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COMMODITY FUTURES TRADING COMMISSION

OPEN MEETING ON THE 29TH SERIES OF RULEMAKINGS
UNDER THE DODD-FRANK ACT

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1 PARTICIPANTS:

2 Commission Members:

3 GARY GENSLER, Chairman

4 BART CHILTON, Commissioner

5 JILL E. SOMMERS, Commissioner

6 SCOTT D. O'MALIA, Commissioner

7 MARK WETJEN, Commissioner

8 Presentation 1: Final Rule: Procedures to Establish Appropriate Minimum Block Size for Large Notional Off-Facility Swaps and Block Trades:

9 JOHN DUNFEE, Office of the General Counsel

10 ESEN ONUR, Office of the Chief Economist

11 NHAN NGUYEN, Division of Market Oversight

12 GEORGE PULLEN, Division of Market Oversight

13 RICK SHILTS, Division of Market Oversight

14 Presentation No. 2: Final Rule: Process for a Designated Contract Market or Swap Execution Facility to Make a Swap Available to Trade Under Section 2h(8) of the Commodity Exchange Act (CEA); Swap Transaction Compliance and Implementation Schedule; Trade Execution Required Under 2h of the CEA:

15 NHAN NGUYEN, Division of Market Oversight

16 RICK SHILTS, Division of Market Oversight

17 DAVID VAN WAGNER, Division of Market Oversight

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PARTICIPANTS (CONT'D):

SAYEE SRINIVASAN, Office of the Chief Economist

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Presentation No. 3: Final Rule: Core Principles and Other Requirements for Swap Execution Facilities:

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Presentation No. 4: Anti-Disruptive Practices Authority -- Interpretive Guidance and Policy Statement:

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CHAIRMAN GENSLER: Good morning. This is a public meeting of the Commodities Futures Trading Commission. I'd like to welcome members of the public, market participants, and members of the media, as well as those listening to this meeting on the phone and watching the webcast.

We will consider today three Dodd-Frank reform rules that together bring transparency to the swaps market before a transaction takes place, so-called pre-trade transparency. These rules are (1) procedures to establish minimum block sizes for swaps; (2) a process for a swap execution facility or a designated contract market to make a swap available to trade; and (3) core principles and registration for swap execution facilities.

In addition, we will consider today an interpretive guidance regarding anti-disruptive trading practices authority.

I'd like to thank Commissioners Sommers, Chilton, O'Malia, and Wetjen for their
contributions to this rule-writing process and all
of the CFTC's hard-working and dedicated staff. I
also want to express my condolences to
Commissioner Chilton and all of his family for the
loss of his stepfather last week, Ron, and I hope
that Bart has been able to join us. I think he's
closer to family right now but I just want to
check.

Bart, are you on?

COMMISSIONER CHILTON: I am, Mr.
Chairman. Thank you for the condolences. But I'm
with you. Thank you.

CHAIRMAN GENSLER: Great. I see you're
on the video link. Good.

Today the CFTC is voting on reforms that
will make public transparency in the swaps market
a reality. These reforms will make a trade
execution requirement come to life. And though
many of the 50 or more rules we have completed
before today have brought transparency to this
once opaque swaps market, today we take a
significant step to open up this market.
I want to underscore the significance of these three rules taken together. When light shines on a market, the economy and public benefit. These three rules -- the block swap rule, the made available for trading rule, and the swap execution facility rule taken together will provide the public with information trade-by-trade that it didn't have before. These three rules taken together will provide the public with the price and volume of every transaction in real-time -- and I mean in real-time as Congress says as soon as technologically practical. With these three rules taken together, they mean that anyone in the marketplace can compete and offer to buy or sell a swap and can communicate that to the rest of the public. And with these three rules today, no longer will this be a closed, dark market.

The 2008 financial crisis, caused in part by the unregulated swaps market, led to 8 million Americans losing their jobs. It led to millions being forced out of their homes. And in the aftermath of the crisis, President Obama,
along with the leaders of 20 other nations called 

the G-20 leaders, committed during a summit in 

Pittsburgh in 2009, nearly four years ago to bring 

needed transparency and oversight to the swaps 

marketplace. The leaders of the world's largest 

economies agreed, and I will quote, "All 

standardized OTC derivative contracts should be 

traded on exchanges or on electronic trading 

platforms where appropriate." It is that 

commitment of these G-20 leaders that we come 

together to consider to finalize rules today. 

Congress fulfilled this commitment by 

including trade execution requirements in the 

Dodd-Frank Act. This means that swaps subject to 

mandatory clearing and made available to trade 

will move to transparent trading platforms. 

Market participants will benefit from the price 

competition that comes from trading platforms 

where multiple participants have the ability to 

trade swaps by accepting bids and offers made by 

multiple participants. Congress also said that 

market participants must have impartial access to
such platforms so they would be open and competitive.

In addition, Congress mandated that the public benefit from seeing the price and volume of swaps transactions smaller than a block size in real-time, or as Congress said, as soon as technologically practical after a trade is executed. So farmers, ranchers, producers, and commercial companies that want to hedge a risk by locking in a future price or rate will get the benefit of this competition and transparency through trading platforms called SEFs and designated contract markets. These transparent platforms will give everyone looking to compete in the marketplace the ability to see the prices of available bids and offers prior to making a decision on a transaction. And by the end of this year a significant portion of the interest rate and credit derivative swaps market will likely be in full view in the marketplace before a transaction occurs. This is a very significant shift towards market transparency away from the
status quo.

Such common sense transparency has existed in the securities and futures markets for decades, and this transparency has lowered cost for investors, businesses, and consumers as it shifts information from the dealer community to the broader public. And it's that type of transparency that Congress mandated should be brought to this market, the swaps market. And as Congress made clear in the law, trading on SEFs and these designated contract markets will be required only when it's a financial institution transacting with another financial institution on swaps. End-users will benefit from the access to the information in these platforms but will not be required to use them. Further, companies will be able to continue relying on customized transactions, those not required to be cleared to meet their particular needs as well as to enter into large block trades. And consistent with Congress's directive that multiple parties have the ability to trade with multiple parties on
these trading platforms, these reforms require that market participants trade through an order book and provide the flexibility as well to seek requests for quotes.

So to be registered as a SEF, these rules provide that a trading platform will be required to provide an order book to all its market participants. This alone is a very significant feature as for the first time the broad public will be able to gain access and compete in this market with the assurance that if they make a bid and they make an offer it will be communicated to the rest of the market. This provision alone will significantly enhance transparency and competition in the market. SEFs also will have the flexibility to trade through requests for quotes. The rule provides that such requests would have to go out to a minimum of three unaffiliated market participants before a swap is executed. This is just for those that are cleared and made available for trading and less than a block size.
There will be an initial phase-in period with a minimum of two participants to smooth this transition. As long as the minimum functionality is met, an order book, a request for COS model and so forth, as detailed in the rule, and the SEF complies with these rules and the core principles, the SEF can conduct business through any means of interstate commerce. Yes, that includes a telephone, even the mail, the Internet, computers. Thus, today's rule as we consider it is technology neutral.

Under these transparency reforms, the trade execution requirement will be phased in for market participants giving them time to comply. I think that today's reforms also fulfill the congressional mandate for the CFTC to set up appropriate minimum block sizes. Trades smaller than a block will be reported as soon as technologically practicable, enhancing transparency, and this will build upon the public reporting that began last December 31st. With today's trade execution reforms, all the major
building blocks of swaps market reform will be complete -- transparency, clearing, and swap dealer oversight.

Looking forward with over 90 percent of our rules behind us if we move forward today on these four rules, it's a priority that the Commission finalizes guidance on cross-border application of swaps market reform, ensuring it appropriately covers the risk of U.S. affiliates operating offshore. The Commission is also pursuing an appeal of the District Court's adverse ruling with regard to position limits. I have also directed the staff to prepare a new proposed rule for the Commission's consideration to implement the speculative position limits required by Dodd-Frank.

And with that, before we hear from the staff that will consider their suggestions today, I will recognize my other fellow commissioners for their opening statements.

Commissioner Sommers.

COMMISSIONER SOMMERS: Good morning.
Thank you, Mr. Chairman.

This is a momentous day for the Commission and for market participants because we are finalizing the long-awaited trade execution rules. And also for me personally because this is likely the last time I will participate in an open meeting to consider Dodd-Frank rules.

It has been an incredible learning experience for me over the past three years, and although I think the Commission would have reached different conclusions on many of the foundational rules if we had been consulted earlier in the process, I really appreciate all the time that the staff has dedicated to this very challenging and oftentimes overwhelming task that we have been given.

Today, we are considering rules on swap execution facilities, minimum block sizes for swaps, the process to make a swap available to trade under 2h(8) of the Commodity Exchange Act, and guidance on how we will interpret the disruptive trade practices authority contained in
4c(a)(5).

That is a lot of ground to cover so I will make my comments brief.

With respect to setting block sizes, I have acknowledged in the past the difficulty of establishing the appropriate minimum thresholds. The goal is to promote transparency as much as possible without reducing liquidity in various markets. The Commission cannot achieve this goal without appropriate data. When we proposed the block rules, I applauded the team's effort to analyze the data that was available at that time in interest rates and credit default asset classes, but noted that the team had only access to three months' worth of data from 2010.

Regrettably, even though reporting has begun in the swaps markets, we are relying on the same stale data to support the final rule. We are also finalizing the 67 percent notional amount formula, which as I observed at the proposal stage, would allow for only the largest 6 percent of all interest rate and credit default swaps to
be executed as blocks, and we are applying the 67 percent formula across all asset classes. This approach, in my view, ignores Congress's mandate that we take into account the impact of public disclosure on liquidity when setting block sizes. These are not "one size fits all" markets, and we should not be adopting a "one size fits all" approach.

I appreciate that we will initially use a 50 percent notional amount formula in order to phase in the impact of the minimum block sizes, but the rules provide for an automatic adjustment to the 67 percent formula after one year no matter what the data shows at that time. Minimum block sizes should be driven by the most current objective data available, not an automatic across the board formula based on stale data.

My objections to the made available for trading rules also remain the same as when we proposed these rules. A few minor revisions have been incorporated into the final rules, but as proposed, the final rules provide the designated
contract markets and SEFs, rather than the
Commission, will make the determination of when a
swap has been made available to trade by
considering a list of factors that fail to contain
any objective standards.

Although we claim we will review the
certifications or requests for approval to
determine whether a swap is suitable for the
mandatory execution requirements, in fact, our
hands are tied. Unless a MAT determination is in
consideration with the act or our regulations, we
must approve it or deem it approved. But because
neither the act nor the final rules contain any
objective requirements that a swap must meet for a
MAT determination to be valid, it is difficult to
envision how we could ever find such a
determination to be inconsistent with the act or
regulation. This approach allows a SEF or DCM to
bind the entire marketplace to a trade execution
requirement as long as the swap must be cleared,
even if liquidity is lacking. This is overly
broad, potentially inconsistent with foreign
regulations, and just plain bad policy.

I suppose we are crossing our fingers and hoping that SEFs and DCMs will be reasonable when they make their MAT submissions, and will submit only highly liquid products that are truly suitable for mandatory execution requirements.

But I would not count on that.

My comments on the disruptive trading practices guidance relate to my hope that the guidance has clarified how we intend to apply this authority in our enforcement actions. Guidance should be helpful and not create more questions than it answers. While we have made some improvements in the final guidance, I am hopeful that as time passes the Commission may be able to provide more clarity to help the market in certain areas.

With regard to the SEF rulemaking, although a lot of noise has been made in the press about the request-for-quote number, I have a number of other concerns with the SEF final rules.

As with many of our rules, we have gone beyond
congressional intent by imposing requirements not
called for by the statute -- the order book and
RFQ requirements, to name just a few. Nothing in
the statute mandates these minimum trade
functionalities. We made them up. This puts us
out of sync with the SEC and I suspect with
foreign regulators when they finalize their rules.

I'm glad that we have lowered the RFQ
requirement from 5 to 2 initially, but as with the
block rules, the SEF final rules provide for an
automatic bump to 3 after one year for all
contracts that must be cleared, no matter what the
data shows or how illiquid these contracts may be.
We should base any decision to increase the RFQ
requirements on objective data. There is no
reason not to. We have taken a very narrow
interpretation of what the statute allows and
incorporated it into these final rules. I believe
we will regret this restrictive approach because
it may cause the U.S. to lose this business to
foreign jurisdictions that do not stifle illiquid
contracts in this way.
I also have questions about why we have refused to contemplate a framework that would allow for exempt SEFs and exempt DCOs, which are clearly included in the statute. Although both concepts are mentioned in the preamble, we fail to give any commitment to develop a process for determining this exempt status.

I look forward to all of the staff presentations and to asking some additional questions but would like to finally say that I want to thank especially my staff that I have been privileged to work with over the last six years, as well as the entire Commission staff. Truly I want to thank you for everything that you've done for me and wish all of my colleagues my gratitude for their kindness and respect, and best wishes as you continue your public service. Thank you.

CHAIRMAN GENSLER: I want to pause for a moment and thank Ms. Sommers for your service and for your friendship. I know that we sometimes come at these rules in the day-to-day life with a little bit different perspective. We've agreed
far more than we haven't, and anytime that we've
disagreed we've always, I think, disagreed
agreeably. And you have been a marvelous
colleague and a remarkable, dedicated public
servant. And I thank you. For four years we've
served together.

Commissioner Chilton, I think, on a
video somewhere.

COMMISSIONER CHILTON: Yeah, I'm here.

Thank you, Mr. Chairman. Thank you, Commissioner
Sommers for all your service. We came in at the
same time and I very much enjoyed working with
you, including on some work we did on the SEF
rule, which quite frankly I think might have been
a better compromise than we're dealing with today.

But thank you for trying to work to get some of
these things done. Whenever you had a suggestion
it was always very thoughtful and a lot of times
made the rules better, even if once in a while you
didn't vote for it you made the rules better and
that's very admirable. So we're going to miss
you.
So I've never been a more sort of reluctant and reticent regulator than today on these rules. I think we need to do them. They've been out there for a long, long time -- too long. But I'm just not super plussed by what we have. I'm not saying they're bad and I'm not saying the staff didn't work hard, but I just wish we had reached a different compromise.

You know, Churchill had this great quote about how the English always blurred the lines on everything, and I think we really blurred the lines on some of these proposals, in particular on SEF. And I think we could have had more transparency and still been totally consistent with the law. I think we've done just the bare minimum of what those who voted for Dodd-Frank envisioned.

At the same time, I think those who voted for Dodd-Frank and the president who fought for it, I think they'd also say, well, look, there's two things that have been going on while we've been sort of messing around trying to figure
this out. One is that we've seen this futurization going on, so we've seen, you know, swaps getting moved to exchanges, some of the standardized swaps, and that brings a regulatory light to those swaps, but it also was a disservice to the would-be SEFs. By default, we've been creating winners and losers, and that's not appropriate.

And the second reason that we really have to act is that something that the Chairman spoke about. These dark markets, the swap markets, they were part and parcel to the economic collapse. So if we don't do anything, they're totally unregulated and the futurization will continue. So as I said, I'm sort of a really reluctant, reticent regulator today, but I think we need to move forward.

I do have some questions, and I do want to get some clarification on a few things as we go through, but at the end of the day Dodd-Frank was about getting rules and regulations for dark markets in place almost above all else. And I
hope that we end up doing that. Thank you.

CHAIRMAN GENSLER: Thank you,

Commissioner Chilton.

Commissioner O'Malia.

COMMISSIONER O'MALIA: Well, I guess I didn't appreciate the fact that this could be your last meeting. And I didn't write a speech for that.

COMMISSIONER SOMMERS: You can sing a song.

COMMISSIONER O'MALIA: I cannot sing a song. But what I propose to do since it's -- we only have the microphones, but I know everybody in the audience and the press at the staff table all appreciate your efforts. So I think it would be appropriate we all stand and recognize Jill for her efforts.

(Applause)

COMMISSIONER O'MALIA: It's really a remarkable career in public service, private sector. She was very helpful to me when I arrived here in helping me navigate the building,
understand the process, et cetera. So I am
grateful for all your advice and counsel and
recommendations. So, a great run. We look
forward to seeing what you're going to do next.

Mr. Chairman, thank you for calling this
meeting to finalize a critical suite of rules
regarding swap execution. The adoption of these
rules will bring the Commission in compliance with
three of the four principles agreed to by the G-20
definitions who finalized the Pittsburgh Communiqué
back on September 25, 2009. The three principles
that have been achieved so far are the reporting
of all trades to a trade repository; requiring
that all standard OTC derivatives be traded on
exchange or electronic platform where appropriate;
and clearing through central counterparties.

Notably, the data rules were one of the
first sets of rules implemented by the Commission.
While these rules are not without flaws, data is
the foundational element of which our regulatory
oversight begins because it shines a light on the
ture makeup of the market, including the trading
and risk relationships of this previously opaque market. From this point forward, the excuse of "we don't have the data" simply does not hold water. We have three SDRs, all collecting information regarding real-time, historic, and regulatory data. The big question in my mind is will we use the data to support decisions by this Commission, or will we selectively ignore the facts when it doesn't suit our concerns and our outcomes?

Of course, this achievement wouldn't be possible without the hard work and dedication of the staff, who have labored endlessly to put together the thousands of pages we're considering here today. Everybody at the table, everybody who is coming to the table, thank you very much for your patience and time and effort to help explain the rules to me, work through the comment letters, et cetera. I greatly appreciate all the work you've done and all the forces that have been upon you.

I would also like to recognize Bella
Rozenberg, who had the responsibility for both the SEF and "made available for trade" rules prior to coming to my office. She has done a marvelous job in service to this Commission as well.

Today, the big rule everybody is waiting for is the swap execution facility final rule. It has been over two years since the draft rule was first voted on back in January 2011. Since that date, the product has evolved, but it has always remained a little more prescriptive and limiting than what was required by the statute. Having said that, I'm excited about the opportunity SEFs will provide in bringing transparency to the swap market, and I support a flexible framework to ensure that all participants have the opportunity and frankly don't have the excuse not to trade on a SEF.

Now let me turn to some of the particulars of the SEF rule. And I've argued strongly and encouraged the Commission to adopt a temporary registration process for SEFs that did not replicate the temporary registration process
for the swap data repositories. In that respect I believe we have succeeded. I believe a streamlined, temporary registration process will not disadvantage SEF applicants that are received later in the queue or as the big bulge of new SEF applications arrive on our doorstep in the coming days. More importantly, I am concerned with the process the Commission is using to shift the number of trades on an RFQ from two to three participants. It is incredible to me that the Commission rushed to implement the data rules to ensure that it can make informed decisions and yet has chosen to pick an unsubstantiated number without utilizing the available data. A transparent rulemaking process should utilize available data to make fact-based decisions. However, both the SEF rule and the swap block rule suffer from a willful refusal to utilize available and useful data.

Now, as Commissioner Sommers noted in her remarks, it still remains to be seen how these rules will be coordinated internationally, and
that is an important feature. And I want to make
sure that we are nimble enough to respond to that
competitive imbalance, and we have created rules
that will keep liquidity here in this country.

With regard to the swap block final
rule, my frustration lies more in the process than
in the outcome. I agree with the premise the
goals of promoting pre-trade price transparency in
trading on a SEF. However, the foundation of any
block size, whether it is a swap or a future,
should be based on good data. Again, the
Commission is forced to develop a rule without the
benefit of extensive data in the financial
products and no swap data in the case of foreign
exchange and commodities. In fact, the
Commission's meager data used to inform its
decision on financial products comes from just
three months worth of data back in 2010.

Like the SEF rule, the Commission has
not availed itself to available data and decided
against making an informed decision regarding the
block rules to automatically move to 67 percent of
notional value for each swap category after the initial period. Therefore, I'm prepared to offer an amendment to this rule to require the Commission set block rules based on the study using actual trade data. And I've circulated that at the table here among my colleagues and staff.

Now, let me turn to the MAT determination. I recognize the challenge the Commission is facing in interpreting the "made available for trade" provision. Unfortunately, the Congress did not provide the Commission with any guidance as to how and under what condition the trade execution mandate must be considered or triggered. The rule, however, provides illusory comfort that the Commission will have the legal authority to review, and if necessary, challenge a mandatory trading determination made by a SEF or DCM. In fact, the only authority that the Commission has is to rubberstamp a SEF or DCM's initial determination.

Finally, the process for removing a "made available for trade" determination lacks any
logical or legal basis and is the exact opposite of what is required to make the initial "made available for trade" determination.

With regard to the disruptive trade practices, it has been a long process since the initial advanced notice of proposed rulemaking back in 2010, and the proposed guidance was published in 2011, in February, and finally now we are voting on the final guidance today. The team has made significant progress in giving meaning to the Commodity Exchange Act, section 4c(a)(5), which prohibits disruptive trading processes.

While I applaud their work in this regard, I do have some concerns that the guidance provided with respect to interpretation of disruptive trading and spoofing. While the guidance we provide says, "It's always a facts and circumstances test," then we really aren't providing guidance. So I have some questions that hopefully will kind of further illuminate the guidance and how we're going to proceed on this in order to give the market some certainty in where
we're going.

I do want to close again by thanking Commissioner Sommers and certainly the staff for all their work in putting all these pages of work together and these rules. They have increasingly gotten better as time has gone on and the input has been received. I look forward to finalizing these important rules so the market can move forward with a greater certainty surrounding the development of the swaps market. So thank you.

CHAIRMAN GENSLER: Thank you, Commissioner O'Malia.

Commissioner Wetjen.

COMMISSIONER WETJEN: Thanks, Mr. Chairman. Since joining the Commission I've had the good fortune and pleasure of meeting a lot of good friends but no one has been a better friend to me since I've arrived than Commissioner Sommers, and no one has provided more useful, interesting, insightful counsel and just overall very helpful insights about these markets and the work of the Commission than you have, Commissioner
Sommers. I know our friendship will continue beyond you tenure here at the Commission, and I look forward to remaining friends and also seeking your counsel even after you leave. So thank you again for your service.

