

UNITED STATES OF AMERICA  
COMMODITY FUTURES TRADING COMMISSION

OPEN MEETING TO CONSIDER EFFECTIVE DATES  
OF PROVISIONS IN THE DODD-FRANK ACT

Washington, D.C.

Tuesday, June 14, 2011

1 PARTICIPANTS:

2 Commission Members:

3 CHAIRMAN GARY GENSLER

4 COMMISSIONER MICHAEL DUNN

5 COMMISSIONER JILL E. SOMMERS

6 COMMISSIONER BART CHILTON

7 COMMISSIONER SCOTT D. O'MALIA

8 Speakers:

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17 Other Participants:

18 DAVID STAWICK  
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19 DAVID VAN WAGNER

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

(9:35 a.m.)

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3 CHAIRMAN GENSLER: Good morning. This  
4 meeting will come to order. This is a public  
5 meeting of the Commodity Futures Trading  
6 Commission to consider issuance of a proposed  
7 order granting exemptive relief for certain  
8 requirements of the Commodity Exchange Act as  
9 amended by the Dodd-Frank Act that becomes  
10 effective on July 16, 2011.

11 In addition, the Commission will vote to  
12 schedule future Commission meetings in July,  
13 August, and September to consider the issuance of  
14 final rulemakings under the Dodd-Frank Act.  
15 Before we hear from staff, I'd like to thank  
16 Commissioners Mike Dunn, Jill Sommers, Bart  
17 Chilton, Scott O'Malia for all of their thoughtful  
18 work to implement the Dodd-Frank Act.

19 Commissioner Chilton could not be with  
20 us today because he's speaking at the European  
21 Commission Bureau of European Policy Advisors. We  
22 do have his cell phone if we need to call him and

1 link him in. And I do want to say, I'm going to  
2 keep doing this, Mike, but since I know that three  
3 days, are we? No, we're five days. You keep  
4 reminding me.

5 COMMISSIONER DUNN: The 19th.

6 CHAIRMAN GENSLER: The 19th. We're five  
7 days away from Commissioner's Dunn official term  
8 of office, but as we all know, he's been gracious  
9 enough to say he'll be here on the 20th, and the  
10 21st, and he'll keep coming in I hope and continue  
11 to serve this nation and this Commission. And so  
12 we'll have ample time because the Senate has to do  
13 something before you're out of here, Mike. So  
14 we'll keep thanking you.

15 I also want to thank the hard-working  
16 staff at the CFTC, everyone really, on the many  
17 things we're doing, but particularly Dan  
18 Berkovitz, Terry Arbit, Harold Hardman, and  
19 Carlene Kim. I see Ananda is also going to be  
20 with us chatting about some things for preparing  
21 the recommendations that we'll hear today.

22 This is a complex area and I think that

1       they've drafted a proposal that appropriately  
2       addresses the issues. But with all that else is  
3       going on here, I know that it's short notice, and  
4       I thank my fellow Commissioners to -- somewhat  
5       putting up with that because it is -- certainly we  
6       probably all prefer to have had this six or eight  
7       weeks ago, but I think they've found the right  
8       balance here.

9               I welcome members of the public, market  
10       participants, members of the media to today's  
11       meeting, as well as welcoming those listening to  
12       the meeting on the phone and watching live  
13       webcast. The proposed order, as well as fact  
14       sheets and Q&A documents will be posted on our  
15       website shortly.

16              Now I intend to support the proposed  
17       order regarding the effective dates of certain  
18       Dodd-Frank provisions. The Dodd-Frank Act has a  
19       deadline of 360 days after enactment for  
20       completion of the bulk of the rulemakings.  
21       There's some that were other dates, importantly,  
22       position limit rules. But the bulk are July 16,

1 2011.

2 But both the Dodd-Frank Act and the  
3 Commodity Exchange Act give the CFTC flexibility  
4 and authority to address issues related to  
5 effective dates of Title VII and we've coordinated  
6 closely on the SEC on these issues.

7 More specifically, there's a section of  
8 the Act, Section 754, that says that the  
9 provisions related to swaps in Subtitle A provide  
10 for those regulations to take effect 360 days  
11 after the date of enactment or to the extent the  
12 provision requires a rulemaking, not less than 60  
13 days after publication of the final rule and  
14 implementation in line with that.

15 Thus, those provisions that require  
16 rulemaking will not go into effect until the CFTC  
17 finalizes the respective rules. And that's the  
18 substantial portion, maybe even the majority of  
19 provisions require rulemaking. And they'll only  
20 go into effect based upon the phased  
21 implementation that this Commission is still  
22 considering in terms of final rulemaking.

1           But there are provisions of the Act that  
2 do not require rulemaking that may go into effect  
3 on July 16th. And the proposed order that we're  
4 considering today would provide relief until  
5 December 31, 2011, on when the definitional  
6 rulemakings become effective, whichever is sooner.  
7 So there's a set of definitional rules, swap, and  
8 swap dealer, and so forth. Until those are  
9 finalized, other parts of the Act have some  
10 ambiguity of course.

11           The proposed order also addresses relief  
12 through December 31st of this year from certain  
13 Commodity Exchange Act requirements that come from  
14 the repeal of provisions. And the staff will go  
15 through those repealed provisions and how we're  
16 granting relief from that.

17           There have been suggestions to delay  
18 implementation of the derivatives reforms included  
19 in the Dodd-Frank Act. That's really not what  
20 today's proposed order is about. Instead it  
21 provides the time necessary for the Commission to  
22 complete its rulemaking and to continue to work

1 with the public and their other regulators.

2 Now some might ask why six months. Six  
3 months will provide the Commission with the  
4 opportunity to reexamine the status of final  
5 rulemaking in light of the changed regulatory  
6 landscape at the time.

7 It would be my hope that we can complete  
8 many of the rules within this six months, maybe  
9 even most of the rules in this six months. But  
10 there will be a changed regulatory landscape and  
11 we can reassess it at the time. And if  
12 appropriate at that time, but only if appropriate,  
13 we can tailor relief to the provisions that still  
14 were outstanding that we need to consider.

15 It's important to note, however, that  
16 until the CFTC completes its rulemaking process  
17 and implements and enforces the rules, the public  
18 remains unprotected. The proposed order will open  
19 -- will be open for public comment as well.

20 So if there's something that you think  
21 that we've missed, please let us know. It's going  
22 to be a short window of 14 days of public comment

1 from the time it's in the Federal Register, which  
2 I suspect will take a few days, and that it's our  
3 hope, and I believe that we will be able to  
4 finalize an order before the July 16th date. So  
5 before we hear from staff, I'd like to turn it  
6 over to Commissioner Dunn.

7 COMMISSIONER DUNN: Thank you, Mr.  
8 Chairman, and thank you all for joining us today  
9 for another meeting of the Dodd-Frank Act. To  
10 date the Commission has issued over 50 advanced  
11 notices of the proposed rulemaking, 2 interim  
12 final rules, 1 final rule, 1 proposed interpretive  
13 rule.

14 This has been the most transparent  
15 rulemaking process that I've been involved with in  
16 over 20 years of rule writing. The sheer amount  
17 of information that staff has reviewed, the  
18 meetings they have had, the questions they have  
19 answered regarding Dodd-Frank could only be  
20 described as monumental. Yet staff has completed  
21 all of this work while simultaneously continuing  
22 their pre Dodd- Frank duties.

1           The qualities of the rules have been so  
2 far in the facts that the market are regulated,  
3 have continued to operate efficiently and  
4 effectively as a testament to the quality of the  
5 staff we have at the CFTC and I thank them all for  
6 the work they've done and are continuing to do.

7           Many have said that our agency is moving  
8 too fast to implement Dodd-Frank. They claim we  
9 have not given them enough time to comment and  
10 that we have not given ourselves enough time to  
11 fully appreciate the effects of the rules we are  
12 writing will have on the market, soon to be under  
13 our jurisdiction.

14           An equal number of individuals are  
15 claiming that we are moving much too slow with the  
16 rulemaking process. They claim that anything less  
17 than strict adherences to the congressionally  
18 imposed deadlines with Dodd-Frank is a failure.

19           Given our level of staffing, I believe  
20 we are moving at a pace that ensures that the  
21 rules are written following the intent of  
22 Congress, are responsive to the comments of the

1 American public, and based upon sound and  
2 fundamental market principles.

3           If we were to move slower, I fear that  
4 unnecessary delay may leave the country vulnerable  
5 to another financial crisis. If we were to move  
6 faster, I doubt the quality of written rules would  
7 continue to remain as high level as I have become  
8 accustomed to receiving from our staff.

9           Regarding today's meeting, once again, I  
10 think it's a testament to Chairman Gensler and the  
11 transparent nature of the process he has overseen.  
12 The staff, together with market participants and  
13 users, were unable -- were able to identify issues  
14 with the July 16th date and develop an effective  
15 way to ensure that. Until our rules are  
16 completed, market users will continue to have the  
17 ability to effectively use derivatives as risk  
18 mitigation instruments.

19           The proposed exemptive reliefs have a  
20 sunset provision of December 31, 2011, that I  
21 strongly support. While others may argue that the  
22 market requires certainty, there is no way that we

1 will meet this date. I believe these fears are  
2 unfounded.

3 The sunset provision sets an ambitious,  
4 but achievable, goal for completion of Dodd-Frank  
5 rulemaking. And I believe that the Commission and  
6 staff should be held accountable for providing  
7 needed certainty to the markets and the public by  
8 that date. Should we not finish by December 31st,  
9 it is nonetheless appropriate and prudent to  
10 periodically review the extent and scope of relief  
11 provided from the CEA and to then tailor that  
12 relief to the Dodd- Frank and implementation  
13 schedule.

