

UNITED STATES OF AMERICA
COMMODITY FUTURES TRADING COMMISSION

OPEN MEETING ON THE FOURTH SERIES OF
PROPOSED RULEMAKINGS UNDER THE DODD-FRANK ACT

Washington, D.C.

Wednesday, November 10, 2010

1 PARTICIPANTS:

2 Commission Members:

3 GARY GENSLER, Chairman

4 BART CHILTON, Commissioner

5 MICHAEL V. DUNN, Commissioner

6 JILL SOMMERS, Commissioner

7 SCOTT D. O'MALIA, Commissioner

8 Presenters:

9 DUANE ANDRESEN
Division of Market Oversight, CFTC10 SARAH JOSEPHSON
11 Division of Clearing and Intermediary
Oversight, CFTC12 BARBARA GOLD
13 Division of Clearing and Intermediary
Oversight, CFTC14 ED RICCOBENE
15 Division of Enforcement, CFTC

16 Also Present:

17 DAN M. BERKOVITZ

18 CHRISTOPHER CUMMINGS

19 ANTHONY HAYES

20 JOAN MANLEY

21 VINCE MCGONAGLE

22 JACKIE MESA

1 PARTICIPANTS (CONT'D) :

2 WILLIAM PENNER

3 ANANDA RADHAKRISHNAN

4 LESLIE RANDOLPH

5 DAVID STAWICK

6 DAVID VAN WAGNER

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P R O C E E D I N G S

(1:10 p.m.)

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3 CHAIRMAN GENSLER: Good afternoon. This
4 meeting will come to order. It's a public meeting
5 of the Commodity Futures Trading Commission to
6 consider issuance of the following proposed
7 rulemakings: The Dodd-Frank Wall Street Reform
8 and Consumer Protection Act. We thank you, Sarah
9 and Ananda, for coming up, and there's six or
10 seven proposed rules that staff are going to
11 discuss with us: One related to foreign boards of
12 trade; another the registration of swap dealers
13 and major swap participants; a third with regard
14 to a new whistleblower provision in the
15 Commodities and Exchange Act; and then a set of
16 rules, which I gather Sarah and Ananda will stay
17 in the seat for awhile on these -- I guess there's
18 four of them all told that we'll hear from the
19 staff on: Risk management policies of swap
20 dealers and major swap participants; two related
21 rules concerning firewalls and
22 conflict-of-interest policies; and also the

1 designation of chief compliance officers and
2 related compliance policies of swap dealers, major
3 swap participants, and futures commission
4 merchants.

5 I'd like to start by thanking all of the
6 staff and Commissioners Mike Dunn, Jill Sommers,
7 Bart Chilton, and Scott O'Malia for all their
8 thoughtful work to implement Dodd-Frank as the
9 public is probably watching us in progress.
10 There's a lot that we're working on so it's really
11 only because of everybody's collective efforts
12 that we're getting this through the Commission.

13 I'd also like to welcome the public and
14 market participants to this meeting, and welcome
15 not only those listening on the phone and watching
16 live on the Webcast, but of course, your public
17 comments are going to be very important to us
18 because even if we do move forward today and vote
19 some of these out, they're just proposals, and we
20 really do encourage the public to give us comments
21 on these.

22 This is our fourth public meeting. I

1 think anticipating what may happen today -- and
2 I'm not going to do this every meeting, but I will
3 do it again because you'll correct my math -- but
4 I think we will be up to 18 proposals, two final
5 rules, and three advance Notices of Proposed
6 Rulemakings. We do have one more public meeting
7 scheduled so far in November; I think it's the
8 19th. And we're looking to calendar, I think,
9 three meetings in December. I think one of them
10 may have been already in the Federal Register, but
11 we'll, you know, as we get the other two dates,
12 we'll put them in the Federal Register and
13 announce the topics. For the 19th of November,
14 we'll announce those topics, I think, by this
15 Friday. We're human. Some of this will probably
16 slip to January. We'll find out. Maybe there'll
17 be a date or two in January and so forth.

18 I anticipate that the -- one thing I
19 wanted to talk about is I anticipate that we will
20 be taking up in our December meetings two
21 important joint proposed rulemakings. These are
22 the two joint rulemakings on definitions. One is

1 on entity definitions, one is on product
2 definitions. The Dodd-Frank Act requires the CFTC
3 to write these jointly with the Securities and
4 Exchange Commission. And these proposals, when we
5 get to them and get them out, are important in
6 their own right, but they're also important as
7 they allow the public to consider what we're doing
8 like today. But those rules will be out there
9 maybe a couple or a few weeks after these, but
10 they'll be running concurrently. And as the
11 public sees those specific definitions on entities
12 and so forth, I think that will help inform even
13 what they're doing on rules today.

14 So with that I'm really going to turn to
15 my fellow Commissioners to see if they have some
16 opening comments. Commissioner Dunn?

17 COMMISSIONER DUNN: Thank you, Mr.
18 Chairman, and I thank all of you for joining us
19 today in this important meeting regarding the
20 implementation of the Dodd-Frank Act. Today's
21 meeting will address proposed rules regarding the
22 registration of foreign boards of trade,

1 implementation of new whistleblower provisions,
2 the registration of swap dealers and major swap
3 participants, and business conduct standards for
4 various registrants.

5 I will support the publishing of these
6 proposed rules in their current form, but I have
7 yet to decide how I will vote on any final rules.
8 I will make those important decisions only after I
9 have had a chance to carefully review all the
10 comments that the agency receives from the public
11 and get final recommendations from our staff. I
12 am especially interested in the proposed rule to
13 register foreign boards of trade. I have long
14 advocated that the Commission codify this
15 procedure for recognizing foreign boards of trade.
16 I believe that eliminating the current no-action
17 process and adopting a registration regime will
18 provide legal certainty, transparency, and
19 fairness in this area.

20 It is somewhat discerning to be
21 discussing rules governing the registration and
22 operational mechanics of swap dealers and major

1 swap participants today when we have yet to define
2 these terms. It's my understanding that we will
3 hear from our staff on December 1 regarding these
4 definitions. If we cannot adhere to this
5 timeline, it's hard for me to contemplate moving
6 forward on other proposed rules without these
7 lynchpins. The Dodd-Frank Act, passed by Congress
8 earlier this year following a catastrophic
9 financial meltdown in 2008, despite whatever
10 rhetoric you may hear on budget concerns we have
11 at the agency, nothing can change one important
12 fact. The Dodd-Frank Act is the law, and as such
13 I have sworn an oath to uphold it. That means we
14 will continue to work diligently at the Commission
15 to implement every aspect of the Dodd-Frank Act by
16 the imposed Congressional deadline. When we are
17 done, I believe trading and over-the-counter
18 markets will be more transparent and present less
19 systemic risk to our financial system. My hope is
20 that the means to accomplish these goals adheres
21 to our principle-based regulatory philosophy. My
22 fear is that our lack of budgetary resources will

1 lead to more prescriptive rules that include
2 greater financial and regulatory burdens and force
3 the CFTC to move more methodically to register new
4 participants and approve new products.

5 I would like to once again thank the
6 staff at the CFTC for their hard work. They are
7 spending long days, nights, weekends, and holidays
8 in their office in order to create a safer
9 financial system for every investor. They are
10 dedicated public servants, and we owe them our
11 gratitude.

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

14 COMMISSIONER SOMMERS: Thank you, Mr.
15 Chairman. I'll just pick up on that thought from
16 Mike and want to start by saying how much I
17 appreciate the work of all the rulemaking teams.
18 The process that we're working through right now
19 and the timelines that we're working under make
20 this very difficult for the staff, and I realize
21 that and appreciate all your hard work on these
22 rules.

1 Going back to another thing that Mike
2 talked about, the definitions, I think that that
3 is also a part of this that makes it difficult for
4 us and the staff in promulgating these rules. In
5 a perfect world, we would be doing the definitions
6 first, then we would be promulgating compliance to
7 those rules, but that's not the way that this is
8 working out because of the tight deadlines that
9 are in the statute. So I know that it makes it
10 impossible for us to try to be practical. It is
11 what it is. Those deadlines are what we're
12 presented with. I feel like I've used the term
13 "we have the cart before the horse" way too many
14 times and unfortunately, doing things in the wrong
15 order doesn't make this kind of progress easy for
16 us. But I think that we have to be mindful of our
17 resources and what the kind of budget restraints
18 we're currently under and what we may be under if
19 we have a CR that goes into 2011. And I think all
20 five of us are concerned about the consequences of
21 having a CR into 2011, but I think that we need to
22 consider when we're promulgating these rules that

1 that analysis should be one of the important
2 things that we look at.

3 I feel like certain rules that we're
4 proposing today are not an efficient use of our
5 resources and when I'm looking at those rules, I'm
6 going to oppose them because I don't think that
7 what we're doing by asking our staff to do things
8 that they could do more efficiently is the right
9 thing for us to do right now with our resources.
10 In my view when the statutory provisions are clear
11 and Congress has not directed us to promulgate
12 regulations, I think the relevant question for us
13 is whether we should promulgate the regulations,
14 not whether we can.

15 There are specific instances when
16 Congress included particular language in one
17 section of the Act, and then omitted that language
18 from another section of the Act, and I think that
19 we need to conclude that that omission was
20 intentional. Congressional intent is not always
21 obvious and that is the hard part for us when
22 we're writing these proposals. I believe it's

1 going to be even more difficult for us when we're
2 trying to finalize these proposals, but I do think
3 that that's something that we need to be mindful
4 of where we believe Congressional intent is clear.

5 Just to end, I want to also say that
6 staff has worked in incorporating our comments at
7 the eleventh hour -- and even maybe right now --
8 into some of these proposals, and I again want to
9 say how much we appreciate it.

10 CHAIRMAN GENSLER: Thank you,
11 Commissioner Sommers. Is Commissioner Chilton on
12 the line?

13 COMMISSIONER CHILTON: Mr. Chairman,
14 just real quick, I echo everybody's thanks. We
15 owe our staff a badge of perseverance and
16 professionalism for their can-do spirit.

17 You know, all of these different policy
18 options, this policy buffet that we have sort of
19 in front of us, can give us these
20 professional-grade regulatory tools, but I agree,
21 if we're not careful, we could mess up. I was
22 looking through a magazine yesterday and in one of

1 these it has a bunch of T-shirts. And one of the
2 T-shirts said on it "Somebody has to set a bad
3 example," and I thought, well gosh, that shouldn't
4 be us. We have to be really careful about how we
5 go forward here. But these are just proposals.
6 We can change them as we go forward. And one of
7 the important things that I'm so pleased that we
8 agreed to do as a group is accept these comments
9 ahead of time. Before we actually have the
10 proposals, we've been accepting generic comments.
11 And I found those to be very helpful, both in the
12 official form and in the meetings that we've had.
13 And to the extent that staff, when they're
14 describing these proposals, if they can mention
15 what the comments were and how they've dealt with
16 them or not dealt with them and why, that would be
17 really helpful I think to all of us, certainly to
18 me.

19 So thank you to the staff, and I look
20 forward to getting comments on all those rules
21 that we published. Thank you, Mr. Chairman.

22 CHAIRMAN GENSLER: Thank you,

1 Commissioner Chilton. Commissioner O'Malia?

2 COMMISSIONER O'MALIA: Thank you, Mr.
3 Chairman. I had a -- after Commissioner Dunn
4 finished, I had a brief moment of panic that I
5 picked the wrong speech up off the printer; mine's
6 going to sound a lot like everyone else's here,
7 especially Commissioner Dunn's. Nonetheless, I
8 will persevere.

9 I would like to thank the teams that
10 have worked so hard on the rules we have here
11 today. The staff has actively sought input from
12 the Commissioners and worked to make improvements
13 to each of these rulemakings, and for that I'm
14 grateful. I'd like to commend Duane Andresen and
15 Barbara Gold and their teams for their work and
16 their respective rulemakings. I'd also like to
17 extend my thanks to Joan Manley and Ed Riccobene
18 for their work on the whistleblower rule proposal.
19 I'm particularly pleased that the proposed rule
20 provides for an Office of Consumer Education and
21 Outreach that can be funded by the penalties and
22 fines collected by the Commission. I believe we

1 can do a much better job of providing consumers
2 with information about our markets and providing
3 them with a forum for which they can receive
4 timely resolution to their complaints. But I'd
5 also like to extend my thanks to Sarah Josephson
6 and her team for crafting four separate
7 rulemakings, proposing rules under Section 731 and
8 732. The Dodd-Frank Act, which mandates
9 implementation of conflict-of-interest rules,
10 rules establishing a chief compliance officer, and
11 specific duties for swap dealers, is only six
12 pages in length; however, the attendant
13 rulemakings exceed 130 pages. The sheer length of
14 the combined rules illustrate to me that this
15 Commission is shifting from a traditional role as
16 a principles-based agency to a highly prescriptive
17 rules-based regulator.

18 Mr. Chairman, you deserve a lot of
19 credit for marshalling the Commission staff
20 resources that put together the teams to tackle
21 the massive number of rulemakings embodied in the
22 2,300 pages of the Dodd-Frank Act. Let me say

1 that I'm both amazed and proud of the capabilities
2 of the Commission staff to develop these rules in
3 the timeframe which you have mandated. While we
4 will differ on some of the recommended policy
5 outcomes of these rulemakings, I am reminded that
6 the highly prescriptive rules are not conceived
7 out of thin air, but are the direct outcome of the
8 Dodd-Frank legislation. In keeping with both the
9 mandates of our statute and your timeframes, I
10 would like to make the following suggestions to
11 improve the rulemaking process going forward and
12 to provide some clarity to market participants as
13 well.

14 First, I think we should immediately
15 produce critical definitions that define swap
16 market participants. Specifically swap dealer,
17 major swap participant, and end- user definitions
18 must be released sooner rather than later. Each
19 rulemaking that passes without some clarity
20 regarding these definitions creates confusion and
21 uncertainty. I hope we can address these
22 definitions at the next Commission Rulemaking on

1 November 19 as originally planned. For example,
2 the debate on terms and conditions for registering
3 swap dealers, which we have today, but we have yet
4 to provide a definition that spells out who these
5 rules will apply.

6 Second, I strongly recommend that we
7 conduct a staff roundtable on the margin and
8 capital issue prior to release of the proposed
9 rulemaking. I would suggest that we release the
10 swap dealer, MSP, and end-user definitions prior
11 to this hearing so the public has some
12 understanding of who will be impacted by the
13 capital and margin rules.

14 Third, I think we must vote on a
15 real-time reporting rule proposed concurrently
16 with the swap execution facility definition.
17 Understanding what type of trading platforms will
18 be permitted is essential to informing our
19 decisions as to the real-time reporting standards
20 and block-trade limitations.

21 Finally, I would prefer that all of the
22 rules related to the clearing be considered during

1 one Commission rulemaking meeting -- not one
2 rulemaking, but at the same meeting -- addressing
3 individual segregation, portfolio margining, and
4 the DCO core principles will give the public a
5 more accurate picture of the new clearing
6 standards and the associated costs. I am very
7 concerned about the cumulative costs of the
8 various clearing mandates. While our primary goal
9 of the Dodd-Frank Act was to eliminate "too big to
10 fail," I fear we're about to create a clearing
11 mandate that makes it "too costly to clear." We
12 need to evaluate all of the clearing room
13 requirements together to understand the overall
14 market impact.

15 I hope we can make these necessary
16 adjustments to our schedule in order to release
17 these critical definition rulemakings and give
18 market participants a better understanding of how
19 they will be impacted by the mandatory clearing
20 and exchange requirements, and most importantly,
21 the costly margin and capital rules. I believe
22 these changes will facilitate the development of

1 better informed and more useful responses to our
2 rulemakings going forward. Thank you.

3 CHAIRMAN GENSLER: I thank you. I'm
4 going to have to -- since we are in a public
5 meeting, I can deliberate, I can respond to some
6 of your -- Commissioner O'Malia. I think that one
7 of our challenges is not only the Dodd-Frank Act
8 and our own Commission structure and process, it's
9 all the public consultation, and Congress was very
10 clear that in some cases we do joint roles, but
11 even when we don't do joint roles, we consult
12 actively with our fellow regulators -- Securities
13 and Exchange Commission and others.

14 So the schedule that we've laid out and
15 the next two meetings, November 19 and December 1,
16 and then probably two more meetings in December,
17 the goal has been to get the bulk of this out or
18 maybe all of it out by that point in time. I
19 think on the individual pieces of it that you
20 mentioned the definitions piece is not just our
21 Commission. It's the SEC and it's -- so it's ten
22 commissioners and two sets of staffs and so forth.

1 And I'm anticipating that we can do the entity
2 definition piece on December 1. I don't know
3 about product definition. I mean I know where it
4 stands, but I mean I don't know -- it's two

5 Commissions, two sets of staffs, and so forth.
6 But I'm anticipating that, too, is in December,
7 but I just don't know if it will be December 1.

8 With regard to real-time reporting,
9 we've been trying to -- when all of the data
10 roles, swap data repositories, data, and real-time
11 reporting, to try to coordinate very actively with
12 the SEC. And so there's -- you've raised this
13 with me, I think, two days ago -- I think there's
14 just a challenge of trying to move it because they
15 may do something on real-time reporting before we
16 do. And so we just have to all consider that and
17 so on the schedule.

18 And I think the third point that you're
19 mentioning about the clearing house is, I think,
20 Ananda could better address it, but I think that
21 we had possibly that there are two additional
22 timeframes that they were going to be done in two

1 different meetings, but it's quite possible that
2 Ananda and his team could help bring those
3 together. I mean, I think those were the three
4 pieces in there.

5 In terms of the capital and margin and
6 whether to do another roundtable, I think it's a
7 question of Thanksgiving and trying to get, you
8 know, these things done and so forth. But I'm
9 very conscious of trying to hear from the public
10 on all of these matters, and roundtables have
11 helped us in three or four, maybe five, other
12 areas as well.

13 COMMISSIONER O'MALIA: Well, I
14 appreciate it, Mr. Chairman. I do think very
15 strongly that we need to get the definitions done.
16 I appreciate -- I'm not privy to the conversations
17 you and some of the staff are having with the SEC.
18 I'm sympathetic, but determined that we should,
19 you know, continue to make headway, and I know
20 some of these negotiations have forced us to slip
21 our schedule earlier than we had hoped. I
22 understand --

1 CHAIRMAN GENSLER: As I said, we are
2 human.

3 COMMISSIONER O'MALIA: I completely
4 understand, and I think the public comment issue
5 is going to be critical, and I'm glad to hear
6 you're open to a public meeting on this. I'm
7 sensitive to the holidays. It's an important
8 time, and I'm sure some staff would like to have
9 some time at home with family, which has been rare
10 lately. And we should get comment on it. We, you
11 know -- keeping the schedule and ignoring public
12 comment or, you know, facilitating a schedule that
13 will get public comment, that's a tough decision.
14 You have the schedule and the gavel, so this
15 definitely falls on your shoulders, but it's a
16 tough balancing act.