Today's releases will fundamentally restructure the over-the-counter markets for swap trading and increase pre-trade transparency and participation for many that were previously unable to access or compete for liquidity in the OTC marketplace. This is a landmark achievement for the Commission. I believe that taken as a whole, the Commission has struck an acceptable balance in these final rules. I'm certainly confident that the next execution framework recommended by the professional staff in consultation with public interest groups, the industry, and the regulatory community over the course of the past two years or so represents a fundamental shift away from the OTC model as it existed only a few years ago.

The benefits of this shift are many. For example, many swaps will for the first time
trade on regulated platforms and benefit from
market-wide pre-trade transparency which should
improve pricing for the buy-side commercial
end-users and other participants that use these
markets to manage risk. Additionally, SEFs, as
registered entities, will be required to establish
and enforce comprehensive compliance and
surveillance programs that simply do not exist in
the swap markets today.

Another potentially significant benefit
not as often discussed is the improved ability for
clearinghouses and their members to manage risk
during times of market stress, effectuated by
liquidity formation on SEFs should these platforms
function as envisioned by these rules. The final
rules also will facilitate compliance with
Dodd-Frank's other derivatives reforms, especially
real-time reporting, clearing, and
straight-through processing. In this respect, the
execution rules complement the Commission's other
efforts to streamline participation in the markets
by doing away with the need to negotiate bilateral
credit and other provisions in order to access liquidity. This not only benefits the end-users that the markets are intended to serve, but also new entrants that intend to compete for liquidity and now will be able to access the markets on impartial terms. In essence, the final execution rules support a transparent, risk-reducing swap market structure under the oversight of the Commission.

Like all the Commission's rules, today's releases require the Commission to make a number of policy judgments that necessarily involve tradeoffs. And in making those judgments, the Commission faces the challenge of creating a new market structure on paper while being informed only by what we know or think we know about the swap markets today. The Commission, therefore, must remain open to reassessing the policy judgments in these final rules as the markets evolve, as the Commission has provided new information, and as the Commission benefits from its experience overseeing the new SEF market.
structure. In short, the Commission must remain open to course correction where necessary and ensure that the swap regulatory regime keeps pace with the markets that it governs.

One difficult and widely reported policy judgment concerns the required trading protocols for executing certain swaps subject to the trade execution mandate. A significant number of commenters cautioned the Commission against imposing specific trading protocols on the marketplace. Comment letters suggested, for example, that such rules might have the unintended effect of increasing hedging costs for liquidity providers, thereby adversely affecting pricing for the firms that depend on these providers to assume risk.

Other participants have expressed concerns that relatively illiquid swap markets, like off-the-run credit, might be dislocated if the Commission tries to force immediate changes to the currently used means of execution. These concerns and others have contributed to a
constructive dialogue both inside and outside of
the Commission. Having considered the panoply of
execution issues and policy tradeoffs at length, I
am confident that the final execution rules before
us today contain appropriately flexible trading
protocols.

Furthermore, it is also my belief and
understanding that if questions of interpretation
arise from market participants concerning
permissible trading protocols, the Commission
staff should air on the side of flexibility when
providing interpretive guidance.

Incidentally, flexible trading protocols
is not code for status quo as some might suggest.
It is not code for pro-dealer trading protocols,
nor is it code for pro buy-side or pro-retirees,
pensioners, endowment beneficiaries and end-user
trading protocols, although I do believe it is
these constituencies who stand to benefit the most
from this flexibility. Instead, what flexible
trading protocols really means is consistency with
congressional intent as it relates to swap trade
execution under Dodd-Frank, which on its own was
destined to bring dramatic change to the OTC swap
markets.

Again, the changes are many. Under
Dodd-Frank and our implementing rules before us,
every SEF will be required to have an order book,
another transparency enhancing change to the
existing market structure. But a number of
important safeguards built into our rules also
ensure that participants continue to have access
to competitive, timely, and representative prices,
as well as liquidity when order book trading may
be somewhat premature.

One such safeguard, of course, is the
block trading rule, which sets the thresholds
above which certain swaps can be executed through
even more flexible trading protocols. In my view,
the long-awaited block rule is consistent with
Congress's intent to drive a significant portion
of OTC swap activity into a multilateral trading
environment, and as a compliment to the SEF
regime, the block rule will for the first time
1 usher in real-time post-trade transparency
2 throughout the swap markets.
3
4 This rule, though perhaps not ideal in
5 several respects, is undoubtedly improved from the
6 uniform social-size approach first proposed in the
7 real-time reporting rule in 2010. Public comment
8 has been essential in this regard. Many
9 commenters raised concerns about the methodology
10 for reaching the block trading thresholds, the
11 dataset upon which the staff has applied that
12 methodology, and definitional judgments that
13 impact transaction distributions and therefore,
14 outcomes, under the final rule. The Commission
15 will need to keep a close eye on these matters
16 once the rule becomes effective. As the markets
17 evolve and the Commission receives new data with
18 which to analyze and set the block thresholds, the
19 Commission has a responsibility to revisit our
20 approach and consider whether this rule has, in
21 fact, landed in the right place. The final rules
22 approach is admittedly blunt, but the Commission
23 has attempted to balance as best it could
potentially conflicting objectives.

As a final note, I've been especially concerned about supporting a competitive landscape for derivatives execution. Recent actions and comments by some have suggested that certain of the Commission's rules unfairly or inappropriately favor futures execution. Again, the intent of these execution rules before us today is not to do away with flexibility but rather to protect it. What should be clear in the Commission's rules is that participants will have clear choices -- choices concerning margin treatment, modes of execution, clearing venues, and in some cases counterparties. If participants weigh carefully the available choices and choose a particular execution venue based upon their own economic interests, the Commission should not second guess that decision and substitute its own. In the end, it is the participants, not the Commission and its staff, who will determine the types of risks that firms should retain or lay off in the markets and the means for doing so. The Commission has
strived to promulgate these rules in a manner that will avoid putting its thumb on the scale for any particular marketplace.

Thank you again to the staff for all of your hard work on all of these rules today, and I look forward to discussing a few questions a little bit later. Thanks.

CHAIRMAN GENSLER: Thank you, Commissioner Wetjen. Thank you again to all of my fellow commissioners for all their input on these rules. I think they have tremendously benefitted from each of the input. And though we might not go over the line unanimously today as I sense from the opening statements, I think that the rules have each benefitted from the input and I want to thank particularly if I might, Commissioner Wetjen. It seems that you and I have been getting some press recently. But I think this is a far better rule and I agree with your statement that these fulfill the congressional mandate and really do deliver to the American public in a balanced way with transparency.
But with that I think that I'm going to invite the first panel. The staff will make presentations concerning their recommendations of the final rules implementing the Dodd-Frank Act, as well as the interpretive statement. After each presentation the floor will be open for questions and comments from each of the commissioners. Following these discussions, the Commission may take votes on the recommendations as presented. All final votes conducted in this public meeting shall be recorded votes and the votes will be included in the relevant Federal Register releases.

I think I'm supposed to ask for unanimous consent to allow staff to make technical changes.

COMMISSIONER SOMMERS: So moved.

CHAIRMAN GENSLER: It being unanimously consented. At this point I also ask unanimous consent to allow -- oh, no, I did that one. All right. So presentation number one. The Swaps Block Rule or Procedures to Establish Appropriate
Minimum Block Sizes. And I want to invite Rick Shilts, the head of the Division of Market Oversight; George Pullen, who is from the Division of Market Oversight; Nhan Nguyen. You'll be helping on this one as well, Nhan? All right.

Nhan Nguyen from the Division of Market Oversight; and then from the Office of General Counsel, John Dunfee, who is now, I guess, our team lead on this. And then Esen Onur from our Chief Economist Office.

So I turn it over to the team. I guess that's to you, John.

MR. DUNFEE: Thank you, Mr. Chairman and Commissioners for the opportunity to present this final rule-making today. I would like to thank each of the members past and present of the Swaps Block Rule Team for their hard work and contributions to this final rule, which we present to you today for your consideration and vote.

Staff is recommending for the Commission's consideration final rules establishing appropriate minimum block sizes for large notional
all-facility swaps and block trades, as well as measures to protect the identities of parties to swap transactions.

Section 727 of the Dodd-Frank Act created section 2(a)(13) of the Commodity Exchange Act. Section 2(a)(13) requires the Commission issue rules regarding the real-time public reporting of swap transaction and pricing data. The section specifically requires the Commission to do three things that we do in this final rule. First, specify the criteria for determining what constitutes a large notional swap transaction or block trade. Second, to ensure that the public dissemination of swap data does not reveal the identities or business transactions of swap counterparties, and third, the Commission must take into account whether public disclosure will materially reduce market liquidity.

In December 2011, the Commission adopted the real-time reporting requirements in new part 43 of its regulations. In that final rulemaking,
to today's final rule.

The real-time final rule established five asset classes for swaps: Interest rates, credit default, foreign exchange, equity, and other commodity. The real-time reporting final rule also established a series of time delays for the public dissemination of swap data. Because the Commission did not establish a block size methodology at the time of the real-time rule, the real-time rule provided that all swap trades would be subjected to the block time delay specified in the real-time rule, pending a Commission rule establishing minimum block sizes.

In February 2012, the Commission issued a further proposal regarding block sizes and anonymity protection. In issuing that proposal, the Commission was informed by many comments received regarding the initial real-time rule regarding blocks. Today, staff recommends for the Commission's consideration final rules springing from that proposal that establish minimum block sizes for swaps and anonymity protections for
parties to swap transactions. Today's final rule benefits from numerous comments from those who are potentially impacted by the rule.

The rule also benefits from the fact that staff was able to collect and review relevant data for two asset classes -- interest rate swaps and credit default swaps. Based upon this data and comments received, the final rule establishes:

First, detailed criteria for grouping swaps based upon the primary economic indicators within each asset class; second, tailored and measured methodologies for determining minimum block levels in a two-phased approach; and third, additional measures to protect anonymity related to the public dissemination of swap data.

I will briefly explain the major components of the block trade rule as well as the anonymity measures. With respect to blocks, the final rule breaks down the five asset classes that I mentioned a moment ago established by the real-time reporting final rule and breaks them down into smaller swap categories. Swaps within
each asset class are generally grouped based on common risk and liquidity profiles. For swaps in the interest rate asset class, the final rule establishes 27 swap categories based on nine tenor band groups and three currency groups. For swaps in the credit asset class, the final rule establishes 18 swap categories based on six tenor band groups and three conventional spread groups. For the FX asset class, the final rule establishes approximately 85 swap categories based on unique currency combinations. For the other commodity class, the final rule establishes approximately 120 swap categories based on groupings of economically related swaps and groupings of swaps sharing a common product type.

In establishing methodologies for determining appropriate minimum block sizes, staff sought to balance the goals of transparency and protecting market liquidity. The final rule establishes that the Commission will prescribe appropriate minimum block sizes for the swap categories within each asset class through a
two-period phase-in approach. The first phase, called the initial period, includes different methodologies based on the availability of data. For the initial period, the final rule sets block sizes in the interest rate and credit default asset classes based upon data obtained and analyzed by the Commission staff.

Sizes will be applied to each swap category within these asset classes based on a 50 percent notional amount calculation methodology. That methodology determines block sizes by looking at the net notional distribution of swaps and setting the block size at the one-half mark within that distribution. Staff believes that the notional determination methodology is a better measure of risk than other alternatives, such as setting the block size so a specific number of trades could be done as blocks. This notional amount methodology focuses upon the amount of risk in a given swap category. For example, a two-year cross currency U.S. dollar-euro interest rate swap will have a block size of $460 million.
For the FX and other commodity asset classes during the initial period, the final rule sets block sizes based upon DCM block sizes set for economically-related futures contracts. Staff believes that DCM-set block sizes for economically related futures contracts are a good comparative measure for setting swaps blocks. For the initial period, the final rule sets out in appendix F the specific minimum block sizes by swap category based on these methodologies.

The initial period will last until SDRs have collected one year of data for each asset class. After the initial period, the final rule states that the Commission will establish post-initial minimum block sizes for each swap category in the interest rate, credit default, FX, and other commodity asset classes based off data collected by SDRs using a 67 percent notional amount calculation. The rules also provide that the Commission will update minimum block sizes no less than once each year using the same 67 percent notional amount calculation. Post-initial block
sizes will be published on the Commission's website and will become effective on the first day of the second month after publication.

For equity swaps, under the final rule, these swaps will not be eligible for block treatment, and thus these swaps will be publicly disseminated in real time in both the initial and post-initial periods. This is because of the existence of a highly liquid underlying cash market which is where price discovery occurs, the absence of time delays for reporting blocks in that market, and the relative size of the equity swaps market relative to futures, options, and cash index markets.

The rule also establishes a series of special rules to deal with complex issues, such as how to determine block sizes for swaps with optionality, how to determine block sizes for swaps in other currencies, and how to address a situation in which a member state is removed from the Euro zone. The rule also prohibits aggregation of orders to satisfy block
requirements. The rule establishes a process for
market participants to elect to treat their swaps
as blocks and how notice of that election will be
sent to a SEF or DCM if such swap is traded
pursuant to the rules of a SEF or DCM, or if it's
traded bilaterally, how reporting parties would
provide notice to a SDR. Also, the rule allows
the Division of Market Oversight to undertake all
responsibilities related to the establishment of
block sizes.

As I mentioned earlier, this final rule
addresses more than just block trades. It also
includes measures to protect anonymity related to
swap data. First, the rule amends part 43 of the
Commission's regulations to establish a permanent
system, establishing cap sizes for masking
notional amounts of swap transactions reported to
the public. Cap sizes will be set using a 75
percent notional amount calculation, similar to
the methodology used for setting block sizes.
Secondly, in regard to anonymity, the rule
establishes that certain commodity swaps will be
subject to real-time reporting with masking of the specific geographic delivery or pricing point detail related to these swaps.

This concludes my prepared remarks regarding the block trade final rule. My colleagues and I would be happy to answer any questions you may have regarding the rule.

CHAIRMAN GENSLER: The chair will now entertain a motion to accept the staff recommendation concerning the final rule.

COMMISSIONER SOMMERS: So moved.

COMMISSIONER O'MALIA: Second.

CHAIRMAN GENSLER: Motion made and seconded. Then it's open for discussion and questions.

I don't have any questions for John and the team, but I do support the final block rule which is, I think, critical to promoting transparency in these markets. I think that with this rule the public will benefit from seeing the price and volume on transactions post-transaction as soon as technologically practical. Those are
words that Congress put in the statute and we will fulfill that mandate initially for approximately 50 percent of the market and subsequent to the post-initial period to 67 percent of the market. So half of the market wouldn't tighten up to that period or after the post-initial, a third of the market will not. But I think that it's critical for the non-blocks to have that which Congress wanted is real time, real-time reporting. And it also, in conjunction with the swap execution facility rules that we'll consider later today, brings to light the trade execution mandate. And together is very critical.

I do think the Commission has benefited from significant public input on these rules. We first proposed a block rule as Commissioner Wetjen noted, and it had a different methodology called social size, I think, if I remember the words we used. And we got significant public input suggesting that we should move to a different methodology. And, in fact, many of the commenters then suggested moving to something similar to what
we have in front of us today. We took those comments to heart and we decided to repropose a block rule. And that reproposal benefitted from the first set of comments, and it also laid out a significant number of alternative methodologies, but the bulk of the commenters came back and said this methodology, percentage-based as it is, to be addressed on an annual basis with an initial period and a post-initial was an appropriate approach. There were comments that some thought we should be higher, some thought we should be lower, and there was a significant comment or support ultimately going to 67 percent. So I think the Commission has already noted in this context that it has had substantial public input but also we have delayed the movement up to 67 percent until there is one year of data which is already coming into the swap data repositories as has been noted. I think the 67 percent formula has been well-noticed. It's been subject to public comment and there is ample support in the public record for adopting that but having that
1  methodology apply to data that we later collect.

2    So I support the rule. I'm going to

3    turn it to Commissioner Sommers for her questions.

4    COMMISSIONER SOMMERS: Thank you, Mr.

5    Chairman. I just have a couple of questions about

6    the methodology. And as I said in my opening

7    statement, this has been a challenge, I realize,

8    and the Commission has struggled with block sizes

9    for many years in trying to determine an

10   appropriate methodology. So just to kind of walk

11   through this specific methodology and the 67

12   percent that when you use this formula based on

13   the notional value in a market, then it gives you

14   a percentage to which would set the threshold for

15   block sizes.

16    So when you're looking at whether 67

17   percent is an appropriate number and specifically

18   applying it gets you I think it was 6 percent of

19   the interest rate market based on the data that

20   we're using would be your block threshold, do you

21   decide that 6 percent is what we're looking for;

22   therefore, 67 percent is right? Or do you know
that 67 percent is right and it doesn't really
matter where the threshold is because based on the
notional value of that class, what if you end up
getting 20 percent of the market as a block? Do
you then decide that 67 percent may not be the
right number? I mean, is that going to be
flexible for us? Or no matter what, 67 percent is
the number? Just sort of walk through with me how
we decided that those are the appropriate numbers.

MR. DUNFEE: Okay. And just to clarify
for a moment, the 67 percent notional amount
calculation is going to give you a block level in
notional. And so based upon that level, in
notional terms, 67 percent of the market will not
be blocks; 33 percent of the market will be
blocks. The numbers that you're referring to are
in regard to number of transactions, right? So on
the data that we have for interest rates and
credit default swaps, applying the 67 percent
notional number, 94 percent of the transactions
for the time period that we looked at would not be
blocks.
In crafting the 67 percent and initially proposing the 67 percent, we were guided by the very goals that you were mentioning in your opening statement, which were to bring real-time transparency to a significant amount of the market, but at the same time to protect liquidity by saying that very large transactions could be done with a time delay. And we thought that the 67 percent test, which as you say, did cover 94 percent, ultimately being not blocks, that that did those two things.

Now, as the Chairman was pointing out earlier in terms of the comment process, we've gotten a lot of comments in regard to the 67 percent, so the way that we went about this enabled us to tell people we're going to do 67. Here are the numbers. You know, not just this is the methodology for commenters to comment on, but also here are the results of that methodology and here's what the exact block number is going to be in the initial period at least based on these numbers. And so we sort of have a dual benefit in
1 terms of the comments both for the methodology and
2 the result, and so based on the comments that we
3 got we think that 67 percent is still the right
4 notional methodology.

5 COMMISSIONER SOMMERS: Have we ran this
6 methodology using even a subset of the current
7 data that we're collecting to know that we may get
8 the same sort of result? At least some sort of
9 consistent result with current data?

10 MR. DUNFEE: George.

11 MR. PULLEN: I think the best way to
12 answer that is to look at the way 67 percent works
13 out in the current dataset that we've used, which
14 is the OSG Volunteer Dataset of 2010 that you've
15 mentioned that we got in 2011. When you look at
16 that dataset, the numbers as you mentioned come
17 around 90-95 percent end up not being blocked.
18 But because of a no-show methodology, if you have
19 -- regardless of the dataset, whether someone in
20 our current SDR or the SDR a year from now, if you
21 had completely uniform distribution of size -- and
22 that would mean that everybody within one of our
250-plus swap categories all traded a size of one million, for example -- what ends up happening is you could have up to, with complete uniformity, 33 percent being blocks. So in the dataset we had, of course, we ran into the situation and the numbers that we supplied to you where you have approximately 5 percent being blocks, but you could have in the future an example where 33 percent -- and again, even in the future, it's always based on a historical look back. It's the method of any statistical sample. It's always going to be a historical look back.

COMMISSIONER SOMMERS: Okay. My additional concern with this approach is just the inconsistency that could arrive between DCMs and SEFs because we're setting the block sizes for SEFs; DCMs set their own block sizes. And if there are economically equivalent contracts, you know, at least some may say that DCMs have an advantage. Do we intend to take a second look at how we approach block sizes for DCMs? Or, I don't know, Rick, you may want to take this.
MR. DUNFEE: If I could just clarify

real quickly, this rule is a swaps block rule, so it applies to swaps, whether they're on a SEF, a DCM, or off-facility. So in regard to swaps, there's not a distinction in terms of where the block level should be.

COMMISSIONER SOMMERS: I'm sorry. I should have made that distinction. I meant futures that are traded on a DCM that could be economically equivalent.

MR. SHILTS: And I think a couple points. One (cough) excuse me, is that I think some of these issues are mostly raised in connection with other commodities. And as this rule adopts in the initial period, it's looking to the DCM's block sizes for equivalents. So in that sense we address...

CHAIRMAN GENSLER: You may want to pull your mic closer, and John, if you'd turn yours off.

MR. SHILTS: Okay. And the second point is yes, the staff, there is an interdivisional
team that is looking at issues related to the setting of block sizes on DCMs and is contemplating some sort of potential commission action or regulations, or rulemaking that would address issues related to the setting of block sizes on DCMs, in particular with respect to the so-called futurization of swaps that happened last year, where a lot of them were listed, especially in the energy area, listed swaps as futures. So it is something that we're looking at.

COMMISSIONER SOMMERS: A year from now, when those block sizes for SEFs are no longer -- when they're no longer using the DCM block sizes for SEFs in the other asset classes, will we go out for additional public comment on those asset classes to make sure that everyone's aware of how this is going to work for those additional asset classes?

MR. SHILTS: Well, as you know, the rules provide that there would be an automatic adjustment in the post-initial period, but depending on what the Commission does with respect
to future rulemakings in the DCM block size calculations or whatever, it's hard to -- I can't say what would happen a year from now, but potentially there would be reconsideration of that.

COMMISSIONER SOMMERS: Thank you.

CHAIRMAN GENSLER: Thank you, Commissioner Sommers.

Commissioner Chilton.

