

UNITED STATES OF AMERICA
COMMODITY FUTURES TRADING COMMISSION

OPEN MEETING ON THREE FINAL RULE PROPOSALS
UNDER THE DODD-FRANK ACT

Washington, D.C.

Thursday, August 4, 2011

1 PARTICIPANTS:

2 Commission Members:

3 GARY GENSLER, Chairman

4 BART CHILTON, Commissioner

5 MICHAEL V. DUNN, Commissioner

6 JILL SOMMERS, Commissioner

7 SCOTT D. O'MALIA, Commissioner

8 Staff:

9 DAVID STAWICK, Office of the Secretariat

10 Presentation No. 1: Consideration of Final Rule
11 for Swap Data Repositories: Regulation Standards,
Duties and Core Principles

12 JEFF BURNS, Office of General Counsel

13 ADEDAYO "BILL" BANWO, Office of General
14 Counsel

15 SUSAN NATHAN, Division of Market Oversight

16 SEBASTIAN PUJOL SCHOTT, Division of Market
Oversight17 ALICIA LEWIS, Division of Clearing and
Intermediary Oversight

18 RICK SHILTS, Division of Market Oversight

19 JOHN ROGERS, Office of Information and
20 Technology Services

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1 PARTICIPANTS (CONT'D):

2 Presentation No. 2: Consideration of Final Rule
3 for Implementing the Whistleblower Provisions of
4 Section 23 of the Commodity Exchange Act.

- 4 DAVID MEISTER, Division of Enforcement
- 5 ED RICCOBENE, Division of Enforcement
- 6 LESLIE RANDOLPH, Office of General Counsel
- 7 ANTHONY HAYS, Office of General Counsel

8 Presentation No. 3: Consideration of Final Rule
9 on Agricultural Swaps

- 10 DON HEITMAN, Division of Market Oversight
- 11 RYNE MILLER, Division of Market Oversight
- 12 RICK SHILTS, Division of Market Oversight
- 13 JANE CROESSMANN, Division of Market
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1 P R O C E E D I N G S

2 (9:36 a.m.)

3 CHAIRMAN GENSLER: This meeting will
4 come to order. It's a public meeting of the
5 Commodity Futures Trading Commission, to consider
6 final rulemakings under Dodd-Frank Act.

7 I'd like to welcome members of the
8 public, market participants, members of the media
9 to today's meeting, as well as those listening to
10 the meeting through the webcast.

11 Today's meeting, the Commission will
12 consider three final rulemakings presented by
13 staff: the Registration and Regulation of Swap
14 Data Repositories -- which I'll say a few comments
15 further on; a whistleblower program, which will
16 incentivize whistleblowers to come forward about
17 potential fraud, manipulation or other misconduct
18 in the financial markets; and the authorization of
19 agricultural swap transactions.

20 Before we hear from staff, I'd like to
21 thank Commissioner Dunn, Commissioner Sommers,
22 Commissioner Chilton and Commission O'Malia --

1 congratulations again grandpa -- for their
2 significant contributions to the rule-writing
3 process. I also want to thank the CFTC hard
4 working staff for all of their efforts to
5 implement the Dodd-Frank Act.

6 The CFTC has turned the corner towards
7 final rules, approving eight last month. And
8 amongst those were an important final rule
9 establishing the large-trader reporting from
10 clearinghouses and swap dealers, which increase
11 transparency.

12 But today, we're building on that, with
13 a final rulemaking to establish registration and
14 regulation requirements of swap data repositories
15 -- a rule that the public has asked us to move on
16 early in our process when we meet with market
17 participants and the public.

18 Leading up to the 2008 crisis, swaps
19 operated in the shadows. There were no
20 requirements that financial institutions had to
21 report the details of their swaps transactions to
22 regulators. And with the rules, regulators for

1 the first time will have specific information on
2 markets' scale and risk, once it's fully
3 implemented and we also move forward, hopefully
4 this fall, on data reporting rules, as well.

5 The data repositories will be required
6 to verify the accuracy and completeness of the
7 data they accept, and will have the capability to
8 aggregate that data so that the regulators can see
9 it, and also the public, in terms of public
10 reporting. And CFTC and other regulators will be
11 able to monitor the markets through this data.
12 And with this transparency, I think we'll be able
13 to better police the swaps market for the benefit
14 of the public.

15 It's worthwhile to note again that the
16 CFTC is committed to an open and transparent
17 rulemaking process. This is our 18th open meeting
18 to approve proposed rules and final rules on Dodd-
19 Frank. We've hosted 14 public roundtables. I'm
20 told there's been 900 meetings with the public
21 that we list on our website.

22 And, in addition, we've had at least 600

1 meetings with other regulators, both here and
2 abroad.

3 For the vast majority of these
4 rulemakings, we've also put it out for 60-day
5 comments, and we had the 30-day additional comment
6 period that ended in early June, so that people
7 could look at the whole mosaic of rules. And
8 we've reached out broadly about phasing of
9 implementation -- and I know Commissioner O'Malia
10 will probably have a few words on that again today
11 -- for consistency.

12 But we've reached out broadly on
13 implementation. We've had two public roundtables
14 on it. We had a 60-day public comment period on
15 it, and gotten a broad array of market
16 participants to comment.

17 But we're also looking at continuing
18 that process by seeking further public comment
19 with regard to phasing compliance, which may
20 relate to the clearing mandate, the trading
21 requirement, and compliance with documentation and
22 margining of uncleared swaps -- the sort of

1 transaction side of our rules.

2 We're also steadily continuing our
3 progress on final rules. In the early fall, we're
4 likely -- and I say "likely," because there's a
5 lot of work to be done, and these could easily
6 change -- but likely to take up rules relating to
7 the clearinghouses' core principles, position
8 limits, business conduct, and entity definitions,
9 working with the SEC.

10 Later in the fall, it's our hope to
11 consider rules relating to the trading venues,
12 real-time reporting, some of the data rules that
13 will be important into this data repository, and
14 end- user exception. But, of course, until the
15 CFTC completes its rule-writing process, and
16 implements and enforces the rules, the public
17 remains where they are today, that a swaps
18 marketplace is largely unregulated.

19 Before we hear from the staff on the
20 rulemaking teams, I'll recognize my fellow
21 Commissions -- Commissioner Dunn.

22 COMMISSIONER DUNN: Thank you very much,

1 Mr. Chairman. And I want to thank all of you for
2 joining us today. This is our third meeting to
3 consider final rules promulgated pursuant to the
4 Dodd-Frank Act.

5 As we've progressed through this
6 rulemaking process, I find the Commissioners are,
7 in my mind, doing a good job of weighing and
8 interpreting the public's comments, and directing
9 staff to revise final rules accordingly. Mr.
10 Chairman, I give you high marks for trying to
11 accommodate the wishes of all the Commissioners in
12 establishing final rules.

13 The fact is, no one Commissioner can
14 always get all they believe they should in a final
15 rule. I find myself in this situation in two of
16 the final rules we consider today. However, this
17 does not mean that the rules should not be
18 adopted.

19 In regards to the final rule for swap
20 data repositories, or SDRs, I have grave concerns
21 about this rule, based solely on the fact that the
22 SDRs will not be required to have independent

1 directors on their boards. To date, I have not
2 received a sufficient answer from staff why public
3 directors are necessary to mitigate conflicts of
4 interest and DCOs, DCMs and SEFs, but are not
5 needed at SDRs.

6 While I readily acknowledge that the
7 SDRs will most likely face different conflicts
8 than DCMs, DCOs and SEFs, I do not believe that
9 the conflicts they will face are so different that
10 we should abandon an independent-director
11 requirement entirely. Independent directors can
12 focus on both the interest of the SDR and the
13 interest of the public. This is particularly
14 important in the budget context we find ourselves
15 in today.

16 The Commission must face the reality
17 that we will not have the resources that we need
18 to do everything Congress has asked us to do. The
19 reality necessitates more prescriptive rules, and
20 passing certain responsibilities on to our
21 registrants.

22 In a perfect world, with a fully funded

1 CFTC, we could simply require SDRs to have
2 directors with an independent perspective and
3 then, in a follow-up, monitoring to see if, in
4 fact, they've done so. In the real world, staff's
5 time will be consumed dealing with registration
6 application, and implementing all the requirements
7 of Dodd-Frank. I hope that the SDRs consider this
8 when they are establishing their governance
9 regime.

10 We also consider today a final rule
11 implementing the whistleblower protection of the
12 Dodd-Frank Act. This rule is very important to me
13 because of its potential to protect everyday
14 people from fraud. I commend the rule-writing
15 team on fashioning a rule that provides ample
16 protection to whistleblowers, who risk retaliation
17 from their employers in order to do the right
18 thing and bring critical information to the
19 Commission.

20 I also appreciate that internal
21 compliance systems can and do contribute to
22 detecting, deterring and preventing wrongdoing.

1 Many companies properly encourage their employees
2 to use such functions to report misconduct
3 internally, and I believe this is appropriate, and
4 it benefits the public in many instances.
5 Internal compliance programs, without government
6 intervention, have undoubtedly allowed companies
7 to address and prevent potential violations.

8 However, where there is a corporate
9 culture of corruption, I do not believe that we
10 should force whistleblowers to report internal,
11 either through explicit requirements or monetary
12 incentives to do so. There are, without question,
13 instances where internal reporting will, at best,
14 delay the prevention of a violation and, at worst,
15 result in retaliation against the whistleblower,
16 or even continuing violations of the law.

17 So, while internal reporting serves as a
18 useful and laudable function, it is difficult to
19 support a rule that penalizes a whistleblower for
20 coming straight to the Commission when to do
21 otherwise would lead to a continued violation of
22 the Act and/or retaliation. I would hope that the

1 Commission, when contemplating penalties for
2 violators that ignore whistleblowers, we would
3 increase the severity of the fines that are
4 levied.

5 I would like again to thank the Chairman
6 and his staff for the tremendous job they've done
7 moving forward on implementing Dodd-Frank despite
8 our limited resources. I would also like to thank
9 the staff of the CFTC for all their hard work on
10 these important rules. These rule-writing teams
11 have put in incredibly long hours drafting rules,
12 reading, analyzing, summarizing public comments,
13 and answering difficult and time-consuming
14 questions from the Commissioners' office. I do
15 wish they'd quite referring to them as "darned
16 Dunn directives" though. (Laughs.)

17 I appreciate all the effort, and look
18 forward to their presentations.

19 CHAIRMAN GENSLER: Thank you,
20 Commissioner Dunn. I usually hear them, "the
21 thoughtful Commissioner Dunn questions."

22 COMMISSIONER DUNN: You're cleaning it

1 up.

2 CHAIRMAN GENSLER: Commissioner Sommers.

3 COMMISSIONER SOMMERS: Thank you, Mr.
4 Chairman. Good morning. And I want to thank the
5 three teams that have rules before us today, and
6 acknowledge the excellent staff work that's gone
7 into getting these final documents ready for
8 Commission consideration -- and let all the teams
9 again know how much we appreciate your commitment
10 to the challenges that we have in front of us in
11 implementing Dodd-Frank.

12 As I have said many times, finalizing
13 the many complex proposals dealing with market
14 structure and business conduct standards will be a
15 difficult, uphill climb. I believe it is a
16 mistake for us to begin this process without a
17 plan to logically sequence our consideration of
18 final rules along with a transparent
19 implementation plan.

20 As a result, I intend to vote against
21 setting any additional meeting dates to consider
22 final Dodd-Frank rules until we have sequencing

1 and implementation plans in place.

2 Regarding the final rules that we have
3 before us today, I support the Agricultural Swaps
4 final rules because it makes sense to me to treat
5 ag swaps like all other swaps. I do have
6 questions on how the repeal of Part 35 will impact
7 the Exemptive Order the Commission recently issued
8 to provide legal certainty to swap transactions
9 and market participants, while the comprehensive
10 regulatory regime for swaps is still being
11 established.

12 It appears inevitable to me that the
13 Commission will need to extend all, or portions,
14 of that Exemptive Order beyond December 31, 2011
15 -- the date upon which Part 35 will be repealed.

16 I want to make sure that we and the
17 public clearly understand how we do that, so that
18 there is no uncertainty as we get closer to the
19 December 31st deadline.

20 I have concerns about the swap data
21 repository rules that are primarily directed at
22 the issues we don't address in these final rules.

1 The rules require SDRs to establish automated
2 systems for monitoring, screening and analyzing
3 swap data, but we do not address the specific
4 functions we expect SDRs to perform in this
5 respect. Rather, we require that SDR systems be
6 capable of fulfilling any monitoring, screening
7 and analysis tasks that the Commission may
8 require, on an ad hoc basis, when our knowledge of
9 the market is more fully developed, and to perform
10 standing swap surveillance objectives the
11 Commission may establish in the future.

12 The rules also fail to address how the
13 Commission will handle the aggregation of data for
14 surveillance and regulatory purposes, or how those
15 duties will be divided between the Commission and
16 SDRs. For foreign SDRs, we correctly acknowledge
17 that the feasibility of considering a recognition
18 regime for foreign regulators will depend on the
19 comparability and comprehensiveness of the
20 regulatory regime in that jurisdiction. The
21 Commission has a strong tradition of relying on
22 foreign regulators in other contexts, and I

1 believe we should continue this tradition for the
2 supervision of foreign SDRs wherever appropriate.

3 Within the Commission, we should have a
4 clear process for relying on foreign regulators,
5 while ensuring that we comply with our statutory
6 duties, building upon existing MOUs to the
7 greatest extent possible.

8 Other issues related to core functions
9 that SDRs will perform, such as real-time
10 reporting, recordkeeping requirements and data
11 standards are intended to be addressed in later
12 rulemakings. It would have made more sense to me
13 to consider these related rules as a group, so
14 that entities that are considering registering as
15 SDRs would know what specific functions, and how
16 the duties will be required of SDRs.

