

1 COMMODITY FUTURES TRADING COMMISSION (CFTC)

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4 Open Meeting

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12 9:34 a.m.

13 Wednesday, July 27, 2022

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18 Commodity Futures Trading Commission

19 CFTC Headquarters (Conference Center)

20 Three Lafayette Centre

21 1155 21st Street, NW

22 Washington, DC 20581

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P R O C E E D I N G S

(9:34 a.m.)

CHAIRMAN BEHNAM: Good morning. This meeting will come to order. This is a public meeting of the Commodity Futures Trading Commission, and I'd like to welcome members of the public, market participants, and members of the media who are observing this meeting today.

I'm also very pleased to be joined by my colleagues, Commissioner Johnson, Commissioner Goldsmith Romero, Commissioner Mersinger, and Commissioner Pham.

In keeping with CFTC tradition, and I want to recognize my predecessor, Chairman Tarbert, I'd like to ask everyone to stand, if they like, and recite the Pledge of Allegiance.

(Pledge of Allegiance recited.)

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

Thank you. The Commission is going to

1 consider two agenda items today. First, a notice  
2 of proposed rulemaking for governance requirements  
3 for derivatives clearing organizations, and a  
4 notice of proposed order and request for comment on  
5 an application for capital comparability  
6 determination submitted by the Financial Services  
7 Agency of Japan.

8           We're now going to move to opening  
9 statements. I'll start first, followed by my  
10 fellow Commissioners in order of seniority. Again,  
11 good morning and welcome. In some respects,  
12 today's open meeting is a historic event. It's the  
13 first open meeting to be held in person at the  
14 Commission in almost two and a half years since the  
15 onset of the COVID-19 pandemic.

16           It's also the first open meeting to be  
17 held with all five Commissioners since December  
18 2020. And perhaps most notably, it's the first  
19 open meeting with our history making CFTC  
20 Commissioners.

21           At a time when many across the country  
22 have dispensed with the formalities of office life,

1 these public meetings seem to be a sharp contrast  
2 to our current day to day operations. However,  
3 these formalities should serve as a fresh reminder  
4 of the importance of the work that we do as a full  
5 Commission and who we are here for, the American  
6 public.

7           On that note, I'm honored to be here  
8 today as Chairman of the Commodity Futures Trading  
9 Commission at this dais, working closely and  
10 collaboratively with my colleagues, and providing  
11 the public a direct view into the critical work  
12 that we do.

13           I want to express my great appreciation  
14 to our colleagues in the Division of Clearing and  
15 Risk, and the Market Participants Division for  
16 their efforts on the two proposals before the  
17 Commission today.

18           My intention is to make today the first  
19 of many productive and insightful open meetings, as  
20 our new Commission thoughtfully supports the  
21 growth, transparency, and vibrancy of the U.S.  
22 derivatives markets.

1           During the pandemic, CFTC staff has  
2 continued its diligent oversight of the derivatives  
3 markets through an ever changing range of market  
4 events, including historic demand disruption across  
5 all commodity classes in the spring of 2020,  
6 titanic shifts in global monetary policy, supply  
7 chain disruptions, and the more recent Ukraine  
8 crisis.

9           These unpredictable events have only  
10 intensified the need for price discovery and risk  
11 management tools, which our markets provide. We'll  
12 be considering two proposals today, as I mentioned,  
13 each representing critical components of CFTC  
14 markets, governance requirements for derivatives  
15 clearing organizations, and a proposed order and  
16 request for comment on the application for capital  
17 comparability determinations submitted by the  
18 Japanese FSA.

19           I'll share my remarks on the respective  
20 proposals in greater detail following the staff  
21 presentations. I want to thank staff in my office,  
22 Abigail Knauff and Alicia Lewis, and of course to

1 my fellow Commissioners and their staff for their  
2 support and their work to get us here today, which  
3 is, in fact, a historic day.

4           So with that, I'm now going to turn to my  
5 colleague, Commissioner Kristin Johnson.

6           COMMISSIONER JOHNSON: Thank you, Chair  
7 Behnam. At the outset of the first open meeting of  
8 this recently confirmed and newly formed  
9 Commission, a complement of five and a historic  
10 majority women's Commission, I'm pleased to offer  
11 this opening statement.

12           I thank Chair Behnam, my fellow  
13 Commissioners, division leadership, and staff for  
14 their kind assistance during my first months here  
15 at the Commission. I am humbled by the President's  
16 confidence in me.

17           It is a privilege to serve and an  
18 opportunity to work with and learn from such  
19 talented people. Over the last three months, I've  
20 met with staff of all the divisions, who  
21 demonstrate expertise, professionalism, and  
22 commitment, even as they navigate cutting edge

1 questions and evaluate issues at the frontier of  
2 the future of finance.

3 I'm grateful to the staff for their  
4 service to the CFTC and our nation, and their  
5 invaluable contribution to the stability and  
6 integrity of the global economy. As Chairman  
7 Behnam mentioned, today we gather to consider two  
8 proposals that grow out of our mission.

9 As we gather, we reaffirm two of the  
10 greatest strengths of our nation, the continuity of  
11 our Government, and the commitment of its public  
12 servants. First, we continue the dialog of our  
13 predecessors regarding the appropriate risk  
14 management framework for derivatives clearing  
15 organizations, and second, focus on an application  
16 for a capital comparability determination from the  
17 Financial Services Agency of Japan (FJSA)

18 In September 2008, the global economy  
19 experienced a shock that reverberated across  
20 communities, markets, and nations. Regulators,  
21 market participants, and citizens witnessed the  
22 precipitating collapse of storied financial

1 institutions that made ill-informed bets in an  
2 opaque, bespoke bilateral market characterized by a  
3 lack of intermediation or central clearing  
4 infrastructure.

5           As international authorities observed,  
6 global output and credit markets contracted at a  
7 pace not seen since the 1930s. Trade plummeted,  
8 jobs disappear, housing markets trembled, and  
9 people worried that the world was on the edge of an  
10 economic depression. A year later, G20 leaders  
11 gathered at a summit in Pittsburgh to address these  
12 concerns.

13           Having identified the catalysts that  
14 trigger the economic crisis and with absolute  
15 resolve, they articulated a prescription targeting  
16 an under supervised sector in our markets, all  
17 standardized over-the-counter derivative contracts  
18 would be traded on exchanges or cleared through  
19 central counterparties by 2012.

20           Observing that the period leading to the  
21 summit was marked by a critical transition from  
22 crisis to recovery, global leaders declared the



1 need to turn the page on an era of irresponsibility  
2 and adopt a new set of policies, regulations, and  
3 reforms that meet the needs of a 21st century  
4 global economy.

5           Twelve years ago, President Barack Obama  
6 signed the Dodd-Frank Act into law, translating  
7 this global imperative into a critical, demanding,  
8 and sometimes for a few people in this room,  
9 admittedly thankless local mission.

10           The Dodd-Frank Act introduced  
11 groundbreaking reforms. Nestled in the Dodd-Frank  
12 Act, the statute entrusted derivatives clearing  
13 organizations with maintaining the integrity of  
14 derivatives markets through comprehensive and  
15 prudent risk management and risk mitigation  
16 practices.

17           I support the proposed governance  
18 rulemaking for comment, continuing a broader  
19 governance deliberation that dates back to  
20 proposals issued over the last decade. The  
21 rulemaking addresses recommendations that the  
22 Commission received from the Market Risk Advisory

1 Committee (MRAC), previously sponsored by Chair  
2 Behnam and which I currently sponsor.

3           The recommendations are based on reports  
4 by the MRAC Subcommittee on Central Counterparty  
5 Risk and Governance. Moving beyond the financial  
6 crisis, in February and March of 2020, markets  
7 faced deeply concerning shocks, the onset of a  
8 COVID-19 global pandemic, destabilizing  
9 geopolitical events, and macroeconomic conditions  
10 marked by persistent inflation periods and periods  
11 of sustained volatility.

12           Alongside these events, our markets  
13 demonstrated tremendous resilience, illustrating  
14 the necessity and vitality of continuing to  
15 reinforce the significance of risk management  
16 oversight. Market conditions stress tested DCOs,  
17 and the effectiveness of reforms codified under the  
18 Dodd-Frank Act were demonstrated.

19           Undeniably DCOs demonstrated notable  
20 resilience in response to this real world, real  
21 time crisis and unanticipated stress test.  
22 Clients, clearing members, and CCPs very likely

1 agree that central clearing has increased market  
2 stability in the derivatives market. But we must  
3 not rest on our laurels. While clearing mandates  
4 have contributed to the development of fair and  
5 orderly markets, noteworthy concerns persist.

6           CCPs play a critical role as central risk  
7 managers in our markets. Increasing clearing  
8 mandates has increased dependence on CCPs,  
9 concentrating credit and liquidity risks. Some  
10 even argue that the concentration creates single  
11 points of failure with the potential to undermine  
12 the progress that we have achieved.

13           The second matter we turn to is the  
14 notice of a proposed order and request for comment  
15 on an application for a capital comparability  
16 determination from JFSA. The Commission's capital  
17 and financial reporting requirements are critical  
18 to ensuring the safety and soundness of regulated  
19 swap dealers and major swap participants.

20           When the Commission adopted Regulation  
21 23.106 in 2020 as part of the final swap dealer  
22 capital rules, we acknowledged under capitalization

1 was a core issue that precipitated the 2008  
2 financial crisis. Although we are separated from  
3 the day that Congress adopted the Dodd-Frank Act by  
4 more than a decade, we must continue to be resolute  
5 in our focus and unwavering in our commitment. We  
6 dare not rest on the resilience of reforms from the  
7 last crisis.

8           It is imperative that we remain vigilant.  
9 We can already see a new set of novel financial  
10 products, innovative use of data, predictive  
11 analytics, algorithms and models, newly styled  
12 entities, and emerging market participants and  
13 platforms. Each will benefit as they join our  
14 ecosystem from the hard lessons learned regarding  
15 the indisputable role of risk management and  
16 prudential measures.

17           Simply stated, we must prepare to  
18 prioritize our common goals and commit to getting  
19 this right. As I shared during confirmation  
20 hearings, part of what I'm here hopefully to do is  
21 raise the comments, questions, and concerns that a  
22 diverse group, broad range of stakeholders who

1 value our markets and who are deeply impacted by  
2 our markets would want us to raise and bring.  
3 Among the values that I hope to emphasize in our  
4 conversation today in my service as a Commissioner  
5 is first customer protection.

6           It is among, I believe, our highest  
7 priorities. And second, maintaining the integrity  
8 of our financial markets. I'm thankful to my staff  
9 who worked tremendously hard to prepare our remarks  
10 for today. I also am thoughtful about the staff  
11 and look forward to their presentations, and the  
12 dialog with my fellow Commissioners.

13           Thank you, Chair Behnam.

14           CHAIRMAN BEHNAME: Thank you, Commissioner  
15 Johnson. And now I'm going to turn to Commissioner  
16 Goldsmith Romero for her opening remarks.

17           COMMISSIONER GOLDSMITH ROMERO: Thank  
18 you. I'm so pleased to be here at the first open  
19 meeting of this new and historic Commission. It's  
20 truly been an honor and a privilege to me -- for me  
21 to serve with my fellow colleagues, with Chairman  
22 Behnam, with Commissioners Johnson and Mersinger

1 and Pham, who we all care for deeply and respect  
2 very much.

3 Chairman Behnam, I'm very appreciative of  
4 your leadership, your willingness to listen, be  
5 thoughtful and collaborative. Thank you for  
6 putting the matters on the agenda today. And to  
7 all my fellow Commissioners and the Chairman, I  
8 have really sincerely benefited from your insights,  
9 your experiences, and, most of all, your  
10 collegiality.

11 And there can be no doubt that the public  
12 interest has been served by the diversity of the  
13 perspectives you all bring to bear on the issues  
14 before us, including the issues today. Like  
15 everyone, my views are shaped by my experiences.

16 I was counsel to the chairman of the  
17 Securities and Exchange Commission just prior and  
18 during the financial crisis, and since the  
19 financial crisis, I have dedicated my entire career  
20 and spent it at the Treasury Department helping our  
21 nation recover and build a stronger, safer, more  
22 resilient financial system.

1           I've advocated, through congressional  
2 testimony, public reports, and proposals specific  
3 ways to promote financial stability and reduce  
4 risk, particularly systemic risk. I'm firmly of  
5 the opinion that regulators should identify to the  
6 American public, the public interest that is served  
7 by the actions that we take. In other words, why  
8 does it matter what we do today, to the public that  
9 we serve.

10           The proposals before us serve the broader  
11 public interest of promoting financial stability  
12 and reducing systemic risks. First, we have before  
13 us a proposal to strengthen the resilience of the  
14 clearinghouses that are at the center of our  
15 financial markets. This would apply to the full  
16 range of clearinghouses, from those designated  
17 systemically significant by the Financial Stability  
18 Oversight Council, to new and future entrants,  
19 including in the digital asset space.

20           Second, we have a proposal before us to  
21 have strong capital requirements and financial  
22 reporting for non-U.S. derivatives dealers who are

1 affiliated with some of our largest bank holding  
2 companies. Let me also thank the amazing CFTC  
3 staff for their hard work and their  
4 professionalism.

5 Our dialog in the lead up to this open  
6 meeting was constructive and thoughtful, and I  
7 appreciate you accommodating a number of my  
8 requested changes to make these proposals stronger.  
9 I also greatly thank my staff, Nora Flood, Phil  
10 Raimondi, and Joe Cisewski. And I'll reserve the  
11 remainder of my time.

12 CHAIRMAN BEHNAM: Thank you,  
13 Commissioner. I'll now turn to Commissioner  
14 Mersinger for her opening remarks.

15 COMMISSIONER MERSINGER: Thank you. And  
16 it is truly an exciting day. One, just to be here  
17 in person and see all of your faces, not on a  
18 computer screen, but in the room. But also to have  
19 this first open meeting with this group. I think  
20 this is pretty extraordinary and very excited to  
21 get started today.

22 Commissioner Johnson mentioned the



1 humbling experience that this is, and I'd like to  
2 also reflect that because I'm not sure I can  
3 describe just how humbling it is to sit at this  
4 dais today. I first walked into this room about  
5 three years ago, and I'm not sure I realized at  
6 that point that someday my name would be on the  
7 placard, and I would be sitting in this dais where  
8 so many other extraordinary people sat before us.  
9 I certainly didn't realize I would be sitting among  
10 this extraordinary group.

11           But we don't always know our destination  
12 when we start on our path, and I have had the good  
13 fortune to stop on this path, continue on this  
14 path, and get to know and work with the really  
15 dedicated staff here at the CFTC, including the  
16 teams we'll hear from today. So thank you in  
17 advance for your hard work, and for your patience  
18 with us, and for always being there when we have  
19 questions and concerns.

20           So the items that we are considering  
21 today really reflect some of the greatest  
22 attributes of the CFTC, the diligent work of our

1 staff, and the willingness of market participants  
2 to share their expertise and provide  
3 recommendations to the CFTC, and coordinating, and  
4 the respect for our regulatory counterparts in  
5 other jurisdictions.

6 I will share -- I will save my further  
7 remarks for when we are -- when we discuss each  
8 individual proposal. But again, it's just a  
9 pleasure and an honor to be here, and I look  
10 forward to our discussion.

11 CHAIRMAN BEHNAM: Thank you, Commissioner  
12 Mersinger. And now, I'll turn to Commissioner Pham  
13 for her opening remarks.

14 COMMISSIONER PHAM: Thank you, Chairman.  
15 Just echoing the comments of my fellow  
16 Commissioners, I just want to say what a true honor  
17 and privilege it is to be here. And I'm grateful  
18 for the opportunity to work and serve with my  
19 fellow Commissioners, and I'm looking forward to  
20 our years together in the future.

21 I also want to thank my office and team,  
22 my chief of staff, Meghan Tente, my senior counsel,

1 Gates Hurand, and my senior policy adviser, Keaghan  
2 Ames. And most of all, I want to thank the  
3 dedicated staff of the Commission. They have  
4 indeed faithfully executed our mission and the  
5 enormous responsibility that we have taken on under  
6 the expanded authorities of Dodd-Frank.

7           One of the things that I just want to  
8 note is the progress that the world has made since  
9 the 2008 financial crisis in implementing the G20  
10 global derivatives reforms. For example, in the  
11 Financial Stability Boards, OTC Derivatives Market  
12 Reforms Implementation Progress Report of December  
13 2021, they've stated that the overall  
14 implementation of the OTC derivatives reforms is  
15 well advanced, and there's been incremental  
16 progress since October 2020 across FSB member  
17 jurisdictions.

18           I'll just share a couple statistics with  
19 you. There's been significant progress in  
20 implementing final higher capital requirements for  
21 uncleared derivatives. That's in 15 out of 24 FSB  
22 member jurisdictions. For margin requirements for

1   uncleared derivatives, that's enforced in 16  
2   jurisdictions, with the expectation that all will  
3   be implemented by the compliance date of September  
4   1, 2020.

5           Trade reporting requirements for OTC  
6   derivatives transactions are in force in 23 FSB  
7   member jurisdictions, and central clearing  
8   requirements are in force in 17 FSB member  
9   jurisdictions. I think we can say that truly the  
10  world has come together to find a global solution  
11  to a global challenge of the financial crisis, and  
12  that there are well-developed regulatory frameworks  
13  in place in our fellow jurisdictions around the  
14  world.

15           Another point that I wanted to raise is  
16  that with the implementation of Dodd-Frank, we have  
17  had some challenges with getting the rules right.  
18  And so we have used various tools that we have at  
19  our disposal to try to make sure that we can adjust  
20  and fix the rules as necessary when warranted.

21           To that effect, there are nine no action  
22  letters that expire in the next year, and I do

1 encourage the Commission to come up with a plan to  
2 provide regulatory certainty well in advance of the  
3 expiration dates. I believe that we should hold  
4 ourselves accountable to the same standards we ask  
5 of our registrants. Finally, just a couple  
6 comments on the proposals that we have here in  
7 front of us today.

8           Regarding the proposed capital adequacy  
9 and financial reporting comparability determination  
10 for non-bank swap dealers located in Japan, I would  
11 like to note, first of all, that the staff of the  
12 Market Participants Division, formerly the Division  
13 of Swap Dealer and Intermediary Oversight, has been  
14 working very hard on these proposals, and their  
15 diligence with these rules has helped make the U.S.  
16 financial system safer, and their good work in  
17 implementing a comprehensive oversight regime for  
18 swap dealers.

19           Both global and domestic markets work  
20 best when there are clear and simple rules with  
21 common standards. Ensuring that these rules are  
22 harmonized minimizes operational complexity that

1 can increase risks and costs. As Commissioner, I  
2 take this responsibility to encourage international  
3 regulatory harmonization seriously.

4           Significantly, these proposed conditional  
5 capital adequacy and financial reporting  
6 comparability determination order for Japan is the  
7 first of its kind for the Commission. These  
8 determinations will set the stage for the capital  
9 adequacy and financial reporting determinations to  
10 follow for the UK, EU, and Mexico. Therefore, we  
11 need to carefully ensure that these determinations  
12 are a model for those that come next, and I look  
13 forward to that good work being done through the  
14 notice and comment process.

15           With that in mind, I would like to also  
16 mention that it's important that we uphold  
17 principles of deference to home country regulators  
18 and promote international regulatory harmonization  
19 to mitigate market fragmentation.

20           As others have noted, an approach that  
21 favors direct oversight of both domestic and  
22 foreign entities often does not recognize that

1 another regulator is already overseeing this  
2 activity at issue in a comparable manner. And as  
3 I've described, we do have comprehensive  
4 derivatives reforms in place in FSB member  
5 jurisdictions.

6           Without a model that favors deference  
7 through reliance on the home country regulator,  
8 trading and clearing becomes more complex, more  
9 costly, and less efficient for all market  
10 participants. Therefore, one of the things that I  
11 will be focused on is to ensure that these  
12 proposals properly balance avoiding weakening of  
13 the Commission's oversight abilities, but also not  
14 unduly constraining cross-border activity.

15           In doing so, I invite commentators to  
16 touch upon any of these aspects. Finally, I am  
17 pleased that we will consider a proposal to enhance  
18 clearinghouse risk governance. I note that this  
19 proposal follows on to the good work and policy  
20 recommendations from the Market Risk Advisory  
21 Committee.

22           Engaging with the public through

1 roundtables in a transparent manner is the type of  
2 good process that results in good outcomes. We  
3 should consider other advisory committee  
4 recommendations as appropriate, and I thank the  
5 Chairman for his leadership, and sponsorship of the  
6 Market Risk Advisory Committee. Thank you.

7           CHAIRMAN BEHNAM: Thank you, Commissioner  
8 Pham, and to my colleagues for those wonderful  
9 opening statements. So now in a few moments, I'll  
10 invite CFTC staff to begin their presentation on  
11 the first matter of today's agenda. After the  
12 presentation, we will formally open the floor to  
13 the Commissioners for their questions, comments,  
14 and any discussion on the matter presented.

