

COMMODITY FUTURES TRADING COMMISSION

COMMISSION MEETING
SECURITIES FUTURES RULEMAKING

Thursday, May 30, 2002

Hearing Room 1000
1155 21st Street, N.W.
Washington, D.C.

The hearing was convened, pursuant to
notice, at 3:00 p.m.

BEFORE

JAMES E. NEWSOME, Chairman

BARBARA PEDERSEN HOLUM, Commissioner

THOMAS J. ERICKSON, Commissioner

P R O C E E D I N G S

CHAIRMAN NEWSOME: Let's go ahead and get started. This is a public meeting of the Commodity Futures Trading Commission to discuss three securities futures product rulemaking. So, this hearing is hereby called to order.

The three issues that we intend to take up today are: a grandfathering position for certain security index futures contracts traded on foreign boards of trade which were jointly authorized by the SEC and the CFTC prior to enactment of the CFMA.

Secondly, the SIPA/SEG rules that govern the treatment of customer funds.

Then thirdly, a joint order modifying the listing standards for security futures products to permit exchange traded funds, trust issued receipts and closing fund shares to underlie security futures products.

We'll take each of those independently. We'll ask staff to brief the Commission and then we'll open it up for questions and comments.

Does anybody have any questions?

[No response.]

The first issue that we will take up is the joint CFTC-SEC order excluding the security indexes from the definition of the narrow based security index.

David Merrill, would you please brief the Commission?

MR. MERRILL: Thank you, Mr. Chairman. The staff today is recommending that the Commission issue an order jointly with the Securities and Exchange Commission that will continue the recognition provided by the Commodity Futures Modernization Act for certain foreign security indexes as being not narrow based, thereby permitted the continued offer and sale of futures contracts on these foreign indexes which are traded on foreign exchanges pursuant to a series of no action letters which have been issues previously by the Commission staff.

By issuing the order the Commission will provide legal certainty and prevent market disruptions that could result concerning the ongoing offer and sale of these foreign exchange-traded stock index futures contracts in the United States.

As the Commission is aware, beginning in 1983, the General Counsel's Office has issued a series of no action letters authorizing the offer and sale in the U.S. of these foreign stock index futures contracts. By December of 2000 when the CFMA was enacted, we had issued letters covering some 42 such futures products.

With the enactment of the CFMA, Congress for the first time established a framework for the joint regulation

by the CFTC and the SEC of futures contracts on single securities and on narrow-based security indexes and continued the Commission's exclusive jurisdiction over futures contracts on non-narrow based or broad based security indexes.

To delineate this jurisdiction between the two agencies, Congress included in the CFMA an objective definition of the term "narrow-based security index." That definition includes several numerical tests for what does and does not constitute a narrow-based security index.

In addition, the CFMA specifically excludes from the definition of narrow-based security index those foreign indexes that have received CFTC no-action relief, thereby allowing their continued offer and sale in the United States. This exclusion, however, lapses 18 months after the enactment of the CFMA, which is to say, June 21.

The CFMA also, in its definition of narrow-based security index excludes from that definition an index underlying a futures contract traded on a foreign board of trade, which meets such regulatory requirements as the two Commissions might stab, even though that foreign index might fail either of the two numerical tests for what does not constitute a narrow-based index.

As the Commission is aware, the staff continues to work diligently with the staff at the SEC to develop such a

more flexible test for determining if a foreign security index is broadbased.

In the interim, with the approach of the June 21st expiration of the statutory protection afforded the 42 stock index products that have received no action relief, we recommend that the Commission issue the order jointly with the SEC to permanently extend that relief.

The only other thing that I would add, Mr. Chairman, is that the CFMA specifically authorizes the two agencies to issue this order finding that these foreign security indexes continue to be broad based and the SEC, as I'm sure you know, in its public meeting yesterday, issued the identical order that you have before you.

I'll be happy to take any questions.

CHAIRMAN NEWSOME: Okay. Thank you, Mr. Merrill. Before we get into the questions, do any of the other senior staff have any comments or thoughts on this?

[No response.]

Okay. Thank you. I have no questions or comments on this particular rule.

Commissioner Holum?

COMMISSIONER HOLUM: Yes, I do have one question. I understand that this grandfathers in all the existing contracts. What is the status of the rules for new contracts?