14 We will know more about the full mosaic  
15 of the rules by December and -- that we know now.  
16 And that knowledge will help us fashion additional  
17 exemptive relief if needed. A more personal  
18 reason is that it is likely I will no longer be a  
19 Commissioner by that date. I believe that my  
20 successor should have a voice in establishing the  
21 policy governing the CFTC at that time.

22 Regardless, today's proposed order will

1 not affect the Commission's ability to provide  
2 further relief to prevent undue disruption or cost  
3 to market participants. Again, I would like to  
4 thank the staff of the CFTC for all of their hard  
5 work on these very important proposed rules and I  
6 look forward to their presentations.

7 CHAIRMAN GENSLER: Thank you,  
8 Commissioner Dunn. Commissioner Sommers.

9 COMMISSIONER SOMMERS: Thank you, Mr.  
10 Chairman. Good morning. Today we are dealing  
11 with an issue of great importance to me:  
12 Providing some certainty to swap market  
13 participants concerning the status of their swaps  
14 transactions on July 16th, the general effective  
15 date of Dodd-Frank.

16 First let me say that I intend to vote  
17 for this relief because I believe the markets need  
18 guidance from the Commission as soon as possible,  
19 but I do so reluctantly. The legal provisions  
20 added by the CFMA in 2000 were critical to market  
21 participants. And I believe that by passing  
22 Dodd-Frank and repealing those provisions of the

1 CFMA, Congress in no way intended to decrease the  
2 confidence in the markets. Yet that is what has  
3 happened.

4 For months I have been talking about the  
5 legal uncertainty that would arise on July 16th  
6 and I've said that the Commission needed to act  
7 sooner rather than later. Market participants  
8 have said the same thing. Instead of acting  
9 sooner, we are acting later even though we have  
10 all known for months that despite our best  
11 efforts, regulations implementing the new  
12 regulatory regime would not be finalized and  
13 effective by July 16th.

14 As a result of waiting until the last  
15 minute, we have needlessly allowed uncertainty to  
16 mount among market participants. As an example,  
17 it has been reported to me that as a result of the  
18 uncertainty surrounding the applicability of  
19 business conduct standards for swap dealers, some  
20 swap dealers have already informed their pension  
21 fund swap counterparties that as of July 16th,  
22 they will no longer be able to act as

1 counterparties to pension funds.

2 DCOs are wondering if they are required  
3 to have chief compliance officers in place. This  
4 kind of ambiguity is not acceptable. I recognize  
5 that because the Commission waited so long to  
6 issue this proposal, we have no time to spare. I  
7 am optimistic that the proposal we have before us  
8 today will answer all of the pending questions and  
9 concerns regarding how agreements will be treated  
10 after July 16th.

11 The objective should be to craft relief  
12 that is not confusing or convoluted and that can  
13 clearly allow swap market participants to continue  
14 operating as they are today and have been since  
15 2000. If that is not what we have accomplished,  
16 then I fear we will be inundated with critical --  
17 excuse me, comment letters and the process of  
18 finalizing the exemptive relief will be very  
19 difficult for us to resolve in one month.

20 In my view, we should utilize the  
21 grandfather relief as Congress intended by  
22 grandfathering 2(h) and 5d markets for one year

1 and fill the remaining gaps with clear and concise  
2 4c relief. Where 4c relief is not possible, my  
3 preference would be to issue some form of  
4 Commission action rather than no action relief  
5 from staff.

6 The current approach, along with its  
7 expiration less than six months after July 16th,  
8 is not ideal. If we are intent on allowing this  
9 relief to expire on December 31st, we should -- if  
10 we are not intent on allowing this relief to  
11 expire, we should commit now to a Commission  
12 meeting on Tuesday, November 1st, to propose  
13 whatever continuing relief is necessary so that we  
14 do not again rush to provide market certainty at  
15 the very last minute.

16 Before I conclude, I would like to  
17 address two additional issues. First, legal  
18 uncertainty among market participants has not been  
19 limited to the issues surrounding July 16th.

20 Legal uncertainty is mounting in the area of how  
21 the Commission views the extra territorial  
22 application of its new authorities under

1 Dodd-Frank.

2           Despite many requests to clarify our  
3 view, we have said woefully little on the topic.  
4 And the questions we ask in the registration  
5 proposal, in my mind, do not answer many of the  
6 important questions. My office has been working  
7 internally to promote conducting a round table on  
8 extra territoriality issues.

9           Unfortunately, we have not set a date  
10 yet. But I'm hopeful that this will be another  
11 topic that interested parties will be willing to  
12 participate in to share views and offer us their  
13 suggestions. I believe we have an obligation to  
14 address these important issues before the  
15 Commission begins to finalize our proposals  
16 implementing Dodd-Frank.

17           Second, as we vote today to set meeting  
18 dates over the next several months, I again ask  
19 that we establish a schedule for finalizing rules  
20 that make sense and allow staff and the Commission  
21 to fully consider input from commenters and input  
22 from each other and allows the Commission to fully

1 consider the provisions of each rule before we  
2 cast our votes.

3 I believe it is irresponsible for us to  
4 calendar five to seven final rules per meeting.  
5 We need the opportunity to consider every single  
6 issue included in each rule and think about the  
7 implications very carefully.

8 If we do not, I think we'll be doing a  
9 disservice to the critical markets, and market  
10 participants, and to the American public. I want  
11 to thank the team, and OGC, and all of the  
12 Commission staff for the hard work they've put in  
13 to this order today and I look forward to the  
14 discussion.

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

17 COMMISSIONER O'MALIA: Thank you, Mr.  
18 Chairman. As the other Commissioners have  
19 discussed, we are here voting today to decide an  
20 issue that has been at the forefront of every  
21 market participants' mind, namely what happens to  
22 my business on July 16th. What makes the 16th so

1 important? That is the date certain provisions of  
2 Dodd- Frank take effect. These provisions include  
3 repeal of the CEA exemptions and exclusions for  
4 transactions and exempt and excluded commodities  
5 on which many market participants currently rely.

6 But on that date, market participants  
7 have no practical way to comply with the  
8 Dodd-Frank provisions. Specifically, the  
9 Commission has yet to issue a final rulemaking on  
10 key definitions such as swap or swap dealer. The  
11 Commission has yet to complete the regulatory  
12 framework for swap execution, including the SEF  
13 definition.

14 Given this situation, it is  
15 understandable that the market participants have  
16 requested, again and again, that the Commission  
17 provide clarity and certainty that their current  
18 practices would continue to be acceptable after  
19 July 16th. This need for certainty goes beyond  
20 regulatory certainty. Market participants need to  
21 know their business activities will not expose  
22 them to increased litigation and counterparty risk

1 as well.

2 Today we are voting on a proposed order  
3 that is supposed to provide certainty and clarity.  
4 The proposed order intends to exempt market  
5 participants under CEA Section 4c from complying  
6 with any provision of the Dodd- Frank Act that  
7 references key definitions and from having to  
8 alter the current practices, in light of the  
9 repeal, the CEA exemptions and exclusions.

10 I support the proposal because we are  
11 just one month away from the July 16th deadline.  
12 It is also important that the Commission show  
13 participants that the relief -- the relief that it  
14 is contemplating.

15 I do believe that the relief offered  
16 isn't perfect for the simple reason that it ends  
17 at an arbitrary date of December 31, 2011, even if  
18 the Commission does not finalize key definitions  
19 or swap execution framework before that time.  
20 December 31st is an arbitrary endpoint.

21 First, the Commission has not set forth  
22 the comprehensive sequencing for consideration of

1 the final rulemaking. I'm afraid that setting an  
2 arbitrary date and the proposed order will just  
3 leave markets with the same questions that they  
4 have today. And what will -- what will we have  
5 accomplished? We will be putting a form over  
6 substance for the sake of an arbitrary date. And  
7 how does this benefit the public?

8 Second, I find that the reasons proposed  
9 -- in the proposed order for the arbitrary 31st  
10 date to be unconvincing. First, the proposal  
11 states it is, "appropriate to periodically  
12 reexamine the scope and the extent of any  
13 exemptive relief in order to ensure that the scope  
14 of the relief is appropriately tailored to the  
15 schedule of implementation."

16 This statement seems to suggest that the  
17 Commission has two choices if the requisite  
18 rulemakings do not take effect by December 31st.  
19 One is to extend relief for a second time or, two,  
20 let the exemptive relief expire. I would suggest  
21 that the Commission only has one responsible  
22 choice: To extend the relief until the final

1 rules are implemented instead of focusing on an  
2 arbitrary date that creates market and legal  
3 uncertainty.

4 Second, the proposal states that  
5 limiting exemptive relief is consistent with other  
6 provisions of Title VII. The proposal references  
7 the one year grandfathering provisions available  
8 for persons relying on Sections 2(h) and 5d of the  
9 CEA. I am baffled as to how a one year  
10 grandfathering provision supports limiting  
11 exemptive reliefs to less than one year, namely,  
12 six months based on an arbitrary date.

13 Finally, because the Commission has not  
14 set forth comprehensive implementation schedule  
15 for the final rulemakings, I have a specific  
16 question as to whether, with respect to the  
17 proposed order -- the proposed order builds in  
18 part on existing Part 35 of the Commission's  
19 regulations. But on February 3, 2011, we  
20 published a proposal on the Federal Register that  
21 would revoke Part 35. This proposal is entitled  
22 Commodity Options and Agriculture Swaps.