15           And then we will conclude the  
16 Commission's discussion with a vote on the matter  
17 presented. That sequence will be repeated for the  
18 second matter today on the agenda. Each of the  
19 votes conducted in this meeting will be a recorded  
20 vote. The result of each vote approving a  
21 Commission documents, should that be the outcome,  
22 will be published with the document in the Federal



1 Register.

2           So at this point, I ask for the  
3 Commission's unanimous consent to allow staff to  
4 make technical corrections to any documents  
5 approved at this meeting as necessary to prepare  
6 such documents for publication in the Federal  
7 Register or to otherwise finalize them.

8           COMMISSIONER GOLDSMITH ROMERO: Yes.

9           CHAIRMAN BEHNAM: Second?

10          COMMISSIONER MERSINGER: I second that  
11 motion.

12          CHAIRMAN BEHNAM: Thank you. Hearing no  
13 objections, consent for staff technical corrections  
14 is hereby granted by the Commission. At this time,  
15 I'd like to welcome staff from the Division of  
16 Clearing and Risk for their presentation on the  
17 first matter on today's agenda, as I've said, a  
18 notice of proposed rulemaking on governance  
19 requirements for derivatives clearing  
20 organizations.

21          Presenting to us will be Clark Hutchison,  
22 Director of the Division of Clearing and Risk,

1 Eileen Donovan, Deputy Director of the Clearing  
2 Policy Branch in DCR, Tad Polley, an Associate  
3 Director in the Clearing Policy Branch in DCR, who  
4 is joining us virtually from Chicago, and Joe  
5 Opron, Special Counsel in the Clearing Policy  
6 Branch in DCR, who is also joining us virtually  
7 from Chicago. So with that, Clark, please proceed.

8 MR. HUTCHISON: Good morning, Mr.  
9 Chairman. Good morning, Commissioners. Thank you.  
10 Before I begin my remarks, I just want to say that  
11 I, too, feel delight in being in this room again in  
12 front of all of you and true delight in the fact  
13 that we have a new Commission in 2022 where we can  
14 get back to work and accomplish a lot of the things  
15 that we want to accomplish.

16 And I have to say that as we've navigated  
17 this particular proposal together in the last few  
18 weeks and getting our feet under us as a group, we  
19 in the Division of Clearing and Risk have enjoyed  
20 working with you and your staff. So, truly a  
21 delight to be here. And it's nice to have fellow  
22 colleagues that I haven't seen in many years, so.

1                   With that, on to business. So this  
2 morning I will be providing an overview of the  
3 notice of proposed rulemaking or NPRM of governance  
4 of clearinghouses. The NPRM involves proposed  
5 revisions to the Commission's existing Regulation  
6 39.24, regarding derivatives clearing organization  
7 or DCO governance, that have resulted from  
8 recommendations issued by the Commission's Market  
9 Risk Advisory Committee, commonly known here as the  
10 MRAC.

11                   On February 23, 2021, the MRAC approved a  
12 report prepared by its central counterparty and  
13 governance committee, which I will refer to today  
14 as the subcommittee. And that committee provided  
15 the Commission with several recommendations on DCO  
16 risk governance for its consideration. The  
17 subcommittee report laid out the perspectives of  
18 both clearing member and end-user members of the  
19 subcommittee on one hand, and DCO members on the  
20 other.

21                   While the report reflects some areas of  
22 disagreement on some topics, the two groups reached

1 a general consensus on how DCO governance might be  
2 improved through new Commission regulations. The  
3 NPRM proposes several amendments to Regulation  
4 39.24 that are consistent with the subcommittee's  
5 recommendations.

6           There are two primary topics at issue in  
7 the proposal, which I will discuss in turn. First,  
8 the proposal would require a DCO to establish one  
9 or more risk management committees, or RMCs, and  
10 require its board to consult with and consider and  
11 respond to input from its RMCs on matters that  
12 could materially affect the risk profile of the  
13 DCO.

14           And second, the proposal would require  
15 each DCO to establish one or more market  
16 participant risk advisory working groups in order  
17 to seek risk based input from a broader array of  
18 market participants.

19           So now to discuss risk management  
20 committees. The respective risk management  
21 committees, the NPRM proposes new Regulation  
22 39.24(b)(11), which would require a DCO to maintain

1 governance arrangements that establish one or more  
2 RMCs, and requires a DCO's Board of Directors to  
3 consult with, and consider and respond to input  
4 from an RMC on all matters that could materially  
5 affect the risk profile of the DCO.

6           This requirement would provide a  
7 consistent, formalized forum for DCOs to solicit,  
8 consider, and address input from clearing members  
9 and end users before making decisions that could  
10 materially affect their risk profile. While  
11 serving on an RMC, clearing members and end users  
12 would have an enhanced role in DCO governance, and  
13 would be able to use their risk management  
14 expertise to promote the safety and efficiency of  
15 the DCO, and the stability of their broader  
16 financial markets.

17           The proposed rule would identify a non-  
18 exhaustive list of matters that could materially  
19 affect the risk profile of a DCO, including any  
20 material change to the DCO's margin model, default  
21 procedures, participation requirements, and risk  
22 monitoring practices, as well as the clearing of

1 new products.

2           The proposal would require DCOs to  
3 maintain written policies and procedures to make  
4 certain that the RMC consultation process is  
5 described in detail and require the DCO to document  
6 the Board's consideration of and response to risk  
7 management committee input.

8           In addition, DCOs would be required to  
9 establish fitness standards for RMC members,  
10 maintain policies to ensure each RMC includes  
11 representatives from clearing members and customers  
12 of clearing members, and maintain policies that  
13 require the membership of each RMC to be rotated on  
14 a regular basis.

15           The proposed requirement that RMCs  
16 include clearing members and customers of clearing  
17 members recognizes the stake that these parties  
18 have in the financial integrity of the DCO and the  
19 need to ensure that they can express their input  
20 and concerns, as well as the fact that the DCOs  
21 benefit from their unique perspective and expertise  
22 on risk management matters.

1           The proposed requirements -- excuse me.  
2   The proposed requirement that the membership of the  
3   RMC be rotated on a regular basis promotes the  
4   ability of clearing members and customers of  
5   clearing members from a broad array of market  
6   segments to provide their expertise and helps  
7   ensure that the RMC provides the DCO with fresh  
8   perspectives on risk management matters.

9           Finally, the NPRM proposes a new  
10   Regulation 39.24(c)(3) that would require DCO to  
11   maintain policies designed to enable its RMC  
12   members to provide independent expert opinions in  
13   the form of risk-based input on all matters  
14   presented to the RMC for consideration and perform  
15   their duties in a manner that supports the safety  
16   and efficiency of the DCO and the stability of the  
17   broader financial system.

18           This proposal is based on the belief that  
19   RMC members must be able to serve as independent  
20   experts, neither beholden to their employer's  
21   particular interests nor acting as fiduciaries of  
22   the DCO in order to provide objective input to the

1 DCO's board.

2           Secondly, risk advisory working groups.  
3 The second primary aspect of the NPRM proposes new  
4 Regulation 39.24(b)(12), which would require a DCO  
5 to establish one or more a market participant risk  
6 advisory working groups to provide input on all  
7 matters that could materially affect the risk  
8 profile of the DCO.

9           These groups would be required to consist  
10 of a broad array of market participants, such that  
11 a diverse cross-section of the DCOs clearing  
12 members and customers of clearing members are  
13 represented. The proposal would further require  
14 the groups to convene at least quarterly and  
15 required DCOs to maintain policies and procedures  
16 regarding the formation and role of each risk  
17 advisory working group.

18           The proposal recognizes that the risk  
19 advisory working groups can serve a valuable  
20 function in supplementing the DCO's RMC. Practical  
21 considerations, most notably the size of a typical  
22 RMC and the significant time commitment that an RMC



1 would require of its members in its role of  
2 formally consulting with the DCO's board will limit  
3 the number of representatives who can serve on an  
4 RMC at any given time.

5 DCO risk advisory working groups, which  
6 the proposal would require to include a diverse  
7 cross-section of the DCO's clearing members and  
8 their customers, will further expand and diversify  
9 the information available to a DCO, while making  
10 material risk decisions and expand opportunities  
11 for those with a stake in DCO risk management to  
12 provide input.

13 As mentioned previously, while the  
14 proposed rules relate to areas in which the  
15 clearing member and end user and DCO  
16 representatives and the subcommittee generally  
17 agreed, excuse me, there were other governance  
18 topics discussed in the report on which the  
19 subcommittee members did not reach clear agreement.

20 The NPRM requests comment on a number of  
21 these topics for the Commission's consideration and  
22 potential use in future rulemaking. These topics

1 include DCO consultation of market participants  
2 prior to submission of rule change submissions made  
3 pursuant to Part 40 of the Commission's rules, and  
4 DCO policies regarding the ability of RMC members  
5 to share certain types of DCO information with  
6 others who work at their employer, and in order to  
7 obtain additional expert opinion that may assist  
8 the DCO's risk management.

9           So with that, we hope this information  
10 has been helpful, and we'd be happy to answer any  
11 questions that the Commission may have. Thank you.

12           CHAIRMAN BEHNAM: Thank you, Clark. To  
13 formally open the Commission's discussion and  
14 consideration of the matter just presented by  
15 staff, I'll now entertain another motion for the  
16 approval and issuance of the notice of proposed  
17 rulemaking on governance requirements for  
18 derivatives clearing organizations, as presented in  
19 the voting draft circulated to the Commissioners.

20           COMMISSIONER JOHNSON: Mr. Chairman, I so  
21 move.

22           COMMISSIONER GOLDSMITH ROMERO: Second.

1                   CHAIRMAN BEHNAM: Thank you. With that,  
2 the floor is now open for the Commission's  
3 deliberations on this matter. I'd like to begin by  
4 offering a few questions and views of my own. I'm  
5 going to start with a short statement and then I'll  
6 ask a few questions of staff.

7                   The last several years have tested the  
8 resilience of the derivatives markets and post-  
9 financial crisis reforms more generally in ways  
10 that a few risk scenarios could have contemplated.  
11 Despite a resoundingly strong response to the  
12 numerous market shocks, the global regulatory  
13 community in concert with market participants has  
14 appropriately debated the need for additional  
15 tools, resources, and rules to manage these and  
16 future risks.

17                   As farmers, ranchers, corporates, pension  
18 funds, insurers, and other market participants  
19 continue to turn to the derivatives markets for  
20 risk management and price discovery, it's critical  
21 that derivatives clearing organizations clearing  
22 these products efficiently calibrate their risk

1 management tools and frameworks to meet the most  
2 extreme but plausible tail events.

3 DCOs with governance structures that  
4 embrace the diverse, risk based views of clearing  
5 members and their clearing members customers will  
6 be better situated to refine their risk management  
7 frameworks to withstand extreme but plausible  
8 market conditions while promoting financial  
9 stability.

10 With an ever evolving risk landscape,  
11 including new clearing structures, new product  
12 innovation, and the emerging risk of climate  
13 change, to name just a few, it's critical that DCOs  
14 governance arrangements and fitness standards  
15 evolve.

16 That's why I support today's proposal to  
17 amend the governance requirements for DCOs and CFTC  
18 Regulation 39.24 to enhance the role of clearing  
19 members and customers of clearing members in the  
20 risk governance process for DCOs. A DCO's robust  
21 risk management framework is particularly critical  
22 because of the systemic nature of clearinghouses

1 and the integral role that DCOs have played in  
2 promoting financial stability.

3           Today's DCO governance proposal is a  
4 direct outgrowth of the work of the Central  
5 Counterparty Risk and Governance Subcommittee of  
6 the Commission's Market Risk Advisory Committee,  
7 which Clark mentioned.

8           The subcommittee's February 2021 report  
9 to the MRAC provided several recommendations for  
10 improving DCO governance standards that the  
11 Commission is proposing today to amend CFTC  
12 Regulation 39.24. First, the Commission proposes  
13 to require each DCO to establish one or more risk  
14 management committees to consult with clearing  
15 members and clearing member customers prior to  
16 making any decisions that can materially affect the  
17 risk profile of the DCO.

18           Under the proposal, the DCO would need to  
19 consult with the RMC for material changes to a  
20 DCO's margin model, default procedures,  
21 participation requirements, risk monitoring  
22 practices, and clearing of new products. The

1 proposal would further require a DCO to have  
2 written policies and procedures related to the  
3 RMC's consultation process, composition, and  
4 rotation of the membership on a regular basis.

5           As proposed, the DCO would be required to  
6 establish and enforce appropriate fitness standards  
7 for RMC members. The Commission also proposes that  
8 a DCO maintain policies that are designed to enable  
9 RMC members to provide independent expert opinions  
10 in the form of risk based input on all matters  
11 presented to the RMC for its consideration.

12           Second, the Commission proposes to  
13 require each DCO to establish one or more risk  
14 advisory working groups, or RWGs, as a forum to  
15 seek risk based input, as opposed to commercially  
16 driven input, from a broader array of market  
17 participants on matters that could materially  
18 affect the DCO's risk profile.

19           The Commission proposes to require a DCO  
20 to maintain written policies and procedures related  
21 to the formation and role of each RWG, which would  
22 be required to convene at least quarterly.

1                   Finally, the Commission is also  
2   requesting comment on the consultation process to  
3   add or amend DCO rule, disclosure of opposing views  
4   in a rule submission, and whether DCO should be  
5   required to maintain policies and procedures  
6   designed to enable an RMC member to share certain  
7   types of information in order to obtain additional  
8   expert opinions.

9                   Today's proposal is an extremely positive  
10   and critical step towards further enhancing the  
11   effectiveness of the CFTC's governance standards.  
12   Strengthening the clearing ecosystem and developing  
13   a DCO governance policy has been a priority of mine  
14   since I joined the Commission in 2017.

15                   As chair, this critical market  
16   infrastructure will remain a focus, and I look  
17   forward to taking a data driven approach to support  
18   any possible enhancements to the agency's oversight  
19   of DCOs, ensuring coordination and consistency with  
20   both our domestic and international partners as we  
21   collectively pursue our shared goals of both market  
22   resiliency and financial stability.

1           Today is a big step, and the Commission  
2 will continue to monitor the clearing ecosystem and  
3 engage market participants on DCO risk and  
4 governance issues in the future. So again, thanks,  
5 Clark, for your presentation and to your staff for  
6 putting this together, for working with my staff  
7 and the Commissioners' staff.

8           Just a few questions before I pass on the  
9 opportunity to my colleagues. The proposed rule  
10 promotes increased transparency and accountability.  
11 And this has been an issue, as I mentioned in my  
12 statement, that I have been dealing with, I think,  
13 in a very positive way since 2017.

14           There's a natural friction between the  
15 two main participants in the clearing ecosystem,  
16 the clearing members and the clearinghouses  
17 themselves.

18           And in many respects, as I mentioned, we  
19 have collective interests in both market resiliency  
20 and financial stability, and I think both do a very  
21 good job at that. However, there are naturally  
22 divergent interests in some parts between the



1 clearing members and the clearinghouses. And as  
2 you mentioned, there are a number of work streams  
3 within that MRAC subcommittee.

4 And unfortunately, we did not reach  
5 consensus on many, and this was certainly not due  
6 to a lack of effort and hard work. And I have to  
7 give a lot of credit to the members of that  
8 committee, who worked tirelessly over many, many  
9 months.

10 But ultimately, in this recommendation  
11 itself, focusing on governance, it's critical, and  
12 one could argue that it sort of overlays many of  
13 the other workstreams that were considered. And it  
14 really comes down to communication and transparency  
15 and accountability.

16 And I firmly believe, and I hope this is  
17 the outcome, but we'll see, depending on my  
18 colleague's view and what we see from the comments,  
19 that with increased transparency and  
20 accountability, many of the other issues that are  
21 of concern to both parties could be resolved.

22 They could be resolved through debate and

1 deliberation and a more robust communication flow  
2 between both parties and keeping each other  
3 accountable for what their vested interests are and  
4 what we collectively, both as the regulator and the  
5 market participant, share as our outcomes and our  
6 goals.

7           So if you could comment, and this is a  
8 very sort of big picture question, but thinking  
9 about the proposed rule, or Eileen or staff, how  
10 does this in fact promote increased transparency  
11 and accountability, and what should we hope to  
12 expect if, in fact the Commission does approve this  
13 role in the future?

14           MR. HUTCHISON: Thank you for the  
15 question, Chairman Behnam. I couldn't agree with  
16 you more that communication is essential. And I  
17 think, as you've heard me say in other remarks, at  
18 other times, good regulation requires good  
19 communication.

20           And I think it's not just for regulators,  
21 but I think it's for the people whom we regulate.  
22 And I have to say that you're right. For a very

1 long time, there has been a debate between  
2 clearinghouses, clearing members, and market  
3 participants about the role of who should govern  
4 what and how.

5           And I think what this rule proposal does  
6 today is, it gets out in front of that, and I think  
7 effectively will address what has been that  
8 conundrum. And I think it does that by some of the  
9 features that we outlined in the proposal.

10           One, we're asking that risk committees  
11 have competent people who understand risk. And I  
12 think that's important so that at least people have  
13 experts that know what they're talking about so  
14 that they can talk about it intelligently.

15           Secondly, I think broad based  
16 participation. I think that it is true that  
17 clearinghouses run their own show, but I think that  
18 clearing members run their show and the market  
19 participants do what they need to do in markets.  
20 And each of them has a unique perspective, unique  
21 risk profile and those need to be harmonized.

22           And the way that's done through our risk

1 management committee proposal and risk working  
2 group proposal is that those entities come together  
3 and need to consult one another and need to  
4 communicate.

5           We are forcing that communication. And I  
6 think through that forcing, so to speak, that this  
7 rule we would ask for, people will come to  
8 conclusions that heretofore they haven't been able  
9 to come to because they've been talking at each  
10 other rather than with each other.

11           And finally, I'd say that what I think is  
12 going to help, and into your big picture question,  
13 I think that this is a good demonstration for  
14 governance generally. We are leading the way in  
15 governance of clearinghouses at the CFTC, and I  
16 think it will help with the governance of  
17 clearinghouses outside of our jurisdiction as well.  
18 We're setting a good example.

19           CHAIRMAN BEHNAM: Thanks, Clark. I  
20 appreciate that. You touched on the importance and  
21 the role of independent experts. And I think we  
22 both know you, as well as anyone in this room,

1 about the challenge of finding independent experts  
2 and finding individuals who have what ends up  
3 becoming a very bespoke expertise when it comes to  
4 CCPs and the functionality of a clearinghouse.

5           So if you could talk for a second, and  
6 you mentioned this in your remarks, the proposed  
7 rule addresses clearing members, employees'  
8 management of conflicts of interest, their  
9 incentives, their duties. This kind of goes to our  
10 previous discussion. My first question about we all  
11 have different vested interests.

12           How does the rule prioritize -- how does  
13 the rule address the conflicts of interest of the  
14 clearing member rep as it relates to prioritizing  
15 safety and soundness of the clearinghouse itself,  
16 any duty that individual may have to shareholders,  
17 as we know, from corporate law requirements, and  
18 then ultimately advancing the interests of their  
19 firm itself?

20           MR. HUTCHISON: First of all, we  
21 recognize exactly what you just said. There is a  
22 matter that needs to be discussed and why we ask

1 for comment about just that subject.

2           And I'll just say this, I think it is  
3 natural to expect that if you're a clearing member  
4 and you work for a firm, you have that firm's  
5 interests in your mind. And when you're on the  
6 risk committee, you need to have the risk  
7 committee's interests in your mind for the  
8 clearinghouse. And therein lies that natural  
9 conflict.

10           But I also think there's an element of  
11 practicality where if a clearinghouse is safe and  
12 sound, it's good for the clearinghouse, it's also  
13 very good for the clearing member. And I think  
14 there's a natural alignment that can occur.

15           So we asked the question because we  
16 recognize the benefit of that natural alignment,  
17 but also the conundrum of the conflict of interest  
18 questions, and we look forward to responses that we  
19 receive from people regarding their feelings about  
20 that.

21           CHAIRMAN BEHNAM: Thanks, Clark. I do  
22 want to thank you again. I want to thank Eileen,

1 Tad, and Joe as well for all the work. Not only do  
2 I think the rule text amendments are fantastic, and  
3 again, something that I'm very proud to see, you  
4 know, sort of come to fruition after many years of  
5 hard work.

6           But as you pointed out in your statement,  
7 we don't stop where the subcommittee found  
8 consensus. We ask a number of very targeted  
9 questions to further, I think, invite debate around  
10 these issues, because as I think we all know, as  
11 we've all experienced, especially in the past two  
12 years, you know, clearinghouses have performed  
13 quite well.