COMMISSIONER CHILTON: I just have one question. I'm curious why the block and the trading mandate rules don't seem to go effective at the same time. If the block rule goes into effect prior to a trading mandate and a trader wants to trade a smaller than the block size trade with one dealer, which they could do, it seems like they could only do it off SEF, away from the SEF, and that would seem to punish the SEF. And it would also deny the regulator, us, with an audit trail. Can you respond to that?

MR. DUNFEE: Well, it may be good that I have Nhan up here for this question also. But
just in regard to the swaps block piece of that question, I believe that both the swaps block rule and the SEF rule have the same effective date. And so -- and I understand you're sort of saying when does the trading mandate go effective. But it is at least theoretically possible, I think, that the trade that you're describing actually could occur on a SEF after the block rule goes effective.

So that's sort of answer one in regard to the swaps block rule. But also, I don't think that the swaps block rule itself in terms of how it's effective date matches up with other effective dates really makes a difference in terms of what one's choices would be in transacting that swap. So if one could do it off-facility today and then the block rule goes effective, that's still how they would be able to do it. And so I don't think that there's sort of an execution difference that's based on the block rule for that trade. And I also don't think that there's really an audit trail difference. There may be a
difference in terms of when the public and when
the Commission would see the information in terms
of how quickly, but ultimately, I think the audit
trail would be the same. The transaction would
still be subject to reporting.

COMMISSIONER CHILTON: Okay. Thank you
for that. I appreciate it.

CHAIRMAN GENSLER: Thank you,
Commissioner Chilton.

Commissioner O'Malia.

COMMISSIONER O'MALIA: Thank you, Mr.
Chairman. I think it's important to make sure
that I get consideration on this motion. I make a
motion to adopt my amendment to the swap block
rule at this point.

CHAIRMAN GENSLER: I have to check
whether I'm supposed to let people ask questions
first.

COMMISSIONER O'MALIA: We don't have to
adopt it.

CHAIRMAN GENSLER: What's that?

COMMISSIONER O'MALIA: We can make the
motion now and then we'll get back to --

COMMISSIONER SOMMERS: Second.

CHAIRMAN GENSLER: Thank you.

COMMISSIONER O'MALIA: All right. Thank you, Mr. Chairman. Thank you, Commissioner Sommers.

Reading the preamble, and I think the Chairman mentioned it and Commissioner Wetjen mentioned it, that there was support for the 67 percent. In reading the document, on page 79, it says 28 commenters provided general comments on the post-initial -- the 67 percent. Of that, 12 supported 67 percent; 14 opposed; 2 kind of said we don't have enough information largely based on the data. A lot of people who opposed the number were also concerned that they did not have enough information based on the data that was in the rule when it was drafted in the proposal stage to make a comment as to whether that's accurate. And Commissioner Sommers and I both raised a concern about the data. Not much we could do about it beforehand when we were developing this rule. I
appreciate that fact, but since January, we've been receiving data. And have you run the calculations based on that data? And what does that data tell us so far about these rules? And why is it not in this document?

MR. DUNFEE: In regard to the data that we get as of now, because reporting has not -- it hasn't started for all asset classes and all participants, we actually don't have the complete data that would be necessary to run the calculation as we were able to based upon data that we have.

COMMISSIONER O'MALIA: What impact has the no-action letters, et cetera had on this and you coordinating and looking at the data? Within the data fields do you have a designated -- are people saying I'm not reporting subject to no-action relief?

MR. PULLEN: No, that's not a data field.

COMMISSIONER O'MALIA: So you couldn't -- in assembling this you either have to know what
no-action relief we've offered or guess as to why that field isn't filled out?

MR. PULLEN: Correct. But the way that it's working is that people will be back-loading, and so as the backlog is completed we'll have a robust dataset. So anyone who currently might have one of those reliefs, that isn't a pass during this period of time. They'll be expected to backload and bring up their information to the same robust level as everyone else.

COMMISSIONER O'MALIA: At the expiration of the no-action relief?

MR. PULLEN: That's my understanding. I'd defer to one of the lawyers here.

COMMISSIONER O'MALIA: And most of this no-action relief kind of dissipates out over the next year or so; right?

And of course, you know, with Rick at the table I do want to thank the DMO team. George, you've been helpful as well. And the ODT team, John Rogers in particular, after our TAC meeting, moving to the next steps about
standardizing data, improving the quality of the data and working with the SDRs to really put a finer point on this so we can use the data is an essential tool because it's a huge missed opportunity if we've mandated all this and we don't fully utilize it. So I look forward to explaining my amendment when it's appropriate at the end of the questions, but I will end my questions here.

CHAIRMAN GENSLER: Commissioner Wetjen.

COMMISSIONER WETJEN: I just, for now, I have one, possibly two questions.

I think we all can anticipate the answer but is it possible that the ultimate thresholds in the post-initial period could be different than 67 percent?

MR. PULLEN: Yes.

COMMISSIONER WETJEN: Is it possible that the ultimate thresholds -- The post-initial -- for the post-initial period could be something other than 67 percent?

MR. DUNFEE: Not with the rule as it is,
no. So the 67 percent notional amount calculation is what will be used to determine the post-initial block sizes.

COMMISSIONER WETJEN: Well, but there is a new provision in the document. I'll just read it. It says that the Commission notes that in response to either a submission or its own surveillance of swap market activity, the Commission may exercise its legal authority to take action by rule or order to delay the imposition of post-initial appropriate minimum block sizes, particularly with respect to swap categories in the other commodity asset class.

CHAIRMAN GENSLER: Page 90.

MR. DUNFEE: Right. That is correct.

COMMISSIONER WETJEN: That's all I have for now. Thanks.

CHAIRMAN GENSLER: Thank you, Commissioner Wetjen. I don't know whether Commissioner O'Malia, you wanted to say something about your amendment before we call the roll on it because I think it's --
COMMISSIONER O'MALIA: I'd love to explain.

CHAIRMAN GENSLER: It's made a motion. It's duly seconded. And before we call the roll I don't know if you wanted to say something.

COMMISSIONER O'MALIA: So to be clear, my amendment does not do anything to change the either 50 percent initial phase. So this is not delaying block rules. It does not change the FX or commodity levels set at the DCM equivalent. So we are going to have upon enactment of this 50 percent block levels. What it does require is that we conduct a study over a year's worth of trade data to decide whether the 67 percent or some other percentage is the appropriate level for making notional value calculations. That percentage will form the basis for setting the post-initial swap block levels that will be voted on by the Commission. The amendment also removes the delegated authority from the director of DMO in setting the first post-initial block size and requires the Commission to make this
determination. So a year's worth of data, recommendation to what the data tells us based on that, and then we vote on that. That's what this does. This does not take away the 50 percent. We will have block levels in the same manner. It leaves it up to the staff on how quickly, but we do require a minimum of one year. And the data must go out for public comment, which is an important feature to any of our APA features. So we will be making post-initial block determinations, whether it's 67 percent, 75 percent, 62 percent, whatever the number, whatever the data tells us, the staff recommendation after public comment will make a recommendation to us. We will vote on it and implement it at that point. That's all it does. It does not take away blocks. It does not radically delay and undermine transparency, et cetera. It is a fact-based decision.

COMMISSIONER SOMMERS: If I could just make a comment. I think certainly from my perspective, looking at this from sort of the
opposite perspective, when you have the data in front of you, a year's worth of data that will show you what percentage of transactions in a specific class will end up being blocks, it may give you a better judgment of where to set the percentage. So you may decide that 10 percent of transactions should be the threshold and the percentage may end up being 70 percent. But it's based on the data.

CHAIRMAN GENSLER: Commissioner O'Malia, I appreciate all the work that you've put into this and on this amendment. I am not able to support this amendment. I feel that the rule that's in front of us today and the staff recommendation is based on data, and it's also, I'd say for four or five other reasons, I am not supporting it. This rule today has benefitted from significant public consultation, and as I mentioned, it's not the first time we proposed it. It's the second time, and we had the benefit of that first comment file to address ourselves to this issue.
I think also as you rightly noted, the commenters -- and it's not a polling, but if there were 12 commenters that said 67 percent is correct and 14 were somewhere else, that seems pretty close to me. It's not like there weren't people that truly supported 67 percent.

I note also what Commissioner Wetjen said that was inserted and is in this very clearly on page 90 in the document, that we have this opportunity, whether market participants come in by petition or other facts come in to us, that this Commission, through appropriate orders and notice and comment and so forth can do what you're suggesting in your document. But that we basically finalize today that in a year's time based on additional data it moves to 67 percent. We have set in place the formula, but that if people petition us or others come in, this Commission, through notice and comment, can do something.

I would also note two other things from the congressional record. Dodd-Frank said we had
to complete these rules in one year. I think Congress meant something by that. They didn't mean that we would never come back and change them but just that we had to put them in place. I do think, as all the Commissioners have said at different times, that we constantly have to come back and look. Do we change them? Do we modify them? And so forth. And then just lastly as we note in our document on page 15 that -- and this was just from the congressional record -- I think it was from Chairman Lincoln, but it's in the congressional record -- she noted that the guiding principle in setting appropriate block trade is that the vast majority of swaps transactions should be exposed to the public market through exchange trading. I mean, I think that's what this is trying to meet that congressional intent, at least as expressed by one chairman that worked on Dodd-Frank.

COMMISSIONER O'MALIA: If I may respond to a couple of those concerns. I don't disagree at all with Chairman
Lincoln on this either. She said do it. Do it quickly. That's what we're proposing. We're just adding the requirement that we do it based on data and the facts. This rule automatically goes to 67 percent. Now, I wish -- as I'm frequently on the losing end of a vote, and if I got to win the vote and still have the losing number of votes, then that would be an interesting outcome, which is kind of the way this rule came out. Twelve were for it, 14 were against it, but a lot of them, including -- and this is the craziest part -- if you look on page -- where is it? Page 87. There's a discussion about -- no, page 83. A number of commenters expressed concerns regarding imposing the proposed 67 percent notional calculation priori to analysis of swap data collected by SDRs.

Now, two of the entities in here are Barclays and Better Markets in this category that are really supporting a fact-based determination. And I think these are just fundamental, good government kind of solutions that we can take from
the data that we're collecting. This was a priority. Get the data out there. We're working to make the data better and I support the Commission's efforts, everybody's efforts to make it good, robust data so we can really surveil the markets. This is not a delay tactic. This is the 50 percent block is ineffective upon this rule. This only says let's look at the data before we set the number.

CHAIRMAN GENSLER: And I think this is -- this rule in front of us is fact-based and has been exposed to the public and has also looked at data, and we went back when we reproposed and looked at significant data as it was available to us then. As we move forward, we can certainly, and I think at all times, look to whether we reconsider things. So I'm not able to support.

COMMISSIONER WETJEN: I'd like to make just a couple of comments. My 12th grade Math teacher famously said, "There's more than one way to the mall." And I'm not going to pass judgment on whether this amendment is a better way to get
to where we need to go or not, but I think with
the benefit of a little bit more notice about the
amendment I could have gotten a better handle on
this, which is I don't have a sense today what
sort of procedural problems could arise by virtue
of us adopting this amendment right now.

Commissioner O'Malia just referred to a couple of
comment letters but I think I would need more time
and the advice of counsel to consider whether or
not this inappropriately falls within the APA if
we were to accept it, which is the main reason I
can't support it.

COMMISSIONER O'MALIA: Fair enough. But
we would have, based on this requirement, a vote
by the Commission to set the level based on public
comment. So I think we would be not only with the
letter of the law but the spirit of the law as
well.

I won't belabor this point. I'm happy
to vote and look forward to the positive outcome.

COMMISSIONER CHILTON: Mr. Chairman.

CHAIRMAN GENSLER: Yes, Commissioner
1  Chilton.

2  COMMISSIONER CHILTON: I just want to
3  say, I mean, I appreciate Commissioner O'Malia's
4  effort, but I believe that what we have before us
5  is based on facts and data and a fulsome review of
6  the comments. And I echo your concerns, Mr.
7  Chairman, but thank Commissioner O'Malia for his
8  effort but I think what we have is totally
9  justifiable. Thanks.

10  CHAIRMAN GENSLER: I guess we have a new
11  secretary. Ms. Jurgens, do you want to call the
12  roll?

13  MS. JURGENS: This vote is on the
14  amendment to the preamble language and the rule
15  text to require fact-based determination of
16  appropriate percentages of notional amount
17  calculations.

18  Commissioner Wetjen:

19  COMMISSIONER WETJEN: No.

20  MS. JURGENS: Commissioner Wetjen is no.

21  Commissioner O'Malia.

22  COMMISSIONER O'MALIA: Yes.
MS. JURGENS: Commissioner O'Malia is aye. Commissioner Chilton. Commissioner Chilton.

COMMISSIONER CHILTON: No.

MS. JURGENS: No. Commissioner Chilton is no. Commissioner Sommers.

COMMISSIONER SOMMERS: Aye.

MS. JURGENS: Aye. Commissioner Sommers is aye. Mr. Chairman.

CHAIRMAN GENSLER: No.

MS. JURGENS: No. Mr. Chairman, no.

Mr. Chairman, on this question the ayes are two and the nos are three.

CHAIRMAN GENSLER: Thank you. Do I call you Madam Secretary?

Ms. Jurgens, do you want to call the roll?

COMMISSIONER O'MALIA: Mr. Chairman, I make a motion to consider a second amendment. This amendment is -- do I have a second on that?

COMMISSIONER SOMMERS: Second.

COMMISSIONER O'MALIA: Thank you. This amendment does not change the percentage at all.
Do you want to hand it out? It says, "In making the determination of 67 percent that we have set in this rule that we will at least conduct a study beforehand and get public comment and then have a Commission vote." We also have protected the delegated authority as well to make sure that the Commission has the opportunity to vote on this. So we keep the 67 percent in. We don't -- we don't try to come up with another number, so we're protecting that number. So I just ask that we take a study, public comment, and vote on it. Did you give it to the secretary as well? I promise this is the last one. Maybe. We'll see how it turns out.

CHAIRMAN GENSLEER: It being motioned and duly seconded, are there any questions?

COMMISSIONER SOMMERS: I actually have a question for the team. I just want to confirm because there were a couple of questions asked about this in the round of questioning for the final rule. Did we consider additional data from when we proposed the
block rule until now finalizing the block rule?

Because I thought that we used the exact same data. And maybe I'm wrong. I didn't know we considered additional data in trying to figure this out.

MR. DUNFEE: Right. We did not consider additional data.

COMMISSIONER SOMMERS: I thought that's what I had understood but then the comment was made that we considered additional data and we did not. So I just wanted to confirm that.

CHAIRMAN GENSLER: Commissioner O'Malia, again, each of these amendments are only handed to us on the dais but this one I have had less time with than the earlier, but I feel I am not able to support this amendment. Like Commissioner Wetjen mentioned, I don't know what I would have done if I had had this a week or two weeks ago but I don't feel I can support this at this point in time. I do think that the Commission always has the opportunity to take petitions, to even to slow down the director of DMO or any director from
1    doing something if they think it's appropriate,
2    but I think the rule that we have in front of us
3    is a good rule. And so I'm unable to support this
4    amendment.

5              COMMISSIONER O'MALIA: Mr. Chairman, let
6    me just, for the benefit of kind of the public
7    watching, so what this does, prior to establishing
8    the post-initial appropriate minimum block size as
9    well as the post-initial capsize is the Commission
10    shall complete a study that will assess whether
11    the 67 percent is the appropriate percentage to be
12    used for the notional amount calculation after the
13    initial minimum block size period has expired. If
14    based on the study the Commission determines that
15    67 percent is not appropriate for any asset class,
16    it will determine an alternative percentage or
17    percentages to be used for notational amount
18    calculation. The Commission notes that it will be
19    able to make an informed evaluation of the
20    appropriate percentages since it now receives
21    swaps data from SDRs.
22    I won't go into the rest of it. But
that's all it does.

CHAIRMAN GENSLER: See, I don't accept the premise. I think that we have made and are about to make an informed determination based on notice and comment and a full public record and data with regard to this. And so I'm not able to support this.

COMMISSIONER O'MALIA: Fair enough, but with all due respect, the data is three years old and it was only three months worth of data. So, and that was only for financial products; nothing for FX and commodities.

COMMISSIONER CHILTON: Mr. Chairman.

CHAIRMAN GENSLER: Commissioner Chilton.

COMMISSIONER CHILTON: Mr. Chairman. It took us months to get to this point, so it seems to me we need to move on this stuff and get it in place. And after my thoughtful 60-second review of the amendment I can't support it.

CHAIRMAN GENSLER: Ms. Jurgens.

MS. JURGENS: This vote is on the second amendment to require fact-based determination of
appropriate percentages for notional amount calculations.

Commissioner Wetjen.

COMMISSIONER WETJEN: No.

MS. JURGENS: Commissioner Wetjen, no.

Commissioner O'Malia.

COMMISSIONER O'MALIA: Aye.

MS. JURGENS: Commissioner O'Malia, aye.

Commissioner Chilton. Commissioner Chilton.

COMMISSIONER CHILTON: No.

MS. JURGENS: Commissioner Chilton, no.

Commissioner Sommers.

COMMISSIONER SOMMERS: Aye.

MS. JURGENS: Commissioner Sommers, aye.

Mr. Chairman.

CHAIRMAN GENSLER: No.

MS. JURGENS: Mr. Chairman, no. Mr. Chairman, on this question the ayes have two and the nos have three.

CHAIRMAN GENSLER: Now, Ms. Jurgens, could you call the roll on the question, I believe, the staff proposal that was motioned and
duly seconded?

MS. JURGENS: This vote is on the final rule procedures to establish appropriate minimum block sizes for large notional off-facility swaps and block trades.

Commissioner Wetjen.

COMMISSIONER WETJEN: Aye.

MS. JURGENS: Commissioner Wetjen, aye.

Commissioner O'Malia.

COMMISSIONER O'MALIA: No.

MS. JURGENS: Commissioner O'Malia, no.

Commissioner Chilton.

COMMISSIONER CHILTON: Aye.

MS. JURGENS: Commissioner Chilton, aye.

Commissioner Sommers.

COMMISSIONER SOMMERS: No.

MS. JURGENS: Commissioner Sommers, no.

Mr. Chairman.

CHAIRMAN GENSLER: Aye.

MS. JURGENS: Mr. Chairman, aye. Mr. Chairman, on this question the ayes have three and the nos have two.
CHAIRMAN GENSLER: I thank you. Let me just say the ayes having or majority voting for it. We will send it along with any technical corrections to the Federal Register. And I want to thank John and George and Esen and Rick and Nhan. I assume that a couple of you, Rick and Nhan, you're staying at the table, maybe others as well, because the next presentation is on the staff recommendation on a rule called Made Available to Trade Process for Designated Contract Market or Swap Execution Facility to make a Swap Available to Trade under the Dodd-Frank Act and the Commodity Exchange Act.

I want to thank -- we have some new colleagues joining at the table, I think. Rick Shilts, the head of the Division of Market Oversight; David Van Wagner, deputy and chief counsel for the Division; Nhan Nguyen, who is the team lead; Sayee Srinivasan and Mike Penick, who are both from the Office of Chief Counsel and have spent many, many months, nights, days looking at the economics of the swap
execution facility rules, the designated contract
market rules that we moved on last summer, and
this important made available for trading rule.

Do I hand it over to Nhan? Is that right?

MR. NGUYEN: That's right. Thanks.

Good morning, Mr. Chairman and Commissioners.

Today staff is recommending for the Commission's consideration rules that establish a process for designated contract markets (DCMs) and swap execution facilities (SEFs) to make a swap available to trade and establish a schedule to phase-in compliance with the trade execution requirement under section 2h(8) of the Act.

First, we'd like to thank our colleagues in the Division of Market Oversight, the Office of the General Counsel, and the Office of the Chief Economist for all of their hard work, advice, and support during this rulemaking process. The available to trade rule was proposed as a Further Notice of Proposed Rulemaking in December of 2011. The Commission hosted a public roundtable on the
issue in January 2012. The Commission subsequently received over 30 comment letters on this proposal and held a number of meetings with market participants. The discussions and comments arising out of the roundtable and letters were informative and insightful and have led staff to suggest a number of changes and clarifications to the proposed rule.

The statutory basis for this rule lies in section 723 of the Dodd-Frank Act, which establishes the trade execution requirement under section 2h(8) of the Commodity Exchange Act. Under the trade execution requirement, swaps transactions that are subject to the clearing requirement must be traded on a DCM or a SEF unless no DCM or SEF makes the swap available to trade or the transaction otherwise is not required to be cleared. The final rules implement the trade execution requirement by allowing a DCM or SEF to submit a rule filing to the Commission stating its determination that a swap is available to trade either under the Commission's 40.5 rule
In response to comments received, the final rules established two prerequisites regarding its review of these determinations. First, the Commission will only review submissions with respect to swaps that are already subject to the clearing requirement. Second, the final rules require that a DCM or SEF submitting an initial determination must actually list or offer that swap for trading on its own trading platform or system.

In making its determination, the DCM or SEF must consider, as appropriate, one or more of the following factors with respect to the swap:

(1) whether there are willing buyers and sellers; (2) the frequency or size of transactions; (3) the trading volume; (4) the number and types of market participants; (5) the bid-ask spread; and (6) the usual number of resting firm or indicative bids and offers.

The proposed rule included eight
factors, one of which would have allowed a SEF or DCM to consider any factor that it considered to be relevant. In response to comments, this factor has been withdrawn from the final rules. Another factor, whether a SEF or DCM will support trading in the swap, has also been withdrawn given the adoption of the listing requirement.

In response to commenters, the preamble to the final rule states that the Commission will, for an initial period of time, extend the review periods for these determinations as permitted under section 40.5 and 40.6 to 90 and 100 days, respectively, to allow market participants to submit and for the Commission to consider public comments. The proposed rules also requested comment on whether a SEF or DCM should be allowed to submit a determination with respect to a group, category, type, or class of swap. In response to those comments, the final rules allow a SEF or DCM to do so with discretion given to the SEF or DCM to define that group, category, type, or class of swap. However, such a determination must address
how the factors apply to all the swaps in the group, category, type, or class that has been submitted to the Commission. The proposed rules also request a comment on whether a SEF or DCM, in evaluating a swap, should be able to consider activity regarding the same swap on other SEFs, DCMs, or activity in the bilateral market. In response to comments, the final rules allow a SEF or DCM to do so.

