

1 U.S. COMMODITY FUTURES TRADING COMMISSION (CFTC)

2

3

4

5

Open Commission Meeting

6

7

8

9

Monday, November 2, 2020

10

10:00 a.m.

11

12

13

14

Virtual

15

16

17 BEFORE:

18

Heath P. Tarbert, Chairman

19

Brian D. Quintenz, Commissioner

20

Rostin Behnam, Commissioner

21

Dawn DeBerry Stump, Commissioner

22

Dan M. Berkovitz, Commissioner

23

1	AGENDA	
2	<u>PRESENTATION</u>	<u>PAGE</u>
3	Call to Order	4
4	Opening Statements	4
5	Chairman Heath P. Tarbert	4
6	Commissioner Brian D. Quintenz	8
7	Commissioner Rostin Behnam	9
8	Commissioner Dawn DeBerry Stump	10
9	Commissioner Dan M. Berkovitz	11
10	Final Rule: Amendments to Part 50 Clearing	
11	Requirement Exemptions for Central Banks,	
12	Sovereigns, IFIs, Bank Holding Companies, and	
13	CDFIs	13
14	Staff Presentation:	
15	Clark Hutchison, Division of Clearing and	
16	Risk	13
17	Motion	21
18	Commissioners' Questions and Discussion	21
19	Vote	40
20		
21		
22		

1	AGENDA (Continued)	
2	<u>PRESENTATION</u> (Continued)	<u>PAGE</u>
3	Closing Statements	41
4	Commissioner Dan M. Berkovitz	40
5	Commissioner Dawn DeBerry Stump	42
6	Commissioner Rostin Behnam	43
7	Commissioner Brian D. Quintenz	44
8	Chairman Heath P. Tarbert	47
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22

P R O C E E D I N G S

CHAIRMAN TARBERT: Good morning. This meeting will come to order. This is a public meeting of the Commodity Futures Trading Commission. I would like to welcome members of the public and market participants as well as those on the phone or watching our WebEx. I would also like to welcome my fellow commissioners: Commissioner Quintenz, Commissioner Behnam, Commissioner Stump, and Commissioner Berkovitz.

As always, we will begin with the Pledge of Allegiance. I will lead, and anyone is welcome to join.

[Pledge of Allegiance.]

CHAIRMAN TARBERT: Thank you.

Today, we will be discussing and voting on a final rule to amend Part 50 to codify certain exemptions from the clearing requirement. We will hear a staff presentation before the Commission deliberates and votes.

We will now move to opening statements. I will go first, followed by my fellow commissioners in order of seniority. Commissioners are free to reserve

1 their time to make a longer closing statement if they
2 wish.

3 Well, the final rule that we are going to be
4 voting on today exempts from the clearing requirements
5 certain swaps entered into by small bank holding
6 companies, savings and loan holding companies, and
7 community development financial institutions; in other
8 words, domestic entities that look very different from
9 Wall Street banks.

10 Finally, the rule also -- or I shouldn't say
11 "finally." In addition, the rule clarifies existing
12 exemptions for, again, very small institutions, such as
13 banks, savings associations, farm credit systems, and
14 credit unions with total assets under 10 billion.
15 These entities are the engines of the real economy
16 providing financial support to American communities,
17 businesses, and families.

18 While today's final rule makes sense in
19 normal times, it is especially critical now. As we
20 continue to manage the fallout of COVID-19, it is
21 particularly important that we advance the CFTC's
22 strategic goal of regulating the derivatives markets to

1 promote the interests of all Americans. Today's final
2 amendments for Part 50 are a step in that direction.

3 In addition, they also reflect the CFTC's
4 commitment to international comity and deference. So,
5 in addition to exempting those small entities that I
6 mentioned, domestically, it also exempts foreign
7 sovereigns, foreign central banks, as well as
8 international financial institutions, such as the World
9 Bank and IMF, from the clearing requirement. And, just
10 as we would expect that a foreign regulator would not
11 impose a clearing requirement on, for example, the U.S.
12 Treasury or the Federal Reserve when acting on behalf
13 of the United States of America, we would accord the
14 same deference to foreign countries as well.

15 Speaking of international, there are two
16 other announcements I wanted to make. The first is
17 that the CFTC and the South African Reserve Bank have
18 signed a statement of intent to cooperate and support
19 FinTech innovation. Specifically, Lab CFTC and the
20 South African Reserve Bank's FinTech Unit will
21 spearhead this effort. This follows similar
22 arrangements with authorities in the U.K., Singapore,

1 and Australia in 2018 and then the CFTC's joining the
2 Global Financial Innovation Network just last year, in
3 2019. Coordinating with our international partners has
4 many benefits, including helping regulators keep up
5 with the rapid pace of technological changes in our
6 markets. I am excited for the opportunity to build on
7 those efforts with our counterparts in South Africa.

8 The second international announcement is that
9 this afternoon, the CFTC will announce a number of
10 exemptions under Part 30 of our rules. The CFTC's Part
11 30 exemptive program has been around for 30 years.
12 During that time, it has provided U.S. customers with
13 increased access to foreign futures and options
14 markets, where foreign intermediaries are subject to
15 comparable customer protection standards.
16 Specifically, we will be issuing orders for the Bombay
17 Stock Exchange and the National Stock Exchange
18 International Financial Service Center, both based in
19 India. We will also be issuing one for the Montreal
20 Exchange, based, of course, in Canada, our neighbor to
21 the north, as well as for the New Zealand Exchange;
22 and, then, finally, for a series of entities based in

1 Singapore.

2 I promised increased comity and deference to
3 our international counterparts. And this relief makes
4 good on that commitment. Altogether, these two
5 announcements as well as today's rulemaking show the
6 CFTC is the global standard for sound derivatives
7 regulation. Thank you.