MR. MERRILL: For new contracts? As I say, we continue to work on a daily basis at the staff level with the SEC to develop so-called Path C, as we call it, Path A and B being the two paths in the statute.

We are working on it. I am not directly involved day to day, but I am working with others. It's a daily event.

COMMISSIONER HOLUM: But we won't meet the June 21st deadline for that?

MR. MERRILL: Certainly not. I think that's a fair statement. We will not get it done in the next three weeks.

COMMISSIONER HOLUM: Do you have any timeframe or what is your projected goal for getting those rules?

MR. McCARTY: Commissioner Holum, the June 21st deadline on the grandfathered foreign indexes is for the specific set that's being addressed here today. The other rule making for the Path C approach which would affect other foreign security indexes is something which the staff is hopeful of sending a counter-proposal the SEC within the next ten days.

COMMISSIONER HOLUM: Thank you very much. I have nothing further.

CHAIRMAN NEWSOME: Commissioner Erickson.

COMMISSIONER ERICKSON: I have no questions on this. Thank you.

CHAIRMAN NEWSOME: If there are no further questions, then I'll entertain a motion that the Commission publish in the Federal Register, an order which the Commission and the Securities and Exchange Commission jointly provide for the exclusion of security indexes from the definition of a narrow-based security index to qualify for the grandfather exclusion under Section 1(a)(25)(B)(V) of the Commodity Exchange Act and Section 3 (a)(55)(C)(V) of the Securities Exchange Act of 1934 which expires, as David said, on June 21, 2002, as outlined in the memorandum of the Office of General Counsel dated May 29, 2002.

COMMISSIONER HOLUM: I so move.

COMMISSIONER ERICKSON: Second.

CHAIRMAN NEWSOME: The motion has been moved and seconded. Is there any further discussion?

[No response.]

CHAIRMAN NEWSOME: If not, all those in favor say aye.

[Chorus of ayes.]

CHAIRMAN NEWSOME: Any opposed?

[No response.]

The vote is unanimous and the motion is approved.

Thank you.

The next item for Commission consideration are the final rules on treatment of customer funds and security futures product transactions.

Mr. Lawton, can you please brief the Commission on this matter?

MR. LAWTON: Thank you, Mr. Chairman and Commissioners. I'm to present to the Commission a recommendation of the staff that the Commission authorize publication in the Federal Register of a release announcing the adoption of rules applicable to accounts holding security futures products.

The rules address CFTC and FTC customer protection, record keeping, reporting and bankruptcy rules as well as the Securities Investor Protection Act of 1970. This is the so-called SIPA/SIPC release. These rules would be adopted pursuant to the provisions of the CFMA that direct the CFTC and the SEC to address certain duplicative or conflicting regulations applicable to any firm fully registered both as an FCM and as a broker-dealer.

In general the rules would permit a full FCM, a full BD, to choose or to let its customers choose whether an account where security futures products are held will be treated as a futures account subject to the segregation requirements of the CEA, or as a securities account subject to the Exchange Act Rule, 15C-3.

With certain modifications the applicable regulatory structure would then follow from the type of account in which the security futures products were held. I won't go into detail about each of the rules in the release, but just highlight a few of the items.

The rules require all firms conducting business in security futures products to make certain disclosures to customers that transact in security futures products concerning the protections provided by both the CEA and the Securities Exchange Act regulatory frameworks. Also, to disclose the regulatory framework that will be applicable to their account and to disclose that the alternative regulatory framework will not be applicable to the account.

In addition, the rules require that every firm engaged in this business that is fully registered both as an FCM and as a broker-dealer establish written procedures regarding how customers' securities futures will be held and obtain a written acknowledgement from each customer indicating that the customer understands that the alternative regulatory framework will not be applicable to its account.

The rules also specify how certain CEA and Exchange Act record keeping, reporting and certain other rules will apply to security futures product transactions and the accounts in which those products are held.

The proposed rules were published last October. The Commission received three comment letters on the proposal, one from NFA, the National Futures Association, one submitted jointly by the FIA, The Futures Industry Association, and the SIA, the Securities Industry Association and one letter submitted jointly by the Chicago Mercantile Exchange and the Chicago Board of Trade.

