1	
2	COMMODITY FUTURES TRADING COMMISSION
3	
4	IN THE MATTER OF:
5	ENERGY & ENVIRONMENTAL MARKETS
6	ADVISORY COMMITTEE MEETING
7	
8	140 Dung dung
9	140 Broadway New York, New York
10	September 16, 2009 8:00 a.m.
11	0.00 a.m.
12	BEFORE:
13	COMMISSIONER BART CHILTON
14	COMMISSIONER BART CHILION
15	
16	
17	
18	
19	
20	
21	
22	
23	
24	
25	

1	9/16/09 2	
2	COMM. CHILTON: We'll call this	
3	meeting of the CFTC's Energy & Environmental	
4	Markets Advisory Committee to order and I	
5	want to in advance thank our technology	
6	folks who have been working so diligently to	
7	ensure that this is as seamless an operation	
8	as possible.	
9	This is the second meeting that	
10	we've had of this newly expanded EEMAC to	
11	include environmental markets. We're going	
12	to spend the first part of the meeting until	
13	the break discussing any comments that	
14	participants, that members of the EEMAC may	
15	have on the hearings that the Chairman	
16	called on position limits and hedge	
17	exemptions, then we'll move to a	
18	conversation on OTC derivatives and	
19	proposals and potential proposals in the	
20	House and Senate, we'll get a little	
21	briefing on the status of those from John	
22	Reilly who does legislative affairs for the	
23	CFTC. Then we'll take a break whenever that	
24	happens but no later than 9:45, and I plan	
25	on 9:45.	

1	9/16/09 3
2	Then for the last hour we'll go
3	ahead and move on to discussion of green cap
4	and trade, green cap markets and we have
5	several presenters there, and then we'll
6	open it up for discussion.
7	You know, the first meeting that we
8	had was fairly lively, actually, and I
9	thought informative. That said, I'd like to
10	dig a little bit deeper today into some of
11	these issues and have a more in-depth
12	discussion on all the ones that I just
13	mentioned, position limits, hedge
14	exemptions, the OTC legislation and on
15	carbon.
16	So with that, let me give you just a
17	quick couple of housekeeping items.
18	Chairman Gensler and former Acting Chairman
19	Dunn are used to this list of things. First
20	is, let's all, including myself, turn our
21	Blackberries off because it will interfere,
22	if it hasn't already, with the audio. We
23	have people that are not only on video in
24	our various regional offices, but we also
25	have some folks who are calling in on

1	9/16/09	4
2	speaker, they're piped through the system,	
3	so they should hear us. This is also	
4	streaming live on our webcast, so we're	
5	hooked up electronically.	
6	The other housekeeping item is for	
7	the court reporter and for me for ease of	
8	operation, I'd like to when people want	
9	to talk, I'd like them to say their name a	nd
10	their location so it's, this is Bart Chilt	on
11	in New York, so that we know where to go as	nd
12	we can keep a good record of how this goes	
13	I know that's a little bit goofy	
14	particularly once you've said it two or	
15	three times and you have people sitting ne	xt
16	to you, but, believe me, it will help	
17	particularly in this situation where we're	
18	having this virtual meeting.	
19	With that, I think I'm actually	
20	going to move to our colleagues. I don't	
21	really have an opening statement other than	n
22	there's been a lot going on lately and I	
23	commend the Chairman specifically but my	
24	colleagues for the work that they've done	on
25	looking at these issues, the issues in the	

2	energy market and the aggressiveness that
3	we've been looking at other things too,
4	carbon markets.
5	Chairman Gensler testified, I
6	believe, last week on carbon markets, and so
7	I said at our town hall staff meeting last
8	week that I sort of felt like he was
9	Chairman Gensler was the fellow on the Ed
10	Sullivan spinning all the plates, trying to
11	keep them all in balance, but he is doing a
12	great job with the help of all the staff at
13	the CFTC which are superlative, every one of
14	them in all our divisions.
15	So with that, I'll go ahead and move
16	to our colleagues. We'll go to Chairman
17	Gensler and then Commissioner Dunn and
18	Commissioner Sommers.
19	Mr. Chairman, would you like to go
20	ahead?
21	CHAIRMAN GENSLER: This is Gary
22	Gensler from New York following the rules
23	here, but from D.C., it's a meeting from New
24	York.
25	Thank you, Commissioner Chilton, for

9/16/09

1	9/16/09
2	chairing today's meeting and thank you
3	particularly to all the members of the
4	Energy Environmental Markets Advisory
5	Committee, I look forward to a productive
6	meeting where you give us valued advice and
7	contributions to our agenda.
8	Now, energy markets are at the
9	forefront of our regulatory mission and our
10	agenda, the top seven energy contracts, I
11	believe, if I got the numbers right last
12	night, have a notional value of over \$700
13	billion in the futures market and that's not
14	speaking to the over-the-counter derivatives
15	markets, of course.
16	So, it's essential that this agency
17	continues to police the energy markets for
18	fraud, manipulation and other abuses, of
19	course, promote market integrity and market
20	transparency in these markets for the
21	benefit of all the American public that
22	whether they're particularly gassing up
23	their cars or thinking about energy as it
24	relates to the cost of so many other
25	products in their daily lives.

1	9/16/09 7
2	Earlier this summer, as Commissioner
3	Chilton said, we had three valuable hearings
4	into whether the Commission should set
5	position limits on energy markets. As you
6	know, Congress mandated in our statute that
7	we set position limits to protect the
8	American public. We do so in the
9	agricultural markets, of course, and
10	actually working with the exchanges we did
11	so in the energy metals markets through
12	actually June. It's not that long ago that
13	we didn't do that.
14	In that regard, I even understand
15	that the major exchange today will be
16	releasing a white paper on position limits.
17	I thank them for their contribution to this
18	dialogue, I look forward to reviewing their
19	paper later today, and over the course of
20	this important discussion, I believe that we
21	I believe that we should continue to
22	seriously consider the benefits to market
23	integrity and promoting markets in this
24	topic area and I look forward to hearing

from the members of the EEMAC in that

1	9/16/09 8
2	regard.
3	As Commissioner Chilton said, we
4	also testified recently, I had the honor to
5	do so on behalf of the Commission on the
6	trade part of cap and trade. There are
7	other agencies that are far better suited to
8	look at cap but we already oversee markets
9	trading programs that came out of the
10	acid rain program, sulfur dioxide, nitrous
11	oxide and so forth and even a carbon
12	initiative out of the regional greenhouse
13	gas initiative.
14	But the four larger markets that
15	might be a result of congressional action we
16	look forward to the members of the EEMAC
17	providing insight into how we can best do
18	that, moving forward if we're asked by
19	Congress to do so.
20	So, again, I just want to thank you
21	all, I look forward to learning from the
22	presenters and I guess I turn it back to
23	Commissioner Chilton.
24	COMM. CHILTON: Commissioner Dunn is
25	fine.

1	9/16/09	9
2	COMMISSIONER DUNN: Thank you very	
3	much, Mr. Chairman, for leading today's	
4	meeting and I commend you for your work in	
5	this vitally important area and look forwar	rd
6	to hearing from the participants you've	
7	gathered today to speak about energy	
8	markets, carbon markets, regulatory reform	
9	and legislation for these areas.	
10	I just returned last week from	
11	Switzerland attending an international	
12	meeting of futures regulators and the	
13	futures of energy futures was a topic of	
14	conversation and I was so proud,	
15	Mr. Chairman, of the efforts that you, Laux	ra
16	Dearer, and citing the MOU and sharing	
17	information, that was certainly a topic of	
18	what regulators ought to be doing in this	
19	area.	
20	Our goal as Commissioners is to	
21	ensure that the energy markets we regulate	
22	function property and are free of	
23	manipulation and other abuses. Three days	
24	of hearings regarding the possibility of	
25	imposing position limits in energy markets	

9/16/09

2	that was held prior to the hearing. Most
3	importantly, can the CFTC effectively
4	regulate energy markets without having a
5	broad view into all the venues in which
6	these contracts are traded, are regulated
7	markets, over-the-counter markets and
8	oversea markets.
9	I am hopeful that this Advisory
10	Committee and the experts you've called to
11	speak today will be able to shed some light
12	on the best way forward in this area. I'm
13	also interested in hearing more about the
14	emergence of carbon markets and how best to
15	regulate this growing industry.
16	Lastly, I would like to hear from
17	the Advisory Committee, their thoughts on
18	what resources the CFTC will need to
19	effectively regulate energy markets and
20	carbon markets. I look forward to hearing
21	the experiences of our panelists and, once
22	again, Mr. Chairman, I thank you for calling
23	today's meeting.
24	COMM. CHILTON: Thank you,
25	Commissioner Dunn. Commissioner Sommers.

1	9/16/09 11
2	COMMISSIONER SOMMERS: Thank you,
3	Commissioner Chilton and thanks for holding
4	this EEMAC meeting today and thanks to all
5	the members that are participating from New
6	York and Kansas City and here in D.C.
7	This is a very challenging time for
8	the CFTC, we're in the process, as you know,
9	of considering a number of very important
10	initiatives and I believe that the EEMAC
11	Committee is a critical source of input to
12	the Commission. There's such a wide range
13	of expertise and number of representatives
14	with a great deal of knowledge and
15	experience with our energy markets and it's
16	very important to us.
17	We're scheduled to discuss position
18	limits and the OTC regulatory proposal and
19	the legislative proposals regarding the
20	carbon markets, and I think that all of
21	these issues present very complicated
22	questions for the Commission.
23	I agree with Chairperson Gensler on
24	many of the initiatives and agree that it's
25	prudent for this agency to require greater

1	9/16/09 12
2	transparency in our energy markets, and
3	before we make these policy changes we must
4	fully understand the consequences of
5	additional regulation in these markets.
6	Many of you and the organizations
7	that you represent have participated in the
8	meetings that we had over the last few weeks
9	and I think that today is just another step
10	in the process to inform this debate. So
11	thank you again for being here and I look
12	forward to the discussion.
13	COMM. CHILTON: Thank you very much.
14	Before we go ahead and start asking for
15	comments on the position limits and hedge
16	exemptions, we're going to have Steve
17	Sherrod give us a brief overview on energy
18	markets.
19	Do you have a Powerpoint, Steve?
20	MR. SHERROD: Thanks, Bart. No, I
21	don't have a Powerpoint. I should say
22	Commissioner Chilton.
23	COMM. CHILTON: No, that's fine, I'm
24	Bart to everybody.
25	MR. SHERROD: Good morning, I'm

1	9/16/09 13
2	Steve Sherrod, I'm in D.C., it's a pleasure
3	to be with you here today. First, I'll
4	provide you with a brief look into my views
5	of what we do in surveillance at CFTC, and
6	second I'll give you a look into the
7	motivations behind our disaggregated
8	commitment of trader reports, we've broken
9	out the energy commodities specifically in
10	the first round of that new Disaggregated
11	Report, and third I'll briefly discuss the
12	index investment data that was released on
13	September 4th.
14	One of the central purposes that
15	we're all familiar with in the Commodity
16	Exchange Act is for us to detect, deter and
17	prevent price manipulation or any other
18	disruptions to market integrity and I think
19	of our role in surveillance as shining the
20	light on those who would engage in
21	disruptive or manipulative activity.
22	We fulfill this imperative of the
23	Act by detecting the traders who might
24	potentially disrupt positions, so we try to
25	find the traders before the disruption

1	9/16/09 14
2	occurs and we do this through our large
3	trader reporting system, we also do this
4	from the transaction data that we obtain
5	from the exchanges, we obtain the
6	transaction data on a T plus 1 basis, so
7	we're looking into the markets trade by
8	trade on the next day and we're looking at
9	the unique positions of traders that we
10	receive from the large trader reporting
11	system.
12	After we detect potentially
13	disruptive situations, we like to work
14	cooperatively with the exchanges and in so
15	doing we're trying to determine the traders'
16	intentions. Sometimes we describe this
17	process that we go through of contacting the
18	traders jawboning, that is, we may ask a lot
19	of questions, we discuss what our
20	understanding is of the futures markets and
21	the cash markets, supply and demand
22	situations, the inventory situations, then
23	we ask the traders in light of this
24	information to explain their intentions, and
25	this jawboning often is sufficient to

9/16/09

2	it's sufficient sometimes to result in the
3	traders resolving the situation before
4	there's a disruption.
5	We do have an escalation process
6	that we use, this includes sending warning
7	letters, we can refer activities that we
8	think are suspicious to our enforcement
9	division to take action, and the ultimate
10	action which rarely is taken is to request
11	the Commission take an emergency action.
12	So I think we focus in surveillance
13	on preventing disruptions so that, as
14	Commissioner Dunn said, the futures can play
15	their important role in the markets, in
16	price discovery and risk transference. We
17	focus on having fair trading, however, in
18	the last decade or so there have been a
19	number of occasions when traders have
20	engaged in disruptive activity by doing
21	things like banging the close.
22	Banging the close refers to the
23	practice of a trader acquiring a substantial
24	position during the day and then offsetting
25	that position before the end of the day

9/16/09

2	during the closing period and that closing
3	period, of course, serves as a settlement
4	price for other over-the-counter or exchange
5	traded cash contracts, and we'll continue to
6	review carefully the trading during the day,
7	the transaction data that we have in the
8	large trader reporting system reports.
9	Turning to the Commitment Traders'
10	Report, we have implemented transparency
11	measures on Friday, September 4th, we
12	released a Disaggregated Commitment Traders'
13	Report along with the Legacy COT Report, so
14	we continue to release both reports.
15	The new report gives the public what
16	I think is a better view of positions of
17	traders in the futures markets, it's not a
18	perfect view but maybe it's a little better.
19	In the Legacy COT Report we provide
20	aggregate information on reportable
21	positions of traders from our large trader
22	reporting system, we break that out into two
23	categories in the Legacy Report, the
24	Commercial Traders and the Noncommercial
25	Traders.

1 9/16/09 1	17	7
-------------	----	---

In the new Disaggregated COT Report
we break the commercial trader positions
down into two pieces, the first piece breaks
out in the reportable positions for a
category and it's a mouthful, it's called
Producer Merchant Processor User, we didn't
use marketing to come up with that, that
category basically covers the entities that
are predominantly engaged in handling the
physical activity.

We categorize traders, so we look to their predominant activity. A trader that might be physically handling the particular commodity might also be engaged in other activities, so we have to make a judgment call to try to categorize, we do that based upon the information we gather from our large trader reporting system process, we have what's called a Form 40, we gather additional information from the traders, our surveillance economists talk with the traders, try to discern the balance of their business, and it's basically fiscal handlers predominantly that will categorize that

Τ	9/16/09
2	trader in all of that trader's positions for
3	release to the public in this report.
4	The second piece of the commercial
5	positions that we break out are for swap
6	dealers. Now, swap dealers may be engaged
7	in a variety of other activities but a swap
8	dealer is in our Commitment Traders Report
9	is an entity that's predominantly engaged in
10	swap transactions.
11	The dealers' counterparties may be
12	engaged in speculative trading, the dealers'
13	counterparties may be engaged in commercial
14	clients, the counterparties could be
15	commercial clients that are engaged in
16	managing the risks arising out of their
17	physical commodity business. In the
18	Commitment Traders Report we can't currently
19	provide that look-through to the public.
20	For the noncommercial trader
21	categories, the Legacy COT Report reports
22	one set of numbers and we break those out in
23	this new Disaggregated Report into two
24	pieces, managed money and the rest of
25	noncommercial reportable positions as other

1	9/16/09 19
2	reportables.
3	For managed money those are
4	positions that are held by a money manager
5	that will be someone like a registered
6	commodity pool operator, a CPO, a registered
7	commodity trading adviser, someone that
8	might not be registered with the Commission
9	that our staff is aware manages money for
10	others. Examples would be something like a
11	hedge fund, someone that has an exclusion
12	from registration as a CTA or CPO.
13	So, again, we categorize the
14	traders, not the transactions, and we use
15	data and judgment to try to break out and
16	provide a better view into the positions of
17	our large traders in this new disaggregated
18	report.
19	We have welcomed comment on this new
20	disaggregation on the website, on the first
21	page of our website there's a link to the
22	commitment of traders and at the bottom of
23	that page you can submit comments to market
24	reports at cftc.gov, and I remind everyone
25	in considering your comments that there is a

1	9/16/09 20
2	limit on the amount of public information we
3	can disclose.
4	We generally are prohibited from
5	publishing data that would reveal the
6	position of an individual trader or the
7	business transactions of an individual
8	trader.
9	Finally, turning to the index
10	investment data. We released data in the
11	commodity futures markets based on data we
12	received from our continuing special call,
13	we're continuing the special call and intend
14	to release data at the end on a quarterly
15	basis, that data basically summarizes gross
16	long and gross short positions on activity,
17	it's typically categorized by a passive
18	strategy that's designed in exposure to
19	quality price movements and that's typically
20	part of a diversified portfolio strategy.
21	Investors, as we understand it, will
22	use two principal means to engage in index
23	investment activity, direct investments in
24	the futures markets and we certainly have a
25	handle on that, and indirect investments

1	9/16/09 21
2	through over-the-counter swap agreements
3	with financial firms.
4	The data for these OTC swap
5	agreements comes from our special call, we
6	issue that to a variety of swap dealers and
7	index funds, we continue to review without
8	surveillance economists who we issued the
9	special call to and as we become aware of
10	large participants we will add firms to our
11	list of special call participants.
12	The index investment data represents
13	our best effort to provide a one-day
14	snapshot of the positions of the swap
15	dealers in the index funds and these figures
16	do not reflect any trading activity or
17	changes in positions that are taking place
18	during the quarter because, as I mentioned,
19	we will add firms to the list from time to
20	time.
21	We do provide data on numerous
22	energy markets in the in dex investment
23	data, including heating oil, natural gas,
24	the gasoline RBOB contract, the WFTI crude
25	oil markets. This investment data is more

1	9/16/09 22
2	comprehensive than what we've previously
3	released as COT supplement that we began
4	publishing in January 2007, and in this
5	regard we can provide the notional value of
6	the commodity index business and we also
7	provide that on a futures equivalent basis.
8	That concludes my remarks about the
9	transparency measures that we have. Thanks.
10	COMM. CHILTON: Thank you, Steve,
11	that was helpful and I'm really glad you
12	talked about that stuff. I was also
13	thinking we ought to get a briefing on the
14	status of the energy markets, but in the
15	interest of time we'll go ahead and move
16	forward.
17	I do want to congratulate Steve, you
18	know, Steve was with the CFTC for a long
19	time and left, he's been back for I'm not
20	sure quite how long but a year or so, I
21	guess, he's our acting Deputy Director for
22	Market Surveillance and he's doing a great
23	job, and the work that he's been doing that
24	he's been talking about is a great example
25	of that. So we thank you, Steve.

