

UNITED STATES OF AMERICA
COMMODITY FUTURES TRADING COMMISSION

GLOBAL MARKETS ADVISORY COMMITTEE MEETING

Washington, D.C.

Wednesday, November 7, 2012

1 PARTICIPANTS:

2 Commission Members:

3 GARY GENSLER, Chairman

4 BART CHILTON, Commissioner

5 JILL E. SOMMERS, Commissioner

6 SCOTT D. O'MALIA, Commissioner

7 MARK P. WETJEN, Commissioner

8 Other Participants:

9 RON FILLER
CFTC

10

11 CARLENE KIM
Deputy General Counsel,
Office of General Counsel, CFTC

12

13 BRIAN BUSSEY
Associate Director, Division of Trading
and Markets, Securities and Exchange
Commission

14

15 ROBERT COOK Director,
Division of Trading and Markets, SEC

16

17 MASAMICHI KONO
Vice Commissioner for International
Affairs Financial Services Agency,
Japan Financial Services Authority (JFSA)

18

19 JUN MIZUGUCHI
Assistant Commissioner for International
Affairs Financial Services Agency,
Japan Financial Services Authority (JFSA)

20

21

22

1 PARTICIPANTS (CONT'D):

2 HIDEAKA NISHIZAWA
3 Deputy Director for International
4 Financial Markets Office of International
5 Affairs, Financial Services Agency,
6 Japan Financial Services Authority (JFSA)

7 FABRIZIO PLANTA
8 Senior Officer, Post-trading European
9 Securities and Markets Authority (ESMA)

10 NATALIE PISCIONE
11 Senior Officer, Post-trading European
12 Securities and Markets Authority (ESMA)

13 PETER KERSTEN
14 First Counselor Economics and Finance
15 European Commission

16 EMIL PAULIS
17 Director of Financial Markets European
18 Commission

19 PATRICK PEARSON
20 Head of Unit, Financial Market
21 Infrastructure European Commission

22 KEN NAGATSUKA
Assistant Director, Capital Markets Policy
Division, Singapore - MAS

KENNETH GAY
Lead Economist Macroeconomic Surveillance
Department, Singapore - MAS

DAPHNE DOO
Director of Supervision of Markets,
The Securities and Futures Commission,
Hong Kong

21
22

1 PARTICIPANTS (CONT'D):

2 RYAN KO
3 Associate Director of Supervision of
4 Markets, The Securities and Futures
5 Commission, Hong Kong

6 OLIVER HARVEY
7 Senior Executive Leader Financial Market
8 Infrastructure, Australia - ASIC

9 CHRISTIAN LACHAUSSÉE
10 Director, Derivatives Oversight Quebec,
11 Canada

12 DEREK WEST
13 Senior Director, Derivatives Oversight
14 Quebec, Canada

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1 P R O C E E D I N G S

2 (9:30 a.m.)

3 COMMISSIONER SOMMERS: Good morning.

4 Thank you all for being here this morning to have
5 what I hope to be a very productive day on some
6 really important issues.

7 I want to welcome all of my fellow
8 Commissioners, all of the Global Markets Advisory
9 Committee Members, and a special welcome to not
10 only our colleagues from the SEC, but our
11 colleagues from around the world. There are a
12 number of foreign jurisdictions that are here with
13 us today and I want to thank you all for being
14 here.

15 We were able to coordinate this meeting
16 with an IOSCO OTC derivatives technical meeting so
17 we're very grateful that our foreign colleagues
18 were able to stay and participate in this meeting
19 today. I would also like to introduce Ron Filler,
20 who's sitting to my left. He's formerly a long
21 serving member of the Global Markets Advisory
22 Committee and I want to thank him for agreeing to

1 serve in the newly created role as Outside
2 Chairman of GMAC.

3 As the primary sponsor of the Committee
4 I asked the Commission to approve this new
5 structure to assist us with consideration of these
6 very important Global Market issues. Ron
7 currently serves as the Director of the Center for
8 Financial Services Law at the New York Law School
9 and has been a valuable resource to the Commission
10 for many years on futures issues. As we work to
11 implement this new swaps regime we are grateful
12 for his continued commitment to this Agency and to
13 helping us formulate sound policy.

14 For the past couple of years the
15 Commission has worked diligently with our
16 colleagues domestically and internationally to
17 coordinate our approaches to regulation of the
18 global swaps market. We've all been eager to
19 address the growing uncertainty brewing among swap
20 market participants who are trying to decipher the
21 extra territorial reach of the Dodd-Frank Act.

22 The CFTC has issued proposed

1 interpretive guidance and a proposed exemptive
2 order and has received numerous comments from
3 market participants and other regulators. CFTC's
4 staff is working diligently to address the
5 challenging issues associated with the statutory
6 language of Section 2(i) of the Commodity Exchange
7 Act. And to incorporate the helpful comments we
8 have received into any final commission documents.

9 Today, we are going to here from Carlene
10 Kim who is our CFTC staff member leading this
11 effort and from SEC's staff regarding their
12 Agency's work on these important issues. We're
13 also going to hear from all of the foreign
14 jurisdictions regarding their progress in
15 implementing OTC derivatives reforms and any
16 concerns they may have with achieving a global
17 approach.

18 It is my hope that today's meeting will
19 provide the Commission with an opportunity to
20 listen to all of the comments and concerns and to
21 use this unique opportunity to ask any questions
22 regarding the challenges to applying a sensible

1 approach to these cross border matters.

2 This Commission has worked for decades
3 to establish relationships built on respect and
4 trust with our foreign counterparts. Global
5 coordination is a key element to any successful
6 regime to regulate the OTC derivatives markets.
7 Again, I want to thank the SEC and all the other
8 foreign jurisdictions for being here today to help
9 us identify any conflicts with the cross border
10 application of Dodd-Frank so that we can
11 accomplish harmonization with the rest of the
12 world both in substance and in timing.

13 I now want to turn to my fellow
14 Commissioners for any opening remarks. Chairman
15 Gensler?

16 CHAIRMAN GENSLER: I want to first thank
17 Commissioner Sommers for her leadership on these
18 global and international issues and her leadership
19 of this Committee and particularly Jill for
20 bringing this Committee together at this point in
21 time. It is a very timely gathering not only
22 because as she said it links up with the meetings

1 in the last two days of the international
2 regulators, but also, as both the SEC and CFTC
3 consider some of these matters, these cross border
4 matters.

5 As we know, the leaders of our various
6 countries came together a little over three years
7 ago in Pittsburgh in 2009 and made a commitment
8 together to bring a sensible common sense reforms
9 to the swaps and over the counter derivatives
10 marketplace. And they actually set a deadline of
11 December of 2012 so I very much appreciate
12 Commissioner Sommers bringing us together in
13 November of 2012.

14 But we really have all made tremendous
15 progress together in Europe, in the US, in Japan
16 and major provinces in Canada. I know great
17 efforts are going forward in Hong Kong, in
18 Australia, in Singapore and probably countries
19 I've yet to name on the key tenets that people
20 laid out in 2009. Central clearing to lower risk,
21 where we really are pretty much aligned. I know
22 there's the devil's in the detail.

1 Data reporting to data repository so
2 that the regulators can have a better window into
3 these markets, public trading where appropriate as
4 the leaders said three years ago, and of course,
5 risk mitigation that we have through so many
6 capital and margin regimes. So, I just want to
7 thank Jill for bringing this together, all of you.
8 This is a very time sensitive matter because under
9 our rules a number of things do go into place
10 early next year about registering as a swap
11 dealer.

12 So we'd like to as best we can take
13 those thoughtful comments that Commissioner
14 Sommers said, the many, many market participant
15 and regulator comments and turn around the
16 document. Carlene Kim is not getting a lot of
17 sleep these days as the team lead. But there is
18 now, I think, Carlene, and am I right in the last
19 two days or three days there's some documents in
20 front of all five Commissioners.

21 MS. KIM: Yes.

22 CHAIRMAN GENSLER: So, and they'll

1 change further but there's documents in front of
2 Commissioners that are to try to publicly finish
3 up this exemptive relief. The exemptive relief
4 which is so critical that we laid out, that
5 certain rules would not take effect until we sort
6 through many of these substituted compliance
7 issues. And the secondly trying to figure and
8 finalize key parts of the interpretive guidance,
9 particularly key parts as it relates to the
10 definition of US person and some of the
11 definitions around what might be entity level
12 requirements versus transaction level
13 requirements. Take up some of the very thoughtful
14 comments that people had laid out with regard to
15 if one has to register which affiliates within
16 their organization would register? It's something
17 we call aggregation internally but I think many
18 people have raised very thoughtful comments.

19 So, we're going to try to find consensus
20 among the five of us as best we can to address the
21 exemptive order and the key parts particularly a
22 definition of US person, this aggregation issue

1 and some other issues so that people can get some
2 clarity here in the near term. But I look forward
3 to hearing as much as I can today. I'll be with
4 you part of the meeting. I do have a couple of
5 other things.

6 COMMISSIONER SOMMERS: Thank you.
7 Commissioner O'Malia.

8 COMMISSIONER O'MALIA: Thank you very
9 much for calling this very timely meeting. And I
10 thank all of our participants, the international
11 regulators for flying to Washington to share with
12 us your perspective on our rules and your rules.
13 This day will be a very productive day I suspect.
14 And I know you've had two previous days that have
15 been quite useful and I look forward to reviewing
16 those notes and meeting summaries so I have a
17 complete understanding of the discussions at the
18 staff level.

19 So, I do thank you for coming, welcome.
20 You should have been last -- no you shouldn't have
21 been here last week. You're lucky you weren't
22 here last week but let me just echo the comments

1 by Chairman Gensler and Chairman Sommers on this.
2 We do need to make sure that we have agreement on
3 these rules to make them effective. We cannot
4 dictate to the world what our rules are going to
5 be and expect you to adopt them whole cloth.

6 I want to hear from you to understand
7 the consequences of some of our rules and learn
8 more about where your rules are going and under
9 what pace. I do not want an unlevel playing field
10 in terms of competition that puts US banks or any
11 other banks at a competitive disadvantage solely
12 because of the rules. So, we need to make sure
13 that we clarify that.

14 So, I look forward to hearing more today
15 and thank you again for coming.

16 COMMISSIONER SOMMERS: Thank you,
17 Commissioner O'Malia.

18 Commissioner Wetjen.

19 COMMISSIONER WETJEN: Thanks,
20 Commissioner Sommers and thanks for assembling
21 this distinguished group. I think this will be a
22 very useful and informative day for me. There's

1 actually I think a fair amount of coordination
2 that goes on behind the scenes both between the
3 regulators here in the US and also with some of
4 the foreign regulators that are here present.

5 Maybe in some cases more than the public
6 realizes but there can always be more. And I
7 think having a very public meeting like this that
8 comes on the heels of the last couple of days of
9 meetings, real working meetings with the
10 regulators present, it is just more of what I
11 think needs to continue to happen here over the
12 next number of weeks as we try and coordinate our
13 efforts here in the United States with the efforts
14 around the globe in completing our rulemakings and
15 having them blend well with the rules of our
16 fellow regulators around the globe.

17 So, I look forward to today's meetings.
18 I think we've been reading with interest all the
19 comment letters that have been filed in response
20 to both our proposed exemptive order and our
21 proposed guidance. And so, I look forward to
22 receiving even more information based on the

1 dialogue today to supplement those letters. And I
2 think all of it will be very, very useful as we
3 decide what to do here in the coming weeks in
4 terms of the application of our rules globally.
5 So, thanks very much.

6 COMMISSIONER SOMMERS: Now, I'm going to
7 turn to our newly appointed Chairman Ron Filler.

8 MR. FILLER: Thank you, Commissioner
9 Sommers. And I just want to use this opportunity
10 to thank the Commission for appointing me as this
11 Chair of the Global Markets Advisory Committee and
12 I really truly appreciate its confidence in me to
13 hold this very distinguished position. I
14 especially want to thank Commissioner Somers for
15 thinking of me to be the new Chair of GMAC.

16 Commissioner Sommers has done an amazing
17 job as a Chair of the GMAC over the past several
18 years and I look at my new role really as a
19 partnership, a joint venture among Commissioner
20 Sommers as the primary sponsor of this Committee,
21 the GMAC members and me in trying to lead the GMAC
22 in the future.

1 I also want to note that when
2 Commissioner Sommers contacted me a few weeks ago
3 and asked if I would be considered to becoming the
4 Chair of GMAC, my first words to her then was that
5 I was so deeply honored and humbled for her to
6 consider me to be the new Chair. Those words
7 still apply today and will for a very long time.
8 So, thank you very much Commissioner Sommers for
9 thinking of me.

10 For those of you who know me I'm a
11 results oriented person. I'm a big believer that
12 actions speak louder than words. And I really
13 hope that we can use this opportunity among the
14 GMAC members, the distinguished guests that we
15 have here today to try to lead and advice and
16 counsel the Commission because that, to me, is
17 what an Advisory Committee should do is provide
18 advice, important advice and counsel. Even offer
19 concrete proposals to the Commission over time.

20 I think we all over a very special
21 thanks to not only the five Commissioners but the
22 very talented and knowledgeable staff here are the

1 CFTC. Many of whom I've known for over 20 years.
2 Their contributions over the past 24 months
3 exemplify their dedication to protecting the
4 public with far too little resources and time
5 implementing the 60 or so rules required by the
6 Dodd-Frank Act. We may not have always agreed
7 with their philosophy or the regulations that they
8 have adopted or proposed but we all owe everyone
9 here our sincere and deepest gratitude and should
10 thank them; the five Commissioners and the entire
11 CFTC staff for the public service that they have
12 so admirably provided over this period.

13 Finally, I want to welcome our guests
14 who have traveled from a far distance and who
15 represent so many regulatory agencies around the
16 globe. I am a professor and I teach a course
17 called Regulatory Policy in the LOM and Financial
18 Services Law Graduate Program at New York Law
19 School. And I strongly believe that our LOM
20 students should not only know what the laws and
21 regulations say but the how and why that created
22 them.

1 In fact, this course on policy is so
2 important that it's a required course for the LOM
3 degree. So, hopefully the discussions today on
4 the cross border guidance proposal will clearly
5 reflect the varying policy differences that may
6 and do exist globally. Commissioner Sommers, your
7 timing to call this meeting is excellent. So,
8 let's begin and I do hope that the discussion
9 today will be complex, challenging, energetic and
10 profound. And I know it will. Thank you again.

11 COMMISSIONER SOMMERS: Thank you, Ron.
12 Is it a requirement that your students watch the
13 webcast?

14 MR. FILLER: Oh, absolutely. Grade
15 depends on it.

16 COMMISSIONER SOMMERS: So, I'm going to
17 start this morning with Carlene Kim who is leading
18 our team effort at the CFTC. She's going to give
19 a presentation on the CFTC proposals. We're then
20 going to turn to the SEC for Brian Bussey and
21 Robert Cook to speak with regard to the SEC's
22 efforts in these areas. But it might be helpful

1 if we first, especially for those people are
2 watching the webcast, if we just ask that you go
3 around the table and introduce yourselves and your
4 affiliation so that everyone knows who's
5 participating today. I'll start with Masa.

6 MR. KONO: Thank you very much. I'm
7 Masamichi Kono, Masa Kono. I represent the
8 Financial Services Agency of Japan and I am also
9 currently chairing the Board of IOSCO, the
10 International Organization of Securities
11 Commissions. And thank you very much for your
12 invitation.

13 MR. MIZUGUCHI: Thank you very much and
14 good morning. My name is Jun Mizuguchi. I am the
15 Assistant Commissioner for International Affairs,
16 FSA Japan.

17 MR. NISHZAWA: Good morning. My name is
18 Hidetaka Nishzawa. I am a Deputy Director for
19 International Financial Markets, Office of
20 International JFSA. Thank you.

21 MR. PLANTA: Hello, I am Fabrizio Planta
22 from the European Securities and Markets

1 Authority, ESMA and I'm dealing with the
2 Post-trading issue act, ESMA.

3 MS. PISCIONE: Good morning. I am
4 Natalie Piscione working ESMA and particularly on
5 Post-trading equations.

6 MR. KERSTEN: Hi, I'm Peter Kersten. I
7 am the Finance Counselor for the European
8 Commission at the EU delegation here in
9 Washington.

10 MR. PAULIS: I am Emil Paulis, Director
11 of Financial Services at European Commission.

12 MR. PEARSON: Good morning, I am Patrick
13 Pearson and I work for the European Commission and
14 I head the team that's responsible for derivatives
15 regulation.

16 MS. KIM: Carlene Kim, Deputy General
17 Counsel, Office of General Counsel at the CFTC
18 leading the cross border team at the CFTC.

19 MR. BUSSEY: I'm Brian Bussey. I'm
20 Associate Director in the Division of Trading and
21 Markets at the Securities and Exchange Commission.
22 And I'm leading the team that's doing the cross

1 border proposal at the SEC.

2 MR. COOK: Good morning. I'm Robert
3 Cook. I'm the Director of the Division of Trading
4 and Markets at the SEC.

5 MR. NAGATSUKA: Good morning. I'm Ken
6 Nagatsuka at the MAS, the Monetary Authority of
7 Singapore. I'm leading the team on the
8 legislative reforms for the OTC.

9 MR. GAY: Good morning, I'm Kenneth Gay
10 from the Monetary Authority of Singapore as well.
11 I'm also working OTC derivatives reform.

12 MS. DOO: Good morning. I'm Daphne Doo,
13 Director of Supervision of Markets Division at the
14 SFC in Hong Kong, Securities and Futures
15 Commissions Hong Kong. Thank you.

16 MR. KO: Good morning. I'm Ryan Ko,
17 Associate Director of the Securities and Futures
18 Commission of Hong Kong in the Supervisions of
19 Market Division.

20 MR. HARVEY: Good morning. My name is
21 Oliver Harvey. I'm the head of the Financial
22 Market Infrastructure Team at the Australian

1 Securities and Investments Commission.

2 MR. LACHAUSSÉE: Yes, good morning. I'm
3 Christian Lachausée from Autorité des Marchés
4 Financiers in Quebec, Canada. I am Director of
5 Derivatives Oversight.

6 MR. WEST: Good morning. Derek West. I
7 also am at the Quebec Autorité des Marchés
8 Financiers. I'm the Senior Director of
9 Derivatives Oversight. And I'm the also the Chair
10 of the CSA, the Canadian Securities Administrators
11 Derivatives Committee working on these very
12 issues.

13 COMMISSIONER SOMMERS: Thank you all. I
14 just want to go over a couple of housekeeping
15 items this morning to remind everyone listening
16 that the transcript of this meeting will be part
17 of the public record on the cross borders issues.
18 And that the comment period for public comments to
19 this meeting will be open for two weeks. And
20 those comments will also be a part of the official
21 record on these issues.

22 I'll start with Carlene. Thank you,

1 Carlene.

2 MS. KIM: Thank you, Commissioner
3 Sommers. I'll spend the next ten, 15 minutes
4 allotted to me giving a broad overview of the two
5 proposals with focus on some of the concerns
6 raised by the commenters and issues that we are
7 closely looking at as we finalize the two
8 proposals.

9 As you know, Section 2(i) was added to
10 the CEA by the Dodd-Frank Act and provides that
11 the Dodd-Frank swap provisions shall not apply to
12 activities outside the US unless those activities
13 have direct and significant connection with or
14 effect on US commerce. Broadly speaking, the
15 proposed and interpreted guidance and policy
16 statement describes the Commission's approach to
17 interpretation of Section 2(i) as it applies to
18 the Dodd- Frank swap provisions in the cross
19 border context.

20 More specifically, the guidance
21 addressed the circumstances under which non-US
22 entity would be required to register as a swap

1 dealer or MSP, major swap participant. And the
2 extent to which the Dodd-Frank swap provisions
3 would apply to such registrants.

4 It also provided a general framework for
5 a substituted compliance regime under which the
6 Commission would permit non-US registrants to
7 comply with the requirements of the home
8 jurisdiction, the comparable and comprehensive
9 requirements in its home jurisdiction in lieu of
10 Dodd-Frank swap provisions. It also addressed the
11 extent to which the Dodd-Frank swap provisions
12 would apply to swap transactions between counter
13 parties, neither of which are registrants.

14 Before I get to the specifics of the
15 proposed guidance, I would like to say a few words
16 about the legal and policy rationale that informed
17 our, and our, I mean the staff's, thinking as it
18 drafted the document. First, the staff views
19 Section 2(i) as a clear expression of
20 congressional intent that Dodd-Frank swap
21 provisions apply to activities outside the US
22 under certain circumstances. These circumstances

1 include situations where activities outside the US
2 have direct and significant nexus to US commerce.

3 In addition to the statutory text, we're
4 also guided by the overall goals of the Dodd-Frank
5 Act which is to reduce systemic risk in the US
6 financial system and to avoid future financial
7 crisis. In enacting the Dodd-Frank Act, Congress
8 was cognizant of the interconnected nature of the
9 today's global swaps market. And in particular,
10 that a firm's failure or trading losses overseas
11 could quickly spill over and effect a US firm and
12 more generally the US financial system.

13 At the same time, the staff is very
14 mindful of the Commission's obligations to
15 consider international comity principles in
16 exercising its authority to apply Dodd-Frank swap
17 provisions activities outside the US.

18 Let me know turn to the US person
19 definition. This is a foundational element of our
20 proposed guidance and one that has generated
21 significant number of comments. As proposed the
22 term was intended to encompass those persons whose

1 activities either individually or in the aggregate
2 have direct and significant nexus to US commerce.
3 So, in this respect this would include, the term
4 would include not only those entities or persons
5 that are domiciled or organized in the United
6 States but also those that are organized abroad
7 but whose activities may have direct and
8 significant nexus to US commerce.

9 In response to the proposed definition,
10 commenters raised a concern that the proposed
11 definition of US person was overly broad, was
12 ambiguous and required data that they did not
13 currently have available to them. In considering
14 those comments we recognized there's room for
15 greater clarity and there's a need to address
16 certain implementation issues raised by
17 commenters. And we're working very hard to
18 address these concerns to the extent possible as
19 we finalize the proposed definition of US person.

20 Another key element of the proposed
21 guidance is the Commission's tiered approach to
22 Dodd-Frank swap provisions. In the proposed

1 guidance the Commission divided, proposed to
2 divide and this is largely consistent with the
3 industry suggestions, into two categories. The
4 first is the entity level requirement which would
5 include requirements like capital risk management.
6 And these requirements would be applied on a firm
7 wide basis regardless of the counter parties
8 involved.

9 On the other hand, we have in the second
10 category transaction level requirements which
11 would include requirements like clearing a margin,
12 real time reporting, and these requirements would
13 be applied on a transaction basis. Meaning that
14 it would apply and the extent to which it would
15 apply would depend on the nature of the counter
16 parties. And even where in certain circumstances
17 even when Dodd-Frank requirements would apply, we
18 may permit substituted compliance.

19 Now, let me turn to the various aspect
20 of the proposed guidance that would apply to a
21 non-US entity. And this I would think would be a
22 particular interest to those sitting around the

1 table. First, the non-US entity would not be
2 required to count swaps with non-US counter
3 parties or form branches of US swap dealers in
4 determining whether they meet de minimis
5 threshold. The exception is where the non-US
6 entity is guaranteed by a US person. In that
7 instance, the counting rules that apply to the US
8 person applies equally to that non-US entity.

9 Second, a non-US entity need not count
10 the swap dealing transactions of their US
11 affiliates when determining whether the de minimis
12 threshold is met. But they would be required to
13 aggregate the US facing swap dealing activity of
14 their non-US affiliates under common control.
15 This so-called aggregation principle or concept is
16 based on the aggregation principle that the CFTC
17 developed jointly with the SEC in connection with
18 the entity's rulemaking. And it was primarily
19 designed to address concerns about evasion. This
20 is also one of the issues that generated a
21 significant number of comments from commenters and
22 one issue that we are again looking at very

1 closely as we finalize the proposal.

2 With respect to the entity level
3 requirements, a non-US registrant would be
4 permitted to substitute the requirements of the
5 home jurisdiction. A substituted compliance for
6 SDR reporting would be allowed only if the
7 Commission has direct access to such data.

8 With respect to transaction level
9 requirements, a non-US registrant need not comply
10 with these requirements when dealing with non-US
11 person except where the counter party is
12 guaranteed by a US person or where the counter
13 party is an affiliate conduit of a US person. But
14 even in those instances the Commission has
15 proposed to recognize substituted compliance.

16 Now, just a brief word on the affiliate
17 conduit because I see that it's listed in your
18 afternoon agenda and it's, again, another of the
19 more controversial issues that was floated by the
20 commenters. The affiliate conduit concept was
21 intended to describe those entities that act as a
22 pass-through or conduit for one of more members of

1 their US affiliated group. We were concerned that
2 by virtue of the relationship between this foreign
3 conduit and the US person and because the foreign
4 conduit is, in effect, conducting market facing
5 transactions on behalf of the US affiliate that
6 the risk associated with that market facing
7 transaction would ultimately reside with the US
8 affiliate. We were also concerned that affiliate
9 conduit can easily be used to affect top
10 transactions outside the protections of the
11 Dodd-Frank regime.

12 As to foreign branches, foreign branches
13 of US swap dealers and MSPs generally would be
14 subject to the same requirements of its US head
15 office. But with respect to transactions with
16 non-US counter parties, foreign branches would not
17 need to comply with external business conduct
18 rules, and may substitute the requirements of the
19 local jurisdictions for other transaction level
20 requirements.

21 Now, let me turn to substituted
22 compliance, again, one of the issues that is

1 listed for further discussion this afternoon. In
2 the proposed guidance the Commission broadly
3 described a process for and the factors that it
4 would consider in making the comparability
5 determination. A couple of notes to highlight in
6 this regard, first, comparable and comprehensive
7 does not mean that we're looking for identical
8 regulations abroad. Rather we would take into
9 account all relevant factors including the scope
10 and objectives of the relevant regulatory
11 requirements and the comprehensiveness of the
12 foreign regulators supervisory compliance program.

13 Second, the comparability assessment
14 does not entail a rule by rule analysis. Rather
15 we'll be approaching this on a category by
16 category basis. So, for example, we would be
17 looking at the capital requirements under our
18 regime and compared to the foreign jurisdiction's
19 capital regime.

20 Finally, under the proposed guidance
21 with respect to non-registrant they must generally
22 comply with certain transaction level requirements

1 such as reporting, recordkeeping, clearing and
2 execution requirement when at least one of the
3 counter party is a US person. And with respect to
4 SDR reporting they may comply by reporting to a
5 foreign trade repository so long as, again, the
6 Commission has direct access to those data.

7 Because we did not anticipate that the
8 proposed guidance would be finalized before the
9 mandatory registration date, and because we do
10 have certain Commission rules implementing
11 Dodd-Frank provisions still in pending status, we
12 proposed to give temporary conditional relief to
13 non-US registrants as well as the foreign branches
14 of US swap dealers and MSPs operating overseas.

15 Generally speaking and very broadly
16 speaking under the proposed temporary relief
17 non-US registrants may be permitted to delay
18 compliance with entity level requirements until
19 July of next year. Similarly for transaction
20 level requirements with respect to transactions
21 with non-US counter parties, they may be permitted
22 to delay compliance with transactional level

1 requirements until July of next year.

2 Finally, in closing let me just update
3 you on the status of the rulemakings as the
4 Chairman mentioned. Both proposals, the proposed
5 exemptive order, the finalized version of it as
6 well as some aspect of the proposed guidance is
7 currently under review by the Commissioners. The
8 final draft, final proposed exemptive order and
9 the guidance reflect a very careful consideration
10 by the staff over 200 comments that we've received
11 from commenters on the proposed guidance and close
12 to 30 comment letters on the proposed exemptive
13 relief.

14 COMMISSIONER SOMMERS: Thank you,
15 Carlene. And now, I'm going to turn to Robert and
16 Brian for any comments that you may have. Thank
17 you.

18 MR. COOK: Thank you, Commissioner
19 Sommers and good morning Chairman Gensler and
20 Commissioners and members of the Advisory
21 Committee. Thank you very much for the
22 opportunity to be with you this morning and to

1 share with you a little bit about where the SEC is
2 in the overall process of implementing the
3 security based swap provisions of Title VII and a
4 little bit about how we expect to address the
5 cross border issues in a release that the
6 Commission staff is currently working on.

7 Before I go any further, I need to state
8 that as a matter of policy the SEC disclaims
9 responsibility for statements like this by SEC
10 employees. So, the views I express today are my
11 own and do not necessarily reflect the views of
12 the SEC, the Commissioners or my colleagues on the
13 Commission staff.

