

UNITED STATES OF AMERICA
COMMODITY FUTURES TRADING COMMISSION

OPEN MEETING ON TWO FINAL RULE PROPOSALS
UNDER THE DODD-FRANK ACT

Washington, D.C.

Thursday, September 8, 2011

1 PARTICIPANTS:

2 Commission Members:

3 GARY GENSLER, Chairman

4 BART CHILTON, Commissioner

5 MICHAEL V. DUNN, Commissioner

6 JILL SOMMERS, Commissioner

7 SCOTT D. O'MALIA, Commissioner

8 Staff:

9 DAVID STAWICK, Office of the Secretariat

10 Presentation No. 1: Consideration of Notice of
11 Proposed Rulemaking on Mandatory Clearing and
Trading Information:

12 DHAVAL PATEL, Office of General Counsel

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15 GARY BARNETT, Division of Swap Dealer and
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19 Presentation No. 2: Consideration of Further
20 Notice of Proposed Rulemaking on Documentation and
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5 Presentation No. 3: Consideration of Final Rules
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P R O C E E D I N G S

(9:38 a.m.)

CHAIRMAN GENSLER: Good morning. This meeting will come to order. This is a public order of the Commodity Futures Trading Commission to consider proposed rules under the Dodd-Frank Act.

I'd like to welcome the public, market participants, and members of the media, as well as those listening to the meeting on the phone and watching this webcast. I'd also like to thank Commissioners Dunn, Sommers, Commissioner Chilton, Commissioner O'Malia, for their significant contributions to the rule writing process. And I'd like to thank the hardworking staff of the CFTC, who have been working day and many a night and weekend to bring these rules and recommendations before us.

During today's meeting the Commission will consider two proposed rules regarding implementation schedule for swap transaction compliance. We also will consider an

1 International Organization of Securities
2 Commissioners Report, what many people call IOSCO,
3 on the Principles for the Regulation and
4 Supervision of Commodity Derivatives Markets.

5 This week I think it's appropriate for
6 us to remember September 11, 2001. Ten years ago,
7 the CFTC's New York office was on the 37th floor
8 of the World Trade Center's North Tower, and that
9 morning 56 members of the CFTC staff were in
10 harm's way when the planes hit the towers.

11 Thankfully, each of the members of our staff made
12 it out of the area safely, but far too many people
13 did not. And we all take a moment on Sunday to
14 remember the fallen and to praise the heroes who
15 saved lives.

16 The response from the other CFTC
17 offices, as well as our New York office, was to
18 rally around all of our colleagues in the
19 aftermath of that attack. Many of the staff
20 members from New York still work for the CFTC.
21 And remarkably, the CFTC seal from the North Tower
22 was actually recovered at Ground Zero in 2002 and

1 now is displayed in our New York office. We also
2 commend our many friends in the New York futures
3 industry which was deeply affected by the attacks.
4 Through devastation and personal losses, the
5 industry worked together night and day to quickly
6 restore market operations.

7 Today is our 19th open meeting on
8 Dodd-Frank rules. We largely completed our
9 proposal phase this spring and the CFTC's first
10 step really in implementing financial reform.
11 This summer the Commission turned an important
12 corner, the second major step really, turning
13 towards final rules to make the swaps marketplace
14 more transparent for participants and safer for
15 taxpayers. And today we finish, I believe, its 12
16 final rules, and we have a full schedule of
17 meetings in front of us. The rules we'll consider
18 today are about the timing for compliance with new
19 rules. Compliance, in essence, represents the
20 third major step once rules are in place -- what's
21 the implementation and compliance schedules -- to
22 make financial reform a reality and to protect the

1 American public.

2 I'd like to take a moment to discuss
3 what we may consider between now and the end of
4 the year on Title VII and some of those rules that
5 we may more likely take up after the New Year. A
6 more complete list will be available on our
7 website, but let me start by just focusing on some
8 of these rules. And we're going to consider rules
9 thoughtfully. We're not going to do it against a
10 clock. No doubt this is a human endeavor and
11 there are likely to be many changes of any
12 outlying down the road. And we'll continue to
13 reach out broadly to other regulators, both here
14 and abroad, for their input as we consider the
15 many thousands of comments that we've received.

16 The next two items on our queue for the
17 CFTC to consider are rules related to
18 clearinghouses, core principles, and position
19 limits. In the last quarter of 2011, we also hope
20 to consider final rules on entity and product
21 definitions, both of which are joint rules with
22 the SEC. So it's going to -- it's a lot for two

1 commissions to lock arms and bring together, but
2 important underlying for many of our other rules.

3 In addition, we hope to consider final
4 rules on swap data recordkeeping and reporting,
5 real-time reporting, and regulations related to
6 trading platforms called designated contract
7 markets or exchanges and foreign boards of trade.
8 All of these rules once considered will help the
9 swap markets to be more open and transparent. And
10 we're looking at considering external business
11 conduct and internal business conduct. This is,
12 in essence, how the swap dealers themselves manage
13 their risk and supervision and conflicts, but also
14 how they relate directly to the public. And we
15 anticipate seeking public input on the application
16 of something called Section 722(d) of Dodd- Frank.
17 This relates to which transactions come within the
18 jurisdiction. Sometimes people call it
19 extraterritoriality.

20 Now, much like we did on July 14th of
21 this year, I think this fall we will also consider
22 further exemptive relief from the application of

1 Dodd-Frank's Title VII requirements. And I've
2 already directed staff to draft recommendations
3 with relief appropriately tailored. For instance,
4 if we complete product definitions further
5 defining the term "swap dealer," for instance, or
6 further defining the term "swap," the exemptive
7 relief might take on a little bit different form
8 or words than it did in July. But I've already
9 directed staff so that market participants could
10 have that clarity and that confidence going into
11 later this year.

12 Let me also highlight some of the roles
13 that we expect will be taken up after the first of
14 the year. As part of the effort to make the swaps
15 market more open and transparent I would
16 anticipate we'd turn to the final rules on swap
17 execution facilities, but probably not before the
18 end of the year. The agency has been working also
19 very closely with other regulators here and abroad
20 on capital margin rules, but as they were proposed
21 later in the timeframe, I'd expect those, too, to
22 be after the first of the year. And right now

1 looking towards the first quarter, we also would
2 look to finalize rules on documentation and
3 something called straight-through processing and
4 other client clearing issues, some of the
5 segregation rules. And again, a more detailed
6 list will be available on our website. And this
7 is really just a tentative outline to give market
8 participants a better sense of how this might
9 unfold.

10 In addition, I'd like to take a moment
11 to talk about the process for clearing mandate
12 determinations. In July, the CFTC finalized a
13 rule on the process for review of swaps for
14 mandatory clearing and it will be effective on
15 September 26th of this year. Under this
16 congressionally mandated process, the Commission
17 has 90 days to review a clearinghouse's submission
18 and determine whether the swap is required to be
19 cleared. And though much of the timing will
20 actually be decided by the clearinghouses, they
21 need to come to us and make some submission to us,
22 it's likely that they will not begin to file

1 submissions until later this fall until we do more
2 rule writing. But, of course, it's up to the
3 clearinghouses. And they might not even come to
4 us this fall, that it's more likely they'd come to
5 us in the winter after various rules that we
6 consider are finalized.

7 Once these submissions come in, the
8 Commission staff will begin to process them. And
9 again, as I said, Congress gave us 90 days to
10 process them. And so though it's quite up to the
11 clearinghouses when they make the submissions, I
12 would anticipate we wouldn't be as a commission
13 looking to do clearing determinations until, of
14 course, into 2012 and, more likely, at the
15 earliest, at the end of the first quarter or into
16 the second quarter of 2012.

17 Now, how does that all fit into today
18 and what we're doing today? I want to turn to
19 implementation phasing. Implementation phasing
20 really relates to the third key area for us.
21 After we finalized the rules, really, how does the
22 market comply with those rules, the timeline by

1 which various market participants bring their swap
2 transactions into compliance with the new
3 requirements, including mandatory clearing and
4 trading, as well as swap documentation and
5 marginining? Recognizing that some market
6 participants may require more time than others to
7 comply, these proposed rules are part of our
8 effort to help ensure there's adequate time to
9 plan for oversight of the swaps market. And the
10 staff reached out broadly on the topic, including
11 two public roundtables with the SEC in May. We
12 also invited comments to our website on
13 implementation phasing, and have been fortunate
14 that market participants have participated in
15 dozens of meetings with staff and commissioners
16 and the comments have been very constructive.

17 The first rule proposed a schedule for
18 phasing compliance with swap clearing and trading.
19 Market participants would be required to comply
20 with the commission-issued clearing mandate, but
21 no sooner than a phasing of three months, six
22 months, or nine months depending upon the swaps'

1 counterparties. The statute actually would allow
2 us to do it earlier, so this is a form of relief
3 in essence. But this timeline would begin only
4 after the mandatory clearing determination which I
5 just discussed. And it was at least my
6 anticipation, and I can't speak for the
7 clearinghouses, but it's my anticipation that that
8 determination is probably at least six months
9 away, if not longer, depending upon when the
10 clearinghouses come and knock on our doors this
11 fall or winter.

12 In addition, the proposal states that no
13 market participant would be required to comply
14 with the clearing mandate before the Commission
15 finalizes certain key roles. In essence, until we
16 finalize further defining swaps, further defining
17 swap dealer, and some key roles with regard to
18 segregation, if I recall.

19 So market participants will have time to
20 make plans for compliance. Of course, we're going
21 to seek public comment on this when it's just a
22 proposal, but the idea is really to phase this and

1 allow market participants time to make the
2 planning of the back office and their
3 documentation and so forth. In terms of the
4 trading requirement, market participants would
5 have at least 30 days after the swap became
6 available for trading on the facility or the
7 contract market or swap execution facility brought
8 the trading requirement forward.

9 The second proposal is an implementation
10 schedule for trading documentation and margin
11 requirements. Again, as I said earlier, I think
12 we will not take up those final rules until after
13 the first of the year. Final rules with regard to
14 documentation and margin requirements. But today
15 we are sort of -- I guess it's further proposing
16 if I have the technical term right -- those rules
17 to get input on compliance. And again, this
18 compliance schedule would apply to swap dealers
19 and major swap participants that have to come
20 under the documentation rules, but would give
21 three months, six months, and nine months
22 compliance schedule again for their

1 counterparties. And as we're not going to be
2 taking those rules up probably in final form for a
3 number of months, this is really, again, a phasing
4 throughout 2012 potentially.

5 The Commission is seeking public input
6 on these proposed rules which apply to the core
7 areas of Dodd-Frank reform. They're designed to
8 smooth the transition from unregulated market
9 structure to a safer market structure. And more
10 information regarding the proposals will be
11 available in fact sheets and Q&As, and of course,
12 the documents themselves. What we're considering
13 today are not the only opportunities that the
14 Commission will have to phase implementation of
15 final rules.

16 As we progress on each of the major
17 roles, we'll be continuing to look at appropriate
18 timing for compliance. Sometimes it's a
19 compliance for the clearinghouse itself as opposed
20 to market participants more broadly or for the
21 swap execution facility itself. And each time
22 we'll be balancing the desire to protect the

1 public while providing adequate time for industry
2 to comply with these new rules. When all of our
3 Dodd-Frank rules are completed, I believe that it
4 is appropriate that the Commission take a step
5 back at the right time in the future. It might
6 not be immediate, but to take a step back at the
7 right time in the future and carefully evaluate
8 the new regulatory landscape as a whole and how it
9 is actually working. This is another part of our
10 efforts to thoughtfully implement the reforms of
11 the Dodd-Frank Act.

12 But until the CFTC completes its rule
13 writing process and implements and enforces these
14 rules, the public does remain unprotected from
15 Congress' broad reforms. That's why the CFTC is
16 working so hard to ensure that the swaps market
17 reform promotes a more open and transparent
18 market, lowers costs for companies and their
19 customers, and protects taxpayers.

20 So I went a little longer here today
21 than I normally did, but I wanted to go through
22 some of the thinking on the schedule. Certainly,

1 if other commissioners have questions for me I'll
2 even take them because we're allowed to
3 deliberate, but I think we'll lay out on our
4 website some of these initial thoughts. We have a
5 lot in front of us. We're not doing this against
6 a clock. We're going to get each of these in a
7 balanced way and taking into consideration all the
8 comments that are before us.

9 So with that I was going to turn to my
10 fellow commissioners.

11 COMMISSIONER DUNN: Thank you, Mr.
12 Chairman. I want to thank everyone for joining us
13 today at this important meeting. And today we
14 will consider the IOSCO report for Principles for
15 the Regulation and Supervision of Commodity
16 Derivatives Markets.

17 Over the past few years, and
18 particularly in the aftermath of the financial
19 crisis of 2008, it has been clear to all of us
20 that what we do here in the U.S. affects markets
21 around the world. Similarly, actions taken around
22 the world affect the markets here. This global

1 interdependency places responsibility on
2 regulators to not only understand what the impact
3 of our actions will be in our markets, but also
4 what the global impacts of our actions will be.
5 Global interdependency also requires us to be
6 aware of how to protect our markets from the
7 negative impacts of action taken in other
8 financial markets.

9 I have for some time emphasized the need
10 for world regulatory bodies to work in harmony to
11 prevent a future financial crisis, and if another
12 crisis should occur, to face it on a global
13 playing field. I thank Mr. Chairman, the actions
14 taken by the G20, and delegation to the FSB of
15 coming up with principles and the subsequent work
16 on IOSCO developing principles is the best we can
17 do internationally. We're beginning to look at
18 the harmonization together. And I really commend
19 our staff and the staff of IOSCO of putting
20 together these principles.

21 The report we consider today presents an
22 important first step towards this harmonization.

1 The IOSCO report establishes international
2 accepted principles for the regulation and
3 supervision of commodity derivatives market. It
4 is my sincere hope that the principles established
5 in the report will lead to meaningful and
6 consistent financial regulatory oversight and
7 global scale.

8 Now, Mr. Chairman, if we can have a Dunn
9 Set, I think we can have an O'Malia Mark, as well.
10 And the other things we will be considering today
11 I consider the O'Malia Mark. He has been
12 tenacious in trying to get us to do scheduling so
13 that everyone can take a look at what we're going
14 to be doing. And in listening to your opening
15 statements I was reminded of the old Rube Goldberg
16 cartoons. Now, for anybody that's under 50, Rube
17 Goldberg was an artist that used to draw out these
18 very elaborate sketches of how things act. The
19 rooster will crow in the morning. That will
20 startle the cat. The cat will jump. The shade
21 will go up. That will startle the parrot. The
22 parrot will fly off. That will pull the string

1 and the marble will start down. It will start the
2 coffee, click the coffee maker, click the oven,
3 turn the oven on, and set off the alarm to wake
4 the person up to go to work. That's kind of what
5 we're doing right here. We're looking at all of
6 these things that have to take place in some kind
7 of sequence to get to where we are at the end of
8 the day of providing greater protection for not
9 only the United States' public, but the world in
10 the financial industries.

11 And the two proposals we're doing today
12 on the implementation of compliance, dates for
13 final rules that are related to Dodd-Frank, really
14 tells the world what has to take place, where
15 we're going to be, and when do we think these are
16 going to take place. Mr. Chairman, I really
17 commend you on getting public comments during the
18 implementation phasing. It's going to be
19 certainly useful. On May 2nd and 3rd, the CFTC
20 and SEC, as you had said, held a joint roundtable
21 meeting on issues related to implementation. The
22 staff proposed 13 concepts to be considered, and

1 the staff asked questions to be based on the
2 concepts that were outlined. In addition, the
3 Commission reopened the comment period on many of
4 the proposed rules until June 3rd in order to
5 allow comments from the public regarding the
6 entire mosaic of the rules.

7 The comments made at the roundtable and
8 the comments letters from various market
9 participants and the public raised key themes that
10 shape today's proposed rules. While I understand
11 that there are some who would like even greater
12 clarity regarding the timing of implementation,
13 and I welcome the public's comments on suggestions
14 during the comment period, and I believe the
15 proposed rules provide clarity for the industry
16 while simultaneously providing the Commission with
17 the flexibility and information it needs to
18 fashion effective final rules.

19 Mr. Chairman, as you pointed out, we're
20 probably not going to get this entirely right.
21 But the public, the industry, is going to have a
22 number of bites at the apple. If we do a rule

1 that is so wrong, we're going to get flooded with
2 comments immediately on it. And I think we're
3 prudent people. We'll react. We'll change it.
4 If we're landing the airplane upside down, we're
5 going to flip it over. We're going to try to get
6 it right. But regardless of us taking immediate
7 action if we've got some unintended consequence
8 that's going to be out there, folks have the
9 opportunity to go to Congress and change the law,
10 which is what we are implementing. They have the
11 opportunity to go to court to challenge us as to
12 whether or not we have the authority to do what
13 we're going to do. They have the opportunity
14 under the Administrative Procedure Act to petition
15 us to change that regulation and for us to take a
16 look at it after the fact, to establish the
17 efficacy of that rule I think is an excellent
18 idea. I'd like to see us do it within a 12- to
19 18-month period if we had the luxury of resources
20 to be able to do that.