17 CHAIRMAN GENSLER: Yeah, but where we
18 may differ is I think we're getting public comment
19 throughout, I mean, there's 350 or 400 meetings.
20 I mean, it seems as everybody seems to know our
21 address and our phone numbers, and I think the
22 roundtables have helped a tremendous amount. The

1 public comment on the proposals helps a tremendous
2 amount. I mean, there's whole different ways to
3 get public comment, so I think we're getting a lot
4 of public comment and even proposals are just
5 that, they're proposals, they're not final rules.

6 COMMISSIONER O'MALIA: Agreed. Without
7 a doubt, some of the more recent public meetings
8 have been extraordinarily beneficial, individual
9 seg, the CDS products, very important and good
10 information. I think it helped catalyze the
11 debate, which I think will lead to better
12 rulemakings. I think there may be no more
13 important issues out there for end-users than
14 capital and margin, and who is an end-user? Who
15 is going to be a swap dealer? That affects a lot
16 of people in this country, a lot of corporations,
17 and it's going to mean how we prioritize the use
18 of our capital, which is very critical going
19 forward especially in a tight economy. So we
20 should definitely consider some public hearings on
21 that.

22 CHAIRMAN GENSLER: Actually, one last

1 thing. I don't think we've slipped on the
2 end-user. I think that one's been calendared for
3 December since two to three months ago. And from
4 everything George tells me, we'll be all right on
5 that date.

6 COMMISSIONER O'MALIA: Well, I think
7 defining who an end-user is, is pretty important
8 to a swap dealer and MSP. I think they can all be
9 brought together.

10 CHAIRMAN GENSLER: No, I just didn't
11 want the press to think that we had slipped on
12 that one.

13 COMMISSIONER O'MALIA: Oh, okay. I'm
14 sorry.

15 CHAIRMAN GENSLER: That one's been
16 calendared for sure.

17 COMMISSIONER O'MALIA: Well, maybe we
18 can -- here's one we can accelerate.

19 COMMISSIONER DUNN: Mr. Chairman, if I
20 can, just to enlighten the public. You may have
21 read about this in the Chairman's office. He's
22 got the Big Brother, king size one of these, but

1 this is the flowchart that we have of how we're
2 going about trying to get all of these various
3 rules promulgated. And the blue is when we're out
4 for comment on it, and when we expect to have
5 those in. And we've been privy to this; it has
6 slipped a little. As the Chairman said, we're
7 only human.

8 Mr. Chairman, since I got out of
9 graduate school in 1972, I have been involved in
10 responding to proposed regulations, writing
11 regulations, implementing regulations, and I must
12 say, this has been the most open, the best run,
13 that I have ever worked with. And my hat goes off
14 to you and to the staff in putting together the
15 type of openness that we have had here, including
16 identifying those 30 working groups and putting up
17 on the Internet "here's how you get a hold of
18 those folks." For the first time that I've ever
19 been involved with regulations, it has been the
20 public knowing what we're hearing. Everybody has
21 had an equal opportunity to get their thoughts
22 down on that initial piece of paper, and even

1 before we got to the point where we're going
2 through the administrative procedure act of
3 promulgating the regulations. So I think the
4 openness that we've had here has just been
5 fantastic. The roundtable meetings I have tried
6 to listen to all of those and then try to get a
7 synopsis from the staff of what was discussed, and
8 unfortunately those synopses are an inch or two
9 thick when we get to them.

10 We've been given a very, very tough job
11 by Congress. They have imposed upon us a
12 Herculean task of getting these regulations out.
13 I find no fault with what we've done to date. I
14 do wish that we had, at least on the entities, the
15 definitions there to work with. When people come
16 in and talk to you and say well, we have to do
17 this or we have to do that, we say well we don't
18 know. What are you? And some of them know that
19 they're going to be swap dealers, but there are a
20 lot of folks out there that have -- and they give
21 us an example of what they do -- and we say gee, I
22 have to think about that. Where do you fall under

1 that? So for that clarity, at least getting the
2 definition of the entities out, and it slipped
3 until the first of December, but again, it still
4 gives folks an opportunity to look at those regs
5 that are out for public comment and say, "Uh oh,
6 now I see where I fall. I know how to tailor what
7 I'm going to say to it." It's a tough task that
8 the Commission's been given and the staff in
9 particular. And I used to complain about us not
10 having enough public meetings. I may be on the
11 other side of that at this point, but I appreciate
12 it, and I know from my interaction with the public
13 and the industry that they appreciate it.

14 CHAIRMAN GENSLER: I thank you,
15 Commissioner Dunn, and all Commissioners for these
16 comments. I think now, so you don't just get to
17 sit there, Sarah and Ananda, you get to walk us
18 through some of rules, and I think that I'm just
19 going to turn it over to Ananda Radhakrishnan who
20 heads our Division of Clearing and Intermediary
21 Oversight, Sarah Josephson who's from the Division
22 of Clearing and Intermediary Oversight, but is

1 known by so many people in the public now as the
2 team lead for the internal business conduct
3 standards, and there are many of those internal
4 business conduct standards as Commissioner O'Malia
5 said. The Dodd-Frank has already been
6 prescriptive, and we have to bring some rules to
7 them.

8 MS. JOSEPHSON: Good afternoon and thank
9 you to the Commissioners and their staff for
10 working with us to put these four Notices of
11 Proposed Rulemaking together, and also thank you
12 to the team that I've been working with here at
13 the staff of the Commission to help me in putting
14 these together.

15 I think that I'd like to ask just at the
16 beginning, should we take the four NPRMs perhaps
17 considered duties first, and then the
18 conflicts-of-interest rule, and finally the chief
19 compliance officer rule? Does that work? Okay.

20 All right, so the first rule that we're
21 proposing relates to the internal business conduct
22 standards for swap dealers and major swap

1 participants, and the statutory provision that
2 we're working with is found in Section 731. It is
3 the new CEA Part 4(s)(j), and it is the duties for
4 swap dealers and major swap participants. These
5 will be new rules in a new part of the CFR, Part
6 23, and what I will do is I'll just go through
7 each rule at a high level and provide you with
8 some background on what it is that we've done.

9 Generally, the approach we've taken is
10 to require written policies and procedures for a
11 series of different aspects. And if you look at
12 the statutory text, they require monitoring of
13 trading to comply with and prevent violations of
14 applicable position limits; risk management
15 procedures for managing the day-to-day business of
16 the swap dealer and the major swap participant; a
17 disclosure of general information and a provision
18 about the ability to provide information to the
19 Commission or to the relevant prudential
20 authorities, as applicable; a conflicts-of-
21 interest provision, which will be dealt with in
22 the second set of rules that we talk about today;

1 and then finally, an antitrust consideration
2 section.

3 So initially what I'll do is I'll talk
4 about what we've done with the risk management
5 section. The proposed rules would establish a
6 risk management program, consisting of written
7 policies and procedures that are designed for swap
8 dealers and major swap participants to be able to
9 manage and monitor the risks associated with their
10 business. The rules, again, take a

11 policies-and-procedures approach that require swap
12 dealers and major swap participants to account for
13 a number of different risks that they face,
14 including market credit, liquidity risk, among
15 others. It also would require that the swap
16 dealers and major swap participants set risk
17 tolerance limits for themselves; again, these
18 would not be set by the Commission.

19 There's a new product policy and I
20 believe, Commissioner O'Malia, you mentioned the
21 roundtable and one of the things that came out of
22 the CDS roundtable was the importance of

1 understanding the risks that are associated with
2 new and novel products. There would also be a
3 provision for the use of central counterparties,
4 that the entities have policies and procedures in
5 place so that if there is a clearing mandate, they
6 would clear their products pursuant to that
7 mandate or consider the use of central
8 counterparties as a way of mitigating counterparty
9 credit risk. The risk management policies and
10 procedures would also require that the risk
11 management personnel be separated from trading
12 personnel. So that is what we've defined as
13 business trading unit personnel and that's an
14 important separation to separate those two
15 entities.

16 And then finally, with regard to risk
17 management, the entities will be required to, on a
18 quarterly basis, provide written risk exposure
19 reports to senior management, and those reports
20 will also come to the Commission to help us in our
21 oversight of these new registrants.

22 Another section of this rule relates to

1 the business trading unit, and again, generally
2 speaking, this is a policies-and-procedures
3 approach so that those individuals who are able to
4 commit the capital of the swap dealer or the major
5 swap participant know the limits to which they are
6 subject. Again, the swap dealers and major swap
7 participants will set those limits themselves, but
8 it's so they know how they're supposed to engage
9 in their trading. This overall risk management
10 program will be reviewed and tested on a quarterly
11 basis by either internal independent audit
12 personnel or external personnel.

13 Then we have a rule on position limits,
14 again to comply with the statutory requirement
15 that swap dealers and major swap participants
16 monitor their trading and swaps to prevent
17 violations of applicable position limits. And
18 that requires annual training of personnel,
19 diligent monitoring and supervision of the trading
20 personnel among other things. There's also an
21 early warning system and monthly testing of that
22 system to alert senior management, again, if

1 position limits that would be established by the
2 Commission or a designated contract market or a
3 swaps execution facility, that those would not be
4 violated. Again, we're not setting those. That's
5 not part of this rulemaking. This is just a risk
6 management component, that once those position
7 limits would be in place, individuals would have
8 internal procedures to address them.

9 There's also a rule on diligent
10 supervision that is very much like the rule for
11 FCMs that's in place right now, requiring that
12 swap dealers and major swap participants establish
13 a system to supervise their employees, agents,
14 partners, et cetera. And then that the
15 supervisory system designate people with
16 authority, and that they use reasonable efforts to
17 make sure that the supervisors are qualified.

18 There's a rule on business continuity
19 and disaster recovery. Again, that just requires
20 the swap dealer and major swap participant to have
21 a plan in place to be able to resume operations by
22 the next business day following an emergency or

1 other disruption. There's also a requirement that
2 they notify the Commission of relevant individuals
3 to contact in the case of an emergency and to
4 notify us if there is an emergency or other
5 disruption. Again, that plan would be annually
6 reviewed and tested. And there are requirements
7 about geographical separation of important
8 information and backing up important data. And
9 then there's a rule on general information, making
10 sure that the SDs and MSPs can provide us with the
11 data we need in a prompt basis, and all
12 information related to their swaps, and financial
13 integrity of those products, and generally having
14 internal systems in place to be able to respond to
15 the Commission. Or if they are also registered or
16 otherwise licensed by prudential authorities, that
17 those same -- that information would also go to
18 the prudential authority with whom they were
19 registered.

20 And then finally, there's a very short
21 rule on antitrust considerations that swap dealers
22 and major swap participants have policies and

1 procedures that would prevent any sort of
2 unreasonable restraint of trade or material
3 anticompetitive burden on trading or clearing.

4 So that's the high-level summary of that
5 particular set of rules.

6 CHAIRMAN GENSLER: Thank you, Sarah, and
7 when you call it a set of rules, that's one Notice
8 of Proposed Rulemaking for those, right?

9 MS. JOSEPHSON: Yes, it is one Notice of
10 Proposed Rulemaking, which we subdivided into, I
11 think, six different rules.

12 CHAIRMAN GENSLER: Right.

13 COMMISSIONER DUNN: A couple of
14 questions. First of all, I'm trying to get in
15 line because I had my questions lined up -- one,
16 two, three, four, five, six -- as we had in the
17 Notice, and we're on number four now. So just in
18 case people wanted to know where we were. How is
19 DCIO going to oversee the implementation of this,
20 and directed primarily at Ananda, what do you see
21 as the resources to be needed, and how
22 prescriptive are we going to have to get if we

1 don't have those resources to get the type of
2 information that will be in these proposed regs?

3 CHAIRMAN GENSLER: And I'm going to
4 apologize and interrupt. I was supposed to take a
5 motion before we entertained questions. So if
6 there is a motion to accept the staff
7 recommendation and send this proposed rule to the
8 Federal Register?

9 COMMISSIONER DUNN: So moved.

10 COMMISSIONER SOMMERS: Second.

11 CHAIRMAN GENSLER: All right, now.

12 MR. RADHAKRISHNAN: Thank you,
13 Commissioner Dunn. That depends on whether we get
14 money, and I'm not being facetious. You know,
15 DCIO was asked -- well, all the divisions were
16 asked -- how many people would you need to
17 implement Dodd-Frank, and I had said
18 conservatively 100 additional FTEs. The question
19 was asked, "When do you need them?" And I said,
20 "The day after I ask for them" which was about a
21 year and a half ago. Because my thinking is if
22 you know you're going to have a lot of

1 responsibilities -- and I'm not making fun of the
2 government and I'm not criticizing the government
3 -- it really doesn't make sense not to get the
4 staff as soon as possible because it's not a
5 matter of getting staff and saying now go and, you
6 know, examine the swap dealer for compliance with
7 the Commission's regulations, you've got to train
8 people. However, I understand government doesn't
9 operate that way. So I -- and I forget the number
10 off hand how many people I've asked for -- but I
11 think we were asking for X in 2011 and Y in 2012.
12 If we don't get these people, then I think the
13 Commission is faced with a decision. DCIO right
14 now has about 125 people. What do we prioritize?
15 Do we examine -- do we send all of our staff to
16 examine swap dealers and MSPs? Do we examine all
17 of them or just the major ones? If we don't do
18 that, who should do it? And I think in the next
19 -- in the registration rulemaking, you know, there
20 are three options: One, we do it; one, you know,
21 the NFA does it; and then there's hybrid fellow.
22 But that's all I can say right now because I don't

1 know how many people we will have.

2 I would submit that it would not be a
3 good case if the Commission staff were not
4 involved in the examination of swap dealers for
5 compliance with the Commission's rules. In other
6 words, if we did it -- even if the Commission
7 decided the NFA was going to do it, I would
8 strongly urge that Commission staff be involved in
9 the examinations because otherwise we would have
10 no idea as to how compliance is being determined.
11 And the reason I say that is because since it's
12 the Commission that promulgated these regulations,
13 I think the Commission should have some experience
14 in examining swap dealers and MSPs, just like the
15 Commission initially, you know, in '74-'75
16 examined all FCMs, and then we got away from it
17 because of lack of resources. And now we're
18 trying to get back into it because after awhile
19 you lose touch with the industry, and I don't
20 think that's a good outcome.

21 COMMISSIONER DUNN: We're asking for the
22 establishment of a risk management program. Is

1 there a gold standard out there for what that
2 program should look like? Are you contemplating a
3 safe harbor or guidelines for such a program?

4 MR. RADHAKRISHNAN: I don't know if
5 there is a gold standard because we have never

6 examined swap dealers, so we have no experience in
7 that. I'm sure that we will probably be
8 consulting with our colleagues in the banking
9 sector who have had supervisory responsibilities
10 over banking entities who are large swap players.
11 But under the issue is, you know, Dodd-Frank is
12 completely new. So I suspect what they have done
13 -- and I'm sure I'll have to confirm this -- they
14 have examined swap activity as part and parcel of
15 their safety and soundness examinations with bank
16 regulators, too. I'm sure we'll have a lot to
17 learn from them, but as to whether we know what
18 the gold standard is or is there one, I'm not
19 sure. You could argue that there isn't one
20 because otherwise why did the government have to
21 bail out so many entities?

22 COMMISSIONER DUNN: I won't get into

1 that argument. Under antitrust consideration, and
2 I really would like some amplification of -- we're
3 going to prohibit any action that results in
4 unreasonable restraint of trade or imposed any
5 material anticompetitive burden on trading or
6 clearing. What does that mean? Is that something
7 we're going to have to go to the FTC or to Justice
8 for or are we going to define that antitrust?

9 MS. JOSEPHSON: This requirement is,
10 again, based on the statutory text, and it
11 actually is found throughout the statute so
12 similar language applies to DCOs and also DCMs I
13 believe. And so, again, it's a unique provision
14 in that it says that they will not adopt a process
15 or take any action that results in an unreasonable
16 restraint of trade unless --

17 COMMISSIONER DUNN: Could you give me an
18 example of what that might be?

19 MR. RADHAKRISHNAN: I'll give you an
20 example. Let's say five swap dealers get together
21 and form a DCO and then don't let anybody else in.
22 That would, you know, cause some alarm bells to

1 ring, you know. We won't say necessarily that
2 somebody's behaving, you know, anti-
3 competitively, but it certainly would, you know,
4 cause one to, you know, ask a question. What is
5 that, because it says unless necessarily
6 appropriate to achieve the purpose of the Act, so
7 the first question we can ask is why are you doing
8 this? You know, what's the motivation behind it?

9 There's a body of antitrust law that --
10 and I'm sure we can learn from Sarah who used to
11 be an antitrust lawyer so that we can learn from
12 -- but Sarah's correct. I think a lot of it has
13 to -- you'll have to depend on the facts and
14 circumstances of each case, but that's one that
15 comes to mind.

16 MS. JOSEPHSON: Right, and I think the
17 only thing I would add to that is that it also
18 does have the sort of carve-out language, "unless
19 necessary or appropriate to achieve the purposes
20 of the Act." So we could -- that is a unique part
21 of the statutory framework. In addition to the
22 clearing example Ananda gave, I might also mention

1 certain actions that could be taken with regard to
2 valuation of swaps. So pricing, collusive
3 behavior, uncertain terms and conditions of swaps,
4 and that sort of thing is what we would
5 contemplate. But at this point, it's primarily
6 putting into the regulation the statutory text and
7 then requiring that the entities have policies and
8 procedures in place to prevent that activity.

9 CHAIRMAN GENSLER: Commissioner Sommers?

10 COMMISSIONER SOMMERS: I don't have any
11 questions, thank you.

12 CHAIRMAN GENSLER: Commissioner Chilton?

13 COMMISSIONER CHILTON: Nope, no
14 questions, thank you.

15 CHAIRMAN GENSLER: Commissioner O'Malia?

16 COMMISSIONER O'MALIA: Thank you. I'd
17 like to follow on what Commissioner Dunn had
18 asked. He asked the gold standard question. I
19 assume in developing your rule that you reached
20 out to these swap dealers for input in
21 establishing these risk management plans. Can you
22 give us a flavor of what we have in the rule, how

1 that matches with the survey of the industry you
2 took, and what might be different in your rule
3 that you didn't see anywhere else?

4 MS. JOSEPHSON: Right, so, and I think I
5 was going to add this earlier to what Ananda said
6 in terms of gold standard. One of the -- or some
7 of the source material that we consulted quite
8 heavily is the banking supervision requirements
9 for those entities, and they have done a
10 tremendous amount of work in areas of risk
11 management, identifying market risk. So the OCC's
12 and the Federal Reserve's extensive amount of
13 material on their supervision manuals is something
14 that we used. We also consulted and conferred
15 with bank supervisors and used generally speaking
16 the best risk management practices that are
17 available. In many ways our experience with
18 oversight of clearing houses was brought to bear
19 because many of the same risks in terms of getting
20 good valuations price information is critical to
21 understanding your market risk, your exposure to
22 the markets, and then also to your counterparties.