14 So, first where are we in the process of
15 implementing Title VII? The SEC has now proposed
16 all of the major rules required by Title VII for
17 securities-based swaps. And in some cases has
18 adopted final rules. As you know well we've
19 adopted jointly with the CFTC certain definitional
20 rules relating to swap dealers and major swap
21 participants and rules and interpretations
22 regarding the products that will be subject to

1 Title VII.

2 The SEC has also adopted rules relating
3 to the security based swap clearing infrastructure
4 including standards for risk management and
5 operations of clearing agencies and rules
6 regarding the process for making mandatory
7 clearing determinations.

8 In addition, to help ensure that the
9 system is implemented in an orderly fashion, the
10 SEC issued a policy statement in June describing
11 and requesting comment on a road map setting forth
12 the anticipated sequencing of compliance dates for
13 when the various Title VII rules will take effect.
14 The goal of the policy statement is to avoid
15 unnecessary cost and disruption that could result
16 if compliance with all the rules were required
17 simultaneously or in a haphazard manner.

18 More generally, the policy statement is
19 part of an overall commitment to making sure that
20 market participants know the rules of the road
21 before compliance with those rules is required.
22 This statement emphasizes that those subject to

1 the new regulatory requirements arising from these
2 rules should be given adequate but not excessive
3 time to come into compliance with them. Market
4 participants provided us with a number of very
5 useful comments on this road map and we're taking
6 them into account as we proceed toward the
7 adoption process for the rules that have already
8 been proposed but have not yet been made final.

9 As the Commission has worked through the
10 process of proposing these rules, it has generally
11 speaking not addressed the cross border
12 implications of them. Our Chairman has indicated
13 on a number of occasions that rather than
14 addressing the cross border issues in a piecemeal
15 fashion in the context of each of the various
16 substantive rulemaking proposals implementing
17 Title VII, the SEC is instead planning to address
18 the international application of Title VII
19 holistically in a single proposing release. We
20 believe this approach will provide market
21 participants, foreign regulators, and other
22 interested parties with an opportunity to consider

1 as an integrated whole the SEC's proposed approach
2 to the application of Title VII to cross border
3 transactions.

4 In terms of timing, I would anticipate
5 that the cross border release will be published in
6 the next few months. And in any case, before the
7 substantive rules such as registration, trade
8 reporting and the like that are discussed in the
9 release are finalized so that comments received on
10 the cross border release can be taken into account
11 in drafting and finalizing our recommendations for
12 the final rules. In other words, we do not intend
13 to recommend that the SEC finalize rules that have
14 a cross border effect without first addressing the
15 cross border implications of those rules as well.

16 We found the exercise of preparing this
17 cross border release to be very difficult and a
18 substantial undertaking for a number of reasons.
19 I would wager that this will probably be the
20 longest document we put out under the various
21 Title VII rulemakings. Why is this? Well first,
22 we're doing it as a rulemaking proposal rather

1 than as interpretive guidance. And as with any
2 rulemaking proposal, in addition to considering
3 issues such as reducing systemic risk and the
4 protection of investors, it will also include a
5 full cost benefit analysis and discussion of the
6 effects of the proposal on efficiency, competition
7 and capital formation.

8 Second, the scope of the rulemaking
9 proposal is very broad. In the rulemaking the
10 staff will recommend that the Commission address
11 the cross border application of Title VII with
12 respect to all the major registration categories
13 such as swap dealers, clearing agencies, data
14 repositories and swap execution facilities. And
15 we'll also recommend that the Commission address
16 the cross border application of the Title VII
17 requirements in connection with the various
18 substantive provisions of Title VII such as trade
19 reporting, trade dissemination, clearing and trade
20 execution.

21 Third, and probably most importantly,
22 we've very conscious of the challenges associated

1 with imposing a new regulatory regime on a
2 preexisting market which raises a number of novel
3 issues for us. In traditional security space, the
4 SEC has a long history of addressing cross border
5 issues going back well over 40 years. However,
6 unlike in the traditional securities markets where
7 the SEC has had the opportunity to consider cross
8 border issues gradually and incrementally, the
9 Dodd-Frank Act requires us to impose a completely
10 new regulatory regime all at once on a preexisting
11 market.

12 These challenges are heightened in the
13 context of the securities based swap market
14 because of its global nature. The securities
15 based swap market currently operates relatively
16 seamlessly across jurisdictions with transactions
17 often being negotiated and executed between
18 counter parties in different jurisdictions but
19 booked and risk managed in still other
20 jurisdictions. In this space, cross border
21 transactions really are more the rule than the
22 exception. And let me try to share with you a

1 little bit of detail on that because I think it's
2 important for understanding the challenges we're
3 facing.

4 We have some data available to us from
5 the trade warehouse about transactions in 2011.
6 Most of the securities based swap market consists
7 of single name or a small number of names of
8 credit to false swap. So, it's the CDS market is
9 most of the securities based swap market. And
10 this data suggests that most of that CDS market is
11 cross border in nature. By some estimates more
12 than half of trades involving a US reference
13 entity had at least one party that was foreign
14 domiciled.

15 And looking at it a different way, if
16 you look at all single name CDS, there's a
17 relatively small percentage that actually involve
18 only two US parties. So, in most securities based
19 swaps there is a cross border component. So, when
20 we're talking about the cross border application
21 of our securities based swap rules, we're really
22 talking about the application of our securities

1 based swap rules in general. And so, that's very
2 much informed our thinking and approach to some of
3 the challenges here.

4 And also, in our view requires that we
5 think about a number of factors in addition to
6 reducing systemic risk and protecting investors.
7 For example, we need to consider and appreciate
8 foreign regulatory frameworks and principles of
9 international comity. We also need to avoid
10 creating opportunities for cross border regulatory
11 arbitrage or competitive imbalances. And we also
12 need to think about and avoid unnecessary
13 duplication of rules or conflicting requirements.

14 How do we go about doing that? Well,
15 we've been working hard with our fellow regulators
16 in other jurisdictions and with the CFTC's staff
17 through various discussions and participation in
18 various international task forces and working
19 groups to help identify the possibility of gaps,
20 overlaps and conflicts between our rules and
21 foreign regulatory regimes.

22 In addition, in order to help promote

1 greater coordination with the CFTC and our fellow
2 regulators our staff has prepared and shared with
3 the CFTC and other regulators fairly extensive and
4 detailed charts indicating our staff's currently
5 thinking about how the various requirements of
6 Title VII might apply to cross border transactions
7 involving different types of entities. These
8 charts would address, for example, potential
9 approaches to US persons, to guaranteed entities,
10 to substituted compliance.

11 And the purpose is to help facilitate
12 greater coordination and to strive for consistency
13 and to solicit comments from our regulators so
14 that we can incorporate those into the
15 recommendations that we ultimately give to our
16 Commission. We intend to update these charts.
17 It's an iterative process. As we get comments on
18 them we'll provide you with new versions of them
19 as our thinking evolves and as we get comment from
20 both the CFTC's staff and other regulators around
21 the world. And of course, with all of our Title
22 VII releases we'll be sharing with you drafts of

1 our cross border release for your consideration
2 and comment before it's published.

3 So, with that let me draw to a close and
4 thank you again for the opportunity to chat with
5 you about where we are in the process of
6 addressing the cross borders issues and to thank
7 you for your continued cooperation and support as
8 we try to implement these provisions of Title VII.

9 COMMISSIONER SOMMERS: Thank you,
10 Robert. Now I'm going to move to the
11 presentations from the foreign regulators that
12 have joined us today. I'm going to start with
13 Masa and then as we go around the table, hopefully
14 we'll have time for questions from the Commission
15 at the end.

16 MR. KONO: Thank you Madam Chair,
17 distinguished members of the CFTC and also
18 certainly those distinguished of GMAC. It is my
19 great honor and pleasure to be here with you
20 today. I have a set of slides here and within the
21 permitted time I would like to take you through
22 those very quickly.

1 I have two disclaimers to make before I
2 start. The first being that of course I do
3 represent the FSA of Japan in various
4 international meetings but what I mention today
5 should be attributed to myself but not necessarily
6 to the JFSA. Also, I do chair the International
7 Organization of Securities Commission Board, but
8 again what I mention today is not the official
9 views of the IOSCO Board. The second disclaimer
10 is that since I got off the plane this morning I
11 hope I can be clear enough and please excuse me if
12 you don't find myself too up to speed with your
13 concerns. I will try my best.

14 And of course, I should start with this
15 slide which reminds you of the fact that this is
16 very much a collective commitment of the G20
17 countries, as of course Commissioner Sommers
18 mentioned at the outset and the other
19 Commissioners have also reemphasized. That is
20 first and foremost I should mention that we would
21 like to commend the CFTC for its hard work in
22 actually meeting those requirements and certainly

1 you have been one of the first regulators in the
2 world to have actually implemented those rules or
3 started to implement those rules. And we, of
4 course, would like to be up to speed with your
5 efforts but whatever I mention later will in no
6 way be critical of the sincere efforts that you
7 have put into this work. So, I'd like to
8 emphasize that.

9 Now, in Japan what we have been doing
10 and of course very much in line with this G20
11 commitment is that we amended our law in two
12 stages. The first stage which was approved back
13 in May 2010 and in this piece of legislation we
14 have actually enacted a mandatory central
15 requirement seat at CCPs and also reporting
16 requirements to trade repositories. And those
17 requirements have actually been implemented as of
18 November 1st of this year. But later on I will
19 touch upon some flexibility that we have put into
20 our law or the implementation of the law to
21 accommodate any international arrangements that we
22 will be making and we had better do it fast, of

1 course.

2 The second stage legislation was
3 approved this autumn of September of this year.
4 And in this we have a mandatory use of electronic
5 trading platforms which will be implemented in a
6 phased approach up to three years. For the
7 initial stage and for central clearing we have at
8 the outset limited the application of this
9 requirement to index-based CDSs and Japanese
10 yen-denominated interest rate swaps with reference
11 to Yen LIBOR.

12 Now, we have also limited at the outset
13 this requirement or mandatory central clearing
14 requirement to transactions between large domestic
15 financial institutions who are members of licensed
16 clearing organizations. And this is, of course,
17 be mindful that currently in our country there is
18 only one licensed CCP under our amended law that
19 qualifies as a designated clearing organization.

20 On trade reporting we have a requirement
21 to report to TRs the OTC derivatives transactions
22 for which TR services are available. Again here

1 we adopted very much a pragmatic where of course
2 we will not ask for some things that are
3 impossible to comply with. Examples of such
4 transactions are credit derivatives transactions
5 and foreign option swap transactions with
6 reference to interest rates, foreign exchange and
7 equities.

8 Now you realize that this is much
9 broader than the central clearing requirement, of
10 course. But again this is very much in
11 recognition that there are trade repositories or
12 trade repository services already available beyond
13 our borders. That is, our institutions can
14 certainly have recourse to TR services outside
15 Japan.

16 This is just a timeline for the
17 implementation in Japan of those requirements.
18 Mandatory central clearing as I mentioned became
19 effective on November 1st. So has the reporting
20 requirement and the use of electronic trading
21 platforms will be for a later stage.

22 Now, this slide could be controversial

1 in this country and I will have to mention that we
2 have already heard from our colleagues at the CFTC
3 that many of those issues are being addressed.
4 So, please take this as a rather rough summary of
5 the issues that we have identified in the course
6 of our study or analysis of US rules as we saw
7 them up to this summer but not necessarily as of
8 today.

9 So, when of course our firms have
10 started to realize that they are facing this
11 registration requirement as swap dealer in the US,
12 and they are known US persons, they have found
13 that of course the details and the exact
14 requirements within the cross border rules and
15 guidances have not been finalized yet. And they
16 would certainly like to see more clarity in the
17 requirements that they will face when of course
18 they have to register. And so, the first item is
19 really a request for more clarity when eventually
20 they register as a swap dealer under the US laws
21 and regulations.

22 Second, as it was referred to already

1 substituted compliance, we certainly appreciate
2 very much this concept and the implementation of
3 this is extremely welcome from the point of view
4 of a non-US firm or a non-US regulator. But of
5 course, we would like to see more clarity and we
6 also, of course, would like to see some assurance
7 that we as a regulator would also qualify as being
8 applying equivalent rules or requirements on the
9 OTC derivatives transactions at issue.

10 The third item cross border transactions
11 subject to duplicative requirements for central
12 clearing and data reporting. On this, of course
13 each regulator faces these issues because, of
14 course, by nature those transactions have their
15 legs in different jurisdictions. In our country
16 at the outset we have simply refrained from
17 applying our rules to cross border transactions in
18 anticipation of an international arrangement to be
19 worked out very soon. And within a year or two
20 years' time we will apply our rules to cross
21 borders transactions when such arrangements are
22 made between regulators on how to apply the

1 respective rules to cross border transactions.

2 Foreign CCPs not recognized under US
3 regulation, again, this is in particular with
4 regard to CCP that we have in our country which is
5 now seeking a license with the CFTC. Now, of
6 course, since they are relatively underdeveloped
7 and have not been in business for a very long
8 time, certainly this is quite a challenge for the
9 CCP and also for the regulator, of course, because
10 we would like to have the CCP be world class and
11 certainly a state of the art operation as compared
12 to the much larger and sophisticated CCPs in the
13 US and Europe.

14 The last point, of course, this may not
15 be a fair point but we would like to see common
16 rules applied by both Commissions, the CFTC and
17 the SEC and certainly I understand that such
18 efforts are being made. But our request would be
19 that this process is speeded up.

20 Now, of course we would certainly like
21 to be constructive in contributing to those
22 collective efforts and therefore from our side

1 JFSA and the Bank of Japan we have sent you a
2 joint comment letter in August of this year. And
3 then of course a joint ministerial level letter
4 has been sent in October with a focus on the cross
5 border issues, the signatories of the ministerial
6 level letter are as follows.

7 In the joint JFSA-BOJ letter we raised
8 two overarching concerns and some specific ones
9 that will follow. But the overarching concerns
10 are our -- I would like to think that this a
11 collective will to avoid overlapping or
12 conflicting regulation and a need for
13 international coordination in cross border
14 regulation. I don't think there's any
15 disagreement here, it's just that we have much
16 more to accomplish in the very near term.

17 Specific requests, this will be somewhat
18 duplicative with the earlier slide that is we
19 would like to see the concept or the formulation
20 of substituted compliance being extended further
21 and be clarified further as well on procedure and
22 timing as well. Deferral of application of CFTC

1 regulations with respect to non-US persons, well
2 of course, we are very much under this G20
3 commitment but at the same time we would like to
4 have your understanding of a non-US person having
5 difficulties going through each and every
6 requirement on the Dodd-Frank and your
7 regulations. And that they would certainly
8 appreciate very much some more time to prepare for
9 complete compliance with those rules.

10 And the last point is exclusion of
11 certain transactions from the calculation of swap
12 transactions in regard to the de minimis threshold
13 for non-US persons. This is somewhat technical
14 but for the firms concerned the calculation of the
15 swap transactions that they have entered into is
16 already a challenge particularly when you have to
17 actually look at all your affiliates and branches
18 around the world and whether they have entered
19 into transactions with US persons. And as it was
20 mentioned by our CFTC colleague, whether of course
21 they would in effect be in giving direct and
22 significant effect on US commerce or having a

1 direct and significant nexus to US commerce.

2 In effect, I would like to characterize
3 the issue really as a coordination issue but then
4 there is also a certain issue of sequencing of the
5 reforms. And this is just to reiterate that while
6 those registration requirements have already into
7 force basically and that non-US persons have only
8 until the end of this year really to prepare for
9 registration, there is a lot that we would like to
10 see in terms of clear and final rules before such
11 requirements come into force. And we can
12 certainly understand that the practical
13 difficulties of properly sequencing them and
14 perhaps doing this all at once, but at the same
15 time we would like some consideration of, again,
16 the difficulties that non-US persons certainly to
17 face in looking at those rules. Making an
18 analysis of how those rules affect their
19 businesses and then, of course, be able to
20 prepare.

21 So, I must say that there is certainly a
22 sense of considerable uncertainty in the markets

1 at this point in time. And while this is really a
2 reiteration that non-US persons are really facing
3 challenges in terms of preparation and in some
4 cases, potential conflicts and inconsistencies,
5 and here I do have a relatively strong statement
6 that major reductions in market liquidity and/or
7 shifts in transaction venues could occur. But I
8 think this is part of reality that this is
9 starting and I have actually heard some firms
10 outside of the US who have started to decline
11 transactions with US counter parties because of
12 the uncertainties in the rules and also the
13 apparent lack of coordination between regulators.

14 For transaction level regulations one
15 particular issue that I would like to draw your
16 attention to is that if there is no single CCP
17 which is licensed or registered both in Japan and
18 the US, for example Japanese Yen- denominated
19 interest rate swaps, market participants really
20 would find themselves in breach of either the
21 regulations of Japan or the US when our rules
22 applied to cross border transactions as well.

1 Now, we have very deliberately excluded
2 cross border transactions from the scope of
3 application of our rules at the outset as I
4 mentioned earlier. But this is not at all an
5 ideal situation of course. Certainly in order to
6 meet the G20 commitments certainly we will have to
7 apply our rules to cross border transactions as
8 well with one leg in Japan of course. But then
9 what will happen is that if there no CCP that is
10 commonly recognized in both the US and Japan there
11 will be a problem. And there is one CCP again
12 that is seeking CFTC registration at this point in
13 time.

14 Now, when it comes to the actual
15 inspection and the day to day supervision of the
16 CCPs, of course, we would like ourselves to be
17 recognized by our US counterparts or our
18 colleagues at the CFTC. So that each authority
19 will be the primary regulator of the CCPs
20 established under its own laws and of course in
21 close coordination with their foreign
22 counterparts.

1 Trade execution requirement when those
2 requirements come into place in countries of
3 course the same kind of issues will arise. Entity
4 level regulations, again, there will be overlaps
5 of those requirements for those firms that
6 actually conduct transactions cross border and
7 operate in multiple jurisdictions. And examples
8 here are such as head offices of Japanese
9 financial institutions registered as swap dealers
10 in the US or subsidiaries and branches in Japan of
11 US financial institutions. They will be facing
12 such issues.

13 Data record keeping and reporting, et
14 cetera, again, we would like to see more
15 coordination. Of course, when I say we would like
16 to see we also have our own obligation to follow
17 through with such coordination. And we are
18 certainly ready to discuss this much more in
19 detail. And we would like ourselves to be, again,
20 recognized as the primary regulator in this area
21 as well.

22 So, this is very much a very quick

1 presentation of the issues we are facing. We do
2 hope that we can work collectively and in good
3 faith to achieve a common goal. And certainly we
4 are partners and thank you very much again for
5 giving us this opportunity.

6 COMMISSIONER SOMMERS: Thank you, Masa
7 for that presentation.

8 MR. PLANTA: Thank you, Commissioner
9 Sommers, and thanks for hosting this this
10 important committee. I will try to be short in
11 view of the fact that both ESMA and the European
12 Commission will talk for Europe.

13 So we'll start by updating on the EU
14 regulatory reforms where the primary legislation
15 implementing the G20 mandate was adopted on the
16 1st of July, and then went into force on the 16th
17 of September. But most of the provisions set to
18 actually take effect requires technical standards
19 to be developed by ESMA.

20 And those draft technical standards have
21 been delivered by ESMA in its final form to the
22 European Commission on the 27th of September. And

1 now the Commission is expected to endorse them
2 fully, hopefully without modifications, by the end
3 of the year. This means that the (inaudible) to
4 force of the entire framework in Europe is
5 expected at the beginning of the year.

6 But the actual application of the
7 different provisions takes on average -- gives on
8 average of six months after the (inaudible) to
9 force to give the time to market participants to
10 adopt, to comply with the new requirements. Of
11 course there are differences in the different
12 provisions, but it's basically on average.

13 Of more than 40 technical standards that
14 ESMA has delivered to the Commission, two were not
15 delivered. And these two were, one, bilateral
16 margins to take into account the international
17 work of the WGMR in that respect. And the second
18 one is to define what are the contracts between
19 third country entities that have a substantial
20 foreseeable effect within the EU. And the reason
21 for postponing, that these are very much linked to
22 the discussion we are having in these days and in

1 the past month with the international colleagues.

2 And this leads me to the European
3 approach to third countries, and this approach is
4 very much based on equivalence. ESMA has received
5 a mandate from the European Commission to issue
6 technical advice for assessing the equivalence of
7 different jurisdiction in three areas: Basically
8 the OTC derivatives area, so clearing obligation,
9 risk mitigation techniques, the CCP requirements,
10 and the trade repository requirements. And we
11 will need to issue this technical advice early
12 next year.

13 And the assessment that would be carried
14 out will basically follow this principle. It will
15 need to be objective, it will be holistic, and it
16 will be focused on the outcome rather than on
17 searching for the exact provision in the third
18 country.

19 And I would like to stress the benefits
20 of the equivalence approach compared to a
21 registration and substituted compliance approach.
22 The benefit is that there is one set of rules that

1 always apply, that basically the EU rules can
2 dis-apply in all cross-border cases in case there
3 is a third country equivalent. So the risk
4 mitigation technique, the clearing obligation, and
5 the (inaudible) can these apply, and the market
6 participants can choose which regulation to comply
7 with if the two regulations are equivalent, and
8 which infrastructure to be used if also the CCP is
9 recognized.

10 And for the recognition, the basic
11 requirements are the equivalent of the regulatory
12 and supervisory framework, and the establishment
13 of a corporation arrangement between ESMA and the
14 third country authority. And this is essential
15 because in Europe we would basically rely on the
16 supervision and the enforcement of the third
17 country. If we recognize an institution is not
18 like registering, we will fully rely on the
19 supervision of the third country authority. And
20 this is why it is important to have this
21 corporation arrangement in place.

22 Now turning to how we see the U.S.

1 approach developed so far and making the
2 difference between equivalence and what we have
3 seen, is basically what the main issues and
4 concern that we have identified are that there is,
5 first, a requirement to register. And then there
6 uncertainty on which rules will apply on which
7 cases, the substituted compliance can apply, but
8 not on all cases, certainly not on the
9 cross-border cases. So at least what we see as a
10 cross-border case because for us, it is pretty
11 clear what is a European entity, and that is an
12 entity established in Europe.

13 In all the cases where there is a U.S.
14 person or whether established in the U.S. or not.
15 In the European case, these are all cross-border
16 transactions in our views, and in all these cases,
17 double regulation can apply because basically
18 Dodd-Frank isn't, for the time being, not be seen
19 to dis-apply. And so if we also do not dis-apply
20 EMR, basically this transaction will not be able
21 to be concluded by the counterparties.

22 And basically this is another major

1 element of this approach is that basically the
2 registration gives, by definition, and this is
3 something that -- I mean, it's a different way of
4 seeing things, but differently -- to the
5 recognition. We basically give the jurisdiction
6 of the U.S. authority over to the third country
7 counterparties. And that means that the authority
8 can decide other to dis- apply, substitute the
9 compliance, to apply it only on certain elements
10 and not on others, to directly enforce the
11 requirement instead of relying on the cooperation
12 of the third countries.

13 So what are the consequences of this
14 approach that we see, at least the major one that
15 we see? First, very high compliance costs because
16 the third country counterparties will be subject
17 to two or multiple set of rules to comply with,
18 and they will need always to monitor which one
19 will apply and whether the two can apply if they
20 are not conflicting. And that two or more people
21 -- competent authorities to be subject to, again,
22 with substantial compliance costs.

1 But more than the compliance cost, the
2 problem is really the impossibility to conclude
3 certain transactions because of conflict between
4 the two sets of rules. And where do these
5 conflicts arise? Why do they arise? They arise
6 because of different definitions. These are swap
7 participants or financial and non-financial
8 counterparties, different scope of application of
9 the different rules, different exemptions.

10 And so what happens if in one
11 jurisdiction there is an exemption and in another
12 one there is not, and the same entities are
13 subject to two set of rules. Does the exemption
14 apply or not, in which case it's depending on
15 which counterparty it faces. These are all the
16 questions that are still unresolved.

17 And so different determinations on the
18 clearing obligations again can give rise to
19 conflict. And the different CCPs to be used, as
20 Masa Kono was mentioning. If there is no common
21 CCP, basically the clearing obligation cannot
22 apply, or in on jurisdiction, there will be a

1 clearing obligation, and in another one, bilateral
2 margins. These are all issues that can arise.

3 Basically if I may make a parallel to a
4 sport situation, it's like asking a player to be
5 at the same on two different fields, or if we
6 consider the global derivatives market as a
7 baseball field, it's like deciding which rules
8 apply depending on the player that hits the ball.

9 This is not workable, and we as
10 international regulators have the responsibility
11 to find mutually acceptable, workable solutions to
12 solve these issues.

13 COMMISSIONER SOMMERS: Thank you so
14 much. And now I'll turn to the European
15 Commission, Emil.

16 MR. PAULIS: Thank you very much,
17 Commissioner Sommers. Thank you for the
18 invitation to the European Commission to this
19 roundtable.

20 When I took my hotel room, at reception
21 they told you, Mr. Paulis, you will have the room
22 722. So by that time I realized how powerful the

1 CFTC can be. I landed in the room 722. I thought
2 it was splendid. This was the right room to be to
3 continue to prepare for this meeting here. Thank
4 you very much. This is really what happened to
5 me. It's not an invention of mine.

6 I'm not going to repeat what my friend,
7 Fabrizio said, very clearly, but just to emphasize
8 a few important messages, I think, from our side,
9 which I think we really want to highlight.

10 First of all, in the EU, we have a
11 robust and comprehensive framework in place, which
12 is EMIA. It covers mandatory clearing, mandatory
13 reporting. We have in other parts company
14 requirements. And as you know, there is no doubt
15 -- I just want to make this clear. There's no
16 doubt that in Europe with the revision on MiFID,
17 we will have mandatory trading.

18 So we are really completely, with some
19 delay comparatively, yes, we are completely on
20 track with a full implementation in the field of
21 derivatives. We fully share the objectives of
22 G20, and we fully share the objectives of all our

1 fellow regulators here to ensure that there's no
2 loophole, that there's seamless safety in the
3 system. So that is what we have already, and I
4 think this is --

5 The other point, which I want to make in
6 that respect, is that when we compared our rules
7 with the U.S. Rules in particular, we found out
8 that quite often, our own rules are even stricter
9 than the U.S. rules. And it is interesting
10 probably for the other jurisdictions if they look
11 at the table of comparison of the two rules. They
12 can pick and choose the best practices basically,
13 the which in an alternative way try to achieve
14 exactly the same objective. But that is
15 important.

16 Two, the derivatives market is, of
17 course, a global market, a hugely important global
18 market. If anything -- if any field in which we
19 have to succeed, then it is on banking and on
20 derivatives. Banking, three, here, derivatives.
21 These are the two fields where we G20 members are
22 being watched and where we need to deliver. So we

1 are fully on the camp of those who want to deliver
2 on that.

3 And this market is so global and so
4 important -- over \$600 trillion -- that we think
5 that none of us -- none of us -- can succeed to
6 control this market by himself. It is impossible
7 even for the most important jurisdictions to think
8 that they can control this market, even by having
9 a very far extra-territorial application of the
10 rules. It is not possible to master the systemic
11 risks in that market if we are not joining up
12 forces here.

13 So that is the importance of the work of
14 the G20, and that is the importance of the
15 discussions which we have amongst the regulators.

16 I also want to stress that this work
17 which are we doing is not about a maximum
18 extension of our respective national laws. That's
19 not what it is. We don't want -- none of us,
20 neither the U.S., nor Japan, nor Hong Kong, nor
21 the EU -- none of us wants to show -- we want to
22 apply our law as far, as wide, outside our

1 territory as possible. No. It is about closing
2 loopholes. It's about ensuring that we get safety
3 in the system, that we are protected against
4 contagion.

5 So for me, this cooperation between the
6 regulators is absolutely key. United we stand,
7 divided we will fall. That's for sure because we
8 are convinced that even if any one of the
9 jurisdictions was to believe that it could really
10 control every corner of risk which can be this
11 sort of contagion, it will fail. And it will get
12 affected by that failure.

13 We need to be very conscious, and,
14 therefore, we think the only way to effectively
15 supervise is cooperation. It is close cooperation
16 between the regulators, and not that one single
17 regulator would think that he could achieve that
18 goal.

19 In the EU, we have graded ourselves by
20 means of this intelligence cooperation. We have
21 in our statute a full substituted compliance
22 regime, which is applicable to foreign

1 jurisdictions where of course is rules -- the
2 rules of the foreign jurisdictions. Now this is,
3 in our view, the right way to go because it trades
4 legal certainty, it trades a workable system for
5 these different laws to speak to each other, and
6 it allows precisely effective supervision --
7 effective supervision. So in our view, it is
8 important that we discuss how we can make progress
9 on that front.

