

UNITED STATES OF AMERICA
COMMODITY FUTURES TRADING COMMISSION

OPEN MEETING ON TWO FINAL RULE PROPOSALS
UNDER THE DODD-FRANK WALL STREET REFORM
AND CONSUMER PROTECTION ACT

Washington, D.C.

Monday, December 5, 2011

1 PARTICIPANTS:

2 Commission Members:

3 GARY GENSLER, Chairman

4 BART CHILTON, Commissioner

5 MARK WETJEN, Commissioner

6 JILL E. SOMMERS, Commissioner

7 SCOTT D. O'MALIA, Commissioner

8 Staff:

9 DAVID STAWICK, Office of the Secretariat

10 Presentation No. 1: Final Rule on Investment of
11 Customer Funds and Funds Held in an Account for
Foreign Futures and Options Transactions

12 JON DEBORD, Division of Clearing and Risk

13 PHYLLIS DIETZ, Division of Clearing and
14 Risk15 ANANDA RADHAKRISHNAN, Division of Clearing
and Intermediary Oversight

16 WARD GRIFFIN, Office of General Counsel

17 DAVID MEISTER, Division of Enforcement,

18 DAN BERKOVITZ, Office of General Counsel

19 Presentation No. 2: Further Notice of Proposed
20 Rulemaking on Process for Making a Swap Available
to Trade Under Section 2(h)(8) of the Commodity
Exchange Act

21

22 BELLA ROZENBERG, Division of Market
Oversight

1 PARTICIPANTS (CONT'D):

2 AMIR ZAIDI, Division of Market Oversight

3 MAURICIO MELARA, Division of Market
4 Oversight

5 RICK SHILTS, Division of Market Oversight

6 Presentation No. 3: Final Rule on Registration of
7 Foreign Boards of Trade

8 DUANE ANDERSON, Division of Market
9 Oversight

10 DAVID STEINBERG, Division of Market
11 Oversight

12 RYNE MILLER, Division of Market Oversight

13 DAVID VAN WAGNER, Division of Market
14 Oversight

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

2 (9:35 a.m.)

3 CHAIRMAN GENSLER: Good morning. This
4 meeting will come to order. This is a public
5 meeting of the Commodity Futures Trading
6 Commission -- are we all signed in -- to consider
7 final and proposed rules under the Dodd-Frank Act.

8 I'd like to welcome members of the
9 public, market participants, and members of the
10 media, as well as those listening to this meeting
11 on the phone and watching the webcast.

12 I'd like to thank Commissioner Sommers,
13 Chilton, O'Malia, and Wetjen for their significant
14 contributions to the rule writing process. I also
15 want to thank the CFTC's hardworking and dedicated
16 staff. They're working day and night and many
17 weekends. I was in here Saturday, and I saw
18 numerous folks, and I thank you on that.

19 Today is our 21st open meeting to
20 consider Dodd- Frank Act rules. And I'd
21 particularly like to welcome Commissioner Wetjen
22 to his first open meeting. And I'm told somewhere

1 there's a rulebook or something that that is the
2 seat where the most junior Commissioner sits.
3 Since Commissioner O'Malia has now switched over
4 there, and this is the seat where the most senior
5 Commissioner sits, other than the Chair. I don't
6 know, but that's why you have us switched around
7 here.

8 Today we'll consider two final rules,
9 the investment of customer funds, and a rule with
10 regard to the registration process for foreign
11 boards of trade. Will also consider one of
12 proposed rule, the process for designated contract
13 markets and swap execution facilities to make a
14 swap available to trade.

15 Last Friday, the Commission approved an
16 interpretation related to antifraud authority
17 provided in the Dodd Frank Act under --

18 OPERATOR: I'm not hearing anything at
19 this time. I'm doing a test on the line right
20 now. I'm not hearing anything at this time.

21 CHAIRMAN GENSLER: There you have it, so
22 maybe I start over. So, that was not webcast?

1 What do we do? I'm going to pause. Keep going?

2 All right, we're good.

3 Last Friday, the Commission approved an
4 interpretation on Section 742. This related to
5 retail commodity swaps, and this interpretation
6 had originally been countered for today, but we
7 completed it by seriatim last week. And it's also
8 up on our website, or should be sometime today.

9 The CFTC is working to complete
10 Dodd-Frank rules thoughtfully, not against the
11 clock. We've finished 18 rules and have a full
12 schedule of public meetings this month, and well
13 into next year. And we've benefited from
14 significant public input, including 25,000 common
15 letters, 1,100 meetings, 14 roundtables. I've
16 also directed staff to host additional roundtables
17 as well. After the first of the year, staff will
18 put together a roundtable on mandatory clearing
19 for swaps. Under this congressionally mandated
20 process, the Commission has 90 days to review a
21 clearinghouse submission and to determine whether
22 a swap is required to be cleared based on various

1 factors that are in statute. And, though the
2 clearinghouses will decide on the timing of the
3 submission, this could be in the near term, and,
4 thus, this staff roundtable will provide further
5 helpful public input regarding the implementation
6 of the clearing mandate.

7 Today we are considering a rule to
8 enhance customer protections regarding where
9 clearing organizations and futures commission
10 merchants can invest customer funds.

11 We're losing the connection again here?
12 But I'm going to keep going.

13 I believe that this rule is critical for
14 safeguarding of customer money. The Commodity
15 Exchange Act in Section 4(d) (A) (2) -- did I get
16 that right, Phyllis -- prescribes that customer
17 funds can only be placed in a set list of
18 permitted investments.

19 From 2000 to 2005, the Commission
20 granted various exemptions to this list, loosening
21 the rules for the investment of customer funds.
22 These exemptions allowed futures commission

1 merchants to invest customer funds in AAA rated
2 sovereign debt, as well as to lend customer money
3 to another side of the firm through repurchase
4 agreements.

5 Today's rule prevents such in-house
6 lending through repurchase agreements. I believe
7 there is an inherent conflict of interest between
8 parts of a firm doing these transactions, and I'm
9 glad that were able to consider staff
10 recommendation on a final rule today.

11 The rule also would limit a futures
12 commission merchants ability to invest customer
13 money and foreign sovereign debt. This is in part
14 a result that Dodd-Frank in Section 939(a) require
15 that the CFTC remove all reliance on credit
16 ratings from its regulations. And, thus, we can
17 no longer just say if it's the highest rated or
18 AAA back debt.

19 Wee proposed this rule and October 2010,
20 and since then I've consistently felt that the
21 CFTC needs to finalize this rule to ensure
22 customer funds are best protected. This rule is

1 important, but I might say the agency will look at
2 additional ways to enhance customer protections.
3 Among possibilities we're reviewing are the audits
4 of futures commission merchants, futures
5 commission merchants' monthly and daily reporting
6 to regulators, how futures commission merchants
7 are examined for compliance, the futures
8 commission merchants' relationship with
9 self-regulatory organizations, custodial
10 arrangements, and possibly increasing the
11 transparency between futures commission merchants
12 to customers. In essence, what do they
13 communicate to their customers, not to the
14 regulators, but to their customers regarding how
15 they invest those funds?

16 As we've previously reported, along with
17 the self-regulatory organizations, the CFTC is
18 also doing a series of reviews of the segregation
19 in futures commission merchants accounts.

20 In addition, the CFTC's five
21 Commissioners and staff will be working with the
22 self-regulatory organizations and market

1 participants on further enhancements and ideas to
2 customer protection.

3 The Commission is also looking soon to
4 finish rules on segregation for cleared swaps.
5 Segregation of funds is the core foundation of
6 customer protection.

7 Also today, the Commission will consider
8 a final rule to implement the Dodd-Frank provision
9 for registration of foreign boards of trade, which
10 will make the swaps market more open and
11 transparent. The registration system replaces the
12 CFTC's current practice of staff issuing no action
13 letters to foreign boards of trade, and it's the
14 result of an amendment in the Dodd-Frank act by
15 Senator Feinstein and Senator Levin. I know there
16 were many others that worked on it, but it's
17 specific to those -- that registration regime.

18 And I think that exchanges and trading
19 platforms that allow investors and hedgers and
20 speculators to meet in an open and competitive
21 central market is fundamental to our markets and
22 promotes competition. And even market

1 participants who are either exempted or choose not
2 to use a trading platform will benefit from
3 transparent pricing and liquidity on trading
4 venues. When markets are open and transparent,
5 prices are more competitive, they're more
6 efficient, and costs are lower to the companies
7 and their customers. Transparency benefits, I
8 think, all of us.

9 Lastly, will consider a proposed rule
10 for a process by which contract markets and SEFs
11 make a swap available to trade. I've also
12 directed staff to put together a roundtable to
13 hear from the public on this topic during the
14 comment period. This is something we've done from
15 time to time, and I think it's enormously helpful,
16 particularly during comment periods.

17 Before we hear from the staff on the
18 rulemaking that will consider today, I will
19 recognize my fellow and commissioners for their
20 opening statements. I think it's a great honor.
21 I turned to Commissioner Sommers.

22 COMMISSIONER SOMMERS: Thank you, Mr.

1 Chairman, and I, too, would like to welcome
2 Commissioner Wetjen to his first CFTC Dodd-Frank
3 open meeting. It's been a very fast-paced first
4 six weeks for him, I know. But I just want to say
5 how much I appreciate the communication between
6 his office and be able to work with you on all the
7 rules before us today. So, welcome.

8 I also want to thank the teams that that
9 are before us today. As I always say, but really
10 mean it, your hard work and the long hours you put
11 in, and especially in the last few days before we
12 are getting ready to consider these rules, is much
13 appreciated.

14 Today we are considering the final rule
15 creating a registration system for foreign boards
16 of trade that make their products available to
17 U.S. customers by providing them with direct
18 access to their electronic trading system. This
19 rule will replace the existing process of staff
20 issued no action letters.

21 The CFTC has a long history of
22 recognizing regimes with comparable regulatory

1 objectives. Currently, we have 20 foreign boards
2 of trade, operating under this no action relief.
3 It is very important for me that we retain the
4 type of regulatory cooperation that we have with
5 other jurisdictions.

6 I believe that global markets benefit
7 from international support and collaboration among
8 supervisors, and it is my hope that under this new
9 registration regime, the CFTC will continue to be
10 a global leader in recognizing and granting access
11 to foreign boards of trade with comprehensive and
12 comparable oversight from their home country
13 regulator.

14 In September of this year, the
15 Commission voted on a proposed compliance and
16 implementation schedule for the clearing and trade
17 execution requirements of Section 2(h) of the Act.
18 I reluctantly supported the proposal because it
19 provided some degree of certainty regarding
20 implementation deadlines. I was discouraged,
21 however, that the Commission had failed to provide
22 any certainty with respect to what would trigger

1 the trade execution requirement. I urged the
2 Commission at our September meeting to define what
3 it means to make a swap available to trade.

4 The proposal before us today represents
5 some progress in that direction. Unfortunately, I
6 think we've taken a wrong turn.

7 The proposal provides that DCMs and
8 SEFs, rather than the Commission, will make the
9 determination of when a swap has been made
10 available to trade by considering seven enumerated
11 factors, or any other factor that the DCM or SEF
12 may view as relevant.

13 The DCM or SEF may base its
14 determination on any combination of the factors,
15 or on one single factor. The rules provide that
16 the DCM or SEF may either certify the
17 determination or seek approval under the
18 Commission's part 40 rules. Although the
19 Commission could theoretically overturn such a
20 determination through its rule certification or
21 approval review, the lack of any parameters on how
22 these factors should be considered will make it

1 very difficult, if not impossible, for the
2 Commission to reverse a determination. Once a
3 determination is final, all other DCMs and SEFs
4 are obligated to determine whether they list or
5 offer the same or economically equivalent swap,
6 and, if so, they must treat the swap or
7 economically equivalent swap as having been made
8 available to trade within the meaning of section
9 2(h)(8).

10 And although the proposal is silent on
11 the matter, all over-the-counter participants will
12 also have to determine whether a swap of a trade
13 or would like to trade is the same or economically
14 equivalent, because if the Commission has
15 determined that the swap must be cleared, OTC
16 trading must cease.

17 This approach is deeply flawed, and I
18 cannot support putting it out for comment, even
19 recognizing that it's just a proposal. This
20 proposal, if finalized, would allow a single DCM
21 or SEF to bind the entire marketplace to a trade
22 execution requirement through an ill-defined

1 analysis that the Commission will be unable to
2 reject unless it finds that the determination is
3 inconsistent with the Act or Commission
4 regulations.

5 Giving the lack of any mandatory,
6 objective criteria contained in the rules, it is
7 difficult to envision how the Commission can find
8 a made available for trading determination to be
9 inconsistent with the act or regulations. For
10 example, the proposed rule would allow a DCM or
11 SEF to declare a swap "made available to trade"
12 based solely on a finding that there are ready,
13 willing buyers and sellers.

14 Will a swap that trades once or twice a
15 year, qualify under this test? Could the
16 Commission find a determination, based on one or
17 two trades a year, to be inconsistent with the
18 rule? These are certainly questions that I have.

19 The definition of economically
20 equivalent set forth in the proposal is also
21 problematic. It directs the DCM and SEFs to
22 determine whether a swap is economically

1 equivalent with another swap after considering
2 each swap's material pricing terms. I'm not sure
3 what that means, and I expect that market
4 participants will not be sure either.

5 The proposal, in effect, would delegate
6 implementation of the trade execution requirement
7 of Section 2(h)(8) of the Act to DCMs and SEFs.
8 The fact that Congress did not explicitly direct
9 the Commission to make the "made available for
10 trading" determination does not mean that we
11 should not turn this -- that we should turn this
12 critical responsibility over to DCMs and SEFs.

13 I strongly disagree with the statement
14 in the preamble to the proposed rule that this is
15 a balanced approach. In my view, going down this
16 path amounts to an abdication of our
17 responsibility as a market regulator to provide
18 clear rules of the road. We've given no
19 legitimate reason for taking this approach, and I
20 do not believe that Congress intended for us to
21 allow a single DCM or SEF to make determinations
22 that will have profound market wide implications.

1 Revisions to the list of permitted
2 investments under rule 1.25 is an issue that the
3 Commission has been grappling with for quite some
4 time beginning with a survey conducted in 2007 to
5 gather information on how futures commission
6 merchants and derivatives clearing organizations
7 were investing customer funds.

8 In May of 2009, the Commission solicited
9 comments through advanced notice of proposed
10 rulemaking, and we issued a proposed rule in
11 October of 2010. In July of this year, staff
12 circulated to the Commission a proposed final
13 rule. I supported most of the provisions
14 contained in the July version of the rule, but
15 believed some of the revisions need further
16 vetting, primarily with regard to the issues
17 surrounding the ban on in-house transactions.

18 The preamble to the version -- to that
19 version of the rule - I'm sorry, to the version of
20 the rule we are voting on today clarifies that the
21 scope of the ban and distinguishes in-house
22 transactions from in-house sales of permitted

1 investments, and in-house exchanges of collateral
2 to convert customer funds into collateral that
3 will be accepted by a DCO or foreign board of
4 trade as margin.

5 I support the ban on in-house
6 transactions with this clarification, and also
7 support the harmonization of Rule 30.7 with the
8 investment limitations of Rule 1.25, and the
9 concentration limits on various investments to
10 promote portfolio diversification.

11 I have lingering questions, however,
12 regarding the investment and foreign sovereign
13 debt. A number of different recommendations on
14 this issue have been presented to the Commission
15 in recent days. The version before us today bans
16 investment in foreign sovereign debt, but invites
17 FCMs and DCOs that seek to invest customer funds
18 in foreign sovereign debt to petition the
19 Commission for exemptive relief pursuant to
20 Section 4(c) of the Act.

21 I believe that investment in foreign
22 sovereign debt, to the extent that an FCM or DCO

1 has balances, in segregated accounts denominated
2 in that country's currency, should be permitted to
3 hedge foreign currency fluctuation risks, so long
4 as the foreign sovereign debt qualifies under the
5 overarching objectives of preserving principal and
6 maintaining liquidity. I question the process of
7 including -- that is included in the rule, and I
8 have a number of questions on how this will be
9 handled under 4(c).

10 I would like to close with an
11 observation on the dearth of information we have
12 regarding how FCMs and DCOs are actually investing
13 customer funds.

14 The cost benefit analysis states that at
15 FCMs currently hold over \$170 billion in
16 segregated customer funds, and \$40 billion in Rule
17 30.7 funds. Throughout the cost benefit analysis,
18 we acknowledged that the new restrictions on
19 investment may cause some forced sales or
20 administrative costs to convert unacceptable
21 investments into permitted investments. But we
22 have no way of calculating these costs because we

1 are not in a position to know the composition of
2 customer fund portfolios. We should know.

3 The last time the Commission attempted
4 to collect this information was in 2007. As the
5 last four years have demonstrated, we are living
6 in volatile times. Financial instruments that are
7 safe today can quickly devolve into risky
8 propositions. The Commission should make a
9 concerted effort, through either a reporting
10 regime or regular surveys, to collect information
11 on the investment of customer funds on at least a
12 yearly basis. We should also think about ways to
13 regularly review and update the list of permitted
14 investments under Rule 1.25.

15 Thank you, and I look forward to the
16 questions for the teams.

17 CHAIRMAN GENSLER: Thank you,
18 Commissioner Sommers. Commissioner Chilton.

19 COMMISSIONER CHILTON: Thanks, Mr.
20 Chairman. I also want to welcome Commissioner
21 Wetjen, who I'm very impressed with so far. Mark,
22 you've been helpful to me and others already. And

1 I also want to thank Commissioner Summers for
2 taking on some added responsibilities lately.
3 It's been helpful not just to me and the other
4 Commissioners, but I think helpful to the
5 contrary, although everybody may not realize it.
6 So, thank you for being so tireless and working
7 hard on those other issues, Jill.

8 We get e-mails all the time from folks
9 and we get phone calls, and I can tell you that
10 lately they haven't been so pleasant. And people
11 are concerned in general about, you know, customer
12 money with regard to one of the cases we're
13 involved in. People are concerned that we don't
14 quite get it, that the regulatory world hasn't
15 necessarily shifted enough yet after the passage
16 of Dodd-Frank. It's all these important rules
17 that have not yet been put in place.

18 And, quite frankly, a lot of them just
19 think there's a big disconnect. There's a
20 disconnect between the average folks out there and
21 what goes on on Wall Street and what goes on in
22 Washington. And, you know, I think you see it

1 down at McPherson Square and other places, that
2 they just don't think we get it. There's a
3 disconnect.

4 And sometimes I think they're right,
5 that we don't get it all the time. Other times
6 it's just a matter of explaining what we're doing,
7 and ensure them that we're from the government,
8 and we're not part of the problem.

9 So, this is an effort to continue the
10 good work that we do, and we'll just have to do
11 the best we can to explain to people what our job
12 is, what our responsibilities are.