1	9/16/09 23
2	With that I want to move to this
3	whole discussion of position limits and
4	hedge exemptions, but maybe as a kickoff,
5	you know, Chairman Gensler mentioned a news
6	report and a white paper on position limits
7	and, you know, that has to do with this
8	exact subject, so I'm wondering, Deanna Dow
9	from CME, if you're there in D.C., if you'd
10	mind giving us an overview and informing
11	everybody who hasn't read the papers yet
12	this morning.
13	MS. DOW: Thank you, Commissioner
14	Chilton. I'm Deanna Dow, I'm here in the
15	Washington office. I wasn't expecting to be
16	asked to give an overview of our proposal
17	but I'm happy to kind of kick off the
18	discussion.
19	We are, in fact, this morning
20	releasing a white paper that is intended to
21	inform and shape the debate about position
22	limits. We have taken the lead, I guess you
23	would say or are interested in trying to
24	provide something of a framework that the

Commission, as well as the Congress, can use

1	1 9	١,	/ -	1	6	: .	/	$\cap$	a	2.	Λ	
4	L 9	' /			τ:	) /	/	١,	. "	/	4	

as a way of addressing perceived perceptions
of problems that I guess the general public
sees as affecting the price and volatility
of the markets, despite the fact that many
economists, noted economists and studies
even here at the CFTC have been done that
prove there's no support for the concerns
about speculated driving volatility in the
market, we recognize that that perception
can potentially take away or affect the
confidence that people have in our market,
so based on that we decided to look at this
issue and address some of the public policy
concerns by seeking a way that position
limits could potentially be implemented that
would do no harm to the markets.

We believe that, you know, in drafting this proposed white paper, we're putting it out, there are recommendations for discussion, we certainly have not gone forward to implement or to self-certify any potential rule changes. We believe that it's very important to preserve the transparency and the liquidity and the price

1	9/16/09 25	
2	discovery function of our markets and in	
3	order to do that we believe that it's	
4	necessary that these position limits be	
5	adopted across all markets, that being the	
6	regulated markets, the over-the-counter	
7	markets, the foreign board of trades that	
8	provide access here as well.	
9	So this is a first step to really	
10	trigger the discussion, inform the debate	
11	and we hope provide a framework that people	
12	will find is a reasonable framework and one	
13	that, in fact, does no harm to the market	
14	and continues to preserve the goals, the	
15	public policy goals that are out there.	
16	As you all know, the	
17	administration the Congress has been	
18	looking to promote transparency and to push	
19	more transactions into clearing more of the	
20	OTC trade, into clearing it out of the dark	
21	pools. We believe that the only way to do	
22	that is to ensure that there's parity across	
23	the markets, so to move too quickly to	
24	impose limits on the regulated market	

certainly and we've already seen this

T	9/16/09 26	
2	happen, you'll see the shift from the	
3	regulated markets into the OTC space.	
4	Again, the paper with all the	
5	specifics and details will be coming out.	
6	Just generally speaking, it would recommend	
7	that there be a spot month limit, that there	
8	also be single month limits as well as	
9	limits across all markets and there are also	
10	recommendations in there in terms of	
11	aggregation across all markets. Thank you.	
12	COMM. CHILTON: Thank you, Deanna.	
13	This is Barton in New York again and I want	
14	to apologize for sort of hitting you and	
15	having you do it off the cuff but you did a	
16	great job explaining it.	
17	For my part, I'm really pleased that	
18	people are sort of taking the charge of the	
19	Chairman and thinking about these things and	
20	I commend you putting your proposal forward.	
21	You know, for my part, we're going to ensure	
22	that whatever we do, I can't for the	
23	Commissioners, but for myself I want to	
24	ensure that whatever we do doesn't advantage	
25	or disadvantage any individual exchange or	

9/16/09 27

2

3

5

6

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

any individual market participant but, you know, I think to the extent that I have any influence in this, we're going to reach the right balance, we're going to do something that is thoughtful, if we do something, and we really appreciate the fact that people are coming forward and giving ideas.

I did want to clarify one thing, if any of my colleagues want to chime in on this they're welcome to. When you talked --Deanna, when you talked about studies at the CFTC that proved something and just to be clear, the studies that we've done recently have not proved that speculators haven't had an impact, they've proved that they weren't driving prices, and as we talked about at our hearings, the possibility that there is some movement is something that we have to be concerned about under the law. So that doesn't prejudge what we may or may not do to any extent, but the fact that we've had these studies doesn't definitively say they're doing anything other than they weren't driving prices last year, driving

1	9/16/09 28
2	prices, they're not the leading indicator,
3	that doesn't mean they didn't have an impact
4	either way.
5	So, with that, let's go ahead and
6	open it up. Since we've been in D.C. for a
7	little bit, why don't we start in New York
8	if somebody wants to comment, anybody here
9	want to start? Mr. Cota, Sean Cota here in
10	New York.
11	MR. COTA: Good morning. I'm Sean
12	Cota in New York representing Petroleum
13	Marketers of America. The heating oil
14	industry has hedged for a long period of
15	time, so we're more cognizant of trading
16	practices and its impact on a lot of other
17	segments.
18	We're not anti-speculative, we are
19	pro exchange, we love what the CFTC does, we
20	would like everybody to be more in that
21	venue if we possibly can but we concur with
22	the comments made by the Chairman a month
23	I think it was a month ago with regard to
24	the impacts of what may be excessive
25	speculation or excessive trading in finite

1	9/16/09	29
2	markets, and it's the finite markets like	
3	energy that concern us.	
4	We need to remember our examples in	n
5	history, one example was Amaranth, Amaran	th
6	did part of its trading in over-the-count	er,
7	part of it in ICE, part of it on the NYME	х.
8	One of the forensic analyses done by the	
9	Senate, they discovered that at one point	
10	their position in natural gas was 80 perce	ent
11	above the total U.S. natural gas production	on.
12	MR. CHILTON: Well, if anybody own:	S
13	80 percent of any market that's, in my	
14	opinion, too large of a market and it wil	1
15	have a significant price impact.	
16	MR. COTA: If they had not done par	rt
17	of their trading on the New York Mercanti	le
18	Exchange at the time they would never have	e
19	been found out, so these positions both ne	eed
20	to be disclosed and there needs to be	
21	limits, that's a real example of something	ā
22	that has occurred.	
23	The notion of index funds and	
24	passive investors going into markets and	
25	overwhelming these finite markets is a rea	al

1	9/16/09 30
2	concern of our industry, that a certain
3	percentage, the economic model for the
4	physical contract diverges from the economic
5	model of the financial contract.
6	The financial contract, and I like
7	to use the heating oil contract as an
8	example because it's the one I'm closest to,
9	you could call the coconut futures at a
10	certain point and it will still have an
11	economic model from a trading perspective,
12	but it won't have an economic model from a
13	physical perspective because you'll have
14	complete demand destruction. I think we're
15	not too far from that with the
16	over-the-counter trades that are not
17	recognized both for position and in size and
18	we have demand destruction that's very
19	significant in the heating oil industry.
20	I think it was 28 year high
21	inventories yet we're more than double the
22	price that we were in the spring in a lot of
23	these trades, so there's a disconnect with
24	the physical which I think shows up in these
25	position limits or the lack of position in a

1	9/16/09 31
2	lot of the over-the-counter trade and we
3	want speculators in the markets but we're
4	concerned about that impact.
5	Like the comments made by the
6	Chicago Mercantile Exchange in Washington
7	just now, we're concerned that you need to
8	connect all of the dots. I applaud the CFTC
9	for its work, the FSA, I caught the press
10	release yesterday about sharing the data, I
11	think that needs to be done across a lot
12	more markets and you need to disclose what's
13	occurring in these markets.
14	I think that if a savvy trader knows
15	what's occurring in these markets both in
16	size and position, they will on their own
17	have a self-regulating effect, and that's
18	another reason why we believe as an industry
19	that more of these things should be come
20	off from over-the-counter, perhaps
21	over-the-counter to some extent but they
22	should be traded the back end needs to
23	be traded on exchanges and needs to be
24	cleared on exchanges, but exchanges will
25	have that function of regulating those

1	9/16/09 32
2	markets and they'll see when things have
3	gotten out of control and say, listen, time
4	out, either you need to change your position
5	or you need to pony up more cash or we're
6	going to liquidate those positions, and
7	unless a market knows that those impacts are
8	going to be done on a mark to market basis
9	and that's what exchanges do, is they force
10	people to deal with these swaps and pony up
11	money instead of just letting the deal hang
12	out forever until it gets to a trigger
13	point.
14	I think that the Commission and the
15	FSA and other regulatory agencies really
16	need to have that in back of their mind when
17	they develop these regulations and
18	reporting. I could go on forever but I'm
19	going to stop there. Thanks.
20	COMM. CHILTON: Thank you, Sean.
21	Anybody else, who's next? You want to head
22	back to D.C. or to Kansas City or Skip, did
23	you want Skip in New York here.
24	MR. HORVATH: Skip Horvath in New
25	York. Thank you, Commissioner. I just want

2	to touch briefly on the position limits and
3	go on to another point. I really appreciate
4	what I heard today which is that the CFTC is
5	cognizant of the need to be careful to
6	address a perceived problem in the country
7	without actually doing damage to the markets
8	if they're regulated.
9	I would suggest that the way you do
10	that is to use your authority to work with
11	the exchanges so that they will set the
12	limits based on the dynamic changes in the
13	marketplace rather than being imposed on
14	them and not responsive to the market
15	changes. I'll leave it at that but I am
16	encouraged by what I heard today.
17	A couple of minutes on another point
18	which is the notion of forced clearing or
19	management clearing on exchanges for energy
20	trading. The reason that's a concern to us
21	is the capital requirements that you have to

25 billions of dollars a year to put steel in

all know, and we require a lot of --

22

23

24

post in order to do that, the natural gas

industry is a very large industry, as you

9/16/09

2	the ground to get the gas to consumers.
3	We always establish credit with each
4	other and use those estimates as collateral,
5	so we establish our credit based on that.
6	If forced to go on an exchange and take that
7	CAPEX money and put it as collateral, that's
8	money that's not being used to put steel in
9	the ground, the result is a decrease in
10	supply while the economy is recovering,
11	that's a portended disaster for the
12	consumers with high prices just
13	skyrocketing.
14	So we haven't done a full study of
15	this but we believe that as much as 25 to 30
16	percent going back looking over if we had to
17	collateralize our trades for the last year,
18	roughly 25 to 30 percent in some cases would
19	have to be put aside and not invested in the
20	ground or by CAPEX, that's a large amount of
21	natural gas that will not come out of the
22	ground, forces prices up.
23	So we ask that in looking at this
24	issue as you move forward to consider a way
25	of allowing the if mandatory clearing

Τ	9/16/09
2	if you go ahead with that, to find a way to
3	use the steel in the ground as collateral so
4	that we can follow the law without forcing
5	Americans to pay higher energy prices.
6	COMM. CHILTON: That's very helpful,
7	Skip and that's really part of, I think I
8	don't mean to minimize that at all, we'll
9	talk more about that, this is a concern that
10	when I spoke with APGA in August that it was
11	raised by a number of folks but that's, I
12	think, part of our second discussion here
13	when we get to talking about OTC
14	legislation, about clearing. So if it's
15	okay, I'd rather stick with for right now at
16	least the position limits and hedge
17	exemptions.
18	We also have folks on the phone, so
19	anybody who wants to chime in now, feel free
20	to let me know. Is somebody there in D.C.
21	or Kevin Fox in Kansas City or somebody on
22	the phone wants to chime in?
23	MR. FOX: Yes. This is Kevin Fox in
24	Kansas City.
25	COMM. CHILTON: Hi, Kevin.

1	9/16/09 36	
2	MR. FOX: So in a little over a year	
3	on this Committee I really haven't heard too	
4	many people opposed to the concept of	
5	limits, most people seem to be in favor of	
6	imposing limits, so I suggest we more or	
7	less accept that and move on to the next	
8	phase which is who is going to set these	
9	limits and the process by which these limits	
10	are achieved.	
11	In the past the exchanges have set	
12	the limits and in one exchange it was not to	
13	have any limits and the other exchange I	
14	suspect had granted exemptions to those	
15	limits to some of the biggest speculators in	
16	the market.	
17	The interesting thing about	
18	Amaranth, the case that's currently out in	
19	the public is this concept of banging the	
20	close, when I read that \$3,000 lots of	
21	natural gas were sold in the last 30 minutes	
22	that really only leaves one of two	
23	situations, either they were exceeding the	
24	position limits which on the last day would	
25	be a thousand, so nobody could only really	

1	9/16/09 37
2	have 3,000 to sell in the last 30 minutes.
3	If they hadn't done that, they had an
4	exemption which makes my case, I think, that
5	the actual setting of these limits should be
6	done by the CFTC and not left to the
7	exchanges.
8	I'd also like to express that the
9	limits need to be set in such a way that the
10	appropriate people are given the opportunity
11	to have input and I was going to suggest
12	some type of technical conference, but I
13	think maybe we could use this white paper
14	that the CME put out as a basis of
15	discussion, but certain markets take
16	electricity, for example, there are no
17	natural buyers out beyond a year or two, I
18	mean, people that need to sell electricity
19	would be independent power producers and
20	owners of merchant power plants, the only
21	real buyers of that power that's going to be
22	sold would be speculators, even there are no
23	ETFs that trade electricity that would give
24	retail access to that market.