1 Your counterparty credit risk is another thing
2 that we tried to, in a very simple way, lay out
3 some of the key things that you need to do so that
4 when you are engaging in these swap transactions,
5 that you understand your exposure from a number of
6 perspectives. Also liquidity risk that -- so as
7 many different sources as we could, we could get
8 our hands on. In the time that we had to work on
9 these rules, we relied on that.

10 COMMISSIONER O'MALIA: Are these the
11 pre-Dodd- Frank manuals that you referred to?
12 Pre- or post-Dodd- Frank rules?

13 MS. JOSEPHSON: Oh, this is just current
14 bank supervision manuals, and then also talking to
15 those entities that are likely to be considered
16 swap dealers or major swap participants, we also
17 got information from them. And it's very standard
18 practice, again, to understand what your overall
19 exposure is to markets and to your counterparties.

20 COMMISSIONER O'MALIA: So you would say
21 these risk management duties embodied in this
22 rulemaking are fairly standard in the industry?

1 MS. JOSEPHSON: Yes.

2 COMMISSIONER O'MALIA: Thank you.

3 CHAIRMAN GENSLER: I am -- I think I
4 could probably just call a question. I'm in
5 support of this. I mean, it's been a lot of years
6 since I was on Wall Street, so I'm a little rusty.
7 But they do seem standard, to know your
8 valuations. What I like about this, too, is that
9 it's -- it probably is closer. I know it's not
10 strict core principles, but it's laying out
11 principles for the dealers to have. It's not
12 laying out "you must do this on Tuesday and that
13 on Wednesday" or anything. So I'm sure we'll get
14 a lot of public comments if we put this out, but I
15 like this because it sort of principles-based for
16 the dealers to do their risk management. But with
17 that I would ask -- call a question -- and all in
18 favor of the Notice going to the Federal Register?

19 GROUP: Aye.

20 CHAIRMAN GENSLER: Any opposed? I don't
21 know if Commissioner Chilton's there, but --

22 COMMISSIONER CHILTON: Aye.

1 CHAIRMAN GENSLER: So I think it being
2 unanimous, we'll send it along and Sarah, you've
3 got three more.

4 MS. JOSEPHSON: All right. So maybe
5 we'll consider the conflicts-of-interest rules
6 together, if that's all right with the
7 Commissioners? Okay.

8 CHAIRMAN GENSLER: There maybe separate
9 votes because they're two different rules, but
10 you'll just -- can discuss them together? Thank
11 you.

12 MS. JOSEPHSON: They are very similar,
13 if not identical in terms of what they require.
14 Here what we are, the statutory text that we're
15 working from is in 731, Section 731, of the
16 Dodd-Frank Act again. The CA section, new Section
17 4(s)(j)(5) on conflicts of interest for swap
18 dealers and major swap participants, it requires
19 that they "establish appropriate informational
20 partitions between persons researching or
21 analyzing the price or market for any commodity or
22 swap and persons whose involvement in pricing,

1 trading, or clearing activities might potentially
2 bias the judgment or supervision of persons
3 engaged in research." That section also
4 establishes or requires "partitions between
5 persons acting in the role of providing clearing
6 activities or making determinations as to
7 accepting clearing customers, and those persons
8 shall be separated again from those individuals
9 who are involved in pricing or trading or clearing
10 activities." It's a little awkwardly worded
11 there, but generally separating people providing
12 clearing services from traders.

13 The other section that applies to FCMs
14 and IBs is from Section 732, the conflicts
15 provision, which will be new. It's in Section
16 4(d) of the CEA, new Sections 4(d)(c). And that
17 requires "futures commission merchants and
18 introducing brokers to implement informational
19 partitions between those researching and analyzing
20 prices and markets and those who are involved in
21 trading or clearing."

22 So what we've done with the rules --

1 again, just an overview of the rules -- is a
2 separation, a restriction, a separation of
3 research from trading, and accomplishing that
4 through placing restrictions on non-research
5 personnel influencing the content of research
6 reports that are prepared by research analysts,
7 prohibiting the supervision of research analysts
8 by people engaged in trading or clearing, putting
9 certain restrictions around compensation that you
10 can't consider as one factor for a researcher's
11 compensation, the researcher's contributions to
12 the trading or clearing business. We took a
13 general disclosure approach to material conflicts
14 of interest; so if a researcher owns or has a
15 financial interest in a derivative of a type that
16 the researcher is following, that that ownership
17 interest has to be disclosed and that the nature,
18 the general nature, of the financial interest must
19 be disclosed. And that's both in written
20 materials, written communications, and also when a
21 research analyst may be making a public
22 appearance. There's a prohibition on retaliation

1 against researchers who produce reports that may
2 adversely affect the firm's business and a number
3 of other provisions, again fairly limited, but all
4 to establish that division between the research
5 and the trading arm.

6 And then to accomplish the important
7 objectives of the separation between the clearing
8 personnel and the traders, what we did -- and this
9 is about preserving access to clearing for
10 customers in a lot of ways, that's sort of the
11 heart of the policy concern here -- so "swap
12 dealers and major swap participants are prohibited
13 from interfering with or attempting to influence
14 decisions related to the provision of clearing
15 services or the acceptance of clearing customers."
16 They also must maintain appropriate partitions
17 between what we've defined as the business trading
18 unit, so that's really the trading desk, those
19 personnel and the people who are involved in
20 making clearing decisions with regard to accepting
21 customers, setting fees, but basically providing
22 the clearing services or accepting clearing

1 customers. And then in order to make sure that
2 there is no -- that the intent is fully
3 effectuated -- what we did is for the FCMs who --
4 under Dodd-Frank, only FCMs can accept collateral
5 from customers, so the FCMs who clear on behalf of
6 customers for all swaps and futures at this point
7 so that those -- if there's an affiliated swap
8 dealer or major swap participant, that they
9 prevent the interference of that trading unit
10 personnel from getting involved in the decisions
11 about providing clearing services to customers.
12 So that's the overview of the rule.

13 CHAIRMAN GENSLER: If I -- there's two
14 rules, actually, and I don't know how to do this
15 so that I can entertain discussion on both. But I
16 guess I will take a motion on each and at least
17 have them so that we can ask about both of them.
18 So let me do a motion on the swap dealer firewall?

19 COMMISSIONER DUNN: So moved.

20 COMMISSIONER SOMMERS: Second.

21 CHAIRMAN GENSLER: So that's on the
22 table to discuss. If I can entertain a motion on

1 the futures commission merchant firewall?

2 COMMISSIONER DUNN: So moved.

3 COMMISSIONER SOMMERS: Second.

4 CHAIRMAN GENSLER: All right. So
5 they're both on the table. Sarah, if I could ask
6 -- and I don't mean to front run my fellow
7 Commissioner Sommers, but I find myself somewhat
8 sympathetic to her point. We've included
9 firewalls in the swap dealer definition between
10 research and trading, between research and
11 clearing, and between clearing and trading. Is
12 that correct?

13 MS. JOSEPHSON: Yes.

14 CHAIRMAN GENSLER: And these firewalls
15 are what the statute calls "informational
16 partitions." I am supporting it, and I am
17 supporting the other one as well because I also
18 understand that these various firewalls are quite
19 similar and tailored off of what the Securities
20 and Exchange Commission has done at Congress'
21 direction under Sarbanes-Oxley. Is that correct?

22 MS. JOSEPHSON: Ah, yes. In fact, the

1 FINRA Rule 2711 is the basis. We worked from that
2 in putting together the separation between the
3 research and the trading desk.

4 CHAIRMAN GENSLER: Right. And that the
5 statutory language in Dodd-Frank is very similar.
6 It may not be identical, but very similar to
7 what's in Sarbanes-Oxley from eight years ago?

8 MS. JOSEPHSON: Yes, it is.

9 CHAIRMAN GENSLER: Okay, but I think the
10 question that comes up -- and we address it in the
11 proposed FCM rule and you have it in the preamble
12 on pages 8, 9, and 10 -- is that the Dodd-Frank
13 provisions for the firewalls and the FCM is
14 different than the provision in the swap dealer
15 area. It explicitly says there's got to be an
16 information partition between research and
17 trading, and research and clearing, but it's -- am
18 I correct? -- it's silent on trading to clearing?
19 It's just that I don't want to front run, but
20 that's I think -- is that right?

21 MS. JOSEPHSON: Yes, yes, it is.

22 CHAIRMAN GENSLER: So why are we doing

1 that?

2 MS. JOSEPHSON: Right. So the idea and
3 the statutory authority for the
4 conflicts-of-interest provision, the first part,
5 you're absolutely right. That under 4(d)(c)(1),
6 it is a division between the research and the
7 trading or clearing -- primarily the focus is on
8 the trading desk -- and then (c)(2) allows the
9 Commission to "address such other issues as the
10 Commission deems to be appropriate." And the
11 reason to include a provision on the FCM side is
12 to prevent regulatory arbitrage between the
13 different affiliates. So within the same entity,
14 you could have going forward an FCM entity and a
15 swap dealer entity, both of which have trading
16 desks, have clearing units, and you want to ensure
17 that -- and I think this is the objective -- that
18 the clearing unit personnel, those who are making
19 decisions about providing, for instance, services
20 to customers, that they aren't influenced by the
21 trading desk because of a number of different
22 concerns, but primarily it would be a competitive

1 threat, that the trading desk would consider there
2 to be a competitive threat to offering clearing.
3 So this would be for cleared or uncleared swaps.
4 That they would perhaps want to disincentivize or
5 influence in some way the clearing personnel from
6 accepting customers.

7 CHAIRMAN GENSLER: So is your and
8 staff's concern just where a futures commission
9 merchant and a swap dealer are held in the same
10 sort of what I'll call consolidated group?

11 MS. JOSEPHSON: That is the primary
12 concern, yes that the rule is attempting to
13 address.

14 CHAIRMAN GENSLER: I didn't see a
15 question, and it might mean that I need to do an
16 amendment and get a motion, but is there a
17 question explicitly like -- I'd be interested from
18 the public whether there's another way, is there
19 an alternative to address this circumstance?

20 MS. JOSEPHSON: We have generally
21 solicited comment on all of the provisions, but we
22 could include a particular question that would ask

1 if there were alternative approaches.

2 CHAIRMAN GENSLER: Well, I have to do it
3 in the right procedure, but I'd like to -- if I
4 get the support of my fellow Commissioners -- to
5 have some more, you know, public input
6 specifically on that.

7 COMMISSIONER O'MALIA: Mr. Chairman, I'm
8 supportive of a question. I think if it would
9 accompany an example that you have provided that
10 might provide a little more helpful comment. What
11 exactly are we trying to solve here? You could
12 draft it in the form of a question.

13 CHAIRMAN GENSLER: Yeah, I think that's
14 a good idea. Is that a motion for an amendment?
15 Just to offer an amendment.

16 COMMISSIONER O'MALIA: Oh, yeah, sure.
17 I'll make a motion.

18 CHAIRMAN GENSLER: So we have a lot of
19 motions on the table. I'll let others ask
20 questions, but that's my main -- I'm going to
21 support both of these, but I would hope that it
22 would get the support and that we'd sort of focus

1 a little bit more and get public input on this.
2 What is in essence in paragraphs or in parts pages
3 8, 9, and 10 in the preamble on the second rule.
4 Commissioner Dunn?

5 COMMISSIONER DUNN: Mr. Chairman, I
6 would make a motion that we agree that any
7 additional questions that maybe brought to the
8 Commission before 5:00 today or some time would be
9 included in here so that --

10 CHAIRMAN GENSLER: I'll second that
11 motion. All in favor of that?

12 COMMISSIONER CHILTON: Can we debate
13 that a little bit?

14 CHAIRMAN GENSLER: Or we'll debate on
15 that, on Mike's amendment, yes.

16 COMMISSIONER CHILTON: I mean, I'm
17 really -- I just want to make sure I understand
18 it, Commissioner Dunn. I mean, anyone of us has a
19 question, we turn it in and it gets published in
20 the Federal Register? Is that what you're
21 suggesting?

22 COMMISSIONER DUNN: On this particular

1 rule, yes.

2 COMMISSIONER CHILTON: Ah.

3 CHAIRMAN GENSLER: Narrow it more, Mike?

4 COMMISSIONER CHILTON: I'm not so sure
5 about that.

6 CHAIRMAN GENSLER: Mike, you want to
7 narrow it more? We were just trying to make sure
8 that we could ask questions about this, but --

9 COMMISSIONER CHILTON: I mean I'd rather
10 see us with sort of a specific question or at
11 least a sort of a certain band of questions.

12 COMMISSIONER DUNN: I guess what my
13 motion would be is that we would keep the question
14 open for voting on it until 5:00 today, and then
15 we would all vote on it up and down, whatever
16 those questions might be. Does that make sense to
17 the Commissioners?

18 CHAIRMAN GENSLER: I have to consult --
19 I think we probably have to what, back off? Do I
20 have to close out my question?

21 COMMISSIONER CHILTON: Perhaps, Mr.
22 Chairman --

1 CHAIRMAN GENSLER: He says I have to
2 close out my question.

3 COMMISSIONER CHILTON: Perhaps the staff
4 could come up with exactly what your question is
5 while you're conducting the meeting and present it
6 to us, which I think I'd be supportive of.

7 CHAIRMAN GENSLER: Right, and my
8 question more specifically is whether there's
9 alternatives to address this partition, the
10 information partition, between trading and
11 clearing in FCMs, so it's just the FCM rule. And
12 it's the discussion on pages 8-10 of the preamble,
13 whether there's alternatives to address the
14 specific example that Sarah Josephson raised about
15 possible regulatory concerns when an FCM is part
16 of a consolidated financial entity that also has a
17 swap dealer. So that was my question. That is as
18 tight as I can say my question.

19 COMMISSIONER SOMMERS: I think just to
20 add, to clarify, I think, my concern in this area
21 is that the specific language that's included in
22 731 with regard to that is not included in 732.

1 So I guess my concern would be that we are going
2 beyond what I believe Congressional intent was.
3 If they wanted to include this to apply to FCMs
4 and IBs, I think they would have.

5 CHAIRMAN GENSLER: So my question is
6 just are there alternatives, particularly in
7 Sarah's example when an FCM is owned and a
8 consolidated group that also has a swap dealer?
9 Because that's what I understand, that's my tight
10 -- as best as I could tightly do the question.

11 COMMISSIONER CHILTON: Mr. Chairman, I'm
12 fine with that question, if Commissioner Dunn
13 wants to make that motion, but even that with any
14 technical changes the staff may have at that time
15 is appropriate to me.

16 COMMISSIONER DUNN: I'll amend my motion
17 to include that.

18 CHAIRMAN GENSLER: All right. So that's
19 what -- that question's on the table. All in
20 favor?

21 GROUP: Aye.

22 CHAIRMAN GENSLER: Any opposed? All

1 right. Now we're back to questioning the --
2 questions on either of these two rules.

3 COMMISSIONER DUNN: I do because as
4 we're looking at the push-out provision here of
5 this, you know, probably before we conclude here
6 this afternoon, the Econobloggers, Zero Hedge, or
7 Naked Capitalists, they're going to come up with
8 dozens of ways people can get around these
9 provisions. And do we have a catchall phrase in
10 here anywhere?

11 MS. JOSEPHSON: Um, I think with regard
12 to the separation between the research arm and the
13 trading desk, the catchall at this point is just
14 "there will be no undue influence on the content
15 of research reports." So that's the general
16 catchall for that. And then the catchall in the
17 clearing area is the idea that there will be no --
18 "no one is allowed to directly or indirectly
19 interfere with or attempt to influence decisions
20 of the clearing unit." So that's the best that
21 we've been able to come up with to be able to try
22 to get at those concerns for evading the intent of

1 the Dodd-Frank Act.

2 COMMISSIONER DUNN: I guess, again, my
3 question to Ananda is how are we going to
4 implement this with the resources you currently
5 have?

6 MR. RADHAKRISHNAN: Again, I think it's
7 a matter of prioritizing resources. In that, I
8 hope the -- in fact, I invite the Commission to
9 give guidance to DCIO based on a set of resources
10 as to where you'd like us to prioritize our work.
11 Because in that way, you know what it is we're
12 supposed to do, and we know what it is we're
13 supposed to do, and we'll give you a plan as to
14 how we're going to do it, and if you like it,
15 we'll go and do it. So, I think as I have
16 discussed this with you privately, something's got
17 to give. If we don't get additional resources,
18 something's got to give. As much as I personally
19 hate not doing anything, I'm realistic enough to
20 know that with limited resources, we cannot do
21 everything. And I think it's essential that we at
22 least keep a finger in each of the pies that we

1 have been given. In other words, it would be a
2 shame if we were to concentrate all our resources
3 on supervising swap dealers and MSPs, and then for
4 us to neglect the SROs and any other registrars
5 and DCOs. And that's not a very satisfactory
6 answer.

7 COMMISSIONER DUNN: And I'm also afraid
8 that I preempted you, Ananda, in my first opening
9 statement when we started this. I asked for
10 prioritization by the division directors of what
11 could be or could not be done, and I am hopeful we
12 will get that by the time we get all of the rules
13 out for comment.

14 MR. RADHAKRISHNAN: Sure, sure, and
15 hopefully we will have more clarity on our
16 resources, what resources we have, so that we can
17 give you a priority.

18 CHAIRMAN GENSLER: Thank you,
19 Commissioner Dunn. Commissioner Sommers, none
20 there. Commissioner Chilton?

21 COMMISSIONER CHILTON: I don't have
22 anything, thank you.

1 CHAIRMAN GENSLER: Commissioner O'Malia?

2 COMMISSIONER O'MALIA: I don't have
3 anything.

4 CHAIRMAN GENSLER: If there are no
5 further questions, I'll first take a vote on the
6 swap dealer firewall rule. All those in favor,
7 say "aye."

8 GROUP: Aye.

9 CHAIRMAN GENSLER: Any opposed? It
10 seems that it's unanimous. Then I will take a
11 vote on the futures commission merchant firewall
12 rule, as amended. All those in favor, say "aye."

13 GROUP: Aye.

14 CHAIRMAN GENSLER: Any opposed?

15 COMMISSIONER SOMMERS: Opposed.

16 CHAIRMAN GENSLER: Opposed. It seems to
17 be 4-1, and I thank you, Sarah. And if we can
18 then move to the chief compliance officer proposed
19 business conduct rule. As I understand it, this
20 is -- again, Dodd-Frank has a whole chief
21 compliance officer -- and I'll call it regime?