All of the commenters supported the overall approach of the rule in providing full FCM, full broker-dealers with flexibility in choosing whether SFPs will be held in a securities account or in a futures account. In support of the proposals, the commenters stated among other things that the approach taken would be neutral as to the protection schemes and would allow firms to use the most cost-effective solutions when determining how to support SFPs.

On the other hand, the commenters oppose the requirement in the proposed rules that the full FCM, full builds must obtain signed acknowledgements from customers stating the customers understand that account protections under the alternative regulatory scheme would not be available with respect to their accounts.

Commenters questioned the need for such a requirement and expressed concerns about the potential costs and burdens.

The division has carefully considered these comments and held further discussions with SEC staff regarding this issue, and particularly with regard to the potential need for a signed acknowledgement under SIPA.

After careful consideration, staff of the division and the SEC staff are recommending that the acknowledgement requirement be adopted essentially as proposed, both as a customer protection measure and to assure appropriate treatment of claims in the unlikely event of the bankruptcy of a broker-dealer SCM.

The division does recommend response to the comments, however. But if there is a change in account type where SFPs are carried from futures to securities or vice versa, that the firm be required to notify the customer of the effective date of the change through its regular account statement rather than immediately as was originally proposed.

I would like to discuss briefly two other issues raised by the commenters. One is confirmations and the second is the SEC reserve formula.

In the proposing release the Commission's requested comment on the application, two transactions in SFPs of the respective confirmation rules. That's Rule 10(b)(10) under the Exchange Act and Rule 1.33(b) under the CEA.

All the commenters stated that confirmation requirements should fall from the type of account in which SFPs are carried. New CFTC rule 41.41(e) would provide that CFTC rule 1.33 should not apply to SFP transactions and positions carried in the securities account.

Nevertheless, SEC staff, we believe, is determined that proposed 10(b)(10) will require confirmation of SFP transactions to contain information related to the capacity in which a firm acted with respect to the transaction, that is either as principal or agent, and concerning payment for order flow, even if the SFPs are carried in a futures account.

The SEC also has determined however, to issue an order that would exempt firms carrying SFPs in a futures account from these requirements of Rule 10(b)(10) until these rule amendments are adopted.

Turning to a more technical issue, the SEC Reserve Formula, one of the commenters noted that Item 13 of the Reserve Formula allows margin required and on deposit at the Options Clearing Corporation, OCC, for option contracts to be included as a debit in the reserved formula calculation.

This commenter stated that in the near future OCC and other clearing organizations, including clearing organizations registered with the CFTC as DCO, may clear SFPs carried by broker-dealers in the securities account.

The commenter suggested that margin required and on deposit with OCC and other clearing organizations relating to SPF'S carried in customer securities accounts should also be included in the reserve formula.

The SEC staff has indicated in conversations with division staff that the SEC may address this issue of amending item 13 of Rule 15(c)(3) in a separate rule making. The SEC staff also has indicated that pending such a rule making the SEC may issue an exemptive order permitting clearing organizations that meet certain criteria to be a good location.

The order would be in effect until the amendments through 15(c)(3)(3) are adopted and the clearing entities, applicable clearing entities, have an opportunity to comply with any procedures and conditions.

In closing, I would like to recognize the efforts of a number of our staff who worked very long and hard on this project. They are Larry Patent, Tom Smith, Bob Wasserman, Aline Schroeder, as well as Beverly Brown and Talorial Glaze of the support staff. Thank you.

CHAIRMAN NEWSOME: Okay. Thank you, John.

Do any of the other senior staff have any comments you want to make on this topic?

[No response.]

CHAIRMAN NEWSOME: I'll start off with one question, John. I want to make sure we clear this is up. You mentioned it during your comments. But in the preamble to the rules it mentions that the SEC will issue an exemptive order concerning reserve calculations by broker-dealers with margins on deposit at DCOs that made specified criteria. Is that correct?

MR. LAWTON: Yes. Our understanding in conversations with the staff is that they will be issuing such an exemptive order. Until such an order was to be issued, funds held at the DCO would not count towards the reserve calculation for a broker-dealer.

CHAIRMAN NEWSOME: So, can they carry SFP margin as soon as the joint rules are issued or do they have to wait for that order is approved?