So for a speculator, as ourselves,

1	9/16/09 38
2	would be able to step in and buy electricity
3	in 2012 or 2013, we need to be able to sell
4	natural gas, for example, that would be a
5	standard EEMAC trade. So when one imposes
6	limits on natural gas, there are
7	ramifications on other markets, and although
8	there are soft limits now that are set as a
9	percentage of the open interests, it's
10	really not a good limit because it's very
11	possible that the markets are thin back
12	there and a particular trader might have
13	what would look to be a large percent of the
14	open interest, could be 50 percent, but if
15	the total open interest is only a 100 lots,
16	who really cares if a trader has 50 lots of
17	that position.
18	So, it's a fairly complicated issue,
19	I think we need to get input from everybody
20	across the market as to how those limits
21	should be set, and lastly, I do think that
22	those limits have to be controlled by the
23	CFTC themselves and not left to the
24	exchanges.
25	COMM. CHILTON: Thank you, Kevin,

1	9/16/09 39
2	those are good points. I want to make sure
3	that my Commissioner colleagues don't have
4	questions here. I apologize if you've
5	wanted to speak and I haven't recognized
6	you, feel free to speak up folks and I will
7	make sure that I get to you, if you want to
8	say anything. I'll make sure that you don't
9	right now before we move on.
10	Mr. Chairman or Commissioners,
11	anybody want to comment on anything that's
12	been said or ask any questions. It's an
13	informal open conversation as best as we can
14	do virtually.
15	COMM. GENSLER: Thank you. Just on
16	the topic of position limits, I do think
17	that I can't remember who it was in New
18	York City but it might have been John, said
19	he appreciated how we're looking at this. I
20	can't speak for everybody in the room, at
21	least for the Commissioners, we're just
22	looking at how we can best promote the
23	market integrity and the transparency in the
24	markets, make sure they're fair and orderly.
25	We're not a price setting agency,

1	9/16/09	40

2	there may be some that wish us to be but
3	that's not what we're our mission is,
4	it's just how best to make sure that these
5	markets function. I mean, there's a lot of
6	debate whether position limits help in that
7	and that's a lively and healthy debate, but
8	I think we're all trying to promote fair and
9	orderly markets and making sure that the
10	risk management contracts, called futures,
11	and the risk management contracts,
12	over-the-counter swaps, if we were to
13	regulate them, that that price discovery
14	function works best for hedgers ultimately
15	in these marketplaces.

Sherrod, when he was talking about when we look at the end of the day of where the positions are, that we actually look at it, I guess, twice a day when we're looking at it, but it occurs to me with the algorithms that folks have on trading that there is probably a great deal of trading that takes place interday and that trading may not get too far out there because what happens with

1	9/16/09 41
2	the algorithms, the machine realizes that
3	there is an opportunity to do some arbitrage
4	between what spot price is in the out months
5	and it's done very quickly, and then in and
6	out and, of course, they can be programmed
7	to be flat at the middle of the day or the
8	end of the day when we tally up, so we
9	really don't know what is pushing those and
10	it says to me that we, as regulators, as we
11	look at the marketplace, have to shift from
12	the old mindset of looking at pits and look
13	at what goes on electronically and get some
14	expertise to be able to do that because I
15	think I suspect that that has as much
16	impact as who has open positions at the end
17	of the day on which directions the prices
18	are going.
19	The other issue and, again, I don't
20	want to ambush you again on what the
21	paper that came out, we will be getting that
22	and digesting that, but in view of the other
23	exchanges have had a great deal of

experience on setting position limits and I

am concerned about what type of

24

1	9/16/09 42
2	organizational structure do we have to have
3	here at the CFTC if at the end of the day we
4	end up setting position limits across the
5	board.
6	And the third aspect of that is,
7	again, coming back from this international
8	meeting, I find no other regulator in the
9	world that is sympathetic to setting
10	position limits and I'd like to know what
11	the impact that this Advisory Committee may
12	think this will have on our markets here in
13	the United States if we do this
14	unilaterally.
15	COMM. CHILTON: Before we go to
16	I'm sorry, go ahead, Deanna.
17	MS. DOW: I think you raised some
18	very, very important issues with respect to
19	setting the limits. I certainly would agree
20	that if you do it unilaterally it will have
21	a very negative impact on the domestic
22	markets, I think that goes without saying
23	from a competitive standpoint and from the
24	very ease of which market can move to other
25	jurisdictions, I think you will see that in

1	9/16/09 43
2	very short order in terms of the resources
3	and the impact of the Commission taking the
4	responsibility of setting position limits.
5	I think it will be a very difficult
6	task, I mean, this is quite a resource
7	intense activity that our compliance
8	department has to address day in and day
9	out, I mean, this is a routine daily
10	monitoring and calculating job that, you
11	know, it really is important to be there, to
12	know the market, to actually have the
13	contact with the participants to know their
14	trading patterns.
15	I think in terms of setting the
16	position limits, the formula needs to be
17	certainly something that the Commission has
18	blessed or signed off on and that is applied
19	across the board for all exchanges. I
20	understand the concerns about individual
21	exchanges setting limits in and of
22	themselves without it being a broad
23	application.
24	So, to me, the exchanges are in the
25	best position in terms of actually

1	9/16/09 44
2	implementing and enforcing those limits, but
3	certainly the formula under which those
4	limits come into place and come into
5	existence, I think, certainly is a process
6	that, you know, needs to be dealt with in
7	conjunction with, you know, all of the
8	markets and in working in cooperation with
9	the CFTC.
10	COMM. CHILTON: Go ahead, Mike.
11	COMMISSIONER DUNN: Mr. Chairman,
12	Tyson would like to respond to that, if
13	that's all right with you?
14	COMM. CHILTON: Yes. Go right
15	ahead, Tyson Slocum in D.C. there.
16	MR. SLOCUM: Thank you very much for
17	recognizing me, I appreciate it. This is
18	Tyson Slocum, I direct the energy program at
19	Public Citizen. Public Citizen is a leading
20	consumer advocacy group, so our constituents
21	including our membership which helps pay my
22	salary are households across the United
23	States.
24	First, I just want to thank the CFTC
25	for making August a not sleepy month in

1	9/16/09 45
2	Washington, D.C., we have been very
3	encouraged by a number of activities by the
4	Commission. I think that the Commission has
5	seized an important opportunity, recognized
6	that we have been undergoing an economic
7	crisis that was caused, in part, by a lack
8	of adequate transparency and regulation over
9	commodity and derivative markets, and I
10	think that the CFTC is making very important
11	positive steps in the right direction to
12	fill that regulatory void and enhance
13	transparency that I think are going to yield
14	a lot of benefits to all market participants
15	and ultimately to end consumers.
16	The conversation right now is on,
17	you know, what to be done about position
18	limits and hedge exemptions, the CFTC has
19	again showed some excellent leadership in
20	holding a series of hearings on this issue
21	and I'm going to find myself in the very
22	unusual position of agreeing with a
23	representative from a hedge fund probably
24	for the first time in my life, that it seems

25 that we are in agreement that some form of

2	position limits are required, and I strongly
3	support the CFTC being the entity that makes
4	that determination, and I very much
5	appreciate concerns by Commissioner Dunn and
6	others noting that there is widespread
7	encouragement by other regulators around the
8	globe to take on that kind of function, and
9	I think that the United States has been
10	recognized through the generations as a
11	global leader in a number of things and when
12	Americans are faced with a crisis, there's a
13	belief that America does things on it's own
14	and sets the standards, and I think it's
15	important to recognize the uniqueness and
16	seriousness of the economic challenges we
17	face and that the United States not
18	necessarily listen to naysayers who say,
19	well, regulators have never done this
20	before, this is not a job for regulators,
21	it's a job for exchanges, I think that the
22	CFTC needs to take decisive action to set
23	the bar high.
24	For those who fear that the CFTC
25	taking aggressive action to set position

9/16/09

1	9/16/09 47
2	limits and be the entity that sets those
3	position limits that this will result in a
4	fleeing from the U.S. marketplace, this
5	so-called race to the bottom mentality that
6	any time people talk about improving
7	regulatory oversight to strengthen
8	transparency is a negative thing, that as
9	long as there are other entities around the
10	globe that have weaker transparency rules
11	than us, that capital and trading activity
12	will flee to those areas.
13	I think that those folks
14	underestimate the concern that many market
15	participants have about the integrity of
16	markets and for the United States to take a
17	lead in aggressively setting firm new
18	transparency rules that would include the
19	CFTC leading action to set position limits,
20	that is going to be a signal that the U.S.
21	markets are safer, it is going to send a
22	signal not to flee the U.S. marketplace but
23	that U.S. markets are more trustworthy, that
24	those who say that markets and capital will
25	flee to those areas with a reputation of

1	9/16/09 48
2	being low regulation entities, I do not
3	think that the current crisis of confidence
4	in markets is going to support large-scale
5	capital or trading volume flight to low or
6	no regulation entities.
7	So I think that we have an
8	opportunity today for the United States to
9	assume its global lead in ensuring that
10	markets are well regulated. As I said back
11	on July 29th when I testified before the
12	CFTC, taking these strong transparency
13	efforts have a lot more in common with Adam
14	Smith in preserving market integrity than
15	they do with Karl Marks, there is nothing
16	radical about encouraging competition and
17	market transparency by establishing strong,
18	clear and effective rules. Thank you.
19	COMM. CHILTON: Thank you, Tyson.
20	Before we go to Mike, did you have
21	something?
22	COMMISSIONER DUNN: Yes. Mr. Cicio,
23	I think, would like to have an intervention
24	as well here.
25	COMM. CHILTON: You know what,

1	9/16/09 49
2	though, if it's okay, when you started to
3	speak a little bit ago, Commissioner Dunn,
4	Bob Pickel on the phone tried to chime in
5	and I stopped him, so let's have Bob, if
6	you're still there, why don't you go ahead.
7	MR. PICKEL: (Inaudible) I had this
8	one question then a couple of points in
9	Steve Sherrod's description of all I know
10	that the Commission is analyzing that, I
11	guess they're in the process of perhaps
12	considering an updated report, I was just
13	wondering about any incites you're gleaning
14	from that data as it stands.
15	Secondly, a few questions just
16	regarding the kind of practicalities as we
17	look into the OTC space for collecting this
18	information and potentially looking to
19	impose position limits on aggregated
20	exchange, OTC and overseas basis.
21	I think that's really a question
22	the kind of things we looked at in recent
23	years was the ICE offerings that we
24	eventually introduced some additional
25	reporting kind of brought those into the

1	9/16/09 50
2	position limits we're seeing.
3	Then secondly, these are again, we
4	say it all the time, but it's helpful to
5	emphasize, these are bilateral contracts
6	where even if somebody has the worst of
7	intentions, they need to engage in bilateral
8	negotiations probably with many different
9	entities in order to build up positions that
10	would somehow, at least, have some effect on
11	the exchange prices.
12	So there's kind of a practicality of
13	what exactly is the situation that is going
14	into the transaction, and then assuming you
15	can even get over that hurdle, what would be
16	the requirements regarding unwinding
17	positions if you're looking at aggregated
18	exchanges, OTC and overseas situation. On
19	exchange contracts or cancel some of the
20	contracts for whatever the settlement price
21	is on the OTC side he would need effectively
22	to negotiate out of any number of different
23	transactions with any number of different
24	counterparties.

Like there are a lot of

1	9/16/09 51
2	practicalities here that we need to think
3	about as we look to expand if, in fact,
4	that's the direction we're going.
5	COMM. CHILTON: Thank you so much,
6	Bob, and I know you had to make a special
7	effort to be with us on the blower here, so
8	thanks very much.
9	We'll go to Paul in D.C. but I
10	wanted to just make a point. You know,
11	we've been putting position limits on ags
12	for a very long time and its worked out real
13	well and I don't think we see people sort of
14	running like Fred Flintstone overseas in the
15	ag markets. I'm convinced we can do it.
16	I have some other concerns that
17	Commissioner Dunn does about staffing and
18	how it's done, et cetera, but, you know, I'm
19	certainly not going to support anything
20	that's crazy or overzealous and going to
21	move things overseas, but there's an
22	appropriate balance, I think, that we can
23	reach, and I can tell you one thing
24	everybody, my colleagues are really smart
25	folks and whatever we do I think we'll get

1	9/16/09 52
2	right.
3	So, Mr. Cicio, Paul Cicio in D.C.,
4	do you want to comment?
5	MR. CICIO: Yes, thank you,
6	Mr. Commissioner. I'll be brief. I would
7	like to simply identify with the remarks of
8	Mr. Slocum and I think he has captured it
9	very, very well.
10	I would add that the stakes are so
11	high, we've tried the old system, it doesn't
12	work, we need aggregate position limits, we
13	need position limits, just in that time
14	period of January to August of last year
15	with the run up of just natural gas it cost
16	consumers across the country \$40 billion
17	just in one commodity, think about all the
18	commodities, there's too much at risk.
19	Finally, there simply is a lack of
20	confidence to allow the exchanges to set
21	these position limits. It can be done as
22	Bart you just said, it's been done well in
23	the agriculture area and to think that it
24	cannot be done and done well in these other
25	commodities is a scare tactic.

1	9/16/09 53
2	Consumers lack confidence in the
3	exchanges to set this, we do need their
4	expertise, we do need their help, we can do
5	this together, if we do it together there's
6	a win win for everyone including the
7	exchanges and we look forward to working
8	with them to achieve these fine results.
9	MS. DOW: Can I make one comment,
10	Mr. Chairman, in response to Mr. Cicio and
11	Mr. Slocum. I think in this particular case
12	it's not an issue of a race to the bottom,
13	it's an issue of the fact that there are
14	risk shifting and hedging needs out there
15	that sometimes require positions that may be
16	above the limits on exchange or that you can
17	carry in a market that's overseas that's a
18	foreign market and it's not subject to
19	position limits.
20	So the activity will continue, it's
21	not going to stop, just because you clamp
22	down on one market it does not stop, these
23	needs are still there, the hedging needs, so
24	the positions need to be placed somewhere,
25	so it's not a question of going to the

1	9/16/09 54
2	market that's at least regulated, it's going
3	to the market where there's the space and
4	the room to carry the positions that they
5	need to carry.
6	I would also add that, you know, the
7	energy markets have always been global
8	markets and the agricultural markets have
9	not been of that nature, so there is
10	definitely a difference between position
11	limits in agricultural markets and putting
12	position limits on energy markets that only
13	apply here in the U.S.
14	COMM. CHILTON: That's a good point,
15	Deanna. We're smart people, we can do this
16	stuff if we put our mind to it. We got two
17	people here in New York and then we'll go
18	back to D.C., if that's all right.
19	Bob Anderson, you wanted to speak,
20	and then we'll go to Jack Cogen and then
21	back to D.C.
22	MR. ANDERSON: Thank you,
23	Commissioner. I thought I should speak of
24	I'm Bob Anderson with the Committee of
25	Chief First Officers (sic) and we represent

9/16/09

2	in the gas, power and oil markets the
3	utilities, the producers, the generators,
4	transport companies.
5	I think in Steve's comments earlier
6	he mentioned a long name for a category
7	called the Producer Merchant Processor, et
8	cetera, that group of companies we represent
9	the larger part of, and what's unique, I
10	think, though, that I bring to the table
11	here is that the representatives from those
12	companies they are in the CCRO, are, in
13	fact, the risk management functions in each
14	of those companies, there are large
15	companies and small companies, and I think
16	there's a lot of analogous ideas, a lot of
17	analogous experience by risk managers in
18	these companies to what the CFTC is thinking
19	about doing to the markets overall, the
20	difference being that my representatives are
21	looking at their own company, trying to
22	manage those risks similar to the fashion
23	that you guys are thinking about in some way
24	for markets.
25	The two points I want to bring up in

9/16/09 56

2

5

6

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

two minutes that I think really jump out at me and compel me to speak up so that you recognize the resource we represent, all we do is research and write white papers about best practices for companies around all aspects of risk in all markets.