13 And the first responsibility is to
14 protect customer funds. Priority for us. It's
15 got to be up there, that we need to ensure that
16 those funds are sacrosanct. And today were going
17 to take one action, I hope, with the 1.25 reg
18 banning internal repos. But there are also other
19 things that we need to do.

20 One, I've talked about this a lot in the
21 last month, we need to do regular and robust deep
22 data dives, and that is going beyond just the

1 sheet that says, this is where the segregated
2 funds are, and actually looking to the bank
3 accounts to make sure the money is there. And not
4 just at COB, but it's there intra-day, that it's
5 there all the time.

6 The second thing we need to do is ensure
7 that the penalties that we impose, which are
8 defined by statute, and Commissioner Wetjen and I
9 talked about this ad nauseam, that the penalties
10 may not be the appropriate deterrent to using
11 customer funds and a potentially nefarious way.
12 And I think we'll have a little bit of
13 conversation on that when we get to 1.25.

14 But, look, by law, it's of hundred and
15 \$40,000 penalty if somebody, and I'm not speaking
16 about any specific case. If somebody can transfer
17 hundreds of millions of dollars overnight and
18 potentially make some money off that, is a
19 \$140,000 penalty a deterrent? Of course not, but
20 we'll talk about that.

21 And the last thing is something that's
22 out of our purview, but it's within our interests,

1 and that is something that exists in the banking
2 world and something that exists in the securities
3 world. And that's an insurance fund for futures
4 customers, sort of a belt and suspenders approach.
5 If we don't locate all of the funds from the given
6 circumstance where a firm may go into insolvency
7 were where they may be in bankruptcy. There could
8 be a gap between what customers put in and what
9 they will receive. But if there's an insurance
10 fund, that is something that could make them
11 whole, make the customers whole.

12 I hope Congress will consider it.
13 Again, it exists in the securities world. It
14 exists in the banking world. And I think it's
15 time that we have one in the futures world. With
16 that belt and suspenders approach, if our
17 oversight, surveillance, or enforcement arm
18 breaks, if that belt breaks, people will lose
19 their pants.

20 Thank you.

21 CHAIRMAN GENSLER: Commissioner O'Malia,
22 you still go after Commissioner Chilton. That

1 didn't change.

2 COMMISSIONER O'MALIA: No.

3 CHAIRMAN GENSLER: Thank you,
4 Commissioner Chilton.

5 COMMISSIONER O'MALIA: And it is a tough
6 act to follow. Commissioner Chilton does an
7 excellent job every speech he gives. And I'd also
8 like to welcome Commissioner Wetjen as well. I'm
9 your buffer, so it's a lot easier to follow me
10 than it is Commissioner Chilton.

11 I, too, am impressed with Commissioner
12 Wetjen's rapid adoption of these issues and
13 uptake. It's an extraordinary time with a massive
14 amount of work, and he's done a very careful job
15 and thorough job. And I've been very impressed
16 with all of the work that he's committed thus far.
17 And keep that seat warm over there. It's an
18 absolute place of power, so enjoy it.

19 Today we have before us two final rules
20 and a further notice of proposed rulemaking. I
21 greatly appreciate the cooperation of the staff in
22 accommodating many of the requests I have made

1 four changes in these rules to make them a better
2 product.

3 It is that time of year when I start to
4 fill out my Christmas list, and this year I've
5 come with some new requests, and I'm going to ask
6 for some old things. But the Chairman also
7 preempted two of the items with certain
8 roundtables, so it's Christmas come early.

9 Last Christmas, my first wish for the
10 Commission was to take the opportunity to organize
11 the rulemaking process and a manner that would
12 build a derivative regulation from a strong
13 foundation as opposed to the regulatory jumble of
14 our earliest attempts to put out the 50 plus
15 Dodd-Frank rules. I'm pleased that Congress has
16 taken notice. Dan retained language in the
17 Commission's annual appropriation bill directing
18 the Commission to develop and publish a 60-day
19 comment period, a schedule for implementation, and
20 sequencing of all rules and regulations under the
21 Dodd Frank Act, specifically Title VII. Not only
22 will that help U.S. markets, but a desire for such

1 a schedule was a common refrain from fellow
2 regulators in Asia, which I just returned from,
3 who are attempting to coordinate their rules with
4 both U.S. and European reform efforts.

5 My second wish is that the Commission
6 continue its early efforts to organize itself
7 around technology. We need to upgrade our 20th
8 century surveillance tools to oversee a 21st
9 century electronic marketplace. Congress has
10 provided that's a significant increasing the
11 funding for technology. It would be a missed
12 opportunity if the Commission does not capitalize
13 on this targeted investment to focus on developing
14 a strategic plan for technology.

15 My next Christmas request was for the
16 Commission to schedule roundtables and to provide
17 market participants an opportunity to fully vet
18 their concerns with staff before they're in a sea
19 of uncertainty between effective dates and
20 implementation dates. Based on the Chairman's
21 statements, Christmas has come early on two of the
22 three roundtables I am seeking, and I appreciate

1 the Chairman's willingness to hold these two
2 meetings on mandatory clearing and trading, which
3 are, I believe, very closely linked. And both of
4 these rules are sufficiently vague, as
5 Commissioner Sommers pointed out, about the
6 definitions and what the determining factors are.

7 As many will recall, I sent out a letter
8 on the mandatory clearing requirement, and we
9 received a number of very good, thorough responses
10 back, which are on my website, and I think will
11 help inform the staff roundtables. So, I greatly
12 appreciate your willingness to do that, and I know
13 there's strong support among the Commission.

14 But there's one more round table, that
15 I'd like to reiterate my request for, and that's
16 on clearing and documentation. Since the
17 Commission has approved a proposal to ban the
18 FIA-ISDA Cleared Derivatives Execution Agreement,
19 particularly the tri-party agreement, market
20 participants from all sectors have continued to
21 discuss the best technological solutions for
22 executing swap transactions.

1 I support the development of a
2 technological solution that will minimize the
3 chance that an intermediary or DCO would reject a
4 swap for credit reasons. However, market
5 participants do differ on how fast the swap
6 markets can evolve to implement this new
7 technology.

8 They also differ on what -- on where the
9 technology should be most effectively deployed.
10 Namely, the debate seems to be deploying it at
11 either the intermediary, the execution platform,
12 at the DCO, or a new concept that was new -- that
13 I was recently informed of, a centralized credit
14 hub. Thus far, the Commission's proposal will ban
15 the tri-party annex, but it does nothing to
16 provide the critical technology solution that the
17 swaps market desperately needs. Our next step
18 should be to schedule a roundtable and discuss the
19 most effective solutions available.

20 A bunch of my speech here, which is
21 probably a great relief to many.

22 Getting back to today's final rules, I'd

1 like to thank Bella Rosenberg, Duane Anderson, and
2 Jon DeBord, and their teams for their work on
3 these rule makings.

4 On the foreign board of trade, I intend
5 to support the final rule on registration of
6 foreign boards of trade. The rule sets forth a
7 new requirement that links the approval of an FBOT
8 with a clearing organization.

9 I have two primary concerns with this
10 rule, however. First, does this rule provide
11 adequate clarity regarding the new requirement
12 that links FBOT approval to a Commission
13 determination regarding its clearing organization?
14 This is a new standard which is tied to my second
15 concern. The rule relies on international
16 principles and standards that are currently, but
17 may not be in the future, comparable to our own
18 standards.

19 I have just returned from a trip to
20 Asia, where I met international regulators.
21 Uniformly, the first question that they asked me
22 was, what standard will the U.S. apply permitting

1 mutual recognition for clearing -- for regulation
2 of clearing organizations? Foreign regulators are
3 concerned that the U.S. would demand that U.S.
4 clearing organizations and their regulators
5 comport with standards that are not strictly --
6 that are not necessarily under principles set
7 forth in the Bank of International Standards
8 Committee on Payment and Settlement Systems and
9 the Technical Committee under IOSCO. And I'm
10 looking forward to hearing some clarification from
11 the staff on this point.

12 With regard to the investment of
13 customer funds rulemaking, I intend to support the
14 final rule on investment of customer funds. As
15 recent events have highlighted, the protection and
16 preservation of customer funds is fundamental to
17 our markets. By limiting investments of customer
18 funds to a subset of instruments that currently
19 have minimal risk, this final rule is a step
20 towards enhancing customer protection.

21 However, as I have emphasized in a
22 statement to MF Global, the Commission must be --

1 must not be complacent. It must take additional
2 action to bolster public confidence and our
3 customer protection regime, including enhancing
4 transparency and risks that our intermediaries
5 assume.

6 I hope that the Commission can develop a
7 notice of proposed rulemaking in the new future to
8 improve transparency into intermediaries and on
9 behalf of their customers.

10 I am pleased that this rule before us
11 today, however, permits greater utilization of
12 money market funds, which would enable
13 intermediaries and DCOs to more easily diversify
14 investment of customer funds. Further, I am
15 pleased the rule restricts investments into failed
16 government sponsored enterprises that remain
17 eligible entirely as a result of federal backstop
18 protection.

19 My support of the final rule on
20 investment protection is not without reservation.

21 With regard to sovereign debt limitations, I am
22 reminded of my recent discussions in Asia with

1 regulators and market participants. Both
2 participants in Singapore and Australia had
3 exposure to MF global, and are fighting to secure
4 a lost customer funds, like U.S. market
5 participants. The fact highlighted the
6 interconnection of our economies and markets.

7 I recognize that foreign sovereign debt
8 can no longer be considered a riskless investment.
9 But the truth of the matter is we are all the
10 global economy together. The coordinated efforts
11 by the Federal Reserve and five other central
12 banks last week evidenced this truth.

13 I'm pleased that the final rule states
14 that the market participants may petition for an
15 exemption, that the Commission would consider such
16 an exemption on a case-by-case basis.

17 While the rule provides no standards for
18 acceptable holdings, even those at hedging
19 currency exposure operational risks, I hope that
20 the Commission will act in a timely manner to
21 clarify the acceptable practices and debt holdings
22 to minimize disruption to the market.

1 Finally, I intend to support the
2 proposed rulemaking, making swaps available to
3 trade. My main purpose is to focus the public
4 commentary on the mandatory trading requirement.
5 Pursuant to this proposed rulemaking, an execution
6 platform would determine that a swap is, "made
7 available to trade" after considering a minimum of
8 eight liquidity factors. The execution platform
9 would then notify the Commission of its
10 determination, either by requesting a rule,
11 approval or by certifying the rule.

12 My concern with this proposal is that
13 the Commission is fostering an inherent conflict
14 of interest that could negatively impact the swaps
15 market. The proposals permitting those who have
16 the greatest financial incentive to trade all --
17 to force all trading onto a platform to determine
18 which swaps should be executed. Fearing this
19 exact situation, many on the buy side have already
20 urged the Commission to play a more active role in
21 the mandatory clearing requirement. For example,
22 the American Benefits Council stated the

1 Commission, and not platforms with pecuniary
2 interests, should determine whether the swaps have
3 been made available for trading. They further
4 stated that the Commission should base
5 determination on empirical data of swap liquidity.

6 I recognize this issue is not easy,
7 particularly due to the linkage between mandatory
8 trading and the mandatory clearing determination,
9 unless, of course, the Commission applies the
10 lowest standard of simply listing a product as
11 sufficient. As mentioned above, I believe the
12 Commission should engage the market through a
13 roundtable, which the Chairman has agreed, and I'm
14 thankful.

15 The Dodd Frank act has placed the
16 Commission in a position to preside over a
17 significant portion of the sweeping financial
18 regulatory reforms. Although we often attach a
19 numerical label to mark our progress in terms of
20 proposed and final rules issued, pages published,
21 and the comments received, it all comes down to
22 making sure that we ultimately create a regulatory

1 structure that will promote the successful
2 transformation of the over-the-counter markets to
3 decrease systemic risk and increase stability. We
4 must make sure we get it done right, not just on
5 quickly.

6 I hope the Commission will focus the
7 rulemaking schedule as requested by Congress, and
8 conduct the roundtables, so we will benefit from
9 the market input.

10 I think the staff again for their hard
11 work and therefore the lists in developing these
12 rules. Thank you.

13 CHAIRMAN GENSLER: Thank you,
14 Commissioner O'Malia. And before I turn it over,
15 I just want to make sure Macie's going to do well
16 at Christmas time as well. I look out for you,
17 you know, because she and I are kind of aligned on
18 this stuff now.

19 COMMISSIONER O'MALIA: I did ask about
20 her Christmas list. It is not yet ready, so we
21 will have to see what she comes up with.

22 CHAIRMAN GENSLER: Okay. I mean, if

1 Macie needs any help from me, you know --

2 COMMISSIONER O'MALIA: Macie does not
3 need any help from anybody.

4 (Laughter)

5 COMMISSIONER O'MALIA: Macie is quite
6 sufficient to get what she wants when she wants
7 it.

8 CHAIRMAN GENSLER: All right, good. I'm
9 glad about that. Macie is one of his young ones.
10 Thank you, Commissioner O'Malia.

11 Commissioner Wetjen, we welcome you to
12 the dais. It is wonderful to have you here and
13 all the input that you've given already in these
14 six weeks.

15 COMMISSIONER WETJEN: Thank you,
16 Chairman Gensler. And thanks to the rest of the
17 Commissioners on the dais for their kind comments
18 this morning. I really appreciate that.

19 Before I comment on the rules before the
20 Commission today, I want to thank Chairman Gensler
21 and Commissioners Chilton, Sommers, and O'Malia
22 for their graciousness during my first week here

1 at the Commission. You've been both welcoming and
2 extremely helpful during my transition here, and I
3 have sincerely enjoyed working with each of you,
4 especially on the rules we are considering today.

5 I also want to thank the professional
6 staff for their assistance. I look forward to
7 knowing all of you better as we work together to
8 meet the important mission of this Agency.

9 I also have been meeting with members of
10 the public almost nonstop since I arrived. I want
11 to express my special appreciation to those who
12 have reached out to offer suggestions and comments
13 to these rules. Public input is an indispensable
14 part of the Commission's rulemaking process, as
15 well as the best safeguard against unintended
16 consequences. So, your involvement was critical
17 to ensuring that we have the best version of the
18 rules before us.

19 I want to stress my belief that the
20 Commission should remain open to course correction
21 as the facts change. The Commissioners and staff
22 have been active in responding to questions and

1 issues raised by my office and others. I believe
2 that the rules under consideration today are
3 better for it, and I believe we must remain open
4 and nimble during the implementation phase.

5 I will be supporting all three rules
6 today, though I intend to pay especially close
7 attention to the Commission's final rule out
8 concerning the protection of customer funds.

9 Today we are considering changes to
10 Regulation 1.25, and it's being done against the
11 backdrop of recent developments in the FCM
12 community. It's important to know that the
13 current investigation underway here at the
14 Commission will yield additional facts to explain
15 what led to the disappearance of customer funds.
16 But the Commission cannot ignore the widely known
17 fact that thousands of futures customers do not
18 know where their money is. Futures customers
19 generally, and indeed the public, are rightly
20 demanding that the Commission take immediate
21 steps. These steps are intended to reassure the
22 public that we are doing everything we can to

1 safeguard customer money.

2 Although we cannot be sure the present
3 rule will address every issue ultimately raised by
4 the recent FCM failure, it is an important step
5 toward reemphasizing the Commission's commitment
6 to ensuring that customer money is invested in a
7 manner that preserves principle and maintains
8 liquidity. I believe this rule is necessary to
9 restore confidence that this is the case.

10 It is incumbent upon the Commission,
11 however, to revisit Rule 1.25 and/or other rules
12 as markets evolve, circumstances change, and new
13 information is brought to light. An investment
14 once viewed as safe may not be viewed as such.

15 Only a few months later, and vice versa. What is
16 deemed a prudent investment cannot be a static
17 determination. Toward this end, we remind market
18 participants in this rule that the Commission can
19 and should implement further changes to our rules
20 whenever it is presented with an informed basis
21 for doing so.

22 There are few issues important to

1 protecting customer funds that the Commission was
2 unable to address in this role, but perhaps should
3 address in the future in order to restore
4 confidence in the futures markets.

5 First, I agree with Commissioner Chilton
6 that misconduct with respect to seg funds must be
7 addressed immediately and with all appropriate
8 sanctions. The Commission, therefore, should
9 consider whether its current approach to penalties
10 in this area is a sufficient deterrent to misusing
11 or misplacing customer funds.

12 Second, the Commission should review how
13 examinations are conducted, and evaluate our
14 compliance regime to ensure that customer funds
15 and segregated accounts are fully protected. I
16 support the Chairman's request for a review of the
17 Commission's regulations in this regard.

18 Finally, I also believe that staff
19 should begin thinking about an appropriate FCM
20 disclosure regime that would disclose to customers
21 certain risks and investment information
22 concerning the firms that take custody of margin.

1 Customers have a right to know how FCMs and DCOs
2 are investing segregated funds, and they are doing
3 so prudently -- excuse me, and that they are doing
4 so prudently. I hope the Commission can take this
5 matter up in the near future.

6 Today, I also support the staff's
7 recommendations with respect to the registration
8 of foreign boards of trade, offering direct market
9 access to participants located in the United
10 States. Congress granted the Commission new
11 authority to register such foreign exchanges in
12 the Dodd-Frank act, and I believe that the final
13 regulations appropriately implement this new
14 authority.

15 The regulations provide a standardized
16 and transparent process that will benefit the
17 public. They also provide a former firm or legal
18 foundation than the current no action regime
19 governing access to FBOT trading platforms by U.S.
20 participants.

21 In my view, the final regulations better
22 ensure the fair treatment of applicants through

1 formal and published processes and criteria. They
2 also align our registration regime with a number
3 of countries that permit U.S. exchanges to provide
4 direct market access internationally.

5 Finally, I am supporting the
6 Commission's re-notice of an issue from the SEF
7 and DCM proposals in order to seek further comment
8 on the meaning of the phrase "made available to
9 trade," or MATT. There has been some confusion
10 concerning the Commission's sub proposal and its
11 provision relating to Matt, assessments and
12 reports. I support the staff's recommendation to
13 reconsider and clarify our initial approach, and
14 to propose a new MATT determination process with
15 greater Commission involvement. Again, I think it
16 is important that we permit course correction as
17 new facts come to the Commission's attention, and
18 I am confident that the proposal will elicit
19 useful comments that will inform our ultimate
20 approach.

21 I look forward to reading the comment
22 letters and reviewing our options for meeting our

1 contract congressional mandate, while ensuring
2 that U.S. swap markets remain liquid and
3 efficient. And I also wanted to add my support
4 for Commissioner O'Malia's request for roundtables
5 on both this issue and the mandatory clearing
6 requirement. That's something he and I discussed
7 this week.

