UNITED STATES OF AMERICA

COMMODITY FUTURES TRADING COMMISSION

OPEN MEETING ON THE THIRTEENTH SERIES OF
PROPOSED RULEMAKINGS UNDER THE DODD–FRANK ACT

Washington, D.C.
Tuesday, April 12, 2011
PARTICIPANTS:

Commission Members:

GARY GENSLER, Chairman
BART CHILTON, Commissioner
MICHAEL V. DUNN, Commissioner
JILL SOMMERS, Commissioner
SCOTT D. O'MALIA, Commissioner

Division of Clearing and Intermediary Oversight:

JOHN LAWTON
TOM SMITH
ANANDA RADHAKRISHNAN
THELMA DIAZ

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PROCEEDINGS

(9:30 a.m.)

CHAIRMAN GENSLER: Good morning. This meeting with come to order. This is a public meeting of the Commodity Futures Trading Commission to consider issuance of proposed rules under Dodd-Frank Act for the Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants.

I just want to check whether our technology is working before I move on.

Commissioner Dunn was going to be joining us, I think, from Chicago, Commissioner Chilton. So I just wanted to just before I go any further to see if we've everybody signed in.

COMMISSIONER CHILTON: I'm here.

COMMISSIONER DUNN: Mr. Chairman, this is Commissioner Dunn. I am here in Chicago.

CHAIRMAN GENSLER: Terrific. Good to see you, Mike, and I think I heard Bart as well. Is that right?

COMMISSIONER CHILTON: Yes, sir, Mr.
Chairman.

CHAIRMAN GENSLER: Great. The Commission will consider the proposed rulemaking related to conforming amendments to current CFTC regulation that was advised on today's meeting agenda, but we're going to take that up at a later meeting.

And before we hear from staff, I'd like to thank Commissioners Dunn, Sommers, Chilton, and O'Malia for all their thoughtful work on implementing Dodd-Frank Act. I'd like to welcome the public as we normally do, and market participants, and members of the media to today's meeting, as well as welcome those listening to the live webcast.

We look forward to receiving your public comments on this proposed rule that we're considering today. The rule, as well as a fact sheet and questions and answers document, will be posted on the website. I think this is our 13th meeting, but sometimes Commissioner Sommers corrects my number. But I think we're 13.
The proposed rule that we're considering today, normally the proposed rules stay open for 60 days, but as we're taking up the capital rule, and, as one of my fellow commissioners said, it's a little like peanut and butter, the two go together. I think we're going to make sure this proposal stays open until at least the last day that the capital rule is open, whenever we take that up.

The rulemaking team will present today's work, and I very much appreciate all of their hard work with their commissioners and fellow regulators. They'll present this rule. And, at the same time today, I believe that the credential regulators are what many in the public might call the bank regulators, are also taking up a similar, though not identical, and we'll get into that a little bit in this hearing, rule as well.

I will be supporting the proposed rule, which addresses Margin Requirements for Uncleared Swaps entered into non-bank swap dealers, because the prudential regulators have the banks, and
non-bank major swap participants. These will be
for trades between the swap dealer, or major swap
participant, and the rules would require paying
and collecting initial and variation margin that's
between the dealers and the dealers.

The rules for trades between the dealers
and financial entities would require collecting,
but not paying, initial and variation margin. And
on an issue that I think I've spoken on and this
Commission has signed on as to various testimonies
I've put forward, the proposed rule would not
require margin to be paid or collected on
transactions involving non-financial end-users
hedging or mitigating commercial risk.

Congress had recognized the different
levels of risk posed by transactions between
financial entities and swap dealers, but reflected
that non-financial end-users would have an
exception from clearing. These transactions
involving non-financial entities don't pose the
same risk to the financial system as those solely
between financial entities. And I think the risk
of a crisis in the future spreading through the financial system is greater the more interconnected financial entities are as contrasted with non-financial entities. So the CFTC staff is about to propose something that moves that issue, I think, to the side, and that's part of why I support this.

In terms of the financial entities, it also allows that there might be some thresholds for the collection of margin if they're regulated financial entities, like insurance companies or banks, and so forth.

I just want to mention one thing that is not on margin. Before today's meeting, the Commission separately voted to proposed rules establishing swapped data, record keeping, and reporting requirements for swaps entered into prior to enactment of the Dodd-Frank Act. I think we had calendereed it for our last meeting. Because of some technical things in the document itself, we decided not to actually vote at the meeting, and we have taken that up in what's
called seriatim. That proposed rule provides clarity concerning what records must be kept and what data must be reported to swap data repositories with respect to the historical swaps. And that has been sent to the Federal Register, and will be posted to our website with the talking points and Q&A as well.

Before we hear from staff, I'll turn to my fellow commissioners, I think recognizing Commissioner Dunn from Chicago.

COMMISSIONER DUNN: Thank you, Mr. Chairman, and thank the staff for the hard work that they've done in preparing this particular rule.

I am here in Chicago, and this morning I had a little overview of how we're modifying our current stand program, be able to, or at least get a different platform, so we can implement this type of a program. I want to thank everyone for the hard work that they have in putting this in.

During the financial crisis, derivatives clearing organizations that have mandatory
clearing and margin requirement met all their financial obligations without the infusion of any capital from the Federal government. This was not the case in the world of uncleared swaps. Today's staff presents us with a proposed rule laying out the margin requirements for uncleared swaps.

When reviewing this proposed rule on margins, it's important to remember that AIG wrote approximately $1.8 trillion worth of credit default swaps. AIG did not post initial margin or pay variations on many of these transactions because of their AAA credit rating. Once the subprime crisis hit, AIG was subject to large margin calls that it could not pay. On the brink of bankruptcy, that had the very possibility of causing a global financial meltdown. The U.S. government poured billions of dollars into AIG, the majority of which went to pay through counterparties on AIG derivatives deal.

If AIG had been required to post initial margins or pay variations, in all likelihood they never would've been able to enter into $1.8
trillion worth of swaps.

The story of DCOs who met all their financial obligations and AIG, who needed a massive government bailout to survive, illustrates the importance of margins in the cleared and uncleared world. In my opinion, companies like AIG simply cannot be allowed to amass swaps positions so large that without paying the necessary levels of initial and variation margin. Without margin requirements, positions of such magnitude will again threaten to destabilize the entire financial system.

I would like once again to thank the staff of CFTC for all their hard work in regard to these very important proposed rules. Their dedication to the important work during this difficult time is what government services is all about.

I know there is a lot of concerns about end-users on margins; I look forward to get the public comments on this. I will keep an open mind on it. Once again, it is up to the industry and
the public to direct the way the Commission will
go on this particular rule. Thank you.

CHAIRMAN GENSLER: Thank you,
Commissioner Dunn. Commissioner Sommers?

MR. SMITH: Thank you, Mr. Chairman.

Today we are considering one of the centerpieces
of the new regulatory structure under the
Dodd-Frank Act. The Act requires that the CFTC,
the SEC, and prudential banking regulators
establish comparable, initial, and variation
margin requirements for uncleared swaps to the
maximum extent practicable.