14           A lot of different factors that we could  
15 not have predicted, even under the most extreme  
16 circumstances and extreme risk scenarios. But as  
17 my colleague said, these reforms that are now  
18 nearly 12 years old have built a more resilient  
19 financial system, and we owe that to the CCPs. But  
20 our work is never done.

21           I think it's globally recognized that  
22 CCPs play a critical role within the financial

1 system, and I don't think that's going to change.  
2 I think, in fact, that's only going to increase.  
3 And that puts the onus on us as a Commission, as an  
4 agency, to continue to work hard, to continue to  
5 understand the issues that are associated with  
6 CCPs.

7           To continue to listen to all parties  
8 involved, and there are a lot of them, and they all  
9 have very different views, but that is in many  
10 respects what our responsibility is. I think we  
11 all take it very seriously, and I think in the end  
12 the outcome is going to be very positive for our  
13 domestic financial system, but the global financial  
14 system in representing what a wonderful agency this  
15 is, but more importantly what great work we do and  
16 what care we take to the responsibility we have  
17 within our mission.

18           So, thanks again to the team. I don't  
19 have any more questions, so I am going to pass it  
20 to my colleague, Commissioner Johnson.

21           COMMISSIONER JOHNSON: Thank you so much,  
22 Chairman Behnam. I, too, have an opening statement



1 and then a number of questions. But even before I  
2 begin to share from the statement, I want to just  
3 thank Clark and Eileen for the time that you've  
4 taken to carefully share with us, with me and my  
5 office as we prepared for today's meeting and also  
6 as we will continue in dialog after today and  
7 through the finalization of the rule.

8 I also want to acknowledge, as my fellow  
9 Commissioner Pham has done and I alluded to in my  
10 opening remarks, Chair Behnam in his leadership of  
11 the MRAC, as sponsor for the MRAC, a lot of the  
12 work that is before us today is a result of work of  
13 that advisory committee.

14 The proposed rulemaking addresses  
15 recommendations that the Commission received from  
16 its Market Risk Advisory Committee and based on a  
17 report prepared by MRAC'S Subcommittee on Central  
18 Counterparty Risk and Governance. Thanks so much  
19 to Chair Behnam for his leadership with respect to  
20 the development and guidance of the MRAC.

21 I would also acknowledge Commissioner  
22 Sharon Bowen, if I might, just for a moment. I was

1 reviewing opening statement remarks from a number  
2 of Commission meetings in preparation for this  
3 meeting and stumbled across the inaugural meeting  
4 of the MRAC's opening statement from Commissioner  
5 Bowen, and just would be thoughtful about her and  
6 her visionary leadership in the development of the  
7 MRAC during her tenure as well.

8 I also would be remiss if I didn't take a  
9 moment to just acknowledge the subcommittee's co-  
10 chairs, Alicia Crighton and Lee Betsill, and their  
11 leadership, as well as Alicia Lewis, who's here on  
12 the dais with us, Special Counsel to the Chair, for  
13 her exceptional stewardship as DFO of the MRAC.  
14 The subcommittee's report is the product of its  
15 membership's collective hard work.

16 The subcommittee's report reflects  
17 efforts on the part of a diverse group of voices to  
18 come together and identify in a single space,  
19 concisely, and effectively reforms that could be  
20 adopted to further risk management oversight for  
21 DCOs.

22 At this point, I'd like to just take a

1 moment and reflect a little bit about what exactly  
2 it is that we're focused on in today's notice of  
3 proposed rulemaking specifically, and to  
4 acknowledge that I am supportive of the proposal's  
5 thrust. DCO Core Principle O expressly directs  
6 each DCO to establish governance arrangements that,  
7 "permit the consideration of the view of owners and  
8 participants."

9           But there are certain aspects of the  
10 proposal that I think we could imagine might be  
11 enhanced, and I suspect they were largely part of  
12 conversations that both Clark and Chair Behnam have  
13 acknowledged may be on the horizon for future  
14 consideration.

15           The proposed regulation supplement  
16 governance requirements that are consistent with  
17 principles of financial markets infrastructure,  
18 PFMIs, published by the Committee on Payments and  
19 Market Infrastructures and the Technical Committee  
20 on International Organization of Securities  
21 Commissions, or IOSCO.

22           In 2013, the Commission revised Part 39

1 derivatives clearing organizations of its  
2 regulations to fully implement PFMI standards for  
3 systemically important DCOs. In 2020, the  
4 Commission extended PFMI compliant SIDCO governance  
5 to all DCOs as part of a broader revision of Part  
6 39. And this is where I like to focus much of my  
7 attention today.

8           In fact, the focus of the remarks that  
9 I'll share with you all are largely growing out of  
10 Core Principle O and Core Principle P, as well as  
11 Core Principle Q and their inter-relationship.  
12 DCOs may be structured in many different ways, and  
13 this is where my questions for the staff will grow  
14 out of or begin today. There is no statutory or  
15 regulatory proscription for a particular business  
16 structure.

17           DCOs may be incorporated, operate as  
18 limited liability companies or partnerships, and  
19 may be organized outside the United States. The  
20 structure under which a DCO is organized, and the  
21 committees or organizational infrastructure can  
22 profoundly impact the functioning of the risk

1 management committees and risk advisory working  
2 groups.

3           So in preparation for today's meeting, my  
4 staff did a little bit of homework, if you will,  
5 that I'll follow up on in just a moment. I think  
6 it's important that I say from the outset that it's  
7 imperative that we think carefully about tailoring  
8 risk management oversight in a manner that  
9 effectively addresses the complexities of business  
10 structures and relationships, in order to  
11 effectively ensure DCOs internalize the  
12 perspectives of clearing members and end users.

13           Public comments on these points will be  
14 tremendously helpful, and I would welcome, my door  
15 will always be open to the broadest range of  
16 constituents that we service and support, to  
17 comment on whether certain organizational  
18 structures might trigger enhanced governance  
19 requirements, or whether traditional targeted  
20 exemptive authority should be part of an expanding  
21 enhanced governance requirements for DCOs.

22           Second, I'll share that the proposal's

1 enhanced consultation requirements are triggered  
2 when DCOs make a decision that may have a material  
3 impact on the DCO's risk profile. I've shared with  
4 the staff, and we'll reserve for later discussion,  
5 hopefully following some useful comments received  
6 from the community, this question of what exactly  
7 we mean by a material impact and what we mean by  
8 the DCO's risk profile.

9           So some of the questions that I will  
10 raise will grow out of this as well. Notably, the  
11 proposal applies the new risk profile standard to  
12 be triggered when certain decisional consultation  
13 requirements have been met or fail to be met.

14           I think this is a tremendously important  
15 issue, and part of the reason is because when we  
16 think about what triggered the financial crisis,  
17 what were the catalysts that led to such tremendous  
18 economic and -- economic decline, we find risk  
19 management rests at the center of many of the  
20 failed risk management or governance requirements  
21 adopted by failed market participants.

22           Turning to the homework that I describe

1 in the questions that I have for the staff, I want  
2 to begin by noting that our research may be  
3 imperfect, so your data may be different and  
4 probably is better, but our back of the envelope  
5 estimation is that the Commission currently has 15  
6 registered DCOs, to the best of our ability to  
7 grasp.

8           We're thoughtful about the fact that 12  
9 already have risk management committees, and these  
10 risk management committees have governance  
11 charters. We also took an exceptional amount of  
12 time to carefully plow through publicly available  
13 information for DCOs regarding the appointment of  
14 chief risk officers.

15           My first question for the staff is if you  
16 could possibly help us understand exactly how the  
17 appointment of a risk management committee that is  
18 comprised of diverse participants, including  
19 clearing members, their clients, or at least  
20 representatives of their clients and end users,  
21 will be helpful in ensuring the governance of  
22 clearinghouses.

1                   MR. HUTCHISON: Thank you. Good morning.  
2 I think that, and I think we think that diversity  
3 is always a good thing. And clearinghouses having  
4 broad representation of their participants included  
5 in their both governance and in risk assessment  
6 protocols is a very good thing. And it is -- we  
7 think it is a fact that a market participant or a  
8 customer, a user of the markets, has a point of  
9 view.

10                   We think that clearing members who  
11 guarantee the performance of their customers have a  
12 point of view. And certainly a DCO who has to run  
13 a clearinghouse and manage all that has to be  
14 managed has a point of view. And having those  
15 points of view come together creates an environment  
16 that I think is more robust than just having a DCO  
17 look at things in the way that they look at them.

18                   And so I think to answer your question,  
19 it's this diversity and competency of people who  
20 will now be participating with one another and  
21 having discussions that are required, will lend to  
22 a better outcome than what we have today.



1                   And to your point about where we in 2008  
2 perhaps had some failures, I think this will go a  
3 long way to identifying matters that would  
4 otherwise be perhaps not looked at.

5                   COMMISSIONER JOHNSON: That's quite  
6 helpful. Thanks, Clark. I want to just understand  
7 though, and part of the reason we did the homework  
8 was to appreciate exactly what the channels of  
9 information flow would be with respect to, and this  
10 may be a question more reserved for the commentary  
11 that will follow, but we are thoughtful about your  
12 expectations or aspirations for how information  
13 flows from the risk management committee that is  
14 comprised of clearing members or representatives of  
15 their clients and users, as well as the DCO, will  
16 engage with the risk management committee existing  
17 for the DCOs, which are fairly diversified. So  
18 completely appreciate it.

19                   MR. HUTCHISON: I want to make sure I  
20 understand your question because I'm not sure I do,  
21 so excuse me for that. Is your question that there  
22 are existing risk management committees today that

1 function in the way that they function, and we are  
2 proposing that there be either new and additional  
3 risk management committees or reformulation of  
4 existing risk management committees that would  
5 conform to some of what we're asking for today. Is  
6 that your question --?

7 COMMISSIONER JOHNSON: That is the  
8 question, yep.

9 MR. HUTCHISON: Okay. So I think on the  
10 one hand, we want to leave that up to DCOs. DCOs  
11 are different and no one size fits all. And I  
12 think if we were too prescriptive, that might not  
13 be beneficial to the outcome that we're seeking.  
14 Secondly, I think that we're leaving it a little  
15 bit up to DCOs for another reason, which is we  
16 have, as you know, applications for new kinds of  
17 DCOs coming to us. And again, not one size fits  
18 all.

19 So I will admit there's a bit of an open  
20 question or perhaps even vagueness that's  
21 intentional so that DCOs can have this  
22 reformulation, so to speak, at their own

1 discretion. So I think that's an answer to your  
2 question.

3           COMMISSIONER JOHNSON: That answers my  
4 question. And I'll simply share that by way of  
5 response, our efforts to really understand the  
6 diversity of DCOs led us to conclude that some  
7 would be organized as corporations, and the Chair  
8 referenced earlier corporations law, and would have  
9 a board of directors and perhaps that board of  
10 directors would have a risk management committee.

11           The members of the board of directors  
12 would have fiduciary duties to the DCO that flow to  
13 the shareholders or owners of the DCO. Whereas in  
14 other context we can imagine, as you know, there is  
15 no one size fits all, the DCO may be organized as a  
16 limited partnership or a limited liability company.  
17 In each case, though, we're hopeful that there is a  
18 way to prescribe an appropriate obligation, if you  
19 will, to effectuate the promise of what we believe  
20 is outlined in the committee report.

21           So we're acknowledging the diversity of  
22 the different DCOs, how they might be different

1 business, or they might be organized as different  
2 business organizational forms but appreciating that  
3 there should be some single obligation or  
4 responsibility with respect to exactly how the RMC  
5 that might exist as part of the board would  
6 interface with, and would likely be comprised of  
7 board members, would interface with the RMCs that  
8 we're thoughtful about forming.

9           I guess this also leads to another sort  
10 of set of questions that was raised by something  
11 you said during the presentation, and that's this  
12 notion of potential fiduciary obligations. I think  
13 when you described it, you were talking about  
14 independent experts and the necessity of  
15 independent expertise, and the ability of risk  
16 management committee members to effectively present  
17 the issues that materially impact DCO risk, and to  
18 sustain or suspend, if you will, during their  
19 service at least, the affiliation that they may  
20 have with their employer.

21           This is an issue my office will be  
22 exceptionally curious to hear in the commentary

1 about as well, including how we might define that  
2 independence and what types of standards we might  
3 look to, to help us truly effectuate that promise.  
4 In terms of relational informational channels, I'm  
5 also deeply thoughtful about the risk working  
6 group.

7           And from the proposal we couldn't  
8 completely appreciate exactly what the relationship  
9 with the risk working group and the risk management  
10 committees might be. If you could describe that  
11 quickly, that would be helpful.

12           MR. HUTCHISON: Well, again, I think on  
13 purpose we left that interaction or that connection  
14 between the two groups a bit open for  
15 interpretation by each individual DCO, because as  
16 we've agreed before, not one size fits all.

17           But I think it's clear to us that a risk  
18 management committee can only have so many people,  
19 as we said in our proposal, given time constraints,  
20 interaction with a board, etcetera, that there  
21 can't be a huge crowd giving their opinions to a  
22 board.

1           But in order to solve that problem, we  
2 like the idea of a risk working group where a great  
3 many more people can get together on a regular  
4 basis, share views, debate, come with ideas or  
5 proposals or concerns, whatever they may be, and  
6 then when those conclusions, proposals, concerns  
7 are amalgamated, how that then react -- intersects  
8 with, I should say, the risk management committee,  
9 or indeed the board, I think needs to be worked  
10 out.

11           And I think that that's the need that we  
12 call for, for policies and procedures being put in  
13 place. So it's a bit open, I agree, but it's open  
14 on purpose, again, to accommodate the idea that not  
15 one size fits all.

16           COMMISSIONER JOHNSON: That's really  
17 helpful. Thanks, Clark. I think the pieces to the  
18 puzzle or the threads that it was difficult to sort  
19 of sew through the entire document, sort of relate  
20 in part to how frequently the risk working group  
21 would convene, what its agenda would be, whether it  
22 would be set out in writing, and whether there

1 would be policies, written policies and procedures  
2 governing the risk working group.

3           So there are, I think, lots of  
4 opportunity areas, I might say, to clarify exactly  
5 what that forum would be. I think it could be an  
6 amazingly important forum. The other piece of the  
7 puzzle, though, that I'd highlight is having it  
8 convene quarterly might not be ideal, in part  
9 because as we've noted from sustained periods of  
10 volatility in recent times, there can be  
11 exceptional crises that arise that really could  
12 necessitate a more frequent engagement of that risk  
13 working group.

14           So I think there was a little bit of an  
15 emphasis on quarterly meetings, so I thought there  
16 might be some kind of report up to the risk -- or  
17 risk management committee. I'll pause because I  
18 think you're going to say something.

19           MR. HUTCHISON: Well, no, look, I think  
20 part of the devilish beauty of the notice of  
21 proposed rulemaking is that as much as we propose,  
22 we also ask questions. And I couldn't agree more

1 with some of the issues or questions that you're  
2 proposing yourself.

3           And we look forward, actually, to the  
4 feedback of the people who will be taking this to  
5 heart, because, as we've said, not one size fits  
6 all and we have to be cognizant of how the  
7 prescription would fit the people whom we're  
8 regulating. So I look forward actually to  
9 exploring the questions that you're asking, because  
10 I think that needs to come back to us in the form  
11 of responses to these questions.

12           And then as we drafted the subsequent  
13 rulemaking, we can fit some of these particulars  
14 more prescriptively into the rule itself. And  
15 clearly we will be working with your office to do  
16 that. But I agree with the questions you're asking  
17 and the points that you raise.

18           COMMISSIONER JOHNSON: Thanks, Clark. I  
19 just sort of maybe then share a few bullet points  
20 rather than raise them individually.

21           So I'm thoughtful about the role of the  
22 Chief Risk Officer, whether that person is a member



1 of the risk management committee or the risk  
2 working group, and sort of deeply thoughtful that  
3 that person in some context where risk management  
4 oversight has been carefully thought out, might  
5 report directly to the board and be a really  
6 important channel of communication about risk --  
7 material risk concerns.

8 I'm also deeply thoughtful about the use  
9 of classes. I think that you identified  
10 classification as an approach to organize an  
11 orderly and continuing rotation of risk management  
12 committee board members. I think that's going to  
13 be a critical part of ensuring that you have that  
14 diversity of viewpoints, as well as probably a  
15 balanced membership plan for the risk management  
16 committee.

17 And then you also noted staggered -- use  
18 of staggered -- staggering the terms of classes of  
19 risk management committee members. I think those  
20 pieces are all excellent examples of best practices  
21 and good corporate governance that we have noted in  
22 many contexts, but particularly in the context of

1 risk management oversight imposed by prudential  
2 regulators and expressly in the Dodd-Frank Act for  
3 banking institutions.

4           So I applaud your thoughtfulness in  
5 aggregating those really critical obligations, that  
6 there be written policies and procedures, that  
7 written work product would flow, and the channels  
8 through which that information might flow. I have  
9 just one last really quick question. That's  
10 probably pushing on a point you've made several  
11 times.

12           So it was so wise of you to anticipate  
13 this point that I just want to highlight and  
14 underscore. To a certain extent, all of this seems  
15 really brilliant because we've learned the lessons  
16 of the last crisis.

17           And what we learned is that if you  
18 introduce effective risk management oversight, you  
19 can anticipate or at least spot sometimes the kinds  
20 of things that are deeply concerning with respect  
21 to the aggregation of risk in certain spaces or  
22 concentration of risk in certain spaces, or

1 correlation among risks.

2           As we imagine and experience the  
3 financial market ecosystem that we operate in,  
4 expanding to introduce market participants who  
5 might not be engaged in the use of intermediaries,  
6 I'm curious to know if you've already begun to  
7 think about, outline, and consider, or if you're  
8 welcoming comments about, how we can think through  
9 risk management oversight in the context of those  
10 entities, particularly as going back to my original  
11 point, from an organizational perspective and then  
12 from a jurisdictional choice of domicile  
13 perspective.

14           We might be dealing with entities that  
15 are not organized in the United States, they might  
16 not be organized as corporations, they may not  
17 engage intermediation. We can also imagine that  
18 ultimately in some sci-fi world, they are fully  
19 controlled by algorithms.

20           So I'm just deeply thoughtful about how  
21 you're planning for the future, as entities and  
22 financial products evolve, to really address the

1 risk management concerns envisioned here.

2 MR. HUTCHISON: I think we are thinking  
3 alike. I think you know that in front of us we  
4 have several proposals for non-intermediated  
5 clearinghouses, and how is that going to work?  
6 What's risk governance going to look like? Who's  
7 doing it? Maybe it's an algorithm. What's the  
8 protocol for having consultation with an algorithm?

9 I mean, I think these are, not to make  
10 light of it, but interesting questions that I will  
11 admit, I don't think we have exactly the answers  
12 for at this point. But I also think the devil is  
13 in the detail, which usually it is, of each  
14 individual proposal that comes to us with how they  
15 navigate, for example, disintermediation and what  
16 that means in their context, we have to consider in  
17 light of this proposal.

18 And as you know, we are principle based  
19 regulators, and what we're trying to do here is put  
20 together some principles that are flexible enough  
21 to live through what it is that we know now and  
22 what it is that might come in the future. And I

1 think the design here is to not be too prescriptive  
2 at the start.

3           Invite people who might be applying to us  
4 with these new types of clearinghouses to comment  
5 on how this might work for them or not work for  
6 them, and lend solutions through their commentary  
7 for which we can then think about that as it comes  
8 through and put forth a final rule.

9           But I couldn't agree with you more that  
10 it's an interesting question when you have market  
11 participants, be direct members of a clearinghouse,  
12 and how is that going to work on a risk committee?

13           COMMISSIONER JOHNSON: Thank you so much,  
14 Clark and Eileen, for the presentation. I am  
15 committed to partnering with you as we really  
16 puzzle through some of these more difficult  
17 questions because they will be critical to risk  
18 management oversight in the future. Chair Behnam,  
19 I yield the remainder of my time.

20           CHAIRMAN BEHNAME: Thank you. And seeing  
21 that Commissioner Johnson has concluded the  
22 remarks, I now recognize Commissioner Goldsmith

1 Romero for the purpose of making any comments and  
2 asking any questions that she may have.

3 COMMISSIONER GOLDSMITH ROMERO: Thank  
4 you, Chairman. Thank you, Clark and Eileen, for  
5 the thoughtful presentation and the answers to the  
6 questions. I'm not going to ask any questions  
7 today. I'll reserve for a follow up after I hear  
8 from my remaining fellow Commissioners and your  
9 answers.

10 But as you know, I asked a lot of  
11 questions that ended up in the release. And in one  
12 way or another, whether it was a question or some  
13 additional language, and I'm very grateful for  
14 that. And the Chairman today asked some really  
15 important questions that I also had in my mind, so  
16 I appreciate that, as well as Commissioner Johnson  
17 -- excuse me.