21 Now, as I said that I noticed that a lot
22 of the lobbyists and law firms out there are

1 smiling because this is a great cottage industry
2 for them with all of those opportunities that
3 they're going to have to ensure that we get it
4 right, but it is important that we get it right.
5 And again, Mr. Chairman, I want to thank you and
6 the staff for going that extra mile to try to get
7 as much input as we can upfront so we don't have
8 to go back and rewrite all of those regulations.

9 I'd also like to thank the staff that
10 worked on these proposals that we have today. I
11 appreciate the hard work that you put in and I see
12 that Gary is out there, Barnett, who this is his
13 first opportunity for us to cross- examine him and
14 grill him. And we've got lots of questions, Gary.
15 We'll get to you on that. But again, Mr.
16 Chairman, thank you for providing this opportunity
17 today.

18 CHAIRMAN GENSLER: Thank you,
19 Commissioner Dunn. Commissioner Sommers.

20 COMMISSIONER SOMMERS: Good morning.
21 Thank you, Mr. Chairman. And thank you to all the
22 teams that have worked very hard to have these

1 proposals before us today. The implementation
2 proposals, as well as to the Office of
3 International Affairs, for their hard work on the
4 IOSCO Principles for the Regulation and
5 Supervision of the Commodity Derivatives Markets.

6 I appreciate all of the efforts that you
7 all go to, the long hours that you spend, and I
8 think we all appreciate what you go through to
9 have the proposals in the shape that they are to
10 have before us today. So thank you all.

11 The IOSCO Commodity Markets Task Force
12 was created in 2008 and is co-chaired by the CFTC.
13 Since 2008, our staff has done an outstanding job
14 of identifying issues, working with industry, and
15 highlighting inconsistencies with our fellow
16 regulators.

17 International coordination of
18 regulations and regulatory objectives is critical
19 as we move forward. Without coordinated and
20 consistent international regulatory approaches, we
21 run the risk of doing great damage to U.S.
22 Futures, options, and swaps markets. The report

1 goes a long way to avoid such an outcome.

2 As I have said many times, finalizing
3 the complex rule proposals before us will be a
4 challenge. I have advocated that the Commission
5 inform the public of the order in which we plan to
6 sequence the consideration of final rules and
7 publish a detailed implementation plan. I am
8 pleased that the Commission is posting an outline
9 of its final rule planning through the end of the
10 first quarter of 2012. This is a helpful first
11 step that gives market participants a view into
12 which final rules the Commission expects to
13 consider in the fourth quarter of 2011 and in the
14 first quarter of 2012. I'm hopeful that we will
15 have a more detailed plan that we can publish in
16 the near future. This would be helpful for us and
17 for those who are trying to tailor their business
18 plans and are concerned about being in compliance
19 with the new structure.

20 Regarding the two implementation
21 proposals before us, I reluctantly support both of
22 them. I support them because they give market

1 participants some certainty about implementation
2 deadlines. My reluctance stems from my view that
3 these proposals represent a very narrow portion of
4 what I expected to be an implementation plan. I
5 believe we should have taken this opportunity to
6 attempt to present a comprehensive plan and seek
7 public comment on it. After all, 4 months ago we
8 held a 2-day roundtable on implementation issues,
9 proposed 13 concepts to be considered regarding
10 implementation phasing, and asked a series of
11 questions based on those concepts. Those 13
12 concepts included issues such as market
13 infrastructure and real-time reporting issues
14 which we have chosen not to include today.

15 Establishing an implementation and
16 compliance schedule for all of the Dodd-Frank
17 final rules will be very complicated and it will
18 be based on a series of assumptions about how swap
19 markets operate and how they will evolve. Now is
20 the time for us to attempt to craft a bold and
21 comprehensive plan for public comment. The
22 Commission and the public can only benefit from

1 publicly engaging in that exercise and from
2 challenging our assumptions and our approach to
3 substantially increasing the regulatory oversight
4 of futures, options, and swap markets. I hope
5 that we will take advantage of that opportunity.

6 The process of considering these two
7 proposals have made it clear to me that over the
8 last year the Commission has failed to address a
9 critical component of the trade execution
10 requirement in Section 2(h)(8) of the Commodity
11 Exchange Act, that is what does it mean to make a
12 swap available to trade. Once the Commission
13 determines that a swap must be cleared, all
14 non-end users must execute that swap on a DCM or
15 SEF unless no DCM or SEF makes the swap available
16 to trade. This is a very important provision
17 because if a DCM or SEF makes the swap available
18 to trade, a non-end user participant that enters
19 into a swap bilaterally will be violating the CEA
20 and will be subject to an enforcement action.

21 In other sections of the CEA, Congress
22 used the phrases "list for trading" and "listing

1 for trading." By using the phrase "makes
2 available for trading" in Section 2(h)(8),
3 Congress must have meant something different than
4 list or listing for trading. Unfortunately, our
5 DCM proposal was completely silent on the matter
6 and our SEF proposal was ambiguous at best. The
7 trade execution requirement is a critical
8 component of the new regulatory regime. Allowing
9 an exception to the trade execution requirement to
10 remain vague and undefined or worse yet, defined
11 on an ad hoc basis by market participants would be
12 irresponsible. The Commission should clarify who
13 makes the determination. I'm sorry. The
14 Commission should clarify who makes the
15 determination that a swap is made available for
16 trading and define how that decision will be made.

17 Before concluding my remarks, I must
18 point out that since the Grain Futures Act of
19 1922, Congress has recognized the importance of
20 maintaining the confidentiality of trader
21 positions. The recent release of protected
22 Section 8 material is a serious breach that could

1 undermine the integrity of our markets and our
2 ability to work closely with our international
3 counterparts. I am disappointed that in the face
4 of such a serious breach this Commission has
5 remained silent.

6 In 1947, the Secretary of Agriculture
7 refused to disclose to Congress trader names and
8 positions without a request from Congress in the
9 form of a joint resolution. In 1975, the CFTC
10 issued a policy statement that insisted that prior
11 to complying with a congressional request for
12 confidential position information, the request
13 must be put to a vote of the relevant
14 congressional committee. I understand that the
15 law requires us to furnish this kind of
16 information to committees of jurisdiction, but I
17 believe the time has come for this Commission to
18 establish a process to better protect confidential
19 Section 8 material.

20 Thank you again to the teams that are
21 here before us today and I look forward to asking
22 questions about the proposals. Thank you.

1 CHAIRMAN GENSLER: Thank you
2 Commissioner Sommers on all that you said, but I
3 thank you particularly for that last bit. I think
4 it is important for markets to know that this
5 Commission complies with the law and the law is
6 very clear, as you say, for decades about
7 protecting confidential information -- that this
8 Commission protect that information. So I look
9 forward to working with all the commissioners on
10 that matter.

11 Commissioner Chilton.

12 COMMISSIONER CHILTON: Thanks, Mr.
13 Chairman. Commissioner Sommers always raises some
14 good points. All of a sudden I know what I'm
15 going to say and I want to change it. So that's
16 good, though.

17 I support the proposals today. Thank
18 you for all your hard work on those, and I look
19 forward to moving forward on them. I also support
20 the IOSCO principles for the reasons that both
21 Commissioner Dunn and Commissioner Sommers talked
22 about. We've sort of been the leaders on these

1 issues, although the EU is moving forward as
2 everybody knows, but I think approving these
3 principles should allay some of the fears about
4 regulatory arbitrage that we are generally moving
5 forward together. So I'm very pleased. It's
6 important. I thank our International Affairs
7 division for working on it and thank the IOSCO
8 staff.

9 On the Section 8 stuff, I agree with the
10 concerns about having information that we are to
11 protect getting out. And I understand how that
12 can -- one, it's against the law for us to give it
13 out so there's no question about that. I don't
14 believe we've done anything inappropriate. We
15 gave it to a congressional committee of
16 jurisdiction. After that, you know, once it gets
17 to Capitol Hill, that's an issue for Congress to
18 deal with. We've abided by the law as far as I
19 know.

20 And I do think it's important to protect
21 confidentiality. I will say that, you know,
22 three-year-old information that gets out there,

1 I'm not sure there's any top secret, you know,
2 trade secrets that are in that information. I'm
3 not saying that it was right to have it out there,
4 but there is some time in the future where, you
5 know, information as a policy question -- not as a
6 matter of law now, the law is clear now -- but
7 it's a policy question it seems to me. There's
8 some point at which the data getting out there
9 shouldn't drive everybody nuts. And I think
10 there's a little bit of, you know, the sky is
11 falling and I'm not saying that it was right to
12 have the information out there, but I think
13 there's some place in the middle here for a policy
14 discussion later. But I agree with the concerns
15 that Commissioner Sommers raised and the chairman
16 echoed.

17 On the suggested timeframe, I really
18 commend you, Mr. Chairman, for coming up with this
19 and for being prompted by my colleagues. I think
20 all of us at one point said it would be a good
21 thing to do and I appreciate you doing that.
22 There are certainly things I would have liked to

1 have seen done earlier. I won't get into those
2 now -- position limits -- but by and large I think
3 we've gone forward on these things in a really
4 judicious manner. And I think that having the
5 added benefit -- I talked about it when we did the
6 SDR rule and the ag swaps rule. We're actually
7 helping to create a system that will sort of fuel
8 inject the economic engine of our democracy. I
9 mean, we're not -- government doesn't create the
10 jobs, but we're establishing sort of a whole new
11 structure. I mean, if you think about it,
12 security markets and exchange existed. Commodity
13 markets and exchanges existed and then they were
14 regulated. The OTC market exists, but there's no
15 exchange. There's no sideboards on it. That's
16 part of the problem that we got into, the country
17 got into, the economy got into.

18 So we've got a real opportunity here and
19 I think if we think sort of unconventionally we
20 actually can help do some real good here. Create
21 jobs, help to create jobs. Government doesn't
22 create jobs. Help to create jobs. So I thank you

1 for that, Mr. Chairman.

2 And look, you'll get criticized from one
3 side and then the other and it won't be, you know,
4 you're going too slow. You're going too fast.
5 It's not detailed enough. And some of them, you
6 know, may have some merit. But by and large, what
7 my experience in Washington has been, when you're
8 getting hit from both sides a little bit in the
9 middle, you're probably doing something right. So
10 thank you for your leadership and doing what I
11 think is something right.

12 CHAIRMAN GENSLER: Thank you,
13 Commissioner Chilton, for all your support. I did
14 say that the next thing on the queue is
15 clearinghouse and position limits.

16 COMMISSIONER CHILTON: Booyah.

17 CHAIRMAN GENSLER: As all of you know, I
18 mean, we're all, you know, weighing in now on
19 these documents that are in front of the
20 commissioners and their legal assistants. I thank
21 you for all your input on all those rules.

22 Commissioner O'Malia.

1 that I intend to press for further clarity on the
2 order of the rulemakings and a schedule for
3 implementation of the over 50 rulemakings that
4 were not included in this document. Slowly, the
5 rulemaking process is coming into focus. The
6 reality is the rulemaking process is on track to
7 comply with the G20 directive of mandatory
8 clearing by the end of 2012. Frankly, I would say
9 the clearing mandate is likely to kick in around
10 the third quarter of 2012. That's just a guess
11 because there are so many remaining variables, and
12 I appreciate the challenge that you have to keep
13 us on track to narrow those down.

14 Despite the Commission's efforts here
15 today, I fear the market will find these proposals
16 raise more questions than they answer. They fail
17 to facilitate a transition to the new regulatory
18 regime in an orderly manner that the market, as
19 well as the Commission, desires. Rather than
20 defining what we know, these proposals emphasize
21 what we don't know about the implementation plan.
22 I would like to highlight six areas where

1 additional guidance would be beneficial so that
2 the market participants could begin to allocate
3 resources and begin compliance in an accelerated
4 manner.

5 First, a proposal for the clearing and
6 trading mandates may not apply in certain
7 situations. The proposal states on page 22, "When
8 issuing a mandatory clearing determination, the
9 Commission would set an effective date by which
10 all market participants would have to comply." In
11 other words, the proposed compliance schedules
12 would only be used when the Commission believes
13 phasing is necessary based on the consideration
14 outlined in this release. Therefore, despite the
15 proposal, market participants will need to look at
16 each individual mandatory clearing and
17 determination to ascertain whether the specified
18 phasing would apply. To date, the Commission nor
19 the staff has issued any guidance on the
20 substantive criteria that will be used to make a
21 mandatory clearing determination, including any
22 criteria relating to when the determination will

1 become effective.

2 Second, neither proposal provides market
3 participants with beginning or end dates. The
4 proposal for the clearing and trading mandates
5 approximately states the Commission must finalize
6 no less than five rulemakings before it can
7 trigger a specified phasing schedule.

8 Third, the proposal only address a
9 handful of requirements that the market
10 participants would need to comply with when the
11 Commission finalizes all of the Dodd- Frank
12 rulemakings.

13 Fourth, the proposals do not make it
14 clear when the Commission -- why the Commission
15 has decided to phase the implementation on 90-,
16 180-, and 270-day timeframes. In fact, several
17 participants in the May 4th implementation and
18 roundtable sought longer timeframes to
19 accommodate, among other things, documentation
20 requirements. For example, the Managed Fund
21 Association proposed a 120-, 210-, and 270-tiered
22 approach, which is obviously very similar, just on

1 some different dates.

2 COMMISSIONER GENSLER: I'm sorry,
3 Commissioner O'Malia, can I ask you what was MFA's
4 numbers again?

5 COMMISSIONER O'MALIA: 120, 210, and
6 270.

7 CHAIRMAN GENSLER: Thanks.

8 COMMISSIONER O'MALIA: What I'm looking
9 for in this rulemaking is a justification why we
10 chose our numbers over why we chose their numbers.
11 They obviously, through our comment and
12 discussion, we had the benefit of reviewing those
13 and looking into those. So what are the
14 ramifications why we chose our numbers? I don't
15 find it in our proposal.

16 Fifth, the proposals incorporate an
17 incomplete and inadequate cost-benefit analysis.
18 The proposal boldly and oddly characterizes
19 themselves from relief from timeframes in other
20 proposals or in determinations the Commission has
21 not yet made. With respect to market-wide
22 obligations, such as clearing and training

1 mandates, we know that the technology investments
2 required for implementation will be massive. New
3 clearing and trading entities, as well as data
4 repositories, all need to be connected to each
5 other and to the firms. In developing back office
6 systems alone, the TABB Group estimated that the
7 industry would spend in 2011 over 3.4 billion
8 globally and a billion dollars in the U.S. alone.
9 With respect to specific obligations, firms will
10 have to make large investments in new software to
11 manage new margin requirements, price aggregation
12 systems, and risk management systems. Knowing
13 when and how the markets are required to deploy
14 these systems is vital to the success of
15 implementing the new market infrastructures
16 required under Dodd-Frank. When billions of
17 dollars are at stake, you simply do not rely on
18 guesses and estimates based on vague conditions.

19 Finally, on a more substantive note, the
20 rules discusses issues as what is meant by made
21 available by trading which I think Commissioner
22 Sommers explained quite well. It is clear that

1 the Commission has not been able to communicate
2 what the standard means. Instead of signaling
3 what we need to address, the Commission is silent.
4 Similarly, instead of making it clear that the
5 Commission will publish guidance on mandatory
6 clearing determinations, it is still unclear how
7 that process will work. The rule proposal also
8 fails to ask some important questions, like how
9 the Commission-proposed implementation
10 requirements will affect entities and transactions
11 located outside the United States.

12 I want to be clear I support completing
13 the final rulemaking in a reasonable timeframe. I
14 am mindful the industry will need to do the real
15 work to implement the regulatory jargon in the
16 Federal Register to constitute our rule making.
17 If we want to promote timely implementation, we
18 need to tell the industry when it will be expected
19 to do so, in what turn, and in what process to
20 make the costly investments in technology and
21 staff that will be necessary to implement the
22 rules we are advocating.

1 Now I'd like to turn to the other agenda
2 item that is not on the Dodd-Frank rulemaking as
3 well, but it illustrates certain themes that the
4 Commission has not adequately addressed in a
5 cohesive manner. It is international coordination
6 and extraterritoriality. I have no complaints or
7 issues with the proposal. The IOSCO team did a
8 good job of identifying the principals'
9 international work. I commend their effort and
10 our team specifically for their work. The fact is
11 with every rule we develop it raises new questions
12 about how our rules will be harmonized with other
13 global regulators.