The importance of achieving consistency
is a theme that runs throughout the Act, and is
something that I believe is critical, not only
with respect to the rules being promulgated by our
fellow domestic regulators, but internationally as
well. We should not be creating opportunities for
regulatory arbitrage. And I want to say that I
appreciate all the work of the staff, what you've
done to attempt to help create this consistency.

I am mindful that substantive
differences exist between the approach to Margin for Uncleared Swaps that we are considering today and the approach being considered by the EU as part of the European market infrastructure regulation, or EMIR, could have far-reaching effects.

My understanding is that EMIR currently does not contemplate a two-way exchange of initial margin. While I'm supportive of today's proposal on Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants, I believe that we must continue to work to harmonize our rules internationally.

Likewise, although the Margin Proposal before us today is broadly consistent with the proposal being considered by prudential regulators, there are some important differences, particularly with respect to commercial end-users. I believe that the CFTC staff recommendation is consistent with congressional intent that commercial end-users be given the flexibility to continue to do business as they have before.
However, I think that all regulators must be mindful of the potential negative economic consequences as we continue to overlook the increased costs that these regulations may be imposing on hedgers and risk management tools.

I want to thank the team for all their work and hard efforts to coordinate with others on this proposal, and I look forward to the public comments on this particular issue and on other aspects of this proposal.

CHAIRMAN GENSLER: Thank you, Commissioner Sommers.

Commissioner Chilton.

COMMISSIONER CHILTON: Thanks, Mr. Chairman. Just quickly, thank you to the staff. I think this is one of those rules where we had the possibility of sort of overreaching, and I think the staff got it right. We'll see in the comments. But it had the potential to go too far, and I think they struck a really good balance, and I thank them for that work.

I also agree with probably all of you,
but what Commissioner Sommers was saying about the harmonization. This is going to be increasingly important as we get into the final rulemaking phase. And, Mr. Chairman, you've done a great job when you were over there three weeks in moving the ball forward. It's a tough balancing act. Everybody has their own sovereign issues. They've got multiple sovereignty issues in the EU. But I think we'll get through it, and I think if we continue to work like we have been, that we'll have more efficient, effective markets overall, and this is a good step with regard to margins for uncleared swaps. Thank you.

CHAIRMAN GENSLER: Thank you,

Commissioner Chilton.

Commission O'Malia.

COMMISSIONER O'MALIA: Good morning.

Thank you, Mr. Chairman. Let me thank the team, which has spent many long hours developing the Margin Rule Proposal today before us. You've done a good job of developing a proposal that I believe is more consistent with the Act, and I appreciate
Today we're voting on a similar, but not identical, rules as the prudential regulators. Despite endless attempts to conform the rules, treatment of end-users couldn't be further apart. The rules proposed by the prudential regulators will require that end-users pay initial margin and variation margin to banks. The Commission rules require transaction between swap dealers and end-users to simply include a credit support agreement. Unfortunately, this is not the only inconsistency.

Another concern I have is that we are moving forward on a margin rule without defining the new capital requirements. Throughout this entire rulemaking process, participants have complained they can't see the entire picture. Today's rulemaking is no different. End-users will need to wait a couple more weeks before they see the entirety of the new capital end margin regime. I am pleased, however, that the comment period for each rule will run simultaneously. I
appreciate that, Mr. Chairman.

I believe the commercial end-users and many of the financial end-users will be dissatisfied with the lack of harmonization among the different regulatory bodies. And I will vote against today's Margin Proposal for the following reasons:

First, the proposed rule states that the policy behind the Commission's margining regime is to, quote, "create the proper incentives for moving more transactions into central clearing."

This line of thinking is representative of the Commission's failure to accept Congress' view that uncleared swaps must be treated differently than cleared swaps.

According to the Dodd-Lincoln letter, quote, "Congress clearly stated in this bill that the margin and capital requirements are not to be imposed on end-users, nor can the regulators require clearing for end-user trades," end quote. The prudential regulators have decided to disregard the policy behind the end-user
exemption, the intent Congress expressed in the
Dodd-Lincoln letter, and, more recently, the
bipartisan letter from Chairman Stabenow, Chairman
Johnson, Chairman Baucus, Chairman Lucas received
on April 6th regarding the treatment of end-users.

I believe the major concern of the
Congress is a concern I share, that we are
imposing increased costs on non-systemically
relevant commercial firms who will now be faced
with the decision of hedging risk or investing in
their business.

Second, I'm also struck by the fact that
prudential regulators are hiding behind the safety
and soundness language in the Act to draft rules
that prohibit bank swap dealers from posting
margin to their counterparties. To be clear, this
is a one-way posting of margin. Banks will not
post margin to end-users, financial or commercial.

What does this mean in reality? First, it
decreases the incentive for counterparties to
conduct a credit analysis on the banks because the
rules are implicitly signaling to the market that
regulated banks are too big to fail. Second, it institutionalizes purchasing and negotiating power on one side of the commercial transaction. Finally, it will now be much more expensive for end-users to hedge their commercial risk using uncleared customized swaps.

Finally, today's rulemaking leaves open the possibility that end-users will be assessed margin. The Commission's own proposal states that each swap dealer may accept margin in a manner agreed to by the parties in a credit support arrangement, although no margin obligations are technically required to be imposed on non-financial entities, but this may be cold comfort to end-users. But I look forward to their input.

It also does nothing to prevent indirect price increases from swaps for end-users due to capital charges, but that we will deal with in the next rule.

I will say this: Many of my concerns regarding the margin and capital rules hinge on
the definition of swap dealer. I have read many
of the comments, and I see a reoccurring theme.
The definition is too broad, and the exception is
too narrow. As a result, it is clear that our
proposal captures legitimate end-users as swap
dealers, and it appears to miss the mark of the
rule.

I'm also frustrated that today's
proposal has paid very little attention to swap
dealer banks that are captured by the Section 16
push out rule, which will be regulated by the CFTC
within the next two years. While I find no
justification for the lopsided treatment of end-
users throughout the bank regulator margin
proposal, I certainly would have preferred that
they not require end-users to post margin, to
push out swap dealers during the 24-month
transition period.

This rule is also the poster child for a
failed cost benefit analysis. I'm trying to
understand what the costs associated with the
segregation of collateral at a custodian bank
because it certainly won't be free. What are the costs associated with posting margin, and what benefits do we gain from allowing margin requirements to be imposed on commercial end-users that pose little, if any, systemic risk to the financial system?

In short, we did not conduct a robust cost benefit analysis, which is consistent with the President's own executive order.

Before I close, I would like to make a comment regarding the rulemaking schedule going forward. Mr. Chairman, I know that you've discussed and have proposed a roundtable on the rulemakings, which I support and appreciate your initiative. And at the end of the roundtable, I suggest that the Commission release a comprehensive schedule, the sequencing of the final rulemaking, and a proposed implementation plan in the Federal Register, and allow the public 60 days to comment before we finalize the rules going forward. This level of transparency will give the market a clear picture of what is coming
and the certainty it needs to make critical investment decisions to be in compliance with the rules upon implementation.