Upon approving or deeming a swap is available to trade, the final rules clarify that all of the DCMs and SEFs that list or offer that swap for trading must do so in accordance with the trade execution requirement and the Commission's regulations with respect to methods of execution. The final rules also clarify that subsequent SEFs and DCMs will not be required to submit separate determinations for that swap.

The proposed rule had included and requested comment on a requirement that economically equivalent swaps that are listed or offered for trading must also be made available to
trade and therefore, subject to the trade execution requirement. In response to commenters, the final rules do not adopt this requirement. The proposed rules also request a comment on whether there should be a process by which a swap is deemed no longer available to trade. The final rules clarify that when all SEFs and DCMs that had listed or offered that swap for trading no longer list or offer that swap for trading, then the Commission will deem that swap as no longer available to trade. Given this clarification, the final rules do not adopt a required annual review of all swaps that are available to trade as had been proposed. The final rules also provide that the Commission will post all available to trade determinations on its website.

The final rules also include a schedule to implement the trade execution requirement. This schedule was proposed in a proposed rulemaking in September of 2011, and the Commission received over 30 comment letters. The final rules adopt the schedule as proposed which
requires market participants to comply with the
trade execution requirement at the later of the
applicable deadline established under the clearing
requirement compliance schedule under the
Commission's regulations or 30 days after the swap
is deemed available to trade by the Commission.

At this time we would be happy to
address any questions that you may have.

CHAIRMAN GENSLER: Thank you, Nhan. I'd
consider a motion on the staff recommendation.

COMMISSIONER SOMMERS: So moved.

COMMISSIONER O'MALIA: Second.

CHAIRMAN GENSLER: Thank you. I don't
have questions. I do support this final
rulemaking to implement the process for swap
execution facilities in designated contract
markets to "make a swap available to trade" or
what has come to be known as the MAT rule, though
MAT is not sitting at the table.

Today's rule also finalizes a separate
Commission rule proposal on phased-in compliance
for the trade execution requirements, so there's
actually -- this is one of those moments -- I say this for the public -- where we took two rules and we're pulling them together in one. Completion of these two rules facilitates the congressionally mandated -- and I would say critical -- reform promoting pre-trade transparency in the swaps market. The trade execution facility of Dodd-Frank requires that swaps be traded on SEFs or DCMs that: (1) are subject to mandatory clearing; and (2) made available to trade. Now, this Commission made significant progress through many rulemakings and we now have clearing requirements in four major interest rate markets and a number of credit default swap indices. Those are the indices that are at the center of last year's very public events around JPMorgan chief investment office and what has been called the London Whale.

Such platforms, these SEFs and DCMs, will allow participants the ability to trade swaps by accepting bids and offers made by multiple participants with all market participants given
impartial access. We've had impartial access or similar broad access to designated contract markets but that is what Congress said would also be on these swap execution facilities.

The MAT rule establishes, I believe, a flexible process for a SEF or DCM to make a swap available to trade. And I would note while Congress mandated and had a very specific process for clearing determinations, Congress did not mandate that this Commission have a process for this. It simply said -- and Nhan, you'll tell me what the statutory language -- was it 5h -- what is it? Or David? What's that? Two?

MR. VAN WAGNER: The trade execution mandate 2h(8).

CHAIRMAN GENSLER: 2h(8) that these two conditions required clearing and made available for trading.

So I think this flexible process is appropriate; that the trading platforms will determine first which swaps they wish to make available to trading on their platforms, and that
these determinations will be submitted to the
Commission either as self-certified or seeking
approval under part 40.

We did actually propose something about
made available for trading in the first SEF
proposal back in December of 2010 or it may have
been in the Federal Register in January of 2011.
Is that correct, Nhan and David?

MR. NGUYEN: Yes. It was originally
proposed in the SEF.

CHAIRMAN GENSLER: And that would have
allowed swap execution facilities just to put it
up on their website with no Commission
involvement. I think that this proposal as
modified through the comment process is flexible
but provides the public with ample public notice
and opportunity to be heard through the process
and the Commission process under part 40 I think
is appropriate.

We also have a phase-in rule here. The
phase-in rule we proposed in I believe September
of 2011. And that got significant public comment.
The phase-in would provide market participants with 30 days after the SEF or DCM self-certification process or rule approval had finished. And as that self-certification or rule approval process may take as much as 100 or so days, it's in essence 30 days after that process. And I know some of the commenters said that such determination should not be taken up until after there's a clearing mandate, and I support the changes the staff made also to ensure as I corrected -- David, you know it says Dan on your card there instead of David? That this MAT determination is only taken up after there's a clearing requirement. Is that right?

MR. NGUYEN: Yes, that's correct.

CHAIRMAN GENSLER: So I support the rule. Commissioner Sommers.

COMMISSIONER SOMMERS: Thank you, Mr. Chairman. And thank you to this team for all of your hard work in helping us navigate what I will or what I always have considered a very significant determination for this Commission.
And I know it hasn't been easy to figure out how we apply the statute in this context but this does determine what contracts will be mandated to be traded on exchange. So I think I can't over-exaggerate the significance of this process and the significance of the determination of this Commission to allow SEFs and DCMs to be making the determination of what is mandated.

My fear, and I guess assumption, has always been that everything that is mandated to be cleared will end up being mandated to be traded on a platform because of the way we have structured this rule. And because we made broad clearing determinations, and I'm not saying that I disagree with that, but we made broad determinations in what's mandated to be cleared. There are a lot of contracts that I fear are not appropriate to be mandated and I think will be subject to this mandate.

I just have a couple of questions. Is there anything in our act or in our rules that would prevent a SEF or a DCM from making a MAT
determination for an illiquid, off-the-run credit default swap as long as it trades once in a while?

MR. NGUYEN: Commissioner Sommers, I think it's difficult given the novelty of this process to prejudge which swaps, you know, may be deemed not made available to trade. I think what we have here is a process by which a SEF or DCM can submit its initial determination to the Commission with the factors that are in this rule and to allow public comments for a period of time to come in. And on the basis of how the factors are applied and the explanation that a SEF or DCM gives us along with perhaps different perspectives from public comments, at that point we'll be able to make a determination of whether the swap is available to trade or inconsistent with the Act or the regs.

COMMISSIONER SOMMERS: Thank you. I appreciate that but I also, you know, I'm concerned that because there aren't really objective standards that it's going to be difficult for the Commission and the Commission
The preamble says that satisfying any of the determination factors would sufficiently indicate that a contract is suitable for mandatory trade execution. How will a DCM or SEF satisfy any of the factors given that they don't incorporate objective standards?

MR. NGUYEN: Well, Commissioner Sommers, we think that the factors are each and of themselves indicative of trading liquidity and what we have here as I stated is a flexible process by which we expect in a rule filing the SEF or DCM to give us a submission containing an explanation or analysis based on one or more of these factors, how that swap that they've submitted is available to trade, and as we stated in the preamble that we expect that explanation to be clear and informative. It's our hope and expectation that, you know, we will get public comments on those determinations that will help us inform whether that swap should be made available to trade or not.
COMMISSIONER SOMMERS: Thank you. As I said in my opening statement, I fear that this rule in particular has the greatest prospect of putting us at odds with some of our colleagues in foreign jurisdictions because I fear that they will not adopt this sort of process. So once we know, especially those major jurisdictions such as Europe, once we know where they may be in making mandatory trade determinations, what process could the Commission take to make a step backwards from any of these determinations? How can we remove a swap from the MAT determination?

MR. NGUYEN: Well, as the final rules clarify, once all SEFs -- one SEF or DCM, they make the swap available to trade and the trade execution requirement would apply, when all -- if there are subsequent SEFs or DCMs that list or offer this swap for trading and therefore they're subject to the trade execution requirement. When all those SEFs or DCMs have delisted that swap it would be in our judgment that that swap would no longer meet any of the six factors set forth in
the rule and at that point the Commission would
demean that swap no longer available to trade.

COMMISSIONER SOMMERS: I think that's
what I was afraid of. As long as a SEF or a DCM
continues to list a swap and it's already been
subject to a MAT determination, there's no way to
remove it from that determination unless the SEF
or the DCM -- this is a question -- unless the SEF
or DCM delists it?

MR. VAN WAGNER: Just -- right. But in
addition to that -- because I thought when you
started you were referring to things that the
Commission could do of its own initiative. And I
think of its own initiative it could take 8a(7)
action vis-à-vis the various exchanges that list
that product.

COMMISSIONER SOMMERS: If you could
elaborate on that. I'm sorry, I didn't
understand.

MR. VAN WAGNER: 8a(7) gives the
Commission authority of its own initiative to
basically impose rule changes on SEFs or DCMs. So
in this case, because the determination itself was
prompted by a rule change, essentially you could
reverse that by taking action vis-à-vis the
exchanges that list that and basically say you
want to unwind the determination. And again --

COMMISSIONER SOMMERS: So we could use
8a(7) to only unwind the MAT determination, not
tell them to delist it?

MR. VAN WAGNER: Yeah, theoretically.

Right.

COMMISSIONER SOMMERS: Okay, thank you.

CHAIRMAN GENSLER: Can I just follow up?

But it's the MAT determination that leads to a
trade execution requirement; a simple listing does
not.

MR. VAN WAGNER: Correct.

MR. NGUYEN: Commissioner Sommers, I
would also note as we discussed in the preamble to
the final rules, insofar there is a listing
requirement for the swaps that are submitted to us
as available to trade, they're submitted to the
Commission initially as a product listing or a
product filing under 40.2 or 40.3. And under the part 40 rules, we, the Commission, are allowed to request of a SEF or DCM that's listing that swap additional information that would -- hypothetically speaking, that would demonstrate that the swap continues to be available to trade.

CHAIRMAN GENSLER: Thank you, Commissioner Sommers. I think that last exchange is very helpful, the 8a(7) can be used by this Commission or future commissions to in essence address itself or reverse a MAT determination.

David, do you just want to confirm that again?

MR. VAN WAGNER: Correct.

CHAIRMAN GENSLER: Without requiring delisting though.

MR. VAN WAGNER: Correct.

CHAIRMAN GENSLER: Commissioner Chilton.

Commissioner Chilton, did you have any questions?

COMMISSIONER CHILTON: I'm sorry, the audio wasn't on yet. Yeah, sorry.

How will folks be notified when a MAT
determination has been made? There has to be some sort of market-wide dissemination, right?

MR. NGUYEN: Commissioner Chilton, as we noted in our final rule the part 40 submissions, as with other part 40 submissions, are currently posted on our website, and as we also stated in the preamble, we plan on listing on a centralized area of our website a list of all the swaps that are approved as available to trade and therefore subject to the trade execution requirement. This would, we believe, give market participants notice of which swaps are subject to the trade execution requirement.

COMMISSIONER CHILTON: Okay. And will a DCM be able to trigger the trading mandate in advance of SEF being registered? Can they trigger it like that?

MR. NGUYEN: No. What a DCM could do on the effective date they could make a filing or make a determination and submit a filing to the Commission that that swap is available to trade, but the actual trade execution mandate wouldn't
take effect until after the part 40 review process occurs and after the implementation period that we have for market participants to prepare to comply with the trade execution requirement passes.

COMMISSIONER CHILTON: Okay, thank you.

CHAIRMAN GENSLER: Thank you, Commissioner Chilton.

Commissioner O'Malia.

COMMISSIONER O'MALIA: Thank you very much. Thank you to the team for trying to make this process workable with little congressional direction and advice.

Can you provide an example of a cleared trade that you believe would be unacceptable to receive the MAT determination?

MR. NGUYEN: Commissioner O'Malia, it's difficult to prejudge, you know, which swaps, you know, at this moment we would deem as not made available to trade. I think it would depend on the swaps that SEF or DCM subsequently decides to list first and then to submit to us. And also, what we would do, expect to do is review the
explanation analysis and how they've applied to
the factors in that determination and also look at
the public comments before making that
determination.

COMMISSIONER O'MALIA: Could a SEF
submit the entire rates curve for MAT
determination as part of its group grouping that
they could submit, that they provide in here?

MR. NGUYEN: Well, as long as the SEF is
listing or offering swaps for trading that cover
that curve that you speak of out to a certain
year, then yes, it could submit all those swaps as
a group, type, category, or class. But as the
final rules stated, they would have to apply at
least one or more of the factors to all the swaps
and explain how the swaps in that grouping are all
available to trade.

COMMISSIONER O'MALIA: Do you see any
reason why they wouldn't?

MR. NGUYEN: It's difficult to determine
at this point.

COMMISSIONER O'MALIA: Of the six
criteria you've selected to make the MAT
determination, do you believe one or more of these
is relevant to our determination? Or more
important? Greater weight?

MR. NGUYEN: Well, as we discussed in
the preamble to our final rule, we think that each
of the six factors are relevant to -- could be
relevant to an available to trade determination
and they all could be indicators of trading
liquidity. But, you know, depending on the swap
that's submitted to us as available to trade, one
or more of the factors could be more relevant than
the other depending on the determination and how
the factors are applied.

COMMISSIONER O'MALIA: I love all my
children equally, right?

MR. NGUYEN: Perhaps. Yes.

COMMISSIONER O'MALIA: So in the period
between the compliance date, this is date 61 and
the effective date, which is date 120, will we be
using trade data -- actual trade data to make any
informed decisions about an eventual MAT
determination? And will we use accept pre
Dodd-Frank, you know, any trades that are
occurring today, for example, as part of a MAT
determination?

MR. NGUYEN: Well, Commissioner O'Malia,
the final rules state that we would consider the
information, evidence, or data that would come in
at filing and perhaps with public comments, but to
the extent that we have data or information
available to us in our role, our market oversight
role that would help inform us about whether a
swap is available to trade, I think we would be
able to use that information in the review
process. I think it would be -- we would have to
disclose what information it is we used to make
that consideration as part of the administrative
record. And I think this approach is consistent
with our practice when we review other part 40
filings.

COMMISSIONER O'MALIA: So what about
futures data? Would that be relevant? I know you
don't have an economic equivalency requirement,
but could a firm submit or a SEF submit as
evidence of tradability futures data?

MR. VAN WAGNER: I don't think they're
foreclosed from using it to make that argument.
I'm not an economist but I don't think they're
foreclosed from using that.

COMMISSIONER O'MALIA: So like our six
factors, all data we view in a very similar,
favorite-no favorite children status; it's all
good as long as it's data? Relevant trade data.
Relevant to the topic.

MR. VAN WAGNER: It goes into the
administrative record that the Commission would
consider when it makes that evaluation at the end
of the review period. I don't think there's
anything. So it has whatever weight you would
eventually want to give it when you consider it.

COMMISSIONER O'MALIA: David, can you go
through this 8a(7) process for delisting? Is
there a notice and comment period? Does somebody
submit a request or is this a self-executing
thing?
MR. VAN WAGNER: There's obviously enough -- it can be informally prompted by somebody filing a petition with us or basically complaining to the Commission. The way the process basically -- there are a number of steps. The Commission itself would basically have to -- the particulars -- presumably the particular swap that's in question, the Commission would actually basically have to pose, send a letter to the exchange or the exchanges basically saying, you know, why do you think that this continues to be a made available for trading, an indication being that this would be an 8a(7) letter and the end result might eventually be the Commission actually moving to change the rule. The DCM or SEF that receives it would have an opportunity to respond. The Commission would consider it and then if the Commission wanted to force a rule change on the DCMs or SEFs involved it would actually have to put out a Federal Register notice to that effect. There would be a comment process. I don't think there's any embedded particular number of days but
there would be a comment process, and ultimately, the Commission would make a determination whether or not the made available to trade determination with respect to a particular product should stand. And if I remember correctly, it actually -- it ends up even being in our regulations. We actually had -- some years back we had a number of regs which actually said the CBT must -- the Board of the Chicago Exchanges must change a particular arbitration rule and the rule itself was laid out in our rules. I can't remember whether that's still in 8a(7) itself but it's basically the Commission imposing a rule on a DCM or a SEF.

COMMISSIONER O'MALIA: And how frequently have we used that?

MR. VAN WAGONER: Very infrequently. I will not oversell it. It's probably been 20 years.

COMMISSIONER O'MALIA: Okay.

MR. VAN WAGONER: But the threat is out there.

COMMISSIONER O'MALIA: There you go. So
the Clear-port situation and with the energy contracts, and we don't have an energy clearing mandate so therefore you don't have a mandatory trade determination pending. But it does -- we have a lot of cleared contracts, right? Thousands of contracts that are cleared, yet the liquidity and the onscreen trading is a little light, so to speak. How do we create a mandatory trade determination in situations like that? How do we say yes, we understand it's clearable?

Eventually, these energy products will be mandatorily cleared, and required to be cleared, but how do we make a determination that there is sufficient liquidity to trade using Clear-port energy contracts as an example?

MR. NGUYEN: Well, Commissioner, I think in your particular scenario it would be up to the DCM or SEF that's listing these contracts to make the case to us based on the factors set forth that there is, you know, sufficient I guess or enough trading liquidity that it's available to trade and therefore subject to the trade execution
1 requirement we would expect with the public
2 comment period we're offering, you know, we'd have
3 market participants weigh in on their thoughts on
4 whether these swaps should be subject to the trade
5 execution requirement.

6 MR. SHILTS: And also the requirement,
7 it doesn't go into effect or can't even be
8 considered until there's a clearing mandate for
9 these particular swaps.

10 COMMISSIONER O'MALIA: No, I understand.
11 MR. VAN WAGNER: Until that's done
12 there's really not --
13 COMMISSIONER O'MALIA: No, this is more
14 of a hypothetical but, you know, eventually we'll
15 get there. I'm a big fan of data and comments,
16 so. It's really up to the SEF is what you're
17 saying.
18 MR. NGUYEN: In so far as they're making
19 an initial determination and presenting their
20 determination of filing for the Commission's
21 review. That's their role in the process.
22 COMMISSIONER O'MALIA: I have no further
questions. Thank you very much.

CHAIRMAN GENSLER: Before I hand over to
Commission Wetjen, I just want to note I'm sure
that Claire, Kelsey, and Macy are very happy to
hear that you love them all equally, and I would
say the same thing about Anna, Lee, and Isabelle.
So, good going, Dad.

Commissioner Wetjen.

COMMISSIONER WETJEN: If my
three-year-old had slept through the night last
night, I might agree with you.

I don't have any questions.

CHAIRMAN GENSLER: Ms. Jurgens.

MS. JURGENS: This vote is on the final
rule process for a designated contract market or
swap execution facility.

CHAIRMAN GENSLER: I'm sorry. I'm
sorry. Mr. -- yes, we did Commissioner Chilton.

Yeah.

MS. JURGENS: To make a swap available
to trade under section 2(h)(8) of the Commodity
Exchange Act or CEA, swap transaction compliance
and implementation schedule, trade execution
requirement under 2(h) of the CEA.

Commissioner Wetjen.

COMMISSIONER WETJEN: Aye.

MS. JURGENS: Commissioner Wetjen, aye.

Commissioner O'Malia.

COMMISSIONER O'MALIA: No.

MS. JURGENS: Commissioner O'Malia, no.

Commissioner Chilton.

COMMISSIONER CHILTON: Aye.

MS. JURGENS: Commissioner Chilton, aye.

Commissioner Sommers.

COMMISSIONER SOMMERS: No.

MS. JURGENS: Commissioner Sommers, no.

Mr. Chairman.

CHAIRMAN GENSLER: Aye.

MS. JURGENS: Mr. Chairman, aye. Mr. Chairman, on this question the ayes have three; the nos have two.

CHAIRMAN GENSLER: The ayes having it, the staff recommendation is accepted. And with any technical edits it will be sent to the Federal
Register.

I thank you all for all this work. I gather Mr. Shilts, Van Wagner, Sayee, and Mike, you're staying up, too, as well, right? And is Amir Zaidi coming up? Great.

Do you want to take a break or anything?

I want to introduce to the public the team that's been working on the swap execution facility rule from the Division of Market Oversight, David Van Wagner and Amir Zaidi; from the Office of Chief of Counsel, Sayee Srinivasan and Mike Penick; from our General Counsel's Office, Adrianne Joves; and it looks like Jonathan Marcus is joining us as well. Rick Shilts from the Division of Market Oversight I assume will be joining us.

I also just want to give a shout out to Bella Rozenberg, who had team led this for a while before she went to work for Commissioner O'Malia's office. Joe Cisewski who is in Commissioner Wetjen's office who was on the team. It seems this team feeds the commissioners' offices. Riva Adriance, who had been working on it initially.
Mauricio and others. There's a lot of people.

Carlene Kim, and Steve Seitz, who have been working on this rule.

But I thank you all. I know it's been a lot of long nights, a lot of consultation with all five commissioners and their legal assistants, and many a public comments.

Who do I turn it over to? Amir. You've got the table.

MR. ZAIDI: Good morning, Mr. Chairman and Commissioners.

Today staff is recommending that the Commission approve for publication in the Federal Register final rules pertaining to the core principles and other requirements for swap execution facilities. I would also like to thank the many staff members who contributed to this final rulemaking for their hard work and dedication.

I'll first provide a little bit of background and then go into the proposal and final.
Title 7 of the Dodd-Frank Act establishes a comprehensive regulatory framework, including registration, operation, and compliance requirements for SEFs. Section 733 of the Dodd-Frank Act added section 5h of the Commodity Exchange Act, which sets forth registration and compliance requirements for SEFs, including 15 core principles that SEFs must comply with in order to register and maintain registration as a SEF. Section 5h of the CEA also states that the goal of this section is to promote the trading of swaps on SEFs and to promote pre-price transparency in the swaps market.