22 MS. JOSEPHSON: Yes, yes, there was a

1 regime. Chief compliance officers were added to
2 several sections of the Dodd-Frank Act, Title VII.
3 So there are chief compliance officers for swap
4 dealers, major swap participants, and FCMs. The
5 rule that is before you today addresses those.
6 There are also similar provisions for DCOs, SEFs,
7 and swap data repositories. So the statutory
8 provisions that we were working from, again
9 Section 731 4(s)(k), this is the designation of
10 chief compliance officer for swap dealers and
11 major swap participants. And then a similar
12 provision in 732, 4(d)(d), the designation for
13 futures commission merchants. And they are
14 different in that the 4(s)(k) lays out specific
15 duties and an annual report for the CCO. It's
16 very similar if not identical to the provisions
17 for DCOs, SEFs, and SDRs. On the other hand, the
18 designation for FCMs is just -- sets forth --
19 "performs such duties and responsibilities as will
20 be set forth by the Commission in regulations or
21 rules adopted by a registered futures
22 association."

1 So the rule before you at this point
2 directs that the CCO report directly to the board
3 or senior officer of the swap dealer, major swap
4 participant, or FCM. And the primary duty of the
5 CCO is to establish and enforce compliance
6 policies and that we have defined in the rule. It
7 includes among other things a
8 conflicts-of-interest policy and general policies
9 and procedures that must be in place to comply
10 with the entity's own rules for itself and also
11 the CEA and Commission regulations.

12 We decided to apply the same standards
13 and the same requirements for CCOs for swap
14 dealers, major swap participants, and for FCMs for
15 a number of reasons, including as we just
16 discussed in many instances, swap dealers and FCMs
17 may be dual registrants with the Commission, may
18 be in the same consolidated entity. We wanted to
19 promote legal certainty for all three registrants.
20 And so having the Commission issue rules makes it
21 possible for those entities to know that they must
22 have a CCO and what is expected of the chief

1 compliance officer. And we've also solicited
2 comments specifically on whether or not this was
3 an appropriate approach to take. The rules will
4 appear in Part 3 -- or the rule will appear in
5 Part 3 of the Commission regulations. This
6 pertains to registration of registrants, so FCMs
7 and now SDs and MSPs. We've modified the
8 definition of "principle" to include a CCO. A
9 principle is generally a CEO, a CFO. And the only
10 requirements that we've put in place for who the
11 CCO must be is that they have an appropriate
12 background in qualifications and they not be
13 disqualified under the CEA, particularly under
14 Section 8(a)(2). They will also be required to
15 file a Form 8R with NFA, submit fingerprints to
16 the NFA from which they do a general background
17 check.

18 I mentioned that the duties that they
19 will have: "Establish compliance policies,
20 resolving any conflicts of interest that might
21 arise, and establishing procedures for remediating
22 noncompliance." The statute also requires that

1 there be an annual report, and the annual report
2 will generally describe policies and procedures,
3 including a code of ethics and
4 conflicts-of-interest policies, an assessment of
5 the effectiveness of the compliance policies,
6 listing any material changes or noncompliance
7 issues. And those annual reports will be filed
8 along with the financial condition, the annual
9 financial condition reporting that is in place
10 right now for FCMs. So they file either a 1-FR or
11 a FOCUS Report, depending on their registration
12 status, and there will be similar requirements to
13 be promulgated in the coming weeks for swap
14 dealers and major swap participants. They will
15 file monthly and annual reports in a similar way
16 to what FCMs do now.

17 And we've also proposed a delayed
18 effective date and solicited for this rule,
19 depending on how difficult it will be to hire a
20 chief compliance officer, although it's our
21 understanding that most entities have someone who
22 already fits this particular role. And we've

1 solicited comment on how long it will take them to
2 come into compliance with the rule and establish
3 the corresponding policies and procedures. But
4 again, for existing registrants, this is not a
5 radically new idea.

6 CHAIRMAN GENSLER: I'll entertain a
7 motion before we ask questions.

8 COMMISSIONER DUNN: So moved.

9 COMMISSIONER SOMMERS: Second.

10 CHAIRMAN GENSLER: I don't have
11 questions. I'm just going to say I support
12 putting a proposed rule out. I am interested in
13 the public comment on it because I think, as you
14 rightly said, I think a lot of large entities do
15 have this concept in what Congress embodied. But
16 I'm not entirely sure whether smaller swap dealers
17 -- you know, not everybody has this concept. And
18 I appreciate that people have to see what the
19 definition of swap dealer is, but they'll see that
20 in a couple of weeks. And this rule is out for
21 how many days? Is this a 60 day?

22 MS. JOSEPHSON: 60 days.

1 CHAIRMAN GENSLER: So this is out for 60
2 days, and they'll see the definition. So I'm
3 particularly just interested in sort of what I'll
4 call the intermediate-size swap dealers, what
5 they'll be commenting. I think this dutifully
6 does what Congress asked us to do though, so I'll
7 be supporting it.

8 COMMISSIONER DUNN: It's my
9 understanding that this is actually part of the
10 risk management program, that they have a CCO? Is
11 that right?

12 MS. JOSEPHSON: The CCO will certainly
13 be a part of that, and in certain instances they
14 will get the risk exposure reports that I
15 mentioned. However, the CCO should not be a
16 substitute for a chief risk officer or to have
17 risk management personnel in place, but they would
18 be involved in that overall oversight, absolutely.

19 COMMISSIONER DUNN: You indicate that
20 the CCO would not have to register with the NFA,
21 but that the NFA will get their fingerprint card
22 and do the background investigation. Now will

1 they be able to charge for doing that service?

2 MR. RADHAKRISHNAN: Um, that's a good
3 question. I guess the -- I don't see it in
4 Barbara Gold's rulemaking, but potentially they
5 could charge the registrant because this will be a
6 CCO for an FCM, IB, swap dealer, and MSP. So if
7 the NFA were not inclined to provide their
8 services for free, they could charge the
9 registrant because after all, this is going to be
10 the chief compliance officer for a registrant.
11 But, you know, you should ask the NFA.

12 COMMISSIONER DUNN: I'm sure they'll
13 write in about that. The annual report -- there
14 are actually seven parts into that that you're
15 asking for in the annual report. I mean, what
16 type of resources and how are we going to go about
17 evaluating those annual reports and to get back on
18 a timely manner to the CCOs that we understand
19 what they're doing and either say they haven't hit
20 all of those seven areas that we've asked for or
21 they have and are in compliance? That's the
22 resource question as well, Ananda.

1 MS. JOSEPHSON: Right, so maybe I'll
2 start with what's required of them. In some ways
3 the annual report also serves as an internal sort
4 of self assessment tool. And in one of the things
5 that we've mentioned in the preamble is that it
6 could prompt a conversation. We would like to
7 assume that chief compliance officers are meeting
8 regularly with the board of directors or the
9 senior officer, but at a minimum we've said they
10 should meet once a year, that reflects the annual
11 report, to go over areas where conflicts of
12 interest have arisen, noncompliance with in some
13 instances their own compliance policies, but
14 certainly noncompliance with our regulations or
15 other applicable regulations. So that would be
16 something that they would do on their own, and
17 we've just set out the parameters for that. And
18 then we would receive a copy of that, but I don't
19 think at this point anyone's contemplating that we
20 would pass a sort of judgment on that. It would
21 help inform our supervision of these entities,
22 however, and that's I think where it would be most

1 useful is to sort of a direction for us to
2 understand here where issues have come up, where
3 they haven't, where you know, what that report is,
4 that that would be part of our ongoing oversight.

5 COMMISSIONER DUNN: I guess that begs a
6 question of if we're not reviewing the annual
7 report, why ask them to submit it?

8 MR. RADHAKRISHNAN: Actually, we are
9 going to review them because as with every report
10 that we ask our registrants to provide us, you're
11 right, if we're not going to review them, why ask
12 for it. So we, you know, make a very conscious
13 effort to review all reports. For example,
14 financial reports and so on, we make a very
15 conscious effort to review the reports. But, you
16 know, Commissioner Dunn, you're right, this again
17 points to yet another strain on our resources.
18 And I just worry that if we don't get the
19 resources that we ask for, that, you know, I hate
20 to say this, but we'll be setting up to be
21 failures. Because if we don't get the resources
22 -- we have all of these responsibilities -- we

1 don't get the resources, something's got to give
2 and that's my concern.

3 COMMISSIONER DUNN: I was on a panel
4 once -- this is just editorial -- with David
5 Lawton from the FSA, and he made the remark that
6 he never asks for a piece of paper that he doesn't
7 know what he's going to do with it. And I want to
8 make sure that we know what we're going to do with
9 this as we're asking for the report.

10 MR. RADHAKRISHNAN: Absolutely. I think
11 what we will do, as Sarah pointed out, you know,
12 the first go-around will be to get the reports
13 and then to the extent that we find that, you
14 know, there's certain deficiencies in the report,
15 I think what we'd like to do is sort of create a
16 set of expectations that we can apply to everybody
17 and say this is what we expect from a report
18 because it would be unfair if, you know, we
19 weren't consistent.

20 CHAIRMAN GENSLER: And is -- I'm just
21 following up on Commissioner Dunn, as I understand
22 it, I'm looking at the statute now at the very end

1 of Section 731, Congress says directly that "in
2 accordance with rules prescribed by the
3 Commission, chief compliance officers shall
4 annually prepare and sign a report." And then it
5 gives more details about it, so this is -- again,
6 I mean, I'm supporting the rule because I look at
7 the rule and I line it up in the statute and it
8 seems we're doing what Congress has asked us to
9 do. Is that --

10 MS. JOSEPHSON: Right. It says that
11 they "shall prepare" and also there's "shall
12 furnish to the Commission" so they do both of
13 those.

14 CHAIRMAN GENSLER: Right, right, but I'm
15 glad to see Dan Roth here from the NFA and, you
16 know, get ready my friend. Commissioner Sommers?

17 COMMISSIONER SOMMERS: Thank you, Mr.
18 Chairman. I think my concerns with regard to
19 these rules are similar to my concerns with regard
20 to the rules on the FCMs, IBs, that the duties
21 prescribed in the Act for swap dealers and major
22 swap participants are pretty clear. It doesn't

1 require us to promulgate a rule. They seem to be
2 pretty clear, yet the duties for a chief
3 compliance officer of an FCM could be delegated to
4 the NFA or we could prescribe those rules. I am
5 happy that we have included a question in the
6 proposal that asks whether or not it's appropriate
7 for us to be imposing the same kind of duties on
8 an FCM, but I will ask whether or not we had
9 considered that instead of us proposing these
10 rules for FCMs that we would have left that to the
11 NFA?

12 MS. JOSEPHSON: Right, so we did
13 consider that and again, I think as I mentioned
14 earlier, our thought was that to provide the sort
15 of legal certainty, that it made sense while we
16 were issuing the rules for the swap dealers and
17 major swap participants that we would do a similar
18 -- take an identical approach in this instance for
19 FCMs.

20 COMMISSIONER SOMMERS: I know in a
21 couple of places in the proposal it says that we
22 are following SEC rules with regard, but are they

1 exact to what chief compliance officers for BDs
2 have to comply with?

3 MS. JOSEPHSON: Right, so in this rule
4 we're actually not following the SEC approach.
5 This is almost entirely on with what the statute
6 requires for our registrants and registered
7 entities, but the SEC does have requirements.
8 There's a FINRA rule for chief compliance officers
9 for broker dealers that is very similar. It is
10 not identical, but it is consistent, and there are
11 examples of where duly registered entities for
12 broker dealers and FCMs have consistent, but not
13 identical, requirements. Recordkeeping is one of
14 them.

15 CHAIRMAN GENSLER: Ah, Commissioner
16 Chilton?

17 COMMISSIONER CHILTON: No questions.
18 Thank you, Mr. Chairman.

19 CHAIRMAN GENSLER: Commissioner O'Malia?

20 COMMISSIONER O'MALIA: Sarah, I'd like
21 to ask you a question regarding kind of the
22 philosophy of this rule. Like it or not, it's in

1 there. We've got -- I don't know how many times
2 CCO is mentioned in the statute, but it's clearly
3 in there. And I guess my question, in the
4 principles-based versus rules-based, we've seen
5 some different drafts of this rulemaking that have
6 been much more prescriptive. And I guess we can
7 look at this in two ways: One, providing kind of
8 the guidance and principles approach to a CCO,
9 which would, you know, kind of serves our
10 frontline of defense in terms of establishing good
11 procedures and conduct within a company. That
12 obviously resolves our ability to go and
13 investigate in a much more prescriptive way. The
14 other version being a very prescriptive, setting
15 specific standards, et cetera, and kind of playing
16 gotcha with a CCO, and then -- so how do we view
17 this? Are we going to use them as a tool or, you
18 know, is this something that we're going to kind
19 of go by chapter and verse to really enforce
20 something here?

21 MS. JOSEPHSON: Right, so the -- again,
22 I think the approach we took was to stick as

1 closely to the statutory text as we could. So
2 that's where the establishing compliance
3 procedures, having the annual report that requires
4 them to provide a description of their compliance
5 with policies and procedures that they have, where
6 we tried to do that. And then because we took
7 from the requirement that they report directly to
8 the board, a few enhancements on what the nature
9 of that relationship so that the board sets
10 compensation and that they'll meet at least once
11 per year. We also added the sort of minimum
12 qualifications for this position, and this is in
13 keeping with the background and skills
14 appropriate, and also that they can't be
15 statutorily disqualified under the CEA. So that
16 is the idea, and again, I think as Commissioner
17 Dunn's question got it, is what role this person
18 plays is really very much up to the entity. Aside
19 from the annual report and the overall compliance,
20 but they can use them -- and we do ask some
21 questions about whether it would be appropriate to
22 have a general counsel serve as the CCO, some of

1 those. But there's really a lot of flexibility
2 that we tried to allow for the entity to
3 incorporate the CCO into. For instance, we did
4 this with the risk management that we discussed,
5 that it will -- they'll at least see it. Now they
6 could be more involved, but sticking to the
7 statute and maintaining a degree of flexibility.
8 And one of the examples of that that I would point
9 to is the reporting to either the board or the
10 senior officer.

11 CHAIRMAN GENSLER: Sorry. Commissioner
12 Dunn?

13 COMMISSIONER DUNN: Mr. Chairman, if you
14 would indulge me here while I kind of follow up on
15 something that Commissioner Sommers was going on
16 and later on we're going to take up the actual
17 registration. In that I think there are three
18 options that we have in there as far as the role
19 of the NFA, either we do it all or we delegate it
20 with them, oversee them, or we let them do
21 everything. Commissioner Sommers, if you'll
22 indulge me in this little colloquy, was that kind

1 of what you were getting at?

2 COMMISSIONER SOMMERS: Because the
3 statute under the designation of a chief
4 compliance officer for an FCM contemplates that
5 the rules either be adopted by us or by a futures
6 association, my question was whether or not we had
7 considered us not doing these rules for FCMs.
8 It's very clear what the duties will be for a
9 chief compliance officer of a swap dealer or a
10 major swap participant. But I guess I would
11 suggest that Congressional intent was not that
12 clear with regard to what the duties would be for
13 a CCO of an FCM.

14 COMMISSIONER DUNN: I would ask is the
15 way the rule is written at this time, does this
16 allow the public to comment on that particular
17 question?

18 MS. JOSEPHSON: Yes, it specifically
19 requests comment on that decision that the
20 Commission may take.

21 MR. RADHAKRISHNAN: If I might just add
22 one more thing. I do take Commissioner Sommers'

1 point that the statute does provide an
2 alternative, although I find it's always useful
3 for the Commission to issue a regulation because
4 it provides guidance to the NFA or the RFA or what
5 the NFA could do is perhaps augment the, you know,
6 the Commission's rules. So, for example, we found
7 that out through the whole FOREX saga where we did
8 not have rulemaking authority, but basically
9 relying on the NFA to regulate this industry.
10 And, you know, the NFA, God bless them, they did a
11 really good job, but now that we have the
12 authority, I think it's important that, you know,
13 we set the standard and for the NFA to not pile
14 on, but join up.

15 COMMISSIONER DUNN: I'm smiling because
16 it's a southernism when you say "bless your heart"
17 you're getting ready to give them a zinger.

18 CHAIRMAN GENSLER: I think the motion
19 being made and duly seconded and fully discussed
20 and even with that, all those in favor say "aye."

21 GROUP: Aye.

22 CHAIRMAN GENSLER: Any opposed?

1 COMMISSIONER SOMMERS: Aye.

2 CHAIRMAN GENSLER: Where are you?

3 COMMISSIONER SOMMERS: I'm opposing.

4 CHAIRMAN GENSLER: Opposing, all right.

5 It's 4-1. Sarah, are you now out of the hot seat?

6 All right. Who wants to go next? Barbara Gold.

7 We're going to consider next the registration

8 requirement or the rule for the process for

9 registration. Barbara Gold from the Division of

10 Clearing and Intermediary Oversight is going to be

11 joined by Chris Cummings and William Penner, and

12 I'm gathering Ananda will stay at the seat as

13 well. Thank you. The floor is yours, probably

14 Barbara, right? Who's taking leave?

15 MS. GOLD: Good afternoon. Thank you

16 for your assistance in developing these

17 regulations, and I'd also like to thank the

18 members of my team and in particular those members

19 of my team with whom I work with in DCIO, William

20 Penner, Talulia Glaze, Elizabeth Miller who's the

21 newest member of my team, and Chris Cummings who's

22 the most senior member and the person I think of

1 as my right- and left-hand man. I'd also like to
2 acknowledge the technical assistance of Mike
3 Crowley of NFA, Associate General Counsel there,
4 in developing these regulations.

5 The substance of the rules that my team
6 has been responsible for concern the following:
7 The registration process for swap dealers and
8 major swap participants who I'll call "swaps
9 entities," the prohibition against a swaps entity
10 permitting a statutorily disqualified person to
11 associate with it, and requirements applicable to
12 affiliates of an insured depository institution
13 created to trade swaps for the purpose of
14 permitting the institution to retain its access to
15 certain federal assistance. These we'll refer to
16 as "push-out affiliates."

17 The sections of the Dodd-Frank Act that
18 these rules relate to are as follows:
19 Registration process for swaps entities, Section
20 731, to be codified in CEA Section 4(s)(a); the
21 prohibition against statutorily disqualified
22 associated persons in Section 731 of Dodd-Frank,

1 to be codified in CEA Section 4(s)(b)(6); and
2 push-out affiliates are discussed in Section 716
3 of Dodd-Frank and there's no specific CEA
4 codification. I would note here that the
5 registration process package wouldn't propose any
6 particular rules for push-out affiliates. It
7 would make clear, however, that if a push-out
8 affiliate came within the swap dealer or major
9 swap participant definition, it would be subject
10 to registration as such. I would pause here to
11 say that we've specifically coordinated with the
12 FDIC in this area, received comments from them.
13 They are verbatim in the preamble to the Federal
14 Register release. The FDIC did not have any
15 specific comments on the rules themselves.