10 We are also of the view that when the
11 G20 decided to impose mandatory clearing, that it
12 is a novelty. It's a huge novelty which we
13 introduce in this market, and that it is quite
14 important that we do not add to that mandatory
15 clearing obligations and new obligations, as
16 obligations, which are not absolutely necessary.
17 And that means that we should try to avoid the
18 application of multiple rules where it is not
19 necessary to have multiple rules. That means we
20 should try to use as much as possible, as
21 Commissioner Sommers said, respect and trust
22 between jurisdictions. We must build it up, of

1 course.

2 And then on the basis that we realize
3 that we defer to a broad substituted compliance
4 regime, a broad equivalence regime, a broad
5 recognition regime, but which remains the
6 responsible one. We don't want to create
7 loopholes in the system.

8 But here the point is, and Fabrizio made
9 it, the huge advantage of that is that one set of
10 rules is applicable. That creates legal
11 certainty. That creates a system which is
12 acceptable also in the daily work. I want to
13 stress is why. Because before I worked in the
14 field of competition. In the field of
15 competition, you have rules which we call
16 prohibition rules. It is not permitted to have an
17 abuse of -- to commit an abuse of a dominant
18 position. It is permitted to enter into a merger
19 which leads to monopoly. These are prohibition
20 rules.

21 You can accumulate prohibition rules
22 over several jurisdictions, and the strict rule is

1 inapplicable. That can work. But where you have
2 a system like we are creating, with not
3 prohibition rules, but mainly rules which impose
4 obligations to do something -- and there are many,
5 there are hundreds of them, massive rules. We
6 must admit that as regulators. You, we, all our
7 jurisdictions, we have to close all these
8 loopholes with many obligations to do something.

9 If in that scenario we finish up with
10 multiple rules applicable, and it is always the
11 strictest rule which is applicable, that eats up
12 so much burden in the system, that it shoots far
13 beyond what we are trying to achieve, far beyond.
14 It creates an undue burden, and it leads to the
15 fact that we regulate. It's nice to do so, but
16 that we regulate so much, which is not necessarily
17 required to ensure financial stability in the
18 market.

19 But again, I am a strong defender -- and
20 the Commission's strong defender of ensuring that
21 there are no loopholes, so we have to focus on
22 that, of course.

1 Now we have, of course, in Europe a
2 similar provision to your 722. That's a whole
3 philosophy. I take it off the Dodd-Frank Act and
4 also of India, is not to apply our rules to
5 foreign entities. It says in Dodd-Frank Act, in
6 principle it's only applicable to U.S. persons,
7 unless, and then you have the issue of we come
8 back to that, you see.

9 We have the same, so it's only by
10 exception that it is provided in our statute that
11 one may apply the rule to entities which are not
12 resident or not established in your jurisdiction.
13 And I think that is correct. The purpose of that
14 set of rules -- your 722 and our rule -- is not to
15 expand the reach of regulation. It's not expand
16 the reach of supervision. It is there to avoid
17 evasion, and it is there to ensure that we have
18 safety in the system that we close loopholes.
19 That's why it is there. And, therefore, we have
20 to be reasonable and proportionate to limit it
21 really to the essentials.

22 Now what are our concerns, not

1 specifically addressed to the U.S., but for us as
2 well and for all jurisdictions? These are common
3 concerns because we need to succeed here for the
4 common good. The concerns are -- you can already
5 deduct from what I just said -- that we should all
6 try to reduce the extraterritorial reach to the
7 minimum. We should try to reduce it to the
8 minimum. And we should try to take account of the
9 fact that in a number of jurisdictions, you have
10 already rules applicable.

11 So let me take the registration case,
12 the obligation to register. In Europe, we have --
13 well before Dodd-Frank Act, we have an obligation
14 for our firm to register, MiFID one, which is in
15 place. So we have MiFID, we have EMIA, we have
16 CID on capital requirements. We have it all. So
17 it is quite questionable why, therefore, those
18 firms which are already registered in a
19 responsible jurisdiction, with a fully-fledged set
20 of rules, now has to add another registration in
21 another jurisdiction, and then a search
22 registration in a search jurisdiction, and we go

1 on, and on, and on there.

2 I think that's not what we want. What
3 we want is that if there's an obligation of
4 registration in those jurisdictions where there is
5 either no regulation or where there's none really
6 materially non-comparable regulation, because then
7 it matters. We can't just accept that we deal,
8 therefore, on the same footing with those
9 jurisdictions. And I would pretend that we should
10 focus our efforts much more on closing the
11 loopholes visa vis jurisdictions which are not
12 sufficiently regulated, rather than extending far
13 the reach of our rules between jurisdictions who
14 are committed to really implement in a serious way
15 the G20 commitments. So these are really some of
16 the major issues.

17 Then a last point which I want to stress
18 is the following: Substituted compliance or
19 clearance. That is not downward sloping route for
20 soft enforcement. If it was, then we cannot
21 accept it. You cannot accept it. We cannot
22 accept it. You cannot accept it. You cannot

1 accept it. So substituted compliance, we must
2 give it a meaning, a serious meaning. And that
3 means that it is only available if there are
4 comparable high standards measured, of course, by
5 outcome. It means that it is only available if
6 comparable standards are vigorously enforced.

7 And as you know, in Europe we are
8 considerably strengthening on the enforcement
9 side. We are introducing heavy sanctions. We are
10 stepping up the supervision, the intensity of the
11 supervision. We have new authorities -- ESMA --
12 present here. So all that is exactly driven by
13 that dynamic.

14 Now substitute compliance should also
15 certainly not be a blank check. It must go
16 hand-in-hand with intense cooperation between the
17 regulators. So it is not acceptable that we would
18 say, okay, now we have recognized equivalence of a
19 third country jurisdiction; therefore, we are no
20 longer allowed to look at what happened to that
21 jurisdiction. So there must be an intense flow of
22 information. There must be the right of the other

1 country regulator to get information, to be
2 involved, et cetera. That's very important.

3 Two, there must be -- I would suggest --
4 always a clawback power because if we give
5 substituted compliance, if we give equivalence, if
6 we give recognition to a third country regime,
7 then it must mean that if that third country
8 regime is not applying those rules correctly, that
9 I find back my powers to apply them myself. And
10 this is nothing new. This is what international
11 comity principles have told for a long, long time.
12 You know this better than I do, but I remember
13 when I practiced them in the field of competition,
14 we knew perfectly in active and passive comity
15 issues that if the other jurisdiction would not do
16 what we would ask them to do, then we would do it
17 ourselves. So that is what I call the clawback
18 position.

19 So substituted compliance should not be
20 equivalent to soft enforcement. It is serious,
21 but we need it here. We may not need it in other
22 areas, but here where the G20 has imposed

1 mandatory clearing for a global market which
2 affects daily operations margin, et cetera, et
3 cetera, if we don't have substitute compliance in
4 this field, then I think this system is not --
5 simply not workable.

6 So that's what I wanted to say. If you
7 allow, I will make a small tango with Patrick here
8 that he can say a few words about why it is not
9 workable for concrete reasons.

10 MR. PEARSON: Commissioners, Chairman,
11 this is a complex area. This is a global market.
12 We agree with everything the SEC said, that trying
13 to regulate the cross- border rules verges almost
14 on rocket science.

15 We did that. We did the rocket science,
16 and we produced for regulators an 80-page
17 comparison between 342 pages of European rules and
18 all of the relevant rules in Title 7 and the CFTC
19 requirements. We did the line-by-line rocket
20 science comparison. And I can tell you this is a
21 potential Apollo 13 situation. The message is,
22 Washington, we have a problem. That's an

1 objective fact. That's not fiction, it's a fact.

2 And as one of your former secretaries of
3 trade once said, I don't know where to start, but
4 I do know where to end when I start trying to list
5 the number of examples of potential problems that
6 the current approach has raised. There are a lot
7 of known knowns that we can already draw
8 conclusions on today as to why proposed approaches
9 across the globe simply won't work. They won't
10 mesh. They won't interact. They will cause
11 conflicts. They will cause inconsistencies. They
12 will cause gaps. And in the end, the conclusion
13 is many of the G20 requirements and expectations
14 won't be met, not because of lack of good will,
15 but because we need to take a wider view of how
16 our rules work on a cross-border basis in this
17 global market.

18 Now I'll try and give you four, five,
19 six, seven very simply examples. We have a whole
20 list. We simply don't have enough time in the day
21 to go through all these examples with you.

22 A simple example is what if we have

1 different mandatory clearing determinations? Just
2 one example. Is this possible? Yes. Is it
3 probable? Yes. This is a possible probability.

4 You have a different mandatory clearing
5 requirement. We have firms from Europe that are
6 registered in our jurisdiction that fall under
7 your registration requirement. What if the trade
8 is subject to mandatory clearing in the United
9 States of America, but it is not subject to
10 mandatory clearing in the European Union? What
11 happens if the DCO clearing the trade in the
12 United States of America is not recognized under
13 European rules?

14 It is possible, if you look at the
15 comparison between Europe and the U.S. rules on
16 DCOs, there's only one inexorable conclusion:
17 Europe has far tougher, far stricter safety
18 stability requirements than DCOs in the United
19 States. But the United States has higher
20 requirements as regards conduct of business rules.

21 But what if we do not have that
22 registration, we do not have that recognition of

1 DCOs across the Atlantic? The trade can't be
2 cleared. Or you require the same trade to clear
3 in one country, in the United States, and we will
4 subject exactly the same trade to bilateral
5 initial and variation margins in Europe. The
6 trade will not take place full stop.

7 The risk that countries and that firms
8 run cannot be hedged. That's not good for our
9 economy. It's not good for our firms. In the end
10 it's not good for jobs. You cannot hedge that
11 risk.

12 Another example: The same trade is
13 actually subject to the mandatory clearing
14 requirement in both our jurisdictions. What if
15 the European DCOs are not authorized to clear that
16 trade in the United States? You have the same
17 conflict again, or even worse, you will have a
18 requirement in Europe and in the United States to
19 clear the same trade on two different DCOs. The
20 conclusion is the trade will not take place.

21 If we move from that example to a
22 potential third example, what do you do for

1 corporates, for non-financial firms? What if you
2 have a swap dealer contract registered here with a
3 swap dealer with an American non-financial
4 corporate? Swap dealers, European via corporates,
5 American. It's not for hedging. It doesn't
6 necessarily mean that this is a bad contract, but
7 it's not for hedging.

8 In Europe, if that contract falls below
9 a clearing threshold, you do not have to clear
10 that trade. But the same trade must be cleared in
11 the United States of America. You can't conclude
12 the contract. Which corporate would want to
13 conclude a contract that is subject to mandatory
14 clearing in the United States, but is not subject
15 to mandatory clearing in Europe? You can't hedge
16 your risk. It's not good for the economy. It's
17 not good for the firms. It's not good for jobs in
18 the end. You cannot conclude that trade.

19 But what if the same swap is for
20 hedging? It's a hedged swap, but the swap is
21 above the European clearing threshold. You have a
22 conflict. You exempt in Europe that contract.

1 You exempt in Europe that contract for clearing,
2 but in Europe you have to clear that contract.
3 Again, you have a conflict of rules and
4 requirements. The trade will not take place. The
5 swap will not be concluded.

6 What if we have an affiliate of a U.S.
7 life assurer in Europe? They do still do business
8 in Europe. They're still out there, Gary --
9 Commissioner Gensler, sorry. You have an
10 affiliate of a U.S. life assurer in Europe. It
11 has an interest rate swap with a European dealer.
12 It's registered here in the United States. That
13 swap doesn't have to be cleared in the European
14 Union. It will have to be cleared as a financial
15 in the United States of America.

16 The contract will not take place. There
17 will be no deal. And the U.S. firms simply cannot
18 risk its risks. You have U.S. life assurers who
19 guarantee, who insure property, who insure lives,
20 pensions in the United States of America, who
21 insure investments, that trade will not take
22 place.

1 Reporting. We have a European and a
2 U.S. Counterparty. Both have to report to a swap
3 dealer repository. We did the rocket science. We
4 compared the rules. The European rules are
5 tougher, stricter, more granular as to what has to
6 be reported -- the details, the reporting formats,
7 the time stamps. Everything is there. The U.S.
8 rules are potentially stricter on when you report,
9 the 30-day minimum that might even be reduced
10 further.

11 You have a problem because the same
12 trade will potentially be reported to a swap
13 dealer in different formats, different times.
14 What if the swap data repository recognition
15 doesn't take place? It is possible we might not
16 recognize each other's swap data repositories.
17 You have the same trade reported to different swap
18 trades or data repositories in different formats.

19 We can go on and on and on. We did the
20 work. We did the rocket science. We've done the
21 Apollo 13. And the message is there: Washington,
22 we have a problem. Apollo 13 had a happy ending.

1 It ended up with blue tack and sticky tape.
2 That's not the ending we want here. We want a
3 happy ending.

4 The legal counsel for the CFTC told us
5 that he watched Apollo 13 recently. It was on
6 your Public Broadcasting System. And he actually
7 suggested that the lesson we have to learn from
8 Apollo 13 is the only way to solve this is
9 cooperation. We know what the problem is. The
10 problem is your registration requirements. It's
11 the wide definition of "U.S. person." It's the
12 narrow scope of substituted compliance.

13 That's where through cooperation we
14 believe we can resolve many of the issues and many
15 of the issues I have tried to explain here, and
16 many issues I haven't even been able to bring to
17 the table because we still have other
18 jurisdictions to listen to.

19 Thank you for your attention.

20 COMMISSIONER SOMMERS: Thank you, Emil
21 and Patrick. Now I'm going to turn to a joint
22 presentation from Singapore, Hong Kong, and

1 Australia.

2 MR. HARVEY: Firstly, thank you,
3 Commissioners, for the opportunity to speak, and
4 thank you to my colleagues around the table. And
5 also a big thank you to the CFTC staff who I know
6 have been working day and night under trying
7 circumstances.

8 As you mentioned, we're going to do a
9 presentation, the Australians, Singaporean, and
10 the Hong Kong regulators, partly because I think
11 we share some joint considerations, most of which,
12 I think it would be fair to say, have been raised
13 already around the table.

14 The first thing I would say from an
15 Australian perspective is that we do take our G20
16 commitments very, very seriously. That's the
17 perspective that I bring to the table, but also
18 one that my stakeholders are very eager to ensure
19 that I shared at this meeting.

20 Domestically, we have in place a
21 framework for regulating swap dealers, or what you
22 refer to as swap dealers. That's an arrangement

1 that has been in place for quite some time. It's
2 an extensive arrangement subject to significant
3 regulatory oversight not just by the securities
4 regulator, but in circumstances where the swap
5 dealer is a bank, and will be for your purposes,
6 they are potentially regulated as well. So
7 there's an extensive framework that goes on at the
8 entity level in Australia.

9 At a transactional level perspective, we
10 have legislation moving through the Parliament,
11 which will provide the government and the
12 respective regulators with the power to mandate
13 trade reporting, clearing, and trading on the
14 platform. We have licensing arrangements in place
15 for clearing facilities both domestic and foreign,
16 looking to do business in our jurisdiction. We
17 have licensing arrangements in place for trading
18 platforms, both domestic and foreign, that are
19 looking to do business on our platform. And this
20 additional regulation will not only provide us
21 with a mandate to ensure that that occurs, but
22 will also provide us with the opportunity to deal

1 with that as the issue arises.

2 More specifically, we have just
3 completed a market oversight assessment report,
4 which has been published. The purpose of that
5 assessment report was to be very, very clear about
6 the nature of the Australian OTC market. It made
7 some anticipatory recommendations in expectation
8 of the legislation being finalized and being put
9 through Parliament. The expectation is that there
10 will be a broad mandate on trade reporting.

11 The expectation at this point is that
12 for Australian dollar denominated interest rate
13 derivatives, we would expect it to be made clear
14 to industry that we would expect them to be
15 essentially cleared in the coming period. In the
16 absence of an industry move or industry meeting
17 those expectations, we will have the power to
18 mandate that.

19 In terms of trading on platforms, we
20 will also have the power to mandate continued
21 consideration of whether it is appropriate now,
22 circumstances which we anticipate. That will be

1 the case, again, in the coming period, and we'll
2 review the nature of our markets in the middle of
3 next year.

4 That gives you a reasonable overview of
5 where we've got to from an Australian domestic
6 perspective. I'll now turn to my Hong Kong
7 colleague so he can give you their own.

8 MR. KO: Thank you, Oliver. I'll
9 briefly go over the status of Hong Kong's effort
10 in carrying out the OTC derivatives market reform.

11 In October 2011, we issued a
12 consultation paper to consult the public on our
13 thinking about the general framework of our
14 proposed regulatory regime for the OTC derivatives
15 market in Hong Kong. We completed that exercise
16 in July this year. We issued our consultation
17 conclusions. At the same time, we launched a
18 supplemental consultation on the proposed scope of
19 the new or expanded regulatory activities and of
20 the regulatory oversight proposals of
21 systematically important players. We are
22 finalizing our consultation conclusions paper, and

1 we aim to publish that before the end of this
2 year.

3 To implement the reform, we need to
4 amend our securities and futures ordinance. The
5 amendment will comprise of two parts. The first
6 part will be a change of the primary legislation.
7 The second part will be the introduction of the
8 subsidiary legislation which sets out the detailed
9 rules to give effect of the provisions in the
10 primary legislation.

11 It is our target to introduce the
12 amendment to the primary legislation to our
13 legislative council in early 2013. At the same
14 time, we aim to consult on the details of the
15 subsidiary legislation at around the same time.
16 Subject to the passage of the relevant legislation
17 by our legislative council, we target to implement
18 the new regulatory regime at around third quarter
19 2013.

20 In terms of the cross-border application
21 of our OTC derivatives rules, although the primary
22 objectives of our legislative amendment is to

1 regulate the OTC derivatives activities conducted
2 by Hong Kong regulated entities and other Hong
3 Kong persons. But because of the cross-border
4 nature of OTC derivatives transactions, the Hong
5 Kong rules may apply to a transaction between a
6 Hong Kong counterparty and a Hong Kong
7 counterparty.

8 The Hong Kong rules may also apply to a
9 transaction between the Hong Kong counterparties
10 under very limited circumstances whereby one
11 example is that an overseas subsidiaries of a Hong
12 Kong bank, if the overseas subsidiaries of this
13 Hong Kong bank is designated by the Hong Kong
14 monetary authorities under its consolidated
15 supervision regime for any avoidance purposes.

16 For overseas financial market
17 infrastructure, providing services in Hong Kong
18 under our OTC regime, third country trading venues
19 may provide services in Hong Kong if they are
20 approved by the SFC as an authorized automated
21 trading services provider.

22 Third country CCP may also provide

1 services to meet the Hong Kong mandatory clearing
2 requirements if approved by the SFC as an
3 authorized automated trading services provider.
4 Although the name of our regime is called
5 automated trading services, HTS regime, but its
6 scope actually includes the CCPs offering service
7 in Hong Kong. Overseas ATS, regulated under light
8 touch approach under our ATS regime, replaced
9 heavy reliance on a day-to- day supervision by its
10 home regulator.

11 On the mandatory reporting obligation,
12 our current thinking is that it must be fulfilled
13 by reporting to ATR to be operated by our Hong
14 Kong monetary authority. But ATR operated by Hong
15 Kong monetary authority will accept reporting
16 global ATRs or confirmation platforms, and to
17 facilitate the reporting by global swap dealers,
18 and also to mitigate the burden of the reporting
19 requirements.

20 For derivatives market intermediaries,
21 overseas intermediaries are required to be
22 licensed in Hong Kong, only if they actively

1 market their services to Hong Kong. And
2 generally, we expect overseas license corporations
3 -- or licensed corporations are normally required
4 to be locally incorporated.

5 Now I will turn it over to my Singapore
6 colleague.

7 MR. NAGATSUKA: Thank you. Thank you,
8 Commissioner, Chairman, and members of the Global
9 Markets Advisory Committee. We welcome the
10 opportunity to come here and share with you some
11 of our cross-border implementation concerns.

12 Singapore, of course, is committed to
13 implementing the G20 reforms. We have been making
14 progress on this over the course of the past two
15 years. Just a quick update. We issued a policy
16 consultation in February on the implementation of
17 G20 concerns. In particular, we consulted on
18 mandating the central clearing and reporting of
19 OTC derivatives transactions. We also consulted
20 on extending to OTC derivatives our current
21 regulatory regime for clearing facilities, and for
22 market operators, and for market intermediaries as

1 well. We also consulted on introducing a new
2 regime for trade repositories.

3 In developing our approach to these
4 reforms, MAS has reviewed the state of the
5 derivatives markets in Singapore and also to
6 (inaudible) industry feedback, which led to
7 further consultations issued in the past few
8 months. In May this year, we issued a
9 supplementary consultation with proposed
10 legislative amendments to our existing regime for
11 clearing facilities, and to introduce the new
12 regime for our repositories.

13 The consultation sets out the licensing
14 approach as well as the general obligations which
15 are regulated trade repository our regulated
16 clearing facility will be subject to. In August,
17 we issued a separate consultation. We proposed
18 legislative amendments setting out the mandatory
19 clearing and the mandatory reporting obligations.

20 We then consolidated these supplementary
21 consultations into a set of draft laws. Keeping
22 in mind the broad-ranging amendments we should

1 have to put in place to implement the G20 reforms,
2 we are undertaking these exercises in parts.

3 The first phase implements the mandatory
4 clearing and reporting requirements, as well as
5 the supplementary regulatory framework for OTC
6 derivatives clearing facilities and trade
7 repositories. These amendments have been
8 introduced in our parliament in October this year,
9 and are targeted to passed into law by the end of
10 this year.

11 In relation to this set of laws, we will
12 issue further consultations on the detailed rules
13 to implement the regulation of these OTC clearing
14 facilities, trade repositories. And again on the
15 mandatory clearing and reporting obligations,
16 these will be consulted upon in the coming months.

17 In relation to other aspects of OTC
18 reform, in particular, the regulation of OTC
19 derivative market platforms, market
20 intermediaries, these are being considered, and we
21 will also consult on them at a later stage in
22 2013.

1 Just a brief note on where our
2 cross-border implementation overlaps. In some
3 instances, Singapore clearing and reporting
4 obligations will apply to transactions between a
5 Singapore counterparty and a non- Singapore
6 counterparty. Generally, the mandatory clearing
7 and reporting obligations will be applicable as
8 long as there is a Singapore counterparty to the
9 transaction, including in cases where the opposite
10 counterparty is non- Singapore counterparty.
11 Singapore rules will also apply where
12 non-Singapore counterparties transact with an
13 overseas subsidiary of a Singapore incorporated
14 bank.

15 So where entities are subject to
16 mandatory clearing and reporting obligations,
17 counterparties must fulfill their obligations by
18 clearing or reporting a true clearing facility or
19 a true repository that is regulated by the MAS.

20 Where overseas incorporated clearing
21 facilities and trade repositories come in, they
22 are able to seek licensing from MAS and the

1 recognition approach. So under this approach, we
2 assess whether the overseas entity is subject to
3 regulation and supervision, which is comparable to
4 our Singapore regime in terms of achieving our
5 objectives of regulation. We also assess whether
6 adequate arrangements exist for cooperation
7 between MAS and the home regulator. Under this
8 recognition approach, we are then able to license
9 to overseas entities based on our broad reliance
10 on the home regulator for the regulation of the
11 overseas entity.

12 So essentially, we have put together the
13 foundation for linking up and perhaps smoothing
14 the jagged edges where our regime meets the
15 international reaches of foreign regulatory
16 regimes. Certainly the interaction of our regimes
17 with other jurisdictions may still give rise to
18 cross-border implementation issues. Industry has
19 raised some concerns, and we have also, together
20 with Hong Kong and Australia, mentioned our
21 concerns to the CFTC.

22 MR. GRAY: Thanks, Ken. Before we cover

1 our concerns on cross-border issues, we would also
2 like to recognize the efforts of our CFTC and SEC
3 colleagues that are already being made towards
4 addressing these cross- border issues.

5 So our primary concerns on cross-border
6 issues are twofold and are broadly similar to
7 those raised by our colleagues in Europe and
8 Japan.

9 First we note that entities outside the
10 U.S. may be subject to the requirements of
11 multiple jurisdictions. This creates the
12 potential for overlapping or even conflicting
13 requirements. Second, uncertainty remains over
14 the meanings of key terms in the proposed
15 cross-border guidance. This combination of
16 uncertainty and overlapping requirements can
17 increase complaints caused for industry and could
18 lead to unintended consequences, such as increased
19 market fragmentation or even increased systemic
20 risk.

21 To shed more light on our concerns, we
22 will now elaborate on six issues we have

1 identified in the CFTC's proposed guidance.

2 First, in respect of the definition of
3 U.S. Persons, we know that at present, particular
4 difficulties remain for market participants in
5 determining whether a counterparty is a U.S.
6 person, and uncertainty also remains over the
7 potential scope of the U.S. person definition.
8 Second, in respect of substituted compliance
9 assessment, we support an outcomes-based approach
10 to this assessment that focuses on expected
11 regulatory outcomes and takes applicable global
12 standards into account. We also call for
13 appropriate transitional arrangements in this
14 regard.

15 Now my colleague from Hong Kong will
16 bring us through the next two issues.

17 MS. DOO: Thank you, Kenneth. The third
18 issue that I want to talk about is on client
19 confidentiality. We all agree that trade
20 reporting is an important tool to collect
21 information for further analysis. However, there
22 is a potential problem when the counterparty whose

1 information is being reported is situated outside
2 the jurisdiction that requires the reporting. The
3 ability to comply with the U.S. reporting
4 requirement may be hampered by conflicts in local
5 laws.

6 Normally, a client agreement will have
7 taken care of a situation where the reporting is
8 required by local laws or regulations. But there
9 is an additional concern when both counterparties,
10 through the transaction, are situated outside the
11 jurisdiction that requires reporting, like, for
12 example, in a situation where the dealer is an
13 Asian subsidiary of a U.S. bank, or is a non-U.S.
14 swap dealer situated in Asia.

15 And because this is outside the normal
16 home host arrangement and is actually a third
17 party regulator that require the disclosure, the
18 client agreement would not have taken care of it.
19 And on top of that, there may be local privacy law
20 or bank secrecy law that prevents this type of
21 disclosure. In some extreme situations, this is
22 the case even though the dealer may have obtained

1 client consent. And sometimes it can be a
2 criminal offense for the dealer to disclose the
3 information.

4 ISDA in August 2012 has published a new
5 Dodd- Frank protocol that will help to address
6 some of the issues. But in order for the client
7 to sign up to the protocol, the dealer needs to
8 spend to educate the client, and this is a
9 time-consuming process, especially in some of
10 those smaller jurisdictions. The client may not
11 be very familiar with the Dodd-Frank requirement,
12 and if, say, they're doing a local currency
13 interest rate swap, they're not dealing with a
14 U.S. person. They're not a U.S. person. It would
15 be difficult for them to understand why that
16 transaction is subject to reporting to the U.S.
17 regulators.

18 And on top of that, in some situations,
19 the dealer may need to get the consent from the
20 local regulators for the trade to be reported.
21 And in some situations, some jurisdictions may
22 have to amend the law in order to grant this type

1 of disclosure.

2 We understand that there will be some
3 transitional arrangement to take care of this
4 situation. However, we'd like to stress that we
5 should underestimate the extent of the issue and
6 the time required to resolve this issue so that
7 there will be adequate time for people to address
8 this particular problem.

9 And the next issue is on U.S.
10 affiliation. In the comprised proposal which was
11 published in July, it proposed that there will be
12 some temporary exemptive relief for non-U.S. swap
13 dealers and non-U.S. major swap participants.
14 They can delay compliance with certain entity
15 level and transaction level requirements. One
16 example is the reporting requirement for swap with
17 non-U.S. Counterparties. And, however, there is
18 actually a condition attached to it. And for any
19 non-U.S. person who is affiliated or subsidiaries
20 of a U.S. swap dealer, they will not be able to
21 enjoy this type of exemption.

22 But we wish to point out that there are

1 situations where the U.S. person and the non-U.S.
2 person, actually they operate totally independent
3 of each other. The non-U.S. swap dealer is not
4 under the U.S. swap dealer's majority control.
5 They don't receive any guarantee from the U.S.
6 swap dealer. They are affiliated purely because
7 they have a common parent, and the parent is
8 actually situated outside of the U.S..

