COMMODITY FUTURES TRADING COMMISSION

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GLOBAL MARKETS ROUNDTABLE

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1:00 - 4:00 p.m.

Room 1012
1155 21st Street, NW
Washington, D.C. 20581

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WALTER LUKKEN,
Commissioner, CFTC

SHARON BROWN-HRUSKA,
Commissioner, CFTC

FRED HATFIELD,
Commissioner, CFTC

MICHAEL DUNN,
Commissioner, CFTC

ARTHUR DOCTERS van LEEUWEN,
Chairman, Committee of European Securities
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WIM MOELIKER,
Senior Office, Committee of
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ANDREA CORCORAN,
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ANTHONY BELCHAMBERS,
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P R O C E E D I N G S

CHAIRMAN JEFFERY: Good afternoon, ladies and gentlemen. My name is Reuben Jeffery, and I thought I would open with a couple of very brief remarks and then turn it over to my friend and colleague, Walt Lukken, and a number of our colleagues, to make today's session be a successful dialogue of matters international and global importance in the world in which we all operate.

I would also like to thank all of you for being here. Most of you come from out of town; some of you are here. I know the weather isn't the most hospitable, it's the holiday season, and there are a lot of other competing demands on our time.

In particular, we extend a very warm welcome to our visitors and colleagues and friends from overseas. Arthur Docters van Leeuwen, Wim Moeliker, Anthony Belchambers, and there are others here in this room who I have not recognized, but we will get to in a moment.

Today's roundtable offers a unique forum to hear from regulators, market participants and

the public on a wide range of issues affecting cross-border business.

It is our hope that frank and open exchange of ideas, experiences, and expertise on various issues will help focus ways to harmonize through regulatory approaches through across markets in ways that are consistent with core principles and ideals each of us as regulators have to adhere to.

We at the CFTC have engaged numerous authorities around the world for the cause of global markets, and I think our Commission shares the view that we try to be forward leaning when it comes to matters of international and global competition, both as U.S. participants overseas and international participants seek access to our markets.

One of the major initiatives resulting from our engagement in this regard is our ongoing work with CESR on transparency in financial services laws and regulation. Once completed, the

transparency project, to name but one initiative of CESR, will go a long way towards encouraging market participants on both sides of the Atlantic.

We will also have the opportunity today to hear from CESR on its continuing work to strengthen the European financial market system, and from the Futures & Options Association on its report on trans-Atlantic regulatory convergence.

Now we look forward to a productive and most importantly, an open and free-forming discussion on these various initiatives, and the issues related to cross-border access.

I would encourage all of you to not hesitate to raise your hand and participate when the opportunity presents itself, and even if it doesn't present itself, if you've got something to say, this is the opportunity to say it. But we will try to recognize as many people as we have time for.

I would also stress in terms of expectations management that today's session is really -- not a beginning, but not an endpoint.

It's really a continuation of discussions related to issues of mutual interest and some degree of complexity, but one that we would like to carry on from this forum to tangible work product in the months and years to come.

Without further ado, I would like to turn the podium over to Walt Lukken, who will continue with the agenda and the introductions.

COMMISSIONER LUKKEN: Thank you, Mr. Chairman.

I want to welcome everybody, as the chairman said, to this roundtable. Today's topic for discussion is derivatives market access between the U.S. and Europe, and we are thrilled to have the chairman of the Committee of European Securities Regulators, Arthur Docters van Leeuwen, kicking off that discussion.

The United States-European Union economic relationship is the largest in the world and still growing. Bilateral trade between the EU and the US amounts to over $1 billion a day. Direct investment between our economies is even

more substantial, totaling over $1.8 trillion a year.

This economic relationship creates 6 million jobs on each side of the Atlantic. The EU-US link accounts for 57 percent of the GDP in the world, and 40 percent of all global trade. Despite the difficult trade negotiations that we read about in the papers between the Americans and Europeans, these differences are dwarfed by the positive trade story that occurs between these partners every day.

With the further advancement and integration of our financial sectors, capital flows across the Atlantic represent a significant and growing part of this bilateral activity.

This is why today's meeting is so important and why the globally-driven derivatives industry can play a leading role in the broader US-European economic dialogue.

The interest for today's industry roundtable grew from an earlier meeting hosted by CESR and the CFTC in Paris last spring. Our then Acting Chair, Commissioner Brown-Hruska, and I

participated in this ground-breaking dialogue between regulators and industry, which ultimately led to an agreement between the CFTC and CESR to work together on ways to improve derivatives market access between Europe and the US.

The CFTC and CESR saw the importance of industry involvement to a successful dialogue and they included it as a component to the communiqué itself.

Today's roundtable provides us with an excellent opportunity to hear some of the industry's concerns, and it will hopefully yield ideas and assurances as the CFTC and CESR continue our discussions.

To begin this roundtable, we are honored to have the chairman of CESR Arthur Docters van Leeuwen to provide us with background on CESR and to discuss the need for and progress of the CFTC-CESR work program.

In addition to his leadership role at CESR, Arthur has served with distinction as chairman of the Executive Board of The Netherlands

Authority for the financial markets since September 1999. Before joining AFM, Arthur was chairman of the board of Procurators General, headed the Dutch internal security service, so be careful, and has served the Dutch public in several other capacities throughout his career. He studied law at the University of Utrecht, specializing in constitutional law and administrative law.

I welcome him, and I look forward to his insightful comments.

Next Wim Moeliker, a senior officer at CESR, will provide us with an update on the transparency project that grew from this work program. Wim has graciously agreed to fill in for Fabrice Demarigny. Some of you may know CESR's secretary-general who could not be with us today due to a last-minute family obligation. I know that Fabrice has worked hard on this program with the CFTC, and I hope that you will pass on our well wishes and gratitude.

After Wim's presentation and our ensuing roundtable discussion, I have asked Andrea

Corcoran, head of the CFTC's International Division, to conclude with a summary of the next steps needed.

As our second agenda item, we are thrilled to have Anthony Belchambers, executive director of the European-based Futures & Options Association, to give a presentation on a report entitled "The Trans-Atlantic Dialogue in Financial Services: The Case for Regulatory Simplification and Trading Efficiency."

That's a long title.

Anthony is a well-known figure in the European and US derivatives community, with a distinguished and varied background in the financial and governmental sectors. His presentation of this report, sponsored by the City of London and a variety of global financial service trade associations, including the FIA, as well as the SIA, lays out areas where the US and Europe can make improvements to facilitate trans-Atlantic business.

Some of these ideas are obviously complementary to the CESR-CFTC discussion, and we look forward to hearing his important presentation.

And last but not least, Arthur Hahn will bring closure to a topic that we have discussed at previous global market meetings -- the need for reform of the segregated/secured fund regime. After significant consultation with the industry, Arthur will summarize the industry's discussion and provide us with the conclusions resulting from his dialogue.

I want to thank Arthur and John and Dan and all those involved in this important by thankless exercise, and I look forward to their report as well.

Before I turn it over to CESR's chairman, I'm not sure if Ethiopis Tafara is here or not -- oh, there he is. I wanted to recognize the head of the international office of the SEC, who has joined us. Obviously some of these issues overlap between the CFTC and SEC, and we are delighted that he is here to join in the roundtable.

Also I would like to ask any of my fellow commissioners for comments or remarks before we get going, and I will first turn it over to Sharon.

COMMISSIONER BROWN-HRUSKA: Thank you. My microphone keeps coming on, so apparently I need something -- someone up there wants me to speak and say a few words.

I just wanted to thank everyone for coming. It's so gratifying to see familiar faces working forward, moving the ball forward on some of these issues that have been around for a while. I seem to recall Anthony in the FOA meeting that I attended two and a half years ago in London. You were just kicking around this idea or just had engaged Clifford Chance to do this evaluation. I have taken a good long look at it and it's really a fine piece of work, so I really want to congratulate you and Roy for all of your support in this endeavor in the trans-Atlantic area, and of course Arthur Docters van Leeuwen, I am delighted to see you here at one of our meetings.

I had the pleasure of attending one of your meetings at CESR, and that was a great honor to sit among the hard-working I would say pathbreakers in Europe, and also, Wim, I am delighted that you are here, and Art Hahn, this is

an important issue as well, and I think that your contribution, your committee's contribution to our thinking about bankruptcy issues, segregated funds and secured issues is really valuable.

So, again, welcome and thank you very much for coming.

COMMISSIONER LUKKEN: Thank you, Sharon.

Commissioner Hatfield, do you have any comments?

COMMISSIONER HATFIELD: Just briefly. I would also like to thank everybody for being here today, especially our visitors from overseas for coming all this way to be here on this very important subject.

I also want to thank you, Commissioner Lukken, for organizing this.

I would also note Commissioner Brown-Hruska's longstanding efforts in all of the issues on the agenda today. Thank you.

COMMISSIONER LUKKEN: Thank you, Commissioner.

Commissioner Dunn.

COMMISSIONER DUNN: Well, Walt, I would like to thank you and the Chair and Sharon for the hard work that she has put in the past on this, echoing what Fred had to say.

Certainly reducing regulatory barriers is a very, very important thing for us, and as we look at the various regulatory regimes from across the world, sometimes it looks like a Herculean task to be able to go forward. But we all know that these journeys begin with small steps, and I think that's what we are here today looking at some of the transparency issues that are a modest beginning but a good beginning.

Hopefully we will prevail, and I don't know how long that's going to take. I wouldn't venture a guess on it, but certainly I think we owe it to the market users who will be the beneficiaries of what comes out of this.

So I welcome all of you to this roundtable, and let me make sure I have the correct technical term on this, and I appreciate all of your participation.

COMMISSIONER LUKKEN: Before we turn it over to Arthur, just one housekeeping note. As you probably observed, we are using voice-activated microphones today, so they pick up on a lot of paper rustling and other noises. So if you want to talk, sort of lean into the mike and hopefully everything else is self-explanatory.

And with that note, I will turn it over to the chairman. Thank you.

MR. van LEEUWEN: Thank you very much, Mr. Chairman, ladies and gentlemen, distinguished members of this roundtable. I am very glad to be here. It is a distinct honor for me to be here with this important panel of leaders and specialists in different fields of financial activities. I would like to thank you very much, and perhaps I have some explaining to do.

I tried to cover two areas with you today. The first area is the world is a community.

I was explaining that I would like to explain CESR, and to cover two areas with you. The first is that the board of the Committee of European Securities Regulators appointed me. I said you should not do these two things at the same time, but nevertheless they did. That's how we are referred to, and we are supposed to play a role in that single market for financial services.

The second thing is to highlight the many things CESR and CFTC have been doing together during the course of the last half year, about which Director Andrea Corcoran and my secretary-general, they will be more specific than I can be later.

Now let me go first to the role of CESR in the EU single market for financial services. Let me start by telling you a little bit about the organization that I chair.

First, touching upon where we come from and the role that CESR plays in the EU single market for financial services, and what we have

been doing, and naturally and secondly, what we are headed for and what we will do in the next future. Where do we come from and what is the role that we play.

Then I have to understand the role of CESR properly, I have to take you back, and now it is Christmas, I would like to start with the sentence "once upon a time." [Laughter.]

MR. van LEEUWEN: Once upon a time, back in 1999, there was a meeting in Lisbon, and heads of state and governments of Europe set a goal of making Europe the most world competitive by 2010.

In order to achieve this, one important tool was needed, namely the creation of a single market, a true single market for financial services, for which the financial services action plan or the FSAP, as it is often referred to, was adopted.

The FSAP set out 43 measures that needed to be taken in order to modernize EU legislation and to make the provision of cross-border services in Europe more fluid. And more than half of these 43 measures were in the field of securities.

Now given that, how does CESR fit in this? But before I do that, and before you start really listening to me, I want to let one important fact sink in. A few of you, quite a few, I think, know this, but I cannot be sure everybody of you in this room, so I think that this is important. When it comes to European supervision and enforcement in financial markets, it is not a European institution, there is no European supervisor. You have European market authority, competition authority, I should say. We have the European Central Bank. But they have no powers of a supervisory or enforcement nature when it comes to the financial field.

I think that is very important because you have all this -- every time I cross the Mall, I see all these Federal buildings, and I am in one now, so I think this is important for you to have -- for you to understand me, if you accept these facts, which is not easy to do. I can well understand it, but it is a fact.

The European Treaty does not allow this to happen, the Treaty of Nice, the EU treaty. There was a provision for what we nicknamed as the

European Constitution, although being a constitutional lawyer myself, I will not bore you with the interesting discussion of whether or not it was a Constitution. In my opinion, it wasn't.