MR. LAWTON: They could carry it, however, the firm would essentially have a double count. They would have to have money at a good reserve location, some other good reserve location equal to the amount of margin that was held at the clearing organization if the clearing organization were not a good location.

CHAIRMAN NEWSOME: Have you got comfort in terms of going forward based upon your conversations with staff?

MR. LAWTON: My understanding is they are working on such an order. We have not actually seen a draft at this point.

CHAIRMAN NEWSOME: Commissioner Holum, any questions?

COMMISSIONER HOLUM: Thank you. I do have one. Again, it relates to the deadline. It seems like we were all prepared to meet our December 21, 2001 deadline. Is the SEC getting any closer? That deadline has been missed already by several months.

MR. LAWTON: I believe that they are planning to schedule a meeting on their version of this within the next two weeks.

COMMISSIONER HOLUM: Great. Thank you.

CHAIRMAN NEWSOME: Commissioner Erickson.

COMMISSIONER ERICKSON: I just have one follow-up question to yours, Mr. Chairman. Just for point of clarification, John, the margin held at the OCC is already considered to be a good location under the SEC's interpretation?

MR. LAWTON: Actually, the way the rule is written, its margin held for options. So, they would actually have to take some sort of action for SFPs even at OCC as well.

COMMISSIONER ERICKSON: So funds held in SFP accounts regardless at what clearing organization?

MR. LAWTON: Right. So, our understanding is that if there was an exemptive order that would address both OCC and futures, clearing organizations as well.

COMMISSIONER ERICKSON: Okay. Thank you.

CHAIRMAN NEWSOME: Further questions? If there are no further questions or comments, if that's the case, then I will entertain a motion that the Commission approve the joint final rules for publication in the Federal Register on the applicability of the CFTC and the SEC customer protection record keeping, reporting and bankruptcy rules and the Securities Investor Protection Act of 1970 to accounts holding security futures products as outlined in the memorandum of the Division of Trading and Markets dated May 29, 2002.

COMMISSIONER HOLUM: So moved.

COMMISSIONER ERICKSON: Second.

CHAIRMAN NEWSOME: It has been moved and seconded. Is there any further discussion? If not, then all in favor say aye.

[Chorus of ayes.]

Any opposed, nay.

[No response.]

CHAIRMAN NEWSOME: The vote is unanimous and the rule is approved. Thank you very much, John.

The final item for Commission consideration is the order related to exchange-traded funds or the ETFs underlying security futures products.

Mr. McCarty, would you please brief the Commission on this matter?

MR. McCARTY: Yes, Mr. Chairman and Commissioners. The staff recommends today that the Commission approve a joint order with the SEC permitting security futures on shares of exchange-traded funds, which I'm going to call ETFs, trust issued receipts, which I'll refer to as TIRs, and closed end investment companies.

The overview: The CMA established criterion requirements for listing standards regarding categories of securities on which security futures products can be based, in particular the Exchange Act and the CEA require that except as provided in the rule, regulation or order such as the one we are considering today, security futures products must be based upon common stock and such other equity securities as the Commissions jointly determine are appropriate.

The Commissions have been asked to permit security futures to be based on a share of an ETF, TIR or a share of a registered closed-end investment company. Collectively,

these investment vehicles hold approximately \$200 billion in assets, while the shares of ETFs, TIRs, and closed end funds are listed and traded on securities exchanges, in many instances, such shares are not common stock.

Therefore, without a joint determination of the Commissions that the shares of ETFs, TIRs and closed end funds are equity securities on which security futures may be based, futures on ETFs, TIRs, and closed end fund shares would not satisfy the security futures requirements of the CFMA.

The Commissions note the following: ETF shares, TIRs, and closed end fund shares are registered under Section 12 of the Exchange Act. Investors effecting transaction in these securities have access to publicly available information about the securities.

Two, most existing EFTS, TIRs and closed end funds represent domestic and foreign indexes, regions, industries and sectors that would not be considered to be narrow-based under the CFMA.

Third, the listing and trading of security futures based on ETF shares, TIRs and closed end fund shares will make additional products available to market participants.

Fourth, conditions imposed by the conditions below will ensure that only liquid, widely held shares are eligible to underlie security futures.