17 Additionally, I have concerns about how
18 we will access the swap data provided to SDRs,
19 which I believe is a critical part of our role as
20 a regulator. I understand that this is not our
21 final bite at the apple for SDRs, but I wish we
22 would have considered a more holistic approach to

1 this new structure.

2 Before I finish, I would like to say a
3 few words about the whistleblower rules. The
4 primary purpose of a whistleblower program is not
5 to pay awards to whistleblowers. The primary
6 purpose is to prevent, detect and remedy
7 violations of the Commodity Exchange Act as
8 efficiently and cost-effectively as possible. In
9 order to be efficient and cost-effective in this
10 regard, I believe robust internal compliance
11 programs, and thorough internal investigations are
12 absolutely necessary to successfully prevent,
13 detect and remedy violations -- particularly given
14 the Commissions resource restraints.

15 I believe that this rule does not
16 sufficiently address the potential for thousands
17 of new tips or complaints, and how this new office
18 will prepare for this outcome. I understand
19 establishing this office is required by
20 Dodd-Frank, but I do not believe that we have
21 appropriately evaluated the increased costs to the
22 agency of not choosing a less burdensome approach.

1 Setting up a whistleblower program that
2 allows all whistleblowers to bypass internal
3 compliance programs will likely deprive such
4 programs of the very information they need in
5 order to be robust and effective. The fact that
6 the position of chief compliance officer has been
7 significantly elevated in our proposed rules, and
8 appears prominently in what the Commission intends
9 to require of registered entities, it underscores
10 the importance that is placed on internal
11 compliance programs by the Commission and by
12 Congress.

13 I believe a better approach to our
14 whistleblower program would have been to require
15 internal reporting as the norm, with the ability
16 for a whistleblower to bypass internal reporting
17 upon a good-faith showing that such reporting
18 would be impracticable or unsafe for the
19 whistleblower. Another potential approach would
20 have been to require simultaneously reporting
21 internally and to the Commission. This would have
22 ensured that any internal investigation could be

1 conducted under the watchful eye of the
2 Commission, and would have made certain that the
3 whistleblower knew that the Commission was
4 watching.

5 We did not explore these options, and I
6 believe we should have.

7 Again, I want to thank the teams, and
8 express my sincere appreciation for all the steps
9 that you have to take in order to get a final rule
10 ready and in front of us today for finalization.
11 We understand the hours that you have spent with
12 external meetings, analyzing comment letters, and
13 providing appropriate recommendations to the
14 Commission. And I just want to thank you for all
15 your hard work.

16 CHAIRMAN GENSLER: Thank you,
17 Commissioner Sommers. Commissioner Chilton.

18 COMMISSIONER CHILTON: Thanks, Mr.
19 Chairman. I sort of have the benefit, always, of
20 listening to the three of you. And then often
21 after Commissioner O'Malia speaks I want to say
22 something else, because you always raise good

1 points.

2 I agree with Commissioner Sommers on to
3 the extent that we can have something more on
4 sequencing, that's better. I mean, we're doing
5 the best we can.

6 When you look at these rules and how
7 they're implemented, all the teams need to be
8 thinking about how they mesh with the other rules.
9 And I know that hasn't always happened, because
10 when we have meetings in our offices we find out
11 that, "Wait a minute -- we're doing this, but then
12 the definitions isn't done until then," and, "How
13 do you decide this and that?" We had a little bit
14 of that on the SDRs, but we had it the last time
15 we met, on -- what was it? -- large-trader
16 reporting?

17 So I just, you know, alert folks, I'm
18 becoming, you know, increasingly concerned that at
19 this point we should all know that we've got to
20 look at these things as best we can and think
21 about it.

22 So, Jill and Mike and Scott have all

1 worked on the Hill, and there are these great
2 tunnels. And there's a particular tunnel that I
3 used to go in, between the Cannon Building and the
4 Library of Congress. And I used to whistle that
5 Andy Griffith song, you know? And it was in that
6 tunnel -- nobody was there -- sometimes I'd wait
7 before I would go down the tunnel so I could be
8 alone and whistle. You'd have a really clear and
9 clarion whistle. Very concise. (Whistles.)
10 Really clear and concise.

11 And I think that's what this
12 whistleblower rule is -- that it's clear and
13 concise. And it should let people out there know
14 that there is an avenue for you to pursue, if you
15 have a concern about your boss or about your
16 company. And there is a potential award. It's
17 not about awards, it's about getting the
18 information -- as Commissioner Sommers said. But,
19 there is an award. And if we use that
20 information, it's mandatory under law that it's
21 between 10 and 30 percent of the amount that we
22 receive. And I believe it's going to actually be

1 a very important tool in our enforcement arsenal.

2 How we deal with some of the questions
3 Commissioner Sommers raised, with getting
4 information, we're going to have to -- like the
5 sequencing -- do the best we can. I don't agree
6 that requiring internal reporting is the way to
7 go. If I know my boss has done something wrong,
8 and I could have sanctions against me if I report,
9 I'm more likely not to report. And if I do
10 report, my boss is more likely to fire up the
11 paper shredders.

12 And so I don't think we should, as
13 Commissioner Dunn said, incentivize going internal
14 -- although I don't have any problem with how the
15 rule has come out, which is that we are required
16 to consider if they go internal. We don't have to
17 make an added award upon that, but we are required
18 to consider it. And I think that's actually a
19 good compromise.

20 So I'm pleased with that rule. I'll
21 have a couple of little things to say about SDR
22 later.

1 Commission's expanded oversight of the swaps
2 market.

3 Data empowers the Commission with
4 information to evaluate everything from overall
5 systemic risk to a company's individual exposure
6 and size in the market. As the saying goes, Rome
7 wasn't built in a day. And I predict that the
8 Commission's ability to organize and establish an
9 effective surveillance program using SDR data will
10 take longer than we expect, and it will take
11 infinitely longer if we continue to invest the
12 minimum in technology, as we have done thus far.

13 Mr. Chairman, I approach the data
14 challenges with a glass- half-full outlook. The
15 rule is a start, but many more questions must be
16 answered to ensure that the SDR rules are clear
17 and effective -- concerns raised by both
18 Commissioners Chilton and Sommers. Tomorrow,
19 we'll begin working on some of the important
20 issues of data standards. We are assembling a
21 subcommittee on the TAC -- the Technology Advisory
22 Committee here -- to address, specifically, data

1 standardization.

2 Now, data standardization is about as a
3 double-decker sawdust sandwich, but it's important
4 nonetheless. We have four working groups, to
5 address four separate topics. And let me just
6 preview for you these exciting topics: "Product
7 and Entity Identification -- to go along with
8 legal entity identifiers that we're already
9 working on; "Machine Readable Legal
10 Documentation;" "Semantic Representation of
11 Financial Instruments;" and then, ultimately,
12 "Storage and Retrieval of Data" -- all elements
13 that are important to a very solid data management
14 program that we have to establish here, using the
15 SDR data.

16 Establishing data standards is one
17 element that continues to demand the attention of
18 the staff and the Commissioners. There are
19 several items within the rulemaking that remain
20 uncertain, as has been noted by my colleagues, and
21 should be clarified. For example, I hope the
22 Commission will focus on improving the application

1 process to minimize the impact to entities that
2 are already thoroughly regulated by the
3 Commission. This rule does not address the
4 fundamental question as to who owns the data.
5 Left unanswered, this creates uncertainty, and may
6 delay the release of data to the market, which
7 obviously helps no one.

8 Further, the final rules before us
9 today will not address the role that SDRs will
10 play in the public dissemination of real-time swap
11 data in determining the minimum block size. That
12 will be addressed in a future rule under Part 43.

13 And finally, more importantly, is the
14 technology question. Will the Commission be
15 ready? This rule doesn't outline as to how the
16 Commission will accept or retrieve data, how it
17 will be aggregated, and by what means the CFTC
18 will perform the critical oversight and management
19 functions.

20 The Commission must take the next step
21 and formulate a technology strategy for, one,
22 ensuring adequate CFTC connectivity to each SDR,

1 internally aggregating SDR information with
2 futures information and, finally, automating
3 surveillance of such information for both markets
4 and credit events. All of these remain open
5 questions today.

6 Let me turn to the whistleblower
7 proposal. Mr. Chairman, I appreciate the team
8 making extensive changes to this rule that we've
9 requested. I have concerns about whether this
10 rule will ultimately encourage and reinforce a
11 strong corporate compliance department. The rule
12 has wavered back and forth in drafting on whether
13 or not whistleblowers should have a reporting
14 obligation to their corporate compliance
15 department. In the end, we have effectively split
16 the baby, given whistleblower reports to corporate
17 compliance positive consideration in the awards.
18 I believe that this is the right result, because
19 it permits a corporation with a strong corporate
20 compliance department to resolve the problems in
21 the first instance, while not penalizing
22 whistleblowers for involving weak compliance

1 departments.

2 I'm pleased also to see the Commission
3 is finally working to establish a consumer
4 education presence, which has been lacking.
5 Earlier in the year I held a public meeting with a
6 wide range of consumer education specialists, and
7 can affirm that we have a long way to go on this
8 front. The good news is that we have now engage
9 -- we are now engaged, and there are many experts
10 from whom we can draw on their assistance.

11 Recently, the D.C. Circuit vacated a
12 rulemaking by the Securities and Exchange
13 Commission due to inadequate cost- benefit
14 analysis, which is very troubling. I know our
15 Commission staff is looking carefully at this
16 precedent, and hopefully we will be revisiting our
17 own policies, as well.

18 In this economic environment, the
19 Commission should be more conscious than ever,
20 ensuring that the benefits of its rulemakings
21 justify the costs. I believe the Commission can
22 do a better job of developing a quantitative

1 analysis and detailing the rationale for choosing
2 to propose and adopt a specific prescriptive
3 requirement, especially since principles-based
4 alternatives may be equally effective and less
5 costly.

6 The Commission should proactively review
7 the cost-benefit analysis of each rulemaking
8 against the two Presidential Executive Orders
9 focusing on quantification and more comprehensive
10 examination of less costly alternatives. If the
11 Commission needs to propose a rulemaking to get
12 the cost-benefit right, then so be it. It is more
13 important that we get the rules right the first
14 time than we finish quickly.

15 I would remind the Commission that with
16 respect to the cost-benefit analysis, as well as
17 other rulemaking processes, the Commission does
18 not have the final word -- as the SEC has recently
19 learned. And to fulfill your prognostication and
20 remain consistent, at our last public hearing I
21 specifically asked the Commission to publish an
22 implementation schedule at this hearing so the

1 market participants and the public would have the
2 opportunity, over August, to comment. Obviously
3 that isn't going to happen. Now, if the
4 Commission sets forth an implementation in the
5 fall, public input will likely be irrelevant.
6 Assuming that the Commission publishes an
7 implementation schedule in the early fall, teams
8 in the September and October timeframe will not
9 have the opportunity to review and digest those
10 comments.

11 I urge the Commission to not permit this
12 situation to come to pass. Therefore, like
13 Commissioner Sommers, I will not support
14 scheduling any further meetings until a
15 comprehensive schedule is produced that allows for
16 public comment.

17 Thank you, Mr. Chairman.

18 CHAIRMAN GENSLER: Thank you,
19 Commissioner O'Malia for not disappointing there
20 at the end. I think we are going to publish
21 something. I've already said, in front of this
22 House Agriculture Committee, a summary of what you

1 all have in terms of the schedule of trying to
2 move on the DCO core principles and position
3 limits sometime in the early fall. Hopefully
4 that's late September, but it might be the first
5 meeting in October -- to get some notice and
6 comment period for implementation, phasing for
7 transactions for the clearing mandate, the trading
8 mandate. As you know, there's excellent staff
9 here, but that excellent staff also has to have
10 time to write something that has the right
11 cost-benefit analysis, the right legal analysis,
12 too. So it's not yet ready for today.

13 But we'll continue to dialogue. With
14 that, we're going to turn to the presentation from
15 three teams today, starting with Swap Data
16 Repository team. I want to thank -- it's a very
17 significant team, and wide ranging. Sebastian
18 Pujol -- I always say "Sebastian Pujol," but it's
19 actually more -- Schott, Susan Nathan. You're
20 going to have to help me to say it right --

21 MR. BANWO: Adedayo.

22 CHAIRMAN GENSLER: -- Adedayo Banwo,

1 Jeff Burns, Rich Shilts, Alicia Lewis -- to
2 present on Swap Data Repositories for the
3 Commission's consideration.

4 Who's going to take the lead? Jeff?

5 MR. BURNS: I will take the lead. Thank
6 you, Mr. Chairman and Commissioners.

7 CHAIRMAN GENSLER: You might move the
8 mike just a little closer, for the webcast.

9 MR. BURNS: How's that? Good? Before I
10 begin, I would like to thank my deputy team lead,
11 Adedayo Banwo, or "Bill," and then Susan Nathan,
12 Sebastian Pujol, and Alicia Lewis, as well as the
13 other team members who worked diligently on the
14 rulemaking to finalize it, that I'm about to
15 present.

16 Today the staff is recommending that the
17 Commission approve final rules set forth in Part
18 49 of the Commission's regulations regarding the
19 registration and regulation of SDRs.

20 As the Commission is aware, SDRs are
21 entities that collect and maintain swap data. The
22 core function of an SDR is to ensure the storage

1 of accurate data in order to facilitate
2 transparency and reporting of the swap market, as
3 well as to provide access to appropriate
4 regulators.

5 The staff, in connection with the final
6 rule, consulted and coordinated with other staffs
7 from the SEC, the Fed, the OCC, FDIC, Department
8 of the Treasury, as well as several foreign
9 regulators. We have incorporate the input we
10 received by all parties to the extent possible
11 within our statutory framework.

12 The final rules specify, first, the
13 registration requirements and processes, the
14 statutory duties that are set forth in section
15 21(c) of the Commodity Exchange Act, the core
16 principles that are applicable to SDRs as outlined
17 in Section 21(f) of the Commodity Exchange Act,
18 additional duties as permitted under Core
19 Principle 4 of the designation of a chief
20 compliance officer, and real-time reporting
21 obligations.

