are removing barriers to.

Removing a barrier to an additional source of liquidity doesn't mean that liquidity will appear. But, one, is it makes it harder to do name give-up in certain markets; and, two, is it may provide further incentive.

And I've talked to a lot of entities who have been interested in providing liquidity in these markets, and so maybe with this structural change -- they are the ones who are going to have to put up significant investments and resources into providing that liquidity.

But perhaps with this change, more of those people will be willing to put up that liquidity, even, you know -- and it won't be so dependent on totally whether the dealers decide to do it or not.

So recognizing, you know, the package

transaction exception, we'll see. We'll see, indeed, how that goes. But removing this regulatory barrier is a significant step forward, and I look forward to continuing to watch these markets to see how they develop. And the study that we conduct, we can evaluate this issue in that as well, perhaps.

So thank you. Thank you, staff, for your work on this -- Dorothy, Aleko, Roger, Vince, and Israel. This was an excellent, excellent endeavor. And thank you, Sebastian, on my staff, too.

MS. DeWITT: So this is Dorothy. May I just pause for a second to let the technical folks on the call know that there is an issue. But I just got a ping that that issue has been resolved, so we can go ahead and carry on.

Thank you.

CHAIRMAN TARBERT: Yes. Thank you. I guess, Commissioner Berkovitz, are you finished your question time?

COMMISSIONER BERKOVITZ: Yes, I'm

done. Thank you.

CHAIRMAN TARBERT: Thank you very much. Yeah. I just wanted to step in to say that my understanding is -- this is Chairman Tarbert -- that there was a temporary glitch that put the public access to our discussion, the public meeting line, down for a short period. I am not certain for how long, but it may have just been a matter of minutes.

I just want to confirm, if the operator is on the line, that the public line is open.

THE OPERATOR: Yes. This is the operator. We were down for about a minute and a half. The public's line is open. Thank you very much.

CHAIRMAN TARBERT: Thank you.

And then could I also just check, then, just to make sure, all five members of the Commission are present. There should be four others, including myself. Commissioner Quintenz?

COMMISSIONER QUINTENZ: Yes. This is Commissioner Quintenz. I'm here. Thank you.

CHAIRMAN TARBERT: Thank you.

Commissioner Behnam?

COMMISSIONER BEHNAM: Yes. Present. Thank you.

CHAIRMAN TARBERT: Thank you.

Commissioner Stump?

COMMISSIONER STUMP: Yes, I'm present. Thank you.

CHAIRMAN TARBERT: And we will make sure we didn't lose you, Commissioner Berkovitz. Still on?

COMMISSIONER BERKOVITZ: Yes. I am still on now. I had actually dropped off for maybe half a minute during your statement, but then I got -- I got back on, so thank you.

CHAIRMAN TARBERT: Okay. Terrific.

Well, thank you, everybody. I think based on us wrapping up our discussion, I will now ask the question: is there any Commissioner not prepared to vote?

Okay. Mr. Kirkpatrick, would you please call the roll for the final rule on post-trade name give-up.

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

The motion now before the Commission is on the adoption of the final rule prohibiting certain post-trade name give-up practices on swap execution facilities.

Commissioner Berkovitz?

COMMISSIONER BERKOVITZ: Commissioner Berkovitz votes aye.

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

COMMISSIONER STUMP: Commissioner Stump votes aye.

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

COMMISSIONER BEHNAM: Commissioner Behnam votes aye.

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

COMMISSIONER QUINTENZ: Commissioner Quintenz votes aye.

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

CHAIRMAN TARBERT: Chairman Tarbert votes aye.

MR. KIRKPATRICK: Chairman Tarbert votes aye.

Mr. Chairman, on this matter, the ayes have five, the no's have zero.

CHAIRMAN TARBERT: Thank you very much, Mr. Kirkpatrick. I am pleased to say that the ayes have it, and the motion to adopt the final rule is approved unanimously.

Before we move to our next agenda item, I wanted to briefly make an announcement regarding the final rules on covered funds -- on the Volcker Rule. We voted that matter in seriatim. The final rule was passed by a vote of three to two -- myself, Commissioner Quintenz, and Commissioner Stump voting in the affirmative, and Commissioners Behnam and Berkovitz voting in the negative.

There are three -- the press release along with three statements, one by myself, as well as ones by Commissioners Behnam and Berkowitz, have been posted to the website, or will be posted shortly.

So with that, we move to our next agenda item, and so I would like to welcome the following staff for their presentation on the final rule on alternative compliance for anti-evasionary provisions of the inter-affiliate swap clearing exemption.

From the Division of Clearing and Risk, we have Clark Hutchison, the Director; Sarah Josephson, Deputy Director; Melissa D'Arcy, Special Counsel.

With that, I will hand it over to you, Clark, Sarah, and Melissa, for your presentation.

MR. HUTCHISON: Thank you. As Chairman Tarbert mentioned, I am Clark Hutchison, the Director of Clearing and Risk.

During these isolated times, on behalf of everyone in the Division of Clearing and Risk, we wish you, Mr. Chairman, Commissioners, and fellow staff, warm greetings and a hearty good afternoon.

My staff and I will now be presenting a final rule that will amend Commission Regulation 50.52, the inter-affiliate exemption from the Commission's swap clearing requirement.

When the Commission adopted the inter-affiliate exemption, it established conditions that affiliates must satisfy when electing the inter-affiliate exemption in relation to cross-border swaps activity. The alternative compliance provisions were time-limited, and expired in 2014.