The Commissions have determined that it is necessary and appropriate in the public interest and consistent with the protection of investors to modify the listing standards requirements for security futures to permit an ETF share, TIR, or closed end fund share to underlie a security futures product subject to the following proposed conditions:

The shares must be registered under Section 12 of the Exchange Act and listed or traded on a national security exchange or through a national securities association and reported as NMS securities. A minimum of seven million shares must be owned by persons other than those required to report their holdings under Section 16 of the Exchange Act.

Total trading volume of the shares must be at least \$2.4 million in the preceding 12 months. The market price per share must be at least \$7.50 for the majority of business days during the three calendar months preceding the date a future is listed on the shares.

The issuer of the shares must be in compliance with all applicable Exchange Act requirements.

In closing, the staff would again note that most ETFs, TIRs and closed end funds are based on domestic and foreign indexes, regions industries and sectors which would be considered to be broad-based security indexes.

The joint order specifically addresses the CFTC's exclusive jurisdiction over futures and options on non-narrow based security indexes. It states that nothing in the order affects the CFTC's authority to approve a futures contract that is based on a non-narrow based security index, including an index that underlies an ETF, TIR, or closed end fund on which an approved security future is based.

That ends my presentation. We would be happy to accept any questions that the Commission may have.

CHAIRMAN NEWSOME: Okay. Thank you, Mr. McCarty. The three thresholds that you mentioned, and this may be more appropriate for Rick or Jim or the economist, but the three thresholds, the \$7 million outstanding shares, the annual trading volume of \$2.4 million and then the minimum price per share in the preceding three-month period, how were those established? Where did that come from?

MR. SHILTS: Mr. Chairman, the thresholds you mentioned will determine which ETFs, TIRs and closed end funds would be eligible to underlie security futures products.

As the Commission is aware, the CFMA established certain requirements for trading and security futures products, such as requirements related to margins, coordinated surveillance, delivery procedures et cetera.

Among those requirements is a provision which requires that the listing standards and conditions for trading be no less restrictive than comparable listing standards for options traded in the National Securities Association.

The SEC previously has approved rules of securities exchanges that established listing standards and eligibility criteria for various types of security options that may be listed on those securities exchanges.

The listing standards adopted by the securities exchanges also apply to options on ETFs, TIRs and closed end funds. The thresholds you mentioned in the order mirror the listing standards that were previously approved by the SEC for trading options on those types of securities, thus specifying the same thresholds which seem to be appropriate to comply with the statutory requirement that listing standards and options be adopted that are not less restrictive than comparable listing standards for security options.

CHAIRMAN NEWSOME: So it creates a similarity to options.

MR. SHILTS: That's correct.

CHAIRMAN NEWSOME: I don't know if we've got this on hand, but how many of the ETFs would be able to meet

these thresholds? Do we have anything where we could look at that, Jim?

MR. OVERDAHL: Yes, Mr. Chairman. We have looked at five different sponsors of ETFs and that represents about, I think we found 119 ETFs and TIRs. Of those 119, 98 failed the test under the provisions of the proposed rule.

CHAIRMAN NEWSOME: 198 did not meet the threshold?

MR. OVERDAHL: Did not meet the threshold for at least one reason. Eighty of them failed for more than one reason. I can give you a breakdown on how that comes out, if you would like as to which were broad based and sector based and so forth.

CHAIRMAN NEWSOME: If you don't mind.

MR. OVERDAHL: The most common reason for failing the threshold was insufficient trading volume. Only a handful, seven, potentially failed due to a minimum price test, that 7.50 requirement. We didn't look into that carefully because all seven of those also failed for other reasons, so we say, "Potentially failed."

Twenty of the ETFs failed due to insufficient trading history. So, they could potentially meet the rule's threshold at some future date. Of the 98 that failed, 45 were based on sector indices, 18 were country indices, 17 were style indices and 18 were based on broad based indexes.

Of the 21 survivors, eight were based on broad market indexes, 9 were based on sector indexes, two were country indexes and two were based on style indexes.

CHAIRMAN NEWSOME: Based upon those levels, it would seem that a relatively limited number of EFT investors then would be able to utilize security futures products as a risk management tool. Is that fair to say? Does that create any problems, Pat?