We do not have this now because, as you know, the French and the Dutch brought this treaty down and the others down there to put it to -- so it's a situation that we cannot have a proper, if you want one, but even if you wanted a European institution that does supervision and that does enforcement, you couldn't get one because you needed a change. I will not bore you with all the technicalities, but if you want one, you have to change the European Treaty. And that will take some time, to say the least, even if everybody wants it, which is not the case, it will take time.

So that is a very important factor that you should recognize and let sink in before listening to me with my story.

Nevertheless, I go back to what I was telling you. We have to do two things. The first one was to -- given the fact that you could not have a European central supervisor, you should establish a mechanism through which the regulators, supervisors -- I will now use the enforcers, most

of them are united in one, of the European financial market work together. And you may have a question how do we do that.

Now that we don't have a European central system, we use a principle that is more decentralized. It's named the Home Post System. I have seen it in several documents that you know more or less what it is and that you even introduced it in some corners of your own when it comes to prospective -- I was glad to see that you have something that we have already have. We now have that, and I will come back to that.

But we have the central principle, the core principle of European cooperation when it comes to supervision and enforcement, is the Home Post principle. And that's the principle that we at CESR have to make work. That's our central assignment. And you know how it works. Keep it simple. It is not simple, but to keep it simple, it is very simple.

If you ask, for instance, a permit from -- when a company comes in Europe, either European or from outside, he will approach a regulator for a permit. When he gets it, that permit gives him -- is a passport. When he has that permit, let's say from the Dutch, then he can go with that -- given that permit, he can establish his business everywhere in Europe, and he will be regulated and supervised and enforced by the Home regulator.

Naturally we are all bureaucrats, are we not. There are quite a few exemptions to that rule, especially when it comes to customer-related -- or when it comes to direct relations with customers, and there are quite a few exceptions, and yes, our dear friends of the Central Bank make some special exceptions when it comes to prudential matters as well.

But in general, this principle stands, and it has been enhanced by the modernization of

European legislation, especially by the market and financial instrument directive that is now underway. It has been enhanced quite considerably when you compare it with former times.

So that's what we have to make to work. I'll come back to that. How we approach that.

The second element is we had to speed up the European legislation, so the member states committed a committee. It was led by Burl Lamfalussy, and he made a report, and in that report, they advised two things, which all was agreed by the government and the parliament.

The first was to establish CESR, and we did it at 9/11 -- though I know very, very well what what we could do on 9/11 was the day we established CESR, and then I was appointed by my dear colleagues for the first time. We had some discussion about going -- not going through with it or not, but a few of us, including me, said the terrorists, they like to disrupt society, and so you should not give in, and even though we have

quite a lot of our friends over there in this terrible, terrible disaster, we decided to go on. So that was the day we created CESR, and that was the day I was chosen by my colleagues for the first time.

We were established as an independent organization of securities regulators in the EU, and so that's the first element, and the second was the new way of creating new legislation in the form of what we now call the Lamfalussy four-level approach. There are four levels.

The first level is the level of the formal European legislation. We have a directive that is supposed to contain principles. You know how this goes between member states. Yes, there are principles, which also require a lot of detail. Because everybody wants to secure his legitimate interest.

But, nevertheless, it helped. Because level two, that's the level of the real -- of making things work. There you will find the operational nitty-gritty and the things where it really bites, where it really matters.

Level three is of an operational nature. How do we cooperate, how do we create enough unity in interpretation of the law and how do we create enough unity and coordinated efforts to investigate, as we did, I'll give you an example in Parliament.

And the fourth level is the level of infringement. That's not for us, it's for the Commission. If a member state does not execute the EU legislation, he will -- it's in the EU treaty, it's the EU commission. And they are -- this is not a soft thing. They have now -- the predecessor of Mr. McCreavy left. He had 2600 infringement proceedings running of all the markets, so half of them were financial. So it's not -- don't think it's soft because it's not. It is very difficult when they have to call on you, it is very difficult to lift such a procedure.

What is our role? Our role is in level two and in level three. First a little bit about level two. It is in level two and level three. If

you want to have one snapshot, what do these guys do in this European Lamfalussy level two and three, I can give you a very simple snapshot.

We are busy with three things. We are involved in rulemaking. I will later explain. We are involved in improving cooperation between ourselves and convergence between ourselves, and we are involved in peer pressure between ourselves.

So if you want to know -- if you want to go home and keep in your hat what is this for, it's this three-segment animal of chairs, of all the regulators, financial regulators in Europe, and they have an agenda that you always can sum up in three things -- rulemaking, improving cooperation and convergence, and peer pressure.

And now the cooperation and convergence has now extended to CFTC. I'll come back to that later.

The main concern is rulemaking is being the formal adviser of the Commission that comes at this level two of financial directives of regulations. We are supposed to give a complete,

comprehensive, in near legal terms -- not quite legal terms, but quite near to them, to give them advice. The Commission is supposed to accept it and to propose this to the member states, and the member states are supposed to vote, and when they do, that's the end of it.

In this level two, it is not a formal role. That is only in the first level. And naturally the Parliament has fought for the rights. They said that's okay, we will grant you this, but if it's time to see whether or not you exceed your mandate as a Commission, we will soon have seen this, and I have to appear in Parliament, and they have to decide whether or not they accept the level two result. It is not completely formal.

We are the principal adviser, the Commission is to accept it, and then the member states has their vote. If they do, it has the power of a directive or even a regulation. We have now provided for three regulations, which are European rules that apply directly to European citizens.

Normally the Commission does not accept everything. There are sometimes quite a few, quite a lot of political hassle, political negotiations,

but at the end of the day, we see only a few, sometimes more, sometimes less, of iterations of what we have proposed.

So we have been evaluated -- I will not bore you with that. The general view of the industry, of the member states, of the Commission, of the Parliament is that it works. So if everybody tells me that it works, perhaps it does.

So that's the first element, rulemaking.

The second I was talking about was peer pressure. If you operate a Home Host system, you better make sure that you have a peer pressure system as well. We have one now operating. We call it the review panel. It looks into the fact whether or not the legislation and all the operational things that go with that is implemented properly and functioning. And we have now under construction something that we call, as a euphemism, mediation, which is interesting for the

industry, because if somebody tells us that operational way the wrong regulator operates in this country differs in a way that it is (off microphone) for the industry, then we will set up a -- we are setting up a mechanism to solve this problem. I hope that we can conclude on this in January in our next meeting.

So when we do this, we don't have to change a European rule. So it's more efficient, we hope, but nevertheless, we want to have this as regulators.

Third, this cooperation and supervisory convergence item, we have now a -- I will come back on it later -- confirmed two permanent commissions to do so. The one is CESR-FIN, which is involved with consistent application of audit rules. The other one we call CESR-POL. That is about consistent application of the market abuse directives, but also in the coordinating all sort of investigations and enforcements.

If I look back for the last four years, you can see that we did all these three things, but

we most of the time were involved with rulemaking. But now you see a shift to this cooperation and convergence, so it is very timely that I am here. Thank you again for that. But allow me to show you a little what we are doing, because this was a little bit more general. When I jump, I cannot be comprehensive given the timeframe I have to speak to you, but I think the most important thing is to give you a flavor.

I jump through several things we are involved with. The first one is the market abuse directive. It is supposed to unify the way in which the supervision of insider dealing, manipulation and dissemination of false and misleading information is carried out in order to preserve confidence in our financial markets.

This is enforced, this directive, in quite a few regulations about this, and it is enforced, and it is CESR-POL that does the coordinative work, and does all the interpretations. The interpretations are European of nature, but I must say that they are not legally binding.

Nevertheless, they are on a "voluntary" basis. That's all the work we do, but I have not yet seen a jurisdiction or a judge in Europe take

another view. So we are not, I repeat, not an institution, but this voluntary basis seems to work very well, and seems to even convince all the judges in all the corners of Europe until now.

Then I go to the prospectus directive. It is enforced as well. We still have to -- we have a group now that sorts out all the peccadilloes that are still there. How many should you -- what language are you allowed to translate your prospectus forms, that sort of thing.

There are also quite a lot of bits that should be sorted out, but it's enforced, and it works.

Then we have a very important one, the adoption of IOSCO. It has been adopted. We will all look at what's going to happen in the second half, in the next half year, when we see the first results of how the companies, 10,000 of them, will have applied IOSCO.

We have in place, and this will surely be an item, as I feel Ethiopis looking at me, it surely will be an item talked about tomorrow, how to coordinate our efforts there.

We have a coordinating mechanism in place. I will not bore you with details, but in essence it

says if you have an enforcement decision to make, and you have to look into the European database that we have constructed, and if you don't find there an answer for what you are going to do, you have to consult us. We have formed a group that can talk about these sort of things within CESR.

Then we have, as mentioned, a transparency directive. That's not yet enforced. It's on the way of readiness. Nobody expects much trouble. I think it will be ready in the beginning of next year, and it will take one year more to get enforced, and that's interesting because industry asked us to set up a European version.

I have said already something about MFIT. We hope that we can conclude on that next spring (off microphone). You don't have to think very

hard to understand why it was (off microphone), but now we seem to get there, and I think that --

[Laughter.]

MR. van LEEUWEN: This is the problem, by the way.

[Laughter.]

MR. van LEEUWEN: I see all sorts of people listening carefully to what I'm saying, so you are either very polite or it works, anyhow.

Last but not least, because you have a very big and very energetic industry, is the modernization of the directives. We are now going into a very liberal regime when it comes to what you can put into this. As long as you are transparent, it will be great. Much more will be possible than was possible than in the past. And the battle is now about transparency, because it's easy said but not easy done, is what exactly transparency should be, and what terms should you be transparent, and so on and so on.

So that's, I think, enough to give you a picture, and now I would like to say something about our work together.

We have found that CESR and CFTC are very open and efficient part of the work is in this direction. We uniquely share the same goals and the work experience, and can only be very grateful to the Chair, the commissioners, and to the staff of the CFTC for their commitment to make this cooperation complete and result oriented.

As you know, we adopted the following in terms of consultation, which is very interesting, and maybe will pop up again in this meeting, is market participants, and we created a formal work program for the next three years, in June of this year. This establishes a practical way where we can work together in the form of a joint task force on trans-Atlantic business. It is a task force that will soon start delivering some practical results of its work.

This follows a discussion that began last year between CESR and the CFTC, and how we can improve this trans-Atlantic business. This led to the arrangement of this roundtable. We already

talked about this. We have a plenary meeting in London in June of this year. Sharon was there, and then last week we have this plan, and we gave this joint task force two years to see how far they can come. They have three years work that will be concluded in two years.

We have six members there on both sides, and we have (off microphone) and it is jointly led, as has been said before, by Andrea Corcoran and by Fabrice De Marigny. It has already met twice since it was established in June of this year.

This work then describes two strands of work. The first is the enhanced transparency and clarity of regulatory requirements. Here the CFTC-CESR joint task force aims at facilitating the understanding of regulatory requirements for access to US and EU derivatives markets by posting the relevant applicable information on EU and US supervisory Web sites.

This work has progressed very well since June, and you should expect to see the results of this work up on our Web sites June the 1st in next year. So that would be our first practical result.

This information that will be posted on these Web sites will be drawn up in two parts. One part will be a document with frequently asked questions, which will give market participants some practical answers to their questions, which we now get asked on a regular basis. This will facilitate the work of market participants as well as regulators.

The other will take the form of a portal for jurisdiction to which market participants will be able to access the specific and detailed information related to regulators, related to exchanges and clearing organizations, to investment services, and to end users. Gathered in one place for the first time will be answers and links to much of the information that is presently located in a library that presently is located -- in a library made up of a huge number of different places taking many, many different forms.

The second part of the work relates to simplified access or recognition procedures, where

the joint task force will, among other tasks, review information requirements of the CESR members and the CFTC with a view to create a common template of core information which could be used for intermediaries and exchanges wishing to gain access to a derivatives market or to receive recognition on both sides of the Atlantic. This part will take a little bit more time. I don't know exactly how it is with you, but I know it's very important. We are quite committed to this one, but it is difficult because access from outside Europe, inside Europe is not in the European regulation. It's a national thing. So normally they could use the European machine, but you cannot use it here.

That's why it is complicated. We have now put out a questionnaire about this, and the first round of information is -- makes me optimistic. It's difficult, but it's doable, but this is the reason why this takes a little bit more time than the other one.

I hope the next time to be able to tell you that although we have trouble, we find all the specific information, we have succeeded.