Since that date, the Division of Clearing and Risk staff have provided targeted relief to allow eligible affiliates to continue using the expired compliance frameworks. Today's amendments will reinstate the alternative compliance provisions with minor modifications to align with the staff no-action relief that is currently in place.

I would like to recognize Sarah Josephson, the Deputy Director, and Melissa

D'Arcy, Special Counsel from the Division of Clearing and Risk, for their work on this rulemaking.

In addition, I would like to thank our colleagues in the Office of the General Counsel, Carlene Kim, Paul Schlichting, and Mark Fajfar; and our colleagues in the Office of the Chief Economist, Scott Mixon and Stephen Kane, for their time, effort, and helpful assistance in preparing this rulemaking. Thank you all, again.

I will now ask Melissa D'Arcy to introduce the final rule to the Commission, which they will be considering this afternoon. Thank you.

And over to you, Melissa, please.

MS. D'ARCY: Great. Thank you, Clark.

Good afternoon, Mr. Chairman and Commissioners. As Clark said, my name is Melissa D'Arcy. I am a special counsel in the Division of Clearing and Risk, and I will be outlining the key changes under consideration in this final rule.

Today staff recommends that the

Commission adopt the final rule to amend Commission Regulation 50.52. These amendments would codify current market practices under the terms of staff no-action relief relating to certain conditions to the inter-affiliate exemption from the swap clearing requirement.

As background, in 2013, soon after the Commission issued its first clearing requirement for certain interest rate and credit default swaps, the Commission adopted an inter-affiliate exemption. The Commission determined that inter-affiliate swaps provide an important risk management role within corporate groups, and that such swaps, if properly risk managed, may be beneficial to the entity as a whole.

The Commission recognized these benefits and adopted the exemption, subject to certain conditions, that require eligible affiliates to manage the risk associated with the exempt swaps through a centralized risk management program, and to report certain information to a swap data repository.

A third tailored condition -- the outward-facing swaps condition -- is the focus of this final rule today.

The outward-facing swaps condition is intended to address the risk that affiliated entities evade the Commission's clearing requirement through third-party trades with foreign affiliates that are not subject to a domestic clearing regime.

In the absence of broadly similar clearing requirements around the globe, eligible affiliates could enter into uncleared swaps with an unaffiliated counterparty outside of the U.S., and then enter into uncleared swaps on a back-to-back basis, using this inter-affiliate exemption, to transfer risk back into the United States.

Ideally, outward-facing swaps would be cleared by a derivative clearing organization, cleared under a comparable foreign clearing regime, or qualify for an appropriate exemption from mandatory clearing. However, in 2013, the

Commission recognized that non-U.S. regimes were not being implemented quickly enough for this option to be viable.

So, the Commission adopted a set of time-limited alternative compliance frameworks, whereby affiliated entities can pay variation margin on their swaps as a means of limiting the possibility of evading the U.S. clearing requirements and transferring risk into the United States.

Currently, market participants continue to rely on the variation margin provisions of the alternative compliance frameworks, pursuant to staff no-action letters.

This final rule reinstates the alternative compliance frameworks as part of the Commission's regulations. The final rule also includes an expanded list of jurisdictions, in which an eligible affiliate may be located and still take advantage of an alternative compliance framework without being subject to a 5 percent limit.

The Commission originally adopted an alternative compliance framework that had no limits on the number or percentage of inter-affiliate swaps that could be executed with an affiliate located in the European Union, Japan, or Singapore, so as long as the variation margin requirement was satisfied.

In 2016, after the original swap clearing requirement and inter-affiliate exemption had been in place for a few years, the Commission expanded its interest rate swap clearing requirement to cover additional currencies. DCR (Division of Clearing and Risk) anticipated that affiliates would enter into more swaps in jurisdictions within which the official domestic currency was subject to the Commission's clearing requirement.

As a result, the Division of Clearing and Risk issued no-action relief to permit affiliates to elect to comply with the alternative compliance frameworks for entities in an expanded list of jurisdictions, including: Australia, Canada, Hong Kong, Mexico, and Switzerland.

The staff no-action relief limited the amount of uncleared inter-affiliate swaps that an eligible affiliate counterparty, located in the United States, may enter into with affiliates in any jurisdiction, other than the identified jurisdiction, to not more than 5 percent of the aggregate notional value of all of its swaps, which are subject to the Commission's clearing requirement.

This limitation is intended to prevent concentrations of uncleared inter-affiliate swaps risk from building up at entities in jurisdictions that do not have an established clearing regime. The final rule codifies this approach.

Finally, the rule eliminates certain provisions that have not been relied upon by market participants and are, thus, unnecessary. These eliminations include a provision related to non-financial entities and the option to variation margin swaps entered into with unaffiliated counterparties.

All of the amendments outlined today were discussed in a Notice of Proposed Rulemaking and published for public comment on December 23, 2019. The comment period closed on February 21, 2020.

The Commission received one comment letter in response to its proposal from the International Swaps and Derivatives Association. This comment letter was broadly supportive of the proposal, because it provides legal certainty to market participants operating under Commission staff no-action relief.

In addition, staff continues to monitor transaction-level swap data to understand the types of entities that are electing the inter-affiliate exemptions, and how those entities are complying with the outward-facing swaps condition.

I would like to thank all of the various Commission staff who have provided helpful edits and revisions to improve the draft, and I'd like to thank you for your time this afternoon.

This concludes our opening remarks, and we would be glad to answer any questions.

CHAIRMAN TARBERT: Well, thank you, Clark, Sarah, and Melissa, for that great presentation.