1           So the proposed order tells the market  
2 participants to rely on Part 35, which we have  
3 already proposed revoking. If we were to give the  
4 market an implementation schedule, as I have  
5 suggested over and over again, things would make a  
6 little more sense.

7           I have drafted an amendment that I will  
8 be offering to extend the relief of the proposed  
9 order until the Commission completes the relevant  
10 rulemaking and the final rulemakings become  
11 effective. This amendment would give market  
12 participants the clarity and certainty that they  
13 have requested. This amendment will also be in  
14 line with the relief contemplated by fellow market  
15 regulators, such as the SEC.

16           I'm also reiterating my call for the  
17 Commission to set forth a comprehensive schedule  
18 for the public -- for a public comment on both,  
19 whether it plans to vote on a final rulemaking and  
20 the order for when the rulemakings will become  
21 effective. A schedule will help the Commission  
22 avoid potential contradictions, like our treatment

1 of Part 35.

2 I hope the Commission will favorably  
3 consider my amendment and my renewed call for a  
4 rulemaking and implementation schedule with an  
5 open mind. As I have stated, even if the  
6 amendment fails, I will support the proposed  
7 order. As Teddy Roosevelt said, "You do what you  
8 can, with what you have, where you are."

9 I welcome public comment on every aspect  
10 of the proposed order, especially with respect to  
11 when the Commission has provided legal certainty  
12 it needs or whether the arbitrary 31st end date  
13 promotes -- or undermines this certainty. Mr.  
14 Chairman, I appreciate you calling this hearing  
15 and moving this as expeditiously as we can. Thank  
16 you.

17 CHAIRMAN GENSLER: Thank you to each of  
18 the Commissioners for your thoughts. And without  
19 further dispatch, Mr. Berkovitz, Mr. Hardman, Mr.  
20 Arbit, Ms. Kim, and -- Ananda, I didn't know you  
21 were going to be up here, but Mr. Radhakrishnan.

22 MR. BERKOVITZ: Good morning,

1       Commissioners. First, I would like to thank all  
2       of the members of the OGC Team that have worked  
3       very hard on this order: Harold Hardman, Terry  
4       Arbit, Carlene Kim, Neil Kumar, Sue McDonagh, and  
5       Mark Higgins. I also would like to thank the  
6       divisions for their helpful comments and support  
7       on this project.

8                 The proposed order before you today  
9       clarifies how the Commodity Exchange Act will  
10      apply to swaps as of July 16, 2011, the general  
11      effective date of Title VII of the Dodd-Frank Act.  
12      As you noted, Section 754 of the Dodd- Frank Act  
13      provides that unless otherwise provided,  
14      provisions of the Act that require a rulemaking  
15      are effective no sooner than the earlier of 60  
16      days after the rulemaking is completed or 360 days  
17      after enactment, which is July 16th.

18                Many provisions fall into this category.  
19      Although the Commission has issued proposed rules  
20      to implement these provisions, these rulemakings  
21      will not be completed by July 16th. Examples of  
22      such provisions include the registration of swap

1 dealers and major swap participants, margin and  
2 capital requirements for swap dealers and major  
3 swap participants, and external business conduct  
4 standards for the same.

5           Because the provisions will not become  
6 effective until the rulemakings have been  
7 completed and implementing dates established, the  
8 proposed order does not include relief from these  
9 provisions. We have provided the Commission, and  
10 the Commission is publicly releasing on its  
11 website, a list of provisions that require a  
12 rulemaking.

13           Provisions that do not require a  
14 rulemaking are effective on the general effective  
15 date. Thus, certain provisions of the Dodd-Frank  
16 Act will become effective immediately on July  
17 16th, while others will be phased in over a period  
18 of time. The proposed order before the Commission  
19 would provide clarity to market participants and  
20 the public regarding which provisions of the CEA,  
21 as amended by the Dodd-Frank Act, will apply  
22 during this transition and those which will not.

1           The draft proposed order proposes to  
2 grant exemptive relief in two parts. Part one of  
3 the draft order proposes to address provisions  
4 that will go into effect on July 16th, but that  
5 reference terms such as swap, swap dealer, major  
6 swap participant, or eligible contract  
7 participant, that the Dodd-Frank Act requires the  
8 Commission and the Securities Exchange Commission  
9 to jointly further define. These definitional  
10 rulemakings will not be in place by July 16th.

11           Accordingly, the draft order proposes to  
12 temporarily exempt persons or entities from  
13 complying with these provisions until the earlier  
14 of the effective date of the definitional  
15 rulemaking for such terms or December 31st. The  
16 exemption would apply only to the extent the  
17 provisions specifically relates to entities or  
18 instruments such as swap, swap dealers, major swap  
19 participants, and eligible contract participants.

20           Part two of the draft order proposes to  
21 address provisions of the Commodity Exchange Act  
22 that will or may apply to certain transactions and

1 exempt or excluded commodities, which are  
2 primarily financial commodities, energy, and metal  
3 commodities, as a result of the repeal of various  
4 CEA exemptions and exclusions as of July 16th,  
5 specifically, Commodity Exchange Act Sections  
6 2(d), 2(e), 2(g), 2(h), and 5d, as well as the so  
7 called line of business provision that was  
8 originally provided in the Swaps Policy Statement.

9           Although Part 35 of the Commissions  
10 Regulations is still available to provide  
11 exemptive relief upon this date, Part 35 does not  
12 cover certain of these transactions. The proposed  
13 relief would cover these additional transactions,  
14 such as those entered into by eligible contract  
15 participants, standardized transactions, clear  
16 transactions, and transactions traded on trading  
17 facilities.

18           The Commission is proposing to  
19 temporarily exempt such transactions until the  
20 repeal or replacement of certain of the  
21 Commission's regulations or December 31st,  
22 whichever is earlier.

1           The proposed exemptive order would be  
2 issued under Section 712(f) of the Dodd-Frank Act,  
3 which specifically authorizes the Commission to  
4 issue exemptive orders in preparation for the  
5 effective date of the Dodd- Frank Act and Section  
6 4c of the CEA, which provides the Commission with  
7 exemptive authority for many provisions of the  
8 CEA.

9           As required by Section 4c, if approved  
10 by the Commission, the proposed order would be  
11 subject to a period of notice and comment. The  
12 proposed order provides for a 14-day public  
13 comment period. This would provide the Commission  
14 and staff time to analyze the public comments and  
15 issue a final order as appropriate prior to the  
16 July 16th effective date.

17           The proposed order does not provide  
18 relief from all of the provisions of the CEA that  
19 will become effective on July 16th. The staff is  
20 also provided a list of those provisions for which  
21 relief is not being provided and this will also be  
22 on the Commission's website.

1           Examples of such provisions include the  
2           core principles for designated contract markets,  
3           the core principles for derivatives clearing  
4           organizations, and the prohibition on certain  
5           disruptive trading practices.

6           There are a few provisions in the CEA  
7           that will apply as of the effective date and for  
8           which the Commission does not have authority to  
9           issue exemptive relief. The staff is considering  
10          whether to issue a no action relief from these  
11          provisions.

12          Before concluding, I would also like to  
13          highlight several limitations on the scope of the  
14          proposed relief. First, the draft order does not  
15          provide relief from the Commission's anti-fraud  
16          and anti-manipulation authorities. Second, the  
17          draft order does not affect any Dodd-Frank Act  
18          implementing regulations that the Commission  
19          promulgates, including any implementation dates  
20          therein.

21          Neither part of the proposed order would  
22          affect the Commissions with authority with respect

1 to futures, contracts, options on futures, or  
2 transactions by retail customers and foreign  
3 currency or other commodities. The proposed order  
4 would not apply to any provision of Title VII of  
5 the Dodd-Frank that has already become effective.

6 Fifth, the draft order states that the  
7 proposed relief would not limit the Commission's  
8 authority under Section 712(f) to provide -- which  
9 provides the Commission with authority to engage  
10 in exemptions, rulemakings, and other actions  
11 necessary to prepare for the effective dates of  
12 the provisions of Title VII.

13 In addition, the draft proposed order  
14 would not affect the Commission's ability to  
15 provide further exemptive relief as appropriate  
16 either prior to or after any future event. I'd be  
17 happy to answer any questions; thank you.

18 CHAIRMAN GENSLER: Thank you, Mr.  
19 Berkovitz. Before I ask for a motion on that, I  
20 realize that I traditionally ask for a unanimous  
21 consent that all final votes for proposals be  
22 taken by voice vote -- recorded vote and published

1 in the Federal Register without objection. I  
2 would at this time then entertain a motion on the  
3 staff recommendation on the proposed orders.

4 COMMISSIONER DUNN: So moved.

5 COMMISSIONER SOMMERS: Second.

6 CHAIRMAN GENSLER: With that, I have  
7 just a few questions. First, we'll publish today  
8 on our website what you'd call Category 1 -- or in  
9 the proposal, Category 1 of all of those things  
10 that require rulemaking. Is that correct?

11 MR. BERKOVITZ: That's correct.

12 CHAIRMAN GENSLER: And so the public  
13 would be able to comment on that if they think  
14 that there is ambiguity or any questions or doubts  
15 about what we've put there. Is that right?

16 MR. BERKOVITZ: Yes, Mr. Chairman.

17 CHAIRMAN GENSLER: Okay. And then is it  
18 correct that anything that's on that list only  
19 goes effective when the final rule happens and  
20 whatever implementation phasing that we put in  
21 there?