16 As Sarah has mentioned, Part 3 of the
17 CFTC's regulations provides for the registration
18 process for existing registrants such as FCMs,
19 IBs, retail foreign exchange dealers, and so on.
20 The proposed registration process for swaps
21 entities would closely follow the Commission's
22 current registration process scheme, and in fact,

1 the work we've developed follows closely the
2 regulatory package the Commission recently
3 approved for the registration of retail foreign
4 exchange dealers. So looking at the existing Part
5 3 rules, some regulations wouldn't need to be
6 changed because they generally refer to
7 registrants or applicants for registration. Other
8 regulations wouldn't need to be changed because
9 they specifically apply to certain categories of
10 registrant such as the floor broker or a floor
11 trader. For some regulations all that would be
12 needed would be to add the term "swap dealer" or
13 "major swap participant" to the title of a
14 regulation or to its introductory text. However,
15 there are some regulations that would require
16 specific additions or amendments to reflect the
17 nature of swaps entities' businesses and certain
18 timing issues, which I'll discuss later.

19 The registration process for swaps
20 entities would commence with the filing of Form
21 7-R with NFA. This is the same form that all
22 other applicants for registration -- IBs, FCMs,

1 RFEDs, and so on -- file. Additionally, swaps
2 dealers' principles -- those being officers,
3 directors, 10 percent or more shareholders, and,
4 pursuant to Sarah's proposal, CCOs -- would be
5 required to file Form 8-R with NFA, and they would
6 also be required to provide fingerprint cards.
7 These forms, 7-R and 8-R, are the basic
8 registration process forms that provide background
9 information, including information on disciplinary
10 history. The question, of course, is what happens
11 next?

12 To become and remain registered, swaps
13 entities would be required to meet or maintain
14 requirements such as capital; internal business
15 conduct, which you all just voted on under Sarah's
16 rules; and external business conduct standards.
17 I'll be referring to these requirements as the
18 Section 4(s) requirements because they're all now
19 contained in Section 4(s) of the CEA. The rules
20 concerning these requirements are being developed
21 by other teams, as Sarah has presented some of
22 those, but because a swaps entity applicant would

1 be required to meet the applicable Section 4(s)
2 requirements to become registered, it's
3 appropriate to talk about the 4(s) requirements in
4 connection with my presentation. Specifically,
5 that talk concerns just who would be responsible,
6 who should be responsible, for determining that a
7 swaps entity has initially met and continues to
8 meet its Section 4(s) and other compliance
9 requirements. In this regard, and as both Ananda
10 and Commissioner Dunn have stated, the Federal
11 Register release proposing the process for
12 registering swaps entities would ask for comment
13 on the following three options: One, whether the
14 Commission should have sole responsibility; two,
15 whether NFA should have sole responsibility; or
16 three, whether there should be some combination of
17 responsibility and if so, what that should be.

18 Further in this regard and to provide
19 for maximum flexibility in implementing the
20 registration process, this team would propose that
21 swaps entities become and remain a member of a
22 registered futures association. Currently, there

1 is one association that has applied for and
2 received registration as such, and that is the
3 National Futures Association.

4 The registration rulemaking process
5 would also address certain timing issues. One of
6 those issues -- and we've heard comment about that
7 earlier today -- one of those issues concerns the
8 requirement to register to comply with applicable
9 requirements versus knowing whether you are or are
10 not a swap dealer or a major swap participant.
11 These issues come up because the Commission must
12 issue swap dealer and major swap participant
13 definitional rules by no later than July 15, 2011,
14 to be effective no earlier than 60 days
15 thereafter. However, the Commission must have in
16 effect rules that provide for the registration of
17 swaps entities by no later than July 21, 2011. So
18 accordingly, while rules providing for the
19 registration process would be effective July 21,
20 2011, swaps entities wouldn't be required to be
21 registered until the effective date of the
22 definitional rulemakings, which would be no

1 earlier than 60 days following July 15, 2011.
2 Basically, they would have two months after July
3 21. All right. Nonetheless, to permit persons to
4 commence the registration process in sufficient
5 time, the registration process rules would be
6 issued on April 15, 2011. And in accordance with
7 the provisions of Dodd-Frank, persons would be
8 able to, but they would not be required to be
9 registered at that time. They would only be
10 required to be registered when the definitional
11 rulemakings become effective.

12 The other timing issue arises from the
13 fact that the regulations implementing the Section
14 4(s) requirements similarly may not be known or
15 may not be effective by the date swaps entities
16 have to be registered. To address this concern,
17 the regulatory process would provide for
18 provisional registration. As a Section 4(s)
19 requirement became known and effective, compliance
20 with it would be required. Failure to comply
21 would result in withdrawal of a registration
22 application, although under the proposal the

1 applicant would be permitted a period of time --
2 30 days or longer upon request and permission --
3 an applicant would be permitted a period of time
4 within which to cure a deficiency that has been
5 noted to it. Once all of the Section 4(s)
6 requirements become known and effective, no more
7 provisional registrations would be issued.

8 Finally, and as I stated above, this
9 rule writing concerns the prohibition against
10 swaps entities permitting persons who are subject
11 to a statutory disqualification from associating
12 with them. The proposed regulation would repeat
13 this prohibition; however, the Federal Register
14 preamble specifically would ask for comment on how
15 swaps entities could conduct background checks or
16 otherwise fulfill this requirement. And among the
17 options noted is submission of fingerprint cards
18 to NFA for the type of fitness review that NFA
19 conducts for existing registrants.

20 Thank you, and I along with William and
21 Chris, am available for questions.

22 CHAIRMAN GENSLER: I'll entertain a

1 motion on the staff recommendation?

2 COMMISSIONER DUNN: So moved.

3 COMMISSIONER SOMMERS: Second.

4 CHAIRMAN GENSLER: I had a question on
5 the "provisional registration" and I was looking
6 in the book, but I just couldn't find it. Where
7 -- is that a mandate of Congress or it that
8 something that the staff is --

9 MS. GOLD: This is something that we
10 developed. There currently is a provision for a
11 temporary license for certain types of registrants
12 under certain circumstances, and this is something
13 that we developed to work with the different
14 timelines and the different deadlines required by
15 Dodd-Frank.

16 CHAIRMAN GENSLER: I thought -- and I
17 see Dan there, too -- I thought there was
18 something in statute that Congress wanted --
19 William?

20 MR. PENNER: There is something in
21 Section -- I believe it's in Section 731 that says
22 "registration can commence before the July 21

1 deadline." It doesn't refer to it as provisional
2 registration. We did that because of the
3 difficulty of coordinating the registration date
4 with the definitions and subsequent 4(s)
5 requirement dates.

6 CHAIRMAN GENSLER: So could you point me
7 to where Congress tells us that we may or tells us
8 to or something?

9 MR. PENNER: Dan tells me it's 712(f).

10 MS. GOLD: It is in a footnote to the --
11 in the Federal Register release. I will find
12 that.

13 CHAIRMAN GENSLER: Oh, all right, great.
14 But I was looking to the law itself. Dan, do you
15 have a page?

16 MR. BERKOVITZ: 276.

17 CHAIRMAN GENSLER: What's that?

18 MR. BERKOVITZ: 276.

19 CHAIRMAN GENSLER: The brown book, 712,
20 you said (d)? (f)?

21 MR. CUMMINGS: The very end of 712.

22 MS. GOLD: Ah, yes, it's in footnote 21

1 of the Federal Register release. It says "this
2 advance application procedure is authorized by
3 Section 12(f) of Dodd-Frank, which states in
4 relevant part 'notwithstanding the effective date
5 of any provision of this Act, the Commodity
6 Futures Trading Commission may in order to prepare
7 for the effective dates of the provisions of this
8 Act, register persons under the provision of this
9 Act provided, however, that no such action shall
10 become effective prior to the effective date
11 applicable to such action under the provisions of
12 this Act.'"

13 CHAIRMAN GENSLER: So, as I understand
14 it, Congress allowed for and staff is recommending
15 that even before all the rules are effective that
16 swap dealers could come in early basically to --

17 MS. GOLD: Yes, they can commence --
18 they can commence the process, yes.

19 CHAIRMAN GENSLER: -- commence the
20 process either through option one, two, or three,
21 whatever option. It might be through the NFA or
22 through us, but they could start.

1 MS. GOLD: They could start, but there
2 is no requirement.

3 CHAIRMAN GENSLER: But there's a clear
4 Congressional authorization. I suspect there may
5 be some differences amongst the Commissioners.
6 And one of the reasons I support this is because I
7 think, particularly in a resource-constrained
8 environment, we might have -- we don't know for
9 sure, but it maybe somewhere in the order of 200
10 swap dealers -- this will allow some of them to
11 come in early, right? This is just optional?

12 MS. GOLD: Yes.

13 CHAIRMAN GENSLER: So if we were
14 successful, and I say if, but if we were
15 successful finishing up the registration procedure
16 by next April, then they could come in, they could
17 get their fingerprints done, they could get some
18 of their preliminary forms in, that's how you've
19 laid it out here?

20 MS. GOLD: Yes.

21 CHAIRMAN GENSLER: And then if they
22 didn't want to come in, they're still allowed to

1 do their business, right? There's nothing
2 constraining them?

3 MS. GOLD: That's correct. The deadline
4 would be the effective date of the definitional
5 rulemakings.

6 CHAIRMAN GENSLER: So I strongly
7 encourage the public, whether it's on Sarah's
8 rules we just voted out for Sarah, or other rules
9 on swap dealers as we go in the next couple of
10 months all the way to the capital and margin
11 rules, that -- and they may be the last, you know,
12 if we do another roundtable -- but the effective
13 dates -- this registration rule, I want to just
14 clarify, this registration rule doesn't limit what
15 we'll do in other rules on effective dates. Is
16 that right?

17 MR. RADHAKRISHNAN: That's correct.

18 CHAIRMAN GENSLER: So if we decide as a
19 Commission to give people six months on something
20 or a year or -- I don't foresee it but -- 20
21 years, this doesn't limit us?

22 MR. RADHAKRISHNAN: No.

1 CHAIRMAN GENSLER: So that we get to
2 consider the public comments on each, whether it's
3 capital, margin, business conduct, recordkeeping
4 reporting, in each of those places?

5 MR. RADHAKRISHNAN: Yes.

6 MS. GOLD: What this rulemaking would do
7 would be to fulfill the statutory mandate that the
8 Commission has in place on July 21, 2011, rules
9 that provide for the registration of swap dealers
10 and major swap participants.

11 CHAIRMAN GENSLER: I see. So it's
12 another place where the statute has -- we're sort
13 of threading a needle a little bit?

14 MR. PENNER: That's right, and what
15 Barbara's attempted to do here is satisfy that
16 deadline and key ultimate registration to the
17 final effective date of the last of the 4(s)
18 requirements. So whatever the effective date of
19 that last rule is, is when registration becomes
20 fully effective, whenever that is.

21 CHAIRMAN GENSLER: But as I understand
22 it, people could come in earlier, get their

1 fingerprinting, getting things, a lot of the
2 questions they might have. So in effect over next
3 spring and summer, we'll have people hopefully
4 starting the process, but they really won't be
5 effective until the fall or even possibly into
6 2012?

7 MR. CUMMINGS: If I may, they can start
8 registering once we put the rule out, and they're
9 not required to be registered until the
10 definitional rulemaking becomes effective. They
11 will still be provisionally registered until such
12 time as all of the 4(s) requirements become
13 effective. Then they become fully registered if
14 they come into compliance with all of those 4(s)
15 requirements as they come into effectiveness.

16 CHAIRMAN GENSLER: I see. It would be
17 my hope that the definitional proposed rules are
18 out in the next few weeks. I'll say that again --

19 MR. RADHAKRISHNAN: This also gives the
20 --

21 CHAIRMAN GENSLER: -- but they're
22 finalized by next July for sure.

1 MR. RADHAKRISHNAN: This also gives the
2 opportunity for entities who know they're going to
3 be swap dealers, and there are some people in this
4 world who know they're going to be swap dealers,
5 to start the registration process.

6 CHAIRMAN GENSLER: Ananda, I agree with
7 you. I think two-thirds or three-quarters, maybe
8 85 percent know who they are. They've read the
9 statute. The statute has a pretty prescriptive
10 detailed definition, but it's important. There
11 are people on the margin. I don't have other
12 questions. I'm going to support the rule,
13 proposed rule. Commissioner Dunn?

14 COMMISSIONER DUNN: Mr. Chairman, maybe
15 the question's not do they know who they are. Do
16 we know who they are?

17 Barbara, let me congratulate you for
18 explaining why the cart's before the horse. I
19 really appreciate it. You did an excellent job
20 there.

21 MS. GOLD: Well, my right- and left-hand
22 man did a lot of that, too.

1 COMMISSIONER DUNN: And, Mr. Chairman,
2 just to echo what you just said, it really is
3 imperative that we at least begin that process on
4 December 1 so that people understand where they
5 are. Could you give me an idea of how the
6 determination, if someone is in compliance with
7 4(s), how is that going to take place and what
8 type of resources are we going to be needing
9 there?

10 MS. GOLD: I can't. I'll leave that for
11 Ananda.

12 MR. RADHAKRISHNAN: Again, the proposal
13 we're making has three options. One option is to
14 let the NFA -- or let us do it. The other one is
15 to let the NFA do it. And the middle one is a
16 mixture, and we ask specifically which one should
17 we have and which one should they have? The NFA
18 --

19 COMMISSIONER DUNN: Yeah, I understand
20 the delegation that we have in there as the
21 question. I'm talking about the actual process
22 you go through in determining whether they're in

1 compliance.

2 MS. GOLD: I would say that would be
3 left up to each of the team leads who are
4 developing those rules. For example, the capital
5 rules, I don't know what Thelma will be proposing.
6 Sarah may have information in her rules, if not
7 today then I'm sure going forward, and so on. I
8 think it depends on the individual 4(s)
9 requirement rule.

10 COMMISSIONER DUNN: So we won't know how
11 much of a job this is until we see the totality of
12 all the proposed rules?

13 MR. RADHAKRISHNAN: Correct. Like I
14 said, I think what we could do is once we know the
15 full extent of all the rules, start creating a
16 program or a template or sort of a checklist for
17 compliance so that, you know, if you get an
18 application -- let's say we have to do it, you
19 know, we can go through the checklist and say yes
20 or no, yes or no. It's not as easy as that
21 because there are a lot of people, but that's what
22 I'm thinking about.

1 CHAIRMAN GENSLER: Commissioner Sommers?

2 COMMISSIONER SOMMERS: Thank you, Mr.
3 Chairman. I just want to clarify my concerns with
4 regard to the registration and make it clear that
5 my concerns are not with the substance of the
6 registration for swap dealers or major swap
7 participants, but just with the early
8 registration. I'm concerned about the resources
9 of the Commission and for entities that can not
10 only not demonstrate compliance with any of the
11 4(s) regs because they don't know what they are,
12 but also can't confirm that they meet the
13 definition because the definitions may not be
14 done. I just question whether it's a good use of
15 our resources to be going through provisional
16 registrations by this April 15 deadline before
17 everything else is in place. Thank you.

18 CHAIRMAN GENSLER: Can I ask this of
19 Commissioner Sommers? So there's two bits that
20 are early, and I see that it actually might be
21 less separates us than I had thought. There's the
22 period of time from when the definitions are

1 finished, which I am like completely committed to
2 finish by July 15 of next year; there's a period
3 of time between that July 15 and the effective
4 date of all the 4(s) rules because hopefully we'll
5 give people, you know, some time to get ready; and
6 then I just heard you say your concern about the
7 provisional, if we finish Barbara's rule by April,
8 it's the period between her rule and the
9 definitions. Is it just that latter piece, that
10 difference between until the definitions are
11 finished?

12 COMMISSIONER SOMMERS: And additionally
13 the compliance of all the 4(s) requirements as
14 well. So being able to say when you register that
15 not only am I confirming being registered as a
16 swap dealer that I comply with the definition of
17 being a swap dealer, but that I also am confirming
18 that I am in compliance with all of the 4(s) regs.
19 I think that doing that all at once, staff being
20 able to check that box instead of sort of a
21 piecemeal process here, would be a more efficient
22 use of our resources.

1 CHAIRMAN GENSLER: All right, okay. I
2 mean I, as you know, support this because I think
3 it might actually facilitate market participants
4 to kind of early file. But I respect what you're
5 saying as you're worried it may be a drain on
6 resources, whereas I think it might smooth it out
7 because at least they can take care of some of
8 this maybe as early as May and June. But I see
9 what you're saying.

10 COMMISSIONER SOMMERS: It also calls to
11 question whether or not there may be compliance
12 regulations that people see during this process
13 that they either can't comply with or don't want
14 to comply with and decide that they don't want to
15 be registered in that capacity because of the
16 requirements. So registering early to me just
17 seems odd.

18 CHAIRMAN GENSLER: Am I right, we're
19 just giving a choice? It's not a requirement,
20 right?

21 MR. RADHAKRISHNAN: That's right. It is
22 a choice.

1 CHAIRMAN GENSLER: All right.
2 Commissioner Chilton?

3 COMMISSIONER CHILTON: No, other than,
4 you know, that's why we do the proposal. Maybe
5 people will come in and tell us that's not a good
6 option. And so I'm open to changing it as we go
7 forward. But just the initial step, I don't have
8 any questions. Thank you.

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

11 COMMISSIONER O'MALIA: Thank you. I am
12 pleased that the rule contains an option that
13 would allow the NFA to collect and perform the
14 required oversight of the swap dealer registration
15 program. This really will enable the Commission
16 to leverage the resources of the NFA and to
17 minimize the need to devote resources and staff
18 time to reviewing applications and the compliance
19 of the swap dealer rules. It makes little to no
20 sense to hire high- cost federal employees to do
21 this oversight work that a private sector can do
22 at lower cost and finance through fees. This

1 option should expedite the review process and
2 insulate it from the inconsistencies of the
3 federal appropriations process. While the much
4 discussed pre- registration proposal has provided,
5 I do agree with Commissioner Sommers that few will
6 avail themselves to this, but that's why we ask
7 the question. Thank you.

8 MR. RADHAKRISHNAN: Just one thought.
9 Despite the propaganda in the press, we are very
10 low-cost employees. We are federal employees. If
11 you look at the comparison to the private sector,
12 we are very low-cost and effective ones. Thank
13 you.

14 COMMISSIONER O'MALIA: Maybe we should
15 have a staff roundtable on that.

16 CHAIRMAN GENSLER: Well, I'd say you've
17 been enormously effective. I mean, it's just like
18 remarkable. With that I think I'll call the
19 question. All those in favor say "aye."