So these are the two elements, and others will talk about it, you will talk about it a little bit more.

Anthony, in your presentation, I have read it, and I can say, and even some of my members have read it, believe it or not, and I cannot speak yet for all 37 of them, but I am absolutely sure that I support it, and I will not be left alone by my members.

Thank you very much. We have seen not only your paper, but we have, as a last word, a very good response on this work that we had together, and if you are really interested in looking to the requirements we have together, you will find quite a few interesting proposals or suggestions that I was quite pleased to see them. Our policy is to first do the things that we already were committed to, and later on this group, when it comes together, it's supposed to meet twice a year, and we are supposed to meet also -- I am now here for the second time. I hope that we have

a tradition here. And we will sort out what we will have as the top priority the next time.

Thank you very much for your attention. I am very glad for your patience. Thank you very much.

COMMISSIONER LUKKEN: Thank you very much, Arthur. That was a wonderful description of the European Commission and the Union, and so we want to turn it over to Wim next to talk about transparency in detail. But before we open it up for a roundtable discussion, I wanted to specifically ask if anybody ha questions of Arthur and what CESR's role might be in particular, and also the dialogue in general, before we get into a general discussion with the roundtable.

Anybody? Well, great.

Before I turn it over to Wim, I wanted to first -- I missed someone at the table, which is Pat White from the Fed. Pat’s a good friend of ours, and I'm sorry I didn't recognize you earlier, but she joins us, and we appreciate you being part of the financial services committee up here.

With that, I will turn it over to Wim, who will describe the transparency project in general, and then we will open it up for a brainstorming session of different ideas we might have for the CESR and CFTC.

Wim.

MR. MOELIKER: Okay. Thank you very much. Thank you for the opportunity and the honor to speak here.

I am a remote member of the CESR secretariat. I am in Paris, which means I am based in Amsterdam.

I want to be brief not only for time reasons, but also to afford the usage of additional microphones.

[Laughter.]

MR. MOELIKER: I can be brief because much of the headlines of the project are covered by the chairman on my right. So the project started in 2005 with two meetings, which was already described earlier this afternoon.

The working group is driven by Andrea and Fabrice De Marigny. I wanted to tell you a bit about the composition of the task force on the CESR

side. It's a tradition to invite all CESR members to join the specific work, including this joint initiative, and to date six members of CESR have participated in the work of this group; namely, the UK, Germany, France, Ireland, Netherlands, and Sweden.

The basic idea is to involve all CESR members, and in particular those with derivatives markets of a substantial size.

The essence of the transparency project is simply a question of putting up information on the Web sites of CESR and CFTC, and of CESR's members, to allow market participants to have easy access to relevant information which they need when considering to establish a business on the other side of the Atlantic.

The communique with the working program, which was referred to just a minute ago, and the frequently asked questions and the template are in

your folder in front of you, and in fact these are the tools which will be used to create an easy access to the information.

The frequently asked questions range from very basic information on who to contact in the jurisdictions, subdivided in exchanges, investment services, services from an intermediary level. All questions should be given direction who to contact best.

The answers to the questions, and with that I want to echo your words, Mr. Chairman, in saying that this is not the grand finale or the presentation of an end product, but merely an update, because there is still work to do.

The answers to the questions, I meant to give factual information and not as legal advice.

And secondly, as has been said by my chairman, there is a template in four different sections. Again, regulators, regulatory activities, exchanges, and clearing organizations, and intermediaries, and finally information which would be useful for the end users.

The answers will be governed by links to places on the various Web sites where further information can be found.

So, in fact, this project is about hosting existing information and not about creating new information, and in that way CESR and the CFTC facilitate the derivatives business on both sides of the Atlantic.

Again, we are not there yet. Following finishing touches work on the area of IT work, we aim to have the results up and running in the first, second, and third quarter of next year.

So in effect the template you will find in your folder may not look impressive to you, but when completed, with the answers and available on the Web sites, I think it's quite a useful tool for information to facilitate the business.

To be able to click on the Web site of CESR and find this information again is a tool for facilitating the business, and with it I think more or less the product, and of course I speak here in the control of the chairman and also on Andrea's side, who is very active in this project.

Thank you.

COMMISSIONER LUKKEN: Thank you, Wim. I was going to ask Andrea to see if she had anything to add to Wim's presentation.

MS. CORCORAN: The only thing I would say is that the idea of this is to be sort of a more technologically modern way of collecting information that people want to know about participating in particular markets, and to make it easier to update than if you have to do it through a survey process.

So theoretically each individual jurisdiction will keep their own information updated, it will be presented in the same way, and you could go into either the CFTC or CESR portal and look up any jurisdiction and find this information on their own Web site. Some people think it's easy to find information on Web sites, but I can tell you that even for the CFTC Web site, I have difficulty sometimes, and the hope is that putting this in a common way will make it

much easier for people to find the information that they need, and then they could pay their lawyers to them how to really do business.

[Laughter.]

COMMISSIONER LUKKEN: I think we are going to open it up to a discussion on these issues, and again this is going to be a public brainstorming session, so that we might be able to garner some ideas and make sure that we are heading in the right direction with this transparency project. I would like to kick it off with transparency, and certainly anybody, my Commissioners and anyone, can chime in on any variety of the subject matters we might get into.

But I think it would be nice to hear from the industry about how important this type of a project might be, and if there is any sort of anecdotal evidence that they have, or experiences trying to get into certain jurisdictions and difficulty finding the laws, the rules of exchanges, bankruptcy provisions, other things that they might need in order to get into those

jurisdictions, and what the cost might be associated with finding out that type of information.

I secretly tasked Emily Zeigler to kick off the discussion, to stir the pot a little bit, and then we'll just follow the flow from there. So, Emily.

MS. ZEIGLER: Thank you very much for inviting me here today. I really appreciate it. I also thank the Commission for focusing on cross-border business and legal issues which are issues that are I think among the industry's biggest challenges today.

We are, in case anybody is wondering, we are outside counsel to a lot of CFTC registrants, including futures commission merchants, CPO, commodity pool operators, commodity trading advisers, and also to broker dealers to SEC registrants, and to investment authorities.

Also we have end users like hedge funds and pension plans and mutual funds. All of them are interested sometimes in different ways in the

kind of issues that you are talking about here today.

I thought I would start first by telling you what you may already know which is when I have a client who wants to pursue business in another country, they will call me up thinking that I have the book, and the book will have in it regulations, rules of every country in the world, indexed in a format so all I have to do is pull it off the shelf and there will be FCM issues for Turkey.

But, in fact, that does not exist. No such book exists, and I guess that means there's lots of business for me in finding out what the laws of all these jurisdictions are. But it would be so much simpler if some of the things that you are talking about, the transparency project, were actually effected. It would help a lot.

I thought I would talk a little about the kinds of transactions that clients might be interested in, that might bring up some of these issues. There might be big things like novel -- I want to start a novel electronic exchange, and I

want it to be in a country that is not in the US and not even in Europe, perhaps, but it's somewhere peculiar that we don't know about, and they would go to really little questions like what are position limits or large trading reporting requirements of some of the foreign exchanges. Those things even are difficult to find.

In between are probably the most common issues, which is where a broker or an adviser -- those are my clients -- want to operate from another country, either all of their business or a part of their business, and you know, as a result, we have to pick up all different kinds of information for these people.

It is not easy to find, although apparently it will be, and there is the FOA-FIA report, which I think somebody is going to talk about later on, which did some countries and looked at the rules pertinent to equities and equities derivatives, but not the larger futures.

Anyway, looking at the middle ground, these clients who want to do business in another

country, I just made a list of questions, basic questions, the kind of information that they could really, really use. And the first, of course, is who are the relevant regulators and what are the registration categories. That, I believe, may be on the CESR Web site at some point.

Second is where do I find the rules. Now if there were links on that Web site to the effective rules, that of course also would be just terrific.

The third question is probably more complicated, and that would be what kinds of activities require registration. This sort of goes to how the various registration categories are defined in a different country, and as you probably know, they can be vastly different, and it makes it very confusing for people wanting to do business in those jurisdictions.

For example, if my client were an adviser, futures adviser, is merely providing advice or recommendations on futures in a particular country necessarily a registrable activity? Or do you

actually have to have discretion over an account in order to be defined as an adviser?

What happens if somebody else makes the decision and you are just the one who picks up the phone and calls the floor of the exchange or calls the FTM? Is that an advisory activity that goes to the definition of adviser?

Similarly, if you were an exchange and you wanted to open an exchange, what constitutes an exchange in another country? Is something that's sort of an electronic bulletin board an exchange that needs to be registered, or is it somehow outside of the requirements for FCMs, or what we consider ID, introducing broker activities, activities that rise to the level of a broker FCM type registration requirement in the foreign jurisdiction?

We don't know those things, and I know that that's sort of harder, it's harder to put those things on a Web site, but those are questions that need answering.

And then what follows from that, of course, is are there any readily available

exemptions? Somebody mentioned exemptions earlier. So, you know, if my clients just deal in proprietary business in the country, are they exempt? If they only do business with institutional clients, however defined, are they exempt? Could they do principal trades on off exchange, or is there some kind of de minimis exception for doing business in isolated -- those come up every time a client calls.

If you assume somehow, after going through all of that, that registration is necessary, the first question that comes up is, okay, well, can I just do business over there and register my branch? Or do I need to have a separate legal entity in order to do business? And I think there are a lot of questions that come out of that basic question.

Going on to easier questions, there are ones that could be on a Web site, like what forms do I file and where do I file them? What kind of tests exist and who has to take them? How long will this whole thing take, best case and possibly

worst case as well? Are there capital requirements? Everybody wants to know that. Are there filed financial statement requirements? And ultimately what is this going to cost the client? Not in legal time, but in filing fees.

The other thing that everybody always asks -- and this again is probably more complicated -- is what additional liabilities am I undertaking by just getting this registration? So now I have to answer to some other regulator, probably. I probably have to answer to some other self-regulator. Clients in this jurisdiction may be given rights against me that I don't know about. So whatever they are, it is a puzzlement for clients and it may be difficult to have stuff like that on a Web site. But it would be great to collect the information if possible.

I guess the other thing that is sort of like that is how are customer funds treated in a jurisdiction. So -- and this would be true whether you are an adviser or an FCM or an IBM exchange, what are the special rules having to do with the

relationship between you as a professional and their clients.

Next -- I'm almost done -- would be another question everybody asks, and probably you need a lawyer to answer, but is how is the company going to be taxed in this jurisdiction? Are there things that I can do that won't get me taxed by the foreign jurisdiction and won't get me taxed to a great degree by the foreign jurisdiction, or is just any kind of business I do there going to have my income tax?

And then, of course, once you get registered, there are a million questions about ongoing compliance and approvals and filings and rules and so forth.

But any step in this process, starting from No. 1 and going to No. 8, would be more than we have now, and so therefore a great thing for the industry, I think.

You know, I guess if you want to know -- probably you don't want to know -- but there are other laws that are interesting to clients in our

business and possibly as a third step, fifth step, ninth step, wherever you are. It would be really nice to know the differences between the bankruptcy laws, the banking laws, securities laws, in these different countries, and the ones that we are familiar with. Again, that's a great big deal, but it's something that clients sometimes need to know at least pieces of. And then, of course, there are the laws that maybe we need access to, though not explication of, and those have to do with labor laws and immigration laws and pension laws and real estate laws. All the things it takes to do business in a foreign country.

So you could go on and on, you could find more and more information to request, but those are the kinds of things that I see that people are looking for.

COMMISSIONER LUKKEN: Anybody else on transparency? Thoughts?

MS. POLASKI: I would just like to say from the exchange perspective, I know our exchange and other exchanges as well that have electronic

trading systems and wish to provide terminals or direct access in foreign jurisdictions would find it very helpful to be able to access information about what requirements there are in those jurisdictions.

COMMISSIONER LUKKEN: Of course, this is an ongoing proposition. It's not just the day we publish this. We will have to continue -- each jurisdiction -- to look at these and keep them updated and that will be the value ongoing.

Dan.

MR. ROTH: Just one further enhancement of that greater transparency involves just subscription lists where we try to have a subscription list for those people who want to receive notices from NFA. If something material changes on our Web site, they are notified of that, and that would sort of simplify that process of trying to keep current, if there could be some form of subscription list that would automatically notify you if there was a material change in the rules on one of the Web sites that you are looking at.