22 MR. BERKOVITZ: That's correct. Those

1 rulemakings -- there would be a minimum of 60 days  
2 before those rules could be effective and further,  
3 the Commission would establish implementation --

4 CHAIRMAN GENSLER: Right.

5 MR. BERKOVITZ: -- dates for the  
6 requirements and those regulations.

7 CHAIRMAN GENSLER: Right, and we've  
8 benefited to public roundtables with the SEC.  
9 We've had a comment file that was open for about  
10 60 days. The staff put out concepts; we're  
11 considering Commissioner O'Malia's suggestion that  
12 we do more to get more public feedback than we've  
13 already gotten on this.

14 But my question then goes to then  
15 anything that's on that list that we put that's  
16 subject to let's say finalizing the clearing  
17 rules, or the SEF rules, or the business conduct  
18 rules, et cetera, necessarily has to wait until we  
19 finalize that rule. Is that right?

20 MR. BERKOVITZ: That's correct. There's  
21 nothing in any of those proposals --

22 CHAIRMAN GENSLER: So basically there's

1 no December 31st deadline on that necessarily.  
2 What we've put the December 31st on is this  
3 exemptive relief on things that might be  
4 self-executing or self-effective in this statute.

5 MR. BERKOVITZ: That -- that's correct.

6 CHAIRMAN GENSLER: Okay. My other  
7 question is, without speaking for the SEC, but can  
8 you just share with the public and us your  
9 coordination with the SEC on this?

10 MR. BERKOVITZ: If -- we've had -- as  
11 we've had, and CFTC staff has on many of the  
12 Dodd-Frank rulemakings, consulted and coordinated  
13 with our colleagues on the staff of the SEC, we've  
14 been discussing this issue with them for quite  
15 some time and discussing our proposed approach  
16 with them and they've shared their proposed  
17 approach with ours at the staff level.

18 I would also add, also consistent with  
19 the direction in the Dodd-Frank, that Congress  
20 provided for consultation and coordination with  
21 other prudential regulators, we have also reached  
22 out to the other prudential regulators and done

1 consultation coordination with them as well.

2 CHAIRMAN GENSLER: And I understand you  
3 actually did a briefing for the FSOC deputies last  
4 week on this?

5 MR. BERKOVITZ: That's correct, we  
6 briefed the Financial Stability Oversight Council  
7 deputies on this issue last week and the SEC,  
8 also, at that time.

9 CHAIRMAN GENSLER: And then my last  
10 question is related to the no-action relief. As I  
11 understand it, though we have this exemptive  
12 relief in Dodd-Frank, Congress did put some  
13 limitations -- even if they're modest, but there  
14 are some limitations -- that we would be -- staff  
15 would be doing a no-action letter. Would that  
16 also be posted on our website so that people could  
17 have a look at that and so forth?

18 MR. BERKOVITZ: We could do that. We  
19 could do that, Mr. Chairman.

20 CHAIRMAN GENSLER: I think that would be  
21 good for transparency. I think that would be very  
22 helpful.

1 Commissioner Dunn.

2 COMMISSIONER DUNN: Thank you, Mr.  
3 Chairman. The only question I have is the one  
4 that my colleague, Commissioner O'Malia brought  
5 up, is when we do repeal Part 35? And we're  
6 saying in here that there's going to be a  
7 continuation of the Part 35 when that final  
8 regulation comes up. Would that issue be  
9 addressed at that time in that final regulation?

10 MR. BERKOVITZ: Presumably yes,  
11 Commissioner, that the proposed regulation, the  
12 Commission would have several options: Either not  
13 issue the final regulation because of the -- it  
14 would entail a repeal of Part 35 or,  
15 alternatively, the Commission could issue the  
16 final regulation, but not make effective the  
17 repeal of Part 35 for however long as the  
18 Commission determined that Part 35 should remain  
19 in effect. So the Commission retains full options  
20 to retain Part 35 however long is necessarily  
21 within that rule and even if that rule is  
22 effective.

1                   COMMISSIONER DUNN: Mr. Chairman, I was  
2 remiss in my opening statement not to recognize  
3 Commissioner Sommers and her bringing to our  
4 attention the need to address this issue and I  
5 greatly appreciate it.

6                   She has brought it up two or three  
7 public meetings ago and her staff has -- and she  
8 have been the clarion call on getting this done.  
9 And I've been frustrated, as have other members of  
10 the Commission, on not having a list. If I know  
11 it, a number of our senior staff meetings, I --  
12 where is the list?

13                   I want to know which ones are being  
14 effective. That, to me, is symptomatic of not  
15 having enough staff for us to be able to do the  
16 regulations on a timely basis. And I'm reminded  
17 back when I was in the service, we had a saying  
18 when you're up to your backside in alligators,  
19 it's hard to remember that you're there to drain  
20 the swamp. I've cleaned that up a little bit, Mr.  
21 Chairman. But these are some of the alligators  
22 that are biting our backsides here and we have to

1 drain the swamps. We have to make sure that we  
2 correct our financial services industry so we  
3 don't have a meltdown that we've had before.

4 I think we're going to run into these  
5 types of issues from time to time. That's why  
6 I've long advocated sunset provisions on  
7 regulations that we're proposing, at least giving  
8 everyone -- putting everyone on notice that we're  
9 going to review these to make sure that we don't  
10 have any unintended consequences.

11 And Mr. Chairman, when I went to you  
12 earlier on and said please put in a sunset  
13 provision, that is exactly what I had in mind. I  
14 think we need to hold the Commission's feet to the  
15 fire to get these final regulations out there.

16 I'm reminded of the no-action letters  
17 that were out there for 10, 20 years that staff  
18 was no longer even aware of. And it was one of  
19 the initiatives that you put in place when you  
20 became chairman of the "Clean Plate Agenda," I  
21 believe you called that, where you went in and  
22 took a look at those and said this doesn't make

1 any sense to us.

2           There are no-action letters out there  
3 that should be revoked or at least addressed in a  
4 regulation and I appreciate that activity going  
5 on. I think it is imperative that we have a  
6 deadline over us to work as hard as we can to get  
7 these finalized. And that to me would be the  
8 ultimate legal certainty that the industry is  
9 looking for.

10           CHAIRMAN GENSLER: I thank you,  
11 Commissioner Dunn, for your compliments. You  
12 better watch it, we might be calling this the Dunn  
13 Sunset. But it was Commissioner Dunn who first  
14 suggested it, so I thank you.

15           Commissioner Sommers.

16           COMMISSIONER SOMMERS: Thank you, Mr.  
17 Chairman. I think I'll follow up on that last  
18 subject matter that Commissioner Dunn was talking  
19 about with the sunset provision because we have  
20 not finalized key definitions, we're in this  
21 place.

22           And so my understanding of a tentative

1 schedule for us finalizing rules, we may have  
2 entity definitions at the top of our list, but  
3 product definitions, because the comment period  
4 doesn't close until mid to late July, I think it's  
5 the 22nd, July 22nd. It is calendared for a later  
6 time in the fall.

7 I think that it -- we could avoid having  
8 an issue with the sunset provision if there's a  
9 way for us to have both entity and product  
10 definitions finished at the top of the list. So I  
11 guess my question is, is that possible for us to  
12 do? Can we get with the SEC to finalize the  
13 definitions, both of entities and products, at the  
14 beginning of the list so that we don't run into  
15 having a final rule on the definition of swap  
16 that's not finished by December 31st and having to  
17 extend this relief.

18 MR. BERKOVITZ: We have been closely  
19 coordinating with the SEC on -- not only on the  
20 substance of rulemakings, but the schedule of  
21 rulemakings. And we're working very closely with  
22 them to go to the final stage on these



1 things they're working on, you know, rating  
2 agencies, and a lot of other topics so that, you  
3 know, is part of what the challenge for both of  
4 our Commissions are. But I think we're aligned  
5 and maybe we can get it over the line with the SEC  
6 and it's just a lot of staff work, obviously,  
7 depending upon how many comments we've got.

8 COMMISSIONER SOMMERS: Well, obviously  
9 that's my preference and I think that it could  
10 help us avoid some of the issues with this sunset  
11 provision if that were doable. With regard to the  
12 order, we state up front in the order that we are  
13 issuing this notice of proposed order and request  
14 for comment to provide greater clarity regarding  
15 the applicability of various statutory and  
16 regulatory requirements. Will market participants  
17 be able to identify which provisions of the CEA  
18 are the subject of the relief being proposed  
19 today?

20 MR. BERKOVITZ: I believe so. That is  
21 the intent. The market -- we've provided a list  
22 of, as the Chairman has described -- and we've

1 used Category 1 provisions, which are the  
2 provisions in Dodd-Frank that require rulemaking  
3 and, therefore, will not be effective until those  
4 rulemakings are complete.

5 We have provided a list of provisions  
6 for which we are not granting relief. We are  
7 providing relief for provisions in the Act which  
8 specifically reference swaps and swap entities,  
9 and these definitional items so people can look  
10 and determine whether or not there's one of those  
11 terms and referenced and therefore whether there's  
12 relief.

13 On the repeal of the CFMA provisions  
14 that were added, the scope of the relief that  
15 we're providing is essentially the same as the  
16 scope of the relief under current law and that's a  
17 general type of relief rather than a specific  
18 relief. So it is basically market participants  
19 who can understand what they are exempt from now  
20 will understand the scope of this proposed order  
21 exemption.