18 So instead, I'll give a statement and I  
19 do thank you for working so closely with me in my  
20 office. I support the Commission's efforts to  
21 strengthen the resilience of clearinghouses to  
22 future risk, including through this proposed rule.

1 Since the 2008 financial crisis, as I said earlier,  
2 I've spent my entire career in federal public  
3 service, helping our nation recover and build a  
4 stronger, safer, more resilient financial system.

5           And I've seen how clearinghouses play an  
6 important public interest role, one of critical  
7 market infrastructure that fosters financial  
8 stability, trust, and confidence in U.S. markets.  
9 The Financial Stability Oversight Council, FSOC,  
10 has recognized this public interest role,  
11 designating several clearinghouses as systemically  
12 important financial market utilities.

13           FSCO's designation highlights the  
14 important role that we at the Commission play in  
15 the oversight of clearinghouses. So thank you to  
16 the staff for taking this oversight role so  
17 seriously. Thank you for working closely with me  
18 to improve the proposal in ways that will  
19 facilitate effective oversight by the Commission  
20 and promote greater accountability, transparency,  
21 and predictability.

22           The Chairman highlighted today in his

1 remarks the importance of accountability and  
2 transparency in this area. And I agree with the  
3 Chairman's statements on those important public  
4 interests. Clearinghouses serve as a cornerstone  
5 to mitigating risk in U.S. markets.

6           The 2008 financial crisis revealed that  
7 over-the-counter trades left market participants  
8 vulnerable to the weaknesses of their  
9 counterparties and left regulators in the dark  
10 about hidden risk. In contrast, clearinghouses,  
11 who put themselves in the center of counterparties,  
12 take on counterparty risk and bring transparency to  
13 the markets and to regulators.

14           So one important post-crisis reform was  
15 to increase central clearing of trades in U.S.  
16 markets, putting clearinghouses in even more of a  
17 public interest role. However, this has resulted  
18 in a concentration of more risk in clearinghouses,  
19 as Commissioner Johnson discussed so well in her  
20 opening statement.

21           FSOC found that the failure or disruption  
22 of systemically important clearinghouses, "could



1 create or increase the risk of significant  
2 liquidity or credit problems spreading among  
3 financial institutions or markets, and thereby  
4 threaten the stability of the U.S. financial  
5 system."

6           The systemic nature of clearinghouses  
7 registered with the Commission further underscores  
8 the need for vigilant oversight by the Commission.  
9 Under the Commission's oversight, clearinghouses  
10 have shown resilience in navigating an ever-growing  
11 list of recent market stress events, as the  
12 Chairman noted.

13           They have helped U.S. markets maintain  
14 financial stability during the global pandemic,  
15 supply chain issues, and geopolitical events.  
16 However, uncertainty surrounding these events has  
17 driven home the need for the Commission to enhance  
18 its roles so that clearinghouses strengthen their  
19 resilience to future risk.

20           The public interest role of  
21 clearinghouses is best served when the  
22 clearinghouses work with their clearing members who

1 have much at stake, as Clark has mentioned, as they  
2 shoulder the burden of losses and defaults.  
3 Clearinghouses, members, and end users should work  
4 collaboratively to decide how to increase the  
5 resilience of their respective clearinghouse and  
6 how to best navigate risk during times of market  
7 stress.

8           Simply put, there is strength in numbers  
9 and diversity of perspective. We have seen how  
10 clearinghouses have benefited from risk management  
11 committees and other working groups that reflect a  
12 broad coalition of stakeholders. Their voices  
13 should be heard in a meaningful way. Today, the  
14 Commission proposes formalizing requirements for  
15 these committees, and I appreciate the discussion  
16 by the Chairman about conflicts of interest, which  
17 was a question and concern that I also have.

18           So thank you for asking that question in  
19 the proposal. We propose a requirement for the  
20 consideration of input from members of risk  
21 committees on matters that could strengthen or  
22 weaken the resilience of the clearing organization

1 to future risk.

2           The proposed rule seeks to balance the  
3 calls of those on the committees for increased  
4 transparency, predictability, and a voice in risk  
5 management, with the clearinghouse's calls for  
6 flexibility and consideration of their own internal  
7 opinions on risk.

8           And commenters will tell us whether we've  
9 gotten this balance right in a way that will  
10 strengthen the resilience of clearinghouses to  
11 future risk, while keeping it agile to respond to  
12 sudden market events. Additionally, we endeavor to  
13 formalize governance rules that promote  
14 accountability of clearinghouses and facilitate  
15 oversight by the CFTC.

16           As you said, Clark, this proposal would  
17 lead to a better outcome than we have today. Both  
18 accountability and oversight are served in the  
19 proposal through written policies and procedures  
20 and documentation that stakeholder voices have been  
21 solicited and heard. I hope that requirement could  
22 resolve the outstanding issues, as the Chairman has

1 noted.

2           The proposal is not prescriptive about  
3 the contents of the policies and procedures, but I  
4 care greatly about having a requirement for written  
5 policies and procedures, accompanied by  
6 documentation of the consideration of input. Those  
7 requirements will benefit the full range of  
8 clearinghouses from the systemically significant  
9 clearinghouses to the new or future clearinghouses,  
10 as you mentioned, Clark, which also includes those  
11 in the digital asset space, who may not have a  
12 history of risk management committees.

13           It is my hope that over time, a  
14 requirement for policies and procedures will serve  
15 as a launchpad for best practices to emerge. I  
16 look forward to public comment on the additional  
17 opportunities on how the Commission can effectively  
18 advance best practices, including the question of  
19 whether the Commission should require the  
20 publication of the policies and procedures, and  
21 whether the Commission should be more prescriptive  
22 about the content.

1           I also look forward to comments on  
2 whether meetings of risk advisory working groups  
3 should be documented to ensure that those members'  
4 voices are adequately heard and considered in a  
5 meaningful way. Today's proposal serves as an  
6 important first step to promote accountability,  
7 transparency, and predictability, and facilitate  
8 effective oversight for the governance of  
9 clearinghouses.

10           We also invite comment on certain future  
11 rulemaking for best practices, and I look forward  
12 to future consideration of the additional  
13 opportunities for the Commission to promote  
14 transparency, accountability, predictability, and  
15 effective oversight. Thank you.

16           CHAIRMAN BEHNAME: Thank you, Commissioner  
17 Goldsmith Romero. Seeing that she's done with her  
18 comments and questions, I'll now turn to  
19 Commissioner Mersinger for any comments and  
20 questions.

21           COMMISSIONER MERSINGER: Thank you, Chair  
22 Behnam. And I also, I don't have any questions. I

1 was lucky enough to have a preview of this earlier,  
2 and in my time here at the CFTC, and certainly  
3 something that I've continued to look at and  
4 consider over the last few months. And I will say  
5 one of the special characteristics here at the CFTC  
6 is the level of engagement and expertise of the  
7 advisory committees, which market participants and  
8 other interested parties come together to provide  
9 us with their perspectives and potential solutions  
10 for practical problems.

11 I've witnessed firsthand, as I served as  
12 a designated federal officer for the Agriculture  
13 Advisory Committee and also in working for former  
14 Commissioner Stump and her sponsorship at the GMAC,  
15 or the Global Markets Advisory Committee. And I've  
16 attended a number of advisory committee meetings  
17 over the last few years. Today's proposed  
18 derivatives clearing organization governance  
19 regulations we all know were born out of the Market  
20 Risk Advisory Committee's Central Counterparty Risk  
21 and Governance Subcommittee, which was adopted in  
22 February 2021.

1           The extensive and thorough work done by  
2 the subcommittee in preparing this report and the  
3 recommendations is certainly something that we're  
4 very grateful for here. I want to thank the  
5 members and the staff of the MRAC. But I also  
6 wanted to take a moment and thank the Chairman for  
7 his leadership as sponsor of the MRAC.

8           And, honestly, the accomplishments that  
9 have stemmed from the diligence and cooperation of  
10 the members of the MRAC under Chairman Behnam  
11 sponsorship are numerous, and I think they serve as  
12 an example to the new Commissioners, including  
13 myself, of how do we effectively engage with CFTC  
14 advisory committees to better our rulemaking  
15 agenda.

16           So thank you, Chairman, for your  
17 leadership. And I'm also certain MRAC is in good  
18 hands with Commissioner Johnson as the new sponsor.  
19 So the proposed rules we are considering today  
20 obviously reflect some general agreement among the  
21 subcommittee members and build upon the report's  
22 specific recommendations regarding the

1 establishment of the risk management committees and  
2 the risk advisory working groups.

3           The core principles in the Commodity  
4 Exchange Act that a DCO must have a government's  
5 arrangement that are transparent in order to both  
6 fulfill public interest requirements and to permit  
7 the consideration of use of owners and participants  
8 are an important part of the CEA.

9           The CFTC's regulations implementing this  
10 core principle set forth more detailed requirements  
11 regarding form and substance of DCO's governance  
12 arrangements, and the proposed rules we are  
13 considering today would enhance these regulations  
14 by requiring a DCO to establish one or more of the  
15 risk management committees or, and the RWGs, the  
16 risk management working groups.

17           So the rules would require a DCO to  
18 maintain written policies and procedures regarding  
19 the establishments of the RMC's, the RMC  
20 consultation process, and the formation and role of  
21 each RWG would afford the DCO the flexibility on  
22 the specific contents of those policies and



1 procedures.

2           And I think this is an important piece of  
3 this proposal, that there is flexibility in these  
4 procedures and that this will not be too  
5 prescriptive. And I think that's something we need  
6 to think about as we move forward, and certainly as  
7 we're reviewing comments and come back to this  
8 proposal. As Commissioner Johnson mentioned, there  
9 are 15 registered DCOs today.

10           My understanding is 12 of them already  
11 have risk management committees, six of them have  
12 the RWGs. And I think this codifies that practice  
13 and certainly will hopefully encourage other DCOs  
14 and new registrants to also adopt these practices  
15 that are within the statutory core principle of DCO  
16 governance.

17           I look forward to reviewing the comments  
18 on the proposal, and certainly I look forward to  
19 seeing what we get back on the many questions we're  
20 asking throughout this proposal. But again, I  
21 would encourage the Commission and maybe remind the  
22 Commission that we do want to include some

1 flexibility here and certainly don't want to be  
2 overly prescriptive in whatever final rule comes  
3 from this process.

4           So, just again, thank you to the members  
5 of the MRAC subcommittee. Thank you to the members  
6 of the MRAC, to Chairman Behnam, and certainly to  
7 the Division of Clearing and Risk for all your work  
8 on this proposal.

9           But before I leave this topic, I did want  
10 to mention one other advisory committee and some --  
11 and a comprehensive report that was prepared by the  
12 CFTC's Global Markets Advisory Committee  
13 Subcommittee on Margin Requirements for Non-Cleared  
14 swaps.

15           This report included recommendations to  
16 tailor the Commission's uncleared margin rules for  
17 swap dealers to account for very real, practical,  
18 and operational challenges arising when they  
19 applied to the different sets of financial end  
20 users such as pension plans, endowments, insurance  
21 providers, mortgage service provides.

22           This group is now coming under the scope

1 of the margin rules, Phase 6. And from the GMAC  
2 subcommittee report, the Commission had promptly  
3 and unanimously adopted four of the GMAC report's  
4 recommendation, and most recently, the Commission  
5 included two more of these proposals in its spring  
6 agency rule list.

7 I know the GMAC members worked  
8 extraordinarily hard to reach consensus on these  
9 recommendations, and I would have liked to have  
10 seen those proposed rulemaking on today's agenda.  
11 And with that, I'll yield back my time.

12 Chairman Behnam: Thanks, Commissioner  
13 Mersinger. Thanks for those comments and certainly  
14 look forward to the work of this new Commission and  
15 the advisory committees that you all sponsor now.  
16 So with that, turn over to Commissioner Pham for  
17 any comments or questions.

18 COMMISSIONER PHAM: Thank you, Chairman.  
19 I agree wholeheartedly with the comments of my  
20 fellow Commissioner Mersinger, so I won't repeat  
21 them again. And in the interest of brevity, will  
22 keep both my comments as well as questions and

1 responses to questions short.

2           And thank you so much to the division for  
3 all of your hard work on this. This is an  
4 important issue with many different viewpoints, and  
5 as Commissioner Mersinger described and under the  
6 leadership of Chairman Behnam and the new  
7 stewardship of Commissioner Johnson, you know, I'm  
8 a strong proponent of public engagement, including  
9 through our advisory committees, and I appreciate  
10 that the MRAC's work included both DCOs' clearing  
11 members and clients of clearing members in the  
12 discussion and the formulation of the  
13 recommendations.

14           So I'll just touch briefly upon that.  
15 And please feel free to keep the answers short.  
16 Could you please describe all of the  
17 recommendations from the MRAC, the subcommittee  
18 report, beyond just the one that we're considering  
19 today? Just sort of a high level recap of the of  
20 the subcommittee report.

21           MR. HUTCHISON: I think for the sake of  
22 diversity, I'm going to have some of the staff

1 that's worked so hard on this answer the question.  
2 So in Chicago, we have Ted Polley and Joe Opron.  
3 And I'll leave it to you, Tad or Joe, to answer  
4 Commissioner Pham's questions, please.

5 (Technical problems.)

6 MR. OPRON: Sorry about that. I mean,  
7 I'd say for the most part, the proposal tracks the  
8 subcommittee's recommendations. You know, there  
9 are some differences. You know, most  
10 significantly, we had an explicit requirement that  
11 a DCO maintain written policies and procedures to  
12 make certain the RMC consultation process is  
13 described in detail.

14 It includes requirements for the DCO to  
15 document the board's consideration of and response  
16 to RMC input. Similarly, we added a requirement  
17 that the DCO maintain written policies and  
18 procedures related to the formation and role of  
19 each risk advisory working group.

20 A couple of points of the proposal that  
21 Clark highlighted in his opening remarks. You  
22 know, the DCO. And also the clearing member end

1 users discussed at length a proposal to rethink how  
2 a clearing member and end user input is considered  
3 in the rulemaking process.

4           Ultimately, they didn't reach a consensus  
5 on that, and so that was left out and was not  
6 actually a recommendation in the report, but there  
7 was discussion surrounding it. Otherwise,  
8 throughout the proposal, the edits that we made to  
9 the text, were all generally aligned with the  
10 proposal by the subcommittee.

11           MR. HUTCHISON: Great. Thank you, Joe.

12           COMMISSIONER PHAM: Thank you for that.  
13 And I appreciate being able to hear directly from  
14 the staff that work on the proposals, because I  
15 think it's really important we recognize all of our  
16 staff, and I appreciate that.

17           Besides the recommendations on DCO  
18 governance, which are included in the proposal,  
19 were there any other recommendations from the MRAC  
20 report that were not included in the proposal?  
21 Could be on different topics than DCO governance.

22           MR. HUTCHISON: I think the answer to

1 that is no, short answer.

2 COMMISSIONER PHAM: Okay. Right. So I  
3 know that -- please go ahead.

4 MR. POLLEY: The way the report was laid  
5 out is that it began with the areas of agreement,  
6 and it laid out how, you know, areas where the kind  
7 of two sides reach consensus and I will quote  
8 something.

9 But then there were several additional  
10 pages of the report after that that kind of  
11 separately laid out what the clearing member and  
12 end users on one side, and the DCOs --

13 (Technical problems.)

14 MR. HUTCHISON: Ted, I'm sorry, but we're  
15 having some technical difficulties, so I think  
16 we'll have to postpone. Do you want to try again,  
17 Tad? We couldn't hear you.

18 MR. POLLEY: Can you hear me?

19 MR. HUTCHISON: We can now.

20 MR. POLLEY: Oh, did it go out?

21 MR. HUTCHISON: Yes.

22 MR. POLLEY: Okay. Well, to say -- I'm

1 sorry, I don't know what you heard and what you  
2 didn't hear, so I'll try to give a short version.  
3 But the report contains a lot of recommendations  
4 that were only advocated by either the CCP side or  
5 the clearing member, end user side to be clear.

6           So, those are topics that, you know, they  
7 did not reach agreement on how to approach a given  
8 topic, but, and these are the areas where we're  
9 generally asking questions to get additional input.  
10 So hope that made it through.

11           COMMISSIONER PHAM: Yes. Thanks so much.  
12 Well, so, again, I think there's a lot of important  
13 viewpoints and important viewpoints from the DCOs,  
14 as well as from clearing members and from clients  
15 of clearing members.

16           So I do welcome continued discussion on  
17 these points, including where there wasn't  
18 agreement. And I welcome commenters to  
19 additionally provide that information to the  
20 Commission as well on those other topics. Thank  
21 you so much. I yield the remainder of my time.

22           CHAIRMAN BEHNAM: Thanks, Commissioner



1 Pham. I want to thank all the Commissioners for  
2 their engagement. We did reserve some time for a  
3 second round of questions, so I'm going to go back  
4 in order of seniority and just ask if you have  
5 questions.

6 If you do, great. We're going to allow  
7 for three minutes for the second round. If you  
8 don't, then certainly we can just move on to the  
9 next individual. So I'll start with Commissioner  
10 Johnson.

11 COMMISSIONER JOHNSON: Thank you so much,  
12 Chair Behnam. I don't have an additional question,  
13 just a comment that dovetails Commissioner Pham's  
14 line of questions, and I simply want to highlight  
15 that alongside the MRAC report that we're focused  
16 on for DCO governance, there were other MRAC  
17 reports contemporaneously prepared, perhaps more  
18 contentiously organized or at least reflecting a  
19 broader diversity of strong views.

20 And I just want to point out, for  
21 purposes of thinking carefully about risk  
22 management oversight, that, in fact, one of my

1 concerns is that we are comprehensive in our  
2 thoughtfulness around the types of issues that can  
3 come to materially affect the risk profile of a DCO  
4 and the role that those unresolved and maybe more  
5 difficult questions might continue to play even as  
6 we fix this piece of the puzzle, as we address this  
7 specific and particular concern.

8 I know that it's something that you all  
9 and the DCR is thoughtful about, so I take that for  
10 granted. But I think it's important to say it out  
11 loud on the record that these factors that are not  
12 immediately captured in this proposal have  
13 tremendous influence on the extent to which DCOs  
14 will successfully manage and mitigate risk.

15 CHAIRMAN BEHNAM: Thanks, Commissioner  
16 Johnson. Commissioner Goldsmith Romero.

17 COMMISSIONER GOLDSMITH ROMERO: Thank  
18 you. I just want to follow up on the issue that  
19 and question that Commissioner Pham raise, and that  
20 Commissioner Johnson just talked about as well.

21 We have a full five of an independent  
22 Commission. And so I hope that a diversity of

1 views on these other issues will just help rather  
2 than deter this independent Commission with this  
3 fantastic staff of really trying to work through  
4 and develop long lasting, strong rules that will  
5 strengthen the resilience of clearinghouses to  
6 future risk.

7 I'm committed to working towards that and  
8 working with my fellow Commissioners to see if we  
9 can move those things forward. Thank you.

10 CHAIRMAN BEHNAM: Thank you, Commissioner  
11 Goldsmith Romero. Commissioner Mersinger, second  
12 round of questions.

13 COMMISSIONER MERSINGER: Just one quick  
14 follow up question with regard to these rules that  
15 we are looking at today or the proposal we're  
16 looking at today.

17 In your opinion, is it better to keep  
18 these rules and proposals flexible and provide the  
19 DCOs and their market risk committees and their  
20 working groups the flexibility to really determine  
21 how to best proceed? Or is there room for some  
22 additional specific requirements?

1                   So kind of the idea of, should we look at  
2 this as we do a lot of things, it's principle  
3 based, and really let those in the market, you  
4 know, kind of decide what that means or is this  
5 something where we should really start to be  
6 prescriptive and direct, the behavior of the DCOs  
7 and the market participants who are advising them  
8 on risk?

9                   MR. HUTCHISON: I think our view is a  
10 little bit of both. I think we put out a proposal  
11 today that asks questions that I think are  
12 important questions.

13                   And as you know and as you do, we take  
14 feedback very seriously as a group and we debate  
15 that feedback, and we debate it also in the context  
16 of practical implementation.

17                   If things are too hard to implement or  
18 too prescriptive, we get ourselves into a situation  
19 where people can't comply, or we cause a burden  
20 perhaps greater than the benefit we're trying to  
21 achieve.

22                   So I think we're very cognizant of not

1 being too prescriptive, but at the same time, not  
2 being prescriptive has its downfalls as well. And  
3 so I know that sounds like middle ground, but I  
4 think that's where we are.

5           We want to see what people have to say,  
6 and we want to be thoughtful about getting people  
7 to actually do some real work here because it's  
8 been in conflict for years.

9           And I think we want to settle that  
10 conflict and get some real results. But at the  
11 same time, as we've all noted, there are different  
12 models coming our way and we have to be open enough  
13 and flexible enough to accommodate those models  
14 within a prescription.