22 I would like to highlight the highlights

1 of final Part 49, which include, first, the
2 registration will occur on a new form, called
3 "Form SDR." And this will also include a
4 provisional registration category. SDRs must also
5 accept all swaps in their selected asset classes,
6 and SDRs are required to provide direct electronic
7 access to the Commission or its designee.

8 SDRs, upon request, are required to make
9 available all data to other regulators. The Part
10 49 regulations establish specific procedures and
11 conditions under which particular regulators and
12 others may obtain access to the data maintained by
13 the SDR.

14 Turning to governance, the governance
15 arrangements under Part 49 are transparent, and
16 emphasize an independent perspective, as well as
17 conflict of interest provisions would require SDR
18 to minimize the conflicts of interest and
19 established procedures for resolving such
20 conflicts.

21 And lastly -- which I think is very
22 important -- is that SDR services are open.

1 There's an open access provision, as well as fee
2 structures that are non-discriminatory.

3 During the comment period for the
4 rulemaking, commenters provided the staff with
5 invaluable input. And as a result of the comments
6 and additional staff review, we have recommended a
7 number of changes from the proposal.

8 The first relates to provisional
9 registration. In the proposal, we had a one year
10 sunset, but that has been removed in the final so
11 that provisional registration remains a permanent
12 part of the registration rule. In this way, the
13 Commission would be able to provisionally register
14 applicants as warranted.

15 Next is the confirmation of data.
16 Regulation 49.11 has been revised to reflect that
17 in certain circumstances SDRs may reasonably rely
18 on evidence that both counterparties agree to the
19 reported data.

20 And with respect to real-time reporting,
21 we have revised Part 49 to reflect the fact that
22 real-time reporting is the subject of a separate

1 rulemaking. And as a result, the SDR rules will
2 rely on the Part 43 rules that will be adopted in
3 the future.

4 A significant change from the proposal
5 concerns access to SDR data. These are the rules
6 that specify how an SDR provides data and
7 information to other domestic and foreign
8 regulators. In the two scenarios that I will
9 describe, the notice and indemnification
10 provisions of Sections 21(c)(7) and (d) of the
11 Commodity Exchange Act will not apply.

12 In the first case, this concerns access
13 by other domestic regulators that have a separate
14 but concurrent jurisdiction over an SDR. The
15 Commission may designate the domestic regulator to
16 receive direct electronic access to the data
17 pursuant to CEA Section 21(c)(4)(a). And, as a
18 result, the notice and indemnification provisions
19 would not apply.

20 And, secondly, in connection with
21 foreign regulators who have regulatory oversight
22 over an SDR, Regulation 49.17 has been revised to

1 provide such access to the foreign regulator
2 without notice and indemnification applying. The
3 foreign regulator, however, in this instance must
4 have its own independent, statutory basis for
5 regulatory oversight over the SDR.

6 Related to data access is -- I think
7 it's been mentioned in the opening statements --
8 is commercialization of data held by the SDR.
9 Final rules generally prohibit commercial use of
10 reported data unless the submitter has consented.
11 The rules have been revised to clarify that the
12 SDR cannot require consent from a reporting party
13 as a condition of accepting data, and also to
14 clarify that the SDR cannot make commercial use of
15 real-time data prior to its public
16 dissemination.

17 Turning to governance, the final rules
18 clarify that the SDR is not required to publicly
19 disclose any Section 8 material or, where
20 appropriate, information that an SDR may have
21 received on a confidential basis from a reporting
22 entity.

1 And, lastly, the final rules clarify
2 that the chief compliance officer cannot be the
3 general counsel or a member of the SDR's legal
4 department.

5 I know in the opening statements talk
6 has been about -- some of the talk about
7 effectiveness of the rule. The effective date for
8 the SDR rules will be 60 days after publication in
9 the Federal Register. However, because the "swap"
10 definition has not yet been finalized, the
11 Commission would provisionally register applicants
12 on a voluntary basis. Section 712(f) of
13 Dodd-Frank permits the Commission to register
14 applicants prior to the effective data of the
15 "swap" definition. However, SDRs would not need
16 to be fully operational and/or compliant with the
17 compliance dates until the compliance dates with
18 data, the data rulemaking and the real-time
19 reporting rulemaking are adopted.

20 That concludes my remarks, and we are
21 happy to answer any questions.

22 CHAIRMAN GENSLER: I thank you for that

1 presentation. And before I move on that, I
2 realized I was supposed to ask unanimous consent
3 that all final votes for publishing for final
4 rules at this meeting be recorded votes and the
5 results be sent to the Federal Register.

6 Without objection, so ordered. And with
7 that, I'll entertain a motion on the SDR rule.

8 COMMISSIONER DUNN: So move.

9 COMMISSIONER O'MALIA: Second.

10 CHAIRMAN GENSLER: Thanks. I don't have
11 any specific questions on the rule -- which I
12 support -- but I did want to ask one question
13 highlighted by Commissioner Dunn, about
14 governance. And it might be a question for the
15 team, or even General Counsel Berkovitz.

16 But if we wanted to consider, in a
17 separate rule, proposed and noticed in comment, to
18 do that which I suspect Commissioner Dunn would
19 have preferred, to have, you know, some structural
20 governance proposal with the board, some
21 percentages -- like we have for DCOs, DCMs and
22 SEFs -- is the statutory authority there to do

1 that? Are we able to do that?

2 MS. LEWIS: Yes, we think so -- in a
3 separate rule.

4 CHAIRMAN GENSLER: So you do think so.
5 So we could still consider that, to follow up on
6 what Commissioner Dunn's suggestion was?

7 MS. LEWIS: Correct.

8 CHAIRMAN GENSLER: I don't know if you
9 want to just comment.

10 COMMISSIONER DUNN: I appreciate the
11 question.

12 CHAIRMAN GENSLER: Yes -- no. Because I
13 think Commissioner Dunn's raised an important
14 question about -- I mean, these are new entities,
15 and we may be learning over time, because of the
16 conflicts and the governance issues.

17 And I do note that DTCC and Reval, two
18 commenters, actually commented in this direction.
19 I think Reval commented that we should do it, and
20 DTCC, I'm pretty -- I see Mike shaking his head --
21 commented in that direction, too. I gather we
22 didn't put it in the initial proposal, but both

1 DTCC and Reval commented to go in that direction.

2 MS. LEWIS: Actually, DTCC said that
3 they didn't think public directors would be needed
4 in this space.

5 CHAIRMAN GENSLER: I think your comment
6 summary in the document said something --

7 (Pause.)

8 CHAIRMAN GENSLER: Well, I might have
9 misread it, but it says, on page 106, "DTCC
10 recommends -- " -- "indicated than an SDR should
11 have governance that is independent from its
12 affiliates, and that such independence and broad
13 representation of market participants would
14 support the Commission's open- access provisions."
15 So that's why I'm saying "in that direction."

16 MS. LEWIS: They're supporting fair
17 representation, which is a broad representation of
18 all classes of market participants, which is
19 different from what we're looking at with respect
20 to public directors.

21 CHAIRMAN GENSLER: Okay.

22 MS. LEWIS: Or the incorporation of

1 independent --

2 CHAIRMAN GENSLER: But isn't it
3 "directionally" -- I mean, they're supporting fair
4 representation, which I gather is something the
5 Securities and Exchange Commission has --

6 MS. LEWIS: That's correct.

7 CHAIRMAN GENSLER: And then Reval
8 supported --

9 MS. LEWIS: Supports having public
10 directors.

11 CHAIRMAN GENSLER: Well, again, I
12 support this rule, and I don't have any other
13 further questions.

14 I think it's a very important rule to
15 build upon what we did in large-trader reporting.
16 Of course, we'll have to build upon this further
17 with the data reporting, and finalizing "swap"
18 definition and many other rules. But I think this
19 will promote transparency in the market, and help
20 us police the markets, and allow aggregate
21 information to get out to the public.

22 Commissioner Dunn.

1 COMMISSIONER DUNN: Thank you, Mr.
2 Chairman. And let me commend this group. I mean,
3 this, by volume, is the largest that we've had.
4 (Laughs.) And I really appreciate the hard work
5 that went into this.

6 But I also would like to thank the
7 public on their comments, and especially those
8 would-be SDRs that have invited Commissioners,
9 their staffs -- our staff -- to come out and look
10 at their facilities to see what is out there. I
11 found that extremely helpful, extremely
12 beneficial, in understanding what the potential
13 was. And, quite frankly, I felt quite overwhelmed
14 on what is out there. I believe that if we're
15 going to ask for information we've got to know
16 what we're going to do with it, and how we're
17 going to utilize that.

18 And to that extent let me commend my
19 fellow Commissioner, Commissioner O'Malia, for the
20 outstanding job that his committee is doing of
21 tackling this particular situation. Scott, it
22 gives me a great deal of confidence that you and

1 your committee, subcommittee, is looking at this
2 and trying to ensure that we optimize the scare
3 resources that we have to get all we can out of
4 that.

5 And, again, I want to thank those
6 would-be SDRs for being so open in working with us
7 on this. I find it very, very helpful
8 government-private sector relationship that I
9 think is needed to get this rule implemented
10 correctly.

11 I do have just one question, though,
12 because I'd like to know -- and you talked, Jeff,
13 a little bit about what we're doing with
14 international -- but for us and the SEC, there are
15 some differences in what we're asking for, and an
16 SDR. Am I correct in that?

17 MR. BURNS: In terms of the foreign
18 regulators?

19 COMMISSIONER DUNN: Oh, just --

20 MR. BURNS: Or just generally?

21 COMMISSIONER DUNN: In general -- yes.

22 MR. BURNS: Well, since there has not

1 been -- they're not at quite the stage as we are,
2 but it is our understanding there was a slight
3 difference on the commercialization prohibition,
4 at least in the text of the rule that they've
5 proposed. They rely more on reasonable policies
6 and procedures. We have a strict prohibition that
7 the SDR cannot commercialize the data unless they
8 get the consent of the submitters.

9 So that is a noticeable difference in
10 the wording of the rule text.

11 In practice, when the staffs discuss
12 this, we didn't believe that it would be a
13 noticeable difference in practice. It's more a
14 difference in how, I think, the two commissions
15 have -- their rules are structured.

16 COMMISSIONER DUNN: But an entity would
17 not be penalized by us for doing something that is
18 approved by the SEC?

19 MR. BURNS: Well, if it's -- the SDR
20 would have to follow, for swaps, the rules that we
21 put in place in Part 49. For security-based
22 swaps, they would then follow the SEC rules.

1 We attempted to harmonize this as well
2 as we could, given our statutory authorities, as
3 well as our rules and how they're written. We
4 believe they're awfully close. There may be a few
5 subtle differences, as I've mentioned. But in
6 practice, we don't believe that -- we believe it
7 will be de minimis.

8 COMMISSIONER DUNN: Well, I would
9 encourage you to continue working on trying to get
10 harmonization. You know, one of the reasons why
11 we still don't have those definitions is because
12 we had to harmonize those with our sister agency.

13 And I think the more we could have a
14 united front, and a single set of regulations for
15 those that we regulate, it would be very, very
16 helpful.

17 Thank you.

18 CHAIRMAN GENSLER: Thank you,
19 Commissioner Dunn. Commissioner Sommers.

20 COMMISSIONER SOMMERS: Thank you, Mr.
21 Chairman. I have a couple of different questions
22 with regard to some of the concerns I brought up

1 in my opening statement -- but want to say that
2 one of the things I appreciate most about this rule
3 is the flexibility that it gives to the industry
4 in order to comply with the framework -- this new
5 framework -- that we're setting up.

6 But it also -- that type of flexibility,
7 because there will be different types of entities
8 that may want to be in this space as an SDR, it
9 also leads to a number of questions about how we
10 intend to regulate.

11 One of the areas is with regard to the
12 requirements we intend to impose on SDRs for
13 monitoring and analyzing the data. If you could
14 just go over what your feeling is with regard to
15 this challenge, and how we have addressed this in
16 the final rule?

17 MR. BURNS: Well, I think right now it's
18 very difficult to outline specifically what we're
19 going to be asking an SDR to monitor and analyze
20 for us, since we haven't received the data yet.
21 Until we receive the data and analyze it, I think
22 it's very difficult to have a very -- to have a

1 rule that sets forth, you know, in a prescriptive
2 way what we're going to require. And that's why
3 we left it open until we gain enough experience to
4 be able to know what we're going to need in terms
5 of the monitoring and analyzing of the swap
6 market.

7 COMMISSIONER SOMMERS: And because there
8 may be different types of entities that want to
9 register as SDRs -- there may be DCOs, there may
10 be entities, different types of entities that just
11 want to be SDRs -- how do we make sure that the
12 type of requirements that we have in this area for
13 monitoring and analyzing the data are consistent
14 across these different types of entities?

15 MR. BURNS: Well, I think whatever
16 requirements that we do eventually establish would
17 be uniform in their application, so that every SDR
18 would have to comply with the same requirement.
19 You couldn't have, I think, a situation where you
20 kind of pick and choose your requirements. It has
21 to be uniform. Otherwise, you will have an
22 un-level playing field.

1 COMMISSIONER SOMMERS: I have the same
2 type of question with regard to our access of
3 data.

4 So, I understand from the rule that
5 there may be a number of different ways for us to
6 access data. We may decide that we want an SDR to
7 send us the data in certain formats, or we may use
8 some type of web-based application, where we
9 access the data from here, but we never actually
10 download actual amounts of data from the SDR.

11 So how do we make those determinations
12 of how we intend to access the data? And will
13 that also be consistent? That if there are a
14 number of different SDRs per asset class, will we
15 access the data in exactly the same way for each
16 SDR?

17 MR. BURNS: Well, I think it depends on
18 the SDR, in the sense that if an SDR has the
19 majority of the reporting, for instance, in an
20 asset class, it's going to be a very different
21 touch than it would be for an SDR that has much
22 more -- a smaller market share, in other words.

