

UNITED STATES OF AMERICA
COMMODITY FUTURES TRADING COMMISSION

PUBLIC MEETING

Washington, D.C.
Wednesday, October 30, 2013

1 PARTICIPANTS:

2 Commission Members:

3 GARY GENSLER, Chairman

4 BART CHILTON, Commissioner

5 SCOTT D. O'MALIA, Commissioner

6 MARK WETJEN, Commissioner

7 Presentation No. 1: Final Rule on Enhancing
8 Protections Afforded Customers and Customer Funds
9 Held by Futures Commission Merchants and
Derivatives Clearing Organizations:

10 GARY BARNETT
11 Division of Swap Dealer and Intermediary
Oversight

12 THOMAS SMITH
13 Division of Swap Dealer and Intermediary
Oversight

14 KEVIN PICCOLI
15 Division of Swap Dealer and Intermediary
Oversight

16 ANANDA RADHAKRISHNAN
17 Division of Clearing and Risk

18 ROBERT WASSERMAN
19 Division of Clearing and Risk

20 PHYLLIS DIETZ
21 Division of Clearing and Risk

22 STEPHEN KANE
Office of the Chief Economist

1 PARTICIPANTS (CONT'D):

2 Other Participants:

3 MELISSA JURGENS
Secretary of the Commission

4
5 CHRISTOPHER KIRKPATRICK
Deputy Secretary of the Commission

6

7 * * * * *

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

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

2 (9:45 a.m.)

3 CHAIRMAN GENSLER: Good morning. This
4 meeting will come to order. This is a public
5 meeting of the Commodity Futures Trading
6 Commission.

7 I'd like to welcome the public, market
8 participants, and members of the media, as well as
9 those listening to this meeting through phone and
10 webcast. I'd like to thank Commissioners Chilton,
11 O'Malia and Wetjen for their contributions to this
12 rule writing process and the CFTC's hard working
13 and dedicated staff.

14 This final set of customer protection
15 reforms comprehensively enhances the protections
16 around the handling and segregation of futures and
17 swaps customer funds.

18 This is a public meeting, I should say,
19 that's partially Dodd-Frank related, because it
20 relates to swaps funds. But if you noted, I
21 didn't say this was a Dodd-Frank meeting. This is
22 really just solely about customer funds and

1 customer protection, and that's because
2 segregation of customer funds is the core
3 foundation of the commodity futures and swaps
4 markets. Segregation must be maintained at all
5 times. That means every moment of every day.

6 Market events, though, of these last two
7 years highlighted that the Commission must do
8 everything within our authorities and resources to
9 strengthen oversight programs and protection of
10 customer funds. And today's reforms are the sixth
11 set of rules finalized by this Commission if we
12 move forward to finalize them, during a two-year
13 process to ensure that customers have the
14 confidence that their funds are segregated and
15 protected.

16 These reforms benefit from the
17 Commission's thorough review of the existing
18 customer protection rules, really looking for any
19 gaps in those rules and the oversight of these
20 markets.

21 They benefit from significant public
22 input, including staff roundtables, the technology

1 advisory committee -- I thank you, Commissioner
2 O'Malia -- the agriculture advisory committee
3 meetings, and numerous reports submitted by market
4 participants.

5 They also benefit from input throughout,
6 a coordinated effort of the CFTC with other
7 regulators, the self-regulatory organization such
8 as the CME and the National Futures Association
9 and also, congressional reports and input on these
10 matters.

11 I will be supporting today's rules, and
12 in summary, at least for six reasons. They're
13 quite comprehensive, but the six that I want to
14 highlight.

15 One: FCMs, clearing members have to
16 significantly enhance their supervision of and
17 accounting for customer funds. They will have to
18 put in place additional policies and procedures
19 for these new protections.

20 Two: There is a significant set of
21 enhancements around outside accounting and
22 auditing. First, that the actual accountant or

1 CPAs that look at futures commission merchants,
2 but also, with regard to the self-regulatory
3 organizations and how they audit the FCMS.

4 Three: The significant customer funds
5 changes -- or significant changes with regard to
6 how funds have been moved around. It's basically
7 when a firm moves money within a firm, how can
8 they move that money around? Some of these were
9 adopted by self-regulatory organizations, the
10 withdrawal of 25 percent or more and the
11 pre-approval of those movements of monies. But
12 there are significant protections with regard to
13 the movement of these monies, and related to this
14 acknowledgement letters from the banks, as well,
15 acknowledging how those monies are done.

16 Fourth relates to investing in
17 international futures accounts. Our Part 30
18 regime really had not kept pace or kept up with
19 the protections in domestic futures accounts. And
20 with these reforms today and the reforms that the
21 NFA had put in place earlier, investing in foreign
22 futures accounts will be significantly aligned

1 with the protections. They won't be identical,
2 but they'll be significantly aligned with the
3 protections for domestic futures accounts.

4 Fifth, there's significant new
5 transparency, transparency to the regulators that
6 we will be able to see electronically, along with
7 the self-regulatory organizations to see custodial
8 accounts and cash accounts on a daily basis, and
9 transparency to the public, as well, with the
10 twice a month statements of what's in the
11 investment accounts themselves.

12 These reforms also have been put in
13 place by the self-regulatory organizations, but
14 it's important that we do this at the federal
15 level, as well, and put it in our rules.

16 And then sixth, the final rules include
17 provisions on capital and residual interest of the
18 FCMs themselves. Quite possibly the most debated
19 features of these reforms, but I think they're
20 important reforms, as well.

21 And in response to comments on this
22 provision, we are phasing in compliance to smooth

1 implementation, and as the staff will present,
2 calling for significant new studies and
3 roundtables on these matters, and providing for a
4 five year phase-in on these matters.

5 But I think it is important that we look
6 very closely at the law, the law that's been in
7 place for some time, and align and ensure that one
8 customer's funds or property are not used in some
9 way to secure or guarantee other people's
10 accounts.

11 Now, prior to this final rule set, the
12 commission has already made important improvements
13 to protection of customers, and in a longer
14 statement for the record, I'd go through that, but
15 it's really a remarkable achievement, and I want
16 to thank my fellow commissioners, a commissioner
17 -- I see a former commissioner, Mike Dunn, here,
18 Commissioner Jill Sommers, as well, because this
19 has been a two-year journey, and this is the sixth
20 set of rules that we're considering, and I think
21 were well needed to do that.

22 Before I turn it to my fellow

1 commissioners, am I supposed to do this other
2 intro thing, or do it after that?

3 STAFF: Do it after.

4 CHAIRMAN GENSLER: I do it after. All
5 right. So, then I turn it to you, Commissioner
6 Chilton.

7 COMMISSIONER CHILTON: Thank you, Mr.
8 Chairman. So you know, one of the sort of strange
9 things you do, particularly like you're coming
10 from a staffer on the Hill, and then you get
11 confirmed, is you actually stand up there and you
12 do this oath thing, and it's a little strange,
13 because you haven't done it before. You've seen
14 lots of witnesses do it.

15 So, we all took this oath to uphold the
16 Constitution, but also to up hold the Commodity
17 Exchange Act. And a lot of times over the years,
18 I found myself and my commissioner colleagues
19 probably have too, where it's like, well, I don't
20 really like the law so much, but it's the law.
21 And so you've got to deal with it.

22 Sometimes, the law leaves lots of

1 latitude for attitude. Sometimes, we can mess
2 around with it a little bit. Other times, not so
3 much. And on this one, not so much. It's really
4 pretty clear that we are supposed to protect
5 customer funds all the time. In fairness, we
6 haven't done as well, if you look at the history,
7 as I think we should have. This rule gets to
8 where we need to be. It comports with the law.
9 It protects customers.

10 Now, there's been some discussion lately
11 about how this may impact particularly the Section
12 4d stuff with regard to whether or not it would
13 negatively impact end users, particularly farmers
14 and ranchers, folks who many of us, but certainly
15 me, hold near and dear to my heart, and I agree
16 with them on most policy, and I agree with them on
17 this one.

18 But I disagree with the outcome of what
19 the rule does, because this is precisely to
20 protect farmers, ranchers and end users from an MF
21 Global or Peregrine type situation. No longer
22 will people be able to use at FCMs, the money as

1 sort of a slush fund to comingle it and just say,
2 well you owe margin, but somebody else doesn't owe
3 margin, so we'll just let it float. Everything's
4 going to be copacetic.

5 The law says we can't do that. So,
6 that's what I'm looking at. This will protect
7 farmers. It will protect ranchers. It will
8 protect end users in the energy and the metals
9 sector. So I think it's a good rule. I
10 appreciate the time that everybody has spent on
11 it. I appreciate what my colleagues have done.

12 And the last thing, by the way, is --
13 and I'm not trying to foretell what we might do,
14 but we always deal with exemptive relief given
15 unforeseen circumstances. If something is
16 technologically impractical, if there is some
17 reason that we have not anticipated, and we have
18 not anticipated a lot of them in the past, but if
19 there's some reason that something is not
20 anticipated, sure, we'll consider whether or not
21 there's appropriate relief.

22 But at this year, there is a year

1 implementation period, and then there's five years
2 -- heck, none of us may be here in five years. A
3 lot of members of Congress, some would even hope,
4 are gone in five years. Congress can change the
5 law if they want, but our job is to uphold the
6 law, and that's what this rule does. Thank you.

7 CHAIRMAN GENSLER: Commissioner Chilton,
8 I thank you, and Commissioner O'Malia.

9 COMMISSIONER O'MALIA: Thank you, Mr.
10 Chairman. I'd like to thank the staff for their
11 hard work on this customer protection rule. This
12 has been almost a year -- what a year and a half,
13 two years in the making? So, obviously, the
14 number of staff, DSIO, DCR, OGC, have all
15 contributed to this rulemaking, and in the wake of
16 the global crisis, it is important to intensify
17 regulatory efforts to strengthen customer
18 protection policies in order to promote financial
19 stability of the derivatives market.

20 There is no dispute. Customer
21 protection must be the cornerstone of the
22 Commission's oversight. Sound customer protection

1 policies and measures to improve the efficiency
2 and transparency of financial markets are
3 critically important. I do not disagree at all
4 with that.

5 I do support several provisions of the
6 rule that allow customers greater insight into the
7 operations of an FCM. Provisions include improved
8 FCM disclosure regime that will give customers new
9 and critical information about their FCM
10 exposures, eliminate the alternative method for
11 calculating segregation for 30.7 funds. These are
12 the foreign futures that the Chairman spoke about.

13 Improved reporting of segregated fund
14 balances and enhancement to risk management
15 procedures. I support all of those. However, my
16 main concern with the draft rule is in the radical
17 interpretation of the longstanding residual
18 interest deadline. This reinterpretation
19 decreases the time for which customers' margin
20 calls must arrive at their FCMs from the current
21 three days to just one day.

22 Such a change would mean a significant

1 increase in the prefunding of margin, perhaps
2 nearly double based on some of the reports we've
3 received. As a result, many small agri-business
4 hedgers will have to consider alternative risk
5 management tools, or even worse, they could be
6 forced out of the market.

7 Now, I recognize the Commodity Exchange
8 Act does not permit an FCM to use the money of one
9 customer to margin the futures and options of
10 another customer. However, I believe that the
11 Commission in deciding whether to reinterpret this
12 provision must make a decision based on the facts
13 and data. Therefore, I am proposing an amendment
14 that would continue to make progress in
15 accelerating the collection of customer funds from
16 three days after the settlement date to just one
17 day ending at 6 p.m. eastern.

18 Just like the final rule, the amendment
19 would be phased-in over one year following the
20 date of publication of the rules in the Federal
21 Register. And just like the draft final rule, the
22 amendment would also require a study to determine

1 the feasibility of changing the collection date,
2 and the cost associated with such a move.

3 The main difference between my amendment
4 and the draft rule is my amendment does not
5 mandate that in five years' time, customers will
6 need to meet the margin obligations by the end of
7 the settlement cycle. The amendment simply lets a
8 future Commission make a determination about the
9 best way to proceed after it has collected all of
10 the evidence.

11 In other words, the amendment does not
12 bias a study with an outcome that has been
13 previously determined. Instead, my amendment
14 would ask a future Commission to perform the
15 analysis and decide at that point, analyzing it
16 against future technology and payment
17 methodologies, what the best course of action
18 should be. This way, the future Commission can
19 make an informed and unbiased decision.

20 If the Commission votes for my
21 amendment, I'd be happy to support this rule.
22 Again, I want to express my thanks for the

1 Commission staff for their effort on this rule,
2 and let me close by thanking so many of the
3 division staff from the Division of Enforcement
4 who have devoted their long hours to bring recent
5 charges against Rabobank and all the other LIBOR
6 settlements.

7 Their work must be recognized by the
8 Commission and as the work of the staff from OGC
9 and DMO, as well. But I'd like to particularly
10 address the folks from OCE -- I mean, Division of
11 Enforcement for their work to bring these cases to
12 secure the settlements and change the behavior.

13 So with your indulgence, Mr. Chairman,
14 let me just recognize the names here. Anne
15 Termine, Stephen Tsai, Maura Veihmeyer, Phillip
16 Tumminio, Tim Kirby, Jonathan Huth, Brian
17 Mulherin, Rishi Gupta, Aimee Latimer-Zayets, Jason
18 Wright, Elizabeth Padgett, and Terry Mayo. These
19 are the folks that have been very engaged working
20 to support this Commission and to bring these big
21 settlements, which are very important and will
22 have a big change in the market. So, I want to

1 just recognize them for their hard work in the
2 trenches. Thank you very much, Mr. Chairman.
3 That's all I have.

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

6 COMMISSIONER WETJEN: Thank you,
7 Chairman Gensler, and my thanks to the
8 professional staff for their hard work on the
9 important final rule we are considering today
10 regarding customer protection.

11 The CFTC's core mission is to protect
12 futures and swap customers from fraud,
13 manipulation, abusive practices, and systemic
14 risk. In pursuing this mission, it is vital that
15 the Commission unceasingly look to update and
16 improve the protections we have in order to better
17 protect the public and ensure the safety,
18 soundness, and integrity of those operating in the
19 derivatives marketplace.

20 The final customer protection rule
21 before us today requires important improvements to
22 a range of protections that have been implemented

1 by the Commission and industry in recent months.
2 It fills certain remaining regulatory gaps to
3 prevent future failures in the FCM community and
4 enhances nearly every protection afforded
5 customers of FCMs and the futures and cleared
6 swaps markets. Customers will benefit from
7 enhancements to FCM risk management programs,
8 modernized audit programs and streamlined measures
9 will better insulate customers from fellow
10 customer risk.

11 The residual interest provisions have
12 been the most discussed part of the proposal. The
13 Commission received a significant number of
14 comment letters in response to that proposal which
15 would have required FCMs to maintain at all times,
16 enough residual interest in their segregated
17 accounts to cover all customer margin deficits.
18 That approach was intended to limit fellow
19 customer risk by ensuring that one customer would
20 in no circumstance be responsible for unwittingly
21 covering another customer's margin obligations.

22 Although the proposal offered one

1 permissible construction of the Commodity Exchange
2 Act, it suffered from some practical shortcomings.
3 Those practical shortcomings, in my judgment, are
4 appropriately addressed in the document before us
5 today.

6 For example, many suggested that the At
7 All Times requirement under the proposal likely
8 would have imposed significant capital costs on
9 FCMs, which could have led to the unintended
10 effect of limiting access to the derivatives
11 markets. Many contended that this would be too
12 high a price to pay when measured against the
13 corresponding benefit of mitigating fellow
14 customer risks. The Commission has considered
15 these comments and has taken a different approach
16 in today's release.

17 The compromise reflected in the final
18 rule is intended to usher in improvements to
19 margin collection practices over time and to
20 protect access to the markets for a broad
21 cross-section of participants. It will better
22 protect the excess segregation funds of a customer

1 in the event of an FCM bankruptcy.