8 I would now like to recognize my fellow
9 commissioners for their opening statements, starting
10 with Commissioner Quintenz.

11 COMMISSIONER QUINTENZ: Thank you, Mr.
12 Chairman, and good morning to you.

13 I don't have any opening statements this
14 morning except to just say thank you to you and to the
15 staff, not only for the final rule that we have before
16 us today but for all of the deferential 30.10
17 exemptions that you mentioned. I was very pleased to
18 vote for those. And I think any time that the CFTC
19 recognizes foreign jurisdictions that are comparable to
20 ours and that can allow efficient and effective and
21 seamless cross-border risk management, it is a good
22 thing for the markets. And that is a good thing for

1 international comity.

2 So, with that, congratulations on that. I
3 was pleased to support them. And I will look forward
4 to supporting today's rule.

5 Thank you.

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

8 Commissioner Behnam?

9 COMMISSIONER BEHNAM: Thank you,
10 Mr. Chairman. And good morning to my fellow
11 commissioners and staff and everyone who has had the
12 chance to listen to this morning's meeting, I look
13 forward to the discussion and the presentation by the
14 Division of Clearing and Risk.

15 I also don't have any formal opening remarks,
16 but I certainly look forward to the discussion and the
17 question and answer period and look forward to the vote
18 later on this morning, certainly appreciate bringing
19 these rules up. I think, as you mentioned, Mr.
20 Chairman, a good indication of our ability as an agency
21 to work with foreign regulators and foreign sovereigns
22 to not only match what they are doing but have

1 reciprocal rules so that we can create more global,
2 more transparent, and more efficient markets.

3 So thanks again, especially to the staff, for
4 the impending presentation in a little bit, but, of
5 course, as always, for all of their work. Thank you.

6 CHAIRMAN TARBERT: Thank you very much,
7 Commissioner Behnam.

8 Commissioner Stump?

9 COMMISSIONER STUMP: Hi. Good morning.
10 Thank you all. And I also wish to commend the chairman
11 and all of the commissioners for the work that has been
12 done with regard to international coordination with
13 global markets. They require globally coordinated
14 regulations. And I think we have made strides in that
15 regard over the past few years and, in fact, over the
16 past decade. There have been many people who have
17 worked towards a global consensus on how we regulate
18 the OTC market, but, talking about Part 30
19 specifically, I do think there are many lessons that
20 can be learned from the Part 30 regime and the way it
21 has been applied in the futures market and the manner
22 in which we as an agency have worked with our

1 counterparts on the futures market and the futures
2 market regulators across the world.

3 Thank you. With that, I have no statement.

4 CHAIRMAN TARBERT: Thank you Commissioner
5 Stump.

6 Commissioner Berkovitz?

7 COMMISSIONER BERKOVITZ: Good morning, Mr.
8 Chairman, and thank you. And I thank my colleagues on
9 the Commission as well, and the staff, for their
10 excellent work in bringing the rule, the final rule,
11 before us today.

12 I am pleased to be able to support the rule
13 today as well as the other actions that you mentioned,
14 Mr. Chairman; the action that we are taking today on
15 this rule as well as the Part 30 recognitions that you
16 mentioned that we are announcing today. As has been
17 noted, in furtherance of our statutory mandate to work
18 towards international harmonization and the
19 longstanding Part 30 program, which I think over time
20 has been a success in permitting a U.S. person to
21 access the foreign markets to manage risk and in
22 furtherance of global harmonization and recognition of

1 international comity. So I am pleased to support the
2 Part 30 actions, and I look forward to today's
3 presentation. And I am pleased to support today's
4 rule, both not only for international comity but for,
5 pursuant to the mandate, the congressional directive
6 for exemptions for smaller financial institutions.

7 So I look forward to the staff presentation
8 and thank everybody for the work leading up to today.

9 CHAIRMAN TARBERT: Thank you very much,
10 Commissioner Berkovitz.

11 We will now move to our consideration of the
12 final amendment to the Part 50 clearing requirement
13 exemptions. After a short presentation, the floor will
14 be open for questions and remarks from each
15 commissioner. The final votes conducted in this public
16 meeting will be recorded votes. The results of the
17 votes approving the issuance of rulemaking documents
18 will be included with those documents in the Federal
19 Register. To facilitate the preparation of approved
20 documents for publication in the Federal Register, I
21 would now ask the Commission to grant unanimous consent
22 for staff to make the necessary technical corrections

1 prior to submitting them to the Federal Register.

2 COMMISSIONER QUINTENZ: So moved.

3 COMMISSIONER BEHNAM: Second.

4 CHAIRMAN TARBERT: Thank you. Without
5 objection, so ordered.

6 Well, now I would like to welcome Clark
7 Hutchison, director of the Division of Clearing and
8 Risk, who will present today's final rule.

9 Clark, you have the floor.

10 MR. HUTCHISON: Thank you.

11 And just a sound check. Everyone can hear me
12 all right?

13 CHAIRMAN TARBERT: Loud and clear.

14 MR. HUTCHISON: Great. Thank you, Mr.
15 Chairman.

16 Good morning. Good morning, commissioners
17 and fellow staff. I am Clark Hutchison, the director
18 of the Division of Clearing and Risk. And I am here to
19 present final rules to amend Part 50 of the
20 Commission's regulations related to certain exemptions
21 from the Commission's swap clearing requirement.