To begin the Commission's discussion and consideration of this rulemaking, I will now entertain a motion to adopt the final rule exempting certain affiliated entities from the swap clearing requirement.

COMMISSIONER BERKOVITZ: So moved.

COMMISSIONER BEHNAM: Second.

CHAIRMAN TARBERT: Thank you.

I will now open the floor for Commissioners to give statements and ask questions. I will go ahead and begin. And I don't have any questions for the team, but I think if one were new to this area and watching, perhaps listening to this meeting, I think people might be scratching their heads and saying, what is this all about? This seems pretty technical and complicated.

Bottom line here is, you know, we've got a couple of things going on. We have our clearing requirement, which basically was a measure to ensure that counterparty credit risk is at least -- traditional counterparty credit risk is basically taken off the table, that certain swaps are liquid enough and standardized enough that they can go through central counterparties, clearinghouses, or what we technically refer to as DCOs, derivatives clearing organizations, whereas other swaps that don't meet the criteria are not cleared.

And so, at the same time, we recognize that when you have a corporate group, the same -- the same company basically, but with a bunch of different entities inside of that company, we don't necessarily treat those transactions, if they are counterparties to swaps among each other as, the same as what we do when we're dealing with truly arm's-length counterparties.

So, in other words, think about it -- the way I like to think about it is, you know, we wouldn't expect the government to regulate loans between members of your immediate family -- you and your immediate family, in the same way that we would, you know, in an arm's-length transaction between someone who is unrelated.

And so we have obviously exempted from the clearing requirement certain inter-affiliate transactions, where you've got members of the same corporate family.

The problem, of course, is that it potentially opens the door for evasion of the clearing requirement, because then a corporation says, I'd have to clear this swap if I'm doing it with this counterparty. But you know what? If I find a member of my corporate family that is from a jurisdiction that doesn't have a clearing requirement, I will just basically slip them in the middle.

And so we are concerned about that. So we have this sort of, what I call, imitation to the exception. And in some cases we require mandatory clearing, but what we have also decided to do, as an alternative, is to at least require variation margin.

So there is some margining there, not to perhaps the same extent as a clearinghouse, with the initial and variation margin, but nonetheless we are treating those transactions a little bit differently because but for that counterparty, as part of the corporate family being in the middle there, it would have had to have been centrally cleared.

So that's the big picture here I think of what we're trying to. And as the team, you know, so well-articulated, there are a few more wrinkles other than -- beyond that, just to make sure that, again, this is -- this, I think, needed exception for inter-affiliates is not going to be used to undermine the overall goal of ensuring that certain classes of swaps are, in fact, centrally cleared.

So no questions on my end. Really appreciate the level of staff involvement as well as the -- you know, the technical expertise that was needed to make this workable.

With that, I will go ahead and hand it over to you, Commissioner Quintenz.

COMMISSIONER QUINTENZ: Thank you, Mr. Chairman. This is Commissioner Quintenz. I just have two quick questions.

Oh. And, first of all, Mr. Chairman, thank you for your explanation of this -- of this rule. I think for those that aren't familiar with the CFTC or our markets, or even that do have some familiarity with how markets -- this is a very complicated issue to understand, and it relates to ensuring that we are not inserting ourselves into the transactions of a particular business unnecessarily, and taking -- and forcing it to use up its liquidity for those purposes.

But also, I think as you explained, to ensure that our rules are preserved, and they have integrity.

So to my questions, I think -- and I'm not sure who the best person would be to answer this, but obviously this is based off of, you know, the clearing requirement the CTFC has put in place.

And it recognizes, you know, nine foreign jurisdictions.

And I just wanted to ask, what is the thinking about issuing comparability determinations, generally, for other jurisdictions' clearing requirements?

MS. D'ARCY: Yes. This is Melissa D'Arcy speaking, again. Thank you, Commissioner Quintenz, for that request.

I can explain the staff's view of the comparability between the CFTC's clearing requirements and other jurisdictions' clearing regimes, and why it may be impractical at this time to look for a comparability determination.

The Commission has not considered or adopted a comparability determination with respect to the CFTC's swap clearing requirement because there are significant differences in the scope of products that are required to be cleared, and the types of market participants that are required to clear across jurisdictions.

For example, although a number of other

jurisdictions have adopted mandatory clearing regimes that cover interest rate swaps, no other country has the same set of products that are required to be cleared as the CFTC. Across jurisdictions, the set of swaps subject to mandatory clearing often vary with respect to the currencies that are covered, the floating indexes referenced, and the termination date ranges that are subject to the clearing mandate.

In addition to these product differences, each clearing regime has a unique approach to the types of market participants that are required to clear the swaps. Some jurisdictions have a broad application of the clearing requirements, with specific exceptions and exemptions, like the CFTC, but even here sometimes those exceptions and exemptions do not align.

Other jurisdictions have a more limited application of the clearing requirement to specific counterparties, and in those jurisdictions a smaller number of market participants are covered, than those covered by the CFTC's clearing requirement.

The CFTC's clearing requirement is unique, and it would be difficult to make a determination that another jurisdiction is consistent with the CFTC's, with respect to both products and the participants covered.

COMMISSIONER QUINTENZ: Thank you very much.

I think while we haven't issued comparability determinations for those jurisdictions that have adopted the swap clearing requirements, this rule does in some degree recognize those regimes by, I guess, placing a limitation on affiliates' variation margining of their swaps, when the affiliate is located outside of one of those jurisdictions.