2 It also will encourage FCMs to more
3 actively monitor customer accounts for instances
4 when those accounts are undermargined. And
5 finally, it will incentivize FCMs to address those
6 circumstances when an account is undermargined.
7 Together, these enhancements will better protect
8 the safety and soundness of the FCM.

9 Importantly, the commission has given
10 itself sufficient time to evaluate the FCM
11 community's progress in implementing the residual
12 interest policy in the final rule and to change
13 course, if necessary. Indeed, the phased
14 compliance schedule provided in today's release
15 was a critical component of getting to this final
16 compromise on residual interest.

17 That compromise is reasonable and
18 measured. For one year, there will be no change
19 to current practice with respect to the treatment
20 of residual interest. After that year, FCMs will
21 be required to comply with the residual interest
22 requirement as of the close of business on the day

1 following the margin deficit calculation. This is
2 a necessary and significant change to current
3 market practice.

4 Thirty months after today's release is
5 published, Commission staff is obligated to
6 conduct a study determining the feasibility,
7 costs, and benefits of moving the residual
8 interest deadline to the completion of the first
9 clearing settlement cycle following the trade day.
10 The study will be published for public comment,
11 and a public roundtable will be held to solicit
12 the views of market participants.

13 Finally, after five years, the residual
14 interest requirement will move up to the first
15 clearing settlement cycle of the day, typically
16 first thing in the morning, should the Commission
17 choose not to change course based upon
18 recommendations in the study or in reaction to
19 public at the roundtable. To be sure, if this end
20 state were implemented today, it would, no doubt,
21 create a significant cost to FCMs and to market
22 participants. The five-year phase-in period,

1 however, provides the industry an opportunity to
2 streamline margin collection practices and to take
3 advantage of any technological solutions that may
4 be developed in the meantime.

5 Equally important, today's release
6 ensures that future residual interest requirements
7 will not be imposed on the FCM community if the
8 facts on the ground regarding feasibility and cost
9 do not support it. It is important to note that
10 the study and roundtable are not optional, but
11 rather, mandated by law, which means that the
12 newly updated information will be brought to the
13 Commission before the phase-in period would end.

14 If the Commission decides that it is
15 appropriate to change the residual interest
16 deadline, the Commission may act nimbly and
17 implement a new compliance schedule for that
18 deadline by order without the procedural hurdles
19 of notice and comment. I am confident that if the
20 Commission is presented with convincing facts
21 through this process, it will be compelled to
22 respond appropriately.

1 All stakeholders in today's release,
2 including policymakers, FCMs, and their customers
3 rightly anticipate that new services and
4 technologies will provide solutions to today's
5 compliance challenges. I know that all of us not
6 only welcome those advancements, but hope they are
7 brought to market as quickly as practicable. The
8 approach of this rulemaking appropriately
9 incentivizes that outcome.

10 For that reason, I anticipate that
11 technological solutions will facilitate compliance
12 with residual interest requirements in the near
13 future for those who could not comply today. I
14 must point out that the comment file to this rule
15 suggests that the vast majority of the marketplace
16 could comply with more abbreviated timelines for
17 margin calls and payments today.

18 I also anticipate that the flexibility
19 built into this rule will help avoid the less
20 desirable alternative methods of compliance
21 suggested by commenters including self-funding or
22 pre-funding residual interest or margin

1 obligations, as some have predicted. To be more
2 clear, I strongly prefer and indeed, expect that
3 FCMS will not pursue these options in order to
4 comply with today's release. This judgment is
5 based in part on the rapid advancement and
6 settlement solutions in recent years, as well as
7 the fact that the latter options may not, all
8 things considered, be as commercially viable.

9 The expense of pre-funding margin
10 accounts was a special concern of the agricultural
11 community raised in their comments. I spent many
12 days with agricultural producers over the last
13 several months discussing this issue and others.
14 I met with a number of producers in my home state
15 of Iowa who actively used the derivatives markets
16 to hedge their production risks.

17 I have listened to and carefully
18 considered their concerns about the residual
19 interest requirement. Today's release takes those
20 concerns into account, and I believe that their
21 most pressing fears will not be realized because
22 of this rule. Meanwhile, even today, producers

1 can make intraday margin payments to FCMs through
2 banking or credit relationships once a margin call
3 is received.

4 Based on what I have learned over recent
5 months, these types of relationships are at a
6 minimum, common in the producer community, and
7 seemingly the norm for large producers. For those
8 producers who do not currently rely on these
9 services, again, I expect other solutions to
10 payment settlement will be offered or producers
11 will, in time, embrace those already available
12 with marginal added expense to them.

13 I also would like to clarify that
14 today's release does require FCMs to take a
15 capital charge for failure to meet its residual
16 interest requirement, but this falls on the FCM at
17 the close of business the day after its residual
18 interest obligation. Importantly, today's release
19 phases in the timing of this capital charge
20 obligation until one year after its publication in
21 the Federal Register, as some commenters
22 suggested.

1 Again, I'd like to thank the staff for
2 their work in putting together this balanced
3 approach. With the concerns about residual
4 interest properly addressed, I am happy to support
5 the final rule as an important step forward in the
6 Commission's ongoing effort to protect customers.

7 As a final note, I look forward to
8 taking up the Volcker Rule in the position limits
9 proposal by year end, along with a number of
10 Commission determinations on substituted
11 compliance. As I said at the time when we
12 finalized our cross-board guidance, those
13 determinations will benefit from as much
14 transparency as practicable. With that, I look
15 forward to supporting the staff's recommendations
16 on the rule, and turn it back over to the
17 Chairman. Thank you.

18 CHAIRMAN GENSLER: Thank you,
19 Commissioners Chilton, O'Malia, and Wetjen.
20 Before I turn it over to the staff, I did want to
21 address at least three other matters. We, this
22 morning, unanimously as a Commission actually

1 finalized two other rule sets. And since they
2 were noticed for this meeting, I just wanted to
3 inform the public of that.

4 One, is one of the five other matters
5 that we did to help customers and protect their
6 funds. It relates to the choice that customers
7 will have to segregate their collateral and funds,
8 which are called initial margins standing behind
9 swaps that are not cleared. Congress gave the
10 clear right of counterparties of swap dealers that
11 if they chose to, to have those funds segregated,
12 and I'm pleased to report that we unanimously
13 moved that this morning. And I think that that's
14 a key tenet to customer protection.

15 COMMISSIONER O'MALIA: Mr. Chairman, if
16 I may, on that point, I'd like to ask the staff a
17 couple of questions about that, when we get to add
18 the questions.

19 CHAIRMAN GENSLER: Absolutely. We have
20 the excellent staff here, and if we need to pull
21 in any in, we will pull them in, as well.

22 COMMISSIONER O'MALIA: No, no, they're

1 here, and I'm happy to support that proposal. But
2 there are a couple of questions I think we need to
3 look at.

4 CHAIRMAN GENSLER: Absolutely. And
5 another rule that we moved was out of the Division
6 of Market Oversight, our Chief Economist's Office,
7 and all of our surveillance teams across the
8 agency, and will help them, is what's called
9 ownership and control reporting. This has been on
10 our docket for four plus years.

11 We went out with an advanced notice of
12 proposed rule-making, a proposal, we re-proposed
13 it after some staff roundtables, and I'm glad to
14 say we again reached conclusion on that, which I
15 want to thank Commissioner O'Malia for his
16 doggedness on this. We will finally have in our
17 rule book that it's required to file these various
18 forms electronically. It will no longer be by
19 mail and fax.

20 I also want to thank staff. Many of the
21 things, even in this document today that we're
22 considering, is also to file things

1 electronically, which is the right place to be in
2 the 21st century. But also, the ownership and
3 control report will give us a greater window into
4 those parties that actually own accounts and
5 control those accounts, not only for positions,
6 but also, in the world of high frequency trading
7 for accounts that have high volume on a particular
8 day, but might end the day flat or without a
9 position. So, for the first time, we'll have that
10 enhancement and an ability to oversee markets.

11 I said there were three things. I also
12 wanted to, at this moment, give a public thanks to
13 my friend, my colleague, and a wonderful head of
14 the Division of Enforcement, David Meister,
15 because today is, in fact, his last day of service
16 at the CFTC.

17 And David, you brought tremendous
18 energy, wisdom, talent, yes, expertise from the
19 Southern District of New York, and I think you've
20 shown how it is to be a tough but fair prosecutor,
21 and you've lead a remarkable team, often strapped
22 with not enough resources, and I wish you well in

1 whatever your next professional adventures are.

2 So with that, I'm supposed to say some
3 things about what we're doing. I, at this point,
4 ask unanimous consent to allow staff to make
5 technical corrections to the documents voted on
6 today prior to sending them to the Federal
7 Register. Without objection, so ordered.

8 And then, I turn it over to Gary
9 Barnett, the head of our Division of Swap Dealer
10 and Intermediary Oversight, Tom Smith and Kevin
11 Piccoli, two of his key deputies. I know that
12 also here, Ananda Radhakrishnan, the head of the
13 Division of Clearing and Risk, and two of his key
14 deputies, Robert Wasserman and Phyllis Dietz will
15 be reporting. And then, Stephen Kane from our
16 Chief Economist's Office. Gary?

17 MR. BARNETT: Thank you, Chairman. I am
18 going to turn it over to Tom for our prepared
19 statements.

20 MR. SMITH: Mr. Chairman and
21 Commissioners, staff today is recommending that
22 the Commission adopt as final certain new

1 regulations and amendments to existing regulations
2 that enhance customer protection and the
3 protections for funds that customers deposit with
4 FCMs or are held by DCO. The document that you
5 have before you was prepared by staff in the
6 Division of Swap Dealer and Intermediary
7 Oversight, the Division of Clearing and Risk and
8 the Office of Chief Economist with substantial
9 contributions and counsel from many of our
10 colleagues in the Office of General Counsel and
11 the Division of Enforcement.

12 The customer protection rulemaking was
13 published for public comment on November 14th,
14 2012 and was in response to several market events
15 and FCM bankruptcies that highlighted weaknesses
16 in the current regulations and FCM monitoring
17 practices. In developing the customer protection
18 rulemaking, Commission staff conducted a
19 comprehensive assessment of how customer and
20 customer funds could be better protected under the
21 current statutory and regulatory structure through
22 appropriate rulemaking and SRO actions.

1 Over 120 written submissions were
2 received on the proposal and staff also met with
3 several commenters during the comment process.
4 Staff also has considered information obtained
5 during public roundtables and advisory committee
6 meetings in developing the recommendations that we
7 will discuss today.

8 Staff's recommendations also have been
9 influenced by the actions that SROs have already
10 taken to enhance customer protections. The final
11 regulations reflect the staff's efforts for a
12 comprehensive review of how to enhance customer
13 protections and the recommendations cover a broad
14 range of areas.

15 Specifically, the final regulations
16 would enhance customer protection by strengthening
17 the requirements on how FCMs and DCOs hold
18 customer funds and record obligations to customers
19 in their books and records, imposing risk
20 management requirements on how FCMs that hold
21 customer funds, revising the SRO and public
22 accounting examination process over FCMs,

1 requiring FCMs to provide additional disclosures
2 to customers and market participants to allow such
3 persons to make a more informed choice regarding
4 participating in the futures markets and in
5 selecting an FCM to entrust their funds, and
6 lastly, requiring FCMs to provide the commission
7 with additional information to assist with the
8 identification of potential risk to the financial
9 soundness of the FCM and ultimately, the
10 protection of customers and customer funds.

11 With respect to providing greater
12 protection to customer funds held by FCMs and
13 DCOs, the final regulations explicitly require an
14 FCM to compute its segregation requirement under
15 Regulation 1.20 using the net liquidating equity
16 method, and further provide that an FCM must hold
17 sufficient funds in segregation at all times to
18 meet the net liquidating equity requirement for
19 all of its futures customers.

20 The net liquidating equity method is
21 computed by aggregating the positive account
22 balances of each customer. This computation

1 ensures that the FCM holds sufficient funds in
2 segregation to meet the full account balances of
3 each customer with a positive account balance.
4 The regulation further provides that an FCM must
5 hold an amount of funds in segregation to cover
6 the net liquidating equities of all customers at
7 all points in time. End of day compliance is not
8 itself adequate. Now, this was already in the
9 Commission's -- or in the Act, but we decided to
10 make it explicit in the regulations, including the
11 actual calculation.

12 The final regulations also revise how
13 FCMs may hold funds for customers trading on
14 foreign markets and compute their obligations to
15 such customers under Part 30 of the Commission's
16 regulations. The revision more closely align the
17 Part 30 requirements with Part 1 requirements for
18 future customers and Part 22 requirements for
19 cleared swaps customers.

20 Specifically, the final regulations
21 eliminate the alternative method of computing the
22 amount of funds an FCM is required to hold in

1 secured accounts for Part 30 customers. Under the
2 alternative method, an FCM is only required to
3 hold in separate customer accounts an amount of
4 funds sufficient to cover the margin required on
5 open foreign futures and foreign options
6 positions, plus or minus any unrealized gains or
7 losses on such positions held by the customers.

8 The final regulation requires an FCM to
9 hold sufficient funds in secured accounts to meet
10 the total net liquidating equities of each of its
11 customers trading on foreign markets.

12 Second, it requires an FCM to include in
13 the account balances of both -- excuse me -- to
14 include the account balances of both U.S.
15 Domiciled customers and foreign domiciled
16 customers in determining the net liquidating
17 equity of customers trading on foreign markets.

18 Third, it prohibits an FCM from holding
19 a customer's non-futures foreign futures position
20 in a Part 30 secured accounts. The final rules
21 also restrict the amount of Part 30 customer funds
22 that an FCM may hold in depositories located

1 outside of the United States to the amount of
2 margin required by foreign carrying brokers or
3 clearing organizations, plus a 20 percent cushion
4 to allow FCMs to meet their business obligations
5 without the need for daily transfers of customer
6 funds from U.S. depositories.

7 And lastly, it prohibits an FCM from
8 waiving any protections afforded to the deposit
9 and holding of customer funds under the laws or
10 regulations of a foreign jurisdiction. The final
11 regulations also require an FCM to establish a
12 targeted amount of residual interest, i.e.,
13 proprietary funds, that the firm will hold in Part
14 1 and Part 2 customer segregated accounts, and
15 Part 30 secured accounts.

16 In determining the targeted residual
17 interest, an FCM must consider all relevant
18 factors impacting the firm's segregated accounts
19 including the nature of its customer base, trading
20 activities of customers, credit worthiness of
21 customers and types of futures markets traded by
22 the customers in determining the targeted residual

1 interest.

2 The analysis and calculation must be
3 described in writing with specificity necessary to
4 allow the commission and FCMs, DSROs to replicate
5 the calculation and test the assumptions made by
6 the FCM. The analysis and target also must be
7 reassessed periodically by the FCM. If the actual
8 amount of excess funds held in segregated or
9 secured accounts fall below the target amount, the
10 FCM is required to deposit additional proprietary
11 funds into the accounts prior to the close of the
12 next business day to restore the balance to the
13 targeted level.

14 An FCM also is prohibited under the
15 final regulations from withdrawing funds from
16 segregated or secured accounts where such
17 withdrawals are not for the benefit of the FCM's
18 customers, unless the FCM has completed its daily
19 segregation or secured amount computation, and the
20 computation verifies that the FCM holds excess
21 funds in the customer's segregated or secured
22 accounts.

1 The regulations also impose an
2 obligation on an FCM's management to actively
3 monitor material withdrawals from customers'
4 segregated or secured accounts by requiring that
5 the firm's senior management pre-approve any
6 withdrawal from customer segregated or secure
7 where such withdrawals or series of withdrawals
8 exceed 25 percent of the FCM's excess segregated
9 or secured funds, and the withdrawal was not made
10 for the benefit of the FCM's customers.

11 FCMs and DCOs also are required to
12 obtain an acknowledgement letter from depositories
13 that hold customer funds. The requirements for
14 the segregation acknowledgement letters will be
15 addressed by my colleagues from DCR.

16 And finally, the regulations have been
17 revised to require an FCM to use proprietary funds
18 to cover undermargined customer futures and Part
19 30 accounts. This issue also will be addressed by
20 my DCR colleagues.

