

1 U.S. COMMODITY FUTURES TRADING COMMISSION (CFTC)  
2 U.S. SECURITIES AND EXCHANGE COMMISSION (SEC)  
3 JOINT OPEN MEETING

4

5 Thursday, October 22, 2020 (10:00 a.m.)

6

7 CFTC Commissioners in Attendance

8 Heath P. Tarbert, Chairman

9 Brian D. Quintenz, Commissioner

10 Rostin Behnam, Commissioner

11 Dawn D. Stump, Commissioner

12 Dan Berkovitz, Commissioner

13

14 SEC Commissioners in Attendance

15 Jay Clayton, Chairman

16 Hester M. Peirce, Commissioner

17 Elad L. Roisman, Commissioner

18 Allison Herren Lee, Commissioner

19 Caroline A. Crenshaw, Commissioner

20

21 Also Present

22 Christopher Kirkpatrick, Secretary of the CFTC

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P R O C E E D I N G S

CHAIRMAN CLAYTON: Good morning. This is Jay Clayton, and this is an open meeting of the U.S. Securities and Exchange Commission under the Government in the Sunshine Act.

CHAIRMAN TARBERT: And good morning. This is Chairman Heath Tarbert of the CFTC. This meeting will come to order.

This is a public joint meeting of the Commodity Futures Trading Commission and the Securities and Exchange Commission. I'd like to welcome members of the public and market participants who are listening on the phone or through the Web. I'd also like to welcome my fellow Commissioners on the CFTC, Commissioners Quintenz, Behnam, Stump, and Berkovitz. And, of course, I'd like to welcome SEC Chairman Clayton and the SEC Commissioners Peirce, Roisman, Lee, and Crenshaw.

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

1 of this meeting in the future.

2           Number one, when you're about to speak,  
3 please ensure your phone line is unmuted.

4           Two, as you begin speaking, please identify  
5 yourself; for example, "This is CFTC Commissioner X,"  
6 or "This is SEC Commissioner Y."

7           And finally, when you're not speaking, please  
8 keep your phone line muted.

9           Before we move to Chairmen opening  
10 statements, we have a tradition at the CFTC of starting  
11 our meetings with the Pledge of Allegiance. It reminds  
12 us that we're all in this together, that our job is to  
13 focus on what's best for the nation, and that we're  
14 always constantly pursuing liberty and justice for all.

15           Anyone is welcome to join me in the Pledge.  
16 If you'd like to do so, please unmute your line at this  
17 time.

18           (Pledge of Allegiance.)

19           CHAIRMAN TARBERT: Thank you.

20           Now I'll turn to Chairman Clayton for his  
21 opening remarks.

22           CHAIRMAN CLAYTON: Thank you, Chairman

1 Tarbert, and I echo your thanks to my fellow  
2 Commissioners, your fellow Commissioners, and all who  
3 made this joint meeting possible.

4           Today marks a milestone in the 45-year  
5 relationship between the SEC and CFTC as we hold the  
6 first joint open meeting to both consider and vote on  
7 policy initiatives. I want to thank you, Chairman  
8 Tarbert, for suggesting that we come together like  
9 this, and again, all those who made it possible for  
10 supporting this meeting; and, more importantly, the  
11 continuing coordination among our agencies.

12           Over the years, and as most recently  
13 evidenced by the standing up of the Dodd-Frank Title  
14 VII regulatory regime for swaps and security-based  
15 swaps, America's investors have benefited from our  
16 agencies' commitment to working together to ensure that  
17 our regulations are effective, consistent, mutually  
18 reinforcing, and efficient. In certain cases, these  
19 important objectives are best served by harmonizing our  
20 rules.

21           Today's recommendations from the CFTC and SEC  
22 staffs demonstrate that commitment to harmonization

1 where practicable. Specifically, the Commissioners  
2 will consider: one, rule amendments related to margin  
3 requirements for certain positions; and two, a request  
4 for comment regarding portfolio margining.

5 Particularly with respect to portfolio margining, I  
6 expect today's recommendation will mark the beginning  
7 of a close collaborative process to align better our  
8 approaches to the important regulatory objectives  
9 underlying our respective margining requirements.

10           Likewise, I am looking forward to our staffs'  
11 continued productive engagement on swap and security-  
12 based swap interpretations as the new regulatory regime  
13 becomes effective. I want to thank our CFTC colleagues  
14 for their coordination and collaboration on Title VII  
15 issues as we stood up our new regime, and in particular  
16 I would like to thank Commissioner Peirce from the SEC  
17 and CFTC Commissioner Quintenz for their leadership in  
18 this regard. We have a more formal thank you to them  
19 coming at the end of today's meeting.

20           Before turning to Chairman Tarbert for his  
21 opening remarks, I want to thank the CFTC and SEC  
22 staffs again for their work on the matters being

1 considered today. In particular, I want to acknowledge  
2 certain members of the SEC staff.

3           From the Division of Trading and Markets:  
4 Brett Redfearn, Lizzie Baird, Ajay Sutaria, Mike  
5 Macchiaroli, Tom McGowan, Randall Roy, Ray Lombardo,  
6 Sheila Swartz, and Abraham Jacob.

7           From our Office of General Counsel: Meridith  
8 Mitchell, Robert Teply, Donna Chambers, and Brooks  
9 Shirey.

10           From the Division of Economic and Risk  
11 Analysis: S.P. Kothari, Hari Phatak, and Chantal  
12 Hernandez.

13           Finally, I would also like to thank the CFTC  
14 for hosting this meeting virtually, including the  
15 CFTC's Office of the Secretariat and the Office of Data  
16 and Technology for their hard work on today's meeting.

17           Now over to you, Chairman Tarbert.

18           CHAIRMAN TARBERT: Thank you very much,  
19 Chairman Clayton. This is CFTC Chairman Heath Tarbert.  
20 I also want to say that it's an honor to be here for  
21 what is an historic moment. As you mentioned, this is  
22 the first-ever joint open meeting of the SEC and CFTC



1 to vote on a final rule in our shared 45-year history.  
2 So, of course, I want to thank you, Chairman Clayton,  
3 and the rest of the Commissioners both on the SEC and  
4 the CFTC, for making this joint meeting happen.

5           Since the 1930s, securities and futures  
6 products have been subject to separate regulatory  
7 regimes in the United States. This is because, at  
8 their core, the SEC and the CFTC monitor different  
9 markets with different market participants. While  
10 certain securities markets, such as securities options,  
11 facilitate the transfer of risk, the SEC is primarily  
12 focused on capital formation. By contrast, the CFTC  
13 concentrates its efforts on risk mitigation, with an  
14 historic emphasis on America's agricultural and energy  
15 producers.

16           Indeed, the unique capital formation role of  
17 certain securities markets has informed the manner in  
18 which our two regimes have developed and, in part,  
19 explains differences between the regulatory structures  
20 of the SEC and the CFTC. This distinction is also  
21 reflected in our Commissions' reporting lines to  
22 Congress. While the banking and financial services

1 committees have jurisdiction over the SEC, the CFTC  
2 falls under the jurisdiction of the agriculture  
3 committees. The characteristics of the markets we  
4 regulate go a long way toward explaining why we  
5 sometimes take a different approach to regulation, or  
6 at least see regulatory issues through different  
7 lenses.

8           I recognize that some critics argue that the  
9 U.S. financial regulatory system is fragmented,  
10 inefficient, and too often plagued with petty turf  
11 battles. However, we've got to keep in mind that the  
12 U.S. has the biggest, deepest, and most liquid  
13 financial markets in the world. It is therefore  
14 appropriate that we have two market regulators: one,  
15 the SEC, that focuses on capital formation; and  
16 another, the CFTC, that focuses on risk-mitigating  
17 hedging. There is a compelling logic to our regulatory  
18 structure.

19           Now, despite that logic, it's true that in  
20 the past there have been instances where our agencies  
21 have disagreed on how to classify certain financial  
22 products. Some of those disagreements have even led to

1 litigation. Given our somewhat overlapping interests,  
2 it was inevitable that frictions would arise. After  
3 all, brothers and sisters often fight.

4           But our agencies also have a history of  
5 cooperation. Most notably for today's meeting, the SEC  
6 and CFTC Chairmen signed the Shad-Johnson Accord in  
7 1981, which provided for joint jurisdiction over single  
8 stock futures and narrow-based stock indices. The  
9 Shad-Johnson Accord was later codified by Congress in  
10 the 1980s and further revised in 2000 with passage of  
11 the CFMA.

12           Since the enactment of the Dodd-Frank Act in  
13 2010, our agencies have tried hard to work together  
14 because we know the American people are depending on  
15 us. We have held joint roundtables on a variety of  
16 topics important to market participants, and  
17 established the Joint CFTC-SEC Advisory Committee on  
18 Emerging Regulatory Issues. We have also consulted on  
19 the implementation of Title VII, and in the past year  
20 we have continued that tradition of collaboration while  
21 taking it to the next level. Going forward, I believe  
22 continued communication and coordination will benefit

1 both agencies as we confront the opportunities and  
2 challenges presented by our evolving markets.

3           Today, we are going to talk about two topics  
4 that are emblematic of the overlapping jurisdiction of  
5 our two agencies and that demonstrate our mutual  
6 commitment to regulatory clarity, the security futures  
7 margin and portfolio margining.

8           Once again, I want to thank you, Chairman  
9 Clayton, and the rest of the Commissioners for  
10 participating in this joint meeting, and I want to  
11 thank the staffs of the two agencies for working so  
12 closely together on these two agenda items. And  
13 particularly, I want to thank the two Offices of the  
14 Secretary, who have toiled behind the scenes to make  
15 this joint meeting and all of our open meetings  
16 possible.

17           Now we'll move on to consideration of the  
18 final rule amending customer margin rules relating to  
19 securities futures. After the presentation, the floor  
20 will be open for one round of questions and remarks  
21 from each SEC and CFTC Commissioner. Following the  
22 close of discussion, the Commissions will each vote

1 separately on the rule. The final votes conducted in  
2 this public meeting will be recorded votes, and the  
3 results of votes approving issuance of the rulemaking  
4 document, at least in the CFTC's case, will be included  
5 with those documents in the Federal Register.

6 To facilitate the preparation of the approved  
7 documents by the CFTC for publication in the Federal  
8 Register, I'd now ask the CFTC Commissioners to grant  
9 unanimous consent for staff to make the necessary  
10 technical corrections prior to submitting them to the  
11 Federal Register.

12 SPEAKER: So moved.

13 SPEAKER: Second.

14 CHAIRMAN TARBERT: Thank you.

15 At this time, I'd like to welcome Clark  
16 Hutchison, Director of the CFTC's Division of Clearing  
17 and Risk, to give the staff presentation on the joint  
18 final rule relating to customer margin rules for  
19 securities futures.

20 Clark, the floor is yours.

21 MR. HUTCHISON: Good morning. Just doing a  
22 sound check to make sure you can hear me, Mr. Chairman.

1           CHAIRMAN TARBERT: Loud and clear.

2           MR. HUTCHISON: Thank you.

3           Good morning and thank you, Chairmen. And  
4 good morning to both of the Commissions and all of the  
5 staff and members of the public participating in this  
6 joint CFTC and SEC open meeting.

7           My name is Clark Hutchison. I am the  
8 Director of the Division of Clearing and Risk at the  
9 CFTC. I am joining you this morning from my home  
10 office in New Jersey. Like many Americans, my team and  
11 I have been finding new ways to work together in this  
12 virtual environment. We've been managing  
13 extraordinarily well, and I have to say that working on  
14 this joint rulemaking with our colleagues at the SEC  
15 has been a similarly positive experience.

16           As a result of these collaborative efforts,  
17 we are able to present a final rule for both  
18 Commissions to consider.

19           As the Chairman noted, this is an  
20 unprecedented meeting of the Commissions. Today, SEC  
21 and CFTC staff are pleased to recommend that the  
22 Commissions adopt final rule amendments to modify the

1 customer margin requirements for security futures.