I think everyone appreciates that we will not be able to implement all the rules in time to comply with the statutory deadlines. I think we ought to put an end to the artificial and arbitrary deadlines and work to implement a completely transparent final rulemaking and implementation process going forward.

In closing, I will not support today's rule, and I would strongly encourage the public to identify the cost burdens associated with the rulemaking in the comment letters they submit to the Commission and to the prudential regulators.

Thank you.

CHAIRMAN GENSLER: Thank you, Commissioner O'Malia.

I think now I turn it over to Ananda Radhakrishnan, John Lawton, Thelma Diaz, and Tom Smith to present today's staff recommendation.

MR. LAWTON: Good morning. The proposed
rules before the Commission address Margin Requirements For uncleared swaps entered into by swap dealers and major swap participants. They would implement section 431(e) of the Commodity Exchange Act -- I'm sorry, 4s(e) of the Commodity Exchange Act, which was added by section 431 of the Dodd-Frank Act.

The rules would apply to swap dealers and major swap participants not subject to regulation by either the Federal Reserve Board, the Office of the Comptroller of Currency, the Federal Deposit Insurance Corporation, the Farm Credit Administration, or the Federal Housing Finance Agency. Collectively, those entities are referred to as the prudential regulators.

In developing these rules, Commission staff has consulted with the prudential regulators, as well as with the staff of the Securities and Exchange Commission.

As required by section 4s, the CFTC staff and staff of the prudential regulators have attempted to make their respective proposals
comparable to the maximum extent practicable. We understand that the prudential regulators will also be voting on proposed rules today.

I'm going to address five topics this morning in presenting this proposal: What products would be covered by the rule, what market participants would be covered by the rule, how margin would be calculated, what forms of margin would be acceptable, and the location of margin, where it would be held.

First, with regard to the products covered, the proposed rules would apply to swaps entered into after the effective date of the rule. The rules would not apply retroactively.

With regard to the market participants, the proposal would apply to swap dealers and major swap participants not subject to oversight by the prudential regulators. As I'll discuss in more detail in a moment, the rules would not require commercial end-users to post margin.

Consistent with the risk-based mandate set forth in Section 4s, the margin treatment
under the proposal would vary by counterparty.

The way we thought about it is there are sort of three tiers of trades: Trades between swap dealers or MSPs and other swap dealers or MSPs, trades between swap dealers or MSPs and financial end-users, and trades between swap dealers or MSPs and non-financial end-users.

The definition of financial end-user for this purpose is based on the definition in Section 2(h)(7) of the Act, which addresses the exemption for mandatory clearing. The definition of non-financial end-user is basically anyone who is not a swap dealer, an MSP, or a financial end-user.

Okay. So moving to the first year, which would be trades, swap dealer to swap dealer. In those cases, a swap dealer MSP, subject to the Commission, would be required to collect both initial margin and variation from its counterparties that were also a swap dealer MSP. They would be required to collect the entire amount calculated; that is to say, there would be
no thresholds allowed. We understand that the prudential regulators proposal is the same in this regard.

The effect is to require two-way initial margin and two-way variation margin from swap dealer to swap dealer, swap dealer to MSP; that is, that each swap dealer MSP will be subject to either the CFTC rules or to the prudential regulators rules, and it will be required to collect under the rules to which it is subject. So, if one is subject to the CFTC and one is subject to a prudential regulator, the CFTC swap dealer will collect pursuant to the CFTC rule, and the prudential regulator's swap dealer will collect pursuant to the prudential regulator rule.

Moving now to the second tier, or trades, between swap dealers, MSPs, and financial entities, the rules would require the swap dealer MSP to collect initial margin and variation margin from its counterparties. Thresholds would be permitted for some, but not all, financial entities.
The standard for qualifying for a threshold would have three elements: The financial entity must be subject to capital requirements by a bank or an insurance regulator, the financial entity must have a swap portfolio below a specified size, which is basically keyed off of the definition of major swap participants, essentially about half, and the financial entity must use swaps predominantly to hedge.

A key difference between the requirements under this tier and the first tier is that for swap dealer financial entities, there would be one-way margin; that is, the swap dealer MSP would be required to collect, but would not be required to pay.

Staff at the prudential regulators have expressed the view that the reason for this is that it may create risk to the safety and soundness of the regulated entity, that is, the swap dealer MSP, such as a bank, if it was giving margin to an unregulated entity, such as a hedge fund.
Again, consistent with the directive in Section 4s that the rules of the Commission and the prudential regulators be comparable to the maximum extent practicable, staff is proposing that this provision also be in the CFTC proposal. Staff of the Commission and staff of the prudential regulators are each going to recommend, however, that the Federal Register release ask questions about this one-way margin and whether there's a rationale for that compared to the rationale for two-way margin.

Moving now to the third tier, which is swap dealer MSP to non-financial entity, the proposal would not require that swap dealers or MSPs collect initial margin or variation margin from non-financial entities. This is consistent with congressional intent as expressed in various letters by the chairman of the applicable Senate and House committees. It's also consistent with the lesser risk that such parties generally propose to their counterparties and to the financial system generally. Non-financial
entities generally use swaps to hedge and do not have the same degree of interconnectedness with the markets as swap dealers or major swap participants would.

The proposal would require that swap dealers and MSPs enter into credit support arrangements with their counterparties. Therefore, a non-financial entity would only be required to post margin to the extent that the parties bilaterally agree in their credit support arrangements independently entered into that that would be done.

Turning now to the topic of margin calculation, the proposal would allow initial margin to be calculated pursuant to our model, or, if no qualifying model were available, pursuant to an alternative method that essentially ties the Margin for Uncleared Swaps to the margin for similar cleared swaps.

Any model that would be used would be subject to a number of standards. For example, a model would be required to cover 99 percent of
price changes over a 10-day liquidation period.

By way of comparison, the clearing rules earlier proposed by the Commission for cleared swaps executed on a swap execution facility would require the margin to cover 99 percent of price changes over a five-day liquidation period. The different liquidation time horizons reflect the greater standardization and the greater market liquidity that can be expected for cleared products compared to uncleared products.

If no model were available for a particular product or group of products, the proposed alternative proposal would require the participants to identify a comparable cleared product. The parties would then apply a multiplier to the margin level required by the DCO for the cleared product to reflect the greater risk of the uncleared product. This is a point of difference. The proposed alternative model being proposed by the prudential regulators would be based on notional value of the uncleared swap.

Again, both the prudential regulator staff and the
CFTC staff are recommending that there be questions asked about the pluses and minuses of the different proposed alternative models.

The fourth of the five topics that I wanted to touch on today is forms of margin that would be acceptable. For trades in the first two tiers, that is, swap dealer to swap dealer or swap dealer to financial entity, the proposal would specify specific acceptable forms of margin. Essentially, they would fall within the category of cash, treasuries, and various GSE type products.

For trades involving non-financial entities, the rules would not specify forms of margin. Again, this would be specified in the credit support arrangements agreed to bilaterally between the parties.

To the extent the parties require or permit the use of non-traditional forms of collateral, the proposal would require that they periodically revalue them just to reflect the potential change in the market value of a product.
For example, if someone were accepting natural gas and storage as margin for an energy swap, the rule would require that that asset be periodically revalued. And the proposed Federal Register release would ask questions as to how frequently should that be done, and what's feasible, what's appropriate for risk management purposes.