21 In the area of risk management for FCMs,
22 new regulation 1.11 requires each FCM that holds

1 customer funds to establish and enforce a risk
2 management program designed to monitor and manage
3 the risks associated with the activities of the
4 FCM operating as an FCM. The risk management
5 requirement is based upon existing risk management
6 requirements for swap dealers under Commission
7 regulations.

8 The risk management program must be in
9 writing and approved by the governing body of the
10 FCM. The FCM must provide a copy of the risk
11 management program to the Commission and to the
12 firm's DSRO, and each FCM must establish a risk
13 management unit with sufficient authority,
14 personnel, financial, operational, and other
15 resources to carry out the risk management
16 program. This risk management unit also must be
17 independent of the business units.

18 Elements of the risk management program
19 are as follows: The risk management program must
20 take into account market, credit, liquidity,
21 foreign currency, legal, operational, settlement,
22 segregation, technological, capital, and other

1 applicable risks, together with the description of
2 the risk tolerance limits.

3 Risk tolerance limits must be reviewed
4 and approved quarterly by senior management and
5 annually by the governing body of the FCM, and the
6 risk management report must take into account risk
7 caused by affiliates, all lines of business of the
8 FCM and other trading activity engaged in by the
9 FCM, and must be integrated into risk management
10 at the consolidated level.

11 The risk management unit of the FCM must
12 provide senior management of the FCM and the
13 governing body with quarterly reports setting
14 forth applicable risk exposures of the FCM and any
15 recommendations regarding changes to the program.
16 The regulations require that risk management --
17 that the risk management program be reviewed and
18 tested on at least an annual basis or upon
19 material changes that alter the risk profile of
20 the firm, with results reported to the Chief
21 Compliance Officer, senior management, and the
22 governing body of the FCM.

1 The final regulations also include
2 amendments to the Commission's capital rules that
3 will assist or enhance FCM risk management
4 programs. First, the regulations require an FCM
5 to demonstrate upon a request of the Commission
6 with verifiable evidence that the FCM has access
7 to sufficient liquidity to continue to operate as
8 a going concern.

9 The capital regulation is also revised
10 to reduce the period of time that a margin call to
11 a customer, non-customer or omnibus account holder
12 can be outstanding before the FCM must take an
13 under margin capital charge. Current regulations
14 require that the FCM take a capital charge for
15 customer accounts if the margin call is not met
16 within three days of the issuance of the call.
17 Non-customer and omnibus accounts are subject to
18 an under margin charge after two business days.

19 Thus, for customer accounts that are
20 under margin at the close of business on Monday,
21 an FCM would issue a margin call on Tuesday and
22 take a capital charge at the close of business

1 Friday if the margin call was not met by the
2 customer. The revised regulations require the FCM
3 to take a capital charge for customer,
4 non-customer, and omnibus accounts if Tuesday's
5 margin call was not met by the close of business
6 on Wednesday.

7 Regarding SRO and public accountant's
8 examination process over FCMs, first, we'll talk
9 about public accountants. With respect to public
10 accountants and the FCM examination program, staff
11 recommends that the Commission adopt as final,
12 several amendments that will result in the
13 strengthening of the overall oversight of FCM's
14 compliance with Commission and SRO minimum
15 financial and related reporting requirements.

16 For public accountants, the final
17 regulations imposed requirements that are intended
18 to strengthen the quality of the auditors that are
19 permitted to conduct audits of FCM. The
20 regulations retain a current requirement that the
21 public accountant must be in good standing with
22 the appropriate state licensing authority. The

1 final regulations, however, further require that
2 the public accountant must be registered with the
3 public company accounting oversight board and have
4 undergone an inspection by the PCAOB. The
5 regulations also require a public accountant to
6 conduct its audits of FCMs using the audit
7 standards issued by the PCAOB.

8 Lastly, the public accountant may not be
9 subject to a PCAOB imposed temporary or permanent
10 bar resulting from a PCAOB disciplinary hearing.
11 The PCAOB registration and inspection requirements
12 enhance customer protections as the PCAOB conducts
13 a continuing program of inspection to assess the
14 degree of compliance of each registered public
15 accounting firm with the rules of the PCAOB, the
16 rules of the SEC or professional standards in
17 connection with the performance of its audits.
18 The PCAOB also is under the direct oversight of
19 the SEC, which approves its regulations.

20 In addition to the above, the
21 regulations also require an FCM's governing body
22 to conduct a separate assessment of otherwise

1 qualified public accountants. The regulations
2 require the governing body to consider, among
3 other factors, the CPA's experience in auditing
4 FCMs, the CPA's knowledge of the Commodity
5 Exchange Act and regulations and the depth of the
6 CPA's staff. Such a requirement helps to ensure
7 that an FCM's governing body is actively
8 participating in the appointment of a public
9 accountant to examine the financial statements of
10 an FCM.

11 With respect to the SRO examination
12 program, the current regulations require SROs to
13 adopt rules imposing minimum financial and related
14 reporting requirements. The amended regulations
15 expand the SRO's role and oversight of FCMs, which
16 will enhance protections of customers, and more
17 generally, market participants.

18 Specifically, the regulations require
19 SROs to adopt rules prescribing risk management
20 requirements from member FCMs. Such risk
21 management requirements must be at least as
22 stringent as the requirements contained in new

1 regulation 1.11. Each SRO also is required to
2 establish and operate a supervisory program that
3 includes written policies and procedures for the
4 purposes of assessing a member FCM's compliance
5 with SRO and commission minimum capital and
6 financial reporting requirements, the obligation
7 to properly segregate customer funds, risk
8 management requirements, record keeping, sales
9 practices, and other compliance requirements.

10 The supervisory program must be based on
11 controls testing and substantive testing, and must
12 address all areas of risk to which the FCM can
13 reasonably be foreseen to be subject. The
14 examination of each FCM must be based on the risk
15 profile of each member FCM. The SRO also is
16 required to file a copy of the supervisory program
17 with the Commission.

18 The supervisory program must conform to
19 auditing standards issued by the PCAOB, including
20 standards regarding training of staff, planning
21 and supervision of examination and documentation
22 of examination evidence.

1 To assess the adequacy of the
2 supervisory program, an SRO is required to engage
3 an examinations expert, which is defined as a
4 nationally recognized accounting or auditing firm
5 that has experience in the audit of FCMs and is
6 acceptable to the Commission. The SRO is required
7 to have the examinations expert evaluate the
8 supervisory program at least once every three
9 years.

10 The SRO is required to obtain a written
11 report from the examinations expert on the
12 findings and recommendations that includes a
13 statement that the examinations expert has
14 evaluated the supervisory program, including the
15 sufficiency of the risk-based approach and the
16 internal controls testing, and the application of
17 the supervisory program by the SRO.

18 The written report must also include an
19 analysis of the supervisory program's design to
20 detect material weaknesses in an entity's internal
21 control environment and contain a discussion of
22 any recommendations of new or best practices as

1 described by industry sources, including but not
2 limited to those from the American Institute of
3 Certified Public Accountants, the Public Company
4 Accounting Oversight Board, the Institute of
5 Internal Auditors and the Risk Management
6 Association.

7 Finally, the final regulations continue
8 to provide that any two or more SROs may file with
9 the Commission a plan for delegating to a DSRO the
10 function of monitoring and examining an FCM that
11 is a member of both SROs.

12 Switching to additional disclosures to
13 customers, with respect to providing customers
14 with additional risk disclosures, the final
15 regulations include additional risk disclosures
16 that are intended to enhance customer protections
17 by providing customers and prospective customers
18 with additional information regarding the risks of
19 engaging in futures transactions.

20 The final regulations are directly drawn
21 from staff's experience with the customers
22 impacted by the bankruptcies of MF Global, and are

1 designed to address specific misconceptions that
2 customers had regarding the protections that were
3 received in the event of an FCM bankruptcy.

4 The new disclosures include statements
5 that, one, customers funds are not protected by
6 private or public insurance generally; and to the
7 extent that a DCO does have a compensation plan,
8 the customer should fully understand the extent of
9 the coverage of such plan.

10 Two: That futures customer funds held
11 in futures accounts by a dual registrant FCM BD
12 are not protected by the Securities Investor
13 Protection Corporation.

14 Three: Customer funds lost by an FCM
15 are not guaranteed by DCOs. And lastly, that
16 customer funds may be comingled with other
17 customer funds by an FCM, i.e., there is no
18 universal individual segregated accounts.

19 Each FCM also is required under
20 regulation 1.55 to provide customers with
21 additional firm specific disclosures intended to
22 provide customers with information about the firm

1 that would be relevant to the customer's decision
2 to entrust customer funds with the firm. Such
3 disclosures include general information regarding
4 the FCM, including the name, title, business
5 background, and areas of responsibility of each
6 person that is defined as a principal of the firm;
7 the types of businesses the FCM engages in; the
8 material risk of entrusting customer funds to the
9 FCM, including the nature of investments made by
10 the FCM with customer funds; and any material
11 administrative, civil enforcement, or criminal
12 complaints or actions filed against the FCM that
13 have not concluded.

14 The regulation also requires each FCM to
15 place on its website financial information that
16 would be available to customers and potential
17 customers. This would include daily segregation
18 computations, monthly financial statement data,
19 and certain statements and schedules from the
20 firm's certified annual report.

21 Additional information that FCMs will be
22 required to report to the Commission under the

1 final rules include amending the financial
2 reporting required by FCMs to prepare a new
3 cleared swap segregation schedule, and to require
4 that all segregation and secured schedules report
5 targeted residual interest levels.

6 Amending regulation 1.32 to require an
7 FCM to file its daily segregation schedules with
8 the Commission and with the firm's DSRO each
9 business day in electronic format.

10 Amending regulation 1.10 to revise the
11 form 1FR FCM balance sheet to provide transparent
12 reporting of the FCM's assets and liabilities to
13 cleared swap customers and liabilities to retail
14 foreign exchange customers, and the amount of
15 funds in designated accounts to meet the FCM's
16 obligation to retail forex customers as required
17 by regulation 5.8.

18 Amending regulation 1.10 to reduce the
19 time frame for stand-alone FCMs to file their
20 certified annual reports from 90 days to 60 days
21 after the year end date.

22 Amending regulation 1.10 to require each

1 FCM to provide a calculation of its leverage ratio
2 to the Commission on a monthly basis.

3 And lastly, requiring FCMs to provide
4 additional regulatory notices under regulation
5 1.12 to provide a more effective early warning
6 system including notice of a violation of the
7 standards for permitted investments under
8 regulation 1.25; notice of a violation of the
9 segregation requirement for cleared swap
10 transactions, and thirdly, notice of a material
11 adverse event at an FCM.

12 That concludes the discussion of the
13 customer protection rulemaking, and I can pass it
14 over to my DCR colleagues for seg acknowledgement
15 letters and for residual interest.

16 MR. RADHAKRISHNAN: Thank you. Before I
17 hand it over to my colleagues, I think it would be
18 very illuminating for members of the public, for
19 me to read Section 4d of the Commodity Exchange
20 Act, because as Commissioner Chilton correctly
21 pointed out, we have to administer the law. I'm
22 not saying that the Commission does not, but it

1 would be good for the public to know and for the
2 record to know what the section says. So, I'm not
3 going to read all of it, but just the relevant
4 part.

5 4d says, it shall be unlawful for any
6 person to be a futures commission merchant unless
7 you're registered as such with the CFTC. That
8 makes a lot of sense. And your registration has
9 not been expired or has been suspended. Also
10 makes a lot of sense.

11 Second, that person, that FCM, shall
12 treat and deal with all money, securities, and
13 property received by such person, i.e., the FCM,
14 to margin, guarantee, or secure the trades all
15 contracts of any customer of such person or
16 accruing to such customer as the result of such
17 trades or contracts as belonging to such customer.

18 It further goes on to say, such money,
19 securities, and property shall be separately
20 accounted for and shall not be comingled with the
21 funds of such Commission merchant -- here's the
22 punch line -- or be used to margin or guarantee

1 the trades or contracts or to secure or extend the
2 credit of any customer or person other than the
3 one for whom the same are held.

4 In other words, you don't use A's money
5 to margin, secure, or guarantee the contracts of
6 B. So, it's important to keep that in mind in the
7 context of the rules that the Commission is
8 considering today. I'm going to hand it over to
9 Phyllis Dietz who is going to talk about
10 acknowledgement letters that FCMs and DCOs are
11 obliged to get from depositories, and then Bob
12 will talk about the residual interest proposal.
13 Thank you.

14 MS. DIETZ: Good morning. The customer
15 protection final rulemaking before the Commission
16 includes amended regulations governing the
17 acknowledgement letters that FCMs and DCOs must
18 obtain from depositories holding customer funds.
19 The purpose of the acknowledgement letters is to
20 put the depository on notice that the funds held
21 in the customer account must be treated in
22 accordance with applicable segregation

1 requirements under the Act and Commission
2 regulations.

3 The regulations, among other things,
4 require the use of a template letter that is
5 included in the appendices of the specific
6 regulations, 1.20, template letters for futures
7 and cleared swaps, 1.26, letters for investments
8 of customer funds, and 30.7 relating to secured
9 amounts.

10 There are a total of six letters, four
11 to be used by FCMs and two to be used by DCOs.
12 Certain provisions of the letters are identical,
13 but there are differences among the letters to
14 accommodate their usage in connection with
15 different customer accounts.

16 In addition to acknowledging the
17 segregation requirements applicable to the FCM or
18 DCO customer account, the letters include
19 provisions that enhance the commission's ability
20 to identify and respond to potential problems in
21 the treatment of customer funds by FCMs, DCOs, or
22 the depositories themselves.

1 For example, the FCMs in their letters
2 authorize the depository to reply promptly and
3 directly to requests for account information from
4 the CFTC or the FCM's DSRO; to provide the CFTC
5 with read-only access to transaction and account
6 balance information for customer accounts and to
7 permit customer accounts to be examined by the
8 CFTC or the FCM's DSRO.

9 I would like to highlight just two
10 provisions in the acknowledgement letter that
11 received a number of public comments. The first
12 is the language related to permissible liens on
13 the customer account. The second is the standard
14 of liability of the depository in relying on the
15 -- applied to the depository in relying on the
16 account holder's representation that the FCM or
17 DCO complies with the Act and CFTC regulations.

18 With respect to liens on the customer
19 account, the final template letters have been
20 modified to incorporate certain recommendations
21 from commenters. The proposed provision permitted
22 a depository to recover funds advanced in the form

1 of cash transfers it makes in lieu of liquidating
2 non-cash assets held in the account for purposes
3 of variation settlement or posting initial margin.

4 So that we do not unintentionally
5 exclude similar situations that would be
6 permissible within the same legal construct, the
7 final letters now provide that the depository has
8 the right to recover funds advanced in the form of
9 cash transfers, repurchase agreements, or other
10 similar liquidity arrangements the depository
11 makes in lieu of liquidating non-cash assets,
12 which as proposed -- and now, in response to
13 commenters, in lieu of converting cash held in the
14 account to cash in a different currency.

15 We have also eliminated the specific
16 references to the use of the funds for variation
17 settlement or posting initial margin because it is
18 implicit that the uses can only be legally
19 permitted ones, and we do not want to
20 unintentionally limit otherwise permissible
21 practices.

22 As a final matter, I note that we have

1 not changed our position that the depository may
2 not extend credit to the FCM and take a lien on
3 the customer account. This includes extending
4 credit to the FCM to fulfill the FCM's obligation
5 to a DCO to post customer margin.

6 With respect to the standard of
7 liability provision and the depository's
8 contractual reliance on the FCM or DCO account
9 holder to comply with the customer funds
10 segregation requirements, we have modified the
11 standard of liability provision to now provide:
12 The depository may conclusively presume that any
13 withdrawal from the accounts and the balances
14 maintained therein are in conformity with the Act
15 and CFTC regulations without any further inquiry,
16 provided that in the ordinary course of the
17 depository's business as a depository, it has no
18 notice or actual knowledge of a potential
19 violation by the FCM or DCO accountholder of any
20 provision of the Act or the CFTC regulations that
21 relates to the segregation of customer funds.