2 I would like to begin by briefly explaining  
3 the joint jurisdiction over security futures and the  
4 current margin requirements for these products. Then I  
5 will describe the final rules under consideration today  
6 and provide an update about security futures trading in  
7 the United States.

8 A securities future is a futures contract on  
9 a single security or on a narrow-based securities  
10 index. In December 2000, the Commodity Futures  
11 Modernization Act, or CFMA, became law. The CFMA  
12 lifted the ban on security futures trading and  
13 established a framework for joint regulation of  
14 security futures.

15 Under the statute, the Board of Governors of  
16 the Federal Reserve system delegated authority to  
17 establish minimum customer margin levels for security  
18 futures positions to the CFTC and the SEC jointly. In  
19 2002, the Commissions adopted joint margin rules for  
20 security futures. These rules, which have not been  
21 amended since 2002, require security futures  
22 intermediaries to collect margin from their customers

1 equal to 20 percent of the current market value of each  
2 long or short position in security futures. The rules  
3 also permit a self-regulatory organization to require  
4 initial and maintenance margin that equals less than 20  
5 percent of the current market value for certain  
6 strategy-based offsetting positions.

7           In adopting the 20 percent margin  
8 requirement, the Commissions considered the provisions  
9 in the Securities Exchange Act of 1934 that governed  
10 the minimum initial and maintenance margin required for  
11 security futures. In particular, the Exchange Act  
12 requires that: one, the customer margin requirements  
13 for security futures must be consistent with margin  
14 requirements for comparable exchange-traded equity  
15 options; and two, the initial and maintenance margin  
16 levels must not be lower than the lowest level of  
17 margin required for any comparable exchange-traded  
18 equity option.

19           After the Commissions adopted the 20 percent  
20 customer margin requirements, two securities self-  
21 regulatory organizations implemented portfolio  
22 margining rules that permit a broker-dealer to combine



1 a customer's securities and security futures positions  
2 in a securities account in order to compute a customer  
3 margin requirement based on the combined positions held  
4 in the portfolio. As a result, the portfolio margin  
5 rules effectively established a 15 percent margin level  
6 for an unhedged position held in the account.

7           Once these portfolio margining programs were  
8 offered to customers, there was a potential for  
9 inconsistent treatment between, one, an unhedged  
10 security future held in a securities account subject to  
11 portfolio margin, which would be charged a 15 percent  
12 margin requirement; and two, an unhedged security  
13 future held in a futures account, which would be  
14 charged a 20 percent margin requirement. Given this  
15 situation, OneChicago, a security-based exchange  
16 offering security futures, petitioned both Commissions  
17 to modify the joint regulations to allow the same  
18 treatment for security futures held in a futures  
19 account.

20           In July 2019, the Commissions proposed a  
21 revision to the security futures minimum customer  
22 margin requirements so the positions held in securities

1 accounts subject to portfolio margining and positions  
2 held in futures accounts receive similar margin  
3 treatment. The Commissions proposed lowering the  
4 generally applicable minimum margin required for each  
5 long and short position in a security future from 20  
6 percent to 15 percent of the current market value.  
7 This change would permit a customer to hold a security  
8 futures position in a futures account or a securities  
9 account that does not use portfolio margining to be  
10 subject to a minimum required customer margin of 15  
11 percent of the current market value of the security  
12 futures positions.

13           The Commissions received comments, data, and  
14 analyses from interested market participants and  
15 exchanges which helped inform the final rulemaking.  
16 Importantly, these final rule amendments apply only to  
17 the minimum customer margin required for securities  
18 futures positions. The Commissions' margin regimes for  
19 securities futures permit self-regulatory organizations  
20 to collect higher margin levels from customers in order  
21 to preserve financial integrity.

22           In practice, this means that if a security

1 futures intermediary or clearinghouse believes that a  
2 higher margin should be required to adequately cover  
3 the level of risk presented by a customer's positions,  
4 the intermediary or clearinghouse is able to collect  
5 additional margin from the customer. Because of this  
6 ability to raise margin requirements and flexibility to  
7 manage risk, staff are comfortable recommending the  
8 change from a 20 percent to a 15 percent minimum margin  
9 requirement.

10           On September 21st, 2020, OneChicago closed  
11 its trading platform for security futures. At this  
12 time, there are no exchanges in the United States that  
13 offer security futures for trading. Given this, the  
14 final rules will have no immediate effect on the  
15 security futures market. Notwithstanding the current  
16 lack of trading in security futures, CFTC and SEC staff  
17 have carefully considered the likely economic impacts  
18 of the final rule amendments on investors,  
19 intermediaries, and the functioning of financial  
20 markets should trading resume. Based on CFTC and SEC  
21 staff analysis and review of information provided by  
22 commenters, staff anticipates that the final rules may

1 reduce the cost of participating in the securities  
2 futures market and could facilitate more trading in  
3 securities futures than would otherwise occur.

4           Staff also considered the potential effects  
5 of the final rule amendments on competition and expects  
6 the amendments to align the margin treatment for  
7 customers that use different types of accounts to  
8 access the security futures market. The rule change  
9 would apply to any new security futures trading in the  
10 United States, and addressing the different treatment  
11 for security futures positions held in a portfolio  
12 margin securities account versus futures accounts may  
13 provide an opportunity for the security futures market  
14 in the United States to operate more effectively in the  
15 future.

16           For these reasons, staff recommends that the  
17 final regulations, a reduction in minimum required  
18 customer margin in security futures from 20 percent to  
19 15 percent of the current market value, be adopted as  
20 the best approach to achieving similar margin treatment  
21 for securities futures whether held in a securities  
22 account subject to portfolio margining or in a futures

1 account.

2           Chairmen and Commissioners, CFTC and SEC  
3 staff and I are available to answer any questions you  
4 may have about these final rules, and thank you.

5           CHAIRMAN TARBERT: This is CFTC Chairman  
6 Tarbert. Thank you very much, Clark, for that  
7 insightful presentation and for the outstanding work in  
8 preparing this rulemaking for our respective  
9 Commissions' consideration.

10           In addition to Clark, of course, I'd like to  
11 thank the following staff from the CFTC for their  
12 contributions to this rulemaking: Sarah Josephson and  
13 Melissa D'Arcy, Deputy Director and Special Counsel,  
14 both from our Division of Clearing and Risk; General  
15 Counsel Dan Davis; and our Acting Chief Economist Scott  
16 Mixon.

17           For the CFTC to begin our Commission's  
18 discussion and consideration of this rulemaking, I will  
19 now entertain a motion from the CFTC Commissioners to  
20 adopt the final rule amending the customer margin rules  
21 relating to securities futures.

22           COMMISSIONER QUINTENZ: So moved.

1           COMMISSIONER BEHNAM:  Second.

2           CHAIRMAN TARBERT:  Thank you.

3           I'd now like to open the floor for all  
4 Commissioners to ask any questions about the rule.  
5 I'll begin.

6           I'll note that this rule has been in the  
7 works for a long time.  I think the initial petition  
8 came to us in 2008, to both Commissions.  But since the  
9 CFMA lifted the ban on trading security futures, this  
10 market has admittedly struggled to develop and, not  
11 only that, I think we can probably say at this moment  
12 in time, it is effectively dead.

13           But it's interesting because, for those of  
14 you who may not know, the market for securities futures  
15 has taken off in other jurisdictions, such as Europe.

16           So I am pleased to support this rule because  
17 it represents our joint effort to do what we can under  
18 the current statutory scheme to make regulation of the  
19 securities futures markets more efficient by adjusting  
20 the margin requirements, and I hope that this final  
21 rule will be the first of a number of steps we could  
22 take to help jump-start this market.

1                   And again, I think when you look at this  
2 market and you look at alternatives such as, for  
3 example, repos, this market, the futures market, is far  
4 more transparent, far less opaque, and can really be  
5 potentially helpful to the United States and our market  
6 participants who want to hedge their risk and do so  
7 through central clearing.

8                   The only question that I have for you, Clark,  
9 is I think one of the points you made was very  
10 important, which is this rule deals with customer  
11 margin, but it doesn't really impact the margin that's  
12 held and collected at our clearinghouses. So if we did  
13 find ourselves in a scenario where there was volatility  
14 at such a level that required us to collect,  
15 particularly for our financial market utilities, higher  
16 levels of margin, this final rule that we're voting on  
17 today doesn't in any way change that. Is that correct,  
18 Clark?

19                   MR. HUTCHISON: Yes, Chairman Tarbert. Thank  
20 you. I think it's important to remember that the final  
21 rule today establishes a floor, a minimum margin amount  
22 to be levied by clearinghouses or intermediaries. Said

1 another way, DCOs regulated by the CFTC or clearing  
2 agencies regulated by the SEC are free to levy higher  
3 margin amounts than the 15 percent described today,  
4 that floor, and they're free to do that if they feel  
5 that it is appropriate to mitigate risk under certain  
6 market conditions.

7           So, in effect, customers cannot be charged  
8 less than 15 percent, but customers can be charged more  
9 than 15 percent should their positions or market  
10 conditions signal to clearinghouses and clearing  
11 agencies the necessity to mitigate risk.

12           So I feel this rule, in establishing a floor,  
13 leaves room for risk mitigation to protect the  
14 financial system at the discretion of the  
15 clearinghouses and clearing agencies.

16           CHAIRMAN TARBERT: Terrific. And I think  
17 it's important to realize that we're talking about a  
18 minimum margin requirement but by no means what the  
19 actual margin requirement could be if we found  
20 ourselves in a stress situation where the volatility  
21 dictated a higher amount.

22           Terrific. Well, that's all of my remarks



1 today. I'd like to turn it over back to SEC Chairman  
2 Clayton for his remarks and potential questions.

3 CHAIRMAN CLAYTON: Thank you, Chairman  
4 Tarbert. And thank you very much, Director Hutchison.

5 I have a number of comments here in front of  
6 me that I will post online, but Clark's presentation  
7 was so clear that there is no reason for me to  
8 reiterate it. I will just say that this marks a  
9 journey, another significant step in a journey that  
10 started in 2002, and I am pleased that we are  
11 continuing on that journey, including bringing the  
12 margin requirements for portfolio margin securities  
13 accounts and futures accounts into line, hopefully, as  
14 you stated, bringing more life to this currently dead  
15 market.

16 With that, I will just thank Clark again for  
17 an excellent presentation, and your question around  
18 central clearing, Chairman Tarbert, was an insightful  
19 one.

20 With that, back to you.

21 CHAIRMAN TARBERT: Thank you so much,  
22 Chairman Clayton.

1           CFTC Commissioner Quintenz, you have the  
2 floor.

3           COMMISSIONER QUINTENZ: Yes. Thank you, Mr.  
4 Chairman. This is Commissioner Brian Quintenz.

5           First, thanks to you and to SEC Chairman  
6 Clayton for calling this meeting. If I could just say  
7 for a minute how honored I am to join both of you and  
8 my fellow CFTC and SEC Commissioners to participate  
9 today in this first-ever joint SEC-CFTC open meeting to  
10 vote on rulemaking initiatives.

11           Both of the items on today's agenda showcase  
12 the hard work and the cooperation between the CFTC and  
13 the SEC staff, a cooperation and dialogue I have  
14 witnessed personally, and it reminds all of us how  
15 critical these staff-level and Commission-level  
16 relationships are to ensuring a rationalized regulatory  
17 framework for strong end products spanning both the  
18 derivatives and the securities markets.

19           Today's meeting is the preeminent expression  
20 of that dialogue, one that I have, again, personally  
21 witnessed behind the scenes in countless settings in my  
22 role leading the harmonization efforts from the CFTC

1 side. That is why in particular I am so happy and  
2 proud to partake today.

3           Speaking of that harmonization role, I would  
4 just like to express my incredible gratitude to  
5 Chairman Clayton and former CFTC Chairman Giancarlo for  
6 developing that role and for thinking of me for it.

7           Additionally, I'm specifically grateful to  
8 Chairman Clayton for his openness to my thinking in the  
9 harmonization discussions, and also for the  
10 relationship that we have developed, and I'm incredibly  
11 grateful to Chairman Tarbert for allowing me to  
12 continue to serve in that capacity, for taking the  
13 personal initiative when needed to move top issues  
14 across the finish line, and for his personal  
15 friendship.