22 Before I present, I would like to recognize

1 the following Division of Clearing and Risk staff, who
2 have worked diligently to prepare the final rulemaking:
3 Megan Wallace, Melissa D'Arcy, and Sarah Josephson. In
4 addition, I would like to thank our colleagues in the
5 Office of the General Counsel Carlene Kim and Clark
6 Ogilvie and our colleagues in the Office of the Chief
7 Economist Scott Mixon and Ayla Kayhan for their
8 assistance in preparing this rulemaking.

9 The final rules before you would amend the
10 regulations governing which swaps are exempt from the
11 clearing requirement under Section 2(h)(1) of the
12 Commodity Exchange Act, or CEA. The new regulations
13 would exempt swaps entered into by central banks;
14 sovereign entities; international financial
15 institutions, or IFIs; and certain bank holding
16 companies; savings and loan holding companies; and
17 community development financial institutions, or CDFIs,
18 from the swap clearing requirement, all consistent with
19 policy determinations the Commission set forth in the
20 2012 end-user exception rulemaking as well as six DCR
21 staff no-action letters. In addition, these final
22 rules will add a clearing requirement compliance date

1 chart and make certain minor restructuring amendments
2 to Part 50.

3 This final rulemaking aligns with the
4 Commission's core values of providing clarity and
5 greater certainty to the market participants that have
6 been relying on Commission statements and staff no-
7 action letters with respect to the application of the
8 swap clearing requirement. These amendments are
9 consistent with the way the clearing requirement is
10 being administered today and make Part 50 of the
11 Commission's regulations easier to understand and
12 apply.

13 New Subpart D of Part 50 will consist of five
14 new regulations that largely codify current market
15 practice. These new rules are: number one, regulation
16 50.75, which exempts from the clearing requirement
17 swaps entered into by a central bank or a sovereign
18 entity; number two, regulation 50.76, which exempts
19 from the clearing requirement swaps entered into by 22
20 named IFIs as well as any other entity that provides
21 financing for national or regional development in which
22 the U.S. Government is a shareholder or contributing

1 member; number three, regulation 50.77, which exempts
2 from the clearing requirement certain interest rate
3 swaps entered into by community development financial
4 institutions; number four, regulation 50.78, which
5 exempts from the clearing requirement swaps entered
6 into by certain bank holding companies; and, finally,
7 number five, regulation 50.79, which exempts from the
8 clearing requirement swaps entered into by certain
9 savings and loan holding companies.

10 The final rules before you today are largely
11 unchanged from the original proposal. However, in
12 response to comments the Commission received on the
13 proposal, staff recommends making one important
14 modification to the final regulations to clarify that
15 the exemptions for swaps entered into by central banks,
16 sovereign entities, and IFIs are not dependent on the
17 exempted swaps being reported to a swap data
18 repository, or SDR. Under one reading of proposed
19 regulations 50.75 and 50.76, the exemption would have
20 been dependent on the swap being reported to an SDR by
21 either the central bank, sovereign entity, or the IFI
22 electing the exemption or the counterparty to such an

1 entity. A swaps counterparty failure to report would
2 make those swaps ineligible for exemption, even if a
3 central bank, sovereign entity, or IFI had no knowledge
4 of their counterparty's failure to report
5 appropriately.

6 Because this reading of the proposal does not
7 reflect the Commission's intent, staff is recommending
8 that the final rule text remove the reference to
9 reporting. This change will allow the current practice
10 to continue regarding which counterparty reports the
11 swap to an SDR and does not impose any new obligations
12 on central banks, sovereign entities, or IFIs.

13 It is important to note that the final rules
14 do not relieve any swap counterparty's independent
15 obligation to report the swap under Commission
16 regulations 45.3 and 45.4.

17 Apart from this change, staff recommends that
18 the Commission adopt the rules as proposed. Staff
19 believes that the exemptions for swaps entered into by
20 central banks, sovereign entities, and IFIs are a
21 proper exercise of the Commission's discretionary
22 authority under Section 4(c) of the CEA and are in

1 keeping with the principles of international comity and
2 consistent with policy determinations the Commission
3 made in 2012 in promulgating the end-user exception to
4 the swap clearing requirement.

5 Staff also believes that the exemptions for
6 swaps entered into with certain bank holding companies,
7 savings and loan holding companies, and CDFIs are a
8 proper exercise of the Commission's discretionary
9 authority under Section 4(c) of the CEA. Part 50
10 already provided for an exception from the clearing
11 requirement for swaps entered into by small banks and
12 savings and loan institutions with assets of less than
13 10 billion that use swaps to hedge or mitigate
14 commercial risk. The new rules before the Commission
15 today would permit swaps entered into by the holding
16 companies of those entities to remain uncleared.

17 Bank holding companies and savings and loan
18 holding companies generally enter into interest rate
19 swaps to hedge interest rate risk that they incur as a
20 result of making loans or issuing debt securities, the
21 proceeds of which are generally used to finance their
22 subsidiaries. These entities enter into swap financing

1 transactions infrequently and have relatively low-
2 volume swap books.

3 Similarly, the new rules would exempt swaps
4 entered into with CDFIs, recognizing that CDFIs share
5 certain characteristics with the entities Congress
6 identified when it directed the Commission to consider
7 an exemption from the clearing requirement for small
8 banks and savings associations. For example, under a
9 U.S. Treasury Department program, CDFIs serve rural and
10 urban low-income communities that lack adequate access
11 to affordable financial products and services. CDFIs
12 make loans and other investments for the benefit of
13 designated investment areas and target populations. As
14 part of this work, CDFIs enter into a very limited
15 number of interest rate swaps and forward rate
16 agreements in order to hedge their interest rate
17 exposures.