The companies that I'm representing, we spend all of our time talking about how all of the companies that participate in both exchanges, I think somebody called dark pools, the bilateral markets that are not reported or seen, they're not transparent, and the first thing that comes to mind is, wow, we've been working for three years very hard on transparency and transparency is not just something that we need for the CFTC in some way to police things, transparency is also something that our risk managers want very much, and that's why they're actually working hard, we have a spinoff company that we're working on having complete reporting of all types of transactions into it in order to provide that transparency not so that we can risk markets, obviously, it's so

1	9/16/09 57
2	that we can simply have healthy markets that
3	can grow, particularly in power, there's a
4	lot of excitement around that, that
5	initiative, so transparency is something
6	that our members would very much like to see
7	as we go forward in the future anyways.
8	So knowing that, that's very
9	encouraging, hearing a lot of what you're
10	talking about and I think we're looking at
11	it in the very near term much more
12	transparent bilateral markets and that
13	brings then to mind, hearing these
14	discussions around position limits, the
15	comment I would make, as a group, we'd like
16	to certainly offer ourselves as a resource
17	and look very closely at the proposal in the
18	white paper that we talked about.
19	But the experience that companies
20	have setting limits on themselves is
21	something worth thinking about, mainly
22	because the most commonly used term is
23	unintended consequences, very often when
24	we talk about managing risk in any way, the
25	balloon analogy is one side of the balloon

1	9/16/09	58
2	flies very well.	
3	If, however, we implement the	
4	proposal carefully and in particular for r	my
5	constituents that are in those opaque or	
6	less transparent markets, if we can think	
7	about potential impact of the limits that	
8	we're discussing, I think there would be a	а
9	lot of benefits overall to the group in the	he
10	sense that the unintended consequences mig	ght
11	be reduced or mitigated greatly.	
12	So we'll certainly make ourselves	
13	available and I think it's important that	
14	this group of companies, the	
15	Producer/Merchants/Processing Group it's	
16	such a large part of OTC markets and has	
17	such an important role in hedging in the	
18	fiscal world, it will be real important th	hat
19	we get their voice in on this whole issue	•
20	COMM. CHILTON: Thank you, Bob.	
21	We'll use you as a resource and let me jus	st
22	say that, you know, the record of this	
23	Advisory Committee meeting can include any	У
24	materials that you think that we should be	Э
25	looking at now and that goes for all the	

1	9/16/09 59
2	EEMAC participants and for the general
3	public as well.
4	Jack Cogen here in New York. Jack.
5	MR. COGEN: Thank you, Commissioner
6	Chilton. I want to expand on a couple of
7	threads of the remarks that Bob Pickel and
8	Kevin Fox touched on.
9	When we hear about position limits
10	and most of the conversation is about the
11	more liquid commodities and the liquid
12	portions of the commodities and the trading,
13	and I'm coming from the environmental
14	commodity side, so it's a little different.
15	First of all, I'm not speaking on
16	these remarks as the Chairman of the
17	International Business Trading Association
18	but as an outsource. We find that there's
19	certain things, as Kevin said, if the entire
20	market is a hundred contracts, who cares,
21	but we find in the new market that's often
22	going to be the case, and so when you look
23	at the limits you also have to look at what
24	is the impact of violating the limits, it's
25	very different to be controlling the nearby

1	9/16/09 60
2	contract in natural gas than it is to be
3	controlling five years out in carbon, it's a
4	very different experience, or even nearby
5	too. So we really have to not say all
6	commodities and all commodity futures are
7	the same.
8	Just to give an anecdotal position
9	that's rather an abstract statement, we had
10	great success two or so years ago in doing a
11	large CDM project in China for Petrol China
12	and in the process we purchased 45 million
13	tons of future carbon reductions. So the
14	futures market that we would want to go to
15	is the nearest you know, basis risk
16	market would be the secondary market in CER,
17	who had an open interest at the time of
18	maybe 100,000 contracts, 200,000 contracts
19	and we did 45 million.
20	Believe me, I would love to go to
21	the exchange and lay off the rest. We went
22	to a series of banks, we went to a series of
23	and all the risk got laid off, but on any
24	given day any position limit that you would
25	find were blown through.

1	9/16/09	61
2	On the other hand, if we would not	
3	have done reductions which take out 45	
4	million tons of carbon from the atmosphere	,
5	so you need to look at the limits but the	
6	impact especially on new markets.	
7	COMM. CHILTON: Thank you, Jack. I	
8	want to make sure that we've got one mo	re
9	speaker, Don, but we'll go after that back	
10	to D.C. or Kansas City for maybe one or tw	0
11	more, then I want to shift just a little b	it
12	and talk about something we've actually	
13	started talking about, but, Don, you want	to
14	go ahead and make some comments first, the	n
15	we'll go back to D.C. if anybody wants.	
16	MR. CASTURO: Thank you,	
17	Commissioner. I just wanted to expound on	
18	that topic a little bit more and move beyo	nd
19	position limits to the idea of hedge	
20	exemptions and as it relates to position	
21	limits.	
22	I want to commend the CME for	
23	putting out their white paper on position	
24	limits, I look forward to reviewing it,	
25	particularly because they recognize that t	he

9/16/09 62

markets are broader than just U.S. exchanges and as was the basis for my testimony on position limits and hedge exemptions, we believe the sensible approach is to look at the overall space, and in that regard that is where the necessity for hedge exemptions comes in for entities such as ourselves who are swap dealers who deal across the broad marketplace.

All we were trying to accomplish if the position limits are on just U.S. future exchanges is to address our imbalance across the broader markets and bring our actual net exposure, the exposure that I would think that anyone should be concerned with if they're looking for any potential for manipulation is their net exposure across the whole space, we need those hedge exemptions if they're just on a U.S. exchange basis to address an imbalance across our space to get our net exposure back down to a level that would be within what we think would be a sensible position limit across the whole space.

1	9/16/09 63
2	MR. PANTANO: This is Paul Pantano
3	on the phone from the FIA, is it okay if I
4	make a quick comment?
5	COMM. CHILTON: Yes, thanks, I'm
6	glad you're with us, Paul, go right ahead.
7	MR. PANTANO: Thank you. I want to
8	bring to everybody's attention the testimony
9	that the the written testimony that the
10	FIA provided to the Commission on August 5th
11	on position limits.
12	The FIA has been a strong supporter
13	of increased transparency in the markets
14	but, you know, as we're talking about
15	position limits on U.S. futures exchanges,
16	the FIA is very concerned about the
17	migration of price discovery to foreign
18	markets and if you take a look at this
19	position paper that the FIA submitted to the
20	Commission it describes the examples of how
21	that can occur and while it's true that the
22	Commission is going to be very careful about
23	doing this, we just want to caution everyone
24	to think very carefully because companies
25	have exposure, they need to hedge that risk

1	9/16/09 64
2	and if there are limits as the prior speaker
3	just described on the amount of risk they
4	can weigh off in the U.S. futures market,
5	that risk is going to be hedged in OTC
6	markets where at least at the current time
7	the CFTC may not have authority to set
8	limits and some of that exposure may move to
9	a foreign market and then the foreign market
10	could become the price leader in terms of
11	price discovery instead of the U.S. markets
12	which have been the price leaders for many
13	decades.
14	COMM. CHILTON: Thank you so much.
15	Anybody else in D.C.?
16	MR. FELDMAN: Ben Feldman from J.P.
17	Morgan. (Inaudible) we testified before the
18	Commission sort of establishing the broad
19	company position with regard to position
20	limits and hedge exemptions and I think that
21	Jack Cogen raised an interesting point that
22	just bears reemphasis about the different
23	market about how to effectively manage
24	the concern about excessive speculation
25	while still providing the ability to lay off

1	9/16/09 65
2	risk, it needs to be laid off, you know,
3	from a natural position.
4	So one of the things that was
5	included in that testimony was the comment
6	that it may be important to look through the
7	swap dealer to the actual participant
8	market participant when thinking about the
9	position limits because if you take the swap
10	dealers who had net positions, just the
11	amount of risk management capacity that
12	would be available with respect to position
13	limits comes into question.
14	This is sort of a narrow point but
15	it's where would you apply such limits and
16	might you look through the aggregators to
17	if the concern is about speculative
18	positions, look at the actual market
19	participant versus the swap dealer side.
20	COMM. CHILTON: Okay.
21	CHAIRMAN GENSLER: I think I've got
22	one more in D.C. here, and if I'm allowed to
23	say one thing afterwards.
24	COMM. CHILTON: Mr. Chairman, say
25	whatever you want, of course, I'm your loyal

1	9/16/09 66
2	subject. We'll do the one more in D.C. and
3	then we've got two here in New York. We can
4	go to you, Mr. Chairman, right now, if you'd
5	like.
6	COMM. GENSLER: I'm fine, I'll wait
7	my turn.
8	COMM. CHILTON: So we'll do one more
9	in D.C., we've got two here, then we'll go
10	to the Chairman then we'll sort of shift
11	gears with John Reilly. Go ahead D.C.
12	MR. PROKOP: Mr. Chairman, I'm
13	honored to have you defer to me. This is
14	Mike Prokop, I'm with AMREX down in Houston.
15	I did want to make sure that Commissioner
16	Dunn did have his original question that
17	started this conversation addressed and
18	that is basically the day trading, if you
19	will, the opening and closing of positions
20	during the day, whether electronic or
21	invoice markets or what have you.
22	Theoretically, obviously, those
23	positions if closed out on a rational basis
24	during the day shouldn't have an effect on
25	prices, they may have a very short-term

1	9/16/09	67
2	effect during the day on the initial open	ing
3	positions but then perhaps the reverse	
4	effect at the end of the day.	
5	I think we've already addressed the	)
6	fact that I think it needs to be looked at	5
7	further (inaudible) as to the timing	J
8	of the closing positions and that's where	
9	the potential for manipulation in these	
10	markets exists. Obviously, the closing	
11	price on these markets (inaudible)	
12	whether it's for settlement of cash	
13	transactions, financial transactions, what	5
14	have you, the interim interday trading doe	es
15	not affect those prices, and in hearing	
16	various comments of my colleagues around t	the
17	table here also, it seems like what a lot	of
18	this comes down to is price transparency.	
19	We have concerns now with position	
20	limits settling to regulate, if you will,	
21	the size of positions that various parties	5
22	are taking in the marketplace. This	
23	transparency right now a lot of it is being	ng
24	provided by clearing, there was an entity	
25	that's in the marketplace right now, it's	

1	9/16/09 68
2	fully regulated, it's a DCM that provides
3	what I believe the perfect model for that
4	transparency which is to have these
5	transactions settle as futures positions
6	which are fully regulated and transparent.
7	There are other entities out there
8	that are clearing their transactions as
9	financially settled instruments and that's
10	where maybe some of the nontransparencies
11	happen. I know there have been many moves
12	recently to improve that but maybe that's
13	where the space needs to get looked at for
14	further thought on that.
15	I will have you notice a
16	over-the-counter probably 60 to 65
17	percent of our positions that we are
18	facilitating on a daily bases are cleared
19	right now between the two major entities
20	which is ICE and NYMEX and growing by the
21	day, natural gas is 35 to 40 percent.
22	So as we talk about the dark space,
23	if you will, the light is coming and has
24	been and actually clearing for us since 2004
25	has been one of the best things for our

1	9/16/09 69
2	business. The large swap hedge funds that
3	you're talking about here can't enter into
4	business swap dealer agreements with other
5	entities, they have to clear, so with that
6	clearing, if reported correctly to the CFTC,
7	you're now looking into these markets where
8	you may not have had that before. Thank
9	you.
10	COMM. CHILTON: Thanks very much.
11	We'll go to Jeffrey Sprecher here in New
12	York.
13	MR. SPRECHER: Thank you. I'm in
14	New York and Jeff Sprecher with
15	Intercontinental Exchange. Just to follow
16	up with on a number of comments. It may
17	surprise some people but although we are an
18	exchange and although we have tremendous
19	expertise in these markets, working with
20	them everyday, working with all the market
21	participants that are material around the
22	world everyday we really believe the CFTC is
23	in the best position to not only put the
24	limits in place, if there are going to be
25	limits, but also deal with any exemptions.

9/16/09	7	0
---------	---	---

We also run agricultural markets in
the U.S. and as Commissioner Chilton has
pointed out, we find that that has worked
very, very well and, in fact, I have never
heard of a single complaint that's bubbled
up to my level of anyone that hasn't been
able to get an exemption that needs an
exemption and so I commend the staff at the
CFTC for working through those issues.

As Don Casturo mentioned that in order to give a hedge exemption we would necessarily need to see the entire global position of a firm, that would include positions on my competitors and in order to grant the exemption there are no rules as to what we might say that an entity should or shouldn't do, particularly vis-a-vis with their positions that are on the competitors, so it's right that that policy of giving hedge exemptions at the exchange level is ripe for potential for anti-competitive behavior.

I think, frankly, my company came up with the idea of clearing OTC swaps, we put

1	9/16/09 73
2	them electronic, we published the daily
3	tape, we have worked very closely with FSA
4	and the CFTC to bring more transparency to
5	overseas trading. We've been a leader in
6	trying to make these markets more
7	transparent, I'm very proud of what we've
8	done but I will tell you that the market
9	itself still does not have confidence in
10	what we have done or we wouldn't have this,
11	you know, group here today.
12	I really believe that this is an
13	area where the CFTC can provide the
14	leadership and we look anxiously to work
15	with you. I think Kevin Fox made the point
16	that some of these markets are quite
17	complicated and really will need the
18	technical expertise of the industry to help,
19	hopefully that will allay some of
20	Commissioner Dunn's concerns about
21	resources. I really think the resources are
22	probably within this room to help solve some
23	of these problems. Thank you.
24	COMM. CHILTON: Thank you, Jeff.
25	Bill McCov from Morgan Stanlev here in New

1	9/16/09 72
2	York.
3	MR. McCOY: Thank you again. Bill
4	McCoy of Morgan Stanley in New York. I want
5	to thank the Commission as well for focusing
6	on these vital issues and I want to echo
7	some of the comments we've been hearing
8	regarding not just discussion of position
9	limits but the importance of the hedge
10	exemptions and continuing to preserve the
11	hedge exemptions obviously for swap dealers
12	and having a thoughtful approach to it.
13	I mean, what I would stress is the
14	need that any structure where we start
15	looking at potentially aggregating futures
16	and OTC positions that it be in the context
17	of a very dynamic and flexible framework for
18	limits and hedge funds whether it's at the
19	Commission itself or through the exchanges
20	and, obviously, anything that remains static
21	is not going to be able to address the
22	changing market forces that will apply for
23	the commodities, and as Jack Cogen
24	mentioned, all the commodities are different
25	and therefore how these things are being

1	9/16/09 7.
2	set.
3	As we heard at the hearing from
4	representatives from such as Goldman
5	Sachs and J.P. Morgan about this concept of
6	the success of the special call, we too have
7	seen that the special call has served
8	extremely useful for ourselves internally as
9	well as we believe for the Commission in
10	helping the Commission get a better view
11	into the OTC markets and so this concept of
12	if there were a way of applying positions of
13	an aggregate basis, this concept of looking
14	to swap dealers for the information and the
15	looking through to various market
16	participants, again I would say this is a
17	flexible and dynamic framework for applying
18	the hedge funds should consider many factors
19	such as considerations may be on the issue
20	of investment money issues may have to be
21	given as to making distinctions between
22	discretionary and passive investors and how
23	whether position limits or hedge funds
24	more likely to be hedge exemptions,
25	rather, are more likely to be administered

1	9/16/09 74
2	and what effect it's going to have on
3	distinguishing say between small pension
4	plans versus large pension plans that may
5	result in the fact that a large a state
6	entirely populated with a large pension plan
7	may find that because of the limits it's
8	only allowed to permit a certain very small
9	portion of the assets allocated into the
10	markets, whereas, if you're a teacher in a
11	very small state because of the level of
12	limits you're able to get a much higher
13	portion of your asset allocation in the
14	pension plan to the price market, these are
15	complex issues, but it sort of underscores
16	again the need for having a flexible
17	framework.
18	COMM. CHILTON: Mr. Chairman.
19	COMM. GENSLER: Thank you,
20	Commissioner Chilton. I just listened to
21	this very important discussion and
22	everybody's contribution has been very
23	helpful, and two that I just want to come
24	back to.
25	One is, there may not be as much a

1	9/16/09 75	
2	difference between some of the panelists,	
3	but it may be a question for Ms. Dow, in	
4	response to Commissioner Dunn's questions, I	
5	thought I heard Ms. Dow say that what was in	
6	the white paper, and again we haven't read	
7	your policy paper, maybe later today, that	
8	you thought that the exchanges were in the	
9	best place to enforce or implement position	
10	limits but that the Commodity Futures	
11	Trading Commission maybe working with the	
12	exchanges was in a better position to	
13	actually set the levels or the formula,	
14	whether that's a formula that's annually set	
15	or something, but there's sort of this	
16	setting of the formula that you see is more	
17	a Commission and maybe your words were	
18	shared with the Commission but they're more	
19	a Commission function and then there's the	
20	sort of the day to day task of surveilling	
21	the market and implementing it. Ms. Dow, is	
22	that correct?	
23	MS. DOW: Yes, that's correct.	
24	COMM. GENSLER: I don't know where	
25	we'll end up but it just seems like that	

1	9/16/09 76
2	I did want to confirm that because I thought
3	I heard that and that was helpful.
4	Maybe my second point is not a
5	question, it's just an observation that Bill
6	just I think it was Bill from Morgan
7	Stanley in New York just mentioned
8	something. I think you're correct, we've
9	found as a Commission the special call of
10	swap dealers and index investors which is
11	done for I think close to 45 participants
12	very helpful, it was very rough at first, it
13	was labor intensive a year ago, its gotten
14	smoothed out, we hope, through that process
15	to actually give monthly, quarterly index
16	investment data, but I'm not I just want
17	to offer a counterview to Ben from J.P.
18	Morgan and Don I think spoke for Goldman
19	Sachs, and I don't know where we'll end up
20	but it's just a counterview, that the swap
21	houses, very important aggregators of risk
22	as you're using the words, whether position
23	limits should be whether they should be
24	exempt, basically.
25	We have position limits for others