16           Lastly, if I could, I would like to take a  
17 special moment to thank Commissioner Peirce, who has  
18 been my invaluable partner in advancing CFTC-SEC  
19 harmonization efforts in coordination. Commissioner  
20 Peirce has brought intellectual heft and ideological  
21 conviction, coupled with open-mindedness, to our  
22 efforts, and she has done so with a rare combination of

1 both tenacity and grace. It has been an absolute  
2 pleasure to work with you to not only attempt but to  
3 actually achieve greater regulatory consistency for  
4 swaps and security-based swaps across a number of  
5 areas.

6 I believe we've made significant progress in  
7 harmonizing capital, margin, reporting, examinations,  
8 and today's agenda on portfolio margining  
9 possibilities. We've been able to keep our commitment  
10 to talk both regularly or suddenly. We've been able to  
11 champion each other's positions within our own  
12 agencies. We've never declared any policy area out of  
13 bounds. And we've established lines of communication  
14 between our staffs and with each other's chairmen.  
15 It's been an absolute privilege to serve alongside of  
16 you in this role.

17 Regarding the final rule today, I am going to  
18 vote in favor of it. I don't have any questions, but I  
19 would like to make just a very brief statement before I  
20 thank the staff for their hard work.

21 As was noted before, today's rule indicates  
22 that OneChicago, the only exchange that has listed

1 security futures in the United States, has recently  
2 discontinued trading operations. That should not mean  
3 that we should not do this. This is absolutely  
4 critical that we take this step and we proceed with  
5 finalizing what has been a long, long time coming final  
6 rule.

7           But the events on the ground underscore the  
8 determinative impact statutory provisions can have on  
9 both the viability of products and whole business  
10 lines. The Securities Exchange Act requires security  
11 futures to be margined comparably to options traded on  
12 an exchange registered with the SEC. While the intent  
13 of that provision is understandable, the economics  
14 underlying it appear to be suboptimal. Today's  
15 lowering of the required minimum margin, consistent  
16 with the Securities Exchange Act, should make trading  
17 this product more cost effective than it has been, but  
18 it still may not be sufficiently cost effective to make  
19 the product economically viable. I hope that is not  
20 the case. But if it is, I would hope policymakers  
21 revisit this provision to ensure that its ultimate  
22 effect is consistent with its intent.

1           And with that, I am very pleased to support  
2 today's rule. I would like to thank our staff, Clark  
3 in DCR, as well as Brett and Mike and Tom, Randall and  
4 Sheila, for all of your hard work and for the dialogue  
5 we have had.

6           Thank you, Mr. Chairman.

7           CHAIRMAN CLAYTON: Brian, it's Jay Clayton.  
8 Thank you for those very kind words and, again, for  
9 your work, and for your analysis as well.

10           With that, SEC Commissioner Peirce, please.

11           COMMISSIONER PEIRCE: Thank you, Mr.  
12 Chairman. It's such a pleasure to be participating in  
13 a joint meeting with our colleagues at the CFTC this  
14 morning. And thank you to Commissioner Quintenz for  
15 your very kind comments. One of the highlights of my  
16 time at the SEC has been working with you and the  
17 staffs of both of our Commissions on issues related to  
18 Title VII. It's not the scintillating subject matter  
19 that has made that experience so fulfilling, but the  
20 shared commitment to preserving and strengthening our  
21 capital markets. The cooperative efforts are an  
22 important milestone in a relationship that has not been

1 without tensions over the years, as Chairman Tarbert  
2 noted.

3           From our first interaction, Commissioner  
4 Quintenz has exhibited a practical, collaborative  
5 approach and a cheerful persistence in tackling  
6 difficult questions. I also credit Chairman Clayton,  
7 Chairman Giancarlo, and Chairman Tarbert for giving us  
8 the room to work together and setting a cooperative  
9 tone from the top. Continued commitment will be  
10 important as our agencies work through differences and  
11 toward our common objectives in the many areas in which  
12 we have shared interests. We always will be stronger  
13 working together than going our separate ways. That is  
14 exactly what we are doing today with this joint meeting  
15 on single stock futures and portfolio margining.

16           As you heard from Clark, the single stock  
17 future has a long and tortured history in our markets.  
18 Despite this history, as Chairman Tarbert noted, there  
19 is potential. Back in 2001, one scholar said that  
20 single stock futures would "introduce opportunities for  
21 substantial leveraging of individual stock transactions  
22 in ways that previously were not available," and they

1 could be used to reduce the regulatory costs of  
2 pursuing certain strategies, including short selling.  
3 They also provided a theoretically less costly way to  
4 pursue certain strategies that investors had used in  
5 the options market.

6           Single stock futures, though, never really  
7 lived up to their potential. In the years after they  
8 started trading, trading volumes remained far below the  
9 levels that commentators had initially expected. And,  
10 as you've already heard, last month OneChicago, the  
11 only U.S. exchange that listed single stock futures,  
12 closed its doors. Advocates of this product have  
13 argued persuasively to me that our margin requirements  
14 have played a role in suppressing interest in this  
15 market.

16           The rule that the Commissions are considering  
17 today takes a small step toward remedying this problem.  
18 The recommendation from the staffs, consistent with the  
19 proposal, is to reduce the margin level for an unhedged  
20 equity option held outside a portfolio margin account  
21 to 15 percent, which will harmonize the margin level  
22 with the lowest margin level that applies to an



1 unhedged equity option in a portfolio margin account.  
2 This change will also ensure that the lowest margin  
3 level for an unhedged single stock future is the same  
4 across account types.

5           I support this change, but I am concerned, as  
6 Commissioner Quintenz mentioned, that it may not be  
7 enough to make the single stock future a viable  
8 product. One commenter argued that the proposed rule  
9 was "at best a first step" and argued that the  
10 Commissions would need to permit risk-based margining  
11 for this product to thrive.

12           The Commissions are working under a less-  
13 than-crystal-clear statutory constraint, which Clark  
14 read to you. And although I believe the Commissions  
15 may have the authority to take a more flexible approach  
16 in determining whether the margin requirement for  
17 security futures is consistent with, and the margin  
18 levels are not lower than, those for comparable listed  
19 equity options, a shift to a risk-based approach would  
20 be a significant departure from the approach we've  
21 taken to date.

22           Before making that change, the Commissions

1 would need to establish that the margin requirements  
2 calculated under that approach satisfied these  
3 statutory constraints. I am not persuaded that the  
4 record before us allows us to establish that either  
5 requirement would be met under a risk-based approach.

6           However, to the extent that my concerns about  
7 this change that we're making today not being enough if  
8 this market does fail to develop, the Commissions  
9 should seek to identify the reasons for the lack of  
10 uptake and to determine whether different margin  
11 requirements would be appropriate and consistent with  
12 the statutory requirements. The SEC, together with the  
13 CFTC, where appropriate, may need to engage in a more  
14 comprehensive exercise to determine whether a broader  
15 reconsideration of its margin framework across the  
16 products it regulates is appropriate.

17           I don't have any questions, and I support the  
18 rule.

19           CHAIRMAN TARBERT: Thank you very much, SEC  
20 Commissioner Peirce.

21           CFTC Commissioner Behnam, you have the floor.

22           COMMISSIONER BEHNAM: Thank you, Mr.

1 Chairman. Good morning to everyone. First I'd like to  
2 thank you, Chairman Tarbert, Chairman Clayton, my  
3 fellow CFTC Commissioners, the Commissioners from the  
4 Securities and Exchange Commission, and all of the  
5 staff from both agencies who made today possible. It's  
6 good to be together to finalize the joint final rule  
7 and issue a joint request for comments. Cooperatively  
8 working on issues when we are mandated to do so is the  
9 floor. When our agencies choose to go beyond that,  
10 like today, engaging one another to explore,  
11 collaborate, and harmonize our policies and regulations  
12 to bring consistency to our agencies' oversight with  
13 respect to similar products, practices, market  
14 participants, and intermediaries, I believe we provide  
15 the highest service to our markets and the American  
16 public. And I am certainly proud to be a part of that  
17 effort today.

18           While today's meeting is historical for the  
19 voting that will take place, a little more than 11  
20 years ago the CFTC and SEC held the first joint public  
21 meeting in the history of the two agencies. The  
22 agencies were asked following the financial crisis to

1 make recommendations via a report to Congress to  
2 further harmonize regulation of futures and securities.  
3 Following two days of public meetings, the CFTC and SEC  
4 issued a joint report on regulatory harmonization,  
5 making 20 recommendations to enhance enforcement  
6 powers, strengthen market and intermediary oversight,  
7 and improve operational coordination. Among other  
8 things, the joint report reviewed and analyzed risk-  
9 based portfolio margining and bankruptcy/insolvency  
10 regimes, which are relevant to both matters before us  
11 today.

12 I think we are following a similar agenda  
13 today, and although we are meeting remotely, I think we  
14 find ourselves meeting virtually due to the ongoing  
15 COVID-19 pandemic. Our senses are heightened as we  
16 recover from economic turmoil and pockets of historic  
17 market volatility. And now, perhaps more than ever, we  
18 must prioritize and promote regulatory activities and  
19 policies that will benefit the American public.

20 I am pleased to be supporting this rule  
21 today. This rule, as was mentioned, is intended to  
22 better align margin requirements of securities futures

1 with those of comparable products. At this time, as  
2 was also mentioned, there are no security futures  
3 contracts listed for trading on U.S. exchanges since  
4 the only U.S. exchange that had offered trading in such  
5 products discontinued operations last month.  
6 Nevertheless, the agencies are moving forward towards  
7 harmonization that is intended to prevent competitive  
8 distortions and is unlikely to result in under-  
9 margining for security futures positions should trading  
10 resume.

11 I believe the joint final rule goes to great  
12 lengths in its parsing of statutory language and  
13 addressing questions, concerns, and alternatives raised  
14 by commenters. In supporting this final rule, I  
15 believe it is important to highlight a point emphasized  
16 throughout the preamble and one that Clark mentioned,  
17 as well: the 15 percent margin requirements being  
18 established represent the floor. If security futures  
19 trading resumes, futures commission merchants,  
20 derivatives clearing organizations, and other security  
21 futures intermediaries may charge additional margin  
22 above the 15 percent minimum level required, as well as

1 take other appropriate actions if it would be prudent  
2 to manage and protect against increased risk, to  
3 preserve their financial integrity, and to protect  
4 customers.

5 I believe that the CFTC's regulatory regime  
6 for FCMs and DCOs, as I mentioned, provides appropriate  
7 incentives and flexibility to manage and mitigate risk,  
8 and I am pleased to support today's final rule. As  
9 well, for the vast majority of futures contracts, the  
10 margin level generally sits between 3 and 12 percent.  
11 Although this data point should not be determinative of  
12 what any contract's margin requirement should be as it  
13 relates to the individual product's risk profile, I  
14 believe the range clearly indicates that the 15 percent  
15 level, the floor in the case of today's rule, remains  
16 conservative. I look forward to monitoring any  
17 developments in this space as and if markets develop  
18 over time to ensure results are as predicted and based  
19 on what the best available data shows us. If outcomes,  
20 through economic analysis, surveillance, or market  
21 monitoring, prove otherwise, I'll be ready to take  
22 action immediately.

1           Mr. Chairman, I want to thank you again, and  
2 Chairman Clayton, for bringing us together today. I  
3 also want to thank Commissioner Peirce and Commissioner  
4 Quintenz for their leadership on harmonization efforts  
5 over the past few years and, of course, acknowledge all  
6 of my fellow Commissioners, both at the SEC and CFTC.

7           I have no questions for Clark but do  
8 appreciate his work and all staffs' work at the CFTC  
9 and SEC in bringing the presentation before us today.  
10 Thank you.

11           CHAIRMAN CLAYTON: Commissioner Behnam, it's  
12 Jay Clayton. I want to thank you for those remarks  
13 and, as always, clearly and accessibly giving us some  
14 history on the matter we're considering, and also  
15 reminding us that our work is never done. Thank you  
16 for those remarks.