MR. RONALDS: Speaking of enhancements, as someone who is by turns astonished by the capabilities and blessings of the Internet and frustrated by sometimes the difficulties of getting the information I'm looking for, in my experience, often the difference between a really useful site and a less useful site is a good search engine. So I just throw that out for those working on the transparency project.

COMMISSIONER LUKKEN: Also, would everybody please announce who you are and what organization you are from, since some of us don't know who you are.

MR. NANDAPURKAR: Sure. I'm Satish Nandapurkar of Eurex, US.

You had asked about some of the costs. I can tell you as we were getting approvals and as a subsidiary of a European exchange seen as somewhat of a European company here, we were certainly seen as a US company over in Europe. So we had to go through individual approvals in all the different

countries. I think we had 14 different approvals. Just to give you an idea of cost, I think we spent well over $1 million just to get the approval in the UK, for example. So in terms of cost, I think transparency will certainly bring those costs down a lot and allow for more competition in more of the things that you are trying to provide for.

COMMISSIONER LUKKEN: What is involved with the cost? Is that hiring local counsel, or what is it that goes into that type of --

MR. NANDAPURKAR: There are many different things. Hiring local counsel; getting all the right advice on all the details of getting approval. It's a long process. Once we got the US approval, then that process started. Obviously there was some parallel process going on, but it's a long process with a lot of detail, a lot of document preparation.

I remember our numbers for just the UK were well over $1 million. And it probably took us about eight, nine months before we had all the different approvals.

COMMISSIONER LUKKEN: Mr. Salzman.

MR. SALZMAN: Jerry Salzman. I work for the Chicago Mercantile Exchange.

I think we actually have to go back one step before we start talking about transparency, at least from the exchange viewpoint, and decide what it means in these days to have access to a particular country.

In the old days we could more or less identify it. You would have to actually put some sort of asset in that country. In the really old days, if you went back to the telephone days, there was nothing. People would call and order from London to the US, and nobody from the US went to London for permission to operate in the UK. And nobody thought it was necessary.

When exchanges first went electronic, foreign regulators, foreign and the United States, of course, sought to grab jurisdiction on the theory that a computer terminal was somehow different than a telephone, and that theory has held for some time, although it never made any sense whatsoever.

Now we are in a situation where exchanges, for the most part, don't have to have communications terminals, don't have to have communications networks, in fact, don't have to have any assets in any foreign countries to in a sense be doing business there because the independent software vendors provide the terminals or the companies provide their own terminals. Membership in exchanges, in electronic exchanges is passe. It's gone out of style. There won't be members in the future. It will all be customer direct access and there will no way anybody can control it any more than they can control the gambling that goes on over the Internet.

So at some point I think we have to skip to the basis and get to the bottom of this and decide what it means to have access in a particular country and why anybody wants a regulator.

COMMISSIONER LUKKEN: De'Ana.

MS. DOW: I won't go near Jerry's question.

[Laughter.]

MS. DOW: Noted, though, duly noted, and I understand a lot of the concerns that he raises,

but I am De'Ana Dow. I'm with the New York Mercantile Exchange.

I would like to thank all of you who have been involved in these initiatives because obviously your efforts have been very helpful to NYNEX and other markets who are attempting to do business overseas.

Some of the things in terms of transparency that are a concern and would be very helpful include simple things such as just who it is actually should receive the application. It's obvious in some jurisdictions as to where to apply, such as FSA in London, but when you go to some of the other countries, you know, it's not quite as clear, as well as what are the application criteria for getting recognition in these various jurisdictions.

So some of these basic questions would be very helpful to those exchanges, markets who are

trying to start new initiatives in markets overseas.

COMMISSIONER LUKKEN: Bonnie.

MS. LITT: I'm Bonnie Litt from Goldman Sachs.

I would like to echo from an intermediary perspective what De'Ana is saying. I do think that a lot of projects like this, as with so many things, less is more, and really so often, I mean you asked for anecdotes. We recently -- you know, just a piece of business came into Goldman Sachs that was a retail options introducing broker that wanted to clear through Goldman Sachs and had clients throughout the world.

You know, we assumed right from the start, rightly, that it was likely that, you know, sort of echoing some of the things that Jerry is saying, that this method of doing business, you know, was basically an option trading platform that was accessible to customers around the world. They could sign on to it and then become customers of this broker that was located in the US.

We assumed that it would be exempt from registration in most jurisdictions. The process of determining that those exemptions existed took us

over a month, and was extremely costly. And so even just part of the cost was just determining who -- you know, what -- sort of finding out what the statute was that would regulate this activity. And so I don't know that we are ever going to replace the need to hire local counsel for interpretation, but given, you know, the Bonnie Litts of the world, just the ability to be coherent enough to ask the question of local counsel when we engage them, especially on something like this, where we weren't really trying to register anywhere, we were just trying to determine that an exemption exists would be I think incredibly valuable.

So you will need to -- you know, it would be great to have bankruptcy interpretations and all sorts of things on a transparent Web sites. I think you can accomplish the goal with a lot less.

COMMISSIONER LUKKEN: John.

MR. DAVIDSON: Just following up on that

thought, I am John P. Davidson from global operations at Morgan Stanley.

I think while the sort of transparency and Web sites of the type described are very, very useful and certainly commend the effort, there will be a temptation to view them as a panacea, and they are very much not that.

I think what sites of this type are useful for are learning about things that are explicitly prohibited, the smaller number of things that are explicitly allowed. But they are not particularly useful, and as Bonnie was saying, you do need to rely on counsel and other interpreters where there is some vagueness.

A clear example of that is actually in this jurisdiction, our regulations both of this agency and its sister agency are very, very vague about the requirements for people performing operational functions to be registered. And while it is very clear from both sets of regulations that such people need to be supervised, it's less than clear as to whether and in what capacity those

supervisors of those people, who may or may not need to be registered, should be registered as supervisors.

There is then a nice temptation to assume that that vagueness is universal. It is in fact nothing like universal. If you go to Germany, for example, there are very explicit regulations with respect to "back office" personnel being registered and examined with respect to their proficiency, which seems like an interesting concept, given how complex some of the activities in which they are involved are.

But one brings one's own constructs to the sort of an environment I think that is itself a danger. But clearly it is an improvement on where we are today.

COMMISSIONER LUKKEN: That leads to another element of this, which is that a lot of us are focusing on the US looking into Europe, but we do have some Europeans at the table, and I have asked them to think about what our issues are in the United States in regards to this transparency

project and other issues we can discuss later, but are there things that are confusing and uncertain when looking into our jurisdiction.

John mentions one of them, but Roy or Richard, do you have thoughts on that?

MR. BERLIAND: I'm Richard Berliand from J.P. Morgan.

I guess the way I look at this representing an intermediary like Bonnie here is that really there are two big objectives that we as intermediaries would like some help on.

The first one is very much around the topics of conversation, which I think Emily summarized very well a short while ago, which is about what I call bureaucracy busting. It's about reducing the cost of doing business -- I'm sorry to people like Arthur Hahn and Emily, it's essentially reducing the amount of money we spend with external counsel--

[Laughter.]

MR. BERLIAND: -- in order to maintain much greater clarity about how to do business around the globe. And it applies equally for a

foreign player trying to get access in the US as it does the other way around.

I think all of the efforts that the CESR paper here, the project, is attempting to achieve help us get down that road, although I do emphasize I think it is critical that we have specific goals that we are trying to achieve, which will -- in my view, we want to be able to measure how successful this has been. I think it is very easy to talk; I think it is much harder to give specific objectives that help business to be done more cheaply. I think that's the No. 1 point.

I think the second biggest frustration we have as intermediaries is around access, international access to markets, and if I was asked to highlight what frustrates our business more than anything else and applies every bit as much as trying to do business into the US as it does going out of the US into other markets, it is this international access problem.

I would split it into three parts:

No. 1 is access to foreign markets,

irrespective of where the client is based. And very good examples in the futures industry at the moment tend to lie in Asia at present. The most notable examples will be India, Taiwan, China, Korea. These are countries where either it is impossible to access or it is difficult to access. And anything that can help us to achieve that is something that is extremely beneficial, and I would highlight Taiwan as being a marketplace that we would complement and try to work closely with US regulators to achieve an internationalization process. I would highlight that very highly as being a progress well made.

So international access for all users, No. 1.

The second frustration is about access -- and this is curious, perhaps -- it's access for US investors to international markets. So what I am trying to drive at here is where a marketplace on the face of it is open, but there is something problematic about the US regulations that is stopping US users gaining access to that market.

It is curious, because it is to me the biggest single competitive disadvantage that the US investor has today is that there are many markets

around the world where an investor who is domiciled in the Cayman Islands or the UK can freely access a market, but a US investor can't. And this clearly is going down the SEC discussion very rapidly here.

[Laughter.]

MR. BERLIAND: Please excuse me for allowing this conversation to go there.

But I would highlight the fact that internationally investors do not differentiate between a listed future and a securities option in the way that US investors clearly do.

So, for example, if one was trying to allow a US investor to start trading single stock options on a European exchange, it is quite eye opening to see how challenging that is, even where it is legally possible.

So I'm having to reverse my cheat sheets here -- even when one is, for example, taking a US investor and one is forced to involve a US broker

dealer to gain access to an international securities exchange.

So essentially it's compliant on getting rule changes, rule 15(a)(6). It is very burdensome and relatively speaking it makes doing business for a US customer more expensive than a foreign customer.

It also incents players that are physically present in the US to place their trading funds offshore and avoid the regulatory constraints of the US.

So I would just highlight that this is the single biggest thing that I think I would be asking for today around improving international access to US investors.

And we always tend to focus on what the international market is doing. Well, in this case, even where the international market is doing something right, we still have a domestic constraint that is preventing us getting out of that.

I particularly should commend the initiatives around the definition of wholesale in

the customer arena -- I know we're coming onto that in a moment. I passionately believe that in this day and age, a wholesale investor should really be able to make its own decisions about what is appropriate or not appropriate for international exchange trade.

So that would be my second point.

My third point would be what I would describe as access to the US markets, and curiously that is the one that most international investors really don't have a big problem with, and that is why that if I have a customer in Europe that comes to a UK-based broker dealer, securities house, call it what you will, they are able to avoid the challenges of understanding SEC v. CFTC regulatory complexities. Because by signing up with a UK broker dealer, they can put everything into one account, they can achieve portfolio margin, they can achieve everything that a domestic US customer would like but cannot get today.

So it's that full bucket, curiously, that's the easy bit. But at this stage -- and some

of you have heard me talk about this before -- it is at this stage I emphasize the commercial impact on the tax base of any one country is that we all know in a world where customers can choose where to effectively book their trades, in many cases, and that is in my view actively moving tax dollars around the world, based upon the regulatory complexity or should I say the regulatory friendliness of the jurisdiction that they are signing up in.

And today I am watching business move from the US to the UK, which I think is a shame, and frankly unnecessary.

I want to close on something that is really representative of feedback we will get from customers, to say that most customers in the listed derivatives world, asked to choose their favorite regulator in terms of commercial sense, would choose the CFTC above all else.

However, asked to choose which country they would choose to be regulated in, they will

choose the UK. This is the thing that I think we should try to find some forward progress here, much as CESR does around the horrendous complexity of the European environment, at least to try and find some way to work to some real concrete progress of partnership between the CFTC and the SEC.

Commercially I think that can have more of the bottom line impact of businesses such as Bonnie's and mine than any single thing that we are talking about today.

Sorry for the long-winded comment.

COMMISSIONER LUKKEN: No, you touched on the institutional versus retail discussion, and I want to turn to Ron in just a second, but before I do, I wanted to check with my Commissioners, whether they had any comments or questions before we continue.

Well, let's go ahead. Ron, we have assigned you with talking about this idea of bifurcating regulations along institutional versus retail lines, and whether that might be a useful area for us to think about as far as access and other issues between the US and Europe.

So, Ron.

MR. FILLER: Thank you, Commissioner Lukken.

You know, the issue or what -- how regulations should apply to -- use the word wholesale/institutional investor, I think before you can even address -- if you are a believer, I should say that if I am a wholesale institutional type client that I should not have all the specific rules and regulations, I should have less regulations, I should have more of a core principle type of regulations applicable to that type, as Richard said, they are more sophisticated than all of us around this table.

I think you have to really look to achieve that type of goal or reform, you have to look at the definition of what is those minimum standards that should exist to meet that definition.

Just here in the US, from both the securities side, even in the CFTC perspective, we have had different standards, different tests

associated with what can qualify for -- under the act, like say the swap participant under an ECP, under the SEC you have always had this accredited investor type test.