22 And then unchanged is the following

1 clause: And the depository shall not, in any
2 manner not expressly agreed to in the letter be
3 responsible to the FCM or DCO accountholder for
4 ensuring compliance by that accountholder with the
5 provisions of the Act or CFTC regulations.

6 Among the changes is the removal of the
7 proposed language that would have held the
8 depository to the additional standard of, could
9 not reasonably know of a violation of the act,
10 which commenters said would greatly expand the
11 scope of the depository's responsibility for the
12 actions of its accountholders, and would create
13 uncertainty as to the level of additional
14 diligence that would be necessary to meet the
15 standard.

16 As an additional matter, we have added a
17 clause providing that the conclusive presumption
18 of the FCM or DCO's compliance does not affect any
19 obligation the depository may otherwise have under
20 the Act or CFTC regulations. This distinguishes
21 between the contractual standard and the "knew or
22 should have known" standard to which the

1 Commission would hold the depository under the Act
2 and CFTC regulations, and which is independent of
3 anything in the template letters. That concludes
4 my summary. Thank you.

5 MR. WASSERMAN: Thank you. As the
6 Chairman and Tom just discussed, in the aftermath
7 of MF Global, staff undertook a comprehensive
8 analysis of customer protection. And one issue we
9 identified was a tension between current practice
10 with respect to customer margin deficits and the
11 requirements of Section 4d of the Act that Ananda
12 just read out to us.

13 I should note that there is a
14 distinction between a debit balance, and that's
15 where the customer actually has a negative balance
16 and owes the FCM money, and a margin deficit. And
17 that's where a customer has a positive balance.
18 So, if I as the customer have \$80 in my account,
19 but the margin requirement for my positions is
20 \$100, I have a positive balance, but I have a
21 margin deficit.

22 So, in terms of the statutory

1 requirement, I guess one way of looking at this is
2 that an FCM is prohibited from using Peter's
3 margin surplus to cover Paul's margin deficit,
4 using the context you're not supposed to rob Peter
5 to pay Paul.

6 And there's an inescapable mathematical
7 fact. The margin a DCO requires to collateralize
8 Paul's positions comes from one of only three
9 possible sources. It either comes from Paul
10 himself, but if Paul's undermargined, then he
11 hasn't been able to do that. It comes from the
12 FCM's own capital, which capital when deposited in
13 segregation we're referring to here as the
14 residual interest, or it's got to come from the
15 excess margin of other FCM customers, who I'm
16 referring to here as Peter. And 4d says that
17 that's simply not supposed to happen.

18 The question comes up, well, what's the
19 harm? Why do we care if we collateralize Paul's
20 positions with Peter's excess collateral? The
21 harm comes if the FCM enters into bankruptcy. And
22 indeed, it's that concern that animates all of our

1 segregation rules.

2 So, the FCM is in bankruptcy. Peter's
3 excess is being used at the clearinghouse to
4 margin Paul's positions. And it's not available
5 to be transferred for the benefit of Peter. It is
6 going to be retained by the clearinghouse to
7 protect itself, or, if Paul's positions are
8 transferred, they'll be accompanied by the
9 required collateral, some of which came from
10 Peter. And if Paul's positions lose money, then
11 Peter may be permanently out of pocket until and
12 unless the trustee recovers from Paul.

13 Now, Congress enacted this prohibition
14 back in 1936 in response to concerns that FCMs
15 were using the margin taken from one class of
16 customers to extend credit for margin for the
17 trades of others. So indeed, we have in the
18 Congressional record, that concern expressed by
19 Senator Pope of Idaho.

20 And indeed, the original regulations
21 enacted in 1937 provided that the net equity of
22 one customer shall not be used to carry the trades

1 or contracts or to offset the net deficit of any
2 other customer of person. In other words, the
3 prohibition applied not only to offsetting net
4 deficits of other customers, but also, to
5 something else, carrying the trades of other
6 customers.

7 Now, reference to net equity was dropped
8 in 1981 regulatory changes addressing options, and
9 we looked, and neither the adopting release nor
10 the proposing release indicated any intent to
11 actually alter or modify these existing
12 segregation requirements for futures.

13 Now, the rule proposal back in 2012
14 noted that this requirement applies "at all
15 times." And as I'll discuss further below,
16 commenters based many of their calculations of
17 costs on that language, that it's the "at all
18 times" requirement that was causing particular
19 problems.

20 The commenters discussed the practical
21 difficulties of a continuous calculation
22 requirement, describing it as a constantly moving

1 target. Other commenters pointed out that
2 customer collateral isn't really used until
3 settlement. And indeed, when we look at the
4 statutory prohibition, the prohibition is on use.
5 And so, if Paul's trading generates an increased
6 margin requirement on Monday, the margin would not
7 be sent upstream to the clearinghouse, it would
8 not be used until settlement on Tuesday morning.

9 And so a point in time approach removes
10 what one commenter described as the predictive
11 element of FCM funding requirements; that is,
12 there's no need to maintain real time funding as
13 markets are moving constantly, creating gains and
14 losses. And this point in time approach permits
15 markets to, as the commenters noted, reap the
16 efficiencies of end-of-day accounting.

17 Now, industry commenters noted that a
18 point in time approach with a deadline of
19 end-of-day on T plus one, in our example, covering
20 Monday's margin deficit, which is paid Tuesday
21 morning by end-of-day on Tuesday would minimize
22 these costs. A few other commenters suggested

1 that the correct approach was the one consistent
2 with the approach currently being followed in the
3 swaps context under LSOC, with residual interest
4 covered by the time of settlement.

5 A number of commenters urged that
6 addressing these issues would require years to
7 implement, and others urged further study of the
8 effects of these changes. The draft before you
9 draws from a number of these suggestions. The
10 implementation scheme in that draft is designed to
11 balance respect for the statutory requirement of
12 avoiding the use of one's customer's collateral to
13 margin another customer's positions with the goal
14 of being sensitive to costs.

15 It follows an implementation schedule
16 that is parallel to that adopted by the Commission
17 for setting the de minimis amount for swap dealing
18 in the entities definition. And so, broadly, 1.22
19 c(1) requires a calculation of each customer's
20 undermargined amount, if any, based on a
21 comparison of collateral required for the
22 customer's positions versus the customer's net

1 liquidating equity. Margin required, what the
2 customer has.

3 C(2) requires each FCM to calculate,
4 based on the information available to the FCM at
5 the close of each business day, the undermargin
6 amounts calculated based on the clearing initial
7 margin that would be required for the next day's
8 settlements. And again, that information is
9 calculated based on the information available to
10 the FCM at the close of business day.

11 C(3) requires the FCM to maintain, by
12 the residual interest deadline, residual interest
13 in seg funds that is at least equal to the
14 computation set forth in c(2), but reduced to take
15 into account payments received from undermargin
16 customers before that deadline. So in other
17 words, you're making the calculation based on the
18 information available at close of business Monday.
19 You get to take into account payments that you
20 received after that point before the residual
21 interest deadline.

22 And that residual interest deadline is

1 defined in (c)5. Starting one year after
2 publication, the deadline would be 6 p.m. on T
3 plus one consistent with some of the commenter's
4 suggestions. So in other words, 6 p.m. on
5 Tuesday.

6 Absent contrary action by the
7 Commission, the residual interest deadline moves
8 on December 31st, 2018, that is in about five
9 years, to the time of settlement, which is
10 essentially where the statute points us and was
11 noted by some other commenters. Now, I should
12 note before I go on that the proposal before you
13 benefits from information provided in the comments
14 about costs and a very detailed cost-benefit
15 analysis.

16 But in addition to that, the staff is
17 directed to complete and publish for public
18 comment a report addressing the practicability for
19 both FCMs and customers of this move. That is, of
20 moving the deadline from 6 p.m. to the time of
21 settlement or to some other time of day, including
22 whether and on what schedule it would be feasible

1 to do so, and the costs and benefits of those
2 potential requirements, and the deadline for that
3 report is in two and a half years.

4 Nine months after publication of that
5 report, the Commission may terminate the phase-in
6 period, but on no less than a year's notice. That
7 would bring that five-year deadline in somewhat,
8 although when you add it all up, it could be
9 really by no more than about nine months. Or, to
10 determine to propose through rulemaking a
11 different residual interest deadline, in which
12 case, the Commission shall establish, by order, a
13 phase-in schedule. So, that phase-in schedule, in
14 other words, would be with the proposal, but would
15 not need to wait until a final adoption for that
16 new phase-in schedule to be established by order.

17 I should note, also, that the residual
18 interest requirements set forth in 1.22(c) overlap
19 with the targeted residual interest that Tom was
20 discussing in 1.23. And so for instance, if an
21 FCM has a target residual interest amount of
22 \$800,000 and they meet that target, and an

1 aggregate of undermargin amounts of \$600,000, that
2 is to say something less, then they would not need
3 to maintain as a result of this rule, 1.22(c),
4 anything more in the way of residual interest than
5 the amount they're already maintaining. In other
6 words, there's an overlap here, and so we really
7 shouldn't double count.

8 If the target were, say, \$700,000, but
9 their requirement after considering the payments
10 coming in from undermargin customers were a
11 million, then they would need to add that \$300,000
12 to top up. In summary, we have endeavored to
13 balance the statutory provision prohibiting the
14 use of one customer's margin to guarantee
15 another's positions within an implementation path
16 that is designed to be as practicable as possible.
17 Thank you.

18 CHAIRMAN GENSLER: Thank you. I will
19 now entertain a motion to accept the staff
20 recommendation concerning customer protection.

21 COMMISSIONER CHILTON: So moved.

22 CHAIRMAN GENSLER: And is there a

1 second?

2 COMMISSIONER O'MALIA: Second.

3 CHAIRMAN GENSLER: There is a second.

4 As I said, I'm going to support these rules. I do
5 have a few questions, if I can, just for the
6 record. First is, there's three different types
7 of accounts that we now have in our regulatory
8 regime. And I'd better make sure I'm right about
9 this, but domestic futures, if I can say it in a
10 colloquial way -- is that right? So it's under
11 this Part 4d, foreign futures under Part 30. Is
12 that right Ananda?

13 MR. RADHAKRISHNAN: Correct.

14 CHAIRMAN GENSLER: And then something
15 called a cleared swaps account. Is that --

16 MR. RADHAKRISHNAN: Correct.

17 CHAIRMAN GENSLER: And that's Part 22.
18 Is that right?

19 MR. RADHAKRISHNAN: Correct.

20 CHAIRMAN GENSLER: So there's three
21 different types of accounts that if a dealer --
22 I'm sorry, an FCM goes into bankruptcy, need to be

1 protected and segregated. So, my question for
2 you, if I go through the six things that were in
3 my opening statement, can you just tell me, do we
4 cover all three accounts, or is it covered
5 somewhere else? So, that's going to be -- I just
6 want to make sure.

7 So, we have enhanced in these rules
8 significantly the supervision and accounting for
9 all of the customer funds. I think it's in
10 Section 1.11 and elsewhere, I mean, throughout.
11 Is all of that we do, Kevin Piccoli, Tom Smith,
12 cover all three of the types of accounts?

13 MR. SMITH: Yes, it covers all three.

14 CHAIRMAN GENSLER: All right. I just
15 think I know the answers, but I just want to make
16 sure. We, in these rules, if we adopt them, have
17 significant enhancements about outside accountants
18 and outside auditors and the CPA and what the
19 self-regulatory organizations need to do. Will
20 that cover all three types of accounts?

21 MR. SMITH: Yes, it goes to the firm, so
22 it covers all three accounts.

1 CHAIRMAN GENSLER: Okay. We've, of
2 course, done something about foreign futures
3 accounts and changed a lot about foreign futures.
4 So, I guess that only goes to foreign futures, or
5 does that go to the others, as well?

6 MR. SMITH: It goes only to foreign
7 futures, and it aligns it more closely with the
8 domestic accounts and cleared swaps.

9 CHAIRMAN GENSLER: Now, I'm getting to
10 the little trickier ones. We have a lot, and I
11 can't remember the sections, about acknowledgement
12 letters that Phyllis did, and also, about the
13 movement of money that, if you're going to take
14 more than 25 percent out of what's called the
15 residual interest, a senior officer has to sign
16 some paperwork and so forth, whether it's in
17 acknowledgement letters or the movement of monies,
18 does that go to all three types of accounts?

19 MR. SMITH: Yes, with respect to the
20 segregation letters, it's all three accounts. And
21 with respect to the movement of funds and the 25
22 percent restrictions, it's all three accounts.

1 CHAIRMAN GENSLER: All right. With
2 transparency, we have a lot in here about
3 transparency. The transparency that regulators
4 can see on a daily basis, the accounts at the
5 custodians, but also, that the public gets every
6 15 days some transparency. Do those two pieces of
7 transparency go to all three accounts?

8 MR. SMITH: Yes.

9 CHAIRMAN GENSLER: All right. We're
10 pretty good so far. Now we have the hard one,
11 Ananda, maybe. This whole issue of residual
12 interest and capital the FCM has to have, and
13 whether they're collecting margin in one day or
14 three days, these related issues, Bob or Ananda?

15 MR. WASSERMAN: So, I'll let Tom speak
16 to the capital point. With respect to the
17 residual interest requirement, I discussed what
18 the requirement is with respect to Part 1, the
19 domestic futures. With respect to cleared swaps,
20 in the implementation of the cleared swaps
21 customer collateral rules last year, we had the
22 opportunity to get folks doing it right as the

1 system was being built, including through working
2 with industry and a staff interpretation, and so
3 that is already there. And so for them, there's
4 no change to be made, because they're already
5 there. With respect to Part 30 --

6 MR. RADHAKRISHNAN: Tell him what --

7 MR. WASSERMAN: Yeah, there, that is to
8 say, at time of settlement.

9 CHAIRMAN GENSLER: Before you get to
10 Part 30, so for cleared swaps accounts, based upon
11 the rules this Commission adopted in Part 22 and
12 various interpretations subsequent, you're saying
13 it's already at, as you call it, time of
14 settlement so that Peter can't use Paul's money?

15 MR. WASSERMAN: Yeah, just so.

16 CHAIRMAN GENSLER: Okay. That's where
17 we might get to in five years for these other
18 accounts?

19 MR. WASSERMAN: Yeah.

20 CHAIRMAN GENSLER: Or is it -- I'm
21 sorry, I interrupted. Will you do the foreign
22 futures and the domestic futures?

1 MR. WASSERMAN: All right. So with
2 respect to the foreign futures, we have two
3 differences. One: You don't have the same
4 statutory requirement, so we're not essentially
5 bound by the statute there. On the other hand, we
6 have, as has been discussed here, a desire to try
7 and keep things somewhat consistent between the
8 various models.

9 Moreover, you've got an additional
10 complication with foreign futures, which is the
11 clock as the world turns. And so, if you were
12 going to try and get things done by time of
13 settlement in Europe, it would need to be in the
14 middle of the night, and in Asia, it would need to
15 be the prior evening. And so, because of those
16 practical issues and because of the statutory
17 difference, staff proposed that we stop at 6 p.m.
18 Eastern time with respect to foreign futures.

19 CHAIRMAN GENSLER: So, I take it that
20 cleared swaps, we've already, through rule and
21 interpretation and industry practice are at the
22 settlement time, which is, in essence, the next

1 morning.

2 MR. WASSERMAN: Right.

3 CHAIRMAN GENSLER: For foreign futures,
4 we have the 6 p.m. cut-off, and for domestic
5 futures, we have the 6 p.m. cut-off for five years
6 and a study and so forth, which in December of
7 2018, unless the Commission acts otherwise, would
8 go to the settlement time.

9 MR. WASSERMAN: Yeah, yeah.

10 CHAIRMAN GENSLER: Okay. All right, I
11 just -- and I'm sorry, Tom. Did you have
12 something on these three accounts?