8 Again, I want to thank the staff for all
9 their hard work on each of these rulemakings. I
10 also look forward to the Commission's future
11 efforts to implement the Dodd-Frank Act in the
12 weeks and months ahead. Thank you.

13 CHAIRMAN GENSLER: Thank you,
14 Commissioner Wetjen. And I think roundtables --
15 I'm going to just make two comments before I turn
16 it over. I think roundtables are very helpful.
17 Of course, you have to be respectful of staff just
18 getting the wealth of information prepared before
19 a roundtable, and then to be -- you know, make
20 them worthwhile while they're still doing the
21 ongoing business of overseeing the futures market,
22 the business of completing our rules. And so,

1 it's just a matter of -- so on the third and
2 possibly fourth, fifth, and sixth roundtable, that
3 people have ideas for, it's mostly just how staff
4 reacts and whether they can -- I'm supportive of
5 as many roundtables as can work and be balanced
6 into their schedule.

7 I also do note, though, two
8 Commissioners just maybe didn't put it on the
9 list, but I want to thank Commissioner Wetjen and
10 Commissioner O'Malia because I share your view
11 that I think that one of the areas to enhance the
12 confidence in the seg system is for customers to
13 know where their money is and what it's invested
14 in. And I know that Commissioner O'Malia and
15 Commissioner Wetjen put that in. And that's in
16 one of the lists that I've asked staff to really
17 think about what recommendations we could have
18 that would probably require rule changes, but to
19 really to be open to get the staff to bring
20 forward recommendations in that area as well as
21 the examination and audit area and custody. And
22 any areas that any of you think appropriate,

1 please weigh in directly with staff.

2 With that, I think we're going to turn
3 over to four people who have been here before.
4 The staff will make presentations concerning their
5 recommendations on the final rules, as well as the
6 proposed rule. After each presentation, the floor
7 will be open for questions, and following the
8 discussions, the Commission will take votes on the
9 recommendations presented.

10 So, at this time, I'd like to welcome
11 Jon DeBord, Phyllis Dietz, Ananda Radhakrishnan of
12 the Division of Clearing and Risk, and Ward
13 Griffin of the Office of the General Counsel.
14 Nice bow tie today, Ward. There's a long history
15 of Ward and his bow ties.

16 SPEAKER: Mr. Chairman, I second that.

17 (Laughter)

18 CHAIRMAN GENSLER: All right. We could
19 have a vote now on your bow tie. To present their
20 recommendations on the final rule and investment
21 of customer funds. I turn it over.

22 MR. RADHAKRISHNAN: Thank you. Before

1 we turn it over to the presentation on Regulation
2 1.25, I would like to highlight a couple of
3 points, which I know the Commission is aware, but
4 members of the public may not be aware.

5 The first point is that the statute
6 limits the investment of customer funds. I'm
7 going to read from the statute. Section
8 4(d) (A) (2) says that such money, meaning customer
9 money, "may be invested in obligations of the
10 United States in general obligations of any state
11 or of any political subdivision thereof, and
12 obligations fully guaranteed as to principle and
13 interest by the United States." So, it's
14 essentially U.S. treasuries, what we call
15 municipal securities, and any other obligations
16 fully guaranteed as to principle and interest by
17 the United States.

18 And Congress repeated this provision in
19 the cleared swaps provision when Congress passed
20 Dodd-Frank, and, in fact, Congress did not change
21 this when Congress had an opportunity to do so
22 when it was considering the Dodd-Frank Act.

1 So, Regulation 1.25, to the extent that
2 it permits investments in anything else, is
3 allowed because the Commission exercises or
4 exercised its exemptive power under Section 4(c)
5 of the Commodity Exchange Act. And as
6 Commissioner Wetjen pointed out, the overarching
7 principle or thought is that the FCM and the DCO
8 must make such investments to preserve principle
9 and maintain the liquidity of the investments.
10 So, I think it's important to bear this in mind,
11 certainly for the members of the public who may
12 not be aware of the provisions of the Act, and the
13 interaction between the Act and Regulation 1.25.

14 So, I'm going turn it now over to the
15 team, Jon DeBord, who has been the attorney who
16 has been working on this substantially, Phyllis
17 Dietz, who is the resident expert on Regulation
18 1.25, and Ward Griffin from OGC who's been very
19 helpful in, you know, this effort. Thank you.

20 MR. DEBORD: Thank you. Good morning.
21 I'm Jon DeBord, Special Counsel for the Division
22 of Clearing and Risk. I'm pleased to present for

1 your consideration our recommendation for final
2 regulations regarding the investment of customer
3 funds in secured amounts.

4 Under 4(d) of the Commodity Exchange
5 Act, customers' segregated funds may be invested
6 in obligations of the United States and
7 obligations fully guaranteed as the principle and
8 interest by the United States, and general
9 obligations in any state or any political
10 subdivision thereof.

11 Starting in 2000, and again in 2004 and
12 2005, pursuant to authority under Section 4(c) of
13 the Act, the Commission substantially expanded the
14 list of permitted investments to allow investment
15 in GSEs, CDs, commercial paper, corporate notes or
16 bonds, general obligations of a sovereign nation,
17 interest in money market mutual funds, and
18 in-house transactions. Other rules dealt with
19 repurchase agreements, standards for investing in
20 instruments with embedded derivatives, and
21 requirements for adjustable rate securities.

22 In connection with that expansion, the

1 Commission included several provisions intended to
2 control exposure to credit, liquidity, and market
3 risks, for example, requirements that the
4 investment satisfy specified rating standards and
5 concentration limits, and be readily marketable
6 and subject to prompt liquidation. The Commission
7 has been and continues to be mindful that the
8 customer's segregated funds must be invested in a
9 manner that minimizes their exposure to credit
10 liquidity and market risks, both to preserve their
11 ability to customers and DCOs and to enable
12 investments to be quickly converted to cash at a
13 predictable value in order to avoid systemic risk.

14 Toward these ends, Regulation 1.25
15 establishes a general prudential standard by
16 requiring that all permitted investments be
17 consistent with the objectives of preserving
18 principle and maintaining liquidity.

19 In October of 2010, the Commission
20 approved a notice of proposed rulemaking proposing
21 that the Commission amend its regulations
22 regarding the investment of customer segregated

1 funds. Certain amendments reflect the limitation
2 of new statutory provisions enacted under Title IX
3 of the Dodd-Frank Wall Street Reform and Consumer
4 Protection Act. Other amendments addressed
5 certain changes to the list of permitted
6 investments, notably the elimination of foreign
7 sovereign debt and in-house transactions, a
8 clarification of the liquidity requirement, the
9 removal of ratings requirements, an expansion of
10 concentration limits, including asset-based,
11 issuer-based, and counterparty concentration
12 restrictions.

13 They also address revisions to the
14 acknowledgment letter requirement for investments
15 in money market mutual funds, revisions to the
16 list of exceptions to the next day redemption
17 requirement for money mutual funds, the
18 elimination of repurchase and reverse repurchase
19 agreements with affiliates, the application of
20 1.25 investment limitations to 30.7 funds, the
21 removal of ratings requirements for depositories
22 of 30.7 funds, the elimination of the option of

1 designated depositories for 30.7 funds, and
2 certain technical changes.

3 Today, DCR recommends that the
4 Commission adopt the proposals in the MPRM as
5 proposed, except for the following areas:

6 In the fall of 2010, the Commission had
7 proposed to limit the GSE asset class to only U.S.
8 agency obligations that are fully guaranteed as
9 the principle and interest by the United States.
10 Today, DCR recommends that the Commission retain
11 the current permissibility standards for GSEs with
12 a caveat that investments in Fannie Mae and
13 Freddie Mac remain permissible only so long as
14 these entities are operating under the
15 conservatorship or receivership of the FHFA.

16 In the fall, for money market mutual
17 funds, the Commission had proposed a 10 percent
18 asset-based concentration limit and a two percent
19 family of funds issuer-based concentration limit.
20 Today, we recommend that FCMs and DCOs be allowed
21 to invest all segregated funds, subject to other
22 concentration limits, in money market mutual funds

1 with at least \$1 billion in assets and with a
2 management company of at least \$25 billion in
3 money fund assets under management. FCMs and DCOs
4 will be allowed to invest up to 10 percent of
5 segregated funds in money funds with less than \$1
6 billion in assets and/or a management company with
7 less than \$25 billion in money fund assets under
8 management.

9 Non-treasury only funds would be subject
10 to a 50 percent asset-based concentration limit,
11 and non-treasury only funds would also be subject
12 to a 25 percent family of funds issuer-based
13 limitation, as well as a 10 percent individual
14 fund issuer-based limitation.

15 Finally, in the fall, we had proposed a
16 five percent counter party concentration limit for
17 repurchase agreements. Today, DCR recommends
18 increasing that to a 25 percent counterparty
19 concentration limit.

20 That concludes the summary of our
21 recommendation. I'd be happy to answer any
22 questions. Thank you.

1 CHAIRMAN GENSLER: Thank you, Jon and
2 Ananda. The Chair will now entertain a motion to
3 accept the staff recommendations concerning the
4 final rule on investment of customer funds.

5 COMMISSIONER SOMMERS: So moved.

6 COMMISSIONER CHILTON: Second.

7 CHAIRMAN GENSLER: Thank you. I'll now
8 open the floor to allow Commissioners to ask
9 questions.

10 I support this rule for the reasons I
11 stated earlier, and I'll have a little statement
12 to go in the Federal Register. So, I don't really
13 have questions on this, but, Jon, I just wanted to
14 clarify -- maybe it's for the public listening. A
15 lot of people have called this Regulation 1.25, it
16 also covers something called Regulation 30.7, is
17 that correct?

18 MR. DEBORD: That's correct.

19 CHAIRMAN GENSLER: And the reason I
20 think that's important is, but let me clarify,
21 30.7 is about -- well, in your own words, what
22 customer funds does that cover?

1 MR. RADHAKRISHNAN: 30.7 is an account
2 class. If I have an FCM, you are my customer, and
3 you tell me that you want to invest in foreign
4 futures, I have to put that money in the 30.7
5 account. I cannot put it in the customer

6 segregated account. So, it's money supporting
7 foreign futures.

8 CHAIRMAN GENSLER: So, importantly, this
9 covers both monies customers put up for domestic
10 futures.

11 MR. RADHAKRISHNAN: Correct.

12 CHAIRMAN GENSLER: And that's what's
13 called 1.25.

14 MR. RADHAKRISHNAN: No, that's -- 1.25
15 applies to all three account types. One is the
16 cleared futures account, cleared futures and
17 cleared options and futures. The second is a
18 cleared swaps account, which Congress created last
19 year. And the third is the foreign futures
20 account. So, 1.25 applies to the investment of
21 customer funds by an FCM or a DCO in all three
22 account types.

1 CHAIRMAN GENSLER: And then, Rule 30.7
2 would also be amended to be in conformity.

3 MR. RADHAKRISHNAN: Actually we're not
4 amending 30.7. We're just saying that if you are
5 an FCM and you have customer money that supports
6 positions in foreign futures, you must follow
7 1.25.

8 CHAIRMAN GENSLER: Oh, I see.
9 Technically, it's done in 1.25.

10 MR. RADHAKRISHNAN: Correct.

11 CHAIRMAN GENSLER: But it covers --

12 MR. RADHAKRISHNAN: Correct.

13 CHAIRMAN GENSLER: -- the 30.7 funds.

14 MR. RADHAKRISHNAN: Correct.

15 CHAIRMAN GENSLER: Is that -- or maybe
16 your colleagues have something.

17 MR. RADHAKRISHNAN: Do you know what
18 we're doing?

19 MS. DIETZ: Yeah. I believe there is a
20 modification to the language of 30.7, yeah. It's
21 at the very end.

22 MR. RADHAKRISHNAN: I'm sorry. It says

1 you must -- I beg your pardon. It's the other way
2 around. It says you must invest it in accordance
3 with 1.25.

4 CHAIRMAN GENSLER: Right. So, there is
5 a --

6 MR. RADHAKRISHNAN: It's a cross
7 reference.

8 CHAIRMAN GENSLER: There's a cross
9 reference, but the important thing for the public
10 is this covers not only your funds that are put up
11 for domestic futures and swaps, but also if you
12 put it up through a futures commission merchant
13 regulated and registered with us to send it into
14 what's called a 30.7 account.

15 MR. RADHAKRISHNAN: Correct.

16 CHAIRMAN GENSLER: All right. Thank
17 you. Again, I support this rule. I think it's
18 really important and critical that we have such
19 protections, and I'm pleased that we could get to
20 this point.

21 Commissioner Sommers.

22 COMMISSIONER SOMMERS: Thank you, Mr.

1 Chairman. I have a couple of questions, and the
2 first part of my questions are with regard to the
3 foreign sovereign debt.

4 I support the rule before us today
5 narrowing the scope of investment choices.
6 However, I have a lot of questions with regard to
7 why we would seek to eliminate investment in
8 foreign sovereign debt in the rule, yet entertain
9 further exemptions from FCMs or DCOs that seek
10 that type of investment.

11 So, I guess my first question would be
12 how we're going to determine under 4(c) that it's
13 within the public interest to exempt foreign
14 sovereign debt if we felt that in the rule we
15 should eliminate the investment.

16 MR. RADHAKRISHNAN: I think that's a
17 great question. I think we would ask the
18 petitioner to explain to us why it's in the public
19 interest. So, I can see how, you know, they may
20 say, well, I've got a lot of balances in a
21 particular foreign currency; therefore, I should
22 be allowed to invest in that foreign sovereign

1 debt, in which case I think it's entirely
2 appropriate for the staff to ask, why do you need
3 to invest? Is it because you have to post margin
4 in that sovereign form, in which case it's not an
5 investment, it's a transformation of cash for
6 collateral.

7 But the way I would -- I look at it
8 right now is, the burden is on the petitioner to
9 explain to the Commission why they believe an
10 investment in the particular sovereign debt is in
11 the public interest.

12 COMMISSIONER SOMMERS: I guess I would
13 expect, because within the comment period, I guess
14 we received 13 comment letters that commented on
15 the investment in foreign sovereign debt and four
16 -- I'm sorry, 12 out of the 13 of the letters
17 suggested that we retain foreign sovereign debt as
18 a permissible investment in some varying degree.
19 So, I would guess that we're going to have people
20 who will immediately petition us for this type of
21 exemptive relief.

22 So, as an example, the CME announced

1 today that they will accept Chinese currency as
2 collateral for trading and all of its products
3 beginning in January of 2012.

4 MR. RADHAKRISHNAN: Right.

5 COMMISSIONER SOMMERS: How will we make
6 a determination that it's in the public interest
7 to allow CME to invest in Chinese sovereign debt
8 under our 4(c) analysis?

9 MR. RADHAKRISHNAN: So, I think what the
10 -- I haven't read the release in whole,
11 Commissioner, but I think what they said, they
12 will accept RMB as collateral, which means that
13 they will expect people to give RMB to them. I'm
14 not sure whether it's limited to a particular
15 contract. I'd need to take a look at that. But
16 that's not an investment. That is a DCO saying, I
17 will accept this as collateral.

18 The way I look upon an investment is,
19 you've got something, like cash, and you invest it
20 in something else to get a return, not because
21 you've got to post that other form of collateral
22 out with another DCO or another FCM. So, I make

1 the distinction there.

2 So, I would, I guess, you know, if a
3 petitioner says, we'd like to invest, say, for
4 example, RMB cash in, and assuming the Chinese
5 government issues bonds, although I do not know
6 that for a fact. The question we will ask is why?
7 Why do you want to do that? Why do you think --
8 tell us how you think that that preserves
9 principle and maintains liquidity. And tell us
10 why you think that is in the public interest,
11 because the key about Section 4(d) and 1.25 is
12 that the term "investment." It's an investment of
13 what the customer gives you in something else.

14 COMMISSIONER SOMMERS: And would you
15 envision that this process will be such that you
16 will make individual determinations with regard to
17 individual --

18 MR. RADHAKRISHNAN: I think that's
19 possible. It depends on what, you know, the FCMS
20 and DCOs want to do. I'm not sure what -- I can
21 anticipate getting a petition very soon. I just
22 don't know what forms of -- which particular

1 sovereign debt people are likely to invest in.

2 The other issue is how they demonstrate
3 to us that a particular sovereign debt is credit
4 worthy. As the Commissioner is aware, in our
5 rule, we cannot make references to credit rating
6 agencies. However, I think it's a pipe dream to
7 assume that nobody makes a reference to credit
8 rating agencies at all. People still do, and
9 that's how sovereign debt is issued -- sorry,
10 sovereign debt is rated right now.

11 So, we'll have to see whether in our
12 4(d) process we can consider rating agency
13 ratings. I think the statute -- correct me if I'm
14 wrong, Ward -- just says we cannot make reference
15 to it in our regulation. I don't know whether it
16 prohibits us from considering it at all.

17 MR. GRIFFIN: That's correct. Section
18 -- excuse me, Section 939(a) of Dodd-Frank
19 mandated that all agencies review the regulations
20 and remove any reference to or requirement of
21 reliance on credit rating. So, that does, in
22 fact, just apply to the regulations.

1 MR. RADHAKRISHNAN: So, and we'll
2 probably ask questions about liquidity, evidence
3 of liquidity.

4 COMMISSIONER SOMMERS: And how often do
5 we anticipate we would review any of these
6 exemptions under 4(c) to know? And how will we
7 deal with, you know, fluctuations in the risk
8 associated with anything we're granting exemptions
9 for?

10 MR. RADHAKRISHNAN: I think that can be
11 answered in one of two ways. One is it's entirely
12 appropriate, I think, for the Commission to place
13 restrictions on -- if the Commission were minded
14 to grant the petition, to grant restrictions, and
15 to provide -- for the petitioners to provide
16 information to the -- affirmative obligation to
17 provide information to the Commission about things
18 like you talked about, Commissioner Sommers, the
19 liquidity and the credit worthiness of a
20 particular instrument.

21 For example, staff has been observing
22 the yield spreads between some sovereign debt

1 against the AAA index. And we've observed that
2 the yield in Italian and Portuguese and Irish debt
3 has improved.

4 Now, this -- we're doing it because, you
5 know, we've got staff looking at it every day, but
6 I think it may be entirely appropriate for the
7 recipient of such relief to have an obligation to
8 tell the Commission either on a daily basis or on
9 a weekly and monthly basis.

10 COMMISSIONER SOMMERS: Okay. Thank you.
11 The second issue that I had a couple of questions
12 on -- is with regard to the money market mutual
13 funds. And the concentration limits that we
14 impose on other instruments are lower than the
15 concentration limits that we have on money market
16 mutual funds.

17 And my question would be, if we're
18 allowing indirect investment of up to 50 percent
19 through money market mutual funds in certain
20 instruments that have lower concentration limits
21 through direct investment in those instruments, do
22 we believe that money market mutual funds are

1 somehow safer than direct investments in those
2 other instruments?