The final topic is the location of collateral. Under the proposal, swap dealer to swap dealer trades, collateral would have to be held at an independent third party custodian. By contrast, for trades between a swap dealer and a financial end-user or a swap dealer and a non-financial end-user, the proposal would simply require that the swap dealer offer the counterparty the opportunity to have the margin held in segregation, and that would be at the option of the counterparty.

Finally, the proposal, with regard to custodians, would set some limits on how they could invest funds that they're held and would prohibit them from rehypothecating assets that
they hold in the custodial account.

Thank you, and we're ready to take any questions anyone might have.

CHAIRMAN GENSLER: Thank you, John. Thank the whole team. I think I'll entertain a motion to accept the staff recommendation on Margin for uncleared Swaps for the swap dealers and MSPs we regulate.

COMMISSIONER SOMMERS: So moved.

COMMISSIONER O'MALIA: Second.

CHAIRMAN GENSLER: Having been moved and seconded, I guess it's now open to the floor for questions. And I'll start with a few.

I am supporting today's rule, but I'd like to tease out a little bit more where there might be any differences between what we're doing today and the prudential regulators. I applaud the staff because I know it's been seven or eight months of work to comply with the statute in all of its respects, but importantly where it says also to the maximum extent practicable to be consistent. But there are some differences. So,
maybe John or Ananda, just if you could highlight what you think the top two, three, or four, I don't mean to limit it, but where are there some differences, if you could?

MR. RADHAKRISHNAN: Thank you. First, with respect to the requirement between a swap dealer and an MSP and a non-financial end-user, I'm looking at the draft that was provided by the staff of the prudential regulators yesterday, and it says, "Under the proposed rule, a covered swap entity," i.e., swap dealer or MSP, "...would not be required to collect initial or variation margin from a financial end-user counterparty as long as the covered swap entity's exposures to the non-financial end-user were below the credit exposure limits that the covered swap entity has established under appropriate credit processes and standards." So, this is a subtle difference, but I'm not sure whether it is a difference because in our proposal we are saying there has to be a credit support agreement, and with respect to the exchange of margin, it's all a function of the
credit support agreement.

CHAIRMAN GENSLER: But I gather, and I'm looking at that page, too, because I read it late last night, but they're saying the swap entity would not be required to collect initial variation margin. We say the same the thing, you would not. They're, of course, regulating banks. They then go on to say this idea of having a credit exposure limit established under appropriate credit processes and standards, so we don't have that because we're not bank regulators. So, that's the difference. We're not mandating there be thresholds.

MR. RADHAKRISHNAN: Correct, we're not. We're not. And the one difference is that if a threshold is reached, and it doesn't seem to me that the prudential regulators are insisting on the threshold. But the one difference is if the threshold is reached, then the types of collateral that can be posted are limited to the types of collateral, basically treasuries, cash, and GSEs, whereas we are very clear that our proposal would
basically, parties agree, but you've got to allow
the use of non-cash collateral.

CHAIRMAN GENSLER: Right. So, if I
remember the statute, I don't remember the
section, but somewhere in 731, it says that
Congress mandated the use of non-cash collateral.
You're saying we allow that.

MR. RADHAKRISHNAN: That's correct.

CHAIRMAN GENSLER: One difference that I
noticed, and maybe it's a modest difference, but I
did notice that the discussion, and I don't know
if my fellow commissioners noticed this because it
was a document that we all maybe got late
yesterday, was reading through the prudential
regulator thing. I noticed that I understand the
prudential regulators have included a provision in
their proposal that would permit portfolio
margining of swaps executed prior to the effective
date. For the public, I think that the proposed
rule that we are proposing would only require
margining for post-effective date. So, first, is
that correct?
MR. RADHAKRISHNAN: That's correct.

CHAIRMAN GENSLER: And the Federal Reserve and the bank regulators look like they're doing the same thing. It's only post-effective date margining.

MR. RADHAKRISHNAN: That's how I understand it, yes.

CHAIRMAN GENSLER: But I noticed that they have about a page and a half where they say that if a bank wanted a portfolio margin, wanted to use some of the pre-enactment or pre-effective date swaps that might help lower margin, that at least the regulators would consider that.

MR. LAWTON: Yeah, that's correct. The way that they've phrased it is that you can't pick and choose, that if you're going to include pre-enactment swaps in the portfolio, you have to put them all in or none of them.

CHAIRMAN GENSLER: So, I'm wondering, and I'd have to unanimous consent, but I'm wondering whether we should at least include questions that would allow us the flexibility in
our final rule if the market thinks that's important. We currently don't have any questions on that, do we?

MR. LAWTON: Right. Our proposal is silent on that. It doesn't prohibit such pre-enactment swaps. It's silent. It doesn't state explicitly that they may be included.

CHAIRMAN GENSLER: Well, I don't know if other commissioners will have questions on that topic, but whether I should ask it now or later, I think I'd like to at least have the questions. I'd like to retain the flexibility that in the final rule, if the market thinks that's a good idea, that we're consistent. So, I might ask that at the end and let others ask about that.

Just a very small point. I noticed a discussion, it was a number of places, but on page 20 particularly in our rule, that we talk about marking the positions for variation and maybe initial margining as well. And I thought it would be appropriate to have just a cross-reference to the statute wherein 4s(h), it says that there has
to be daily marks. So, it's a small technical thing, but I'd ask unanimous consent to accept just some cross-reference to the statute.

Not hearing objection, we can do that.

Commissioner Dunn?

COMMISSIONER DUNN: Thank you, Mr. Chairman. Again, I want to express my appreciation to the staff for their hard work on this, and I know that doing all the harmonization that needed to take place on this, they did a great job on it.

But I would like to zero in on this credit support arrangement that we're talking about there. And for those end-users would able to post that non-cash collateral. What is the role of the CFTC in verifying that there is some there within that arrangement?

MR. RADHAKRISHNAN: You mean in terms of the valuation of it?

COMMISSIONER DUNN: That's correct, the valuation.

MR. RADHAKRISHNAN: Well, first of all,
if we're going to examine the swap dealer, we'll probably look at what the credit support arrangement provides in terms of what you can accept as collateral. And then we'll probably ask for supporting documentation to show that collateral has in fact been posted. And then with respect to valuation, I think John mentioned, we do require that there be a periodic valuation of the collateral.

But the broader question is, let's say, for example, the collateral provided is natural gas leases or natural gas in storage. Then we and/or the NFA will have to quickly get an understanding of how natural gas is valued.

COMMISSIONER DUNN: Mr. Chairman, I note that we did get a modest increase in the deal that was worked out with Congress, and I think that will be very, very helpful. But I would ask Ananda, do we have the resources now to be able to do that type of quick study that he was talking about, and to understand those balance sheets, and what the worth of these assets that are being
pledged are?

MR. RADHAKRISHNAN: I'll respond this way. If all of the auditors in DCIO moved from their current responsibilities, which are fairly significant, and trained to understand the valuation of non-traditional forms of collateral. And the other issue is we don't know what it is.