13 MR. SMITH: Yeah. With respect to the
14 undermargined capital charge that today firms take
15 on Friday and the example of the account going
16 undermargined on Monday, that applies to the
17 foreign futures Part 30 account and to the 4d seg
18 account. It does not apply to the Part 22 cleared
19 swaps account.

20 That was included in the Commission's
21 proposed amendments to the swap dealer capital
22 rules, and we incorporated that in the FCM

1 requirements, because FCMs could be swap dealers.
2 So, that's something that staff still has to
3 complete.

4 CHAIRMAN GENSLER: I see. So that's
5 still an open item until the Commission completes
6 capital rules --

7 MR. SMITH: That's correct.

8 CHAIRMAN GENSLER: -- for swap dealers.
9 So that's yet to be addressed, because it's open.

10 MR. SMITH: Correct.

11 CHAIRMAN GENSLER: In another docket.

12 MR. SMITH: Yes.

13 CHAIRMAN GENSLER: I see. All right, I
14 thank you. I have a question about
15 acknowledgement letters, and I don't know if
16 anybody from the Division of Enforcement is here.
17 Maybe not. Well, Phyllis, you get to speak for
18 the Division of Enforcement. Does the Division of
19 Enforcement believe that these acknowledgement
20 letters are where they want it to be and that they
21 work and sufficiently protect customer funds?

22 MS. DIETZ: Yes. They are comfortable

1 with that, and we've fully vetted this. I should
2 actually thank -- you remind me, the Division of
3 Enforcement and the Office of General Counsel for
4 their consultation on this. Yes, they are
5 comfortable.

6 CHAIRMAN GENSLER: Carlene, anything you
7 want to add?

8 MS. KIM: (No response)

9 CHAIRMAN GENSLER: You're good. All
10 right. Then, I wanted to turn to this topic of
11 residual interest and just thank the staff. I
12 have to say, I did not, when we proposed this,
13 anticipate as much debate. But that's why it's
14 good to have an Administrative Procedures Act, and
15 that we go out and we get -- I think we've
16 benefited greatly from this discussion and debate.

17 The reason I say I didn't anticipate
18 quite the activity is because the law seems, as
19 Ananda read, quite clear that one's not to use one
20 account, as Bob Wasserman said, Peter's money or
21 Paul, or was it Paul for Peter? And I was very
22 glad that we were able to benefit from so much

1 input about this, and there's a clear statement in
2 the document as a threshold matter. I'm reading
3 page 175, but it's in the preamble.

4 And as noted above, the Commission
5 reiterates that the act expressly prohibits an FCM
6 from using the collateral of one customer to
7 margin, secure, or guarantee the trades or
8 contracts of other customers.

9 And then, the remarkable work, Jonathan,
10 a shout out to whomever in the Office of General
11 Counsel or the Division of Clearing and Risk who
12 did this research of the 1930s and got Senator
13 Pope's statements and the head of the Grain
14 Futures Administration's statement and so forth.
15 What's that?

16 MR. WASSERMAN: That was Evan Winerman
17 in OGC who did some really, really excellent --

18 CHAIRMAN GENSLER: Right.

19 MR. WASSERMAN: -- almost archaeological
20 research.

21 CHAIRMAN GENSLER: Right. I thank Evan
22 for that, because it really is, as Commissioner

1 Chilton says, what is the law and then, how does
2 that affect customers? And I think that there is
3 a good balancing of the statute and the practical
4 realities of the marketplace with this five-year
5 phase-in, and I think that really is, as
6 Commissioner Wetjen said -- I think his words
7 were, a compromise, but I think it's the right
8 balance with a lot more study and roundtables and
9 a Commission that can still take action three to
10 four years from now, based on that study and as
11 technology continues to change.

12 Technology is very different today than
13 the 1930s, but it will again be different in four
14 years, as well. And I'm struck, as Commissioner
15 Wetjen said, but I'll ask the staff about his
16 comment about that -- actually, because of
17 technology, a lot of counterparties and customers
18 are able to do their margin calls even before the
19 6 p.m. at this point in time. Is that as we
20 understand it?

21 MR. RADHAKRISHNAN: That's our
22 understanding. There's something called a wire

1 transfer.

2 CHAIRMAN GENSLER: What's that? I'm
3 sorry?

4 MR. RADHAKRISHNAN: There's something
5 called a wire transfer.

6 CHAIRMAN GENSLER: Wire transfer.

7 MR. RADHAKRISHNAN: Transfer money. You
8 don't even need to write a check anymore. You
9 just transfer money through wire.

10 CHAIRMAN GENSLER: But I do think
11 leaving it right now at the five years is good.
12 David Meister, Division of Enforcement, are you
13 all right with the acknowledgement letters?

14 MR. MEISTER: Yeah, we are.

15 CHAIRMAN GENSLER: We are. One of his
16 last statements at a Commission meeting. So then,
17 I move to my last question, and then I'll turn it
18 over to my fellow Commissioners.

19 If you were discussing this with a
20 farmer or a rancher or a my mom, and you just
21 think about not Peter and Paul, but think about
22 two events over the last two years, the failings

1 at Peregrine and MF Global. And my mom only knows
2 what she reads in the newspapers. How do these
3 rules help protect against the future
4 circumstances of those situations? The whole
5 package.

6 And I'm not looking for the detail of
7 what 1.22 says and things like that. But if you
8 -- just like how do these rules in combination
9 help protect the public and protect the investing
10 and hedging public, the farmer, the rancher from
11 these events in the future? Gary Barnett or
12 Ananda?

13 MR. BARNETT: Sure. I think the focus
14 now on internal control and the emphasis on
15 internal risk management is a huge mitigant to
16 risk. Some of the things we saw during the two
17 crises, if we'd had this sort of separation of
18 duties and the internal policies and procedures
19 would have helped mitigate some of those risks
20 that we saw.

21 Also, giving us -- changing our
22 orientation in terms of examinations and

1 oversight, getting ahead of the problem, seeing
2 around corners a little better, more
3 forward-looking notices, and so on; being more
4 proactive on supervising problem situations before
5 they occur, so we can be more on the spot. Those
6 sorts of things will really reduce the level of
7 risk, I think.

8 MR. RADHAKRISHNAN: I'd agree with Gary.
9 I think what the two events caused us to do was to
10 examine practices in the industry. So, if you
11 think about the two events, Peregrine, in my view,
12 was a misappropriation or theft. I'm not speaking
13 for the Division of Enforcement. And MF Global,
14 it wasn't really a market driven event in that it
15 was not an event in our markets.

16 People at MF Global were doing things in
17 markets that this Commission does not regulate,
18 and there was a spillover and there was a
19 requirement for liquidity. And for reasons best
20 known to themselves, they decided that customer
21 segregated funds would be their source of
22 liquidity. You know? In violation of the law, in

1 my opinion. But what it did do was to cause us to
2 examine the industry and to propose rules that we
3 believe would strike them. And you know, DCR is
4 clearly in support of the, you know, the DSIO part
5 of the rules.

6 And also, I guess, in the context of
7 Section 4d(2), I'll speak for DCR, we assumed
8 people understood the law. I guess we were wrong
9 in our assumption, because people either didn't
10 understand the law or had a different view of the
11 law. And I want to address issues raised by
12 commenters that we are changing our interpretation
13 of the law. We are not changing our
14 interpretation of the law. If at all, you know,
15 as the record suggests, we are iterating or
16 reiterating our long held position of the law.
17 The language of the statute is very clear.

18 CHAIRMAN GENSLER: Can I simplify? You
19 think that -- this is a yes or no. I'm hoping
20 it's a yes, that it would be way harder to do what
21 Russ Wasendorf did at Peregrine, to forge
22 statements, to do that which we found in

1 Peregrine.

2 MR. BARNETT: Yes.

3 MR. RADHAKRISHNAN: I agree.

4 CHAIRMAN GENSLER: Would it be harder
5 that if a firm was going into crisis because of
6 their various trading positions across the globe,
7 to possibly reach in to customer funds to find, as
8 Ananda said, and is on the record, to find
9 liquidity as you're going into crisis? Would
10 these rules make that, you know --

11 MR. BARNETT: Yes.

12 CHAIRMAN GENSLER: -- hopefully near to
13 impossible, but -- Kevin Piccoli, do you want to
14 -- are you pushing the mike?

15 MR. PICCOLI: Yep. No, I agree. I
16 think these rules will make it very, very
17 difficult.

18 CHAIRMAN GENSLER: All right, thank you.
19 Commissioner Chilton?

20 COMMISSIONER CHILTON: That was a really
21 good exchange, Mr. Chairman, because all too
22 often, you know, we're down in the weeds and

1 nobody understands, really, about the countryside.
2 The people who are -- the folks that really, we're
3 trying to benefit, understand these things. And
4 you all gave really great answers.

5 I want to dig in just a little bit more
6 on the same type of answer for residual interest.
7 So, why should customers care about this residual
8 interest provision? Mr. Wasserman, if you could
9 do this one? You did a real good job, by the way,
10 in your opening statement, but just specifically
11 to that one, and make it truncated.

12 MR. WASSERMAN: Sure. And I would note
13 that some months ago, there was a meeting with the
14 public, I think it might have been Ag Advisory
15 Committee, and this issue came up. And the
16 question was asked, you know, okay, so who would
17 like to have their excess used to margin someone
18 else's positions? And oddly enough, no hands went
19 up.

20 And so I mean, that's the issue.
21 Because again, when the ball drops, in the event
22 of an insolvency, and if the money is being used

1 -- again, if Peter's money is being used for Paul,
2 it's not there for Peter. And Peter's going to
3 want it, and he wants it right now. And the
4 statute tells us we need to take steps to make
5 sure that it's going to be there when he needs it.

6 COMMISSIONER CHILTON: Thank you. And
7 then, Mr. Wasserman, also, so what have we done
8 here in this final rule to try to ensure that it's
9 not overly costly for smaller FCMs in particular?
10 Some of them that we've heard from, you know,
11 during the waning days of our comment period.

12 MR. WASSERMAN: And I think there's two
13 things. One is, again, we've made clear that this
14 is not a continuous requirement; that is a
15 point-in-time requirement. And so, this concept
16 of well, look, we're going to have to worry all
17 day Monday as the market's going up and down, is
18 there enough money there? No. It's a
19 point-in-time requirement.

20 Plus, we have what I think is a fairly
21 lengthy implementation period. And so in other
22 words, nothing happens for one year. And then,

1 until 2018, five years from now, that's when,
2 absent further Commission action, the full rigor
3 gets applied. And so there is time for folks to
4 get used to this, to implement changes, and also,
5 as has been pointed out, the technology is
6 changing every day. And certainly, you know, it
7 used to be if I wanted to move money, I had to
8 write a check and put it in the mail.

9 And now, what is the phrase, there's an
10 app for that? And so I think that's what we've
11 been seeing in just the past few years. I rather
12 expect even broader than our industry, just in the
13 payments in the banking industry more generally,
14 there's going to be yet further advances, and as
15 well, I think this would create as an impetus for
16 our industry to get more timely and to up their
17 game in terms of essentially information flow and
18 funds flow to meet what our -- again, you know, in
19 this case, Paul's obligations.

20 COMMISSIONER CHILTON: So you know, when
21 we do these things, you do them based upon the
22 intel and the knowledge that you have at the time.

1 And you can't tell the future. I mean, in the
2 future, Peter could marry Paul. They could
3 harmonize and have one account. We could have
4 flying guitars in five years. Wouldn't that be
5 cool? So, we don't know. We're making our best
6 determinations.

7 This is a little -- and I'm throwing
8 this one to you without having any knowledge of
9 what you might say, but Ananda, when you talked
10 about, you know, wire transfers, and these things
11 could be made during the day, so if you're looking
12 at one -- this in the weeds, so I apologize for
13 people.

14 But if you're looking at (c) (3), the
15 provision that says you don't actually have to pay
16 it until 6 p.m. the next day -- this is after the
17 five years, so yeah, you could make the wire
18 payment in the morning, but since you don't have
19 to pay it until the end of the day, because maybe
20 you won't have that requirement, because (c) (3)
21 says that if you make up the money -- correct me
22 if I'm wrong -- if you make up the money -- so one

1 day at six o'clock, you have such and such of a
2 margin call.

3 Twenty-three hours later, maybe you
4 don't have as much of a margin call, so you don't
5 actually have to pay the amount that you owed the
6 previous evening. Tell me why I'm wrong here.
7 But my question, why isn't everybody going to wait
8 until 5:59 before they hit the button that
9 transfers?

10 MR. WASSERMAN: So, I apologize if I got
11 a bit too much in the weeds and wasn't clear
12 enough. So as I mentioned, there's three
13 potential places. There's the other customers,
14 and that's what we're working to avoid. There's
15 the FCM, and then there's the customer, you know,
16 Paul himself.

17 COMMISSIONER CHILTON: Yeah.

18 MR. WASSERMAN: And so, the point is
19 that if the FCM has not just before the deadline
20 gotten payments in from the customers whose
21 positions generated the margin requirement, then
22 it's the FCM's obligation to put in their own

1 money.

2 COMMISSIONER CHILTON: Right.

3 MR. WASSERMAN: But yeah, the
4 expectation is the FCM would not be putting in
5 their own money until the deadline, because the
6 amount of the FCM's own money that they would have
7 to put in would be going down as they're
8 collecting the money from the customers whose
9 positions are actually generating the requirement.

10 COMMISSIONER CHILTON: But the customer
11 money is not due until 6 p.m., either. Right?

12 MR. WASSERMAN: Well, in other words, so
13 during the implementation, it will be 6 p.m.

14 COMMISSIONER CHILTON: But yeah, after
15 the five years, it'll be in the morning.

16 MR. WASSERMAN: After the five years, it
17 would be before, essentially the time of
18 settlement.

19 MR. RADHAKRISHNAN: We're not specifying
20 when the customer is going to pay. We're just
21 going to --

22 COMMISSIONER CHILTON: I'm just saying,

1 they're going to wait until the end of the time.

2 MR. RADHAKRISHNAN: Well, that's --

3 COMMISSIONER CHILTON: That's the only
4 thing I'm saying.

5 MR. RADHAKRISHNAN: That's possible, but
6 then --

7 COMMISSIONER CHILTON: You know, you can
8 make an electronic payment on your bank. It says
9 when do you want to make it? Now, it says, you
10 know, what day do you want to make it?

11 MR. RADHAKRISHNAN: But we also have --

12 COMMISSIONER CHILTON: My guess is, you
13 can say exactly the time you want to make it.

14 MR. RADHAKRISHNAN: They could.

15 COMMISSIONER CHILTON: And the time that
16 it's going to be is the minute before it's due --

17 MR. RADHAKRISHNAN: They could.

18 COMMISSIONER CHILTON: -- in part,
19 because it may change, that amount. And why would
20 you put more margin in when you might not be
21 required to in five minutes?

22 MR. RADHAKRISHNAN: Why would it change,

1 though? Because that's the call that you got
2 yesterday.

3 COMMISSIONER CHILTON: Well, I thought
4 -- maybe this is where I'm incorrect. I thought
5 22(c)(3) said that you're not required to make
6 until this time certain, whatever it is, 6 p.m. or
7 the next morning.

8 MR. WASSERMAN: So, let's talk about
9 this in terms of after the five years.

10 COMMISSIONER CHILTON: Yeah, okay.

11 MR. WASSERMAN: And so the margin call
12 that is going to be made, essentially the payment
13 upstream from the FCM to the DCO. So that
14 happens, let's just call it 9 a.m. So, the FCM
15 doesn't have to pay the money up to the DCO until
16 9 a.m. They're not using the money that they're
17 sending up there until it is actually sent up
18 there.

19 And so, the FCM would be collecting
20 money from their under margin customers. And so
21 essentially, there's no harm to anyone, you know,
22 other than obviously, the FCM might want a couple

1 of minutes to get their accounting done before, so
2 that they know, in other words, their treasury
3 requirements; how much they're going to have to
4 pull in. So they might incentivize customers to
5 pay it earlier than one minute before.