22 COMMISSIONER SOMMERS: I hope that

1       that's right. I mean, I wanted to make it clear  
2       that our intent here today is to make sure that  
3       market participants have a very clear  
4       understanding of what this relief applies to. So  
5       the goal here is to make this extremely clear.

6                   MR. BERKOVITZ: That was certainly the  
7       intent in drafting this and in categorizing this  
8       way and people could figure out which category of  
9       regulation they're in and, therefore, whether  
10      relief would or would not apply. As was noted in  
11      the opening remarks, part of the purpose of ht  
12      comment period is to see whether we got it right.  
13      And so we're looking forward to comments.

14                   I know -- and we provided this to the  
15      divisions and many of the -- much of the material  
16      you'll hear -- you'll see in the order is a result  
17      of the process within the Agency of trying to get  
18      it right and trying to identify all of the  
19      relevant provisions and ensure that we did. So we  
20      welcome the comment period for that purpose.

21                   COMMISSIONER SOMMERS: I have a number  
22      of additional questions and my objective here is

1 to not confuse everyone in the audience or people  
2 listening, but to make some of these issues much  
3 -- or answer questions that maybe someone would  
4 have.

5 I'm going to start with Footnote 16.  
6 And Footnote 16 refers to areas where the  
7 Commission does not have authority to use 4c  
8 exemptive authority and mentions that staff is  
9 issuing -- considering issuing no-action relief.  
10 And as I said in my opening statement, I actually  
11 have a preference for some other sort of relief  
12 besides relief issued by staff.

13 So my question is, does the Commission  
14 have authority in these areas, other than 4c  
15 authority, such as issuing a policy statement or  
16 Commission guidance? And then what would, you  
17 know, what in your opinion would provide the most  
18 clarity to market participants?

19 MR. BERKOVITZ: In addition to the staff  
20 no- action relief, the Commission itself could  
21 also indicate determination of whether or not it  
22 would take enforcement action against -- for

1 violation of these provisions. The no action  
2 relief does not necessarily have to be issued by  
3 the staff. The Commission retains the authority  
4 to do it itself.

5 Traditionally, there are pros and cons  
6 of doing it -- staff no-action versus a Commission  
7 no-action -- which -- so there's pros and cons of  
8 doing it each way. In different circumstances one  
9 could do one or the other.

10 COMMISSIONER SOMMERS: Okay. So we're  
11 not bound to issue staff no-action relief?

12 MR. BERKOVITZ: No, the Commission could  
13 take similar action itself.

14 COMMISSIONER SOMMERS: Okay. Within  
15 that same footnote --

16 MR. BERKOVITZ: I would clarify that it  
17 wouldn't -- we would have to be careful not to  
18 wade into the area that it's exemptive relief  
19 because the statute says we can't give exemptive  
20 relief, so the Commission would have to be a  
21 little careful in how it would do that.

22 COMMISSIONER SOMMERS: So would

1 Commission guidance be issuing exemptive relief?

2 MR. BERKOVITZ: We could work on  
3 providing the options in that area --

4 COMMISSIONER SOMMERS: Okay.

5 MR. BERKOVITZ: -- to see how we could  
6 thread that needle.

7 COMMISSIONER SOMMERS: Okay. On the  
8 same footnote, this is with regard to the  
9 anti-fraud and anti- manipulation provisions,  
10 including CEA Section 4b to cover swaps. And the  
11 footnote says that although these provisions,  
12 therefore, would, under the proposed relief, not  
13 apply to swaps under the Dodd-Frank Act because  
14 that term is subject to further definition,  
15 nevertheless they will apply to all transactions  
16 other than swaps, including but not limited to  
17 futures, contracts, options on futures contracts,  
18 transactions with retail customers and foreign  
19 currency, or other commodities pursuant to CEA  
20 Section 2(c)2.

21 The last part of this refers to  
22 transactions subject to exemptive relief pursuant

1 to Part 2 of the proposed order. Can you explain  
2 what transactions subject to exemptive relief  
3 pursuant to Part 2 of the proposed order would  
4 cover?

5 MR. BERKOVITZ: This would cover  
6 basically the type of agreements, contracts, and  
7 transactions that are covered in -- within Part  
8 35. So if an agreement or contract or transaction  
9 is -- would fall under the Part -- current Part 35  
10 or the scope of relief that we're providing, which  
11 does not have the same type of limitations as Part  
12 35. In other words they could be clear, they  
13 could be standardized. They'd be entered into by  
14 eligible contract participants, those agreements,  
15 contracts, or transactions. The ANTI-MANIPULATION  
16 AUTHORITY AND ANTI- FRAUD AUTHORITY would apply to  
17 those types of agreements, contracts, or  
18 transactions.

19 COMMISSIONER SOMMERS: Okay. Moving on  
20 to our ability to issue grandfather relief, I  
21 think that Congress gave us the ability to provide  
22 grandfather relief to both 2(h) and 5d markets.

1 And I've talked about this before about whether or  
2 not grandfather relief provides any other relief  
3 that we are not providing today.

4 And I just would like to hear your  
5 comments on whether the relief issued under this  
6 proposed order and the proposed grandfather relief  
7 for 2(h) and 2(d) would be the same or are there  
8 any differences there?

9 MR. BERKOVITZ: We believe that for the  
10 time -- apart from the time period difference at  
11 -- in terms of the December 31st date or the  
12 length of the period that -- within the time  
13 period covered, that this order provides the same  
14 relief from applications of the Commodity Exchange  
15 Act that the grandfather relief would provide.

16 COMMISSIONER SOMMERS: There's also a  
17 footnote that says that nothing in this proposed  
18 order is intended to impact the availability of  
19 grandfather relief. So I'm just wondering are we  
20 contemplating that after we issue this order, that  
21 at some point somebody could be granted  
22 grandfather relief?

1           MR. BERKOVITZ: This footnote was  
2 intended that if you have grandfather relief  
3 already, this does not place -- displace what you  
4 already have. So though -- to the extent that  
5 we've already granted grandfather relief for  
6 certain of the 2(h), three through five  
7 transactions, and the 5d transactions, that relief  
8 would continue in effect.

9           COMMISSIONER SOMMERS: So I guess that's  
10 what I'm confused about. I didn't know that we  
11 had already granted grandfather relief.

12           MR. BERKOVITZ: We had granted  
13 grandfather relief -- we've granted exemptive  
14 relief for two classes of transactions: Those of  
15 the exempt commercial markets and the exempt  
16 boards of trade back in the fall. The 2(h), three  
17 through five provisions, and the 5d provisions, we  
18 do have grandfather relief in place for those.

19           At the same time, the Commission  
20 determined that it would -- at that time it would  
21 not issue grandfather relief for the 2(h)1 or two  
22 transactions, which are the ones that are not

1 taking place on exempt commercial markets.

2 COMMISSIONER SOMMERS: So anyone that  
3 sent in a petition under our request for those  
4 petitions, they've been issued Grandfather Relief?  
5 I was under the impression that we had --

6 MR. BERKOVITZ: Some --

7 COMMISSIONER SOMMERS: -- received  
8 thousands.

9 MR. BERKOVITZ: Some have and some  
10 haven't.

11 COMMISSIONER SOMMERS: Oh.

12 MR. BERKOVITZ: Certain -- we granted  
13 grandfather relief for certain of the petitioners,  
14 but not others. And to the extent that we granted  
15 relief, it wasn't limited to the actual people who  
16 petitioned.

17 CHAIRMAN GENSLER: Carlene, why don't  
18 you just take them --

19 MS. KIM: Okay. Let me just clarify the  
20 general counsel's statement on the nature of the  
21 grandfather relief that was issued back in  
22 September. The grandfather relief that we issued

1 in September extended to the facilities  
2 themselves. So that would be the ECMs and EBOTs  
3 and not necessarily the transactions or the market  
4 participants trading thereon.

5 COMMISSIONER SOMMERS: I thought that  
6 the petition said that you had to have a pending  
7 DCM or SEF application in order to be granted  
8 relief?

9 MS. KIM: The grandfather order that we  
10 issued back in September lists a number of  
11 conditions that must be continually met by the  
12 ECMs and EBOTs to be able to rely on the  
13 grandfather relief and the condition that you just  
14 cited is one of them.

15 COMMISSIONER SOMMERS: So do people have  
16 SEF applications pending?

17 MS. KIM: I think David could help --

18 COMMISSIONER SOMMERS: Sorry.

19 CHAIRMAN GENSLER: David, why don't you  
20 take -- David Van Wagner, who's the chief counsel  
21 for the Division of Market Oversight.

22 MR. VAN WAGNER: Sorry Ananda. Yeah,

1 one of the conditions was that when the SEF rules  
2 or the DCM rules -- oh, thank you -- come into  
3 place, that within 60 days of the effective date  
4 of the SEF or the DCM rules, they'd have to have  
5 an application here and it would have to remain  
6 pending. So until such time as that condition is  
7 possible, I would say that they are -- they can't  
8 fail that condition of the relief, so.

9 COMMISSIONER SOMMERS: As long as  
10 they're meeting all of the other conditions --

11 MR. VAN WAGNER: Right.

12 COMMISSIONER SOMMERS: -- then we  
13 granted them the relief?

14 MR. VAN WAGNER: And at this point,  
15 really the only thing that they could have done  
16 for 2(h)3 markets is gotten their petition here in  
17 time, which was back in the fall and then actually  
18 EBOTs can continue to file a relief petition up  
19 until July 16th. That's just a quirk of Dodd-  
20 Frank.