1	9/16/09 //
2	but not for those very important complex
3	financial institutions and a counterview is
4	that at the core of what Congress laid out
5	in the 1930's and at the core of market
6	speculation is a good part of the markets,
7	that hedgers and speculators meet but there
8	might be a role for this Commission to play
9	to diminish or eliminate, prevent any
10	burdens that come from excessive
11	speculation.
12	Now, excessive speculation, what is
13	that, but concentrated positions, if we only
14	had the three of your firms in a market I
15	think there is a counterview as to whether a
16	market would have more liquidity or less
17	liquidity. If you have three great firms,
18	large firms, are aggregating and
19	internalizing so much the deal flow and that
20	deal flow is not coming to transparent
21	exchanges, so that's part of a healthy
22	debate.
23	There is a market better served if
24	there's only three automakers or three drug
25	companies, there ultimately are only three

Ţ	9/16/09 /8
2	swap houses that internalize everything and
3	only bring their net position, as Don said
4	earlier, to their futures market and have 30
5	percent of the market or 40 percent of the
6	market where there's at least a minimum
7	number of actors on the stage and that's
8	what we're grappling with.
9	COMM. CHILTON: Thank you,
10	Mr. Chairman. Let's go ahead and sort of
11	shift the discussion to something actually
12	we started talking about a couple of times
13	and that's legislation on the Hill and the
14	OTC markets. John Reilly, are you there?
15	MS. MOLER: This is Betsy Moler from
16	Exxon, can I just make one brief comment?
17	COMM. CHILTON: Sure, Betsy, go
18	ahead.
19	MS. MOLER: Thank you very much. It
20	will be brief. It was my privilege to chair
21	the Federal Energy Regulatory Commission for
22	a number of years, and there is a regulatory
23	model that FERC has used successfully and
24	it's apropos of your comments, Mr. Chairman.
25	Industry working stakeholders

1	9/16/09 79
2	working together submit proposed standards
3	to FERC, FERC establishes what the policy is
4	with respect to reliability, for example,
5	and with respect to what are known as open
6	access same time information systems, and
7	then the stakeholders such as the exchanges
8	in this case then actually do the oversight
9	and do the implementation of those
10	standards.
11	There's no need for this Commission
12	to duplicate the whole staff that the
13	exchanges have, but the exchanges would then
14	implement what our CFTC standards are. It
15	just strikes me that that regulatory model
16	might prove to be beneficial and successful
17	there. It's what is happening now, it's
18	fraught with some difficulty, to be fair, on
19	implementing reliability standards and
20	there's a tremendous amount of work. One of
21	the reasons FERC has adopted that model is
22	just resources and I would just commend it
23	to you as a possible model, if you might
24	consider it.
25	COMM. CHILTON: All right.

1	9/16/09 80
2	COMM. GENSLER: I think you were
3	also Deputy Secretary of Energy?
4	MS. MOLER: I've had a checkered
5	career, yes, sir.
6	COMM. CHILTON: She's done a great
7	job.
8	MS. MOLER: But the model works and
9	it saves the government resources and you
10	have the benefit of the expertise of the
11	industry and other stakeholder groups.
12	COMM. CHILTON: Thank you, Betsy,
13	and we're really pleased that you've joined
14	the EEMAC. We are going to break at a
15	quarter to, so I've only got like eleven
16	minutes, but John Riley the Chairman has
17	brought over from the House Agriculture
18	Committee, he's our director of legislative
19	affairs at the CFTC and I've known John for
20	a long time, he does a great job and he's
21	going to give us an update on where things
22	stand on the Hill on OTC legislation and,
23	again, we're going to take a break in about
24	eleven minutes. Go ahead, John.
25	MR. RILEY: Thank you very much,

1	9/16/09 81
2	Commissioner Chilton, it's a pleasure to be
3	here with the Advisory Committee today and
4	going into the discussion.
5	I was asked to kick it off a little
6	bit in terms of where Congress is on OTC
7	derivatives legislation, to do that I guess
8	I'll just briefly note some recent events to
9	keep fresh in your mind, I don't think that
10	there's anything that news to members of the
11	Advisory Committee or the Commissioners, but
12	just having these things together.
13	Chairman Frank was interviewed this
14	week and he kind of made note of a change in
15	the congressional schedule that Congress
16	looks like it's going to be in this session
17	through December and that he was sort of
18	addressing the question of whether or not
19	there was time this year to deal with OTC
20	derivatives legislation and he said,
21	December is the new October, Congress has
22	time to get the bill done this year.
23	His committee along with, of course,
24	the House Ag Committee and the Senate
25	Banking Committee and the Senate

1	9/16/09 82
2	Agricultural Committee are going to be the
3	focus of a lot of attention.
4	Important news within the last
5	couple of weeks was that Senator Dodd is
6	going to remain as chairman of the Banking
7	Committee, Senator Harkin has taken over as
8	chairman of Health, Education and Pensions
9	Committee, and Senator Blanche Lincoln from
10	Arkansas has taken over as chairman of the
11	Senate Agriculture Committee, they all have
12	committed themselves as far as their agendas
13	to move forward on OTC derivatives
14	legislation, and all of those committees, of
15	course, have been pretty active this year.
16	The House Agriculture Committee had
17	a couple of hearings, both Senate Ag and
18	Banking Committees had hearings on OTC
19	derivatives in June, it was in July that
20	Secretary Geitner testified before a joint
21	meeting of the House Agriculture and
22	Financial Services Committee which is one of
23	Chairman Frank's opportunities to point out
24	that there's not going to be a big turf
25	fight this year, that the Ag Committee and

1	9/16/09 83
2	the Financial Services Committee are going
3	to get along and continue to join us, and
4	the Financial Services Committee had a
5	hearing in July as well with Chairman
6	Gensler and SEC Chair Shapiro.
7	Also I'll just note that there has
8	already been some action this year, as a
9	reminder, on OTC derivatives legislation, it
10	was February 12th that the House Ag
11	Committee approved its Bill HR977, it
12	primarily consisted of provisionals that
13	were included in last year's the bill
14	passed by the House last year focusing on
15	speculation and energy and agriculture
16	markets, but new provisionals were added
17	that were intended to bring more
18	transparency and oversight to the OTC
19	derivatives markets and that bill was
20	reported as well to the Financial Services
21	Committee.
22	Going into some other events that
23	occurred recently that you know of, it was
24	July 30th Chairman Pearson and Chairman
25	Frank released what they call their

1	9/16/09	84
2	description of principles for OTC	
3	derivatives legislation, they held a	joint
4	press conference on that, they were	
5	committed to moving together based on	those
6	principles and I'll tick them off rea	1
7	quick, they were that there would be	the
8	bill would have a robust oversight of	
9	dealers in the markets, there would be	e full
10	clearing house regulation and that the	ere
11	would be comprehensive trade reporting	g,
12	there would be mandatory clearing for	OTC
13	derivatives with two exceptions, one	is that
14	an appropriate regulator if an	
15	appropriate regulator determines the	product
16	is not sufficiently standardized to be	е
17	cleared or no qualified clearing mech	anism
18	exists, the other would be if one par	ty in
19	the transaction does not qualify as a	major
20	market participant as determined by t	he
21	appropriate regulator.	
22	They also had provisions for s	trong
23	capital market requirements within the	at
24	there would be higher capital market	charges
25	for non-standardized transactions, no	t

1	9/16/09 85
2	exchange traded as a principle for
3	protecting U.S. financial institutions from
4	lesser regulatory standards in other
5	countries, there was also a role in there
6	for a financial services oversight counsel
7	which would have the task of resolving any
8	disputes between the SEC and the CFTC over
9	products or jurisdiction.
10	Then another big event, of course,
11	is August 11th the Treasury Department
12	released their over-the-counter Derivatives
13	Market Act of 2009 which was the final piece
14	of the administration of the regulatory
15	reform agenda and, again, kind of taking off
16	some of the highlights in that, it's got
17	comprehensive regulation of OTC swaps for
18	all commodities by the CFTC and the SEC, it
19	requires registration and regulation of swap
20	dealers and major swap participants
21	including capital margin reporting and
22	record keeping requirements and business
23	conduct documentation and back office
24	standards, has provisions to require that
25	standardized swaps be cleared by clearing

1	9/16/09 86
2	houses registered, regulated, and that
3	standardized swaps also would be traded
4	required to be traded on regulated exchanges
5	or in cases where they were regulated to
6	commercial and sophisticated parties on ASER
7	which is the acronym standing for
8	Alternative Swap Execution Facilities.
9	The bill also has comprehensive
10	reporting and record keeping regime for
11	swaps and provisions for swap repositories
12	and large trader reporting for OTC products.
13	It would give the CFTC and the SEC the
14	authority to set aggregate position limits,
15	and as far as the dividing line for swaps,
16	it kind of adopts the model of the
17	Shar/Johnson Accords (sic) so that broad
18	based security index swaps will be under the
19	CFTC's jurisdiction, and narrow based or
20	single security based swaps would be in the
21	SEC's jurisdiction.
22	So some of the other events that are
23	further hearings that are coming up on the
24	OTC derivatives, the House Ag Committee is
25	actually having a hearing tomorrow to get

2	industry views of OTC derivatives and
3	they're going to continue Tuesday and take
4	testimony from Chairman Gensler and SEC
5	Chair Shapiro in the aftermath of tomorrow's
6	hearing, and the Financial House Services
7	Committee they have to deal with the other
8	portions of the reform package including the
9	resolution of authority to systemic risk
10	regulator, Consumer Financial Protection
11	Agency, and it was yesterday that Chairman
12	Frank put out a schedule of eleven hearings
13	to be held between next week and October 9th
14	to cover the breadth of those issues
15	including one on October 7th specifically on
16	derivatives.
17	This is not an exhaustive list but I
18	thought I would just take a minute to kind
19	of highlight what I thought was sort of high
20	frequency questions members seem to be
21	asking in the hearings that have been held
22	so far, certainly not an exhaustive list but
23	just ones that have been coming up fairly
24	frequently.
25	Of course, the question over

9/16/09

1	9/16/09 88
2	customization and standardized swaps and
3	where you draw that dividing line has been
4	raised as a concern across the gamut from
5	questions over whether or not restrictions
6	on customized swaps would impact hedging to
7	the other end of the spectrum where the
8	question of, if there are accommodations for
9	customization, do you lose comprehensive
10	effective regulation.
11	Another question raises concerns
12	about whether or not the U.S. should go
13	forward and what level of international
14	cooperation should we achieve in the course
15	of doing that.
16	Then the question that has been
17	raised a few times regarding clearing houses
18	has been, if we're going to have a regime
19	where in certain circumstances require that
20	swaps be cleared, are we also going to
21	require the clearing houses to take those
22	swaps.
23	Those are clearly not an exhaustive
24	list, as you all know, but those are the

ones that I kind of flagged as sort of high

1	9/16/09 89
2	frequency areas where members I think are
3	looking for guidance. So that's all I had,
4	Commissioner Chilton. I turn it back over
5	to you.
6	COMM. CHILTON: Thank you, John,
7	that was very good. I did say I want to
8	take a break and that will be in a couple of
9	minutes from now, but I've gotten approval
10	from our technology people to go for another
11	five minutes. So who wants to speak up on
12	OTC stuff?
13	MR. SHELK: John Shelk from the
14	Electrical Power Supply Association. Skip
15	started to talk about this but I think
16	anybody that does the electricity sector
17	knows that different segments are often to
18	disagree much more frequently than we agree.
19	On the question of the OTC
20	derivatives and requiring them to be cleared
21	on exchange, this is an issue that has
22	brought all of the segments of the industry
23	together, I'm only here to represent the
24	Electric Power Supply Association which is
25	the competitor, also I think it's important

1	9/16/09 90
2	to note that our colleagues on the
3	cooperatives and the public power and in the
4	investor and the utility community share
5	these concerns that Skip started to discuss,
6	and we've picked this opportunity to this
7	committee and others by working with the
8	Commission.
9	There's an important task here to
10	bring about transparency and confidence in
11	markets that are important to our members
12	and we view this as consumers of these
13	products, so the question I think John
14	mentioned is how do you address and achieve
15	your regulatory goals while allowing these
16	products to still be available. We have to
17	hedge risk with fuel coming into the plants,
18	we have to hedge the risk associated with
19	the price going of power for the output.
20	Paul touched on what gas prices were
21	like earlier last year, of course, now we
22	forget that prices are a fraction of what
23	they were in the peak, the same thing is

true with power prices, so it's important as

we go forward that we -- it would really

24

1	9/16/09 91
2	impact the collateral and that's the number
3	one issue.
4	We're facing capital challenges
5	regardless of our type of company or
6	public power, it touches on the issue we're
7	going to talk about, climate change, or
8	we're expected to invest billion of dollars
9	in retiring plants and other environmental
10	requirements, cyber security, so if you look
11	at that, this is an industry that is a very
12	highly capital intensive industry and
13	becoming more so.
14	So we'd like to work with you and
15	make sure that you all understand how
16	electricity is things that are dealt with
17	by not just this Commission but any other
18	commission, electricity is literally
19	physically interactive. Betsy can speak to
20	that, having regulated that, so we want to
21	be sure that you understand that, and
22	there's a link, of course, to the climate
23	issue that we'll talk about after the break,
24	not only because of the investments that
25	were to address climate change but, of

1	9/16/09 92
2	course, we support a cap and trade approach
3	as an organization, we support having this
4	agency handling the trading aspect, as the
5	Chairman mentioned, but these things are
6	interrelated not just electricity physically
7	but also what happens on mandating
8	over-the-counter derivatives being cleared
9	affects climate, so I think this Committee
10	and others are the best way to talk about
11	these things and we look forward to working
12	with you to do that.
13	COMM. GENSLER: Commissioner
14	Chilton, could I ask a question and it might
15	relate, I think Jeff Sprecher is in New
16	York, as well, and it may well be true that
17	NYMEX has these contracts, I just can't
18	remember, but there are electricity
19	contracts that are currently listed at least
20	at ICE and maybe it's at NYMEX too, I just
21	can't remember.
22	Those contractors currently require
23	the daily posting of margin and if so how
24	would you see that distinguished from what
25	we're thinking about in the over-the-counter

	1		9/16/09			93
:	2	space, but Jeff	could c	omment t	o or anyone	9
:	3	else.				
	4	MR. SHEL	K: The	concern	has been	
	5	more I've hea	ard more	on the	fuel side	
	6	than the input	side, wh	ere if w	re had to	
	7	actually clear	these on	the exc	hanges, we	're
;	8	talking about a	s our me	embers ha	ve explaine	ed
	9	it to me and th	is has r	isen to	the CEO-CF	C
1	0	level and to the	e risk l	evel tha	t Bob	
1	1	mentioned, that	you wou	ıld have	to post car	sh
1:	2	collateral on the	hese fue	el contra	cts, that's	S
1	3	what I've heard	about m	ore ofte	en.	
1	4	Obviously, I'll	be able	to spea	k more to	the
1.	5	output side a l	ittle bi	t more.		
1	6	I've bee	n told r	ight now	that	
1	7	because we have	physica	l assets	, we're no	t
1	8	financial playe	rs, we'r	e consum	ing these	
1	9	products, that	we post	liens on	the power	
2	0	plants and other	r non-ca	sh colla	teral	
2	1	principally tha	t the ma	ndatory	clearing	
2:	2	would shift to				
23	3	COMM. GE	NSLER:	I can't	speak to	
2	4	what Congress w	ould do	or even	what my	
2	5	fellow Commission	oners	T could	send a let:	ter

1	9/16/09 94
2	up to the Hill suggesting that endusers like
3	your association, so forth, could enter into
4	arrangements where there's non-cash
5	collateral as well, that there be a perfect
6	rule writing written into the statute so
7	that but, again, that's one person, I've
8	got a unique chair here but Congress has got
9	to sort through this.
10	MR. SHELK: We very much appreciate
11	you're doing that because it's not just any
12	chair, it's an important chair.
13	COMM. CHILTON: Jeff would want to
14	respond to you, I think, Mr. Chairman.
15	MR. SPRECHER: Thank you for posing
16	the question to me. I came out of the
17	electric power industry as well, I started
18	in the intercontinental exchange actually
19	and as we were looking with the industry to
20	clear electric contracts back in the year
21	2000 before Enron's collapse, the industry
22	really was not supportive at all. Today, a
23	lot, I would say a bulk of electricity is
24	cleared.
25	What's really happened in the

interim is that many people do not post cash collateral but their positions are actually effectively cleared because their opposing counterparty who typically is a swaps dealer is putting their positions into clearing and the swaps dealer is doing two things, one, it's becoming the counterparty to the transaction, but also it's a lender, and what you've seen in the major swaps dealers is the ability to both price the commodity and the cost of capital and depending upon how legislation would unfold it may de-couple that.