1 Because of the sheer volume of data that
2 an SDR with a predominant market share would have
3 in the reporting, I think our touch would be much
4 different than, say, in a smaller SDR that may not
5 have as many -- is not having as many trades
6 reported to it.

7 But I think the principle would be the
8 same, whether it's web-based or a data push-out to
9 us. But I think in the web-based we also could
10 download in a web-based, you know, protocol, as
11 well. It just -- it wouldn't have to be just
12 pushed out to us, where we'd have the information.
13 In both cases, I think we'd still be able to
14 retrieve and maintain the information at the
15 Commission.

16 COMMISSIONER SOMMERS: Thank you. I do
17 appreciate all the challenges that are inherent in
18 this type of rulemaking, considering that we don't
19 have these entities out there that we're
20 regulating right now. So there's things that we
21 are assuming, and we're trying to write a rule
22 around that. So, I do appreciate those

1 challenges.

2 I will say that I have concerns with
3 regard to how we will access this data. And
4 because in other rulemakings we will be relying on
5 some sort of aggregation method for us to be able
6 to have the data to see the whole, entire market.

7 So if there are a number of different
8 SDRs per asset class, we're going to have to
9 figure out how to either have the data pushed out
10 to us, or have it pushed out to someone who's an
11 aggregator in order for us to see the market
12 holistically. And at some point, I think the
13 Commission needs to make some decisions on how we
14 do that, and how costly it's going to be for us to
15 have the ability or the technology to do it.

16 So -- thank you.

17 CHAIRMAN GENSLER: You know,
18 Commissioner Sommers, the last point that you
19 raised -- and we've all chatted about it. I know
20 Commissioner O'Malia's done a lot on the
21 technology side, too -- I agree with you.

22 I'm told -- and maybe you all want to

1 comment, or Dan -- but the statute doesn't give us
2 any authorities to force this aggregation. So I
3 think you're right that we're going to have
4 competitive data repositories. And that's why, as
5 part of the budget process -- and I know we're
6 just starting to look at the 2013 request -- but
7 part of the budget -- I agree, we're going to need
8 the technology dollars, probably, to have some of
9 this aggregation here. I'd rather it be
10 elsewhere.

11 But, I mean, I don't know. Do we have
12 authority to say, "One place."

13 MR. BURNS: We didn't believe that the
14 Commission had the statutory authority to name an
15 SDR aggregator.

16 CHAIRMAN GENSLER: Does anybody have a
17 different view? Dan?

18 COMMISSIONER CHILTON: Mr. Chairman, I
19 went at great lengths -- some people may remember,
20 when I say it -- in questioning -- my questions
21 were brought to you by the letter "S" -- and I
22 talked about all the different times that Congress

1 specifically talked about swaps data
2 "repositories," not a swaps data "repository."

3 CHAIRMAN GENSLER: Now, I gather -- and
4 Commissioner Dunn just said to me -- we do have
5 authority to say how they would report it to us,
6 though.

7 MR. BURNS: That, we definitely have the
8 authority. Yes. And I think that's where the
9 unique identifiers will come in, that was proposed
10 in the data rulemaking that has yet to be
11 finalized.

12 CHAIRMAN GENSLER: Thank you
13 Commissioner Sommers. Commissioner Chilton.

14 COMMISSIONER CHILTON: Generally, I want
15 to not ask a whole lot of questions as we get to
16 these final rules because, hopefully, they've been
17 asked and answered by now.

18 But on this issue of timing, I just want
19 to get some clarification. I think I understand
20 what it is. But, you know, Commissioner Sommers
21 raises great questions about how these things all
22 fit together. And I don't have a problem saying,

1 you know, "We're doing the best we can," but we
2 certainly have to make sure that people understand
3 what that is.

4 So, let's go over again, please, the
5 timing. Sixty days after this gets put in the
6 Federal Register, people "may" apply to be an SDR.
7 They're not required to --

8 MR. BURNS: That's correct.

9 COMMISSIONER CHILTON: Okay. They
10 "may." To some extent, that gives an advantage to
11 the people that are out there doing this stuff
12 already.

13 But be that as it may, then what's the
14 next time period? It's after we do a definitions
15 rule of what a "swap" is? Because then we know
16 what we're going to be required that they collect?
17 And then is it 60 days after that rule?

18 MR. BURNS: That would be correct. The
19 definition of an SDR includes the word "swap" in
20 it, so that we can't mandate registration until
21 the "swap" definition is finalized.

22 COMMISSIONER CHILTON: So we're

1 essentially saying, "Look, if you want to be an
2 SDR, you're going to have to get this
3 information," but we're not giving them exactly
4 what that information is. We're going to define
5 that information later.

6 Now, so once we've done the definitional
7 rule on what a swap is, then 60 days after that
8 what happens? That's when the applications are --
9 they have to be in place then?

10 MR. BURNS: Then you would be -- if you
11 are operating as an SDR, you would be mandated to
12 file your registration.

13 However, you still wouldn't be
14 completely operational, because of the two other
15 rulemakings that I mentioned, the data rulemaking
16 -- which is really the guts of the SDR.

17 COMMISSIONER CHILTON: Well, explain
18 that part. So, I got that you can apply in 60
19 days after that gets published, and that once you
20 know what the definition is, 60 days after that
21 you can have submitted your application. So it's
22 that whole time period --

1 MR. BURNS: That's right.

2 COMMISSIONER CHILTON: But there's a
3 middle time period we don't know about, when we
4 get to the rule.

5 But what are the other sort of kickers
6 on when the other rulemakings impact this rule.

7 MR. BURNS: I look at those as what I'll
8 call "compliance dates" for an SDR to be fully
9 operational. So you could be -- so, one, you'd be
10 compliant with all of the Part 49 SDR rules at
11 that point in time, once the data rulemaking is
12 completed, as well as the real-time reporting.

13 COMMISSIONER CHILTON: Okay.

14 MR. SHILTS: Because the other rules, in
15 a sense, go to the requirements for who has to
16 report the swaps, when they have to report, and
17 how they're reported for real-time reporting. So
18 it's when those compliance dates are established
19 that also feeds into the requirements --

20 COMMISSIONER CHILTON: Well, it's really
21 on who has to report to the SDRs.

22 MR. BURNS: And what they are reporting.

1 MR. SHILTS: Who, what, and when.

2 MR. BURNS: The data fields that they
3 will be reporting to the SDR.

4 COMMISSIONER CHILTON: Okay. So, as far
5 as the SDR is concerned, once they get the
6 definition, they're going to know what it is
7 they're supposed to be collecting. They won't yet
8 know whom should be reporting -- right?

9 MR. BURNS: That's correct.

10 COMMISSIONER CHILTON: Okay. But that's
11 going to depend on the entities themselves who
12 report. They say, "Well, I'm in this group that
13 has to report," now that this other, the data
14 rulemaking has been done. And they'll have to
15 report in some time-certain. We'll have to see
16 what that rule is.

17 Okay. Well, thank you for that. But
18 those are the sorts of questions that we've been
19 getting into in my office and, I'm sure, all these
20 offices. And, you know, it is a little bit of a
21 hodge-podge. But, you know, you do the best we
22 can. I mean, this is the law. We were supposed

1 to have done in, you know, July, and we're doing
2 the best we can to make sure we're getting them
3 out and get them right.

4 But this is a real key issue, this
5 timing. And all I can say is, you know, we're
6 doing the best we can, given what we have. And
7 the comments have been very helpful on this rule
8 and the other ones.

9 One other thought, here, is that we
10 often sort of get criticized -- you know, watching
11 one of the news programs this morning -- all these
12 regs, there's all these regs out there, and, you
13 know, big, bad government with all these regs.

14 This is a great reg. I mean, this is
15 bringing -- talk about songs. Remember the Fifth
16 Dimension, and Hair, "Let the Sunshine In?" I
17 mean, this is about bringing the sunshine in.
18 This is a really important regulation.

19 For people who say government is bad and
20 regulations are bad, you should want this.
21 Without this, we can end up in the same economic
22 calamity that we were in a couple years ago.

1 So, one, it's important. And two, it's
2 going to create some economic activity. I mean,
3 these are businesses that are doing this. There's
4 going to be competition.

5 And so I think this is a really good
6 rule for a bunch of reasons. And I thank you for
7 your work.

8 CHAIRMAN GENSLER: Thank you,
9 Commissioner Chilton. Just on the timing issue,
10 if I might -- if it's all right -- this is a
11 building block. I mean, I think it actually
12 lowers cost by getting this registration rule in
13 place. And there was also -- in response somewhat
14 to market participants and the public, when we had
15 two days of roundtable on implementation in May --
16 many people, not all but many, said, "Try to get
17 the swap data repository registration rules first,
18 because so much is dependent upon data."

19 So I'm very proud of the staff, who was
20 able to be responsive. I know it wasn't easy when
21 I asked you, I think some time in May could you go
22 early, and you said, "What's early?" But I think

1 --

2 MR. BURNS: I think we all gulped --

3 CHAIRMAN GENSLER: What's that?

4 MR. BURNS: We all went, "Gulp."

5 CHAIRMAN GENSLER: Yeah. But I think
6 it's an important building block.

7 Now there are other building blocks. We
8 have to further define "swap." There are other
9 building blocks in terms of the data rule itself.
10 But this will allow this handful of data
11 repositories to start to at least, in a sense,
12 provisionally register, you know, sort of work
13 through some of the kinks -- because there's
14 always some kinks in the road -- with us, and with
15 the SEC and so forth.

16 So I think it's a -- I thank the team
17 again. But Commissioner Chilton's right, there's
18 going to be --

19 There's no mandate to report data to
20 data repositories in 60 days. That's a further --

21 MR. BURNS: They couldn't do it --

22 CHAIRMAN GENSLER: -- further out. They

1 can do it, but there's not the mandate. There's
2 other rules that will come. Commissioner O'Malia.

3 COMMISSIONER O'MALIA: Thank you. I
4 noted in my opening statement I had a couple of
5 concerns.

6 Some of these I know we're going to
7 address in future rulemakings.

8 But the issue of data ownership is
9 pretty important, trying to figure out who owns
10 the data and who's going to be able to release it,
11 sell it, manage it. What the responsibility of
12 the SDR is, when that occurs.

13 So who owns the data reported to the
14 SDR?

15 MR. BURNS: Well, obviously, the SDR
16 does not own the data. I look at the SDR as
17 having a license to maintain the data.

18 But, you know, the ownerships issues I
19 think weren't germane to the Part 49. And I think
20 the private parties will work that out.

21 And a lot of these issues could go to
22 the courts. Because there are differences of

1 opinion on who may own the data -- whether a
2 trading platform owns the data, or is it the
3 counterparties. It's very murky.

4 I think a lot of that will be decided,
5 probably, by the agreements, user agreements, that
6 occur between the counterparties, as well as the
7 trading platforms.

8 COMMISSIONER O'MALIA: Well, we just
9 banned, in a draft rule last week, banned user
10 agreements. So I'm not optimistic about that.
11 And I'm a little concerned about the courts
12 settling this ownership issue.

13 I think this is an important issue,
14 fundamentally, about who owns the data. And who
15 -- you know, the counterparties own the data? Is
16 the central counterparty the swap -- the
17 clearinghouse the central counterparty when they
18 take the other side of that? What
19 responsibilities do they have? And when they are
20 a swap data repository, as the statute provides,
21 what obligations do they have working as the CCP
22 or the SDR? How does that resolve in here?

1 The question of if a CCP is party to a
2 trade, owns -- I assume they own the data at some
3 point, but they're also an SDR, how do we manage
4 that? How does this rule dictate that? And can
5 they sell it as a CCP, but they can only abide by
6 the aggregation rules when they're an SDR?

7 MR. BURNS: Well, as a CCP, they would
8 seem to own the data, per se. So they could give
9 -- and if they report it to their own SDR, they
10 could then use the data, since it would be their
11 "consent."

12 COMMISSIONER O'MALIA: Let me just ask
13 -- I mean, Jeff, in the dialogues that you have
14 had, in at least my office, I thought that it was
15 a question of commercialization -- and that's
16 related to who owns the data, maybe. We just
17 speak to commercialization in this rule -- is that
18 right?

19 MR. BURNS: We do, in terms of the SDR
20 using the reported data.

21 COMMISSIONER O'MALIA: Right. And isn't
22 there two streams? If the information is coming

1 from a SEF or a DCM, and being real-time reported
2 from a SEF and DCM and so forth, I thought we said
3 you can't commercialize it prior to making the
4 information public, if you're sort of doing the
5 real-time reporting.

6 MR. BURNS: That's right. In terms of
7 real-time reporting, it would be prior to the
8 public dissemination. But after that, they could
9 commercialize the public-reported data -- but not
10 the core regulatory data that's going to sit with
11 the SDR.

12 COMMISSIONER O'MALIA: And I thought on
13 the core regulatory data we said that they had to
14 get the consent of the, I guess, the data provider
15 -- whether that's a counterparty, a swap dealer, a
16 clearinghouse --

17 MR. BURNS: That's correct.

18 COMMISSIONER O'MALIA: -- is that right?

19 MR. BURNS: That's correct.

20 COMMISSIONER O'MALIA: So don't we
21 affirmatively say that without the consent of the
22 data provider they can't commercialize?

1 MR. BURNS: We do say that -- although
2 we didn't go into who actually is the owner --

3 COMMISSIONER DUNN: Mr. Chairman?

4 CHAIRMAN GENSLER: Commissioner Dunn.

5 MR. BURNS: -- we didn't get into
6 property rights.

7 COMMISSIONER DUNN: I would hope that as
8 an SDR gets this information we're not going to
9 preclude them from being able to analyze and mine
10 this data to look for new services and products to
11 provide for the industry that will allow the
12 industry to be as efficient as possible.