3 MR. DEBORD: It's a reflection of some
4 of the adjustments made by the SEC to 2(a)(7).
5 Essentially, the staff felt that through money
6 market mutual funds, it's sort of an independent
7 way to ensure high quality securities, short
8 material limits, and so forth. So, we're aware of
9 that difference, but that's the reason for the
10 treatment.

11 COMMISSIONER SOMMERS: And then, will
12 our rules in this area be consistent with the SEC
13 rules?

14 MR. DEBORD: How do you mean?

15 COMMISSIONER SOMMERS: Well, you said
16 that the reason why we decided to allow this is
17 because of the SEC changes.

18 MR. DEBORD: So, money market mutual
19 funds are regulated by the SEC under 2(a)(7), and
20 2(a)(7) is what dictates what the money market
21 mutual funds are allowed to invest in, the quality
22 of the securities, maturity limitations, and so

1 forth. And so, in our rules, we refer to 2(a)(7).

2 COMMISSIONER SOMMERS: Because they've
3 upgraded their rules.

4 MR. RADHAKRISHNAN: Yes.

5 COMMISSIONER SOMMERS: We feel more
6 comfortable.

7 MR. RADHAKRISHNAN: Yes. The one
8 distinction is that I think under 2(a)(7), money
9 market mutual funds is up to seven days to redeem,
10 and we said if you want to participate -- if a
11 fund wants to be 1.25 compliant, it must provide
12 for the next liquidation?

13 MR. DEBORD: Yes.

14 MR. RADHAKRISHNAN: Yeah, next day
15 liquidation.

16 COMMISSIONER SOMMERS: Okay, thank you.

17 MS. DIETZ: Yeah. I would just add that
18 the next day redemption requirement is not new in
19 this regulation.

20 CHAIRMAN GENSLER: Thank you,
21 Commissioner Sommers. Commissioner Chilton?

22 COMMISSIONER CHILTON: Thanks, Mr.

1 Chairman. I support the rule, and I thank the
2 staff for the good job you've done.

3 I did have some questions. I think I'm
4 going to need some other people, though, so we're
5 going to have to do a little bit of musical
6 chairs. If I could get David Meister, our
7 director of the Division of Enforcement, and we
8 already have Mr. Berkovitz, our counsel.

9 So, I'm talking theoretically now, first
10 of all, for my questions, and this is for Mr.
11 Berkovitz, Mr. Meister, and Ananda, if you'd like
12 to answer, feel free also. So, the three division
13 directors.

14 And so, I'm talking theoretically. And
15 I understand at the outset that everything I'm
16 talking about would depend upon the facts and
17 circumstances with regard to an individual case.

18 So, by law, there is a fine for the
19 misuse of customer funds of \$140,000. If I say
20 anything, correct me. Raise your finger and I'll
21 let you correct me.

22 So, there's a \$140,000 penalty. So, in

1 theory, you could have an FCM that transferred
2 millions, hundreds of millions of dollars, and the
3 penalty is \$140,000, which doesn't seem like much
4 of a deterrent to me.

5 So, my question is, how do we define
6 what the actual violation would be? Again,
7 depending upon the individual facts and
8 circumstances, and I'm not talking about any
9 individual case. For example, Mr. Meister, if
10 there was, say, \$100 million that was transferred
11 from customer money, and it went to three
12 different places, so it's a transfer out, but it
13 goes to three different places, would that be one
14 violation or three violations?

15 MR. MEISTER: Just sort of taking your
16 qualification that obviously a penalty depends
17 upon facts and circumstances, let me just address
18 one premise.

19 The Commission can impose -- generally
20 speaking, the Commission can impose a penalty of
21 \$140,000 per violation of the Act or a rule, or --
22 and that would be a maximum penalty -- or three

1 times the gain to the defendant per violation, so
2 that there's actually two alternatives. Our
3 penalties are not based upon the amount of a loss,
4 however.

5 In your hypothetical, I would say that
6 it really does depend upon a number of things,
7 including perhaps conduct of the defendant, which
8 might give rise to more than one violation. The
9 number of victims involved might give rise to more
10 than one violation; it might. The duration might
11 give rise to more than one violation.

12 And, again, generally speaking, we in
13 the Division of the Enforcement and the Commission
14 considers a whole host of factors in determining
15 the number of violations in play that would give
16 rise to the maximum possible penalty.

17 COMMISSIONER CHILTON: So, it is
18 theoretically possible, given the facts and
19 circumstances of the individual case, that such a
20 violation could be three different violations and
21 not just one. Theoretically possible.

22 MR. MEISTER: Absolutely.

1 COMMISSIONER CHILTON: Okay. And the
2 same would go, I assume, but correct me if I'm in
3 error, that if during the day you transferred
4 three different times to the same place, that even
5 though it was in one day, that given the specific
6 facts and circumstances, that it could be three
7 violations, even though it occurred on the same
8 day. Is that also correct?

9 MR. MEISTER: Again, sure. That is
10 theoretically possible for us to recommend.

11 COMMISSIONER CHILTON: Okay. Now, I
12 want to talk about this other criteria that you
13 mentioned, the amount of money that they would
14 make. So, if you're an FCM and you say, look, you
15 know, it's only \$140,000 penalty, so I'm going to
16 take \$100 million and I'm going to use it to make
17 some bet overnight. And with \$100 million, I
18 mean, I could make millions and millions. And the
19 fine's only \$140,000, so that's not a deterrent.
20 But you say that there's also this treble damage
21 essentially. You're saying it could be three
22 times -- is it three times the 140 if they made a

1 profit? Say, they made a profit of \$10 million.
2 Is the damage three times the 140? Is that what
3 we could theoretically, given the facts and
4 circumstances, fine someone, fine an FCM?

5 MR. MEISTER: Again, we're talking about
6 civil monetary penalties, which is actually
7 something different from damages. So, this is
8 civil monetary penalties. And in your
9 hypothetical, one way to calculate the civil
10 monetary penalty maximum would be three times the
11 gain to the defendant.

12 COMMISSIONER CHILTON: Three times the
13 gain. So, if they made \$10 million, the civil
14 monetary penalty could be \$30 million. Is that
15 correct?

16 MR. MEISTER: Theoretically, correct.

17 COMMISSIONER CHILTON: You ever hear of
18 that? So, \$30 million on a \$10 million gain if
19 you used the customer money illegally. Three
20 times the gain.

21 Mr. Berkovitz, is there anything else
22 that we should be looking at, if we -- and I do --

1 I can't speak for my colleagues -- want to be as
2 tough as we possibly can as a deterrent to
3 misusing customer funds? Is there anything you'd
4 add to the discussion Mr. Meister and I had here
5 today?

6 MR. BERKOVITZ: One thing I would note,
7 Commissioner Chilton, and, again, it depends on
8 the hypothetical. But I think some of your
9 hypotheticals and the questions that you posed
10 possibly would indicate potentially a deliberate
11 intent to take these funds and use them for some
12 other purpose. If there were a certain level of
13 intent, I'd just also add there are criminal
14 provisions in the Commodity Exchange Act. There's
15 one specifically, Section 9(a)(1) provides -- it's
16 a criminal provision for knowingly embezzling,
17 stealing, or criminal intent to convert customer
18 funds that have been deposited to margin or
19 guarantee. So, there's that specific criminal
20 provision.

21 Secondly, there's the more general
22 criminal provision regarding willful violations of

1 the Act in general, knowing of the unlawfulness
2 and willful. So, potentially I think some of the
3 hypotheticals that you pose could raise criminal
4 issue as well.

5 CHAIRMAN WETJEN: Actually I had one
6 follow-up question. Thanks, Commissioner Chilton.
7 In the hypothetical that Commissioner Chilton laid
8 out where you had theoretically three violations,
9 I'm kind of curious, if you had a gain of \$10
10 million to the defendant, and the statute allows
11 you to choose that as the basis for the penalty,
12 so you can treble that, you still have two
13 separate violations.

14 How does the statute read? Do you have
15 to -- is it one or the other, or could you do
16 treble damage on one violation and then just for
17 good measure do 130 for the other two, for each of
18 the other two?

19 MR. MEISTER: I guess the way the
20 statute is written is per violation. The penalty
21 is imposed per violation. I don't -- as I'm
22 sitting here right now, I don't know of a

1 restriction such that you would have to calculate
2 the penalty for one violation in a course of
3 conduct one way, and then keep to that calculation
4 for each of violations. So, again, just sitting
5 here, I would imagine you could calculate the
6 maximum penalty for one of those violations one
7 way under one theory, and then the maximum penalty
8 for a second violation under an alternative
9 theory.

10 In other words, just to put that more
11 directly, so \$140,000 maximum for one of the
12 violations and triple the gain for a second
13 violation.

14 COMMISSIONER WETJEN: Thank you.

15 COMMISSIONER CHILTON: Okay. Thank you.
16 The point I'm trying to make is that from my
17 perspective, look, if you are out there and you've
18 violated the law, you've misused customer funds,
19 but don't expect me to give you a third of what
20 you should get. If you violated, for example,
21 and, again, I'm not talking about a specific
22 matter. This would depend upon the circumstances

1 of the individual case. But if you went out and
2 four years you messed up and used customer funds
3 illegally, then you should be fined \$140,000 every
4 day, or, depending upon what the prophets is,
5 three times that amount.

6 I just want to be clear that I'm done
7 with any settlements or deals that would lessen
8 that amount. There are people out there who've
9 lost their money. They're having to, as I said
10 earlier, using their college kids' funds. They're
11 using their retirements because they've lost their
12 money. And we've got to do everything we can. I
13 don't know if there's more we can do. Something
14 the chairman and I have talked about a little bit,
15 whether or not there's more we can do, but we've
16 got to provide a real deterrent out there. And I
17 think \$140,000 when you could spend millions of
18 dollars, hundreds of millions of dollars on a bet,
19 is just silly. Just silly.

20 That's all I have. Thank you.

21 CHAIRMAN GENSLER: Thank you,
22 Commissioner Chilton, and a cameo from

1 Commissioner Wetjen.

2 Commissioner O'Malia.

3 COMMISSIONER O'MALIA: Thank you. I'd
4 like to ask one question before -- a follow-up to
5 Commissioner Chilton.

6 Commissioner Chilton seemed to indicate
7 that there was one account that money came from.
8 If this money was moved from an FCM to some other
9 entity, wouldn't we do the \$140,000 million
10 violation per account of the accounts it came
11 from, or is it because it's an omnibus account,
12 there would only be a single --

13 MR. MEISTER: Again, there are a number
14 of ways in which the Commission can and has
15 determined the number of violations. I would
16 think it would be relevant to that assessment as
17 to the number of accounts in play. And, you know,
18 the Commission has issued some authority with
19 respect to this.

20 I should add that the Commission has
21 also issued a policy statement on how it does
22 calculate penalties. That was from November of

1 1994, which is on the books and people can
2 consider, and it's something that we in the
3 Division consider. There are a number of
4 different factors that go into play, and it's
5 something that the Commission always does consider
6 as well.

7 COMMISSIONER CHILTON: Thank you,
8 Commissioner O'Malia. I mean, I just wonder,
9 which maybe my colleagues are, 1994. Should maybe
10 we look at updating that? Is that something that
11 could be done internally to make a recommendation
12 to the Commission is whether or not we should
13 reevaluate that? I'm not sure about the process.

14 MR. MEISTER: The 1994 policy statement
15 that I'm talking about is a Commission policy
16 statement concerning the factors it considers in
17 determining the amount of the sanction. I'll
18 point out, however, that that also says that the
19 Commission is not limited by those factors, but it
20 does list them. I imagine that the Commission
21 could issue --

22 COMMISSIONER CHILTON: But the types of

1 things we're talking about, if we wanted to up
2 that, it's a Commission document, so it requires
3 three of us to make that. Is that correct? Well,
4 to the extent that staff can come up with a
5 recommendation for whether or not we could --
6 should update that 1994 document, I'd appreciate
7 hearing what you have to say. Thank you.

8 MR. MEISTER: Right. Just so it's
9 clear, Commissioner Chilton, that doesn't talk to,
10 you know, the \$140,000 or triple the gain. It
11 just talks about -- which those are things that
12 set maximums. What it does is it lists a number
13 of factors that the Commission does consider in
14 deciding where between zero and the maximum it
15 wants to impose.

16 CHAIRMAN CHILTON: But it's talking
17 about the exact questions the three of us were
18 just asking about if it's one account or if it's
19 three. I mean, it could get into those types of
20 things --

21 MR. MESITER: Yes.

22 COMMISSIONER CHILTON: -- and provide

1 some guidance to people that we wouldn't be
2 limited to, but we could use, depending upon the
3 facts and circumstances.

4 MR. MEISTER: Yes, correct.

5 COMMISSIONER O'MALIA: I have no further
6 questions about this hypothetical or theoretical,
7 so you're welcome to stay at the table if you
8 want.

9 I would like to thank the team for
10 rationalizing its analysis of the risks posed by
11 certain instruments and adjusting asset-based and
12 issuer-based concentration limits. Nowhere is
13 this rationalization more clear in the final rule
14 treatment of investment securities,
15 government-sponsored enterprise, and money market
16 funds.

17 Since the public does not have the
18 benefit of having the rule in front of them, I'd
19 just like to go through some of the differences
20 between the final rule and the proposed rule for
21 their benefit.

22 First, with respect to GSE securities,

1 the proposal would have effectively banned an
2 investment of customer funds in such securities,
3 correct, in GSEs?

4 MR. DEBORD: That's correct.

5 COMMISSIONER O'MALIA: Including
6 securities that have performed well during the
7 financial crisis, such as the Farm Credits System,
8 GSE, and Federal Home Bank?

9 MR. DEBORD: That's correct.

10 COMMISSIONER O'MALIA: And now, how does
11 the final rule treat investments of customer funds
12 in these securities?

13 MR. DEBORD: Well, they'd be retained.
14 The only change between the current permissibility
15 standards in which those investments are allowed
16 and what we're recommending today is simply a
17 caveat that for just Fannie Mae and Freddie Mac,
18 that those investments would be allowed only so
19 long as they're operating under the
20 conservatorship or receivership of the FHFA. But
21 the Federal Home Loan and Farm Credit you
22 mentioned would be permitted.

1 COMMISSIONER O'MALIA: And what of the
2 -- how will we treat the potential replacement
3 entities to Fannie and Freddie if those reforms
4 are undertaken?

5 MR. DEBORD: Any limited life follow-ups
6 to Fannie and Freddie wouldn't be permitted.
7 Would not be.

8 COMMISSIONER O'MALIA: Would not be
9 permitted, all right.

10 Second, with regard to money market
11 mutual funds, the proposal would have limited
12 investments to such funds to 10 percent and
13 investments in a particular fund to two percent,
14 correct?

15 MR. DEBORD: That's correct.

16 COMMISSIONER O'MALIA: And the treatment
17 of customer funds in those -- in the final rule
18 would do what?

19 MR. DEBORD: Well, it's a bit more of a
20 nuanced approach. We make distinctions between
21 the size and also fund type. So, I'm going to
22 read from my notes just so I'm clear on it.

1 COMMISSIONER O'MALIA: Please.

2 MR. DEBORD: FCMs and DCOs can invest
3 all their segregated funds in money market mutual
4 funds with at least \$1 billion in assets and a
5 management company of at least \$25 billion in
6 assets under management. FCMs and DCOs can invest
7 up to 10 percent of segregated funds in money
8 funds with less than \$1 billion in assets and/or a
9 management company with less than \$25 billion in
10 money fund assets under management. So, that's
11 the size treatment.

12 In addition, non-Treasury only funds, so
13 typically prime money funds, will be subject to a
14 50 percent asset-based concentration limit. It
15 would also be subject to issuer-based
16 concentration limits, 25 percent for a family of
17 funds, and 10 percent for an individual fund.

18 COMMISSIONER O'MALIA: Thank you. Let
19 me turn to the foreign sovereign debt issue.

20 It is an understatement to say the
21 safety of certain foreign sovereign debt has been
22 in the news recently. I'd like to explore some of

1 the nuances and, frankly, build on some of the
2 questioning from Commissioner Sommers about
3 sovereign debt, this investment versus
4 transformation debate that we -- I'm still a
5 little confused about it, so I'd like to ask a
6 couple of questions.

7 On its website, LCH indicates that in
8 addition to the U.S. dollars and euros, it accepts
9 cash collateral in the form of sterling, Canadian
10 dollars, Swiss francs, Japanese yen, Swedish
11 krona, Danish krona, and Norwegian krona. Let's
12 assume that for the certain contract, LCH only
13 accepts cash collateral in Canadian dollars.
14 Let's also assume that the U.S. customer would
15 like to take a position in that contract.

16 Now, that we've banned Canadian debt,
17 how would an intermediary hedge foreign currency
18 exposure that it faces on behalf of a customer?

19 MR. RADHAKRISHNAN: So, the question is
20 LCH says I will only take Can dollars?

21 COMMISSIONER O'MALIA: It currently does
22 today.

1 MR. RADHAKRISHNAN: Okay. So, the
2 customer has got a choice. He can deposit Can
3 dollars, FCM passes it on. If the customer gives
4 something else, let's say Can bonds, FCM sells the
5 Can bonds, get Can dollars, passes it on, the
6 customer gives treasuries, FCM sells treasuries,
7 gets U.S. Dollars, buy Can dollars with the U.S.
8 dollars, buy the debt with Can dollars.

9 It's not impossible. They can do it,
10 yeah. It's -- you know, something -- some of the
11 comment letters, with all due respect to the
12 commenters, I don't think they're being completely
13 honest with all the steps. It involves a couple
14 of steps, but it's not impossible. And when
15 financial institutions with the sophistication of
16 these FCMs tell me it's impossible, I'd like to
17 know why.

18 COMMISSIONER O'MALIA: Okay. Do we have
19 any sense of what the cost of these alternative
20 hedging arrangements might be?

21 MR. RADHAKRISHNAN: Again, I don't know
22 whether there's any -- I don't understand when

1 these firms say there's hedging risk, because you
2 hedge because you have a risk. It's not clear to
3 me -- what I don't understand is the customer
4 gives me Canadian dollars, and I'm not obliged to
5 pass it on. I have Canadian dollars. The risk
6 belongs to the customer, not to me. So, I don't
7 quite understand where, you know, when an FCM says
8 I've got a risk, I don't quite understand what the
9 risk is, because the point is, it's customer's
10 money.

11 COMMISSIONER O'MALIA: I do have some
12 frustration. I would note that on the cost
13 benefit analysis that we noted that this is a \$100
14 million significant -- major -- what do we call
15 it, a major rule. Therefore, it has an impact of
16 over \$100 million in economic impact due to the
17 change that we've implemented.