9 So what we want to mention is for this
10 type of swap between a non-U.S. swap dealer is who
11 affiliated with a U.S. swap dealer with other
12 non-U.S. counterparties, they're unlikely to have
13 any significant systemic impact to the U.S. And
14 those non-U.S. swap dealers also need time to
15 prepare for compliance.

16 So we would like to suggest either
17 removing or modifying this definition of
18 affiliation so that the situation we mentioned
19 early on will not happen.

20 CHAIRMAN GENSLER: Can I ask a quick
21 technical question on that? Are you referencing
22 when the parent -- in in that circumstance, the

1 ultimate parent is non-U.S.?

2 MS. DOO: Yes.

3 CHAIRMAN GENSLER: Okay, thank you.

4 MR. HARVEY: Thank you. I have just two
5 final issues, and they've been made previously
6 around the table, so I won't belabor them. But I
7 guess the first is just the timing of the
8 implementation and strong support for any
9 flexibility that is available. And the additional
10 flexibility that is available to take account of
11 the fact that countries are moving at slightly
12 different speeds notwithstanding the strong
13 commitment to meeting the obligations.

14 The final one is just around
15 registration of a domestic CCP. As a DCO,
16 mechanics around that for that swiftly happen if,
17 in fact, the need arises. Thank you.

18 COMMISSIONER SOMMERS: Thank you all so
19 much. And now finally we'll turn to Quebec for
20 their presentation.

21 MR. WEST: Thank you very much, Chairman
22 Sommers, and the CFTC for the opportunity. We'd

1 like to also voice our appreciation to the CFTC
2 for holding this and other meetings. The level of
3 inclusion and cooperation in this process is
4 really impressive and unprecedented, and we do
5 sincerely appreciate it.

6 Just yesterday, the FSB issued a
7 statement urging regulators to pursue further
8 discussions before the end of 2012. And as
9 Chairman Gensler rightly pointed out, there's not
10 a lot of 2012 left, so the timing of these
11 meetings is very important.

12 I'm in the fortunate position of
13 following all of my international colleagues who
14 have spoken much more eloquently than I could on
15 several of these issues. So I'll try and focus on
16 specific Canadian issues, and maybe reiterate some
17 of the burning points. But I won't get into as
18 much detail.

19 Canada has very close economic ties with
20 both the U.S. and the EU. The majority of our OTC
21 derivatives contracts between our financial
22 institutions are with foreign counterparties, and

1 not surprisingly, the majority of those are with
2 the U.S. counterparties. So our market
3 participants are going to have to comply very
4 quickly with foreign regulations, with U.S. rules
5 in particular. And this could cause some serious
6 conflicts both in the short term where there is a
7 gap, but also in the long term as we go through
8 the substituted compliance evaluation process.

9 The CSA, which is the umbrella group for
10 the various provincial securities commissions --
11 the Canadian securities administrators -- has been
12 working diligently to meet the G20 commitment
13 objectives. I should explain that in Kenda, our
14 securities laws tend to be very highly harmonized
15 across the country. The legislation all look very
16 familiar, and we tend to issue our rules as a
17 national instrument that each jurisdiction would
18 sign on to.

19 The derivative markets are not nearly as
20 harmonized. Far from it. We have different
21 regimes in Quebec. We have a dedicated
22 legislation, the Quebec Derivatives Act. Ontario

1 has for listed derivatives the Commodities Futures
2 Act. But OTC derivatives are part of -- are
3 treated under the Securities Act. It's the same
4 in Manitoba, in other provinces, particularly BC,
5 Alberta, Saskatchewan, and New Brunswick. They
6 have blanket orders that deal with derivatives
7 markets.

8 So we can't come up with national
9 harmonized rules, but what we are trying to do is
10 come up with model rules that we will then adapt,
11 so we will go out with a consultation process in
12 our rulemaking so that the marketplace will see
13 that even though the end rule might look a little
14 different from jurisdiction to jurisdiction, the
15 regulatory objectives and how we get there will be
16 the same.

17 So in Ontario, and Quebec, and Manitoba,
18 we have modified our legislation to ensure that
19 the G20 commitments can be put into place through
20 rulemaking. And then on a national basis, other
21 jurisdictions are working on legislative
22 amendments, and the rulemaking is going through a

1 process, a consultation process. We two years ago
2 published an overarching policy document, and then
3 we followed that up. We have eight consultation
4 documents, five of which have been published on
5 various subjects -- trade repositories, clearing,
6 segregation, affordability, and so on.

7 We are going to be publishing hopefully
8 this year or in January our trade repository
9 rules. Those will be followed by clearing rules.
10 So we're trying to prioritize them on what we
11 think needs to be done the most quickly to make
12 sure that we can meet the G20 commitments.

13 We are, of course, reviewing U.S. rules
14 and European rules and other rules as we go
15 through this. We have the benefit -- just as I
16 have the benefit of following my colleagues around
17 the table today, you do have the benefit when
18 you're drafting rules after they've already been
19 implemented in other jurisdictions of doing a
20 comparison, doing analysis, trying not to use the
21 photocopier as your main legislative tool, but
22 actually do some, as we propose rules to our

1 chairs, to use some analysis, do some thought to
2 it, and make sure that we're coming up with the
3 best solutions.

4 So we feel that it's important that the
5 larger jurisdictions already have the rules in
6 place. They recognize that the timelines, and
7 it's been mentioned quite a few times around the
8 table -- the timelines are very constraining. And
9 they do create some interim and probably
10 temporary, but very important issues. A question,
11 for example, that was brought up was regarding the
12 reporting to a trade repository. Until we have
13 our TR reporting rules in place, we aren't
14 protecting the people reporting from any privacy
15 issues. That rulemaking needs to be in place to
16 give them the legal certainty that reporting is
17 not violating any privacy issues. So that is a
18 gap that will be dealt with rather quickly, but in
19 the interim it is a very significant concern.

20 I can skip over a lot of this, too. My
21 colleagues have been so good.

22 To speak about substituted compliance.

1 I think equivalence or substituted compliance is
2 an excellent solution, although it's difficult for
3 us to assess how it will be -- effective it will
4 be or how it will be carried out until we have
5 more details. If substituted compliance is going
6 to be done on a rule by rule, line by line basis,
7 I don't think anybody could ever be determined to
8 be equivalent, whereas if it's done on a more
9 holistic basis, I think we could -- we all have
10 the G20 goals in mind, and I think we could all
11 make a good argument for achieving equivalence.

12 There's also -- the assessment should
13 also take into the fact -- into consideration that
14 international initiatives, some of them are still
15 undergoing -- under way, particularly when you're
16 talking about the BCBS-IOSCO working group on
17 margin requirements, that we're all committed to
18 implement generally. That work is very important
19 for all of us as we go forward.

20 We are working on adopting the PFMI as
21 the rules for clearinghouse, and we will, as
22 everybody else, become PFMI compliant. We're

1 concerned, however, in the implementation that
2 internationally in terms of communication and
3 cooperation, perhaps in the time of a crisis at a
4 CCP, that the home regulator and the various
5 regulators in other jurisdictions who licensed
6 that CCP, that that information and flow and
7 cooperation in a crisis situation needs to be
8 insured. And we think it can be, but a lot of
9 work needs to go into managing a crisis. It's our
10 role of course to try and avoid ever having a
11 crisis in the CCP, but we do need to plan for it.

12 Another point worth mentioning, in
13 candor, we are not currently contemplating
14 developing a trading mandate for electronic
15 trading until we've had time to look at TR data.
16 So once we get more TR analysis, understand more
17 the liquidity of our markets, the effect of a
18 trading mandate and what it could have. So we are
19 providing ourselves with the regulatory powers to
20 mandate trading, but we're not going to implement
21 that or we're proposing not to implement that
22 until we've had some time to better understand the

1 marketplace.

2 The other concern that's been brought up
3 around the table is the concern about the conflict
4 that would be created if a derivative is mandated
5 for clearing in one jurisdiction and not in
6 another. I don't need to belabor that point.

7 So I think in summary I can say that the
8 -- although the end of 2012 is -- you know,
9 clearly we will not be -- have the rules in place
10 to meet the G20 commitments. I think a lot of the
11 G20 commitments will be met as our infrastructure
12 has to respect Dodd-Frank anyway. The reporting
13 will happen. The clearing is already happening.
14 The rules will be in place over the course of the
15 next year.

16 We do feel the progress that we've made
17 and the momentum behind our regulatory development
18 is going a long way to put the objectives of the
19 G20 leaders into an effective and robust
20 regulatory regime, and we look forward to ongoing
21 cooperation. So thank you.

22 COMMISSIONER SOMMERS: Thank you, Derek.

1 I think certainly what I've taken from all the
2 presentations this morning and am encouraged by is
3 every jurisdiction that is sitting around the
4 table today's commitment to all of our obligations
5 to the G20 commitments. And although these issues
6 are enormously challenging and we have a lot of
7 different concerns around the table, that we all
8 have the commitment to resolve any conflicts that
9 exist.

10 I am going to -- I have a quick
11 question. I'm going to turn to my colleagues for
12 any questions they may have, and then we'll turn
13 to the GMAC members who are sitting at the tables
14 at the sides if they have any questions with
15 regard to the -- excuse me, the progress of any of
16 the jurisdictions that around the table today.

17 So I guess my question would be for
18 anyone who has made a presentation today with
19 regard to the progress and the opportunity that
20 you've had over the past two days to speak with
21 each other about some of these, you know, very
22 complicated and challenging issues. Where do we

1 go from here, and what is the next steps for all
2 of us to make sure that we have coordinated
3 efforts moving forward so that we can protect
4 these critical markets? Is there anyone who wants
5 to -- Emil, thank you.

6 MR. PAULIS: Yeah. I think we have a
7 mandate from the FSB to put the principles -- the
8 identification of inconsistencies, conflicts,
9 gaps. So the first mandate which FSB asks us to
10 do is to identify where the problems lie. And
11 then I think the next logical step is that our
12 principles discuss openly in a cooperative spirit
13 and a constructive spirit, which certainly they
14 do, what are the options to overcome these
15 inconsistencies, these conflicts, these gaps
16 without hurting anybody in terms of effectiveness
17 and without unduly loading companies which are
18 subject to mandatory clearing.

19 But that is the next step I think,
20 first, to identify and then to look at the
21 options, and hopefully we would think that on the
22 basis of that agenda that the principles could

1 come out with a consensus view of how one should
2 deal in this global market between jurisdictions
3 with cross-border issues, which we all have. And
4 I think that is feasible. I think that that can
5 be done, you see.

6 What I would like to add to that is that
7 there are two categories of issues. There is a
8 category of issue of conflicts, inconsistencies,
9 and overlaps. I think that block of issues can be
10 dealt with by substituted compliance, by
11 equivalence, by recognition in an efficient way.

12 There's another set of issues which are
13 the gaps. A number of them were mentioned by my
14 colleague, Patrick Pearson. The gaps relate to
15 issues of scope, and we think that that is a
16 different piece of cake, a much more serious piece
17 of cake. We think that in relation to gaps,
18 there's a need not only to work on substituted
19 compliance and the definition of what is U.S., or
20 EU, or Hong Kong, or Singapore person for the
21 application of our cross-border rules. I think it
22 is necessary to go back and look at the

1 convergence of the rules and the rationale behind
2 these exemptions, whatever it is, these
3 differences in scope of application between our
4 jurisdictions, because we feel that if there are
5 too many of these exemptions and gaps between the
6 jurisdictions, we get an accumulation of
7 non-regulated spots.

8 And if on top of that it is combined
9 with cross- border issues between jurisdictions,
10 then we don't know where that is going to end.
11 This can lead to migration of transactions. This
12 can lead to regulatory arbitrage, all things which
13 we don't like, which we don't want to see.

14 Now it is not -- the gap block of
15 issues, the scope block of issues, is not so much
16 -- it can't be resolved with substituted
17 compliance or equivalence or recognition. It's
18 not a matter which we can resolve in the short
19 term. It is a more long-term issue, but it has to
20 be done. And, therefore, for me, there is a step
21 in the further work to be done is we need to see
22 what we can do about that, what we can do.

1 We need to further identify is it
2 material, is it going to disturb the system, or
3 can we live with it status quo or not. If not,
4 should we not then make another attempt to analyze
5 what are the reasons for these exemptions and see
6 whether we cannot further converge, because of
7 course the best and the fundament of every
8 corporation is convergence on the rules of
9 substance.

10 And once you have the convergent rule of
11 substance, which is the work of the G20 where we
12 have 80, 90 percent -- I don't know how the
13 correct percentage lies, but it is a high
14 percentage of convergence, which we have already
15 achieved. Once you have done that, we all know,
16 as Gary said, the devil lies in the details when
17 it comes to the interpretation of using that word
18 when it comes to the application even suppose even
19 we had harmonized rules.

20 David Wright, Secretary General of the
21 IOSCO, said recently in the newspapers in the FT
22 that we should go for harmonized rules. Now that

1 would be the ideal world. I think that is a dream
2 that may be reachable in 20 years' time. But we
3 don't have harmony. But even if we had harmonized
4 rules, we know inside the European Union where we
5 have harmonized rules that that is not the end of
6 the game. You need still to have then guarantee
7 of the harmonized application of the rules.

8 And, therefore -- and we will not --
9 this is not reachable by any other means than
10 substituted compliance combined with intense
11 cooperation between the regulations, intense
12 information exchange, and, as I said, clawback
13 powers, so that you have some discipline in the
14 system. That is one thing.

15 So we can solve a lot of things via that
16 process of substituted compliance, but there are
17 things we should be aware of. There are things
18 which we cannot resolve with substituted
19 compliance. And we need also to look at that
20 package of issues.

21 So I would say I'm optimistic, you see.
22 And to quote somebody who was elected president of

1 this country last night, the best is still ahead
2 of us, you see. So I think we can achieve that.
3 We are close to the goal, but we should not walk
4 this last mile really together only because it is
5 necessary, but also I think I can detect that it
6 is feasible in that we have the spirit of doing
7 it.

8 COMMISSIONER SOMMERS: Thank you, Emil.
9 Masa?

10 MR. KONO: Thank you very much. While I
11 don't disagree with Emil on the points he has
12 mentioned, I think we need some solutions in the
13 very near term on very pragmatic issues. And, in
14 fact, on page in my slides, we have actually
15 raised some very specific points.

16 And this is quite important to
17 businesses because -- well, of course, we can talk
18 a lot about the ideal state of the world. We can
19 also talk about what in the longer term we should
20 collectively, one set of rules that are commonly
21 applied, on overlap, et cetera.

22 But businesses have been used to

1 overlaps or minor or mild inconsistencies in rules
2 for decades, and that has not really prevented
3 global capital or markets from being global. And
4 so in that sense, we would certainly like
5 particularly conflicting parts of our rules or the
6 most contentious issues in the near term to be
7 address sooner than later and then of course have
8 a vision for the longer term. I can call this
9 perhaps a two-stage approach, but we do need some
10 urgency on resolving those very short-term issues.
11 Thank you.

12 COMMISSIONER SOMMERS: Does anyone else
13 have anything to add to our next steps. I'm going
14 to now turn to my colleagues. Chairman Gensler,
15 do you have any questions?

16 CHAIRMAN GENSLER: If it's all right,
17 Commissioner Sommers, I might just respond to your
18 question a little bit, and then some just reaction
19 because I think this is a very helpful and
20 beneficial discussion. And I recognize and I've
21 spent so much time with really just about each of
22 your jurisdictions and each of you personally at

1 international meetings. So I like having you here
2 as well, but I look forward to seeing you in
3 Europe and in Asia and in Canada again.

4 I think that I find myself agreeing with
5 bot Emil's and Masa's answers to Commissioner
6 Sommers. There are some urgent matters that we
7 need to address, and that's why Carlene and many
8 other colleagues and the staff have put something
9 back in front of commissioners. It will continue
10 to change. Today's meetings will help us, you
11 know, focus on those important details. It's why
12 I asked -- I apologize, I can't remember your --
13 yeah. But I don't want to mispronounce -- Daphne,
14 all right -- technical, because, you know, these
15 technical issues are really important. But I'm
16 hopeful that we can move forward and take all the
17 very good comments about the definition of U.S.
18 person and try to tighten that up, all the very
19 important and critical comments that we've heard
20 today.

21 I agree with Emil, though, that there
22 will be some, as you say, gaps. We have different

1 political systems. We have different cultures.
2 We had different histories living through the
3 crisis that sort of animate us, so we might have
4 embedded in statutes something you don't. And one
5 of those things we have embedded in Dodd- Frank is
6 a registration regime for swap dealers. And that
7 is one, frankly, that we're grappling with here,
8 that, Patrick, one could read what you suggested
9 as maybe not have the registration happen come
10 January. I don't think that's what our statute
11 says, but that's one thing we're grappling with
12 that we do have this registration regime.

13 But we have a long history at the CFTC
14 of mutual recognition, of substituted compliance,
15 of memorandums of understanding, and we embrace
16 them, an wish to embrace them through this
17 challenging time of registration with substituted
18 compliance. But I think that's one difference
19 that's embedded in our statute frankly.

20 I think partly the reason it is, if I
21 can say, as background, we've all lived the OA
22 crisis. But when \$180 billion of U.S. taxpayer

1 money went into a company called AIG, an insurance
2 company, AIG Financial Products incorporated in
3 the U.S. actually had its banking license from
4 France and operated in Mayfair. And the primary
5 risk- taking operations was a Mayfair branch of a
6 Paris bank, though the legal entity was somehow a
7 U.S. legal entity. And \$180 billion of U.S.
8 taxpayer money went into it, but more than that,
9 it almost toppled our whole economy, and eight
10 million Americans are still out of work, who might
11 have otherwise been working if we didn't have this
12 crisis.

13 Long ago, Long-Term Capital Management,
14 a hedge fund operated out of Connecticut, actually
15 booked its \$1.2 trillion notional derivatives book
16 in its Cayman Islands legal affiliate. We all
17 thought of it in Connecticut, but it was booking
18 it in a legal entity in the Cayman Islands.

19 The reality of modern finance is many
20 large financial institutions and small ones set up
21 legal entities as structuring vehicles to maximize
22 their ability to serve their clients, but also to

1 take opportunities on funding, on taxes, on
2 regulatory matters, in a very constructive way to
3 run their business, sometimes also to do
4 regulatory arbitrage as Emil said, but often it's
5 for constructive reasons. The largest financial
6 institutions here in the U.S. often have 2,000,
7 3,000 legal entities literally.

8 So the question in international finance
9 today is what happens when one of those fails?
10 Can it be separated off? Is there a true
11 subsidiarization? Can something be hived off? I
12 think experience tells us the answer is not
13 really. When there's a run on one part of a
14 financial institution's global network, there's
15 usually a run on the whole network. And why is
16 that? Because it's logical. Who is really going
17 to lend to the parent that's guaranteeing some
18 offshore affiliate when they don't know what's in
19 that offshore affiliate?

20 And as good as the SEC's disclosure
21 regime is, and it's excellent, but as good as it
22 is, when you're dealing in a crisis, there's never

1 enough information. There's always an asymmetry.
2 There's uncertainty. There's a run on something
3 in the Cayman Islands or somewhere. There's a run
4 on the whole. That's what happened in Lehman
5 Brothers. It's what happened in Bear Stearns.
6 It's what happened almost to Citicorp, but the
7 U.S. government put not one, but two rounds of
8 finances into there. Their special purpose
9 vehicle is called SIVs, the SIVs. They were all
10 incorporated in the Caymans as well. Originally
11 set up in Europe, but they were incorporated in
12 the Caymans.

13 So we have that reality of modern
14 finance, and Dodd-Frank addressed that. And so we
15 have a lot of U.S. Institutions that we don't
16 think -- and I'm talking about the U.S. ones now
17 -- U.S. parents -- I was trying to get Daphne's
18 point -- that we don't feel that we can just say,
19 you know what, if they have a guaranteed affiliate
20 sitting in Europe or Asia, that's a subsidiary,
21 and the bankruptcy code will protect the U.S.
22 taxpayers, because it really doesn't, you know.

1 When it's a guaranteed affiliate, all that risk is
2 coming back here. A branch -- we all know that a
3 branch is the same part as the legal entity. So
4 that's what animates us.

5 And then the registration regime, so the
6 non-U.S. Entities, the many really large
7 significant interests from Europe, and Asia, and
8 Australia that do business with U.S. Persons. So
9 we'll tighten the U.S. person definition, and we
10 have this de minimus of \$8 billion, and we're
11 taking very seriously the comments on how that
12 should apply, and should it apply to all of your
13 affiliates or just some of them, maybe the
14 largest, this topic we call aggregation. And I
15 think we've taken that up, and Commissioners will
16 try to narrow that as well. But if you're dealing
17 enough with U.S. persons in a narrower definition,
18 then Dodd-Frank applies because that's what our
19 Congress has said.

20 Now we might be able to do, as Emil
21 says, the substituted compliance, and we look for
22 a lot of good dialogues with that. And we've done

1 that so actively in Europe and in Asia. I'm not
2 sure if we've done as much in Australia on that
3 yet, and we look forward to doing that a lot more.
4 So I just wanted to mention those thoughts.

5 On central clearing, we have no
6 geographic mandate. We're fine with
7 clearinghouses. We like LCH, ICE clear, Europe,
8 you know, the bulk of energy business, interest
9 rate business, credit default swap business
10 actually clears offshore. And we have -- I mean,
11 that probably will be enhanced, and there'll be
12 other jurisdictions, including Japan and
13 elsewhere. I know we have to sort through, and
14 Masa has raised very good questions that Anand and
15 others are trying to sort through. And I'm
16 committed to try to help get that sorted through.

17 Patrick, I think the problem that we
18 have is that the financial system failed all of
19 our publics, and so we're all grappling together
20 to try to, you know, enhance the transparency and
21 oversight, and recognizing that risk can flow back
22 to our shores so rapidly in a crisis.

1 COMMISSIONER SOMMERS: Commissioner,
2 O'Malia, do you have any questions?

3 COMMISSIONER O'MALIA: I do. To the
4 point about risk flow and back to our shores, I
5 appreciate that it can and does, but I want to
6 understand a little bit more about that test.
7 Emil, you raised the point about direct and
8 significant. What is the test? I think we failed
9 that test in our cross-border guidance. And I
10 would point out that a great opportunity I think
11 the SEC has taken the right approach to do a
12 rulemaking on this, and I would prefer that we
13 would do a rulemaking as well.

14 But to the direct and significant test,
15 everybody around the table has talked about
16 clearing as a risk mitigant, and I agree with
17 that, and we have to work that out. And to the
18 Chairman's point, we do rely on foreign
19 clearinghouses, and hopefully with Japan joining
20 as well.

21 But when it comes to the transaction
22 rules, how do we -- what is the direct and

1 significant test if we've already cleared a
2 product? And I'm interested to know a little bit
3 more about what the EU is thinking about solving
4 the transaction-level requirements in light of the
5 direct and significant. And, Carlene, by all
6 means, if you've got some thoughts on this, on how
7 we can justify beyond, you know, some of these
8 transaction rules in isolation.

9 You know, we say that all of our rules
10 apply as part of the direct and significant test.
11 What is the test, first of all? Is there a
12 comparable test in Europe and Asia, and any of the
13 Asian regulators want to comment on this, I'd love
14 to have it, comment on it as well.

15 And then what if we -- the difference is
16 over the transaction rules, how do we solve that
17 and how do we mandate -- how does our statute
18 allow us to mandate at the transaction level? So
19 maybe, Patrick, if you could, or Emil, I'd be
20 interested in your thoughts on this.

21 MR. PEARSON: Thank you. Very, very
22 good points. We faced exactly the same conundrum

1 as you did over here. Risks flowed back to your
2 shores, but risks also flowed across the Atlantic
3 into the shores of the European Union, not only
4 the continent, but also that little island called
5 United Kingdom.

6 Chairman Gensler, these are the
7 realities, so we ask ourselves exactly the same
8 questions as you did. And we went through the
9 permutations. Option one, we ring fence our
10 phones. No risk. You've ring fenced and isolated
11 all of the risks. It doesn't work. International
12 trade, international firms don't work like that.

13 Secondly, when American Express Bank
14 went down the drain at the beginning of the 90s,
15 the market responded. It said "membership has its
16 privileges, ownership has its requirements." The
17 market expects the parent to stand behind the
18 subsidiary or the affiliate.

19 The way you chose to go is to extend the
20 requirements and the rules to the affiliates and
21 the branches outside of the United States. We
22 have chosen a different way. We have also needed

1 and we were required to understand and accept that
2 regulators in Europe simply cannot apply all of
3 their rules to the more than 3,642 entities that
4 operate outside of the European Union. It's
5 physically impossible. We don't have the staff.
6 We don't have the wherewithal. We simply cannot
7 do it.

8 It is difficult enough in Europe setting
9 up a banking union for 6,422 banks within our own
10 shores. But supervising the activities of our
11 firms outside of the EU and making sure that they
12 apply and are subject to our rules simply can't
13 work.

14 We accept the point about AIG. We
15 accept the point that AIG went down the drain
16 because of reuse of securities and securities
17 lending through its Mayfair operation --
18 securities lending, not swaps, securities lending.
19 When AIG lent securities to clients and the clients
20 gave AIG cash to fund its activities, the ratings
21 downgrade of AIG, and the client said, here is
22 securities-backed AIG, now give me my cash. And

1 AIG went down the drain because it couldn't cough
2 up the cash within 36 hours. We accept that
3 point.

4 The only way we believe we can resolve
5 this is through a maximum scope of deference, a
6 maximum scope of substituted compliance to rules
7 that we know protect the safety, have the same
8 objective of our operations outside of the
9 European Union. How do we do this? I'll ask Emil
10 to explain that to you. He's much more versed as
11 a lawyer to explain the process.

12 But there is something else. What is
13 the scope of a direct and significant impact on
14 the European Union? Commissioner O'Malia, we
15 don't know yet because we haven't made that
16 determination. We can only make that
17 determination after we've understood how other
18 jurisdictions believe that they need to apply that
19 scope. So there is that interaction between the
20 two.

21 But, Emil, would you like to explain the

22 --

1 CHAIRMAN GENSLER: Can I just say,
2 Patrick, I think, and we've worked so well
3 together. I've just missed this quote to
4 Shakespeare, by the way.

5 (Laughter.)

6 MR. PEARSON: I quoted Kissinger.

7 CHAIRMAN GENSLER: Which was it that you
8 quoted?

9 MR. PEARSON: It was Henry Kissinger.

10 CHAIRMAN GENSLER: Henry Kissinger
11 rather than Shakespeare.

12 (Laughter.)

13 COMMISSIONER O'MALIA: And Rumsfeld.
14 There's a Rumsfeld quote in there.

15 CHAIRMAN GENSLER: And a Rumsfeld quote?

16 MR. PEARSON: Yeah. Rumsfeld was the no
17 known. Kissinger was I don't know where to start,
18 but I do know where to end.

19 CHAIRMAN GENSLER: But on this
20 substituted compliance, I think -- I can't speak
21 for my fellow commissioners, but I can speak to my
22 own thinking. I think that we are going to rely

1 on it. We, like you, we're a relatively small
2 agency. We don't send anybody into examine the
3 U.S. futures business on a regular way. We're not
4 the controller of the currency with 65 staff
5 sitting in London at some bank. We don't have
6 them sitting at the Chicago Mercantile Exchange --
7 hi, Brian. And so we very much rely and look
8 forward to relying on foreign regulatory regimes.

9 I think one some of the biggest pieces
10 of global derivatives reform, capital
11 requirements, margin requirements, central
12 clearing, we have really moved nearly in lock
13 step. I know we have a small back exemption and
14 you have a pension exemption. I mean, there are
15 some differences. But it's remarkable how close
16 we are to getting a unified approach to margin,
17 which we here in the U.S. have worked so closely
18 with ESMA, and the European Commission, and our
19 banking colleagues, and so forth. And then
20 through this IOSCO process MASA and then that MASA
21 and then Basel Committee.

22 I would hope that the margin

1 requirements, whether it's the first quarter of
2 2013 or the second quarter, that we'd come to some
3 international consensus, real tactical consensus.
4 Capital is, of course, with Basel. The clearing
5 requirement is quite close. We then get to these
6 transparency initiatives and data reporting into
7 -- DTCC, by the way, is registered here. It'll
8 be, I would assume, will be registered with you
9 all. So I don't see that there's going to be an
10 issue there. And there'll be other data
11 repositories. CME has something in front of us,
12 ICE, others. LCH sits on your shores for
13 clearing, and ICE and others.