We have gone to the Commission and sought reforms from some of the regulations, like 30.12 to allow foreign transmittal of orders, and that was a little bit different standard, a little bit different test.

I think the critical starting point for this type of discussion is coming up with, if you can, a common minimum standard to determine what is a wholesale or institutional investor, because you want to set the bar at a sufficiently high level, because you don't want to ignore the -- what we call retail client, but it's really a nonwholesale type client, because you still want to make sure that proper protections are still afforded to that group.

Now in the futures world, what I'm going to call the traditional retail client makes up such a small percentage of our business, I think most of

the firms around this table probably don't even have any "retail" or nonwholesale type clients. So it doesn't really impact our business, but you still want to make sure the proper protections are afforded that group.

And so it is important to try to come up with, in your discussions and analysis, what is that minimum standard? Is it an asset type test? Most of our clients are advisory type clients. You look to the adviser, who is the fiduciary to those clients, in making sure that that particular adviser has a certain amount of assets under management, whatever that test or number might be? Or do you have to pierce through that and look to their individual clients behind that particular advisory firm to make that determination?

So there is a lot of issues that must be addressed in coming up with this what I'm going to call minimum standard bar to achieve commonality around the world. It is important that once you come up with that definition, then you need to look to what reforms -- I agree 100 percent with what

Richard just said, these institutional clients that we now deal with are very sophisticated investors. They are looking for various -- and the money flows and the collateral and the assets they want to do in the different transactions they want to do through us, they are looking for that risk-based type margin thing portfolio analysis.

And so it's really important for us to look and see what kind of rules -- what kind of exemptions from the rules might be applicable.

I am not an advocate of regulations for that type of group. I am more of an advocate for core principles that might apply. Some commercial reasonableness standards that would be applicable to that group so that they also have fairness in their approach, but they don't need all the regulatory -- regulation, I should say, that apply that we always have had here in the US to that type of group.

I mean the key is getting that standard of definition, and then looking to what is the better approach. Do we exempt them from a particular

regulation? Do we exempt them from all regulations? Do we just apply a core principle type test to that group? Those are decisions that need to be made.

But once you do, you've got to allow that group, that institutional wholesale client, to have freer access to all the markets.

COMMISSIONER LUKKEN: I think the good thing is essentially the US, through the CFMA, has thought about this bifurcation that larger ECPs, larger institutional business has less regulation, a lighter touch. Those that are doing proprietary trading versus using other people's money, we are going to be less interested in that as well.

And you know, for futures business, we are obviously interested in physical versus those commodities that are inexhaustible and can't be manipulated. We break it down into those three categories, and I think the EU does the same with MITT. I think they have different categories of institutional versus retail, and different treatment of those. So I think this might be a fruitful area. Arthur.

MR. van LEEUWEN: It was one of the -- yes, I was -- the distinction that we have now between retail professional and individual counterparts is the lowest level of protection, was one of the most difficult issues to conclude. To be frank with you, I believe not that it is already completely concluded yet -- it's one of the elements of the package deal.

So we have one level of retail, we have -- I forgot exactly what the specs are because they go up and down with this debate, but we have retail, we have professional, and we have the third level, what we call illegible counterparties, who have almost no protection at all against each other. Only the market is being protected against them, so they have to apply the rules against market abuse, that sort of thing.

It was one of the most difficult ones to -- also in CESR. So but it is doable. We were successful in doing it, to define it, and to find a

believable system, and it will come out. But we profited by having not two but three levels.

The problem was we started with two. We started with retail and professional, or institutional and wholesale, or not wholesale, or institutional, not institutional. We couldn't find the solution. I tried several times. We couldn't find it.

And now my dear colleague Art Compline (phon.), some of you know him, found the solution to create three levels. Then it was much more easy. It was still very difficult, but it was much more easy to do. So perhaps you can -- if you are looking at what answers today will come out, hopefully they will publish the final proposals after New Year.

So perhaps that would help you to identify the mistakes that we have made in four years time, and that's what I wanted to add. Thank you.

COMMISSIONER LUKKEN: Arthur?

MR. HAHN: To echo really the last two speakers, I think the market has evolved, and I'm

not sure that the old retail-wholesale distinction still works. As Jerry pointed out before, membership in exchange may not be around anymore, but you do have professional traders, you have them all over the world, who are banning together large volumes of transactions. I think we do need to think about our definitions, as Ron started, because the old definitions I don't think work anymore. The market has changed.

And before we make the distinction, as Arthur said, I think you have to look at that definitional problem again.

COMMISSIONER LUKKEN: John.

MR. DAVIDSON: I think I want to take the other side of this trade. I actually find the last four or five years of various financial industry and sort of general corporate events really challenge this notion that large institutional investors are in fact more sophisticated than retail investors.

I see virtually nothing in the public record with respect to the Revco case that would

suggest that certain large investors exercised any level of sophistication whatsoever with respect to what was happening to their funds, when it was happening, or what category they fell into when those things happened.

So I think rather than trying to set up a set of distinctions based on assumed level of sophistication, be it the board of directors of Enron or the participants who were getting wonderful returns on their idle cash by having it siphoned off and didn't realize they were general creditors in the Revco case, I think it would be better just to have good regulations and not try to bifurcate the categories of people by level of sophistication to whom those regulations apply.

If you have good regulations in the first instance, they apply to everyone, and you don't have to worry about presumed sophistication which rarely in effect is manifest. And certainly is never a lack of an excuse for, gee, I didn't understand what was going on, I didn't read that document, my good buddy who I went golfing with gave it to me and I just signed it.

COMMISSIONER LUKKEN: Roy.

MR. LEIGHTON: I agree. I think, just to give you a little bit of the UK experience -- I am Roy Leighton, the chairman of the FOA.

One of the best things that happened in the UK about 18 months ago was the FSA streaming itself between retail and wholesale. It wasn't set up that way to begin with, and it has been so much more efficient as a result. We are in the midst of conducting a major survey into the costs of regulation that will be published in the spring of next year. But one can see already kind of a strong reflection that streaming between wholesale and retail has brought the cost down for major institutions.

How you define them I think needs more attention, and certainly in the UK system, it's a blend of net worth, it's expertise, it's senior management competence and responsibility. It's a complete package.

But in my view, that works pretty well, and the headaches in the UK system are all in the

retail side. And that's what is proving very costly.

Regulators aren't thinking of the European context. They have to operate within national laws, and national laws take a long time to change, and a lot of them are very focused on the protection of the private citizen, the consumer, et cetera. And I just think we are facing a giant task to get a lot of that harmonized in anything like a reasonable time.

So I would very much endorse the concept of proceeding with a better definition of wholesale taking that route.

COMMISSIONER LUKKEN: Arthur has a comment, and then I will get to Bonnie on this issue.

MR. van LEEUWEN: Just one comment, responding to what Mr. Davidson said. You will find opting in and out, especially opting out. If you are on the highest level, because you have an enormous financial turnover, a company or so, you

cannot force -- if you are one, you can opt down. You can opt down to being a professional. And if you are a professional, you can even opt down to being a retail. So you are free, more or less, not completely. The higher level -- on this highest level of not being protected, you can always opt down. There are possibilities on the lower rung on the scale as well. And that's I think helpful for the problems you have, it helps, I think. And I think it also helps so we develop this opting out or opting in.

You can also opt up. I'm a professional, I don't need the professional protection, I'm big enough, I meet the standard, I want to opt out, I want to be a legible counterpart. I should have had it -- this when I spoke the first time, because this too is three levels, and this opting in and out system makes -- solves the definition problem. And it also solves the problem of an individual company has. So he can see what he -- either he is a professional or even illegible and then has to do a lot of homework because he will not be protected.

Or he can choose to do it -- to choose for lower level payment and higher fee and be protected.

So this is a technical explanation of the system. Thank you.

COMMISSIONER LUKKEN: Let's go to Bonnie, and then I will turn it over to George.

MS. LITT: Just in debating this question, I want to bring the issue back to the cross-border access issues, and this sort of anticipates something I was asked to talk about a little time from now, but I'll take it now.

Just remembering that, you know, institutional versus retail distinctions don't only apply to whether or not an individual within the jurisdiction is regulated by people within that jurisdiction, or is -- the regulations apply to their interactions with that. But also a lot of the way -- you know, people like Goldman Sachs and Co., the US broker dealer FCM, isn't going to do business in a lot of jurisdictions in which we operate by setting up an office and registering and having a full presence there, partly for tax

reasons, partly it's just not the way business is done.

And so a lot of these institutional retail distinctions apply to our ability to do cross-border business within those jurisdictions, and so it may be that, you know, you can have your cake and eat it, too, that really what you need is -- I agree with John that, you know, at core is that a system of regulation within the jurisdiction makes sense.

Then I think you need these institutional retail distinctions, plus some notion of reciprocity in talking about the ability to do cross-border business. So, you know, we are regulated by the CFTC, the CFTC regulations are deemed to be good or bad, as it will, and then when we deal with people who are defined as institutional investors in other jurisdictions, the story is over. You know, we can do that on an exempt basis. And that is something that I do think that -- you know, I think this -- I agree that you have to look to the efficacy of the

regulation and the jurisdiction, and I think then you have to have other jurisdictions say, and we will -- you know, we will have reciprocity with folks who are regulated within that jurisdiction for our institutional clients.

COMMISSIONER LUKKEN: Apparently, George and then to Bob Klein. Unfortunately we are running out time and so we are going to have to wrap up at that point.

MR. CRAPPLE: I will be brief. I wanted to take some issue with Mr. Davidson's remarks.

I'm George Crapple. We're an adviser to commodity pools.

There are lots of decisions that we have to make about whether to trade a particular market, so we might decide not to trade the Indonesian rupea (phon.) for various liquidity or other types of reasons, but then you come to a market just, for example, Korean futures markets, the KOPCI (phon.) which has not been approved for trading by US investors, presumably because the decision has been made that it's not suitable for retail investors. But we do trade that market for funds we manage. We have made a judgment and an analysis.

I'm not suggesting that people don't make stupid judgments and analyses, but I don't think anyone could protect against that. I think that a lot of the decisions about what markets around the world can be traded can be left to the sophisticated investors, and if they make a mistake, so be it. But to try to protect against that kind of judgment, when there are many, many judgments like that that the CFTC is not looking at, such as what currency do you trade, I think it's going beyond what is a reasonable use of resources, and it creates the kind of problems that Richard was referring to that make it very difficult or perhaps illogical to run a trading business from the United States.

MS. : I just wanted to clarify for George and thank you for your comments, but having visited Korea and discussed this with some of the officials over in Korea, it is not -- in my understanding -- Andrea also can add to this -- is that the reason we have yet to move on enabling the KOPCI index traded or availability to US customers is more a result of the fact that we don't have the

necessary information-sharing agreements in place with them from an enforcement perspective, and that some of their laws, their privacy laws actually limit their ability to share that information as other countries have engaged with the US with the CFTC.

So in short, we are working on it. We are in discussions. We had fruitful discussions with the Korean regulatory authorities, and I know that they were actually talking about maybe introducing some kind of legislation or some kind of bridge to ensure that in the event that the CFTC had a concern, we could get the information that we needed from Korean authorities about Korean brokerage activities and markets.

So to make a short story long, I wanted to give you that. But it wasn't anything explicit about KOPCI or its liquidity or that market that gave -- discouraged us from going forward.

COMMISSIONER LUKKEN: Our last comment before we break, and I think the next topic will lead right into this. We can continue this

discussion after Anthony's presentation, but we will end with Bob, and then any comments from commissioners.

MR. KLEIN: I'm Bob Klein from Citigroup. I will keep my remarks very brief.

I want to thank John for getting everyone's attention.

[Laughter.]

MR. KLEIN: But I have to agree with Bonnie, I think the reality of how financial intermediaries do business is that we don't typically see an advantage and don't want to establish a bricks-and-mortar establishment in each country, and we do rely on the institutional nature of counterparty and the exemptions and exclusions that allow us to deal with them in order to construct a business. And frankly I think John is right, the real issue is the efficacy of the regulatory scheme in general, but I think that there are legitimate distinctions to be made among types of customers and counterparties, not because institutions are always well informed, not because they always ask the right questions, but because

the kind of information that is relevant to them is different in nature than the information that is relevant to a retail customer.

COMMISSIONER LUKKEN: I'll ask any of my commissioners whether they have comments or questions of Arthur or the group before we take a short break.