13 CHAIRMAN GENSLER: The team can answer.
14 I don't think we've limited that -- that they can
15 think of new services, and so forth.

16 MR. BURNS: Oh, no. I mean, an SDR is
17 able to provide any new service -- within the
18 confines, obviously, of the statute and the
19 regulations, that don't -- aren't contrary to the
20 statute and the regulations. But they are free to
21 offer ancillary services as they wish.

22 COMMISSIONER O'MALIA: So we don't

1 confuse -- so we confuse people less, can you
2 start -- I think Commissioner Dunn's point is a
3 great point. We do want commercial services out
4 there. We want this data out there to the extent
5 -- and we've set some conditions on it.

6 So can you walk through -- building on
7 the Chairman's question and Commissioner Dunn's
8 question -- what the process is to achieve
9 Commissioner Dunn's goal -- in the
10 commercialization space?

11 MR. BURNS: Well-

12 COMMISSIONER O'MALIA: What the
13 requirement -- you know, they have to have the
14 approval. They can't commercialize it before --
15 you know.

16 MR. BURNS: And the regulation also has
17 firewalls between -- so that --

18 COMMISSIONER O'MALIA: Go back to the
19 beginning. How does this all work?

20 MR. BURNS: So, the data is reported to
21 the SDR. The SDR would need to get the consent of
22 the reporting part that sent it to it to be able

1 to commercialize the data. And I'm speaking of
2 the core regulatory data.

3 The other stream, as the Chairman
4 mentioned, the real-time reporting, the SDR, if
5 it's receiving that real-time data, is able to use
6 it without consent, but not prior to its public
7 dissemination. That's the only restriction.

8 COMMISSIONER O'MALIA: And that's
9 specifically the real-time data.

10 MR. BURNS: That's the real-time.

11 COMMISSIONER O'MALIA: Right. Now to
12 Commissioner Dunn's question, they can offer
13 products, innovative ideas, sell this stuff after
14 they release the real-time data, but not unless
15 they get the approval on the core data from the
16 commercial entities -- correct?

17 MR. BURNS: That's correct.

18 COMMISSIONER O'MALIA: Susan? Do you
19 want to clarify something?

20 MS. NATHAN: No, I don't want to clarify
21 anything. I'm wondering if I can reduce this even
22 more to essentials, as the Chairman began.

1 Two streams: one is real-time, which
2 becomes -- which is in the public domain as soon
3 as it's reported, so there really aren't any
4 ownership issues any more. Prior to that time, it
5 can't be used commercially by anybody.

6 The core data can be used by the SDRs
7 for commercial purposes with the consent of the
8 submitting parties.

9 I'm wondering if Commissioner Dunn was
10 asking whether the SDRs can make use of that data
11 internally in developing services that they may
12 wish to offer, rather than "commercial" in the
13 sense of selling it off?

14 COMMISSIONER DUNN: That is, in fact,
15 the core of my question.

16 MS. NATHAN: Okay. I don't think that
17 there would be any restriction on research and
18 development -- for want of a better phrase --
19 within the SDR. I think "commercialization," as
20 we used it in the rule, is focused more on using
21 the data for profit --

22 MR. BURNS: Profit.

1 MS. NATHAN: -- outside the SDR.

2 COMMISSIONER O'MALIA: Can I go back to
3 the question of the CCP/SDR that the statute
4 allows? How do we separate those entities -- if
5 there is a separation?

6 MR. BURNS: A lot of it depends on how
7 they are structured. I mean, I would assume that
8 it's probably one entity and just maybe a
9 different division does the SDR work, versus the
10 CCP work.

11 So that it would appear to be one entity
12 that -- it could -- obviously, it would give
13 itself consent to use the data. So they could use
14 the data.

15 COMMISSIONER O'MALIA: Okay. Thank you.
16 Commissioner Sommers touched on this, the
17 technology question. I assume that you've had
18 some of our OITS -- this is our technology people
19 -- in your rule team to help develop an idea how
20 do we want to receive this data, manage this data,
21 aggregate this data. I agree, you know, we don't
22 have the responsibility, or the statute doesn't

1 dictate that we have to create a single SDR. I'm
2 fine with that. But it's really incumbent upon us
3 to be that backstop.

4 How -- I see we have Mr. Rogers, our
5 technology.

6 MR. BURNS: I knew we'd get this
7 question.

8 MR. ROGERS: I was invited just for this
9 purpose.

10 COMMISSIONER O'MALIA: Well, talk to me,
11 and talk to the Commission, a little bit about how
12 we're going to deal with this and manage this,
13 please.

14 MR. ROGERS: Well, I mean, I think that
15 either it was Jeff or Rick that mentioned this
16 earlier -- I do think that there are multiple
17 forms of getting access to the data and what we
18 want to do with it. I do believe that web access
19 is an important ingredient, and I think that's
20 probably going to be a first way to be able to
21 examine data and see what kinds of data we would
22 want to bring back here.

1 And that certainly comes back to Jeff's
2 point of saying that in order to really define
3 some of these elements, we really need to be able
4 to see the data, to understand what our needs are.

5 So I believe direct access -- which is
6 actually, I think, going to be the lowest hurdle,
7 you know, for us, from our internal technology
8 perspective -- is going to be the first thing that
9 we're going to need to do.

10 I do believe that -- and some of the
11 potential SDR components, there is an ability to
12 export or bring down data in an ad hoc sort of
13 way. So I imagine that that's going to be another
14 method of collecting information. But that
15 doesn't really get to the heart of, you know, how
16 do we get data here on a regular basis.

17 We do have processes in place for the
18 existing data that we get, and I would expect that
19 we would continue to utilize those, from a
20 technology perspective, in terms of regular
21 transmissions of large quantities of data that
22 then get ingested into our technology systems. I

1 would anticipate that at some point we will be
2 using that, those kinds of capabilities, to
3 collect data from the SDRs.

4 The key question, of course, is what is
5 the data that we need? What is the form and
6 manner in which we want to receive it? And then,
7 how do we load that into our systems, and how do
8 we build the automated surveillance platforms on
9 top of it to do the things that you were referring
10 to in your opening remarks?

11 The challenge that we face right now,
12 moving forward, is, of course, to have access to
13 the data to see it, to understand what we want to
14 bring back on a regular basis, and how we want to
15 use that in our automated systems.

16 I don't envision that we are going to
17 want to collect all of the data that an SDR might
18 hold. I think that would be impractical -- and
19 certainly, given the resource challenges that we
20 face. And so I imagine that there is going to be
21 a subset of that data that we will ask for on a
22 recurring -- on a regular basis to use in our

1 automated systems, and we will combine that with
2 direct access, to see other information that we
3 might want -- not necessarily for some
4 technological analysis, but rather to get a view,
5 to get more insight into a particular matter that
6 we're looking into.

7 COMMISSIONER O'MALIA: Well, I know this
8 is -- I appreciate you participating and coming
9 down. This is going to take a lot of work, time,
10 energy, money, et cetera to do this.

11 I appreciated the team's work on this
12 one. I know we have a lot more to do. There are
13 a lot of questions that are going to come up in
14 this new regulatory area.

15 But I do appreciate this, and I will
16 support the rule. Thank you.

17 CHAIRMAN GENSLER: Jeff, if I could ask
18 one follow-up question on the dialogue you had
19 with Commissioner O'Malia, Dunn and myself.

20 In talking about commercialization,
21 there was a question of Commissioner O'Malia about
22 property rights, or who owns the data, maybe it

1 was that. And you mentioned something about there
2 may be lawsuits.

3 Could you just clarify? I take it that
4 you meant not about our rule, but you meant maybe
5 between --

6 MR. BURNS: Oh, no, no, no, no. Not
7 about the rule, but between the parties, on the
8 data itself.

9 CHAIRMAN GENSLER: You mean, maybe, you
10 know, whether a dealer and a clearinghouse, or a
11 clearinghouse and a SEF, and just market
12 participants --

13 MR. BURNS: Exactly.

14 CHAIRMAN GENSLER: -- the question about
15 property rights.

16 MR. BURNS: Exactly.

17 CHAIRMAN GENSLER: Which is not ours to
18 decide.

19 MR. BURNS: It's not ours to decide.

20 CHAIRMAN GENSLER: So you have
21 confidence on the rule itself.

22 MR. BURNS: I have confidence on the

1 rule.

2 COMMISSIONER DUNN: Mr. Chairman --

3 CHAIRMAN GENSLER: General Counsel
4 Berkovitz, do you have the same -- I just want to
5 make sure that the record. I didn't want to --

6 COMMISSIONER DUNN: Mr. Chairman, let me
7 assure you, there will be lawsuits about the
8 rules. (Laughs.)

9 CHAIRMAN GENSLER: Oh, no, I do. I do
10 understand that, Commissioner Dunn. But I just
11 wouldn't -- I wanted to understand where the staff
12 thinks we are on the rule, and where the General
13 Counsel thinks we are on the rule -- and that Jeff
14 Burns' comment was about this property rights
15 issue, that we're not addressing, and it doesn't
16 --

17 MR. BURNS: Yes, that was not about the
18 rule itself.

19 CHAIRMAN GENSLER: All right. Thank
20 you. With that, before we turn to the roll call,
21 I want to ask unanimous consent -- Commissioner
22 O'Malia was good enough to find a few words to

1 change, and I think they're good words to change
2 -- but on Commissioner O'Malia's amendment, just
3 without objection, accepting that amendment.

4 (No objection.)

5 CHAIRMAN GENSLER: Okay. Mr. Stawick.

6 (Vote.)

7 MR. STAWICK: Commissioner O'Malia?

8 COMMISSIONER O'MALIA: Aye.

9 MR. STAWICK: Commissioner O'Malia, aye.
10 Commissioner Chilton?

11 COMMISSIONER CHILTON: Aye.

12 MR. STAWICK: Commissioner Chilton, aye.
13 Commissioner Sommers?

14 COMMISSIONER SOMMERS: No.

15 MR. STAWICK: Commissioner Sommers, no.
16 Commissioner Dunn? Commissioner Dunn, aye. Mr.
17 Chairman?

18 CHAIRMAN GENSLER: Aye.

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

22 CHAIRMAN GENSLER: I thank you, and I

1 particularly thank this team for the excellent
2 work. You should all get a few days off in
3 August, and then you'll be thanking us because
4 you'll get reassigned to other teams, probably.
5 (Laughter.)

6 Yeah. You can pick whichever team you
7 want. Maybe we can use you on the Entity
8 Definition, or the Implementation Phasing, or --

9 No -- really, excellent work. And I
10 thank you. And I guess we're moving on to the
11 Whistleblower team, is that right?

12 MR. BURNS: Thank you, Mr. Chairman,
13 Commissioners.

14 CHAIRMAN GENSLER: Mr. Meister, good to
15 see you back here.

16 MR. MEISTER: It's good to see you, too.

17 CHAIRMAN GENSLER: Mr. Riccobene -- Ed
18 Riccobene -- Leslie Randolph, and Anthony Hays,
19 you're going to present the staff recommendation
20 on the final -- on whistleblower.

21 MR. MEISTER: Good morning, Mr. Chairman
22 and Commissioners. In Dodd-Frank, Congress

1 directed the Commission to establish a
2 whistleblower program. The Commission's adoption
3 of final rules today will give effect to that
4 mandate and provide the public with incentives to
5 report potential violations of the Commodity
6 Exchange Act to the Commission. These rules will
7 advance the Division of Enforcement's ability to
8 bring successful enforcement actions, and will
9 advance the Commission's mission to protect market
10 participants and the public, and promote the
11 integrity of the markets that we oversee.

12 The staff's recommendation to adopt the
13 final whistleblower rules, which are numbered Part
14 165 of the Commission's regulations, reflects our
15 careful review of the comments that we received,
16 and acceptance of many of those comments. The
17 staff also considered the SEC's new whistleblower
18 program. Wherever appropriate and consistent with
19 Congress' mandate, we endeavored to harmonize our
20 whistleblower rules with those of the SEC.

21 I will now briefly summarize the
22 Whistleblower Program under our proposed final

1 rules.

2 The Commission will pay eligible -- I'm
3 sorry, the Commission will pay awards to eligible
4 whistleblowers who provide original information to
5 the Commission leading to a successful Commission
6 enforcement action and the imposition of monetary
7 sanctions in excess of one million dollars.
8 Congress provided that the amount of the
9 whistleblower award must be between 10 percent and
10 30 percent of sanctions collected in either the
11 Commission's action or a related action, as
12 defined in the rules. The Commission has
13 discretion in determining the amount of the award
14 within that 10 to 30 percent range.

15 The rules set forth a number of factors
16 that the Commission will consider in determining
17 the amount of the award. These factors include
18 the significance of the information, the degree of
19 the whistleblower's assistance, the Commission's
20 programmatic interest, whether the award enhances
21 the Commission's ability to enforce the
22 Commodity Exchange Act, protect customers, and

1 encourage people to come forward with high-quality
2 information, and potential adverse incentives from
3 oversized awards.

4 To be award-eligible, a whistleblower is
5 not required, under our recommendation -- a
6 whistleblower is not required to report his
7 information internally to his employer. Staff
8 believes that such a requirement would deter some
9 whistleblowers from coming forward, which would
10 undermine Congressional intent. Sometimes a
11 whistleblower might reasonably believe that his
12 employer's internal reporting system is
13 ineffective, or that he might risk retaliation if
14 he reports internally. By the same token, the
15 rules recognize that internally reporting through
16 effective company compliance systems can help
17 deter and detect violations of the Commodity
18 Exchange Act, and that reporting to effective
19 internal systems should be encourage.

20 So the rules strike a balance among
21 these factors. They provide that, in its exercise
22 of discretion, the Commission will consider a

1 whistleblower's decision to report his information
2 internally as a basis -- potentially -- to
3 increase the amount of the award. This is not to
4 say that a whistleblower's decision to bypass an
5 internal system and report first and directly to
6 the Commission will necessarily reduce the
7 whistleblower's chance to maximize the award.
8 Again, sometimes such a decision to bypass the
9 internal system would be entirely reasonable. The
10 rules simply make it explicit that an internal
11 report is factor that will be considered, and that
12 it might increase the award.