I don't know about quick study, Commissioner Dunn. We will study it, but it presumes that staff may not be doing other responsibilities. And the reason I answer that way is because it remains to be seen just how many of these instances we are required to do and what forms of collateral people will accept.

COMMISSIONER DUNN: Well, I've said before, when it comes time for a final rule, I really would like to see from the division drafters how they're going to afford to implement that rule. What are they not going to be doing that we're presently doing, because I'm assuming we're 100 percent fully employed, maybe 110 or 15 percent fully employed. So, some things that we
are currently doing we're not going to be doing. 

I'd like to know what those are and how the 
resources are going to be allocated to implement 
these regulations. I just feel that if we say 
we're going to do something, we'd better have the 
wherewithal to be able to do that. 

We did get a lot of input on end-user on 
this, and, John, in your opinion, does this rule 
satisfy the majority of those end-users that had 
concerns on the pre-writing of this particular 
proposal?

MR. LAWTON: I hope so, but I really 
couldn't say. 

MR. RADHAKRISHNAN: Well, we believe 
that it does to the extent that we are not 
mandating the collection of margin and pretty much 
leaving it to the parties to decide. All we're 
saying is you've got to have a credit support 
agreement without saying what thresholds people 
need to have. We're saying you've got to allow 
the use of non-cash collateral. So, we believe 
that we are being responsive to the concerns that
were addressed.

COMMISSIONER DUNN: Well, I'm sure we will get further comments from folks.

Mr. Chairman, I have no further questions, but again, I want to thank the staff for a job well done.

CHAIRMAN GENSLER: Yeah. I thank you.

Mike, on this issue on non-cash collateral, I just looked in the statute book where it is. And it's explicit in 4s(e)(3)(C) that in prescribing margin requirements of the subsection, etc., etc., the Commission, with respect to swap dealers and MSPs for which there is not a prudential regulator shall permit the use of non-cash collaterals the regulator commissioner determines to be consistent. Of course, it's got to be consistent with preserving financial integrity in markets, preserving the stability of the U.S. financial system. So, I'm pleased to see that staff has included something because Congress directed us to include something. But we'll get comments.

MR. RADHAKRISHNAN: That's correct, sir.
Page 28, there is a statement that says, "As was the case for initial margin, this is in accordance with the statement in Section 4s(3)(C) that the Commission permit the use of non-cash collateral."

CHAIRMAN GENSLER: But we've only allowed it for the non-financial end-users.

MR. RADHAKRISHNAN: Correct.

CHAIRMAN GENSLER: I would, hopefully Commissioner Sommers will give forbearance, there was something Commissioner O'Malia said in his opening that I will maybe turn you to. On the bottom of page 8 and the top of page 9, there are sentences that if I turn you to, and I'm not even going to ask unanimous consent, we might strike. But it's the last word on page 8, "and", and then the top of page 9, "create the proper incentives for moving more transactions in the central clearing." And I find myself in agreement with Commissioner O'Malia. I don't think the statement is necessary for the rest of it; it's just a preamble statement. But is that necessary?
MR. RADHAKRISHNAN: Staff of CFTC does not believe so, but this is language we obtained from the prudential regulators. I just want you to know that.

CHAIRMAN GENSLER: Oh, okay. But it's our preamble.

MR. RADHAKRISHNAN: Yes, so we can take it out.

CHAIRMAN GENSLER: So I'm asking unanimous consent, even though I don't think it'll change Commissioner O'Malia's vote on the overall rule -- I always like to find ways that we can narrow differences -- that we could strike those eight or 10 words.

Not hearing objection, they'll be struck. Commissioner Sommers? Sorry.

COMMISSIONER SOMMERS: Thank you, Mr. Chairman. I have a couple of different areas that I just want to clarify for those who are interested in what we're doing in this proposal.

The first area is where in the proposal, we require that the CSEs calculate hypothetical,
initial, and variation margin each day for the non-financial entities because we believe that it would likely be necessary in helping them compute their capital requirements.

So, my question, because we're not doing capital today, and because we're not laying these out side by side, to just ask if this consistent with the way current capital requirements are calculated, and if this is something that you think is necessary to be in here because of the way the capital rule will be proposed.

MR. SMITH: Yes, it is consistent with the way capital is computed today for futures commission merchants or for broker-dealers. What this is basically saying is we need to mark the position to market and recognize any gains or losses, and also to see if you have any receivable or liability, which is included in the entity's capital. The question then becomes, how do we treat it for regulatory purposes? Do we allow that receivable to qualify as regulatory capital or not? So, this is the first that was just had
the calculation.

COMMISSIONER SOMMERS: And those decisions will be made in our capital proposal?

MR. SMITH: That's correct.

COMMISSIONER SOMMERS: Okay. Thank you.

Then on the use of proprietary modeling. So we say in the proposal that we will not allow the use of proprietary models unless those models have been approved by prudential regulators. And then I think, you may want to explain this because I'm not going to do a very good job of explaining it.

There is an alternative methodology for calculating the margin.

Do you contemplate that we may be in a place where having the methodologies blessed so that we can approve those if we don't have the resources to do such a thing, could be delegated to a third party?

We talk about independent third party verification, but having some entity, and perhaps even internationally, that would say that certain valuation methodologies have been tested and that
all regulators could be able to look to that type
of entity, if that's something we could
contemplate delegating.

MR. RADHAKRISHNAN: I think we could in
theory, Commissioner. I think if a movement
developed suddenly internationally for an
independent entity to develop modeling techniques
for margin, and it's got to be specific to margin,
and if it meets certain minimum standards that the
regulators all can agree on, then it may not hurt
the Commission to think along those lines. If you
think about margining models in the cleared space,
the SPAN, which is pretty much used quite
significantly and throughout the world. There is
also to a lesser extent TIMS, developed by the
OCC. And then they're SPANs. The historical
development of SPAN in this agency, staff was
involved in looking at it, and now it's gotten a
worldwide acceptance.

So, if you do find such a movement and
if the international regulators do agree on it,
then I don't see why we can't consider it.
COMMISSIONER SOMMERS: I have concerns in this particular area for us to be creating policy saying that in this proposal what we say is that CSEs, subject to Commission regulations, may not have proprietary models. Given our current budget constraints, the Commission does not have the resources to review numerous models individually, and that we're proposing to permit the use of non-proprietary models. My concern is that we may be putting our registrants at a competitive disadvantage. So, I guess, I would say that I would like to see comments specifically addressed to this area, and what comments may be helpful for this Commission, and how we can move forward in helping us review these type of models.

CHAIRMAN GENSLER: Commissioner Sommers, may I ask, do you think that it would help to ask a specific question, again, to retain flexibility that we ask a specific question that's in the document that Commissioner Sommers is asking about this reliance on some internationally, because I would support it if we need it.
COMMISSIONER SOMMERS: I don't know if we would be prohibited from using a delegated source, even if we don't include it, right?

MR. RADHAKRISHNAN: I don't think so, but if you'd like to ask the question, we can certainly ask it. If I understand you correctly, Commissioner Sommers, if there were to develop an international standard, could the Commission in its rules rely on that. That's the question, right?