21 COMMISSIONER SOMMERS: Okay. So --

22 MR. VAN WAGNER: So technically they

1 still can. So the ECMs that have relief are known  
2 at this point. The EBOTs who have relief will not  
3 be known until -- in totality until July 16th.

4 COMMISSIONER SOMMERS: And there may be  
5 entities that have pending applications that are  
6 operating say under 5d that now have until July  
7 16th to get a petition in?

8 MR. VAN WAGNER: Correct.

9 COMMISSIONER SOMMERS: Okay.

10 MR. VAN WAGNER: And just one other  
11 clarification just to throw in. When you refer to  
12 the thousands of petitions, most of them I would  
13 characterize that the vast majority were requests  
14 for relief from 2(h)1 and the Commission, as part  
15 of their orders back in the fall, indicated there  
16 are, you know, the view that they would -- that we  
17 would not be granting relief, however, at that  
18 time.

19 However, we might, closer to the date of  
20 Dodd- Frank's implementation, i.e., July 16, 2011,  
21 take up this issue and I think that's what's being  
22 done here. And so again, if this is adopted, all

1 of those 2(h)1 parties will get swept up into the  
2 order that's pending before you now.

3 COMMISSIONER SOMMERS: And do you  
4 believe that this is comparable to what they would  
5 have been given in grandfather relief? This  
6 order.

7 MR. VAN WAGNER: Yes, I mean, the only  
8 real discrepancy is that if they had been granted  
9 relief they would have gotten it through July of  
10 2012, so the timing is not, you know, in synch.  
11 But obviously enough, December 30th comes around  
12 and we decide to extend, so.

13 COMMISSIONER SOMMERS: Thank you.

14 MR. VAN WAGNER: Sure.

15 COMMISSIONER SOMMERS: I have a number  
16 of questions with regard to the different types of  
17 categories that we're extending this relief to  
18 that have pending rulemakings. So, for example,  
19 if the DCM core principles are effective before  
20 the rules and guidance are finalized, how is a DCM  
21 supposed to comply? If you look at Core Principle  
22 9, how can a DCM comply with Core Principle 9 as

1 of July 16th, given that the language was changed  
2 in Dodd- Frank? So that's one of the examples.

3 MR. BERKOVITZ: On the DCM, the core  
4 principles could come into effect and, as the  
5 statute provides, the DCMs would have substantial  
6 discretion in determining how to comply with those  
7 core principles in the absence of, or in prior to,  
8 Commission providing further guidance or  
9 interpretation. So it would -- they would have  
10 substantial discretion to determine how to comply  
11 with those requirements.

12 COMMISSIONER SOMMERS: And does that  
13 mean that they should plan to comply with  
14 pre-Dodd-Frank core principles until things like  
15 the chief compliance officer rules are finished?

16 MR. BERKOVITZ: I believe the chief  
17 compliance officer is a specific -- there's no  
18 chief compliance --

19 MR. RADHAKRISHNAN: There's a chief  
20 compliance officer requirement for DCOs. So if  
21 you look at the structure of the statute, the  
22 statute itself lays out certain responsibilities

1 for the chief compliance officer. And these don't  
2 require rulemaking.

3 And then there's one provision which  
4 goes to the annual reports and there the  
5 Commission has proposed rulemaking as to the  
6 contents of the annual reports. So it's staff's  
7 view that if you look at the duties, they're  
8 fairly clear as to what the chief compliance  
9 officer has to do.

10 So that's why this particular provision  
11 is in Category 4. If you look at the sheet that  
12 OGC's provided, which is that they come into  
13 effect because the staff's view that rulemaking  
14 was not required, nor was it dependent on any  
15 other proposal making in order for a DCO to make  
16 sure that somebody was serving as chief compliance  
17 officer.

18 COMMISSIONER SOMMERS: How should a DCO  
19 comply with that provision then? A DCO should  
20 know that they have to have a chief compliance  
21 officer in place by July 16th even though we  
22 haven't laid out the duties yet?

1                   MR. RADHAKRISHNAN:  Actually, I would  
2                   say that the duties are prescribed and so I would  
3                   argue that the DCO should designate an individual  
4                   as a chief compliance officer.  The only thing  
5                   that's not been finalized are the details of the  
6                   annual report that the chief compliance officer  
7                   has to provide.  But as far as everything else --  
8                   I'll just read you the duties.

9                   Report directly to the board or senior  
10                  officer; review the compliance of the DCO with  
11                  respect to corporate (inaudible) described in  
12                  Subsection C2; be responsible for administering  
13                  each policy procedure that's required to be  
14                  established pursuant to the Sections.  I would  
15                  argue these don't require rulemaking.

16                  Now, of course, once the Commission  
17                  finalizes its proposed rules for implementing the  
18                  core principles, then the chief compliance officer  
19                  will be responsible for making sure that the DCO  
20                  complies with these core -- with the regulations.

21                  COMMISSIONER SOMMERS:  Thank you.  And  
22                  one last question on private rights of action.  Do

1       you believe that the proposed relief today  
2       provides protection from any private right of  
3       action claim based on the failure to comply with  
4       the CEA as amended by Dodd-Frank?

5                   MR. BERKOVITZ:  Yes, we do.  We believe  
6       it provides that protection.

7                   COMMISSIONER SOMMERS:  Thank you.

8                   CHAIRMAN GENSLER:  Thank you,  
9       Commissioner Sommers.

10                   Commissioner O'Malia.

11                   COMMISSIONER O'MALIA:  Thank you.  Kind  
12       of following around that line of questioning by  
13       Commissioner Sommers, General Counsel Berkovitz,  
14       what counsel would you give a DCM transacting  
15       swaps going forward?  What set of rules are going  
16       to apply between now and December 31st?  We've got  
17       the core principles that apply, but if they  
18       transact swaps, what should they -- what set of  
19       rules should they use?

20                   MR. BERKOVITZ:  Actually, Commissioner  
21       O'Malia, that's a very good question.  The DCM  
22       transacting swaps question is one we've actually

1       been discussing at the staff level as recently as  
2       very late last night.

3                   And I think that's one we're looking for  
4       some comment on during the comment period and  
5       further discussion here as to exactly what -- how  
6       we would -- whether we would grant full exemptive  
7       relief for a DCM that wants to do swaps. So we  
8       look forward for some input and further thought on  
9       that before we finalize the order.

10                   COMMISSIONER O'MALIA: Thank you. Let  
11       me ask you another question regarding the larger  
12       trader reporting and other reporting and record  
13       keeping requirements applied during the -- how  
14       will all of these requirements apply during the  
15       period of exemptive relief? The proposed order  
16       does not appear to set forth clear guidelines,  
17       whereas I understand the SEC may be considering  
18       this issue in far greater depth. Do you have a  
19       thought on this?

20                   MR. BERKOVITZ: Excuse me, on the  
21       specific reporting --

22                   COMMISSIONER O'MALIA: Large trader

1 reporting, for example.

2 MR. BERKOVITZ: Right. Large trader  
3 reporting, should the Commission issue a final  
4 rule, we would anticipate under this approach in  
5 the proposed order that there would be further  
6 guidance in that particular rule. It's exactly  
7 what the implementation schedule would be for  
8 that.

9 This approach contemplates that as the  
10 Commission issues regulations to implement  
11 Dodd-Frank, either through the definitions  
12 themselves, the definitional rulemakings, or the  
13 substantive requirements that implementation will  
14 be addressed in each of those instances. Whether  
15 one comes before the other, we don't know at this  
16 point.

17 So -- but when we get to the point where  
18 we're issuing rules, we're going to either have a  
19 definitional rule first to be followed by  
20 implementation or an implementation rule followed  
21 by a definition.

22 So the phase-in will have to be

1 addressed in either of those instances, whatever  
2 order we're going. And so the same is true with  
3 large trader reporting. We'll have to provide  
4 greater clarity in the rulemaking itself.

5 COMMISSIONER O'MALIA: Thank you. Can  
6 you -- in reflecting on the proposal rulemaking  
7 here, the staff recommendation, should the market  
8 have any expectation that the Commission will  
9 renew this exemptive authority beyond December  
10 31st if the relevant rules are not in place?

11 MR. BERKOVITZ: I can say as a -- the  
12 intention, as the CFTC staff, we have -- we  
13 believe that the Commission indicated this intent  
14 in the -- when it addressed the grandfather issues  
15 initially, as David was talking about, an initial  
16 order on the grandfather -- the Commission  
17 Statement of Intent to ensure a smooth transition.  
18 If the Commission issues this proposed order and  
19 final order, there would be similar statements of  
20 intent.

21 The Commissioners have expressed that.  
22 I certainly take that intent very seriously and I

1 think the staff intends it as well. So I think  
2 the intent is pretty clear for the -- that the  
3 Commission is -- intends to provide this smooth  
4 transition and those statements of intent are also  
5 reflected in the roundtable, and the phasing, and  
6 of implementation.

7 So I think this is a theme that is  
8 pretty consistent in a number of orders,  
9 roundtables, and forums that the Commission has  
10 issued. So I do think that there is that clear  
11 statement.

12 COMMISSIONER O'MALIA: But it's not  
13 explicitly stated in the proposed rulemaking?  
14 Well, we're working on it. I mean they just have  
15 to -- based on our conversations, et cetera,  
16 they're just going to have to hope that we have an  
17 extension?