15           But at the end of the day, I have to say,  
16 I try to follow maxims and I think we would all  
17 agree, you know, an ounce of prevention is worth a  
18 pound of cure.

19           And I think what we're trying to do is  
20 come up with what the ounces of prevention look  
21 like, so we don't have to deal with a pound of cure  
22 later.

1                   COMMISSIONER MERSINGER: Thank you. And  
2 I would just add that in moving through this  
3 process, I do think this is the first step and  
4 there's probably more that we can do here.

5                   But with regards to this specific  
6 proposal, I think it's important that we remember  
7 that any further additions or edits or changes to  
8 the proposal should be carefully thought through,  
9 reflecting public comments, and not go too far  
10 fledged from what we are putting out there today.  
11 With that, I'll yield back my time.

12                   CHAIRMAN BEHNAM: Thanks, Commissioner  
13 Mersinger. And any second round questions from  
14 Commissioner Pham?

15                   COMMISSIONER PHAM: Thank you. I'll just  
16 make one more comment, and that is that the CFTC is  
17 not only internationally recognized as a leader,  
18 but also as the premier clearinghouse regulator.

19                   And so I really want to commend not only  
20 the staff for all of their work, but also in, you  
21 know, the Congress in putting together that  
22 regulatory framework in the Commodity Exchange Act,

1 and that our principles based regulation has stood  
2 the test of time.

3 And with our leadership in regulating  
4 clearinghouses, I think that it's important that we  
5 understand and have shown with the track record of  
6 what works. So, thank you so much.

7 CHAIRMAN BEHNAM: Thanks, Commissioner  
8 Pham. Having heard from each of the Commissioners,  
9 if there is no further discussion or debate, we'll  
10 proceed to a vote on the pending motion to approve  
11 an issue the notice of proposed rulemaking on  
12 governance requirements for derivatives clearing  
13 organizations as presented in the voting draft.

14 Are the Commissioners prepared to vote?  
15 Okay, it appears the Commissioners are ready to  
16 vote. Mr. Kirkpatrick, will you please call the  
17 roll?

18 MR. KIRKPATRICK: Thank you, Mr.  
19 Chairman. The motion now before the Commission is  
20 on the approval and issuance of the notice of  
21 proposed rulemaking on governance requirements for  
22 derivatives clearing organizations, as presented in

1 the voting draft circulated to the Commissioners.

2 Commissioner Pham.

3 COMMISSIONER PHAM: Yes.

4 MR. KIRKPATRICK: Commissioner Pham votes  
5 yes. Commissioner Mersinger.

6 COMMISSIONER MERSINGER: Yes.

7 MR. KIRKPATRICK: Commissioner Mersinger  
8 votes yes. Commissioner Goldsmith Romero.

9 COMMISSIONER GOLDSMITH ROMERO: Yes.

10 MR. KIRKPATRICK: Commissioner Goldsmith  
11 Romero votes yes. Commissioner Johnson.

12 COMMISSIONER JOHNSON: Aye.

13 MR. KIRKPATRICK: Commissioner Johnson  
14 votes aye. Chairman Behnam.

15 CHAIRMAN BEHNAM: Aye.

16 MR. KIRKPATRICK: Chairman Behnam votes  
17 aye. Mr. Chairman, on this matter, the ayes have  
18 5, the noes have 0.

19 CHAIRMAN BEHNAM: Thank you, Mr.  
20 Kirkpatrick. The ayes have it. The motion  
21 carries, and the notice of proposed rulemaking on  
22 governance requirements for directives clearing



1 organizations is approved to be issued by the  
2 Commission.

3           So with that, I'd like to say a final  
4 thanks to Clark, to Eileen, to Tad, and to Joe in  
5 Chicago. Thanks for joining us, despite some  
6 technical difficulties, but I think we did a great  
7 job. Thanks for all your work. Important issue.  
8 I look forward to the comments and moving forward  
9 on this proposal.

10           To continue with our agenda today, I'd  
11 like now to invite staff from the Market  
12 Participants Division to make a presentation on the  
13 notice of proposed order and request for comment on  
14 an application for a capital compatibility  
15 determination submitted by the Financial Services  
16 Agency of Japan.

17           Okay. Welcome to staff. I'm going to  
18 just identify who we have here with us today.  
19 First, Amanda Olear, Director of the Market  
20 Participants Division; Tom Smith, Deputy Director  
21 of the Financial Requirements Branch in MPD; Josh  
22 Beale, an Associate Director in the Financial

1 Requirements Branch at MPD; and Rob Schwartz, the  
2 Agency's General Counsel. So with that, Ms. Olear,  
3 please proceed.

4 MS. OLEAR: Good morning, Chairman Behnam  
5 and Commissioners. Just echoing the comments that  
6 were made by my predecessor at this seat, Clark  
7 Hutchison, it is my great honor and privilege to  
8 participate in today's historic meeting. It is my  
9 first open meeting as a Division Director, so thank  
10 you for giving me this opportunity.

11 I'm joined at the table today by my  
12 colleagues Tom Smith, Deputy Director, and Josh  
13 Beale, Associate Director of the Financial  
14 Requirements Branch of the Market Participants  
15 Division.

16 I would also like to introduce to  
17 additional financial requirements branch staff  
18 members who are with us today, Joo Hong and Justin  
19 McPhee. Joo and Justin are sitting in the front  
20 row behind me and are available to assist with  
21 responding to your questions if necessary.

22 Additionally, we are joined remotely by

1 Natalie Markman Radhakrishnan, who is available to  
2 respond to any questions that might benefit from  
3 the expertise of the Office of International  
4 Affairs.

5           Today, MPD is recommending that the  
6 Commission approved for public comment a proposed  
7 capital comparability determination and related  
8 order, preliminarily finding that Japanese non-bank  
9 swap dealers that are registered with the Financial  
10 Services Agency of Japan may, subject to proposed  
11 conditions set forth in the proposed order, satisfy  
12 certain CFTC capital and financial reporting  
13 requirements by complying with comparable Japanese  
14 laws and regulations.

15           As we will discuss during the  
16 presentation, the assessment of the comparability  
17 of the swap dealer capital and financial reporting  
18 requirements of Japan with those of the Commission  
19 involves substantial MPD staff resources.

20           In this regard, I wish to acknowledge the  
21 efforts of Rafael Martinez, Joo Hong, Justin  
22 McPhee, Jennifer Bauer, Larry Eckert, Carmen

1 Moncada Terry, and Liliya Bozhanova, in addition to  
2 those of Josh and Tom.

3 I would also like to acknowledge the  
4 contributions provided by my colleagues in the  
5 legal division, including Rob Schwartz, Carlene  
6 Kim, Paul Schlichting, Mark Phifer, and Jeanette  
7 Curtis, as well as the assistance provided by the  
8 Office of International Affairs, Suyash Paliwal,  
9 Mauricio Melara, Natalie Markman Radhakrishnan, and  
10 Lily Chu.

11 I would further like to thank the  
12 Commissioners and their staffs for your engagement  
13 with MPD on this matter, including your  
14 constructive comments and feedback on the proposed  
15 determination.

16 I will now turn the presentation over to  
17 Josh Beale, who will present to you the proposed  
18 capital comparability determination for Japan.

19 MR. BEALE: Thank you, Amanda. Chairman  
20 Behnam, Commissioners. MPD staff recommends that  
21 the Commission approved for public comment a  
22 proposed capital comparability determination and

1 related order.

2           The proposed determination and order  
3 would find that the CFTC registered swap dealers  
4 that are both domiciled in Japan and licensed as  
5 financial instruments business operators with the  
6 Financial Services Agency of Japan, the FSA, may  
7 comply with capital and financial reporting  
8 requirements under Japanese laws and regulations in  
9 lieu of the Commission's swap dealer capital and  
10 financial reporting requirements.

11           To put this determination into context,  
12 I'll provide some background. The Dodd-Frank Act  
13 directs the Commission and U.S. banking regulators  
14 to impose capital requirements on entities  
15 registered with the Commission as swap dealers, and  
16 further directs the Securities and Exchange  
17 Commission, the SEC, and U.S. banking regulators to  
18 impose capital requirements on entities registered  
19 with the SEC as security-based swap dealers.

20           In summary, the Commission and SEC have  
21 jurisdiction to impose capital requirements over  
22 swap dealers and security-based swap dealers that

1 are not subject to regulation by a U.S. banking  
2 regulator, which we refer to as non-bank swap  
3 dealers or non-bank security-based swap dealers,  
4 respectively.

5           While U.S. banking regulators have  
6 authority to impose capital requirements over  
7 entities that are subject to their regulation,  
8 which we refer to as bank swap dealers and bank  
9 security-based swap dealers.

10           Pursuant to the Dodd-Frank Act, the  
11 Commission, SEC, and U.S. banking regulators were  
12 further directed to consult with respect to the  
13 development of minimum capital requirements for  
14 swap dealers and security-based swap dealers, and  
15 to the maximum extent practicable, establish and  
16 maintain comparable minimum requirements.

17           The Dodd-Frank Act further added Section  
18 4s(f) to the Commodity Exchange Act, which  
19 authorizes the Commission to impose financial  
20 condition reporting requirements on all registered  
21 swap dealers, including swap dealers subject to the  
22 capital requirements of a U.S. banking regulator or

1 bank swap dealer.

2           After extensive consultation with the SEC  
3 and U.S. banking regulators, the Commission adopted  
4 capital and financial reporting rules for swap  
5 dealers. The final rules were published in the  
6 Federal Register in September of 2020 with an  
7 effective date of October 6, 2021. Regulation  
8 23.101 of the final capital rules permits a non-  
9 bank swap dealer to elect one of three capital  
10 regimes.

11           The first, the net liquid asset approach,  
12 which provides that a swap dealer shall compute its  
13 capital as if the firm were an SEC registered  
14 security-based swap dealer. A second, the bank  
15 based approach, which provides that a swap dealer  
16 shall compute its capital as if the firm were a  
17 bank holding company subject to the capital rules  
18 of the Federal Reserve Board.

19           And third, the tangible net worth  
20 approach, which requires a swap dealer to have a  
21 defined amount of tangible net worth. Tangible net  
22 worth is only available to swap dealers that are

1 themselves or whose parent is primarily engaged in  
2 commercial activities.

3           The Commission adopted a rule providing  
4 flexibility for swap dealers to elect a capital  
5 approach in recognition of the broad spectrum of  
6 entities registered as swap dealers with the  
7 Commission.

8           Specifically, the Commission determined  
9 that mandating a single capital approach would not  
10 be appropriate given the diverse range of corporate  
11 entities registered as swap dealers, which include  
12 agricultural firms, energy companies, international  
13 financial institutions, and relatively small  
14 financial firms.

15           The flexibility provided by the  
16 Commission's rule also is consistent with the Dodd-  
17 Frank Act's direction that the Commission, the SEC,  
18 and U.S. banking regulators should, to the maximum  
19 extent practicable, establish and maintain minimum  
20 capital requirements.

21           In this connection, the net liquid asset  
22 approach allows entities that are duly registered



1 as security-based swap dealers with the SEC and  
2 swap dealers with the CFTC to use a single uniform  
3 approach to computing their regulatory capital,  
4 which would simplify their regulatory obligations  
5 to both the CFTC and SEC.

6           The net liquid asset approach requires a  
7 swap dealer to hold a sufficient level of liquid  
8 assets to meet all of its obligations to customers,  
9 counterparties, and creditors.

10           In addition, the bank-based approach,  
11 which is important for this presentation, is based  
12 on the Federal Reserve Board's capital rules for  
13 establishing safety and soundness of banking  
14 entities and is generally consistent with the  
15 international bank capital standards adopted by the  
16 Basel Committee on Banking Supervision.

17           A further benefit of adopting a bank-  
18 based approach is that many of the domestic and  
19 foreign non-bank swap dealers are non-bank  
20 subsidiaries of bank holding companies and compute  
21 regulatory capital in accordance with Basel-based  
22 bank capital requirements.

1           In addition, the final rules adopted by  
2 the Commission included several important financial  
3 reporting rules, which included various monthly and  
4 annual financial reports to be furnished by swap  
5 dealers to the Commission.

6           The final rules also included specific  
7 recordkeeping and typical notification requirements  
8 regarding the firm's capital and financial position  
9 that the Commission similarly collects from other  
10 registered intermediaries.

11           In adopting the Commission's final rules,  
12 the Commission also recognized that a substantial  
13 number of non-bank swap dealers were domiciled in  
14 foreign jurisdictions and already subject of home  
15 country capital and financial reporting  
16 requirements.

17           To address potential dual regulation, the  
18 Commission adopted Regulation 23.106, which  
19 provides a system of substituted compliance. That  
20 regulation provides a mechanism whereby non-U.S.,  
21 non-bank swap dealers may comply with home country  
22 capital and financial reporting requirements in

1 lieu of the Commission's requirements, provided  
2 that the Commission finds that the foreign rules  
3 are comparable to the Commission's rules and are  
4 intended to ensure the safety and soundness of the  
5 dealer.

6           Regulation 23.106 provides that either a  
7 non-U.S. swap dealer, a foreign regulatory  
8 authority with jurisdiction over a non-U.S. swap  
9 dealer, or a trade association representing one or  
10 more of non-U.S. swap dealers may submit an  
11 application to the Commission requesting a capital  
12 comparability determination and order that would  
13 allow the non-U.S. swap dealers to comply with home  
14 country capital and financial reporting  
15 requirements in lieu of all or some of the  
16 Commission's respective requirements.

17           Regulation 23.106 further provides that  
18 an application for a capital comparability  
19 determination must include at least three things.  
20 The first, a description of the objectives of the  
21 relevant foreign jurisdiction's capital adequacy  
22 and financial reporting requirements.

1           Second, a description of how that  
2 relevant foreign jurisdiction's requirements  
3 address the elements of the Commission's respective  
4 requirements, including whether the foreign  
5 jurisdiction's capital rules are consistent with  
6 the international standards such as Basel Bank  
7 capital standards.

8           And finally, third, a description of the  
9 ability of the relevant foreign regulatory  
10 authority or authorities to supervise and enforce  
11 that jurisdiction's requirements.

12           Regulation 23.106 also provides that the  
13 Commission will issue a capital compatibility  
14 determination to the extent that it finds that some  
15 or all of the relevant foreign jurisdiction's  
16 capital adequacy and financial reporting  
17 requirements for non-U.S. swap dealers are  
18 comparable to the Commission's corresponding  
19 requirements.

20           In determining whether a foreign  
21 jurisdiction's capital requirements are comparable,  
22 the Commission may consider all relevant factors,

1 including the scope and objectives of the foreign  
2 jurisdiction's capital adequacy and financial  
3 reporting requirements.

4           Whether the relevant foreign  
5 jurisdiction's capital adequacy and financial  
6 reporting requirements achieve comparable outcomes  
7 to the Commission's corresponding requirements for  
8 swap dealers and major swap participants.

9           The ability of the relevant regulatory  
10 authority or authorities to supervise and enforce  
11 compliance with the foreign jurisdiction's capital  
12 adequacy and financial reporting requirements. And  
13 any other factors or circumstances that the  
14 Commission deems relevant.

15           Regulation 23.106 also provides that,  
16 notwithstanding the Commission issuing a  
17 determination, foreign swap dealers remain subject  
18 to the Commission examination and enforcement  
19 authority.

20           With respect to Japan, the FSA filed an  
21 application on behalf of three non-bank swap  
22 dealers that are registered with the FSA as Type I

1 financial instrument business operators.

2           The application addresses the  
3 comparability of each element of the Commission's  
4 bank based approach rules and financial reporting  
5 rules to Japanese requirements, with citations to  
6 relevant Japanese laws and regulations.

7           The FSA application requested a finding  
8 of comparability, specifically with respect to the  
9 Commission's bank-based approach.

10           With respect to the MPD's process of  
11 reviewing the application, staff initially  
12 requested the FSA to complete a chart mapping the  
13 Commission's bank based capital requirements and  
14 financial reporting requirements to the Japanese  
15 laws and regulations.

16           MPD staff also requested the FSA to  
17 provide English language translations of the  
18 relevant Japanese laws and regulations cited in the  
19 application.

20           MPD staff then reviewed the Japanese laws  
21 and regulations and mapped them to the FSA  
22 application. MPD and OIA staff also held several

1 calls with FSA staff to discuss the application,  
2 and MPD requested written responses to various  
3 questions.

4           Based upon MPD's analysis, which I'll  
5 speak to briefly in a minute, staff prepared a  
6 draft capital comparability determination and  
7 order, preliminary finding, the Japanese capital  
8 and financial reporting rules comparable to the  
9 CFTC's capital and financial reporting rules  
10 subject to certain conditions.

11           The draft determination and order were  
12 provided to the FSA for the purpose of reviewing  
13 the factual accuracy of MPD's description of  
14 Japanese regulatory requirements and citations to  
15 Japanese laws and regulations.

16           In addition, staff consulted with the  
17 U.S. banking regulators, including the Fed, the  
18 FDIC and OCC, as well as with the SEC.

19           With respect to MPD's analysis, staff  
20 performed a holistic assessment of whether  
21 Japanese, Basel based capital and financial  
22 reporting requirements are comparable to the

1 Commission's capital and financial reporting  
2 requirements.

3           That assessment is reflected in the  
4 voting draft before you today, and to briefly  
5 summarize, preliminarily finds the following.  
6 First, the fundamental capital structure and  
7 requirements of Japan and the Commission's bank-  
8 based capital approach are comparable, and both are  
9 rooted in the Basel bank capital requirements.

10           Specifically, both the Japanese and  
11 Commission's capital requirements are structured to  
12 require a swap dealer to maintain an appropriate  
13 ratio of qualifying capital to its risk weighted  
14 assets.

15           Second, both the Japanese and CFTC  
16 capital rules limit qualifying capital to capital  
17 that generally represents permanent equity of the  
18 firm and to subordinated debt where the debt  
19 holders subordinate their claims to repayment to  
20 the claims of all other creditors.

21           And finally, both Japanese and CFTC's  
22 frameworks provide the respective relevant



1 regulatory authorities with the appropriate  
2 information to adequately supervise and enforce the  
3 respective capital and financial reporting  
4 requirements.

5           While the proposed determination contains  
6 a preliminary finding that the two regimes are  
7 comparable, the proposed determination also  
8 includes certain important conditions.

9           In this regard, the proposed  
10 determination includes several conditions with  
11 respect to reporting, including requirements for  
12 Japanese non-bank swap dealers to provide the  
13 Commission and NFA monthly and annual financial  
14 reports, regulatory notices of decreases in  
15 capital, and notice of a violation of home country  
16 capital requirements.

17           The conditions requiring certain  
18 financial reporting are necessary to allow the  
19 Commission and NFA to monitor the Japanese non-bank  
20 swap dealers' ongoing compliance with home country  
21 requirements.

22           The proposed conditions are intended to

1 strike an appropriate balance between accepting  
2 home country financial reporting, while also  
3 ensuring that the information received is adequate  
4 and timely for CFTC and NFA staff to properly  
5 monitor the capital condition of non-bank swap  
6 dealers.

7           The proposed preliminary determination  
8 also requests comment on several specific questions  
9 with respect to the timing of the filing of  
10 regulatory notices and financial reporting by  
11 Japanese non-bank swap dealers.

12           And on the question of whether the  
13 Japanese capital rules adequately address  
14 operational and other risks without a provision  
15 requiring Japanese swap dealer to maintain a level  
16 of capital equal to or greater than 8 percent of  
17 the firm's uncleared swap margin.

18           Staff recommends that the Commission  
19 approve the proposed determination and order for  
20 public comment with a 60-day comment period. Thank  
21 you, and we are happy to take your questions.

22           CHAIRMAN BEHNAM: Thank you, Josh. And

1 to Amanda's point, I do want to recognize both Joo  
2 and Justin, who are sitting behind the head table  
3 and all the work.

4 Amanda, you named a number of divisions  
5 and a number of individuals, and I think that's  
6 just a testament to both the complexity of our  
7 markets, who we engage with, both here  
8 domestically. Josh mentioned conversations that  
9 have happened with domestic regulators, but also  
10 international regulators, obviously with the  
11 Japanese FSA.

12 But this is a terribly complex issue that  
13 requires a lot of hands and expertise, and I do  
14 want to recognize all the staff here at the CFTC,  
15 and of course, support that we've gotten from our  
16 colleagues here within the U.S. Government  
17 regulatory structure, but also folks overseas.

18 So, Amanda, thanks for recognizing those  
19 individuals. I think it's extremely important. So  
20 with that, the Commission will consider and vote  
21 upon each of the proposed comparability  
22 determinations and requests for comment

1 individually.

2           To formally open the Commission's  
3 discussion and consideration of the first of those  
4 matters, I'll now entertain a motion for the  
5 approval and issuance of notice of proposal order  
6 and request for comment on an application for  
7 capital comparability determinations submitted by  
8 the Financial Services Agency of Japan as presented  
9 in the voting draft circulated to the Commission.