Section 721 of the Dodd-Frank Act added section 1a(50) of the CEA which defines SEF as "a trading system or platform in which multiple participants have the ability to execute or trade swaps by accepting bids and offers made by multiple participants in the facility or system through any means of interstate commerce."

Section 723 of the Dodd-Frank Act amended section 2(h) of the CEA which sets forth a
trade execution requirement in section 2(h)(8) of the CEA. Swaps subject to the clearing requirement and made available to trade must be traded on a DCM or SEF.

On January 7, 2011, the Commission published for comment a combination of proposed regulations, guidance, and acceptable practices pertaining to SEFs. The Commission reviewed many comment letters from and participated in numerous meetings with members of the public in connection with the SEF proposal. The Commission also consulted with the Securities and Exchange Commission and International Regulators on numerous occasions. This final rulemaking is informed by and benefits from those public comments and meetings. In this final rulemaking, staff is recommending that the Commission adopt many of the regulations that were proposed with respect to how SEFs comply with section 5h of the CEA. However, as a result of public comments and meetings, this final rulemaking revises or eliminates a number of proposed regulations and in
1 a number of instances establishes guidance and/or
2 acceptable practices in lieu of the proposed
3 regulations.
4
5 In determining the scope and content of
6 the final SEF rules, the cost and benefits for
7 each rule were carefully considered in light of
8 the public comments. In the interest of time I'll
9 give a general overview of selected aspects of
10 this final rulemaking and then we'll be happy to
11 answer any questions.
12
13 Section 5h(a)(1) of the CEA sets forth a
14 broad registration requirement which states that
15 no person may operate a facility for the trading
16 or processing of swaps unless the facility is
17 registered as a SEF or DCM. This final rulemaking
18 adopts a registration requirement for any person
19 who operates a facility that meets the SEF
20 definition. Accordingly, this final rulemaking
21 states that any person operating a facility that
22 offers a trading system or platform in which more
23 than one market participant has the ability to
24 execute or trade swaps with more than one other
1 market participant on the system or platform must
2 register as a SEF or DCM.
3 In response to commenters' requests,
4 this final rulemaking provides examples of whether
5 certain better understood categories of facilities
6 fall within the registration requirements. In
7 addition, consistent with the 2(h)(8) execution
8 requirement, swaps subject to the trade execution
9 requirement, those swaps that are subject to the
10 clearing requirement and made available to trade
11 are required to be executed on a SEF or DCM. The
12 rulemaking also states that swaps not subject to
13 the trade execution requirement may be executed on
14 a SEF or DCM or an entity that is not required to
15 register as a SEF.
16 The final rulemaking also provides
17 procedures for full and temporary registration.
18 An applicant seeking registration as a SEF may
19 request that the Commission grant the applicant
20 temporary registration. The Commission will grant
21 a request for temporary registration upon a
22 determination that the applicant has filed a
complete form SEF and submitted a notice to the Commission requesting that the Commission grant the applicant temporary registration. Complete form SEF means that the applicant provides appropriately responsive answers to each of the items set forth in form SEF. Staff will not conduct a substantive review before granting temporary registration. An applicant may operate as a SEF under temporary registration upon a notice from staff granting temporary registration but in no case before the effective date of the SEF rules.

The final rulemaking adopts the minimum trading functionality requirement as noted in the SEF proposal, which is now termed an order book. An order book is similar to the definitions in the SEF proposal, that is an electronic trading facility as defined under the CEA, a trading facility as defined under the CEA, or a platform in which all market participants have the ability to enter multiple bids and offers, observe or receive bids and offers entered by other market participants.
participants, and transact on such bids and offers.

An entity that must register as a SEF must ensure that its operations comply with this order book minimum trading functionality requirement. This final rulemaking also distinguishes between transactions that are and those that are not subject to the CEA section 2(h)(8) trade execution mandate and provides execution methods for each category.

As I noted earlier, swaps not subject to the trade execution mandate may be executed on a SEF or DCM or an entity that is not required to register as a SEF. If a SEF chooses to list such swaps defined as permitted transactions in the release, this rulemaking does not limit the execution methods that are available to market participants or require market participants to utilize certain execution methods for such permitted transactions.

On the other hand, transactions involving swaps that are subject to the trade
execution requirement must be traded on a SEF or DCM. This final rulemaking provides that transactions in such swaps defined as required transactions in this release and that are not block trades must be executed on a SEF in accordance with the order book or RFQ system and order book execution methods. I previously described the order book so I'll now go into the RFQ system. An RFQ system means a trading system or platform in which a market participant transmits a request for a quote to buy or sell a specific instrument to no less than three market participants in the trading system or platform to which all such market participants may respond. This final rulemaking lowers the minimum market participant requirement from the proposed five market participant requirement to the final three market participant requirement. Several commenters expressed concerns about the risk with respect to information leakage and a potential winners' curse for the market participant whose quote is accepted.
by the RFQ requester under the proposed five
market participant requirement.

To address the concerns of commenters
while still complying with the statutory SEF
definition and promoting the goals provided in
section 5h of the CEA that is pre-trade price
transparency and the trading of swaps on SEFs,
this final rulemaking adopts the market
participant requirement of three. This final
rulemaking also provides a phase-in for the RFQ to
three requirement to assist market participants
and SEFs to make an efficient transition from the
swap industry's current market structure to the
more transparent market structure set forth in
this final rulemaking. From the effective date of
the final SEF rules until one year from the
compliance date of these final rules, a market
participant transmitting an RFQ for required
transactions may transmit the quote to no less
than two market participants.

As I noted earlier, the SEF definition
includes the phrase "through any means of
interstate commerce." Given this phrase, the final rulemaking allows a SEF to use any means of interstate commerce, including but not limited to mail, Internet, email, and the telephone, in providing the execution methods for required transactions. The execution methods are technology-neutral given the "any means of interstate commerce" language. However, regardless of the means of interstate commerce utilized, a SEF must comply with the Act and the Commission regulations including but, not limited to, the execution methods, impartial access, audit trail, and surveillance requirements.

The SEF proposal included a time delay requirement for cross trades that are required transactions. The SEF proposal set the time delay at 15 seconds. This final rulemaking notes that the purpose of the time delay is to ensure a minimum level of pre-trade price transparency for required transactions on a SEF's order book. The time delay requirement is similar to time delays in the futures markets for cross trades. The
final rulemaking adopts the time delay requirement but in response to commenters' concerns allows SEFs to adjust the time period of the delay based on liquidity or other product-specific considerations. The final SEF rules will become effective 60 days after publication in the Federal Register and there is a general compliance date of 120 days after publication in the Federal Register.

That concludes my remarks, and we would be happy to take any questions at this time.

CHAIRMAN GENSLER: Thank you, Amir. Now I entertain a motion to consider the staff recommendation on the swap execution facility rule set.

COMMISSIONER SOMMERS: So moved.

COMMISSIONER O'MALIA: Seconded.

CHAIRMAN GENSLER: I thank you. Once again I want to thank the tremendous dedication of this team and the many people that have helped before we got here and the dedication of each of the Commissioners and their legal assistants.
I do support this rule. I support this final rulemaking as I think it's a key to fulfilling the transparency reforms that Congress and the President came together and laid out in 2010. It's been subject to significant public input. I think the file shows at least 100 comment letters, but I'm led to believe that there have been more meetings with market participants than even comment letters. And that's all noted on our website. There's also been big public conferences that are called like SEFCOM. Do I have this right? SEFCOM1 and SEFCOM2 that a number of us on this panel have talked with. Congress included a trade execution requirement in the law and this means that swaps that are subject to mandatory clearing and made available to trade would move to a trading platform, and so the swap execution facilities are quite important along with designated contract markets to fulfill that mandate. And Congress also provided the swap execution facilities would allow multiple participants the ability to trade
swaps by accepting bids or offers made by multiple participants, the so-called multiple to multiple provision.

And I think that the public really benefits by transparency, that farmers and ranchers and commercial companies, municipal governments and the like, whether it's a mortgage company, a community bank, or local insurance company benefits from this transparency. Many end-users will not be required to use this. If it's a nonfinancial end-user you get a choice but you get the benefit of seeing that competition and transparency. And competition does narrow bid ask spreads and competition does benefit the marketplace overall and the economy overall. But it does shift some of the information advantage from Wall Street to Main Street. So it should be no surprise that the record shows that many dealers have had concerns about these rules because they have a different job than this Commission has. This job's Commission (sic) is to comply with the law, implement the law, but as
Congress mandated, it's to bring transparency to
the marketplace. And as I think Commissioner
Wetjen earlier noted, this is a very significant
change coupled with the other two rules that will
bring significant transparency to this
marketplace.

I do believe that this rule also strikes
an appropriate balance of flexibility. That
flexibility I want to express in a number of ways.
Though it does require an order book, and the
order book means anybody in the marketplace who is
guaranteed by a futures commission merchant I
should note, but who is guaranteed to do a trade,
has the financial resources, can leave a live,
executable bid or offer on these platforms. And
if they want to communicate to the whole
marketplace, that's how they can do it. That's
competition. It's very critical. But also, if
they want the flexibility to just request from a
small number of participants who are unaffiliated
with the responses, they can do that as well. And
they can do that with what's called the
request-for-quote approach.

There are other comments that commenters have raised with us about whether is something called a work-up, whether you do a transaction at some level -- let's say it's a $10 million or $50 million trade, can you add to it or work it up? And the rule appropriately addresses that and says swap execution facilities can have rules about workups so that all the market participants can benefit from that as well to the extent they want to come in with a smaller transaction and then work it up.

So I think it provides significant flexibility in that way. In addition, as Congress said in the definition of a swap execution facility that it could be by any means of interstate commerce. This rule is technology neutral. Telephones work. Maybe it's because I'm 55 years old, but I think Congress made the decision, and we're just implementing that decision that this rule is technology neutral. As long as there is an order book and somebody can do
the minimum functionality around requests for
quotes, have an audit trail and the other
provisions of the rule, it's technology neutral.

I do have a question for the team. I
just want to ask specifically David if you can
take this one up. We at the Commission in 2011
and 2012 issued a series of exemptive orders and
then subsequently I think the Division of Market
Oversight issued a no-action letter which
preserved certain exemptions under the Commodity
Exchange Act until the completion of the SEF final
rulemakings and various rulemakings on contract
markets. If we adopt this SEF rule today, how
will that relief measure now operate?

MR. VAN WAGNER: You're correct. There
were a number of Commission exemptive orders and
then in December of 2012 the Division of Market
Oversight issued a no-action letter 12-48, which
basically permitted facilities that rely on some
of the old CFMA exclusions and exemptions -- the
ones we know about are exempt commercial markets
and exempt boards of trade -- but also there are
markets that would have previous to now been
opaque to us, like relying on 2(d)(2) and
provisions like that. So essentially, we are
proposing that no-action letter is due to expire
on June 30th, so if the SEF rulemaking is adopted
today, the Division of Market Oversight intends to
issue a follow-up no-action letter to that 12-48,
which would essentially extend the relief that was
provided there until the proposed compliance date
of the SEF rulemaking, which is 120 days after
publication in the Federal Register. The relief
would end on that compliance date unless, of
course, one of these trading facilities actually
have pending before us at that time a DCM or a SEF
application. Essentially, the point of this
relief was to transition these facilities to the
Dodd-Frank regime and they got to take a look at
both the DCM and the SEF rules and they decide
which way they're going to go when they're moving
into a regulated environment. So that's DMO's
plan.

CHAIRMAN GENSLER: So in essence your
plan is to extend the relief that was granted earlier beyond June 30th to effectively four months after this gets in the Federal Register, and as Amir laid out, during that period of time people can get temporarily registered, which is similar to notice registration?

MR. VAN WAGNER: Correct.

CHAIRMAN GENSLER: Thank you.

Commissioner Sommers.

COMMISSIONER SOMMERS: Thank you, Mr. Chairman. I have a couple of different questions. First of all, on the effective date versus compliance date, and I think if you could confirm for me that what we had in our proposal was a 90-day -- was it an effective and compliance date in our proposal?

MR. ZAIDI: Correct. Yes, it was 90 days.

COMMISSIONER SOMMERS: So now we're being a little bit more aggressive about this effective date, and I think if there's been one takeaway that we've gotten form many of our SEF
meetings that we've had is to make sure that
there's a level playing field established for
those platforms that are currently operating
versus maybe new startups that want to be SEFs,
that they can be in a place where they all have
the ability to start on the same day. So can I
assume the starting day for people that have
applications pending before us would be on the
60th day they could start?

MR. ZAIDI: Yes, depending on when
applicants get their applications ready and submit
them to us. They could submit them after the
publication of these final rules in the Federal
Register, and depending on our timeframe of
reviewing the applications, there's a possibility
that they could be starting on day 60.

COMMISSIONER SOMMERS: But then they
have until the 120th day to come into compliance,
so you wouldn't have to have an application, and
if you don't care about being one of the first
movers --

MR. ZAIDI: Right.
COMMISSIONER SOMMERS: -- as long as you have an application in before the 120th day you're okay?

MR. ZAIDI: Right.

COMMISSIONER SOMMERS: For those currently operating?

MR. ZAIDI: Right. So, as David mentioned, those who are operating under the no-action relief could still continue to operate under that no-action relief and take additional time to get their application ready and submit it to us as long as it's before the 120-day compliance date and then we would review the application and grant temporary registration. For entities that want to come in after 120 days who aren't operating right now, they have the flexibility to do that as well.

COMMISSIONER SOMMERS: Okay. And just to clarify for everyone, on the 121st day, if you are operating a multiple to multiple platform and you still don't have an application in to the Commission, you would be found in violation --
MR. ZAIDI: Correct.

COMMISSIONER SOMMERS: -- of the act? I am a little concerned about how ambitious this seems for our staff to be able to potentially get through these registrations even for temporary status within 60 days, especially if we have everyone that we believe may want to be SEFs, you know, 15-20 of these different entities putting applications in to us for temporary registration. I am concerned that 60 days is pretty aggressive for us.

My next set of questions is with regard to a piece that was actually just added last night in a redline that considers my dissent from the proposal. And there's a footnote, footnote 117 that says that "section 13.2 will allow the Commission to consider if a broader model for executing on SEFs consistent with the suggestion in Commissioner Sommers' dissent would be appropriate on a case by case basis in conformance with the CEA and Commission regulations, core principles, and other requirements for swap
1 execution facilities."

2 In my dissent I suggested that the

3 Commission had gone beyond the mandate by

4 requiring that there be a minimum functionality

5 for SEFs. If you could just explain to me how

6 section 13.2 will work on a case-by-case basis.

7 MR. ZAIDI: Section 13.2 of the

8 Commission's regulations, from what I understand,

9 allows any person to file a petition with the

10 Commission to issue, amend, or repeal a rule. So

11 a participant or a person could come in and ask

12 for a rulemaking as far as the execution methods

13 or ask us to look at the execution methods and

14 either issue a rule or amend what's in the current

15 rules.

16 COMMISSIONER SOMMERS: So potentially

17 somebody could come in as a SEF and petition us if

18 they don't have the minimum functionality

19 requirement and petition us to allow them to be

20 registered as a SEF under 13.2?

21 MR. VAN WAGNER: Correct. But 13.2 is

22 forcing -- basically, it's forcing a regulatory
change. So during the pendency of any Commission consideration of that petition the reg that's being suggested there be revisions to would stand. So they would, presumably if they wanted to operate or continue operations they would have to comply with the SEF requirements.

COMMISSIONER SOMMERS: Okay. Thank you.

And then finally, I have questions regarding the concept of exempt DCOs and exempt SEFs. So, sorry, Dodd-Frank has required me to use reading glasses because of the thousands of pages that we've been going over has made me lose my eyesight.

So on page 38 -- well, I'm sorry, this is potentially an older version, but we recognize that we're authorized to notice register SB-SEFs under 5h(a)(2) and 5h(g) of the Act. And we say that the Commission must comprehensively review and understand a SEF's proposed training models and operations which will facilitate trading for a more diverse universe of financial instruments and underlying commodities than SB-SEFs could offer.
But at this time the Commission is not permitting notice registration given the differing requirements and we also note that form SEF may differ from the SEC's registration form. So we acknowledge that the Commission has the ability to notice register entities or exempt SEFs and we do the same for exempt DCOs. There's a section in the preamble where we acknowledge that the statute clearly allows for the Commission to exempt SEFs. However, until such time as the Commission determines to exercise its authority to exempt DCOs from the application registration requirement, SEFs must rattle swaps through registered DCOs. So we acknowledge that we have this ability, yet we don't set out any type of framework to allow these entities to be recognized as exempt DCOs or exempt SEFs. If you could just outline for me whether we have plans to do this or what the Commission intends.

MR. ZAIDI: Sure. You mentioned 5h(g). Under 5h(g), the Commission, as you said, may exempt a SEF from registration but it's also if
the facility is subject to comparable comprehensive supervision and regulation by the SEC, another prudential regulator, or governmental entity in the facility's home country. We note that at this time the SEC or other regulators don't have comprehensive comparable supervision and regulation for SEFs to what the Commission is considering today. So at this time we're not going to consider exempt SEFs or allow for exempt SEFs, but it doesn't foreclose the possibility in the future that we could consider exempt SEFs and also as we discussed, 13.2 of the Commission's regulations, if at some time in the future an entity wants to come in and petition the Commission for a rule with respect to exempt SEFs then the Commission could consider it at that time.

COMMISSIONER SOMMERS: What about entities that are just comparably regulated by the SEC or prudential regulators, not necessarily as an SB-SEF? Have we made the determination that just because they're not currently being regulated
as a SEF that they're not comparably regulated as
a trading platform? They could be registered as
an ATS with the SEC and be comparably regulated.

MR. ZAIDI: We haven't made any
determinations at this time.

COMMISSIONER SOMMERS: Okay.

MR. ZAIDI: It's just if those entities
want to come in and petition, then we can decide
at the time whether they're comprehensive and
comparable regulation.

COMMISSIONER SOMMERS: Okay. Thank you.

My last meeting wouldn't be complete without being
able to put Ananda on the spot. So can I ask
Ananda to answer the question about exempt DCOs?

CHAIRMAN GENSLER: I want to thank
Commissioner Sommers because I always enjoy this.

MR. RADHAKRISHNAN: Thank you for
inviting me. Court reporter, my name is Ananda
Radhakrishnan. I'm director of the Division of
Clearing and Risk.

Commissioner Sommers is correct. The
statute does provide for an exempt DCO and the
standard the statute lays is comparable and
comprehensive supervision and regulation by either
the SEC or foreign regulators. To date, no one
has asked the Commission or petitioned the
Commission to exempt them as an exempt DCO, and if
you're wondering why we don't have a process it's
a function of the fact that nobody has asked. And
also, because of the tremendous amount of work
that not just DCR but other people have had, we
believe it is time better spent dealing with
issues that we've got to deal with rather than
dealing with issues that might arise.

The other consideration is as follows:
An exempt DCO cannot legally segregate customer
money. And if you look at the structure of the
statute, for customers who want to trade and clear
swaps, if they're not a direct clearing member of
a registered DCO, they must go through a
registered FCM. And a registered FCM is obliged
to segregate customer funds. At the clearinghouse
level, that segregation must also take place,
legal segregation, otherwise, in the event of a
bankruptcy there will be all sorts of issues and it's highly doubtful that there will be customer protection.

So anyone who is exempt cannot claim to legally segregate customer funds. They may be able to physically segregate it but they cannot legally segregate it. The reason I bring this up is if we do have exempt DCOs clearing for a SEF, then by definition that SEF can only transact dealer-to-dealer business; it cannot transact customer business because it cannot send the customer transaction to a DCO. So something for the Commission to think about in considering whether to exempt DCOs. Is the Commission going to be satisfied having a dealer-to-dealer SEF?

COMMISSIONER SOMMERS: Thank you. And one last question on this point. If an entity were to ask us for exempt status as a SEF, is that a Commission decision or is that a decision that the division can make on its own?

MR. ZAIDI: I believe under 13.2 that's a Commission decision.
COMMISSIONER SOMMERS: Thank you.

CHAIRMAN GENSLER: Thank you,

Commissioner Sommers.

Commissioner Chilton. Commissioner Chilton.

COMMISSIONER CHILTON: Thank you. Thank you, Mr. Chairman.

On voice brokers, and Mr. Chairman, you spoke about being technology neutral and we've heard it from staff but since this is something that I've been really an ardent advocate for from the beginning from the time we had the proposal, I just want to get a simple answer. Can we be sure that under this rule that voice brokers, who have been executing trades, will continue to be able to execute trades on SEFs?

MR. ZAIDI: Yes. Voice brokers will continue to --

COMMISSIONER CHILTON: Thank you.

That's good. That's all I need. Thank you.

Okay. And Commissioner Sommers asked some good scheduling questions but I have a follow
on. So under the proposal would a platform operating prior to the registration have to stop trading like the day before they go live as a SEF? How would that actually work? That wouldn't make sense, right? That's not what we're saying?

MR. VAN WAGNER: Right, Commissioner Chilton. That's actually an interesting point, and I think that we just realized that there is a little bit of a gap here. And I think you're referring to the fact that you're an entity right now who is operating, relying on the no-action letter, and then you are temporarily registered on a particular day. And then as a SEF at that point you would have to file all your products with us pursuant to part 40, and that's actually a process that might take a few days. So I think that we probably have to take care of that in the no-action letter that I described at the top of the meeting or this segment of the meeting to sort of cover that gap because we certainly don't want there to be any exposure for somebody who is coming in to be a regulated SEF. So I think we're
1 going to take care of that but it's actually a
2 very good observation. Thank you.

3 COMMISSIONER CHILTON: Thank you, David.

4 Two others. On these workups, I'm okay with them
5 but I'm a little reluctant. What would we do to
6 ensure that these workups, where somebody may go
7 out for a small amount and then not have to go out
8 for a full meal deal RFQ to work that amount up.
9 What procedures or policies should the SEF have or
10 would we have as part of our oversight to ensure
11 that this isn't some big gaping loophole to get
12 around going out for RFQs?