COMMISSIONER SOMMERS: Right.

MR. LAWTON: Just to add one point. The proposal also talks about models developed by a vendor, so I think that if there were some sort of international model, somebody would have had to have developed it, and somebody would have to be making it available. So, I think to that extent, it would be covered under the proposal if it's out there.

COMMISSIONER SOMMERS: Thank you. The next line of questioning is with regard to the forms of margin or assets that can be posted. And
I was wondering if you could explain the differences between what we will allow for swap dealers, financial end-users, and non-financial end-users, with regard to what forms of margin can be posted, and the differences between what we currently allow in the futures regime, because I think there is quite a difference here for people to be aware of.

MR. LAWTON: Yeah. I think that in the proposal. It's fairly narrow. It's essentially cash treasuries and certain other GSE-type entities. In the futures world, it varies from DCO to DCO, and it varies from product to product. But certainly there's a wider number of things, I mean, money market funds being an example that comes to mind, or some DCOs permit equity securities with a pretty big haircut, but they permit equity securities for some products. People permit, for example, gold.

I think the non-financial entities is broader still when we start getting into things like natural gas in the ground. I don't think you
see that at a clearing house. So on the continuum, the most narrow is what's being permitted for financial entities here. In the middle would be what's permitted by clearing houses. And then the broadest would be what's being permitted for non-financial entities here.

COMMISSIONER SOMMERS: And then, with regard to custodial arrangements, something you said in your summary with regard to offering the counterparty the option or requiring that the custodial arrangements between swap dealers or major swap participants be kept at an independent body. But we're offering the counterparty the option. And then there are limits to what they can invest. And so, if you could explain the differences between those custodial arrangements and the limits between this and what we currently see in the futures industry.

MR. LAWTON: With the future's industry, basically there's not really limits on custodians under our rules. The custodians would be banks, and so they would be limited in what they can do.
The limit under our Rule, Section 4d that says a custodian that receives segregated funds must treat and deal with them as belonging to customers, and they have to sign a custodial arrangement under the Commission regulations. But there's not really investment linked limitations under CFTC rules for a custodian for 4d futures segregated funds. So, that would be a distinction between here and there.

COMMISSIONER SOMMERS: Sorry. With regard to requiring that the swap dealers have a custodial and independent custodian, is that different from what normally exists now?

MR. RADHAKRISHNAN: That is different. Right now, we don't have an independence requirement. So, for example, an FCM that's affiliated with a bank can custody its customer funds. We monitor this because there is, of course, the issue, which if is a bank goes bust, then the FCM is going to go bust as well. But we don't have any rules that say if you're an FCM, you must keep your customer funds at a depository
that you're not affiliated with.

COMMISSIONER SOMMERS: What about for
the CSE that has a financial entity or a
non-financial entity as a counterparty? Did
limits to investments versus what we have under
1.25, is there a difference? Is there more
limitation there?

MR. LAWTON: Yeah. This is narrower
than 1.25. Again, an example would be money
market funds, that this, again, is the smaller
category.

COMMISSIONER SOMMERS: I guess I would
say with regard to this issue as well, I have
specific concerns with regard to this, so ask if
the public would like to specifically comment on
these areas. I think it would be very helpful for
us in knowing whether these type of more stringent
limitations are going to be anti-competitive or
add more costs to doing business. Thank you.

CHAIRMAN GENSLER: If I might, because I
think Commissioner Sommers asked a very good set
of questions, the whole line. But I'm just
curious, back to the, if I might. We're actually deliberating. But in the futures model right now, futures commission merchants have to segregate the money, but it doesn't have to be with a separate custodian. Is that what I understood?

MR. RADHAKRISHNAN: That's true.

CHAIRMAN GENSILER: That's similar to what we're requiring here for swap dealers to financial entity trades. In this rule, we're saying you don't necessarily have to have a separate custodian. Is that correct?

MR. LAWTON: That's correct.

CHAIRMAN GENSILER: So where we're more restrictive, and that the prudential regulators have, as I understand it, or similar, is it's the dealer to dealer. Is that correct?

MR. RADHAKRISHNAN: That's correct.

CHAIRMAN GENSILER: Is there much dealer to dealer FCM business in the futures world right now?

MR. LAWTON: Well, everything would go through the clearing house in the futures world,
so there really wouldn't be a bilateral trade. So
the FCM, it would be in their house account.

CHAIRMAN GENSLER: So, it would be in
their account. So, the analogy is mostly with the
financial entity counterparty. So, I do think it
would be very helpful to get public comment
because it's a little bit different, but may be
warranted.

MR. RADHAKRISHNAN: And I think also, if
you look at it from the banking perspective, I'm a
bank, I'm a dealer. If there wasn't an
independence requirement, you're basically
allowing me to keep my money with myself. So, I
think that's why the prudential regulators have
those independence requirements.

CHAIRMAN GENSLER: And to the extent
that our rules might be modestly different than
the prudential regulators, they're more flexible,
once a bank pushes out its business to the
non-bank affiliate, it would have our rules. Is
that correct?

MR. RADHAKRISHNAN: That's correct.
CHAIRMAN GENSLER: Commissioner Chilton?

COMMISSIONER CHILTON: Thanks, Mr. Chairman. Two quick things. One, Mr. Chairman, your idea on the portfolio margining idea, I think, is a good one. If we can develop a question to ensure that we have the latitude to do something in the final rule, should we want to do that, I think that's a good idea.

I wanted to raise an issue that Commissioner O'Malia raised, but Commissioner Sommers raised it several times, on the cost benefit. And by and large, I think, I agree that to the extent we can do more analysis on cost benefit, it's a good thing.

On this one, I think we did a pretty good job based upon what we know, and I'm not sure that we can know a whole lot more. I mean, essentially we've asked for comments, and Commissioner O'Malia mentioned that. The rule asked for comments on the cost benefit. But overall, we say that this is going to be better for markets and better for individuals, and that
it'll offset any costs.

But, Ananda, I'm curious. I mean, how would you even go about doing a cost benefit because much of this is discretionary in how individual parties would set it up. So, I'm trying to get a handle on how you think you could do something more than what we've done.

MR. RADHAKRISHNAN: Commissioner Chilton, that's part of the issue, because in our cost benefit analysis, we talk about opportunity costs, because if you have to put up margin, the cost is the cost of funding, the opportunity costs. Because you've got to fund the margin, you couldn't do something else with your money, so what are the opportunity costs?

And, of course, the other issue has to do with, we're hoping for comment on the totality of the costs. We really don't have a good idea what the totality of the costs will be.

COMMISSIONER CHILTON: My point was that there is discretion in what individual parties were coming up with. We are allowing collateral
to be used instead of posting margin, but we don't
say exactly what it will be. And so, there's a
big unknown out there. So, for us to try to make
some guess on what individual parties will come up
with on a bilateral agreement, what that would
cost, I don't know how we would do it. That's my
real question.

MR. RADHAKRISHNAN: Meaning how much
margin would actually be required?

COMMISSIONER CHILTON: Right.