13 The rules also state that the Commission
14 will consider a whistleblower's interference with
15 his company's internal compliance and reporting
16 process as a basis -- potentially -- to decrease
17 the amount of an award.

18 Now, there are categories of individuals
19 who are ineligible to receive a whistleblower
20 award because of their position, status, or the
21 manner in which they obtained information. For
22 example, certain government employees are

1 ineligible. Executives who learn information
2 about misconduct in connection with an entity's
3 process for identifying, reporting and addressing
4 possible violations of law are, in general, not
5 eligible for an award. Nor are employees who
6 obtain information because their principal duties
7 involve compliance or internal audit
8 responsibilities.

9 Eligibility is also limited where the
10 information reported to the Commission was
11 obtained in connection with the legal
12 representation of a client. Likewise, information
13 obtained through attorney-client privileged
14 communications cannot, in general, be used by a
15 whistleblower to obtain an award.

16 A whistleblower may appeal the
17 Commission eligibility and amount decisions to a
18 United States Circuit Court of Appeals. However,
19 neither Dodd-Frank nor these final rules authorize
20 a whistleblower to appeal a decision not to pursue
21 an investigation, or a Commission decision to
22 file, not file, or settle an enforcement action.

1 Whistleblower awards will be paid from
2 the Commodity Futures Trading Commission Customer
3 Protection Fund, established by Dodd-Frank. The
4 Commission will deposit into this fund civil
5 monetary penalties, disgorgement, and fines it
6 collects in covered actions up to a \$100 million
7 balance.

8 The Commission is also establishing an
9 Office of Consumer Outreach, which will undertake
10 initiatives to help people protect themselves
11 against fraud or other violations of the Commodity
12 Exchange Act.

13 Dodd-Frank provides whistleblowers who
14 submit information to the Commission with
15 protections. A whistleblower will have a federal
16 cause of action against his or her employer who
17 retaliates against the whistleblower for making a
18 report to the Commission. Under this
19 anti-retaliation cause of action, a prevailing
20 whistleblower is entitled to reinstatement, back
21 pay, and compensation for other expenses,
22 including reasonable attorney's fees.

1 Finally, the Commission is taking the
2 procedural step, under these recommendations, of
3 delegating the implementation of the Whistleblower
4 Program to a Whistleblower Office, and delegating
5 the determination of the award amount to a panel
6 comprised of staff from three of the CFTC's
7 divisions or offices.

8 Now, before concluding my remarks, I
9 would like to thank my colleague Ed Riccobene from
10 the Division of Enforcement, and Anthony Hays and
11 Leslie Randolph from the Office of the General
12 Counsel for their tireless work on these rules. I
13 would also like to thank Michael Penick and
14 Kirsten Sonenson from the Office of the Chief
15 Economist for their hard work on the rule's
16 cost-benefit considerations. And I thank our EEO
17 Director, Pamela Gibbs, and our CFO, Mark Carney,
18 for their work on this rulemaking.

19 I also would like to acknowledge your
20 Commissioners and your legal assistants for all of
21 your very thoughtful comments on these rules.

22 And now I'm prepared to respond to any

1 questions that you may have.

2 CHAIRMAN GENSLER: I'd like to entertain
3 a motion on the staff recommendation on the
4 whistleblower final rule.

5 COMMISSIONER DUNN: So move.

6 COMMISSIONER SOMMERS: Second.

7 CHAIRMAN GENSLER: I thank you. I
8 support the final rulemaking to establish a
9 whistleblower program, as mandated by the
10 Dodd-Frank Act. I think Congress enacted these
11 provisions to incentivize whistleblowers to come
12 forward with new information about potential fraud
13 and manipulation and other abuses or misconduct in
14 the financial markets. And the final rule
15 authorizes the CFTC to provide monetary awards to
16 whistleblowers.

17 And the rule encourages people to assist
18 the CFTC in identifying, investigating, and
19 prosecuting potential violations of the Commodity
20 Exchange Act. And as other Commissioners have
21 noted, there is this -- commenters came forth, and
22 we had to balance the use of internal compliance.

1 And I think that we found a good balance in the
2 final rule, where that can be taken into
3 consideration, as well, but is not necessarily --
4 depending upon the facts and the circumstances and
5 so forth.

6 So, I don't have any questions, and I'm
7 going to support the rule, but I turn to
8 Commissioner Dunn.

9 COMMISSIONER DUNN: Thank you, Mr.
10 Chairman. I have discussed this with you, but to
11 make sure that if a CFTC staff contacts a
12 whistleblower, and they do not contact that
13 employer's counsel, as may be required by a state
14 bar association, we can do that, and there will be
15 no repercussions to our employees that do so?

16 MR. MEISTER: The rule provides that if
17 the whistleblower initiates contacts with staff,
18 that staff is authorized by law to speak to the
19 whistleblower directly -- to communicate with the
20 whistleblower directly without seeking the consent
21 of the entity's counsel. And that takes advantage
22 of the standard "authorized by law" exception to

1 general "no contact" rules provided in the Model
2 Code governing attorneys, which is adopted in the
3 states.

4 COMMISSIONER DUNN: In my opening
5 statement I tried to express a situation that
6 would incentivize the employer to make changes
7 once a whistleblower contacts them internally.
8 And by doing that, what I suggested was that the
9 Commission contemplate stricter enforcement
10 provisions -- i.e., fines' being levied higher if
11 they do not take appropriate action once a
12 whistleblower contacts them internally.

13 As the Division Director, would that be
14 something you would take under consideration when
15 making a suggestion to the Commission on a fine?

16 MR. MEISTER: Yes.

17 COMMISSIONER DUNN: Thank you. I would
18 really like to thank two of our Commissioners --

19 Commissioner Chilton, who started the
20 process, and Commissioner O'Malia, on following up
21 on the consumer outreach, and Laura Gardy, who
22 worked on both of their staffs in putting that

1 together. I am all for that, and I really
2 appreciate the hard work the two Commissioners and
3 Laura put in on getting that started.

4 CHAIRMAN GENSLER: Thank you,
5 Commissioner Dunn. Commissioner Sommers.

6 COMMISSIONER SOMMERS: Thank you, Mr.
7 Chairman. I just have a couple of quick
8 questions.

9 There was an article on the SEC's
10 whistleblower program last week, and the article
11 mentioned that their Whistleblower Office, you
12 know, is already -- has been in effect, and that
13 they're drafting guidance for SEC staff on a
14 number of issues.

15 I just wanted to ask you about where we
16 are in establishing our office, and if we are
17 already in the process of establishing guidance
18 for this so that -- you know, it would be helpful
19 to us when these rules get into effect.

20 MR. MEISTER: Yes, we've been in
21 discussions with the Chairman as to how to
22 establish, how to best establish the office to

1 make sure that we're implementing the program
2 effectively.

3 As far as guidance to staff, actually
4 within the Division of Enforcement we've already
5 put into place guidance to staff as to how to deal
6 with whistleblowers, what to do with their
7 information. We have a system in place to record
8 their data appropriately -- in other words, to
9 record the information appropriately and to
10 catalogue it appropriately.

11 My understanding is that we'll establish
12 this -- well, the rules establish the
13 Whistleblower Office, and we'll, you know, staff
14 that up, I imagine, as soon as we can.

15 COMMISSIONER SOMMERS: Thank you. On
16 May 26, Representative Frank sent a letter to
17 Chairman Schapiro at the SEC about their final
18 rules, indicating that -- I'm quoting- " -- as a
19 matter of fairness to ensure that a company has
20 some notice and opportunity to cure a violation
21 when it has not previously received such notice
22 through it's own system -- " -- will we be able to

1 deal with this kind of opportunity for companies
2 to be able to cure violations when they don't even
3 know that there may be violations happening?

4 Will we be able to deal with that
5 through guidance? How will we -- or can we
6 provide these companies an opportunity to cure
7 violations internally?

8 MR. MEISTER: Well, I should say I'm not
9 familiar with the quote. I can say that when we
10 decide whether or not to recommend that the
11 Commission bring an action against a company, we
12 look at a variety of factors, including what level
13 of -- at what level the violation occurred. In
14 other words, if a violation occurred at ranks
15 within the company that we think merit an action
16 against the company, we make the recommendation to
17 you.

18 And I imagine maybe what that quote went
19 to is a situation, perhaps, where there was, you
20 know, a one-off violation that a company, not
21 really at sort of a broader company level, and the
22 question is, under those circumstances, would we

1 exercise the discretion not to recommend an action
2 against the company, perhaps just to recommend an
3 action against the individual. And, generally
4 speaking, we do make those sort of determinations
5 -- on a case-by-case basis.

6 Just going to Commissioner Dunn's point,
7 I do think it's very appropriate, however, to take
8 into consideration, both at the charging stage and
9 at a penalty stage, as to whether or not a
10 company's internal system has reacted
11 appropriately in response to information that they
12 do get -- at any level.

13 COMMISSIONER SOMMERS: So do you think
14 that that's the kind of specificity that would be
15 included in guidance to staff? Or do you just --
16 I mean, in general, how will we deal with that. I
17 understand that's your feeling, but --

18 MR. MEISTER: It's a -- it's -- I will
19 say that it's a sort of prosecutor's-discretion
20 decision. And it is, you know, whether or not we
21 write down, you know, each of the factors that we
22 consider, for staff, it is routine in discussions

1 within the enforcement staff to think through
2 factors like that when we're deciding about
3 whether to exercise discretion -- in other words,
4 who knew at the company? At what level did people
5 know? And what did they do once they -- if they
6 didn't know originally, what did they do once they
7 found out.

8 So I guess the direct answer to your
9 question is, I wouldn't be inclined to try to
10 address all of the factors that we consider in
11 writing when we make a decision, because it's very
12 sort of facts-and-circumstances based.

13 COMMISSIONER SOMMERS: Okay. Thanks.

14 COMMISSIONER DUNN: Commissioner -- if I
15 could, because I think this is an important point
16 -- that if a company was unaware that they were in
17 violation, and a whistleblower comes directly to
18 us, and we go to the company and they say, in good
19 faith, "My goodness, we didn't know that. We're
20 going to fix that immediately," then I think
21 there's, first of all, discretion at the division
22 level, do they go forward and file a violation or

1 not. And then there's discretion at the
2 Commission level of whether or not to accept that.
3 And then, finally, what level of fine -- and I
4 know Commissioner Sommers, you've been able to
5 talk me off the ledge a number of times on some of
6 these in the past (laughs).

7 But I do think there are adequate
8 safeguards from the past way that the Commission
9 has operated in this arena.

10 COMMISSIONER SOMMERS: Those were the
11 answers I was hoping for. I just wanted to get
12 them on the record.

13 Thank you.

14 CHAIRMAN GENSLER: I particularly -- I
15 concur with both of you on this. But I think it's
16 ultimately the Commission's -- it's prosecutorial
17 discretion, the Division, of what they recommend,
18 and then ultimately what we hear. Because every
19 one of these goes through the Commission.

20 Commissioner Chilton.

21 COMMISSIONER CHILTON: Thanks. Again, I
22 think you all did a really good job on this.

1 This is one of these rules where, you
2 know, I don't think the proposal actually captured
3 everything that Congress intended. And I think
4 that we listened to the comments and that we
5 incorporated those, and we've done a good job.
6 This is how the process should work.

7 I think we did reach a good compromise
8 on how we go forward with internal versus coming
9 to us, reporting. We had a real large exclusion
10 for things that wouldn't be included, originally.
11 We've narrowed that down. That's good.

12 I also appreciate the fact that you've
13 included a provision that requires us to
14 proactively notify the whistleblower once a case
15 has been concluded, to let them know that they may
16 seek an award. It doesn't guarantee that they
17 have an award but, you know, it's a lot to ask a
18 whistleblower to follow all the internal dealings
19 of a regulatory agency. So I think that's a good
20 provision, too.

21 I did want to echo what Commissioner
22 Dunn said about -- you know, companies that are

1 notified internally and don't take an action, or
2 try to cover it up, we should take that very
3 seriously, and look for increased fines. I don't
4 have a problem if people go internally. It may
5 make sense. As Commissioner Sommers said, you
6 know, save us some time.

7 But in the even that somebody tries to
8 cover this stuff up, I won't be kind in my
9 determination.

10 Did you want to comment on that, Mr.
11 Meister?

12 MR. MEISTER: No.

13 COMMISSIONER CHILTON: And the last
14 thing is, people can call us now --
15 1-866-FON-CFTC. You know, we get a lot of tips.
16 I mean, a lot of what we do in enforcement is from
17 tips. So if people are out there and they are
18 waiting for something to happen, you can call
19 right now -- 1-866-FON-CFTC. That's my public
20 service announcement for the day.

21 Thank you.

22 CHAIRMAN GENSLER: Thank you,

1 Commissioner Chilton. Commissioner O'Malia, you
2 have the honor of always going after Commissioner
3 Chilton. Where are you going to go with this
4 1-866 --

5 COMMISSIONER O'MALIA: I get the last
6 word. And I like to go with the last word. I'll
7 close this one out, and I appreciate him putting
8 it out.

9 Education, I think, is an important --
10 we've talked a lot about whistleblower. I think
11 we will be much more successful in preventing
12 situations where we have to use the whistleblower
13 backstop. You know, we should make sure we have
14 strong corporate compliance culture.

15 But educating consumers -- our business
16 is dealing with a lot of Ponzi schemes. And a lot
17 of these things that Commissioner Chilton has
18 always talked about and highlighted. So we're
19 going to have these individuals in these schemes
20 that are likely to come forward.

21 And we've talked a lot about the
22 corporate compliance, which is, I think, the first

1 order of business. But education coming later is
2 critically important.