13 MR. ZAIDI: Sure. So first of all, the
14 SEFs would have to have rules about their workups
15 and as far as how that mechanism would operate,
16 and they would also have to have systems in place
17 so that all the market participants can
18 participate in the workup and also that the
19 information from the workup session are
20 distributed to all market participants.
21 Furthermore, workups can actually promote
22 pre-trade price transparency where all the market
participants are able to participate in a workup session. And by having other market participants who didn't participate in the initial trade participate in the workup session can actually promote liquidity as well.

COMMISSIONER CHILTON: Okay. So just to stray out a little bit more, so is there any potential -- think about this theoretically -- any sort of fact pattern that where, you know, a trader might be out there and continually use the workups to -- you could do a workup all the way up to the block size, right? So is there some sort of fact pattern that we would look at and if we could potentially take an action on or would we have to amend the rules? I mean, it would be consistent with the SEF rules, I suppose, but could we, for example, if we saw the spec pattern of people doing the workups and always going right up to the block size, for example, say no, that's not what we intended? Or would we have to provide some further clarity either as part of a, you know, a letter or would we have to amend the
rules?

MR. ZAIDI: Sure. Well, with respect to the block size, the proposal or the final rules note that workup trades, you can't just work up a trade to the block size and consider it a block. It would actually be individual trades. And you're --

COMMISSIONER CHILTON: Yeah, but what I'm saying is as long as you're under the block size you could work it up until that point.

MR. ZAIDI: Correct.

COMMISSIONER CHILTON: So as long as you keep it under the block size, then you put it out there for a small trade and then you work all the way up just below the block size.

MR. ZAIDI: Sure.

COMMISSIONER CHILTON: Look, if that happens, you know, sporadically, okay. I'm just concerned that people are going to try to drive a truck through the workup provision. And I know the SEFs don't want to do that. They're just happy to get rules. I also don't want to just
allow it to happen without having some oversight.

MR. ZAIDI: Sure. And that's why opening it up to the whole market will probably mitigate your concerns there because it's not just the two original counterparties who are doing a small sized trade and then working it up to almost the block size; it would be opened up to the whole market. So other market participants could participate in that workup session.

COMMISSIONER CHILTON: Okay. Thank you. The last thing I had was something that -- and I prepared an amendment on this but it doesn't look like I need one assuming I get the answer I think I'm going to get from you all. And that is dealing with this whole debacle with Bloomberg and maybe, you know, having information that was sort of misappropriated from the terminals. And my question is, presuming that a firm like a Bloomberg would register as a SEF, and once they've done that if we, you know, smelled something fishy with this potential SEF, could we then go after them under 1.59 to further review,
probe, investigate, et cetera whether or not they
misused material, non-public information?

MR. VAN WAGNER: Yes, Commissioner.

Regulation 1.59 would apply to SEFs and SEF
employees. They would have to have rules
prohibiting their employees, governing board
members, disciplinary committee members from
misusing and disclosing material non-public
information. And we could also pursue them. And
I should point out it's not in the part 37 rules
that are being considered today; that is by
application of a number of rules which have
broader application to not only SEFs but DCMs.
And as sort of a public service announcement to
prospective SEFs they should beyond whatever
publication comes out of today's meeting, they
should look at 77 FR 66288, which actually has
1.59 and a number of other provisions that are
going to be more broadly applicable to SEFs and
DCMs post Dodd-Frank.

COMMISSIONER CHILTON: Great. That's
why I asked. Good public service. Thank you,
1. David.

2. That's all I have, Mr. Chairman.

3. CHAIRMAN GENSLER: Thank you,

4. Commissioner Chilton.

5. Commissioner O'Malia.

6. COMMISSIONER O'MALIA: Mr. Chairman, I

7. make a motion that my amendment that I circulated

8. earlier be adopted.

9. COMMISSIONER SOMMERS: So moved. Sorry,

10. second.

11. CHAIRMAN GENSLER: Being motioned and

12. seconded it's part of the record.

13. COMMISSIONER O'MALIA: Thank you. I'd

14. like to follow up on two lines of questions that

15. Commissioner Sommers started, and this is the

16. temporary registration. And I think we've made a

17. lot of progress. I'm quite pleased with where we

18. are, and I think Commissioner Sommers raised a

19. good point, you know, with this new compliance and

20. effective date split. The ability to put and

21. approve the multitude of SEFs and put them in a

22. position so that there is not a competitive
disadvantage as a result of the first mover and
not being ready to go, how are we going to ensure
that? She does bring up a good point. And
certainly, if you look at our SDR track record,
our ability to pencil-whip an application seems to
be endless. How are we going to learn from that
mistake and not get in the same position that we
found ourselves in SDRs?

MR. ZAIDI: Sure. I'll note this
process is very different from what they did in
the SDR rulemaking. From what I understand, that
process, there had to be substantial compliance
with the requirements in the SDR rule. Here it's
just a complete application review, so basically
we're just looking for appropriately responsive
answers to all the questions and exhibits in form
SEF and we're not doing a substantive review like
they did in the SDR space. So this process is
meant to be an expedited process because as you
noted, a lot of SEFs could come in here and staff
has resource constraints, so we're well aware that
we don't want to drag this process out. So it's
meant to be an expedited process for temporary registration.

CHAIRMAN GENSLER: Can I just ask, because I can't remember the page number, but I think some of us have used the expression "notice registration." I know technically it's temporary registration but could you point to where we put that in the preamble?

MR. ZAIDI: Sure. The version --

CHAIRMAN GENSLER: I see page 38.

MR. ZAIDI: I believe it's on --

CHAIRMAN GENSLER: I'm pleased to see -- I'm pleased to see this, the Commission notes that there is -- or wait.


CHAIRMAN GENSLER: Forty-seven, 48?

MR. ZAIDI: Yeah.

CHAIRMAN GENSLER: Okay.

MR. ZAIDI: And there's also reference to it, I think around page 46, too.

CHAIRMAN GENSLER: I just think that
Commissioner O'Malia raises a very good point. We're resource constrained and there's 15 to 20 aspiring swap execution facilities who are ready to get going. It's been nearly three years since Dodd-Frank passed and two and a half years since this rule was put out. And as we all know, about six or seven months since we've been debating it intensely. And we want to see that happen. We don't want our resource constraints to limit that and we've had a lot of discussions up on the panel but David, you and Amir and Rick, as head of DMO, you've explained it to me that you're going to take these 15 or 18 applications that may come in, not do a substantive review. It's similar to a notice registration, and then over what might be a two-year period after that, you know, work with those SEFs and work with whether there's issues that might be there and how they have come in. Is that correct?

MR. ZAIDI: Yes, that's correct.

CHAIRMAN GENSLER: I think that's an appropriate compromise with the realities of our
resources. I just think that that's -- and coupled with the public policy imperative to get these entities, in essence be licensed or registered and operating.

COMMISSIONER O'MALIA: That's great news. I appreciate that. Obviously, it does require the prospective SEFs to do their job and put together a really adequate application to make sure that they answer all of the questions that we're looking for, but the reality is that we're going to make sure that they've done their job and then we can quickly approve them so we can have a good, robust, competitive market.

Now, another area that I'm concerned, again, Commissioner Chilton -- Commissioner Sommers raised this, and it's the international differences. Right? We've got -- we're waiting on the MiFiD rules. They have these MTEFs and OTEFs which are different from the standards that we have but they're not final yet is my understanding, and it's going to take a year or two before they are final, at least in Europe, and
it could even take longer in Asia. So there could be some differences. And one thing I don't want to create is a situation where we pass our rules and then not look back and make any corrections that we need to fix our rules to remain competitive internationally and to make sure that liquidity resides here to the extent that we can compete for it and it's transparent in our markets and people have the ability to transact domestically. It's a competitive business. I don't, you know, want to make any misunderstanding about that.

Now, I know that Europeans and Asians are thinking about the same thing when they put their things together, but I do not want to put forward a rule that is cast in stone that we cannot have the opportunity to look back and make a response in case we're left out and we're uncompetitive in this environment. Is there anything that we can -- that provides this rule to really go back and fix problems in light of the international situation?
MR. ZAIDI: Sure. I'll come back to regulation 13.2, that petitioners or persons can come in here and petition for a rulemaking or to amend a rule such as these SEF rules. But also, we've included in these final rules a review. Commission staff will conduct a review of the execution methods within four years of the effective date of the rules and provide recommendations to the Commission, so that could address some of your concerns there as far as --

COMMISSIONER O'MALIA: I'll be honest. That one -- that is a study in four years with no requirement to make a recommendation or have the Commission act. And I'm a little concerned that that is just cover.

CHAIRMAN GENSLER: Commissioner O'Malia, if I can address a little bit and enter into a discussion here if that's all right on the international.

I think that we've done a number of steps, but I agree with you that we have to stay very vigilant going forward. But let me just
mention some of the steps we have taken. I think as Commissioner Sommers noted, we have clearly stated that a swap execution facility may also refer trades or execute trades that go to an exempt clearing organization to which Ananda spoke to earlier. And I know Sarah Josephson, our new head of the international office was actually over in Europe -- was it earlier this week? I'm losing -- yes, earlier this week. And that was very constructively received. We have a lot more work as Commissioner Sommers noted as to what processes. We don't have any applications but I think that's an important way to keep swap execution facilities that might be registered with us competitive if, for instance, they might have international parties that don't necessarily want to come into a clearinghouse here and have some exempt DCO. I think that's very relevant to this. But I also concur with you that I think we stay vigilant, whether it's through rule 13.2 or any other means that people come in.

The Europeans look close to passing
their legislative initiative but it will be nearly three years after our legislative initiative. And they will go forward with rulemaking and sometime in 2014 or maybe 2015, they'll land somewhere around order books and requests for quote models and all that we've debated here, and I share your view that this Commission should relook at this and be open because these are international platforms ultimately. Some of these swap execution facilities will be located actually offshore which is fine as well.

COMMISSIONER O'MALIA: Well, it's reassuring to know that I have your commitment that we'll reopen this if we get in kind of a regulatory imbalance here because we are going first, and going first you could possibly make some mistakes and over-reach or under-reach, frankly, but I want to be in a position that this Commission is doing this with its eyes wide open and we're prepared to make adjustments if necessary. And while we haven't gone back to fix any of our rules that I would argue that need
fixing, I will take you at your word and your
commitment that we will revisit this one as well
if we're out of kilter internationally.

CHAIRMAN GENSLER: I think it's
appropriate. I also share you view with some of
our others we're going to have to go back. And
we're learning. As you go from a law to a rule to
an actual compliance --

COMMISSIONER O'MALIA: We could start a
list right now.

CHAIRMAN GENSLER: -- things get very
granular. I know. I know.

COMMISSIONER O'MALIA: How about part
45?

CHAIRMAN GENSLER: I know about part 45.
We actually apparently have a lawsuit on that,
too.

But on the swap execution facility, as
other jurisdictions take this up, I think these
will provide flexible means of liquidity and that
market participants will come to them, but as you
say, other jurisdictions set something up. If
they're slightly different we should really look
at conflicts and inconsistencies and be creative
about it.

COMMISSIONER O'MALIA: Well, being
nimble and adjusting is a great opportunity.

Thank you very much for that, Mr. Chairman. Now, it appears by reading the preamble
that the rule will permit voices and independent
method of execution. Why wouldn't the rule
expressly state so? We've had this discussion a
little bit but execution by voice is buried within
the definition of RFQ. So why don't we just call
it out, A, B, C, by any means of interstate
commerce? For those watching at home it's A and B
and then some subcategories within B that provide
for the voice. I'm wondering why we didn't
expressly and specifically state it as a third
prong.

MR. ZAIDI: Sure. As you noted, the
rule text does provide for any means of interstate
and it includes voice or the telephone in the rule
text. When we came up with the execution methods
for the required transactions which are similar to what was in the SEF proposal, we looked at the SEF definition and also the goals in 5h of pre-trade transparency and also promoting trading of swaps on SEFs, and we also note the any means of interstate commerce language in the SEF definition. And we believe that by looking at the SEF regulatory regime as a whole and not in a vacuum of just looking at the SEF definition, that the order book and the RFQ, in conjunction with the order book are the appropriate methods that meet the SEF definition and also the SEF regime in 5h. And as you noted, any means of interstate commerce is included in the SEF definition and that also includes a telephone, so we are saying you can use the telephone to meet the order book or the RFQ system in conjunction with the order book requirement. So there can be a voice system as long as it meets those.

COMMISSIONER O'MALIA: Excuse me. How do you execute on the phone?

MR. ZAIDI: Sure.
COMMISSIONER O'MALIA: Is there the opportunity --

CHAIRMAN GENSLER: Can I try this? From the old Wall Street days you say you're done.

COMMISSIONER O'MALIA: Walk me through -- so walk me through done backwards. If Chairman Gensler wants to be done on the phone and he wants -- and you have a requirement to interact with the order book and the RFQ, how does that function?

MR. ZAIDI: Sure.

COMMISSIONER O'MALIA: Does he have to post something?

MR. ZAIDI: As we noted in the final rule there's a couple of examples of how this would work. I'll just go through one hypothetical.

Say Chairman Gensler calls you on the phone and wants to execute a trade and you're the SEF, you're a SEF employee. In keeping with the RFQ to three requirement you can go out to -- you would go out to three market participants to try to fill Chairman Gensler's order. And then you
could use the telephone to go back to him and say these are the three responsive orders. And also

COMMISSIONER O'MALIA: Would you have to put -- can I clarify something?

MR. ZAIDI: Sure.

COMMISSIONER O'MALIA: As the RFQ employee, would you have to type his order into a screen?

MR. ZAIDI: No, you could --

COMMISSIONER O'MALIA: You could call other people?

MR. ZAIDI: You could call other people on the telephone or use a squawk box or use email or chat. And ping three market participants and you can take whatever responses you get back, either one, two, or three, go back to Chairman Gensler with the responsive orders and also telling him what is resting on the order book and he can say I want this one and you are done on the phone. So that's kind of one example of how it could work.
CHAIRMAN GENSLER: So I can say I hit that bid or I lift that offer?

MR. ZAIDI: Yes, you may.

CHAIRMAN GENSLER: And you would say you're done?

MR. ZAIDI: Exactly.

CHAIRMAN GENSLER: Thank you.

COMMISSIONER O'MALIA: Thank you very much. Can you explain how we treat EDRP exchange for derivative positions in this on a SEF footnote 216?

MR. VAN WAGNER: We got a comment from MFA, I believe. Essentially, it was not in the proposal but there was a comment requesting that exchange of derivatives -- well, actually, three particular types of EDRPs (exchange of derivatives for related positions) that the commenter asked to permit SEFs to list as an exception to the trade execution mandate. They basically analogized the three transactions to the types of EDRPs that core principle 9 permits on DCMs. So essentially at the outset we would note that Congress obviously
enough in the context of DCMs explicitly
recognized exceptions to the centralized
marketplace trading requirement for DCMs for
EDRPs. There is the absence of any such exception
to the trade execution mandate for SEFs.

COMMISSIONER O'MALIA: Are they
prohibited on SEFs?

MR. VAN WAGNER: Excuse me?

COMMISSIONER O'MALIA: Did they prohibit
them on SEFs?

MR. VAN WAGNER: No, they did not.

COMMISSIONER O'MALIA: They're just
silent?

MR. VAN WAGNER: Excuse me?

COMMISSIONER O'MALIA: Congress is
silent on this issue?

MR. VAN WAGNER: That's correct. Right.

So what we worked through was to look at each one
because they did not really offer any clear bona
fide purpose in discussing them in their comment
letter, so there were two that essentially -- that
they didn't quite justify or we didn't quite
1 understand what the rationale for the exception
2 would be. There was one in particular I think
3 that had some -- basically had some traction. And
4 that is EDRP, which would be a swap in exchange
5 for a physical commodity. At this time, obviously
6 enough physical commodities are not yet subject to
7 the clearing mandate, therefore, not subject to
8 the trade execution mandate, so they would not be
9 mandated to be on a SEF and subject to the trade
10 execution mandate. And even if they were, we
11 would anticipate that most of them would be used
12 by end-users who would be able to -- would be
13 exempted from the trade execution mandate. At the
14 end of this little thing, we did recognize that
15 there might be a possibility that non-end-users
16 might want to do this transaction in the future,
17 and so we basically in the release indicate that
18 we'll take it under consideration if and when
19 physical commodities have become subject --
20 physical commodity swaps ever become subject to
21 the trade execution mandate.
22
23 COMMISSIONER O'MALIA: So is there a
1 process that people have to apply to get these
2 things -- to trade some sort of exchange for
3 derivative position on a SEF?

4 MR. VAN WAGNER: At this point there's
5 nothing that explicitly recognizes them in the
6 context of part 37, no.

7 COMMISSIONER O'MALIA: So what does that
8 mean? So is there or is there not a process that
9 they would have to come back to apply?

10 MR. VAN WAGNER: The request was to make
11 it an exception to the trade execution mandate,
12 when a swap is subject to the trade execution
13 mandate. And we said at this point in time,
14 because those swaps are not yet subject to the
15 trade execution mandate, we were not going to be
16 granting an exemption in advance of that fact. I
17 mean, obviously enough if they're permitted
18 transactions that are involved, if the swaps are
19 not yet subject to the trade execution mandate,
20 you know, a swap -- excuse me, a SEF wouldn't be
21 restrained.

22 COMMISSIONER O'MALIA: Okay. So --
MR. VAN WAGNER: Yeah, right,
ultimately, they could always come to us with a
no-action request, too.

COMMISSIONER O'MALIA: But that is not
for a non-required transaction. They don't need
to come to you for --

MR. VAN WAGNER: Well, I was jumping
ahead to when they might need it as an exception
to the trade execution mandate.

COMMISSIONER O'MALIA: Right. So they'd
have to come ask for no-action relief for required
transactions?

MR. VAN WAGNER: Right.

CHAIRMAN GENSLER: David, I gather --

MR. VAN WAGNER: It's still a
hypothetical situation.

CHAIRMAN GENSLER: Your point of view
and one that I support is that this comment from
-- was it MFA?

MR. VAN WAGNER: Right.

CHAIRMAN GENSLER: This comment was
sufficiently generalized that it didn't get down
to this narrow point.

MR. VAN WAGNER: Right. I mean, we --

CHAIRMAN GENSLE: But that when you get to the narrow point you say in exchange for swap for swap, well, that's what a SEF is about. But an exchange for swap for something that's physical, you note in the footnote that we don't have any required or clearing mandate, physical commodity swaps at this point in time. If that were to occur in the future, many people would be out because they would be end-users, but if it was a financial company doing a transaction with a financial company, and it was cleared and required to be cleared and they wanted to do an exchange for a swap for a physical --

MR. VAN WAGNER: ESP.

CHAIRMAN GENSLE: What would that be? An ESP?

MR. VAN WAGNER: ESP, I guess. I don't know.

CHAIRMAN GENSLE: Then you note in the bottom of this footnote for the offisionados that
they'll end up looking at what, footnote 219 --
that at that time the Commission could consider it.

MR. VAN WAGNER: Correct.

COMMISSIONER O'MALIA: David, is there another option using -- if a SEF wanted to put in their own rule book and use part 40 to petition us, would that been an acceptable use? An acceptable application I guess?

MR. VAN WAGNER: I mean, I'd have to think about that one but obviously the words that are in the mouth of the Commission in that footnote is not at this time.

COMMISSIONER O'MALIA: So we've created --

MR. VAN WAGNER: If you accept the footnote.

COMMISSIONER O'MALIA: -- a lot of uncertainty around where Clear-port is and kind of how those are treated. And there's been a number of press articles recently about that and there's a lot of uncertainty about what their standing is
and how we're going to treat them, et cetera. It seems as though we're creating the same thing. If it's a non-required -- what do we call those?
Non-permitted transaction, anything goes.

MR. VAN WAGNER: Right.

COMMISSIONER O'MALIA: But all of a sudden when you get to required, what if those products that have been permitted all of a sudden want to leap the required? All of a sudden we're back in regulatory limbo again.

MR. VAN WAGNER: I take your point but there's issues on the DCM side in core principle 9. I guess in staff's view that should inform us at this point in saying go slow before creating exceptions to the trade execution mandate.

COMMISSIONER O'MALIA: Go slow and/or create regulatory uncertainty doesn't sound like the same thing. And I think that's where we find ourselves on this one.

CHAIRMAN GENSLER: If I might,

Commissioner O'Malia, wouldn't it be possible to take -- if we actually had a physical commodity
swap clearing determination as part of that process at that time to address now that we're doing this, a year from now or three years from now or whenever we might, to simultaneously take up what to do about what staff is now calling an ESP, an exchange for a swap for a physical.

COMMISSIONER O'MALIA: Well, that in and of itself is a better process than what we've provided in this footnote because what we provided in this footnote doesn't provide you the certainty. It doesn't say, "Oh, by the way, when you come in as a required from a permitted, that we'll consider this as a solution." It doesn't say that. And it would be really useful to say either you could use part 40 or in part of a determination for required transaction we will revisit this issue.

CHAIRMAN GENSLER: With regard to exchange for swaps for physicals as opposed to the broader request was more general, which could have included exchange for swaps for swaps. Yeah, that doesn't. But exchange of swap for a physical is
the question for you.

COMMISSIONER O'MALIA: Could we just put in a sentence that says that this is a path and how we address it and warn anybody who might be considering, well, where does this really stand? At least we'll tell them, you know, we're willing to consider this as part of the --

CHAIRMAN GENSLE: I think as part of the administrative record I'm saying right now I think -- and you're saying -- I think that it's appropriate if we take up a physical commodity clearing mandate at that time to consider this exchange for a swap for physical.

COMMISSIONER O'MALIA: Let's put those words in this footnote.

CHAIRMAN GENSLE: Somebody found the transcript of what I just did, that's your first amendment on this rule?