18 Lastly, the final rule creates a new Subpart
19 D with regulation 50.26, which is a compliance date
20 chart for the Commission's swap clearing requirement.
21 This chart identifies each category, class, and type of
22 counterparty that is required to clear, and the date on

1 which the clearing requirement became effective.
2 Although the Commission has publicized the dates of its
3 clearing requirements in prior rulemakings and press
4 releases, for the first time, this information will be
5 available in one place for market participants to
6 reference.

7 As noted earlier, the final rule also
8 contains other minor, non-substitute changes to Part 50
9 regulations, such as renumbering the exemptions for
10 swaps entered into with small banks and savings
11 associations to clearly delineate the availability of
12 the exemption.

13 We hope this overview has been helpful and
14 will be happy to answer any questions. Mr. Chairman?

15 CHAIRMAN TARBERT: Well, thank you very much,
16 Clark, for that insightful presentation. And I also
17 want to thank the staff that you mentioned for their
18 outstanding work in preparing this final rule for
19 Commission consideration.

20 To begin the Commission's discussion and
21 consideration of the final rule, I will now entertain a
22 motion to adopt the final amendments to the Part 50

1 clearing requirement exemptions.

2 COMMISSIONER QUINTENZ: So moved.

3 COMMISSIONER BEHNAM: Second.

4 CHAIRMAN TARBERT: Thank you.

5 I would now like to open the floor for my
6 fellow commissioners to ask any questions. I will
7 start, but I actually don't have any questions. I
8 think I articulated the reasons why I fully support
9 this final rule in my opening statement. And, of
10 course, I also support the technical clarification that
11 you mentioned, Clark, the small change that we made
12 from the proposed rule to this final rule, so very
13 pleased to support this and once again want to thank
14 Commission staff for their excellent work.

15 Commissioner Quintenz?

16 COMMISSIONER QUINTENZ: Thank you, Mr.
17 Chairman. And thanks, Clark, for that great
18 presentation. And, again, I would like to also follow
19 you in recognizing Megan, Melissa, Sarah, Carlene,
20 Clark, Scott, and Ayla. Thank you to all of them for
21 their work on this.

22 I just have two quick questions, if I could,

1 Clark. You know, the discussion of what a sovereign
2 entity is may seem straightforward to some, but I think
3 it is important to recognize that in this rule, that
4 doesn't extend to state and local government financing
5 entities, including those abroad, which may not be
6 permitted to be exempt from the swap clearing
7 requirement. Could you discuss that for just a quick
8 minute?

9 MR. HUTCHISON: Sure. Thank you for the
10 question, Commissioner Quintenz.

11 Staff is recommending that the definition of
12 entities that are exempt from the swap clearing
13 requirement remain consistent with the status quo that
14 has been around for several years, roughly about seven.
15 The definition of sovereign entity under Part 50 means
16 a central government, including the U.S. Government, or
17 an agency or department or a ministry. Expanding the
18 definition of sovereign entity to include states and
19 other instrumentalities, such as agencies, departments,
20 or ministries, and the financing entities those
21 entities may have in place, would go beyond the status
22 quo that we have had in place for the past seven years.

1 Additionally, this new approach would require
2 the Commission to periodically reassess which entities
3 are included in the definition of sovereign entity and
4 financing entity, by the way, based on geopolitical
5 events and whether a specific entity meets certain
6 standards of state or foreign law. The staff believes
7 that this is infeasible under the present statute. And
8 as explained in the adopting release, the final rule
9 defined the term "sovereign entity" so that it excludes
10 state governments. This definition reflects the fact
11 that Section 2(h)(7) of the CEA limits the exemptions
12 from the clearing requirement to national governments
13 and, thereby, excludes state, regional, or provincial
14 or even municipal governments. And this limitation
15 applies equally to U.S. and non-U.S. entities.

16 I would also like to note that the final rule
17 reflects the fact that most government entities are
18 predominantly engaged in nonfinancial activities
19 related to their public functions and, therefore, are
20 not likely to be financial entities subject to the
21 CFTC's swap clearing requirements in the first place.
22 As nonfinancial entities, these governments are

1 eligible to elect an exception from the clearing
2 requirement under present Commission regulations.

3 So I think that really gets to the point of
4 defining sovereign entities versus state and local
5 entities, as you might have suggested. And I hope that
6 is helpful.

7 COMMISSIONER QUINTENZ: Thank you, Clark.

8 Yes, it is. It is very helpful. I think not
9 only statutorily but also from a resource and process
10 perspective how confusing and complicated that can be
11 on an ongoing basis. You know, I would note my
12 interest in that issue isn't necessarily domestic, as
13 opposed to abroad. But, you know, as the issues there
14 may be often few and far between, there could be other
15 avenues to address those, but thank you for that. That
16 was a very robust answer, which I appreciate.

17 Last question, Clark, if I could, I think it
18 is important to get a sense of the volume that we are
19 talking about, how large this activity is that we are
20 thinking about exempting. Could you describe what your
21 understanding is of the volume of swaps that had been
22 exempted from the clearing requirement under the

1 existing relief?

2 MR. HUTCHISON: Yes, sure. Thank you for the
3 question.

4 I have in some notes here some statistics.
5 If you don't mind if I read for a second, during 2018,
6 16 IFIs elected not to clear their swaps under existing
7 relief. This resulted in roughly 2,500 uncleared
8 swaps, which had an aggregate notional value of
9 approximately 220 billion. So that was in 2018 for 16
10 IFIs.

11 In 2018, for CDFIs, eight elected not to
12 clear their swaps under this relief. This resulted in
13 13 and only 13 uncleared swaps, having an aggregate
14 notional value of 84 million.