20 GROUP: Aye.

21 CHAIRMAN GENSLER: Any opposed?

22 COMMISSIONER SOMMERS: Opposed.

1 CHAIRMAN GENSLER: We have 4-1. Thank
2 you very much, Chris and Barbara and William, for
3 your excellent work. Get ready for 60 days of
4 comments, and, Dan, don't go away. You're going
5 to -- Dan Roth from the NFA whom I'm picking on to
6 the public a little bit as we change chairs here.
7 So are we going to whistleblowers next and foreign
8 board of trade will be last? Whistleblowers,
9 there we have it. The next rule, as some of our
10 colleagues are coming in to the chairs, is to
11 comply with the Congressional mandate that we set
12 up a whistleblower program and the procedures
13 around that whistleblower program. And I think Ed
14 Riccobene from the Division of Enforcement will be
15 presenting along with -- oh, we have four people,
16 okay. I have to make sure that I have everybody.

17 MR. RICCOBENE: Mr. Chairman, this is
18 Leslie Randolph of the OGC and Anthony Hayes also
19 from OGC are two of the members on our rulemaking
20 team.

21 CHAIRMAN GENSLER: And Vince -- Vince,
22 our acting head of Enforcement.

1 MR. RICCOBENE: Absolutely.

2 MR. MCGONAGLE: Good afternoon.

3 MR. RICCOBENE: Good afternoon, Mr.
4 Chairman and Commissioners. My name is Edward
5 Riccobene. I am with the Commission's Division of
6 Enforcement. I'm here with my rulemaking team
7 concerning a staff recommendation regarding a
8 Notice of Proposed Rulemaking to implement the new
9 whistleblower incentives and protective provisions
10 of Section 748 of the Dodd-Frank Act. Before I
11 present the proposed Notice, I'd like to introduce
12 the other members of our team. I already have
13 introduced Leslie and Anthony. Pamela Gibbs is
14 also a participant on our rulemaking team as the
15 Commission's EEO Program Director; Mark Carney,
16 the Commission's Chief Financial Officer; and from
17 the Office of the Chief Economist, Kirsten
18 Sorenson and Michael Penick. I'd also like to
19 thank Tim Karpoff from the Chairman's Office;
20 Vince McGonagle, the acting Director of
21 Enforcement; and Joan Manley, my Deputy Director
22 of Enforcement, for their hands-on assistance and

1 guidance in this matter. I'd also like to thank
2 Steve Cohen from the SEC's Chairman's Office and
3 the SEC staff implementing their comparable
4 whistleblower provisions under Section 922 of the
5 Dodd-Frank Act for their invaluable and generous
6 cooperation and assistance in this matter.

7 In Section 748 of the Dodd-Frank Act,
8 the Congress amended the CEA by adding Section 23,
9 which directs the Commission to issue final rules
10 implementing whistleblower incentives and
11 protections within 270 days of the date of
12 enactment. Specifically, Section 748 requires the
13 Commission to pay awards to whistleblowers who are
14 individuals that provide original information to
15 the Commission which leads to successful
16 enforcement of the Commission action that results
17 in monetary sanctions exceeding \$1 million. The
18 amount of the award, as determined by the
19 Commission, will be between 10 and 30 percent of
20 sanctions collected in either the Commission's
21 action or a related action that is based upon the
22 same information provided by a whistleblower. The

1 Commission's award determination is dependent upon
2 certain criteria. The Commission may exercise
3 discretion in granting an award based upon the
4 significance of the information provided, the
5 degree of assistance provided to the Commission --
6 I mean, in support of the Commission's action --
7 or the related action, the Commission's
8 programmatic interest, and other criteria. An
9 award will be denied to certain government
10 employees and others who are statutorily
11 ineligible. And a whistleblower may appeal to the
12 appropriate U.S. Circuit Court of Appeals a
13 Commission award determination, including the
14 Commission's determination as to whom to pay an
15 award, the amount of the award, or the denial of
16 an award.

17 The Commission will pay whistleblower
18 awards from the Commodity Futures Trading
19 Commission, Customer Protection Fund, which was
20 established under Section 748. The Commission
21 will also use the Customer Protection Fund to
22 finance customer education initiatives. The

1 Commission will deposit into the Customer
2 Protection Fund civil monetary penalties,
3 disgorgement, and fines collected by the
4 Commission in covered administrative and judicial
5 actions up to a \$100 million balance.

6 Whistleblowers may receive an award
7 based upon violations that occurred prior to the
8 date of enactment of the Dodd-Frank Act, and
9 whistleblowers who submit information after the
10 date of enactment, but prior to the effective date
11 of these rules, will also be eligible for an award
12 providing they comply with the Commission's
13 procedures within 120 days of the effective date.
14 The Commission has already begun to receive tips
15 from individuals identifying themselves as
16 Dodd-Frank whistleblowers.

17 Section 748 provides whistleblowers who
18 submit information after the effective date with
19 certain protections against retaliation, including
20 a federal cause of action against their employers.
21 Under this anti-retaliation cause of action,
22 prevailing whistleblowers are entitled to certain

1 relief including reinstatement, back pay, and
2 compensation for other expenses including
3 reasonable attorney's fees.

4 In the Notice, staff is recommending the
5 Commission seek comment with respect to all
6 aspects of the proposed rule during a 60-day
7 comment period. The Commission will, in the
8 future rulemaking, address related internal
9 procedural and organizational issues, including
10 establishment of and delegation of authority to an
11 office or offices to administer the Commission's
12 whistleblower and customer education programs.

13 Thank you and I'll be happy to answer
14 any questions you might have.

15 CHAIRMAN GENSLER: Thank you, Ed. First
16 I'll entertain a motion on the staff
17 recommendation?

18 COMMISSIONER DUNN: So moved.

19 COMMISSIONER SOMMERS: Second.

20 CHAIRMAN GENSLER: Ed, if I could ask --
21 and I'm supporting the rule and I think as I
22 understand it, it's consistent with the eight very

1 detailed pages of legislative text on these
2 provisions. But I did have one question. Let's
3 say this was the final rule, if this went in, has
4 the Commission delegated its authority to actually
5 set, you know, the numbers? Let's say somebody is
6 duly, you know, should get their 10 or 30 percent
7 of something, have we delegated to somebody or do
8 you need to still come back with a recommendation
9 on that?

10 MR. RICCOBENE: Under the proposed
11 rulemaking, that authority remains with the
12 Commission, and it would require a follow-on
13 rulemaking to delegate it to an office or
14 division.

15 CHAIRMAN GENSLER: I don't know where my
16 fellow Commissioners will come out, and it
17 certainly doesn't have to happen before December
18 15, but I for one would like some recommendation
19 for staff. Maybe it won't be supported by others,
20 but I think that, you know, if we as a full
21 Commission have to sign off on every single one of
22 them, that may be appropriate over a certain

1 dollar amount, but there may be ways to delegate
2 part of this for smaller whistleblower claims or
3 smaller awards. And if not initially, certainly
4 over time we'll gain enough experience that we
5 could hopefully delegate some of that to staff,
6 but I didn't have other questions. Commissioner
7 Dunn?

8 COMMISSIONER DUNN: Well, first a
9 general statement. I hope when we get this
10 program going that there is communication with
11 whoever is a whistleblower. And a lot of times --
12 what we're saying in here is that there maybe more
13 than one person as a whistleblower. But I think
14 we owe it to someone who blows a whistle on
15 something that we communicate with them our
16 follow-up on what they have blown the whistle on.
17 And then frankly, I just think we haven't done a
18 good job in the past in that, and we need to be
19 able to follow up on it.

20 Those that are eligible for the
21 whistleblower provisions in there, there is a
22 great deal that are folks that are excluded by

1 statute and, Ed, could you kind of amplify or
2 enumerate that for me?

3 MR. RICCOBENE: Well, I think there is a
4 list a number of employees of government agencies,
5 specifically a number of the financial regulators,
6 who would not be eligible for an award. Employees
7 or officers of a registered entity or a
8 self-regulatory organization would also not be
9 eligible, as would be the employees of a law
10 enforcement agency.

11 COMMISSIONER DUNN: But employees of a
12 registered entity are often the ones that are
13 going to see what is happening, and they are
14 excluded by statute? Am I correct in that
15 assertion?

16 MR. RICCOBENE: You are correct.

17 SPEAKER: Commissioner, are we talking
18 about --

19 MR. MCGONAGLE: Some of the exclusions
20 are provisional exclusions, so in connection with
21 a registered entity's internal business function,
22 where we want to encourage internal reporting and

1 compliance functions, that the proposed rules have
2 a protocol that's in place that if there's an
3 obligation that currently exists upon an employee
4 either by virtue of their supervision status or
5 their compliance obligation, that they will be
6 provisionally excluded from the application of the
7 whistleblower rules because we want the internal
8 compliance program to work first. But that after
9 a certain period of time -- and the proposed rules
10 have language about a reasonable time, maybe 60
11 days or 90 days, whatever that timeframe is --
12 that if then the company, and I think that this is
13 a very important provision frankly from an
14 enforcement perspective talking about self
15 reporting, that if the entity then doesn't self
16 report, we have the ability or the whistleblower
17 then has the ability to become a whistleblower and
18 actually come forward with information so long as
19 that information otherwise satisfies the
20 requirements under the whistleblower statute. So
21 I do think that there is a natural, I would say
22 tension, between having the companies or the

1 corporations go through their compliance function
2 and take on their obligations affirmatively with
3 the opportunity for a whistleblower who identifies
4 conduct to ensure that that conduct is addressed
5 appropriately by the regulator.

6 MR. RICCOBENE: The follow up -- Vince
7 makes a very important distinction that it would
8 be statutorily prohibitive as being an employee of
9 a registered entity, which is a defined term under
10 the CEA, and not of a registrant. So there are
11 certain provisions allowing the compliance, as
12 Vince has pointed out, compliance staff in certain
13 situations to make a report to the Commission.

14 COMMISSIONER DUNN: Someone registers
15 with the NFA? That will be made known to them?

16 MR. RICCOBENE: Well, I think that,
17 again, the term "registered entity" is most
18 commonly used with respect to a designated
19 contract market and a Commission registrant would
20 be a different category.

21 CHAIRMAN GENSLER: So, just to clarify
22 on Commissioner Dunn's question, an employee of a

1 designated contract market statutorily cannot be a
2 whistleblower? Is that what you're saying?

3 MR. RICCOBENE: Correct.

4 CHAIRMAN GENSLER: But an employee of a
5 swap dealer, though that's a registered entity --

6 MS. MANLEY: Is a registrant.

7 CHAIRMAN GENSLER: It's a registrant,
8 thank you, Joan -- is a registrant, they could be
9 as long as they comply with everything else a
10 whistleblower.

11 MR. RICCOBENE: Correct. And I think
12 that focusing on some of the preliminary comments
13 that the SEC is receiving regarding their
14 comparable provision under Dodd-Frank, there is a
15 lot of interest and concern for how it is going to
16 be handled to encourage people to still use a
17 firm's compliance program or reports to that. And
18 on the other hand, there's whistleblowers counsel
19 that's concerned that if it's required that they
20 go through the compliance program that
21 whistleblowers will be discouraged.

22 CHAIRMAN GENSLER: And I see -- Dan,

1 were you -- no, all right.

2 MR. MCGONAGLE: There was one point of
3 clarification that Dan had pointed out to me with
4 respect to the delegation that, Chairman, you had
5 asked the question concerning whether the
6 Commission currently has the authority or whether
7 the rule currently provides for a delegation, and
8 there is a delegation that's contained in the
9 proposed rule with respect to delegating the
10 authority to the Executive Director and then
11 leaving open then the potential for further
12 delegation within the Commission.

13 MR. RICCOBENE: And, again, just to
14 follow up --

15 CHAIRMAN GENSLER: That's to me good
16 news.

17 MR. RICCOBENE: Although just as a
18 clarification, the delegation to the Executive
19 Director with regard to payment of whistleblower
20 awards and the funding of the Customer Protection
21 Fund, it doesn't include a delegation of the
22 Commission's authority to make an award

1 determination.

2 CHAIRMAN GENSLER: All right, that's it.
3 So I would just hope that sometime, and it may be
4 after we gain experience, that the smaller dollar
5 ones, that there's some way that a five-person
6 Commission -- I mean, we've got a lot that goes on
7 that we may find a way. I would seek staff
8 suggestions on the smaller, at least the
9 smaller-size ones, whether to delegate
10 determinations. But, again, not by December 15.
11 It might not even be before July 15 of next year,
12 but that's where I would directionally want to be.

13 I had a question that I was asked last
14 night actually by a member of the press. How
15 similar is this to the SEC whistleblower rule that
16 they adopted a couple of weeks ago?

17 MR. RICCOBENE: Um, as I noted, Steve
18 Cohen and the rest of the staff of the SEC have
19 been extremely cooperative. We have tried to keep
20 our rules as similar as possible to the extent
21 that the provisions are relatively comparable
22 under 748 and 922 of the Dodd-Frank Act.

1 Organizationaly, the rules are perhaps a bit
2 different. There are some differences based upon
3 statutory differences between our two provisions.
4 For example, the SEC's language requires them to
5 establish a whistleblower office; ours does not so
6 that's why we have left that issue of organization
7 to a future rulemaking. I think from my read of
8 it, I think a significant difference that goes to
9 statutory interpretation rather than differences
10 in statutory provisions is in how the Commission's
11 proposed rulemaking would handle the determination
12 of an award. Under the Commission's proposed
13 rule, the whistleblower award could be based
14 either upon amounts collected in the Commission
15 action or a related action. The SEC's proposal
16 would have the whistleblower award based upon a
17 certain percentage of amounts in both the SEC
18 action and the related action.

19 CHAIRMAN GENSLER: Thank you.

20 Commissioner Sommers?

21 COMMISSIONER SOMMERS: I don't have any
22 questions. Thank you.

1 CHAIRMAN GENSLER: Commissioner Chilton?

2 COMMISSIONER CHILTON: No questions.

3 Thank you.

4 CHAIRMAN GENSLER: Commissioner O'Malia?

5 COMMISSIONER O'MALIA: Thank you. I do
6 believe we can do a better job of protecting
7 consumers from fraud and deception by providing
8 the resources necessary to fund consumer education
9 and outreach, and with this whistleblower I think
10 we're making a positive step forward. This does
11 allow for the venue and the funding to be paid
12 through penalties for whistleblower awards and a
13 free- standing office focused on public
14 protection. This agency does many things well;
15 however, educating consumers and providing an
16 effective venue for complaint and resolution and
17 adjudication are two activities that we do not do
18 well. I hope this rulemaking will encourage us to
19 take a more comprehensive look at how we treat
20 market participants and resolve their complaints.

21 Now I have a couple of questions. You
22 had mentioned the slight difference in the SEC and

1 CFTC award. Is it possible if somebody brings up
2 a Ponzi complaint to both the CFTC and the SEC and
3 we take that to court, is it possible they can
4 collect under our authority and their authority,
5 under both?

6 MR. RICCOBENE: Yes, they could be under
7 our rules. They would be a whistleblower under
8 our program. The Commission could make a
9 determination to grant them an award based upon
10 sanctions collected in our action or the SEC
11 action. Under the SEC's proposal, the
12 whistleblower would only be entitled in that
13 situation to an award based upon sanctions
14 collected in the SEC action.

15 COMMISSIONER O'MALIA: The definition of
16 whistleblower "is limited to persons who provide
17 information with regard to violations of the CEA;
18 however, certain violations notably under the new
19 Anti-disruptive Trading Practices Authority may
20 only appear in the regulations." Does this mean
21 that a whistleblower cannot collect as a result of
22 those violations?

1 MR. RICCOBENE: That is an interesting
2 issue, and the staff and the guidance from the
3 Office of General Counsel decided that for
4 purposes of these proposed rules to strictly
5 interpret what is provided under the statute, and
6 the statute only refers to violations of the CEA.

7 CHAIRMAN GENSLER: So we're going to --
8 and I thank Commissioner O'Malia for drawing
9 attention to that -- so it's not just disruptive
10 trading practices, we've just published a proposed
11 rule, which I assume at some point we'll finalize
12 on anti-manipulation. What's the view of the
13 Office of General Counsel as to whether a
14 whistleblower three years from now brings
15 something under the anti-manipulation rules, the
16 disruptive trading practices rules, or any other
17 rule because we have a lot of rules that we're
18 doing? Does that mean you're not a whistleblower?
19 You can't get an award?

20 MR. BERKOVITZ: In that circumstance,
21 those rules are enacted under the authority of the
22 Commodity Exchange Act. So violation of those

1 rules would be a violation of the Commodity
2 Exchange Act as well. Not all of the Commission's
3 rules are grounded in the Commodity Exchange Act.
4 So if it's a rule basically that's grounded in the
5 Commodity Exchange Act to implement the CEA and,
6 therefore, you're violating the requirement of the
7 CEA, you're eligible. But not all the
8 Commission's rules are CEA authority rules, if
9 that's clear.

10 CHAIRMAN GENSLER: Thank you,
11 Commissioner O'Malia, for letting me interlope. I
12 liked your answer a little bit better than Ed's.
13 Thank you.

14 COMMISSIONER O'MALIA: That's all I
15 have.

16 CHAIRMAN GENSLER: Thank you. If there
17 are no further questions, I'll call the --
18 Commissioner Dunn?

19 COMMISSIONER DUNN: Do we have any other
20 opportunities in here? I mean, I'd like to give
21 them a bonus when somebody is actually convicted
22 for a civil or a criminal activity in there.

1 We're just precluded by law to just follow that
2 formula that --

3 MR. RICCOBENE: Correct. There is a
4 disqualification from eligibility if you are
5 convicted of a criminal violation related to the
6 information that you're providing.

7 COMMISSIONER DUNN: No, I would like to
8 have a bonus given to the whistleblower if
9 somebody they blow the whistle on is convicted of
10 a criminal offense.

11 MR. RICCOBENE: Again, I think that the
12 Commission has a wide range of criteria they could
13 develop, and it would be assumed that these
14 elements would be considered in any internal
15 procedures that would be developed in the
16 determination process. So there is a possibility
17 I would assume.

18 CHAIRMAN GENSLER: If no further
19 questions, I'll call the motion. All in favor say
20 "aye."

21 GROUP: Aye.

22 CHAIRMAN GENSLER: Any opposed?

1 Appearing to be unanimous, 5-0, we'll send this
2 along to the Federal Register as well. I thank
3 the team -- Leslie, Ed, Vince.

4 We have one more, foreign board of
5 trade. I'm told as I call this up, it will be
6 considering the staff recommendation on
7 registration of foreign boards of trade as amended
8 by Amendment 1, if I've said that correctly. The
9 only Amendment 1 to my fellow Commissioners is the
10 one that we've chatted about as we've been passing
11 it around.

12 David Van Wagner, who's the General
13 Counsel of the Division of Market Oversight?
14 Chief Counsel?

15 MR. VAN WAGNER: I'm Chief Counsel.

16 CHAIRMAN GENSLER: Chief Counsel of the
17 Division of Market Oversight. I'm sorry because
18 Dan probably cherishes the other term. And Duane
19 Andresen who is in the Division of Market
20 Oversight and in one team lead meeting told me he
21 was just an island. He was just doing foreign
22 boards of trade. Well, for an island, you

1 certainly have gotten a lot of interest from your
2 Commissioners.