Specifically, there is a 5 percent limitation on affiliates' variation margining of their swaps regarding, you know, the outward-facing swaps condition.

But I was just hoping -- if someone

could explain to me the rationale for that 5 percent limitation?

MS. D'ARCY: Yes. Thank you. This is Melissa D'Arcy again. Staff believes that the five percent limitation you mentioned, which applies to the aggregate notional value of swaps covered by the CFTC's clearing requirement with an eligible affiliate counterparty located outside of one of those nine jurisdictions listed, or the United States, is a generally useful tool to prevent excessive uncleared swap risk from concentrating in an affiliate located in a jurisdiction without an established clearing regime.

So this 5 percent test is intended to prevent those non-U.S. affiliates from taking on unlimited, uncleared swap risk, in the categories of swaps that are subject to the CFTC's clearing requirement, which can then flow back to the United States through an affiliated entity.

Again, the test applies only to the swaps covered by our clearing requirement, which would otherwise have to be cleared if the affiliates did not qualify for an exemption.

Although the final rule does require the eligible affiliate counterparties to pay and collect full variation margins daily, with all eligible affiliate counterparties, it is staff's belief that this five percent test acts as an additional layer of risk protection, by essentially capping the exposure of the U.S. affiliate to certain types of uncleared swaps in jurisdictions where it is less likely that the swaps will be cleared.

COMMISSIONER QUINTENZ: Great, thank you for that explanation. Mr. Chairman, that's all the questions I have. I do have a statement in support of the final rule today, but in the interest of time, let me just thank the staff again for their work on this important issue and bringing a final rule to a vote, and I'm fully supportive of it. Thank you.

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

Behnam.

COMMISSIONER BEHNAM: Thank you, Mr. Chairman. I don't have any questions because they've been addressed, at least in part. So, I won't have anything formal, to go back and forth with the staff.

But first, I want to thank the staff, specifically Melissa D'Arcy, Sarah Josephson, of course Clark Hutchison -- all out of DCR -- for your leadership on this and working with my staff. I will have a statement that will be on the website shortly that the public can view if they choose. And I would also just like to say that I'm really pleased to be supporting this because, in addition to, I think it being the right policy decision -- it's also another example of this current Commission and the previous Commission under Chairman Giancarlo's leadership, of tidying up a lot of no-action relief that was issued shortly after Dodd-Frank, and ensuring it and providing market certainty -- for our market participants and the folks working with our market. So, pleased to be supporting this.

I just want to note one particular issue. And the reason I'm not going to ask a question is that you talked about outward-facing swaps a number of times.

I raised this issue in a statement after we proposed the rule back in 2019, and some of the risks that many of you presented with the outward-facing swaps, and Melissa obviously discussed those in her presentation, obviously talking about a variation margin requirement, and also the CFTC's ability to review and examine and surveil transaction-level data, so that we sort of remain vigilant for our responsibilities to the clearing requirements writ large, but also being flexible with our registrants and market participants so that we're not unduly imposing requirements where it's not required.

Mr. Chairman, I appreciated your explanation to push a tense point. These are complicated issues, and so it's helpful to explain these matters the best that we can.

The public, I think, will have a better understanding of what we do and what we provide on a day-to-day basis. But certainly, as much as we want to remain flexible for these unique circumstances, we -- and I'm not suggesting that we're not doing this -- you said this yourself Mr. Chairman, that we ought to remain vigilant in these unique circumstances.

Because, whether it's the corporate family affiliate or sub overseas, or you can --

(Audio interference.)

CHAIRMAN TARBERT: Commissioner Behnam, I believe we've lost you.

COMMISSIONER BEHNAM: -- 2008 one way or another. So, again, grateful to DCR for all their work. I'm glad that we're going to provide this extension and codify no-action relief -- that's been out for a while -- while remaining, again, vigilant on individuals or entities that may try to evade this requirement, so that we don't present and introduce new risk unnecessarily into the market. Thank you again. Thanks, Mr. Chairman.

CHAIRMAN TARBERT: Thank you, Commissioner Behnam. You blacked out for a quick moment regarding your comment, the 2008. Do you want to just take a moment to say that again? It was just in the last minute or so.

COMMISSIONER BEHNAM: Sure. Sorry about that, my phone's been acting up. But, I just wanted to make the point that you alluded to, that we need to be flexible with respect to corporate groups in many circumstances, but we should never sort of fail to recall and remember that these types of transactions often have created risks that were systemic in 2008 that have been brought to the market. So, we have to remain vigilant, which I appreciate that the Commission has committed to doing. So, thanks to you and to DCR for that commitment and continued vigilance.

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

COMMISSIONER STUMP: Thank you, Mr. Chairman. I also have no questions. I just want to take the opportunity to make a brief statement regarding my general support for efforts to codify longstanding no-action relief that has proven to be worthwhile, such as that that we're considering today. I think the staff often has an occasion to issue relief or take other actions, such as no-action relief, interpretive letters, advisories, on various issues and in various circumstances.

This affords the Commission a chance to observe how the staff action operates in real time, and to evaluate the lessons we're learning.

And as I've previously noted with the benefit of this time and experience, the Commission should then consider whether codifying such staff actions into rules is appropriate in order to provide a legal certainty that the marketplace requires.

I am hopeful that we can continue to clean up our rulebook in such a pragmatic way, such as we are doing today, and I know there are a number of things that are candidates for codification and

I look forward to considering them.

I do want to thank the team specifically today from DCR, for their efforts to help us tidying up the rulebook and I look forward to other opportunities to do the same. Thank you.