3 And I would point out, we did catch a
4 break from Congress in the Dodd-Frank Act. The
5 education office can be funded entirely out of
6 civil monetary penalties. It's not an
7 appropriation. So there's no excuse why we should
8 not have an extraordinarily robust program if Mr.
9 Meister's doing his job.

10 So, as long as he brings in the cash,
11 we'll be successful. And the more success he has
12 in funding the education office, the less work
13 he'll have to do -- I hope. But that's the
14 long-term strategy. We have a lot to do on that
15 front.

16 But I think the educational office is a
17 great opportunity for us. It's something we
18 really haven't done a whole lot. We could use the
19 public service announcements. We can use a lot of
20 tools.

21 And Commissioner Dunn, I appreciate you
22 recognizing Laura Gardy. She's done an

1 outstanding job on this front, and really worked
2 hard on it. And a lot of credit ought to go to
3 her for her tireless efforts on this.

4 Mr. Meister, we spent a lot of time
5 about "good corporate culture, bad corporate
6 culture." What about "good whistleblower, bad
7 whistleblower?"

8 Working on the Hill, and funding the
9 Department of Energy as a clerk of the Energy and
10 Water Subcommittee, we saw quite a bit of
11 whistleblower programs in the Department of
12 Energy. And, frankly, not all these folks were
13 Boy Scouts. And we had some bad whistleblowers,
14 frankly. Some people that were not truthful, et
15 cetera.

16 I don't want to -- you know, we want to
17 make sure we have good corporate culture. We want
18 to make sure we get legitimate, good
19 whistleblowers.

20 How does the rule deal with frivolous
21 whistleblower claims? How are we going to dispose
22 of those?

1 MR. MEISTER: I guess there's a few
2 parts of the rule that speak directly to this.
3 The rule, first of all, requires whistleblowers to
4 tell the truth, and imposes certain restrictions
5 where whistleblowers are not truthful to the
6 Commission.

7 The second, if a whistleblower is
8 convicted criminally, a whistleblower -- for the
9 conduct that he or she is reporting on -- the
10 whistleblower is ineligible for an award.

11 And if a whistleblower engages in
12 misconduct, but short of a criminal conviction,
13 the Commission can -- or has to take into
14 consideration that factor in deciding the amount
15 of the award.

16 So I would say, principally, in those
17 three ways.

18 COMMISSIONER O'MALIA: So if we have a
19 Ponzi scheme and we catch him, and somebody -- two
20 partners in a Ponzi scheme. One decides to become
21 a whistleblower the moment you show up, how do we
22 deal with that?

1 MR. MEISTER: If, say, a coconspirator
2 in a Ponzi scheme was the whistleblower? That
3 person -- and that person was not criminally
4 convicted -- in other words, our colleagues, or
5 our partners over in the Department of Justice
6 decided not to pursue a criminal conviction, or
7 obtain a criminal conviction from that
8 whistleblower, that whistleblower, if he was
9 truthful with us, could qualify for an award --
10 assuming that, you know, the other eligibility
11 thresholds were met.

12 It is just -- I'll tell you that my
13 experience over -- when I was a criminal
14 prosecutor -- was that there are certain cases
15 that are made principally based upon people who
16 were involved in schemes, based upon their
17 testimony. And this system recognizes that -- as
18 does our, you know, our criminal justice system.

19 If the person was, you know, a
20 substantial participant in the Ponzi scheme, you
21 would think that the Department of Justice, in
22 exercising its discretion, would seek a criminal

1 conviction against the person.

2 COMMISSIONER O'MALIA: So, we've got
3 tight budgets, they can't pursue every case. It
4 might be a small case, but a Ponzi scheme
5 nonetheless, a conspirator nonetheless. And only
6 if they're not convicted criminally, we won't make
7 an award?

8 So if the Department of Justice says,
9 "Too small -- " --

10 MR. MEISTER: If the other eligibility
11 thresholds are met, I think that's right. If we
12 bring the action -- I mean, if you say it's a
13 small Ponzi case, and we decide, for whatever
14 reason -- if the Commission exercises its
15 discretion not to bring a case, then there is no
16 -- then there would be no award there, either.

17 COMMISSIONER O'MALIA: We do have
18 discretion on the amount. But it's the 10 to 30
19 percent.

20 MR. MEISTER: Right. You have
21 discretion within the range of 10 to 30 percent of
22 the collected amount.

1 COMMISSIONER O'MALIA: So as long as --

2 MR. MEISTER: And I should add -- as Mr.
3 Riccobene has just pointed out -- it's actually
4 from the statute that whistleblowers who are
5 criminally convicted are excluded. So it's not
6 short of that.

7 In other words, the rules -- the statute
8 itself says that a whistleblower who has been
9 criminally convicted should be excluded. And the
10 rules don't say that -- say something different
11 from that. I mean, we were somewhat confined by
12 that part of the statute.

13 COMMISSIONER O'MALIA: Let me ask you
14 another question. If a whistleblower -- a
15 legitimate whistleblower, and we get a criminal
16 conviction of his partners, who receives the civil
17 monetary penalty on which we're supposed to pay
18 these whistleblower? If it goes to a criminal
19 prosecution, they win, and they exact some
20 penalties, et cetera, who gets to pay the award?
21 Does that money come to us if DOJ gets the
22 prosecution?

1 MR. MEISTER: No, the way it's set up is
2 that if there's a related action -- say, a
3 Department of Justice related action -- and in the
4 Department of Justice action they obtain some
5 penalty, that penalty goes -- is paid to whoever
6 it's normally paid to in the Department of Justice
7 or Treasury. We don't get that penalty.

8 However, the Commission would have
9 discretion to pay an award to the whistleblower
10 based upon the amount of the Department of Justice
11 penalty -- even though --

12 COMMISSIONER O'MALIA: We don't have the
13 money.

14 MR. MEISTER: -- even though we didn't
15 receive that money. Our money would be paid out
16 of the fund that we have, that all -- that is
17 funded by other actions.

18 COMMISSIONER O'MALIA: That doesn't make
19 any sense.

20 MR. MEISTER: It was part of the
21 statute.

22 COMMISSIONER O'MALIA: Okay. We need to

1 change the statute. (Laughter.) That's
2 ridiculous.

3 Anyway -- walk me through the
4 cost-benefit analysis performed by the staff, as
5 it compares to the SEC's cost-benefit analysis in
6 connection with its own whistleblower program.

7 MR. MEISTER: Yes, we -- I won't be able
8 to -- unfortunately, I won't be able to sort of
9 sit here today and line our cost-benefit analysis
10 up as against their cost-benefit analysis.

11 What I can say is that our Office of the
12 Chief Economist in the Office of the General
13 Counsel very carefully reviewed the cost-benefit
14 factors and applied them here as against our rule.
15 But I'm not sort of able to sort of sit here now
16 and compare ours to theirs.

17 I should point out that their statute is
18 somewhat different. It differs -- the SEC
19 statute, whistleblower statute, differs from ours
20 in some respects. Our rules, as I say, tried to
21 harmonize with theirs. But I'm personally
22 comfortable that we very carefully reviewed the

1 cost-benefit factors that apply to us in reaching
2 our conclusions.

3 COMMISSIONER O'MALIA: The rules
4 generally suggest that a whistleblower will always
5 be employees. However, the definition of
6 whistleblower refers to a "person."

7 How does the staff differentiate between
8 individuals who provide tips, and individuals
9 providing original information making them
10 eligible for whistleblower awards?

11 MR. MEISTER: You're right that
12 sometimes the rules refer to "employees," and
13 sometimes the rule refers to "individuals." The
14 definition of "whistleblower" is an "individual,"
15 though. You don't have to have been an employee
16 of some entity in order to be a whistleblower. A
17 whistleblower is an individual. It cannot be a
18 company, though.

19 COMMISSIONER O'MALIA: So --

20 MR. MEISTER: I don't know if that
21 answered that question.

22 COMMISSIONER O'MALIA: So what is the

1 obligation of an individual who's not an employee
2 to deal with the corporate compliance (inaudible)?

3 MR. MEISTER: There's no obligation at
4 all for an individual to deal with a corporate
5 compliance function. I would imagine that the
6 Commission, in determining the amount of the
7 award, would recognize that this person didn't
8 even have an opportunity to go -- an unemployed
9 individual wouldn't even have the opportunity to
10 go to an internal compliance system.

11 And so that factor doesn't make a whole
12 lot of sense unless the person is an employee.

13 COMMISSIONER O'MALIA: That's all I
14 have. Thank you.

15 CHAIRMAN GENSLER: Thank you,
16 Commissioner O'Malia. Mr. Stawick.

17 (Vote.)

18 MR. STAWICK: Commissioner O'Malia?

19 COMMISSIONER O'MALIA: Aye.

20 MR. STAWICK: Commissioner O'Malia, aye.
21 Commissioner Chilton?

22 COMMISSIONER CHILTON: Aye.

1 MR. STAWICK: Commissioner Chilton, aye.

2 Commissioner Sommers?

3 COMMISSIONER SOMMERS: No.

4 MR. STAWICK: Commissioner Sommers, no.

5 Commissioner Dunn?

6 COMMISSIONER DUNN: Aye.

7 MR. STAWICK: Commissioner Dunn, aye.

8 Mr. Chairman?

9 CHAIRMAN GENSLER: Aye.

10 MR. STAWICK: Mr. Chairman, aye. Mr.
11 Chairman, on this matter, the "yeas" are four, the
12 "nays" are one.

13 CHAIRMAN GENSLER: With the ayes having
14 it, the staff recommendation is accepted.

15 And I wish to thank this team for all
16 their excellent work -- not just Anthony, Leslie,
17 David and Ed, who are sitting here, but certainly
18 the people beyond that in the two departments and
19 the Office of the Chief Economist and the General
20 Counsel's Office, and all of my Commissioners.

21 And, with that, we are going to move to
22 the next staff presentation, with regard to

1 agricultural swaps.

2 We'll get Don Heitman, who I'm sure will
3 have us thoroughly educated on the history of
4 agricultural swaps and the rule. And he'll
5 probably have us laugh once or twice, if I know
6 Don.

7 And Rick Shilts. And Ryne Miller.

8 MR. HEITMAN: Mr. Chairman,
9 Commissioners, at the outset, I would like to
10 thank the members of the Ag-Swaps team,
11 particularly Ryne Miller and Jane Croessmann.

12 However, as I have explained to them --
13 even though they've done all the actually work,
14 under OMB guidelines, as team leader I am legally
15 required to take all the credit.

16 Section 723(c)(3) of the Dodd-Frank Act
17 provides that swaps in an agricultural commodity
18 are prohibited, unless permitted under a rule,
19 regulation or order adopted pursuant to Section
20 4(c) of the Act, the Commission's general
21 exemptive authority.

22 Section 4(c) includes a few more

1 regulatory bells and whistles in ordinary notice
2 and comment rulemaking -- for example, a public
3 interest test. This reflects the fact that, for
4 reasons both historical and practical, the Act has
5 always devoted special attention to the
6 agricultural commodities. Trading in those
7 commodities laid the foundation of modern futures
8 markets.

9 These final rules represent the third
10 time the Commission has addressed agricultural
11 swaps. On September 28, 2010, the Commission
12 published an Advance Notice of Proposed
13 Rulemaking, requesting comment on the appropriate
14 conditions, restrictions or protections to be
15 included in any regulation governing agricultural
16 swaps. On February 3rd this year, after reviewing
17 the comments on the Advance Notice, the Commission
18 published Proposed Rules for agricultural swaps.

19 The issues raised in the Advance Notice
20 of Proposed Rulemaking, and addressed in the
21 Proposed Rules was a simple one: should swaps in
22 agricultural commodities be treated any

1 differently than swaps in any other commodity?

2 The commenters included general farm
3 organizations, commodity organizations,
4 agricultural producers, merchants, swap dealers,
5 commodity funds, futures industry organizations,
6 and private individuals.

7 The overwhelming response of those
8 commenters favored treating agricultural swaps
9 exactly the same as swaps in other commodities.
10 For example, the National Grain and Feed
11 Association noted -- and this is a quote--"The
12 passage of the Dodd-Frank Act changes the
13 regulatory structure for all swaps, and institutes
14 a number of safeguards, including the limitation
15 that only eligible contract participants may
16 engage in swaps, unless entered into on a
17 designated contract market, mandatory clearing
18 requirements for swaps, and registration,
19 reporting, business standards, and capital and
20 margining requirements for swap dealers and major
21 swap participants.

22 "The NGFA believes that these safeguards

1 provide more than ample protection in the swaps
2 marketplace for both agricultural and
3 non-agricultural swaps, and that there is no
4 compelling reason to place additional burdens on
5 agricultural swaps."

6 The Notice of Proposed Rulemaking
7 proposed -- and these final rules provide for --
8 exactly that. These final rules will repeal Part
9 35 of the Commission's regulations, the current
10 authority for trading agricultural swaps, and
11 replace it with a provision that essentially says:
12 Agricultural swaps are to be regulated in exactly
13 the same way as other swaps. Proceed directly to
14 the general swaps rule. Do not pass go. Do not
15 collect \$200.

16 I would like to touch on two other
17 issues that will be addressed a little further
18 down the road.

19 First, commodity options. The Advance
20 Notice of Proposed Rulemaking and the Proposed
21 Rules I mentioned earlier also addressed possible
22 revisions to the Commission's rules for commodity

1 options -- both agricultural and non-agricultural
2 commodity options.

3 While the question of what to do about
4 agricultural swaps lends itself to a fairly simple
5 and straightforward answer, commodity options
6 raise several more complex issues. For that
7 reason, it has been decided to separate the two
8 subjects, to deal with ag swaps now, and to
9 address commodity options in a subsequent
10 rulemaking.

11 Second -- effective dates. And this is
12 a question that Commissioner Sommers raised in her
13 opening statement.

14 The effective date of this rule, which
15 will repeal and replace existing Part 35, is
16 December 31, 2011. However, Part 35 is also one
17 of the subjects referenced in the Commission's
18 recent Transition Order under Section 4(c) of the
19 CEA. Transactions that meet the requirements of
20 Part 35 are outside the scope of the Transition
21 Order, because they did not require relief as of
22 July 16th.