6 But in either event, it's really between
7 Paul, the customer who's generating the
8 requirement, and the FCM when Paul has to pay the
9 FCM. The FCM can say, well you know what, Paul?
10 I will let you pay me later. The FCM will likely
11 charge for that convenience. Paul might have --
12 you know, if Paul isn't undermargined, there's no
13 issue.

14 But in any event, then the FCM will be
15 using either their money or the money of the
16 customer who generated the requirement before that
17 money is used, sent upstream, so there's really no
18 harm. And so during the implementation time,
19 during the four-year period after the one year,
20 that would be at 6 p.m. And so they would have
21 time, then, to basically implement better systems.

22 COMMISSIONER CHILTON: So it's up to the

1 FCM for when the customer actually has to make the
2 payment to them.

3 MR. RADHAKRISHNAN: Correct.

4 COMMISSIONER CHILTON: Okay.

5 MR. RADHAKRISHNAN: Except that, you
6 know, there's another part about, you've got to
7 take a capital charge. Right? So, if the FCM
8 doesn't collect the undermargined amount by two
9 days, then there's a capital hit to the FCM. If
10 the FCM wants to take a capital hit, that's up to
11 it.

12 COMMISSIONER CHILTON: Right.

13 MR. RADHAKRISHNAN: But there's going to
14 be an impact there.

15 COMMISSIONER CHILTON: And I apologize
16 for going down this little rabbit hole.

17 MR. RADHAKRISHNAN: Yeah.

18 COMMISSIONER CHILTON: I'm just trying
19 to think about it, and, you know, I guess
20 theoretically, and I'll stop here so we can go get
21 back out of the rabbit hole. Theoretically, there
22 could be competition between the FCMs, in that if

1 I require as an FCM that my customers make the
2 payment three hours before the FCM has to make the
3 payment, the DCO, but somebody else has a
4 requirement, as long as it's in five minutes
5 before my pay --

6 So this may actually be something that
7 could be used, which I'm stumbling upon now, to
8 make people even more competitive. And perhaps
9 not, but I wanted to go down that, as I said,
10 rabbit trail, and I appreciate your perseverance
11 with me.

12 MR. RADHAKRISHNAN: No, it could be.
13 You're right. Because it's all a matter of the
14 discipline that the FCM imposes on its customers.

15 COMMISSIONER CHILTON: Yeah.

16 MR. RADHAKRISHNAN: And one would hope
17 that you know, with some of the risk management
18 enhancements that we are proposing, that FCMs
19 would be more disciplined than not.

20 COMMISSIONER CHILTON: Thanks for
21 entertaining it.

22 MR. WASSERMAN: I'd just --

1 COMMISSIONER CHILTON: Yep?

2 MR. WASSERMAN: I'd make two points.
3 First, I should note, the total amount that needs
4 to be made up is based on a calculation that's
5 fixed at the close of the previous business day.

6 COMMISSIONER CHILTON: Okay.

7 MR. WASSERMAN: As to how much it comes
8 from the customer who generated it or the FCM,
9 that is between them. But the point is that this
10 competition that you're referring to, so long as
11 it's based on how much the FCM uses of their money
12 --

13 COMMISSIONER CHILTON: Yeah, right.

14 MR. WASSERMAN: -- or the money of the
15 customer who generated the requirement, and not
16 competing based on how much money they're
17 borrowing from Peter, the customer who has excess
18 --

19 COMMISSIONER CHILTON: Yeah, but you're
20 talking about after the fact. You're talking
21 about after the FCM has made the payment. I'm
22 talking about before --

1 MR. WASSERMAN: No.

2 COMMISSIONER CHILTON: -- in collecting
3 it. In collecting it from the customers.

4 MR. WASSERMAN: Yeah.

5 COMMISSIONER CHILTON: The FCM collects
6 it. Some of them say, you know, the rule says the
7 next morning I've got to be, you know, even-steven
8 with everybody. But I want the payment by
9 midnight. And another FCM says, well, 6 a.m. is
10 good with me. That's the competition I'm trying
11 --

12 MR. WASSERMAN: Yep.

13 COMMISSIONER CHILTON: -- I'm talking
14 about before the FCM has to be even-steven.

15 MR. WASSERMAN: Yeah.

16 COMMISSIONER CHILTON: Okay, thank you.
17 And again, thanks for your perseverance on that.

18 CHAIRMAN GENSLER: Thank you,
19 Commissioner Chilton. I just ask the good grace
20 of Commissioner O'Malia. I just had one question
21 just that occurred to me. We've tried to
22 encourage, all four of us, but Commissioner

1 O'Malia and I have spent a lot of time on
2 encouraging portfolio margining, particularly in
3 credit derivatives where we have a jurisdiction
4 over index swaps and the SEC has it over
5 securities-based swaps. And I think we've made
6 some progress there.

7 I just want to ask a broad question.
8 Those market participants that might use one of
9 our account structures, a 4d account or other
10 account, maybe it's a cleared swaps account, to do
11 a portfolio margining that we've allowed in
12 particularly, credit derivatives. Would these
13 various reforms be applicable, and would they
14 still benefit in that regard?

15 MR. RADHAKRISHNAN: Yes. Yes. So it's
16 a function of which account the portfolio
17 margining takes place. So right now, you've got
18 portfolio margining programs with DCOs' and FCMs'
19 portfolio margin in the cleared swaps account, and
20 you also have portfolio margining programs in the
21 cleared futures account. So, whichever account
22 that portfolio margining takes place, the rules

1 pertaining to that account will apply.

2 CHAIRMAN GENSLER: And it can be a
3 securities -- you know, somebody that was putting
4 some securities into that account under those
5 various allowances would still get the protection
6 of segregation?

7 MR. RADHAKRISHNAN: Correct.

8 MR. BARNETT: Yeah, I just -- and the
9 risk management part of it, that the risk
10 management rule would require risk management of
11 all risks applicable to the FCM business, as such.
12 So you slice it all the way down to an issue like
13 that, as well.

14 CHAIRMAN GENSLER: I thank you. I'm
15 glad we covered that. Commissioner O'Malia?

16 COMMISSIONER O'MALIA: Thank you. I've
17 got a couple of questions. I'd like to start with
18 some of the accounting things, so for Tom and
19 Gary. 1.52(c)(2)(i). Now, we have an SRO
20 obligation to surveil the FCMs and to perform
21 these necessary responsibilities, and in part of
22 their strategies or their oversight

1 responsibilities, they're supposed to do certain
2 things. And in this 1.52 area, we kind of lay
3 this out.

4 There are a number of areas, though, in
5 this, that I'm concerned a little bit about vague
6 or unachievable specifics. In fact, they lack
7 specifics and there's some broad goals that
8 they're supposed to adhere to, but it would be
9 very difficult from an either surveillance or an
10 oversight or an enforcement standpoint.

11 And there is, in this (c)(2)(i), there
12 is a term in here -- let me just read it. It
13 says, you know, as part -- a CRO essentially, a
14 CRO must address all areas of risk to which a
15 futures commission merchant can reasonably be
16 foreseen to be subject. And so obviously, they
17 were trying to anticipate the worst. But how were
18 they supposed to address and certify to us that
19 hey, we've done it? We have foreseen all risk for
20 which an FCM might incur?

21 MR. BARNETT: Traditional risk,
22 enterprise risk management, our own risk

1 management rules under 23.600 require an analysis
2 of all risks applicable. And so you know, you
3 have to analyze the risks of the business, and
4 then, you have to assign you know, risk tolerance
5 limits to it and then manage it with policies and
6 procedures. It's not a different concept than
7 that. So, you have to understand your business
8 and you have to analyze the risks of that
9 business.

10 COMMISSIONER O'MALIA: And how should
11 they report it to you?

12 MR. BARNETT: Is there a report? I
13 mean, is that --

14 COMMISSIONER O'MALIA: I assume you're
15 going to surveil the SRO for that.

16 MR. BARNETT: Yeah. I mean, they --
17 typically, they have sort of a risk index they put
18 together. Sort of a risk -- they index the risks
19 of the business. The more granular they can make
20 it, the better they can risk manage the business.

21 COMMISSIONER O'MALIA: Well, that's my
22 concern. How granular can you be for all risks

1 foreseen --

2 MR. BARNETT: Well -- yeah, go ahead.

3 MR. PICCOLI: Yeah, I think this is --
4 performing any risk analysis of a firm, you always
5 look at the risk profile. And there are a number
6 of very, very good templates out there that people
7 use right now, all the time. I think FFIEC has
8 some good templates. IIA has good templates.
9 Risk Management Association has good templates
10 that are out there to guide an examiner and
11 auditor through an analysis of the risk profile of
12 the firm.

13 And in doing that analysis, they're
14 going to look at the elements of risk and evaluate
15 what is the likelihood of the risk? What are the
16 risk mitigants? And then, what is the residual
17 risk, or what's remaining after you look at, okay,
18 this is a risk? Here are my mitigants or my
19 controls to manage that risk. Here's my
20 remaining, my residual risk. And that's where an
21 examiner or an auditor should be focusing. And
22 that's what we're trying to get to.

1 But those are all very proven, and
2 they've been out in the industry for a long time
3 now. And that's what we're recommending is to
4 adopt those particulars.

5 COMMISSIONER O'MALIA: Okay. So that's
6 all I wanted to hear from you. As long as they do
7 those types of things, they'll be in compliance,
8 and they know what to look for. And they -- you
9 know, to anticipate every risk. So, thank you for
10 bounding that.

11 I mentioned earlier that I wanted to
12 talk about this segregation of uncleared -- the
13 rule that we all signed off on, and therefore, did
14 not have as part of this agenda. So, under 4SL of
15 our rules, which has been in place since the
16 beginning of the year -- right? Swap dealers are
17 required to offer segregation of uncleared swap.
18 You know, they're required to offer the third
19 party segregation.

20 So, for the past full ten months since
21 swap dealers have filed their compliance
22 paperwork, et cetera, we have 89 entities signed

1 up with NFA. And DSIO is pouring through the
2 180,000 pages of documentation you've requested.
3 I'm interested to know, A) what have swap dealers
4 been offering to their customers already? Because
5 this has already been in place, our rule does not
6 fundamentally change their obligation.

7 It puts some more specificity on it, but
8 it doesn't change what they've had to offer. And
9 what are customers accepting thus far? I mean,
10 we've had ten months that they've had to comply
11 with us. So, where do we stand on this today?

12 MR. WASSERMAN: So, I am not aware of
13 any studies we've done. As you know,
14 Commissioner, we have more than a few resource
15 constraints. I'm not aware of any studies we've
16 done. There is no -- in this rule -- neither in
17 4SL, nor in this rule, is there a reporting
18 requirement to us. And so I don't know that we
19 have been collecting information that would tell
20 us who has been accepting what, based on that.

21 MR. BARNETT: That's true. We haven't
22 collected it, but we could get it for you. We

1 that point, we would know, because the requirement
2 would not -- an omnibus account would not do for
3 this.

4 COMMISSIONER O'MALIA: I know, but it's
5 not -- for ourselves, it's not mandatory, either.

6 MR. WASSERMAN: No, that's fair.

7 COMMISSIONER O'MALIA: Or at least for
8 customers to accept third party seg.

9 MR. WASSERMAN: Right.

10 COMMISSIONER O'MALIA: They are only
11 required to be offered it.

12 MR. WASSERMAN: Right. I'm sorry.

13 COMMISSIONER O'MALIA: And the dealers
14 could check the box and say hey, we offered it.
15 Nobody accepted. So where does that leave us?
16 We're talking about customer protection -- you
17 know, how important it is and blah, blah, blah.
18 We don't know where customers are in unsegregated,
19 uncleared accounts.

20 MR. WASSERMAN: So, I would say that
21 based on work with folks over a range of things,
22 cleared space and the uncleared space, we've heard

1 quite a few folks expressing the view that having
2 segregation of their collateral is very, very
3 important to them. Now, I think it's fairly the
4 -- likely the case that your larger money managers
5 are getting segregation of their bilateral
6 collateral. Indeed, they tell us they are.
7 They've been telling us this for a while, and
8 they've been doing this before 4SL --

9 COMMISSIONER O'MALIA: Sure.

10 MR. WASSERMAN: -- because essentially,
11 they have not waited for the swap dealer to say,
12 oh, you have the opportunity to do this. They've
13 told the swap dealer, we're big. You want to do
14 business with us? Here's how it will be. And
15 they've been able to negotiate this.

16 COMMISSIONER O'MALIA: Historically, we
17 haven't had to worry as much about the big guys
18 getting protection that they want to buy. It's
19 the little guys that I'm concerned about on this
20 one. So, let's just figure out where we stand.
21 We've implemented a new rule setting a higher
22 standard than the statute, and we'll just figure

1 out where it is in terms of offerings.

2 MR. WASSERMAN: If I could actually --

3 CHAIRMAN GENSLER: Let me just take it.

4 I think you're raising a good point. I don't know
5 because of the resource constraints, but Gary --
6 and maybe working with, whether it's Bob's people
7 or what, I think it would be good to see, you
8 know, some data. I don't think this data is
9 necessarily in the data repositories, because this
10 is whether the bilateral counterparty opts for
11 segregation or not.

12 Anecdotally, Commissioner O'Malia, I
13 know that many pension funds have told us that
14 they are.

15 COMMISSIONER O'MALIA: And they've had
16 it before.

17 CHAIRMAN GENSLER: Yeah, yeah, yeah.

18 COMMISSIONER O'MALIA: Those really
19 aren't the people we're worried about.

20 CHAIRMAN GENSLER: But as you say, it's
21 really the hundreds or even thousands of other
22 customers.

1 COMMISSIONER O'MALIA: Right.

2 CHAIRMAN GENSLER: And so, if there's
3 some way to either survey a handful of dealers or
4 the largest dealers and find out, that would be
5 helpful.

6 MR. BARNETT: We can do that.

7 COMMISSIONER O'MALIA: Thank you. On
8 this residual interest, so, as Ananda says, it's
9 the law today, it's been the law since 1937 - it's
10 been in our regs since 1937. Why haven't we
11 enforced it?

12 MR. RADHAKRISHNAN: I'll defer to the
13 Division of Enforcement to see whether they've
14 taken enforcement action. I'm not sure these sort
15 of things came to our attention. So, but you
16 know, Enforcement would like to talk about it,
17 what enforcement action.

18 COMMISSIONER O'MALIA: So we --

19 MR. RADHAKRISHNAN: I mean --

20 COMMISSIONER O'MALIA: We didn't know
21 about it?

22 MR. RADHAKRISHNAN: Well, the thing is,

1 you had this law. You assumed that people
2 complied with the law. And I imagine that all
3 through the years, in the examinations that we
4 took, we had no evidence that people were not
5 complying with the law.

6 COMMISSIONER O'MALIA: So, why are we
7 giving them an extra five years to comply with it
8 now? I mean, I know it's -- I know why. We were
9 talking about resources and compliance, but
10 clearly, you're looking into this and saying --

11 MR. RADHAKRISHNAN: You want to do it --
12 you want to make it 9 a.m. tomorrow? That's fine
13 with me. That's fine with me.

14 COMMISSIONER O'MALIA: -- five year
15 delay is an acceptable.

16 CHAIRMAN GENSLER: Let the record show
17 that Ananda's recommendation was not the five
18 years.

19 MR. RADHAKRISHNAN: No, my
20 recommendation is --

21 CHAIRMAN GENSLER: I happen to support
22 the five years, by the way.

1 MR. RADHAKRISHNAN: Yeah, sure. But if
2 you would like -- if the Commission would like to
3 comport the futures rule with the swaps rule, DCR
4 will be fully supportive.

5 COMMISSIONER O'MALIA: So, I was reading
6 in the rule here, and Commissioner Chilton jogged
7 my memory here in how we've accommodated small
8 FCMs here. And in the document, in the preamble
9 it says, smaller FCMs may have more difficulty
10 than large FCMs in absorbing the additional costs
11 created by the requirements, particularly 1.22,
12 which is the residual interest. It is possible
13 that some FCMs may elect to stop operating as FCMs
14 as a result of these costs. How much will it cost
15 for FCMs to comply with this rule under our cost
16 benefit analysis?