3 MR. ANDRESEN: That we have.

4 CHAIRMAN GENSLER: We hand it over to
5 Duane and David.

6 MR. ANDRESEN: Mr. Chairman,
7 Commissioners, the Dodd-Frank Act provides that
8 the Commission may adopt rules and regulations
9 requiring registration with the Commission for a
10 foreign board of trade that provides its members
11 or other participants located in the United States
12 with direct access to its electronic trading and
13 order matching system. The Commission may adopt
14 rules and regulations prescribing procedures and
15 requirements applicable to registration. For
16 purposes of any such registration, the Dodd-Frank
17 Act defines direct access to mean "an explicit
18 grant of authority by a foreign board of trade to
19 an identified member or other participant located
20 in the United States to enter trades directly into
21 the trade matching system of the foreign board of
22 trade."

1 The Notice of Proposed Rulemaking before
2 you would establish such a registration
3 requirement in new Part 48 of the Commission's
4 regulations. It creates a process that starts
5 with the requirement that a foreign board of trade
6 must be registered in order to provide direct
7 access. It also includes criteria of eligibility
8 to determine if a foreign board of trade is
9 eligible to be registered. The proposed rule
10 would create transparent standards that must be
11 met to be registered and transparent conditions to
12 be followed once the foreign board of trade is
13 registered. The proposed registration system
14 would replace the existing staff-issued direct
15 access no-action letters traditionally relied upon
16 since 1966 by foreign boards of trade providing
17 direct access from the United States.

18 Many of the requirements and conditions
19 that this proposed rulemaking would apply to
20 registered foreign boards of trade are modeled
21 after requirements and conditions that Commission
22 staff currently applies to foreign boards of trade

1 in our no-action letters. For instance, in
2 determining whether to register a foreign board of
3 trade, the CFTC would evaluate whether the foreign
4 board of trade's home regulatory authority
5 oversees the foreign board of trade in a manner
6 that's comparable to the CFTC's oversight of
7 designated contract markets. I would stress that
8 the operative word here, comparable, is used in
9 both the rulemaking and the foreign board of trade
10 provisions of the Dodd-Frank Act. We would not
11 interpret comparable to mean that the foreign
12 board of trade has to be subject to oversight that
13 is identical to the manner in which the CFTC
14 oversees designated contract markets. Instead, we
15 would propose that the comparability standard mean
16 whether the foreign board of trade's regulator
17 supports and enforces regulatory objectives that
18 are substantially equivalent to those supported
19 and enforced by the CFTC. These objectives would
20 include, for instance, prevention of market abuse,
21 market manipulation, and customer abuse.

22 The proposal describes how and where to

1 apply for regulation and provides a limited
2 registration application process for those foreign
3 boards of trade that are currently relying on the
4 staff-issued direct access no- action letters.
5 The proposal would include in the rule
6 requirements that foreign boards of trade would
7 have to meet in order to be registered. These
8 requirements are divided into the same general
9 categories currently evaluated by staff during the
10 course of a review of an application for no-action
11 relief. They would include membership criteria,
12 the trading system, contracts, settlement and
13 clearing, the regulatory authority, rule and rule
14 enforcement, and information sharing. Whether
15 they are successfully met would be determined by a
16 review of the information submitted by the
17 applicant and, as necessary, a staff due-diligence
18 visit on site to the foreign board of trade and
19 its regulator.

20 The proposal also details the conditions
21 that a registered foreign board of trade must meet
22 to retain its registration, including general

1 conditions, reporting obligations, and conditions
2 that apply to linked contracts. Staff believes
3 that most of the proposed general conditions and
4 many of the reporting obligations would be met by
5 the foreign boards of trade currently operating
6 pursuant to direct access no-action relief. The
7 linked contract conditions include those
8 identified in the Dodd-Frank Act and those derived
9 from Commission staff experience in issuing
10 no-action letters.

11 The proposal identifies the types of
12 entities to which a registered foreign board of
13 trade could grant direct access. That includes
14 identified members or other participants in the
15 United States that trade for their own accounts,
16 FCMs that trade for their proprietary accounts or
17 submit orders for customers, and CPOs or CTAs or
18 entities exempt from such registration that submit
19 orders on behalf of U.S. pools or accounts where
20 U.S. customers for which they have discretionary
21 authority. Again, this list of eligible
22 participants is consistent with the existing no-

1 action relief.

2 The proposal also identifies certain
3 reasons for which an FBOT's registration could be
4 revoked and identifies certain actions that, if
5 taken by a registered foreign board of trade,
6 could have an adverse impact on the market and the
7 public interest. And the proposal in the preamble
8 sets forth possible Commission actions to remedy
9 such adverse impacts. The proposal describes the
10 procedures to be followed by a registered foreign
11 board of trade that wants to make available for
12 trading by direct access additional contracts not
13 submitted in the original application, including
14 non-narrow-based stock index futures contracts.
15 These provisions are substantially similar to the
16 provisions that a foreign board of trade with a
17 no- action letter complies with today.

18 Finally, the appendix to the proposed
19 regulation identifies what should be included in
20 an application for foreign board of trade
21 registration in order to demonstrate that the
22 registration requirements have been met. The

1 proposed rule would be published for a 60-day
2 comment period.

3 I'd like to take this opportunity to
4 thank my fellow team members for their exceptional
5 efforts in creating what ended up being a very
6 difficult proposal. And finally, I would be happy
7 to answer any questions that you may have as will
8 David.

9 CHAIRMAN GENSLER: Um, before taking
10 questions, I'd entertain a motion on the staff
11 recommendation.

12 COMMISSIONER DUNN: So moved.

13 COMMISSIONER SOMMERS: Second.

14 CHAIRMAN GENSLER: It being moved and
15 seconded, I want to thank the staff for this. I
16 want to thank my fellow Commissioners because it's
17 been a -- I really do say it's been a pretty
18 active dialogue of all seven of the rules today,
19 but Duane, you are not an island.

20 I think that it is important for us to
21 move forward on a registration regime for foreign
22 boards of trade. I think it brings consistency

1 and uniformity to what here to for has been a
2 no-action process. It started many years ago,
3 done I think very well by staff -- when I say
4 staff, by Duane -- I mean there's no -- you don't
5 have a five-person --

6 MR. ANDRESEN: For the last few years,
7 it's been mine.

8 CHAIRMAN GENSLER: How many years have
9 you been doing this, Duane?

10 MR. ANDRESEN: Oh, five or so. Five or
11 six years I guess.

12 CHAIRMAN GENSLER: But I think that the
13 public -- and when I say the public, I mean
14 registrants as well as the broader public --
15 should have one set of consistent and transparent
16 set of rules as to when we do this. So that's why
17 I'm very supportive.

18 Two questions came up as this was being
19 pulled together, and I think Duane and you and
20 David and others have addressed both of them
21 satisfactorily for me in a proposal. The final
22 rule, just as Commissioner Dunn says all the time,

1 he's going to reserve his vote. This one, I
2 think, I'm really -- I don't, you know, see where
3 we come out in the final. But one was how do we
4 deal with current no-action boards of trade,
5 foreign boards of trade, particularly as some of
6 them had modified their no-action letters as
7 recently as oh, maybe 12 or 14 months ago, in the
8 case of ICE in Europe, and others haven't really
9 been relatively looked at in five, six, seven
10 years? And I think the way you address that,
11 which I support, is that you put a set of
12 conditions that are sort of the most recent. So
13 it is possible that some of those earlier boards
14 of trade will have to look at that, but from what
15 you've said, you think -- as I understand it, this
16 is now a question and then I'm going to go to my
17 second point -- is you think that all of the
18 current no-action boards of trade will be able to
19 come into compliance with the futures half of
20 this, and then I'll get to the swaps half?

21 MR. ANDRESEN: Well, that actually would
22 be -- it's unclear at present because we now have

1 standards for clearing that we have never had
2 before. A clearing organization would either have
3 to register with us as a DCO or comply with the
4 international RCCP standards, and it's unclear to
5 me how many of the clearing entities on these
6 foreign boards of trade with no-action letters are
7 in compliance with those standards.

8 CHAIRMAN GENSLER: I see because some of
9 the earlier smaller ones might not be.

10 MR. ANDRESEN: Yes. Now we know that at
11 least two of them are already DCOs, ICE Clear
12 Europe and LCH Clearnet would comply because
13 they're DCOs. We've never asked them to
14 demonstrate compliance with international
15 standards. When we originally started the
16 no-action letter program, there were no standards
17 applicable to clearing. In fact, the Commission
18 didn't even regulate clearing entities.

19 CHAIRMAN GENSLER: Right. So the first
20 big question was how we adopted them to current
21 standards and clearing is the best example, and I
22 know Ananda strongly recommended that. But the

1 most recent ones, I support that, but I know that
2 that will be subject to hopefully significant
3 public comment.

4 The other piece is swaps. I think that
5 this -- and even I was kind of on the fence as my
6 fellow Commissioners know -- it is not -- I think
7 we're taking the less prescriptive approach, but
8 some might say this is the more prescriptive
9 approach by allowing foreign boards of trade to
10 also allow swaps to U.S. customers through direct
11 access. I was fearful if we didn't allow that,
12 then all foreign trading platforms would have to
13 be swap execution facilities, and we'd have to
14 have some other set of rules or through no-action
15 letters do what is comparable to swap execution
16 facilities. And I support this because this to me
17 is a consistent uniform approach rather than -- I
18 was fearful that we'd start using a no-action
19 process for swap execution facilities. But I do
20 recognize that including swaps in this is just a
21 proposal and we really -- even I was kind of on
22 the fence on this one. But maybe if you want to

1 say anything about the second, it wasn't much of a
2 question, but it was a comment. But do you have
3 any comment on the swaps half of this?

4 MR. ANDRESEN: We think that foreign
5 boards of trade have traditionally been treated
6 like DCM equivalents, and under Dodd-Frank DCMs
7 can trade swaps. And we're generally not aware of
8 a reason why a foreign board of trade couldn't
9 also trade swaps. Now, any swaps trading on a
10 foreign board of trade would be subject to
11 membership requirements and all the other
12 requirements that apply to other contracts. All
13 the swaps would have to be cleared. And in
14 addition we have a couple of additional
15 requirements that are SEF requirements. That is
16 the real-time reporting and reporting of the data
17 to a swap data repository, and we think there are
18 adequate protections for U.S. persons that want to
19 trade swaps through direct access.

20 CHAIRMAN GENSLER: I thank you. I, too,
21 think so but I could see if people come out the
22 other way. But I would note that if we take out

1 swaps from this, I think you have to sort of say
2 then they can't trade swaps. You have to be a
3 swap execution facility instead. That's why I
4 prefer doing it this way.

5 MR. ANDRESEN: We have -- despite the
6 fact that we have included swaps, we have included
7 a big comment question at the very end,
8 specifically addressing and requesting comments
9 with respect to that issue.

10 CHAIRMAN GENSLER: Commissioner Dunn?

11 COMMISSIONER DUNN: Thank you, Mr.
12 Chairman. Duane, as we go forward with this, can
13 we get an assessment of the current FBOTs and
14 whether or not they're in compliance with these
15 seven general areas that are being proposed?

16 MR. ANDRESEN: I could certainly ask for
17 a response once the proposal goes out, but I have
18 no documentation to indicate, for instance,
19 compliance with the new clearing standards other
20 than the two clearing entities that are DCOs.
21 We've not in the past asked for a demonstration
22 that they met any particular standards. We've

1 assume you're supporting this one, the head of our
2 international?

3 MS. MESA: I am.

4 CHAIRMAN GENSLER: All right.
5 Commissioner Sommers?

6 COMMISSIONER SOMMERS: Thank you, Mr.
7 Chairman. I think my comments regarding this rule
8 are really with regard to the successful mutual
9 recognition program I think that we have
10 implemented here at the Commission and have had in
11 place for a number of years, where we have a
12 reliance that's built upon these comparable
13 regulatory regimes and our good relationships with
14 our fellow regulators around the world. And
15 although, you know, we may not have looked at some
16 of these exchanges in five years, their own
17 regulators have and this whole system relies on
18 the fact that we trust that their own regulator is
19 comparably and comprehensively regulating them. I
20 was supportive of the provision that was included
21 in Dodd-Frank that basically codified the process
22 that we had had in place by recognizing these

1 exchanges through no-action to register these
2 exchanges because I felt like it was a
3 continuation of a successful program. I think
4 where I come out is I wish that we could have
5 looked at grandfathering these FBOTs that are
6 currently registered. I think it would have been
7 a better use of our resources in this situation
8 because we have already gone through the process
9 of looking at these exchanges and recognizing them
10 and making the determination that they fall under
11 a comparable- comprehensive, supervision and
12 regulation in their own home country. So although
13 I am supportive of the registration process and
14 making, codifying, what we've done instead of
15 having this be under a no-action process, I have
16 concerns with regard to the way that this rule is
17 laid out.

18 So I guess I do have a question for
19 Duane on the limited registration and to ask you
20 what, with regard to FBOTs that are currently
21 registered, how that is limited from what a new
22 registrant would have to do?

1 MR. ANDRESEN: We would expect that all
2 applicants would have to meet the registration
3 requirements. Now, for a board of trade that has
4 an existing no-action letter, we've included a
5 provision that says they can rely on previously
6 submitted documents to demonstrate that they meet
7 certain of the requirements. But we've asked them
8 to provide those documents to us for one thing so
9 that we'd have a complete file of all the
10 documentation demonstrating that they comply with
11 the requirement. But in order for them to meet
12 the limited application requirement, they're going
13 to have to review the document they submitted
14 anyway, I don't see it as a major burden on them
15 to send it on to us. And again we're going back
16 in some cases to 1999 for documentation, and I'm
17 not sure we would be able to find everything that
18 we need to be able to find that was submitted in
19 1999.

20 MR. VAN WAGNER: Actually, just one
21 thing to add, and this also goes to the resource
22 burden attendant to one of these grandfather

1 relief filings by an existing FBOT, is once it's
2 before us, they're going to continue to be able to
3 operate pursuant to the no-action. So it's going
4 to be seamless as far as their operations are
5 concerned, unlike somebody who's a new FBOT who's
6 going to have to, frankly, wait for their entire
7 application to be processed. So it should be
8 seamless and an easy transition for them to
9 continue their operations.

10 COMMISSIONER SOMMERS: Thank you.

11 CHAIRMAN GENSLER: Can I just ask how
12 many foreign boards of trade currently are
13 operating under no-action letters?

14 MR. ANDRESEN: We have 20 active
15 no-action letters to foreign boards of trade, 14
16 of them are showing volume from the United States.
17 The other six it's difficult to say whether
18 they're actually operating or not. I know they're
19 not here so they have not been -- there are still
20 exchanges, but they're not trading from within the
21 United States anymore, and they have not asked
22 that their letter be removed, and we've not

1 received information from their regulator that
2 they've lost their status as an exchange.

3 CHAIRMAN GENSLER: But as far as we know
4 it, though we had issued 20 letters -- or we
5 issued letters to 20 exchanges that are maybe
6 still active somewhere, only 14 of them are
7 necessarily active here in the United States at
8 this time.

9 MR. ANDRESEN: We've actually issued
10 about 23 or letters, 20 of them are still in
11 being. There were a couple of them that were
12 revoked and one was superseded, but 20 are active.

13 CHAIRMAN GENSLER: But whether it's the
14 14 or all 20, what David Van Wagner said, is all
15 of them would continue being able to do what
16 they're doing, get us the documentation as you
17 say, and presumably many of them -- maybe all of
18 them -- would then be registered as foreign boards
19 of trade.

20 MR. ANDRESEN: That's correct.

21 CHAIRMAN GENSLER: But then on a
22 separate point on swaps, if the final rule

1 includes swaps, they would also be able to offer
2 swaps under certain conditions as long as there's
3 comparable-comprehensive regulation on the five or
4 six points that are in here.

5 MR. ANDRESEN: We would think that they
6 would be able to offer swaps once they were fully
7 registered. They have existing no-action letters
8 and there are no provisions in those no-action
9 letters for swaps contracts. Now, that's not to
10 say they couldn't request an amendment to their
11 no-action letter to trade swaps during the
12 pendency of their registration. So I don't know
13 how we'd look upon that.

14 CHAIRMAN GENSLER: So I thank you for
15 the clarification. So to offer swaps to the U.S.
16 public directly, they'd have to wait for their
17 registration. Well, that makes sense.
18 Commissioner Chilton?

19 COMMISSIONER CHILTON: Thanks, Mr.
20 Chairman. The only point I wanted to make is that
21 it's one thing just to have U.S. customers, but
22 when there are linked contracts, that raises I

1 think a separate level of concern. Now this dates
2 back to June of '08 when Senator Durbin introduced
3 legislation and then Senator Cantwell and others
4 sort of picked up on this issue. And while I
5 didn't have a general problem with what we did as
6 far as the questions we asked for the no-action
7 process, I do think that what I said on the WTI
8 look-alike was helpful in agreeing to the position
9 limits for spot month. I think traders were
10 looking at a way to get around the spot month
11 limits in the U.S. and so they went to look-alike
12 contracts in London.

13 The one question that we are asking here
14 -- and I think this is particularly important
15 given what we've learned from the flash crash
16 about the interconnectedness, not of just the
17 futures market and the securities market in the
18 U.S., but of the linkages between global markets.
19 I mean, if the flash crash had happened when the
20 European markets were open, this would have been a
21 problem. But the question we're asking in here,
22 and I hope we get a lot of comments, is whether or

1 not we should require of FBOTs some automatic
2 safety features, whether or not it's price banding
3 or some sort of stop logic-like procedures that
4 pause so you don't have sort of these cascading
5 markets like we saw in the flash crash where folks
6 were arbitraging in that case between the futures
7 market and other related S&Ps. But in this case
8 it would be very easy if there weren't similar
9 sort of stop logic measures or, you know --
10 circuit breakers they call them in the securities
11 world -- in London. I mean if you think about it,
12 if the WTI went up or down in a volatile fashion,
13 but then it got -- there was a stop-logic, but

14 they didn't have that on ICE London, then
15 arbitragers could be going back and forth between
16 the markets. So that's a question we ask here,
17 and I'm hopeful that we strongly consider putting
18 it in as sort of one of the requirements. These
19 things -- we have to remain nimble and sort of
20 quick in looking around the corner at what we're
21 going to have to do in the future. So I agree
22 with Commissioner Sommers that this has worked

1 well in the past, but I think we are going to need
2 some tweaks as we go forward. And we need to
3 start thinking about those now, and this is one
4 area that I think deserves real serious
5 consideration. I don't have any questions,
6 though. Thank you.