14 I've asked for this meeting on the topic
15 to initiate a discussion on our international
16 coordination. International coordination is
17 becoming clear that the schedule for financial
18 reform is converging among the G20 nations and the
19 G20 Clearing Mandate. It is less clear that the
20 substantive policies underlining the financial
21 reform is experiencing the same convergence. In
22 fact, the fact that may have competitive

1 implications the Commission has yet to fully
2 examine. The IOSCO principles illustrate some of
3 the tensions surrounding the international
4 coordination that we have all seen and will
5 continue to see with respect to Dodd-Frank. For
6 example, while each IOSCO member supports the
7 organization's general principles, each member may
8 have a wildly different interpretation of exactly
9 the regulations would accord under these
10 principles. As we all know, the Commission has
11 set forth position limits proposals. Regulators
12 in other jurisdictions may set forth dramatically
13 different proposals and still comport with the
14 IOSCO principles. How the Commission plans to
15 manage international regulator arbitrage and how
16 the Commission intends to enforce that plan
17 remains to be seen.

18 Second, on extraterritoriality, in order
19 for the Commission to coordinate
20 internationally, other regulators should ideally
21 have an understanding of the manner in which the
22 Commission perceives its boundary of its

1 jurisdiction, even if those regulators do not
2 agree with them. I would urge the Commission to
3 make its thoughts on extraterritoriality known
4 sooner rather than later. I would strongly urge
5 the Commission to take a more comprehensive
6 approach in this area, an approach that is
7 coordinated with the SEC and that is chosen with
8 respect to these proposals on compliance before
9 us.

10 Finally, on technology, to comport with
11 the IOSCO principles, the Commission needs to
12 invest more than the minimum in technology. Only
13 by investing more can we achieve the goals of
14 real-time surveillance. Having position
15 management powers means very little if the
16 Commission lacks the tools to exercise those
17 powers. Therefore, I'm going to close by urging
18 the Commission, as I've done many times in the
19 past, to focus on improving its technological
20 capabilities.

21 Mr. Chairman, again, let me thank you
22 for developing this implementation plan. I am

1 absolutely convinced that we can improve
2 compliance with our rules if we provide much more
3 certainty to the timetables going forward. And I
4 will also be submitting several questions for the
5 record that were not included in this document,
6 but I will include them as part of the record
7 going forward. Thank you.

8 CHAIRMAN GENSLER: Thank you,
9 Commissioner O'Malia.

10 The staff will now make presentations
11 concerning their recommendations on the proposals
12 implementing Dodd- Frank Act, as well as the IOSCO
13 report. Though I didn't say something in my
14 opening remarks, Jackie, I'm going to, you know,
15 speak to your -- I thought I had enough on the
16 other things, but I support that report that
17 you're going to talk about.

18 After each presentation, the floor will
19 be open for questions and comments from the
20 commissioners. Following those discussions, the
21 Commission will take votes on the recommendations.
22 To that end, I ask unanimous consent that all

1 final votes conducted in this public meeting of
2 the Commission be recorded votes and that the
3 results of those votes -- I'm talking about the
4 unanimous consent on the Dodd-Frank pieces of it
5 -- be put in the Federal Register release.
6 Without objection, so be it.

7 Let me introduce Gary Barnett who is at
8 the table -- it just happens to be you sat left,
9 Gary -- who recently joined us and will head up as
10 director of the Division of Swap Dealer and
11 Intermediary Oversight, which I guess stands up on
12 October 9th.

13 MR. BARNETT: That's right.

14 COMMISSIONER GENSLER: The new division
15 will be an integral part of implementing
16 Dodd-Frank provisions that will lower risk to the
17 swaps market, to the overall economy. One of the
18 key pieces of Dodd-Frank was the regulation of
19 swap dealers for the first time, and it's
20 historic. And we thought it was appropriate to
21 take this opportunity to take some of the
22 excellent people that are already working on

1 intermediary oversight, overseeing futures
2 commission merchants and commodity pool operators,
3 commodity trading advisors, and stand that up as a
4 division to include in that also the
5 responsibility to see these major intermediaries
6 called swap dealers. They will be working very
7 closely with the NFA -- National Futures
8 Association -- in that world. But we thank you,
9 Gary, for leaving a career somewhere else and
10 joining us here.

11 MR. BARNETT: Thank you.

12 CHAIRMAN GENSLER: In addition, this
13 week John Rogers -- and I don't know if John is
14 actually in the room, but I'm just going to give a
15 shout out to John -- was promoted to lead the new
16 office in data technology that for the first time
17 will include data office. And we are doing some
18 reorganization to move data over into there and to
19 have it report directly to the chairman. And I
20 thank Commissioner O'Malia for a lot of your
21 leadership of the Technology Advisory Committee,
22 but also the division and sometimes good repartee

1 back and forth about technology. But I think
2 moving data and technology into a full division
3 and this promotion of John is an excellent move
4 forward that all five commissioners supported with
5 the strategic plan earlier this year, and
6 particularly given the wealth of data that's going
7 to be coming into this agency and the swaps world
8 and aggregating it with the futures world and the
9 like. Both of these will be up and running next
10 month and are crucial components to the agency's
11 restructuring and fulfilling and expanding our
12 responsibilities under Dodd-Frank and will help
13 provide necessary oversight for the futures and
14 swaps markets.

15 So having made that shout out at this
16 time, I guess Dhaval Patel and Mark Higgins have
17 been our respective team leads; Dan Berkovitz from
18 the Office of General Counsel, along with Ananda
19 Radhakrishnan from the Division of Clearing and
20 Intermediary Oversight; and Rick Shilts from the
21 Division of Market Oversight, joined by their new
22 division head, will present their recommendations

1 and the consideration of these two notices. And
2 then we'll figure out how to take the motions.
3 But I leave it to the teams to figure out what
4 you're presenting first.

5 MS. PATEL: Good morning, Commissioners.
6 Today's staff is recommending that the Commission
7 approve for publication in the Federal Register a
8 proposed rulemaking that would establish a
9 schedule phase in transaction compliance with the
10 new clearing requirement and the new trade
11 execution requirement provide for under Section
12 723 of the Dodd-Frank Act. The compliance
13 schedules proposed in this rulemaking are informed
14 by public comments received in connection with a
15 May 2011 roundtable held jointly by the Commission
16 and the Securities and Exchange Commission to
17 consider issues and concepts regarding the
18 implementation of the Dodd-Frank Act.

19 One of the key themes to emerge from the
20 comments received by the Commission is that some
21 market participants may require more time to
22 ensure their swap transactions comply with the new

1 clearing and trade execution requirements. Upon
2 careful consideration of these comments, the
3 proposal before you provides relief in the form of
4 additional time for compliance with these
5 requirements. This relief is intended to
6 facilitate the transition to the new regulatory
7 regime established by the Dodd-Frank Act in an
8 orderly manner that does not unduly disrupt
9 markets and transactions.

10 The clearing requirement makes it
11 unlawful for any person to engage in a swap that
12 is required to be cleared unless that person
13 submits the swap for clearing to a derivatives
14 clearing organization. The Commission is required
15 to determine whether a swap -- is required to be
16 cleared pursuant to either a commission-initiated
17 review or pursuant to a submission from a
18 derivatives clearing organization. The trade
19 execution requirement requires that the execution
20 of all swaps subject to a clearing mandate occur
21 on a designated contract market or a swap
22 execution facility except where no DCM or SEF

1 makes a swap available for trading or the swap is
2 subject to a clearing exception.

3 Under the proposed rule, the clearing
4 and trade requirements would be phased in based on
5 the identity of the counterparties to the swap.
6 The proposed compliance schedules would not
7 prohibit any type of market participant from
8 voluntarily complying with the clearing or trading
9 mandate sooner than the compliance deadline.
10 Additionally, the proposed compliance schedules
11 would be used only when the Commission believes
12 that phasing is necessary based on a variety of
13 factors, including a market participant's
14 experience, resources, and whether or not they are
15 third party subaccount.

16 The triggering event for the proposed
17 compliance schedule for the clearing requirement
18 would be the Commission's issuance of a mandatory
19 clearing determination. The proposed compliance
20 schedules for the trade execution requirement
21 would be triggered upon the latter of the
22 applicable deadline established under the

1 compliance schedule for the associated clearing
2 mandate or 30 days after the swap is made
3 available for trading on either a SEF or a DCM.

4 Under the proposed rule there would be
5 three phases for compliance with the clearing and
6 trade execution requirements. In phase one, any
7 swap between or among category one entities and
8 their counterparties would be required to comply
9 with a mandatory clearing requirement within the
10 first 90 days after the Commission issues any
11 mandatory clearing determination. Category one
12 entities include swap dealers, security-based swap
13 dealers, major swap participants, or active funds.
14 The proposal defines an active fund as any private
15 fund as defined by the Investment Advisors Act
16 that is not a third-party subaccount and that
17 executes 20 or more swaps per month based on a
18 12-month trailing average. The proposal provides
19 these market participants with 90 days to come
20 into compliance based on their level of swap
21 activity, market experience, and resources.

22 In phase two, a swap transaction between

1 or among category two entities and their
2 counterparties would be required to comply with a
3 mandatory clearing requirement within 180 days
4 after the Commission issues a mandatory clearing
5 determination. Category two entities include
6 commodity pools, private funds other than active
7 funds, employee benefit plans or persons
8 predominantly engaged in activities that are in
9 the business of banking or activities that are of
10 a financial nature, provided that the entity is
11 not a third-party subaccount. The proposal
12 provides these market participants with 180 days,
13 since these market participants will not be
14 required to register with the Commission and may
15 be less experienced or less frequent users of the
16 swap markets than those in category one.

17 In phase three, the proposal would phase
18 in compliance for all other swap transactions,
19 including those involving third-party subaccounts
20 and those not accepted from the mandatory clearing
21 requirement within 270 days after the Commission
22 issues a clearing requirement. Third- party

1 subaccounts are defined to include those parties
2 that may have numerous accounts to bring into
3 compliance. The proposal provides these market
4 participants with 270 days to bring their swaps
5 into compliance because they may need additional
6 time to document, coordinate, and manage numerous
7 accounts.

8 That concludes my remarks. I'm happy to
9 answer any questions.

10 CHAIRMAN GENSLER: Thank you very much.
11 The chair will now entertain a motion to accept
12 the staff recommendation concerning this proposed
13 rule.

14 COMMISSIONER DUNN: So moved.

15 COMMISSIONER SOMMERS: Second.

16 CHAIRMAN GENSLER: I support the
17 proposed rule to establish schedules for phasing
18 of compliance with clearing and trade execution.
19 I just want to ask some questions which may be
20 outside of the proposal itself, but for Ananda and
21 the clearing staff. Ananda, where do we stand,
22 and maybe to the extent you can share with the

1 public, again, nothing confidential, but where do
2 we stand after September 26th as to the
3 clearinghouses submitting swaps for this clearing
4 determination? I sort of shared what I thought,
5 but I'd be interested in what you're hearing and
6 the public hearing what you can tell us.

7 MR. RADHAKRISHNAN: So far we've reached
8 out to the clearing organizations and they're
9 still thinking about it. So nobody has given me
10 an answer as to when they're going to submit
11 something. I guess I think some of them may be
12 waiting for the commissions -- this Commission and
13 the SEC's action on the further definition of a
14 swap. So that's one of the comments that I got.
15 But I've not received any --

16 CHAIRMAN GENSLER: Right, right. So my
17 thoughts that I shared publicly, you know, a half
18 hour ago, that it would be later this fall at the
19 earliest and could well be the wintertime before
20 they official submit it and we have to go through
21 this 90-day process, you see that to be -- it
22 would be no sooner than that period probably?

1 MR. RADHAKRISHNAN: I don't think so.

2 COMMISSIONER SOMMERS: Can I --

3 CHAIRMAN GENSLER: Sure. No, please.

4 No, let's have a discussion on this.

5 COMMISSIONER SOMMERS: I thought that in
6 the rule that we did that any swaps that were
7 currently being cleared are deemed submitted.

8 MR. RADHAKRISHNAN: They are deemed
9 submitted. Last year we wrote to them and asked
10 them to give us an extension.

11 COMMISSIONER SOMMERS: So that's an
12 indefinite extension until we decide to lift it?

13 MR. RADHAKRISHNAN: I think -- or once
14 the Commission determines what a swap is.

15 CHAIRMAN GENSLER: And wouldn't it also
16 be if they lift it?

17 MR. RADHAKRISHNAN: Yeah, they can lift
18 it.

19 CHAIRMAN GENSLER: Because they haven't
20 lifted it as I understand it.

21 COMMISSIONER SOMMERS: I was just
22 wondering. We asked them to do it so would we be

1 telling them to lift it or --

2 CHAIRMAN GENSLER: I assume it would be
3 -- you would be in discussions with --

4 MR. RADHAKRISHNAN: Yeah, because the
5 other thing we could also do is to -- you've got
6 swaps that are being cleared pre-enactment and
7 then you've got swaps that have been cleared
8 post-enactment. So instead of working on --
9 thinking of organizing work, instead of doing two
10 separate things, why don't we do one thing at one
11 time? So --

12 CHAIRMAN GENSLER: Commissioner O'Malia,
13 do you have any --

14 COMMISSIONER O'MALIA: I thought there
15 was a 60- day delay. Didn't we give them 60 days
16 on pre-enactments?

17 MR. RADHAKRISHNAN: No. No.

18 COMMISSIONER O'MALIA: It's indefinite?

19 MR. RADHAKRISHNAN: Yeah.

20 CHAIRMAN GENSLER: I mean, in essence
21 because they wrote us a letter. I mean, it's
22 their letter to us asking for the delay.

1 MR. RADHAKRISHNAN: That's right.

2 CHAIRMAN GENSLER: It was a good thing
3 they asked for it.

4 COMMISSIONER O'MALIA: Maybe they were
5 looking for our guidance.

6 CHAIRMAN GENSLER: Yeah. But where we
7 are now is though they could on September 26th,
8 nobody has said they're going to do it on
9 September 27th.

10 MR. RADHAKRISHNAN: No.

11 CHAIRMAN GENSLER: And -- all right.
12 And Dhaval, I think it would be helpful just again
13 to make sure I have the list right. So there
14 would be no compliance mandated until, one, we
15 make this determination. I just want to make sure
16 I have the list right.

17 MS. PATEL: Yes.

18 CHAIRMAN GENSLER: All right. So let's
19 just go. And then we would have to further define
20 "swap dealer," what we call "entity definition."
21 Right?

22 MS. PATEL: Yes.

1 CHAIRMAN GENSLER: And swap. We have to
2 further define "swap" as well which we are calling
3 "product definitions."

4 MS. PATEL: Right.

5 CHAIRMAN GENSLER: And it's my hope that
6 we take those up this fall. I mean, that's where
7 we're sort of, as a tentative basis, but we're
8 working with the SEC and a lot could happen, you
9 know, to shift that. But we really heard loud
10 from the market let's get those in the earliest
11 phase. And then there's also two other rules that
12 it's dependent upon. Is it segregation?

13 MS. PATEL: Yep, segregation and the
14 end-user exception.

15 CHAIRMAN GENSLER: And the end-user
16 exception. Right?

17 MS. PATEL: Yes.

18 CHAIRMAN GENSLER: And the end-user
19 exception so that market participants can know
20 whether they're in or out.

21 MS. PATEL: Exactly.

22 CHAIRMAN GENSLER: And then segregation,

1 it's just segregation for the cleared swaps.

2 MS. PATEL: Yes.

3 CHAIRMAN GENSLER: Right? All right.

4 And in terms of Commissioner O'Malia's question
5 about when is the starting date and when is the
6 end date, I think that actually the market will
7 take some comfort from this. I mean, they'll see
8 that there is at least 4 substantial and important
9 rules that we have to complete and we have to go
10 through a 90-day clearing determination process,
11 which I frankly would anticipate those 4
12 substantial rules we would get done by the first
13 quarter of next year. I mean, even though we
14 might be calendaring them for this last quarter,
15 that some of them might roll into the first
16 quarter, the clearing determination, 90 days, is
17 unlikely to start until later this year. Now, I
18 mean, again, the clearinghouse could knock on our
19 door sooner, but, so I think Commissioner O'Malia,
20 that the likely earliest starting date is about
21 six months from now and could be later. I mean,
22 your estimate is you think it could be the third

1 quarter. I'm saying maybe it's as early as the
2 second quarter. Is that how I understood your
3 comment?

4 COMMISSIONER O'MALIA: Yes. As a guess
5 I said around the third quarter was probably my
6 best guess at this point.

7 CHAIRMAN GENSLER: Yeah. And I'm saying
8 the earliest is probably the second quarter. The
9 end of the second quarter because we'd give them
10 three months from the determination.