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

COMMISSIONER BERKOVITZ: Thank you, Mr. Chairman. This is Commissioner Berkovitz. I too want to state my support for this final rule and thank everybody who's worked on it.

I view this rule, for many of the reasons that have been stated, really as doing a couple of things.

One is help protect against risk being imported back into the US. And as you explained, Mr. Chairman, this deals with the potential that the U.S. entity and its non-U.S. affiliate enter into swaps.

And it's just traditional practice that non-U.S. affiliate may want to enter into a swap with another non-U.S. entity, and then perhaps the U.S. entity is the ultimate place where that risk lies. And so, they will then back-to-back that swap back into the U.S.

So, effectively, the risk from the non-U.S. affiliate and the non-U.S. counterparty is imported back into the US.

Well, one could take the position that the swaps between the U.S. entity and this non-U.S. affiliate have to be cleared, but that poses the issue, as you've described, that makes the two entities within the same corporate structure clear.

Initially, when the Commission addressed this issue back in 2012 or '13 here -- I forget when the initial rule was adopted -- the provision to ensure that these risks from non-U.S. affiliate swaps didn't get imported back into the US, there was the provision that allowed effectively what we're allowing today, that's exchange the variation margin.

At that time it was anticipated that in

a few years we would have these comparability determinations, and therefore, if you want to do these swaps, if affiliates want to do the swaps, then the condition would be that the non-U.S. affiliate would be subject to the comparable clearing requirement with a non-US counter party, so that effectively you couldn't evade the U.S. clearing requirement by doing the back-to-back with a foreign affiliate.

So, that was really an anti-evasionary motivation, and, as well as to ensure that risks didn't get imported back into the U.S.

Well, as things turned out, the anticipation that there would be all these clearing determinations with non-U.S. jurisdictions, for the reason I think that Sarah explained, didn't come about. We just haven't made those comparability determinations.

So, the rule gave a few years, said this alternative compliance framework where you exchange variation margin would expire in a few years, and by then we'll have these clearing determinations.

Well, we didn't get the clearing determinations, the rule expired. So, what we did was the staff granted no-action relief to continue the ability to exchange variation margin.

And that's happened -- we've extended it several times. And so, here we are today with several extensions. And that framework has appeared to have worked, that the exchange of variation margin prevents these back-to-back swaps from importing risk back into the U.S.

There's risk management practices. The company and its affiliate have to engage in risk management practices and exchange variation margin.

So, we have over time -- although the initial regulation, the provision expired -- we have over time found that that original approach has worked, and as Commissioner Stump noted. So, based on that experience, we're able to go final.

So, I view this as a measure to help prevent risk from being imported to the U.S. It's an anti-evasionary measure and it also is another measure where through no-action relief, temporary -- time-limited no-action relief.

We have observed how the market has responded, and grown comfortable with that response and that practice, and are able to codify it.

So, no-action letters sometimes get criticized for, why do we do them, why don't we just do regulations, etc.? But this is a good example how market practice permitted by a no-action letter over the span of a sufficient amount of time, a few years and extensions, we can see how the industry is implementing it and whether it's needed or not, and make the determination of whether to put it into regulation.

So, I think both in terms of what the substance of this rule gets at and the process by which we've obtained the confidence to put it in rule text, so that's positive. And so, I'm pleased to support the rule and thank the staff for their work on it.

CHAIRMAN TARBERT: Thank you very much, Commissioner Berkovitz. Well, I think that brings to a close our question and answer time. Is there any Commissioner who is not prepared to vote?

Okay, hearing none, Mr. Kirkpatrick, could I please call on you to call the roll for the Final Rule on the Inter-affiliate Swap Clearing Exemption.

MR. KIRKPATRICK: Thank you, Mr. Chairman. This is the Commission Secretary speaking. The motion now before the Commission is on the adoption of the final rule exempting certain affiliated entities from the swap-clearing requirement. Commissioner Berkovitz.

COMMISSIONER BERKOVITZ: Commissioner Berkovitz says aye.

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

COMMISSIONER STUMP: Commissioner Stump votes aye.

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

COMMISSIONER BEHNAM: Commissioner Behnam votes aye.

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

COMMISSIONER QUINTENZ: Commissioner Quintenz votes aye.

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

CHAIRMAN TARBERT: Chairman Tarbert votes aye.

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

CHAIRMAN TARBERT: This is Chairman Tarbert. Thank you so much, Mr. Secretary. I'm pleased to announce that the ayes have it and the final rule is adopted unanimously.

Now, we move to our final agenda item, for purposes of a vote. And that is the proposed rule extending the Phase Six compliance date for initial margin requirements for uncleared swaps and for swap dealers and major swap participants.

And of course, we mentioned this last time in our open meeting that this is related to COVID-19 and what the international community has already proposed to do.

So, in furtherance of that, I'd like to invite staff presentation on this topic. From the Division of Swap Dealer and Intermediary Oversight, we have Josh Sterling, our Director, Warren Gorlick, the Associate Director, Carmen Moncada-Terry, Special Counsel, and I'd be remiss if I didn't also personally thank Eric Remmler, Commissioner Berkovitz's office, for his help on this proposal.

So with that, I will hand it over to you, Josh, Warren and Carmen.

MR. STERLING: Well, thank you, Mr. Chairman. This is Director Josh Sterling for the Division. Good afternoon to you and good afternoon to the rest of the Commission. I know it's been a long meeting and we will move apace.