COMMISSIONER O'MALIA: Well, I make a motion to --

CHAIRMAN GENSLE: No, that's your second amendment.
COMMISSIONER O'MALIA: That would be my second amendment. But, you know, I think that's just -- what's the path forward? How might people? And I'd frankly be interested in the part 40 submission. Could they, as part of that and part of their rulebook, say we're going to adopt these things. We think as a SEF that serves kind of this physical market, that we're going to make this part of our solution and put it in the rule book and then we'll have to review it under the part 40 submission. That's another way of doing it. But you weren't as equivocal on that one.

MR. VAN WAGNER: I guess I'm still thinking of it but I mean it seems to me that, again, I mean, this is obviously somebody coming in well in advance of even the trade execution mandate pertaining to any particular commodity yet, I mean, the trade execution mandate does not have -- it does have exceptions carved into 2(h)(8) and it's for 2(h)(7), the clearing exemptions. And there is not embedded any other exceptions that are akin to what's in core
principle 9 for DCMs, which is obviously the analogue that the commenter was trying to go towards.

COMMISSIONER O'MALIA: But they're also not banned either.

MR. VAN WAGNER: I'm sorry?

COMMISSIONER O'MALIA: They're also not banned.

MR. VAN WAGNER: I mean, in a case such as that, I mean, I would think that it would probably be wise to accompany -- since there is some ambiguity around it I would think it would be wise to accompany the rule submission with either a no-action or 4c petition for absolute certainty.

COMMISSIONER O'MALIA: I'm not a big fan of the --

MR. VAN WAGNER: I can't prejudge part 40 filings here.

COMMISSIONER O'MALIA: So I'm a little uncertain. Are we going to change that they can submit this as part -- and change the footnote to reflect that it's part of their submission that
they could -- that's how they could address this
for a required transaction?

CHAIRMAN GENSLER: Well, I think what I
was suggesting, and I think it's appropriate, is
it concurrent with any future action of this
Commission on a clearing mandate for physical
commodities that at that time market participants
could come to us, petition with regard to exchange
for swaps for physical, the ESP part of it? And
that I would be comfortable. And if people by
unanimous, if Commissioners by unanimous consent
want to amend the footnote to add that type of
language, I'm comfortable with that.

COMMISSIONER O'MALIA: I'm comfortable
with that as well. Thank you.

CHAIRMAN GENSLER: Any objection for it?

COMMISSIONER O'MALIA: Thank you, David.

Rick, can I ask a question on technology? There
are 18 proposed SEFs that have been registered
with the NFA to conduct their market surveillance.
I've even toured the NFA market surveillance
floor, and it was explained to me that with all
the API connections, the NFA will be able to
monitor across its registrants and see across all
SEFs in real-time, you know, an effective
real-time market watch room. Are we going to have
that same capability?

MR. SHILTS: No. We've never had the
capability to monitor any markets in real time. I
mean, all of our oversight has been on a T+1 basis
whether it is large trader or trade information.

COMMISSIONER O'MALIA: Right. How will
we interface with NFA to help them with their
market surveillance? Are we going to expect each
SEF to download its position and information data
or can we work with NFA to get a more
comprehensive view?

MR. SHILTS: Well, we'll be working with
NFA. I mean, NFA is operating on behalf of the
SEFs, who they've delegated the responsibility to
do the oversight. We'll be getting information,
you know, from them as well as from the SDRs and
then from the clearing organizations for the swaps
that are cleared. So it would be a -- we haven't
actually set up processes yet but that's something
as the SEFs start coming in and if the rules are
approved, we can start working with them to get
the information to do oversight. To some extent
the obligation is on us to do the overall
overight of the markets because each SEF is only
responsible for its particular exchange.

COMMISSIONER O'MALIA: It's probably not
lost on you but that's only 60 days away.

Do we have a technology strategy? Do we
need to buy more computers? Move desks? Do
something to prepare for that technology?

MR. SHILTS: I'd have to talk with John
Rogers and others. I don't have that answer right
now.

COMMISSIONER O'MALIA: That's all I
have. Thank you very much.

CHAIRMAN GENSLER: Thank you very much.

Commissioner Wetjen.

COMMISSIONER WETJEN: Thank you, Mr.
Chairman. I don't have a lot of questions, just a
couple here. I thought maybe it might be helpful
for the benefit of the public -- I know your presentation got into this some and my opening statement alluded to it as well as the Chairman's, but it might be helpful, I think, to reiterate just what the key differences are between the environment we'll now see in light of the SEF rule and the related rules compared to the current OTC market. A lot of focus has been paid to trading protocols, but what are some of the other things that might be useful to review as required in this rule that will bring some additional benefits to the public?

MR. ZAIDI: Sure. In addition to the trading protocols that you mentioned, and another requirement that will be in effect if these rules become final is the impartial access requirement. So all market participants will have impartial access to -- that ECPs will have impartial access to SEFs market. Another --

COMMISSIONER WETJEN: I'm sorry to interrupt but with this -- I'll just jump in with a follow-up.
MR. ZAIDI: Sure.

COMMISSIONER WETJEN: In rough terms anyway, how is impartial access going to be provided for or monitored by the Commission? How are we going to measure whether a SEF is permitting impartial access? What's the standard?

MR. ZAIDI: The impartial access standard is for a SEF to provide impartial access to ECPs and ISVs so they have to have nondiscriminatory rules in place when they're considering whether to grant access to ECPs. So the SEFs will have the rules in place and then obviously we'll have our oversight authority through rule enforcement reviews or other mechanisms to oversee that.

A couple other benefits that I didn't mention in my remarks, there will be audit trails and surveillance requirements that SEFs will be required to keep that is not necessarily true in today's OTC market. And also --

COMMISSIONER WETJEN: And again, sorry again to interrupt, Amir, but why is that
important? I mean, why is that an important reform that the Commission today feels needs to be part of this rule?

MR. ZAIDI: Sure. Well, for the audit trail requirement, the SEF will have to be able to reconstruct transactions and keep audit trail from the time orders come in through the time of fill or allocation or other. So that's very important for our oversight responsibility to look into if there is some prohibited trading practices going on or other disruptions in the market. We can gain access to that data to find out what's going on similar to the real-time trade monitoring that SEFs have to implement and also automated trade surveillance as well. So that will be very important to us for our oversight responsibilities and my colleagues and DMO for them to review on a daily basis.

A couple other things -- COMMISSIONER WETJEN: Again, just to interject again, I agree these are important provisions that benefits pre-trade transparency or
multiple -- obviously, one has a lot to do with pricing of these contracts, but through these other mechanism and other requirements, under the core principles of SEFs, it's also going to be extremely important that the Division of Enforcement, as they monitor for manipulation -- well, for DMO and surveillance as well -- but these will all be very, very useful tools just to ensure against manipulation.

MR. ZAIDI: True. Yes. Also, the CCO requirement for SEFs, that will also be implemented, and these final rules when they become effective, if they become effective, that's also another important aspect to these rules so the SEF can have the rules in place, they can have somebody at the SEF overseeing the rules, and also the compliance measures that we just went through. So that's another important aspect to these rules that is not in place today in today's OTC market.

And also just from another aspect, the clearing will be mandatory clearing obviously that has started to take into effect right now and the
real-time reporting, that will be in effect when
the SEFs get up and operating. So there are many
benefits that these rules will provide for the
marketplace.

COMMISSIONER WETJEN: Thank you for
going through that.

MR. VAN WAGNER: Can I just add one
thing because we sort of forget. I mean,
obviously enough, SEFs are building out the
requirements that they have but, I mean, at the
outset when we were talking about the no-action
letter and some of the entities that are relying
right now on that no-action letter because they
were real relying on CFMA exclusions and
exemptions.

I mean, there are markets that we
literally do not know who they are prior to Dodd_
Frank. I mean, they relied on 2(d)(1) and 2(d)(2)
to trade interest rate swaps on trade facilities
and nontrading facilities. Without any notice to
us. Obviously, no data provisions, et cetera, you
know, since Dodd-Frank there is obviously
reporting requirements that have kicked in. And then moving them to a regulated space. So I think we get lost in the details as the big picture changes that have happened post-Dodd-Frank.

COMMISSIONER WETJEN: I agree. I appreciate you pointing that out. And again, as it relates back to protocols, the trading protocols, I said in my remarks I thought it was important. I thought that Congress was informing or directing the Commission to be flexible in that regard. And again, I think we've provided for appropriate flexibility in this rule.

But in any event, isn't there a baseline level of pre-trade transparency that's always going to be required to be met by virtue of us requiring trading protocols in the first place, again, in a way that's different from what we might see in the current OTC space.

MR. ZAIDI: So for required transactions, transactions that are subject to the trade execution requirement, we've laid out the
baseline execution methods that market participants and SEFs will have to comply with, and we've taken into account the pre-trade price transparency goals of section 5h, and we believe that, as you said, it provides appropriate flexibility to SEFs and market participants.

CHAIRMAN GENSLER: Commissioner Wetjen, if I can add, I think that even parts of the market that are not required to use a SEF will benefit because there will be an order book there and if somebody wants to leave quotes, that will be relevant to their thinking, too. They'll be able to see that. They might not execute against it because they're permitted not to, but I think that just actually having a place that any market participant can come to, who, of course, is appropriately guaranteed to be there and so forth, that really is a big part of this benefit well before you get to whether it's a required trade execution mandate swap; well, before you get to whether the request-for-quote model is 2/3/5 or something else.
COMMISSIONER WETJEN: Well, and similarly, again, I alluded to it in my statement but there might be some enhancements to risk management for clearinghouses and clearing firms alike.

CHAIRMAN GENSLER: No, I agree with that because I think as the Congress said that so much has to come to clearinghouses, clearinghouses benefit by having that available pricing data, as well as the liquidity that swap execution facilities will provide, and it will lower some of the risk of clearinghouses. And I think that's a major -- when we think about cost and benefits, that's a major benefit that clearinghouses, this will help lower their risk.

COMMISSIONER WETJEN: I appreciate the staff working with me on this exchange. Again, the moment we're at right now as a Commission is pretty important and transformative, and I thought it was useful for the public to just understand a little bit better and in more detail all the different ways this rule set today brings about
reform. So I appreciate that.

That's all I have.

CHAIRMAN GENSLER: Before calling the roll I didn't know whether --

COMMISSIONER O'MALIA: I'd like to explain what my amendment does and I'd be happy to entertain any questions.

So this is very similar to what we discussed in terms of block rules. This is a data requirement that would require the Commission to conduct a study based on a year's worth of swap trade data in order to make an informed decision about the appropriate minimum RFQ requirements. Based on this study and after public comment, the Commission will be required to vote on the appropriate changes based on the recommendations of the study. My amendment binds the Commission to act before two years but there is no requirement why it can't act prior, so long as the completed study has had the benefit of public comment and review.

Obviously, it goes without saying we've
discussed it here at the dais. By requiring the
Commission to act in this amount of time and after
some time has gone by in terms of moving this, we
would also have the opportunity to see where
Europe is in terms of its RFQs. And we would
obviously have a forcing mechanism to adopt our
rules in light of the MiFiD final rules. This
amendment does not change the bias of the rule
towards a minimum RFQ of three; it simply ensures
that we undertake our appointed responsibilities
and they are done so based on the facts and the
data before us.

So if anybody has any questions or
cconcerns, let me know. I'd be happy to answer
them.

COMMISSIONER SOMMERS: Just to clarify,
this does not do anything to the timing of the SEF
rule. The SEF rule will still go into place. It
just requires us to look at the data before the
RFQ automatically goes to three?

COMMISSIONER O'MALIA: That is correct.

COMMISSIONER SOMMERS: I guess, sorry,
one more question.

In looking at the data, the Commission then would have the ability to decide whether some more liquid contracts would be appropriate for a higher RFQ versus a lower RFQ number for more liquid?

COMMISSIONER O'MALIA: The facts in the data would tell us.

CHAIRMAN GENSLER: I'm not able to support your amendment, Commissioner O'Malia.

We've come a far way, this Commission, and you and I have in these three years of discussing this. I think that this Commission included at your good suggestion in the initial proposal phase a request-for-quote model recognizing that we would provide market participants flexibility in the swaps market that was not necessarily in the futures market; that that request-for-quote model was appropriate, and I still support that, that we have a request-for-quote model here. In the futures market for the public, if you want to request a quote, the information has to go out to
all of the market and the responses come back.

Everybody gets to see that.

Fairly different here, what we proposed is you could go out to a minimum of five and the responses didn't have to be shared with the market. I feel that based on the comments in the public record that we've come out in an appropriate place based on the data and the facts that we know it as of May 16, 2013, is that there's a request-for-quote minimum of going out to three. Now, if the three parties don't come back and only one comes back, you can execute by any means of interstate commerce. For a phase-in period, which is approximately, what, about 16 months, to one year from the four months --

MR. ZAIDI: It's one year from the compliance date, so about 14 months.

CHAIRMAN GENSLER: Well, isn't the compliance date four months?

MR. ZAIDI: Yes, sorry. Yeah, you're right. Sorry.

CHAIRMAN GENSLER: I'm sorry. All
right, so 16 months. Has a phase-in at two that
gain helps the market adjust if there's any
adjustment. I feel that it's appropriate. I
would note that these are highly liquid markets
because we've already determined that they're
under the clearing mandate and one of the five
factors that Congress asked us to determine and we
went out to notice and comment was the liquidity
of these markets. But I would further note that
we have 77 registered swap dealers and 66 of them
registered before December 31st, which meant that
they passed the de minimis of $8 billion of
trading. And that was an annual de minimis they
passed in just 18 days in October of last year.
Now, of course, that's not necessarily 77
independent, unaffiliated members, but I think
it's 35 unaffiliated members. And this is that
they are registered and making markets as dealers
in the credit derivative indices and the interest
rate markets.

I also feel it's an appropriate

balancing because each of the market participants
could, if they wish, also have other means available to them. They can use the order book. We have a crossing rule that was proposed and is still in here. Some people call it the 15 second rule, but a party could one-on-one do a transaction and bring it to the swap execution facility and the swap execution facility by any means of interstate commerce would have to note that a cross was happening and somebody could improve on it. This is a mechanism that's used with quite success in the options market. Options on futures markets today. And as we talked earlier today there is also the work-up rule to the extent if somebody feels that they would somehow have a bit of a winner's curse or something on something they could come in, let's say at 50 million rather than 300 million and then work up the transaction without going back to three parties. So I think it's an appropriate balance, and I'm going to continue to support what's in the staff recommendation, and with all respect, decline to support your amendment.
COMMISSIONER WETJEN: I'm just going to make a couple of quick comments, too.

Over the course of the last week or so we spent considerable time carefully calibrating all the words of the preamble to make sure that this is a bulletproof document in some respects. And so, again, my fear here is that without the benefit of the sort of labored study and analysis that we've gone through over the last week or so in making the final edits to the rulemaking, I worry that by accepting this amendment now without that same level of analysis we'd be taking a risk that I just can't, well, tolerate at the moment. In other words, I don't want to delay this rule any further and bring about some of the uncertainty that we're resolving by adopting this rule today. And so I think the policy we've struck here is appropriate in this rule. Again, there's a number of different ways we could have done it but we've settled on where we've settled, so I think I'm going to have to reject the amendment as well.
COMMISSIONER O'MALIA: Well, I -- go ahead.

COMMISSIONER SOMMERS: I just have a couple of comments.

I think certainly based on everything that we've been reviewing over the past two and a half years to be able to get to the place we are, the data that we have been receiving even over the past four months has shown us that the contracts that are now being cleared and reported are not all liquid contracts. So being able to use the data and to consider the data and how we set the RFQ I think would be helpful to the Commission, and I'm hopeful that if this amendment doesn't pass today that future commissions will consider the data when making any determinations.

COMMISSIONER WETJEN: Just one quick follow-up. I think Jill made an excellent point, and we actually do have in the rule a requirement that the Commission do conduct a study, and the purpose of the study is going to review the trading protocols that are contained in the
rulemaking today and to review whether they've been appropriate in light of what the Commission sees after some amount of time. I don't remember the exact amount of time laid out by the rule, so I think that's an important part of this rulemaking as well that gives me a little bit more assurance that we've landed in an appropriate place.

COMMISSIONER O'MALIA: Let me respond to both the Chairman and Commissioner Wetjen.

You're right. We do have a three-year study in here, exactly two years after we make a decision unfortunately. Or a decision is just automatically made for us, actually, based on this rule.

The other thing that I think you highlighted, Mr. Chairman, was the transparency. That's what this is about. We insist that the market have pre-trade transparency. You mentioned the 15-second crossing rule. We mention the RFQ. We make sure the industry does all these things for transparency, yet we don't spend a single
second to consider the data before we make a
decision. I think it's just upside down. I'm
disappointed that we're not going to take the data
and make the decision, but let's vote and figure
out where we go. But I certainly hope going
forward that we will consider the data more
carefully.

COMMISSIONER WETJEN: One last time. I
agree with Scott, and I think the study that's
part of the rule has to be taken very, very
seriously, and I expect and hope and believe that
Commission staff will, in fact, do that.

CHAIRMAN GENSLER: And I expect that the
Commission staff and the Commission will do that.
I do feel that we've taken to heart all of the
obligations we have, though it is three years and
Congress gave us one year to do this. And we have
considered the data at the proposal stage and at
this possible point of finalizing this rule.

I didn't know if Commissioner Chilton
had anything before we called the roll. I just
want to make sure.
Commissioner Chilton.

COMMISSIONER CHILTON: I'm still holding my nose and biting my tongue. I think I'll just be quiet here. Thank you. No.

CHAIRMAN GENSLER: Ms. Jurgens.

MS. JURGENS: This is a vote on the amendment to require fact-based analysis of RFQ minimum.

Commissioner Wetjen.

COMMISSIONER WETJEN: No.

MS. JURGENS: Commissioner Wetjen, no.

Commissioner O'Malia.

COMMISSIONER O'MALIA: Aye.

MS. JURGENS: Commissioner O'Malia, aye.

Commissioner Chilton.

COMMISSIONER CHILTON: No.

MS. JURGENS: Commissioner Chilton, no.

Commissioner Sommers.

COMMISSIONER SOMMERS: Aye.

MS. JURGENS: Commissioner Sommers, aye.

Mr. Chairman.

CHAIRMAN GENSLER: No.
MS. JURGENS: Mr. Chairman, no. Mr. Chairman, on this amendment the ayes have two, the nos have three.

CHAIRMAN GENSLER: All right. So Ms. Jurgens, you can call the roll on the base recommendation that had been duly motioned and seconded. The swap execution facility rule.

MS. JURGENS: This is the final rule, core principles and other requirements of swap execution facilities.

Commissioner Wetjen.

COMMISSIONER WETJEN: Aye.

MS. JURGENS: Commissioner Wetjen, aye.

Commissioner O'Malia.

COMMISSIONER O'MALIA: Aye.

MS. JURGENS: Commissioner O'Malia, aye.

Commissioner Chilton.

COMMISSIONER CHILTON: Aye.

MS. JURGENS: Commissioner Chilton, aye.

Commissioner Sommers.

COMMISSIONER SOMMERS: No.

MS. JURGENS: Commissioner Sommers, no.
1 Mr. Chairman.

2 CHAIRMAN GENSLER: Aye.

3 MS. JURGENS: Mr. Chairman, aye. Mr. Chairman, on this matter the ayes have four, the
4 nos have one.

5 CHAIRMAN GENSLER: The swap execution
6 facility rule with the ayes in the majority with
7 technical edits and that unanimous consent
8 amendment on footnote 219 will be sent to the
9 Federal Register.

10 I want to thank all the team. I want to
11 thank my fellow Commissioners. This is all, I
12 will say, just part of a journey, and I do concur
13 that we have to be open, whether it's because of
14 international regimes, new data as it becomes
15 available. This is a paradigm shift for the
16 American markets that will bring transparency but
17 we have to be open to revising based on new
18 information along the way.

19 David Meister is coming. But does
20 anybody want a break or should we just get on and
21 just do it?
All right. We've deliberated, and David Meister is here.

We have in front of us David Meister, the head of the Division of Enforcement; Robert Pease, who is in the Division of Enforcement, and who have worked on a staff recommendation on an interpretive guidance with regard to disruptive trading practices. So I hand the floor over to you, David.

MR. MEISTER: Thank you, Mr. Chairman. Thank you, Commissioners.

Today the staff is recommending that the Commission issue a final interpretive guidance and policy statement or interpretive statement for short concerning the Commission's prohibitions of destructive practices. I'll summarize the highlights of the interpretive statement and then we'll take the Commission's questions.

In the Dodd-Frank Act, Congress adopted a provision prohibiting certain disruptive practices. The provision took effect on July 16, 2011, and it applies to violations arising after
The provision prohibits three types of conduct on a registered entity. First, violating bids or offers; second, recklessly disregarding orderly execution during a closing period; and third, spoofing, an example of which is given in the provision as "bidding or offering with the intent to cancel the bid or offer before execution."

This Dodd-Frank law, now numbered section 4c(a)(5) of the Commodity Exchange Act is an important and welcomed new enforcement tool to be used against persons who employ these destructive practices which harm the critical price discovery function of CFTC regulated markets. It can and will be used in furtherance of the Commission's core mission to protect market participants and promote market integrity.

This Dodd-Frank provision provides the Commission with rulemaking authority but it does not mandate the promulgation of rules.

Nonetheless, beginning in November 2010, the Commission took steps to inform the market as to
how the Commission interprets and intends to apply this provision. Those steps, which included a public roundtable and opportunity for the public to submit comments in response to Commission proposals, are now culminating today with today's recommended interpretive statement.

As a threshold matter, the interpretive statement sets forth the Commission's interpretation that all three categories of prohibitions apply only with respect to violations on a registered entity, such as DCM or a SEF. They do not apply to bilateral, off-exchange trades conducted in accordance with Commission rules.

Now, taking each of the three types of prohibitions in turn, the highlights include the following: First, with respect to the prohibition on violating bids or offers, the interpretative statement makes several points clear. When a person buys on a registered entity higher than the lowest price offered or sells lower than the highest priced bid, the Commission's
interpretation is that the law is violated regardless of the person's intent. This conduct is disruptive. It impedes the price discovery function, and therefore, Congress made this a per se or strict liability offense.