17           With that, Commissioner Roisman, please.

18           COMMISSIONER ROISMAN: Good morning, and  
19 thank you to Chairman Clayton. I would like to thank  
20 Chairman Tarbert, my fellow SEC Commissioners and CFTC  
21 Commissioners, and in particular I would like to also  
22 acknowledge the incredible work of Commissioners Peirce

1 and Quintenz on all the harmonization that you have  
2 done to date.

3 I am truly pleased to participate in today's  
4 joint open meeting with the CFTC. This morning we are  
5 considering two matters involving markets that have  
6 explicitly been assigned to the jurisdiction of both  
7 agencies, security futures and swaps. Before I turn to  
8 the first recommendation concerning security futures  
9 margin, I want to take a minute to speak more broadly  
10 on the importance of coordination between the SEC and  
11 the CFTC, something I believe all my colleagues have  
12 done, that there are more areas where our two agencies  
13 actively coordinate besides those for which we have  
14 been expressly assigned joint oversight. This  
15 engagement is critical to effective market regulation.

16 As we know, cash and futures markets, for a  
17 variety of asset classes, are interconnected. Active  
18 market participants often engage in cross-market  
19 trading activity across many securities and derivative  
20 markets. For example, cash equities markets are  
21 closely connected with the markets for futures on  
22 financial indices. Prices in the cash Treasury markets



1 maintain tight connections to those for Treasury  
2 futures.

3           Furthermore, many of these that are large  
4 players in the securities and derivatives markets are  
5 duly registered with both the SEC and the CFTC.

6           While meetings such as today's are important,  
7 regular and routine collaboration among our staffs  
8 based on candor, collegiality, and cooperation is a  
9 critical component for facilitating effective and  
10 efficient oversight. I commend the SEC and CFTC staffs  
11 for the commitment to developing a close working  
12 relationship for the benefit of our markets and  
13 investors. Going forward, I hope to see this  
14 relationship continue to strengthen.

15           Turning to the first item before us, I  
16 support the recommendation to lower the margin  
17 requirement for unhedged security futures positions.  
18 Over the years I have heard from many market  
19 participants that margin requirements have served as an  
20 impediment to the development of more robust demand for  
21 security futures. I'm glad that our agencies have  
22 chosen to take this step and reduce the required margin

1 level to 15 percent.

2           As a result of the amendments we adopt today,  
3 the margin levels for unhedged security futures held in  
4 futures accounts and securities accounts that are not  
5 portfolio margin accounts will be aligned with those  
6 held in portfolio margin accounts. Thus, the  
7 amendments provide for consistent margin requirements  
8 for securities futures positions irrespective of  
9 whether they are held in futures accounts or securities  
10 accounts.

11           Furthermore, the level of margin for unhedged  
12 securities futures will be consistent with the required  
13 margin for unhedged exchange-traded equity options in a  
14 portfolio margin account. This is important in light  
15 of the statute's requirement regarding the consistency  
16 of margin levels between futures and exchange-traded  
17 options.

18           I hope that today's amendments will help  
19 increase the attractiveness of security futures, as  
20 there are currently no securities futures listed for  
21 trading on U.S. exchanges. I realize that further  
22 steps may be needed to invigorate this market. The

1 door remains open to all those that have other ideas  
2 about how to jump-start demand for security futures.  
3 In so doing, we should think about whether our current  
4 (inaudible) is designed to reflect the practical uses  
5 of security futures.

6 Thank you to the SEC staff and the Division  
7 of Trading and Markets, as well as the staff in the  
8 Division of Economic Risk Analysis and the Office of  
9 the General Counsel, for your thoughtful work. Thank  
10 you as well to the CFTC staff for your collaboration on  
11 this rulemaking.

12 I have no questions, and thank you again.

13 CHAIRMAN TARBERT: Thank you very much, SEC  
14 Commissioner Roisman.

15 CFTC Commissioner Stump, you have the floor.

16 COMMISSIONER STUMP: Thank you. Good  
17 morning. This is CFTC Commissioner Stump, and I, too,  
18 wish to briefly commend Chairman Tarbert and Chairman  
19 Clayton for holding this meeting; and to Commissioner  
20 Quintenz and Commissioner Peirce for their broader  
21 efforts to harmonize the regulatory regimes of the  
22 agencies; and to all of my colleagues on both

1 Commissions for their attention to the importance of  
2 our coordination; and to all of the staff who have  
3 worked hard to make this meeting a reality today, and  
4 in particular those who have put before us today's  
5 joint final rule to lower the margin level for an  
6 unhedged security futures position from 20 percent to  
7 15 percent. I firmly believe this is sound public  
8 policy rooted in years of consideration and tremendous  
9 contemplation.

10           And while I don't want to rain on today's  
11 parade, I nevertheless feel compelled to express a few  
12 regrets.

13           I regret, for example, that the Commissions  
14 did not take this common-sense step of reducing the  
15 security futures margin level from 20 percent to 15  
16 percent years ago. After all, OneChicago, the only  
17 U.S. exchange that made a long-term effort to develop a  
18 market for security futures, suggested that we consider  
19 taking this step 12 years ago. I appreciate that the  
20 global financial crisis and the ensuing regulatory  
21 focus on swaps and other reforms diverted attention  
22 from security futures. But it is nonetheless

1 unfortunate that it took so long, and even more  
2 disappointing given that OneChicago did not survive to  
3 operationalize the benefit of what we are doing today  
4 because, as has been pointed out, they discontinued all  
5 trading operations about a month ago on September 21st.

6 I also regret that the adopting release  
7 issues opinions on hypothetical questions that I do not  
8 believe should be addressed here due to the unique  
9 change in circumstances presented by OneChicago's  
10 recent exit and the fact that no other U.S. exchange  
11 currently lists security futures for trading in this  
12 context. Let me explain.

13 In response to a question we posed in the  
14 proposal of this rule, OneChicago urged the Commissions  
15 to permit the use of risk-based margin models for  
16 security futures, similar to what is done for other  
17 futures contracts. While I generally support this  
18 risk-based margin methodology, I acknowledge that  
19 implementing such a sweeping change in response to a  
20 single question contained in a proposal designed to  
21 address a wholly different type of margin calculation  
22 rule was likely not achievable at this time.

1           But today's release actually goes further and  
2 rejects OneChicago's interpretive arguments regarding  
3 the Commissions' authority to adopt risk-based  
4 margining for security futures, and this concerns me.

5           As Director Hutchison has pointed out, the  
6 Securities Exchange Act of 1934 requires margin levels  
7 for security futures consistent with and not lower than  
8 margin requirements for comparable exchange-traded  
9 options. In applying this language and in an attempt  
10 to be responsive to our inquiry, OneChicago raised  
11 several interpretive questions, including whether  
12 security futures contracts are, in fact, comparable to  
13 equity options; and also what influences demand for  
14 security futures.

15           I do not believe that we should be offering  
16 advisory opinions on these interpretive questions that,  
17 in light of the demise of OneChicago, no CFTC- or SEC-  
18 registered exchange is currently asking. Due to the  
19 hypothetical nature of these questions, it is my view  
20 that they are not material given the circumstances  
21 before us, and should therefore be answered in real  
22 time when future CFTC and SEC Commissioners are

1 presented with any live request to list and trade  
2 security futures and in that context only.

3           You may be asking yourself why, if no one  
4 currently seeks to offer these products, am I so  
5 concerned with issuing a hypothetical opinion. It  
6 should be remembered that the trading of security  
7 futures on U.S. exchanges before the year 2000 was  
8 prohibited due to jurisdictional disputes over the  
9 treatment of products that have attributes of both SEC-  
10 regulated securities and CFTC-regulated derivatives.

11           In the Commodity Futures Modernization Act of  
12 2000, Congress repealed that prohibition and permitted  
13 security futures to trade on U.S. exchanges pursuant to  
14 a framework of joint regulation. Yet today, the  
15 rejection of risk-based margining in the adopting  
16 release risks stifling the very security futures market  
17 that Congress intended to promote.

18           Furthermore, and as has been noted by  
19 Chairman Tarbert, risk-based margining for security  
20 futures is permitted in Europe, and while factors other  
21 than margin requirements may influence demand for  
22 security futures, its rejection in the adopting release

1 creates a potential competitive disadvantage for U.S.  
2 exchanges versus their international counterparts.

3           The Commodity Exchange Act specifies that one  
4 of its purposes is "to promote responsible innovation  
5 and fair competition among boards of trade, other  
6 markets and market participants." The interpretation  
7 in the adopting release fails to fulfill that purpose.

8           Nevertheless, it is my sincere hope that,  
9 while the reduction in margin level from 20 percent to  
10 15 percent may have come too late for OneChicago, it  
11 will be encouraging to other U.S. exchanges that may  
12 consider launching security futures. And in that  
13 event, it is my further hope that the Commissions will  
14 bring an open mind to any interpretive arguments the  
15 exchange may advance at that time in requesting  
16 recognition of risk-based margining for its contracts.

17           In the meantime, I draw a distinction between  
18 the matter that I've just discussed, risk-based  
19 margining, and that which we are advancing today. I  
20 support, therefore, the final rule that is before us,  
21 and I hope the discussion in the adopting release  
22 related to risk-based margining will not discourage



1 U.S. innovation and competitiveness going forward.

2 I, too, have no questions, and I genuinely  
3 want to thank all of my colleagues for the tremendous  
4 effort in advancing this component of the rule, which I  
5 wholeheartedly support.

6 Thank you, Mr. Chairman.

7 CHAIRMAN CLAYTON: Thank you, Commissioner  
8 Stump. Thank you for your comments on risk-based  
9 margining, much appreciated.

10 Commissioner Lee?

11 COMMISSIONER LEE: Thank you. It's a  
12 pleasure to participate in today's joint meeting of the  
13 Commissions. I know we've met together previously and  
14 also have approved many joint rules together, but as  
15 was noted by others, this is the first time we've met  
16 together to consider and vote on a rulemaking, so I'm  
17 very pleased to be able to participate today, and I  
18 very much appreciate the support, the collaboration  
19 between our agencies that the Commissioners have  
20 discussed and celebrated today.

21 I want to add my thanks to the staff of both  
22 the CFTC and the SEC for the work they've done on the

1 two items to be considered today, and much appreciation  
2 for all those who lent a hand in setting up the  
3 logistics of today's meeting.

4 My remarks will be brief. We have a lot of  
5 ground to cover. The history of how we got here was  
6 quite well and thoughtfully laid out by Director  
7 Hutchison of the CFTC, so I won't retread that ground.

8 Today's release essentially seeks to provide  
9 equivalent treatment for unhedged security futures held  
10 in the CFTC's regulated account to that which is  
11 available for security futures held in an SEC-regulated  
12 account. This change in margin from 20 to 15 percent  
13 is arguably modest. But after giving it much thought  
14 and reading through the comment letters, I cannot  
15 support proceeding with the rule at this time absent  
16 more analysis.

17 As others have noted, demand for security  
18 futures has been historically low, and also as  
19 discussed in today's release, there are many possible  
20 factors for that unrelated to a modest difference in  
21 margin levels between the two types of accounts.

22 Since 2004, there has been only one exchange,

1 OneChicago, that listed these products, and it has now  
2 closed its door. That is very unfortunate, but it is  
3 not due to the difference in the margin treatment  
4 available in an SEC-regulated versus a CFTC-regulated  
5 account, both of which accounts are currently available  
6 to market participants.

7           In 2008, OneChicago petitioned for this  
8 rulemaking, seeking to lower the minimum margin from 20  
9 to 15 percent for CFTC-regulated accounts. However,  
10 over time, their assessment evolved with experience and  
11 research, and by the time this rule was proposed they  
12 were of the view that a drop from 20 to 15 percent  
13 would not address their concerns related to the  
14 appropriate margining for security futures.