17 MR. WASSERMAN: And so, we've basically
18 looked at costs of capital and multipliers, and we
19 were calculating this industry-wide. And so,
20 essentially, I believe the -- and was it 3.125
21 percent, was I think the amount?

22 COMMISSIONER O'MALIA: Well, I'm just

1 looking for the number. How much does it cost?

2 CHAIRMAN GENSLER: You want to hand it
3 over to Steve? Maybe Steve will answer the -- he
4 did a lot of the cost benefit.

5 MR. KANE: So we looked at the different
6 FCMs. The really large ones have a much lower
7 cost to capital than the smaller ones. So to be
8 able to fund the residual interest is going to be
9 a much bigger burden for smaller FCMs, especially
10 if they're not creditworthy. And so, it could
11 force them to become introducing brokers. The
12 economics might no longer work.

13 MR. WASSERMAN: I would add that we've,
14 through the point in time requirement, as I was
15 discussing with Commissioner Chilton, and the
16 phase-in requirement endeavored to mitigate the
17 costs. But at the end of the day, we have to be
18 somewhat careful, because we don't want to say, I
19 think, that we're establishing a regime under
20 which customers of smaller FCMs will be less well
21 protected than customers of larger FCMs.

22 COMMISSIONER O'MALIA: Nobody is

1 suggesting that. I'm just trying to find -- I
2 just asked what it's going to cost them, and
3 you've admitted that the burden on smaller FCMs,
4 regardless of how you want to treat them, is going
5 to be higher. And I'm also interested in small --
6 we've already established earlier in the uncleared
7 seg that the big customers can get big benefits
8 when it comes to dealings with banks.

9 They can get better treatment. Third
10 party segregation for uncleared stuff. Well
11 established. We know that. What about the little
12 guy? How much is this going to cost -- this rule
13 going to cost in terms of -- if they're required
14 to prefund to meet their obligations? And that's
15 what we talk about in this document. Prefunding
16 is the solution -- is really the default solution.

17 Nobody has come up with another specific
18 solution or viable solution, other than
19 prefunding, which if you go a time of
20 settlement calculation, which this -- which
21 apparently was the law, is the law today, but
22 we're delaying it for five years. So, how much

1 are the little guys going to -- what kind of cost
2 are they going to bear?

3 MR. KANE: So, to address that kind of
4 question, you need proprietary information from
5 the FCM. So you're talking about a particular
6 market segment. You would have to see how they
7 would respond to changes in fees versus higher
8 prefunding requirements. And so, if you were in
9 the marketing department, you would do some test
10 marketing to assess the sensitivity of customers.
11 But I don't know how we're going to do that as a
12 Commission.

13 COMMISSIONER O'MALIA: So we haven't
14 done it thus far?

15 MR. KANE: No.

16 COMMISSIONER O'MALIA: To come to our
17 conclusion that we already have. All right.

18 CHAIRMAN GENSLER: Can I just ask
19 permission? You lay this out on page 370. But
20 375, just to put in the record, the answer in the
21 aggregate, not necessarily the one by one -- but
22 you have, we have, for all FCMs, the aggregate

1 annual cost is approximately \$487 million,
2 parentheses, you add two figures together, to fund
3 the additional residual interest needed by FCMs
4 due to 1.22 of residual interest were required at
5 all times.

6 And then you go on for several pages of
7 analysis as saying, but though we delay that for
8 five years -- and then you have a figure later of
9 a cost for the top ten FCMs of about \$78 million.
10 But I don't know if that would help you try to
11 answer Commissioner O'Malia's question.

12 MR. KANE: No, we separately broke out
13 the top ten FCMs from the other FCMs, because
14 their costs were much different. The other thing
15 is, the customers of the smaller FCMs are not
16 going to be able to get their payments in as fast
17 as the customers of the larger FCMs.

18 COMMISSIONER O'MALIA: That's what we've
19 heard, yeah. I agree with that. I've got one
20 more question. Oh yeah, back to Tom. I'm sorry.

21 Can you explain the rules on the
22 read-only access for the customer accounts? We

1 have had some concerns about every bank providing
2 an individual account number and password for each
3 account, and how we were going to secure them and
4 how we would utilize them. There were a number of
5 people that are saying that's a cybersecurity hole
6 waiting to happen that's you know -- just turning
7 over passwords and account numbers to put in a
8 file drawer at the CFTC is somewhat perilous,
9 especially since you know, as you well know, it
10 seems as though every time I come into the office,
11 my password changes.

12 So, those constantly needed to be
13 updated, I'm sure, for very good reasons, of
14 course. How are we going to secure those,
15 maintain those, and not create a loophole for the
16 banks that they have additional exposure that --
17 you know, that there is -- without a doubt, that
18 we are not going to be the security hole in their
19 cybersecurity net?

20 MR. SMITH: In the proposal, there was
21 actually a bifurcated or two-step process that we
22 had proposed. One was that any depository would

1 provide us with any technology and connectivity
2 capability, but not provide password or user IDs
3 up front. In addition, you know, our need to
4 access account balances through this direct online
5 access is subject first, to some other steps that
6 we would try to use.

7 One would be where, you know, obtaining
8 the information from the CME, NFA through their
9 collection of it directly now, each day from
10 depositories, and also, our capability of -- which
11 is embedded in the segregation acknowledgement
12 letters, to call and obtain confirmations. So,
13 only in those situations where we couldn't, or the
14 data wasn't fresh enough for us from getting it
15 from the NFA or CME or contacting a bank. We
16 needed another context.

17 That's when we anticipated that we would
18 use direct online access. We would have the
19 connection established. It would be at that point
20 that we would contact the depository institution
21 to obtain a password and user ID. In discussions
22 with the industry, they pointed out that there's

1 some flaws in that analysis.

2 While we thought we were making it
3 easier so that we didn't have access to the
4 passwords and IDs, it was suggested that the
5 better approach would be to get full access up
6 front, and then, let a password and ID actually
7 expire, because they already have the security
8 systems in place to address a client who has
9 misplaced or lost a password.

10 So, I think the idea is we would not
11 necessarily have the password and IDs up front.
12 We would wait until we did need it, and then they
13 would be able to turn on that access, just like as
14 we forget our passwords for our own private
15 accounts.

16 COMMISSIONER O'MALIA: And you've worked
17 with bank regulators and entities to say, you
18 know, that have indicated that this is the
19 appropriate way to do this?

20 MR. SMITH: We've dealt mostly with
21 meetings with the FIA and with outside counsel for
22 bank depositories. We have not dealt with bank

1 regulators.

2 COMMISSIONER O'MALIA: So, could there
3 be issues with bank regs prohibiting this type of
4 access?

5 MR. SMITH: I don't think so, because
6 it's basically a contractual agreement between the
7 depository and the customer that they have, that
8 they're allowing a third party to have access.

9 COMMISSIONER O'MALIA: Okay, thank you.
10 Mr. Chairman, I have an amendment that I'd like to
11 have considered. I ask consent that it be
12 considered.

13 CHAIRMAN GENSLER: I think you do a
14 motion, and then I'll second it for you.

15 COMMISSIONER O'MALIA: I ask for a
16 motion that this be considered.

17 CHAIRMAN GENSLER: I'll second it.
18 Thank you, Commissioner O'Malia. I do think that
19 you actually shared the document with the bank
20 regulators, did you not, at some point in time,
21 what we were doing? Certainly, they had our
22 proposal from --

1 MS. DIETZ: Yes.

2 CHAIRMAN GENSLER: Kevin?

3 MS. DIETZ: Not -- we have been working
4 with -- we got comment letters from the FIA and
5 representatives of banks. And so, we have had
6 conversations with them about specific provisions
7 and the mechanics of how this would work. We have
8 not discussed it with bank regulators.

9 And I would just echo what Tom said.
10 It's actually a contractual matter. And the way
11 the acknowledgement agreement is set up is that
12 the FCM gives permission and authorizes designated
13 persons, meaning the DSIO director and designees
14 to be provided access.

15 CHAIRMAN GENSLER: Right.

16 MS. DIETZ: So, it is the customary
17 practice in the banking industry that if it's my
18 account, I can authorize certain transactions or
19 arrangements, and one of them would be that other
20 members, my family or third parties are permitted
21 to have access to my account. So it's really not
22 a regulatory, but a contractual matter.

1 CHAIRMAN GENSLER: Thank you.
2 Commissioner Wetjen?

3 COMMISSIONER WETJEN: Thank you, Mr.
4 Chairman. Just some follow-up to the previous
5 exchange, or actually, the one before Phyllis'.
6 Stephen, doesn't the cost-benefit analysis point
7 out that it should not be necessarily assumed that
8 prefunding will be the solution in terms of
9 meeting these new and residual interest
10 requirements?

11 MR. KANE: Right. It doesn't have to
12 come through prefunding. It can come through the
13 FCM getting the money sooner from customers, and
14 it can also come from the FCM's capital. So it
15 could require less prefunding, but they might
16 charge more in fees.

17 COMMISSIONER WETJEN: So, is there any
18 way to -- does the cost-benefit analyze this, or
19 is there any way to predict or try and --

20 MR. KANE: Well, to really address it,
21 you would need, you know, proprietary information
22 about FCM customers and the different market

1 segments and their sensitivity to the different
2 things -- prefunding, paying sooner, and paying
3 fees, if they're borrowing from the FCM.

4 MR. WASSERMAN: Steve, would it be
5 accurate to say that we, at an aggregate level,
6 did a fairly conservative approach of what the
7 costs would be, and we've noted that there may be
8 opportunities, then, for people to do things
9 differently? And presumably, if it were to cost
10 less, they would do it differently? And so --

11 MR. KANE: So, our cost estimate was
12 done at an At All Times basis. We pointed out
13 that there could be several mitigants to the At
14 All Times point. First, they're not legally
15 required to do it. Also, they can go with lines
16 of credit from their banks, so they don't have to
17 keep all that on hand, and so on. So, the number
18 was meant to be conservative to overestimate.

19 MR. WASSERMAN: And then, we basically
20 also estimated these with the -- at the 6 p.m., at
21 the time of settlement, but again, in each case,
22 assuming that the FCM prefunded it all themselves.

1 And then, there are alternative ways of getting
2 there, including you know, lines of credit and
3 such. And so, essentially, to the extent folks
4 can do things more cheaply, one would expect that
5 they would. And therefore, the numbers we gave, I
6 think were intended to be a conservative, high end
7 estimate of what those costs would be.

8 COMMISSIONER WETJEN: Yeah, well I think
9 as you pointed out, Steve, if it is -- and you, as
10 well, Bob, if it is cheaper to find an alternative
11 solution, one would imagine that's what most FCMS
12 would do. I guess I alluded to that in my opening
13 statement, that not only would I imagine that, but
14 I would expect that that would happen.

15 That just seems like the most
16 commercially prudent thing to do for most FCMS.

17 MR. KANE: But we have to base our cost
18 benefit on observations somewhere. So, what would
19 the line of credit cost? We just couldn't find,
20 you know, any quotes or anything.

21 COMMISSIONER WETJEN: I just had a
22 couple of other questions on the deadline, the

1 residual interest deadline itself. And it
2 reflects on what was provided in the comment file
3 and part of the preamble of the rule. But I think
4 it's important to tease out here in this exchange.
5 And that is, if there is a residual interest
6 requirement that is, in fact, later in the day, to
7 whom is it more likely that the costs and burdens
8 will be shifted because of that practice?

9 MR. KANE: So it's going to be -- the
10 costs are going to be borne by --

11 COMMISSIONER WETJEN: Well, and just to
12 be more clear, the costs and burdens of margin
13 shortfalls.

14 MR. KANE: So, as you go closer, then
15 it's going to go on the FCM and it's going to go
16 on customers that can't pay quickly, because
17 they're going to have to prefund more. But you
18 know, it's for their trading, too, so -- Or they
19 might have to burden -- they have to pay higher
20 fees if the FCM is going to put up the money for
21 them.

22 COMMISSIONER WETJEN: And Bob, I think

1 I'll direct this to you. In your judgment, the
2 later the time of the requirement, the residual
3 interest requirement falls in the course of the
4 day, how does that impact the odds of compliance
5 with the FCM's segregation requirements and their
6 other 4d requirements?

7 MR. WASSERMAN: I'm not sure I
8 understand that.

9 COMMISSIONER WETJEN: Well, I mean, 4d
10 says you can never use another customer's funds to
11 --

12 MR. WASSERMAN: Oh, right.

13 COMMISSIONER WETJEN: -- you know, top
14 up their shortfall in another customer's funds.
15 So, the later in the day we require the residual
16 interest requirement, how does that impact the
17 fact -- or how does that affect the odds that the
18 FCM might be more likely to be out of compliance
19 with 4d?

20 MR. WASSERMAN: So, the issue is that so
21 long as we're having the 6 p.m. requirement,
22 essentially, what you're going to have is a gap

1 there. So in other words, the FCM will be, for a
2 time, using the funds of one customer to margin
3 the positions of another. The longer that time,
4 the more the exposure --

5 MR. RADHAKRISHNAN: Sorry, not will be,
6 may be.

7 COMMISSIONER WETJEN: Yeah.

8 MR. WASSERMAN: That's right.

9 MR. RADHAKRISHNAN: Because there are
10 some FCMs who might decide that compliance with
11 the law is a good thing, and stop whining and you
12 know, do what they're expected to do, but --

13 MR. WASSERMAN: But I think the issue is
14 this, that there's that gap. What we're trying to
15 do is at the end of the five years, then bring
16 people back to where 4d requires them to be. And
17 so avoiding that gap -- because again, if, let's
18 say while the deadline is at 6 p.m., an FCM has
19 made the payment up to the clearinghouse, and
20 they've used Peter's money to margin Paul's
21 position, and at noon or at 3 p.m., sometime
22 before the money comes in, the FCM goes bankrupt.

1 So at that point, the gate comes down
2 and the harm to Peter is realized. And so that's
3 why it's important to get -- you know, again,
4 we're trying to do this in a measured way and give
5 people time to get to do this most efficiently.
6 But ultimately, that's why it's important to get
7 to, back to that initial time of settlement so
8 that FCMs are not using one customer's money.

9 COMMISSIONER WETJEN: Yeah, I mean, I
10 guess the way I would state it a little bit
11 differently is, there is value in making it more
12 difficult for an FCM to be out of compliance with
13 4d.

14 MR. RADHAKRISHNAN: Absolutely. Indeed.

15 COMMISSIONER WETJEN: Especially as
16 you've said in your remarks, and others have said
17 here on the dais, in the case of a bankruptcy.

18 MR. RADHAKRISHNAN: Right. And then the
19 key --

20 COMMISSIONER WETJEN: And there's
21 tremendous value there. So, the issue, then, is,
22 is it overly costly to get to where we land in

1 CHAIRMAN GENSLER: Thank you.

2 COMMISSIONER O'MALIA: Can I --

3 CHAIRMAN GENSLER: Oh, absolutely,
4 Commissioner O'Malia.

5 COMMISSIONER O'MALIA: We haven't
6 changed the pro rata bankruptcy treatment on
7 customers. So, if we have an FCM that has blown
8 up due to large customer failure, it can't meet
9 coverage. And I know all of this is trying to get
10 to a point where we'll have all the money. But
11 listen, you know, things are going to happen. We
12 can't predict it.

13 To the extent we have an FCM failure,
14 let's hypothetically -- I'm sure we've solved it
15 all here, but hypothetically, we may have one. In
16 a bankruptcy treatment, everybody shares in that
17 hole under -- in a 4d account under pro rata
18 distribution. Is that correct?