18 MR. BERKOVITZ: Well, in terms of  
19 drafting the proposed order, it would -- we didn't  
20 think we could draft a proposal or that would bind  
21 a future Commission that might be in a future  
22 order at that time. Ultimately, the future

1 Commission would make the determination. So we  
2 couldn't give -- go further than we went.

3 COMMISSIONER O'MALIA: Well, I  
4 appreciate that. And before I go to the  
5 amendment, I do want to mention or respond to  
6 Commissioner Dunn and we will now have forever  
7 know it as the "Dunn-set provision" and I will no  
8 longer refer to it as an arbitrary date. It will  
9 be the "Dunn-set Provision."

10 And I appreciate the fact that as he  
11 stated, he wants to hold our feet to the fire.  
12 And one would argue that that's what the Statute  
13 intended us to do and despite our best efforts,  
14 and the staff absolutely working as hard as they  
15 possibly can, and the inventiveness of the  
16 Commission as well, and the hard-charging nature  
17 of the Chairman, we still were not able to meet  
18 the statutory deadlines.

19 So -- and as the Chairman said, this is  
20 not about delay. And I think if we were going to  
21 hold our feet to the fire, the best way to do that  
22 would be to put forward an implementation plan

1       that we can march in order, by each rule, and have  
2       the public do that, understand where we are and  
3       what's coming up next. So I would again make that  
4       plea. But is it now appropriate that I move to  
5       amend the staff recommendation with the following  
6       amendment?

7                   CHAIRMAN GENSLER: Sure, Commissioner.

8                   COMMISSIONER O'MALIA: Well, I make that  
9       motion.

10                  COMMISSIONER SOMMERS: Second.

11                  CHAIRMAN GENSLER: The amendment as I  
12       understand it is to drop the sunset, or the  
13       Dunn-set, or --

14                  COMMISSIONER O'MALIA: The Dunn-set.

15                  CHAIRMAN GENSLER: And so then it is --  
16       I'm told it's debatable and then we can vote on --  
17       I'm not going to support the amendment as offered  
18       by Commissioner O'Malia, but I do appreciate all  
19       of the work that you put into all of what we're  
20       doing, but even this amendment. I think it is  
21       important as Commissioner Dunn said, that we move  
22       forward, we give the markets this relief, but that

1 we take up whatever further relief might be  
2 appropriate at the time knowing what we know then.

3 As Commissioner Sommers said, that may  
4 well be a little bit more time than we have this  
5 time. She suggested, you know, seven or eight  
6 weeks before, eight weeks before rather than --  
7 and in this case it's about five weeks before.  
8 But I think that we'll know a lot more then and I  
9 do think that the American public is still very  
10 much vulnerable.

11 The crisis in 2008 was very real. The  
12 regulatory system failed, Congress reacted, the  
13 President reacted, that this swaps marketplace be  
14 brought with transparency, openness,  
15 competitiveness, and we lower risk. And I think  
16 that our staff is doing an excellent job and will  
17 start to take up some final rules this summer and  
18 into the fall.

19 I agree with Commissioner Sommers, these  
20 definition rules are very important. And then we  
21 can see where we are come, you know, probably  
22 early November. And it would be my hope that we

1 -- we've got most of these final rules done or  
2 maybe all of them and if not, we can then see and  
3 tailor to where we are. So I will not be  
4 supporting your amendment.

5 COMMISSIONER O'MALIA: Mr. Chairman, I  
6 appreciate that and your willingness to entertain  
7 this and the Commission's willingness to entertain  
8 this amendment. You make mention of the fact that  
9 we will have our rules completed, but what matters  
10 is the transition when they -- completing the  
11 rules and implementing the rules, as you have  
12 noted on numerous occasions, is going to be a  
13 different date.

14 And there's going to be phasing and I  
15 support that. And I -- obviously we need to  
16 understand getting them done and when they're  
17 going to implement is -- might be a bit of a delta  
18 and we need to understand how that transition will  
19 occur.

20 CHAIRMAN GENSLER: And I think that's a  
21 very good point and I think that in fact the  
22 market will benefit that we phase. That will

1 lower risk to the American public and lower cost  
2 by phasing the implementation, or technically it's  
3 phasing the effective dates. I would note, again,  
4 this exemptive relief is only on those things that  
5 are self executing. If it's dependent upon a  
6 clearing rule, or a business conduct rule, or a  
7 SEF rule it's -- it doesn't go effective until the  
8 earliest of 60 days after the final rule. And in  
9 many instances we'll delay that 60 days.

10 COMMISSIONER O'MALIA: Well, I advocate  
11 that we put all of those rules under the same  
12 condition. Let me ask you, do you have -- do you  
13 think there's any chance the Commission would not  
14 renew the exemptive relief prior to rule  
15 implementation?

16 CHAIRMAN GENSLER: I think that it's  
17 best to take that up at that time and just see  
18 what the circumstances are. I agree with General  
19 Counsel Berkovitz that it's terms of the intent.  
20 It's the Chairman's intent, me, that this is a  
21 smooth transition.

22 These are very significant changes that

1 -- in market structure, that swaps will be  
2 regulated after having been unregulated for 30  
3 years. And to get this smooth, to phase it, I've  
4 been a long advocate and public advocate for. But  
5 I think it's best to take it up, and as  
6 Commissioner Dunn says, you know, to keep us  
7 focused; that the American public's still  
8 vulnerable until we get this stuff done;  
9 Commissioner Dunn.

10 COMMISSIONER DUNN: Thank you, Mr.  
11 Chairman. I would like to see this Dunn Amendment  
12 become a Dunn Deal. And again, I -- the two  
13 reasons that I've given here is to hold our feet  
14 to the fire. And I am concerned that it's taken  
15 us this long to recognize that this is a problem  
16 and we should have addressed it much earlier, as  
17 Commissioner Sommers has advocated.

18 By having a sunset on there, it doesn't  
19 allow the Commission to say, oh, well, that's  
20 covered. It gives a certain amount of urgency to  
21 get these things completed. And Mr. Chairman, I  
22 tend to agree with Commissioner O'Malia.

1           Yes, we'd like to see what's coming up  
2     on the plate, what's next up. I think everyone  
3     would like to see that. But the fact that there  
4     is going to be a phase-in provision on these final  
5     rules, is also something that ought to be a  
6     certain amount of relief to the industry as a  
7     whole out there.

8           Legal certainty, I can understand people  
9     wanting to know legal certainty. And for all of  
10    those folks that have questions of is this product  
11    in or out, am I as an entity in or out, it would  
12    be my hope, Mr. Chairman, that the Commission and  
13    the staff commit to responding to those types of  
14    inquiry within a reasonable amount of time so that  
15    people understand where they are in this.

16           The second reason that I have given is  
17    that hopefully there will be a new Commissioner  
18    sitting here soon and I think it's incumbent upon  
19    me to allow that individual to have some say in  
20    the policy as we go forward on this. And for  
21    those reasons, I'm very adamant that we have the  
22    Sunset Provision in there.

1           I -- again, I go back to no-action  
2 letters that sat on the books for decades that in  
3 some instances staff didn't even know they had  
4 been issued. But the individual that got that was  
5 aware of it. So I feel it is a way to maintain  
6 some discipline.

7           CHAIRMAN GENSLER: Commissioner Sommers.

8           COMMISSIONER SOMMERS: I have a couple  
9 of comments. I think -- I have no objection to  
10 this kind of exemptive relief having a sunset. I  
11 think the more appropriate sunset would be upon  
12 the effective date of the new rules we're putting  
13 in place.

14           My worry, my fear, is that this is a  
15 very serious issue and the market uncertainty that  
16 we could create by not extending this relief could  
17 be worse than, you know, what I've been talking  
18 about for the last couple of months.

19           The fact of the matter is, we have on a  
20 tentative calendar the product definition  
21 scheduled to issue for November or December, which  
22 means we already know now that we probably won't

1 have that done in time for December 31st. So  
2 unless we make some sort of commitment right now  
3 to make sure that the definitions are done first,  
4 we're going to end up in the same place.

5 CHAIRMAN GENSLER: I don't think  
6 Commissioner Chilton is tied in by phone, is he?  
7 No, he didn't, okay.

8 I think with that I'm supposed to just  
9 -- do I have to call a vote on the amendment, the  
10 roll call, or what do we do, Mr. Stawick?

11 MR. STAWICK: You may --

12 CHAIRMAN GENSLER: Fine --

13 MR. STAWICK: I'm happy to call roll.  
14 This question, again, is on the O'Malia amendment?

15 CHAIRMAN GENSLER: O'Malia amendment.

16 MR. STAWICK: Commissioner O'Malia?

17 COMMISSIONER O'MALIA: Aye.

18 MR. STAWICK: Commissioner O'Malia, aye.  
19 Commissioner Chilton?

20 CHAIRMAN GENSLER: I have a document  
21 somewhere. Where is it? I just want to make sure  
22 -- I think I know what it is.

1 SPEAKER: It's right here.

2 CHAIRMAN GENSLER: Opposing the  
3 amendment to extend or eliminate the expiration  
4 date included. So I think that's no by proxy.

5 MR. STAWICK: Commissioner Chilton, no.  
6 Commissioner Sommers?

7 COMMISSIONER SOMMERS: Yes.

8 MR. STAWICK: Commissioner Sommers, aye.  
9 Commissioner Dunn?

10 COMMISSIONER DUNN: No.

11 MR. STAWICK: Commissioner Dunn, no.  
12 Mr. Chairman?

13 CHAIRMAN GENSLER: No.

14 MR. STAWICK: Mr. Chairman, no. Mr.  
15 Chairman, on this question the yays are two, the  
16 nays are three.

17 CHAIRMAN GENSLER: The motion did not  
18 pass. Then I think we'll go, Mr. Stawick, to the  
19 order as proposed by the staff.