14 So I actually think that we're very far
15 along, and the substituted compliance, the
16 challenges will come on timing on the public
17 transparency because MiFID is yet to have
18 happened. And so we have to sort through that.
19 But so I'm more optimistic maybe than my
20 colleagues from Europe.

21 COMMISSIONER O'MALIA: Mr. Chairman?

22 Back to my question --

1 MR. PAULIS: Can I complete what Patrick
2 said? First of all, it's correct that we have not
3 yet implemented our test of direct and significant
4 effect. It's a different language, but it's to
5 the same effect basically.

6 We will certainly struggle with the same
7 issues, but the approach will be different because
8 we will want to link what we are going to do, to
9 link it with equivalence. In other words, where
10 there is equivalence, there's no need to apply the
11 direct and significant effect test. We will link
12 the two.

13 What you have done, you defined in the
14 absolute first what is direct and significant to
15 say as a result, our law is applicable, and then
16 all the rest comes. That's to say that all the
17 provisions, all the requirements, as it is
18 repeated several times, all the requirements of
19 U.S. law become applicable.

20 Now that is a very different approach.
21 And it is material because when we discuss, Gary,
22 these issues, we are very close to each other in

1 terms of what you want to do and what we want to
2 do. But I am glad that Commissioner O'Malia
3 raised the legal question of the test because your
4 approach does not eliminate the application of
5 more than one rule. It leads to the application
6 of several laws, while our test of significance
7 will lead to the result of application of the one
8 rule only in situation and in relation to those
9 members -- to those, sorry, those territories,
10 those jurisdictions where we find equivalence. So
11 we link it to. And then we have each other.

12 Now this is hugely important because it
13 has an impact, I think, also on what you said,
14 Gary, at the beginning. You said we are compelled
15 by our statute to require registration. Now we
16 would say that of course it's not our role to
17 interpret your statutes, so forgive me, I'm not
18 going to do that.

19 But I would say that Dodd-Frank Act
20 probably also some room to say that if there's a
21 foreign jurisdiction and that foreign jurisdiction
22 has all the requirements which are in our law, in

1 the U.S. law, then for that jurisdiction, we don't
2 need to require registration of foreign resident
3 established dealers, swap dealers. Why? Because
4 simply these swap dealers, they are fully covered,
5 so it's no safety risk. They are fully covered.
6 We can, therefore, rely fully on that foreign law.

7 And when you make the weighing up of the
8 interest on the international committee principle
9 where you have to weigh up the interest of the two
10 jurisdictions, then I would submit and I would
11 argue that where you deal with a jurisdiction
12 where all these requirements are given, where the
13 firms are already with the dealers, the swap
14 dealers are already on obligation of registration,
15 then the weighing of the interested substituted
16 jurisdiction should lead to the result that you
17 say. In that case, we don't require registration
18 because it is a heavy interference because you
19 impose an additional burden, which is not
20 necessary. And then the weighing on the
21 international committee principle should normally
22 lead you to the result. In that case, Dodd-Frank

1 does not require us to impose registration.

2 However, I can see two situations. If
3 it is in relation to a jurisdiction where it is
4 not sufficiently regulated, not comparable, not
5 comprehensive, in that case, makes imminent sense
6 that you say, sorry, we have by law to apply our
7 registration requirement. So that I could see.

8 You could also say even in relation to a
9 jurisdiction which has comparable standards, I do
10 not now require registration, but even the cause
11 of the corporation, which we would have with a
12 foreign regulator, it turns out that a particular
13 major swap dealer above eight million is not being
14 supervised as it should, or there's a real
15 material significance which occurs. In that case,
16 clawback, you have to register. You come under my
17 jurisdiction. But it would be more proportionate
18 if you linked these two issues and you make them
19 apply in that particular circumstance rather than
20 wholesale.

21 What I want to point to was, you argue
22 in the guidance, you say we need to take an

1 aggregate approach. We need to look at the whole
2 business. And because the risk can come from the
3 whole business, we can't just separate the
4 transactions. We can't apply the test of direct
5 and significant to each transaction individually.
6 I appreciate it. But you can link it to the
7 distinction between a jurisdiction which is
8 comparable and comprehensive in its requirements
9 as opposed to a non-comparable and
10 non-comprehensive regulation. That you can do.
11 That is feasible. And that would I think be, in
12 my view as a lawyer, a better, a more
13 proportionate application of the international
14 committee principle than the one which you would
15 --

16 Of course we can all say it is so nice
17 if we can regulate more because then we are
18 absolutely sure. By the way, you mentioned AIG.
19 You mentioned \$180 billion, you see. But it could
20 have happened to us what has happened to you is
21 the subprime crisis started here, and we got the
22 whole result, and then we aggregated that by many

1 other crises, you see. So we are all in the same
2 boat, you see.

3 But as I said yesterday or the day
4 before in another meeting here, you see, be aware
5 that even in the smallest jurisdiction, if
6 something goes wrong, don't limit yourself just to
7 regulate your own business, you see, and that you
8 say I don't care what happens elsewhere because
9 what happens elsewhere may hit you tomorrow. So
10 we share that.

11 COMMISSIONER SOMMERS: Thank you. Oh,
12 I'm sorry.

13 MS. KIM: Can I just add one point of
14 clarification, and I hope this answers partly the
15 transparency question to the transactional level
16 reporting requirement question that you're asking,
17 Commissioner O'Malia. And that is, the swap
18 dealer, the new swap dealer and MSP regulatory
19 regime is a comprehensive one. It's not just
20 about prudential oversight. It's also about
21 providing greater transparency to the overall
22 marketplace.

1 And so we take the position in the
2 guidance that to the extent that you are
3 registered as a U.S. swap dealer, even though you
4 are organized and operating from outside the U.S.,
5 all of the entity level and transaction level,
6 including reporting requirements, apply. But then
7 we scale back, recognizing there may be instances,
8 such as when a non-U.S. swap dealer is transacting
9 with a non-U.S. Counterparty, that the
10 supervisory interest of the home jurisdiction may
11 supersede ours, and we scale back.

12 But to the extent that the counterparty
13 may be related to the U.S. person, for example,
14 guaranteed by a U.S. person, we believe that we do
15 have proper supervisory interest. But again, in
16 recognition of principles of comity and the need
17 to minimize conflict, we will recognize
18 substituted compliance.

19 COMMISSIONER SOMMERS: Thank you,
20 Carlene. Commissioner Wetjen, do you have any
21 questions?

22 COMMISSIONER WETJEN: Two questions.

1 One is related to some of what Emil said, and it
2 also relates to what Carlene just said. There
3 seems to be reflected in the comment letters a
4 real resistance or aversion to having foreign
5 firms register here with the CFTC. But
6 nonetheless, in a lot of instances we do recognize
7 -- I have to remember exactly what the document
8 provides for, Carlene, so correct me if I have
9 this wrong. But even if you registered with the
10 CFTC and you're located abroad, there is the
11 availability of substituted compliance. Isn't
12 that right, Carlene?

13 MS. KIM: Yes.

14 COMMISSIONER WETJEN: So there's also
15 this other concept that I'm less familiar with
16 concerning recognition, which is something that's
17 been done at the CFTC for quite some time. So I'm
18 just kind of curious, as a practical matter,
19 what's the difference? If you have a regime here
20 at the CFTC that requires registration, but you
21 allow for substituted compliance with any level
22 requirements, how is that different from the

1 historic practice of the CFTC in having this
2 recognition regime? Isn't it essentially the
3 same?

4 And again, back to the original way I
5 phrased the question, there seems to be this real
6 aversion to registering. And there might be a
7 good reason not to require that when it's not
8 necessary. But if all we're doing is requiring
9 registration but permitting substituted
10 compliance, how is it that that's terribly
11 onerous, and how is it that that's different from
12 the way things have been done here at the CFTC by
13 way of recognition in the past? Yeah, Emil or
14 anyone else.

15 MR. PEARSON: I know ESMA has a view,
16 but I think our view is simply twofold. The first
17 issue is the scope of registration. It has to do
18 with the definition of U.S. Person. Yes, we
19 acknowledge that everybody who meets the test has
20 to register as a swap dealer. That's in your
21 proposition.

22 The point is that we believe that the

1 scope of that test is too wide. And we don't
2 believe that, as Carlene has just explained, that
3 it really goes far enough to say you register with
4 us, but if you're not American, you're not an U.S.
5 trade, but it's a trade between two Europeans,
6 then American law doesn't apply, yes. How and why
7 would you want to apply American laws to a trade
8 between somebody in Germany and Italy? I mean,
9 that is not flexibility. That is plain common
10 sense.

11 What we would point is that the
12 definition of U.S. person is simply so wide that
13 it should not only exclude a trade between two
14 non-Europeans and one of whom might actually be
15 registered here, but that it should also take into
16 account trades between a European and a United
17 States counterparty. And that is where the points
18 kick in that Emil has raised. So that's who has
19 to register. We think that definition of a U.S.
20 person really is far too wide.

21 And the consequences of registration.
22 Colleagues around the table have pointed out it is

1 not clear what the consequences of registration
2 are. We hope that will be clarified soon.
3 Secondly, the scope of substituted compliance.
4 Why only substituted compliance for one set of
5 level of transactions? Why not for entity and
6 transactional-level requirements? That's, I
7 think, the second point.

8 The third point is, yes, we are
9 recognizant of what Dodd-Frank says. Even if it
10 would not be possible for you, for legal reasons
11 -- Emil said we cannot interpret your statute or
12 your act for you. Ideally, we believe
13 registration should not apply, and you should have
14 a clawback possibility. If a foreign jurisdiction
15 does not apply the rules, the comparable rules
16 that you decide on in the first instance, you claw
17 back that requirement.

18 Even if you do require registration, why
19 not require registration in a far more flexible
20 and a far more applicable form? Why does it have
21 to be so heavy handed? Why can it not take some
22 form of notification? You register, but the

1 consequences are not as heavy as set out in your
2 draft guidance. I think that again would reflect
3 that principle of, as Emil has pointed out, not
4 just of flexibility, but of proportionality in the
5 application of the rules. But I know that my
6 colleague, Mr. Planta, from ESMA also has some
7 points to make.

8 MR. PLANTA: Nothing to add.

9 MR. KONO: Thank you. And just a
10 viewpoint from a third jurisdiction. That is, in
11 the past, of course, we have found the equivalence
12 test in the European Union very rigorous as well.
13 But I think there is an important difference here
14 that if you tie this to a registration of course,
15 that at least in our eyes would automatically mean
16 that it would be a case-by-case judgment or an
17 entity-by- entity determination, whereas under
18 this equivalence test, of course, we will be
19 recognized either as a regime or as an authority.

20 And, in fact, in our case, we, in fact,
21 would still like, for example, to have foreign
22 CCPs to be designated by us. But we make those

1 conditions much less onerous as compared to
2 domestic CCPs, for example.

3 So I think it is possible to have a
4 registration system which is much less onerous,
5 but as it appears, and I'm quite sure you're
6 working on it, at the moment it looks as though
7 you have a very broad definition of what direct
8 and significant would mean, whereas your
9 substituted compliance would appear very much case
10 by case, and not as certain as some market players
11 outside of the U.S. would like it to be. So that
12 is one perspective.

13 COMMISSIONER WETJEN: My other quick
14 question was a process one. And that is, I'm just
15 curious what the group thinks is further required
16 in terms of coordinating the efforts of the CFTC
17 and our big brother agency, the SEC, and the rest
18 of you at the table.

19 Obviously folks have been following
20 comments in response to our documents, so there's
21 input from folks here as to the substance or what
22 the substance of our rulemakings should be. There

1 are also things that we can do in our documents
2 with respect to when we time the effectiveness of
3 our rules, especially as it relates to reaching
4 outside of our borders.

5 But I'm wondering if there are any other
6 things that the group thinks that needs to be
7 done. In other words, this is one GMAC meeting
8 we're having today, and there are a couple of
9 meetings that happened before today. But do folks
10 feel like these sorts of meetings are helpful and
11 are more than required, or is it enough just to
12 continue commenting on the CFTC's documents and
13 coordinating the effectiveness of when folks have
14 to comply with the CFTC's rules.

15 MR. PAULIS: Yeah, thank you very much
16 for that question. Yes, we want to be seen to be
17 acting, and we want to be seen to be solving
18 problems. And I personally believe that we can
19 solve a lot of the problems if our principles of
20 all the regulators present here on the 28th of
21 November could agree on a kind of common
22 interpretation of foreign person, which would go

1 much more back to the more conservative approach
2 of linking it much closer to residence and
3 establishment, and only going beyond to the
4 absolute necessary, and that should be discussed.
5 For that we will put options on the table.

6 But the objective would be to have an
7 agreement of the principles to reduce to the
8 absolute minimum and necessary the definition of
9 what is a foreign person for the application of
10 our rules, one. And two, certain action that we
11 would agree amongst ourselves on a broad
12 application of substituted compliance linked to
13 stringent conditions, not stringent in the sense
14 of operating the application. That should remain
15 linked to outcome, not line by line, not rule by
16 rule. That's not what I mean. But the other
17 conditions which I mentioned in my short
18 introduction.

19 So if we do this two things -- reduce
20 considerably the extraterritorial reach of the
21 rules and broaden considerably the application of
22 substituted compliance -- then I think we will

1 show to industry that we have solved a big chunk
2 of possible, likely, probable conflicts,
3 inconsistencies. And we have taken away a big
4 part of the burden of application by industry of
5 these new rules and mandatory clearing, mandatory
6 reporting, mandatory trading, mandatory margining,
7 which will be daily obligations on hundreds and
8 thousands and millions of contracts.

9 So if we do that, and we can do that in
10 the short term. That's a short term. We can do
11 that. So I think it is hugely important that
12 between now and the 28th of November, that none of
13 us moves and goes out with new statements about
14 cross-border application rules because that would
15 preempt the good will which we have now in the
16 discussion ongoing. Then on the 28th of November,
17 every investment should be made that the
18 principles come to a consensus, and then we go
19 home and implement these short- term consensus
20 rules.

21 Part of that must also be -- in my view,
22 the short-term includes also the timing issues,

1 the sequencing. And I do support -- the European
2 Commission, I can speak here for my institution
3 here in this respect. We are willing to show
4 flexibility, but this flexibility must be linked
5 to clear commitment by all the jurisdictions to
6 come in line with G20. And I think no
7 jurisdiction disputes it, so we are exactly on
8 that line. We are all on that line. So we have
9 no reason to believe that that would not be, and
10 that is really something nice to take note here,
11 you see.

12 But with this three short-term actions
13 -- so reducing extraterritorial application,
14 broadening the substituted compliance, and dealing
15 with the timing issues -- then I think we have the
16 short-term plan.

17 The next step is then the gaps, which we
18 should not prejudge here today because, as Gary
19 rightly says, maybe the problem is less than it
20 looks like, you see. So let's do first the other
21 work of analysis of the impact and see whether and
22 what we need to do there.

1 COMMISSIONER SOMMERS: Thank you. And
2 now I'm going to turn to Ron for any questions he
3 may have.

4 MR. FILLER: Thank you, Commissioner
5 Sommers. And first of all, I want to thank
6 everyone. If I were grading this discussion, I
7 would give you all a very high grade.

8 But I'd like to raise another issue that
9 hasn't yet been addressed completely, and it deals
10 with a lot of these other issues that had been
11 raised. I mean, the definition of a U.S. person
12 will obviously trigger this \$8 billion de minimus
13 test and whether registration is required or not.
14 And then if you have to register, then you've got
15 the substituted compliance issue.

16 Well, the CFTC for 25 years have already
17 dealt with this issue under Part 30 regarding
18 futures. It really is an exemption from
19 registration as long as the non-U.S. Entity
20 resides or is located in a country that has a
21 "comparable regulatory system." So, therefore,
22 what's the difference between futures and swaps?

1 And the key part is that futures are
2 cleared globally. Swaps have been bilateral
3 globally, historically. And all of you, at least
4 the countries around this table, are all talking
5 about you're either there or getting close to a
6 mandatory clearing. And I'm a -- one of those
7 proponents of clearing. I think clearing reduces
8 systemic risk significantly. And if you just look
9 at AIG Financial Products, they would not have
10 lost \$185 billion if they were required to clear
11 the products. They would've had to put up margin.
12 There would be capital requirements imposed. And
13 they would not have had the cash or collateral to
14 meet any of the size. They may have lost a
15 billion dollars. They may have lost something
16 smaller. But they would not have lost \$185
17 billion because they didn't have the cash.

18 And a lot of the swaps, because margins
19 are not distributed or forwarded between the
20 parties, were in clearing both parties put up the
21 margin at the clearinghouse. And I'm a big
22 believer that clearing reduces system risk, and

1 systemic risk is, to me, the heart and soul of
2 Dodd-Frank.

3 And so my question to you is, if swaps
4 are required to be cleared, and they will be --
5 it's a timing issue, I think, more than a what if
6 issue. Is that really the proper analysis, or is
7 it really the substituted compliance? Do we still
8 want a comparable regulatory scheme in place, and
9 whether it's November 28th or whatever that date
10 might be, where all of you come up with a
11 "comparable regulatory definition" of a comparable
12 regulatory --

13 I'd like to throw it out. How
14 important, from your perspective, is this clearing
15 aspect to "reduce the systemic risk," or is it
16 really more of just looking at the comparable
17 regulatory or substituted compliance type
18 analysis? Which is the higher priority for you,
19 or is it a combination of all of them? Thank you.

20 COMMISSIONER SOMMERS: Patrick.

21 MR. PEARSON: Chairman, I give you the
22 highest grade for that question.

1 (Laughter.)

2 MR. FILLER: Your grade is depending on

3 --

4 (Laughter.)

5 MR. PEARSON: My grade depends on my
6 answer, but your question was excellent.

7 Yes, sure, futures cleared globally. We
8 all around the table, everybody in this room is
9 thoroughly 100 percent behind clearing, central
10 clearing of swaps. The risk in the \$647 trillion
11 markets today focuses that mind. We need to clear
12 as much as possible and increase safety in our
13 system. There's no disagreement about the
14 objective.

15 Where the discussion is, how we do this?
16 How do we move a bilateral OTC market that is
17 global into a cleared space? So you have the
18 interaction with the market that is not used to
19 central clearing. You have an interaction with a
20 market that is subject to very, very different
21 incentives from the futures space. And you have
22 an interaction with the global market.

1 So that leads us to the following three
2 conclusions: We can only capture that market,
3 regulate that market, if we have consistent and
4 seamless international rules. As colleagues
5 around the table have said, the one thing we must
6 not do is come up with a regulatory system that
7 incentivizes arbitrage and could potentially shift
8 trades outside of the regulated space.

9 Master Kono started off the very first
10 presentation with this interesting exchange of
11 views commenting that there is already evidence
12 that firms are doing this. So that's the first
13 point. We need to do this internationally. We
14 need to do this credibly.

15 My second point is we need all of the
16 requirements to apply. It's not which
17 requirements apply. It's and/and. It's not
18 either/all. All of these requirements must apply.

19 And it brings me back -- and I really
20 apologize if I continue to make this point. If we
21 have rules that apply to the same trade and to the
22 same entity in different jurisdictions, you

1 immediately, inexorably, as an absolute
2 scientifically 99.9 percent Gaussian statistical
3 probability introduce a potential conflict,
4 inconsistency, and overlap of requirements. And
5 you immediately, therefore, need to answer the
6 question, which rules and requirements apply,
7 except for that 0.0, one percent of cases where
8 there is absolute identity of the rules and
9 requirements. That is why we have to apply this
10 comprehensively, seamlessly. And we must address
11 these issues that are real issues. This is fact,
12 it is not fiction.

13 And as my colleague Emil Paulis said, we
14 have 36 days to do this until the end of 2012. I
15 come from a civilized jurisdiction where we have
16 long Christmas holidays. You call them
17 "holidays." We call them "Christmas holidays."
18 We have 26 days to do this, so time is short, sir.

19 COMMISSIONER SOMMERS: Thank you so
20 much. We are running a little bit behind schedule
21 this morning. But Commissioner O'Malia has one
22 final question -- quick, quick question.

1 COMMISSIONER O'MALIA: The issue is on
2 privacy. Obviously substituted compliance works
3 really well when we can get access to some of the
4 data, and I think everybody here has talked about
5 good sharing of data. Are there privacy concerns
6 that might impede that coming out of European of
7 Asian regulators?

8 MS. DOO: I think probably Stephen can
9 help on this. ISDA has made a submission to CFTC
10 where they have surveyed, if I remember correct,
11 the 23 jurisdictions. And they all have some sort
12 of a local privacy law. And out of the 23
13 jurisdictions, they have identified seven
14 jurisdictions that are very problematic. Those
15 are the ones that even with client concerns, you
16 may still need to regulate it to the concern, or
17 the client concern has to be on a transaction by
18 transaction basis. And obviously we need to
19 resolve this.

20 I think from the market participants,
21 that we have been talking to, they are trying to
22 deal with this issue. But as I mentioned early

1 on, it will take time.

2 COMMISSIONER SOMMERS: Being mindful
3 that we are running a little bit behind schedule
4 this morning, I was hoping that I could open it up
5 for GMAC members who have questions, and I'll do
6 that really quickly if we have questions on either
7 side. Steve.

8 MR. O'CONNOR: So as Chairman of the
9 International Swaps and Derivatives Association,
10 you might imagine I have a lot to say following
11 the discussion, and you're correct. But I will
12 limit it, Chairman, to some observations on one
13 question.

14 But first, I think it's really good that
15 so many global regulators have attended today, and
16 thank you for your forthright comments. A
17 dialogue like this is very healthy.

18 I'd like also to say that ISDA
19 understands the challenge globally and the issues.
20 We get feedback daily because ISDA has 800 plus
21 members in 70 countries. But we strongly agree
22 with the G20 goals, and I strongly agree with many

1 of the sentiments that you have expressed this
2 morning. We must work to avoid an overlap on the
3 one hand, but close loopholes, avoid
4 inconsistencies, inefficiencies, impossibilities,
5 timing differences, and inappropriate coordination
6 will be harmful to markets.

7 And for the first time now, we're seeing
8 some real hard evidence of harm to markets because
9 certain non- U.S. banks will no longer trade with
10 U.S. banks. I've been on a trip through Asia
11 recently, and this is very clear to me, and
12 they're avoiding trading with U.S. banks onshore
13 to avoid the registration requirements of
14 Dodd-Frank. So that's just one example of how
15 rules can harm liquidity and increase costs.

16 And just to highlight a couple of
17 industry perspectives, not all of which have been
18 addressed this morning. I think that one
19 overriding goal for us would be to have a level
20 playing field, the market participants. A U.S. or
21 European bank when trading with European clients,
22 the rules must be the same. Similarly, for a U.S.

1 client trading with a U.S. bank or a European
2 bank, the rules must be the same there. We can't
3 have one party seeming to be more -- one bank
4 seeming to be more attractive than another, or to
5 have a pricing advantage.

6 An even better outcome would be to have
7 the rules the same in both jurisdictions, but
8 that's the nirvana of harmonization mentioned by
9 Mr. Paulis earlier. We look forward to that,
10 though.

11 Also Mr. Paulis mentioned the burden.
12 That cannot be underestimated. As I say, it
13 absolutely supports the G20 efforts to reduce
14 systemic risk and to close loopholes, but an
15 implementation burden caused by scope extending
16 beyond G20 goals by jurisdiction overreach, by
17 short deadlines, uncertainty, impossibilities,
18 dual compliance, rules that add to systemic risk
19 rather than reduce it will stretch regulators, end
20 users, dealers, and will harm liquidity, and harm
21 party's ability to trade.

22 And then just touching on a couple of

1 micro points. Mr. Kono earlier mentioned a
2 deferral of the application of CFTC rules to
3 non-U.S. persons would be useful. We strongly
4 agree with that, including deferral of onshore --
5 or those rules applying onshore U.S. banks trading
6 with non-U.S. persons. And we also that certain
7 transactions should be excluded from the de
8 minimus calculation for non-U.S. persons,
9 including transactions with onshore U.S. swap
10 dealers. That would overcome the issue that I
11 raised earlier as my evidence point.

12 So sorry for being so long. On to the
13 question now, this area is more complex than
14 margin, which itself is very complex. We need a
15 very coordinated approach globally that's
16 efficient, effective, comprehensive, that avoids
17 overlap, closes loopholes, but it's not so
18 elaborate or granular or over burdensome that it's
19 unworkable. And I hope that the comity doesn't
20 become a comedy, or a farce, or, even worse, a
21 tragedy from markets.

22 So my question is, and we would welcome

1 that work that the BCBC-IOSCO has done through the
2 WGMR in the area of margin. I would like to ask
3 the community whether a similar group under the
4 auspices of SSB, BIS, IOSCO, would be helpful with
5 regard to resolution of these cross-border issues.

6 COMMISSIONER SOMMERS: Masa, would you
7 like to take that in your role as the chair of
8 IOSCO?

9 MR. KONO: Yes, than you very much.
10 Actually first, of course, I was going to mention
11 that up to now, IOSCO has been less than ideal in
12 actually dealing with this issue. And it is
13 certainly the case that for a standard setter or a
14 global standard setter, it is difficult to deal
15 with the types of issues that we are discussing
16 today, which are very much dealing with the
17 unintended consequences of slightly differing
18 rules being implemented in different
19 jurisdictions, but which in principle at the high
20 level are very broadly convergent, or at least
21 share the same objectives. Having said that, at
22 IOSCO, we have already decided to create a new

1 work stream to deal with cross border issues.

2 Now I fear that work at IOSCO would not
3 be quick enough in time to deal with issues that
4 will be arising towards the end of this year. But
5 on the other hand, I can certainly state very
6 clearly that we are aware of this issue, and to
7 the medium to longer term, I would definitely
8 bring this back to IOSCO and deal with it. Thank
9 you.

10 COMMISSIONER SOMMERS: Thank you, Masa.
11 I think we will have the entire afternoon to hear
12 input from all of our GMAC members on all of these
13 very important issues, so I'm going to close the
14 morning session and move on to lunch.

15 I cannot express the gratitude of this
16 Commission and of my colleagues. We all agree
17 that it was enormously important for you all to be
18 here and to agree to have this type of open
19 dialogue helping the market and the industry
20 understand the challenges and these complicated
21 issues that we're all dealing with. So thank you
22 all so much for participating this morning.

1 We are hosting a lunch downstairs right
2 now for all of the regulators here and our GMAC
3 members. And we will come back to these important
4 issues this afternoon at 2:00. Thank you.

5 (Recess)

6 COMMISSIONER SOMMERS: I think we're
7 going to go ahead and try to get started with the
8 afternoon session. I want to reiterate how
9 helpful I think we all found the morning session
10 and the topics that are going to be discussed this
11 afternoon with market participants, the members of
12 the Global Markets Advisory Committee, are the
13 same topics that we discussed this morning with
14 the International Regulators, but hearing market
15 participants perspectives. And so I think it's
16 going to be equally as useful for us at the
17 Commission to have this afternoon discussion.

18 I'm going to turn everything over this
19 afternoon to Ron and he's going to lead the
20 discussion in our three different topics this
21 afternoon. And of course, if there are other
22 topics that members want to get into and discuss,

1 I encourage you to bring any other topics related
2 to our cross-border releases in to the discussion
3 and dialogue this afternoon. But we thought we
4 would start with the three topics that seemed to
5 receive the most comments. So I'll turn it over
6 to Ron.

7 MR. FILLER: Again, thank you very much
8 Commissioner Sommers. You are all my students and
9 we want to a very vocal, open discussion. And the
10 first topic we're going to talk about is as
11 Commissioner Sommers mentioned is the U.S.
12 persons. And a lot of that was discussed this
13 morning and let me just throw out some food for
14 thought. I'm going to look to each of you for
15 your comments and thoughts on each or some of
16 these issues. In October, October 12th, the CFTC
17 put out a No Action Letter that limited the
18 definition on a temporary basis of a U.S. Person
19 literally to U.S. people: Persons resident or are
20 in the U.S., companies that were located or
21 incorporated in the U.S., and for the temporary
22 basis removed the guarantee part language, removed

1 the affiliate language, if they're outside the
2 U.S. And part of that analysis is there are other
3 definitions of U.S. persons under CFTC rules,
4 under 4.7, Part 30.

5 So my question to all of you is, is that
6 the proper standard, should there be one standard
7 among all CFTC regulations or is there a need for
8 a difference or thought for our futures, we need
9 one definition. But for swaps or something, we
10 need possibly a different definition. Or is there
11 a way in which we could have one definition across
12 all applicable CFTC regulations? So I would like
13 to just throw that out for a discussion and
14 Bonnie, may I start with you, please?