I want to begin though by thanking Mr. Remmler as well for really some great work in supporting us during a very busy period.

I'll simply observe to begin that, as you all know, my division is deadly focused on smart, effective and practical oversight of our registrants.

We were here together a few weeks ago before you extending Phase Five in light of the pandemic, the margin requirements for Phase Five, by means of an interim final rule, and we are back here following good order and seeking to propose that Phase Six be extended for a year as well.

And as the Chairman has noted, this will align us with the international community and what we expect will be the approach ultimately taken by our fellow US federal financial regulators.

With that, I will hand over to my team that's well traveled in this area, as you all know, Warren and Carmen, to thank others who've supported the work on this rule and to make the presentations. Thank you.

Mr. GORLICK: Okay, thank you, Josh. So, good afternoon. This is Warren Gorlick an

Associate Director in the Swap Dealer and Intermediary Oversight Division.

And in addition to Josh, who just introduced our presentation, I am joined by my colleague, Carmen Moncada-Terry, Special Counsel.

As all have already recognized, we want to note the invaluable assistance we've received from Eric Remmler. And we would also note the great assistance we've received from the Office of General Counsel and the Office of the Chief Economist.

Today, we are pleased to present this proposed Notice of Proposed Rulemaking to mend the CFTC margin rule, by delaying, for certain entities, the September 1, 2021 deadline for compliance with the initial margin requirements, and delay that to September 1, 2022.

By way of background, the CFTC margin rule that became effective in 2016 requires that swap dealers and MSPs post and collect initial margin in accordance with the compliance schedule set forth in Commission Regulation 23.161.

As adopted in 2016, the schedule required compliance on staggered compliance stakes spanning from September 2016 to September 2020.

The CFTC margin schedule was consistent with the implementation schedule set forth in the Basel Committee, and they asked this framework for margin requirements for uncleared derivatives.

Last year, the Basel Committee and IOSCO revised the framework to extend the implementation schedule to September 2021.

On April 9, 2020, consistent with the revision to the Basel Committee/IOSCO framework, the CFTC published in the Federal Register a final rule that we refer to in the NPRM as the April 2020 final rule, that amended the compliance schedule for the initial margin requirements under the CFTC margin rule, by splitting the last phase of compliance that began on September 1, 2020, into two compliance phases that will begin on September 1, 2020, and September 1, 2021.

The April 2020 final rule effectively extended by one year the compliance date for entities with smaller average daily aggregate notional amounts for swaps and certain other financial products. In the NPRM, we refer to this as the smaller portfolio group.

The Commission's intent in adopting the April 2020 final rule was to mitigate the potential for market disruption that could have resulted from the large number of entities that would have entered into initial margin compliance at the end of the phase compliance schedule beginning in September 2020.

The entities would have needed to engage at the same time a limited number of financial services providers to range for the exchange of regulatory IM, including the preparation of regulatory compliant documentation, the approval and implementation of risk-based models for IM calculation, and the setup of custodial arrangements.

In April 2020, in recognition of the operational challenges posed by the COVID-19 pandemic, the Basel Committee and IOSCO announced the further extension of the implementation schedule for one year by deferring deadlines of September 2020 and September 2021 to September 2021 and September 2022, respectively. That is to say, a one-year delay for each.

Consistent with the Basel Committee's and IOSCO's revision of the implementation schedule, last month, on May 28, 2020, the Commission adopted an interim final rule extending the September 2020 compliance date for entities subject to that compliance date (we refer to this as the IFR extension group) to September 1, 2021, in order to alleviate the immediate impact of the COVID-19 pandemic on such entities.

This IFR did not extend the compliance deadline, however, for entities beginning compliance on September 1, 2021, as the impact of the pandemic on these entities was unclear.

As a result of the IFR, the IFR extension group and the smaller portfolio group would be required to begin initial margin compliance on the same day, which could lead to the potential for market disruption that the April 2020 final rule was intended to address.

Staff, therefore, recommends that the Commission publish for comment this proposed rulemaking, which would extend the smaller portfolio group's compliance deadline of September 2021 to September 2022.

The extension of this deadline is consistent with the Basel Committee and IOSCO's guidance, and would achieve the intent of the April 2020 final rule, which sought to reduce the potential for market disruption that could result from a large number of entities coming into compliance with the initial margin requirements at the same time.

Thank you for your attention after a long meeting. We'd be happy to discuss any questions that you may have.

CHAIRMAN TARBERT: Thank you very much. This is Chairman Tarbert. That was an excellent presentation, and again, out of Josh, Warren and Carmen, great job getting this ready in short order.

To begin the Commission's discussion and consideration of this proposed rulemaking, I'll now entertain a motion to approve the proposed rule extending the Phase Six compliance date.

PARTICIPANT: So moved.

PARTICIPANT: Second.

CHAIRMAN TARBERT: Thank you very much. So now, I'd like to open up the floor for Commissioners to ask any questions and give any statements they might have. I've discussed these extensions, both verbally and in my written statement, last meeting. So, I'll go ahead and forego any questions or comments now, and move straight to Commissioner Quintenz.

COMMISSIONER QUINTENZ: Thank you, Mr. Chairman. I think I'm pretty much in the same boat. I think we've discussed this at length and I certainly have discussed my views on it at the prior meeting and times before that.

And so, let me first thank the staff for their work on this and putting this before us in

I think fairly short order. Very impressive job.

But this also just gives me an opportunity, Mr. Chairman, if I may, to recognize the work of the Office of Chief Economist and, in particular, Bruce Tuckman.