15 And then in 2018, 11 bank holding companies
16 elected not to clear their swaps under this existing
17 relief. This resulted in 18 uncleared swaps, which had
18 an aggregate notional value of about 152 million.

19 So you can see that CDFIs and bank holding
20 companies really haven't taken advantage of this very
21 often. And it is really IFIs that have used the bulk
22 of it but in total not very much.

1 COMMISSIONER QUINTENZ: Thank you. Thank you
2 for that. I mean, I think, you know, when talking
3 about millions of dollars in terms of swaps, especially
4 interest rate swaps, like you would describe, I mean, I
5 don't think that qualifies as a drop in the bucket. I
6 think even, you know, getting into the \$200 billion
7 range, while it sounds like a very large number and it
8 could be from a risk perspective, an interest rate swap
9 that does not represent significant risk and we are
10 talking about a swaps market that has hundreds of
11 trillions of dollars for a notional value.

12 So thanks for that, putting it into context,
13 appreciate that. And thanks again for the hard work.

14 MR. HUTCHISON: Thank you.

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

17 Commissioner Behnam?

18 COMMISSIONER BEHNAM: Thanks, Mr. Chairman.

19 And, Clark, thank you for that excellent
20 presentation. And I also want to extend thanks to
21 Megan, Melissa, and Sarah as well in DCR and also staff
22 in OGC.

1 I had a similar line of questions that
2 Commissioner Quintenz did. And if you don't mind, I am
3 going to just follow up a little bit on that cart. I
4 agree with what Commissioner Quintenz said, just said,
5 in terms of the scope and the relative size of the
6 exemptions and the data that you provided as it relates
7 to the larger market. Clark, can you just confirm that
8 you sort of agree with what Commissioner Quintenz says
9 and whether, you know, you want to use the drop-in-the-
10 bucket analogy or something similar just to tell the
11 public that, really, this is, based on the data that
12 DCR has collected and provided in the rule, a very,
13 very small portion of the larger interest rate market
14 specifically or CDS market.

15 MR. HUTCHISON: Yes, I can confirm without
16 reservation wholeheartedly that the notional value of
17 these swaps is not material to the overall swap market.
18 I will assist Commissioner Quintenz in his description
19 of it as a drop in the bucket. I think that is
20 probably about right. And I think that this proposed
21 rule is doing what it is designed to do. Those
22 entities that use swaps in I will say a nonmaterial way

1 can escape a burden that might otherwise have occurred
2 should we have required them to clear, as others might.
3 This is a very small number that we are giving
4 exemption to.

5 COMMISSIONER BEHNAM: Thanks, Clark.

6 And I think, just a follow-up to that quickly
7 -- and I will move on after this, but there is a nice
8 line in the rule that I think is worth sort of
9 paraphrasing, but, really, this exemption is not going
10 to -- and I use this word in quoting -- "dramatically
11 shift the level of swap clearing pursuant to the
12 clearing requirement. I think that is important to
13 note to just sort of follow up and I think affirm what
14 you just said.

15 I do want to talk about the sovereigns and
16 the IFIs a little bit. We talked about the statutory
17 exemption, but can you from your perspective give a
18 little bit of a sense from a risk perspective why it is
19 smart from a policy perspective to exempt swaps that
20 are executed by these institutions?

21 MR. HUTCHISON: Well, I think that a swap, as
22 everyone knows, is a counterparty transaction. And the

1 risk associated with a counterparty transaction is the
2 ability of that counterparty to perform. And I think
3 that when we start talking about exempting people from
4 swaps, from clearing, we have this idea of performance.
5 And I think that central governments, sovereign
6 entities, and then also community development banks and
7 savings and loans that we described are entities that
8 are using swaps for a specific purpose with every
9 intention to perform and have the credit rating and the
10 ability to perform. So I think putting these entities
11 in a different category and giving them an exemption
12 makes sense from a performance point of view and I just
13 also think from the point of view of what they are
14 trying to accomplish in the greater good of the
15 commercial marketplace.

16 COMMISSIONER BEHNAM: Thanks, Clark. That's
17 excellent. And I couldn't agree with you more. That
18 is a great summary I think and a little bit of an
19 outline I think for the folks that are listening who
20 might not understand or see the larger policy, both
21 initiatives and reasonings for why we're doing what
22 we're doing.

1 So, with that, I would just thank you again
2 for your work. I think this is a good step in terms of
3 the agency's effort, as we said at the beginning in the
4 opening statements, to improve our international
5 harmonization. I think we do a lot to harmonize our
6 rules with our colleagues overseas, but we can always
7 do better. I think this is a step in the right
8 direction.

9 And, also, I think it is important to note
10 that we are in many respects codifying no-action relief
11 that has been around for a number of years. And this
12 has been a challenge I think for the agency but, more
13 importantly, for the market in terms of regulatory
14 certainty. And I know this has been an initiative of a
15 number of chairs over the past few years to knock out a
16 lot of these no-action relief letters and policies that
17 have existed and have been extended year over year and
18 have created uncertainty. And I think this creates a
19 level of certainty that I think is a step in a very
20 positive direction.

21 So, again, I appreciate the work of DCR,
22 Clark, and your work as well. And, Mr. Chairman, I

1 look forward to supporting the rule later on this
2 morning. Thank you.

3 CHAIRMAN TARBERT: Thank you very much,
4 Commissioner Behnam.

5 Commissioner Stump?

6 COMMISSIONER STUMP: Thank you, Chairman
7 Tarbert.

8 I don't have any questions. As has been
9 said, the folks who worked on this, it should never be
10 interpreted by the lack of questions or the lack of
11 controversy or the lack of applause that they haven't
12 worked tremendously hard in getting us to where we are
13 today. So I just wish to thank everyone for
14 fulfilling a statutory mandate and building upon the
15 things we have done over the past 10 years to get us to
16 this point. So I am happy to support the rule before
17 us. Thank you.