19 MR. WASSERMAN: Absolutely.

20 COMMISSIONER O'MALIA: All right, thank
21 you.

22 CHAIRMAN GENSLER: Thank you,

1 Commissioner O'Malia. I actually think there will
2 be, in the future, futures commissions merchants
3 that fail, because it's the nature of business and
4 the nature of risk, and we have not, in any way,
5 repealed the business cycle or that financial
6 firms will make mistakes and risk will bring them
7 down. What our regime is, is about protecting
8 customers when that happens, because it will
9 happen. Firms will fail. It's protecting them
10 when that happens.

11 I think, Melissa, we have an amendment
12 and we have the base rule, and I turn it to you to
13 tell us how we actually you know, do the voting
14 and so forth. But I turn it to our Secretary.

15 MS. JURGENS: First, we'll vote on the
16 amendment.

17 CHAIRMAN GENSLER: Wait a second. Can
18 you just say it more loudly?

19 COMMISSIONER O'MALIA: Just to discuss
20 it?

21 MS. JURGENS: Yeah. First, the
22 amendment comes before the base rule.

1 mandate that in five years' time, the customers
2 will need to meet their margin obligations by the
3 end of the settlement cycle, as proposed in the
4 draft rule. This amendment simply lets a future
5 Commission make a determination about the best way
6 to proceed after they collect all the evidence.

7 The final rule, like many others,
8 established a -- this final rule, like many others
9 we voted on, have established a predetermined
10 outcome and then conducts the feasibility study to
11 determine whether the policy is feasible and cost
12 effective for all market participants.

13 Other Commission rules I can recall that
14 similarly determined an outcome that -- and then
15 conducted a study include, as Bob mentioned
16 earlier, the de minimis rule, and this study is
17 phased to tie in with that within the entity
18 definition; the swap execute facility rule and the
19 swap blocks rule are three good examples.

20 Somehow, by imposing an outcome and then
21 conducting the study process, this should make
22 everyone feel better about the predetermined

1 outcome. I, for one, don't feel better about it.
2 I cannot support a rule that is a ready, fire, aim
3 approach. Instead, I'm offering an amendment that
4 will do the following:

5 First, it will not predetermine a policy
6 outcome. The amendment requires the Commission to
7 study the feasibility and the cost and the
8 technology solutions before it moves beyond a T1
9 at 6 p.m. settlement date.

10 I'm cognizant of the fact that the
11 approach of this rule is a major reinterpretation
12 of decades of Commission practice and shouldn't be
13 taken lightly or without quantitative and
14 technological analysis, as if and how market
15 participants can move from T1 to the settlement
16 cycle without onerous prefunding arrangements.

17 Second, my amendment will not bind a
18 future Commission. All of us at the table here
19 today will have terms that expire by the time this
20 rule contemplates any changes. There is no reason
21 to believe that a future Commission can't make an
22 informed decision based on the facts and without a

1 Sword of Damocles hanging above them.

2 Third, my amendment does not bias the
3 study with an outcome that has already been
4 predetermined. Under the circumstances provided
5 in the final rule, Commission staff can't possibly
6 conduct an unbiased study, because any analysis
7 will be compared against a status quo of
8 prefunding solution tied to the end of the
9 settlement cycle.

10 It is ironic that we empower a future
11 Commission to make a fact-based determination,
12 albeit predetermined, but refuse to take the same
13 opportunities for ourselves. There is ample
14 evidence that accelerating the payments can be
15 done and provide better protections to customers.
16 However, moving beyond the residual interest
17 deadline of T plus one 6 p.m. to a 7 to 9 a.m. in
18 the morning of the settlement cycle without
19 resulting in prefunding is far from certain.

20 Small market participants believe they
21 would be blocked from the market if they had to
22 prefund their margin arrangements, and there is

1 nothing in this document to suggest other
2 possibilities. In fact, the cost-benefit analysis
3 in this document even acknowledges that -- which I
4 read earlier, that smaller FCMs may have more
5 difficulty than larger FCMs in absorbing the
6 additional costs created by the requirements under
7 the rules, particularly 1.22, ("It is also
8 possible that some smaller FCMs may elect to stop
9 operating as FCMs as a result of these costs.")

10 I would like to point out that last
11 month, the commission received a letter from the
12 House and Senate authorizers on both sides of the
13 aisle that said -- they said -- in that letter
14 they said, "The goal of increasing futures
15 Commission protection should be to strengthen the
16 markets without harming the ability of American
17 farmers and ranchers and end users to hedge their
18 legitimate risks."

19 This letter, which I have here, is
20 urging the Commission to make improvements without
21 significant disruptions. And I don't believe this
22 rule meets that test, so this rule, to be clear,

1 is consistent -- in the time frames that we have
2 set of five years of coming into compliance, it
3 does not change that.

4 In fact, the future Commission could
5 make a determination before that five year time is
6 up, and it could come to the exact same conclusion
7 that is in this rule, or it can come with a
8 different conclusion. I'm a big believer in
9 technology, and I believe technology can solve
10 many things, and I hope that's the case with this.
11 And I hope we can get to a cost effective improved
12 solution to minimize any exposure whatsoever. But
13 we are not there yet.

14 And I just want to make sure we do this
15 with our eyes wide open, we don't bias the study
16 and we let a future Commission, which really will
17 have the responsibility, either under the proposed
18 rule or under my amendment, to make this decision
19 going forward. So, with that, I'm happy to answer
20 any questions.

21 CHAIRMAN GENSLER: I want to express my
22 appreciation for Commissioner O'Malia's work on

1 this rule, and as he's expressed that other than
2 in this residual interest area, he's supportive of
3 the many recommendations of the staff and the
4 enhancements that we're going to bring to people
5 in the futures and swaps marketplace. And I take
6 it even in residual interest provisions that
7 you're supportive of the 6 p.m. cutoff. But it's
8 what happens at the end of this study.

9 I think that this balance is
10 appropriate, the law, with allowing the Commission
11 to get more facts; a 30 months study, roundtable
12 and so forth, which as you appropriately pointed
13 out is what we did with the Securities and
14 Exchange Commission in seeking a compromise around
15 what was the de minimis in becoming a swap dealer.
16 A little shout out, maybe, to Commissioner
17 Gallagher at the SEC who came up with that idea in
18 that circumstance.

19 But I think that it's appropriate here,
20 because it does allow five years for further
21 study, and the provisions do allow, as
22 Commissioner Wetjen said earlier, that if the

1 Commission, then, after that study wants to
2 propose something else, they put out a notice of
3 proposed rulemaking and simultaneously do an order
4 at that point in time to change that five year
5 phase-in.

6 So, I don't see it binding futures
7 Commissions. I think where I might respectfully
8 differ is, I think that the law itself, the better
9 read of the law, maybe the best read of the law
10 points to the settlement of this in the morning.
11 And future Commissions will be benefited with a
12 great deal more about costs and benefits, 30
13 months of data. They, too, can amend or change
14 this. They could even work with Congress to
15 change the law, if that was what was appropriate,
16 as you point to our authorizers.

17 But I'm not going to be able to support
18 your amendment, though I do appreciate all the
19 hard work you've done, and we've gotten this
20 close, Commissioner O'Malia, to a full agreement
21 on the document. But on this one, I'm on the
22 other side of, I think what the best read of the

1 current statute is. I don't know if other
2 Commissioners want to say anything.

3 COMMISSIONER CHILTON: Mr. Radhakrishan
4 -- so it's an interesting concept, Commissioner
5 O'Malia, and -- but I am curious about the law,
6 whether or not this would -- the O'Malia amendment
7 would comport to the law. And this is following
8 up on what the Chairman was saying, but if we did
9 what Commissioner O'Malia is proposing, would that
10 meet the test of the law?

11 MR. RADHAKRISHNAN: In my view, any rule
12 that goes past time of settlement is not
13 comporting with the law. I'm sorry. I've got to
14 be honest with you guys. All right?

15 The rule we passed for cleared swaps
16 comports with the law. What we are seeming to do
17 here is to give more people more time to comply
18 with the law. But if you're asking me what the
19 law says, it's like when you use the money, are
20 you using somebody's money or not?

21 CHAIRMAN GENSLER: Right.

22 MR. RADHAKRISHNAN: And in our view, in

1 DCR's view, what the Commission did in clear swaps
2 comports with the law.

3 COMMISSIONER O'MALIA: Yeah. Did you --

4 COMMISSIONER CHILTON: All right, thank
5 you.

6 COMMISSIONER O'MALIA: I'm no more
7 illegal than the statute, right?

8 MR. RADHAKRISHNAN: No, you're giving
9 people more time. Right? So you're giving
10 people time to comply. I would urge the
11 Commission to not give people so much time that
12 people forget about what the obligation under the
13 law is.

14 COMMISSIONER O'MALIA: No. Ironically,
15 my amendment could get faster to your outcome than
16 their base text.

17 MR. RADHAKRISHNAN: You know what my
18 position is.

19 COMMISSIONER WETJEN: I don't disagree
20 with what Commissioner O'Malia just said, but I do
21 agree with Ananda in the sense that I think the
22 closer we get to that first settlement, the more

1 likely we are to be in the closest fidelity of --
2 with the intent of the statute.

3 And so, I would imagine that there's
4 probably full agreement on that. It's more of a
5 question of how soon can we get there, which is
6 just a question of feasibility. And in light of
7 that fact, and in light of the fact that we have a
8 very fulsome comment file to this rule, the staff
9 in front of us today has considered this
10 carefully.

11 I, myself, have looked into this. I
12 mentioned the fact that I met in person with a
13 number of producers who, I think, were most
14 fearful of what was in the proposal. And I met
15 with them, and I talked to other people who are
16 involved in intermediating payment transfers to
17 FCMs, and I don't think that what is reflected in
18 the final today prejudices anything. We are making
19 a judgment. We are making a judgment today based
20 on what was in the comment file, based on other
21 information that we've brought to bear on the work
22 of the Commission.

1 And based on all of that, the Commission
2 is judging today that this can happen. It's the
3 best read of the law, but it probably just can't
4 happen right now. And in the event that we're
5 wrong about the amount of time it's going to take
6 to ensure the maximum level of compliance, we have
7 the ability to move it further out in time.

8 That's why I think this balance --
9 what's contained in the final is preferable to
10 what Commissioner O'Malia has in his amendment,
11 although I think what's in the amendment is
12 perfectly reasonable too, another way of dealing
13 with it. But I just think this is a better way.
14 So, I cannot support the amendment.

15 CHAIRMAN GENSLER: Secretary?

16 MS. JURGENS: This is a vote on
17 Commissioner O'Malia's amendment to the final rule
18 enhancing protection afforded customers and
19 customer funds held by futures commission
20 merchants and derivatives clearing organizations.

21 Commissioner Wetjen?

22 COMMISSIONER WETJEN: No.

1 MS. JURGENS: Commissioner Wetjen, no.
2 Commissioner O'Malia?

3 COMMISSIONER O'MALIA: Aye.

4 MS. JURGENS: Commissioner O'Malia, aye.
5 Commissioner Chilton?

6 COMMISSIONER CHILTON: No.

7 MS. JURGENS: Commissioner Chilton, no.
8 Mr. Chairman?

9 CHAIRMAN GENSLER: No.

10 MS. JURGENS: Mr. Chairman, no. Mr.
11 Chairman, on this amendment, the ayes have one,
12 the no's have three.

13 CHAIRMAN GENSLER: Then I hand it back
14 to you. Okay.

15 MS. JURGENS: We will now be voting on
16 the final rule on enhancing protections afforded
17 customers and customer funds held by futures
18 commission merchants and derivatives clearing
19 organizations.

20 Commissioner Wetjen?

21 COMMISSIONER WETJEN: Aye.

22 MS. JURGENS: Commission Wetjen, aye.

1 Commissioner O'Malia?

2 COMMISSIONER O'MALIA: No.

3 MS. JURGENS: Commissioner O'Malia, no.

4 Commissioner Chilton?

5 COMMISSIONER CHILTON: Aye.

6 MS. JURGENS: Aye. Commissioner

7 Chilton, aye. Mr. Chairman?

8 CHAIRMAN GENSLER: Aye.

9 MS. JURGENS: Mr. Chairman, aye. Mr.

10 Chairman, on this matter, the ayes have three, the

11 no's have one.

12 CHAIRMAN GENSLER: With the vote being

13 in the affirmative and the -- the rule will then

14 be sent to the Federal Register, with any

15 technical corrections because of that unanimous

16 consent.

17 I want to thank this team, and not just

18 those who are sitting at this table, but the

19 dozens of others at this agency from the Division

20 of Enforcement, the Office of General Counsel, of

21 course, the Chief Economist, the two divisions

22 that are represented here, Clearing and Risk and

1 Swap Dealer and Intermediary Oversight, and
2 probably so many others.

3 This is the sixth of six rules that we
4 have put in place over two years from investment
5 of customer funds to cleared swap -- what was it
6 called -- legally segregated but operationally
7 comingled to gross margining at clearinghouses to
8 rules in designated contract markets about
9 facilitating higher risk management, and of
10 course, earlier today by seriatim vote for
11 segregation of customer funds for noncleared swap
12 accounts. So, I want to thank you all for this.

13 I do note that yesterday, we noticed a
14 meeting for next Tuesday? Is it Tuesday, the 5th,
15 where we'll be taking up a number of matters,
16 including looking at proposals for limits on
17 positions, speculative position limits aggregate
18 across the futures and swaps marketplace. It will
19 be the third time that I get an opportunity to
20 vote on such a rule, and I think it's probably the
21 third proposal, maybe the fifth time to vote on
22 something.

1 So, I look forward to coming back
2 together next Tuesday on position limits and other
3 matters as we put on the agenda. With that,
4 Commissioner O'Malia?

5 COMMISSIONER O'MALIA: Commissioner
6 Wetjen mentioned Volcker Rule a lot, in the press
7 about us doing a Volcker Rule before the end of
8 the year. I have not seen a single piece of
9 paper. Can you send us the document, please,
10 immediately? I understand it's upwards of a
11 thousand pages, and if we're going to do this in
12 mid-December, I'd better get reading now.

13 CHAIRMAN GENSLER: We're working, staffs
14 of five federal regulatory agencies, plus the U.S.
15 Department of Treasury, so six are trying to work
16 through documents. I don't have a document to
17 send at this point in time. But if I do in the
18 next couple of days, I will share it. I will do
19 my best.

20 I am hopeful to try and schedule a
21 public commission meeting by the second week of
22 December or the third week of December. I know

1 we've all reserved a date on our calendars right
2 now that Melissa has gotten from us, and we're
3 working to try to get a document.

4 I know that there's further, what's
5 called deputies meetings, but it's basically
6 staff. Eric Remmler, Paul Schlichting and others
7 are sort of our point people working with the
8 other Federal regulators, trying to move the
9 document to a position to share it with
10 Commissioners.

11 COMMISSIONER O'MALIA: Since staff has
12 it, can they share the document with us?

13 CHAIRMAN GENSLER: Again, I will share
14 the document when I think it's appropriate. But
15 at this point in time, it is still very much
16 moving between the SEC, the FDIC, the Comptroller
17 of the Currency, the Federal Reserve and the
18 Treasury. But I'm working to try to get something
19 in the next few days to a week.

20 COMMISSIONER O'MALIA: But if all of
21 those people are working on it and sharing it, why
22 can't this Commission have it?

1 CHAIRMAN GENSLER: The staff of all
2 these agencies is working through this document
3 right now, and I'm working to get that document to
4 you as soon as we can. But it's not going to be
5 today.

6 I look to a motion to adjourn the
7 meeting?

8 COMMISSIONER CHILTON: So moved.

9 CHAIRMAN GENSLER: Second? All in
10 favor?

11 SPEAKERS: Aye.

12 CHAIRMAN GENSLER: All right. The
13 meeting is adjourned.

14 (Whereupon, at 12:14 p.m., the
15 PROCEEDINGS were adjourned.)

16 * * * * *

17

18

19

20

21

22

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22

CERTIFICATE OF NOTARY PUBLIC

DISTRICT OF COLUMBIA

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

(Signature and Seal on File)

Notary Public, in and for the District of Columbia
My Commission Expires: January 14, 2017