1 Among other things, the Transition
2 Order provides temporary relief for certain
3 transactions in exempt or excluded commodities
4 that might otherwise be affected by Dodd-Frank's
5 repeal, effective on July 16th, of various CEA
6 exemptions and exclusions. By its own terms,
7 though, that portion of the 4(c) Transition Order
8 will expire on the earlier of December 31st, or
9 the repeal of Part 35 -- which this rulemaking
10 does.

11 In order to avoid any inconsistency with
12 the 4(c) Transition Order, the repeal of Part 35
13 should occur -- and does -- no earlier than the
14 latest possible expiration date of the 4(c)
15 Transition Order, that is, December 31, 2011.

16 In the event that Transition Order is
17 ultimately extended beyond December 31st, staff
18 anticipates recommending that the extended
19 Transition Order be expanded to cover those
20 transactions that rely on existing pre-repeal Part
21 35. Such a course of action would maintain the
22 status quo, and allow swaps transactions that are

1 permissible under the pre-Dodd-Frank rules to
2 continue without interruption until the necessary
3 post-Dodd- Frank rules are in place.

4 I'd be happy to answer any questions.

5 CHAIRMAN GENSLER: Thank you so much,
6 Don. And Jane, I should have introduced you, too.
7 I thank you, Doug, for passing the note up. Jane
8 Croessmann, as well.

9 With that, I'll entertain a motion on the
10 staff recommendation to allow for agricultural
11 swaps.

12 COMMISSIONER DUNN: So move.

13 COMMISSIONER SOMMERS: Second.

14 CHAIRMAN GENSLER: Thank you. I don't
15 have any questions. I do support this rule. I
16 think it's an important rule. Congress gave us
17 authority to take an extra look at agricultural
18 swaps to see if they should be allowed, or
19 prohibited, or allowed in certain circumstances.
20 And I think they were particularly attentive to
21 this area because of its deep history.

22 I think it's important that we move

1 forward with this so that producers, merchants,
2 handlers in the agricultural world have the same
3 benefit of risk-reducing through the use of swaps
4 and derivatives that others have -- whether it be
5 interest rates or commodities such as energy and
6 metals.

7 And so I think this is an important
8 rule, but we sought additional comment from the
9 public through an Advance Notice, a Notice, and
10 now a Final Rule.

11 But I'm pleased to support this rule.
12 Commissioner Dunn.

13 COMMISSIONER DUNN: Thank you, Mr.
14 Chairman. And I want to thank this group,
15 especially, as the Chair of the Ag Advisory
16 Committee, for taking all of the considerations
17 that we put forward to them on this.

18 I understand the split, why things have
19 to go forward as they have. And many of the 31
20 comments that you've got revolve around the
21 definitions. And you have indicated that you have
22 forwarded these to the team that are working on

1 those definitions.

2 Mr. Chairman, I would ask that, as that
3 team begins to consider those definitions with
4 agriculture, that we have members of this team go
5 as advocates for those that made -- those 31
6 members that made comments.

7 CHAIRMAN GENSLER: No, no -- I think so,
8 as long as Don's willing to stick around, and
9 Ryne, and so forth.

10 COMMISSIONER DUNN: Absolutely. And we
11 have had a number of joint meetings already with
12 the product definitions and the participant
13 definitions team. And we would, even after this
14 rule goes final, we certainly would continue that
15 cooperation.

16 CHAIRMAN GENSLER: And I think a number
17 of the issues in the entity definition area --
18 many very real issues about agricultural
19 cooperatives -- we have a road that's pretty well
20 discussed with the agricultural coops, I think,
21 and the product definition. And it's really
22 forwards with embedded options, and so forth.

1 COMMISSIONER DUNN: I want to make sure
2 that somebody's there that understands the issues.

3 CHAIRMAN GENSLER: No, no -- we've got
4 them. And in my office it's been Eric who's been
5 helping out. But he's still sitting there.

6 Eric -- you don't remember him? -- who
7 worked for you, and that you were kind enough to
8 let work for me?

9 COMMISSIONER DUNN: A fine, fine figure
10 of a man.

11 CHAIRMAN GENSLER: Yeah -- good, good.
12 Commissioner Sommers.

13 COMMISSIONER SOMMERS: Thank you. On
14 this same subject -- I think, just to clarify for
15 market participants -- we've split out the options
16 portion that we did deal with in the proposal, but
17 is the intention to deal with this issue in the
18 product definition rule?

19 MR. HEITMAN: Well, we have a separate
20 rulemaking from the product definition rules, but
21 we would obviously have to coordinate very closely
22 with the product definitions team. You know, I

1 don't set the schedule by myself. But it seems to
2 me that it would make sense for the options rules
3 to be addressed in a coordinated fashion with the
4 product definitions. Because that's where all the
5 questions are arising.

6 CHAIRMAN GENSLER: That was our
7 thinking, but it wouldn't become a joint rule with
8 the SEC. So the options piece of this, we can
9 move forward and try to do it. Whether it's at
10 the same meeting, or at least -- the Commissioners
11 would have both of them in front of them so that
12 it's in a coordinated way, as a package -- as you
13 often point out in times.

14 We thought it would be better packaged
15 with product definitions.

16 COMMISSIONER SOMMERS: I just thought
17 the market participants may want to know that.

18 Thank you.

19 CHAIRMAN GENSLER: Commissioner Chilton.

20 COMMISSIONER CHILTON: I don't have a
21 question. I just want to make a comment.

22 I think this is another one, like the

1 SDR, that is a regulation that will actually
2 create some economic activity. I mean, there have
3 been ag swaps, but there's been certain limits on
4 the ag swaps. So this will sort of streamline it
5 and treat them like others.

6 And I see Mike agreeing, out there.
7 And, you know, he's been in to talk with a number
8 of us on the SEF rule. And we don't know what
9 that's going to look like, but that's yet another
10 example of a regulation that I think is actually
11 going to help create economic activity.

12 So I just point that out that -- you
13 know, too often people are saying, criticizing how
14 burdensome and bad that regulation is for the
15 economy. And we've done two of them today that I
16 think are actually going to spur economic
17 activity, and hopefully we'll do some more in the
18 near future.

19 Thank you.

20 CHAIRMAN GENSLER: Thank you,
21 Commissioner Chilton. Commissioner O'Malia.

22 COMMISSIONER O'MALIA: I don't have a

1 question, I would just note that the explanation
2 you gave of this rule, half the time was spent
3 explaining when it goes effective -- which is very
4 telling about how complicated we've succeeded in
5 making our implementation strategy, which I've
6 opined before.

7 But I appreciate your hard work and
8 team's hard work on this one.

9 Thank you.

10 CHAIRMAN GENSLER: Mr. Stawick.

11 (Vote.)

12 MR. STAWICK: Commissioner O'Malia?

13 COMMISSIONER O'MALIA: Aye.

14 MR. STAWICK: Commissioner O'Malia, aye.
15 Commissioner Chilton?

16 COMMISSIONER CHILTON: Aye.

17 MR. STAWICK: Commissioner Chilton, aye.
18 Commissioner Sommers?

19 COMMISSIONER SOMMERS: Aye.

20 MR. STAWICK: Commissioner Sommers, aye.
21 Commissioner Dunn?

22 COMMISSIONER DUNN: Aye.

1 MR. STAWICK: Commissioner Dunn, aye.

2 Mr. Chairman.

3 CHAIRMAN GENSLER: Aye.

4 MR. STAWICK: Mr. Chairman, aye. Mr.
5 Chairman, on this matter the "yeas" are five, the
6 "nays" are zero.

7 CHAIRMAN GENSLER: The yeas have it, and
8 the staff recommendation is accepted and will be
9 sent to the Federal Register.

10 I thank you all so much. I know we'll
11 see you back on the trade options or commodity
12 options issues, and working closely with the
13 definitions team. So I thank you.

14 At this point I ask unanimous consent to
15 allow staff to make technical corrections to the
16 document voted on today, prior to sending to the
17 Federal Register. I guess, without objection.
18 The next item for today is to vote on authorizing
19 additional meetings.

20 We do have two meetings in September
21 that we'd already voted on, and then we look to
22 schedule meetings on October 4th, October 18th,

1 November 1st and November 17th -- twice a month --
2 to allow for time in between to consider the
3 different documents and rules.

4 All such meetings would be at 9:30, and
5 agendas for the meetings will be available at the
6 Commission's website seven days in advance.

7 As I noted earlier, in my opening
8 statement, it's our goal -- but all goals can be
9 changed by Commissioners, and by just the normal
10 process -- to try to take up the Financial
11 Resources Clearing Core Principles, whether that
12 be late in September or early in October, but try
13 to do that. Position limits about that same time.
14 We're looking at getting some notice and comment
15 out on this implementation phasing on swaps,
16 transactional -- the mandates and so forth.

17 Moving into October, the two business
18 conduct groupings -- the business conduct, both
19 internal and external. And then the transparency
20 package -- and Commissioner Sommers and others
21 have said can we try to move those together.
22 There's a lot of work on designated contract

1 markets, SEFs, FBOTs, and real-time reporting. So
2 whether that actually were successful in October
3 or that moves into November is hard to tell.

4 And then, of course, the definitions.
5 And we're going to continue to meet with the SEC.
6 I've got another meeting even today over there.
7 But on the entity definitions and the product
8 definitions -- product definitions just closed
9 July 22nd, so we're -- I think we have 73 comment
10 letters, but trying to move through those
11 thoughtfully. As I think we all agree, we don't
12 want to do things against a clock, and if we need
13 to come later in this year to look at that 4(c)
14 exemption based on the facts and circumstances to,
15 you know, give us more time, and market
16 participants more time, based on the facts and
17 circumstances then.

18 But I think that's -- I'm sure I'm
19 missing a few of the rules -- the end-user
20 exception we're trying to take up when we do the
21 entity definitions, as well.

22 But that's kind of the agenda we're

1 thinking about. But it's based on feedback from
2 the Commissioners, and feedback from the SEC and
3 the Federal Reserve. So some of this will clearly
4 change as we move.

5 CHAIRMAN GENSLER: But, with that, I'd
6 like to -- I guess we need to have Mr. Stawick
7 call the roll on this one, too? Or just do it by
8 "ayes" and "nays?"

9 MR. STAWICK: You may do it either way?

10 COMMISSIONER DUNN: Move the question?

11 CHAIRMAN GENSLER: I'll just -- I'll
12 move the question. Any second?

13 COMMISSIONER DUNN: Second.

14 CHAIRMAN GENSLER: All those in favor,
15 say aye.

16 COMMISSIONER DUNN: Mr. Chairman, just a
17 bit of discussion, because hopefully I'm
18 allocating Mr. Weejun's time, and not mine.

19 CHAIRMAN GENSLER: Mr. Dunn, we don't
20 know. It's in the will of the Senate.

21 COMMISSIONER DUNN: But I am very
22 sympathetic to Commissioner O'Malia's and

1 Commissioner Sommers' concerns. And I do hope
2 that we are able to accommodate them in some form
3 as we go forward.

4 COMMISSIONER O'MALIA: Mr. Chairman?

5 CHAIRMAN GENSLER: Sure.

6 COMMISSIONER O'MALIA: I appreciate
7 Commissioner Dunn -- and he's said some
8 extraordinarily nice things that I'd like to
9 compliment him and thank him for today.

10 I will object to a unanimous consent
11 agreement. I will vote no on further meetings.

12 We need to see this in writing. We need
13 to put our schedule out for comment, and an
14 implementation plan in writing.

15 And I hope we'll do that. I know you're
16 working towards that, and your staff is working
17 towards that. I just have to see it in writing
18 before I'll be able to vote yes on any further
19 meetings.

20 MR. STAWICK: Would you like me to call
21 the role?

22 CHAIRMAN GENSLER: Sure.

1 (Vote)

2 MR. STAWICK: Commissioner O'Malia?

3 COMMISSIONER O'MALIA: No.

4 MR. STAWICK: Commissioner O'Malia, no.

5 Commissioner Chilton?

6 COMMISSIONER CHILTON: Aye.

7 MR. STAWICK: Commissioner Chilton, aye.

8 Commissioner Sommers?

9 COMMISSIONER SOMMERS: No.

10 MR. STAWICK: Commissioner Sommers, no.

11 Commissioner Dunn?

12 COMMISSIONER DUNN: Aye.

13 MR. STAWICK: Commissioner Dunn, aye.

14 Mr. Chairman?

15 CHAIRMAN GENSLER: Aye.

16 MR. STAWICK: Mr. Chairman, aye. Mr.

17 Chairman, on this matter the "yeas" are three, the

18 "nays" are two.

19 CHAIRMAN GENSLER: We'll have a few

20 extra meetings scheduled.

21 I thank you. I'm just seeing if there's

22 any more -- our next scheduled meeting, then, is

1 September 8th, and that, of course, will put out
2 shortly, seven days in advance.

3 Is there any other Commission business?

4 (No response.)

5 CHAIRMAN GENSLER: Nope? There being no
6 other Commission business, I will entertain a
7 motion to adjourn the meeting.

8 COMMISSIONER DUNN: So move.

9 COMMISSIONER CHILTON: Second.

10 CHAIRMAN GENSLER: All in favor.

11 (Chorus of ayes.)

12 CHAIRMAN GENSLER: Any opposed?

13 (No response.)

14 CHAIRMAN GENSLER: The meeting is
15 adjourned. Thank you all. If you're going on
16 vacation or anything, have a good August.

17 (Whereupon, at 11:47 a.m., the

18 PROCEEDINGS were adjourned.)

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CERTIFICATE OF NOTARY PUBLIC

DISTRICT OF COLUMBIA

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

Notary Public, in and for the District of Columbia
My Commission Expires: January 14, 2013