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

20 Commissioner Berkovitz?

21 COMMISSIONER BERKOVITZ: Thank you, Mr.
22 Chairman. And thank you, Clark, for the presentation

1 and the ensuing discussion.

2 I just want to follow up on several of the
3 questions that my colleagues have asked. And maybe I
4 can tie together a little bit some of the themes that
5 the questions and answers have put before us. And if
6 my characterization of this needs supplementing or
7 correcting, please feel free to do so.

8 So, as I see what we are doing here today,
9 there is a number of factors, in addition to the
10 legislative reasons, that compel the result in this
11 final rule as well as provide us comfort that by
12 providing this exemption, we are not introducing any
13 significant new risk, any material risk, into the
14 system. The one factor that we have talked about is
15 the size, the magnitude, the number of transactions
16 involved and the notional value of those transactions
17 being whatever adjective you use, small. I will just
18 use the word "small," relatively small compared to the
19 big swaps world.

20 The other, the nature of the counterparty,
21 the nature of the counterparties here are sovereign,
22 sovereign entities. And then I also see that the

1 purpose of these swaps -- and maybe I can ask you to
2 elaborate on it-- I think you talked about the nature
3 of the counterparty being the sovereigns would feel
4 more comfortable about, you know, that they're going to
5 be there, the ECB or whatever, that it's default risk
6 on one of these swaps for the ECB is pretty small. But
7 could you also talk about the nature of the
8 transactions that they are going to be entering into,
9 that we are confident that these entities are not
10 entering speculative transactions? But, also, some of
11 these are -- these entities have more of a commercial
12 purpose in terms of encouraging commercial activity or
13 providing funds for economic growth. And can you just
14 expound on when we look at these, we look at not just
15 the fact that it is sovereign but what it is actually
16 using these swaps for?

17 MR. HUTCHISON: Sure. Thank you,
18 Commissioner Berkovitz. I think your point is a good
19 one. And I think we do have to remember that one of
20 the purposes here besides, as you say, the element of
21 counterparty risk that we feel confident with the
22 performance of these entities, is the financing that

1 goes on for, I will call it, purposes of development
2 and purposes of good. So if we go away from sovereign
3 entities to savings and loans and their parent
4 entities, which was discussed in the preamble that I
5 gave, I would say that we lump these entities or the
6 transactions that they do are designed to help perhaps
7 rural communities or specific targeted efforts for
8 community development or, in fact, outside the U.S. for
9 development that the U.S. Government feels is not only
10 a good investment but also for development of purposes
11 that are outside just speculation. And I think if we
12 can call those efforts of good, these transactions that
13 are going on are financing transactions that are -- and
14 the swaps that are used for those financing
15 transactions are for hedging risk, interest rate risk.

16 So I think hedging is not speculation.
17 Hedging is an activity to insulate a financing activity
18 from risk. And I think this all hangs together very
19 well, as I think you rightly concluded, which is we
20 have good counterparty risk with these entities. We
21 have a good social purpose for these entities. We have
22 hedging, as opposed to speculation, being used in these

1 interest rate swaps. So I think they meet a lot of
2 requirements that are different than I would say swaps
3 that might be used for other means, which is I think
4 the intent of why we are here today.

5 So does that help?

6 COMMISSIONER BERKOVITZ: Yes. That is very
7 helpful. Thanks. That is helpful.

8 In terms of other requirements, you had
9 talked about reporting requirements. This does not
10 relieve any transactions from being subject to the
11 reporting requirements that the counterparty would have
12 to report. Is that the case for these transactions,
13 that it would be, the counterparty to the sovereign
14 would be required to report this to our SDR, one of our
15 SDRs?

16 MR. HUTCHISON: Well, yes. I think what we
17 are doing here is we wanted to make sure that the
18 reporting requirements are not misunderstood in any
19 way. I think what we wanted to make sure is, is that
20 if an entity failed to report, somehow the exemption
21 would be not given. So I think what we have done is we
22 have said that the reporting requirements are modified

1 such that we won't have that conundrum that we had
2 before that might come into the reading of the rule.

3 COMMISSIONER BERKOVITZ: Going forward, just
4 so today we can be confident that looking back on the
5 record of who has been subject to the no-action relief
6 and what is the universe of swaps that are being exempt
7 or not being cleared due to this exemption, the volume,
8 the number of transactions plus the notional amount, we
9 have that data. We will continue to get that data
10 going forward. So we will be able to monitor this and
11 a year from now say, "Okay. Are we at the same level
12 of risk in terms of this exemption?" --

13 MR. HUTCHISON: Yes.

14 COMMISSIONER BERKOVITZ: -- through the SDR?

15 MR. HUTCHISON: No. Sorry I didn't make that
16 perhaps clear in my previous response, but the answer
17 to that is just simply yes. We have been getting this
18 data all along. And we will continue to get this data
19 going forward. We just wanted to eliminate any
20 particular reading of this rule that might confuse
21 people as to reporting requirements and that sort of
22 thing. But the answer to your question is yes.

1 COMMISSIONER BERKOVITZ: In terms of
2 counterparty risk, are these transactions still,
3 nonetheless, subject to the uncleared margin rules so
4 that potentially they would -- even though they are
5 exempted from the clearing requirement that they are
6 subject to margin requirements?