10           COMMISSIONER GOLDSMITH ROMERO: So moved.

11           COMMISSIONER JOHNSON: Second it.

12           CHAIRMAN BEHNAM: Thank you. So with  
13 that, the floor is now open for the Commission's  
14 deliberations on this matter. And as we did before  
15 with the DCO governance role, I will take a moment  
16 to make a short statement and then maybe ask a few  
17 questions of staff, and then I will turn it to  
18 Commissioner Johnson and our colleagues to do the  
19 same.

20           So, of course, turning to another  
21 important matter here this morning, as CFTC  
22 provisionally registered swap dealers operate and

1 manage risk globally, the Commission's supervisory  
2 framework must acknowledge the realities of multi-  
3 jurisdictional operations.

4 I support the Commission's proposed order  
5 and request for comment on its preliminary  
6 determination that non-bank swap dealers organized  
7 and domiciled in Japan are subject to and comply  
8 with capital and financial reporting requirements  
9 in Japan, that are comparable to certain capital  
10 and financial reporting requirements under the  
11 Commodity Exchange Act and the Commission's  
12 regulations, subject to certain conditions.

13 Today's preliminary capital comparability  
14 determination is the first such order proposed by  
15 the Commission since adopting its regulatory  
16 substituted compliance framework for non-U.S.  
17 domiciled, non-bank swap dealers in July of 2020.

18 The Commission is proposing this order in  
19 response to an application submitted by the  
20 Financial Services Agency of Japan, which has  
21 direct supervisory authority over the three  
22 Japanese non-bank swap dealers that are

1 provisionally registered with the Commission.

2           The Commission's principles based  
3 approach to the proposed determination focuses on  
4 whether the FSA's capital and financial reporting  
5 requirements achieve comparable outcomes to the  
6 corresponding CFTC requirements.

7           Specifically, the Commission has also  
8 considered the scope and objectives of FSA's  
9 capital adequacy and financial reporting  
10 requirements, the ability of FSA to supervise and  
11 enforce compliance with its capital and financial  
12 reporting requirements, and other facts or  
13 circumstances the Commission has deemed relevant  
14 for this particular application.

15           Throughout its analysis, the Commission  
16 recognized that jurisdictions may adopt unique  
17 approaches to achieving comparable outcomes, and  
18 the Commission has focused on how the FSA's capital  
19 and financial reporting requirements are comparable  
20 to its own in purpose and effect, rather than  
21 whether each are comparable in every particular  
22 aspect or contain identical elements.

1           In this regard, the approach was not a  
2 line-by-line assessment or comparison of FSA's  
3 regulatory requirements with the Commission's own  
4 requirements. Consistent with the Commission's  
5 authority to issue a capital comparability  
6 determination with terms and conditions it deems  
7 appropriate, today's proposed order contains 22  
8 conditions.

9           These conditions aim to ensure that the  
10 proposed order, if it's finalized, would only apply  
11 to Japanese non-bank swap dealers that are eligible  
12 for substituted compliance, and that these Japanese  
13 non-bank swap dealers comply with FSA's capital and  
14 financial reporting requirements, as well as  
15 certain additional capital, margin, position, and  
16 financial reporting, recordkeeping, and regulatory  
17 notice requirements.

18           If the Commission, upon consideration of  
19 the comments received, determines to issue a  
20 favorable comparability determination, an eligible  
21 Japanese non-bank swap dealer would be required to  
22 file a notice of its intent to comply with FSA's

1 capital adequacy and financial reporting rules in  
2 lieu of the Commission's requirements.

3           The Commission, or the Market  
4 Participants Division through delegated authority,  
5 would then be obligated to confirm to the Japanese  
6 non-bank swap dealer that it may comply with the  
7 foreign jurisdiction's rules, as well as any  
8 conditions that would be adopted as a part of the  
9 final determination.

10           And that by doing so it would be deemed  
11 to be in compliance with the CFTC's corresponding  
12 capital adequacy and financial reporting  
13 requirements. I believe it's important to note  
14 that today's proposed capital comparability  
15 determination, if it's finalized, would not  
16 compromise the Commission's capital and financial  
17 reporting requirements.

18           Instead, it recognizes the global nature  
19 of the swaps market, with duly registered swap  
20 dealers that operate in multiple jurisdictions that  
21 mandate prudent capital and financial reporting  
22 requirements.



1           A capital and financial reporting  
2 comparability determination order of this kind is  
3 not a compromise or deference to a foreign  
4 regulatory authority.

5           The Commission would retain its  
6 enforcement authority and examinations authority,  
7 as well as obtain all financial and event specific  
8 reporting to maintain direct oversight over non-  
9 bank swap dealers located in Japan.

10           While the CFTC and the FSA have a  
11 preexisting memorandum of understanding in place, I  
12 also believe it's important to note that an MOU or  
13 a similar agreement is not necessary for the  
14 Commission and the National Futures Association to  
15 monitor these firms' compliance with the conditions  
16 of a capital comparability determination.

17           I look forward to the public submission  
18 of comments and feedback on this proposed  
19 determination and order. And looking beyond the  
20 proposed Japan capital compatibility determination  
21 on the Commission's agenda today, the Commission  
22 will consider the proposed capital compatibility

1 determination for non-bank swap dealers domiciled  
2 in Mexico, which we initially noticed last week, at  
3 a future date to allow for additional dialog  
4 between CFTC staff and our international  
5 counterparts.

6 Separately, to address additional  
7 similarly situated non-bank swap dealers that are  
8 not organized or domiciled in Japan, the Market  
9 Participants Division is actively considering  
10 whether to renew its no action position in no  
11 action letter 21-20, which currently expires on  
12 October 6, 2022.

13 MPD hopes to provide certainty to  
14 provisionally registered non-bank swap dealers  
15 located in the four jurisdictions with a capital  
16 compatibility determination that is under active  
17 consideration by the Commission as soon as  
18 practicable.

19 Again, thank you to the staff for the  
20 excellent presentation, all the work that went into  
21 this. Again, understanding the complexity and the  
22 intersection of so many different divisions and

1 agencies.

2           It's certainly no easy task. If you  
3 don't mind a few questions. And I think, Josh, you  
4 pointed out a lot of very important things in a  
5 very structured way about what we do and how we get  
6 to where we are today in terms of our relationship  
7 with foreign regulators and this idea of an  
8 outcomes-based approach, and not, as I pointed out  
9 in my statement, necessarily focusing on the  
10 particular specifics of a rule requirement, less  
11 prescriptive and more principles-based.

12           I think it would be helpful if you could  
13 explain in your experience with conversations and  
14 understanding different laws and rules and  
15 regulations, why is that the best approach? Why is  
16 that really in many respects the only appropriate  
17 approach to affect what we're trying to accomplish  
18 as an agency vis-à-vis our foreign counterparts,  
19 but also, if we think about our markets as global  
20 markets? What would it fundamentally be if we were  
21 more prescriptive in saying, you know, the side-by-  
22 side of check, check, check, as opposed to what we

1 do to accomplish what, you know, ultimately is our  
2 goal of an outcomes-based approach and  
3 comparability between us and our partners overseas?

4 MR. BEALE: Thank you, Chairman. That's  
5 a very important question. I think I would answer  
6 it in a couple of different ways and then turn it  
7 to some of my colleagues if they have any of their  
8 thoughts.

9 First, it's important to note that, you  
10 know, in the United States, the CFTC has a very  
11 targeted mission with respect to adopting capital  
12 requirements over these swap dealers. In other  
13 jurisdictions, there is important capital  
14 requirements built, but there aren't things  
15 necessarily, as swap dealers recognized in other  
16 jurisdictions.

17 And the same entities that we're talking  
18 about here wear many different hats in foreign  
19 jurisdictions and therefore the regulatory  
20 environment by their home country is very  
21 different.

22 And the capital requirements, which are

1 entity specific, go towards all types of activities  
2 that they might be engaged in from a regulatory  
3 capacity.

4           And it's important to understand that,  
5 because when you talk about comparing line by line  
6 and getting into capital, capital can get very  
7 weedy and very specific to different types of  
8 activities, and how the firms account for it, and  
9 how that is reflected in the capital requirements.

10           And when other jurisdictions approach  
11 their mandate in slightly different ways, you end  
12 up with -- you can get lost in the details of how  
13 they do that. And it's very important that this  
14 approach, specifically with respect to capital,  
15 remain at that level for that reason.

16           And I'll turn to Tom if he wants to offer  
17 anything else.

18           MR. SMITH: Thank you, Josh. Mr.  
19 Chairman, it's a good question. And I think from  
20 the starting perspective, we look at the  
21 international swap dealers that we're dealing with.  
22 Most of them are in a Basel-based regime.

1           That's what we -- what we've seen so far  
2 is that sort of standard of what their capital is.  
3 Now, Basel is a framework, and that framework has  
4 to be implemented by national authorities, and they  
5 make adjustments to Basel to fit their own specific  
6 purposes and needs.

7           We, in the CFTC, are looking at the Fed's  
8 Basel-based rules for our bank-based approach, but  
9 even the Commission in going final made certain  
10 adjustments to that Basel-based approach.

11           So lining them up sort of side-by-side,  
12 it'd be very difficult to have complete uniformity.  
13 They're consistent with respect to the principle,  
14 the objective, and what they're accomplishing, but  
15 they have slight differences to reflect national  
16 interest, experiences, etcetera.

17           That's why I think it doesn't work to  
18 have just a pure line-by-line assessment.

19           CHAIRMAN BEHNAME: Thanks, Tom. And to  
20 Josh as well. I think that is just so important  
21 for the public to hear because I think it's easy to  
22 get lost in a narrative that, you know, we're just

1 looking at things from too high of a level.

2           But in fact, in some respects we are  
3 getting in the weeds, but in some respects it  
4 really doesn't make sense and it would be  
5 counterintuitive to what we're trying to  
6 accomplish.

7           And this is not even suggesting cultural  
8 differences, language differences, and many other  
9 challenges that you all face in terms of debates  
10 and discussions with our counterparts overseas.  
11 And I do want to recognize the accomplishment that  
12 this team largely achieved in the recent past with  
13 the capital rule.

14           This is really an offshoot of that  
15 success, which took many years, but I think in the  
16 end landed in a very good spot. So really a thank  
17 you to the team for all the work and the success  
18 that's gotten us to here and the first of many  
19 steps, I think, in terms of comparability  
20 determinations.

21           One last question, and Josh, you  
22 mentioned this in your statement as well about the

1 conditions that we require above and beyond what  
2 these non-bank swap dealers are required to comply  
3 with in their home country jurisdiction.

4           You mentioned, you know, monthly or  
5 annual notices. The idea of ongoing monitoring of  
6 the entities so that we know they're in compliance  
7 with what we initially agreed to and what we're  
8 considering here today as a proposal.

9           Again, another issue I think that's  
10 extremely important for the public to hear and for  
11 us to sort of more unpack in a more simple way.

12           But just in many respects, repeat what  
13 you said, I think, but perhaps in a different way,  
14 why we're -- why we require these additional  
15 conditions, what purpose they serve, and really, it  
16 supports the longevity of the relationship and the  
17 agreement we make today, and hopefully to, you  
18 know, in the future when we finalize this rule.

19           Because ultimately regulatory  
20 environments change, markets evolve, markets adapt,  
21 we all know that here. And we collectively have to  
22 make sure that the agreements that we sort of



1 solidify in time adapt and evolve with those  
2 changes in market structure.

3           So, maybe just some comments on how you  
4 landed on those certain conditions, how they've  
5 worked in the past, and really ultimately, to the  
6 extent there's anything else you'd want to share,  
7 what the goal is in requiring those conditions.

8           MR. BEALE: Right. So the financial  
9 reporting -- many of the conditions, as I noted in  
10 the introductory remarks, go towards financial  
11 reporting.

12           And that is particularly one of the more  
13 challenging areas to really reconcile and get  
14 right. It is the activity in which the dealers  
15 engage with the Commission and the NFA on a monthly  
16 basis and obtaining the important information that  
17 we need for oversight purposes to make sure that  
18 those non-bank swap dealers remain in capital  
19 compliance even with their home country.

20           We obtain those reports from the FSA that  
21 they are receiving, and we match those up to  
22 similar requirements that we have and reports that

1 have been adopted as an offshoot of the swap dealer  
2 capital rule. And the conditions reflect the  
3 important components that we think are necessary to  
4 achieve that ongoing surveillance.

5 And there is a bit -- several questions,  
6 which I will note in the release, that ask about  
7 striking that balance. And we hope that this will  
8 continue to be an important dialog going forward.

9 But those -- the reconciliation, if you  
10 will, that we have performed, finds itself in those  
11 conditions and we think that those are the ones  
12 that are absolutely necessary for us to compare  
13 those swap dealers positions, particularly with  
14 existing reports that we're receiving from domestic  
15 swap dealers, and continue that surveillance and  
16 continue that understanding of how the effect of  
17 the capital rule has on all of the registered swap  
18 dealers.

19 CHAIRMAN BEHNAM: Thanks, Josh. Just an  
20 extremely important point and I think, again, a  
21 testament to some of the very unique expertise we  
22 have here at the agency and unique markets that we

1 have, and how we have to deal with the  
2 international component and many differences in  
3 terms of making sure markets run well, are  
4 resilient, and are fighting financial stability  
5 issues, but also are operating in an efficient way.

6           So, again, thanks to the entire team at  
7 the table behind and all those who contributed to  
8 this proposal. I will now ask Commissioner Johnson  
9 for any statements or questions.

10           COMMISSIONER JOHNSON: Thanks so much,  
11 Chair Behnam. Thank you so much for this  
12 presentation. I just want to layer in one small  
13 piece to Amanda's thanks.

14           Actually, Amanda, I just note your  
15 exemplary thoughtfulness about each and every  
16 individual who contributed to this particular  
17 matter is really fantastic. So thank you for that  
18 thoughtfulness.

19           I'm just going to underscore and  
20 acknowledge Rafael Martinez, because he happily  
21 called my office while away on vacation in Hawaii  
22 with his family to discuss these matters in great

1 detail at an hour in the morning in Hawaii that I  
2 can only imagine was fairly awful.

3           So quite the testament to the commitment  
4 that this division and all staff for the CFTC have  
5 to executing their duties to the highest of their  
6 abilities and even while on vacation with their  
7 family in Hawaii. So thank you so much, Amanda, to  
8 you and your team.

9           At the heart of this discussion, to  
10 Chairman Behnam's last point and to his exchange in  
11 colloquy with Josh, is this concern that arises out  
12 of our experiences with undercapitalization and the  
13 consequences of undercapitalization.

14           We can reflect back, as we've talked  
15 about across the dais today, on the events that led  
16 us to a place that we began to develop the rules  
17 and began down the road of establishing obligations  
18 at the outset for domestic even swap dealers to be  
19 effectively or sufficiently capitalized.

20           I want to just take a little bit of a  
21 step back and review for purposes of our  
22 conversation here and also just some table setting

1 for those who are joining us and may not have as  
2 much familiarity with the process. And we talked a  
3 little bit about this in the extensive  
4 conversations that we had, that you all have  
5 engaged in.

6           You also sort of reflected on this in  
7 your colloquy with the Chair. Specifically, I'm  
8 thoughtful about information sharing arrangements,  
9 and enforcement arrangements, and supervisory  
10 memorandum of understanding.

11           As just a foundational point for the  
12 conversations that have been had here, can you  
13 comment on the extent to which this effort that we  
14 have today before us, the matter before us, as it  
15 is articulated in the notice, is the result of  
16 those types of conversations and dialog.

17           And part of the reason I ask that  
18 question is, I have some specific follow on that  
19 I'm just curious to know how we'll navigate going  
20 forward. So I'm not sure, Amanda, who the best  
21 person would be to just share some a brief  
22 background of the collection of agreements that we

1 might have in place with a jurisdiction on a matter  
2 like capital comparability.

3 MS. OLEAR: This might be something that  
4 Natalie might be able to assist us with because  
5 Natalie is our point person with respect to MOU  
6 negotiations.

7 COMMISSIONER JOHNSON: Welcome, Natalie.

8 MS. MARKMAN RADHAKRISHNAN: Hi. Good  
9 morning. I'm not sure if you can hear or see me.  
10 My screen has gone entirely dark. So if you could  
11 let me know that you can hear and see me, that  
12 would be helpful.

13 COMMISSIONER JOHNSON: We see you. You  
14 look lovely. And we hear you clearly.

15 MS. MARKMAN RADHAKRISHNAN: Well, thank  
16 you for that. I unfortunately, I'm not in Hawaii,  
17 but I am dialing in remote, and I'd like to thank  
18 our tech folks for helping me do so. With respect  
19 to the question of supervisory arrangements  
20 generally, I would say that with a number of  
21 jurisdictions, we do have memoranda of  
22 understanding that cover swap dealers.

1                   We've got arrangements with authorities  
2   in Australia, Canada, Hong Kong, Italy, Japan,  
3   Singapore, and the United Kingdom. With respect to  
4   Japan, we negotiated and signed in March 2014 a  
5   supervisory arrangement with the JFSA, which I  
6   think has formed the foundation for the ability of  
7   our staff in the Market Participants Division and  
8   Office of International Affairs to have what  
9   hopefully have been very helpful conversations  
10  about this particular proposal.

11                   We have the ability, you know, to go  
12  further than that with respect to the supervision  
13  of swap dealers. Arrangements provide for such  
14  things as expectations on cooperation, a mechanism  
15  for requesting information, safeguards for  
16  protecting nonpublic information, and also sort of  
17  a protocol or process for conducting onsite visits  
18  where necessary.

19                   So on the supervisory side, that's sort  
20  of the general picture. And then I would add also,  
21  a number of market authorities are signatories to  
22  the IOSCO Multilateral Memorandum of Understanding,

1 and that would cover cooperation that is sort of in  
2 an investigatory or more of an enforcement related  
3 mode. And so the JFSA and CFTC are signatories to  
4 the IOSCO MMOU as well.

5           COMMISSIONER JOHNSON: Thanks, Natalie.  
6 That's really helpful. I think in setting the  
7 stage and being exceptionally clear about something  
8 that the Chair highlighted in his comments, that we  
9 are not deferring or giving up our authority and  
10 ability to engage in examinations or exercise  
11 oversight.

12           In fact, we are partnering with and  
13 cooperating with jurisdictions around the world to  
14 ensure the soundness -- safety, soundness, and  
15 integrity of global financial markets. To that  
16 point, however, there are places where there is  
17 divergence between what we're asking and what would  
18 be required under the local jurisdiction in this  
19 context.

20           So specifically, I'm just curious to talk  
21 a little bit about notices, in particular the  
22 obligation that they be written in English and



1 delivered within a particular window of time. I'm  
2 thoughtful that what's described in the documents  
3 before us really calls for comment rather than  
4 resolves each of those types -- each of those  
5 individual issues.

6           But for these types of concerns, in  
7 particular, again, I'll focus in on the monthly  
8 reports, I'm curious to know what you anticipate to  
9 be the likely response from the community in terms  
10 of the ability of relevant swap dealers to respond  
11 as described in the order or pursuant to what we  
12 likely anticipate might be in the final order, and  
13 whether or not the timing mechanisms there are a  
14 reasonable, rational, and consistent, first with  
15 what could be delivered, but then also with what  
16 might be critical in the event of some type of  
17 crisis.

18           MR. SMITH: Commissioner, I'll start the  
19 conversation on our side. So with respect to  
20 financial statements, I think we break this into a  
21 couple of sections, but with respect to the pure  
22 financial statements, and there we're talking

1 about, you know, the balance sheet income  
2 statement, etcetera, what the proposal does is  
3 accepts the types of financial statements and  
4 reporting that is done by the swap deal with the  
5 FSA.

6           As you pointed out, the only difference  
7 is that we have asked that they be provided to us  
8 in English so we can understand them and read them,  
9 and have balances converted to U.S. dollars so we  
10 can monitor that.

11           But we are accepting copies effectively  
12 of what is filed with the JFSA. In addition, under  
13 the proposal, there's a 15 day additional period of  
14 time provided to the entity to do that translation  
15 for us and to do the conversion.

16           I don't think this would be a substantial  
17 issue with the entities. This concept has been  
18 sort of informally discussed, certainly discussed  
19 in detail with the JFSA, but also stepping back,  
20 you know, part of our original process of this when  
21 the rule became final was to deal with U.S. firms  
22 that have foreign affiliates.

1                   So most of, I think Commissioner Pham  
2 mentioned earlier today, that many of the non-U.S.  
3 entities are part of U.S. companies. So we've had  
4 informal sort of discussions with the large  
5 investment firms that are swap deal registrants,  
6 that have foreign affiliates.

7                   They understand the process that we have  
8 with respect to reporting, and they certainly  
9 understood that our desire would be to have those  
10 documents in English so that we could read them.  
11 Because we are, in effect, deferring with respect  
12 to the rule in that they can meet the Japanese  
13 requirements in lieu of our requirements.