7 CHAIRMAN GENSLER: If not any comments
8 on that, Commissioner O'Malia?

9 COMMISSIONER O'MALIA: Well, I was
10 sitting here thinking about the island that Duane
11 may want to be on right now or what island he was
12 on. And I came up with Vieques with the bombing
13 range off of Puerto Rico. He's had a long week
14 for sure.

15 In my short tenure here at the CFTC,
16 it's clear the Commission values its relationship
17 with foreign regulators, and I want to continue to
18 preserve that cooperative working relationship as
19 we go forward. However, I'm concerned that this
20 proposal will cause significant angst among our
21 international regulators and those entities that
22 they regulate. I find myself agreeing with the

1 neutral and straightforward rules, but disagreeing
2 with the overreaching nature of the preamble.
3 This is especially true of the random, pre-risk
4 management proposals which the Commission itself
5 does not even require exchanges in the U.S. to
6 implement. As the Chairman of the Technology
7 Advisory Committee, we've conducted two meetings
8 in the past five months, which addressed direct
9 market access issues. During the past year, both
10 the FIA and IOSCO have produced proposals on
11 direct market access. This issue is subject to
12 extensive debate. I find the approach used in the
13 rulemaking to be premature. And if we are going
14 to mandate pre-trade functionality, we should take
15 a more thorough review of all the various
16 proposals, including the most recent FIA proposal
17 -- which I have right here -- which builds on the
18 FIA proposal we heard in our first Technology
19 Committee hearing and then the IOSCO report of
20 August of 2010.

21 And in addition, obviously we had some
22 great debate last Friday on the SEC-CFTC Joint

1 Advisory Committee in which they posed a number of
2 very good questions we do not have solutions yet.
3 And I think before we begin testing concepts in
4 the preamble of the FBOT, I think we should come
5 to some conclusion about these studies and what
6 we're going to do with the SEC-CFTC flash crash
7 report. In the brave new world of regulated
8 swaps, harmonization with international regulators
9 is paramount. And the Commission must give
10 adequate consideration and deference to the
11 ability to regulate exchanges within their
12 jurisdiction. I'm eager to hear from our foreign
13 regulators and market participants as to whether
14 or not this rulemaking strikes the right balance.
15 I'm hopeful that the regulators will work together
16 to avoid gaps in the regulatory framework.

17 I will be voting against this proposal,
18 but I did want to ask Duane, how are we going to
19 -- you know, what have you done to evaluate all of
20 these studies that we have conducted so far, and
21 are you waiting? I know it's a question, and
22 we've adjusted it in the preamble, but are we

1 going to -- is it -- don't you think it's
2 appropriate that we get our rules straight here
3 before we test it and impose it on the FBOTs?

4 MR. VAN WAGNER: Um, well, I don't think
5 we're actually testing it for the FBOTs, but we
6 realized that the timing of such that this is
7 something that's likely to come up and the DCM
8 rulemaking as well. And DCM being the reference
9 point for the FBOT, you know, registration regime,
10 we thought it would be wise to headline the
11 question, the issue, and base a question upon it
12 for FBOTs so that they can think about it. I
13 mean, one thing to point out is that the question
14 that we ask is actually -- it pertains to, you're
15 right, these pre-order mechanisms or safety
16 devices. We ask about it in the context only of
17 FBOTs with linked contracts, and we'd note that
18 that and many of the examples that we throw out
19 are derived from the studies on the May 2010
20 events. Many of those mechanisms actually are
21 already used by ICE Futures Europe, which really
22 is the only contract, the only foreign board of

1 trade now, which has linked contracts. I mean, we
2 think it is appropriate and it's unfortunate the
3 timing is such that FBOTs actually come before
4 DCMs, but we wanted to highlight that this is an
5 issue that we would be think that the Commission
6 might be thinking about.

7 COMMISSIONER O'MALIA: We did receive
8 specific questions and comment back from both ICE
9 and CME regarding the initial FIA paper as to what
10 they have, if you want a copy of that. I don't
11 know if you saw that in putting this together and
12 what -- it was only a footnote which you've
13 stricken out in the new text. I just want to make
14 sure that we take a very measured approach and we
15 consider it. IOSCO is working towards this. I
16 don't think they have gone to the great -- in the
17 same level of fidelity and granularity that the
18 FIA papers have, but maybe we ought to have, you
19 know, the next TAC committee and move it sooner
20 rather than later to discuss these things. I
21 think this is the first we've seen of it, showing
22 up in the FBOT rule, which I think is premature

1 clearly. But we should have this discussion. I'm
2 not afraid of the discussion, but I think we
3 should think about how we're going to implement it
4 here, and then we have a comparability requirement
5 over on those.

6 CHAIRMAN GENSLER: It may be just
7 because my style is always to narrow differences,
8 but what I understand what you're saying,
9 Commissioner, is that the question that now -- and
10 it's just a paragraph in the preamble -- but it's
11 a question about whether on linked contracts there
12 should be any conditions or whether the Commission
13 should consider any conditions on those linked
14 contracts about some pre-trade risk -- and I
15 remember what you said that we say in here -- but
16 some risk mechanisms about -- that's the paragraph
17 you're referring to or at least that you're more
18 specifically referring to?

19 COMMISSIONER O'MALIA: Yeah, it is. I
20 think before we throw out some concepts like this,
21 I think we're going to raise further concerns
22 among our regulators overseas because we have a

1 preamble that says one thing, and we have a rule
2 that doesn't have this in it. I know it's a
3 question now. It wasn't up until we audibled (?)
4 here, which I appreciate, but --

5 CHAIRMAN GENSLER: No, no, it was longer
6 and it was more detailed before.

7 COMMISSIONER O'MALIA: It's a
8 significant change, and this is the first anybody
9 has seen of this concept in this format. You
10 know, I'm happy to explore it. We've had two TAC
11 meetings on it. I don't think we've come to any
12 resolution on it, and I'd like to explore this
13 further about what we're going to implement.

14 CHAIRMAN GENSLER: And though we don't
15 have this luxury, I take comfort that you might
16 even support the rule if the preamble weren't
17 there, right? I mean, the rule -- you didn't have
18 a disagreement with the rule. It was the
19 disagreement with the preamble?

20 COMMISSIONER O'MALIA: It is a
21 prescriptive rule. I would be happier not to have
22 the preamble, that's true.

1 CHAIRMAN GENSLER: And can I ask Jackie
2 Mesa, the head of our International Affairs,
3 because I know we have shared some of the term
4 sheets and other parts of this with international
5 regulators, particularly in Europe? What have you
6 heard back?

7 MS. MESA: Um, we have received some
8 comment. I think generally, by the way, at
9 international meetings I've been vocalizing that
10 we have a rule that we're going to form on foreign
11 boards of trade. And I've kind of generally
12 described what it will look like, although I did
13 not add in the swaps part as that came later. But
14 people seemed generally accepting of the idea that
15 there would be a statutory basis for foreign
16 boards of trade. Second, we did share some term
17 sheets with some regulators and got back a few
18 comments. Most of the comments we tried to
19 actually address as we were writing the rules.
20 There wasn't a great concern. I think they were
21 wondering how we're going to do ongoing compliance
22 with the FBOTs, so more explaining rather than the

1 rule itself -- just how is it going to work in
2 practice.

3 CHAIRMAN GENSLER: Yeah, I mean I, too,
4 share Commissioner Sommers' view. I think this is
5 an agency that one of its hallmarks has been a
6 strong and constructive mutual recognition
7 program. I think Dodd-Frank adopts that in a
8 sense, and it allows us to recognize if there's
9 comparable and comprehensive regulation of
10 contract markets, swap execution facilities, and
11 clearing organizations. And that's why I was
12 encouraged that we might include swaps in here as
13 well so that we could get that going. But I do
14 respect that this one's going to be a split vote,
15 probably more on, as you say, the preamble and
16 some of that and the grandfathering issue here.
17 I'm sorry, David, did you or Duane?

18 MR. ANDRESEN: If I could address that
19 one paragraph, we have ICE Futures Europe which
20 has linked contracts. They're the only exchange
21 foreign board of trade that has linked contracts.
22 And through two sets of amendments to their

1 no-action letter, we've imposed at least nine
2 additional conditions, the first half of which are
3 actually spelled out to be included in the
4 Dodd-Frank Act. We have always provided
5 additional protection for linked contracts because
6 of our obligation to protect traders on the DCM in
7 the United States to which that contract is
8 linked. In this case, the WTI contract traded on
9 NYMEX. It's not unusual at all for us to consider
10 additional conditions for a linked contract. Now,
11 those conditions on ICE Futures Europe apply
12 specifically to those contracts, not other
13 contracts that are not linked.

14 COMMISSIONER O'MALIA: I'm not taking
15 issue with the requirements. I'm just taking
16 issue with the way we're rolling this out in the
17 venue. We're testing a theory and some ideas on
18 which we haven't even applied our own standards
19 on. So if you want to go through all of this and
20 go through the specific recommendations and test
21 them out, that's one thing. But we just threw
22 some ideas out there and said, what do you think?

1 Are we going to apply the fat finger and the kill
2 switch and some of these other things that are
3 well-thought out in these documents, but we
4 haven't done that here. And that's the problem I
5 have with this.

6 COMMISSIONER CHILTON: We do have fat
7 finger. We do have stop logic in our markets
8 already. Is there something else Commissioner
9 O'Malia that you're concerned about?

10 COMMISSIONER O'MALIA: No, again, I am
11 not at all concerned with the specific controls
12 and the pre-trade risk functionality; that's what
13 we had the debate about in the two TAC committees.
14 I have concerns with how we're rolling them out
15 and what certainty we're giving to the market and
16 our international regulators overseas about what
17 we're doing. This is not a thorough discussion by
18 any means about which activities we're going to
19 apply and not apply or which we favor and we don't
20 favor. Let's go through it. Let's have the
21 debate, and let's be specific about which controls
22 we favor and do not favor. Absolutely, I agree.

1 I disagreed with the FIA on the wash sales. It's
2 not the controls that I have a problem with. It's
3 the manner in which we're, you know, launching
4 this in a preamble on a new rule.

5 COMMISSIONER CHILTON: Yeah, I mean, my
6 preference actually would be to be to put it in
7 the rule because I think that these are things
8 that we absolutely need. I think the flash crash
9 told us that we're going to have arbitrage
10 opportunities, but I sort of thought that -- and
11 maybe the preamble isn't the right place, maybe
12 just a question would have been better, but you
13 know, I want -- I agree with you that we need to
14 have this debated, and we want people to comment,
15 but if we don't ask, they won't tell, and that's
16 why I'd like to have it out there. Maybe the
17 preamble's not the right place, but it's better
18 than nothing.

19 COMMISSIONER SOMMERS: If I can just
20 comment, I think that these issues are extremely
21 complicated and are issues that market
22 participants and the industry have been concerned

1 about for a number of different years. They've
2 come up with some of these best practices which we
3 have discussed, but we haven't settled on where we
4 think our own market should be in the United
5 States. So I don't disagree that it's something
6 that we should put a lot of thought into and in
7 what we impose on our own markets and on our
8 registrants, but it is -- it's not simple, and I
9 think that whatever we end up doing here then we
10 can decide whether or not it's appropriate for
11 conditions to impose on an FBOT.

12 COMMISSIONER O'MALIA: By virtue of
13 having the comparable language, if we adopted it
14 here, we could assume it would be adopted over
15 there. Is that correct? I'd ask the counsel.

16 CHAIRMAN GENSLER: David?

17 MR. VAN WAGNER: Yeah, if it was adopted
18 across the board, right, for all DCM contracts,
19 that's correct. We would probably look for
20 something that would be similar on FBOTs.

21 CHAIRMAN GENSLER: So then David, just
22 on this narrow question because, you know, there's

1 a lot of other pages, but on this narrow question.
2 If it were adopted, and we don't even know if we
3 would, but if we were to adopt on contract markets
4 and swap execution facilities some pre-trade risk
5 management functionality, you're saying we could
6 then subsequently ask -- you know, this could be
7 two years from now -- but ask the then registered
8 foreign boards of trade to come into compliance
9 with that feature? On the linked contracts, I'm
10 sorry, on the linked contracts?

11 MR. VAN WAGNER: Well, I mean, actually
12 it would be even more expensive than linked
13 contracts obviously. If you had it on -- if you
14 applied it to DCMs on all their contracts, then I
15 think that we would look for similar mechanisms on
16 FBOTs for all their contracts. But, I mean, you
17 have to keep in mind, you know, comparable-
18 comprehensive means that you're always looking to
19 a reference point, and the reference point is
20 what's applicable to DCMs. So to the extent that
21 the requirements for DCMs increase, change,
22 decrease, then there would be a knockout effect

1 for FBOTs.

2 COMMISSIONER SOMMERS: Well, I think in
3 that case, that's a little bit further than I
4 guess I thought it went. In that case, I would
5 suggest that we need to take this discussion up in
6 IOSCO. We can't ask for comparable regulation
7 from our international counterparts if they
8 haven't had the opportunity to approve this in
9 their own regulatory authorities. Jackie, do you
10 --

11 MS. MESA: Um, IOSCO did just publish a
12 report on direct-to-electronic access with a
13 number of high-level principles that regulators
14 should look for from market integrity purposes.
15 And perhaps the best way to go forward, one
16 suggestion would be to reference that report,
17 which we accepted at the CFTC and adopted and
18 other regulators did as well.

19 COMMISSIONER SOMMERS: But it isn't this
20 specific.

21 MS. MESA: It's not this specific.

22 COMMISSIONER SOMMERS: I guess, to

1 follow up, do you think that IOSCO will in the
2 future consider pre-trade risk controls that may
3 get more specific than what we've done with the
4 direct market access paper?

5 MS. MESA: Um, I don't know. As I talk
6 about the specificity of that report, the
7 principles themselves are not specific, but the
8 body of the report goes into more detail on
9 options. It's more of an optionality of things
10 that you could apply to the market. So whether it
11 says you have to do X, Y, and Z, I don't think
12 IOSCO will probably go in that direction as much
13 as give a range of options that get you to the
14 same point.

15 CHAIRMAN GENSLER: Commissioner O'Malia?

16 COMMISSIONER O'MALIA: I have one
17 question. The other part of this is the May 6.
18 And remind me, Mr. Chairman, what our timetable
19 is to have those recommendations because I think
20 it references May 6 right here. It references one
21 of our May 6 reports, our May 18 report in our
22 footnote in this new amendment. How does this --

1 how should international regulators read that?
2 Maybe I should -- that's a better question. Not
3 you, Mr. Chairman, I apologize --

4 CHAIRMAN GENSLER: I'll take the
5 question.

6 COMMISSIONER O'MALIA: May 18, we
7 reference the May 18 Joint Committee. There are
8 no recommendations.

9 MR. VAN WAGNER: I mean, actually, the
10 reference there is to basically indicate that some
11 of these mechanisms are actually discussed there
12 and also actually, if anybody takes the trouble to
13 look, they'll see that many of these mechanisms
14 are in place already at ICE Futures Europe as well
15 as CME. So that was the point of the reference.

16 COMMISSIONER O'MALIA: Okay, fair
17 enough. So out of that, we're going to get
18 recommendations from the Advisory Committee
19 shortly I assume?

20 CHAIRMAN GENSLER: Yeah, we've asked
21 them in January, but you know, they're human, too.

22 COMMISSIONER O'MALIA: Oh, absolutely.

1 CHAIRMAN GENSLER: But we've asked them
2 for January.

3 COMMISSIONER O'MALIA: I understand. I
4 just want to understand what we're asking, what we
5 expect -- what international regulators and
6 registrants, whoever these are, should understand
7 what we're dealing with here. And I think the
8 process is important to understand, what the other
9 reforms might be out there.

10 CHAIRMAN GENSLER: I mean the positive
11 part of this debate, even here as we're going to
12 get comments on this paragraph. It could be
13 called the -- I don't know -- the discussion
14 paragraph. I won't name it anything. And it's
15 just a paragraph, by the way, for the press,
16 asking about whether there are additional
17 conditions on linked contracts for these pre-trade
18 risk functionalities. And I encourage the public
19 to comment, but we're going to have comments from
20 the Advisory Committee hopefully in January.
21 We'll have comments from your TAC, the Advisory
22 Committee. This is just a proposal in any event,

1 and this is a question in the preamble, not in the
2 rule.

3 But I think with that maybe I'll call
4 the vote? All those in favor of sending the
5 foreign board of trade rule to the Federal
6 Register, say "aye."

7 GROUP: Aye.

8 CHAIRMAN GENSLER: Any opposed?

9 COMMISSIONER SOMMERS: Opposed.

10 COMMISSIONER O'MALIA: Opposed.

11 CHAIRMAN GENSLER: I don't know if I
12 heard from Commissioner Chilton. You might be the
13 swing vote, my friend.

14 COMMISSIONER CHILTON: It's a reluctant
15 aye.

16 CHAIRMAN GENSLER: Yeah. So it's 3-2 to
17 at least send it to the Federal Register. What I
18 normally do about here other than thanking the
19 staff is see whether I also have to have a vote on
20 any technical corrections because I seem to have
21 done that every week. Do we? Do I? So there is
22 a -- I ask for a motion at this point for

1 unanimous consent to allow staff to make technical
2 corrections to the documents voted on today prior
3 to sending to the Federal Register.

4 COMMISSIONER DUNN: So moved.

5 COMMISSIONER SOMMERS: Second.

6 CHAIRMAN GENSLER: All those in favor?

7 GROUP: Aye.

8 CHAIRMAN GENSLER: Says here "chorus of
9 ayes." So I want to really thank everybody. I
10 mean, this is a long, these seven rules in one
11 day. We do meet on November 19, which I guess is
12 next Friday. We'll publish in the Federal
13 Register on, I guess -- or on our Web site, I
14 guess, more technically -- on the Web site and
15 maybe the Register on Friday, the topics. I do
16 fear Commissioner O'Malia that it just is -- some
17 of the staff -- while we're here I think real-time
18 reporting is for that day, and it's partly because
19 we're aligning with the SEC. But we'll keep
20 talking about that one.

21 COMMISSIONER O'MALIA: Any chance we can
22 get definitions moved up? I'm ready to work.

1 CHAIRMAN GENSLER: I am, too. I am,
2 too. Right now it looks like it's calendared for
3 December 1, but maybe entities and products is a
4 little, you know, it's just -- maybe both.

5 But with that, is there any other
6 Commission business? If not, I will entertain a
7 motion to adjourn the meeting.

8 COMMISSIONER SOMMERS: So moved.

9 COMMISSIONER O'MALIA: Second.

10 CHAIRMAN GENSLER: All in favor?

11 GROUP: Aye.

12 CHAIRMAN GENSLER: Good, unanimous.

13 There we go. Thank you.

14 (Whereupon, at 4:09 p.m., the
15 PROCEEDINGS were adjourned.)

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CERTIFICATE OF NOTARY PUBLIC

DISTRICT OF COLUMBIA

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

Notary Public, in and for the District of Columbia
My Commission Expires: April 14, 2011