18 We don't do a very good job of
19 quantifying those costs in the rule, but if the
20 analysis -- the memo says that we have \$170
21 billion in segregated funds, and \$40 billion in
22 Part 30 funds, it doesn't take much in terms of

1 changes to equal -- to go over \$100 million. Less
2 than one-tenth of one percent I think is what the
3 memo says.

4 So, yet none of that quantitative
5 analysis is reflected in the rule. I would just
6 continue to make my concerns raised regarding our
7 economic analysis, and what goes into it, and how
8 we come up with these numbers because I can't tell
9 what the costs are actually in the document as a
10 result of this.

11 Maybe you could explain why that is and
12 why we don't have a good quantitative analysis.
13 And maybe it's the point that Commissioner Sommers
14 raised earlier that we don't really know what
15 they're holding.

16 MR. DEBORD: That's correct. We can
17 only quantify information that we receive. We
18 have an open comment period, and FCMs and DCOs are
19 welcome to give us as much information as they
20 want to to help us make these decisions. If they
21 don't provide us with quantifiable information, we
22 certainly can't quantify it.

1 COMMISSIONER O'MALIA: And that was --
2 when you say that they don't provide it, that was
3 in the request for comments, right?

4 MR. DEBORD: That's correct.

5 COMMISSIONER O'MALIA: The fact that we
6 don't know what's being held in these funds today
7 is also problematic, I would think. I do think.
8 That's not a question, that's an answer. It's my
9 own answer.

10 CHAIRMAN GENSLER: I'm going to
11 associate my -- I'm associating myself with what
12 you just about, I think, we would be better served
13 as regulators, and I think customers themselves
14 would be better served if they knew how their FCMS
15 were investing their money.

16 COMMISSIONER O'MALIA: Agreed. That's
17 all I have.

18 CHAIRMAN GENSLER: Thank you,
19 Commissioner O'Malia. Commissioner Wetjen.

20 COMMISSIONER WETJEN: Thank you. My
21 question is, has been more or less addressed
22 already, but I did want to go over one point.

1 Commissioner Sommers raised it in her opening
2 statement and I think in her questioning, too, and
3 Commissioner O'Malia just touched on it. But the
4 goal of this rule, as I understand it, is to
5 protect customer funds insofar as they're used as
6 investments by the FCM or the DCO.

7 MR. RADHAKRISHNAN: Correct.

8 COMMISSIONER WETJEN: But we do
9 recognize, do we not, in this role that there are
10 a variety of different services that FCMs provide
11 for their customers that would continue to be
12 permitted, notwithstanding this rule, correct?

13 MR. RADHAKRISHNAN: Correct.

14 COMMISSIONER WETJEN: I don't want to
15 put you on the spot too much, but I wonder if
16 maybe you could give an example of that. You've
17 actually probably provided a couple already here
18 this morning. But actually take it back. Let me
19 ask you this question.

20 If a customer provided Treasury
21 securities to the FCM and let's say those bonds
22 reach maturity, and so at that point, effectively

1 convert into cash --

2 MR. RADHAKRISHNAN: Yes.

3 COMMISSIONER WETJEN: -- But they want
4 to reinvest the cash, roll it over rather, into
5 more treasury debt. Would the FCM be able to do
6 that transaction on their behalf?

7 MR. RADHAKRISHNAN: Yes, that's an
8 investment of customer funds. Under your
9 hypothetical, in the first instance, there's
10 access. This is not money that is required to be
11 put out in a DCO or another FCM. This is money
12 sitting with the FCM. And, let's say, you know,
13 either because the customer says buys some
14 Treasuries or the FCM decides to buy some
15 Treasuries, they buy some Treasuries, and they
16 mature. The U.S. Treasury Department gives you
17 cash back. The FCM is free to reinvest the
18 proceeds in Treasuries.

19 COMMISSIONER WETJEN: And there's
20 nothing in this rule that would keep the FCM from
21 buying those Treasuries from an affiliated
22 Treasury desk if it's a duly registered entity,

1 correct?

2 MR. RADHAKRISHNAN: No, it's an outright
3 purchase.

4 COMMISSIONER WETJEN: That's all I have.

5 CHAIRMAN GENSLER: Thank you,
6 Commissioner Wetjen. There not being any further
7 questions, I'd like to thank the presenters as
8 well as the rest of the team for the excellent
9 presentation. And unless Commissioners want to
10 make any other further statements, I'd call Mr.
11 Stawick to call the roll.

12 MR. STAWICK: Commissioner Wetjen?

13 COMMISSIONER WETJEN: Aye.

14 MR. STAWICK: Commissioner Wetjen, aye.
15 Commissioner O'Malia?

16 COMMISSIONER O'MALIA: Aye.

17 MR. STAWICK: Commissioner O'Malia, aye.
18 Commissioner Chilton?

19 COMMISSIONER CHILTON: Aye.

20 MR. STAWICK: Commissioner Chilton, aye.
21 Commissioner Sommers?

22 COMMISSIONER SOMMERS: Aye.

1 MR. STAWICK: Commissioner Sommers, aye.
2 Mr. Chairman?

3 CHAIRMAN GENSLER: Aye.

4 MR. STAWICK: Mr. Chairman, aye. Mr.
5 Chairman, on this question, the yeas are five, the
6 nays are zero.

7 CHAIRMAN GENSLER: As the ayes have it
8 unanimously, the staff recommendation is accepted,
9 and it'll be sent to the Federal Register. I
10 guess somewhere I'll probably say something about
11 technical corrections. Why don't I just do that
12 now if I could? What's that? Do it at the end
13 unless there's an objection? All right. Thank
14 you so much.

15 And then, we're going to be calling up
16 -- who's the next up? Are we doing the next
17 final, or are we going to do the available for
18 trading? All right.

19 So, this is one of these opportunities
20 to seek further public comment on a proposed
21 rulemaking that's already outstanding. We already
22 have proposed rulemakings out on designated

1 contract markets and swap execution facilities.
2 And what we're considering is the staff
3 recommendation to, in essence, open these up for
4 further public comment, most specifically about
5 the process that these swaps are "made available
6 for trading."

7 And at this time, I'd like to welcome
8 Bella Rozenberg, Amir -- Amir, you're going to
9 have to help me pronounce your last name. I just
10 -- what's that?

11 MR. ZAIDI: Zaidi.

12 CHAIRMAN GENSLER: Zaidi. I don't see
13 Mauricio, and Rick Shilts, all of the Division of
14 Market Oversight, to present their staff's
15 recommendation to provide further notice of
16 proposed rulemaking and the process of a
17 designated contract market and swap executive
18 facility to make a swap available for trading
19 under Section 2(h)(8) of the Commodity Exchange
20 Act.

21 I welcome Bella back because you were a
22 team lead on another thing. This is what you do.

1 Thanks, Bella.

2 MS. ROZENBERG: Thank you. Thanks.

3 Amir is going to present --

4 CHAIRMAN GENSLER: All right, great.

5 Amir.

6 MR. ZAIDI: Good morning, Mr. Chairman
7 and Commissioners. Today, staff is recommending
8 that the Commission approve for publication for
9 publication in the Federal Register a further
10 notice of proposed rulemaking that would establish
11 a process for a designated contract market or a
12 swap execution facility to make a swap available
13 to trade as set forth in Section 2(h)(8) of the
14 Commodity Exchange Act pursuant to Section 723 of
15 the Dodd-Frank Act.

16 Section 2(h)(8) of the Commodity
17 Exchange Act has a trade execution requirement for
18 swap transactions. This section requires that
19 swap transactions, subject to the clearing
20 requirement, be executed on a designated contract
21 market or a swap execution facility.

22 The exceptions to the trade execution

1 requirement are if no designated contract market
2 or swap execution facility makes a swap available
3 to trade, or the swap transaction is subject to
4 the clearing exception; that is, the end user
5 exception.

6 On December 22, 2010, the Commission
7 published for comment in the Federal Register a
8 notice of proposed rulemaking entitled, "Core
9 Principles and Other Requirements for Designated
10 Contract Markets," which did not address the
11 available to trade provision.

12 Additionally, on January 7, 2011, the
13 Commission published for comment unnoticed of
14 proposed rulemaking entitled, "Core Principals and
15 Other Requirements for Swap Execution Facilities,"
16 which addressed the available to trade provision
17 in a limited manner with respect to periodic
18 evaluation and reporting. This further notice of
19 proposed rulemaking is informed by public comment
20 received in connection with the swap execution
21 facilities' proposed rulemaking.

22 Key theme to emerge from those comments

1 was that the Commission should establish a process
2 for determining when a swap is made available to
3 trade that includes greater Commission
4 involvements. In light of the comments received
5 and the fact that the designated contract market
6 proposed rulemaking did not address the available
7 to trade provision, this notice before you
8 provides a process for both designated contract
9 markets and swap execution facilities to make a
10 swap available to trade within the meaning of the
11 trade execution requirement.

12 Under the proposed regulations, a
13 designated contract market or swap execution
14 facility would initially determine that a swap is
15 available to trade for purposes of the trade
16 execution requirement.

17 To make a swap available to trade, a
18 designated contract market or swap execution
19 facility would consider, as appropriate, certain
20 factors with respect to such swap, such as the
21 frequency or size of transactions, trading volume,
22 the number and types of market participants, war,

1 or the bid ask spread. A designated contract
2 market or swap execution facility would be able to
3 consider any one factor or several factors.

4 Under the proposed regulations, the
5 designated contract market or swap execution
6 facility that decides to make a swap available to
7 trade in accordance with the factors set forth in
8 the regulations would submit to the Commission its
9 determination, either for approval or under
10 certification procedures, pursuant to the rule
11 filing procedures under part 40 of the
12 Commission's regulations. Specifically, a
13 designated contract market or swap execution
14 facility would have to submit its determination,
15 either under approval procedures of Section 40.5
16 or under certification procedures under Section
17 40.6. Under the approval procedures, a designated
18 contract market were swap execution facility would
19 have to provide an explanation and analysis of the
20 proposed rule and its compliance with applicable
21 provisions of the Commodity Exchange Act and the
22 Commission's regulations. The Commission would

1 have a 45-day review period, which may be extended
2 for an additional 45-day period in specified
3 circumstances.

4 Similar to the approval procedures under
5 Section 40.5, if the designated contract market or
6 swap execution facility chooses to submit its
7 determination under the certification procedures
8 of 40.6, it would have to provide an explanation
9 and analysis of the proposed rule, and a
10 certification that the rule complies with the
11 Commodity Exchange Act and the Commission's
12 regulations. The Commission would have a 10
13 business day review period, which may be stayed
14 for an additional 90 days under specified
15 circumstances.

16 Under the proposed regulations, upon a
17 determination that a swap is available to trade,
18 all other designated contract markets and swap
19 execution facilities listing or offering for
20 trading such swap and/or any economically
21 equivalent swap, would have to make those swaps
22 available to trade for purposes of the trade

1 execution requirement. The proposed regulations
2 would define the term "economically equivalent
3 swap" is a swap that the designated contract
4 market or swap execution facility determines to be
5 economically equivalent with another swap after
6 consideration of each swap's material pricing
7 terms.

8 Designated contract markets and swap
9 execution facilities would also be required to
10 perform an annual review and assessment of the
11 swaps it has made available to trade, and to
12 provide electronically to the Commission a report
13 of this review no later than 30 days after the
14 designated contract market's or swap execution
15 facility's fiscal year end.

16 This further notice of proposed
17 rulemaking only solicits comments pertaining to
18 the regulations proposed in this notice.

19 At this time, I'd be happy to take any
20 further questions.

21 CHAIRMAN GENSLER: The Chair will now
22 entertain a motion to accept the staff

1 recommendation to give further notice on these
2 rules.

3 COMMISSIONER SOMMERS: So moved.

4 COMMISSIONER CHILTON: Second.

5 CHAIRMAN GENSLER: I support the
6 proposed rule to implement the process for
7 determining a swap is made available to trade. Or
8 now I've learned -- Commissioner Wetjen tells me
9 this is called MATT. Is that right?

10 COMMISSIONER WETJEN: That's what my
11 staff tells me, Mr. Chairman.

12 CHAIRMAN GENSLER: The Dodd-Frank Act
13 requires that swaps subject to a clearing
14 requirement be traded on a designated contract
15 market, or SEF, unless no contract market or SEF
16 makes the swap available to trade. Thus, this
17 question as to, well, what does it mean for SEF or
18 DCM to make something "available" to trade.

19 And I think, though we did not include
20 this in the initial staff proposals last December,
21 that it's appropriate to seek further public
22 comment, and also to have a SEF roundtable. I

1 hope Bella and Amir are looking forward to that
2 during the 60-day public comment period to really
3 get the market input on this, and to bring greater
4 transparency to the process for making a swap
5 available for trading.

6 I just have maybe one or two questions,
7 but anyone, is it correct that though Congress
8 laid out in some significant detail a process for
9 determining a clearing mandate, that Dodd-Frank
10 did not have a similar set of statutory provisions
11 this regard?

12 MR. ZAIDI: Yes, that's correct.

13 CHAIRMAN GENSLER: So, there's a real
14 distinction as to what Congress did.

15 MR. ZAIDI: Yes, in the statute there is
16 a distinction.

17 CHAIRMAN GENSLER: And I also just want
18 to make sure you've asked a whole bunch of
19 questions in this proposal, I mean, when I went
20 through it, to get further input as well.

21 MR. ZAIDI: Yes.

22 CHAIRMAN GENSLER: And now, these seven

1 or eight factors that were referred to by a couple
2 of Commissioners in their opening statement could
3 be either a shorter list, or a longer list in a
4 final SEF rule, is that right?

5 MR. ZAIDI: Yes. We also asked
6 questions, as you mentioned, in the proposal about
7 the factors.

8 CHAIRMAN GENSLER: Okay. Well, again,
9 I'm going to support this proposal. I think it's
10 good to get further input from market participants
11 on this important matter.

12 Commissioner Sommers?

13 COMMISSIONER SOMMERS: Thank you, Mr.
14 Chairman. I have a number of different questions
15 with regard to the proposal, and a number of
16 different concerns about the process. And I think
17 I would start by saying that I think that there
18 are -- there's potential for huge competitive
19 advantages with regard to allowing DCM's and SEFs
20 to make this determination.

21 So, just following up on the Chairman's
22 question, is there anything in Dodd-Frank that

1 would prevent the Commission from being able to
2 make this determination instead of allowing the
3 DCM or SEF? Could the Commission be the one
4 making the determination?

5 MR. ZAIDI: The Dodd-Frank Act doesn't
6 specify who should make the determination.

7 COMMISSIONER SOMMERS: I understand that
8 it doesn't specify, but does it prevent us?

9 MR. ZAIDI: And it doesn't prevent.

10 COMMISSIONER SOMMERS: Okay. So,
11 because I believe that these -- the factors here
12 allowing SEFs or DCMs to make these determinations
13 on their own will bind the entire marketplace to
14 the trade execution requirement, I'm wondering how
15 we're going to do anything about it if a SEF or a
16 DCM submits these under part 40, as made available
17 for trading.

18 So, under what circumstances would you
19 anticipate that the Commission could find that a
20 Part 40 submission reflecting a determination is
21 inconsistent with the Act?

22 MR. ZAIDI: Well, under Part 40, as you

1 mentioned, as all rules under Part 40, a DCM or
2 SEF would submit their determination, and we would
3 review the explanation and analysis that they
4 would provide to us. And we would look at the
5 factors that they used in their analysis to come
6 up with a determination that something's made
7 available to trade. And then, we would have to
8 look to see if that was inconsistent with either
9 the Act or the regulations that we proposed.

10 MR. SHILTS: And also, the specific
11 factors that were listed in the proposal were
12 things that I think most people would consider to
13 be -- would go to the determination about whether
14 something is really tradable, you know, and should
15 be subject to the trade execution mandate.

16 And I think the idea is, too, that is we
17 get and look at the analysis, the description that
18 the SEFs or DCMs supply with their filings. It's
19 something that the staff and Commission over time
20 would gain more experience and maybe potentially
21 come up with some sort of more formal Commission
22 process, as you're suggesting, ultimately. And

1 obviously, that would be up to the Commission at
2 some time.

3 COMMISSIONER SOMMERS: I think you have
4 just completely identified where my concerns lie,
5 because I believe that, and, I guess, have always
6 assumed that this would be a determination that
7 the Commission would make down the road after we
8 gain experience and after we know what kind of
9 factors should be considered. And my fear in
10 allowing a DCM or a SEF to make the determination
11 on their own is because of competitive reasons
12 we're going to have SEFs and DCMs that immediately
13 want the determination to be made that all
14 economically equivalent swaps have to be executed
15 on a platform because they want that competitive
16 advantage. And I wonder how we draw the line and
17 what kind of factors we would consider would be
18 inconsistent with the Act if a swap is only
19 trading once a week, or even once a day. Does
20 that make a swap liquid enough to have the trade
21 execution requirement?

22 MR. SHILTS: Yeah. I just don't think

1 we can make a judgment now. We'd have to look at
2 the filings and the analysis that the SEF or DCM
3 supplied, and then evaluate it then with respect
4 to its compliance with the Act.

5 But also, this is a proposal, so we'll
6 be looking for comments as well as the roundtable
7 that the Chairman talked to get more feedback on
8 how we should approach this in connection with the
9 final.

10 COMMISSIONER SOMMERS: I would really
11 encourage market participants to provide us with
12 very distinct economic analysis with regard to a
13 determination like this being made by individual
14 execution platforms, and what the disadvantages
15 may be to other market participants. Thank you.

16 CHAIRMAN GENSLER: Thank you,
17 Commissioner Sommers. If I might mention, and
18 sometimes there's role reversals here because I'm
19 sort of probably inclined of being less
20 prescriptive on this one than you are or it
21 appears that you may be. But I think part of what
22 influences me is not only the statute, but our own

1 Commission experience on the SPDC determinations.
2 When we, the Commission, went through based on the
3 2008 Farm Bill to make these determinations --
4 Commissioner Wetjen, you weren't here, but when we
5 went through this, contact by contract to
6 determine whether they were significant price
7 discovery contracts, it took a lot of staff time.
8 I mean, an enormous amount of staff time.

9 It was, I think, a thoughtful and
10 considered review, but it was a significant -- now
11 take that broader to the entire swaps marketplace
12 and when Congress didn't mandate that we do it. I
13 mean, we'd be, in essence, putting ourselves in to
14 a determination process, even more than this
15 process.

16 I mean, this process has us involved. I
17 mean, this process definitely has the Commission
18 involved, but it sort of starts with the SEF or
19 DCM, and then has us review it through the Part 40
20 rather than possibly the other direction.