A lot of the issues around the number of counterparties involved in then-Phase Five, and now Phase Five and Phase Six, in addition to the small notional values and amount of margin in question, were really brought to light by work that Bruce Tuckman and his staff at OCE put together.

And I just wanted to thank Bruce for his tireless work. It's just been a pleasure to work with him at the Commission over the last two years. And I'm very grateful for his service in that role. But with that, Mr. Chairman, I'll turn it back to you.

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

COMMISSIONER BEHNAM: Hi, Mr. Chairman. No questions for me. I do want to thank DSIO staff for putting this together --

(audio interference). I have a statement that I will publish supporting this proposal, and I think -- within the context of Phase Six and what we'll be doing with (audio interference) as a consequence of the pandemic. Phase Six -- I'm interested to see what the comments are coming back. Obviously, a clear margin requirement has been many years in the making.

It's been quite remarkable to see our industry respond to the pandemic from a technological standpoint, a business standpoint, and of course from a personal standpoint, from the fact that many have responded in a wonderful way. Conditioning businesses in this market to remain functional and safe.

To that Phase Six meeting (audio interference) 3/21 and that extension 322. I'd just be interested in what the comments are, whether or not (audio interference).

I'm open to it of course (audio interference). But hearing the responses I think will better form the considerations of regulators and policymakers, as to the best decision forward.

So, thanks again to DSIO staff for your work, and thank you, Mr. Chairman.

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

COMMISSIONER STUMP: Thank you, Mr. Chairman. I'm happy to support today's proposed rule to achieve the globally agreed-to extension.

I've had the opportunity to work with Warren and Carmen recently on this matter in various initiatives that the agency has been involved in. And I very much appreciate their time and attention to this matter.

It's very important to me as well, and I look forward to hearing the public's views on this extension that is related to the COVID pandemic. But I also hope that the Commission will soon consider addressing a number of recommendations included in the report that was recently prepared by the Subcommittee on Margin Requirements for Non-Cleared Swaps, and adopted recently by the

Global Markets Advisory Committee.

That subcommittee's charge was different. It was not pandemic-related and the issues discussed in the report remain, despite the one-year extension in compliance dates that are before us today.

So, I look forward to having input on both the proposal to extend, as well as the report addressing some specific items that make this last two phases particularly challenging for specific market participants implicate. Thank you very much.

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

COMMISSIONER BERKOVITZ: Thank you, Mr. Chairman. And first of all, I'd also like to thank Eric Remmler on my staff for stepping up and helping to draft this rule and working with DSIO on this significant effort by Eric and I appreciate it.

My concern on this -- and I support the proposal. We just did an extension, a one-year.

And this extension is now -- and partially we did that extension to avoid the crunch that would come from both Phase Five and this phase, Phase Six, all being at the same time, so we extended this originally from September of this year to September of next year, to avoid that crunch that would have otherwise happened in September this year.

And now, this is necessitated by the fact that we're extending Phase Five for a year. And it's not just us, this is done on a global basis. So, we're avoiding another crunch supposedly, although everybody will have another year -- albeit a COVID-interrupted year -- to do this. But we keep pushing these off and off.

And whether all these entities need until September 2022 to do this I'm not convinced some extent -- if everybody else in the world is doing it, that's a significant consideration, whether we would be setting up a separate time line.

Sort of the entities that we're responsible for, perhaps. I don't know that that would be infeasible. But anyway, I look forward to the public comments on it. I'm supporting the proposal. But yet, another full year after we just granted a year, does seem like a long time, and considering they've had a number of years prior to this to get ready for it. So, voting for the proposal. Look forward to comment.

I'm not yet convinced that yet another full year beyond 2021 into 2022 is necessary. So, thank you, Mr. Chairman. And thanks, everybody, for working on this rule together.

CHAIRMAN TARBERT: Thank you, Commissioner Berkovitz. Is there any Commissioner not prepared to vote? Okay, then I'll please ask our secretary, Mr. Kirkpatrick, to please call the role for the proposed rule extending the Phase Six deadline.

MR. KIRKPATRICK: Thank you, Mr. Chairman. This is the Commission Secretary. The motion now before the Commission is on the approval of the proposed rule extending the Phase Six compliance date. Commissioner Berkovitz.

COMMISSIONER BERKOVITZ: Commissioner

Berkovitz votes aye.

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

COMMISSIONER STUMP: Commissioner Stump votes aye.

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

COMMISSIONER BEHNAM: Commissioner Behnam votes aye.

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

COMMISSIONER QUINTENZ: Commissioner Quintenz votes aye.

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

CHAIRMAN TARBERT: Chairman Tarbert votes aye.

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

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

I'm pleased to say that the ayes have it and the motion on the proposed rule is hereby approved unanimously.

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

Okay, hearing none, the only thing I would like to say is just a quick announcement to let everyone know that we'll be making the audio recording and transcript of this meeting available as soon as possible.

And to the extent any portions of the meeting were not captured by the audio recording, we'll provide a summary of that portion of the meeting.

We'll go ahead and begin with any final statements or comments at this time in reverse order of seniority. So, we'll start with you, Commissioner Berkovitz.

COMMISSIONER BERKOVITZ: Thank you, Mr. Chairman. I think I've made my sufficient statements on each of the proposals. So, I won't go into the proposals. I just again want to thank everybody who's worked on these rules.

Again, I've said this before, the five-to-nothing vote belies the difficulty in getting all there -- and even you know, on non-five-to-nothing votes -- there are still very difficult issues and a lot of back and forth with all the Commissioners.