11 COMMISSIONER O'MALIA: I think my exact
12 statement was around the third quarter.

13 CHAIRMAN GENSLER: Okay.

14 COMMISSIONER O'MALIA: So I think we're
15 both in the same spot.

16 CHAIRMAN GENSLER: Yeah. Yeah. And
17 there's a lot that's beyond our control. It's the
18 clearinghouses, as well.

19 Dan.

20 COMMISSIONER DUNN: I just wanted to
21 make clear. I think it was implicit in some of
22 the answers and in the questions, but I just want

1 to make sure it's clear on the record that the
2 completion of those other rulemaking swap dealer
3 definitions, those definitions we're making, are
4 not a prerequisite to the making of the
5 determination of whether a swap should be cleared,
6 but it is the prerequisite as Dhaval was
7 explaining before, the actual compliance schedule
8 kicks into effect.

9 CHAIRMAN GENSLER: I understand.
10 There's no teeth before that time.

11 And then Dhaval, one other thing or if
12 there's anybody that wants to address this, the
13 first category, second category, and third
14 category which I think is a good setting, swap
15 dealers and active funds in the first category and
16 then other financials get six months, and then the
17 people that are managing a lot of pension money --
18 we call it "subaccounts," but I call it "pension
19 money" -- is the last category. But what if a
20 pension account or a bank or insurance company
21 wanted to clear earlier? What did we say about
22 that? I'm interested in that. And then I'll turn

1 to Commissioner Dunn for his questions.

2 MS. PATEL: Nobody would be prohibited
3 from complying, you know, in advance of when
4 they're required to comply with the clearing
5 requirement. And in fact, we've worded the
6 regulation so that the category one entities or
7 two entities couldn't refuse, you know, to clear
8 those transactions. So nothing would prohibit
9 them from voluntarily complying and they should be
10 able to do that ahead of time.

11 CHAIRMAN GENSLER: So if a middle market
12 insurance company or an asset manager of some sort
13 said no, I want to get in essence the benefits of
14 clearing and that's their commercial desire, the
15 dealer under this proposal would need to
16 facilitate that is what you're saying?

17 MS. PATEL: Yes.

18 CHAIRMAN GENSLER: Okay. Thank you.
19 Commissioner Dunn.

20 COMMISSIONER DUNN: Thank you, Mr.
21 Chairman. Dhaval, how did staff come up with
22 those timelines? The 30, 90, 180, 270 days?

1 MS. PATEL: Well, we took into
2 consideration a lot of the feedback we received
3 during the roundtable and reviewed many comment
4 letters. And one thing that became pretty
5 apparent is that people were kind of all over the
6 place. Some people thought they could comply

7 pretty immediately. Some people thought they
8 could comply within a couple of years. So we
9 tried to take into consideration everyone's sort
10 of input and thought three, six, and nine would be
11 a reasonable time for people to be able to comply.

12 COMMISSIONER DUNN: Let me turn to Gary
13 and Ananda on these broader questions. Does this
14 schedule work for the industry? Can they meet it?
15 What kind of unintended consequences do they --
16 might see on the schedule?

17 And then the second part of that, can
18 the SROs and the Commission meet this schedule?
19 Are we going to have the staff available? Are we
20 going to be able to make these determinations and
21 recommendations to the Commission during these
22 time periods?

1 MR. RADHAKRISHNAN: We think this is a
2 reasonable schedule, especially given the
3 categories. You know, category one is dealers,
4 MSPs, and active funds, which we believe are
5 people who already are clearing voluntarily or
6 have the requisite amount of sophistication to be
7 able to clear.

8 The other consideration is, you know, we
9 wanted to make sure that we proposed a schedule
10 that would give this commission an opportunity to
11 meet the G20 commitment that the U.S. Government
12 has committed to, which is the end of December.
13 So the requirement to clear is not new.
14 Dodd-Frank has been in existence since July of
15 last year. Anybody who is participating in these
16 markets who would come and tell me that they don't
17 understand what's going on, I would find that very
18 difficult to believe. So I do realize that around
19 the margins there's a question of who and end-user
20 is and who can take advantage of the exception,
21 but, again, you're not talking about an
22 unsophisticated person who is not a participant in

1 the markets.

2 The other point I wanted to make is if
3 you're already trading swaps, there's a certain
4 amount of sophistication involved in trading
5 swaps. I don't trade swaps, not that I'm allowed
6 to do so, but, you know, the average person on the
7 street is not a participant in the swap market.
8 So and maybe I'm being a bit too tough, but, you
9 know, this is the law. We're required to comply
10 with the law. So I think it's a reasonable
11 schedule, but we'll wait and see what the comments
12 are.

13 And as far as staff is concerned, that's
14 always, as you know, Commissioner Dunn, that's
15 always the unknown factor. We believe we have the
16 staff right now. If you ask me do I have enough
17 staff to make sure this is done, I've told you
18 from the beginning the answer is no. I'm hoping
19 that we will get the 2012 Appropriation as the
20 president has asked for, but if we don't get it
21 then it's a matter of deciding where to prioritize
22 staff resources. It's not a satisfactory answer,

1 but that's the only one I can give to you.

2 MR. BARNETT: Yeah, I agree with Ananda.
3 I think that there's enough time. I think the
4 SROs can do it. I think the clearinghouses can do
5 it. I think the documentation packages that the
6 clearing members have to get out to the buy side
7 and negotiate all that can be -- can take varying
8 amounts of time to get things done. But there's a
9 lot of time being given here. And so I think it's
10 on the documentation side and dealing with the buy
11 side and getting them all onboard. That is only
12 now in the marketplace starting to happen. And
13 getting that out, negotiating it, getting it in
14 place will take time, but more time has been
15 given. So I'm hopeful that that will be
16 sufficient.

17 COMMISSIONER DUNN: For those that are
18 voluntarily going ahead here, and I imagine what
19 they're thinking, well, this provides some
20 certainty and it begins to give us some expertise
21 in what's going on, how much are they in jeopardy
22 of us saying, wait a minute, you're doing it

1 wrong?

2 MR. RADHAKRISHNAN: Meaning how much are
3 we in jeopardy of people --

4 COMMISSIONER DUNN: Those that are going
5 ahead and doing it.

6 MR. RADHAKRISHNAN: Yeah.

7 COMMISSIONER DUNN: Is there a risk of
8 us coming back and saying, wait a minute, we think
9 this is wrong. You've got to go back and do
10 something different?

11 MR. RADHAKRISHNAN: That the schedule is
12 wrong?

13 COMMISSIONER DUNN: No. What we're
14 allowing them to do. How they're doing it.

15 MR. RADHAKRISHNAN: Oh, I see. Meaning
16 we're giving them too much?

17 SPEAKER: Yes.

18 MR. RADHAKRISHNAN: Well, actually that
19 would be a good comment. If the majority of the
20 comments are that, hey, you don't need the
21 schedule because we're ready to go, then, you know
22 -- but nobody has ever told us, well, I'm not

1 aware that people have told us that we're going
2 to, you know, that they don't want the schedule.
3 Maybe I'm not understanding your question.

4 COMMISSIONER DUNN: Not just the
5 schedule, the actual process. The rules.

6 MR. BARNETT: Sir, are you asking, so
7 for instance, if people are going forward today
8 ahead of us coming out with definitive answers are
9 they at risk? I would think no, I don't think so.

10 MR. RADHAKRISHNAN: No, no.

11 MR. BARNETT: I think that the rules are
12 largely written around market practice in a lot of
13 respects.

14 MR. RADHAKRISHNAN: Right.

15 MR. BARNETT: And those who would be out
16 there trying to put things in place now are likely
17 not going to find surprises in terms of these
18 kinds of requirements that we're talking about
19 today.

20 MR. RADHAKRISHNAN: Yeah, especially
21 with the clearing requirement. I think it gives
22 people time, but there might be some people who

1 say I'm ready. And as Dhaval has pointed out, if
2 a category two person is ready to clear, then, you
3 know, the proposed rules make it clear that they
4 cannot be stopped. So.

5 CHAIRMAN GENSLER: Commissioner Dunn, if
6 I could add, too, one of the reasons that I've
7 asked the staff to be prepared on the clearing
8 rules early in the queue, relatively early in the
9 queue, I think it will probably be the rule that
10 we take up next with position limits. But as
11 that, too, will give, that will answer a lot of
12 these remaining questions. You know, does the
13 clearinghouse have to do five-day margining or
14 something other, you know, all of the risk
15 management questions that were embedded in those
16 clearing rules. And hopefully, in the next month
17 or so that will be out. And so -- at least on the
18 clearing side, I think.

19 Commissioner Sommers.

20 COMMISSIONER SOMMERS: Thank you, Mr.
21 Chairman. First of all, I just want to start with
22 a general question about implementation. And so

1 maybe it's better directed to Dan. It's not
2 specific to either one of these proposals. The
3 issues that we're dealing with today, both trading
4 and clearing and documentation and margin are very
5 important. But is there a reason why we didn't
6 deal with the host of other issues that also may
7 be relying on a sequencing schedule?

8 COMMISSIONER DUNN: It was really
9 focused on these particular documentation
10 requirements, taking these ones and not doing the
11 others at this particular time.

12 COMMISSIONER SOMMERS: During the
13 roundtable, the concepts that we put out dealt
14 with several other issues that I think at the time
15 at least we felt may also be appropriate for
16 sequencing. And that's market infrastructure,
17 real-time reporting. And so how will we deal with
18 those? Will we deal with the potential sequencing
19 within those specific rulemakings? Or are we
20 going to do other implementation plans?

21 COMMISSIONER DUNN: Yeah, I'm not able
22 to --

1 CHAIRMAN GENSLER: Let me try to answer
2 it and have a discussion. I think the real reason
3 is just as we did with swap data repositories and
4 what we hope to do on the clearing rule is that on
5 each of the platforms we've gotten a lot of input
6 and input from commissioners as well as to the
7 sequencing within that role, the provisional
8 registration and then how long to the, you know,
9 final registration and so forth. So I think it
10 would be in the platforms and the broad 4s
11 requirements within those rules. So in essence,
12 even in documentation there's a part of it that's
13 not take up in this rule. I don't want to make it
14 sound like this is even narrower, but the swap
15 dealer themselves have to have policies and
16 procedures in place. Now, we could say that's two
17 months later or three months or four. You know,
18 we'll have to pick some time. These rules speak
19 to anytime that registered entity or registrant is
20 interfacing with somebody outside.

21 So as it relates to the 15 or 20
22 clearinghouses, they'll look to what we take up in

1 a few weeks time on the clearing rule. Similarly,
2 on the swap execution facilities though we
3 probably won't take that rule up until after the
4 first of the year.

5 COMMISSIONER SOMMERS: Will there
6 eventually be a comprehensive plan that shows
7 which ones you have to comply with when? A
8 comprehensive view of all of this?

9 CHAIRMAN GENSLER: Well, I think for
10 market participants this really does speak to
11 that. If you're a hedge fund or an insurance
12 company or even somebody else, this does that.
13 For the individual platforms, as we did in the
14 swap data repository rule, I mean, the handful of
15 SDRs will know how they have to comply. The
16 clearinghouses hopefully will in a few weeks when
17 we address that rule. We could then stitch it
18 together and put something there, but I think each
19 of the platforms -- the main rules for the
20 platforms is when do you have to have your
21 policies and procedures in place and be open for
22 business voluntarily. This is dealing with the

1 stuff that interfaces with the thousands of market
2 participants.

3 COMMISSIONER SOMMERS: Okay, I think I
4 understand that that's no.

5 Okay. So specific to this proposal, my
6 questions are all with regard to the made
7 available for trading. So footnote 35 in
8 particular says that this rulemaking does not
9 address the manner in which it may be determined
10 or established that a DCM or a SEF has made a swap
11 available for trading. So if we're not going to
12 address it, what do we expect to happen? Anybody
13 can make that determination whenever they feel
14 like it?

15 MS. PATEL: This is an issue I think DMO
16 staff is currently considering. Since the purpose
17 of this rulemaking was not substantive and just,
18 you know, for the purposes of providing a
19 compliance schedule we didn't touch on that, but I
20 understand staff is currently considering that
21 issue.

22 MR. SHILTS: Yeah, that's correct. And

1 as you know, we did get a lot of comments related
2 to that in connection with the SEF proposed
3 rulemaking. So it's something that staff is
4 considering, but it's not part of this which is
5 really a compliance implementation proposal.

6 COMMISSIONER SOMMERS: Right. But if
7 we're dealing -- if we're going to try to, I
8 guess, on the same sort of theme, deal with that
9 comprehensively and not narrowly in the DCM
10 rulemaking to apply to DCMs or narrowly in the SEF
11 to apply broadly, where else will we put this?
12 Because the process for mandatory clearing we've
13 already done.

14 MR. SHILTS: That's something to be
15 determined. As I mentioned, we did get a lot of
16 comments on this in connection with the SEF
17 rulemaking. To some extent some of those issues
18 were addressed there. But that's something
19 ultimately for the Commission to decide whether
20 it's incorporated with one of the other final
21 rulemakings or done separately.

22 COMMISSIONER SOMMERS: Okay. Thank you.

1 CHAIRMAN GENSLER: Thank you,
2 Commissioner Sommers.

3 Commissioner Chilton.

4 COMMISSIONER CHILTON: I think I just
5 want to make a comment about what Commissioner
6 Dunn was talking about if somebody goes forward
7 ahead of when we're actually requiring it and
8 similar to what I was talking about earlier about
9 how I think these rules if we get them correct can
10 actually sort of fuel inject economic activity. I
11 don't want to give away anything that people have
12 told me and maybe my colleagues in confidence, but
13 there are folks in several areas that I've talked
14 with that are moving forward in this area. They
15 are preparing to either do something ahead of when
16 we are requiring it. I'm not saying specific to
17 these proposals, but there are areas or
18 immediately on day one trying to seek the
19 competitive advantage. So, you know, I don't
20 think we want to, you know, discourage that when
21 people can see something coming and know what
22 they're going to do. And I think we should not

1 only not discourage it; I think we should value
2 what they may be doing ahead of time that is
3 right. When we talk about, you know, SEFs and we
4 look at how they're going to operate, we could
5 look at what is out there now that the private
6 industry is doing right. We talk a lot about and
7 I've talked a lot about what's gone wrong in this
8 OTC area, but there are some things that have gone
9 very right. And so I just want to make that
10 point, Mike. It was following up on your comment.

11 Now, on the issue that Commissioner
12 Sommers was talking about, this available for
13 trading, I mean, if there's a determination that
14 something needs to be cleared, but nobody offers
15 it for trading, then it doesn't trade. Right?

16 MR. RADHAKRISHNAN: Yes.

17 COMMISSIONER CHILTON: I mean, that's
18 the law.

19 MR. RADHAKRISHNAN: It doesn't trade on
20 a platform. It will trade bilaterally.

21 COMMISSIONER CHILTON: Will it trade
22 bilaterally?

1 MR. RADHAKRISHNAN: Yeah, because -- so
2 the presumption is the Commission has made a
3 clearing determination, but however the Commission
4 -- however it is determined what makes available
5 for trading. Let's say that we all agree what
6 that means. And you cannot find it on a DCM or
7 you cannot find it on a SEF, then the way I look
8 at it, it will trade bilaterally. But it's got to
9 be clear though.

10 COMMISSIONER CHILTON: It's got to be
11 clear.

12 MR. RADHAKRISHNAN: Yeah, go to to be
13 clear.

14 COMMISSIONER CHILTON: That was my
15 point.

16 MR. RADHAKRISHNAN: Yeah, it's got to be
17 clear.

18 COMMISSIONER CHILTON: If a
19 determination is made --

20 MR. RADHAKRISHNAN: Yeah.

21 COMMISSIONER CHILTON: -- but it's
22 important enough that it has to be cleared --

1 MR. RADHAKRISHNAN: And the assumption
2 is there's a DCO --

3 COMMISSIONER CHILTON: It's got to be
4 cleared.

5 MR. RADHAKRISHNAN: Yeah, there's a DCO.

6 COMMISSIONER CHILTON: It may not be
7 offered on an exchange.

8 MR. RADHAKRISHNAN: Right. Yeah.

9 COMMISSIONER CHILTON: So there could be
10 a bilat. But even the bilat's got to be cleared.

11 MR. RADHAKRISHNAN: Got to be cleared.

12 COMMISSIONER CHILTON: Got to be
13 cleared.

14 MR. RADHAKRISHNAN: Correct.

15 COMMISSIONER CHILTON: I mean, that was
16 the whole point of the law.

17 MR. RADHAKRISHNAN: Yes. Yes.

18 COMMISSIONER CHILTON: So. Okay. Did
19 you want to say anything?

20 CHAIRMAN GENSLER: No, I was just -- the
21 use of the term bilateral sometimes people think
22 of as not cleared. So that was the confusion.