COMMISSIONER HATFIELD: I just have one quick question. Getting back to the type of people John was describing, Arthur, if I heard you correctly in your comments, you said that it doesn't have direct involvement with infringement. I wondered, for the purposes of the transparency project, enforcement and infringement issues, can you discuss a little bit about how they would be involved in that project? Or if they would be involved in that project?

MR. van LEEUWEN: It depends a little bit on what you're talking about. Infringements, let me start there. Infringement is a breach of European law in the sense that while the member states have not implemented European law properly

or not. And if they have implemented it, don't use enough executive power to really make it work. So that's about -- that's a -- the European Commission is seen as always commented, the guardian of the treaty. Member states have committed themselves to implement, and the proper procedure has been followed to implement law and to execute that law, and if they don't do it, because for instance when they implement security laws in conformity with European law, and they have no regulator at all, or one like you find them on some nice sunny islands near here. We visited them. They had one man, one secretary, and one dog to do work.

So if that will be the case in Europe, then certainly there will be a case for infringement. So that's one.

When we talk about enforcement, enforcement of security laws is in the hands of the national regulators. I'm one of them. And how do you cooperate if you have gains that is not only in one jurisdiction, which is quite often the case. Sort of insider trading. You are a fool if you do

it in your own country. You have to make it a little bit more complex than that.

[Laughter.]

MR. van LEEUWEN: So we have to cooperate, as an example. And the same is market abuse, market manipulation, just to give you some examples. So early in our existence we set up a MOU that makes this -- a multilateral MOU that makes this memorandum of understanding, that makes it much more easy for us to exchange information rapidly. We have certain -- I have it here if you need a copy, because I might need it tomorrow as well.

[Laughter.]

MR. van LEEUWEN: So it makes it much more easy to exchange information, so we have a group that supervised the working of this MOU. That's one. And we also have now formed a group that can rapidly come together when we see a multilateral problem. Parliament was the first one where we followed it up with the Citicorp trades in Europe, and biohazards. That can happen, okay. Some of us

thought -- we have this rapid group that comes together, can come together, and we exchanged on a very, very rapid way information, and have real joint investigations in the sense that you are only -- you are only legally -- you have legal powers in your own jurisdiction, but nevertheless, you can do, even with that constraint, quite a lot. So that's the third element, that's what we do.

So I hope that I made clear the difference. The infringement is the Commission vis-a-vis the member states that you have created the proper laws and then you execute them in a proper way. When Europeans transpose national laws, they have to be enforced towards the citizens, towards the companies, towards everything. Normally when it's in one jurisdiction, we do it on our own. When it's in more than one, which becomes more often the case that that's the case, we have a system to make this work, and we have a special group for the real big ones, like we had in Citicorp and some others.

COMMISSIONER LUKKEN: Mr. Chairman?

Great. Well, we'll take a short break, grab a cup of coffee, use the restroom, and I'll say five minutes, but I understand it will probably

be 10 minutes, so we'll try to meet back here about 10 after the hour and get going with Anthony. Thank you.

[Recess.]

COMMISSIONER LUKKEN: Could you please take a seat so we can get started with the second half of the program.

[Pause.]

COMMISSIONER LUKKEN: The chairman will join us shortly, but we will go ahead and get started.

The second half, we are honored to have Anthony Belchambers, executive director of FOA, to talk about important reports that deal with many of these issues involving the futures industry as well as the securities industry, and how regulators can best attack this beast and try to work on bettering trans-Atlantic business.

So I will go ahead and turn it over to

him. Anthony.

MR. BELCHAMBERS: Well, could I start first of all by thanking the chairman in his absence and you, Commissioner, and your colleague commissioners for giving us the chance to talk about this project to you. We are very grateful for that opportunity.

Just briefly, as I think you all know, six trans-Atlantic industry associations got together -- I'm including the FIA, the SIA, and two constituent associations of the American Bankers Association as well as ourselves and one or two others -- to put forward what was a 200-page report in two volumes. The purpose behind it was quite simply to set out an industry case -- and I emphasize it's a trans-Atlantic industry case -- but an industry case for priority regulatory action. How are we going to in effect simplify the framework of regulation that sets over trans-Atlantic business and financial services. That was the report in summary and what it does.

What I would like to do is cover the why,

the who, the what, and the what next. The critically important part is what we are going to do next.

If I could perhaps summarize it by saying it's a bit like the story of the game of golf, and the golfer, when he came back, the husband came back, he was four hours late getting home. Not surprisingly, his wife gave him a very hard time, and when she paused for breath, he said, well, look, it was my golfing partner Fred. He had a heart attack on the second hole, and after that it was hit the ball, drag Fred, hit the ball, drag Fred.

[Laughter.]

MR. BELCHAMBERS: So basically what I'm saying is the plea behind here is let's drop Fred. Let's leave him where he is, and let's start hitting the ball.

More seriously, though, there were six -- I always identify six motives behind this particular target that we had. The first, and you mentioned it, Commissioner, was size. And if I can

add to the figures just for a second, we are talking about a combined market that has 75 percent of the world's commercial banking, 78 percent investment banking, 66 percent of foreign exchange dealings, 50 percent of exchange traded business, and 83 percent of over-the-counter derivatives. So a very, very big market.

The second reason was quite simply unnecessary cost and burden that's faced by firms, by their customers, by investors in dealing with conflicting rules, duplicating rules, and rules often which have levels of detailed difference that are embedded deep within the rule books and make life expensive and very difficult. And that goes, if I may say so, to the transparency argument, that very often when we talk about transparency, we say, well, we want to put our contact names on Web sites. Very often it's the rule books themselves that are at peg. There are lots of periodic releases, there are lots of regulatory updates, there are lots of interpreted guidance that people who are remote dealing in jurisdictions never see,

never get to see.

Of course, you can't commit everything in that way to a Web site. There's no question you can't do that; it's impossible. But it does go to the point that transparency is also about reducing the density of rule books, the complexity of rule books, and that, frankly, is as much in the interest of the customers as it is in terms of the interests of the providers.

So unnecessary cost and burden.

I think it is also fair to say that despite the best efforts of IOSCO and FATA (phon.), all of whom have common public policy objectives, all of whom would like to have the rules have the same outcomes, somehow harmonized principles never get down to the rules. They never get that deep.

So the firms at the co-face and the customers at the co-face who are dealing with each other have all these minute differences to handle every day, and that is a significant cost.

It is also blight on everyone. It is also blight on the regulatory authorities, because if we

want them to, and we all do want them to rely upon each other more in terms of enforcement, in terms of information sharing, in terms of cooperation, it is much better for them to have a converged set of rules to deal with, because then they understand each other's rules much better. So transparency benefits the regulators as well.

The other reason was a few years ago, there was a bit of a debate between the SEC and the Commission about mutual recognition, and I have used the phrase before, but it was a bit like debasing the solution when you don't actually know what the problem is. That's where I suppose this piece of work came into play in the sense that somebody had to do, as I have described it, the grunt work, although I was ticked off by Clifford Chance. I think in a meeting with you, he said, no, no, no, it's not grunt work at all, it's a sophisticated regulatory analysis.

[Laughter.]

MR. BELCHAMBERS: At which I said, well, it's sophisticated regulatory grunt work. But the

point is that what I am trying to say about this particular point is it has to -- we have to do that work because then we can measure the differences in the rules. We can see where they are similar, very close; where they are a long way apart.

I have to say that I don't -- I personally don't subscribe to the mutual recognition argument, per se, because if you look at what happened in the EU, there would have been no mutual recognition without preceding convergence.

And if you go back to 1990, with the investment services directive and all the debates that have taken place in the last 15 years, much of it has been about regulatory convergence, in order to get to the point of mutual recognition.

So I think the two have to go hand in hand. There is a debate about how much convergence you need in order to recognize, but I do think you have to go through that first stage, and that's critically important.

The other reason is I think the EU is in a much better place than it has been to be seen to be

negotiating and to be seen to be a single jurisdiction for this purpose. It was clearly beforehand, and it still is to some extent, a federation of nation states with varying degrees of sovereignty, and it depends upon what economic sector you look at as to the extent of that sovereignty, whether it exists or not. But it is a much better place.

We now have a newly completed financial services action plan, we have a better regulation agenda, we have a post-financial services action plan to enhance the implementation standards of all the different member states.

So I think we can lose what the Belgian prime minister once described as the EU being made up of small countries. The only difference is between those who know it and those that don't. We are no longer in that place anymore. We are now moving into a converged financial market. That means we can negotiate in a much better way as a single entity.

Lastly, the last point why we did it was

there is a trans-Atlantic marketplace, not because of regulation, but in spite of it. It has happened. And therefore, the question for the regulators is how are we going to catch this up. How are we going to move away from silo regulation into global regulation.

And wrapped up in all of that is reducing density, reducing complexity, having simplicity, debating the convergence argument and trying to move us on into convergence.

I have mentioned who did the work already, so I didn't need to repeat that, other than to mention the name Clifford Chance. I have to do that.

But there are four aspects to the trans-Atlantic dialogue. The first one is accounting divergence. Now we are not covering that because that, as we all know, is being addressed endlessly.

Reduction in trade barriers. We are not going to go there because that is quite commercially and competitively sensitive in many

ways, but it is critically important that we do go there.

Prudential regulatory convergence we know is being addressed already through Basel.

So what is left is licensing and business conduct regulatory convergence, and this is really what this particular paper is about. The scope of it I think you know, but basically it's French, German, Spanish, UK rules, SEC rules, CFTC rules, and the various overarching EU directives.

The focus is on wholesale, not retail, and the reason for that is comparatively simple, and that is the moment you try and converge retail rules, you get into all sorts of public policy difficulties which are fairly deeply entrenched within governments. So it is difficult to reconcile retail rules. It's a more difficult thing to do.

I have mentioned the fact that this is a trans-Atlantic business case. I think it is well worth emphasizing that point. This is not a question of the EU approaching the US and saying we

want access to markets, we want access to customers. Because actually there is much fault that goes in the other direction where the cri d'coeur for many institutions here is we don't think we get the same kind of level of access into all the 25 member states that make up the EU.

So I think, and I would hope, that what we can do is make a genuine trans-Atlantic case for convergence, not reflecting one side or the other. And that reflects the participating associations.

In terms of the sources of the work, it came out of obviously the legal analysis, it came out of a variety of one-on-one interviews that were conducted by Clifford Chance. It came out of a survey that was done by some of the participating trade associations. So it's been sourced from a number of different directions.

In terms of content, I have to say that the CFTC summary was excellent, though if I may, I'm going to discard my own summary and use that in the future. It was very good, first class.

I don't propose to go into all of it, but

I would like to make one or two observations that tie into what was said in the first half of the roundtable. And particularly the need for a common set of client and counterparty definitions.

I know this is a difficult one. I am very much on that side of the table, and if you look at what we said, it was the very first thing in the list, was customer classification. I mean we have a trans-Atlantic marketplace made up of -- I've probably got this figure wrong, but about 750 million customers and investors. Surely to goodness, it is the most important thing we can do is for them, that those customers, and for the providers to be working to a common set of definitions when they apply differentiated rules split across wholesale and retail. That must make sense.

Equally, I share John's point that just because you happen to have a high net worth doesn't mean you are not an idiot, and therefore --

[Laughter.]

MR. BELCHAMBERS: -- clearly how you

define wholesale is another argument, and you may well need to introduce some sort of measurement of competency into that definition. But that's another debate. I think the bottom line of the debate is we need to move to a common set of definitions.

I will also say just on the transparency argument -- and I have touched on this question about density and the opaque practices and procedures in some jurisdictions of some of the regulatory authorities. That is critically important that as much transparency is built around the rule books as possible. It is always worth bearing in mind that it isn't just the providers that look at rules; it isn't just the providers who want to know how they're being protected. It's the customers. They want to know this kind of information.

So, in plain English, transparency on some of the critical areas of rules is very, very important.

I would say that in putting together the

list that we did, certain regulatory authorities -- you don't have to own up to this, if you don't want to -- certain regulatory authorities did warn us and say, well, look, don't get too specific. What we would rather have is the idea is put across in an undoctored form. Don't try and analyze now what are the quick deliverables. Just say. All things being equal, what would the firms like, what would they like to see. Don't use pejorative language. Don't use the word barriers, for example, because obviously that can be sensitive, so we don't use the word barriers. We use the word simplification, facilitation, coherence, all those other kind of nice comfortable words. And don't put forward solutions yet.

What we want to do is just get this undoctored sense of the sort of angry man response when they are doing business. What makes you go red in the face?

Well, hopefully we produced that list.