MR. McCARTY: I think that is an absolutely accurate assessment, at least with respect to it being a security future product. It is possible that that is one reason we made this point in the order as well as during the presentation, that most of the indexes which underlie these ETFs, closed end funds and TIRs would be non-narrow, and therefore broad based, in our view.

Based on that, they would be within the CFTC's jurisdiction and it would be appropriate and permissible for us to approve a futures contract on the same index that underlies one of the ETFs, TIRs or closed end funds.

CHAIRMAN NEWSOME: Okay. Thank you.

Commissioner Holum, any questions?

COMMISSIONER HOLUM: Thank you, Mr. Chairman.

Yes, my question again gets back to the timing. I'm pleased to vote for this. I'm wondering how soon the SEC, in your judgment, might be taking action on this particular rule.

MR. McCARTY: We have not received, I guess, a confirmation from the SEC regarding when it's scheduled. I know that they have a June 6 open meeting and it is the staff's hope that they will be able to get that on to the June 6th meeting along with the SIPA/Seg Rule. They are still waiting for, I guess, their last clearances from staff.

So, I guess it could be as early as next week. They have another meeting scheduled for June 12, so one would hope that they would be able to get to it by the 12th of June at the latest.

COMMISSIONER HOLUM: Thank you very much.

CHAIRMAN NEWSOME: Thank you, Commissioner.

Commissioner Erickson?

COMMISSIONER ERICKSON: Briefly, maybe a couple of questions. I first of all want to thank you, Pat, and others who have really helped me get my mind around this concept of broad based index trading as a single security futures product.

It has finally sunk in over time that what we have here is a basket of held securities, that this is otherwise registered as a security independently and people are purchasing an interest in that basket as opposed to an interest in the broad based index. So, I appreciate that.

Along the lines of the questions that the chairman asked, with respect to ETFs, I'm presuming then that for those ETFs where an SFP can be, I guess, offered, multiple exchanges could offer a single security futures product on that one ETF basket. Is that correct?

In other words, the NYMEX, CBOT and CME could all offer an SFP on an ETF that was otherwise established by the New York Stock Exchange.

MR. McCARTY: Yes, I believe that's correct.

COMMISSIONER ERICKSON: I have no further questions with respect to this particular rule making. But just one point of clarification as well from you, Pat, and I have briefly talked with you about it.

It's this idea of moving forward as an order as opposed to a rule. For those of us looking to the Commodity Exchange Act in the future, by issuing an order as opposed to doing this by rulemaking, how is this reflected in the white book? Is it a footnote to the law or is it otherwise readily available for people to know that we have amended the listing standards?

MR. McCARTY: I guess since the white book comes out every year and a half or two years or so, it's like the CFR in terms of being updated. But that was one of the reasons why we wanted to have these orders published in the Federal Register, so that people would have notice of it.

I think it's our intention to have this somewhere on our home page also so that people may have access to it. Obviously, we would want to, in the next printing of the white book, have it included in the appropriate place and cross reference it to the Act so that people can find it.

COMMISSIONER ERICKSON: Thank you. It's a concern of mine. We don't have the same history as the SEC of using orders to really amend what the statute otherwise provides. So, thank you.

MR. McCARTY: Yes, the statute is very clear about we can go through rule, reg or order. So, this is a preferred path by some agencies. It is a quicker way in some instances, but we will make sure that it is available to people so that they can see it and understand that it is there. So it's clear when people are researching the issue.

COMMISSIONER ERICKSON: Thank you. No further questions.

CHAIRMAN NEWSOME: Begin there are no further questions, I will entertain a motion that the Commission publish in the Federal Register the order in which the Commission and the Securities and Exchange Commission jointly modified the listing standards related to security futures products as outlined in the memorandum of the Office of General Counsel dated May 30, 2002.

COMMISSIONER HOLUM: So moved.

COMMISSIONER ERICKSON: Second.

CHAIRMAN NEWSOME: Is there any further discussion?

[No response.]

CHAIRMAN NEWSOME: Is there any further discussion? Seeing none, all in favor say aye.

[Chorus of ayes.]

CHAIRMAN NEWSOME: Any opposed?

[No response.]

CHAIRMAN NEWSOME: The vote is unanimous and the motion passes.