And I appreciate my colleagues' efforts in that to have dialogue and the give-and-take of the process.

At the end of the day we agree on certain things and we disagree on certain things. But we do it in a collegial manner and we come together on a number of things and I really enjoy that.

And the staff has been helpful to me and my staff, regardless of particular viewpoints that may be expressed -- agreement or disagreement with a draft here or there.

A lot of work went into incorporating comments, a lot of drafts over many days and into the evenings and on the weekends. And certainly one thing about working remotely that's been apparent is -- as it was even before we were working remotely, but I think it's more so now that the blurring of work and home is -- it's almost no more blurring. It's almost indistinct between -- there's no more, quote, going into the office. We're continually living in the office.

And the CFTC and its staff and the dedication, people working nights, weekends, all around the clock, to provide drafts and comment and information back and forth, has really been remarkable through this whole exercise. More than an exercise, through this whole effort that we're undertaking of working on a socially distance, remote environment.

So, yes, we're at home. But to tell you the truth, our home is our work and our work is our home. So, I want to thank everybody for all the effort. I know with my staff, this is required around the clock -- work and effort and tension. And we all have many, many family responsibilities at the same time.

So, I just want to express appreciation to my staff for Erik, Sebastian and Lucy. Sebastian really -- a number of these rules were in his domain for this meeting and it did require around-the-clock work, as you've got to deal with everybody's work habits.

Some people work late at night, some people get up early in the morning. If you're in between, you're working both late at night and early in the morning.

So, thank you all and I hope folks can enjoy the Fourth of July holiday coming up.

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

COMMISSIONER STUMP: Thank you, Mr. Chairman. I don't think I could say it any better than Commissioner Berkovitz. So, I've just going to ask that I be associated with everything he said.

I would like to thank my team specifically though, Libby Mastrogiacomo, Dan Bucsa, Terry Arbit and Charlie Vie (phonetic) for their help this week and the weeks leading up to this week. It's been very busy and I very much appreciate their efforts. Thank you.

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

COMMISSIONER BEHNAM: Thanks, Mr. Chairman. First, special thanks to my staff, John Dunfee, Laura Gardy and David Gillers, for their work leading up to today's meeting. I appreciate having commitment from all the staff during these trying times.

So, I hope everyone is doing well and staying safe, with the public as well. And look forward to continued meetings. And thank you, Mr. Chairman, for bringing up these important matters.

CHAIRMAN TARBERT: Thank you, Commissioner Behnam. Commissioner Quintenz.

COMMISSIONER QUINTENZ: Thank you, Mr. Chairman. This is Commissioner Quintenz. I don't have a formal statement. I would like to join the other Commissioners in thanking all of the staff from the agency today that worked hard to present these proposed and final rules before us, as well as thanking my own staff.

I mentioned Kevin Webb and his extraordinary work on the risk principles for electronic trading. I'd also like to recognize Margo Bailey from my staff for her work on the post-trade name give-up and the Phase Six, and Peter Kals for his work on the Inter-affiliate Margin.

And thank you, Mr. Chairman, for yet another open meeting in the environment in which we find ourselves. I think the dedication to conducting our business in public, whether or not it's in person or over the phone, is a testament to you, but also to the camaraderie that we have amongst the Commissioners, and to elevate the discourse to policy differences. Thank you.

CHAIRMAN TARBERT: Thank you very much Commissioner Quintenz. Let me echo everything that everyone has said. Of course, let me thank all of your staffs and the Commissioners' offices, my own staff, particularly Andrew Ridenour and Chelsea Pizzola and Matt Daigler, who worked on the rulemakings that we vote on today, and also those we voted on yesterday.

Let me also thank all of the members of our staff, including the Office of General Counsel and the Office of Chief Economist.

To pick up on something that you mentioned earlier, Commissioner Quintenz, Bruce Tuckman, who has been our Chief Economist for three years at the CFTC, one of the leading academics in American finance, he has one of the most popular and important textbooks on fixed income, he left for a three-year stint, his faculty position at the New York Stern School of Business to be with us, to share his insights.

He's an MIT-trained economist and he's really continued to build out our Office of Chief Economist. So, Bruce is moving on now to go back to teach future leaders of American business in the MBA and probably the doctoral program as well, but we certainly wish him well.

To the points made by Commissioner Berkovitz and Commissioner Stump and others about how hard working the Commission is, I think during this important, difficult period, a lot of Americans are facing prospects of unemployment and things of that nature, I think they can look to us at the CFTC, that not only we're working, but we're working very hard.

We continue to put at the forefront our mission of promoting the integrity, resilience and vibrancy of our derivatives markets.

And in many ways, not only has the work continued, but in many ways it's increased, because it's so important, and the agency's role in the American economy is arguably now more important than ever.

So, I want to thank all of my colleagues for all of their help in the past few weeks, and wish everyone a happy, restful, safe and healthy July 4th holiday.

So, with that, if there's no further business, I'd entertain a motion to adjourn our meeting.

PARTICIPANT: So moved.

COMMISSIONER BEHNAM: Second.

CHAIRMAN TARBERT: Great. Those in favor of adjourning the meeting will say aye.

(Chorus of aye.)

CHAIRMAN TARBERT: Those opposed, no. The ayes have it. And once again, I'm grateful to everyone -- my fellow colleagues, as well as the CFTC staff -- for their outstanding work, and for members of the public tuning in to watch our open and transparent deliberations.

The meeting is hereby adjourned.

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