20 MR. STAWICK: Commissioner O'Malia?

21 COMMISSIONER O'MALIA: Aye.

22 MR. STAWICK: Commissioner O'Malia, aye.

1 Commissioner Chilton?

2 CHAIRMAN GENSLER: In favor of the  
3 motion to accept the staff recommendation to issue  
4 the proposed order and request for comment. So  
5 that's an aye.

6 MR. STAWICK: Commissioner Chilton, aye.  
7 Commissioner Sommers?

8 COMMISSIONER SOMMERS: Aye.

9 MR. STAWICK: Commissioner Sommers, aye.

10 Commissioner Dunn?

11 COMMISSIONER DUNN: Aye.

12 MR. STAWICK: Commissioner Dunn, aye.

13 Mr. Chairman?

14 CHAIRMAN GENSLER: Aye.

15 MR. STAWICK: Mr. Chairman, aye. Mr.  
16 Chairman, on this question the yays are five, the  
17 nays are zero.

18 CHAIRMAN GENSLER: Thank you, Mr.  
19 Stawick. Thank you to my Commissioners. With it  
20 being unanimous, we will seek to send it to the  
21 Federal Register post haste. I thank our friends  
22 at the Federal Register. Hopefully it will get in

1 in the next two to three days. But there's a  
2 couple more things I have to do on dates. But  
3 General Counsel Berkovitz.

4 MR. BERKOVITZ: Just permission to make  
5 a few technical corrections. It will not  
6 interfere with the expeditious getting this to the  
7 Federal Register. It will improve getting this to  
8 the Federal Register.

9 CHAIRMAN GENSLER: I ask unanimous  
10 consent that General Counsel Berkovitz is able to  
11 make technical corrections? I'm not hearing  
12 oppositions, so allowed and moved.

13 COMMISSIONER DUNN: Mr. Chairman, just a  
14 point of clarification then. I'm assuming that  
15 that final vote will be by seriatim then?

16 CHAIRMAN GENSLER: It will either be by  
17 seriatim or we need to have a public meeting. But  
18 seriatim is all right with me, I mean, just to get  
19 it out there. But I don't know if we have  
20 something scheduled before July 16th. I'm about  
21 to turn to that.

22 The next item for today is to vote to

1 authorize publishing a Sunshine Act notice for  
2 some meetings. I see here that we have meetings  
3 July 7th, July 19th, August 4th, September 8th,  
4 and September 22nd.

5 So I guess Commissioner Dunn, you're  
6 correct unless people want to get -- I mean, I'm  
7 ready to get together before the 16th if you want  
8 to do that publicly. So if you want to do  
9 something on the 14th or something like that we  
10 can do that as well.

11 COMMISSIONER SOMMERS: So will -- it  
12 won't be ready for the July 7th meeting?

13 CHAIRMAN GENSLER: Will it be ready for  
14 the July 7th meeting, Dan?

15 MR. BERKOVITZ: We'll have to see what  
16 the comments and if we have a 14-day comment  
17 period and we get it, that puts us to about June  
18 30th to -- so I think it will be tough to -- we'll  
19 do the best we can, but that's also the July 4th  
20 weekend, so to -- one week with the July 4th, 7th  
21 would be difficult.

22 CHAIRMAN GENSLER: So I think it would

1 be best if we had it the July 7th. But are you  
2 saying that should we sneak a date in here, call  
3 it July, you know, 13th or 14th?

4 MR. BERKOVITZ: We to get it right so we  
5 --

6 CHAIRMAN GENSLER: Do you want to --

7 MR. BERKOVITZ: -- a few days would  
8 help.

9 CHAIRMAN GENSLER: -- with apologies, at  
10 least --

11 COMMISSIONER SOMMERS: I would prefer to  
12 do it by seriatim if it's not ready by the 7th.

13 COMMISSIONER DUNN: I think seriatim  
14 would be fine.

15 CHAIRMAN GENSLER: I go with the will of  
16 the Commission. But all meetings are scheduled to  
17 begin at 9:30. It will take place in this room.  
18 Agenda's, of course, will be published seven days  
19 in advance. Sorry to do this to your staff, Dan,  
20 but I'm hopeful that we can do it the July 7th. I  
21 think that would be helpful, and it also gives the  
22 market a little bit more preparedness for the 16th

1 if possible.

2 MR. BERKOVITZ: And it will depend on  
3 the comments. I think if we don't have  
4 substantial revisions or the comments can be  
5 incorporated, we can do it sooner.

6 CHAIRMAN GENSLER: Okay. And then --

7 MR. BERKOVITZ: We'll see.

8 CHAIRMAN GENSLER: -- I guess I'm making  
9 a motion on the Sunshine Act. So do I hear a  
10 second?

11 COMMISSIONER SOMMERS: Second.

12 CHAIRMAN GENSLER: Do I need to do it  
13 through Mr. Stawick or do I just do it? All  
14 right, fine.

15 MR. STAWICK: Yes. Commissioner  
16 O'Malia?

17 COMMISSIONER O'MALIA: Aye.

18 MR. STAWICK: Commissioner O'Malia, aye.  
19 Commissioner Chilton?

20 CHAIRMAN GENSLER: It looks like it's in  
21 favor in the motion to schedule the meetings.

22 MR. STAWICK: Commissioner Chilton, aye.

1 Commissioner Sommers?

2 COMMISSIONER SOMMERS: Aye.

3 MR. STAWICK: Commissioner Sommers, aye.

4 Commissioner Dunn?

5 COMMISSIONER DUNN: Aye.

6 MR. STAWICK: Commissioner Dunn, aye.

7 Mr. Chairman?

8 CHAIRMAN GENSLER: Aye.

9 MR. STAWICK: Mr. Chairman, aye. Mr.  
10 Chairman, on this question the yays are five, the  
11 nays are zero.

12 CHAIRMAN GENSLER: It being unanimous,  
13 we'll send that on. The CFTC has substantially  
14 completed its rulemaking around these 30 topics  
15 and our next meeting will be on July 7th and the  
16 subjects of that meeting will be posted at that  
17 time.

18 Some of the meetings that we're thinking  
19 -- some of the topics we are thinking about taking  
20 up, and I'm doing this off script, but just  
21 because we've distributed it along here, is in  
22 these July and early August meeting, without

1       trying to be specific on the dates, and staff will  
2       probably shoot me for doing this, but we're  
3       looking at anti-manipulation and trying to  
4       finalize the anti- manipulation rule. It's  
5       subject to where the Commissioners are. The large  
6       trade reporting, there's a number of process rules  
7       related to Part 40, but also with regard to  
  
8       clearing determinations. There's a mandatory  
9       clearing, but there's a process rule with regard  
10      to that.

11                Agricultural commodities definition  
12      seems about ready to be teed up and there's some  
13      rules about credit ratings. Possible, but I don't  
14      know if that will be teed up. And then there's  
15      some privacy notice provisions in FCRA and GLB,  
16      Gramm-Leach-Bliley, and so forth. I'm probably  
17      missing a few things for these July meetings.

18                We are working, and there's a  
19      significant staff dedicated to completing the  
20      summary and getting recommendations up to the  
21      Commissioners on position limits. There are many  
22      rules that were reopened through June 3rd. We are

1 now at about a little over 20,000 public comments  
2 in the comment files. About 12,000 are related to  
3 position limits, but the other 8,000 grew  
4 significantly when we reopened for 30 days.

5 So some cases, the teams only got four  
6 or five more comments and are pretty ready to give  
7 us summaries and give us feedback. In some  
8 instances, they've got 50 or 100 comments or even  
9 more and so it will take a little bit longer. But  
10 what we're looking to do is get the comment  
11 summaries and staff recommendations, you know,  
12 percolating up a lot of these in June and July,  
13 but to the extent that they do that, I think that  
14 some of those meetings will have to be calendared  
15 for the September period to finalize clearing  
16 rules, finalize SEF rules, and business conduct  
17 rules.

18 But it's still dependent on how the  
19 comment summaries, and most importantly, your back  
20 advise; your advise back to staff, each of you, as  
21 you start to look at the comments yourself, that  
22 we can bring these together. The entity

1 definition and the product definition, I share  
2 Commissioner Sommers' views. We've had very good  
3 dialogue with the SEC on both.

4 We're going to have a joint roundtable  
5 on the entity definition in a couple of days. But  
6 again, depending upon some of these newer comments  
7 just to see how that -- able to take up, I would  
8 hope, shortly after Labor Day, but we're human.

9 As I continue to say, things can slip.  
10 These are important matters and we want to get it  
11 right and balanced and so forth. So that gives --  
12 I mean, I'm just trying to give a little bit of  
13 the -- Mr. Berkovitz, anything else? Any other  
14 issues?

15 With that can I just entertain a motion?  
16 You don't have to do anything else, right? No,  
17 entertain a motion to adjourn the meeting.

18 COMMISSIONER DUNN: So moved.

19 COMMISSIONER SOMMERS: Second.

20 CHAIRMAN GENSLER: All in favor?

21 SPEAKER: Aye.

22 COMMISSIONER SOMMERS: Aye.

1                   CHAIRMAN GENSLER: Aye. Any opposed?  
2 Thank you, the meeting is adjourned. We'll see  
3 you on July 7th, I think.

4                   (Whereupon, at 11:58 a.m., the  
5 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.

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