1 But you meant cleared --

2 MR. RADHAKRISHNAN: Cleared but traded.

3 CHAIRMAN GENSLER: But maybe transacted
4 between two parties.

5 MR. RADHAKRISHNAN: Two parties.

6 CHAIRMAN GENSLER: Not in some central
7 way.

8 MR. RADHAKRISHNAN: Correct. But, yeah,
9 the clearing determination doesn't go away.

10 MR. BARNETT: So it might be entered
11 into bilaterally and then given up for clearing.
12 Right? So they enter into the trade and they give
13 it up for clearing. You didn't have a SEF or
14 platform in the middle of trading.

15 CHAIRMAN GENSLER: As part of the market
16 does today.

17 MR. RADHAKRISHNAN: That's right. And
18 also, Commissioner Chilton, I agree with you. I
19 don't think there's anything in what we're
20 proposing that would stop somebody from clearing,
21 for example. So if somebody wants to clear right
22 now, you know, we would encourage that and they

1 would do that.

2 COMMISSIONER CHILTON: And how they're
3 doing it might be educational for us.

4 MR. RADHAKRISHNAN: Yes, absolutely.

5 COMMISSIONER CHILTON: Thank you.

6 CHAIRMAN GENSLER: Thank you,
7 Commissioner Chilton.

8 Commissioner O'Malia.

9 COMMISSIONER O'MALIA: Let me just build
10 on it. I'm thinking of Clearport right now. What
11 happens with Clearport? It's cleared. It is made
12 available for trading. What happens to those
13 contracts?

14 MR. RADHAKRISHNAN: From a clearing
15 perspective or from what perspective? I'm sorry.

16 COMMISSIONER O'MALIA: Either made
17 available for trading or are we going to make a
18 separate determination? What happens to those
19 products when we make this determination and 90
20 days later they have to be --

21 MR. RADHAKRISHNAN: So let's say the
22 Commission makes the determination that the suite

1 of products has to be cleared. So which means
2 everybody is obliged to clear -- dealer, MSP,
3 financial entity, you know, must clear it.

4 COMMISSIONER O'MALIA: And they're being
5 cleared today.

6 MR. RADHAKRISHNAN: And they're being
7 cleared today. So it will just be imprimatur. So
8 if I could use that term that it has to be
9 cleared, right now clearing is almost voluntary.

10 COMMISSIONER O'MALIA: And the exchange
11 trading requirement? It must be traded?

12 COMMISSIONER DUNN: It must be traded
13 unless no SEF or DCM "makes it available for
14 trading." And so the question is what satisfies
15 that condition?

16 COMMISSIONER O'MALIA: That's my -- I
17 get to ask the questions. You're supposed to
18 answer them.

19 COMMISSIONER DUNN: And that will be
20 determined, as Rick said, the staff is working on
21 the answer to that question or recommend, you
22 know, for the Commission's considerations what

1 that would be. But it won't be determined here.
2 That will be determined elsewhere. And part of
3 the recommendation is where else -- where
4 elsewhere and how elsewhere.

5 COMMISSIONER O'MALIA: We're dying to
6 know. Commissioner Chilton, I completely agree
7 with you on the first mover advantage. The SEFs
8 have consistently told us get out of the way,
9 we're ready to go, we're trading today, let it
10 happen. And you know, they want to know when is
11 day one. And I hope we can do more to provide and
12 tell them when day one is. We want to encourage
13 that. So I agree with you. I think there's a
14 lot, especially on the technology exchange trading
15 front there's very exciting going on right now and
16 a lot of great promising companies.

17 Let me ask the team. It builds on
18 Commissioner Dunn's question, a little bit on the
19 cost-benefit analysis, what efforts did the team
20 make to quantify the cost of implementation for
21 either of these proposals? And based on the
22 schedules outlined, we obviously heard from

1 different entities that said, you know, some of
2 the Vanguard and Fidelity, some of these
3 retirement funds that say, hey, we need 18 to 24
4 months is kind of what I've heard. We're telling
5 them you get 270. What are the consequences of
6 that and what did we estimate in our cost-benefit
7 analysis of accelerating that date to make them
8 comply with it sooner when they said that they had
9 this year and a half requirement that they thought
10 they needed to comply?

11 MS. PATEL: Staff from OC that we worked
12 with on this consulted with several academics,
13 market participants, and industry groups when
14 helping with the cost-benefit analysis. In terms
15 of efforts to quantify we really couldn't find any
16 sort of data that we thought would be useful.
17 We've asked several questions on the cost-benefit
18 analysis and are open to public comment and
19 suggestions going forward and open to
20 reconsidering the cost-benefit issues.

21 MR. HIGGINS: Commissioner O'Malia, I
22 just wanted to add to it that the proposals take a

1 perspective that the statute normally would
2 require under Section 754 compliance within 60
3 days of the effective date of any of these
4 substantive requirements. These proposals are
5 adding additional time. And so in that respect
6 they are entirely beneficial. And the proposals
7 are also compliance schedules. They don't
8 consider the substantive underlying requirements
9 that the market participants are saying they need
10 additional time for. So in some respects the
11 compliance schedules themselves don't impose
12 costs. And we look forward to comment on that
13 approach. But I just wanted to add that. Thank
14 you.

15 COMMISSIONER O'MALIA: That sounds like
16 creative lawyering to me, but we'll move on.

17 What process or guidance has the
18 Commission outlined to let market participants
19 know when the Commission will incorporate by
20 reference this implementation proposal and when it
21 will not? Specifically, from the release page 22
22 which I raised in my statement, "When issuing a

1 mandatory clearing determination, the Commission
2 would set an effective date by which all market
3 participants would have to comply." In other
4 words, the proposed compliance schedules would be
5 used only when the Commission believes phasing is
6 necessary based on the considerations outlined in
7 the release. What's the standard? What date are
8 we dealing with here?

9 MS. PATEL: So in writing the rule this
10 way we wanted to afford the Commission a certain
11 amount of flexibility in the future. Our
12 anticipation -- we anticipate that because of the
13 considerations we outlined in the proposed
14 rulemaking we will most likely be using the
15 proposed schedule. But if the factors -- if
16 people, you know, have sufficient experience, if,
17 you know, the cost, you know, are as much of an
18 issue in the future, we're hoping that, you know,
19 the staff and DCIO has the opportunity to kind of
20 make those determinations if circumstances change.

21 CHAIRMAN GENSLER: Commissioner O'Malia,
22 can I? Because your staff was very helpful, some

1 of the edits that we incorporated even last night
2 was very helpful. On this page 22 it says, "The
3 Commission" -- which I support this because I
4 think it addresses you -- "anticipates it will
5 exercise its authority to trigger the phasing
6 schedule each time it issues a mandatory clearing
7 determination for a new group, category, type, or
8 class of swaps." So anytime we did it on a new --
9 this was the language your staff helped on --
10 group, category, type, or class of swap. And then
11 it says under this approach when it does a swap
12 that is already in one of those groups, category,
13 you know, it's sort of, you know, an additional
14 interest rate swap, then it wouldn't necessarily
15 use it. I mean, I think --

16 MS. PATEL: To kind of give you --

17 CHAIRMAN GENSLER: I mean, anytime it
18 would be a new group, class, or category I think
19 we're -- I mean, we're going to get comments on
20 it, but I think it would be -- you get phasing.
21 If it's just sort of some fill-in swap, then, you
22 know, something else. I think that's what this

1 means. Does it?

2 MS. PATEL: Yeah. To give you an
3 example of when we may not use this schedule, and
4 you probably already noticed this, but if we had a
5 credit default swap, a five- year credit default
6 swap, and then we decided -- then we had a new
7 five-year credit default swap product based on a
8 different index, that's something that, you know,
9 we might decide doesn't need to be -- we don't
10 need to use the schedule. I don't know if you
11 have any further questions or that explains it.

12 COMMISSIONER O'MALIA: No, I mean, I
13 just think it warrants further clarification. And
14 maybe by providing an example that would have been
15 more helpful. But it is what it is. So I'm glad
16 you were able to kind of clarify what you intend
17 by that.

18 I think Commissioner Sommers raised a
19 good question about what else should be in the
20 implementation plan. And there are several things
21 regarding swap dealer MSP, capital requirements,
22 reporting and recordkeeping, daily trading

1 records, business conduct standards, duties
2 related to trading, risk management, information
3 disclosure, conflicts of interest, antitrust, and
4 the designation of a compliance officer. All of
5 those would have been very helpful to have, I
6 think, in this to help understand how those are
7 all going to be phased in. But I think we're
8 going to do that in a different manner.

9 So some of these -- some of the
10 questions that I had asked were not included. I'm
11 going to include them. Hopefully, the market
12 participants will comment on some of the questions
13 I add in here. For whatever reason they weren't
14 included, but I'll just add them in again.

15 CHAIRMAN GENSLER: Okay. Thank you,
16 Commissioner O'Malia.

17 And now I'm just trying to remember. Am
18 I going to take a vote on this one because it's
19 got a motion and then we'll do the next one or --

20 COMMISSIONER CHILTON: Mr. Chairman, I
21 just have a real quick question if you don't mind.

22 CHAIRMAN GENSLER: Yeah, please.

1 COMMISSIONER CHILTON: We've run across
2 the issue on some other rules that we really maybe
3 missed the mark on them and we question whether or
4 not we need to repropose or Mr. Berkovitz will
5 tell us if you do that you're going to need to
6 repropose. And that's all fine, you know, we did
7 a lot of these things very early. We were
8 throwing things against the wall we talked about,
9 the chairman has talked about.

10 CHAIRMAN GENSLER: I'd like to use
11 another phrase.

12 COMMISSIONER CHILTON: I don't even know
13 if I was comfortable with yours earlier actually,
14 but --

15 COMMISSIONER DUNN: We promulgated
16 regulations.

17 COMMISSIONER CHILTON: Yeah, we
18 promulgated regulations. Thank you. You've been
19 around a lot longer, I'm sure, Dunn.

20 So my question is, is there something
21 that we can think about in this regard, maybe on
22 the phasing, that if we got comments that maybe

1 aren't comments we would expect that would require
2 us if we wanted to change to repropose? I mean, I
3 know there are some extreme examples, Mr.
4 Berkovitz, outside of what we think, but I just
5 want to make sure we're not missing something
6 easy. I support the proposal and everything. I
7 just want to make sure that if some new group came
8 in and they weren't mentioned and we want to put
9 them in this last phasing that that wouldn't
10 require us somehow to repropose the rule. Or if
11 everybody said we could do this all in 90 days,
12 that we wouldn't have to repropose, we could get
13 rid of the other categories. That is a generic
14 question I suppose.

15 COMMISSIONER DUNN: Yes, Commissioner
16 Chilton. Not wanting to have -- to try to
17 minimize the circumstances where we would have to
18 say no, you have to repurpose. And as we've
19 gained experience with these proposed rulemakings
20 we have paid very close attention to the questions
21 we're asking on these and to the extent we can
22 anticipate possibilities where we might want to go

1 in the future to indicate questions and indicate
2 what the alternatives and options the Commission
3 is also considering and to include those in the
4 questions. And there are questions in here
5 related to what other potential requirements
6 should be included within the phasing or maybe
7 possibly even expanded, other documentation
8 requirements actually. That would be in the other
9 rule.

10 Are there other documentations that
11 should be included -- requirements that should be
12 included within the schedule? Is this -- can some
13 entities -- we've asked specific questions about
14 the -- which entities are in which categories of
15 these rules and whether the timeframes should be
16 adjusted to give us the option to the extent
17 possible of either lengthening or shortening the
18 timeframes and to indicate that the Commission is
19 also considering options.

20 Obviously, one never knows what other
21 option there is that a commenter might provide
22 until the commenter provides it and then we would

1 go through the evaluation. But we've tried to put
2 commenters on notice wherever we can that we are
3 considering variations on what we've proposed out
4 there to give the Commission as much flexibility
5 as we can foresee. The Commission might want to
6 have without going through yet another round of
7 notice and comment. But then again, it will
8 depend on specifics.

9 CHAIRMAN GENSLER: And I would note,
10 Commissioner Chilton, we've -- we have and we will
11 probably repropose something along the line. We
12 have done it. It was at an area in clearing
13 called straight-through processing that Ananda and
14 John Lawton presented a few weeks back. We are
15 today further proposing some of our business
16 conduct standards and where the staff comes
17 forward and the commissioners think it's
18 appropriate there's going to be, from time to
19 time, through this process, I guess as long as
20 it's not a -- what is it, logical outgrowth of
21 that which we have proposed. Did I get that
22 right?

1 COMMISSIONER DUNN: That's correct.

2 CHAIRMAN GENSLER: I've been reading all
3 these legal memos.

4 COMMISSIONER CHILTON: I get that. My
5 point was just, one, I wanted to make sure that we
6 thought about all the outcomes and the staff, as
7 usual, has done a very good job anticipating
8 everything they can. You've got a tough job
9 dealing with all of us. I appreciate that. But
10 my point was that I think we don't have as much of
11 a luxury as we may have had. Last fall we were
12 doing some of these things. We're trying to get
13 them all out and meeting these sequencings and
14 deadlines that I want to make sure that we're
15 cognizant of that. So thank you very much.

16 CHAIRMAN GENSLER: So do I turn it to
17 Mr. Stawick on this one and then we go to the next
18 one? Okay, Dave.

19 MR. STAWICK: Commissioner O'Malia.

20 COMMISSIONER O'MALIA: No.

21 MR. STAWICK: Commissioner O'Malia, no.
22 Commissioner Chilton.

1 COMMISSIONER CHILTON: Big yes.

2 MR. STAWICK: Commissioner Chilton, aye.
3 Commissioner Sommers.

4 COMMISSIONER SOMMERS: Yes.

5 MR. STAWICK: Commissioner Sommers, aye.
6 Commissioner Dunn.

7 COMMISSIONER DUNN: Aye.

8 MR. STAWICK: Commissioner Dunn, aye.
9 Mr. Chairman.

10 CHAIRMAN GENSLER: Aye.

11 MR. STAWICK: Mr. Chairman, aye. Mr.
12 Chairman, on this question the ayes are four; The
13 nays are one.

14 CHAIRMAN GENSLER: Thank you, Mr.
15 Stawick. Thank you my fellow commissioners and
16 the team. I think you're all going to stay in
17 place, right? And I gather, Mark, you're going to
18 take the lead on this?

19 MR. HIGGINS: Good morning, Mr. Chairman
20 and Commissioners.

21 In Dodd-Frank, Section 731, Congress
22 amended Section 4s of the Commodity Exchange Act

1 to require among other things the Commission to
2 adopt rules governing documentation standards for
3 swap dealers and major swap participants. Section
4 4s also requires the Commission to adopt rules
5 establishing margin requirements for all
6 registered swap dealers and major swap
7 participants that are not banks.

8 Pursuant to this statutory authority, on
9 January 13th and April 28th, the Commission issued
10 proposed regulations that among other things
11 specified the documentation requirements for
12 trading and margin. This Further Notice of
13 Proposed Rulemaking, if so ordered, would be a
14 continuation of those ongoing rulemakings by
15 proposing schedules to phase in compliance with
16 the previously proposed documentation
17 requirements.

18 The compliance schedule set out in this
19 for their notice are informed by public comments
20 regarding the implementation of Dodd-Frank Act.
21 One of the key things to emerge from those
22 comments is that many market participants,

1 particularly those not required to register with
2 the Commission, may need additional time to ensure
3 that their swap transactions comply with the new
4 documentation requirements proposed. Upon careful
5 consideration of these comments, the further
6 notice before you provides relief in the form of
7 additional time for market participants to comply
8 with any documentation requirements the Commission
9 may finalize under Part 23 of its regulations.

10 Depending on the identity of the
11 counterparty, swap dealers and major swap
12 participants are afforded either 90, 180, or 270
13 days to bring their swap trading and margin
14 documentation into compliance. This phasing
15 accords by the category of counterparty and it
16 works as follows in category one of the swap
17 dealers, major swap participants, and active
18 funds. An active fund is a defined term used to
19 capture any private funds as defined in the
20 Investment Advisers Act that is not a third-party
21 subaccount, but executes 20 or more swaps per
22 month based on a trailing 12- month average. A

1 third party subaccount is also a defined term and
2 it's defined as a managed account that requires
3 the approval of a beneficial loaner to execute the
4 necessary documentation.

5 In the first of three phases of
6 compliance, transactions with category one
7 entities -- that is transactions between swap
8 dealers and major swap participants and category
9 one entities -- would need to comply within 90
10 days of the publication of any final documentation
11 and margin rules.

12 In category two are the commodity pools
13 providing private funds and inactive funds,
14 employee benefit plans, or persons predominantly
15 engaged in the business of banking or finance
16 under Section 4(k) of the Bank Holding Company
17 Act. Also excluded from category two are third
18 party subaccounts. Transactions between swap
19 dealers, major swap participants, and category two
20 entities will be afforded 180 days from the
21 publication of the final documentation on margin
22 rules.