14                   But we still are monitoring because of  
15 their registration status with us and their  
16 involvement in the U.S. marketplace. We are not  
17 sort of deferring wholesale the monitoring of the  
18 entity to Japan. We are still monitoring their  
19 condition.

20                   We are also recognizing and will in  
21 developing the oversight program that there is a  
22 home country regulator that will factor into our

1 scope and our frequency of review, etcetera, that  
2 staff will do.

3           Now, turning to the notices. That was an  
4 area where we identified certain missing items, if  
5 you will, that they did not have a comparable sort  
6 of notice that we expect and have in our rules for  
7 swap dealers and for FCMs. And generally these are  
8 referred to as early warning notices and they're  
9 intended to put staff on alert, and this is why  
10 they're important.

11           They put us on alert of not an under  
12 capital position necessarily, but a potential, that  
13 something is going on. They've had a reduction in  
14 the amount of capital they have. They've gone  
15 under the early warning level of capital. They're  
16 not in violation yet. They could be in violation,  
17 that's another notice.

18           But the intent of these notices is to  
19 provide us with an opportunity to identify  
20 potential issues, to engage with the firm directly  
21 or engage with a foreign regulator to understand  
22 what possibly is happening with that firm, and if

1 there is any market risk to that event.

2           So that -- those are the ones that we've  
3 specifically identified. And some are just copies  
4 again too -- I guess I should back up just a second  
5 and say, like, if they filed a notice with their  
6 home country regular regarding not being  
7 undercapitalized, in Japan, it is 120 and 140  
8 percent of the minimum requirement, they would  
9 alert us to that fact.

10           We then on top of that said, well, if  
11 you're also in violation of Japanese rules, you  
12 notify us. And that's the purpose of those  
13 notices. And you're correct, we've asked a  
14 specific question on both financial reporting and  
15 on notices as to whether the timeframe that we've  
16 established is sufficient.

17           I will note that one or two of the  
18 notices required are notices within 24 hours of the  
19 event where, you know, in response to a  
20 Commissioner's comment or question of us, we  
21 recognize that, yes, time zone difference and other  
22 things, it might be appropriate to at least ask a

1 question about that as to whether that provides  
2 adequate time for the translation to be done and  
3 the issue to be addressed.

4           COMMISSIONER JOHNSON: And they're just  
5 following up really quickly. Thanks so much for  
6 that. I just want to follow up quickly and here  
7 with the notices also, written notice in English.  
8 I think specifically you're referring to the 24  
9 hour obligation possibly to report -- to deliver a  
10 notice because of the occurrence of a reportable  
11 event.

12           And presumptively, again, that's written  
13 and in English. Maybe taking into account time  
14 zone differences is what you likely anticipate will  
15 surface there, is that right?

16           MR. SMITH: Yes. We expect that we will  
17 get comment on that point. That's right.

18           COMMISSIONER JOHNSON: And one last  
19 really quick question about accounting standards.  
20 So audited financials, in this context we're  
21 referring to financials that had been audited  
22 according to GAAP standards or IFRS. Is that

1 correct?

2           MR. SMITH: With respect to the  
3 substituted compliance, the U.S. requirement is  
4 GAAP or IFRS. The determination would accept in  
5 accordance with Japanese accounting standards.  
6 There, we look at this and you say, there's two  
7 sort of accounting regimes that are relevant in  
8 this discussion. One is the financial reporting  
9 requirements or GAAP of Japan for the purposes of  
10 producing their financial statements and annual  
11 report.

12           There's also regulatory accounting  
13 required, and that's where we're looking at the  
14 capital levels. And that's based on the Japanese  
15 regime for Basel. So we're looking at their ratio  
16 of capital to risk weighted assets. That's not  
17 really driven by accounting principles, it's driven  
18 by a regulatory accounting standard in the Basel  
19 standards.

20           So it does provide flexibility that we  
21 can read the Japanese financial statements prepared  
22 in accordance with their standards, but we also

1 have the regulatory components.

2 COMMISSIONER JOHNSON: Thanks so much,  
3 Tom. That was an exceptionally fulsome answer. I  
4 appreciate that. Chair, I yield the remainder of  
5 my time.

6 CHAIRMAN BEHNAM: Thanks, Commissioner  
7 Johnson. And turning to Commissioner Goldsmith  
8 Romero for any statement or questions.

9 COMMISSIONER GOLDSMITH ROMERO: Thank  
10 you, Chairman. This was just terrific. What's  
11 happened today reflects what has been happening  
12 over the last couple of weeks, and this is just a  
13 wonderful team that has been so thoughtful, so  
14 engaged, and I've really enjoyed the dialog we've  
15 had on this. These are important matters that you  
16 care about a lot about, I care a lot about, we all  
17 care a lot about.

18 And you've done just a very thorough job  
19 in going through all of it and then making sure  
20 that we as Commissioners truly understand not just  
21 the rules, but how you look at them, and then just  
22 the real -- the reality of what you go through in



1 trying to make these determinations.

2           And I'm very grateful for that. And I  
3 recognize how hard you've worked. Very thoughtful  
4 presentation. And there were a number of questions  
5 and comments that I had that, again, are contained  
6 in the proposal after we had this discussions, and  
7 I'm really grateful for that.

8           So I'm going to give my statement. I  
9 have a couple questions, although some of them were  
10 just answered, I believe, and some of them are  
11 things we've discussed before, so let me give my  
12 statement first.

13           I support the Commission's efforts for  
14 strong capital requirements and financial reporting  
15 to help ensure the safety and soundness of swap  
16 dealers whose activities could affect U.S. markets,  
17 including through the proposal today for Japan.

18           The proposal promotes financial stability  
19 and the benefits of global harmonization, with a  
20 like-minded regulator for the global swaps markets.  
21 So, thank you to the staff for your hard work on  
22 the proposal and your thoughtful engagement with me

1 and my office on changes to improve the proposal.

2           A key cause of the 2008 financial crisis  
3 was the failure of bank regulators to require  
4 financial institutions, including those who were  
5 swap dealers, to have enough high quality capital  
6 to serve as a buffer against risk and absorb  
7 losses.

8           The devastating result of this  
9 undercapitalization swept rapidly through the  
10 highly interconnected financial system. The  
11 default or margin failure of one counterparty  
12 triggered another and then another, which led to a  
13 short-term liquidity crisis.

14           Risk and losses cascaded from  
15 subsidiaries and affiliates to bank parent or bank  
16 holding companies, including across borders. The  
17 financial contagion, as we know, was not limited to  
18 major players in the markets.

19           The entire economy suffered, with Main  
20 Street bearing the consequences of Wall Street.  
21 And then the federal government made unprecedented  
22 capital injections of hundreds of billions of

1 taxpayer dollars into more than 700 financial  
2 institutions through the Troubled Asset Relief  
3 Program, known as TARP.

4           For the last decade, I have served as the  
5 Special Inspector General for TARP, known SIGTARP,  
6 providing oversight over TARP. I have testified  
7 before Congress and reported publicly on lessons  
8 learned from inadequate capital requirements, pre-  
9 crisis, and the need for strong levels of high  
10 quality capital to lower systemic risk in the  
11 financial system.

12           Swap dealer capital requirements are one  
13 of the most critical reforms in the Dodd-Frank Act  
14 for derivatives markets. These reforms led the  
15 CFTC to have strong minimum capital requirements,  
16 including allowing non-bank swap dealers to use a  
17 capital framework similar to what banking  
18 regulators apply to banks, aimed at safety and  
19 soundness, and consistent with the Basel  
20 international framework.

21           Capital protects the solvency of the swap  
22 dealer from losses expected or unexpected and

1 prevents market disruption so that swap dealers  
2 continue to perform their critical market function.  
3 Capital reduces the potential for contagion,  
4 lowering systemic risk in the financial system and  
5 promoting financial stability.

6           The global nature of the financial crisis  
7 highlighted the need for the CFTC to coordinate  
8 with federal regulators as foreign swap activities  
9 could impact the United States. For example, risk  
10 of a foreign subsidiary can flow to their U.S.  
11 parent company. Same with affiliates.

12           The CFTC's substitute of compliance  
13 framework provides for global harmonization and  
14 leverages a second regulator, a like-minded foreign  
15 regulator that has rules, supervision, and  
16 enforcement that are comparable, in purpose and  
17 effect, to ours. But we are not giving up our  
18 monitoring, our supervision, and enforcement, as  
19 Tom, you spoke about today and the Chairman, and  
20 Commissioner Johnson has highlighted.

21           I am mindful that this proposal is the  
22 first of its kind. The first substituted

1 compliance determination for the CFTC's capital  
2 rules. This was noted by Commissioner Pham in her  
3 opening statement, and I agree with her that we  
4 should proceed carefully as we are establishing  
5 precedent.

6           Importantly, the proposal today is for  
7 non-bank swap dealers in Japan, where we have a  
8 memorandum of cooperation and a long history of  
9 cooperation with the Japanese FSA. It is also  
10 meaningful that Japan follows the bank-based  
11 approach consistent with the Basel international  
12 framework.

13           I will note this would apply to Japanese  
14 affiliates of Bank of America, Morgan Stanley, and  
15 Goldman Sachs, three systemically important  
16 institutions and three of the largest TARP  
17 recipients, having collectively received \$60  
18 billion in TARP capital injections. Therefore, it  
19 is vital that the CFTC ensures that these swap  
20 dealers have adequate amounts of high quality  
21 capital.

22           Public comment will be helpful on whether

1 the CFTC is correct in its preliminary  
2 determinations of comparability. And I'm grateful  
3 for the staff's very hard work on this. I also  
4 want to highlight and express my appreciation for  
5 the involvement of the Japanese Financial Services  
6 Agency in this process.

7 CFTC staff engagement with our regulatory  
8 counterparts in Japan has really helped to ensure  
9 the accuracy of the staff's assessment of Japanese  
10 capital and financial reporting, along with  
11 supervision and enforcement programs. And I also  
12 appreciate the coordination with the other U.S.  
13 federal regulators.

14 Substituted compliance does not require  
15 an all or nothing determination to just allow all  
16 of the home country's requirements. As Josh said,  
17 it can be all or some. The CFTC may continue to  
18 require compliance with certain of its rules and  
19 impose any terms or conditions that it deems  
20 appropriate.

21 I strongly support retaining the CFTC's  
22 \$20 million capital requirement. However, the

1 proposal would not require that that be limited to  
2 Common Equity Tier 1 capital, which is one of the  
3 strongest forms of capital, and that is the CFTC's  
4 requirement.

5 I look forward to commenters' response on  
6 whether the requirements allowing for the type of  
7 capital called basic items under Japanese law  
8 achieves a comparable outcome to the CFTC's  
9 requirement to only accept Common Equity Tier 1  
10 capital in the \$20 million minimum capital  
11 requirement.

12 Unlike the CFTC, Japan does not have a  
13 requirement for capital tied to the margin for  
14 uncleared swaps. I look forward to commentators'  
15 response as to whether Japan's capital requirement  
16 of 25 percent of operating expenses achieves a  
17 comparable outcome to the CFTC's capital  
18 requirement equal to 8 percent of the uncleared  
19 swaps margin.

20 It is a priority for me to ensure that  
21 the CFTC guards against complacency with post-  
22 crisis reforms, particularly after market stresses

1 from the pandemic and geopolitical events. We  
2 should remember that our capital rules serve as  
3 critical pillars of Dodd-Frank reforms to help  
4 ensure the safety and soundness of financial  
5 institutions and to protect the market from serious  
6 risk and contagion.

7           The CFTC has a duty to ensure that our  
8 comparability assessment is sound, and that the  
9 foreign regulator is like minded in not only rules,  
10 but in their approach, supervision, and  
11 enforcement. I am grateful for the reporting that  
12 we will require and the monitoring and supervision  
13 that we will continue to conduct.

14           And I look forward to public comments on  
15 the proposal. Substituted compliance must leave  
16 U.S. markets and our economy at no greater risk  
17 than full compliance with our rules.

18           I had a question about the benefit of an  
19 MOU, even though I know it's not required. But I  
20 think the answer was very, very helpful and  
21 thorough, so I won't ask that, although I'll echo  
22 my question on that.



1           I have this question that Commissioner  
2 Johnson was just ending on, and, Tom, you were  
3 addressing, which is, how do we know when a foreign  
4 swap dealer becomes undercapitalized? What do we  
5 do? What are our options, and how do we work with  
6 the foreign regulator in that instance? And you  
7 were talking about that just now, but maybe if you  
8 can go into a little more detail beyond just the  
9 notice.

10           MR. SMITH: Certainly. So when we look  
11 at an FCM, and they're a little bit different,  
12 obviously, and I'll discuss that. But generally  
13 speaking, when we get a notice that a firm is  
14 undercapitalized or has fallen below the early  
15 warning level of capital, what we do is contact the  
16 firm.

17           So they're obligated to provide us with  
18 that notice. And if they don't file a notice, then  
19 that's always an issue. But generally speaking, of  
20 course, the firms know what the regulatory  
21 requirements are, and they filed the notice with us  
22 that they're undercapitalized.

1           A dialog commences. We speak to the  
2 firm, we speak -- within the U.S. we'll speak to  
3 the self-regulatory organization, be it the CME or  
4 NFA, if they have oversight responsibility for that  
5 entity. We will assess whether they have taken  
6 steps to address that.

7           Have they gotten -- if, let's just say it  
8 was that they fell under capital, did they get a  
9 capital infusion from a parent entity, or what  
10 other steps that they've taken to address that? If  
11 nothing else works for the firm and they're  
12 undercapitalized, then the question becomes, does  
13 the Commission initiate an enforcement action  
14 against them for being undercapitalized, or does an  
15 exchange requirement kick in where they can no  
16 longer be a clearing member in good standing?

17           The question then becomes, how do you  
18 port customers? That's in the FCM's space because  
19 you have customers that are at the clearinghouse.  
20 You have to move the book. With respect to swap  
21 dealers, we don't have that same immediate issue.  
22 We're dealing with counterparties.

1           So now you're looking at a situation  
2 where we have to figure out what is the best way to  
3 have that dealer manage those counterparty  
4 relationships.

5           So in this case with Japan, we would have  
6 a conversation with the dealer, we would have a  
7 conversation with the FSA as to what steps the firm  
8 was taking either to come back into compliance with  
9 the requirements, or to maybe decrease its capital  
10 requirements by taking other steps to remove  
11 certain assets off its balance sheet that will  
12 reduce its exposures and therefore bring them back  
13 into capital compliance.

14           So they're very fact specific as to what  
15 is the cause of the issue and what steps can be  
16 taken to address that issue.

17           COMMISSIONER GOLDSMITH ROMERO: And I  
18 think you were talking about this in your answer  
19 just now and with Commissioner Johnson, but also  
20 with the Chairman, that you are just actively  
21 engaged at this point, correct? I mean, you are  
22 back and forth with the swap dealer itself, but

1 also the regulator.

2 MR. SMITH: Yes.

3 COMMISSIONER GOLDSMITH ROMERO: And this  
4 is where I think having a very good relationship,  
5 obviously an MOU really is beneficial to that, or  
6 short of an MOU, having strong relationships with a  
7 like-minded regulator can help facilitate that. Is  
8 that right?

9 MR. SMITH: Yes.

10 COMMISSIONER GOLDSMITH ROMERO: Okay.  
11 Can we talk about the \$20 million capital  
12 requirement? I know you decided to keep that.

13 I'd like to know why you decided to, I  
14 was going to say keep that, but you know, require  
15 that the \$20 million capital requirement be met,  
16 and then which I very much support very strongly.

17 But if you can also discuss why you  
18 wanted to keep the \$20 million capital requirement,  
19 and then also the difference between us requiring  
20 Common Equity Tier 1 capital, which is some of the  
21 strongest in the world, strongest capital that  
22 exists, and while allowing under Japanese law,

1 Japan FSA allows what is called basic items, which  
2 is a category of capital. So how do we ensure that  
3 we're not requiring less?

4 MR. SMITH: Okay. With respect to the  
5 \$20 million requirement and why we elected to have  
6 that as part of the swap deal or rule in general,  
7 the first thing is we have 53 or so entities  
8 registered with the Commission as swap dealers, and  
9 we did not know their capital position.

10 We wanted to have a capital rule that  
11 would have a minimum or minimum level of capital  
12 that notwithstanding the level of dealing activity  
13 or other activity the firm engaged in, it would be  
14 required to hold a certain minimum level of  
15 capital, even if that was sort of like a shelf  
16 registrant.

17 They voluntarily registered but were not  
18 engaged in too many transactions or any  
19 transaction, they would still have to have a  
20 capital requirement. We took that from our  
21 experience with FCMs and retail foreign exchange  
22 dealers, particularly with respect to the RFEDs.

1 Those are dealers who engage in off-foreign  
2 currency transactions with retail participants.

3           And as you know there, they have a \$20  
4 million minimum capital requirement that was  
5 established by Congress. We use that here as well  
6 because we weren't sure of the capital levels, but  
7 we felt that a swap dealer should have at least \$20  
8 million of capital.

9           Applying that now to the Japanese  
10 environment, the Japan capital rules did not have a  
11 minimum requirement, but, you know, their standards  
12 are Basel-based capital ratios. And given that  
13 this is required of U.S. entities, we felt it was  
14 important to have that as a condition.

15           So it's a proposed condition right now  
16 where -- and then as you mentioned, the three  
17 entities that are currently registered from Japan,  
18 this is obviously not an issue for them. And I  
19 will say that, you know, the level of capital  
20 required by the \$20 million is not really a  
21 systemic risk issue.

22           If that's the driver of the capital,

1 that's clearly a firm that's not engaged in a  
2 substantial amount of activity because the capital  
3 rule is the greater of, or you have to meet all of  
4 the requirements.

5           So \$20 million is the minimum, and then  
6 you also have to maintain the capital ratios, which  
7 are based on the exposures and the balance sheet of  
8 the firm. So to the extent that a \$20 million is  
9 the requirement or the driver, it's obviously a  
10 firm that's engaged in a limited amount of activity  
11 and shouldn't present systemic risk.

12           So but that's sort of the background.  
13 The background was, if you're going to register  
14 with the Commission as a swap dealer, even if  
15 you're engaged in very limited activity, you should  
16 have a certain amount of capital. With respect to  
17 Japan, you're correct in pointing out that their  
18 structure is different than the CFTC.

19           Instead of having a Common Equity Tier 1  
20 capital, Tier 2, and then also in between the  
21 additional Tier 1 capital, their structure is basic  
22 items and supplemental items. And the basic items

1 are broader than our Common Equity Tier 1 capital  
2 requirement.

3           They allow certain additional types of  
4 capital. It's not just primarily common equity,  
5 which, as you know, stands sort of last in line to  
6 be -- for any distributions from the firm. If you  
7 enter an insolvency, they are the true sort of  
8 equity holders.

9           But we felt comfortable with the basic  
10 approach in that it is also sort of based on common  
11 equity and other types of equity in the firm. And  
12 our experience so far has been that the structure  
13 of these entities are not complex.

14           We, in the limited financial reporting we  
15 received from the non-U.S. entities, we've  
16 generally seen like common equity and retained  
17 earnings is comprising most of their capital. We  
18 don't see any type of other classes of equity that  
19 would be additional Tier 1, for instance, but there  
20 could be. So we've asked that question. We'll see  
21 what the comments come in, and if it's appropriate  
22 as it's calibrated.



1                   COMMISSIONER GOLDSMITH ROMERO:  Yes, I  
2  very much appreciate that answer and I appreciate  
3  asking the question.  And I hope that the public  
4  responses we get are broader than the three swap  
5  dealers and the Japanese FSA so that we can really  
6  have a good sense of it.

7                   And I appreciate the analysis that you  
8  did in looking at that.  I also want to just ask  
9  briefly about the 8 percent uncleared swap margin  
10 requirement, capital requirement.  And I understand  
11 you had mentioned earlier that some of what we have  
12 is very focused to the derivatives market and that  
13 this is one of them, and other regulators may have  
14 a broader mandate.

15                  And I appreciate you putting a question  
16 in the proposal about whether this is comparable in  
17 outcome to the Japanese capital requirement of 25  
18 percent of operating expenses.  Can you talk about  
19 sort of the origin of the 8 percent uncleared swap  
20 margin capital requirements?

21                  Sort of, what are the risks that that is  
22 designed to address?  Because it looks as if the

1 Japanese capital requirement is really focused on  
2 operating risk.

3 MR. SMITH: Yes. So the -- in developing  
4 the final capital rule for the swap dealers, the  
5 Commission put in a requirement that each swap deal  
6 would have to maintain capital in excess of 8  
7 percent of the uncleared swaps margin. That is  
8 comparable or consistent with the FCM capital rule,  
9 which is based on customer margin amount.