MR. RADHAKRISHNAN: Yeah, that's right.

COMMISSIONER CHILTON: Anyway, I guess
my point is, I think we've done a pretty good job
on this one. While I agree in concept that the
more detail we can get on cost benefit analysis
the better, I think on this one, there are so many
unknowns that we've done a good job with the
information that we had.

MR. RADHAKRISHNAN: Thank you. I just
want to mention, you were cutting in and out just
now when you were talking, so I just want to make
sure our telephone guys know that. I don't know
whether it's your distance to the telephone.

COMMISSIONER CHILTON: Two inches, so

I'll try to get closer. Thank you.

CHAIRMAN GENSLER: Thank you,

Commissioner Chilton.

Commissioner O'Malia?

COMMISSIONER O'MALIA: Thank you. Along the lines that Commissioner Sommers mentioned, I think the issue of this proprietary model, we talked about it before. We found that, to my frustration, we didn't have a jurisdictional hook with some of these banks, and, more specifically, these push out banks. We're in an intervening time here. They've got two years to push these things out, and then they will be under our jurisdiction. And I'm trying to understand. This doesn't really provide a transition plan. Are we going to trust the modeling that the prudential banks send them over with when they push them out? They're going to have margining requirements under prudential requirements, but when they get over here, will we just lift those and return the
money? What's the plan with push outs?

MR. RADHAKRISHNAN: In the current rule we're saying that if you want to use a proprietary model that's been reviewed by the prudential regulator, correct me if I'm wrong, though, it has to be approved by the prudential regulator for use by our registrant.

COMMISSIONER O'MALIA: By our registrant? At that time it's their registrant.

MR. RADHAKRISHNAN: Correct, their registrant. But also, our rule says, let's say we have, I won't name an entity, but let's say you have an entity right now. It's not part of a push out. It's not part of a banking entity. So, it may be affiliated with a banking entity. So we're saying that the regulator has to approve it for use by our entity.

So, I guess what we're saying is as long as we don't get any information from the prudential regulator that it stopped allowing somebody to use the model, the presumption is that the prudential regulator is still comfortable with
them using the model.

COMMISSIONER O'MALIA: Are you comfortable using their model and the prudential regulator signing off on it?

MR. RADHAKRISHNAN: Yes, right now I am because they have the resources. They have the experience doing this. I guess I have to be comfortable because we don't have the resources. I'll put it this way: I have no evidence for me not to be comfortable.

COMMISSIONER O'MALIA: Okay.

MR. LAWTON: Just to add one point, and I think when someone came over to us, we would probably want them to do some back testing and show us how it did perform.

COMMISSIONER O'MALIA: Since these 716 entities are coming our way anyway, is that something that we can sit down with the regulators, the prudential regulators, today and have them walk through it and work with us on this so we understand our modeling -- their modeling?

MR. RADHAKRISHNAN: OH, certainly, yeah.
We can send staff to understand how they --

COMMISSIONER O'MALIA: I think we have to have a higher level of certainty with these models before we just endorsing them.

MR. RADHAKRISHNAN: So, right now, there's no 716 entity right now, so right now it's all the bank. So, if I understand you correctly, let's say two years from now we found out that a particular bank has to push out somebody. Then I think I think at that time we'll find out what it is they want to use. The first question is, they'll have to demonstrate to us that they're using a model that has been approved by the prudential regulator for use by them. So, and I guess at that time it's certainly appropriate for us to have a conversation with the prudential regulator, first, to make sure the entity is not lying to us, and trying to get an understanding of the model itself.

COMMISSIONER O'MALIA: Can I ask you another question?

MR. RADHAKRISHNAN: Yes.
COMMISSIONER O'MALIA: Are the end-users privy to the models used by swap dealers under our jurisdiction or prudential regulators?

MR. RADHAKRISHNAN: I'm not sure. I don't think they are. I'm not sure.

CHAIRMAN GENSLER: Can I just, because I want to assure, because this is a very important line. But on page 22 of the preamble, I thought we retained the right that if something is part of a bank holding company and has some model approved by the prudential regulators, it's one of these 716 push outs, or it's already an affiliate. Don't we retain under this proposal, it says under 23.155(b)4, we could approve or deny, and we could set conditions or limitations?

MR. RADHAKRISHNAN: That's true.

CHAIRMAN GENSLER: I mean, again, I just want to make sure because I agree with Commissioner O'Malia that we don't want to just give up our -- Congress has said we have to do something for non-banks. If we inherit these 716 push outs, does this retain -- I mean, it's a
question for you, but it's also -- does this retain our --

COMMISSIONER O'MALIA: I think it does, and that's my line of questioning. What are we actually doing to be comfortable with this so we can, A, represent this Commission and our registrants in this negotiation with the proprietary model? If we don't understand the model and we can't explain it, how are we going to police it? And I'm trying to understand the hook we'll have immediately. There's no way we can get to the prudentially regulated banks, but those push outs are coming our way.

CHAIRMAN GENSLER: And some of them are already there. Some of the banks already have them outside of the bank.

COMMISSIONER O'MALIA: Correct. Are we going to rely on them? What capabilities do we have? And then, will end-users be on a level footing with the banks in negotiating these agreements?

CHAIRMAN GENSLER: Right. And I think
it's an excellent question, and I just want to make sure retain that we can see the models. Is that right, Ananda?

MR. RADHAKRISHNAN: Yes.
CHAIRMAN GENSLER: Completely. Like it's no black box.

MR. RADHAKRISHNAN: No, the models have to be filed.

CHAIRMAN GENSLER: And we could set conditions or limitations if we're not satisfied.

MR. RADHAKRISHNAN: Right. Page 22, there has to be a filing of the model and an explanation of the manner in which the model meets the requirements, the mechanics, the theoretical basis, the empirical support, and independent body validation. And we reserve the right to impose conditions or deny the use of the model.

MR. LAWTON: And I would just add that in the proposed rule, there's also a provision the Commission may require that a covered swap entity to provide further data or analysis concerning any model at any time.
CHAIRMAN GENSLER: I think it might help to add some questions on Commissioner O'Malia's thought about transition. Like, what happens if somebody were under the prudential regulator's margin requirement and the business gets pushed out?

COMMISSIONER O'MALIA: That's why I opened this. This rule doesn't contemplate that. No later than two years I think is what the Act says that they have to come over to our jurisdiction. But I think we need to prepare ourselves for this and be clear about this thing. You listed all the futures models, margining models that are completely transparent. We understand. I get they're complicated, and I get that we don't have a lot of staff. But we can't make excuses and just hope this goes away. We got more money today, or we're in the process of getting more money, and that's great news. And this isn't always going to be the situation, but we have to be able to stand up on our own. And if we can leverage the resources of the prudential
regulators at this point to work with the models, let's take advantage of that.

MR. RADHAKRISHNAN: If the Commission can make sure that DCIO gets all money, we'll hire all these people.

COMMISSIONER O'MALIA: Well, let me go to a concern that Commissioner Dunn raised about valuating these things. Don't allocate all your staff to looking at oil and gas reserves. I mean, the real bogey in this one is going to be systemically risky entities, and that's not, quite frankly, the oil and gas companies at this point. It's really the clearing houses.