I think the market has adapted so quickly to clearing and I'm a strong believer in market forces and I think that there is a solution that will evolve whether we help with legislation or not where increasingly the positions will be in clearing houses and for those who don't want to post cash collateral there is a lending function that can either be imbedded in the price or separated from the price and often we've seen futures commission merchants who

1	9/16/09 96
2	are not dealers provide lending, if you
3	will, imbedded into the FCM piece.
4	COMM. CHILTON: We're going to take
5	a break here. Sorry to cut that
6	conversation a little bit short. You know,
7	there is an OTC piece in the climate change
8	bill, so if you want to continue a part of
9	this discussion when we get to the climate
10	change part of that, you're welcome to do
11	so.
12	We'll start sharply in ten minutes
13	from now. Thank you.
14	(Whereupon, a short recess was
15	taken.)
16	COMM. CHILTON: I'm going to call us
17	back to order. I know people are still
18	taking their seats and that's okay. I was
19	neglectful, Tony Mansfield wanted to get in,
20	he's on the line, the phone line, and I
21	wasn't able to get to him, so I'm going to
22	exert my Chairman's prerogative here and let
23	Tony go ahead and say a word before we move
24	on to our carbon discussion. Tony, why
25	don't you go ahead.

1	9/16/09 97
2	MR. MANSFIELD: Thank you for your
3	time and thank you Commission for convening
4	this meeting, but I'm here as a
5	representative for Shell Trading U.S.
6	Company. I just wanted to briefly follow up
7	on some of the points that were made with
8	regard to the position limits and
9	specifically just to encourage the
10	Commission as it considers this issue of the
11	position limits to also recognize and
12	appreciate even within the group of
13	commodities that we have been referring to
14	as the energy commodities, I think there are
15	some meaningful distinctions.
16	We've heard from a number of people
17	who have talked about the natural gas
18	markets, but I think that there is an
19	important and potentially meaningful
20	distinction between the natural gas market
21	which is a more bounded market in the United
22	States versus the crude oil markets which
23	are a more global market and one of the most
24	robust markets, and I think as the
25	Commission considers the issue of position

1	9/16/09 98
2	limits and the concerns and issues that were
3	raised based, for example, by Paul Pantano
4	on behalf of the FIA, I think the concern
5	about the activity moving overseas becomes
6	more real and more of a concern when you're
7	looking at the crude side, for example, with
8	respect or compared to some of the other
9	commodities that we would put in the energy
10	basket.
11	So I just wanted to make that point
12	to have you consider that certainly, but I
13	think that the crude markets in particular
14	that sensitivity about the flight to markets
15	outside the United States becomes more
16	acute.
17	COMM. CHILTON: Thank you so much
18	for that, and I'm sorry I didn't get to you
19	earlier. I want to make just one quick
20	comment before we go to carbon and that is
21	also on OTC stuff that we've had to break on
22	there for technical reasons.
23	First of all, you know, I think we
24	need OTC legislation and whatever the
25	Commission may or may not do regarding

1	9/16/09 99
2	position limits and hedge exemptions, if it
3	needs to be done in tandem or just with full
4	knowledge of what may happen with doing one
5	without the other, I think we need both, so
6	I hope that happens, but I want to be clear
7	to people that think, you know, the
8	Commission may consider something
9	unilaterally, not the reflection of what
10	might happen in the future.
11	The other thing is, the
12	administration called for in the OTC space
13	additional requirements for margin and
14	capital on dealers for non-standardized
15	contracts, things that we might not be able
16	to get on exchange or Congress may not deem
17	appropriate to put on exchange.
18	I've been speaking with some people
19	actually just here in New York in the last
20	day and I just I don't know if something
21	should be done but I'm sort of thinking it
22	should, but dealers should have an
23	additional fiduciary duty, this is on the
24	non-standardized trades, that they should be
25	the pension funds, state, local

1	9/16/09 100
2	governments, university endowments, that
3	they should be protected even if it's a
4	non-standardized trade from a legal
5	perspective.
6	You know, these are important funds,
7	these are important you know, university
8	endowments, et cetera, these are important
9	things to your economy, they're important to
10	people, the pension funds, and they may need
11	an added legal protection.
12	So, anyway, I'm hopeful that
13	Congress will think about those things also
14	as they go forward on OTC.
15	I want to move to carbon unless any
16	of my colleagues had anything else to say
17	since we ran out of time on the OTC stuff.
18	Mr. Chairman, Commissioner Dunn or
19	Commissioner Sommers, you all okay?
20	COMM. GENSLER: I think we're back
21	to you in New York. There is something not
22	from one of your fellow Commissioners but
23	Tyson Slocum. Okay, Tyson, go ahead.
24	MR. SLOCUM: Just very quick on that
25	OTC issue. I am very sensitive to my

1	9/16/09 101	
2	colleagues in the fossil fuel production and	
3	electric power production industries who	
4	have concerns about mandatory clearing for	
5	their current hedging in the OTC markets,	
6	and I guess I have two very quick comments	
7	on that.	
8	I guess first is, what the	
9	industries did prior to the explosion of the	
10	OTC market after the Commodity Futures	
11	Modernization Act of 2000. I assume that	
12	folks just relied upon the regulated	
13	exchanges to hedge the risk that they	
14	currently conduct in the OTC market, and	
15	what I imagine has happened is that folks	
16	are quite accustomed to the lower up front	
17	costs associated with working with their	
18	swaps dealers in the OTC market, they don't	
19	have to post as high margin requirements,	
20	their swaps dealer might do a number of	
21	other activities for them as well, so they	
22	might offer them discounts, I'm not quite	
23	sure, but I think that the issue is that	
24	it's akin to me having to have insurance on	
25	my automobile, that there is an up front	

1	9/16/09 102
2	cost associated with me paying a monthly
3	premium but that there is a long-term
4	benefit in case if something happens, and I
5	think that the long-term benefit from
6	mandatory clearing is reduced systemic risk
7	and there are clear benefits to end
8	consumers, the households whose
9	contributions help pay my salary to that
10	kind of insurance policy, and so that's all
11	I want to say on that. Thank you.
12	COMM. CHILTON: Thank you, Tyson,
13	and you sort of raised some questions, but
14	actually I would like to go ahead and move
15	on to carbon unless any of my colleagues
16	have something, but you raise interesting
17	points and I know Skip and Laura Campbell
18	may have something to say.
19	Laura, are you on the line, by the
20	way? Doesn't appear so. Let's move right
21	to carbon. Roy Cheruvelil who is in the New
22	York office is one of the folks who works or
23	green cap markets, cap and trade and has
24	done a fantastic job, he's done a great job
25	helping me out over the two years I've heep

1	9/16/09 103
2	at the Commission.
3	We don't have as deep a bench as I
4	hope we will in the future but we've got a
5	strong bench and Roy is really good on that
6	along with Rafael and Irina. So Roy is
7	going to give us a quick presentation on
8	carbon, about five minutes or so, we'll get
9	a couple of other people to speak and then
10	we'll open it up after that. Roy, go right
11	ahead.
12	MR. CHERUVELIL: Thank you. Good
13	morning, Commissioners, Committee members,
14	Commission staff and guests. It's my
15	pleasure to sit with you today and lead off
16	our discussion on environmental markets.
17	Our meeting this past May was a
18	fantastic start and we here at the
19	Commission are looking forward to learning
20	from the experience and expertise of the
21	Committee members once again here today.
22	It's been only four months since we last met
23	but the dynamic nature of environmental
24	markets, particularly those for carbon
25	dioxide give us a lot to talk about here

9/16/09

2	today as much has taken place in this period
3	of time.
4	I would like to add that the views I
5	express here today are my own and do not
6	necessarily reflect those of the Commission.
7	Can we move to the first slide of
8	the presentation, please. To start off I
9	would like to speak a bit about actual
10	emissions of carbon dioxide in the United
11	States. Carbon dioxide represents more than
12	80 percent of the total heat trapping
13	greenhouse gas emissions in the United
14	States, of that 80 percent carbon emissions
15	from the consumption of energy constitute
16	the vast majority.
17	On the chart you see before you we
18	have U.S. carbon dioxide emissions from
19	energy consumption plotted since 1990, as
20	well as the annual growth rate for each
21	year. From 1990 to 2008 energy related
22	carbon emissions grew 16 percent in
23	aggregate and at a rate of 0.83 percent per
24	year on average. Although there were a
25	couple of years where carbon emissions

1	9/16/09 105
2	declined including 2008, overall the growth
3	in emissions has been consistently positive.
4	In 2008 peak energy prices and a 2.2
5	percent reduction in total energy
6	consumption coupled with lower economic
7	growth, particularly in the latter part of
8	the year, led to a 2.8 percent decrease in
9	energy related carbon emissions. The EIA
10	has estimated that energy related carbon
11	emissions will fall again for this year but
12	will resume its rise with the projected
13	economic recovery in 2010.
14	This has taken place while
15	atmospheric concentrations of carbon dioxide
16	approach 400 parts per million by volume,
17	the highest they have been in quite
18	sometime, some say thousands if not millions
19	of years.
20	Moving ahead to the next slide. In
21	response to the growth in carbon emissions,
22	robust carbon trading markets have developed
23	around the world with the goal of carbon
24	abatement. The following chart contains
25	information on the aggregated global carbon

1	9/16/09 106
2	market since 2002 in terms of volume and
3	also by dollar value.
4	It shows very clearly that carbon
5	markets have experienced significant rapid
6	growth in this period of time. The market
7	reached a total transactional value of
8	approximately \$126 billion in 2008,
9	essentially doubling in value from 2007. A
10	majority of this can be attributed to
11	transactions of allowances and derivatives
12	relating to the EU emission trading scheme,
13	or EUETS, the largest multi-national cap and
14	trade style, mandatory carbon abatement
15	program in the world, effectuated in 2005.
16	Voluntary carbon markets around the world
17	have also experienced rapid growth.
18	Industry sources have estimated that
19	the global carbon market in 2009 will be at
20	least as large despite weak economic
21	conditions and lower overall emissions.
22	Such explosive growth in global carbon
23	trading markets in tandem with a strong
24	prospect of a mandatory cap and trade
25	program in the U.S. which would drastically

1	9/16/09 107	
2	augment the size of the global marketplace	
3	has kept us very closely attuned to these	
4	market developments here at the CFTC.	
5	Can we move on to the next slide,	
6	please. The following chart provides a	
7	breakdown of CFTC regulated emissions	
8	futures contracts by open interest, current	
9	and from one year ago. These contracts are	
10	listed and traded on the Chicago Commodity	
11	Futures Exchange and the New York Mercantile	
12	Exchange, CFTC, DCMS.	
13	Over the course of just a year total	
14	open interest in emissions futures under the	
15	CFTC's purview has grown approximately 53	
16	percent from 66,000 at open interest to over	
17	100,000. While the overall share of open	
18	interest and carbon dioxide related futures	
19	has remained relatively stable at 35 to 36	
20	percent year on year, open interest in these	
21	contracts has grown 48 percent, most of this	
22	is represented by futures contracts	
23	associated with the regional greenhouse gas	
24	initiative allowances and with the carbon	

financial instrument traded on the Chicago

9/16/09

2	Climate Exchange, both of whom are
3	represented here today.
4	As many of you know, the Commission
5	recently put out a proposed determination
6	for public comment to classify the carbon
7	financial instrument contract traded as a
8	significant price discovery contract, such a
9	determination would give the CFTC full
10	oversight authority over the contract.
11	I'd also like to mention that we
12	have witnessed growth in the sulfur dioxide
13	and nitrogen dioxide allowance contracts
14	affiliated with the acid rain, budget
15	trading and clearing air market programs,
16	and have also seen the development of new
17	projects.
18	Experience with the regulation of
19	these markets has helped us gain a great
20	understanding and should place us in a good
21	position if and when a mandatory program is
22	active for carbon dioxide.
23	Moving on to the next slide, please.
24	The next slide charts the price of the EUA,
25	as I mentioned the most heavily traded

1	9/16/09 109
2	carbon dioxide allowance globally against
3	crude oil, natural gas and coal converted to
4	energy equivalent since the beginning of
5	last year.
6	The graphic clearly demonstrates the
7	strong relationship between carbon
8	allowances and energy price movements. In
9	fact, daily price movements in EUA futures
10	were over 90 percent positively correlated
11	with the other energy commodities presented
12	over this time period, this is because many
13	energy market fundamentals impact markets
14	for carbon allowances as well.
15	For example, weather has a large
16	impact on energy and allowance records.
17	Extreme weather increases energy consumption
18	and so to carbon emissions through power and
19	heat generation. As emissions increase so
20	does the demand for allowances.
21	In addition, relative to the old
22	prices matter quite a bit particularly in
23	areas with a high propensity for fuel
24	switching. On the supply side, allocations
25	are determined by program administrators and

1	9/16/09 110
2	unique programmatic rules. Globally we have
3	now a fragmented carbon market as different
4	programs exhibit unique supply/demand
5	dynamics and thus different price outcomes.
6	In all cases, however, the
7	relationship with the energy complex is very
8	strong and as Steve Sherrod told us this
9	morning, we take energy market analysis and
10	surveillance very seriously here at the
11	CFTC.
12	We can move on to the final chart.
13	Finally, before turning it over to our
14	Committee members, I'd like to add a note on
15	large traders and CFTC regulated emissions
16	markets. Every day for all of our markets
17	CFTC receives large trader position data
18	from reporting firms, this helps us to
19	assess individual trader activity and be on
20	the lookout for market power and abuses.
21	A healthy mix of market participants
22	contributes to the ultimate goal of futures
23	markets, price discovery and risk transfer.
24	As you can see from the slide, emissions
25	market contains those who would be

1	9/16/09 111
2	considered traditional compliance entities,
3	oil and gas companies, utilities and large
4	industrials.
5	As with most of our markets, these
6	markets also contain the presence of
7	brokers, financial institutions,
8	intermediaries and hedge funds. Thus far
9	I'm happy to report that we have not had any
10	major surveillance issues or enforcement
11	actions with regards to CFTC regulated
12	emissions markets.
13	This does transition us to a couple
14	of important questions which I'd like to
15	toss out to our Committee members, if they
16	feel like addressing them.
17	There has been much public debate
18	about the role of financial institutions and
19	banks in a potentially mandatory in a
20	potential mandatory national cap and trade
21	market for carbon.
22	Some argue that the role of
23	financial institutions must be significantly
24	limited to prevent speculative bubbles,
25	while others say that financial institutions

Τ	9/16/09 112	
2	provide liquidity, market making and project	
3	finance functions without which a carbon	
4	market cannot function efficiently.	
5	Further, also subject to much debate	
6	has been the idea of an OTC derivatives	
7	market in carbon. While some argue that OTC	
8	derivatives and carbon would create new	
9	large systemic and regulatory risks and that	
10	all carbon allowances should be traded on	
11	regulated exchanges only, others believe	
12	that OTC derivatives such as swaps are	
13	necessary to provide adequate risk	
14	management services to those who need them,	
15	services that would be infeasible on	
16	exchange.	
17	So I'd like to propose the following	
18	questions to our Committee today and, again,	
19	this overlaps a lot of what we started	
20	discussing already in our earlier segment.	
21	What is the proper role for	
22	financial institutions in carbon allowance	
23	markets, and secondly, what are the risks	
24	and the benefits of OTC carbon derivatives?	
25	Thank you very much. Though I don't take a	

1	9/16/09 113
2	position on either of these matters, I
3	believe the Committee's input on them would
4	be very valuable. Thank you.
5	COMM. CHILTON: Good job, Roy.
6	Thank you so much. I move to Eileen
7	Claussen in D.C. Eileen.
8	MS. CLAUSSEN: This is Eileen
9	Claussen, I'm in Washington. I was asked to
10	talk about legislative prospects for a
11	climate cap and trade bill. Since we met
12	before, something quite amazing happened and
13	that is that the House actually passed a cap
14	and trade bill, it was a very tight vote,
15	eight Republicans voted for it which helped
16	to get it passed, but it has and that's the
17	first time we've seen either House of the
18	Congress actually pass a bill of this kind.
19	But, I mean, I think we have to calm
20	down a little bit and think about the Senate
21	which is a very different institution. I
22	think we have a shot at getting an energy
23	climate bill that includes cap and trade
24	enacted in this Congress, but I think we
25	have to be very realistic about the timing.