21 COMMISSIONER SOMMERS: I understand
22 that. I just would respectfully suggest that the

1 SPDC determination did not carry with it
2 significant competitive advantages.

3 CHAIRMAN GENSLER: Is your concern that
4 one SEF might do it ahead of another one?

5 COMMISSIONER SOMMERS: Absolutely.

6 CHAIRMAN GENSLER: So, it may be that --

7 COMMISSIONER SOMMERS: If you were
8 determined to have been -- to have a SPDC on your
9 market, you had more requirements put upon that
10 specific contract. It didn't give you an
11 advantage that then market participants would be
12 required to trade the SPDC on your platform.

13 CHAIRMAN GENSLER: So, I'd like to
14 continue this dialogue, but to better understand
15 because if it's about trying to make sure that one
16 SEF is not ahead of another, it might be that
17 still the determinations are made by the SEF, but
18 somehow they get aligned, or it could be in terms
19 of the effective date to give others time to catch
20 up.

21 MR. ZAIDI: Also, just one point to
22 consider on that, on the swap transaction

1 compliance and implementation proposed rulemaking,
2 proposed a -- at least a 30-day time period before
3 the trade execution requirement would kick in.
4 So, that would maybe address some of the concerns
5 about one SEF getting a competitive advantage over
6 another one.

7 CHAIRMAN GENSLER: Yes, though I think
8 what Commissioner Sommers and I were talking about
9 is whether that would be enough basically.

10 Commissioner Chilton?

11 COMMISSIONER CHILTON: I don't have any
12 questions. I want to thank the team for your hard
13 work on this.

14 I do share some of Commissioner Sommers'
15 concerns. That's why we have the comment period,
16 and as we learned from the last rule, it's
17 important for us to get information from people.
18 And it's hard for us to make -- we're not the
19 experts, and it's hard for us to make final
20 determinations without fulsome input. So, I
21 encourage people to comment, come in and visit
22 with us, and explain your perspective. But no

1 questions, Mr. Chairman.

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

4 COMMISSIONER O'MALIA: I guess I'd first
5 like to make sure that I'm operating on the same
6 document. Is this a 30-day or a 60-day comment?
7 Mr. Chairman, you mentioned 60 days in your
8 remarks. I have a document that says 30-day
9 comment period.

10 CHAIRMAN GENSLER: You probably have the
11 right document. I don't know if --

12 MS. ROZENBERG: We proposed 30 days.

13 COMMISSIONER O'MALIA: I think -- do
14 holidays count? This is --

15 MS. ROZENBERG: The document is 30 days.
16 We propose day --

17 COMMISSIONER O'MALIA: It should be 60
18 days, I think, consistent with what the
19 President's transparency in government executive
20 order would be.

21 CHAIRMAN GENSLER: Yeah. When are you
22 going to do your staff roundtable? You're talking

1 about --

2 COMMISSIONER O'MALIA: Yeah, and that's
3 another -- I mean, you've obviously made --

4 CHAIRMAN GENSLER: Macie, you know. I'm
5 thinking -- I'm channeling Macie.

6 COMMISSIONER O'MALIA: I think a 60-day
7 would be appropriate for this, and I'd make a
8 motion that we do adjust it to 60 days.

9 CHAIRMAN GENSLER: I'll second the
10 motion.

11 MS. ROZENBERG: All right. Thank you.

12 CHAIRMAN GENSLER: Well, no, I think I
13 seconded a motion. It's just an amendment to it,
14 so it still has to probably -- Dave Stawick
15 probably has to do something or not.

16 MR. STAWICK: You can just do that by
17 unanimous consent.

18 SPEAKER: You can do it by unanimous
19 consent, yes.

20 CHAIRMAN GENSLER: So, I'll seek
21 unanimous consent on that.

22 COMMISSIONER O'MALIA: Thank you very

1 much, Mr. Chairman.

2 Obviously we received a number of
3 comments in the SEF proposal that put this on our
4 radar screen, and a number of people have really
5 raised significant concerns. And I would point
6 out that some of the comments from the buy side on
7 this were very concerned about an immediate
8 decision. And I think to Commissioner Sommers'
9 point that there's almost a race to the bottom, in
10 their view, of people listing products regardless
11 if they meet any of the eight -- what do we have,
12 eight tests. One or eight tests, that there's no
13 disincentive for a SEF to list any product
14 whatsoever and try to capture that liquidity right
15 out of the box.

16 And, Rick, you mentioned that we would
17 gain experience. I'm a little concerned that, you
18 know, they would all list these products, and
19 there would be -- you know, that work would be
20 done and what experience we have with kind of
21 already be behind us, and we wouldn't have an
22 opportunity to really gain a lot of experience

1 because every SEF would list every product. I
2 don't see what disincentive they would have not to
3 list a product, to possibly capture that
4 liquidity, which I think was the concern of the
5 buy side comments.

6 Why did we ignore the buy side comments
7 on these?

8 MR. SHILTS: Well, first off, just the
9 listing of a swap on a SEF or DCM wouldn't trigger
10 the requirement. They would have to then file
11 something with us under Part 40, and then explain,
12 you know, looking at the factors we enumerated or
13 something else they felt was relevant, explain to
14 us why they thought it should be subject to the
15 made available to trade execution mandate. And
16 that is something that, you know, staff -- the
17 Commission, we would look at, and whether to allow
18 that either to approve the proposal, or whether to
19 allow it to go through as a certification. And
20 that's what I meant as we get those filings and
21 look at their analysis, that we would, you know,
22 ultimately come up with, you know, more specific

1 criteria possibly, or, you know, at least staff
2 would have criteria and things that we'd be
3 looking at in making these -- in doing the reviews
4 of the filings.

5 COMMISSIONER O'MALIA: Do you envision
6 some -- please go ahead.

7 MR. SHILTS: No, but it just wouldn't be
8 a listing in and of itself that would trigger
9 that.

10 COMMISSIONER O'MALIA: I understand
11 that. So, let's go back to the concerns of the
12 buy side. They had asked for a more formal
13 analysis by the Commission to look at liquidity
14 factors and a number of things, and to take some
15 comment there. We didn't request that, or we
16 didn't include that in the rule. What have we
17 learned about pre-existing swaps? Did we do any
18 data analysis in development of these factors or
19 any other --

20 MR. SHILTS: No, we didn't do any data
21 analysis. As I said, I think these are the types
22 of things that you and most, you know, industry

1 observers would consider when you're thinking
2 about whether a particular swap might be liquid or
3 tradable on a particular exchange. And, again, we
4 put those out as a proposal, and we're looking for
5 further comment on whether there's other factors,
6 or how we should be treating them, or narrowing
7 them, or whatever. And then, you know, look at
8 that in the context of developing a final rule.

9 MS. ROZENBERG: I also would like to
10 clarify that we took the factors, the factors that
11 are listed in the proposal are from the comment
12 letters. So, these are the commenters suggesting
13 to include these factors in making determination
14 that something is available to trade.

15 And I also would like to point out, even
16 though I acknowledge there's flexibility in the
17 determination process, but made available to trade
18 determination because the rule is going to be
19 treated like any other rule that's submitted to
20 the Commission for either certification or
21 approval. So, there is Commission involvement --
22 there is some sort of Commission involvement in

1 the process, especially if people are going to
2 start submitting these rules under the
3 Commission's approval.

4 The Commission -- staff looks at
5 explanation analysis. Staff looks at the factors.
6 So, I would say there is some Commission
7 involvement, significant involvement in the
8 process. It's not ideal, but it's the step in the
9 right direction.

10 COMMISSIONER O'MALIA: What would happen
11 if two competing SEFs offered the same product,
12 send it up. We have -- you know, their economic,
13 what do we call it, economically equivalent. They
14 come up with different criteria for eligibility.
15 How do we sort that out between the two products
16 that are of identical nature? Do we pick a winner
17 or loser? I guess at the end of the day we would
18 say whatever criteria somebody selected.

19 MR. SHILTS: I think we -- the staff
20 would like at the two filings and the analyses
21 that were presented, and there would be one
22 determination made by staff in connection with the

1 two filings. And if it's that these -- we agreed
2 with either, both, or one or the other, that the
3 -- presumably it would be both -- that the swap
4 should be -- that the filing should go through,
5 then that swap would be "made available for
6 trade." Well, both swaps would then be subject to
7 the trade execution mandate.

8 I think part of the goal of having, you
9 know, staff looking at this is you wouldn't end up
10 with circumstances where you would have
11 differences. The same swap, maybe, you know, one
12 SEF would make a determination or not choose to
13 file it thinking that it's not subject to the
14 execution requirement, where another one would.
15 But if they -- if you had something come in, then
16 the staff would be looking at this. And I think
17 one goal is that you would have a consistent
18 approach or consistent treatment for the same
19 swap.

20 COMMISSIONER O'MALIA: So, let's -- when
21 something is "made available for trade", and a SEF
22 submits something, it's approved, it's a little

1 vague on what economically fungible, or
2 economically equivalent is.

3 So, what if we have a buy side
4 participant looking to do a bilateral deal? Is it
5 their obligation to go and search out the
6 different rule submissions, or the self-
7 certification and rule approvals that we have done
8 to determine how equivalent their bilateral swap
9 is to determine whether they have to transact on
10 screen or not? How is this all going to be
11 coordinated to ensure that market participants
12 aren't put in any jeopardy for trying to determine
13 whether their product is economically equivalent?

14 MR. ZAIDI: Currently, the rule
15 submissions -- any rule submissions are put on our
16 website. And DCMs and SEFs, when submitting a
17 rule submission, they would have to put those on
18 their website as well.

19 So, if a market participant is doing an
20 economically equivalent swap and that has also
21 been made available to trade, then they would have
22 to currently look at our website to see if those

1 swaps would also be subject to the trade execution
2 requirement.

3 We also do ask questions in the proposal
4 about how market participants would know that, and
5 economically equivalent swap is available to
6 trade, and also if DCMs and SEFs should also have
7 to submit something for economically equivalent
8 swaps.

9 COMMISSIONER O'MALIA: So, we're going
10 to be a clearinghouse for all, you know, at a
11 minimum, they have to look at the Commission
12 website to determine those that are economically
13 equivalent to determine that.

14 MS. ROZENBERG: Yes. I just want to add
15 one more point. We mention in the preamble that
16 we're considering creating -- maybe the Commission
17 would consider creating a one-page on the
18 Commission's website with all the submissions. At
19 least it would be easier for the participants to
20 see, with a definition of what economically
21 equivalent is once we've -- if we go -- the
22 Commission goes final. And it'll be easily

1 accessible to the participants.

2 COMMISSIONER O'MALIA: Well, this is
3 complicated. The factors are complicated and
4 somewhat vague. And I don't -- you know, that's
5 why we have a comment period. So, I appreciate
6 the fact that we will do a comment period. We
7 will extend the comment period longer than 30
8 days. We will have a roundtable because these are
9 -- this is difficult. I don't know how we're
10 going to weigh individuals.

11 I think Commissioner Sommers is right,
12 we may be putting the wrong people in making this
13 determination.

14 Let me ask one other question, I guess.
15 The link between clearing and trading, if we make
16 a determination on the clearing, can we also make
17 at the same time a trading determination? Would
18 that one-stop-shopping offer the market a little
19 better solution, or at least less confusion?

20 MR. ZAIDI: Well, the clearing
21 determination is a separate determination. The
22 clearing determination looks at -- DCOs submit

1 clearing determinations, and here DCMs and SEFs
2 are the ones submitting "made available to trade"
3 determinations. And also for clearing, there are
4 other factors besides liquidity that go towards
5 swaps that are required to be cleared. So, those
6 wouldn't be necessarily relevant to this process.

7 COMMISSIONER O'MALIA: But we have eight
8 factors. Aren't those -- don't we have some
9 overlap in those two features? I mean, wouldn't
10 it make it easier on the market to submit this
11 once, a single contract?

12 MR. ZAIDI: Some of the factors here do
13 kind of go to the liquidity factors of the
14 clearing determination. But in the -- in that
15 rulemaking, from what I understand, that's not
16 really flushed out of what liquidity is. So,
17 we're not sure if that would be made at the same
18 time or if -- what those requirements are there.

19 MR. SHILTS: But I think if you're
20 talking about internally, I mean, staff would work
21 together, so if there's an analysis done by --
22 with respect to making a determination where a

1 particular swap should be subject to the clearing
2 mandate, then obviously we'll share that
3 information from staff internally in looking at a
4 filing with respect to a "made available to
5 trade."

6 But I think on your other point is that,
7 as Amir said, with respect to the clearing
8 mandate, you're going to get filings from DCOs,
9 although the Commission could independently do
10 that, whereas the determinations, at least
11 initially, with respect to the trading mandate go
12 to the exchanges, the SEFs and DCMs.

13 But I think internally, we could
14 certainly share -- you know, look at the same
15 information. It wouldn't be duplicating the
16 analysis.

17 COMMISSIONER O'MALIA: Well, that's
18 encouraging. You know, ideally -- we'll have to
19 look at the factors. And I think with these
20 roundtables, that we'll be able to have absolutely
21 the opportunity to ask those questions about can
22 we and should we make single determinations? It

1 would obviously save on our resources not to --
2 you know, if we're already making one call and
3 maybe working together, and maybe marketing
4 participants need to think about how these things
5 will interact. That could just save them some
6 time and provide them some certainty going
7 forward.

8 Well, I think the comment period --
9 hopefully everybody will comment, and now they'll
10 have a little more comment -- opportunity to
11 comment. They won't have to work through the
12 Christmas holiday to get them in in 30 days. So,
13 that's better. Thank you.

14 CHAIRMAN GENSLER: Before I turn to
15 Commissioner Wetjen, I just -- there is a question
16 on page 22. And, Dan, I want to make sure that
17 you're focused on this as well. But is the
18 Commission's proposed definition of economically
19 equivalent swap appropriate? If not, how should
20 it be, you know, definition be changed, and why?
21 And what other factors should consider when
22 defining economically equivalent, et cetera, et

1 cetera?

2 My question for you, Dan, is, if in a
3 final rule in this matter we were to say, you
4 know, based on commenters, these are the three
5 things that define what economically equivalent
6 is, then we could go final. We don't have an
7 administrative law problem, that we didn't ask
8 enough questions. Because I, for one, would've
9 been fine even if this proposal had --
10 economically equivalent means same tenor, meaning
11 the same life, and the same underlying reference,
12 you know, just things like that. Now, maybe
13 there's a third or fourth thing, but I'm just
14 using that as two examples that it's the same
15 tenor and same reference, you know, because
16 economically equivalent to me means really
17 economically equivalent. But I just want to make
18 sure we could -- my question for you is an
19 administrative law question.

20 MR. BERKOVITCH: The --

21 CHAIRMAN GENSLER: Do we ask enough so
22 that we could finalize with specificity about the

1 definition of economically equivalent?

2 MR. BERKOVICH: As long as there's
3 notice in the -- in this proposed rule that this
4 is the subject of the Commission is considering,
5 and that the proposed definition is something the
6 Commission is considering. So, as long as the
7 final is a logical outgrowth of the proposed,
8 there's adequate notice.

9 CHAIRMAN GENSLER: So, this is adequate
10 notice on, for instance, if economically
11 equivalent were to be the same tenor and the same
12 underlying, or might we need to add a question to
13 help on that?

14 MR. BERKOVITZ: That sounds like that
15 could be a logical outgrowth, what you had just
16 described.

17 CHAIRMAN GENSLER: Right, but if --

18 MR. BERKOVITZ: The more specific --

19 CHAIRMAN GENSLER: -- the fellow
20 Commissioners would allow me to add a question
21 there, right? So, could you, Amir, make sure,
22 like, for instance, that it would be the same

1 tenor and the same underlying, what other factors
2 could people, you know.

3 MR. ZAIDA: That would be beneficial in
4 providing the needed notice?

5 CHAIRMAN GENSLER: Yeah. Commissioner
6 Wetjen. I'm sorry to interrupt, but I was trying
7 to build on what you were saying. Commissioner
8 Wetjen?

9 COMMISSIONER WETJEN: Thanks, Mr.
10 Chairman. Thanks to the staff for all your hard
11 work on this rule. And I also appreciate the
12 briefings that you provide on this.

13 Listening to the questions this morning
14 and reflecting on our briefings and conversations
15 about it over the last couple of weeks, I mean, it
16 seems like there is this real issue or question
17 about whether and to what degree the Commission
18 should be involved in these determinations. I
19 think that's the main takeaway, for me anyway,
20 after having these discussions.

21 But I think one thing that would be
22 helpful for me, and maybe for the public, too, in

1 helping assess whether or not -- what has been
2 proposed here would do the trick, and would
3 reflect the appropriate level of involvement is if
4 you could -- and it's been touched on a little bit
5 already. But if you could walk me through again
6 real briefly what the review process would like in
7 the proposed rule, and what exactly the Commission
8 and the Commission staff would do under that
9 process, which is under Part 40, as I understand
10 it.

11 MR. ZAIDI: Sure. Under Part 40, like
12 we mentioned, a DCM or SEF would submit the
13 "available to trade" determination, and then staff
14 would look at that explanation and analysis that
15 they give -- that they provide with the rule
16 submission, but also look at how they consider the
17 factors under the regulations.

18 And then, staff would either under the
19 approval process or the certification process have
20 45 or 10 days to review. It could also be
21 extended for an additional review period based on
22 certain -- in specified circumstances, like if

1 there was a novel or a complex issue. And then --

2 COMMISSIONER WETJEN: Sorry to
3 interrupt, but if the staff or the Commission does
4 nothing, and then after, what is it, 10 days of
5 doing nothing, that's when the rule becomes
6 effective. Is that right?

7 MR. ZAIDI: Right. That's correct.

8 COMMISSIONER WETJEN: I'm sorry.

9 MR. ZAIDI: Yes. So, it would become
10 effective. Otherwise, if staff give notification
11 that it's disapproving the rule, then it would
12 provide a notification to the DCM or SEF that it's
13 disapproving or it's objecting to the
14 certification.

15 COMMISSIONER WETJEN: Do we have any
16 sense at all right now how many products there are
17 out there -- potentially out there that the
18 Commission would act on?

19 MS. DIETZ: I don't think so. Not at
20 this time.

21 MR. SHILTS: Yeah. There's thousands of
22 swaps that are out there, but how many would be

1 filed under the trade execution mandate, the "made
2 available to trade" under this proposal, I'm not
3 sure I could hazard a good educated guess.

4 CHAIRMAN GENSLER: Yeah. Commissioner
5 Wetjen, you know, you could towards, like, in
6 clearing LCH, the largest clearinghouse for
7 interest rate swaps right now, somewhere between
8 three quarters of a million and a million
9 individual contracts. That's not to say that
10 those are each subject to trading. And, in fact,
11 if you enter into an interest rate swap on a
12 Monday and then enter into it Tuesday, that's a
13 different contract. So, that gives you the widest
14 scope.