1 Category three entities capture those
2 third-party subaccounts. According to comments
3 received, some entities, particularly large asset
4 managers, may have hundreds or even thousands of
5 such accounts to bring into compliance.
6 Recognizing that even the most sophisticated asset
7 managers have limited resources, this further
8 notice provides relief in the form of 270 days to
9 come into compliance.

10 We also have a category four, which
11 serves as a catchall intended to reach any person
12 not otherwise included in categories one, two, or
13 three. These persons would also be provided 270
14 days.

15 Although this is a continuation of the
16 previously mentioned Part 23 proposals, this
17 further notice solicits only comments related to
18 compliance schedules and the questions presented.
19 The comments received and any compliance schedules
20 that may be adopted will become part of any final
21 trading and documentation rules the Commission may
22 promulgate.

1 Before concluding my remarks I would
2 like to thank Camden Nunnery of the Office of
3 Chief Economist for his contributions to the
4 proposed cost-benefit analysis. I would also like
5 to thank Sarah Josephson of your office for her
6 particularly valuable insights throughout this
7 process. I would be happy to respond to any
8 questions. Thank you.

9 CHAIRMAN GENSLER: As I understand,
10 Mark, this is a further proposal as it relates to
11 the -- what we broadly call documentation or
12 internal business conduct rules. Is that right?

13 MR. HIGGINS: That is correct.

14 CHAIRMAN GENSLER: And so if we run --
15 how long is the comment period?

16 MR. HIGGINS: Forty-five days.

17 CHAIRMAN GENSLER: So if we run this
18 comment period for 45 days, then summarize the
19 comments, I guess, in November, that will be
20 included in the administrative docket for those
21 documentation rules that right now we're
22 anticipating taking up after the first of the

1 year?

2 MR. HIGGINS: That's correct. The
3 proposal uses the same rulemaking identification
4 numbers as the outstanding substantive proposals.
5 So the comments will be consolidated within their
6 respective dockets. That's correct.

7 CHAIRMAN GENSLER: Right. And one of
8 the rules that we're looking at taking up later
9 this fall and I think the comment summaries around
10 to the commissioners and so forth is some of the
11 business conduct, what we call external business
12 conduct. It may have another term. I just want
13 to make sure that we can still do that and take
14 that up and move effectively on external business
15 conduct, if appropriate.

16 COMMISSIONER DUNN: Nothing in this
17 would affect the ability to establish business --
18 to establish those business -- finalize those
19 business conduct standards.

20 CHAIRMAN GENSLER: Okay. And we've used
21 the same three, six, and nine-month period, but we
22 used some different preconditions. Could you just

1 walk through again? Just want to make sure. Tell
2 me if I got it right. We have to further define
3 swap dealer.

4 MR. HIGGINS: Correct.

5 CHAIRMAN GENSLER: We have to further
6 define swap.

7 MR. HIGGINS: Correct.

8 CHAIRMAN GENSLER: All right, now what's
9 the other things we have to do?

10 MR. HIGGINS: Sure. We have to finalize
11 the registration requirements.

12 CHAIRMAN GENSLER: All right. So that
13 makes sense. So the swap dealers have to
14 register.

15 MR. HIGGINS: Correct.

16 CHAIRMAN GENSLER: And we've calendared
17 all three of those hopefully sometime this fall,
18 but, again, we're human and it may be later.

19 MR. HIGGINS: Right. Then also the
20 confirmation rulemaking, as well as the
21 segregation rulemaking.

22 CHAIRMAN GENSLER: Which segregation?

1 Segregation for uncleared swaps, right?

2 MR. HIGGINS: Correct.

3 CHAIRMAN GENSLER: So the segregation
4 for uncleared swap and I think confirmation --
5 playing off of our dialogue -- those right now I
6 don't envision us getting to before the first of
7 the year. Gary Barnett, is that correct on the
8 confirmation?

9 MR. BARNETT: That's right.

10 CHAIRMAN GENSLER: So we probably would
11 be getting to segregation of uncleared swaps and
12 confirmation sometime in the first quarter of next
13 year. So to Commissioner O'Malia's question of
14 when might this one start, again, I think this one
15 starts probably at the earliest end of February,
16 end of March, because we have to get through the
17 five further defining the various definitions.
18 But the confirmation and the segregation, and of
19 course, this is all at a docket that we probably
20 would only consider in the first quarter as
21 documentation.

22 So I look at it, I know that there's a

1 lot to plan, that this is more than three, six,
2 and nine months. It's probably six months before
3 we finalize the pre -- the five rules that need to
4 be finalized before this documentation kicks in.
5 So if I can do my math, and hopefully you won't
6 say that it's just -- what was the word you used
7 about lawyering earlier? You don't say it again.

8 MR. BARNETT: I won't say it again.

9 CHAIRMAN GENSLER: You won't say it
10 again, but you don't say it about my accounting.
11 Is it's 6 + 3, which is 9 months for swap dealers
12 and active managers of hedge funds to get ready
13 for this. And you can add the roughly 6 months to
14 the 6 and roughly the 6 to the 15. That at least
15 had some influence on me as to when the Vanguards
16 and Fidelities talked about 18 months and I kind
17 of looked at this and I said this is kind of 15
18 months. This is towards the end of 2012 at least.
19 It felt like it was in the same ZIP code. So, I
20 mean, that's how I was thinking of it. But I do
21 support this. I think it gives the market ample
22 notice, whether it's 3, 6, or 9, or you allow me

1 my accounting to say it's really 9 months, 12
2 months, and 15 months at least, to plan and to
3 start to work on this documentation which is so
4 critical.

5 But I'm going to turn it to Commissioner
6 Dunn.

7 COMMISSIONER DUNN: You know, it's the
8 chairman's prerogative to send things forward to
9 the Commission at anytime, so those schedules are
10 whatever you say they're going to be.

11 CHAIRMAN GENSLER: Well, it's not
12 entirely the case because it's also the staff, the
13 Office of Chief Economist on the cost-benefit
14 analysis, the really excellent input from the
15 commissioners' offices. So there's a lot to be
16 done here.

17 COMMISSIONER DUNN: Now you're getting
18 into the one area that I'm just going to ask about
19 because I think the industry as a whole is going
20 to go ahead and give us their take on this. But I
21 would like to know, and I'd like to hear from the
22 SRO, the NFA in this case, can we do the

1 registration that is needed? And more important
2 for us, are we ready? Will we be ready to receive
3 that documentation and approve that margining by
4 the time these go into effect?

5 CHAIRMAN GENSLER: And can you just hold
6 that question because I didn't follow Robert's
7 Rules. I need a motion to consider this
8 recommendation from the staff on the documentation
9 issue.

10 COMMISSIONER DUNN: So moved.

11 COMMISSIONER SOMMERS: Second.

12 CHAIRMAN GENSLER: All right, now.

13 COMMISSIONER DUNN: Question.

14 MR. BARNETT: I think your question was
15 is the NFA ready to help with this process on this
16 kind of timeframe. And I think the indications
17 are yes. But all still under discussion.

18 COMMISSIONER DUNN: And are we prepared
19 to accept that documentation? It probably gets to
20 some of the concerns Commissioner O'Malia has.
21 Are we going to have the technology available?

22 MR. BARNETT: We are mapping it all out

1 right now and we believe we will. But we're in
2 the process of doing that.

3 CHAIRMAN GENSLER: Commissioner Dunn,
4 can I ask you, are you envisioning that the
5 documentation between a swap dealer and their
6 counterparties finds their way here? Because I
7 didn't -- I thought maybe Ananda or Gary, we don't
8 have to --

9 MR. RADHAKRISHNAN: This is a
10 requirement for the dealers. But eventually, the
11 NFA, as and when the 4s requirements come into
12 place, the NFA will have to ascertain for itself
13 that the registrants are in compliance with the 4s
14 requirements. So I think in the proposal for
15 registration the Commission contemplated a
16 provisional registration because it's all a matter
17 of timing. If, for example, the entity definition
18 and the registration rule are finalized ahead of
19 the 4s requirements, then there will be
20 provisional registration. And in our discussion
21 with the NFA, their thinking was they would start
22 the registration process and then as and when the

1 4s requirements are finalized and, you know, the
2 effective date is given, the NFA will then
3 determine compliance.

4 CHAIRMAN GENSLER: I just wanted to make
5 sure you didn't read any --

6 MR. RADHAKRISHNAN: Yeah.

7 COMMISSIONER DUNN: I don't see that,
8 but I see the counterparties and even the third
9 parties involved in they are going to have this
10 documentation.

11 CHAIRMAN GENSLER: But we don't get it.

12 COMMISSIONER DUNN: No. We need to be
13 prepared to review it, though.

14 MR. RADHAKRISHNAN: Right. We need to
15 be prepared. Somebody needs to be prepared to
16 make sure that the deal is -- the chairman is
17 correct. The obligation is on the registrants.
18 So somebody needs to be prepared to make sure that
19 our registrants are in compliance with the CFTC's
20 regulations. The -- unless, I'll be honest,
21 unless we get money, we cannot do it ourselves.
22 We have to get the NFA as our partners. So, but

1 if we do get the money, then it will be a big head
2 start. But, so the way -- you know, I don't know
3 what Gary thinks. I see it will be a
4 collaborative effort between us and the NFA,
5 especially if -- and one of the preconditions is
6 that the Commission -- I would recommend the
7 Commission adopt as final the rule -- the proposed
8 rule that says all registrants, all SDs and MSPs,
9 have to be a member of at least one registered
10 futures association since there's just one. That
11 will then make sure that the NFA has supervisory
12 authority over dealers and MSPs who have to
13 register their members.

14 MR. BARNETT: Right. I agree with what
15 Ananda is saying, but just for clarity sake and
16 also what the chairman was alluding to, we just
17 have to -- we've got a couple topics going on at
18 the same time. So if we're talking about
19 documentation for clearing documentation and the
20 swap transactional kind of documentation, that is,
21 you know, clearing member, clearing house, buy
22 side, so on and so forth. That's not with us. If

1 we're talking about the registration process,
2 identifying somebody as a swap dealer then having
3 to register and how that process goes on, that's
4 when the NFA discussion comes up and becomes most
5 relevant to where we are then interfacing how will
6 that work and so on and so forth. And that's what
7 I was referring to when I said we are working on
8 that right now.

9 CHAIRMAN GENSLER: Thank you,
10 Commissioner Dunn. I look forward to continuing
11 to hear more about how we're working with NFA
12 because I think we will need, just as we do in the
13 futures world, to collaborate with them. And
14 that's a collaboration that's gone on for decades.

15 Commissioner Sommers.

16 COMMISSIONER SOMMERS: Thank you, Mr.
17 Chairman. My questions are also with regard to
18 documentation. In the proposals that we have done
19 over the past year on internal business conduct
20 standards and specifically documentation, I think
21 we have heard from a number of market participants
22 that would be considered in category one that

1 these are very different from current market
2 practices. So some of the things may have been
3 developed around market practices, but certainly
4 are wholesale different from what they do now. So
5 in order for them to comply, how do we know that
6 these extended deadlines are even appropriate when
7 we have not finalized those documentation rules.
8 And at this point we don't know what we're going
9 to be requiring them to do in documentation. So
10 I'm a little skeptical that we know how much time
11 it's going to take them to comply when our
12 proposals were very different from current market
13 practices and who knows what we'll end up
14 finalizing.

15 MR. BARNETT: Yeah, I'm aware of one
16 topic involving give-up arrangements where there
17 was a difference between where we are some of in
18 the industry felt they wanted it to be and so on.
19 Aside from that, when I read what our proposed
20 rules are requiring, I don't think there's that
21 much difference. So I'm not sure that I think
22 it's as broad as you're suggesting. But I'm just

1 getting here and I'll delve into it. But I'm
2 aware of one significant issue, and otherwise, I
3 look at it and I'm not foreseeing problems at all.

4 COMMISSIONER SOMMERS: Okay. I'll show
5 you the comments after.

6 MR. BARNETT: Okay. I'll be happy to
7 look at it. Thank you.

8 CHAIRMAN GENSLER: Thank you,
9 Commissioner Sommers.

10 Commissioner Chilton.

11 COMMISSIONER CHILTON: Thanks, Mr.
12 Chairman. I mean, on that, I mean, the swaps
13 world is, you know, different from the futures
14 world so we're going to have to do different
15 documentation, I suppose.

16 I wanted to -- when you were talking
17 there about NFA, Ananda, and probably everybody in
18 this room understands how this works, but for
19 people who may be watching this now or later I
20 thought I'd do a little translation.

21 The budget, and we didn't get everything
22 we wanted to implement the bill, but as you said,

1 we don't have the money currently to do this. The
2 President proposed some user fees and I
3 reluctantly said I thought that was better user
4 fees than not doing this. We need to implement
5 this law, so Congress would have to give us user
6 fee authority. I'm not sure if that's really
7 happening. I think when presidents of both
8 parties propose user fees that a lot of times not
9 much happens on them and it's really just sort of
10 creative accounting at times.

11 So when we're talking about using NFA to
12 help do this regulatory -- participate in this
13 regulatory role and they have supervisory
14 authority that we give to them and that allows
15 them to require registration, with the
16 registration may come a charge. They will ask
17 from the people who are registered to pay money,
18 and that is how this oversight would be funded.
19 So it's a user fee, but it's maybe not as
20 transparent as everybody sees. So, you know,
21 Congress has to make the decision whether or not
22 they want a user fee, whether or not it's from

1 legislation or whether or not it's this sort of --
2 it's not really a backdoor approach, but it's a
3 less transparent approach to getting -- I mean,
4 the law is the law. We're supposed to implement
5 it. If we don't have the money, this is one way
6 at least that we could implement it.

7 So I just wanted to, you know, let --
8 again, people in this room may get a visual on all
9 that, but when we're talking about, yeah, we'll
10 give it to NFA, that means more money for people
11 who are registering. And my view has generally
12 been that these are public markets and it's a
13 public good. These things affect the prices
14 consumers pay for everything from milk to
15 mortgages and there's a public interest in funding
16 it. But we certainly need the regulations. So
17 unless I've said anything incorrect, Ananda or
18 Gary --

19 MR. RADHAKRISHNAN: No, you're
20 absolutely correct.

21 COMMISSIONER CHILTON: Okay. Then I
22 don't have a question. Thank you.

1 CHAIRMAN GENSLER: Thank you,
2 Commissioner Chilton.

3 Commissioner O'Malia.

4 COMMISSIONER O'MALIA: Maybe I could
5 clarify a budget item and the user fee discussion.
6 I think you're right. There's a tradeoff here.
7 The proposal in the president's budget, and both
8 Presidents Bush and Obama have proposed it, the
9 difference between that and what the NFA provides
10 for is a completely different universe. The
11 budget proposal that we considered would send all
12 the money to Treasury. In fact, every dollar we
13 charge the industry goes to Treasury. It doesn't
14 stay here. It doesn't make -- it doesn't expand
15 Ananda's team that he so richly deserves. It
16 doesn't do any of that. It goes to balancing the
17 budget or filling the hole in the deficit. At
18 least the industry gets what they pay for with
19 NFA. They sit on the board, they review the cost,
20 they can see exactly what NFA spends money on, and
21 they can understand what that cost pays for. And
22 I believe we address the transaction fee. Don't

1 we through seriatim?

2 MR. RADHAKRISHNAN: All of the rules,
3 yeah, you're correct, Commissioner O'Malia.

4 COMMISSIONER O'MALIA: So I would
5 disagree. I think it's a more transparent
6 process. The industry knows exactly what it's
7 getting and they can understand the transaction
8 and the service that they're going to be
9 benefitting. Mr. Barnett has to satisfy himself
10 that the registration requirements and the
11 collection of the swaps and everything else is
12 what they -- is what we need. And the industry
13 needs to be satisfied they're getting what they
14 want. But at least they get what they pay for as
15 opposed to the pig in the poke that is the federal
16 budget.

17 COMMISSIONER CHILTON: I don't disagree,
18 although, of course, it depends how they would
19 write the user fee.

20 COMMISSIONER O'MALIA: Yeah, yeah.
21 Congress could change the law to send all the
22 money here.

1 COMMISSIONER CHILTON: It goes right to
2 this. And again, my preference is they do it
3 through an appropriation. But nobody should think
4 that, at least for myself, that we're not doing
5 this stuff. And somebody is going to pay for it.
6 And that was my point.

7 COMMISSIONER O'MALIA: Yeah. Well
8 taken. One of the issues with entity-specific
9 rules is the international coordination. And
10 certainly the margin rule on extraterritoriality,
11 when does it apply, who does it apply, and some of
12 the -- we're beginning to receive some comments
13 about, you know, a bank located in a foreign
14 jurisdiction trading with U.S. customers. And
15 we're trying to sort out who the margin rules
16 apply to. In developing this rule and the phasing
17 of this rule for the implementation, did we speak
18 to any international jurisdictions to think about
19 their rulemaking process?