1	9/16/09	114
2	The Senate debate on an energy climate b	ill
3	will certainly wait for health care to be	Э
4	resolved and for appropriations bills to	be
5	enacted.	
6	We also have to wait for the	
7	financial services reform bill and to me	
8	that suggests that the window is not 200	9 as
9	many had hoped but possibly 2010, and if	you
10	listen to what Senator Reed said yesterd	ay,
11	2009 is really not on the table, but we	also
12	have to understand that 2010 is an elect.	ion
13	year and to me that means that the first	
14	quarter is really the quarter we have to	
15	think about, maybe it could spill over is	nto
16	the second quarter, but you really have	a
17	fairly narrow window here to see a clima	te
18	cap and trade bill passed.	
19	I think there are some things that	t
20	could help us toward passage of a bill,	
21	continued positive signals from China and	d
22	other developing countries, particularly	
23	Copenhagen I think would help a Senate ve	ote
24	and most importantly a legislative succes	SS
25	in health care would help a Senate vote.	

-	9/16/09	115

I think there are two things beyond that that actually have to happen if we want to see an energy and climate bill emerge from the Congress. First, I think we can't expect every Democratic Senator to vote for an energy climate bill, so we will need a pretty solid number of Republican votes.

Right now even Republican Senators with years of leadership on climate change have been reluctant to return to that leadership role, and that's really because the mood in Congress is deeply partisan.

I think to get a bill that would have to change, we would have to see a number of Republican Senators work constructively with the Democrats and the administration to develop and pass a bill.

Maybe even more important, I think the administration would have to advance a fairly detailed vision for what must be in a bill and generally become much more involved in the legislative process than it has been to date, a little bit more like the first Bush administration did in enacting the

1	9/16/09 116
2	Clean Air Act Amendments of 1990 where there
3	was serious engagement, there was
4	legislative proposals looking forward and
5	there was a real working together that we
6	saw.
7	So my general take is that I think
8	it's possible that it could happen next year
9	but only if the administration becomes much
10	more involved, if we can get some
11	Republicans in the Senate to work on this in
12	a constructive way and if health care passes
13	in a satisfactory way.
14	Yes, I see the Chairman here
15	laughing but I think those
16	COMM. GENSLER: I'm just smiling.
17	MS. CLAUSSEN: That's my take on
18	where we are.
19	COMM. CHILTON: Thank you, Eileen.
20	Both Eileen and Deputy Secretary or
21	Chairwoman Moler, we're really pleased to
22	have you as part of the EEMAC.
23	Professor Stevens from Harvard.
24	MS. CLAUSSEN: I just want to add
25	one other thing which just struck me. I

Ţ	9/16/09
2	testified yesterday before the Energy
3	Committee in the Senate on cost containment
4	issues on a cap and trade bill, but one of
5	the things that really struck me was the
6	amount of discussion about market
7	manipulation and market oversight and it
8	came from some Senators who just don't like
9	markets and it came from some Senators who
10	probably would never vote for a bill of this
11	kind no matter what it says, but who are
12	using this as a reason not to vote for it,
13	and I think it's worth pointing that out,
14	that this whole issue is very key to what
15	actually might happen or not happen.
16	COMM. CHILTON: Professor Stevens,
17	are you on line with us? If not, I want to
18	go to really our regulated entities, RGGI
19	and CCX. John Shrag is here in New York
20	with Reggie Johnson.
21	MR. SHRAG: Thank you, Commissioner,
22	thanks for including the Regional Greenhouse
23	Gas Initiative and, as you know, I'm a
24	representative of Regional Greenhouse Gas
25	Initiative, Inc. which is a not for profit

1	9/16/09 118
2	entity that administers the RGGI market, the
3	market set up by the ten participating
4	states, Maine through Maryland to implement
5	greenhouse gas reductions.
6	We just completed our first year and
7	I think, you know, we've really been working
8	hard at RGGI, Inc. to implement the market,
9	the states have succeeded in five options in
10	originating over 140 million allowances,
11	there's broad interest among market
12	participants, the trading is occurring as
13	you heard from Roy, Chicago as well as New
14	York Mercantile Exchange, mandatory
15	reporting of emissions from every pilot plan
16	in the region to the RGGI CO2 emissions
17	allowance tracking system to provide that
18	fundamental environmental integrity and
19	operational integrity to the system, a
20	series of public reports that emanate from
21	that emissions allowance tracking system,
22	and then the market monitoring program that
23	is effective in communicating with the
24	public what the what's happening in the
25	market and specifically dividing between the

1	9/16/09 119
2	auctions that RGGI is known for and the
3	secondary market.
4	We've developed a very strong
5	relationship with your staff, Roy, Rafael
6	and Irina in understanding the secondary
7	market, the independent market monitor firm
8	has worked with them and created sets of
9	methodologies for doing market monitoring of
10	carbon markets and I think that the RGGI
11	states and RGGI, Inc. understand RGGI as a
12	playground, if you will, for that kind of
13	development for bidders, for analysts, for
14	journalists and for regulators, and that's
15	been very productive and we look forward to
16	continuing that.
17	I think if you talk about the
18	monitoring of the auctions, they are as
19	important as the originating device to the
20	extent that allowances are allocated and
21	originate through auctions, as important for
22	an overall sense of integrity as the
23	secondary markets are and the derivatives
24	markets.
25	The way that the RGGI program, which

1	9/16/09 120
2	is what I will talk about here, we'll focus
3	on that monitoring of auctions, is through a
4	reserve price designed to prevent collusion,
5	and a reserve price which is pegged to a
6	current market price and that is specified
7	in state regulations. 25 percent bid
8	limitations at the auctions per entity and
9	with that the mandatory reporting of
LO	corporate associations which are so complex
1	in the power sector, and so those are very
12	important pieces of the current RGGI plan
L3	for making sure that the auctions are run in
L 4	a smooth way at the same time because these
15	are quarterly auctions, there is a very
16	deliberate reporting of information coming
17	out of those auctions.
L8	I think that we have built good
L 9	meshing with the CFTC on the secondary
20	market, I think there's a lot more work that
21	we can do. On the key question that Roy
22	asked, I will just report the way that RGGI
23	works which is that we, RGGI, Inc., holds
24	auctions sponsored by the state that are

open to all, anyone can apply, winning a CO2

1	9/16/09 121
2	allowance auction from one of the states is
3	an open and transparent process and I think
4	both the states and RGGI again as
5	contractors that we feel that that's an
6	essential element to the entire auction
7	approach which is to provide allowances at a
8	single price for any bidder. Thank you.
9	COMM. CHILTON: Thank you, Jonathan.
10	Richard Sander, are you on the line with us?
11	MR. SANDER: Yes, I am, Bart.
12	COMM. CHILTON: Go right ahead,
13	Richard. Thank you for being with us. I
14	know you had to fit this into a tight
15	schedule, so thank you and go right ahead.
16	MR. SANDER: My pleasure,
17	Mr. Commissioner and other Commissioners and
18	guests. I'm Richard Sander and chairman and
19	founder of the Chicago Climate Futures
20	Exchange which trades a variety of emissions
21	contracts, we are regulated by the CFTC, we
22	trade across sulfur dioxide under the
23	mandatory cap and trade, NOX, RGGI futures,
24	et cetera.
25	Our market has grown over the years,

1	9/16/09 122
2	in 2006 we did 100 contracts a day, in '07
3	around 1,100, 1,800 in '08, and we're
4	averaging about 5,500 a day this year. RGGI
5	is by far the most successful contract on
6	the exchange, when we started the market the
7	bid-ask spread over-the-counter market was
8	about 40, 50 cents a ton and currently we
9	trade as much as a penny bid offer spread,
10	sometimes 20 up, 50 up contracts.
11	The exchange has about 135,000 open
12	interest and we also have national markets
13	in renewable energy certificates in
14	Connecticut, Massachusetts, New Jersey and
15	voluntary markets, CCAR, the California
16	registry, as well as a when issued U.S.
17	contract, that is a contract where the
18	delivery will be whatever is passed in
19	the legislation, we traded 2,013 futures,
20	it's got about 1.1 million tons open
21	interest and the market forecast is pricing
22	it at roughly \$10.50 a ton.
23	We've been running these markets
24	for, as I said, three, four years now and we
2.5	soom to have performed the function of price

1	9/16/09 123
2	transparency, no counterparty risk in
3	providing the hedging medium for those
4	people who are involved in that market.
5	We also run a voluntary cap and
6	trade called the Chicago Climate Exchange
7	and in that market we have a significant
8	number of players, about 600 million tons of
9	baseline which would make it about 30
10	percent of the Europe size as far as
11	underlying emissions.
12	We have two objectives in our group,
13	number one is to establish a market when
14	there is no mandate from a federal, state or
15	regional level and that is what we have done
16	in the United States and we have partnered
17	with the China National Petroleum
18	Corporation, Petro China, to establish such
19	a market and that is called the PNJ Climate
20	Exchange.
21	In the voluntary market which is
22	relevant to the debates, I'd like to briefly
23	describe what we do there. Even though we
24	were exempt under the CFTC, we opted for
25	oversight and chose to be regulated by FINRA

9/16/09

2	that does monitoring verification and market
	-
3	oversight because we felt that was a very
4	important part of our program to have
5	credibility.
6	In addition to that, having that
7	regulated and the futures regulated, while
8	we don't regulate the OTC market, we do
9	require that any member must report to us
10	any OTC position, so the exchange has a full
11	knowledge of regulated spots in futures
12	markets or oversight on the spot market and
13	reporting requirements for the OTC market.
14	That's an overview who we are and I
15	hope that provides some insight to the
16	people listening to the meeting.
17	COMM. CHILTON: Thank you, Richard.
18	Thanks again for being with us. What I
19	said, is it a regulated market, obviously we
20	have NYMEX and we may have another DCM in
21	the future, so I want to make note that
22	obviously there's some competition here and
23	competition is a good thing.
24	The last presenter before I want to
25	open it up to my colleagues is Jack Cogen.

1	9/16/09 125
2	Are you NatSource, where are you now?
3	MR. COGEN: I'll speak on behalf of
4	IETA. I am NatSource, an aggregator and
5	portfolio manager of carbon, we are managing
6	approximately a million dollars worth of
7	(inaudible.) The remarks I'm going to make
8	actually represent my role as chairman of
9	the International Emissions Trading
10	Association. IETA represents or has
11	members, 170 corporations, approximately 50
12	percent being large industrial emiters, the
13	other 50 percent being financial
14	institutions, legal firms and the various
15	support and firms that are necessary for an
16	international carbon market.
17	IETA supports clear and stringent
18	market oversight policies to ensure that
19	carbon markets achieve the greatest possible
20	emissions reductions at the lowest possible
21	cost. We support measures to achieve
22	transparency, require robust disclosure
23	information to the regulator, create open
24	markets and provide fair competition in
25	order to enable covered industries, their

1	9/16/09 126	
2	consumers and investors to use the market to	)
3	meet emission reduction targets at the	
4	lowest cost. We support provisions to	
5	safeguard against fraud, market manipulation	ı
6	and excessive speculation.	
7	In order for carbon markets to fully	
8	deliver the cost saving benefits, market	
9	participants will need access to both	
10	exchanges and over-the-counter markets.	
11	Exchanges are well suited to standardize	
12	contracts for short duration, OTC markets	
13	are necessary for customized products, all	
14	set to delegate contracts and long-term	
15	transactions that limit price increases.	
16	Given this important need, IETA	
17	opposes prohibitions on OTC trading. IETA	
18	believes that the Commodity Futures Trading	
19	Commission is well suited to oversee the	
20	carbon market given it's oversight related	
21	energy markets.	
22	As we heard previously, the carbon	
23	markets in Europe are highly correlated with	L
24	energy markets or as our traders sometimes	
25	say, except when they're not. We believe	

1	9/16/09	127
2	that the CFTC should be empowered to	govern
3	carbon markets with the same set of	tools
4	what are used in other markets, thes	е
5	include prompt reporting trading dat	a by
6	major participants, possible use of	position
7	limits as we've discussed, and margi	n
8	requirements, training and licensing	of
9	futures and options traders and stro	ng
10	penalties against fraud, false repor	ting and
11	market abuse.	
12	Echoing Chairman Gensler's re	mark
13	earlier today about the trade in cap	and
14	trade, the cap in cap and trade is o	ften the
15	focus of the environmental discussion	n but
16	the trade is the key cost containmen	t
17	available to regulated point source	emiters
18	in a carbon controlled regime.	
19	The most economically efficie	nt path
20	towards compliance with the emission	s cap is
21	achieved by allowing each emiter to	decide
22	whether to purchase carbon credits,	sell
23	excess credits or retain credits for	future
24	use. It is the emiter that is the p	arty

with the most information about a particular

9/16/09

2	source of emissions and can best manage this
3	process.
4	Exchanges are an important part of
5	many commodity markets, they are an
6	efficient platform for conducting the
7	trading of standardized contracts, they're
8	an important mechanism for price discovery,
9	but OTC markets provide customized products
10	that need regulated industries needs in ways
11	that standardized exchange products cannot
12	do.
13	Companies use the OTC markets in
14	carbon to structure contracts of longer term
15	time horizons that are tenable in exchange
16	products, companies use the OTC contracts to
17	meet buy-in needs that are different from
18	the standard lot sizes on exchanges, and
19	finally small industries and companies come
20	to the market infrequently, OTC markets
21	offer a simpler route to market than
22	exchanges, given the exchange access rules
23	and cash collateral requirements.
24	As skip alluded to this morning, OTC
25	markets allow for more efficient use of

1	9/16/09 1	.29
2	capital, OTC transactions are now covered	
3	industries or offset producers to use their	.r
4	physical assets as collateral instead of	
5	posting cash as required by an exchange.	
6	This is key and these firms will	
7	often choose to go to OTC transactions sin	ice
8	they can free up capital to be used for	
9	other more productive purposes, instead of	
10	locking it up as collateral for years at a	L
11	time potentially in these type of	
12	transactions for as long as ten years, the	:
13	result is a lower cost of financing in the	:
14	OTC market.	
15	OTC markets without the long-terms	
16	planning, unlike exchanges, OTC markets	
17	allow for elongated contracts and therefor	e.
18	enable the industry to manage its needs for	r
19	any duration necessary. OTC markets allow	ī
20	for customization to business needs, a key	7
21	advantage of OTC transactions is the abili	ty
22	to tailor the transaction to the exact	
23	amount of the carbon or other energy	
24	commodity needed, the ability to precisely	7
25	match the OTC transaction with the carbon	

1	9/16/09 130
2	exposure has very real accounting
3	implications and can negatively affect the
4	stability of profits of the corporation.
5	Finally, on this point, OTC markets
6	are absolutely necessary to develop offset
7	projects. OTC markets provide the
8	flexibility to develop contract structures
9	that are tailored to the finance needs of
10	offset projects. A typical offset structure
11	in the carbon market extends five to ten
12	years into the future and often allow best
13	efforts to deliver the volume as opposed to
14	the absolute need or an exchange for firm
15	delivery of the commodity.
16	Given the challenges in developing
17	offset projects and regulatory approvals as
18	well as the unpredictability of weather,
19	offsets would be impossible to trade on the
20	exchanges prior to the creation and
21	issuance.
22	IETA believes market oversight
23	policy should encourage a wide range of
24	market participation, including financial
25	institutions. The private sector would need

1	9/16/09 131
2	to come up with the money to protect the
3	climate and spur on economic development and
4	job creation. Forcing banks or other
5	non-emitting sectors away from the carbon
6	market would remove the very source of
7	financing necessary to build new, more
8	efficient and cleaner manufacturing centers.
9	The participation would be essential
10	to drive innovative technology which will
11	protect the climate. In a proper carbon
12	market structure banks acting as financial
13	intermediaries will provide liquidity by
14	standing in the market and providing daily
15	offers to buy or sell allowances to carbon
16	industries. Banks will also provide tools
17	to help cover industry exposure to carbon
18	price risk.
19	These tools like forward sales and
20	options to purchase are designed to enable
21	companies to prudently manage their exposure
22	to market fluctuations and preserve capital
23	for productive investments. Prohibiting
24	financial institutions from participating in
25	the market would make the market less

1	9/16/09	132
2	liquid, less efficient, more volatile and	l
3	more expensive, and increase overall	
4	compliance costs due to the decreased mar	ket
5	efficiency and lack of liquidity.	
6	For these reasons, IETA recommends	}
7	that the carbon market be accessible to a	11
8	segments of the economy and a carbon mark	:et
9	open to all participants with proper	
10	oversight and regulation is the best	
11	mechanism that we know of to achieve our	
12	environmental policy while efficiently	
13	deploying capital and creating jobs and n	ıew
14	industries in this new economy. Thank yo	u.
15	COMM. CHILTON: Thank you very muc	:h,
16	Jack. I want to open it up to my colleag	jues
17	in Washington, if you have any questions	or
18	comments. If not, we'll go to the other	
19	people. Commissioner Dunn?	
20	COMMISSIONER DUNN: I have nothing	١.
21	COMM. GENSLER: I was going to tha	ınk
22	everybody. I think in my testimony, I ma	ıУ
23	have even had it in my written testimony,	
24	which means I was speaking on behalf of t	he
25	four Commissioners, but I certainly did i	.t

1	9/16/09 133
2	in my oral which would have been just for me
3	in full support that we have
4	over-the-counter carbon allowance swaps as
5	well as futures.
6	What I said then was 100 percent of
7	the futures should be born exchange, just as
8	it's true on acid rain emissions, sulfur
9	dioxide and nitrogen oxide contracts now and
10	corner wheat and oil, and that the
11	over-the-counter portion should be regulated
12	consistent with working with Congress trying
13	to do it that the dealers are regulated and
14	the standard producers come on to exchanges
15	and clearing, but there still is a role for
16	customized or tailored products and I think
17	I used the example of a seven or ten year
18	financing or even longer term financing to
19	finance a utility plant.
20	So, I know the Chairman agrees with
21	you largely about that, I think I might even
22	had it in my written testimony.
23	COMM. CHILTON: Thank you,
24	Mr. Chairman. Commissioner Sommers, did you
25	want to add anything?