15           But (inaudible) an unusual situation in that  
16 the release responds at length to a request and  
17 comments from the entity that is no longer in  
18 existence, and the solution proposed does not  
19 (inaudible) all of the concerns that entity raised.

20           Given that no exchange is currently listing  
21 security futures, there is time to more thoroughly  
22 evaluate some of the underlying complexities raised by

1 commenters surrounding the comparability and the uses  
2 of these products so that we could have more confidence  
3 that our actions may support the intended outcome.

4           As a result, I must respectfully dissent.

5 Thank you.

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

8           CFTC Commissioner Berkovitz, you have the  
9 floor.

10           COMMISSIONER BERKOVITZ: Thank you very much,  
11 Mr. Chairman. I would also like to thank my fellow  
12 Commissioners, the CFTC staff, and especially Chairman  
13 Clayton and the SEC Commissioners and the SEC staff and  
14 the technical staff for all the hard work that went  
15 into this meeting and making today's meeting possible.

16           Congressman Mo Udall, who was a congressman  
17 when I first came to Washington -- I saw a number of  
18 hearings presided over by Chairman Udall, and Mo Udall  
19 was fond of saying at committee meetings that  
20 everything has been said, but not everyone has said it.  
21 So I'll try to keep my remarks brief, but I'd really  
22 like to echo many of the sentiments of the preceding

1 speakers regarding today's rule and the great  
2 collaborative work of the staff of both agencies.

3           Although today may be the first joint meeting  
4 that the two agencies have publicly, it's really just  
5 the latest in a long history of collaboration and  
6 behind-the-spotlight, behind-the-scenes hard work over  
7 many years. Chairman Clayton referred all the way back  
8 to the Shad-Johnson Accord, which was negotiated by the  
9 two agencies and then ratified by Congress in statute.

10           I personally had the privilege of  
11 participating in the two really foundational joint  
12 rulemakings, the Dodd-Frank rulemaking to define swap  
13 and to define swap dealer. Really, the CFTC owes a  
14 long debt of gratitude to this day for the SEC's  
15 commitment on those joint rulemakings. The SEC had a  
16 huge role arising out of the Dodd-Frank legislation,  
17 and we had to implement Title VII of the Dodd-Frank  
18 Act. But at the time, Chairman Schapiro of the SEC  
19 committed to Chairman Gensler of the CFTC to make those  
20 joint rulemakings a priority of the SEC, and that  
21 really enabled our swap implementation of Title VII to  
22 go into effect a number of years ago. The SEC placed

1 those rulemakings at the very top of its priorities in  
2 collaboration with the CFTC, and I'm forever  
3 appreciative of the commitment of the SEC staff and the  
4 hard work.

5 I would note that one of the SEC staff people  
6 who worked on these rules today, Ajay Sutaria, was in  
7 our office at the CFTC at that time, and the agencies  
8 have a long history of personnel going back and forth  
9 from the CFTC and SEC, as well.

10 So today's effort really is the latest in a  
11 long line of collaboration, and I think the  
12 Commissioners of both agencies, Commissioner Quintenz  
13 and Commissioner Peirce, are really the latest in a  
14 long tradition in that respect. And I'd like to also  
15 express my appreciation to them for carrying on that  
16 tradition in that regard.

17 Today's rulemaking is just one aspect, just  
18 one area in which the two agencies, and our agency in  
19 particular, continues to consider harmonization.  
20 Harmonization we've considered recently in our cross-  
21 border rules. We did commodity pool operator rules a  
22 couple of weeks ago in which harmonization was a major

1 factor. They're in our swap dealer reporting rules.  
2 Across the board, really, harmonization is something we  
3 consider in all our rulemakings.

4           It's not easy. There are challenges. There  
5 are different markets, the agencies have different  
6 traditions and, most significantly, as we heard in some  
7 detail already today, our underlying statutes are  
8 different. So in some areas I think we've been more  
9 successful in our harmonization efforts, and in some  
10 areas success has really not been 100 percent. I think  
11 the OneChicago example, despite our best efforts, it's  
12 unfortunately too late for OneChicago.

13           But there is the commitment of both agencies  
14 within the statutory constraints we're operating under.  
15 At least I'm committed and I know my colleagues are all  
16 committed to working through these issues as diligently  
17 as we can.

18           Turning to the rule, I'm going to be  
19 supporting the rule -- I think it's overdue --  
20 equalization of the margin requirements for security  
21 futures held in a futures account as opposed to a  
22 portfolio margining account, for the reasons that have

1 been explained in the presentation by Clark and  
2 articulated by a number of other Commissioners. So I'm  
3 going to be supporting the rule before us today.

4           Again, in conclusion, I'd like to thank the  
5 Chairmen and Commissioners of both agencies and the  
6 staffs of both agencies for their work on today's  
7 rulemaking. It may be too late for OneChicago, but  
8 nonetheless it represents the agencies' commitment to  
9 addressing this issue and continuing to look for ways -  
10 - if today's rulemaking is not a solution to the  
11 problem, I look forward to continuing to work on ways  
12 to develop a solution that can benefit the market in  
13 the near term.

14           So again, thank you very much.

15           CHAIRMAN CLAYTON: Thank you, Commissioner  
16 Berkovitz. I just want to echo two things you said,  
17 which is the importance of the cross-pollination that  
18 we've had over the years between our agencies, and also  
19 the need for this kind of work across the board,  
20 including our reaction to the market stresses of March  
21 and April and how to improve our markets. I want to  
22 thank the CFTC staff for being open and helping us with



1 that analysis.

2 With that, Commissioner Crenshaw, please.

3 COMMISSIONER CRENSHAW: Good morning. This  
4 is Commissioner Caroline Crenshaw with the Securities  
5 and Exchange Commission. Thank you to the Chairmen and  
6 to all of my fellow Commissioners, as well as to the  
7 dedicated staff who have been mentioned already this  
8 morning, those who have worked on the rules today and  
9 the proposals, the request for comments, as well as  
10 those who have ensured a successful meeting here this  
11 morning. So again, thank you to all of you.

12 I'm not going to belabor the points that have  
13 already been made pretty extensively, but I am pleased  
14 that we are holding this joint meeting today. The  
15 coordination between the SEC and the CFTC is critical  
16 to the effective regulation of the closely connected  
17 markets that we oversee.

18 Turning to today's agenda, we are considering  
19 first whether to adopt rule amendments that would lower  
20 the required margin on securities futures. While the  
21 adjustment is modest, from a minimum margin level of 20  
22 percent to 15 percent, I do not believe we have

1 articulated a sufficient rationale for making this  
2 change. We have not explained why the existing margin  
3 is too high or otherwise identified a problem that  
4 would be solved by lowering the required level of  
5 margin to 15 percent, nor have we pointed to any  
6 problems that have resulted from the differing margin  
7 requirements for securities accounts approved for  
8 portfolio margining on the one hand, and securities and  
9 futures accounts not approved for portfolio margining  
10 on the other.

11           The release states that lowering the margin  
12 may increase competition and investor participation in  
13 the markets for securities futures by putting them on a  
14 more level playing field with comparable options and by  
15 aligning the requirements for securities futures held  
16 in different types of accounts.

17           However, the evidence we have about the  
18 nature of this market seems to indicate that the lack  
19 of popularity of these products is due to factors other  
20 than margin.

21           First, our rules already permit securities  
22 futures to be held in portfolio margin accounts subject

1 to a minimum margin of 15 percent. But, as the release  
2 notes, investors have not taken advantage of this  
3 option, instead continuing to hold these products in  
4 futures accounts subject to the higher 20 percent  
5 minimum level of margin.

6           Second, the release explains that there are  
7 other issues such as tax treatment and competition from  
8 foreign markets that may limit investor demand. These  
9 issues would not be addressed by today's amendments.

10           Third, as pointed out by the commenters and  
11 acknowledged in the release, investors will continue to  
12 be able to obtain similar exposure at a lower cost from  
13 other products such as OTC total return swaps and stock  
14 loans.

15           I am thankful to the staff of the two  
16 agencies for their hard work on this release. Again, I  
17 recognize that today's change is modest and that  
18 securities futures have utility to certain investors in  
19 the markets. However, I am wary of lowering the  
20 required margin on highly levered products in the  
21 absence of evidence that will address the issues that  
22 we have identified.

1           Therefore, I thank everybody again, but I  
2 respectfully dissent.

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

5           This is CFTC Chairman Tarbert, and I think,  
6 now that all Commissioners have had an opportunity to  
7 make remarks and ask any questions they may have, we  
8 will now proceed to vote, and we will vote separately,  
9 as I mentioned early on in the meeting.

10           So we'll start first with the CFTC, and I  
11 will ask the following question.

12           Is there any CFTC Commissioner who is not  
13 prepared to vote?

14           (No response.)

15           CHAIRMAN TARBERT: Hearing no response -- all  
16 CFTC Commissioners are prepared to vote -- I will ask  
17 Mr. Kirkpatrick, our Secretary, to please call the roll  
18 for the motion to adopt the final rule amending the  
19 customer margin requirements relating to securities  
20 futures.

21           MR. KIRKPATRICK: Thank you, Chairman  
22 Tarbert. This is the CFTC Secretary speaking.

1           The motion now before the CFTC is on the  
2 adoption of the final rule amending the customer margin  
3 requirements relating to security futures.

4           Commissioner Berkovitz?

5           COMMISSIONER BERKOVITZ: Commissioner  
6 Berkovitz votes aye.

7           MR. KIRKPATRICK: Commissioner Berkovitz  
8 votes aye.

9           Commissioner Stump?

10          COMMISSIONER STUMP: Commissioner Stump votes  
11 aye.

12          MR. KIRKPATRICK: Commissioner Stump votes  
13 aye.

14          Commissioner Behnam?

15          COMMISSIONER BEHNAM: Commissioner Behnam  
16 votes aye.

17          MR. KIRKPATRICK: Commissioner Behnam votes  
18 aye.

19          Commissioner Quintenz?

20          COMMISSIONER QUINTENZ: Commissioner Quintenz  
21 votes aye.

22          MR. KIRKPATRICK: Commissioner Quintenz votes

1 aye.

2 Chairman Tarbert?

3 CHAIRMAN TARBERT: Chairman Tarbert votes

4 aye.

5 MR. KIRKPATRICK: Chairman Tarbert votes aye.

6 Mr. Chairman, on this matter, for the CFTC,

7 the ayes have 5, the noes have zero.

8 CHAIRMAN TARBERT: Thank you, Mr. Secretary.

9 I'm pleased to say that the ayes have it and

10 the motion to adopt the final rule is hereby approved

11 by the CFTC.

12 Now I'll hand it over to SEC Chairman

13 Clayton.

14 CHAIRMAN CLAYTON: Thank you. We will take

15 the vote in our usual way.

16 On the matter before the Commission,

17 Commissioner Peirce, how do you vote?

18 COMMISSIONER PEIRCE: This is Commissioner

19 Peirce, and I vote yes.

20 CHAIRMAN CLAYTON: Commissioner Roisman, how

21 do you vote?

22 COMMISSIONER ROISMAN: I vote yes.

1                   CHAIRMAN CLAYTON:  Commissioner Lee, how do  
2 you vote?

3                   COMMISSIONER LEE:  I vote no.

4                   CHAIRMAN CLAYTON:  And Commissioner Crenshaw,  
5 how do you vote?

6                   COMMISSIONER CRENSHAW:  No.

7                   CHAIRMAN CLAYTON:  And I, Chairman Clayton,  
8 vote yes.

9                   Thank you.  Thank you all.

10                  With that, we're going to move to the second  
11 item on our agenda, the recommendation to issue a  
12 request for comment on portfolio margining.

13                  Director Redfearn of the SEC's Division of  
14 Trading and Markets will provide the staffs'  
15 recommendation.

16                  Brett, over to you, please.

17                  MR. REDFEARN:  Thank you, Chairman Clayton  
18 and Chairman Tarbert.  Good morning.  This is Trading  
19 and Markets Director Brett Redfearn.

20                  The staffs of the SEC and CFTC recommend that  
21 the Commissions jointly issue a request for comment on  
22 the portfolio margining of non-cleared security-based

1 swaps and uncleared swaps, along with related  
2 positions.