In terms of what we do next -- well, the first thing was that trade associations who put

this together have now formalized their relationship a little bit more by calling themselves the EU/US Coalition on Financial Regulation, which clearly demonstrates we want to take this work forward. We are not going to go away.

So I think that's the first point.

The second point is we have now been joined by the ICMA, and we have just opened discussions with the European banking federation again. So we are hopeful that we might be able to persuade them to participate with us, but we will have to wait and see.

What we are now doing is drilling down to that next level of detail. What we want to try and do is identify the quick deliverables.

Now in order to be a quick deliverable, they can't get too deep into public policy areas of sensitivity; they can't punch above primary legislation. So they have to remain within largely the rules or principal space as much as possible.

Well, I have to say that a large class of

customer classification is hard coded in level one directive, so it's going to be quite difficult to move.

But all that said, I mean that's what we want to do. We hope that we will have achieved that second tranche of work fairly soon, and by that I mean we are working to mid January, because around about the end of January, early February, we probably want to come around and make a bit of nuisance of ourselves to everyone again and get a sense of time lines and particularly, because we know that the regulatory authorities are stretched, we know that they have resource difficulties, we know they have a lot on their agenda, what can we do to help?

As a group of trans-Atlantic associations, hopefully reasonably responsible folk, we can actually make a real contribution to the analysis and to the debate. And I was very much encouraged by Andrea's article when clearly I think it is fair to say, Andrea, you foresaw that one of the things that we would want to do is not become an

occasional participant in this exercise because we feel if the commercial and economic and social objectives of a trans-Atlantic dialogue are to be achieved, we are all stakeholders in this exercise. We all have something to get out of this, and it is very, very important that the industry are -- this is done in a collegiate way with the industry.

We know that we don't have a decisionmaking role. We accept that. But up until that point, I think we can make a real and very positive contribution to it.

Can I just close in a few more minutes just by making a few points, and I scribbled them down there, about some of the observations that have been made to us as we have gone around and talked to people and the regulatory authorities and to firms.

The first one was it's a mountain to climb. Well, yes, it is, but it's only going to get worse. It's not going to get better. So, and you have to make a start some time. So I think, like it or not, we have to make a start.

The second one is we don't want regulatory changes for the firms. Can we have steady state? We have had enough change. Entirely

understandable, perfectly logical response. But if the watchword for the dialogue is simplicity, is coherence, is cost efficiency, I don't think many firms will complain.

The third one that we came across was the public policy issue. I covered that.

Another one was the hurdle of changing primary legislation. That shouldn't be a barrier. It goes to time, it goes to politics, it goes to policy, but we shouldn't be daunted by the fact that it may require some change in legislation.

The other one that I heard is, well, we are large firms, we found a way through a lot of these problems. We have kind of -- you know, we have snaked our way through to where we want to go in terms of access, doing business in that jurisdiction and this jurisdiction. True. But it is at a cost, and it's much better to have a free-flowing marketplace, frankly

trans-Atlantically, than having something that's going round in sort of all sorts of strange corners.

And I think the other thing is it's not an entirely well received argument because small to medium-sized firms just don't have that kind of resource. So in a way, regulatory barriers, I don't think should be argued in quite that way. Their preservation shouldn't be argued on that basis.

Could get fouled up by EU/US trade disputes. Well, we want a range of financial services. It's critically important they don't get bound up in commerce and trade issues. Although as somebody rightly pointed out, they are a very, very small percentage of total trade between the EU and the US. Somebody -- I forget, I think it was 2 percent is the assumption of disputes.

The other one, rules ownership. It's human nature whenever you go in and negotiate about a rule, you start from the position of defending your rule and trying to convince the other person

that your rule is best and they should follow your rule. Totally natural thing to do.

If -- and it's a big if -- if, let us say, for the sake of example, we could conjure up principles of good regulation or better regulation that could be held in common between the EU and the US, then everyone is working to a changed regulation, to a common agenda of change, you own the prices of change. You are not in the business of trying to say, well, this rule does this and this rule -- that kind of argument that's driven by rules ownership begins to evaporate because you actually own the process of change through those consensual principles of good regulation. It's just a thought. It's no more than that. It's mentioned in the paper.

I have mentioned the fact that I am quite pleased to see this initiative that's been launched by CESR and the CFTC, the task force. I think that is a tremendous initiative, and I am very pleased to see the observations about industry participation. That was particularly welcome. We

emphasized that in our report.

I think the other thing that I quite would like to mention is I remember there was an interview in the FT, if I can find it, where Fabrice De Marigny was interviewed by the FT, and there were a number of observations he made, which were quite interesting, but if I remember from memory -- I can't find it now -- but one of them was very much along the lines of it has to be in the interests of customers that we have common regulation, a common framework of regulation. And that has to be right.

If that's true of the EU -- I'll find it just here now. Here we are -- when market players go to country B, they know supervisors will ask them more or less what they were asked by their home supervisor in country A, and they will behave in the same manner.

And the other one, which was mentioning this to investors, I hope the investor can be confident his money will be protected elsewhere in the EU in a similar way to at home.

Those two arguments are no different to the US-EU dialogue. They apply exactly the same way with a much bigger client base across the

piece.

So if they are good for the EU, they have to be good for the trans-Atlantic dialogue.

I have mentioned the next steps. I perhaps will just finish on one quick observation, which is really asking the question. I mean you can ask the question and say why should we do this. But if you ask it in the negative and you say why should we not do this, you come up with a slightly different sense of what should be done, and I would say that, why should we not do this.

Then when you have asked that question, you then have to get on and do it, and we're back to the mountain again.

But perhaps I can just pause there at that stage, and take questions or however you want to do it, Commissioner.

COMMISSIONER LUKKEN: Do any in the group have questions? Richard.

MR. BERLIAND: Anthony, if I may, could you define for us what you would consider a time line and a measure of tangible success on what you have set out to propose here? What do you think is a realistic objective here? Tangible.

MR. BELCHAMBERS: I hate people to ask me

that because I'm an incurable optimist. So whatever I say, probably add at least two years onto the end of it.

But I think I would be better placed to answer that question when we have done the quick deliverables, when we have actually analyzed those.

Having said that, there is no reason why we shouldn't start this next year, because I think while the debate is going on a bit at level three, maybe there is room for a bit of convergence so when we are debating level three, we can actually factor in one or two things that might be helpful going forward.

I would have thoughts in terms of the quick deliverables, given that they don't require primary legislation, given that they don't hit very

sensitive areas of public policy, given also that we have got the political will to do this, we have got the view that the U.S. Treasury and the Commission to get this done -- there are a lots of quotes in the report which I could have mentioned about that -- and given that critically we have now got the mechanism to do it with the CESR, CFTC, SEC kind of relationship, I would have thought two years would have seen a number -- should see a number of changes.

Now if the regulators are prepared to use the industry as a means of doing the grunt work -- let's put it the grunt work -- then I think that two-year timetable could be met.

Now I am an incurable optimist, and I'm sure that there are people on the other side of the table who might say no, no, no, no, that's far too ambitious. But if we are engaged in a process, we can do this.

COMMISSIONER LUKKEN: I promised Ethiopis I would put him on the spot here, so I'll give him an opportunity to respond to any jabs in his direction.

MR. TAFARA: I was part of that debate with regard to mutual recognition, and in discussions we were having with the European Commission I kept insisting that mutual recognition had to have a basis, and that basis had to be some sort of convergence of objectives and approaches with respect to regulation. And I have to commend Anthony and his team for having gone through the process of identifying where there is convergence and where there is divergence so we can move towards convergence.

I wanted to respond to something Richard had raised earlier, with regard to the access of US investors to international markets and probably surprise him by agreeing with him and saying that I think it is one of the more important, if not the most important, issues facing our Commission.

However, I think to unravel that ball of yarn, we are going to have to consider the terms and conditions by which foreign players actually access the US market because the concern

historically at the SEC has been with regard to regulatory arbitrage, and the concern that when you are competing for the same capital, it's important that you have a level playing field, and if the terms and conditions differ when you come from abroad as opposed to what applies in the United States, you are creating this potential for regulatory arbitrage.

I happen to believe that that is solvable because I think there are differences that make a difference and differences that don't. And I think it will be our responsibility -- indeed, my office and others I think are being charged with identifying where there are differences that make a difference and where they don't, and have agreed to have a certain set of terms and conditions be the basis for reciprocal cross-border access.

So stay tuned.

I don't think I have -- oh, with regard to some of the priorities that have been identified by Anthony and his team, one of the things that will be important to us will be to have a sense of

priority because we do have limited resources. As you know, we are expending a fair amount of resource in dealing with the accounting issue, which I think has been identified by most global players as being probably the most important issue, international issue facing the SEC. We are now engaged in an exercise of taking a look at the financial statements that will be filed with us following the 2006 year, using IFRS to determine whether you are getting the consistency in interpretation and application that we think is critical to acceptance of IFRS in the US without reconciliation.

As you might imagine, that is a huge resource drain. That is not to say we are unwilling to address other cross-border issues, but given that we are spending so much time and effort with our IFRS, among the other things that you have identified, it will be important to us to know which ones you think are a priority.

I imagine you might say the wholesale-retail distinction, but there may be a

couple of others that you can identify for us so we can attack them or try to address them in a way that takes into account the resources we have at our disposal.

MR. BELCHAMBERS: Could I just respond very quickly to say one thing on that?

Cliff Chance is going to do that first piece of drafting work, and they will do it, you know, looking at the analysis and -- but then we will fly it past most of the major firms to do their due diligence on it. So I hope we will have, as I say, by the end of January or early February, say, a proper list.

MR. TAFARA: Probably it will make sense for us to put our heads together because we have, of course, taken a look at that list to determine what the low-hanging fruit is, and between the two groups we might be able to identify a couple of things on which we agree being addressed in the first instance.

MR. van LEEUWEN: Yes, let me first -- the image of a regulator, although they are very

optimistic, it's the only way to survive, they are supposed to have a grim outlook and a possibility and ability to be very grim in their analysis. So let me start there.

In this case that you make, also in the article of Ben Steele that you refer to, these are very, very optimistic. But if it's such a good case, why doesn't it happen? And all these articles, I don't read enough why it doesn't happen. I think it might be fruitful to look more -- I'm speaking to you but also to the others that are interested in this dual market phenomenon that behave like dual markets but are more or less one. Why doesn't it happen? I don't know.

But the arguments against creating more unity, more coordination between the market must be very, very strong. They seem to reside under the surface and do their work there. It might be -- because they must be there. Otherwise, it would have happened without effort, like other things happen without effort. So perhaps not -- I'm saying this to you but also not to you, also to

others and to ourselves. That's my first, more grim remark.

Now the optimistic side, and there I can almost echo Ethiopis. I was designing a little diagram. Could you tell me what the impact, because if you want to coordinate or whatever word you use, these two markets, there are measures or whatever that have more impact analysis. So that would be one element.

And the other element would be doability. And could you tell me what's the most doable and the most impact -- has the most impact that would be the one that we should tackle first? And that could perhaps bring on a process that will accelerate over time, as we have seen in Europe, and as we have seen, if we look at the broad picture, in the relations, the trade relations we see in the EU.

So that's an echo of what Ethiopis said. But I say this to you but also to the others, if it's not doable, that is for the first three years. If it's only doable and has not much impact, then

you might consider it because to create results is the first goal that we should have. I would like to have results with a big impact, but if perhaps I have seen, especially in what I have done in Europe, that sometimes results is more important than the impact of the result. We should have -- we should be more or less to start, not because our vision is -- but if you want to stay in a car that doesn't move, it's very difficult. Even if it rolls very, very slowly, you can steer to the proper direction.

COMMISSIONER LUKKEN: Dan.

MR. ROTH: I would like to think that one of the more doable issues should involve licensing, and obviously we are very involved in that.

With respect to licensing under the US regime, there is basically two components of that program that is administered by NFAM on behalf of the CFTC. One is a background check into the individual, and the other is a proficiency exam.

The proficiency exam itself is divided into two parts, testing both market knowledge and

knowledge of regulation. It seemed to us some time ago that if individuals were already licensed in a jurisdiction which already tested their market knowledge, then it was silly for us to require those individuals to be tested again on the same subject matter. And so we devised a separate exam to test only regulatory knowledge, sort of a subset of our basic exam, to try to facilitate that process, to sort of recognize that testing has been done in other jurisdictions, and to basically only test that portion -- only apply that portion of our test which had not been covered by the other exam.

That is just one small example of I think some of the efficiencies that can be recognized in the licensing process. You know, background checks I think are another area where we can have perhaps greater sharing of information with respect to foreign principals of firms.