15 MS. LITT: Sure. I mean just to be
16 clear, there really isn't a U.S. person definition
17 in the futures markets right now. I mean there is
18 -- I think that for commodity pool registration
19 and commodity trading advisory registration
20 purposes, folks focus on the U.S. ownership of a
21 commodity fund but we have functioned in the
22 futures markets without a definition. And Ron, I

1 think that you point out a concern that many
2 futures professionals have which is that if this
3 does become the global definition for all of the
4 commodity exchange act, there are real concerns
5 associated with that because the futures markets
6 have in effect FCMs like my firm have come up with
7 a very rational approach but a much simpler
8 approach than the one that's been proposed by the
9 CFTC. So I actually would advocate that when we
10 think about a new definition of U.S. person to the
11 extent that it's going to spill over into the
12 futures world, we have to think very seriously
13 about a phase-in period, an interim period because
14 I don't think futures professionals have used
15 anything like the definition that is being
16 proposed.

17 MR. FILLER: But just to go on, expand,
18 what do you believe that proper definition, if you
19 were five commissioners all in one, what will you
20 think the proper definition of a U.S. person? Is
21 it the October 12th limited definition? Or could
22 it be more expansive? What are your thoughts?

1 MS. LITT: Well I think -- I mean, I
2 guess it's hard to talk about the definition
3 without going through the entire analysis of the
4 proposal. I'm very concerned about the CFTC's
5 proposed definition and I think many people both
6 on the buy side and the sell side are concerned.
7 And in part, we're concerned because it's both
8 complicated to apply -- and again, I'm thinking
9 I'm taking this down a notch from where we were
10 this morning. We were talking very high level
11 about jurisdictional lines and where one
12 jurisdiction's regulatory focus begins and one
13 ends. I'm just talking about this from a very
14 practical standpoint which is that as a swap
15 dealer and as a customer of a swap dealer, we're
16 going to have to make determinations based on this
17 proposed definition as to who's in and who's out.
18 And I think the CFTC proposal in trying to be
19 broad, in trying to worry about evasion really was
20 overly expansive and quite concerning.

21 And not only that, I think there are
22 some internal inconsistencies that might

1 potentially lead to a single entity being
2 characterized both as a U.S. person for U.S.
3 regulatory purposes and as a non-U.S. person for
4 non- U.S. regulatory purposes. And, you know,
5 I'll leave it to all the regulators who were here
6 this morning to work out who's going to regulate
7 which swap dealers, but I don't know how my
8 clients and how Goldman Sachs are going to figure
9 out just whether someone's within Dodd-Frank or
10 not. I do think -- I mean I don't want to take
11 too much time, but I do think that's particularly
12 true for the commodity pool and collective
13 investment vehicle test that's been established
14 which could easily lead to a non-U.S. domiciled
15 entity. At the very best, being both a U.S.
16 person and a non-U.S. person based on a single
17 point in time. At the very worst actually
18 potentially changing its identity as a U.S. person
19 from day to day.

20 MR. FILLER: Thank you. Richard, do you
21 have any thoughts from your perspective?

22 MR. BERLIAND: Yes, I guess getting that

1 I'm surrounded by a lot of lawyers or legally
2 qualified people I'm going to try and make some
3 comments that are perhaps broader brush and more
4 commercial and perhaps more from the client's
5 side, so if you'll excuse me not addressing very
6 specifically the U.S. person definition where
7 people like Bonnie and Bob are far better
8 qualified than me. I wanted to make three main
9 observations around what I'm experiencing in the
10 markets in Europe and that applies to both the
11 exchange level, the intermediary level and the end
12 customer level.

13 The first thing is that it is clear from
14 this morning's conversation how difficult the
15 subject matter that we are dealing with today is
16 for those that are life- long experts in the U.S.
17 regulatory environment and the political
18 environment. If you try and remove yourself to
19 the positions of an end user customer, the levels
20 of complexity here are quite overwhelming.

21 And I think to one of the comments you
22 made this morning, Mark, about whether what is

1 such a big deal about registration? It is fear of
2 the unknown I think at its most fundamental and
3 the fact that by definition, given the environment
4 in which we are living today, politically unknown
5 rarely results in good things. It can result in
6 bad things that will be a big resistance to
7 anything that is happening there.

8 The second thing is that as a result of
9 that, there is this big timing consideration,
10 which is that there is concern that many of these
11 deadlines are imminently upon us. There are
12 indeed lots of examples of where relief is being
13 applied but the relief is until July next year or
14 until the end of this year. They're sort of
15 six-month relief periods that in many of these
16 customer's cases are quite honestly still very,
17 very constrained. And in a large number of cases,
18 I am working with customers in Europe who are just
19 saying we're not going to do anything until we
20 know what the rules are and that means we will
21 stop trading until we do know what the rules are
22 and we have managed to implement. And I think

1 given the fact that sitting in Europe there all
2 the European regulations to digest, prepare for
3 and comply with. We've got the same issue then of
4 being multiplied up, of having the U.S.
5 Regulations to consider it as well.

6 Which brings me to my third point, which
7 is the impact on the market. And we saw the
8 comments from the JFSA this morning about
9 anecdotally feedback that there are impacts on the
10 markets. I think I would highlight two or three
11 things that I'm seeing going on. The first thing
12 is that whenever there is a change in market
13 structure or a change in regulations, it is quite
14 normal for the level of turnover in the market to
15 decline while people digest and adjust. I think
16 of the examples of the futures industry where in
17 Europe, for example, we had listed options traded
18 on the floor, in a pit, moving to a call-around
19 non-central limit order book market, volumes
20 declined by about one- third for a 12-month
21 period, while everyone adjusted and then got used
22 to it and then they started to pick up again.

1 We are now in an environment where
2 industry volumes are declining year on year. Most
3 of the examples I've seen in the past are where we
4 have seen double digit compound growth upwards, so
5 the likely impact will be even more significant to
6 market liquidity than has been the case in a lot
7 of transitions before. So I think the first thing
8 is we will see really quite significant declines
9 in market turnover as a result of the changes.
10 The second thing is that I think we -- a point
11 that I think is very important for the CFTC in
12 particular to keep their minds on is that as the
13 regulator of the majority of the over-the-counter
14 derivatives market in the new environment and all
15 of the futures industry, ex-swap security futures,
16 you are an organization that has oversight for
17 both of these new areas of activity.

18 I think that the complexity and the
19 uncertainty around the OTC side could have some
20 quite interesting dynamics about whether bilateral
21 over-the-counter derivatives that are traded today
22 end up in a cleared SEF- based over-the-counter

1 derivatives environment or, in fact, whether they
2 go all the way to full futurization. As we heard
3 a lot at Expo, the FIA in Chicago last week, it is
4 a theme that clients over the last three months or
5 so are increasingly thinking about. Now it may be
6 an unstated objective of some policymakers, in
7 fact, to achieve just that and move it all the way
8 into a central limit order book with a regulatory
9 environment that's been around for a long time.
10 But I think we need to be very conscious of the
11 fact that there are people out there that are
12 beginning to think that the over-the-counter
13 derivatives environment is too complicated for
14 them, certainly in the medium term. And that, in
15 fact, a move into full futurization is something
16 that is worth considering.

17 You look at the ICE conversion to
18 futures of some of their energy products, the
19 launch, in Bryan's case, of the swap future there,
20 I think it's indicative of the changes that are
21 there. So I think the three points I really want
22 to make then was around how overwhelmed customers

1 really are at the moment. It is incredibly
2 daunting. The fact that I think this will have an
3 impact on market turnover. And I think thirdly it
4 will have an impact on the market structure that
5 we end up with. And I just really wanted to sort
6 of place those comments in the context of much of
7 what we discussed this morning.

8 MR. FILLER: May I follow up with a
9 question? Because I think you raise a very
10 important issue in this, I'm going to call it
11 conversion from swaps to futures. And I know it's
12 a relatively new approach, maybe Bryan can add to
13 it as well. But once you have a futures, Part 30
14 applies. And you have all this comparable
15 regulatory thing, we talked about it briefly in
16 the morning, but I really want to expand on that.
17 I thought one of the creative approaches that ICE
18 and CME or whatever by converting a swap to a
19 futures, you bring in -- it is a more structured
20 regulatory environment, but there is a lot more
21 exceptions or exemptions under Part 30 that would
22 not apply in the swap world. I wonder if you had

1 any thoughts on that or had any discussions at all
2 with your clients along those lines?

3 MR. BERLIAND: So I think the answer is
4 it, in my experience, very much depends on the
5 customer. So there are those who are very
6 comfortable with the use of highly standardized
7 products that fit perfectly well into their risk
8 management model. Furthermore, you have a number
9 of customers who, in fact, would like to see the
10 futurization because investment mandates, for
11 example, do not authorize over-the-counter trading
12 but do actively encourage listed trading. So
13 there are some who will be entirely comfortable.
14 There are others where the risk management process
15 needs to be far more tailored and the futures
16 product does not answer the question or does not
17 solve the problem that they have around risk
18 management. And I think to try and put a
19 percentage number on which would fall into which
20 category, I wouldn't attempt to try and judge.
21 But I think it is fair to say that in my
22 experience there are plenty of examples of people

1 who would say that the futures solution does not
2 meet their needs and that they, hence, the really
3 significant concern that they have at the moment.

4 I guess my other point on Part 30 is
5 more a question which is that in the event that we
6 redefine, in other words if this CEA definition
7 applies to all of it, are we not actually going to
8 reinvent the futures rules as Bonnie said, in
9 which case does Part 30 still survive? I don't
10 know.

11 MR. FILLER: And that is a big policy
12 concern and issue as well. Bryan, can you add
13 some thoughts to that, if you don't mind?

14 MR. DURKIN: I totally echo what Richard
15 just said. I mean in the context of offering the
16 deliverable swap futures contract, it's not been
17 presented in such a way to replace swaps. You
18 know, it's presented in a way to offer an
19 additional mechanism or instrument for users of
20 the swaps market to have an alternative venue.
21 And not everybody is going to be able to meet the
22 criteria, the requirements from a capital

1 perspective and a margining perspective. Yet,
2 today, they rely on availing themselves to those
3 particular instruments. We also have found that
4 the interest in introducing the deliverable swap
5 actually provides an augmentation to the existing
6 business model that exists today for the swap
7 market in particular.

8 But if I could possibly go back to the
9 original question with respect to the whole
10 definitional aspect of things. And you know, God
11 knows the commission has undertaken a great deal
12 with respect to all of the rules associated with
13 Dodd-Frank. But I'm just speaking as a market
14 itself that is dealing with questions across
15 Europe and Asia daily on this as well as other
16 topical matters. And while there has been some
17 progress in the context of trying to clarify the
18 definition of what constitutes a U.S. Market
19 participant, there is still mass confusion out
20 there. I mean day-in and day-out, my team is
21 working with the end users who are asking us, do I
22 fall under the definition of a U.S. person? At

1 what entity level or what transactional level does
2 that apply?

3 And so we're all trying to bring
4 ourselves up to clarity in that respect. And one
5 of the things that I don't think has been clearly
6 defined or articulated is, if we're dealing with
7 two non-U.S. participants and they're absolutely
8 non-U.S. participants that are doing a swap which
9 happens to clear through a U.S. clearing
10 organization, does that now fall into the
11 definition for the de minimis standards as a swap
12 dealer or a major swap participant? And that's
13 something that we would adamantly say it should
14 not and does not, however, it's not really clear.

15 MR. FILLER: So may I follow up with a
16 question that you just raised? What do you think
17 the proper definition of a U.S. person is? Should
18 it be the October 12th interp. or be more
19 expansive than that? Do you have any thoughts on
20 does CME have a position on what they think is the
21 best definition for the commission to consider?

22 MR. DURKIN: Well, I think that the

1 October 12th interpretation has come a way to
2 giving that clarity. I think we still need more
3 work just from what we've been experiencing with
4 our client base, what we're hearing this morning.
5 There's still unanswered questions with respect to
6 the application at the various entity levels and
7 how that may or may not apply.

8 MR. FILLER: And as a follow-up, let's
9 say one of your clients or firms does do business
10 "with U.S. persons." Does the CME have a position
11 that the \$8 billion de minimis should be different
12 at that firm even though it's not in the U.S. but
13 is outside the U.S.? Should it be a higher test?
14 Is that the need or is the \$8 billion amount for
15 the de minimis an acceptable level from your
16 perspective?

17 MR. DURKIN: I wouldn't say it's an
18 acceptable level from our perspective. So it's
19 the requirement that is out there that, speaking
20 again from experience, is creating a great deal of
21 unrest just with the standard itself that we're
22 trying to work with.

1 MR. FILLER: Commissioners O'Malia or
2 Wetjen, feel free to --

3 COMMISSIONER WETJEN: Just a real quick
4 question. Sorry to interrupt the flow, but,
5 Bryan, you said that the U.S. person definition
6 and the no action relief went a long way towards
7 clearing things up. Are you aware of any
8 questions or issues related to that definition? I
9 know that in the current relief that ends
10 relatively soon but it'd be useful for me to know
11 whether there are any questions or concerns that
12 people in the markets have had over that
13 particular definition. Acknowledging it's not the
14 same as what was in the exemptive order in the
15 guidance, but that specific definition.

16 MR. DURKIN: I think again as we're all
17 learning in this process ourselves and as we're
18 continuing to deal with idiosyncrasies that are
19 presented to us, bases various differences and/or
20 structures, whether it's an affiliate, whether
21 it's a branch, whether it appears to be a
22 combination of one or the other. How does this

1 apply? And how I think a lot of the questions
2 also turn to substitutability of regulatory
3 regimes that are in place. So if they're all
4 intertwined, the registration, what defines
5 whether or not you're either a swap participant or
6 you're not a swap participant, if you fall into
7 this category and you're in a different regulatory
8 regime, how might they get recognition for a
9 regulatory regime that is comparable? So there's
10 all of these questions that are circulating in the
11 marketplace that is creating this confusion.

12 MR. FILLER: Bob, do you have any
13 thoughts on the definitional issue?

14 MR. KLEIN: I can't without spending a
15 lot of time diagramming words, get into the
16 nuances of the definition. I can say this, that
17 the No Action definition went a long way toward
18 addressing customer concerns and comments but not
19 all the way. And I think part of the lingering
20 concerns are with the temporary nature of the
21 relief and as others have noted, the overall
22 complexity of the regulatory regime. And there

1 are still a number of U.S. counterparties who
2 simply are taking the view that it's too
3 complicated for them to figure out. They don't
4 know whether they're going to be a U.S. person or
5 not a U.S. person, or that counterparty might be a
6 U.S. person when everything is said and done and
7 that they are considering curtailing trading with
8 anybody who might have a U.S. nexus. So I think
9 there is still an enormous amount of confusion out
10 in the marketplace that has just temporarily been
11 tamped down by the No Action Letter, but people
12 are still scratching their heads about what this
13 market's going to look like.

14 COMMISSIONER WETJEN: Robert, I'm not
15 hearing you say that the confusion stems from the
16 meaning of the exact words in the No Action
17 relief, it's related to these other --

18 MR. KLEIN: I think that's right. I
19 mean, I think we can discuss whether the actual No
20 Action definition is the perfect definition, a
21 good definition, or however you want to categorize
22 it. I think the confusion is with what the rule

1 is going to shape up with to look like in the long
2 run and an overall fear about exposing yourself to
3 the U.S. regulatory regime.

4 MS. LITT: I think that's it,
5 Commissioner Wetjen. I don't think people are as
6 focused on the No Action definition because
7 they're so focused on the potential next
8 definition. And so if we had some sense that
9 that's what we were going to work with and then we
10 could do what Bob suggests, which is actually
11 parse the words and figure it out. That would be
12 one thing but right now people are wondering
13 about, do I have to worry about how many U.S.
14 owners my commodity pool has on Tuesday or do I
15 have to worry about what it means to be indirectly
16 owned by a U.S. person? Or when I face a swap
17 dealer, do I have to think about things that I
18 wouldn't necessarily know which is like, are they
19 guaranteed by a U.S. person or are there U.S.
20 persons in their control group? So I think that
21 in some ways there's not a lot of comfort
22 associated with the No Action definition because

1 it's so concerning that the next step might be
2 more uncertain and more unclear.

3 COMMISSIONER WETJEN: I think, just to
4 follow real quickly and I'll get off of this pony
5 here, but it would be useful for me to know if
6 there's something about that definition --

7 MS. LITT: Okay.

8 COMMISSIONER WETJEN: -- as it appears
9 in the No Action relief that is somehow
10 insufficiently clear.

11 MS. LITT: I think that's something we
12 can give to you. So I don't know that we did that
13 for this presentation.

14 MR. FILLER: Steve, any thoughts from
15 your perspective or ISDA's?

16 MR. O'CONNOR: There is confusion. I'd
17 echo what Bonnie said earlier, that we have
18 thousands of clients who are waiting for guidance
19 here. With regard to clarity as to the
20 definition, I think it has to be very precise. So
21 language such as, "includes but is not limited
22 to," for instance, is very broad and I understand

1 maybe that's in the works for getting changed.
2 But that absolutely is something that is very
3 important.

4 And then another thing, once we do
5 arrive at a final rule, I think this has been
6 mentioned already as well but there's a timing
7 issue as well. It's going to take some time to
8 implement, so a proper phase-in approach once the
9 rule has gone final would be adequate. And I
10 think in our letter, we felt the whole ET should
11 have been a rulemaking rather than guidance, so
12 it's probably too late, that horse has left the
13 barn by now. But to allow some kind of comment
14 period somehow once a proposal is out there to
15 make these modifications I think will be useful.

16 MR. FILLER: Chuck, from your
17 perspective, any thoughts because your change is
18 also doing a little bit of a conversion practice
19 as well.

20 MR. VICE: Right. Yeah, I think in our
21 experience in the energy markets, actually in all
22 the markets, but I agree with Bryan's comment

1 earlier about all these things work together, all
2 these provisions. I mean, I think what happened
3 to energy, the marketplace looked at the de
4 minimis requirement; that was number one. I would
5 say number two is the U.S. person definition, so
6 it was actually a global impact of do I want to
7 keep trading swaps. And with those concerns in
8 mind, I think they looked at the energy swaps that
9 they were trading and they said these are largely
10 standard instruments. They could certainly be
11 futures, notwithstanding whatever differences
12 there might be in execution, alternatives and so
13 forth.

14 But from a product structure standpoint,
15 the marketplace told us loud and clear we would
16 prefer these be futures and, therefore, we get rid
17 of these concerns and we don't need a certain
18 amount of customization ability and a lot of
19 flexibility around these instruments. I think --
20 so it may be that for some OTC markets or some
21 instruments in some OTC markets that are standard
22 and are liquid and are cleared or easily cleared,

1 the marketplace may make that decision. And I
2 don't think that's necessarily a bad thing. It
3 may be there are other parts of the swaps market
4 that particularly where end users are involved and
5 there's a lot more customization, that having
6 business conduct rules and a lot of the other
7 swaps dealer requirements are appropriate. And if
8 you look at it that way, then a broader -- back to
9 the U.S. person question, a broader U.S. Person
10 definition may be appropriate. If you have a
11 different view, then you may come to a much
12 narrower definition of a U.S. person.

13 I think the last point I would make on
14 that, though, back to futures, is, you know, one
15 characteristic of the futures market
16 internationally is a heavy reliance on recognition
17 and equivalents. And I think that's part of
18 what's made it successful and kind of globally
19 embraced and globally understood. And so I do
20 agree, I think, to some extent with the European
21 view that the U.S. solution for swaps would
22 ideally have more of that element than it has

1 today.

2 MR. FILLER: Dan, as an NFA, as one of
3 the principal SROs involved in this, especially in
4 registering and auditing swap dealers, can you
5 share some thoughts from the NFA's perspective on
6 this issue on how broad or how narrow the
7 definition should be.

8 MR. BERLIAND: Well, when we tend to
9 think about it from our point of view and what it
10 means for NFA and what are the resource
11 implications for NFA. And it notes also
12 intertwined with the concept that we were talking
13 this morning with substituted compliance. If, in
14 fact, the definition is broad and if, in fact, a
15 large number of foreign firms instead of being --
16 even if they're subject to a comparable regulatory
17 regime, instead of being exempt from registration
18 as they would be on the futures side, they are now
19 required to register and they're subject to some
20 but not all of the CFTC's rules. Well, then what
21 does that mean for NFA? Presumably, if these
22 firms are registered, they'll have to be members

1 of NFA. That means that NFA is going to have to
2 be monitoring these firms for compliance and the
3 question becomes compliance with what? Are we
4 requiring -- are we monitoring them for compliance
5 with the CFTC rules? Are we monitoring them for
6 compliance with the CFTC rules and for those rules
7 for which there is substituted compliance? Which
8 is to say does NFA have to have expertise in the
9 regulatory regimes in all the various foreign
10 jurisdictions and understand those rules so that
11 we can monitor for compliance?

12 That has some resource implications, to
13 put it mildly. So from our point of view, what
14 we're sort of grappling with is trying to make
15 sure that we understand the scope of our
16 responsibilities. And obviously the definition of
17 U.S. persons and the concept of substituted
18 compliance, that has a very direct impact on what
19 it is that we're going to be expected to do.

20 MR. FILLER: Just on that one point and
21 I think Ann raises a very important issue for all
22 of us and that is, is registration the important

1 issue? Or is it the compliance with the
2 underlying regulation the more important issue?
3 And if it's the latter rather than the former,
4 what should those standards be, the comparable
5 regulatory regime or the regulatory recognition or
6 the substituted compliance? Does anyone have any
7 thoughts? Is there one part more important than
8 the other or are they both equally important?

9 MR. BERLIAND: I think there are two
10 answers to that. The one is a perception one and
11 one is a legal answer and I'd just like to -- I'm
12 going to answer the perception one. And the
13 perception is that registration, despite the fact
14 under Part 30 you already agree to comply with all
15 sorts of things, the registration itself is a --
16 I'm going to use a very emoted word -- a scary
17 thing. Because it leads to things that are
18 perhaps less well known than the Part 30 model
19 that people have been used to dealing with. So I
20 think a lot of this is fear of the unknown and
21 where it can lead to from a perception problem
22 that is causing some of the real fear. I'll let

1 Bonnie and Bob talk more to the legal side. But I
2 think the perception side, a lot of it is fear of
3 the unknown.

4 MR. ROTH: Can I just -- I'm sorry.
5 Just when I think about registration and I think
6 if you look at the legislative history between
7 section -- for Sections 882 and 883 of the act, I
8 think a large part of the benefit of registration
9 is the vetting process, to make sure that the
10 people that are going to be licensed to do
11 business are, in fact, fit and proper; that they
12 meet certain standards set forth in the act;
13 they've never had these types of problems. I
14 assume that part of the determination that there
15 is a comparable regulatory regime would mean that
16 that foreign regulatory regime has some form of
17 vetting and checking for background, in which case
18 I'm not sure what the additional benefit of the
19 registration here is as far as checking out the
20 background.

21 Furthermore, with these foreign firms, I
22 always -- as part of the registration process if

1 you're applying -- if you're a principal, a
2 foreign print of a firm, we have to get a
3 fingerprint card for you that we can then send to
4 the FBI in Washington and they'll do a background
5 check. And I've never been entirely sure what the
6 benefit of doing a background check through the
7 FBI's U.S. Fingerprint directory of an individual
8 that's never set foot in the United States.
9 There's not a lot of bang for that buck. So from
10 the point of view of the benefits of registration,
11 obviously it can be jurisdictional but I'm sure
12 the commission has otherwise to assert its
13 jurisdiction. But to the extent that it's
14 involving a background check and a background
15 check has already been done by a foreign
16 jurisdiction, I'm not sure what the additional
17 benefits are of the background check.

18 COMMISSIONER WETJEN: Dan, perhaps you
19 underestimate the FBI.

20 MR. FILLER: Richard, you mentioned, you
21 know, the Part 30 and everything. And Dan, I
22 mean, the Part 30 does require the foreign broker

1 or the non-U.S. entity to either be licensed or
2 registered in their home country, or be a member
3 of an exchange in that home country, which is a
4 separate licensing or membership type test. So
5 there is some, whether it's comparable or not is
6 another issue, but there is some kind of licensing
7 or registration issues.

8 Sorry, we haven't called on you, Jiro,
9 what are your thoughts?

10 MR. OKOCHI: Yeah, I want to go back to
11 I guess another unintended consequence of this
12 definition. So I think -- and I represent more of
13 the end user side. I don't think they've focused
14 at all on the U.S. person definition here in the
15 States. They understand they are a U.S. person
16 but hearing what's beginning to happen in the
17 interbank dealer market with liquidity where, you
18 know, is the dealers aren't being able to trade
19 overseas, I think it's about to come -- hit the
20 U.S. corporations head on. And then also the
21 futurization of the swaps, the benefit for the end
22 users is getting the customized hedges that they

1 probably can't currently get in the futures
2 market. So I think that impact to liquidity is
3 going to be a big concern that really most end
4 users were really thinking more about margin and
5 capital requirements that may shrink their choices
6 for dealers. So I think that's a big concern.

7 And the other thing I'm just sort of
8 thinking off the top of my head hearing about sort
9 of the confusion or how do you track changes to
10 U.S. persons. Is there a way to use the Legal
11 Entity Identifier as a leading way? So if the
12 entity does change ownership or gets a guarantee,
13 do they apply for a new LEI so the market will
14 know that this is not the same entity or is it
15 just a data-tracking field and not really used to
16 help track those changes.

17 MS. LITT: I think that the issue is
18 that the LEI can work once -- you know that's why
19 this all has to happen sequentially. First you
20 have to have a definition that is something where
21 an entity will know from day one whether or not
22 it's a U.S. person and then changes in ownership

1 of that U.S. person become much easier. But I
2 think right now with looking through to ownership
3 of the entity, looking through to how it's
4 guaranteed, how it's indirectly owned, I think all
5 of that means that you don't have -- you have a
6 shifting landscape right from the beginning. And
7 you both run the risk that an entity will change
8 its identity over time, as a U.S. person or a
9 non-U.S. person and you also run the almost
10 inevitable risk that they will be a U.S. Person
11 for one jurisdiction's purpose and not for
12 another. And I don't think that's workable.

13 I just don't -- as I try to think about
14 developing a compliance program around that kind
15 of uncertainty, I don't think it can happen. And
16 I think there are fixes to the CFTC's longer term
17 proposed definition that can make it work. But it
18 requires recognition of some of its internal
19 inconsistencies that I think will help with that
20 ongoing kind of transition.

21 MR. FILLER: Dave, from a U.S. futures
22 exchange perspective, any of your thoughts?

1 MR. DOWNEY: You know, I'm, like all
2 futures exchanges, a little confused as to why
3 people don't use the futures market. Richard, I
4 believe that in the past the traditional swap
5 business has not used the futures because of the
6 enormous profits that were built into it. And if
7 they had to bring these types of transactions on
8 to an exchange, into centrally cleared, those
9 profit margins would be reduced. Now, with the
10 incentive to actually move on to not just
11 regulatory incentives, but I think counterparty
12 exposure, is a real problem for customers, asking
13 for answers on how they mitigate that. And as
14 they begin to move on to futures exchanges,
15 futures exchanges in the past have always been
16 innovative in their product development and I
17 think that will continue. I think this is going
18 to lead to a great deal of product innovation in
19 our marketplace, not only on the futures markets
20 but on the options markets as well, embedded
21 optionality into a futures which we don't really
22 have today but we could. I think we could begin

1 to go down those roads of building very similar
2 types of customized products.

3 Now, the question there is going to be,
4 how do you actually value such a product and as to
5 the complexity? I'm very much against bringing
6 swaps onto clearinghouses that we don't know how
7 to -- if they don't know how to value it, how are
8 we going to value it? If our clearing members are
9 going to give the implicit guarantee that if one
10 firm fails, everybody else has to buck up, well,
11 then, tell me how we're going to value this.
12 There are committees that are going to have to do
13 that. Those types of swaps, those that nobody
14 really understands, those need to be kept away
15 from us, and I think those should eventually die
16 out. I've always said, if you don't like the
17 margining treatment, then you should get out of
18 the trade. But if you do like the trade, then
19 it's worth the margin.

20 Now, when it comes to exchanges,
21 customers who come through clearinghouses, who are
22 backed by the clearing members, they already sign

1 agreements that say you are subject to the
2 jurisdiction of the exchanges. So we know who
3 those guys are. Any large position has to be
4 reported to us. We know exactly who they are,
5 what types of positions that they have. And, of
6 course, we can ask them any question we want. We
7 can ask how to make their positions accountable to
8 us, ask them why they have those positions. We
9 can raise that limit to as high as we want. We
10 can lower to as low -- we could make zero, any
11 time you put a one lot on, you have to tell us why
12 you're doing this type of stuff. So I think that
13 the movement of the swap business onto exchanges
14 is inevitable. I think that's a buyer's view.