3           The staffs have worked collaboratively on  
4 drafting the recommended request for comment. In doing  
5 so, they have sought to highlight areas where comment  
6 would be particularly helpful to the Commissions as  
7 they further consider the merits of portfolio margining  
8 and the various alternatives to implementing a  
9 portfolio margining program.

10           Portfolio margining of non-cleared security-  
11 based swaps and swaps, along with related positions,  
12 would involve holding all of these products in a single  
13 account. Positions in the account would offset each  
14 other. For example, a basket of long total return  
15 equity security-based swaps and a short total return  
16 swap on a broad-based equity index would be combined to  
17 reduce the margin requirement of the account holder.

18           In addition, related positions such as long  
19 and short cash securities positions, listed options,  
20 futures, and options on futures, potentially can be  
21 combined with offsetting security-based swaps and swaps  
22 to reduce the account holder's margin requirement.



1           Of course, an entity's ability to offer  
2 portfolio margining of different product types will  
3 depend on its registration status; i.e. as a broker  
4 dealer, security-based swap dealer, futures commission  
5 merchant, and/or a swap dealer. The request for  
6 comment would take into account these different types  
7 of registrants.

8           In addition, the type of account in which the  
9 portfolio margin products are held can have regulatory,  
10 legal, and operational implications. More  
11 specifically, depending on the entity's registration  
12 status, it could offer portfolio margining in its  
13 securities account, a securities-based swap account, or  
14 a swap account. The request for comment would ask  
15 about portfolio margining in each of these account  
16 types.

17           The request for comment also would take note  
18 of certain differences in the margining segregation  
19 requirements of the SEC and the CFTC. Comment would be  
20 sought on how these differences should be addressed in  
21 the context of portfolio margining.

22           Portfolio margining can promote efficiencies

1 in calculating and collecting margin, and it can  
2 alleviate excessive margin calls, improve cash flows  
3 and liquidity, and reduce volatility. At the same  
4 time, portfolio margining of uncleared swaps and non-  
5 cleared security-based swaps and related positions  
6 requires careful consideration to ensure that any  
7 customer protections, applicable regulatory issues and  
8 potential impacts are appropriately considered as  
9 addressed.

10 For these reasons, the SEC and CFTC staffs  
11 recommend the Commissions jointly seek comment on the  
12 matters I've discussed.

13 Finally, I really want to thank the SEC and  
14 CFTC staff members who worked on drafting the  
15 recommended request for comment. The thoughtful  
16 analysis of the implications and issues surrounding  
17 portfolio margining of these products has produced a  
18 request for comment that flags important matters for  
19 which public comment would be very helpful. It's great  
20 to see the staffs of the SEC and the CFTC working so  
21 closely together on this request for comment, and also  
22 the customer margin rules covered earlier, as well as

1 other things.

2           The SEC and CFTC staffs and I are available  
3 to answer any questions you may have about the request  
4 for comment. Thank you.

5           CHAIRMAN CLAYTON: Brett, thank you very  
6 much.

7           I'm now going to turn it over to Chairman  
8 Tarbert for his opening remarks.

9           CHAIRMAN TARBERT: Well, thank you very much,  
10 Chairman Clayton and Brett and the rest of the team at  
11 the SEC.

12           To begin the CFTC's discussion and  
13 consideration of this rulemaking, or this proposal, I  
14 would now entertain a motion to adopt the request for  
15 comment on the portfolio margining of uncleared swaps  
16 and non-cleared security-based swaps.

17           COMMISSIONER QUINTENZ: So moved.

18           COMMISSIONER BEHNAM: Second.

19           CHAIRMAN TARBERT: Thank you.

20           Let me first begin by thanking the following  
21 CFTC staff for their work on this request for comment.

22           From our Division of Swap Dealer and

1 Intermediary Oversight, Josh Sterling, Director; Tom  
2 Smith, Deputy Director; Josh Beale, Associate Director;  
3 in addition to that, Paul Schlichting, our Associate  
4 General Counsel at the CFTC.

5 Portfolio margining is of central importance  
6 to market participants who are dually registered with  
7 the SEC and the CFTC and have customers who hold  
8 positions in separate accounts without the ability  
9 right now to cross-margin the positions.

10 The whole area of margining and who holds  
11 margin and depending on whether you're a broker dealer  
12 registered with the SEC or you're a swap dealer without  
13 that affiliation, it's an area where there have been  
14 significant differences and approaches over the years.  
15 So, therefore, I think it's an area that's ripe for  
16 further discussion, and I will note that this request  
17 for comment is actually the direct result of efforts by  
18 both you, Chairman Clayton, as well as my own  
19 predecessor at the CFTC, Chairman Giancarlo. Both of  
20 you asked the staffs of the SEC and CFTC to conduct  
21 market outreach and seek further input from the public  
22 regarding issues surrounding portfolio margining. So I

1 was pleased to continue that process when I came in the  
2 door, and I am, of course, pleased to support this  
3 request for comment because I think it will enable our  
4 respective staffs to prepare a thoughtful  
5 recommendation on actions that our two Commissions  
6 might take in the future to facilitate portfolio  
7 margining.

8           So I think it's very straightforward, but it  
9 is in many ways a critical first step in generating  
10 this discussion. So I have no questions and am  
11 grateful for your leadership on this in particular,  
12 Chairman Clayton.

13           CHAIRMAN CLAYTON: Well, thank you very much,  
14 Chairman Tarbert. As is often the case, we have been  
15 led by the staff here. Most of our good ideas bubble  
16 up from our colleagues on the staff.

17           I will just note that in 2019, as part of the  
18 final rulemaking adopting capital margin and  
19 segregation requirements for security-based swap  
20 dealers, the SEC stated that it would need to  
21 coordinate further with the CFTC to implement the  
22 portfolio margining of uncleared swaps and non-cleared

1 security-based swaps in a single account.

2           Today's recommended request for comment is  
3 designed to facilitate this coordination by asking  
4 market participants and other interested parties to  
5 provide information and their views on portfolio  
6 margining.

7           The objective is to gather information to  
8 help us carefully consider how portfolio margining  
9 might promote greater efficiencies, and also how to  
10 address any potential customer protection, financial  
11 stability, and other regulatory impacts that might  
12 result from portfolio margining.

13           Since 2012, the Commissions have coordinated  
14 to permit the portfolio margining of cleared credit  
15 default swaps that are swaps and security-based swaps  
16 in a CFTC-cleared swaps account. The request for  
17 comment on the portfolio margining of uncleared swaps  
18 and non-cleared security-based swaps is another  
19 important step for our agencies to continue our  
20 collaborative efforts and dialogue to explore whether  
21 and how increased harmonization in portfolio margining  
22 would better serve our markets and our investors.

1           I very much look forward to public comment.  
2 Today's actions are a result of our staffs' diligent  
3 efforts and collaborative arrangement with the CFTC  
4 staff, and I am proud to support the staffs' efforts in  
5 this area.

6           Thank you, and back to you, Chairman Tarbert.

7           CHAIRMAN TARBERT: Thank you.

8           I think we can go ahead this time and start  
9 with the SEC Commissioners first. So that would be  
10 Commissioner Peirce.

11           COMMISSIONER PEIRCE: Thank you, Chairman  
12 Tarbert.

13           Title VII of the Dodd-Frank Act mandated a  
14 massive overhaul of the regulatory framework governing  
15 swaps and security-based swaps, and one of the most  
16 significant of these changes is the requirement that  
17 swap and security-based swap dealers be subject to  
18 minimum initial and variation margin requirements for  
19 uncleared swaps and non-cleared security-based swaps.

20           These requirements are intended to reduce  
21 various risks associated with those transactions. At  
22 the same time, they impose significant costs on

1 counterparties for these trades, as funds that could be  
2 put to other productive uses are set aside to mitigate  
3 these risks.

4           Portfolio margining, or the (inaudible)  
5 margining of related positions, can reduce these costs  
6 in a manner consistent with prudent risk management by  
7 allowing the netting of offsetting exposures.

8 Different types of products can provide exposure to  
9 similar risks, but one of the unique features of the  
10 U.S. financial markets is that jurisdiction over these  
11 products and the dealers who intermediate transactions  
12 in these products is divided between the SEC and the  
13 CFTC, and each agency has its own margin requirements.

14           These jurisdictional and legal differences  
15 make it difficult or impossible for market participants  
16 to achieve the efficiencies that would be possible if  
17 they could prudently offset these exposures through  
18 portfolio margining. Regulatory margin requirements  
19 sometimes stand in the way of effective, safe, and  
20 efficient portfolio margining.

21           So finding a solution to these issues that  
22 will work for participants in our markets is going to



1 require a lot of hard work on the part of our two  
2 agencies, but it's a very important objective. Both  
3 agencies have made policy choices over the years that  
4 reflect the idiosyncrasies of our respective markets,  
5 the risk characteristics of the products we regulate,  
6 and the decades-long legacy of our respective  
7 approaches to the regulation of margin and capital  
8 requirements that apply to our regulated entities.

9           As the Commissions examine how to make  
10 portfolio margining a possibility for the firms we  
11 regulate and across the product types that we regulate,  
12 we need to be sensitive to the ways that our different  
13 approaches create unnecessary complexities for market  
14 participants and determine how we might enable market  
15 participants to benefit from prudent risk management  
16 practices while still achieving the regulatory  
17 objectives of our respective regimes. Doing this is  
18 going to require frank, open dialogue between the two  
19 Commissions and our staffs, as well as intensive  
20 engagement with the public, including those who are  
21 active across these markets.

22           The request for comments that we're

1 considering today is the first step of this process.  
2 The document invites engagement on a wide range of  
3 issues relating to the portfolio margining of uncleared  
4 swaps and non-cleared security-based swaps, both with  
5 each other and with other products of both SEC- and  
6 CFTC-regulated entities. I hope that market  
7 participants and other interested members of the public  
8 will respond in detail and, where possible, with  
9 analyses of the efficiencies that portfolio margining  
10 can generate, and suggestions for how the Commissions  
11 can continue to advance what each of us has identified  
12 as important policy objectives while also permitting  
13 firms to benefit from these efficiencies.

14           Speaking of public input, I also have gotten  
15 repeated requests that the exemptive relief that the  
16 Commission granted in 2012 for portfolio margining of  
17 cleared swaps and security-based swaps needs to be  
18 revisited. Indeed, Brian Quintenz and I have been  
19 together at meetings where he has sat smiling as I  
20 received some of that feedback. I agree and hope that  
21 we will follow up with something in short order on that  
22 front, as well.

1                   Thank you to the staff of both agencies who  
2 have worked on this request for comment. I look  
3 forward to working with you as we receive input from  
4 interested members of the public, and I have no  
5 questions. Thank you.

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

8                   CFTC Commissioner Quintenz, you have the  
9 floor.

10                  COMMISSIONER QUINTENZ: Thank you, Chairman  
11 Tarbert. This is Commissioner Brian Quintenz of the  
12 CFTC.

13                  I'm very proud to support today's request for  
14 comments, which marks the beginning of the agency's  
15 public consideration of ways to implement portfolio  
16 margining regimes for uncleared swaps and non-cleared  
17 security-based swaps, although, Chairman Tarbert, as  
18 you've mentioned, this was initially aired through a  
19 joint statement by Chairman Clayton and then-Chairman  
20 Giancarlo a few years back. I remember having follow-  
21 on conversations about trying to get this over the  
22 finish line in the early part of this year, and then we

1 all went virtual, but we stuck with it and we're  
2 getting it done, and I couldn't be prouder to see this  
3 come to fruition.

4 Portfolio margining can lead to efficiencies  
5 in margin calculation by appropriately accounting for  
6 the impact offsetting positions have on a portfolio's  
7 actual risk profile. This in turn gives firms and  
8 customers additional capital that can be deployed  
9 elsewhere.