So I would hope that when you start drawing your list of things that are doable relatively quickly, you know, from my perspective at least licensing ought to be an area in which we can achieve greater efficiencies.

COMMISSIONER LUKKEN: I have always tried to liken this, especially on the competency testing, to -- many of us are lawyers in the room -- multistate bar exams, where 50 jurisdictions with 50 different sets of books of laws are able to come together and test common areas, and each jurisdiction has its own state exam. Maybe this is some type of concept that we can think about as we start to think about other jurisdictions we might have to test for competency. I think this is an area that might be fruitful. Anybody else?

MR. BELCHAMBERS: Could I just respond very quickly to the question why hasn't been this done before. And I think one of the -- I can refer to one of the chapters in this report, which is called "Two Fortresses in Search of a Causeway."

I think if you analyze that statement, that's exactly why it hasn't been done before. We have been busy building the fortress, and I think now we are going to build the causeway.

MS. CORCORAN: I just wanted to echo the

process that -- because I think the CESR dialogue and basically the remarks that Ethiopis has made about the thinking of the SEC now, where they want to evaluate where convergence law is, that the process is very much the same thing. And, you know, to some extent people have discounted the value of doing a transparency analysis, but the reason we said do a transparency analysis first and then look at a common application form is for the very reason you said, to identify the commonalities, and you identify the differences.

If it turns out that 95 percent of the information being requested by regulators with respect to licensing for cross-border business is the same information, and then if we look at why they are asking for that information and what, you know, define as fitness, for example, you know, then it becomes much easier to see, you know, where you have to go to go the additional five or 10 percent.

I think what is really interesting is that, you know, there really wasn't the necessity

to have this dialogue to this degree before. I mean as recently, I would say, as in the, you know, 1990s, people felt that all this business was going to just stay within jurisdictions except for a very small portion of it. But now, you know, the playing field is really changed, and there is a reason for us to have this dialogue, and I think it will be successful because, you know, it's worth having.

COMMISSIONER LUKKEN: I think we have time for one more question before we turn to Arthur's presentation. Anybody else?

Easy enough. We'll go ahead, and I want to thank Anthony for his presentation and discussion. We will now turn to Art Hahn, who has done wonderful work in this area of the segregated/ secure funds area. With that, I turn it over to you to give us some background on the discussion.

MR. HAHN: Chairman Jeffery, Commissioner Lukken, and fellow commissioners, thank you for a chance to report very quickly. There is a story I

guess about a Washington lawyer apropos of Richard's comment, I've got to charge a huge fee, and we're expecting to submit a big bill here, and the advice he gave at the end of all of his work was do nothing. Which I think is going to be what our advice is going to be from the group that we work with.

But it is worth taking a minute to describe our process and how we came to that conclusion.

The task was, is there a good reason to keep a regime of domestic segregated money being in one pool and funds that support transactions on a foreign exchange being in a separate and secured pool. And would there be advantages for international futures trading were we able to combine them.

There was an initial feeling that that was a worthwhile exercise, and that there could be benefits if we could find our way through that.

At the outset, we established two kind of subcommittees, and that's where the heavy lifting

was done. A particular thanks to Dan Roth and his colleagues at NFA who really did an extraordinary amount of work. They were charged with the kind of prudential aspect of the thing. First rule, do no harm. And we were concerned if we put these two funds together, would there be undue risk, would we undermine what was important and good about the existing system.

John Davidson was chairman of the second committee, and he again with his colleagues did an awful lot of work to say what is the benefit if we pull it together. Is there really an ease, is there a cost savings, is there a significant benefit.

Both committees held separate meetings. They were supported by people from the exchanges, from end users, from other intermediaries, and we worked on it very methodically. We came up with at different times in our work different solutions, ranging all the way from, well, yes, we can combine them, provided all the money is kept in the US under the US bankruptcy code. That doesn't seem

practical.

We went down other paths, and our work finally culminated in an open forum that we had where we invited end users, FCM participants' exchanges, to think with us about the various ideas that were then on the table.

We had wonderful participation. I think we had a meeting of 80 people in our offices in New York, and the meeting went on for a couple of hours with very good contribution, Ron Fuller and people like that were there, that made good points on it.

On the prudential side, one thought that we came to, and it may be a guidance point as you work through these things in the future, was that the truth is that at the end of the day, you are looking to the financial integrity of the intermediary, and the CFTC licenses those intermediaries and monitors them, and that certainly with the top-up provisions as they exist, that's your first line of defense, and the fact that a portion of customer money is sitting in a clearinghouse overseas or in a bank overseas

shouldn't be an ultimate driver if you've got good control of the finances of the FCM. And you know what you're doing there.

So although we identified concerns that we had in a foreign bankruptcy, and indeed it is the case that the simplistic view of international bankruptcy is the guy who's got the money has got the money, and you can't get your hands on it in a quick and easy way, and that's a reality which we are just going to have to live with, I think, in international bankruptcy issues.

Having said that, domestically, if you have got a well-capitalized proper FCM that can mitigate, you know, some of that risk with the top-up obligation.

We were a little surprised, I think, John, with the outcome of the inquiry of what is the benefit to this and what is the cost if we put it together. And we ran into what seemed to be a pretty significant cost of changing systems internationally, of tweaking those systems a little bit to add certain other little levels of

protection that we felt was necessary. There was a lot of concern about that. There was a lot of concern about the difference in investment flexibility that might exist currently in the two pools and harmonizing them might not be worth the candle.

But at the end of the day, we tried very hard to quantify the savings that would be effected, and those savings weren't significant enough. The only real driver that people uniformly came up with was that it would be a necessary predicate to portfolio margining before we get there. Obviously the margin across futures and equities is certainly much more significant. But at the end of the day, when we added up the pluses and the minuses, the conclusion was pretty clear, that at this point in time we should leave the existing system as it is.

It took us -- we worked very hard, as Walt suggests. There were a lot of meetings and very good thought went into it. I'm really kind of proud of the people who did it because it wasn't

uncritical thought. It would have been easy to jump to conclusions and have a deliverable, and we put up various ideas, people thought about it. I remember a statistician's organization came back with some comments, and several of the others, and they were critical, and said this doesn't quite work, and how about this. We tried a lot of different ideas, but in the end there was a broad consensus that the system as it exists should probably be left alone.

So that's a long-winded way of do nothing, and we'll send a bill.

[Laughter.]

COMMISSIONER LUKKEN: Send it to the chairman.

[Laughter.]

COMMISSIONER LUKKEN: I just want to commend them for everything that they did, the three leaders of this and others of the exchanges that were involved. Certainly a model of good decisionmaking. I think everybody went in with an open mind on this issue. They didn't have to. A

lot of people could have gone in and just sort of hunkered down, but people went in exploring this and looked at every angle of how this might be solved, and I think we came up with the right solution for now.

Mr. Chairman.

CHAIRMAN JEFFERY: I'm unburdened by the facts and any history on this, were there any strong dissenting views?

MR. HAHN: Well, no, we really came together, and indeed -- and I will be very direct about it. There were potentially, you know, some competitive commercial interests that could have gotten in the way of this with people taking a position one way or another, and Walt's comment is exactly right. Everybody came to the table in good faith to try to get to a good place, and there were no strong dissenting views.

COMMISSIONER LUKKEN: Ron.

MR. FILLER: Commissioner Lukken, I too want to commend Arthur and Dan and John for their task, and I would like to recommend to you and this

group that the committee continue on another project that Art mentioned that I think is the most critical issue facing our industry today, and that is somehow how you can achieve some kind of reforms to merge futures and securities of a single account.

That is, as Richard mentioned earlier, we can do this in London through our London affiliates. We cannot do so here in the US. It's driven by the bankruptcy laws, but if somehow this group, along with a similar group from the SEC -- and it will require effort, a combination of time, energy, whether it's a legislative change, or we can do it by way of regulatory change among the two agencies. I think this is one of the most critical issues facing the global financial services industry, and if that committee can be used and we expand it to include securities people, I would highly recommend this to this group to consider that.

MR. HAHN: And aside from just the crass commercial piece of that, which I think people

would like it if they make more money and business would be done better, my strong sense from the work we did here is that it be safer. You know, if you could have an easier flow between the funds that are on the securities side and the futures side, you know, from a single customer, I think the public, the infrastructure, the community would be safer.

It's not an easy task. There's a lot of work to be done. But aside from everybody would like it, I think it is more prudential.

COMMISSIONER LUKKEN: Duly noted.

John.

MR. DAVIDSON: Just to be clear, there is a proposal on the table from 431 committee of the New York Stock Exchange to put the futures into the securities account. So that would -- they don't discuss the consequences of that particularly on the futures side, but that is the proposal that is on the table.

CHAIRMAN JEFFERY: It's not a question that is going to go away.

COMMISSIONER BROWN-HRUSKA: Didn't the exchanges have some comment to make on that proposal? If you could refresh my memory as to the substance of it.

MR. SALZMAN: I'm not sure I can give you the substance. I can tell you what I am concerned about right now, which is whenever the SEC gets its hands on this particular type of issue, it uses it to try to drive jurisdiction towards its side and away from the Commission. And that is my particular concern about it. It attempts to force all of the business into the securities account rather than giving the customers the choice of which regime they will take.

I would say one of the lessons we have learned from the Revco situation, looking forward, is Revco had separate subsidiaries doing futures and securities business. That is not always going to be the case, and I do not think we have a regime that's prepared to deal with a bankruptcy of a firm that's both a securities broker and a futures broker in any real sense, and I think it's

something we ought to be thinking about, and we also -- Andrea, although the regulations, when they were written, were great, it's 20 years and the business has changed and a lot of the things in regulations don't work anymore, and all of that has to be looked at again.

I think it's one of the most important things. I mean if we are going to have another failure, and sooner or later there's going to be another failure, we've got to deal with this.

COMMISSIONER LUKKEN: I think this was brought up at FIA in Chicago, that it would be a case of first impression if a broker dealer, FCM went under and how bankruptcy treatment would be handled in that situation. So it's something we have to think about here at the Commission.

My colleagues, any questions or comments before we wrap up?

COMMISSIONER BROWN-HRUSKA: I would just like to make a comment because I'm sitting here with Andrea and I'm getting answers to my questions as I write them to her. I just want to commend

Andrea Corcoran and Robert Rosenthal and the rest of her staff also for the assistance that they provided to us as commissioners in the international arena, with discussions and the filming of the work plan with CESR, and arranging meetings with Anthony and Roy when they're coming across the pond to collect information. I just think that they have done a fantastic job, so I thank you for that.

COMMISSIONER LUKKEN: Well, thank you very much. Sharon stole my thunder.

[Laughter.]

COMMISSIONER LUKKEN: I thank Andrea as well for working on this project, and she does a lot of the heavy lifting here at the Commission on these issues. So we thank her and her staff for everything they do. And also the three As, our presenters today, Arthur, Arthur, and Anthony, for coming together today and to enlighten us on this topic. We look forward to the continuing dialogue there.

And also I wanted to thank my own staff,

who did an extraordinary amount of work -- Jackie, Dave, and Erin, and any others I'm missing here, Carlene Kim. And lastly, I want to thank the Chairman for allowing us this opportunity to do that, and I'll give him the last word.

CHAIRMAN JEFFERY: I have nothing other than my thanks. And also, you know, I appreciate it if everybody here would spend time really thinking through these issues. Most of you, unlike me, have actually spent a good bit of your careers actually dealing with the real-world practicalities of trying to make business happen cross border in a very complex, often patchworked, and sometimes not always consistent series of regulatory regimes. So to just have this opportunity to exchange ideas, touch on some of the key issues, at least I found extremely valuable, and I think certainly all of the commissioners share that view.

I think the challenge going forward is going to be very much -- we're not going to write Emily's book -- is going to come down to prioritizing, and I don't know whether to go for

the low-hanging fruit or go for the big things that really matter. But given the scope of the task at hand, my own view and experience is that if we don't isolate it down to a few big things or key things that matter to everybody, that are potentially doable in our lifetimes, we run the risk of diluting all of our efforts, running up a lot of time and effort, and bills, without a lot to show for it.

So I would urge all of you, as you think about follow-up to this meeting, and Walt will be taking suggestions from each of us, to really hone in on what matters to you and your respective constituencies.

Anyway, we have kept you here for a long time. It's a long time to sit still on a cold winter's afternoon, but again, thank you all. We look forward to another productive session.

Happy holidays, everybody.

[Whereupon, at 4:11 p.m., the conference was concluded.]

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