15 But how many contracts are on the
16 futures markets right now to give you an order of
17 magnitude there?

18 MR. SHILTS: I don't -- it's around
19 1,200, 1,400, somewhere in that range of listed
20 products. But --

21 CHAIRMAN GENSLER: So, it's likely to be
22 well in excess of the futures, but not all the

1 individual dates and contracts of that bigger
2 number.

3 MR. SHILTS: (Nodding)

4 COMMISSIONER WETJEN: I mean, I guess it
5 might be a fair point -- if there are, in fact,
6 that many products out there, and, you know, given
7 the strains on resources, I guess you can kind of
8 see where I'm going. I'm just trying to figure
9 out, you know, what the Commission involvement
10 would be under this review process if there's so
11 many contracts. So, I'm just looking forward to
12 the comments to see what folks have to say about
13 that.

14 CHAIRMAN GENSLER: And I'd imagine --
15 but just make sure. We do ask -- people can make
16 these submissions by class or group similar to how
17 they do it on the clearing side, or is that not
18 the case?

19 MR. ZAIDI: That's not the case. We
20 didn't propose that.

21 CHAIRMAN GENSLER: But wouldn't it be
22 wise of us to -- you know, if somebody's doing,

1 for instance, two- to three- year interest rate
2 swaps, they don't have to make, you know, 365
3 individual submissions. It could be one
4 submission for two- to three-year interest rate
5 swaps, noting 365 calendar days in the year.

6 MR. ZAIDI: A DCM or SEF could submit
7 determinations under rule submission. They
8 wouldn't have to submit 365 rule submissions at
9 one time. They could include the analysis for the
10 different swaps that they want to make "available
11 to trade" in one rule submission.

12 CHAIRMAN GENSLER: But could they do the
13 analysis based on a class rather than having a
14 document for each -- it would seem, like,
15 burdensome on a SEF if they had to make 365, in my
16 little hypothetical, submissions, even if it was
17 all appended to one document.

18 MR. SHILTS: I guess I'm not really sure
19 what makes the most sense. I think for clearing,
20 that doing it by class, because you do -- you
21 know, like LCH, you can clear thousands of
22 different individual swaps, you know, of interest

1 rate swaps. I don't know if the same analysis or
2 review, looking for the trading mandate, you know,
3 what's tradable would apply necessarily, whether
4 you can do a, kind of a broad review of, you know,
5 a number -- like you said, of the three- to five-
6 year, that every one of the three-year, 17-day,
7 and whatever, they would all be subject to the
8 trading mandate, that the same analysis would
9 apply. I just -- I don't really know the answer
10 to that.

11 I think the -- you can do that for
12 clearing, but I don't know if that's -- would work
13 for the trading mandate. It's just not something
14 I've really thought about. But it might be
15 something we can include as a question.

16 CHAIRMAN GENSLER: If other
17 Commissioners felt the same way so that we could
18 hear from the market participants, if we could add
19 some question on that. But I don't know.

20 MR. SHILTS: Yeah.

21 CHAIRMAN GENSLER: But I was -- we'll
22 call it the Mark Wetjen question.

1 COMMISSIONER WETJEN: Thanks, I think.
2 I don't have any further questions. The only
3 other thing I would say is that my impression is
4 that Commissioner O'Malia has an especially keen
5 interest in this, and so I'm looking forward to
6 the opportunity of working with him on these
7 roundtables so I can learn more from the market
8 participants as well. Thanks.

9 CHAIRMAN GENSLER: I thank you. And,
10 Mr. Stawick.

11 MR. STAWICK: Commissioner Wetjen?

12 COMMISSIONER WETJEN: Aye.

13 MR. STAWICK: Commissioner Wetjen, aye.
14 Commissioner O'Malia?

15 COMMISSIONER O'MALIA: Aye.

16 MR. STAWICK: Commissioner O'Malia, aye.
17 Commissioner Chilton?

18 COMMISSIONER CHILTON: Aye.

19 MR. STAWICK: Commissioner Chilton, aye.
20 Commissioner Sommers?

21 COMMISSIONER SOMMERS: No.

22 MR. STAWICK: Commissioner Sommers, no.

1 Mr. Chairman?

2 CHAIRMAN GENSLER: I'm going to say aye,
3 but before you summarize, that was with that
4 question having been added, okay?

5 MR. STAWICK: The staff proposal as
6 amended.

7 CHAIRMAN GENSLER: Yeah.

8 MR. STAWICK: The -- Mr. Chairman, on
9 this question, the yeas are four, the nays are
10 one.

11 CHAIRMAN GENSLER: I thank you, Mr.
12 Stawick. And with the ayes having it, it will be
13 sent off to the Federal Register, as amended. Was
14 there -- no?

15 So, I think what we're doing next is
16 some members of the Division of Market Oversight
17 will be up to talk about the staff recommendation
18 on the final rule with regard to foreign boards of
19 trade. Again, a particular shout out to two
20 senators, Senators Feinstein and Levin, who worked
21 so hard to help us, I think, move from a no-action
22 regime to a more consistent registration regime.

1 I'd like to welcome Duane Anderson,
2 David -- is David there? Yes, David Steinberg,
3 Ryne Miller. Where's Ryne? I don't see him
4 there. Oh, there's Ryne. David Van Wagner, and
5 Rick Shilts, all of the Division of Market
6 Oversight, to present the staff's recommendation
7 concerning this final rule on registration of
8 foreign boards of trade. I'll share with the
9 public.

10 Duane once said when we set up 30
11 separate rule teams, and this one of them, Duane
12 said he was just an island. He really -- he was
13 off to his own, and he didn't think -- well,
14 actually you're, as you'll describe, has touched
15 clearing.

16 MR. ANDERSON: And it wasn't just me as
17 an island, it was the team was an island.

18 I'm here to present for your
19 consideration the proposed final rule for foreign
20 board of trade registration. As you know, the
21 Dodd-Frank Act amended Section 4(b) of the
22 Commodity Exchange Act to provide that the

1 Commission may adopt rules and regulations
2 requiring registration with the Commission of a
3 foreign board of trade that provides its members
4 or other participants located in the United States
5 with direct access to its electronic trading and
6 order matching system.

7 The Commission may also adopt rules and
8 regulations prescribing procedures and
9 requirements applicable to such registration.

10 For purposes of this registration, the
11 Dodd-Frank Act defines direct access to mean an
12 explicit grant of authority by a foreign board of
13 trade to identified member or other participant
14 located in the United States to enter trades
15 directly into the trade matching engine of the
16 foreign board of trade.

17 Of course, the Commission determined to
18 establish a registration provision and published a
19 proposed rule in November of last year. After
20 reviewing the comments submitted in response to
21 the proposed rule, we are proposing that the
22 Commission adopt this final foreign board of trade

1 registration rule substantially as originally
2 proposed, with certain modifications.

3 The registration provisions will replace
4 the current procedure in place since 1996 of staff
5 issuing no-action relief letters to foreign boards
6 of trade that wish to permit direct access.

7 By adopting uniform application
8 procedures and registration requirements and
9 conditions, the process by which foreign boards of
10 trade are permitted to provide direct access to
11 their trading systems will become more
12 standardized, more transparent to both
13 registration applicants and the general public,
14 and will promote fair and consistent treatment of
15 all applicants.

16 Generally applicable regulations will
17 provide greater legal certainty for foreign boards
18 of trade providing direct access.

19 Commenters generally supported the
20 adoption of a registration process.

21 The process set forth in new Part 48 of
22 the Commission's regulations, it provides that a

1 foreign board of trade must be registered in order
2 to provide direct access and identify standards
3 that must be met to be registered and conditions
4 that must be satisfied to maintain registration.
5 Many of these requirements and conditions of
6 registration have evolved from requirements and
7 conditions that Commission staff currently applies
8 to foreign boards of trade in the no-action relief
9 letters.

10 For instance, in determining whether to
11 register a foreign board of trade, the Commission
12 will evaluate whether the foreign board of trade's
13 home regulatory authority overseas, the foreign
14 board of trade, in a manner that is comparable to
15 the CFTC's oversight of DCMs. The operative word
16 here is "comparable," is used in both the
17 registration rule and the foreign board of trade
18 provisions of the Dodd- Frank Act itself.

19 Comparable is not interpreted to mean
20 that the foreign board of trade and its clearing
21 organization have to be subject to oversight that
22 is identical to the manner in which the CFTC

1 oversees DCMs and clearing organizations.
2 Instead, the rule provides that the comparability
3 determination will be based on a principles-based
4 review in which the Commission will look to
5 determine if the foreign board of trade and the
6 clearing organization's regulators support and
7 enforce regulatory objectives in the oversight of
8 the foreign board of trade and clearing
9 organization that are substantially equivalent to
10 the regulatory objectives supported and enforced
11 by the Commission in its oversight of DCMs and
12 DCOs. These objectives would include such
13 requirements as prevention of market manipulation
14 and customer and market abuse.

15 Part 48 describes how and where to apply
16 for registration, and provides a limited
17 registration application process for those foreign
18 boards of trade that currently are operating on
19 staff-issued no-action relief letters. Many of
20 those who are recipients of the no-action letter
21 commented to the proposed rules.

22 In response to their comments, the

1 Commission has attempted to make it easier for
2 those who are operating under a no-action letter
3 to register; that is, originally they had to make
4 a limited application within 120 days from the
5 effective date of the rule. That's been modified
6 out to 180 days, so they now have the two months
7 the rule takes to become effective, and then 180
8 days after that in which to submit a limited
9 application.

10 During that period, they can continue to
11 operate pursuant to the no-action relief. If they
12 get their application in at the 180-day point,
13 they can continue to operate pursuant to the
14 no-action relief until such time as the Commission
15 acts upon their application; that is, by issuing
16 an order of registration or a notice of action
17 indicating that the Commission will not register
18 the foreign board of trade, at which time the
19 no-action letter will be withdrawn.

20 Part 48 describes the requirements that
21 foreign boards of trade would have to demonstrate
22 and meet in order to be registered. Whether

1 they're successfully met will be determined by a
2 review of the information submitted by the
3 applicant in the application forms, and, as
4 necessary, a staff on-site visit to the foreign
5 board of trade, the clearing organization, and its
6 regulator.

7 With respect to the clearing and
8 settlement requirement, Part 48 requires that the
9 clearing organization either be registered with
10 the CFTC as a DCO or demonstrate that it observes
11 generally recognized international standards, the
12 RCCP's recommendations for central counterparties,
13 or successor standards.

14 In response to comments, the Commission
15 has modified the final rule to reflect that if a
16 clearing organization is registered with the
17 Commission as a DCO, we would need no further
18 information from that clearing organization as
19 part of the foreign board of trade's registration
20 process.

21 Part 48 also details the conditions that
22 a registered foreign board of trade must meet to

1 retain its registration, including general
2 conditions, reporting obligations, and conditions
3 that apply to link to contracts. Staff believes
4 that most of the general conditions and reporting
5 obligations, including quarterly volume reports,
6 are being met by foreign boards of trade currently
7 operating pursuant to direct access no action
8 relief.

9 The linked contract conditions include
10 those identified in the Dodd-Frank Act and those
11 derived from Commission staff experience in
12 issuing no-action letters, and currently are being
13 met by the one foreign board of trade that is
14 operating pursuant to direct access no-action
15 relief that lists linked contracts.

16 Part 48 identifies the types of entities
17 to which a registered FBOT could grant direct
18 access. That would include identified members and
19 other participants that trade for their
20 proprietary accounts, FCMs that can submit orders
21 on behalf of U.S. customers, and CPOs or CTAs or
22 entities exempt from such registration that submit

1 orders on behalf of U.S. pools or for accounts of
2 U.S. customers for which they have discretionary
3 authority.

4 Again, this list of eligible
5 participants is consistent with the participants
6 under the existing no-action relief.

7 With respect to new contracts that are
8 not included in the original application, Part 48
9 describes the procedures to be followed by a
10 registered foreign board of trade that wants to
11 make them available, including non-narrow based
12 stock index futures contracts.

13 Part 48 also identifies reasons for
14 which a foreign board of trade's registration
15 could be revoked, including failure to satisfy
16 registration requirements or conditions.

17 Finally, the appendix to Part 48 has
18 been modified from a list of items that are
19 required in the original proposed notice to
20 application forms that include the same
21 requirement for information.

22 I'd like to thank my fellow team members

1 for their exceptional efforts in creating this
2 proposal, and that includes David Steinberg, my
3 deputy team leader, Ryne Miller, Phillip Calling
4 (phonetic), and William Muldinado from DMO,
5 Carlene Kim and Neil Kumar from OGC, Jocelyn
6 Partridge from DCR, Michael Pennick from OCE,
7 Peter Calls from DSIO, and last, but not least,
8 Robert Rosenfeld from OIA.

9 I'd be happy to answer any questions
10 that you may have.

11 CHAIRMAN GENSLER: Thank you, Duane.
12 The Chair will entertain a motion to accept staff
13 recommendations and consider this final rule.

14 COMMISSIONER SOMMERS: So moved.

15 COMMISSIONER CHILTON: Second.

16 CHAIRMAN GENSLER: All right. I support
17 the final rule to implement this foreign board of
18 trade registration regime. I think it's very
19 appropriate that we have a consistent registration
20 regime. We didn't have this opportunity before
21 Dodd-Frank. We, as Duane went through, used
22 something called no-action letters, and I know

1 that sometimes it was a little bit concerning to
2 members of Congress why we didn't register these
3 entities. And now we have a specific registration
4 in our statute.

5 I just really -- I have one question.
6 It's for somebody not at the table, but it's for
7 Jackie Mesa, who's the head of our international
8 -- as Jackie comes to the table.

9 But, Jackie, I just want to understand
10 how foreign jurisdictions see this, because I know
11 we've shared, as we've been going through these,
12 you know, dozen or 15 months, and we always want
13 to coordinate closely. I know Jackie and I are
14 flying out tomorrow night to Paris to be at these
15 meetings on Wednesday and Thursday.

16 MS. MESA: As you rightly point out,
17 foreign regulators and foreign exchanges have been
18 very interested in this rule and this provision in
19 Dodd-Frank. They've really benefitted from our
20 recognition procedures in the past. And we're
21 curious on how we would be changing it.

22 And so, we have been talking about it in

1 international meetings where foreign regulators
2 and exchanges attend, but also in our bilateral
3 discussions. It always comes up on how we're
4 going to proceed in this area. And I can tell you
5 that largely the biggest concern was whether we
6 were going to back away from a recognition regime
7 and a comparability analysis, and whether we were
8 going to require, like, a domestic exchange full
9 registration. And I think, as the rule reflects,
10 we are going to maintain our recognition under --
11 for foreign exchanges and the comparability
12 analysis. And that was their biggest concern.

13 So, we haven't had any other specific
14 concerns from foreign regulators, and I think they
15 seem relatively comfortable with the rule we're
16 proposing today.

17 CHAIRMAN GENSLER: Great. I thank you.
18 And that gives me additional comfort.

19 Commissioner Sommers?

20 COMMISSIONER SOMMERS: Thank you, Mr.
21 Chairman. I'll continue on the same path of
22 questioning to just clarify that this rule creates

1 a registration system, not a dual registration for
2 these foreign boards of trade. They will not be
3 duly regulated by us and their home country
4 regulator.

5 MR. ANDERSON: That's correct. That's
6 what this rule does. Dodd-Frank provides that we
7 look to the foreign regulator for comparable,
8 comprehensive supervision in the home country.
9 The foreign regulator is the primary regulator.
10 They're registered with us just for the purpose of
11 providing direct access.

12 COMMISSIONER SOMMERS: Thank you. I
13 have a couple of questions on the process, and
14 with regard to the process for limited
15 registration in those foreign boards that are
16 already operating under no-action relief. And you
17 said that they will be able to continue to operate
18 until the Commission acts. So, there isn't a
19 deadline that would kick in that we have only a
20 certain amount of time to either approve or
21 disapprove their registration status.

22 MR. ANDERSON: We have no time criteria

1 on ourselves. Now, we have established the
2 180-day time period for the application, but we
3 have amended the rule to say that it is required
4 to be in good faith on the part of the applicant,
5 a complete application. And we can work on that
6 applicant -- application, and if down the road it
7 turns out to be materially incomplete, we can work
8 with the foreign board of trade to get it
9 complete.

10 COMMISSIONER SOMMERS: And if a foreign
11 board of trade that is currently operating under
12 no-action relief does not have an application,
13 even in good faith and within those 180 days, do
14 we immediately revoke their status?

15 MR. ANDERSON: That's unclear. I don't
16 anticipate that happening because we're telling
17 the foreign boards of trade, we're encouraging
18 them to come in in draft form before the 180 days.
19 We're working with them to get a document that
20 looks good when they do come in. I will be in
21 contact with all of them, and they will certainly
22 be pressured to have something here at the 180-day

1 point.

2 COMMISSIONER SOMMERS: Okay.

3 MR. ANDERSON: The ones that have the
4 no-action letters, the ones that might not have
5 anything, are probably the ones that will no
6 longer have business from the U.S. But the others
7 will certainly have something here because they
8 want to continue to operate with business from the
9 U.S.

10 COMMISSIONER SOMMERS: I believe that
11 the way that this rule is written, it also
12 captures those people who currently have pending
13 applications for no-action relief to be part of
14 the limited registration.

15 MR. ANDERSON: Yes.

16 COMMISSIONER SOMMERS: Is that correct?
17 And how many of those do we have pending right
18 now?

19 MR. ANDERSON: We have seven people who
20 have submitted applications, but I don't know
21 they're all going to be considered valid
22 applications. One of them, for instance, is a

1 European MTF, a multi-lateral trading facility,
2 and we have not addressed the issue of whether an
3 MTF is subject to comparable, comprehensive
4 supervision and regulation that the Commission
5 applies to DCMs. So, I'm not sure whether that's
6 going to turn out to be a valid application or
7 not. We'll have to spend some time with that one.

8 COMMISSIONER SOMMERS: Because those
9 people who have pending applications for no-action
10 relief are not able to actually operate during
11 this time frame while we're considering
12 applications, will they be first in the queue?

13 MR. ANDERSON: If they wish to be. I
14 mean, there's no incentive for them to wait 180
15 days certainly. I mean, we're allowing them to do
16 the limited part of the application process that
17 allows them to identify documentation that they
18 have already submitted to us and tell us that it's
19 still current and valid, and apply it to their new
20 application. They can certainly begin application
21 right after the effective date, and my
22 understanding is at least two of those who have

1 pending applications are going to be here probably
2 day one after the effective date.

3 COMMISSIONER SOMMERS: Right. I guess I
4 would just expect that their applications would be
5 the most current of anyone who's there.