10 However, given the differences between the  
11 regulatory regimes for swaps and security-based swaps,  
12 it also implicates incredibly important legal and  
13 policy considerations. This request for comments  
14 solicits critical feedback for market participants on  
15 how portfolio margining could impact the safety and  
16 soundness of firms, result in competitive advantages  
17 for certain types of registrants, raise questions about  
18 how collateral will be treated in the event of  
19 bankruptcy, but also make more efficient our markets  
20 and how they work together.

21 In order to make informed decisions about if  
22 and how portfolio margining should be implemented for

1   uncleared swaps and non-cleared security-based swaps,  
2   we need thoughtful feedback on these very complex  
3   questions.  So I encourage all interested parties to  
4   provide written comments, including data wherever  
5   possible, in order to further the agencies'  
6   understanding of the various options presented in this  
7   request for comment.

8           It is a great document.  I'm grateful to DSIO  
9   Director Sterling, Tom Smith, Josh Beale, and Paul  
10   Schlichting, and to SEC Trading and Markets Director  
11   Redfearn and your team for getting this before us.  And  
12   lastly, Mr. Chairman, if I could, I would just like to  
13   recognize one of my own staff members.

14           This is the last open meeting that Margo  
15   Bailey is going to be with my office.  Since joining my  
16   office in 2017, she has worked both tirelessly and  
17   incredibly effectively, but always with an unflappable,  
18   cheerful, sunny disposition.  She has handled some of  
19   the most complicated rulemakings we've undertaken,  
20   helped me craft my policy goals and public statements,  
21   and has been one of the tips of the spear on the  
22   harmonization efforts with the SEC.  Most importantly,

1 as a highly trained lawyer, she's had to deal with  
2 staffing a non-lawyer Commissioner. I consider myself  
3 and the markets incredibly lucky to have had her with  
4 my office and consider her a close friend and wish her  
5 all the best.

6 Thank you.

7 CHAIRMAN CLAYTON: Commissioner Quintenz,  
8 thank you for the comments regarding the proposal and  
9 the request for comments, but also thank you for the  
10 comments regarding Margo. I think we all recognize  
11 that we couldn't do any of what we do without our  
12 incredibly committed staffs.

13 With that, we'll go to Commissioner Roisman,  
14 please.

15 COMMISSIONER ROISMAN: Thank you, Mr.  
16 Chairman.

17 I'm supportive of seeking comment on  
18 portfolio margining of uncleared swaps and non-cleared  
19 security-based swaps and commend the staffs at both  
20 agencies for continuing to pursue areas that may be  
21 ripe for regulatory harmonization. As I have stated  
22 before, the SEC's regulatory approach in this area

1 should reflect the reality that most market  
2 participants who are active in the security-based swaps  
3 market are also active in the swaps market. Seeking  
4 out areas that may benefit from a harmonized regulatory  
5 framework has the potential to result in more effective  
6 and efficient oversight that limits unnecessary cost.

7           This is not to say that I believe the SEC  
8 should completely defer to CFTC regulations. Rather,  
9 efforts to minimize deviations and regulatory  
10 frameworks should reflect careful, deliberate  
11 consideration of the differences in our markets and  
12 regulatory structures.

13           Issuing a request for comments, as we are  
14 considering today, is a prudent first step when  
15 exploring areas for regulatory harmonization. Public  
16 comment is critical to receiving necessary feedback on  
17 whether we can fairly and effectively develop a  
18 harmonized approach to portfolio margining  
19 requirements. I encourage market participants to  
20 consider the issues implicated by harmonization in this  
21 area, particularly with respect to capital (inaudible)  
22 of customer property, bankruptcy implications, and any

1 other operational issues.

2 Thank you to the SEC staff and the Division  
3 of Trading and Markets and the Office of General  
4 Counsel, as well as to the incredible CFTC staff, for  
5 their work on this request for comment. I have no  
6 questions, and thank you again.

7 CHAIRMAN TARBERT: Thank you very much, SEC  
8 Commissioner Roisman.

9 CFTC Commissioner Behnam, you have the floor.

10 COMMISSIONER BEHNAM: Thanks, Mr. Chairman.  
11 I am pleased to support this request for comment on the  
12 potential ways to implement portfolio margining for  
13 uncleared swaps and non-cleared security-based swaps.

14 As one who often comments on the importance  
15 of process, I'm pleased that the Commissions are  
16 beginning here. At the highest level, portfolio  
17 margining is where our two sets of margin rules  
18 intersect. It sounds simple, but there's much to  
19 reconcile in terms of calculation, collection,  
20 protection in the event of a default, and much more.

21 The questions focus on drawing out various  
22 considerations and notable differences in our



1    respective margin rules identified by staff at our  
2    agencies, with a goal of advancing a program even  
3    though we are in the very nascent stages of policy  
4    development. I believe beginning with the request for  
5    comment is an important first step because it builds  
6    accountability by promoting greater transparency and  
7    engagement with the Commissions throughout the  
8    decision-making process and supports the highest levels  
9    of collaboration internally and, I think most  
10   importantly, with the public. So I would certainly  
11   echo my fellow Commissioners' comments in encouraging  
12   the public to engage to provide us information so that  
13   we can make the best and most informed decisions as we  
14   proceed with this important process and policy  
15   deliberation.

16           I look forward to the comments and will be  
17   especially interested in hearing about new approaches,  
18   tools, practices, and processes that may contribute to  
19   our deliberations, with an emphasis on financial  
20   stability, market resiliency and integrity, and, of  
21   course, customer protection moving forward in this  
22   process.

1           Thank you, Mr. Chairman. Thanks to Chair  
2 Clayton as well. And, of course, thanks to all the  
3 staff in the DSIO, within the CFTC and SEC staff, for  
4 putting together this very exhaustive and comprehensive  
5 document and questions. I look forward to public  
6 comment and contributions from the public and private  
7 stakeholders. Thank you.

8           CHAIRMAN CLAYTON: Thank you very much,  
9 Commissioner Behnam.

10           We'll now go to Commissioner Lee from the  
11 SEC.

12           COMMISSIONER LEE: Thank you. I support  
13 sending out this request for comment and exploring the  
14 issues that it presents, and I appreciate very much the  
15 responsiveness of our Trading and Markets staff to the  
16 comments and questions from my office during the  
17 drafting process.

18           Portfolio margining, when well designed, can  
19 offer capital efficiencies by better aligning margin  
20 requirements with the overall financial risk inherent  
21 in a specific participant's position. We should be  
22 cautious, however, in our approach to portfolio

1 margining for uncleared swaps and non-cleared security-  
2 based swaps in a single account for a number of  
3 reasons.

4           The differences in the markets our  
5 Commissions oversee and our different regulatory  
6 regimes can complicate portfolio margining across these  
7 two types of assets. For example, the Commissions have  
8 different regimes for handling the insolvency of our  
9 futures commission (inaudible) broker dealer. There  
10 are differences in whether two-way or one-way margin is  
11 required for swap and security-based swap positions  
12 that can have implications for customer protections.  
13 Depending on the types of assets included, there can be  
14 differences in how difficult it is to liquidate or  
15 transfer a portfolio in a default scenario.

16           So I look forward to hearing from commenters  
17 as to if or how these differences may be addressed, and  
18 on all the other issues that are raised in the request  
19 for comment. And again, I want to thank the staff at  
20 the CFTC and the SEC for their work in putting this  
21 together. Thank you.

22           CHAIRMAN TARBERT: Thank you very much, SEC

1 Commissioner Lee.

2 CFTC Commissioner Stump, the floor is yours.

3 COMMISSIONER STUMP: Thank you. I simply  
4 wish to say that I look forward to receiving comments  
5 on this very important topic. I have some past  
6 experience with previous efforts regarding portfolio  
7 margining, and I know we are going to approach this  
8 with a can-do attitude. The CFTC and the SEC have  
9 worked together in the past to overcome our  
10 differences, and I think that is extremely important.  
11 The open-mindedness that we bring to receiving comments  
12 in this context is quite important to me as well, and I  
13 know to others.

14 As has been mentioned by Chairman Clayton,  
15 there were efforts to ensure that we could allow for  
16 broker dealer/FCMs to portfolio margin single-name  
17 security-based credit default swaps under the  
18 jurisdiction of the SEC, and cleared index credit  
19 default swaps under the CFTC's oversight, and I believe  
20 that there may be more work to do, as Commissioner  
21 Peirce suggested. But I believe this challenge  
22 continues to demand our attention both in the context

1 of the cleared products and the uncleared products that  
2 we're considering today, and I know we are up to the  
3 task.

4           It is, frankly, critical that we remain up to  
5 the task because we are the U.S. market regulators, and  
6 market participants are often engaged in cleared,  
7 uncleared, listed, and OTC transactions; and regardless  
8 of whether these products are within the CFTC's or the  
9 SEC's oversight, we should not ever allow  
10 jurisdictional lines to obstruct the markets' ability  
11 to account for risk on a portfolio basis, where it is  
12 most appropriately realized and accounted for.

13           Today, we face a new challenge. Each  
14 regulator has pursued a different path when adopting  
15 margin policies for positions that are not cleared,  
16 positions that are likely part of a portfolio.

17           So, I do have one question. With that  
18 context, I'm hoping that Tom or Josh might address the  
19 practical impacts on the market participants, the  
20 market structure, and the risk management as a result  
21 of these divergent approaches to the margin rules for  
22 those transactions that are not cleared.

1           MR. STERLING: Madam Commissioner, this is  
2 Director Sterling of the CFTC. Thank you for that  
3 question. I'll be happy to answer it.

4           I think the bottom line is to appropriately  
5 evaluate and be fully responsive to your question, we  
6 will be in a much better position after we receive  
7 public comment on the release. For now, we continue to  
8 support the existing framework, as I'm sure the SEC  
9 does, but we look forward to working through all the  
10 comments we receive, all the information we're hopeful  
11 to receive, and continue to coordinate with Director  
12 Redfearn and his staff at the SEC.

13           COMMISSIONER STUMP: Thank you, Director  
14 Sterling.

15           I have no further questions. I'm extremely  
16 pleased we are putting forward an opportunity for the  
17 public to comment on this, as I think it's critically  
18 important. I know when Commissioner Peirce and I were  
19 in very different positions during the development of  
20 the Dodd-Frank legislation, we often heard from market  
21 participants who were anxious about these exact  
22 obstacles when it came to properly recognizing the

1 risks, and the potential for there being competing and  
2 divergent controversy amongst the regulatory agencies.

3           So, I hope that we will be able to advance  
4 the cause in a way that enables the market participants  
5 to most efficiently manage their risks. Thank you.

6           CHAIRMAN CLAYTON: Thank you, Commissioner  
7 Stump, for the comments and for noting that we have  
8 taken different paths in the past. I will just note  
9 that our staffs are putting together, with respect to  
10 the fact sheets that go out with this, a nice chart  
11 that summarizes the different paths that we have taken  
12 and where we stand today.

13           With that, Commissioner Crenshaw, please.

14           COMMISSIONER CRENSHAW: Thank you.

15           As has been noted, we are also considering  
16 today whether to issue a request for comment regarding  
17 portfolio margining for uncleared swaps and non-cleared  
18 security-based swaps held in the same account.

19           This is an area in which the Commissions,  
20 both the Commissions, should proceed with caution.  
21 Without a central clearing counterparty, the risk of  
22 default is borne by the parties to the transaction.

1 The risks are particularly acute where the transaction  
2 is complex and customized, which is often the case with  
3 respect to uncleared swaps and non-cleared security-  
4 based swaps.

5           Ensuring that sufficient margin is available  
6 to help cover losses in the event of a default is a key  
7 source of protection for the financial system. There  
8 are many challenging issues that we will need to  
9 address in order to move forward on this topic. I will  
10 just briefly note a few.

11           First, as summarized in the release, the  
12 rules that apply to the transactions, accounts, and  
13 intermediaries in this space are complex and varied.  
14 The commingling of uncleared swaps and non-cleared  
15 security-based swaps, therefore, has the potential to  
16 create confusion about the availability of margin in a  
17 liquidation situation. This, in turn, could lead to  
18 greater risks for counterparties and for the financial  
19 system overall.