15 But what's of concern is the rules that
16 are coming out have to be very clear that you're
17 moving from a bilateral transaction where two
18 parties are on either side of the trade, into a
19 multilateral where it's often the two parties
20 don't know each other. Now we have this, in a
21 very similar way, we have it, not with the CFTC
22 rule, but with the IRS rules having to do with

1 dividend equivalents and whether you are dealing
2 with an offshore party or not. And they came out
3 with the buyer's that said, well, all these trades
4 are bilateral so, of course, you know at the other
5 side. But then when they start doing these
6 transactions on an exchange where it's point and
7 click, you don't know who the other side is. All
8 of my customers are coming back saying, we can't
9 trade your product because we don't know if the
10 other side is an offshore account.

11 Well, it's a stupid argument because you
12 don't have to know, there's a chain of payment
13 thing, is the guy who makes the last payment to
14 that offshore account. Now these types of
15 confusing regs that are not just the CFTC, not
16 just the SEC but the IRS and the Treasury, these
17 guys have all similar or different definitions of
18 a U.S. person. I think you all should get into a
19 room and try to bang this out yourself because
20 they're all kind of aligned. You all have the
21 similar problem and you affect the marketplace in
22 a similar way.

1 MR. FILLER: Thank you. George, so
2 you're my asset management guy and also my tax
3 expert, so I remember your younger days. Bonnie
4 raises the issue on what type of non-U.S.
5 commodity fund should or should not fall within
6 the definition of a U.S. person. And we all know
7 that tax laws impact the number of U.S. investors
8 in a lot of these offshore funds. Is there a
9 number, is it the majority test, is a large
10 percentage test, 30, 40 percent? Is it a smaller
11 test that should bring in an offshore fund into
12 the definition or should any and all offshore
13 funds be completely excluded from the definition
14 of a U.S. person, in your view?

15 MR. CRAPPLE: Well, first of all, I'd
16 like to say that I think that futurization is
17 going to eventually get, you know, remove a lot of
18 this whole swaps problem because there are so many
19 advantages to futurization, including for U.S.
20 taxpayers that are not hedging or that are not
21 dealers that get mark-to-market tax treatment that
22 -- at least today we do.

1 On the question of who's a U.S. person,
2 all I know is I'm a U.S. person. My company is a
3 U.S. person and we are not a dealer, we are not a
4 trade association, we're not an exchange. So I am
5 not an expert on which persons should be dragged
6 into this U.S. definition, but I will say this,
7 because the number 8 billion did get bandied about
8 briefly, earlier, assuming that foreign exchange
9 does not get exempted entirely, and I guess that's
10 still up in the air with the Treasury, \$8 billion
11 is not very much when you consider it's
12 cumulative.

13 Foreign exchange trades may last a day,
14 they may last a long time, but it's real easy to
15 get to \$8 billion and I think that I can't see any
16 way that that is a good measure of systemic risk
17 in the system. I mean, maybe there ought to be a
18 test about what is the maximum you have on any
19 given day or over a week or something like that
20 because I think that you're going to capture a lot
21 of people who should not have to register as major
22 swap participants, which is a way to not answer

1 your question at all, but I wanted to make that
2 point.

3 MS. LITT: George, can I try asking you
4 a question? Let's say you were an asset manager,
5 you form a fund, you form it in the Cayman
6 Islands, and you've decided that you have the
7 ability to admit U.S. persons into that fund. But
8 you have a regular redemption policy and so from
9 time to time the number of U.S. persons will vary
10 on a daily basis. You structured it as a Cayman
11 fund because, you know, there are various tax
12 reasons, other reasons why you took it offshore.
13 Do you think that -- I mean, and obviously this is
14 a leading question from a lawyer, but do you think
15 that it should be relevant where you are in the
16 redemption cycle and where you are during the
17 course of the year as to whether or not that fund
18 is a U.S. person? And, ask you another question,
19 how would you build a compliance program as a fund
20 manager around determining that and notifying your
21 counterparties on a daily basis of today I'm a
22 U.S. person, but Wednesday I probably won't be

1 because my redemptions all come in today?

2 MR. CRAPPLE: The question answers
3 itself.

4 MS. LITT: Yeah. I know it did. That's
5 why it was a leading question.

6 MR. CRAPPLE: You can't have a
7 definition --

8 MS. LITT: You can't do it.

9 MR. CRAPPLE: -- where your status
10 changes day to day.

11 MS. LITT: I also don't -- I mean I do
12 think that people invest in fund vehicles and
13 managers form fund vehicles for very legitimate
14 purposes, because essentially they've decided that
15 they don't want to have a fund management business
16 that involves dealing with each of the
17 individuals. They want to raise money in a fund
18 and they want their client to be the fund and if
19 the fund is a Cayman corporation, it's a Cayman
20 corporation. And the investors in that
21 corporation aren't really relevant to the way the
22 fund was formed or the way it's managed. Not to

1 mention the fact that if your swap dealer had to
2 be talking to that fund on a daily basis about
3 whether it was a U.S. Person or not on that
4 particular day, I don't think that's tenable
5 either. So I actually don't think it's relevant.
6 I mean, I think there are a lot of factors that
7 came into the U.S. person definition that I know
8 are very much motivated by a legitimate concern on
9 the CFTC's part to worry about evasion of
10 Dodd-Frank and its responsibilities.

11 But there are lots of anti-evasion
12 policies under Dodd-Frank that give the CFTC and
13 its enforcement division lots of opportunity to go
14 after people, bringing in tons of entities and
15 persons who really shouldn't be within Dodd- Frank
16 just because of the concern that someone else who
17 was structured similarly might be evading the
18 mandate of Dodd- Frank. I don't think that's the
19 right regulatory focus, especially if it leads to
20 such compliance complexity.

21 MR. CRAPPLE: Well, life used to be
22 quite simple like we have a Cayman company.

1 MS. LITT: It's a non-U.S. person.

2 MR. CRAPPLE: Well, even if we have U.S.
3 Citizens, we have been aware for many, many years
4 that we can't trade futures contracts that haven't
5 got the seal of approval from the CFTC. So that
6 was easy enough and, in effect, the CFTC would
7 study the COSP and decide that okay, that one,
8 that regime over there is okay. But this whole
9 swap issue has thrown that concept into a cocked
10 hat unfortunately and made this infinitely more
11 complex.

12 MR. KLEIN: I just wanted to underscore
13 something that Bonnie alluded to. And that is in
14 arriving at a U.S. Person definition you have to
15 keep in mind that it gets used from both ends of
16 the telescope. I need to know whether I'm a U.S.
17 person because I need to know what rules I need to
18 comply with. But the way the CFTC has structured
19 its rules, I also need to know whether my
20 counterparties are U.S. persons because I need to
21 know what rules apply to them. And in that
22 context, the latter context, it becomes

1 particularly problematic if the definition hinges
2 on whether my counterparty has a guarantee which
3 might be revoked or removed any day, whether my
4 counterparty's investors are U.S. persons because
5 I don't have full transparency into that. And
6 it's extremely difficult to build a compliance
7 program around things that I don't know unless my
8 counterparty tells me and my counterparty might
9 not have any affirmative obligation to do that,
10 unless I impose it by contract.

11 And to make a big circle back to this
12 morning's discussion, I really think, and I
13 acknowledge Bonnie's point, that many of the
14 concerns that prompted the complexity in the
15 definition are legitimate concerns about evasion.
16 I think the real answer to that is global
17 harmonization in an effective comparability regime
18 where regulators are on the same page and that
19 regulators recognize comparable regulation
20 globally so that these differences stop mattering
21 and you don't have to worry about it.

22 MR. FILLER: Just on that one point, can

1 I ask you a question? Do you believe a Part
2 30-type regime should apply to swaps or not?

3 MR. KLEIN: I'll ask you a question.
4 What exactly do you mean by a Part 30 regime? If
5 you mean a regime in which a national regulator
6 looks holistically at the regulatory regime of
7 other countries and makes a determination that, on
8 a holistic basis, that regulatory regime meets
9 certain standards, I think that's a very workable
10 idea to work for the CFTC under Part 30. And I
11 think the G20 commitments are high level enough
12 that it could work in looking at whether any
13 particular jurisdiction has met those
14 requirements. If you're looking at a
15 rule-by-rule, requirement-by-requirement face-off,
16 it's entirely unworkable to do that. And so I
17 think that's not what Part 30 does. And I don't
18 think that's a workable approach.

19 MR. FILLER: Well, Part 30 goes -- I
20 agree with 100 percent what you just said. But
21 Part 30 also says if you do -- if you're the
22 foreign brokerage firm or non-U.S. Entity and

1 you're located in a country that has "a comparable
2 regulatory scheme," you don't have to register as
3 an FCM. You do have to file a notice and "consent
4 to the jurisdiction" so if you do commit fraud
5 against a U.S. Person, the CFTC has a right to
6 bring maybe an enforcement action against you or
7 issue -- prevent you from trading further with
8 that U.S. person. But is the consent to
9 jurisdiction for anyone around the table, if a
10 firm has a right to just consent to jurisdiction
11 but not require to register here, is that an
12 acceptable standard from your perspective?

13 MR. DOWNEY: I think consent to
14 jurisdiction is not a right, it's an obligation.

15 COMMISSIONER WETJEN: Repeat that,
16 David, I'm sorry.

17 MR. DOWNEY: If you want to deal with an
18 exchange, you have to abide by our rules. And
19 inside of our rules is a consent to jurisdiction.
20 There's no gray area. Either you want to or you
21 don't.

22 MR. BERLIAND: That's not correct,

1 because as a customer you are consenting to abide
2 by the -- to your rules, but the customer, you do
3 not have jurisdiction over the customer.

4 MR. DOWNEY: As long as you put that in
5 your rulebook, yes, you do. Your consent is in
6 your rulebook and if you consent to my rules, you
7 are consenting to my jurisdiction.

8 MR. ROTH: Richard, well, I guess the
9 only way that would work would be that if the
10 exchange's rules require the member to require its
11 customers to consent to jurisdiction by contract.
12 Yeah.

13 MS. LITT: But Ron, I think there's also
14 a precedent. I mean, look, it may just be that
15 Dodd-Frank doesn't permit Part 30 and maybe all of
16 us futures guys are off daydreaming about a
17 happier, simpler time. But the point is that
18 there was also a provision in Part 30. I mean the
19 CFTC may recall that when the UK firms got Part 30
20 recognition, there were certain things that were
21 commonplace in the UK that just weren't permitted
22 with respect to those UK firms interacting with

1 U.S. persons, opting out of segregation, that sort
2 of thing. You know, that would be a wonderful way
3 to accommodate some differences. But, you know,
4 look I do think -- I don't know if Dodd-Frank
5 allows us to have this conversation but it is just
6 a fact that the precedent set by Part 30.

7 I can't tell you for how long a time my
8 securities colleagues have been jealous of me at
9 Goldman Sachs because I got to deal with Part 30
10 and they had to deal with 15(a)(6). And the fact
11 is that Part 30 was a beautiful integrated regime
12 that permitted globalization of the markets
13 without a big sacrifice.

14 MR. FILLER: I mean, Bonnie, I think you
15 raise a very important point that the comparable
16 regulatory part of Part 30, again may be idealism
17 that we can even apply that, but really dealt with
18 customer asset protection. Did the home country
19 have a regime in place that would protect U.S.
20 Persons who traded on that regime and have like a
21 segregated-type approach? And that was really the
22 principle theme behind it and swaps, well,

1 obviously we'll clear swaps and the rules under
2 4(d) of the act would apply. So I don't know
3 whether that's the principle thing for swaps or
4 other aspect of it but I just think maybe this
5 ought to be further considered by the commission.

6 MS. LITT: Well, and even if -- and I
7 may be segueing into your next topic, which is
8 substituted compliance, but I do think that even
9 if we accept the fact that there's a registration
10 requirement that applies to non-U.S. persons who
11 deal with U.S. persons under the swaps rules, when
12 you start thinking about what substituted
13 compliance has to be, I'm dealing a lot at my firm
14 with issues associated with the internal conflicts
15 rules. And I spoke to many of you about the
16 internal conflicts rules when they were being
17 developed and they're very specific and they're
18 unusual. The question is are we really going to
19 start looking at substituted compliance in terms
20 of a rule-by-rule analysis. Or can we look to the
21 fact that other jurisdictions have general rules
22 against fraud, general rules about how one

1 interacts with clients, whether one has to give
2 full disclosure to clients about conflicts of
3 interest within a firm generally.

4 And couldn't that be the argument for
5 what substituted compliance is, a general regime
6 that recognizes that financial services firms have
7 conflicts of interest and have to deal with those
8 or does it have to be looking for the rule that
9 specifies how the swap dealer portion of a firm
10 can interact with the clearing portion of the
11 firm. It doesn't seem like the latter is the
12 right approach. But I think we're all concerned
13 that we haven't gotten a clear message from the
14 commission that the former is going to be the
15 approach over the latter.

16 MR. ROTH: And in fact, Ron, I'm sorry,
17 with respect to the comparability determination,
18 that was something that struck me in the proposal.
19 And that under Part 30, that determination is made
20 jurisdiction by jurisdiction. Whereas under the
21 proposal, the comparability determination for
22 purposes of substituted compliance would be made

1 on a firm-by-firm basis. Each firm submitting as
2 part of its application instead of the appropriate
3 4s submission, a compliance plan that would make
4 reference to substituted compliance. So it struck
5 me as being an odd arrangement whereby those
6 determinations would be made firm by firm, rather
7 than jurisdiction by jurisdiction.

8 MR. FILLER: Well, I mean the proposal
9 first required the firm to be registered and then
10 once you're registered, whether or not any of the
11 entity or transaction level requirements would
12 apply on a case-by-case basis to a firm. But as
13 Chairman Gensler said earlier this morning, they
14 got another proposal on their desk. It will be
15 interesting to see how far those reliefs or
16 changes might occur.

17 COMMISSIONER WETJEN: Bonnie, I'm just
18 curious. Is there something in the statute that
19 tells you as a legal reason that Part 30 just
20 wouldn't be an approach that Title VII would
21 permit? Or are you just saying from --

22 MS. LITT: We're going to leave my area

1 of expertise pretty soon, I'm hoping Bob can help
2 me. But I think the fact is that when you deal
3 with a U.S. person on a swap, you have to be
4 registered as a swap dealer, correct? Whereas the
5 Part 30 regime contemplates that you could
6 interact with U.S. persons in a futures
7 environment as long as you only interacted with
8 them within your jurisdiction. So I'm a
9 London-based broker dealer, I have a U.S. client
10 who trades on the London and the other European
11 exchanges; I can deal with that person as long as
12 I don't interact with them on U.S. exchanges. I
13 think because swaps are so global, the analysis
14 was different but, Bob, help me. Am I right?

15 MR. KLEIN: I think you're partly right,
16 but I also think there are mechanisms by which the
17 commission could get to the same place through No
18 Action and interpretive guidance that would
19 effectively use a Part 30 analogy. I mean we can
20 parse through the statute but, yeah, Dodd-Frank,
21 you're right at the highest level that Dodd-Frank
22 imposes certain requirements whenever you deal

1 with a swap involving a U.S. person and limits the
2 commission's ability to exempt people from aspects
3 of the act, but that is not absolute.

4 MR. FILLER: Commissioner Wetjen, just
5 to add to that. 722, which brings in the 2(i) and
6 the direct and substantial connection test and
7 then there's another section called 712, I think
8 it's (f), I'm not sure. It's more of a catchall
9 and anything else that the commission may want to
10 do. So whether or not you wanted to use that and
11 expand your authority to bring in these rules,
12 it's sort of a catchall. And/or you want to
13 interpret that on a more narrow basis, I think
14 it's up to the commission to make that decision,
15 from that perspective.

16 So I want to change -- oh, Jim, I
17 haven't called on you yet. So I apologize, but
18 any thoughts from your perspective on the U.S.
19 person before we go on?

20 MR. LUBIN: We, at the CBOE, haven't
21 really addressed these issues or commented on them
22 directly, but I would reiterate probably most

1 closely with what David had said and also George,
2 in that I think there's going to be a lot of
3 product innovation that'll probably help in moving
4 a good part of this market onto the exchange into
5 a futures contract mechanism. So, in fact, we're
6 working on that now with a couple of products
7 where we think we'll make the market that has
8 really been trading OTC to date, more accessible
9 to other participants that maybe haven't had the
10 ability to trade those products, maybe it's credit
11 related or whatever issues they may face with
12 trying to get bilateral agreements in place. So I
13 would fully agree that I think we're starting to
14 see that momentum now at the CME, the ICE and I
15 think other exchanges will follow in that pursuit.

16 MR. FILLER: So I want to take a little
17 --

18 MR. O'CONNOR: Sorry, one specific thing
19 on a non-U.S. person. Jerry reminded me of my
20 point this morning, that we've got this fractured
21 global interbank market right now. I think if an
22 exception was made for the foreign banks not to

1 count U.S. onshore swap dealers as U.S. persons
2 for their de minimis calculation, I think that
3 would cure that fractious behaviour immediately.
4 And then just on the futurization, I feel as
5 though I should respond. I think that absolutely
6 there'll be some shift of liquidity from OTC
7 markets to futures markets. That will be a client
8 choice, so let's wait and see, the market will
9 decide there. And one observation from this
10 morning was that it's interesting that with all
11 those regulators around the world, not once was
12 futurization mentioned as a cure for the issues
13 that we've been struggling with and that's because
14 I think there will always be a substantial OTC
15 market and Chairman Gensler himself has said that
16 often. And so that's, you know, we have to cure
17 the world for that -- OTC markets even in its
18 somewhat diminished form, it will still exist.

19 MR. FILLER: Thank you. I mean you
20 raise a very important point and I want to maybe
21 ask the group if they have any thoughts on it.
22 And one of the issues or concerns from the

1 cross-border guidance proposal and the definition
2 of a U.S. person is looking to non-U.S. firms that
3 are either guaranteed by a U.S. company or under
4 common ownership or control of a U.S. person. The
5 interp. on October 12th excluded those two parts,
6 again on a temporary basis. But is, from your
7 perspective, from a risk perspective, obviously
8 Dodd-Frank talks about systemic risks and trying
9 to minimize or reduce it, should a non- U.S. firm,
10 non-U.S. person that is guaranteed by a U.S.
11 Company or under a common control be brought into
12 the definition? Or again, I go back to the
13 October 12th definition, which excluded it. Is
14 there any way to bring that in, in your view, or
15 should they be not brought in? No one wants to
16 touch that?

17 MS. LITT: Where can we distinguish
18 common control and cure?

19 MR. FILLER: Okay, define --

20 MS. LITT: I mean I think they're both
21 problematic. You know, many of us work for
22 multifaceted, diverse financial institutions who

1 are based around the globe. It is often the case
2 that when a global institution has a liquidity
3 crisis that that becomes a global liquidity
4 crisis. But it's not essential, you know, we
5 lawyers work very hard to make sure that those
6 affiliates are separately managed, they're
7 governed by separate laws. I simply think it's
8 just a bridge too far to say that because you're
9 part of an integrated financial institution that
10 you are -- it's just I don't understand it from a
11 regulatory perspective to say that you're dragged
12 into the same regulatory structure as one entity.
13 So I don't get that.

14 MR. FILLER: Richard, as a person from a
15 global firm, can you share your thoughts?

16 MR. BERLIAND: Yeah, I don't have a
17 strong legal view on it. I mean one of the things
18 that was clear from this morning's session was as
19 much went unsaid but suggested as below the
20 surface, was very striking and I can only begin to
21 guess what happened in the last couple of days
22 when we were not in the public domain. But I

1 think of all of the areas that is most subject to
2 what I will call a tit for tat reciprocity thing,
3 this one is the easiest one for the other parts of
4 the world to go, well, if you're going to do that,
5 we'll do this. And I do feel very strongly that
6 the risk of nationalistic behavior is so just
7 below the surface on these debates. I thought
8 this morning's conversations were broadly very
9 restrained, balanced, thoughtful and so on, but
10 the bits underneath and you only need to look at
11 some of the nationalistic commentary that comes
12 from the politicians rather than from the
13 regulators certainly sitting in Europe, please
14 don't underestimate how close to the surface that
15 is.

16 There is a -- at the client level, I
17 talked about the uncertainty and this perception
18 of concern about fear of the unknown. But at the
19 political level it really worries me that the G20
20 commitments are holding better than the Syrian
21 ceasefire but it's only just better. And that's
22 what worries me most. I think that's why I think

1 this is such a great initiative. It worries me
2 we're under such a tight guideline -- guidelines
3 on time. But if we had a bit more time to work on
4 this and sort of try and get the clock back to the
5 sort of level of cooperative behavior that we had
6 pre-'08 in IOSCO where there was so much attempt
7 to find efficiency and sensibility in what we were
8 trying to do, I think we would be far better
9 positioned. I can't comment specifically on this
10 individual rule about conduits, but I do feel
11 this, of all areas, is one that is most subject to
12 a political tit for tat.

13 MR. FILLER: Steve, you have any
14 thoughts?

15 MR. O'CONNOR: I'd agree with everything
16 that Richard just said with regard to the
17 possibility of outbreaks of nationalistic
18 behavior.

19 MR. FILLER: One of the questions I want
20 to raise just on U.S. person and then we'll go on
21 to the substituted compliance part. And again
22 Dodd-Frank, one of the principles of Dodd-Frank is

1 reduce systemic risk and I think that's what
2 pretty much led to the mandatory clearing. And as
3 we learned this morning, almost every country
4 around the world is going -- they may not be there
5 yet and we're not really there yet, but they're
6 all going toward this mandatory clearing. So if
7 you're going to clear the swap, let's just talk
8 about swaps, you're going to reduce, in my view, a
9 lot of the systemic risk. And so if you clear the
10 swap, even if you're a non-U.S. person dealing
11 with a U.S. person, so we might have this cross
12 border issue, but if the underlying swap is
13 ultimately cleared, either here or the DCO here or
14 a CCP somewhere else, is that clearing concept
15 sufficient to not count that swap toward the de
16 minimis test.

17 In other words should the \$8 billion
18 really deal more with an uncleared swap world or
19 should a cleared swap be included or not included
20 in this "de minimis" test? Anyone have any
21 thoughts on that? Bryan.

22 MR. DURKIN: I think you raise a very

1 interesting point and I'm now going to go back to
2 what we've done on the energy markets that, you
3 know, these products have been recognized at the
4 CME group as futures. The way of getting the
5 trades into the system may have been a bit
6 different but be that as it may, those trades were
7 always brought into a centrally cleared
8 environment. And so the risk management and the
9 risk management concerns that Dodd-Frank evolved
10 as a result of what didn't exist in the bilateral
11 markets were there, yet we still have the
12 situations where people are concerned about the de
13 minimis standard applying. And what's the point
14 of that de minimis standard as these transactions
15 are moving into that clearing mechanism and always
16 have. So it's a great point that you raise.

17 MR. FILLER: Chuck, any thoughts from
18 your perspective on going to a cleared environment
19 should be the main focus and not rather or not you
20 have 8 billion or 6 billion or 100 billion?

21 MR. VICE: I don't really have a view
22 whether which swaps should count toward the de

1 minimis or not. I guess I do agree that I think
2 the primary goals of Dodd- Frank, remove systemic
3 risk, increase transparency, whether you talk
4 about that from a post-trade standpoint or a pre-
5 trade standpoint, I guess, at a high level as an
6 operator of multiple regulated entities around the
7 world, our concern is just around the level of
8 prescription and the rules generally. I mean, and
9 that goes beyond just swap dealer definitions and
10 it applies to the U.S. and Europe. Because we are
11 -- we haven't talked about this today, it's not on
12 the agenda, but given that it's a form of
13 international regulators, some of whom are
14 regulated by -- you know, we've got a lot of
15 overlapping conflicting regulation particularly in
16 our clearinghouses.

17 And so the whole equivalence thing and
18 recognition we've talked about with regard to
19 swaps dealers and I think is good with regard to
20 exchanges. Foreign Boards Of Trade could use a
21 little work on the clearinghouse and to -- because
22 you can see more conflicts coming down the road as

1 the ESMA provisions move along. So a little off
2 topic, I apologize but I don't really have strong
3 feelings on your particular question.

4 MR. FILLER: Sorry, George?

5 MR. CRAPPLE: From the point of view of
6 systemic risk, I think it should be noted that
7 managed money in the foreign exchange market
8 trades on a fully margined basis. And the margins
9 tend to be at least as high as on the IMM. And I
10 think your point about if a swap is liquid enough
11 to be traded on an execution facility and then
12 could be cleared, then you've got something that
13 is really akin to a futures contract and its
14 margin. But I think that probably the more
15 important point is that it's margined. In the
16 foreign exchange markets, very liquid, not
17 centrally cleared and we trade on margin and we
18 get margin calls, and, I mean, I think that that
19 kind of trading should certainly be excluded from
20 the de minimis rule.

21 MR. FILLER: Bob, do you have a comment?

22 MR. KLEIN: I was just going to say that

1 if your question is should an entity be required
2 to register as a swap dealer and comply with all
3 of the attendant regulatory obligations of a swap
4 dealer, because it is engaging in the activity of
5 entering into swaps that are immediately submitted
6 to clearing and are cleared, I think if you step
7 back and look at the purposes of requiring a
8 registration, the question answers itself. The
9 statute proposes regulation of swap dealers for, I
10 think, two general buckets of reasons. One is to
11 manage and control systemic risk by requiring them
12 to be overseen and have capital requirements and
13 effective risk controls and also for transparency
14 and risk disclosure.

15 And I think if all an entity is doing is
16 cleared swaps, both of those are taken care of in
17 that clearing mechanism. That simply by clearing
18 the swap you effectively manage your exposure,
19 you're required to margin the transaction, you get
20 the transparency of clearing it through a cleared
21 environment where there's a clearinghouse dealing
22 mark-to-market. The counterparty would also have

1 to clear the swap and enter into clearing
2 documentation where it would receive disclosures.
3 So I think from that perspective the policy
4 argument doesn't really hold up very well, just in
5 that context.

6 MR. FILLER: Sorry, any other thoughts
7 on U.S. Person or are we -- beat the thing pretty
8 hard. So anyone else about a U.S. person?

9 So the second topic that we had raised
10 for discussion and a lot of it was discussed
11 earlier this morning, so I'm not sure -- let's
12 throw it out for open discussion. What more is
13 this "substituted compliance" aspect, and we've
14 already been talking about it. And I think the
15 gentleman from -- Emil from European Commission
16 talked about we need to work together, meaning all
17 the regulators from around the world need to work
18 together and come up with what those standards or
19 tests are for the comparable regulatory structure.
20 But does anyone have any thoughts? Is that the
21 right approach? Any thought of who should have
22 the -- just how do you determine this

1 comparability? Anyone have any thoughts on that?
2 George?

3 MR. CRAPPLE: This is not a cosmic
4 thought, but it seems to me the thing that has
5 turned out to be the most important in
6 comparability is bankruptcy law. Very
7 incomparable.

8 MR. FILLER: I can talk all day on that
9 point, so I'd be glad to. Sorry, any other
10 thoughts on substituted compliance? Jiro?

11 MR. OKOCHI: Yeah, I think the only
12 comment I would have was addressed very
13 extensively this morning. But I looked at the
14 swap day reporting substituted compliance and if
15 the different jurisdictions could allow direct
16 access to the commission then that would be pretty
17 reasonable. But then as the opinions went around
18 the table, it became clearer and clearer that it
19 wasn't such a simple solution. So taking the most
20 simple, in my opinion, use of that benefit and
21 then you hit the privacy laws, it just really
22 uncovers how complicated this is, especially given

1 all the gaps that there are between the different
2 rules.

3 MR. FILLER: I think you raise a very
4 important point and one of the issues that
5 regulators around the world have to deal with.
6 And they've been going through or instituting,
7 implementing memorandum of understanding among the
8 countries and part of those MOUs is really to
9 share information. And to the extent the world
10 can share more information through the MOUs I
11 think it's a better world and provide greater --
12 as Emil said, we're trying to close those
13 loopholes, and that's a very important way of
14 doing it. But anyone have any other thoughts on
15 the details or what the -- I'm sorry, Dan.

16 MR. ROTH: Just a question with respect
17 to secrecy laws and the sharing of information.
18 Again, under Part 30 there have been MOUs and
19 information sharing arrangements between the
20 commission and foreign regulators regarding Part
21 30 firms forever or 1987, whichever came first.
22 But I just don't understand why the secrecy laws

1 are an impediment with respect to swaps when they
2 have not been an impediment to information sharing
3 on futures and maybe that's just my own ignorance.