6 MR. ANDERSON: Certainly we will look at
7 those as they come in, and they have more
8 incentive to come in right after --

9 COMMISSIONER SOMMERS: Right.

10 MR. ANDERSON: -- the effective date
11 than the exchanges that are operating under
12 no-action relief.

13 COMMISSIONER SOMMERS: All right. Thank
14 you so much.

15 CHAIRMAN GENSLER: Thank you,
16 Commissioner Sommers. Commissioner Chilton.

17 COMMISSIONER CHILTON: Thanks again for
18 all your work.

19 I have a general question about
20 comparability. And I appreciate the final rule
21 and that it's using a principles- based look at
22 our brethren regulatory regimes and the foreign

1 boards of trade. But I have a specific question
2 with regard to look alike contracts; that is,
3 contracts that are offered on a U.S. exchange,
4 potentially for delivery in the United States. Is
5 there any added criteria other than that
6 principles-based general look at a foreign board
7 of trade with regard to adhering to any of our
8 rules or regulations?

9 We all remember the ICE circumstance
10 where ICE London has a look alike to the WTI
11 contract offered on NYMEX for delivery in the
12 United States. I'm curious, does this address
13 that sort of possibility?

14 MR. ANDERSON: There's a long series of
15 conditions that apply in the ICE situation because
16 that's a linked contract. It's actually -- the
17 price is linked to a contract traded on a
18 registered entity. Those conditions are in the
19 rule.

20 We have also asked the foreign boards of
21 trade to identify any other kinds of contracts
22 which may have some relationship to a contract

1 traded in the United States. For instance, MRX
2 and NYMEX both traded freight rate contracts that
3 used the same third party price for settlement.
4 Now, it turns out that there was no market
5 manipulation issue there. There was no potential
6 problem, but we needed to know about that. And
7 if, in fact, we get a contract listed in which
8 there is a potential problem, we've given
9 ourselves the option of imposing additional
10 conditions on that contract, all the way up to and
11 including the same conditions that we imposed on
12 linked contracts.

13 COMMISSIONER CHILTON: Very good.
14 That's helpful. And no other question, but for
15 the people who don't understand why this is an
16 important issue, you have a contract on a U.S.
17 Exchange, and there's a look alike contract on a
18 foreign exchange for delivery at the same place in
19 the United States. What we've seen happen in the
20 past is that traders would reach a level at which
21 they feel like they're above what are currently
22 accountability levels on the U.S. exchange. These

1 aren't position limits, but they're accountability
2 levels, sort of a loosey-goosey position limit, if
3 you will.

4 But then, they would, in order to have
5 greater exposure in that same contract, this crude
6 oil contract, they'd go to the look alike contract
7 in London and have positions there. And they
8 could do the same -- well, when you combined all
9 of those in aggregate, they could have a
10 significant, what I would term, excessive
11 speculative role.

12 So, this rule allows us to look at those
13 sorts of things and ensure that they are meeting
14 more than just a principles-based test, but an
15 actual test similar to what we did in the specific
16 crude oil example with regard to WTI.

17 MR. ANDERSON: Yes, sir. And, as a
18 matter of fact, among the link contract conditions
19 is reporting in the COT, position limits that are
20 comparable or identical to the position limits at
21 the registered entity on which the contract is
22 based. And ICE Futures Europe has been complying

1 with those for some time now, and will continue
2 to. And any additional linked contracts get
3 listed by other foreign boards of trade that want
4 direct access, will also have to meet those
5 conditions.

6 COMMISSIONER CHILTON: Thank you very
7 much. Thank you, again, for your work, guys.

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

10 COMMISSIONER O'MALIA: Thank you to the
11 team for working through this.

12 In the rule -- proposed rule, we have
13 the term "observance of recommendations for
14 central counterparties." Now, Duane, you had
15 mentioned comparable regulation, but in this we
16 use the term "observance of recommendations for
17 the central counterparty." How will the
18 Commission evaluate a clearing organization's
19 "observance of recommendations of clearing
20 counterparties?" I see Mr. Wasserman is in the
21 house.

22 MR. ANDERSON: We're going to defer the

1 questions on clearing to the clearing expert.

2 MR. WASSERMAN: Thank you, Commissioner
3 O'Malia. As you know, the currently applicable
4 standard internationally is the recommendations
5 for central counterparties. The Committee on
6 Payment and Settlement Systems and IOSCO have a
7 team, or a number of teams actually, working on
8 updating these recommendations to what are going
9 to be the principles for financial market
10 infrastructures. And I'm actually participating
11 in that effort. There is an intention that those
12 will be completed by the end of March, and
13 applicable by the end of 2012.

14 Along with those principles, we are
15 developing, with the help of the World Bank and
16 the IMF, an assessment methodology to determine
17 observance of those principles, both at the
18 principle level as well as certain key
19 considerations.

20 That -- I think the intention of this
21 rule is to permit, so long as the recommendations
22 for central counterparties are effective, one may

1 essentially demonstrate observance of those. On
2 the other hand, as may likely happen given the
3 time schedule, in the case that the principles for
4 FMIs have been finalized, but are not yet
5 effective, an entity would be able to, if they so
6 choose, say, well, let's just skip over and go
7 directly to the PFMIIs and demonstrate how those
8 are observed.

9 As I mentioned, there is an assessment
10 methodology, and essentially what that looks is --
11 that is still in development. It has not yet been
12 finalized, but essentially as with a number of
13 international standards, it looks at whether the
14 standards are observed, broadly observed,
15 partially observed. And it strikes me that the
16 approach we will be taking is going to be a
17 flexible one because essentially it may well be
18 the case that perfection is very, very hard to
19 achieve in terms of observance of each and every
20 key consideration of each and every principle.

21 And so, obviously if in some cases, if
22 the standard may be broadly observed rather than

1 observed, that would not, it seems to me, be
2 disqualifying. Obviously when one get down to
3 partially observed and not observed, that might be
4 somewhat of a different story. But I think the
5 key point is it needs to be done in a bit of a
6 more flexible and thoughtful manner rather than,
7 okay, this box was not checked, you're out.

8 COMMISSIONER O'MALIA: This is a key
9 point. This was the first question I was asked
10 every time I went into a meeting with foreign
11 regulators in my recent trip to Asia. So, they
12 were keenly aware of the IOSCO principles,
13 international settlements. They do support a
14 principles- based.

15 What happens if there's a difference
16 between our DCO core principles and the
17 international principles-based standards? They
18 were concerned that they would be tugged in two
19 different directions on a clearinghouse at least.
20 And now that we've linked clearing and trading in
21 this regard, they were uncertain how that might
22 play out.

1 MR. WASSERMAN: As I read it, they have
2 two choices. They may register as a DCO, and if
3 you have a registered DCO, that's the end of it.
4 Now, obviously we are supervising those DCOs, and
5 if we have some concern with what the DCO is
6 doing, then DCR as part of its supervisory
7 activities would be addressing that. But that
8 would not be part of this exercise.

9 So, under this exercise, if you're a
10 DCO, you're in. Alternatively --

11 COMMISSIONER O'MALIA: In meaning under
12 our DCO core principles.

13 MR. WASSERMAN: Yes. That is to say, if
14 you are registered as a DCO, then for purposes of
15 this rule, that is enough. One just simply says
16 I'm registered, and we say, yes, indeed you are.
17 And that's it for these purposes.

18 Alternatively, if you are not registered
19 as a DCO, then what you must do is observe this
20 international standard, the RCCPs or, in the
21 fullness of time, the principles for FMIs.

22 And so, then the question is not, do you

1 meet the core principles for DCOs. If you're not
2 seeking registration as a DCO, you would not be
3 measured against those principles. You'd be
4 measured against -- I'll just the principles for
5 FMIs and your observance of those.

6 COMMISSIONER O'MALIA: Thank you very
7 much. Do other jurisdictions utilize or rely on
8 an FBOT-

9 Like registration regime so their
10 citizens can directly access U.S. exchange? And,
11 if so, do they require the same standards that
12 we've -- that Mr. Wasserman here just laid out?

13 MR. ANDERSON: Foreign countries do have
14 standards for, for instance, CME or NYMEX to make
15 it system available from their country. And I'd
16 like to ask Jackie to come back up here and talk
17 about similarities or differences.

18 MS. MESA: We have a music chair on the
19 end here. Yes, they do have a similar process
20 in foreign jurisdictions, and we looked at this
21 pretty intensely a couple of years ago, a pretty
22 thorough analysis. And most apply the same

1 standard across the board because there were
2 principles developed in IOSCO for recognition of
3 direct access. And so, everyone bases their
4 regimes off those IOSCO standards, and we did the
5 same here.

6 COMMISSIONER O'MALIA: So, it's a
7 two-way comparability street here. Okay.

8 MS. MESA: That's right.

9 COMMISSIONER O'MALIA: Thank you,
10 Jackie. Can you walk me through the real time
11 reporting obligations for swaps under the FBOT
12 rules?

13 MR. ANDERSON: The real time reporting
14 is, I believe, going parallel to what we're going
15 to do with DCMs, and that is the swap data will be
16 provided to an SDR once there are SDRs available.
17 And the SDR will do the real time reporting.

18 COMMISSIONER O'MALIA: So, an FBOT would
19 report to U.S. SDRs, or their respective --

20 MR. ANDERSON: It's either one that's
21 approved by the Commission or has an information
22 sharing arrangement with the Commission. That's

1 our standard for SDRs.

2 COMMISSIONER O'MALIA: So, an entity in
3 a foreign jurisdiction has to report to a U.S. SDR
4 under the FBOT rules.

5 MR. ANDERSON: Yes.

6 COMMISSIONER O'MALIA: One last question
7 on pending contracts. You know, obviously there
8 are contracts for clearing and trading that have
9 been submitted and will be submitted, I suspect,
10 under the no-action relief. How will we treat
11 contracts being reviewed under that separate
12 process while we're doing the FBOT? Are we going
13 to wait until we complete the FBOT before we go
14 back --

15 MR. ANDERSON: No.

16 COMMISSIONER O'MALIA: -- or can we walk
17 and chew gum at the same time?

18 MR. ANDERSON: I think we'll continue to
19 look at contracts submitted by FBOTs under the
20 no-action provision. The difference is that the
21 no-action provision does not provide for swaps
22 contracts. So, in all likelihood, they will have

1 to hold off if they want to trade swaps until
2 they're registered, which would be an incentive
3 for them to register as well.

4 But we're reviewing contracts even now
5 from foreign boards of trade operating under the
6 no-action letters.

7 COMMISSIONER O'MALIA: Well, assuming
8 they're able to get their registration in on time,
9 would they then be able to submit contracts -- if
10 they submit within the 180-day period, would they
11 then be able to submit swaps for trading?

12 MR. ANDERSON: Once they're registered.

13 COMMISSIONER O'MALIA: Under -- once we
14 determine their --

15 MR. ANDERSON: Yes. Once we issue --

16 COMMISSIONER O'MALIA: Once we finalize.
17 So, it's really -- it may be an incentive for
18 them, but it's really -- we're really the
19 gatekeepers as to whether -- and they get to move
20 these contracts. And it's up to our pace to
21 determine when that final rule is approved,
22 correct?

1 MR. ANDERSON: Yes.

2 COMMISSIONER O'MALIA: All right. So,
3 regardless, they have 180 days, but it's still --
4 they have to still wait for us to finalize.

5 MR. ANDERSON: If they're really
6 interested in trading swaps, they can submit the
7 application the day after the effective date of
8 the rule, if they wish.

9 I mean, foreign boards of trade under
10 the no-action relief have always been treated as
11 parallel to the DCMs, and DCMs have never been
12 able to list swaps. So, they've never been listed
13 under the foreign board of trade no-action relief.
14 So, it's new on both ends. It's new on the DCMs,
15 and it's new on the foreign board of trade.

16 COMMISSIONER O'MALIA: But you could
17 probably understand their concern when they say
18 you demanded 180 days, and yet I have no certainty
19 going forward as to when you will approve my
20 contract.

21 MR. ANDERSON: Oh, that's true.

22 COMMISSIONER O'MALIA: Or your exchange.

1 MR. ANDERSON: That's true.

2 COMMISSIONER O'MALIA: Okay. I would
3 suspect we have some concerns in that area.

4 Thank you very much.

5 CHAIRMAN GENSLER: Thank you,
6 Commissioner O'Malia. Commissioner Wetjen.

7 COMMISSIONER WETJEN: I just want to
8 start by thanking the team. I appreciated the
9 briefing that we had on this rule a couple of
10 weeks ago. And I appreciate everyone's hard work
11 in getting this rule finalized.

12 I don't have any other questions. I
13 just wanted to, I guess, restate something I
14 alluded to in the opening statement, which was I
15 think on balance it's better to have a
16 registration approach or a registration regime as
17 opposed to a no-action letter regime. I think
18 there are a lot of benefits to that for market
19 participants that were covered in the preamble of
20 the rule. So, I'm happy to support the final rule
21 today.

22 Thanks for all your help.

1 CHAIRMAN GENSLER: Thank you,
2 Commissioner Wetjen. Thank you for everybody on
3 the staff.

4 Mr. Stawick?

5 MR. STAWICK: Commissioner Wetjen?

6 COMMISSIONER WETJEN: Aye.

7 MR. STAWICK: Commissioner Wetjen, aye.

8 Commissioner O'Malia?

9 COMMISSIONER O'MALIA: Aye.

10 MR. STAWICK: Commissioner O'Malia, aye.

11 Commissioner Chilton?

12 COMMISSIONER CHILTON: Aye.

13 MR. STAWICK: Commissioner Chilton, aye.

14 Commissioner Sommers?

15 COMMISSIONER SOMMERS: Aye.

16 MR. STAWICK: Commissioner Sommers, aye.

17 Mr. Chairman?

18 CHAIRMAN GENSLER: Aye.

19 MR. STAWICK: Mr. Chairman, aye. Mr.

20 Chairman, on this question, the yeas are five,

21 the nays are zero.

22 CHAIRMAN GENSLER: Thank you, Mr.

1 Stawick. The ayes having it unanimously, the
2 staff recommendation is accepted, and will be sent
3 to the Federal Register.

4 I think, Mr. Stawick, I already did a
5 unanimous consent on technical corrections. Is
6 that right?

7 MR. STAWICK: Yes. You were going to.
8 You mentioned it. You might want to just restate
9 it now.

10 CHAIRMAN GENSLER: I have. All right,
11 I'll do it now.

12 So, at this point, I ask unanimous
13 consent to allow staff to make technical
14 corrections to documents voted on today prior to
15 sending them to the Federal Register, without
16 objection.

17 So ordered. Our next scheduled public
18 meeting will be Tuesday, December 20th, and the
19 subjects of the rulemaking presented in that
20 meeting will be published on the Commission's
21 website as is our practice under the Government
22 and Sunshine Act seven days before the meeting.

1 If there's -- did you want to say something?

2 COMMISSIONER CHILTON: I did very
3 briefly.

4 CHAIRMAN GENSLER: All right. All
5 right. I'm sorry -- no, no, I think I have a
6 minute. I need to go to an FSOC meeting, but go
7 ahead.

8 COMMISSIONER CHILTON: Well, I'll be
9 very quick. The Chairman and I have spoken
10 several times about the swaps definition, which
11 the position limit rule is dependent upon the
12 swaps definition. And I know you are working hard
13 to push that. I know you were asked about it
14 before the Agriculture Committee the other day.

15 And it's a joint rule. It's mandated,
16 but it's a joint rule between the CFTC and the
17 SEC. So, as much as we might like to at times, we
18 can't control everything.

19 But I'd just reiterate that this is an
20 important issue for me, that I know it's important
21 for a lot of us, but that we got to get this thing
22 done. And I appreciate the forbearance of the

1 Chairman as I continue to nip around trying to
2 push us to do that.

3 CHAIRMAN GENSLER: I will say this. I
4 think it's critical that we complete the further
5 definition rules, the entity definition that
6 related to swap dealers and securities- based swap
7 dealers and so forth. It is further along. There
8 is nearly a PENs down version that we can
9 distribute to all of you, and you've all given
10 some input on that comment summary over the last
11 two months.

12 We're frankly just not as far along on
13 the products because it was proposed in April,
14 whereas the entities one was proposed about five
15 or six months earlier.

16 But I do -- I'll raise it with Chairman
17 Shapiro again in about a half an hour when I'm at
18 the FSOC.

19 COMMISSIONER CHILTON: Thank you, sir.

20 CHAIRMAN GENSLER: Thank you.

21 COMMISSIONER O'MALIA: Mr. Chairman, to
22 the point on the meeting on the 20th, obviously

1 we're approaching the holidays, and the more
2 specificity we can have and the staff can have
3 about who will be up on the 20th and potentially
4 January 5th as well so we can marshal our forces
5 and address the appropriate rules. We want to be
6 as responsive as possible, but we also need to
7 protect -- you know, the staff has worked
8 extraordinarily hard, and protect their holidays
9 to the extent that we can. And if we can narrow
10 down those so we can address specifically the
11 rules that we are going to be working over the
12 holidays, I would greatly appreciate that, and cut
13 everybody loose if they're not going to have to be
14 ready for the 20th of --

15 CHAIRMAN GENSLER: No, I think that's
16 very good, and glad to have feedback. I think
17 there's five documents that are PENs down version
18 in each of your hands for finals. I think that's
19 right. So, those are the ones that are possibly.
20 But I know that we're not going to do all five on
21 December 20th. But, I mean, to get some feedback
22 from Commissioners' offices as to which ones you

1 think, you know, whether it's, you know, three of
2 them, four of them, which ones also people think.

3 And in terms of January 5th, we'll
4 continue to work on that because we have still a
5 few days before the PENS down version before that.
6 It may just be that some of those five are split
7 between December 20th and January 5th.

8 COMMISSIONER O'MALIA: And I'm happy to
9 work through that. I know this is -- we can't
10 necessarily be 100 percent, but to the extent that
11 the Commission can make a determination so we can
12 tell everybody what their holiday future may be in
13 store. Obviously, we're going to be working, and
14 we're reading through the rules, and we're going
15 to have to -- you know, we just want to make sure
16 we're asking the right staff on the right rule
17 teams to participate and cut the rest loose if
18 they don't have to be here.

19 CHAIRMAN GENSLER: Yeah, I absolutely
20 agree. Absolutely.

21 With that, I guess if there's no other
22 further business, I'd entertain a motion to

1 adjourn the meeting, right? That's what I'm
2 supposed to do?

3 COMMISSIONER SOMMERS: So moved.

4 COMMISSIONER CHILTON: I move we
5 adjourn.

6 CHAIRMAN GENSLER: All in favor?

7 (Chorus of ayes)

8 CHAIRMAN GENSLER: Any opposed? Thank
9 you very much.

10 (Whereupon, at 12:25 p.m., the
11 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.

(Signature and Seal on File)

Notary Public, in and for the District of Columbia

My Commission Expires: January 14, 2013