The interpretive statement also makes clear the Commission's policy that there are limitations on the reach of this first category. For example, as to SEFs, the prohibition on violations of bids and offers applies only when a person is using the SEF's order book but not with respect to other SEF execution methods such as a request-for-quote system. The provision also does not create a best execution standard between different trading platforms within a particular DCM or SEF or across multiple registered entities.

Second, with respect to the prohibition concerning orderly execution during the close, the interpretive statement makes clear that the Commission interprets this to cover not only intentional but also reckless conduct. It also makes clear that the violative conduct does not
1 necessarily have to be undertaken during the
2 closing period. Reckless, a common term in the
3 law, means conduct that departs so far from the
4 standards of ordinary care that it is very
difficult to believe the actor was not aware of
what he or she was doing.

7 The closing is a particularly important
8 period because many derivative contracts are
9 valued based upon closing period prices. The
10 interpretive statement confirms what the
11 Commission understands closing period to mean in
12 the context of this provision. As to what is
13 orderly, the interpretive statement highlights
14 that the fundamental concepts of orderly trading
15 are similar in the CFTC regulated markets and the
16 securities markets and that there is a substantial
17 body of judicial precedent applying the concept of
18 orderly trading in the securities markets. The
19 interpretive statement sets forth the policy of
20 the Commission to be guided by, but not controlled
21 by, that precedent.

22 Third, with respect to the prohibition
of spoofing and similar practices, the interpretive statement makes clear that the Commission intends to apply the provision only when the actor engages in intentional conduct. It does not cover reckless conduct. This limitation flows directly from the statute. The interpretive statement states that the Commission's position that it intends to employ -- let me start that again.

The interpretive statement states the Commission's position that it intends to employ this prohibition against a person who at the time he or she places an order intends to cancel it prior to execution. The interpretive statement provides that the statutory prohibition applies to conduct on all registered entities, regardless of the trading system. It can apply to partial fill situations, and it can apply to one instance of misconduct or to a pattern. On the other hand, the interpretive statement makes clear that the Commission does not intend to apply the prohibition to good faith order cancelations or
modifications.

The statement lists four possible examples of violations under this spoofing paragraph of the provision but these are just by way of example, and they do not limit the Commission's authority to consider the facts and circumstances of a given situation to determine whether the conduct meets the elements of the law as provided by Congress. One of the Commission's core missions is to protect against disruptions of market integrity. In that vein, staff believes that this interpretive statement, which takes into consideration comments that we have received and constructive dialogue with commissioners will help market participants abide by the law.

I'd like to thank my staff colleagues who worked on the interpretive statement and other prior initiatives on this project and on this subject, Vince McGonagle and Bob Pease from the Division of Enforcement.

With that, I'll entertain any questions that you may have.
CHAIRMAN GENSLER: I'll entertain a motion to adopt the staff recommendations on disruptive trading practice guidance.

COMMISSIONER SOMMERS: So moved.

COMMISSIONER O'MALIA: Second.

CHAIRMAN GENSLER: I support the interpretive guidance and policy statement with regard to disruptive trading practices for swap execution facilities in designated contract markets.

As part of reform, Congress actually included a new section about various abusive practices, the three that Mr. Meister just went through, and expressly prohibited certain activity. And what we found after Dodd-Frank passed is many market participants asked what does this mean? And we went out and we actually had a lot of discussions, and we had an advance notice that we put out with 17 or 20 questions. Is that right, David?

MR. MEISTER: I think it was 19, Mr. Chairman.
CHAIRMAN GENSLER: Nineteen questions.

We had a roundtable, and I think separately it also probably came up at the Tech Advisory Committee a number of times as well if I remember, Commissioner O'Malia.

But based on that roundtable and the advanced notice and some of the advisory committee, then we put out this proposed interpretive guidance. And I think that it's helpful to the markets. The guidance addresses the comments the Commission received during that process, and I support it. And I have a longer statement that will go in the record but I'm going to let others ask you questions.

Commissioner Sommers.

COMMISSIONER SOMMERS: Thank you, Mr. Chairman. I just have a couple of questions. One is specifically to the disregard for orderly execution of transactions during the closing period, and the guidance recommends that market participants should assess market conditions. And I'm just wondering if you could give us a little
bit of color on that because market conditions are constantly changing and one market participant's view of a market condition versus another one could be very different. How are we going to evaluate whether a market participant adequately assessed market conditions?

MR. MEISTER: The guidance provides the language that you're talking about. I look at that in terms of the overall interpretive statement that says that this applies to reckless conduct. And reckless is defined in the rule, as I said, it's sort of department very far from the standards of ordinary care. And so under the law what people do in determining whether or not someone acted recklessly is they look at what did the person observe? What did the person try to observe? You know, what is the evidence that reflects on the person's mental state? One thing that we suggest, and the statement says that one ought to look at is, you know, what does the market look like at the time that you're entering the market. It's really -- that's a long way of
saying it's really all wrapped up in an assessment of whether or not one acts recklessly.

And as I say, the word "recklessly" is a common word in the law. It appears also actually in the Commodity Exchange Act as well, and it appears in many statutes across the spectrum of the law and ultimately the assessment of whether or not someone acts recklessly does depend upon, in part, what the person knew and was observing at the time.

COMMISSIONER SOMMERS: I also wonder, because our registered DCMs did comment during this process and I wonder whether or not we've reviewed the exchanges' trade practice rules to make sure that this guidance, it doesn't conflict with what exchanges might have in their own rules.

MR. MEISTER: We certainly did review all of the comments. We received more than 50, and we received some, I agree, from registered entities. It's the goal of this guidance to give the market and market participants an understanding as to how we interpret the statute.
But I will say that whether or not the interpret
-- I'm sorry, whether or not the statute conflicts
with a DCM's rule -- and I'm not saying that it
does -- we would still be bound to apply the
statute as written.

COMMISSIONER SOMMERS: Of course. I'm just saying if perhaps something that may be
conflicting or confusing in an exchange rule, you
know, conflicts with the guidance that we've given
here, you know, I assume that the Exchange will
just have to change their rule.

MR. MEISTER: I think that's -- I would agree. I mean, if the Exchange has written a
rule, say, making lawful spoofing, just by way of
example, but without getting into something
granular or some sort of conduct that violates
congressional statute, I think it would behoove
them to change the rule as well.

CHAIRMAN GENSLER: Thank you,
Commissioner Sommers.

Commissioner Chilton.

COMMISSIONER CHILTON: Thank you, Mr.
Chairman. Mr. Meister, with regard to the
"cheetahs", with regard to HFTs, you know, since
they don't have phone messages that we would, you
know, recordings that we would get or maybe
instant messages, what sort of circumstantial
evidence would you look for for spoofing for those
guys?

MR. MEISTER: Thank you, Commissioner.
Your question about circumstantial evidence is a
good one. Just to remind everyone, under the law
the weight of circumstantial evidence and the
weight of direct evidence is the same. And what
we would -- and we often, in the Division of
Enforcement, rely on circumstantial evidence.
Circumstantial evidence can take various forms,
including pattern of trading. It could include,
you know, for example, how a particular algorithm
is coded. For example, if an algorithm was coded
to cancel trades from the get-go. In other words,
if an algorithm was coded that before an order was
placed there was an intent to cancel it, then that
would be a level of circumstantial evidence that
COMMISSIONER CHILTON: Thank you. I'll 

put on my Scott O'Malia hat for a minute. Do we 

have the tools, the technology tools to really 

detect this sort of in a real-time -- on a 

real-time basis? I mean, I know we can go in and 

respond to complaints, referrals that we get, but 

do we have at this point the technology tools 

available to detect this? I'm particularly 

interested in it, by the way, during the closing 

period. I think you addressed this a little bit 

but give me a little bit more flavor.

MR. MEISTER: With respect to the 

surveillance tools that we have, I don't have a 

DMO colleague sitting next to me here. You know, 

so I just don't have a direct answer to your 

question.

CHAIRMAN GENSLER: Rick Shilts, do you 

want to come up to the table?

Sorry, David. You seemed to call out 

for a lifeline. You get two more lifelines.

MR. MEISTER: It was a phone a friend.
MR. SHILTS: Yeah. I guess the short answer is no, we don't have that capability. To a large extent it would involve looking at messaging data, which is something we're just starting to look at and we would need more people that are familiar with algos, you know, computer programmer types that would be able to look at that. So that's something that we would be wanting to do down the road but as I think we mentioned at the last -- as Commissioner O'Malia asked, we're now working to integrate our oversight of SEFs. We're also trying to integrate SDR data into our oversight of the swaps markets and the futures markets. So frankly, I don't see with our current resources that's something that we'll have the capability to do in the near term.

COMMISSIONER CHILTON: Mr. Shilts, if you want to answer this one too then, because my next question was about the prohibition on violating bids and offers operate sort of a SEF world. And you know, where there's no best execution requirement. How does this work in the
SEF world? And maybe back to you, David. I'm sorry, whoever.

MR. MEISTER: That's okay. I'll take it. The violation -- you're talking about the first paragraph of the provision, which makes it a prohibitive practice to violate bids or offers. That works in the SEF world only with respect to the order book. It doesn't work with respect to RFQs.

COMMISSIONER CHILTON: Okay. I do think it's significant that, you know, what Mr. Shilts just said is we don't have the tools to stop this stuff. So we can put the rule in place or we can put your guidance in place and it's concomitant with all the other rules but the bottom-line is, you know, we may not be able to catch these people until we go after them and it could be a long time. So it's just another really shout out to Congress to say if you want us to abide by our rules, you want us to be able to enforce this, we need the technology tools and the people power to do so.
1 Thank you.

2 CHAIRMAN GENSLER: Thank you,

3 Commissioner Chilton.

4 Commissioner O'Malia.

5 COMMISSIONER O'MALIA: He actually said

6 that he was intentionally going to proffer me on

7 that question. He should be brought up on

8 charges.

9 So I do have a number of questions.

10 David, I've sent you a list of three ATS

11 strategies which I think probably I'll give to the

12 reporter. I don't want to have to go through

13 these, but you and I -- I sent you the specific

14 strategies.

15 MR. MEISTER: The ones you sent me last

16 night?

17 COMMISSIONER O'MALIA: Yeah.

18 MR. MEISTER: Yes.

19 COMMISSIONER O'MALIA: Strobing,

20 priority positioning or laddering, and front

21 running. You've had the opportunity to review

22 those. These are a variety of different
strategies that involve high level cancelations,
flashing liquidity and pulling it back real quick.
Where does that fall in terms of our guidance?
Maybe if you could kind of go by each strategy. I
mean, if we try to explain it here it might be a
little difficult.

CHAIRMAN GENSLER: And David, as you
think that through I'm just asking unanimous
consent to put those three things fully in the
record.

Hearing no objection --

COMMISSIONER O'MALIA: I've got actually
a pretty good little explanation on each one of
them.

CHAIRMAN GENSLER: All right. So
they'll all go fully in the record. Thanks.

MR. MEISTER: What's going to go in the
record is as sent to --

COMMISSIONER O'MALIA: As sent to you.
The questions I sent to you.

MR. MEISTER: Okay. So your first
category concern is labeled strobing. I can't
1 tell you I've had a ton of opportunity to consider
2 it but it does -- something that leaps out with
3 respect to strobing, which as described in this
4 document is an HFT strategy that rapidly sends and
5 cancels the same order many times to create the
6 false appearance of liquidity. That one certainly
7 seems like a problem to me under the provision.
8 And I would be thinking about the third category
9 of the provision which concerns spoofing because I
10 think what this is talking about is intentionally
11 placing an order with an intent to cancel it
12 before execution, which would meet the
13 prohibition's language.

14 COMMISSIONER O'MALIA: So in this they
15 do flash orders. They just do it quickly. And if
16 they are lifted then that obviously -- the intent
17 to cancel is, you know, that intent seems to be
18 mitigated if they actually did get lifted. This
19 is a tough one to solve and obviously a tough one
20 to describe in terms of what good and bad behavior
21 is. So wouldn't the response be, well, we are
22 placing orders. The question is how fast do they
get out.

MR. MEISTER: Right. I think that's a very good question and good to clarify here.

The offense is complete if someone places an order with the intent to cancel it at the time it's placed. It doesn't -- I would suggest to you that it's not a defense if, in fact, that order is ultimately executed on. Just like, for example, in manipulation space just by way of analogy, sometimes people will try to manipulate the market by putting in orders to move a market price. That's not spoofing; that's in the manipulation space. It's not a defense if, in fact, that order is executed on. That just so happens. Perhaps it's the cost of doing business. But so with respect to your question, I don't think that it's a valid defense to say, oh, the order was executed on.

I should also point out that just so the record is clear here, your definition or this strobing hypothetically talks about an intent to create a false appearance of liquidity. That is
not a necessary element of spoofing.

COMMISSIONER O'MALIA: That's good to know. Thank you.

Do you want to address either priority positioning in laddering or front running?

MR. MEISTER: With respect to laddering -- and maybe I should just read what is laddering here.

COMMISSIONER O'MALIA: Sure.

MR. MEISTER: It says it's an HFT strategy for highly liquid markets, extracts profits from a market by using speed to gain superior positioning. This strategy adds very little or no benefit or even harms the marketplace as it seeks to intercept trading that would otherwise take place and extract profits from the system without participating in the transference of risk.

This one we would have to study further. This certainly suggests there may be a market structure issue and may well violate other provisions in the act, but one question that would
come to my mind is whether or not there was a disruptive -- this was disruptive of orderly execution in the close. I don't see in the hypothetical on the other hand, if you were trying to analyze this under spoofing, whether there was an intent to cancel. So it raises questions in my mind but I wouldn't be able to answer those questions here on the spot.

COMMISSIONER O'MALIA: Fair enough.

MR. MEISTER: And then with respect to the last point, which is front running, and I'll just read that quickly, front running defined here is an HFT strategy that relies on ultrahigh speeds to observe a trade take place in the marketplace that they took no part in so as to rush and buy or sell the underlying stock or future in front of the anticipated forthcoming hedge orders. I read this to say there's some strategy to watch trading take place, to sort of make observations about what trading is taking place and then once you get that observation you take advantage of the information that you've gathered.
Again, for this one I'd want to study this further. I don't see anything about -- on the spoofing side about intending to cancel orders, so that seems out. But with respect to does it -- and I'll assume there's no violation of bids or offers, which is a per se event. So again, it just raises a question about whether this is during the close and whether the trading conduct disrupts orderly execution.

COMMISSIONER O'MALIA: Now, you brought up disruptive trading in the closing period. And since trades outside the closing period may affect the trading during the closing period, the portion of the rule effectively applies to all trading activities taking place on the registered entity's order book. Is that correct? Because we say anything -- doesn't the guidance say that there is a closing period and if you execute trades outside the closing period that affects the closing period then that, too, would be considered affecting the close? Is that how you interpret it?

MR. MEISTER: Yeah. It's conceivable
1    that conduct that occurs outside of the closing
2    period could disrupt the orderly execution. And
3    the way the statute is written it makes sense to
4    consider conduct that occurs outside as possibly
5    disruptive.

6              COMMISSIONER O'MALIA: Would it possibly
7    include trading that occurs in the open might
8    affect the close? Is that how broad this is?
9              MR. MEISTER: I wouldn't limit it.
10    First of all, you keep on saying trading and I
11    keep on saying conduct. Conduct outside the close
12    can disrupt the close. Could it be conduct during
13    the opening? I guess it would depend upon the
14    facts and circumstances. Obviously, as you get
15    further and further away of a closing period on a
16    particular day it gets harder to prove that
17    someone was acting recklessly with respect to the
18    close. And we would certainly take that into
19    consideration.

20              COMMISSIONER O'MALIA: And this is one
21    of your facts and circumstances kind of guidances?
22              MR. MEISTER: That would certainly
depend upon the facts and circumstances.

COMMISSIONER O'MALIA: What about the practice of multiple trading strategies within a firm and kind of coming back to trade the S&P. If there were an equity strategy and a commodity strategy and they happened to cross in the S&P, same firm but different trading strategies and they essentially cross themselves in the S&P but executing different strategies on different markets, do you believe that's disruptive?

MR. MEISTER: I think you're talking about again about disrupting the orderly execution during the close. Just to be clear, there's the violation of bids or offers, there's disrupting the close, and then there's spoofing. There's no cancelation in your hypothetical. And I'm assuming you're not worried about violating bids and offers. So you're talking about if there was disruption of a closing period because two different strategies from the same company hit themselves during the close. We would look at whether or not there was -- whether it was
1 disorderly and whether the conduct was reckless.

2 COMMISSIONER O'MALIA: Would it be under
3 your new manipulation authorities a violation?
4 MR. MEISTER: Under the new manipulation
5 authorities there is, you know, that prohibits,
6 again, all reckless conduct or reckless conduct
7 but there has to be some level of deception in the
8 fraud-based manipulation space. So we would opt
9 to see whether or not there was some sort of
10 deception of the market in that context.

11 COMMISSIONER O'MALIA: Are there any
12 other authorities that that would be illegal?
13 MR. MEISTER: Well, if a firm is meeting
14 itself, it raises questions about whether there's
15 a wash trade problem. That comes to mind. You
16 know, I'd have to crack the book to look for
17 others.

18 COMMISSIONER O'MALIA: I should have put
19 that in my written submissions for you.
20 MR. MEISTER: And frankly, what you say,
21 when we look at facts we sort of look at the facts
22 carefully and then we look to see whether or not
there are any prohibitions that are violated.

COMMISSIONER O'MALIA: As I said in my
opening statement, you know, I'm pleased that we
have reserved some activities and clarified that
they are not captured into this disruptive. I
think we have a long way to go in terms of really
illuminating where this authority starts and
stops. And we attempted to do some of that here,
obviously. But, you know, the market, there's a
lot of gray area in this one and hopefully we'll
continue to define the space a little better so
everybody understands where good and bad behavior
resides. So I appreciate your looking at those
strategies and giving me your assessment. I look
forward to following up with you on those. Thank
you.

MR. MEISTER: Thank you.

CHAIRMAN GENSULER: Thank you,

Commissioner O'Malia.

Commissioner Wetjen.

COMMISSIONER WETJEN: I don't have any
questions. Thanks.
CHAIRMAN GENSLER: All right. If there are no amendments, absent hearing any amendments, Ms. Jurgens.

MS. JURGENS: This is a vote on the anti-disruptive practices authority -- interpretive guidance and policy statement.

Commissioner Wetjen.

COMMISSIONER WETJEN: Aye.

MS. JURGENS: Commissioner Wetjen, aye.

Commissioner O'Malia.

COMMISSIONER O'MALIA: Aye.

MS. JURGENS: Commissioner O'Malia, aye.

Commissioner Chilton.

COMMISSIONER CHILTON: Aye.

MS. JURGENS: Commissioner Chilton, aye.

Commissioner Sommers.

COMMISSIONER SOMMERS: Aye.

MS. JURGENS: Commissioner Somers, aye.

Mr. Chairman.

CHAIRMAN GENSLER: Aye.

MS. JURGENS: Mr. Chairman, aye. Mr. Chairman, on this question the ayes have five,
nos have zero.

CHAIRMAN GENSLER: The vote being unanimous, with any technical corrections, Mr. Meister, if you can send this along with the secretary to the Federal Register.

Before I ask for a motion to adjourn I just want to again thank all of the staff. This is a very significant day for this Commission and I think for the American public that a market that is measured in vast numbers, nearly $20 of swaps for every dollar in our economy, we took a step closer today to enhance transparency, both after the transaction and before the transaction. And I know a lot will be written about whether the request-for-quote model was two, three, or five, and it seems that that's caught a lot of public attention. I frankly think that's only part of the story, and it's a small part of the story. I think what we really did today said swap execution facilities can come alive, compete with each other, provide transparency to the markets, that everybody in the marketplace is going to benefit
and have an opportunity, that the block swap rule
set appropriate, that approximately half the
market will benefit from greater post-trade
transparency and later after a transition,
two-thirds. I think these are very significant
accomplishments for the American public and
deliver on what Congress asked for. And I know
all five Commissioners have spent it feels like a
lifetime on this particular set of rules.

I want to thank Commissioner O'Malia who
first led the way in how to do a swap execution
facility rule because I know we spent a lot of
time.

I want to thank Commissioner Chilton,
who, though he lost his stepdad just a week ago,
has really participated, but also over these last
three and a half years, really looking out and I
think Bart, you really brought many excellent
suggestions to this rule. I know as you said, it
wasn't exactly the rule you would have wanted.

Commissioner Wetjen, you and I have
spent more time on this rule probably than any
other rule but I think we found the appropriate balance. I really do, and I know we both seem to be getting some press over this but I really think this rule brings the appropriate transparency to the markets.

   Commissioner Sommers, although you didn't necessarily support the final rule, all of your suggestions were helpful. I think particularly on the international front we made really good progress in making this rule more accessible internationally. And I'm going to miss you as a Commissioner here. You have served the American public for -- what is it, seven years?

   COMMISSIONER SOMMERS: Six years.

   CHAIRMAN GENSLER: Six years. Since the day Bart was sworn in. And you've really served the public, and we all owe you a closing round of applause.

   (Applause)

   CHAIRMAN GENSLER: Do you want to say anything before I take a motion to adjourn?

   Motion to adjourn the meeting.
COMMISSIONER SOMERS: So moved.

COMMISSIONER O'MALIA: Second.

CHAIRMAN GENSLER: All in favor?

COMMISSIONERS: Aye.

CHAIRMAN GENSLER: The meeting is adjourned. Thank you.

(Whereupon, at 2:20 p.m., the PROCEEDINGS were adjourned.)

* * * * *
CERTIFICATE OF NOTARY PUBLIC

DISTRICT OF COLUMBIA

I, Debra S. Derr, 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: March 14, 2014