7 MR. HUTCHISON: Yes.

8 COMMISSIONER BERKOVITZ: So, even for these
9 robust counterparties, there are still margin
10 requirements, though, that --

11 MR. HUTCHISON: Yes.

12 COMMISSIONER BERKOVITZ: -- confident that
13 there is not significant new risk coming into the
14 system through this?

15 MR. HUTCHISON: That's correct.

16 COMMISSIONER BERKOVITZ: Okay. Well, thank
17 you.

18 I think given the factors that we have
19 discussed, the scope of these, what we are talking
20 about here in terms of the exemption, the nature of the
21 counterparties, the purpose of the swaps, the uncleared
22 margin requirements, and it is still reported to the

1 SDR, I think there is a -- and the beneficial purpose
2 is to recognize these sovereign entities and
3 international comity. I think this is a reasonable
4 approach to take. I feel comfortable supporting
5 today's final rule.

6 So thank you, Clark. And thank you to the
7 team for the rule, for the responsiveness to the
8 comments, and for the presentation today.

9 MR. HUTCHISON: Commissioner Berkovitz, thank
10 you for helping summarize the rule, again, in terms
11 that I think everyone will understand. I appreciate
12 that. And I agree with what you have just said. So
13 thank you very much.

14 CHAIRMAN TARBERT: Well, thank you very much,
15 Commissioner Berkovitz. And, of course, thank you,
16 Clark, for answering our questions.

17 I can ask all of the commissioners to go
18 ahead and turn on their videos now so I can ask whether
19 there is any commissioner who is not prepared to vote.

20 [No response.]

21 CHAIRMAN TARBERT: Okay. Hearing none, I
22 think we can go ahead and ask our secretary, Mr.

1 Kirkpatrick, to please call the roll for the final
2 amendments to the Part 50 clearing requirement
3 exemptions.

4 MR. KIRKPATRICK: Thank you, Mr. Chairman.

5 The motion now before the Commission is on
6 the adoption of the amendments to the Part 50 clearing
7 requirement exemptions. Commissioner Berkovitz?

8 COMMISSIONER BERKOVITZ: Commissioner
9 Berkovitz votes aye.

10 MR. KIRKPATRICK: Commissioner Berkovitz
11 votes aye.

12 Commissioner Stump?

13 COMMISSIONER STUMP: Commissioner Stump votes
14 aye.

15 MR. KIRKPATRICK: Commissioner Stump votes
16 aye.

17 Commissioner Behnam?

18 COMMISSIONER BEHNAM: Commissioner Behnam
19 votes aye.

20 MR. KIRKPATRICK: Commissioner Behnam votes
21 aye.

22 Commissioner Quintenz?

1 COMMISSIONER QUINTENZ: Commissioner Quintenz
2 votes aye.

3 MR. KIRKPATRICK: Commissioner Quintenz votes
4 aye.

5 Chairman Tarbert?

6 CHAIRMAN TARBERT: Chairman Tarbert votes
7 aye.

8 MR. KIRKPATRICK: Chairman Tarbert votes aye.

9 Mr. Chairman, on this matter, the ayes have
10 five, the noes have zero.

11 CHAIRMAN TARBERT: Thank you very much, Mr.
12 Secretary. I am pleased to say that the ayes have it,
13 and the motion to adopt the final rule is hereby
14 approved.

15 Now I would like to give my fellow
16 commissioners an opportunity to make closing
17 statements. And we will start in reverse seniority
18 order with Commissioner Berkovitz.

19 COMMISSIONER BERKOVITZ: I have nothing
20 formal. I just again want to thank everybody in DCR
21 for their work on this rule and thank my fellow
22 commissioners and, of course, thank my staff as well.

1 CHAIRMAN TARBERT: Thank you very much,
2 Commissioner Berkovitz.

3 Commissioner Stump?

4 COMMISSIONER STUMP: Thank you, Mr. Chairman.

5 I am going to use my opportunity to make a
6 closing statement to just note and highlight that the
7 CFTC is unmatched when it comes to our staff's
8 dedication and their commitment and their capabilities.

9 And for two years, I have been the
10 beneficiary of a CFTC-trained chief of staff in Dan
11 Bucsa, who came to work with me from the Division of
12 Market Oversight. And now that he has trained me in
13 the ways of the CFTC, it is time for Dan's skillset to
14 once again benefit the broader cause. Beginning next
15 week, Dan will play a leadership role in our newly
16 formed Data Division as the deputy director responsible
17 for data reporting policy and standards across the
18 agency.

19 It is a bit bittersweet for me to see the
20 creation of this new Data Division, which emphasizes
21 our commitment to both data protection and the
22 importance of the data that we collect. And I am

1 pleased to have Dan help lead the division. I know his
2 skillset will benefit the new division, the Chairman's
3 leadership, and the new director, Tamara Roust.

4 So I would like to take just this very brief
5 moment to thank Dan for his good humor about my
6 obsession to the details of things. Some might say
7 that it is a -- I have a tendency to ask multiple
8 questions about every single thing that enters absent
9 objection. And Dan has handled it always with a great
10 deal of confidence but also with a great deal of, as I
11 said, humor. And I think he has done a remarkable job.
12 And I am particularly pleased that he shared my
13 commitment to data protection and helped me work
14 through those issues and played a leadership role in
15 advancing that cause here at the agency.

16 So, Dan, I am sure that the Chairman and Dr.
17 Roust will be much more conversant than I was in
18 historic military strategy, but if you ever care to
19 revisit my ideas on Marie Kondo or The Great British
20 Baking Show, I am only a phone call away. Thank you.