Prior to adjournment, I wanted to give my colleagues on the Commission an opportunity to make any comments that they so choose. I have mentioned that to them prior to this meeting.

May I start off by saying that I believe that the CFTC and the SEC have made substantial progress over the last year on the governing structure for security futures products. We are continuing to move toward permitting trading of these new products at the earliest possible date.

Our shared goal has really been two-fold: One, getting the rules done in a timely fashion, and then two, getting them done correctly. While, as Commissioner Holum brought up earlier, we have missed the statutory deadline, I am confident that the importance of taking a well thought-

out approach to these rulemakings will turn out in the long run to be the appropriate action.

I'm particular pleased to have voted on the three items on our agenda today. Because the SEC voted yesterday on the Commodity Futures Modernization Act grandfather provision, which permits the offer and sale in the U.S. of certain security index futures contracts traded on foreign boards of trade where the offer and sale of such contracts in the U.S. was authorized by the CFTC upon consultation with the SEC prior to the enactment of the CFMA.

And because we just affirmed the same order, that order is now final. Therefore, I think these markets are now provided with legal certainty regarding these products and that's certainly a significant step in the right direction.

In addition, I'm pleased that our Commission has voted on a final rule governing the treatment of customer funds related to security futures transactions, the SIPC/Seg Rules. This, too, is a significant rulemaking, one that our staffs have worked long and hard on, both the CFTC and the SEC.

I want to echo John's comments about his staff and the many staff across divisions who have spent a tremendous amount of time on these rulemakings. It has been very much appreciated.

I am particularly pleased with the account-specific approach used in this rulemaking because I believe that this approach serves both the futures and the securities industry as well by ensuring that the joint rule is not overly burdensome nor anti-competitive.

I am also pleased to see that the Commission voted on the exchange rate of funds order today. This is another positive step toward the completion of rules for security futures products.

Finally, I would like to mention an issue that the Commission did not take up today. Chairman Pitt and I issued a joint statement on December 21, 2001, which was the first anniversary of the CFMA's enactment, expressing our commitment to promulgation of final rules on margin for securities futures products at the earliest possible date.

I believe that we are near in agreement on margin rules for security futures products. This week I'm scheduled a meeting with Chairman Pitt in order to reach resolution on the remaining margin issues within a matter of days.

I look forward to speedy completion of the entire rulemaking package for the domestic trading of these products.

Commissioner Holum, any comments that you would like to make?

COMMISSIONER HOLUM: Thank you, Mr. Chairman. I would like to join with you in saying how pleased I am to be able to vote on these three issues today and also to commend all of you who have worked so hard and have spent countless hours since the passage of the bill to come into compliance with our Congressional mandate.

I know of the many impediments that you had no control over. Also, I would like to commend the chairman and his staff for, on a daily basis, just keeping this moving forward. I am happy to have voted on this package and look forward to the rest of it.

Thank you again for all of your efforts.

CHAIRMAN NEWSOME: Thank you very much, Commissioner.

Commissioner Erickson, any comments?

COMMISSIONER ERICKSON: Sure. Actually, I would also just like to echo what you each have commented on. First, I would like to thank you, Mr. Chairman, for keeping your eye on the ball and keeping this Commission focused on trying to do its due diligence and making sure that we're putting rules out effectively but also efficiently.

I am very hopeful that our action today will clear the deck sufficiently to allow us to move forward on margins next month, the 6th or 7th maybe.

In any event, I would also like to thank the staff. It's been a long 18 months. There have been a lot of hurdles along the road. You have managed all of them very well. I look forward to seeing this through to completion. Thank you.

CHAIRMAN NEWSOME: Thank you very much, Commissioner.

Does anyone else have any comments or questions?

[No response.]

If not, then I'll entertain a motion we adjourn.

COMMISSIONER HOLUM: So moved.

COMMISSIONER ERICKSON: Second.

CHAIRMAN NEWSOME: All in favor say aye.

[Chorus of ayes.]

CHAIRMAN NEWSOME: Any opposed?

[No response.]

CHAIRMAN NEWSOME: The vote is unanimous and the meeting is adjourned. Thank you.

[Whereupon, at 3:44 p.m., the meeting was adjourned.]