MR. RADHAKRISHNAN: Oh, absolutely.

COMMISSIONER O'MALIA: So don't put all your auditors over there trying to learn what the business of oil and gas engineering.

I'm trying to understand, we have some language, and I believe this came over from the bank regulators. What authority do we have to include foreign governments and sovereign wealth funds? Section 23.150 of the proposed rule
expands the statutory definition to include, quote, "Any government or any financial country, or any political subdivision, agency, or instrumentality thereof." What is our statutory hook for expanding that definition?

MR. LAWTON: I think the concept is that 4s says that you have to have set margin requirements that ensure the safety and soundness of the swap dealer, major swap participant and are appropriate to the risk posed. And so, I think the idea was that such entities seem to pose risks that are more along the lines of the risks posed by a financial entity as compared to the risk posed by a non-financial entity.

COMMISSIONER O'MALIA: I appreciate the purity argument, but do you think you're going to actually be able to regulate financial activities of foreign governments?

MR. RADHAKRISHNAN: We can try.

CHAIRMAN GENSLER: It's just the margin that the bank has to collect.

MR. RADHAKRISHNAN: That's right. So,
our hook is on to the --

COMMISSIONER O'MALIA: And how are you going to enforce that?

MR. RADHAKRISHNAN: We'll enforce it against our registrants.

COMMISSIONER O'MALIA: And what happens when they can't get it?

MR. RADHAKRISHNAN: Our registrants? Then we'll refer it to enforcement for appropriate action.

COMMISSIONER O'MALIA: Let me ask you, on the issue of one-way margining, what impact will that have in bankruptcy? If a bank fails, and I am obviously reminded that there was Lehman and Bear that failed that wasn't an end-user that failed that brought the entire financial system. But what happens in bankruptcy under that scenario?

MR. LAWTON: Well, I think that means the end-user is going to have to have a claim against the bankrupt entity, whereas if they had received the variation, they would have it. I
don't know whether there might be any kind of fall back provisions in that. There probably wouldn't, but I can't really speak to that.

COMMISSIONER O'MALIA: Buyer beware?

MR. RADHAKRISHNAN: Sort of, yeah.

COMMISSIONER O'MALIA: Do you think that provides adequate coverage of our overall financial system?

MR. RADHAKRISHNAN: I guess it's a function of who we believe poses greater risk, because if margin goes towards the banks, then the thinking is, from our colleagues in the prudential entities, they'll be more secure. And the chance of them getting into trouble would be less.

COMMISSIONER O'MALIA: I don't have any further questions.

CHAIRMAN GENSULER: I think that the last question I have, and Commissioner Dunn focused on it, is one that we'd be enormously grateful for the public to comment on is whether two-way margining is appropriate to protect, in essence, the financial entities as well as the swap
dealers, and that is a really important one. We included rule text in case. I mean, it's right there.

I think I'm going to ask for two unanimous consents. One unanimous consent is just to have a question so that we would retain the flexibility similar to what the prudential regulators do to permit portfolio margining of swaps, executed prior to the effective date, given the possibility that that might be more flexible in the end.

Not hearing objection, you'll find the right language in which to do that.

MR. RADHAKRISHNAN: We'll find the language, and we'll also make sure that they can't pick and choose.

CHAIRMAN GENSNER: And the other one is, I'm picking upon Commissioner O'Malia's question. I think if I could ask unanimous consent that you find the right words of the question on 716 push-outs, that what market participants think is appropriate for any transition that might come as
somebody, in essence, moves from the prudential regulators' margining standards to our margining standards. Just anything that people on that transition.

COMMISSIONER O'MALIA: Can we also ask whether it's appropriate for the end-users to see the valuation and collateral models?

CHAIRMAN GENSLER: As amended, a unanimous consent on two issues. They might be in different parts of the document, yeah.

COMMISSIONER O'MALIA: Thank you very much.

CHAIRMAN GENSLER: Not hearing any objections, I guess we're adding three or four questions.

I think there are no further questions, Mr. Stawick.

MR. STAWICK: Commissioner O'Malia?

COMMISSIONER O'MALIA: No.

MR. STAWICK: Commissioner O'Malia, no.

Commissioner Chilton?

COMMISSIONER CHILTON: Aye.
MR. STAWICK: Commissioner Chilton, aye.

Commissioner Sommers?

COMMISSIONER SOMMERS: Aye.

MR. STAWICK: Commissioner Sommers, aye.

Commissioner Dunn?

COMMISSIONER DUNN: Aye.

MR. STAWICK: Commissioner Dunn, aye.

Mr. Chairman?

CHAIRMAN GENSLER: Aye.

MR. STAWICK: Mr. Chairman, aye. Mr. Chairman, on this question, the yeas are four, the nays are one.

CHAIRMAN GENSLER: I thank you, Mr. Stawick. I thank the staff. The ayes having it, a majority will be sending it along.

I'm supposed to ask unanimous consent to allow staff to make technical corrections, I guess, because we have four or five things they have to get at.

Not hearing any objections to that, you'll be able to make some corrections.

In terms of moving forward, as you all
know, we had identified 30 topic areas for rulemakings. I think with today's, we're 28 and a half topics or something because we have to do the other side, the peanut butter that goes with the jelly, so to speak, capital with margin.

We're also hopeful in the next several weeks to move forward with the SEC on the joint rule on product definitions, which then other than a Volker rule, which is sort of on a different time path because Congress put it on a different time path, would really largely complete our proposal phase.

It's this Chairman's hope that we do that in the next few weeks.

MR. RADHAKRISHNAN: Actually, there's two more, conforming part one.

CHAIRMAN GENSLER: There's two other rules. I thank you, Ananda. There's conforming part one, which we scheduled for today, but just with some commissioner travels and so forth, we decided we'll probably be taking up, and also, the segregation of cleared swaps. We're working
further on testing and supervision. I don't know that that will be in April. And that's a really important rule. I know many commissioners are weighing in with staff, and so I'm just being realistic. That's probably a little bit more time on the testing and supervision. But on the four product definitions, capital, the conforming rule, which was largely ready for today, and the cleared swap segregation, it's the hope to do those in the next several weeks. I know that you all, Commissioner Sommers and Commissioner O'Malia, much deserved family vacations, I guess next week.

I think we're trying to schedule something for the week that you're coming back because it would line up with the SEC on the same day. The 27th we're thinking about possibly doing it. But we're going to work with the SEC if we can get a few more days maybe.

So with that, and if there's not any other Commission business, I'll entertain a motion to adjourn the meeting.

COMMISSIONER SOMMERS: So moved.
COMMISSIONER O'MALIA:  Second.

CHAIRMAN GENSLER:  All in favor?

COMMISSIONERS:  Aye.

CHAIRMAN GENSLER:  Thank you again to

the team.

(Whereupon, at 10:52 a.m., the

PROCEEDINGS were adjourned.)

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CERTIFICATE OF NOTARY PUBLIC

DISTRICT OF COLUMBIA

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

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Notary Public, in and for the District of Columbia
My Commission Expires: May 31, 2014