20 MR. HIGGINS: Not that I'm aware of.

21 COMMISSIONER O'MALIA: Okay. Thank you.
22 That's all I have.

1 CHAIRMAN GENSLER: Thank you,
2 Commissioner O'Malia.

3 Commissioner Dunn, are we going to do a
4 little dance for a bit or -- I'll ask a question
5 or two. I'll come up with something.

6 COMMISSIONER SOMMERS: I have a
7 question.

8 CHAIRMAN GENSLER: Commissioner Sommers,
9 please.

10 COMMISSIONER SOMMERS: I have a question
11 about the implementation plan that the SEC may be
12 releasing. And if we know that it will -- the
13 SEC's implementation plan, whether it will deal
14 with these four specific issues or whether it will
15 be more comprehensive? Because it would be weird
16 if they're giving the exact same entities a lot
17 longer or different considerations than what we're
18 doing.

19 MS. PATEL: I don't know the answer to
20 that question. We did share these proposals with
21 the SEC. We, as far as I know, we haven't
22 received any of their proposals yet.

1 CHAIRMAN GENSLER: Yeah, my
2 understanding is they may not be as far along in
3 their deliberations. Though they have excellent
4 staff, they have about twice the number of rules
5 to take up given all of their authorities in other
6 areas. But I've certainly talked to the chairman
7 about it and I know staff has shared everything
8 and our thinking. And we had the joint
9 roundtable, of course, in May.

10 Mr. Stawick.

11 MR. STAWICK: Commissioner O'Malia.

12 COMMISSIONER O'MALIA: No.

13 MR. STAWICK: Commissioner O'Malia, no.
14 Commissioner Chilton.

15 COMMISSIONER CHILTON: Aye.

16 MR. STAWICK: Commissioner Chilton, aye.
17 Commissioner Sommers.

18 COMMISSIONER SOMMERS: Aye.

19 MR. STAWICK: Commissioner Sommers, aye.
20 Commissioner Dunn.

21 COMMISSIONER DUNN: Aye.

22 MR. STAWICK: Commissioner Dunn, aye.

1 Mr. Chairman.

2 CHAIRMAN GENSLER: Aye.

3 MR. STAWICK: Mr. Chairman, aye. Mr.
4 Chairman, on this question the ayes are four; the
5 nays are one.

6 CHAIRMAN GENSLER: The ayes have it.
7 And the staff recommendation is accepted. I thank
8 Dhaval and Mark and everybody that worked on the
9 teams from the Chief Economist to the legal teams
10 to the divisions, but also Dan, Rick, Ananda, and
11 for your maiden voyage, Mr. Barnett.

12 And I think that if people are -- unless
13 you feel like we need a break we'll just call
14 Jackie and her team up. So I think Jackie Mesa --

15 MS. PATEL: Chairman Gensler --

16 CHAIRMAN GENSLER: Oh, sure.

17 MS. PATEL: Do we need to vote on
18 technical corrections Harold mentioned?

19 CHAIRMAN GENSLER: Harold, we will look
20 for unanimous consent on any technicals sending
21 this to the Federal Register absent hearing any
22 objection. Yes, thank you, Dhaval and Harold.

1 Jackie Mesa, head of our Office of
2 International Affairs, and Robert Rosenfeld and
3 Aaron Miller are going to come up and talk about
4 the IOSCO publication of Principles for the
5 Regulation and Supervision of Commodity
6 Derivatives Markets. And so why don't I turn it
7 over to you, Jackie, and you can present this and
8 the excellent work I know that you and Robert and
9 Aaron have been doing overseas.

10 MS. MESA: Thank you. The staff is
11 recommending that the Commission authorize me,
12 Jacqueline Mesa, director of the Office of
13 International Affairs, to not object to the IOSCO
14 Organization of Security Commissions' publication
15 of the report on Principles for the Regulation and
16 Supervision of Commodity Derivatives Markets.

17 Before beginning I would like to thank
18 two people on my staff who have worked hard on
19 this report. Robert Rosenfeld, sitting to my
20 left, deputy director of the Office of
21 International Affairs, who really had the laboring
22 war on this report, and Aaron Miller, an attorney

1 in the Office of International Affairs and also a
2 member of the task force.

3 In my remarks I will explain who
4 developed this report, why IOSCO wanted this
5 report drafted for delivery in September, the
6 content of the report, our estimation of the most
7 noteworthy principles, and the significance of
8 these principles.

9 This report was developed by the IOSCO
10 task force on commodity futures markets, which is
11 co-chaired by the CFTC and the United Kingdom
12 Financial Services Authority. In addition to the
13 United States and the United Kingdom, 18
14 regulatory authorities from 14 jurisdictions
15 participated in the task force. The report,
16 therefore, draws on a broad range of regulatory
17 experiences. IOSCO organized the task force in
18 response to global concerns with respect to
19 volatility and price increases in energy and
20 agricultural commodity markets.

21 The report before you today represents
22 IOSCO's response to specific calls by the G20

1 leaders and finance ministers. In November 2010,
2 the G20 leaders called for enhanced transparency
3 in both cash and derivative markets and requested
4 that IOSCO report its progress on this work to the
5 Financial Stability Board. In April 2011, the G20
6 finance deputies asked IOSCO to finalize by
7 September 2011, its recommendations on regulation
8 and supervision in this area and especially to
9 address market abuses and manipulation such as
10 through position management powers, including the
11 authority to set ex ante position limits where
12 appropriate among other powers of intervention.

13 IOSCO provided the FSB with an update of
14 its work, and in April 2011, the FSB stated that
15 it welcomed the ongoing work of the IOSCO on
16 commodity futures markets and will consider next
17 steps in this area in light of IOSCO's final
18 report on commodity financial markets in September
19 2011.

20 I've recounted this history to underline
21 the importance that the international community
22 attaches to this report. The report will create

1 IOSCO principles for the regulation and
2 supervision of commodity derivative markets in the
3 following areas: Contract design, which is
4 focused on established design concepts for futures
5 contracts; surveillance, including the basic
6 framework for surveillance, powers needed to
7 access information for on- exchange, OTC, and cash
8 market transactions; and the report emphasizes the
9 importance of monitoring large positions. It also
10 addresses disorderly markets which sets out powers
11 needed by market authorities to intervene in
12 markets to address disorderly conditions;
13 enforcement and information sharing, which address
14 the basic framework for successful enforcement
15 programs, including needed powers; and finally,
16 enhancing transparency to both public and
17 regulators through publication of open interests
18 according to certain categories of traders and the
19 reporting of OTC derivatives to trade
20 repositories.

21 In constructing these principles, we
22 updated and added to original guidance that was

1 given in 1997 in the Tokyo communiqué, and that
2 work was led by the U.S., the U.K., and Japan.

3 I'm going to briefly just highlight some
4 of the more significant principles in the report.

5 First, large trader reporting. For the
6 first time, the international community is
7 endorsing a system of large trader reporting as a
8 mechanism to facilitate the monitoring of large
9 positions on an aggregated basis. Second, a
10 framework for addressing multi-market abusive
11 trading. The report recognizes that a
12 jurisdiction surveillance and enforcement
13 structure should actively look for and respond to
14 trading of uses that involve futures, OTC
15 derivatives, and cash markets. A theme throughout
16 the report is surveillance cannot be one
17 dimensional, but must look at the trader's total
18 activity.

19 A principle on intervention of powers in
20 the market. The report calls on market
21 authorities to make credible use of their
22 intervention powers to address disruptive

1 conditions. I think this is important. For the
2 first time, futures market authorities are
3 endorsing on an international level that those
4 intervention powers include, among other things,
5 the power to set ex ante position limits,
6 particularly in the delivery month. And finally,
7 commodity derivative market transparency. For the
8 first time, the international community is
9 endorsing the publication of a CFTC-like
10 Commitments of Traders report.

11 The principles themselves will set the
12 standard for commodity derivative markets
13 supervision and regulation. In this sense, the
14 principles will operate to harmonize international
15 regulation of commodity derivatives markets. The
16 principles establish a solid framework for
17 fostering market integrity and strong surveillance
18 and enforcement functions. More broadly, these
19 principles reflect that IOSCO and the
20 international community recognize how important
21 derivative markets are to national economies and
22 that these markets deserve and require the

1 international authorities to work together to
2 raise global standards.

3 I'm happy to answer any questions you
4 may have about the report.

5 CHAIRMAN GENSLER: First, I think I am
6 supposed to entertain a motion to accept your
7 recommendation that we authorize you, Jackie, to
8 not object to this report at IOSCO.

9 COMMISSIONER DUNN: So moved.

10 COMMISSIONER SOMMERS: Second.

11 CHAIRMAN GENSLER: All right. I had to
12 get that straight.

13 First, let me do a big thanks to the
14 staff, Jackie and Robert, of course, Aaron and
15 everybody that's worked on it. But also to
16 Commissioner Sommers who heads up our Global
17 Markets Advisory Committee and tirelessly goes
18 overseas to represent this Commission at various
19 IOSCO meetings. And I don't do that lightly. I
20 think that this report, and it being on the public
21 agenda, is important because it is a real sign of
22 the harmonization that Commissioner Sommers and

1 Jackie and her team have been able to promote and
2 accomplish. And I can't remember what section it
3 is of seven of Dodd-Frank, but I think, what was
4 it, 727, I think, where it actually asks us to
5 harmonize overseas.

6 So this report, and Jackie went through
7 the three areas that I thought were remarkable,
8 but this report for the first time has an
9 international body saying they'll be endorsing,
10 using all sorts of words of diplomats, but
11 endorsing large trader reporting. Is that
12 correct?

13 MS. MESA: That's correct.

14 CHAIRMAN GENSLER: And we've benefitted,
15 and I think our markets have benefitted from that
16 large trader reporting for some number of decades.
17 Secondly, this agency many years ago moved towards
18 public transparency through what we call
19 Commitment to Traders reports every Friday in the
20 futures world. And this is an international body
21 endorsing something similar. It's not identical
22 words, but is that --

1 MS. MESA: That's right.

2 CHAIRMAN GENSLER: And I think most
3 importantly for some of the deliberations that
4 have been going on for the last three or four
5 years around position limits and Congress
6 addressed it in '08 and then again in Dodd-Frank
7 and this Commission's deliberations, this is an
8 international body that appears on the precipice
9 of saying something, at least consistent with the
10 authorities we have. I know they use terms like
11 position management rather than position limits.
12 But is that correct, Jackie?

13 MS. MESA: That is correct.

14 CHAIRMAN GENSLER: And Congress mandated
15 that we do everything we can not just to
16 harmonize, but in the position limit area I think
17 they had an extra little bit of language that we
18 should try to harmonize. So I thank Commissioner
19 Sommers and the staff for their work on getting us
20 this close to a document that, you know, roughly
21 does that. I mean, I know there's a lot of
22 diplomatic words and "shall considers" and "may

1 considers" in here.

2 MS. MESA: Yes, thank you. Just to add
3 onto that a little bit, this is an international
4 document and these are principles. It doesn't
5 prescribe the means to achieve the principles, but
6 as you stated, I think this goes a long way to
7 sort of raising the standards on a global basis
8 for derivative markets.

9 CHAIRMAN GENSLER: So, I support this.
10 I think this is really a very significant
11 achievement of everybody that's worked on it. And
12 I endorse it and hope that IOSCO endorses it in a
13 couple of weeks.

14 Commissioner Dunn.

15 COMMISSIONER DUNN: Thank you, Mr.
16 Chairman. Jackie, let me thank you and your staff
17 for all the hard work that you put into this and
18 actually taking the lead in IOSCO and developing
19 these principles. I'd be remiss if I didn't
20 recognize our fellow commissioner, Jill Sommers,
21 who has done such an outstanding job as our GMAC
22 Chair. It is delightful, Mr. Chairman, when I'm

1 at international meetings, to walk in and the
2 amount of respect and deference they have to the
3 Commission due to Jill's hard work and the ground
4 that she has laid has just been magnificent. And
5 I know she's worked very, very hard for us to
6 achieve that level of deference and respect
7 internationally, and especially in IOSCO. So,
8 Jill, thank you for plowing all that heavy ground
9 for us.

10 Just a couple of questions to Jackie on
11 this because when you work internationally it's
12 always on a consensus-type basis. And how do we
13 go about to ensure that other countries are, in
14 fact, going to adopt this? Or how do they get
15 prodded on? And I know IOSCO does assessments and
16 it's late in their assessment period, so how do
17 you envision this document, these 22 different
18 principles in these broad areas that you've
19 outlined, being adopted or other countries being
20 prodded?

21 MS. MESA: I think what's unique about
22 this report is many of the reports that IOSCO

1 issues they don't call the recommendations
2 principles; they call them just recommendations.
3 But here we were very deliberate in calling them
4 principles and so that later they could be used to
5 actually assess jurisdictions against the
6 principles. In order for them to be assessed as
7 you referred to I think by the IMF and World Bank
8 doing a formal assessment process, they have to be
9 adopted by the entire IOSCO membership and adopted
10 into their principle regime. That process took
11 place sort of last year to update the principles
12 and I don't envision that happening soon.

13 That said, there are other ways to kind
14 of assess the jurisdiction against this report,
15 and IOSCO is considering them now. One way is for
16 the task force to do sort of a self-assessment of
17 task force members and whether they are complying
18 with the principles or what they're doing to come
19 up to compliance of the principles. And we will
20 probably recommend that as a next step for the
21 task force. And in addition, of course,
22 authorities can always do self-assessments against

1 the principles. And this report was definitely
2 intended to have that kind of assessment take
3 place.

4 COMMISSIONER DUNN: That begs the
5 question as we're going through the process here
6 of adopting our regulations for Dodd-Frank, are we
7 in general compliance?

8 MS. MESA: We believe we are in general
9 compliance. We worked very closely with the other
10 divisions, specifically the Division of Market
11 Oversight and DCIO and ODC in developing this
12 report and enforcement, of course, and making sure
13 that what we are staying in the report is really
14 the best practices and rules and regulations that
15 we're applying here. We tried to make them as
16 current as possible so they reflect our current
17 way we do surveillance and enforcement, et cetera.
18 But we believe we're in compliance.

19 COMMISSIONER DUNN: The report talks
20 about in the compliance that it's market
21 authorities. And I guess SROs that are really
22 going to be responsible for the implementation

1 aspect, how do we stand here?

2 MS. MESA: That's a good point. The
3 term throughout the report is market authorities.
4 And market authority is defined as the regulator,
5 the exchange or the SRO. So in many of the
6 principles, particularly on surveillance, it
7 really is an exchange duty in the U.S. But the
8 idea was not to dictate in the report again the
9 market structure that the nation may use, but yet
10 to say whoever has delegated or whoever has this
11 responsibility, this is the goal we want achieved.

12 COMMISSIONER DUNN: Once again, let me
13 thank you and your staff for going forward with
14 this. And Commissioner Sommers, thank you.

15 CHAIRMAN GENSLER: Thank you,
16 Commissioner Dunn. I'm just going to correct -- I
17 cited the wrong statute number, but it was 752 is
18 on international harmonization.

19 So, Commissioner Sommers.

20 COMMISSIONER SOMMERS: Thank you, Mr.
21 Chairman. And thank you both Commissioner Dunn
22 and Chairman Gensler for your kind words. But

1 really, the compliments all rest with Jackie and
2 her staff for all the hard work that you have
3 done. And Robert, in putting this report and the
4 previous reports that this task force has put
5 together. I mean, when the task force was created
6 in 2008, you were under a very tight deadline in
7 getting a report out to the public with regard to
8 the regulation of commodity markets. And as the
9 name reflects, IOSCO is an organization of
10 securities commissions. So from my perspective,
11 it is very significant to even have a task force
12 on commodity derivatives within IOSCO and a giant
13 step forward for us as a leader in this area to be
14 putting out reports with regard to commodity
15 derivatives. So thank you for everything you've
16 done.

17 MS. MESA: Thank you.

18 COMMISSIONER SOMMERS: Not just on this,
19 but on the previous reports. And I guess it leads
20 into my question. You have tackled other issue
21 areas in your previous reports -- oil markets,
22 specifically in the past and now this on

1 principles for the commodity markets. What are
2 the next steps for the task force? And are there
3 other issues areas that you think need to be
4 addressed?

5 MS. MESA: I think the next steps
6 somewhat may be determined by the FSB at their
7 meeting on Monday. In their previous statements
8 they said that they will consider this report at
9 the meeting on Monday, the steering group of FSB
10 and consider what next steps need to take place.
11 They may just endorse the report, but they may
12 actually ask IOSCO to do more work in certain
13 areas.