1	9/16/09 134
2	COMMISSIONER SOMMERS: I don't have
3	anything.
4	COMM. CHILTON: Others want to chime
5	in here? Sean Cota here has something. I
6	want to double-check to make sure that
7	Professor Stevens didn't join us. Rob, are
8	you there? Okay, we'll move on. Sean Cota
9	has a comment.
10	MR. COTA: I think that we need to
11	be careful as we go into these carbon
12	markets that we realize that there are going
13	to be a lot more connected to energy price
14	than were NOX or SOX, and the oversight is
15	differentials between NOX and SOX and how
16	it's been traded in the past is different
17	from what carbon trading will be because
18	there were different levels of oversight.
19	So with most large NOX and SOX
20	emiters, you've got the EPA as an additional
21	regulator because there are individual
22	permits for large power plants and large
23	consumers, in addition, you've got state
24	regulatory commissions that are overseeing
25	both power plant productions and our

2	construction with their emission allowances
3	and any large emiter for a fixed point
4	pollution source is going to have those
5	calculations made about what their current
6	emissions are and what the improvements will
7	be in the future. So you've got various
8	overlaying regulatory agencies that are
9	taking a look at this.

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

When you move to a carbon trading as that, although those players are large players, there is going to be a huge increase in the amount of players in the market that are going to be affected by that, you're not going to have an air quality permit from a state regulatory agency, it's not going to go and measure the amount of air emissions that's on somebody's Lamborgini, you're not going to do that, or somebody's own home furnace, so as we go forward with carbon regulations in the carbon trading, it's going to be much more connected to the price of that underlying energy commodity and if we don't fix the over-the-counter portions of that market,

1	9/16/09 136	
2	the transparency in the energy markets,	
3	it's my opinion that the disruptions we	
4	potentially have seen in the energy markets	
5	will be even more compounded because the	
6	carbon market is going to be so much bigger.	
7	So that's my concern for the	
8	Commission going forward and that the past	
9	successes which in my opinion have been	
10	successes and NOX and SOX will not	
11	necessarily readily translate to carbon	
12	without a significant amount of market	
13	oversight.	
14	COMM. CHILTON: Thank you, Sean.	
15	Benjamin Feldman in D.C., did you want to	
16	make a comment?	
17	MR. FELDMAN: Thank you. First,	
18	Bart, I would like to commend you on your	
19	speech yesterday in New York on the subject	
20	of cap and trade legislation and some of the	
21	things that you laid out with which we	
22	wholeheartedly agree.	
23	Also, just to sort of refer back to	
24	what Jack Cogen was mentioning and Roy's	
25	basic question which is, what's the role of	

1	9/16/09 137
2	financial institutions within the context of
3	a carbon settlement. The first thing to
4	recognize is that the financial risk is the
5	passage of the legislation that creates the
6	position for the reduction.
7	I think what Jack really hit on,
8	what the key issues are which is one is a
9	tremendous capital mobilization over a
10	relatively short period of time while
11	changing the transportation of the stuff to
12	the manufacturer infrastructure, the energy
13	infrastructure, great big parts over a
14	relatively short time, it's about research
15	and development, climate technologies and
16	that really is a big capital call and that
17	capital has to be deployed efficiently to
18	make it through this.
19	Ultimately, financial institutions
20	in the capital markets are where we will
21	turn to finance this technology revolution
22	that seems to get clean energy and I
23	think that there is we wind up talking
24	with a level of polarity that really doesn't
25	exist between the linkage between the OTC

1	9/16/09	.38
2	market and the exchange market there's	a
3	symbiotic relationship there it's importan	ıt
4	to recognize.	
5	Certainly exchanges provide, you	
6	know, transparent, liquid, standardized	
7	contracts that allow for very powerful ris	k
8	management solutions over short periods of	:
9	time for defined structures, but ultimatel	У,
10	and Chairman Gensler, by the example that	
11	you gave, ultimately we're talking about	
12	long-lived capital assets	
13	COMM. GENSLER: We do agree on some	<b>;</b>
14	things; is that right?	
15	MR. FELDMAN: We absolutely do. I	
16	think that's exactly right. When we talk	
17	about long-lived capital assets and the	
18	turnover of those long-lived capital asset	s
19	and the way that that capital will be	
20	costed, the price of that capital, the ris	k
21	management tools simply have to be there t	.0
22	manage this transition of the economy over	
23	time, so I think that the important point	to
24	recognize is the clearing and exchanges	
25	offer tremendous value, they increase over	

1	9/16/09 139
2	time as the commodities mature, as we would
3	expect to see in the carbon market, and so
4	over the long arc it would be expected that,
5	you know, initially the tenured contracts
6	(inaudible) on exchange and other
7	customized contracts on the OTC.
8	In fact, it's the development of
9	those OTC contracts and their development
10	into standardization that leads to the
11	movement on to exchange and we talk in
12	polarities but really it's something that
13	transitions from one to the other.
14	COMM. GENSLER: I think that the
15	polarities that you talk about are the black
16	and white matrix, would help to be
17	addressed, we all saw that the
18	over-the-counter market was also fully
19	regulated by the dealer product as well as
20	standardized product, but dealers are
21	regulated not just for lower risk to capital
22	market but the transparency is there.
23	If the CFTC were to be given
24	oversight along with the SEC on these
25	markets, on all the transactions, and we

1	9/16/09 140
2	could be the cop on the beat for the whole
3	marketplace, not just for the standard
4	because we're just the cop on the beat on
5	the one side, then there really is a black
6	and a white, and there really is a public
7	policy concern or gap, but if we're able to
8	see the whole market and police the whole
9	market then I think then you have more
10	opportunity to have standardized and
11	customized that are still overseen by the
12	market regulators.
13	MR. CHOWINS: I agree with the
14	Chairman.
15	MR. FELDMAN: I fully agree with the
16	need to act, regulatory enforcement tools to
17	make sure that there isn't market
18	manipulation, abuse or excessive speculation
19	across the spectrum.
20	COMM. GENSLER: Maybe the press will
21	pick up on that.
22	COMM. CHILTON: Thank you, Ben. I
23	want to go, I think, Tyson and then Betsy
24	had some comments here in Washington, then
25	we're going to sort of try to wrap it up

1	9/16/09 141
2	pretty quickly after that. Tyson, did you
3	want to make some remarks?
4	MR. SLOCUM: Yes. Thank you very
5	much, Bart. First I just want to applaud
6	the CFTC for putting the question out there
7	whether or not the Chicago the carbon
8	product on the Chicago Climate Exchange,
9	whether it meets the test of influencing the
10	price. You know, Public Citizen definitely
11	supports bringing the Chicago Climate
12	Exchange under enhanced regulation, that
13	would increase reporting requirements and
14	position limits and I think importantly that
15	would provide the CFTC with access to the
16	cash market and I think that moves us closer
17	to where the Senate has been, where you've
18	got Senator Barbara Boxer supporting a
19	legislative action by Feinstein and Snow
20	that would give the CFTC jurisdiction over
21	both the cash and the futures market,
22	whereas the House bill that passed in June
23	kind of splits up jurisdiction between cash
24	and futures with FERC taking cash and CFTC
25	taking futures

1	9/16/09 142
2	So I believe that having one agency
3	oversee both markets would be better and I
4	appreciate Roy's presentation that showed 90
5	percent correlation between carbon dioxide
6	prices in Europe and futures prices with a
7	key fossil fuels, I think that really
8	underscores how important it is for the CFTC
9	to have jurisdiction over these markets
10	because they're all going to be interrelated
11	and it's really important that we have
12	strong regulatory jurisdiction over what are
13	going to be emerging carbon markets in the
14	United States. So that's all I wanted to
15	say. Thank you.
16	COMM. CHILTON: Thank you, Tyson.
17	Betsy.
18	MS. MOLER: Thank you.
19	Mr. Chairman, we noted your remarks last
20	week with great interest where you said you
21	did not support mandatory exchange trading
22	and we at Exxon and I believe the vast
23	majority of our sector agree with that. We
24	do need over-the-counter markets, we have
25	lots of very, very peculiar little products

9/16/09

2	and the trading associated with regional
3	powers markets is huge, three-quarters of
4	the United States consumers are served by
5	regional power markets, so this is not a
6	trivial thing.
7	We have endorsed having the CFTC
8	have oversight over OTC markets and products
9	and absolutely understand the importance of
10	that, things like position limits and
11	disclosure and transparency and everything,
12	but if we're to have a successful cap and
13	trade market, we have to have the ability to
14	do the trading, develop the deep liquid
15	markets.
16	Here I think we can all put on our
17	consumer hats because if they're not
18	flexible enough and big enough, this whole
19	cap and trade thing is not going to work and
20	that's what's really important. It's also
21	true if you treat them as transmission
22	organizations then we would be happy to work
23	with you and your staff to understand these
24	creatures if that would be at all helpful.
25	COMM. CHILTON: Thank you, Betsy. I

1	9/16/09 144
2	want to wrap up here unless there are other
3	people who feel a burning desire to make a
4	comment now and you're welcome to. Jack
5	Cogen here.
6	MR. COGEN: A very brief remark.
7	One of the things as we separate energy from
8	the beginning discussion and environmental
9	pieces, I think what we all seem to agree on
10	is don't separate (inaudible) we'll
11	take everything else, and that's one of the
12	things that we want to get through to the
13	Congress as well is that carbon is not
14	exceptional, it works, it's another
15	commodity and all the same rules should
16	apply.
17	COMM. CHILTON: Thank you, Jack. Is
18	there somebody else in D.C.?
19	MS. DOW: I just wanted to mention,
20	Mr. Chairman, you talked about the fact that
21	there is another venture out there, the
22	grain exchange venture, I just wanted to
23	acknowledge it's a partnership launched,
24	we're one of the founding partners, CME
25	Group, it involves environmental brokerage

9/16/09

2	firms as well as some other financial
3	institutions. We have, you know, made
4	effort to get or help out with moving
5	legislation, and I want to say that Eileen
6	in terms of our meetings on the Hill, we
7	were told to take a step back because there
8	were a number of members or Senators up
9	there that were in favor of capping no trade
10	as they put it.
11	So while we were there to discuss
12	what would be viable cap and trade programs
13	and what some of the design features would
14	look like, we were told, you need to start
15	with why there should be a market at all and
16	obviously, you know, its mainly a cost
17	containment issue, we believe that the cap
18	and trade program is the best way to meet
19	the reduction requirements at the least cost
20	to those who are emitters, so I'm required
21	to meet these additional reduction
22	requirements and caps that are going to be
23	put on the emissions. That's all I have.
24	COMM. CHILTON: Thank you, Deanna.
25	COMM. GENSLER: I just wanted to ask

1	9/16/09	146
2	Eileen said something earlier and jus-	t
3	make an offer, if you think there are	
4	individuals, whether they're members on	the
5	Hill or groups that are concerned about	the
6	oversight of the trade side, again, we're	Э
7	not leading this debate, others in the Wh	nite
8	House and the Department of Energy and	
9	elsewhere and the EPA properly are leading	ng
10	it, but if there are people you think that	at
11	are concerned about the oversight of the	
12	trade side, we make ourselves available	to
13	talk about that, the T in the cap and tra	ade.
14	MS. CLAUSSEN: We would be happy	to
15	work with your staff and figure out how	we
16	can best be deployed to make the case, the	ne
17	trading was not a bad thing.	
18	COMM. GENSLER: At least it would	be
19	overseen well and it would be fair an	
20	orderly markets free of fraud, that's who	at
21	we do, others can decide the greater pub	lic
22	policy issues at the cap.	
23	COMM. CHILTON: Anything else from	n
24	my colleagues? All right, great, with the	nat
25	I want to briefly talk about the next	

2	meeting. Comments from the EEMAC members
3	were that me sort of setting this date today
4	back at our other meeting was helpful as a
5	planning tool. You know, we did it as sort
6	of a to be determined thing and it ended up
7	being that day. I'd like to do that again
8	but I want to go a little bit further out,
9	you know, we've got other advisory
10	committees that Commissioner Dunn and
11	Commissioner Sommers chair and I don't want
12	to take up too much time without regard for
13	their other responsibilities.
14	So I'd like to propose as a TBD
15	April 20th which is a Tuesday, now that's
16	seven months away, so we may need to do
17	something sooner based upon the legislation.
18	That, by the way, is two days before the
19	40th anniversary of Earth Day, so it's very
20	apropos that we talk about not just energy
21	but carbon markets. It's not a firm thing
22	and I'll get back to you all at the
23	beginning of the year, and again I want to
24	make sure I'm not interfering with another
25	schedule that both my colleagues may have.

9/16/09

1	9/16/09 148
2	But the other thing that I was told
3	from people during the break is that doing
4	this virtually has been very helpful and so
5	my intention would be at the next EEMAC
6	meeting we do the same thing. So finally in
7	that regard, I want to thank the CFTC staff.
8	First of all, really, the technical people,
9	Lamar Dunn in D.C. and John Rogers and
10	Robert Young here who we had the great
11	slides that we had earlier this year, we got
12	them here in New York, I'm sorry, we don't
13	have them all in D.C., but we're looking at
14	the Grand Canyon and the Tetons and it makes
15	for a nice environment, we thank Robert.
16	Also Laurie Chowns (phonetic) in
17	Kansas City, thank her. I thank our
18	presenters, Roy Cheruvelil and Steve Sherrod
19	and John Riley, and then finally our staff
20	Tammy Semega, Mandy and their staff, and
21	finally the folks the office directors,
22	Venel Hickson and Henry Hansen here and then
23	Holy Arines and Elizabeth Ritter and Laura
24	Gardy on my staff and all the Commissioners

and their staffs for working with us as we

1	9/16/09 149	
2	have been going forward.	
3	Unless there's anything else from my	
4	colleagues, anything?	
5	COMM. GENSLER: I just want to make	
6	a big thank you from the three Commissioners	
7	here. It's great to get your advice, the	
8	fidelity and the clarity with you addressing	
9	these issues.	
10	COMM. CHILTON: Thank you so much to	
11	all of our presenters and all the EEMAC	
12	members and as always our e-mails are open	
13	and feel free to holler at us, tell us what	
14	we're doing right and what we're doing wrong	
15	more importantly.	
16	Thank you. The meeting is	
17	adjourned, have had a good day.	
18	(Time noted: 11:05 a.m.)	
19		
20		
21		
22		
23		
24		
25		

1		150
2		
3	CERTIFICATION	
4		
5	I, JAMES PUNGELLO, a Shorthand Reporter and	
6	Notary Public in and for the State of New York	do
7	hereby certify that the above is a true record	of
8	the meeting taken before me.	
9		
10		
11	JAMES PUNGELLO	
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		