20           Second, uncleared swaps and non-cleared  
21 security-based swaps can be subject to varying  
22 liquidity conditions, replacement costs, and



1 counterparty risks. Even where positions may appear to  
2 offset one another, these factors may increase the  
3 overall risks of a portfolio.

4           Finally, the effectiveness of a portfolio  
5 margining approach depends on the effectiveness of the  
6 models used. It is extremely important that the  
7 Commissions are able to exercise sufficient oversight  
8 of the approaches used by industry members.

9           I am thankful to the staffs of both agencies  
10 for their work on this release. While I do have  
11 concerns about the risk presented by portfolio  
12 margining, I hope the commenters will provide input on  
13 whether this is an advisable course of action for the  
14 Commissions to follow and how some of the risks might  
15 be mitigated.

16           I believe a request for comment is an  
17 appropriate place to begin this consideration.  
18 Therefore, I support today's action, and thank you  
19 again to everyone who has helped put this forward  
20 today.

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

1           CFTC Commissioner Berkovitz, you have the  
2 floor.

3           COMMISSIONER BERKOVITZ: Thank you, Chairman  
4 Tarbert.

5           I'm pleased to support the request for  
6 comment today. I want to commend the staffs of the two  
7 agencies on really an excellent document. In my view,  
8 it really does the public a great service, rather than  
9 just posing a number of questions that we would like  
10 answered, to really lay out the issues, the statutory  
11 background, and the challenges that we face on these  
12 issues. I think it's a really helpful document to the  
13 public. It's really informative as to what the issues  
14 are and seeks very thoughtful comments and responses  
15 that will really enable us to hopefully make some  
16 progress on this issue.

17           So I'm very much looking forward to the  
18 comments that we do receive on it. But again, I'd like  
19 to commend the staffs of both agencies for their work  
20 on the document itself. I really think it's a model  
21 for how to address a complex issue and to seek  
22 meaningful and informative public comment.

1           So I'm pleased to support the document, and  
2 thank you again.

3           CHAIRMAN CLAYTON: Thank you, Commissioner  
4 Berkovitz. I wholeheartedly agree with you on the  
5 staffs' work and the level setting that this document  
6 provides.

7           With that, Chairman Tarbert, I believe we're  
8 proceeding to voting, and the SEC will go first.

9           CHAIRMAN TARBERT: That is correct, Chairman  
10 Clayton.

11          CHAIRMAN CLAYTON: Thank you. Thank you very  
12 much.

13          We will go in our usual order on issuing the  
14 proposed request for comment.

15          Commissioner Peirce, how do you vote?

16          COMMISSIONER PEIRCE: This is Commissioner  
17 Peirce, and I vote yes.

18          CHAIRMAN CLAYTON: Commissioner Roisman,  
19 please?

20          COMMISSIONER ROISMAN: This is Commissioner  
21 Roisman, and I vote yes.

22          CHAIRMAN CLAYTON: Commissioner Lee, please?

1                   COMMISSIONER LEE: This is Commissioner Lee,  
2 and I vote yes.

3                   CHAIRMAN CLAYTON: And Commissioner Crenshaw,  
4 please?

5                   COMMISSIONER CRENSHAW: I also vote yes.

6                   CHAIRMAN CLAYTON: Thank you all.

7                   This is Chairman Clayton, and I vote yes.

8                   Over to you, Chairman Tarbert.

9                   CHAIRMAN TARBERT: Thank you very much,  
10 Chairman Clayton.

11                   This is CFTC Chairman Tarbert. I will ask  
12 the following question.

13                   Is there any CFTC Commissioner who is not  
14 prepared to vote?

15                   (No response.)

16                   CHAIRMAN TARBERT: Hearing none, I'll now ask  
17 our Secretary, Mr. Kirkpatrick, to please call the roll  
18 for the request for comment on the portfolio margining  
19 of uncleared swaps and non-cleared security-based  
20 swaps.

21                   MR. KIRKPATRICK: Thank you, Chairman  
22 Tarbert. This is the CFTC Secretary speaking.

1           The motion now before the CFTC is on the  
2 request for comment on the portfolio margining of  
3 uncleared swaps and non-cleared security-based swaps.

4           Commissioner Berkovitz?

5           COMMISSIONER BERKOVITZ: Commissioner  
6 Berkovitz votes aye.

7           MR. KIRKPATRICK: Commissioner Berkovitz  
8 votes aye.

9           Commissioner Stump?

10          COMMISSIONER STUMP: Commissioner Stump votes  
11 aye.

12          MR. KIRKPATRICK: Commissioner Stump votes  
13 aye.

14          Commissioner Behnam?

15          COMMISSIONER BEHNAM: Commissioner Behnam  
16 votes aye.

17          MR. KIRKPATRICK: Commissioner Behnam votes  
18 aye.

19          Commissioner Quintenz?

20          COMMISSIONER QUINTENZ: Commissioner Quintenz  
21 votes aye.

22          MR. KIRKPATRICK: Commissioner Quintenz votes

1 aye.

2 Chairman Tarbert?

3 CHAIRMAN TARBERT: Chairman Tarbert votes

4 aye.

5 MR. KIRKPATRICK: Chairman Tarbert votes aye.

6 Mr. Chairman, on this matter, for the CFTC,

7 the ayes have 5, the noes have zero.

8 CHAIRMAN TARBERT: Thank you, Mr. Secretary.

9 I'm pleased to say that the ayes have it and

10 the motion on the request for comment is hereby

11 approved by the CFTC.

12 Now I think we have just one very quick item

13 of business left that Chairman Clayton alluded to

14 earlier in the meeting before we adjourn.

15 Chairman Clayton?

16 CHAIRMAN CLAYTON: Thank you, Chairman

17 Tarbert.

18 I want to start by noting what a great job

19 our staffs have done in our tele-work environment of

20 continuing to do the important work of our Commissions.

21 It's just remarkable that we've been able to accomplish

22 so much not being together.

1           For this last item, I wish we were together  
2 because I do wish that I could present this personally  
3 to Commissioner Quintenz. And what I am foreshadowing  
4 here comes from many of the comments that were made  
5 earlier today about the work of Commissioner Quintenz  
6 and Commissioner Peirce in facilitating the  
7 coordination among our staffs to bring the Title VII  
8 regime over the finish line, and bring it over the  
9 finish line in a way that Commissioner Behnam noted,  
10 that it is something that is there but we will continue  
11 to vigilantly monitor as we go forward.

12           So on a personal level and on behalf of the  
13 many colleagues here at the SEC who worked diligently  
14 to stand up the Title VII regime, I want to present  
15 Commissioner Quintenz with the SEC's Chairman's Award  
16 for Regulatory Excellence.

17           This is for your leadership in advancing the  
18 cooperation between the CFTC and the SEC to stand up a  
19 Title VII regulatory regime that promotes integrity,  
20 resilience, and vibrancy of the U.S. swaps and  
21 security-based swaps market.

22           Brian, on my personal level and professional

1 level, and on behalf of my colleagues who worked with  
2 you at the SEC, thank you very much and please accept  
3 this as a small token of our gratitude.

4 COMMISSIONER QUINTENZ: Thank you, Mr.  
5 Chairman. Thank you so much. It's such an honor, such  
6 an honor. Thank you.

7 CHAIRMAN TARBERT: Outstanding.

8 This is Chairman Tarbert of the CFTC, and I,  
9 first of all, want to echo Chairman Clayton's remarks  
10 regarding the agencies and how they have enabled us to  
11 work remotely and to be so productive during this  
12 critical time in American history. And I, too, wish  
13 that we could be there in person. But for those of you  
14 that are watching our Webcast, you'll see the two  
15 awards up, and I am very pleased to present the mirror  
16 award to SEC Commissioner Hester Peirce, the CFTC  
17 Chairman's Award for Regulatory Excellence for her work  
18 on Title VII.

19 Chairman Clayton just asked me to sort of  
20 quickly go through the kinds of things that our two  
21 Commissioners, Commissioner Peirce and Commissioner  
22 Quintenz, have been able to achieve over the last



1 couple of years.

2           They have helped update and expand existing  
3 MOUs regarding areas of shared regulatory interest,  
4 including examinations of joint registrars.

5           They have helped harmonize many critical  
6 aspects of SEC rules on capital margin and segregation  
7 for duly registered broker dealers, security-based swap  
8 dealers, and the CFTC's regulations on those same  
9 subjects for futures commission merchants and swap  
10 dealers.

11           They have also worked together to try to help  
12 us harmonize swap data and real-time reporting for both  
13 swaps and security-based swaps.

14           They have also helped further harmonize  
15 cross-border entity and transaction-level requirements  
16 for the dealing of swaps and security-based swaps.

17           They have initiated discussions on the review  
18 of Form PF, and they have helped initiate and develop  
19 the request for comment, this one, on portfolio  
20 margining that we just voted on unanimously with both  
21 of our Commissions.

22           And then finally, they promoted and initiated

1 joint dual registrar examination and cooperation  
2 between the SEC and the National Futures Association.

3           So those are the official accomplishments of  
4 what these two dedicated public servants have done over  
5 the last few years.

6           But I just want to say, on a personal note,  
7 Commissioner Quintenz has been truly an outstanding  
8 colleague during my tenure at the CFTC, and  
9 Commissioner Peirce and I started working on Title VII  
10 issues before there was a Title VII, when we were  
11 colleagues on the Senate Banking Committee back 11  
12 years ago. So both I consider to be not only  
13 outstanding colleagues and experts in financial  
14 regulation but also friends.

15           So it's my honor to bestow this award on you,  
16 Commissioner Peirce, and to see Chairman Clayton bestow  
17 a similar honor on Commissioner Quintenz.

18           Back to you, Chairman Clayton, before  
19 adjournment of the meeting.

20           COMMISSIONER PEIRCE: Chairman Tarbert, I  
21 want to thank you for those very kind words and for the  
22 award.

1           I do have to say that the award that I'm  
2 accepting reflects the hard work of the staff at CFTC  
3 who has been so patient in working with me and so  
4 devoted to this task, really from day one. I have just  
5 been delighted to work with them. So any recognition  
6 that I'm getting really belongs to them.

7           And I have to highlight specifically my  
8 staffer, Richard Gabbert, who has been fantastic on  
9 these issues and has worked harder than anyone could  
10 imagine someone would work. He lives and breathes  
11 Title VII, which is not always healthy.

12           And I also wanted to echo my thanks to Margo.  
13 I'm sad to hear that today is her last meeting. She's  
14 been wonderful for our office to work with, as well, so  
15 I just really want to thank her for her work.

16           So thank you to everyone. Thank you,  
17 Chairman Clayton, as well, for enabling me to work on  
18 these issues.

19           CHAIRMAN TARBERT: Terrific, and many  
20 congratulations to you both.

21           Chairman Clayton, would you like to adjourn  
22 the meeting from the SEC side?

1           CHAIRMAN CLAYTON:  Yes.  Thank you very much.  
2  I want to just say again thank you to you and to the  
3  CFTC Commissioners.  A big thank you to my colleagues,  
4  the SEC Commissioners, for bringing this together and  
5  for the work to date.

6           And with that, the SEC part of this meeting  
7  is adjourned.

8           CHAIRMAN TARBERT:  Terrific.  This is  
9  Chairman Tarbert of the CFTC.

10           I want to take just a second to thank all of  
11  those who attended today, as well as my fellow  
12  Commissioners from both Commissions.

13           And there being no further business, I would  
14  like to entertain a motion from the CFTC to adjourn the  
15  meeting.

16           SPEAKER:  So moved.

17           SPEAKER:  Second.

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

20           (Chorus of ayes.)

21           CHAIRMAN TARBERT:  Those opposed, no.

22           (No response.)

1                   CHAIRMAN TARBERT:  The ayes have it.

2                   Once again, I'm grateful particularly to the  
3 SEC and the CFTC staff for their outstanding work in  
4 making this meeting possible.

5                   This meeting is hereby adjourned.  Thank you  
6 all.

7                   (Whereupon, at 11:47 a.m., the meeting was  
8 adjourned.)

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