14 But additionally, of course, the task
15 force can come forward and recommend work to the
16 IOSCO technical committee -- of course, we are a
17 representative -- and suggest further work in
18 certain areas. I think some of the further work
19 that the task force really wanted to do is to
20 drill down on some of these principles and so that
21 there is a separate whole report on some of the
22 issues in this document. And then to provide more

1 guidance to the regulatory authorities.

2 One area, for instance, was on the
3 Commitments of Traders report, was to drill down
4 further on how to do that and hopefully to
5 harmonize so that when you're looking at one of
6 these we're defining terms in the same way. So
7 that's probably where we may go next.

8 COMMISSIONER SOMMERS: I think -- I
9 don't have any other questions, but I think just
10 generally to say that with regard to not only this
11 task force, but also the IOSCO task force on OTC
12 derivatives you and your team have done an
13 incredible job. And to tell the public that there
14 are -- there's a report that's already done, a
15 report that's out for consultation right now, I
16 think. Right? Still open for consultation?

17 MS. MESA: That's right.

18 COMMISSIONER SOMMERS: And another
19 report to be done on OTC derivatives. So thank
20 you for all of that work as well.

21 MS. MESA: Thank you. And thank you for
22 your support.

1 CHAIRMAN GENSLER: Thank you,
2 Commissioner Sommers.

3 Commissioner Chilton.

4 COMMISSIONER CHILTON: I don't have any
5 questions, but I commend you for all our work and
6 your team. And commend Commissioner Sommers, too.
7 She really has been a leader on this. And I'm
8 also going to say a nice word about other people,
9 but I don't want to minimize the work that Jill's
10 done, which I think has been helpful. But, you
11 know, the chairman has been overseas.
12 Commissioner Dunn has been to Birkenstock a couple
13 of times, you know, carrying the flag.
14 Commissioner O'Malia was in London earlier this
15 year. I was over there. I was in Brussels and
16 President Sarkozy was there and he spoke
17 eloquently on the need to move forward on these
18 things. And I don't know that he used the word
19 "unison," but together. And so President
20 Fernandez of the Dominican Republic, his office
21 has communicated with us on these issues, too.

22 And I think in general, like I said at

1 the opening in my opening comments, this should
2 alleviate some concerns among people that there's
3 going to be some tectonic plate shift up in the
4 U.S. because droves of traders are going to move
5 offshore. There's been a few examples. I was
6 trying to find it. I believe it's a shout out to
7 Silla Brush. I think it's a Bloomberg story from
8 April or May that talked about how Singapore was
9 saying, well, we don't want to do limits. And I
10 think those things actually are going to be
11 short-lived. I think generally we're moving
12 together as an international community. We're all
13 going to have our own sovereign issues. But by
14 and large we're moving together. The changes, as
15 we're primarily doing them together, are going to
16 actually make our markets more competitive.
17 People are going to want the certitude of the
18 markets that we have.

19 So I commend you. I think this is a big
20 step. And I'm glad we're moving forward with it.
21 Thanks.

22 CHAIRMAN GENSLER: Thank you,

1 Commissioner Chilton. I'm wondering whether
2 Commissioner O'Malia is going to give a shout out
3 to somebody else at the press table. But --

4 COMMISSIONER O'MALIA: I'm going to
5 continue to rain praise on Commissioner Sommers
6 for her work and obviously the work of the
7 international team for their work. Frequently,
8 since coming to the Commission, I've gone to ask
9 Commissioner Sommers how does this all fit
10 together? You know, what does IOSCO stand for?
11 What does it do? How will it add value? How do
12 we coordinate? And she's always been very
13 generous with her time and explaining it to me.
14 And as Jackie and Robert and the rest of the team,
15 Aaron, have been very helpful in making sure we
16 have to coordinate, but it has to be more than
17 words. We can agree to principles, but it's going
18 to get down to the nitty-gritty here when we are
19 debating over who -- what margins apply to which
20 people.

21 I think, Jackie, you just made a great
22 point about large trader. What if we use

1 different data? You know, Commitments of Traders
2 reports. What if we're comparing apples to
3 oranges? That's not helpful. And so the real
4 work, and we're going to have to put Commissioner
5 Sommers back on the plane, Jackie and her team
6 going back on the plane for these, no doubt, not
7 very luxurious, you know, all day meetings,
8 nonstop, hashing out words, trying to find
9 accommodations internationally.

10 The hard work has probably yet to begin.
11 People asked about our rulemaking proposals. It
12 was easy to put out the drafts; it's tougher to
13 put out the finals. And that's kind of where
14 we're into right now. And I have a handful of
15 questions here I'd like to ask just to make sure I
16 understand this process.

17 This task force report seems to be
18 caught partway between a futures regulation and a
19 post Dodd-Frank world. For example, we talk about
20 trade repositories, position management, and
21 broader manipulation authority. And I think you
22 mentioned that there are -- or maybe Commissioner

1 Sommers mentioned that there's another report
2 coming. How do these reports fit together? And
3 how do we ensure that we're timely -- because even
4 though our pace is becoming or our order and
5 implementation is becoming a little clearer, we're
6 still -- it's still going to be a guessing game
7 and a lot of variables at play here. How do we
8 make sure that all of these pieces come together
9 and we're submitting the relevant reports to the
10 relevant people in relevant timeframes? What's
11 next?

12 MS. MESA: There are a lot of work
13 streams. I think maybe the best way to explain
14 this is there are a lot of work streams going on
15 internationally across the board. And I know
16 Commissioner Sommers was referring to the OTC
17 Derivatives Task Force that specifically is
18 addressing issues in the OTC sphere. So they have
19 a data report out right now and they will issue
20 one on general standards is the next one. So I
21 think that is the task force and that's the group
22 that is really kind of, I would say if you put it

1 in these terms, Dodd-Frank-oriented, but
2 OTC-oriented. And then this work and this report
3 is primarily about on- exchange derivatives trading.
4 Although we did not want to close the door, that
5 some of the principles in here could be applied in
6 the OTC space. They're instructive. We say
7 they're instructive, but they're not in the same
8 world as when we're trying to say these are the
9 principles that you must have for the on-exchange
10 trading.

11 I think taking in light all of those
12 work streams, we tried not to step on the toes of
13 the separate work going on in the OTC sphere,
14 which is why you see a mention of OTC derivatives
15 and it feeds in, of course, to some of these
16 principles. But it is not really explicitly going
17 in that space because you've got a lot of other
18 work streams handling it.

19 And I just want to mention one thing.
20 You mentioned margin and coordination. On a
21 global scale, there will be a group going forward
22 to try to harmonize margin on a global basis. I

1 think that's really important work. The Federal
2 Reserve is participating, we're participating, the
3 SEC is participating and, of course, national
4 regulators from all over the world.

5 COMMISSIONER O'MALIA: What's the
6 timetable on that?

7 MS. MESA: They're going to have their
8 first meeting I think in October. And then I
9 don't know that -- because it's just going to be a
10 first meeting, it's not determined yet the
11 timeframe of how long it will take or when the end
12 date is.

13 COMMISSIONER O'MALIA: What direction
14 should the various Dodd-Frank rulemaking teams
15 take from this document in developing our rules?
16 Have you shared this with the various teams? Are
17 they looking at it?

18 MS. MESA: We've shared it with all of
19 the division directors, of course, and many people
20 downstream. Because, again, it doesn't
21 necessarily directly address OTC derivatives, but
22 the other work in IOSCO does. These documents

1 aren't necessarily geared toward that and have
2 not, I don't think, globally been shared with the
3 teams, but I would have to check with the
4 directors.

5 COMMISSIONER O'MALIA: Okay. How will
6 the task force members, the IOSCO task force
7 members, commit to implement comparable
8 regulations to avoid the extraterritorial disputes
9 that we might be setting ourselves up for? And is
10 there a process? I didn't see it in this
11 document, but is there a process that you and your
12 colleagues have committed to?

13 MS. MESA: Let me know if this answers
14 your question. But I think it might relate to one
15 that Commissioner Dunn asked which is how do we
16 know that people are actually going to implement
17 these? And that's sort of the next step.

18 COMMISSIONER O'MALIA: I'm less
19 concerned of whether they're going to implement
20 them because I think what they will do is we will,
21 you know, some will implement here and some will
22 implement here and we'll have agreement that we're

1 within the principles, but closing this gap is
2 going to be the challenge.

3 MS. MESA: I think we should consider --
4 I think there are several things. I think first
5 we should consider this a first step. First, you
6 have to establish the principle. Second, IOSCO is
7 a body that -- and as many international
8 organizations that don't determine again the means
9 to get to the final outcome, but just say these
10 are the goals and then let each regulatory
11 jurisdiction decide how to get there. And that's
12 precisely because of historic reasons, different
13 legislatures, to determine the exact way to get to
14 a certain principle on an international scale is
15 fairly rare and not impossible. And in important
16 areas we are trying to do that.

17 COMMISSIONER O'MALIA: Can you, since
18 this, you know, it's clearly a dual track. Right?
19 You've got IOSCO trying to coordinate everybody,
20 but you've obviously got the five us. You've got
21 international bodies working on their own separate
22 rules. Can you provide a quick update as to what

1 the current EU reforms are -- what the schedule
2 looks like and when we expect both EMIR and MiFID
3 to meet the G20 deadlines?

4 MS. MESA: I don't have the exact
5 timeframe.

6 COMMISSIONER O'MALIA: We seem to be
7 suffering from that everywhere.

8 MS. MESA: Yeah. I can give you a
9 general view of where they are.

10 So as of yesterday they had began
11 counsel negotiations. So that's the 27 member
12 states and the European Union came together as a
13 body to look at EMIR, which deals mainly with
14 mandatory clearing and trading. And that
15 legislation is still in piece. It was passed by
16 the Parliament. But once the council settles on a
17 draft they will work together to come out with a
18 final piece of legislation. And MiFID is supposed
19 to be -- the MiFID is supposed to be proposed by
20 the European Commission, I believe, next month.

21 COMMISSIONER O'MALIA: Do we have an
22 estimate on when that -- because we have --

1 obviously today we've spent a good portion of the
2 day talking about our mandatory clearing and
3 trading timelines. And apparently the chairman
4 and I agree that around the third quarter is when
5 this one comes home. Are they going to be around
6 the third quarter?

7 MS. MESA: Mandatory trading and
8 clearing is in EMIR and that I think will be
9 finalized by the end of the year. And then
10 implementing regulations by ESMA and the other
11 authorities in Europe by sometime in 2012 with
12 hope to meet the G20 deadline by the end of 2012.
13 So on clearing and trading I think -- or clearing
14 and reporting I believe they're pretty much there.
15 On MiFID, which handles separate issues regarding
16 trading and some of the issues we talked about
17 today, it's further down the timeframe. Again,
18 the EC first has to propose legislation which will
19 be sometime before the end of the year and then it
20 goes through this -- the EU Parliament has to pass
21 it. The council has to pass it. And then they
22 have to pass the Common Draft. So it's further

1 down the line in 2012 and '13.

2 COMMISSIONER O'MALIA: Now, I understand
3 the SEC is working on a pretty extensive and
4 detailed extraterritoriality proposal. I'm not
5 aware of where ours stands. I know we've
6 assembled a team, but I don't know how detailed
7 and how specific it will be or how extensive it
8 will be. Are you talking to the SEC? Are you in
9 coordination with them?

10 MS. MESA: We are talking with the SEC.

11 COMMISSIONER O'MALIA: Okay.

12 CHAIRMAN GENSLER: We are doing it at
13 the chairman level, the general counsel's level,
14 the international. There's been a lot on the
15 international. Of course, we have something,
16 Commissioner O'Malia, they don't have, is Section
17 722(d). They didn't -- and even to this day they
18 feel comfortable they didn't need a specific thing
19 from Congress. But that Section 722(d) that we
20 have, they don't have the parallel in Dodd-Frank.
21 And so there's some differences there. And a lot
22 of what we're discussing is the application of

1 that Section 722(d) and seeking, you know, putting
2 out some guidance and getting notice and comment
3 on that.

4 COMMISSIONER O'MALIA: Okay.

5 CHAIRMAN GENSLER: Which is a little
6 different than their world because they don't have
7 the exact parallel.

8 COMMISSIONER O'MALIA: Okay, now Jackie,
9 you and I have talked about obviously starting
10 with -- when I first came on we started talking
11 about Pittsburgh, September 2010. The goal was to
12 have -- it was really a two-part mandate from the
13 G20, was to improve our physical data on commodity
14 markets, energy markets, and also financial
15 reform. Now, we're obviously well down the way
16 with regard to financial reform, but we still seem
17 to be lagging in terms of physical reporting of
18 data. The Europeans, I think, probably did the
19 right move to improve agriculture data. But the
20 oil market data is woefully inadequate, especially
21 non-OECD nations. I think obviously the growth
22 and consumption is in nondeveloped nations by a

1 long way. And so there's a lot of factors.

2 And in fact, the FTC kind of confirmed
3 that in their report that just came out this
4 month. And I think this report would be very
5 helpful to have to make sure that it really looks
6 at kind of both the factors: Supply and demand
7 factors, physical data factors, the financial
8 reforms. Can I ask you to make sure you get this
9 to your IOSCO colleagues to make sure it's in
10 future reports, this reference? Because I know
11 they do cull all the economic analysis out there.
12 And just to make sure that this report makes it
13 in.

14 MS. MESA: I'm happy to share that.

15 COMMISSIONER O'MALIA: Thank you. Do
16 you know if they're going to make any headway in
17 improving compliance with reporting of physical
18 data from all G20 nations?

19 MS. MESA: There is a G20 group on oil
20 market volatility that is working on just this
21 issue. It's led by the French and they've had
22 several meetings and it's really to assess

1 jurisdictions and how they're reporting to the
2 JODI Initiative, which I know you're familiar
3 with. And they have made progress. They actually
4 have made progress with several of the countries.
5 There are still countries that are out of
6 compliance and they're putting pressure on those
7 countries to make progress.

8 COMMISSIONER O'MALIA: Thank you. Good
9 work on this report.

10 MS. MESA: Thank you.

11 CHAIRMAN GENSLER: Thank you,
12 Commissioner O'Malia.

13 Just before I ask Mr. Stawick to call
14 the roll I have a unanimous consent to note for
15 the record that the Commission business required
16 consideration of this matter with less than seven
17 days' notice. Apparently we sunshined. It was
18 six days. But not hearing any objection that's
19 done in the record.

20 Mr. Stawick.

21 MR. STAWICK: Commissioner O'Malia.

22 COMMISSIONER O'MALIA: Aye.

1 MR. STAWICK: Commissioner O'Malia, aye.
2 Commissioner Chilton.

3 COMMISSIONER CHILTON: Aye.

4 MR. STAWICK: Commissioner Chilton, aye.
5 Commissioner Sommers.

6 COMMISSIONER SOMMERS: Aye.

7 MR. STAWICK: Commissioner Sommers, aye.
8 Commissioner Dunn.

9 COMMISSIONER DUNN: Aye.

10 MR. STAWICK: Commissioner Dunn, aye.
11 Mr. Chairman.

12 CHAIRMAN GENSLER: Aye.

13 MR. STAWICK: Mr. Chairman, aye. Mr.
14 Chairman, on this question the ayes are five; the
15 nays are zero.

16 CHAIRMAN GENSLER: With that I guess Ms.
17 Mesa, you can have authority to not object to the
18 publishing of this by IOSCO.

19 I did the technical corrections. Just
20 looking our next scheduled meeting is September
21 22. I think the schedule after that is October 4.
22 I've already said what the next couple of things

1 in queue are. If we're ready we'll go on the
2 22nd; if not, we'll probably go on the 4th. I
3 mean, we'll just see how, you know, these things
4 that are in the queue continue to be reflecting
5 the commissioner's comments back.

6 So we, for the public, we'll only tell
7 you on the 15th what we're doing on the 22nd. Or
8 even if we're meeting on the 22nd, I guess, just
9 depending upon how these two ripen along the way.
10 But we will put that on our website with seven
11 days notice.

12 And if there isn't any other Commission
13 business I'd entertain a motion to adjourn. But I,
14 too, want to thank you all before we adjourn.
15 Because it was excellent, really excellent work.
16 I think this is, you know, of all the pieces that
17 we've had, this one stands out because of the
18 international coordination on commodities markets.
19 It's not really been, as Commissioner Sommers
20 said, part of IOSCO in the past, so.

21 COMMISSIONER DUNN: So moved.

22 COMMISSIONER SOMMERS: Second.

1 CHAIRMAN GENSLER: All in favor. This
2 meeting is adjourned.

3 (Whereupon, at 12:15 p.m., the
4 PROCEEDINGS were adjourned.)

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CERTIFICATE OF NOTARY PUBLIC

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.

Notary Public, in and for the District of Columbia
My Commission Expires: January 14, 2013