4 MR. FILLER: Well, I'm not a privacy
5 expert, so I will defer, but I think is the
6 difference when the governments share versus when
7 private institutions or firms share. So I think
8 for -- the privacy laws protect the customers or
9 individuals in those countries and prohibit
10 companies from sharing that -- I could be wrong on
11 that, I'm not an expert. But --

12 MR. ROTH: I would think we'd still want
13 information sharing from government regulator to
14 government regulator. I would think that that's
15 what we'd be striving for. The only other point
16 I'd make is listen to the discussion both this
17 morning and this afternoon, is that when we talk
18 about substituted compliance, I think we have to
19 be precise in what we mean because I've heard the
20 term used in several different ways here today.
21 Part 30 involves substituted compliance. It's
22 just that, substituted compliance with a

1 comparable regulatory regime in lieu of
2 registration as a condition for an exemption from
3 registration. So there is substituted compliance
4 in Part 30. What we're talking about under the
5 current proposal is substituted compliance for
6 some but not all of the CFTC's requirements, so
7 there'd be registration and some substituted
8 compliance. So I think we have to be precise with
9 exactly which substituted compliance regime we're
10 talking here.

11 And as I mentioned earlier, if it's the
12 proposed version of substituted compliance where
13 firms are required to be registered and can
14 substitute compliance for some but not all the
15 commission's requirements then it does get into
16 this issue whether it's the commission or NFA or
17 whomever, how are we monitoring for compliance
18 with those substituted compliance rules.

19 MR. FILLER: Well, the key part under
20 Part 30 is even though you don't have to comply
21 with specific regulations, you're still subject to
22 the anti-fraud provisions. And that's the consent

1 to jurisdiction aspect of Part 30 that if you want
2 to deal with a U.S. person, you may not commit
3 fraud against that U.S. person and if you do,
4 you're going to consent to our jurisdiction to
5 bring some kind of legal action, enforcement
6 action against you. So the anti-fraud provisions
7 never go away in any kind of comparable regulatory
8 scheme and you don't want to close that loop. All
9 you want to make sure the firms do comply with all
10 the proper approaches.

11 MR. ROTH: Just purely as an aside that
12 people can use at their next cocktail party. I
13 think Part 30 regulations also require firms to
14 consent. The exempt firms have to consent to NFA
15 arbitration programs if a U.S. Customer has a
16 beef. And I think we're still waiting for that
17 first case to come in.

18 MR. FILLER: I'm sorry, Richard, I
19 didn't see you.

20 MR. BERLIAND: I'm just trying to think
21 practically. The biggest challenge of this is all
22 the time constraints. If we had three years to do

1 this, which we did when we started this. The
2 trouble is it's good until now, it's always three
3 years rolling. We always need another three
4 years. The customers need three years, we need
5 three years, it's all I think constrained by the
6 time frame. What we are facing is not new and
7 Jill's already listened to this over lunch. What
8 we are facing is not new to this world. The
9 complexity of different regulators bumping up
10 against each other with activities that take place
11 across border is things that we've been dealing
12 with for the best part of 100 years. I'm thinking
13 about the aviation industry as being probably one
14 of the best examples.

15 The challenges with it is if you end up
16 with a minimum of 10 different interested parties,
17 I use that as an example of the number people
18 represented around the table this morning, is to
19 try and agree something multilaterally amongst
20 that many people on this time frame is, frankly,
21 unrealistic. And that's why we end up with the
22 put your rules out comment and that's the only

1 other way you can deal with it. Because as soon
2 as you try and draft by committee you end up
3 failing to meet the deadline. From a purely
4 practical point of view, at the end of the day, if
5 there was an agreement between the U.S. and
6 Europe, that bilaterally would in my view, set a
7 group of agreed foundations around which the rest
8 of the world could coalesce. You've already
9 captured about 70 to 80 percent of the business,
10 if you just get those two regions together.

11 And I think if there was a way to get to
12 the point where with using IOSCO, which I think,
13 you know, you've got the foundation stones and the
14 form to do it based on the work that's been done
15 here. If we could get a set of agreed principles
16 and it won't solve all of them. I would state
17 remarkably narrative stuff to start off with and
18 then allow others to sign up to it. Exactly as
19 the aviation world agrees, you can choose not to
20 sign up to YKO, the odds are nobody's going to fly
21 to your country, but you have the choice. Sign
22 up, you'll be part of the world global activity.

1 Don't sign up, expect to be left out in the cold
2 and you will then be subject to all the
3 registration rules and everything that we would
4 come in here. But it does seem to me that if we
5 could get a bilateral agreement between Europe and
6 the U.S., the rest of the world will coalesce
7 around that. I think it would seem to be the most
8 practical step to try and get to the type of --

9 MR. FILLER: I assure you that --

10 MR. BERLIAND: -- things that we need to
11 achieve on an absurdly short deadline that we've
12 got.

13 MR. FILLER: I agree 100 percent. I
14 mean those are the two, as you said, from the
15 volume of business alone, that's going to deal
16 with a lot. And to be honest, the two, European
17 Commission and the CFTC and the SEC here are
18 pretty comparable from a timing point of view. I
19 mean two and a half years ago, when they were
20 negotiating Dodd- Frank, we were here and the rest
21 of the world was down here but that time frame --
22 because we all thought Dodd-Frank was going to

1 take effect in 2011. And now we're almost at
2 2013, so that time gap or the regulatory arbitrage
3 gap is closing tremendously and I share your
4 thoughts.

5 COMMISSIONER SOMMERS: I just have a
6 question with regard to the substituted compliance
7 and thinking about conceptually letting IOSCO play
8 a role here. Do we decide on perhaps the five
9 most important principles and say if you're
10 abiding or you have laws enforcing these five
11 principles that you are comparable, and IOSCO
12 develops those sort of high-level principles and
13 you leave it at that? Or how does IOSCO --

14 MR. BERLIAND: So I think if we had
15 three years, I would want to do exactly that. I
16 would want to go back to first principles and
17 indeed a lot of this has been done. You guys have
18 done this at IOSCO. Over the years, there have
19 been whatever it is, the 34 principles have been
20 written, it's not new stuff. I think the problem
21 we're facing though we just don't have the luxury
22 of doing that. We've got two or three areas that

1 are sufficiently challenging at the moment that
2 they could cause major disruptions to
3 relationships between countries and the
4 marketplaces that are acting across border. And I
5 would be inclined to, rather than go back to the
6 drawing board, start with the general principles
7 that have already been stated that many people
8 have been part of forming. But I would focus the
9 efforts on those areas that are causing the most
10 anxiety here.

11 Commissioner Sommers, you listed them as
12 the agenda items in here. We know what the
13 biggest problems are and we've got like days left
14 to solve them. I would focus there and then with
15 the luxury of time, build out from around that.
16 If we could get a set of agreed principles around
17 which we would operate for these specific items
18 and get agreement just bilaterally between the two
19 regions, we can go back and extend, whether it be
20 with a view to harmonization all-around general
21 principles, I would do that later. I wouldn't go
22 back to a grand statement of principles. I just

1 think it's not realistic. We don't have the
2 luxury of the time. So for me, I would just focus
3 on the issues at hand and even if we ended up with
4 bilateral agreements between Europe and the U.S.
5 on these points here and then give others the
6 option to sign up, I think we will have achieved
7 an immense amount.

8 MR. DURKIN: Commissioner, I agree with
9 what Richard said. And I thought it was
10 heartening this morning from the foreign
11 regulators that it seemed as though they would be
12 very open to working towards that end and IOSCO
13 would serve as a good base for people just to
14 start ticking through what those issues are and
15 getting some commonality and agreement. But I
16 thought what I was hearing this morning was they
17 are hungry for that to some degree just to know
18 that substitutability actually will or can apply
19 in this regard. And I thought that the commission
20 sent a very positive message in that regard that
21 you all were open to doing so.

22 COMMISSIONER SOMMERS: Are there other

1 issues that are not addressed in these three
2 topics that we had for this afternoon: The
3 substituted compliance, the conduit issue or the
4 U.S. person? Are there other issues that we have
5 the time to discuss this afternoon, we would
6 appreciate your feedback on. Steve?

7 MR. O'CONNOR: Yeah, just one question
8 for clarification. We're all talking about this
9 extremely aggressive timeline. What exactly is
10 driving that timeline? Is it the G20 commitment?
11 Because many jurisdictions will miss many
12 components of that commitment. Or is it that
13 there is a U.S. CFTC rule event at the end of this
14 year?

15 COMMISSIONER SOMMERS: You know I'm
16 probably not the appropriate person to answer
17 that. The staff that sat through the meetings for
18 the last two days could answer that, I'm sure
19 better. I do think it has something to do with
20 the FSB being part of this dialogue and asking the
21 G20 countries to identify the gaps and the
22 inconsistencies and that asking them to have that

1 done by the end of this year because that's the
2 deadline that was in the commitment. So I think
3 that's part of it. I don't know, Dan, if you have
4 any idea about of the timeline and what -- if
5 there's something more to it?

6 MR. BERKOVITZ: All right, we would, as
7 Commissioner Sommers says, talk about to identify
8 inconsistencies consistent with the G20 and see if
9 there are other areas where we can have some
10 agreement and principles going forward.

11 MR. O'CONNOR: I guess my question is
12 more the ramifications, is it if we can find a
13 little bit more time and get it done properly by
14 the end of March, isn't that better than rushing,
15 try and cobble something together in the 26 days
16 mentioned by Patrick, if you take a long holiday
17 at year-end.

18 COMMISSIONER SOMMERS: I'm under the
19 impression that the deadline is merely for the
20 identification of the gaps and inconsistencies.
21 It's not for a solution to all of those problems.
22 Is that accurate?

1 MR. BERKOVITZ: That's correct. This
2 would not be the final answer to all of the
3 problems. This would be a critical step going
4 forward to see what we have agreement on now and
5 potentially steps going forward, how to address
6 other issues. And this is -- these very issues
7 are what's actually going to be discussed. What
8 can we agree on now, what are the inconsistencies
9 we need to address now, what can be done later?
10 So all this is part of what's actually being
11 discussed.

12 MR. FILLER: Bob.

13 MR. KLEIN: So Dan, I'll take over Ron's
14 role and ask you a question, now that you've sat
15 down next to me. No good deed goes unpunished.
16 Does that mean -- I mean, I think part of the
17 concern here is that roughly on December 29th
18 there will be a multitude of entities that will
19 have to register. And as part of registering,
20 they will have to submit compliance procedures on
21 how they are going to comply with various rules
22 and yet we don't know who's a U.S. person. We

1 don't know how a swap transaction across border
2 between a dealer in Europe and a deal in the U.S.
3 is going to be regulated. There are so many
4 unknowns. Does that mean that the commission is
5 prepared to give people an amount of time where
6 they will not have to comply with those
7 requirements, notwithstanding the fact that they
8 have submitted their registrations?

9 MR. BERKOVITZ: Let me provide a staff
10 answer. Obviously only had staff level on this.
11 Those are all very relevant questions and good
12 questions that staff here in the agency is
13 discussing amongst themselves as we prepare to
14 make recommendations to the commission and how to
15 deal with the transitional issues. I would say
16 that as we have faced these questions, we came up
17 on the October 12th deadline, a number of No
18 Action relief granted in a number of areas to
19 enable the transition to occur with respect to how
20 certain swaps will be counted towards the
21 registration requirement. As we come up with the
22 December 31st deadline, the questions you've

1 raised are very much -- we're very much aware of
2 those. The commission and a number of documents
3 and a number of instances previously stated its
4 commitment to ensure an orderly transition.

5 And where appropriate and where the need
6 has been identified, the commission in certain
7 instances in terms of exemptive orders, the staff
8 in other instances in terms of No Action Letters,
9 has take a number of actions to ensure the orderly
10 transition. So, yes, those are exactly the
11 questions we're looking at. But I would say to
12 date that we have attempted to be responsive and
13 attempted to ensure that the transition does occur
14 in an orderly manner. Where there's a technical
15 necessity, where there's questions, we have
16 provided additional time. On the other hand, it
17 hasn't been just a blanket, we give everybody more
18 time. We've tried to do it on a very case-by-case
19 basis where the need has been identified.

20 MR. KLEIN: And I think timing is of
21 paramount importance here because people are
22 genuinely trying to come into compliance with the

1 commission's rules. But it's extraordinarily
2 difficult to put all this in place. It's a very,
3 as you know, a complicated regulatory regime. And
4 when you're looking at unanswered questions about
5 who has to register, what rules apply to what
6 transactions done where by what employees with
7 what counterparties, it becomes an incredibly
8 difficult puzzle to try and solve to do what needs
9 to be done to come into compliance with the rules.
10 And I think that giving people additional time is
11 absolutely essential to avoid market disruptions.
12 And I think also the unintended consequence of
13 having the implementation of the regulatory regime
14 pick winners and losers in the market evolution.
15 I think people talk about level playing fields and
16 I think timing is probably the most critical
17 element in ensuring that regulators are not
18 inadvertently picking winners and losers as the
19 market adjusts to the new regulatory environment.

20 MR. FILLER: Okay, so I want to ask a
21 question of my two lawyers, Bonnie and Bob. So I
22 wonder if you had done any thinking on this issue.

1 And the issue in question is obviously swaps are
2 traded so much differently than futures. Swaps
3 you might have one party negotiate the swap but
4 it's booked in another entity and that's what we
5 call the conduit theory. And one of the issues
6 raised by Commissioner Sommers on the regulation
7 of conduits, is it proper to regulate both? Is it
8 proper only to regulate where the swap is booked
9 as the entity for purposes of regulation? Does
10 the firm that "solicits," negotiates the swaps?
11 From a regulatory perspective, policy perspective,
12 what's the right answer? Bob.

13 MR. KLEIN: I think you have to go back
14 to the primary purpose of the regulations. And
15 the regulations are for transparency, safety and
16 soundness and to some degree customer protection,
17 although I would argue that that may be overstated
18 in an institutional only market but I think it's
19 still a valid consideration. And so the question
20 is, do you need to regulate every single person in
21 every single location that might have anything to
22 do with the transaction? And my answer would be,

1 no, you need to regulate appropriately to achieve
2 the goals of the regulation. I mean, to step back
3 to a futures or securities environment, there are
4 firms active in the market now that might have
5 back office systems in one place, they have
6 employees in different places than their corporate
7 headquarters. They may be facing counterparties
8 in different locations.

9 Over time the system has evolved to
10 provide registration requirements and exemptions
11 and exceptions to those requirements. I think the
12 challenge here is that we're doing all this in a
13 big bang. When you've got a preexisting global
14 market, as others noted this morning, and global
15 regulators are trying to come up in one fell swoop
16 with a regulatory regime for that market, it makes
17 it very challenging. But I don't think you need
18 to -- I think it's going to create more problems
19 if you try and get the last 5 percent of what
20 might be out there, in bringing it under your
21 regulatory umbrella. And you're going to get a
22 lot more bang for the buck and a lot less

1 disruption if you focus on the first 50 percent.

2 MR. FILLER: Bonnie.

3 MS. LITT: Well, and I do think -- we
4 said a little bit of this before. But I think in
5 their ultimate sense, the conduit rules are
6 focused on people who are trying to use some kind
7 of surreptitious means to get out of the scope of
8 Dodd-Frank, and because ultimately they're backing
9 off risk to a U.S. person. But, you know, one
10 great thing about Dodd-Frank is there is
11 significant, clear, black-and-white, anti-evasion
12 authority. And I really think that, at least at
13 this point in the process, as Bob talks about,
14 we're launching so many things all at once, I
15 don't know that the conduit analysis is essential
16 for startup. It just feels like it's trying to
17 make sure that you have every possible base
18 covered and instead maybe we should allow
19 Dodd-Frank to take off with what's obvious, which
20 is when U.S. swap dealers -- or swap dealers deals
21 with U.S. persons directly.

22 And then if you guys, as regulators,

1 feel at some point in time that there are
2 significant abuses because of the kind of things
3 that the conduit rules are designed to affect,
4 that can be the subject of later interpretation.
5 But I just -- you're certainly not -- the CFTC is
6 not left unprotected against some of the things
7 that the conduit rules are designed to do.

8 So I do think that as all the comment
9 letters on this topic have pointed out, there are
10 very legitimate reasons why, for risk management
11 purposes either on the part of our clients or on
12 the part of firms like Goldman Sachs, why people
13 would back off risk into other entities that have
14 nothing to do with evasion of Dodd-Frank. And
15 really have to do with centralization of risk,
16 again, both from a client perspective and from a
17 swap dealer perspective. So I'm surprised to see
18 them at this stage in the rulemaking process
19 because I think they're chasing at something that
20 may not actually be a problem at all.

21 MR. FILLER: Thank you. Commissioner
22 Wetjen, did you have a question?

1 the question is that doesn't strike me as soon --
2 as a terribly unreasonable approach even if it
3 were to require registration, you know, sometime
4 relatively soon. It would require basically
5 updating your compliance plan; you'd have to do it
6 at least once. You'd have to demonstrate and
7 comply with your transactions with rules, with
8 respect to transactions with U.S. person and you'd
9 have to come up later, per the NFA, and once this
10 other process, this international process is
11 complete, make a due demonstration at that point.
12 It doesn't strike me as a terribly unworkable way
13 to do this, but I guess I asked that in the form
14 of a question. Is it?

15 MR. ROTH: I can tell you from our point
16 of view it would just simply be a question of
17 stretching out the period of time in which 4s
18 submissions have to be made. And there'd be a
19 smaller of 4s submissions that had to be made
20 initially. Provisional registration would be
21 granted. The provisional registration would stay
22 in place for a longer period of time and it

1 wouldn't convert to a full registration until a
2 later date. That's certainly not a problem from a
3 processing point of view.

4 MR. KLEIN: I think there are two
5 interrelated questions. One is when do you have
6 to comply with the rules? And what rules do you
7 have to comply with? And I think that your
8 approach is a very good solution to when you have
9 to comply with the rules. I think there's an
10 underlying issue that we've all been sort of
11 talking about, is what rules do you actually have
12 to comply with? Are all of the proposed and final
13 rules necessary to accomplish the G20 commitments
14 and the statutory goals? And I think that's a
15 somewhat different answer. I mean, I would argue
16 that -- and I was interested to hear Robert Cook's
17 comments this morning about how they are actually
18 looking at the data that's now available through
19 the SDRs in fashioning that regulatory regime. I
20 think the commissions have the luxury of this
21 impending flood of data from swap data
22 repositories.

1 And if there are concerns about whether
2 there's evasion through conduits or through other
3 aspects, you're going to have data to be able to
4 look for those kind of things. And maybe the
5 answer is rather than trying to adopt a
6 prophylactic rule that has unintended consequences
7 now, you hold off, you look at the data and if you
8 think there's a problem then you can address it.

9 MR. FILLER: Okay. I know there's a
10 storm brewing up in New York and I know many of
11 you need to catch a train very quickly. So let me
12 just conclude or ask one question around the
13 table. And I'm going assign a magic wand to each
14 of you. And each of you have the right to pick
15 one rule of the cross-border guidance proposal
16 that you would like to see changed. Okay? One
17 rule and one rule only, not two. What rule would
18 you say? What are the comments you want to share
19 with the commission? What is the most critical
20 issue that you see among the cross-border guidance
21 proposal that you believe should be modified or
22 changed or removed? Bonnie, your light's on from

1 before, so you're stuck with it.

2 MS. LITT: You know, the only way I can
3 answer that is I think the agenda that you and
4 Commissioner Sommers picked for this meeting was
5 perfect. I mean, I think the U.S. person
6 definition is very problematic as proposed. I
7 think the focus on rule-by-rule substituted
8 compliance at a firm level is concerning and
9 actually not consistent with the commission's
10 approach to global regulation previously. And I
11 think there are a number of rules with the conduit
12 definition being one example. I think some of the
13 regulation of companies based on common control or
14 things like guarantees are also examples. But I
15 think that just the general overreach of the
16 proposal beyond what is obviously within the scope
17 of Dodd-Frank is a concern.

18 So, sorry, that's a bit of a copout but
19 I think you guys got it right. I think these were
20 the right issues.

21 MR. FILLER: Jim, your thoughts.

22 MR. LUBIN: I don't know if there's one

1 rule to get rid of, but I think Richard's point
2 was valid earlier as finding some consensus, maybe
3 around the leading regulators and working forward
4 in a smaller fashion to resolve it. But I think
5 maybe reiterating what Richard said, don't bite
6 off more than you can chew initially, but let's
7 find a -- what's the most three salient points or
8 five salient points and find consensus with the EU
9 and bring others in to comply or to agree or not.
10 So I think that would be the approach.

11 MR. FILLER: Thank you. Steve, any
12 thought from your perspective?

13 MR. O'CONNOR: Same as him. I think
14 substantive compliance and I got the feeling today
15 that the EU is pretty convinced that they've got a
16 fantastic rule. So let's sit down and work with
17 them and work out what's wrong with that and
18 partner with them to come up with some rule that
19 makes sense for everybody.

20 MR. FILLER: Thank you. Jiro.

21 MR. OKOCHI: You said magic wand, right?
22 So I'd suggest line up the dates to the

1 international regulation. So why -- election
2 happened yesterday, we know the results, now let's
3 line up the dates so we all can see each other's
4 rules and pick the right date. I think the date
5 is more important than the gaps which we'll never
6 fill because it's principles-based internationally
7 versus more rule-based here. So I think it's
8 going to be very hard to close those gaps.

9 MR. O'CONNOR: I take back my answer.
10 (Laughter) I want all regulators globally to move
11 to the same rulebook on the same day.

12 MR. FILLER: Dan.

13 MR. ROTH: Just to follow up on a point
14 that Dan made. To the extent that continuing
15 uncertainty requires the commission to push back
16 certain deadlines, the sooner that's pushed back,
17 relief granted at the eleventh hour doesn't
18 relieve anxiety quite as much as relief granted at
19 an earlier time. So if that's the direction we're
20 moving in, and I don't know that it is, but if
21 that's the direction we're moving in, something
22 prior to December 30th would be a good thing.

1 MR. FILLER: Chuck, from your
2 perspective.

3 MR. VICE: I guess I would just repeat
4 it, something I said earlier. This theme of
5 mutual recognition and equivalence with regard to
6 participant registration or swap dealer
7 regulation, equal focus on leveraging that
8 international cooperation with regard to
9 clearinghouses and exchanges given that both U.S.
10 and in Europe new core principles with financial
11 reform are ever more prescriptive on both those
12 institutions. So there's an increasing
13 opportunities for clearinghouses and exchanges to
14 be caught with two different requirements from two
15 different regulators to serve the same global
16 market.

17 MR. FILLER: Thank you. Bob.

18 MR. KLEIN: Being a lawyer, rather than
19 answer your question, I'm going to incorporate by
20 reference the sources for the answer. I jotted
21 down some notes of things I wanted to mention
22 today. And I was pleased and somewhat surprised

1 that as I was listening to this morning's
2 discussion, I ticked all of them off. So I think
3 this morning's discussion is incredibly helpful.
4 And I would also note that my institution filed
5 its own comment letters on both the ET guidance
6 and the exemptive order. We really tried to make
7 those comments short, concise and constructive and
8 I would just point to those.

9 MR. FILLER: I thought you were going to
10 say you wanted all swaps converted to futures so
11 you don't have to negotiate any more addendums,
12 but I guess I was wrong. Bryan.

13 MR. DURKIN: It's repeating everything
14 that everybody's said. But just some clarity on
15 mutual recognition. I think that there was
16 definitely some representation in the cross-border
17 release. We believe that it makes absolute sense;
18 we're very supportive of it. But I think hearing
19 around the table this morning, we need to really
20 work towards providing that clarity as to what
21 that means to the foreign regulators. And we need
22 to make sure that reciprocity is included in that

1 context as we look at approval of foreign CCPs and
2 how reciprocally we're treated in that regard.

3 MR. FILLER: Thank you. David.

4 MR. DOWNEY: Just like Richard
5 mentioned, that this is one part of the world
6 where people can do tit for tat. Earlier Emil
7 mentioned that -- and he really pointed out that
8 they were prepared to be flexible. And I think it
9 would be a perfect time for us to reciprocate.

10 MR. FILLER: Thank you. George.

11 MR. CRAPPLE: I think that this tsunami
12 of registrations that Dan is going to have to deal
13 with could be limited a little bit by saying that
14 the \$8 billion rule doesn't apply to exchange
15 traded at cleared swaps or margined swaps.

16 MR. FILLER: Thank you. Richard.

17 MR. BERLIAND: I've got only a single
18 piece of advice. And that is that I think if we
19 made the process a little more iterative and I
20 think as Bob said we were focused on the big
21 things that mattered out front, get them in place.
22 And then essentially sock it and see we've got all

1 the luxury in the world of catching these other
2 things, which I think staff at the moment are
3 understandably concerned about. But we've got the
4 luxury of cleaning them up as the time goes by. I
5 think we are trying to do too much in too short a
6 period of time. And I don't think we have to get
7 to 100 percent perfection. If we can get to 90
8 percent now and fine-tune it, I think that will be
9 great.

10 I think a lot of us underestimate how
11 Dan's world, the CCPs, the exchanges, the amount
12 of new things we are trying to do are enormous.
13 And I, certainly sitting on the board of one of
14 the large exchanges, clearinghouses and CSDs in
15 Europe, do not underestimate the level of
16 responsibility that we have on our shoulders to be
17 able to execute this properly. And it would help
18 immensely if we can keep stuff simple and then as
19 we learn more, adjust rather than try to get
20 perfection on day one. And, therefore, iterative
21 is my single word of advice.

22 MR. FILLER: Commissioner Sommers, I'm

1 sorry.

2 COMMISSIONER SOMMERS: No, it's okay. I
3 just wanted to say thank you to all of the GMAC
4 members for setting through not only this morning,
5 which I thought was a very productive discussion,
6 but being here this afternoon, spending the whole
7 day with us to help us get all these issues right.
8 So I appreciate all of your participation.

9 COMMISSIONER O'MALIA: Let me echo your
10 sentiments as well. Thank you all to the GMAC
11 members. Ron, thank you for your help today
12 facilitating this. The one takeaway today, Mr.
13 Kono said it regarding the commission rules,
14 direct and insignificant is way too broad and the
15 substituted compliance is way too narrow. And we
16 have to bring that together. That has got to be
17 reconciled and I think that was reflected in a lot
18 of your concerns here today, that was obviously
19 reflected in the concerns of the international
20 regulators. So that's my takeaway. So,
21 Commissioner Sommers, thank you very much for
22 doing this.

1 MR. FILLER: Commissioner Wetjen,
2 anything or Dan?

3 COMMISSIONER WETJEN: I just wanted to
4 go with what else has been said by the others.
5 Thank you, Jill, for putting this together. This
6 is extremely useful, very, very helpful.

7 MR. FILLER: So before we just conclude
8 today's session, I do want to thank all of you and
9 I am, as I said earlier, I'm very humbled and
10 honored to be here. And I look at this as a
11 partnership, joint venture among Commissioner
12 Sommers, myself and all of you. And I think some
13 of the things we need to think about going forward
14 is what are the other issues that are of interest
15 to this group. You are the best and the brightest
16 in the industry. And I hope we can come up with
17 some other new concrete proposals down the road.
18 And I've always been a big customer asset
19 protection and George mentioned it earlier. I
20 mean, one of the lessons we learned from Lehman is
21 that the bankruptcy laws around the world need --
22 I mean, we can't change that, requires parliaments

1 around the world to change the laws, but those are
2 critical issues that we might want to deal with
3 from a topic perspective and just start that
4 discussion. But if you have anything else on your
5 plate that you think would be of interest to this
6 group to discuss, if you could just send those
7 thoughts to Commissioner Sommers and myself, and
8 we'll try to put together our programs in the
9 future.

10 So I want to thank all of you. That was
11 a great discussion not only this afternoon but
12 this morning. And I hope all of you have some
13 safe travels, especially those of you going back
14 to New York. Thank you very much.

15 (Whereupon, at 3:53 p.m., the
16 PROCEEDINGS were adjourned.)

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DISTRICT OF COLUMBIA

I, Christine Allen, notary public in and for the District of Columbia, do hereby certify that the forgoing PROCEEDING was duly recorded and thereafter reduced to print under my direction; that the witnesses were sworn to tell the truth under penalty of perjury; that said transcript is a true record of the testimony given by witnesses; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this proceeding was called; and, furthermore, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.

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