10 It was incorporated into the swap dealer  
11 rules and basically made the greater of the  
12 traditional bank-based Basel rule or the 8 percent  
13 of uncleared swaps margin.

14 The idea was, one thing that all the swap  
15 dealers would have in common that were registered  
16 with us, no matter which method that they elected,  
17 the net liquid asset or the bank-based approach, is  
18 that they're all swap dealers, therefore they all  
19 have uncleared swaps margin on their books.

20 And the greater the risk with those  
21 position, or the more positions that the entity  
22 puts on, the capital requirement increases because

1 if you have a very plain vanilla simple swap, it's  
2 8 percent of the margin on that.

3 If you have a much more exotic swap, the  
4 initial margin under the margin rules is going to  
5 be much higher and you'll have to have a  
6 corresponding increase in your minimum capital  
7 requirement. The concept of it, though, was also,  
8 you know, we were gaining experience and  
9 understanding with Basel.

10 That was not how the FCMs were structured  
11 for us with respect to capital requirements, but we  
12 wanted to get some experience. But that was one  
13 thing that was uniform across all the dealers. It  
14 was intended also to be a floor. It was not  
15 intended to be the driver.

16 Really the Basel requirements were  
17 intended to be the driver. It was intended to be a  
18 floor. That would increase, though, with respect  
19 to the amount of activity engaged in by the firm.  
20 It was intended to cover all types of risks, market  
21 risk, credit risk, legal risk, operational risk, of  
22 the entity.

1           With respect to Japan, their approach is  
2 more consistent with Basel in the sense that their  
3 requirement is -- they include operational risk in  
4 total risk weighted assets. So they add it to  
5 market risk and credit risk, then add on top of  
6 that the operational risk.

7           So there it is an incremental requirement  
8 or an additive requirements, where with the CFTC,  
9 it's a standalone separate requirement relative to  
10 the Basel requirement.

11           COMMISSIONER GOLDSMITH ROMERO: I  
12 appreciate that. And we've talked about that  
13 before, how that's an incremental requirement. I  
14 think that's helpful for the public to know as  
15 well. And I'm looking forward to the public  
16 comments on that.

17           And I also appreciate you talking about,  
18 you know, you can look at the three current non-  
19 bank swap dealers that are in Japan now, but we  
20 have to think about what could happen in the  
21 future. And we're trying to establish something  
22 that would move forward for the future. And lots

1 of things can change, and there can also be new  
2 entrants.

3           And so I appreciate you being thoughtful  
4 about looking at where we are currently, and the  
5 situation currently doesn't mean we match our  
6 requirements to that. We're clearly trying to  
7 build up and require strong capital requirements.  
8 So thank you for all of your hard work. It's been  
9 a pleasure to engage and work with you, and work to  
10 make this better collaboratively.

11           And I'm looking forward to the public  
12 comment. And again, we just have to ensure that  
13 substituted compliance must leave our U.S. markets  
14 and our economy at no greater risk than if the  
15 CFTC's rules apply. Thank you, Chairman.

16           CHAIRMAN BEHNAM: Thank you, Commissioner  
17 Goldsmith Romero. Commissioner Mersinger.

18           COMMISSIONER MERSINGER: Thank you. And  
19 thank you for all the discussion so far and for  
20 your very thorough answers to the questions. I  
21 believe a lot of my questions have been answered so  
22 far as well. But I did want to make a couple of

1 comments, and just kind of going back to my opening  
2 remarks and also my comments before the DCO  
3 governance, you know.

4 I think this is another unique  
5 characteristic of the CFTC and it's our ability to  
6 work with foreign regulators and collaborate with  
7 foreign regulators, understanding that our markets  
8 are global, and that this international cooperation  
9 is necessary. And we do need to allow for some  
10 deference when there is a comprehensive and  
11 comparable home country regulation.

12 When the G-20 leaders met in Pittsburgh  
13 in 2009, that was in response to the financial  
14 crisis, and they recognized this global nature of  
15 the derivatives markets and were committed to  
16 taking action to raise standards together so that  
17 national authorities would implement global  
18 standards consistently and in a way to ensure a  
19 level playing field.

20 In doing so, that would avoid market  
21 fragmentation, protectionist policies, and  
22 regulatory arbitrage. Congress memorialized its

1 commitments in Dodd-Frank, and the CFTC has worked  
2 very hard to implement a regulatory framework that  
3 respects these commitments.

4           And in accordance with those regulations,  
5 the Financial Services Agency of Japan submitted  
6 their application requesting that the Commission  
7 determine the Japan's capital adequacy and  
8 financial reporting requirements and related  
9 financial record keeping and reporting requirements  
10 for non U.S., non-bank swap dealers are comparable  
11 to corresponding CFTC regulations.

12           That's the proposed order we are  
13 reviewing today, and I know it took countless hours  
14 of work from MPD staff. So, thank you all for what  
15 you have done to bring this before us today.

16           And as well as our counterparts in Japan.  
17 Because my understanding is they have been very  
18 engaged with us since the start of this and have  
19 worked very closely with us in order to get this  
20 proposal ready.

21           I think, when we're doing these  
22 comparability determinations, you know, it is

1 important that we look at them as a principle  
2 based, holistic approach. We focus on whether the  
3 other countries regime achieves comparable outcomes  
4 to the corresponding CFTC requirements.

5           Certainly, this is a major undertaking,  
6 and I know it's taken years, and this is the first  
7 of several steps the Commission will have to take  
8 and consider. So I understand the work here is  
9 just getting started, but again, appreciate MPD  
10 staff's diligence and continued efforts on these  
11 complex and really labor intensive analysis that  
12 you're doing.

13           I have one quick question, and it has  
14 been brought up, both Commissioner Pham and the  
15 Chairman brought up this no action letter that is  
16 in effect currently, because these do take so long  
17 to complete and get right that we have had to issue  
18 temporary no action relief to the non-bank swap  
19 dealers, kind of subject to pending Commission  
20 review of the comparability determinations.

21           And this is just the first of many to  
22 come. And I know the current no action letter,



1 which had been mentioned, does expire on October  
2 6th. And I understand that there is, you know,  
3 efforts to extend that. But even with the  
4 comparability determination before us, with a 60-  
5 day comment period, you know, we'll be receiving  
6 comments just before the no-action relief is set to  
7 expire.

8           And I know you all are clearly capable of  
9 a Herculean tasks. I think expecting some sort of  
10 a final comparability determination before that  
11 expiration is unlikely.

12           So I guess my question is, what happens  
13 if that no-action relief should expire and we don't  
14 have -- you know, not only is this comparability  
15 determination, you know, final, but we don't have  
16 others in place either. What would happen? What  
17 would be the result?

18           MR. SMITH: Well, I hope we don't get to  
19 that stage. We do have and we do plan to provide  
20 the Commission very shortly the no-action letter  
21 for your consideration on an absent objection  
22 basis.

1           So the goal would be to issue that  
2 extension while we continue with these  
3 determinations and work with the Commission to get  
4 those finalized with whatever conditions we think  
5 are appropriate so that we've got -- and we try to  
6 do that as soon as possible. As I said, it should  
7 be with the Commission very shortly for absent  
8 objection consideration.

9           We'd get it out -- that we'd want to  
10 alert the public to that effect on the dealers.  
11 But what were to happen if that letter was not  
12 issued and we get to October 7th of this year, the  
13 firms technically would have to comply with the  
14 CFTC rule.

15           And I'm sure that that would result in  
16 substantial system adjustments they would need to  
17 make, books and record adjustments they would need  
18 to make, so it would be a very heavy burden on  
19 them, which, you know, based on our, you know, the  
20 first no-action letter, at least speaking for  
21 myself, I wouldn't think that's necessary given  
22 that they, you know, they all are subject to a

1 capital regime right now in their home country.

2 COMMISSIONER MERSINGER: Thank you, and I  
3 look forward to reviewing the no-action letter when  
4 it's before us. That's all.

5 CHAIRMAN BEHNAM: Thank you, Commissioner  
6 Mersinger. Commissioner Pham.

7 COMMISSIONER PHAM: Thank you, Chairman.  
8 First off, I want to recognize the staff's work as  
9 each of my fellow Commissioners has done, because  
10 this is not easy, particularly not only this  
11 rulemaking, but also, generally speaking, swap  
12 dealer oversight, because it's an incredibly  
13 complex regulatory regime.

14 I also appreciate your commitment to  
15 providing substituted compliance. So I would  
16 appreciate it if the staff addressed my concerns  
17 directly with me. In addition, you know, in my  
18 past work in Japan and with their financial sector,  
19 I have enjoyed working with the Japan FSA for many  
20 years and I appreciate their thoughtful and robust  
21 oversight of their regulated firms.

22 I also want to say that my thoughts and

1 heart are with the people of Japan regarding the  
2 tragic loss of Prime Minister Shinzo Abe.

3           As I stated in my opening statement, the  
4 CFTC should take an outcomes-based approach to  
5 substitute a compliance that appropriately balances  
6 and recognizes the nature of cross-border  
7 regulation of global markets and firms that  
8 preserves access for U.S. persons to other markets.

9           I appreciate the Chairman's remarks and  
10 welcome comments, particularly on operational  
11 issues, with additional reporting requirements  
12 given the time difference, language translation,  
13 conversion to USD, local governance and regulatory  
14 requirements, differences in financial reporting,  
15 and I urge a pragmatic approach with sufficient  
16 time to implement before any compliance date.

17           And I appreciate the thought that the  
18 staff have been putting into that, and the  
19 discussion today. I speak from my past experience  
20 as a global head of swap dealer compliance who had  
21 to implement global regulatory reforms.

22           I'll also note that in a crisis, such as

1 during the early days of the COVID-19 pandemic,  
2 there was timely and effective engagement between  
3 and among CFTC registrants and U.S. regulators.

4 I have been on many calls and spoken to  
5 many regulators all over the world, not only during  
6 COVID-19, but also during times of market  
7 disruption or potentially material events.

8 There is a difference between a phone  
9 call and a formal written notice, and so I  
10 appreciate receiving comments on this and any other  
11 operational issues, and the careful consideration  
12 by the staff and the Commission of how to take a  
13 practical approach to achieving appropriate  
14 oversight and mitigation of risk to the United  
15 States and to our markets. Thank you so much.

16 CHAIRMAN BEHNAM: Thanks, Commissioner  
17 Pham. We did reserve time for second round, three  
18 minutes. No. Okay, wonderful. So with that,  
19 thanks again to the team.

20 Excellent presentation and excellent back  
21 and forth with the Commission and we look forward  
22 to the comments as was said by my colleagues. So

1 having heard from the Commissioners, if there's no  
2 further discussion and debate, we'll proceed to  
3 vote on the pending motion to approve and issue the  
4 notice of proposed order and request for comment on  
5 the application for capital comparability  
6 determination that was submitted by the Financial  
7 Services Agency of Japan as presented in the voting  
8 draft.

9           Commissioners, prepare to vote. As it  
10 appears, the Commissioners are ready to vote. Mr.  
11 Kirkpatrick, will you please call the roll?

12           MR. KIRKPATRICK: Thank you, Mr.  
13 Chairman. The motion now before the Commission is  
14 on the approval and issuance of the Japan non-bank  
15 swap dealer proposed comparability determination  
16 and request for comment, as presented in the voting  
17 draft circulated to the Commissioners.  
18 Commissioner Pham.

19           COMMISSIONER PHAM: I concur.

20           MR. KIRKPATRICK: Commissioner Pham  
21 concurs. Commissioner Mersinger.

22           COMMISSIONER MERSINGER: Yes.

1                   MR. KIRKPATRICK: Commissioner Mersinger  
2 votes yes. Commissioner Goldsmith Romero.

3                   COMMISSIONER GOLDSMITH ROMERO: Yes.

4                   MR. KIRKPATRICK: Commissioner Goldsmith  
5 Romero votes yes. Commissioner Johnson.

6                   COMMISSIONER JOHNSON: Aye.

7                   MR. KIRKPATRICK: Commissioner Johnson  
8 votes aye. Chairman Behnam.

9                   CHAIRMAN BEHNAM: Aye.

10                  MR. KIRKPATRICK: Chairman Behnam votes  
11 aye. Mr. Chairman, on this matter, the ayes have 4  
12 and there is one vote to concur.

13                  CHAIRMAN BEHNAM: Thank you, Mr.  
14 Kirkpatrick. The ayes have it. The motion carries  
15 and the notice of proposed order and request for  
16 comment on an application for capital comparability  
17 determination submitted by the Financial Services  
18 Agency of Japan is approved to be issued by the  
19 Commission.

20                  So, having completed the planned agenda  
21 items for this meeting, we are now going to turn to  
22 our closing remarks. And I'm going to begin in

1 reverse order. So, if Commissioner Pham, you're  
2 prepared to make any closing remarks you'd like,  
3 please go ahead.

4           COMMISSIONER PHAM: Thank you, Chairman.  
5 I just want to thank everybody for their time here  
6 today, not only the staff of the Commission, but  
7 also for those market participants that closely  
8 follow what we do each and every day because of the  
9 impact it has on their business and on global  
10 markets. Thank you.

11           CHAIRMAN BEHNAM: Thank you.

12 Commissioner Pham. Commissioner Mersinger.

13           COMMISSIONER MERSINGER: Just a short  
14 statement here. I just want to, again, say thank  
15 you to the staff of MPD, thank you to the staff of  
16 DCR, and the Legal Division as well, and certainly  
17 the Secretariat's Office, who has done an amazing  
18 job of making sure we can have these meetings both  
19 virtually and in person.

20           So, they've done a lot of great work over  
21 the last few years in very difficult circumstances.

22 I also want to thank my staff, Terry Arbit, Libby



1 Mastrogiacomo, who is with me up here, and Chris  
2 Lucas, for all their help in preparing me for this  
3 first open meeting.

4           And certainly I would be remiss if I  
5 didn't mention the hard work of our technology  
6 staff and our logistics team for their part in  
7 making sure that today's meeting was a success.

8           Everything from the -- every little  
9 detail from, you know, our microphone's working to  
10 having water to the technology so we can do these  
11 meetings both in person and virtually, is really a  
12 testament to our teams in the technology offices  
13 and the logistics office.

14           So, without all their hard work and  
15 efforts, we wouldn't be able to function as an  
16 agency and certainly not have -- be able to hold an  
17 open meeting. So with that, thanks everyone and I  
18 will turn over the rest of my time.

19           CHAIRMAN BEHNAM: Thanks, Commissioner  
20 Mersinger. Commissioner Goldsmith Romero.

21           COMMISSIONER GOLDSMITH ROMERO: Thank you  
22 to all the staff in the CFTC who worked on these

1 proposals and on this open meeting and everything  
2 that went into it. Thank you for working to ensure  
3 that our financial system and markets are strong,  
4 are safe, resilient, fair, and transparent.

5 I am always impressed by your expertise  
6 and sincere interest in reaching these broader  
7 public interests, while balancing all of the  
8 competing policy, legal, and operational issues,  
9 and five different Commissioners. You do a  
10 remarkable job navigating all of that. Thank you  
11 for being true public servants and taking the  
12 CFTC's oversight role to heart.

13 Thank you to my colleagues on the  
14 Commission. As I said at the beginning, I  
15 sincerely benefit from all your insights, your  
16 thoughtful comments, your diversity of experience,  
17 and that was certainly true today, and I hope that  
18 the public was able to see that.

19 Chairman Behnam, thank you for holding  
20 this open meeting. I found it incredibly helpful  
21 to hear everyone's thoughts and to hear the dialog  
22 and the things that people care about. And I

1 appreciate that opportunity to have this and to  
2 meet as a Commission in this open forum.

3 I also have to also thank my staff who  
4 are just rock stars in getting me prepared and  
5 really digging deep into these issues so that they  
6 can understand and ensure that the public interest  
7 that need to be met are absolutely met here. So,  
8 thank you.

9 CHAIRMAN BEHNAM: Thank you,  
10 Commissioner. Commissioner Johnson.

11 COMMISSIONER JOHNSON: Thanks so much,  
12 Chair Behnam. I also want to echo my fellow  
13 Commissioners, thanks to the staff who have made  
14 today's meeting possible, working behind the  
15 scenes, I'm sure late into the evening, yesterday  
16 and early this morning to ensure that we were able  
17 to hold this very important public forum and hold  
18 this very important public meeting, and have a  
19 forum to discuss the ideas we exchanged -- ideas  
20 and views we exchanged.

21 Simply stated, the two proposals before  
22 us aim to future proof financial markets,

1 emphatically addressing risk management oversight  
2 and ensuring adequate capitalization of critical  
3 market infrastructure and critical market  
4 participants.

5           For each matter, today's actions mark the  
6 Commission's efforts to and commitment to clarify,  
7 carefully consider, and codify requirements. Our  
8 efforts today will lead to clarity regarding the  
9 application of existing and newly implemented  
10 regulation.

11           Upon conclusion of a rigorous debate and  
12 comprehensive and dynamic dialog among domestic and  
13 international regulators, regulated entities, other  
14 stakeholders, and citizens in our communities will  
15 benefit from the broad range of interests and views  
16 exchanged, and the development of policy that aims  
17 to best achieve goals in our mandate.

18           Our efforts today to codify measures and  
19 enhance systemic risk management and mitigate the  
20 likelihood of events such as counterparty credit  
21 default, liquidity, or solvency crises, or others  
22 that threaten the safety and soundness of our

1 financial markets.

2 I would be remiss if I didn't pause to  
3 say thank you very much to my own staff and to  
4 ensure that I share that my staff and I, our door  
5 is open. We are excited to meet and have spent  
6 significant time over the last three months  
7 traveling across the United States and abroad to  
8 hear diverse viewpoints from a broad range of  
9 shareholders.

10 What we find to be true in our search for  
11 an understanding of where each market participant  
12 stands is that two values codified by this  
13 Commission and in the statute and regulations that  
14 govern our actions are often top of mind. The  
15 first is customer protection.

16 As I mentioned at the outset, one of my  
17 highest priorities personally and as a public  
18 servant committed to this particular opportunity.  
19 Second, the integrity of financial markets, which  
20 was clearly a theme that resonated across the  
21 comments and conversations we had today and will  
22 likely continue to resonate and echo through the

1 comments we'll receive in response to these two  
2 proposals. Thank you.

3 CHAIRMAN BEHNAM: Thanks, Commissioner  
4 Johnson. And thanks to all my fellow Commissioners  
5 for the great meeting. It was fun. It was good to  
6 be here.

7 I think as Clark and Amanda pointed out,  
8 with a new Commission, after a few years, it's  
9 really exciting to be back in person and see some  
10 faces, and I think we're going to build off of  
11 this.

12 And, you know, hopefully after some rest  
13 and a little reflection in August, we'll come back  
14 in September and get some more work done and look  
15 forward to doing that with my colleagues. But a  
16 special thanks to MPD for this presentation and  
17 everyone here, to DCR for the presentation earlier,  
18 and of course to the Office of the General Counsel.

19 You are integrated in all this work, so  
20 we thank you very much for your work, Rob, and your  
21 team. I do want to recognize the Secretariat, and  
22 thank you, Commissioner Mersinger for doing that.

1           The Secretariat and everyone involved in  
2 putting today's meeting together. It is not easy.  
3 We're a little rusty, but I think we pulled it off  
4 pretty smoothly, given where we are and what we're  
5 trying to accomplish, especially with the hybrid  
6 environment where we have both virtual and in-  
7 person.

8           So, with that, a lot to look forward to.  
9 I do want to recognize my staff. I mentioned  
10 earlier Alicia Lewis, who helped on the DCR front  
11 and also was integral to the MRAC recommendations,  
12 which, you know, I do, and as I said earlier, I  
13 want to recognize all the individuals who were a  
14 part of that effort.

15           And I certainly do look forward, as the  
16 public has seen in the past month or so, each of  
17 the new Commissioners is now sponsor of an advisory  
18 committee, and I think we'll have some exciting  
19 things to look forward to as a Commission and as a  
20 market as we hear more from market participants and  
21 public interest.

22           So, a lot to look forward to, but again,

1 I want to say thanks to everyone. Enjoy August.  
2 We'll be in touch, of course, as always. Thanks to  
3 my fellow Commissioners. And with no other  
4 Commission business, I'm going to entertain a  
5 motion to adjourn the meeting.

6 COMMISSIONER GOLDSMITH ROMERO: So moved.

7 COMMISSIONER JOHNSON: I second that  
8 motion.

9 CHAIRMAN BEHNAM: Those in favor of the  
10 motion to adjourn the meeting, please say aye.

11 (Chorus of ayes.)

12 CHAIRMAN BEHNAM: Those opposed, please  
13 say no.

14 (No response.)

15 CHAIRMAN BEHNAM: The ayes have it. This  
16 meeting is adjourned. Thank you.

17 (Whereupon, at 12:40 p.m., the meeting  
18 was adjourned.)

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