21 CHAIRMAN TARBERT: Thank you very much,
22 Commissioner Stump.

1 Commissioner Behnam?

2 COMMISSIONER BEHNAM: Thanks, Mr. Chairman.

3 No closing remarks, but, again, thanks to you
4 and DCR for today's rule. And I am obviously happy to
5 have supported it and, as always, just reiterating this
6 is another I think fine action by the CFTC to
7 demonstrate our willingness and our success in working
8 with our foreign counterparts, also codifying no-
9 action, which I said, which I think is always a good
10 thing for regulatory certainty. But, you know,
11 remaining on our toes, collecting data, using our tools
12 and our personnel, our expert personnel, to adjust and
13 adapt as needed, we have flexibility to rewrite rules
14 and do things as we need them and adjust to market
15 evolution. And I think today's action is another step
16 and positive direction in demonstration of the CFTC's
17 willingness to act when it is necessary.

18 So thanks again to you and my fellow
19 commissioners. And thanks, everyone, for having a
20 chance to listen this morning. Thanks.

21 CHAIRMAN TARBERT: Thank you very much,
22 Commissioner Behnam.

1 Commissioner Quintenz?

2 COMMISSIONER QUINTENZ: I thank you, Mr.
3 Chairman. And, first, I would like to say thank you to
4 all of my colleagues for their consideration of the
5 rule today and discussion that ensued, very
6 educational, as always, and the insightful questions.

7 I guess I can't help but notice that given my
8 passion for a few issues that have some relationship to
9 this, I think there may have been a few that agreed
10 with my assessment on the relative size of hundreds of
11 billions of dollars of swaps and, you know, my
12 insistence over a number of years that the de minimis
13 threshold was not appropriately calibrated at \$8
14 billion.

15 Obviously, there are different policy
16 considerations between the two, but that latter one is
17 most specifically based on size. And that's hundreds
18 of billions of dollars or truly a drop in the bucket.
19 Maybe it is worth continuing to think about whether or
20 not that de minimis threshold is appropriately sized
21 for the market. And I would just encourage continued
22 thought there and a focus on data. And I appreciated

1 the discussion today.

2 Let me join Commissioner Stump in recognizing
3 Dan Bucsa. I have really enjoyed working with him. He
4 has been wonderful in engaging with our staff. We have
5 learned from him and have had a wonderful line of
6 communication. I wish Dan the best.

7 And I would also like to take a moment of
8 personal privilege, if I could have everyone's
9 indulgence, that this will likely be the last open
10 meeting that I have Kevin Webb on my staff serving as
11 my chief of staff. Kevin has been with me since I was
12 sworn in. And I still remember discussing details with
13 him on my swearing-in ceremony as we were on our way
14 out to go fishing in an effort to get to know each
15 other a little bit better over a very shared common
16 interest and passion. Throughout our time here, he has
17 led our office with distinction. And he and I have had
18 a lot of fun along the way. Through -- just intense
19 work and immeasurable good spirits and participatory
20 strategic thinking, effective internal communication
21 and deliberation, and intense and highly productive
22 international and domestic travel, Kevin has proved

1 himself to be the most trusted invaluable right-hand
2 deputy I have ever had and likely will ever have. I am
3 most fortunate to have considered, and to continue
4 considering, him a close personal friend. So I would
5 like to thank Kevin publicly for all of his hard work
6 for me, for my office, for the Commission, for our
7 markets, and for our country.

8 Thank you, Mr. Chairman.

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

11 So, in closing, I guess I would just sort of
12 echo a number of the things that were said by my fellow
13 commissioners; first of all, pointing out how great our
14 staff has been, how much work they have done in
15 ensuring that the CFTC is forward thinking and that we
16 stay ahead of the curve.

17 I also want to commend Commissioner Stump, in
18 particular, for her data protection initiative but all
19 of the other commissioners for their input on how do we
20 make the CFTC a more effective organization. So I was
21 very excited to announce the reorganization of major
22 aspects of our agency last week, including the creation

1 of the Division of Data, for the first time. I am also
2 pleased that Dan Bucsa will be leaving Commissioner
3 Stump's employ to come and become a leader in that
4 division as deputy director.

5 And I am also very pleased that Kevin Webb
6 and his many years of experience will be translated to
7 our Office of International Affairs, where he can
8 continue to strengthen our work with our international
9 counterparts. I feel as if I have gotten to know not
10 only, you know, much of the leadership throughout the
11 agency but also those in the commissioners' offices
12 because we have done so much together as a five-member
13 Commission. With the five of us, in particular, this
14 is our 19th open meeting together. And people have
15 seen the amount of work and output and, of course, all
16 of this done during the greatest health pandemic and
17 economic challenge the country has faced in decades.
18 And so the CFTC is working hard on behalf of the
19 American people, but ultimately it is the people within
20 the CFTC that make this organization so great. So I am
21 obviously privileged to be the leader of the
22 organization.

1 So, with that, I will ask whether there is
2 any further business. And if not, I will entertain a
3 motion to adjourn the meeting. Any further business?

4 [No response.]

5 CHAIRMAN TARBERT: Okay. Those in favor of
6 adjourning the meeting will say, "Aye."

7 [Chorus of "Ayes."]

8 CHAIRMAN TARBERT: Those opposed, "No"?

9 [No response.]

10 CHAIRMAN TARBERT: The ayes have it. And,
11 again, I am so grateful for the CFTC staff for their
12 great work as well as for my fellow commissioners and
13 all of the effort that they have put into this
14 rulemaking and all of the rulemakings we have conducted
15 together. This meeting is hereby adjourned. Thank you
16 very much. Have a great day.

17 [Whereupon, at 10:51 a.m., the meeting was
18 adjourned.]

19

20

21

22