

UNITED STATES OF AMERICA  
COMMODITY FUTURES TRADING COMMISSION

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

Washington, D.C.  
Tuesday, July 19, 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 Presentation No. 1: Consideration of NPRM on  
8 Customer Clearing Documentation and Timing of  
9 Acceptance for Clearing  
9

10 Division of Clearing and Intermediary Oversight

11 JOHN LAWTON

12 CHRIS HOWER

13 ANANDA RADHAKRISHNAN

14 Presentation No. 2: Consideration of NPRM on  
14 Clearing Member Risk Management  
15

16 Division of Clearing and Intermediary Oversight

17 JOHN LAWTON

18 CHRIS HOWER

19 ANANDA RADHAKRISHNAN

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1 PARTICIPANTS (CONT'D):  
2 Presentation No. 3: Consideration of Final Rule  
2 on Process for Review of Swaps for Mandatory  
3 Clearing  
3  
4 Division of Clearing and Intermediary Oversight  
5 EILEEN DONOVAN  
6 ANANDA RADHAKRISHNAN  
7 JOHN LAWTON  
8 Presentation No. 4: Consideration of Final Rule  
8 on Part 40, Provisions Common to Registered  
9 Entities  
10 Division of Market Oversight  
11 BELLA ROZENBERG  
12 JOE CISEWSKI  
13 RIVA SPEAR ADRIANCE  
14 TOM LEAHY  
15 RICK SHILTS  
16 Division of Clearing and Intermediary Oversight  
17 PHYLLIS DIETZ  
18 Presentation No. 5: Consideration of Final Rule  
18 on Removing Any Reference to or Reliance on Credit  
19 Ratings in Commission Regulations; Proposing  
19 Alternatives to the Use of Credit Ratings  
20  
21 Office of General Counsel  
22 WARD P. GRIFFIN

1 PARTICIPANTS (CONT'D):

2 Division of Clearing and Intermediary Oversight

3 ANANDA RADHAKRISHNAN

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

2 (9:36 a.m.)

3 CHAIRMAN GENSLER: Good morning. This  
4 meeting will come to order. This is a public  
5 meeting of the Commodity Futures Trading  
6 Commission to consider issuance of proposed and  
7 final rules under the Dodd-Frank Act. I'd like to  
8 welcome members of the public, market  
9 participants, and members of the media to today's  
10 meeting as well as welcome those listening to the  
11 meeting by phone and watching the webcast.

12 During today's meeting the Commission  
13 will consider two proposed rules and three final  
14 rules. Specifically, we'll consider proposed  
15 rules related to customer clearing documentation  
16 and timing of acceptance for clearing, and a  
17 related clearing member risk management rule.  
18 We'll also consider final rulemakings with regard  
19 to the process to review swaps for mandatory  
20 clearing; a second process rule, but it's called a  
21 process for registered entities rule submissions,  
22 or what the industry sometimes calls Part 40; and

1 removing references to credit ratings in some of  
2 the Commission regulations.

3           Before we hear from staff, I would like  
4 to thank Commissioners Dunn, Sommers, Chilton, and  
5 O'Malia for their significant contributions to the  
6 rule-writing process. I also want to pause and  
7 give a hearty congratulations to Commissioner Bart  
8 Chilton who became a grandfather I guess a few  
9 hours ago. And a young baby boy, Connor Thomas,  
10 we understand is healthy. And so Bart, I think,  
11 has left his proxy for the various matters today,  
12 but terrific, Bart Chilton is a grandfather.

13           I also want to thank --

14           SPEAKER: Not ominous.

15           CHAIRMAN GENSLER: Yeah, we're just all  
16 thinking about that. No cheated traders for that  
17 poor Connor, though.

18           I also want to thank the hardworking  
19 staff of the CFTC for their efforts to implement  
20 the Dodd-Frank Act. This week's the one-year  
21 anniversary of the Dodd-Frank Act, and on this  
22 anniversary it's important to remember why the

1 President and Congress came together in this  
2 historic way. The financial crisis was very real  
3 and happened, in part, because the system failed,  
4 the financial system and the regulatory failed.  
5 And when AIG and Lehman Brothers failed, we all  
6 paid a price. The Dodd-Frank Act included  
7 critical swaps markets reform to protect the  
8 American public and the law brings much-needed  
9 transparency to this marketplace and reduces the  
10 risk that swaps pose to the overall economy. And  
11 while they are important, I would say, essential  
12 hedging tools for end users, they also  
13 concentrated risk and led to the possibility that  
14 taxpayers might stand behind large financial  
15 institutions.

16 Since the passage of the Dodd-Frank Act,  
17 the CFTC has been working diligently to write  
18 rules to implement swaps provisions of the law to  
  
19 ensure that swaps no longer operate in the shadows  
20 and financial institutions pose less risk to  
21 taxpayers. And we substantially completed the  
22 proposal phase and have now turned towards final

1 rules. And we're going to take these up in public  
2 meetings as we have another one in early August  
3 and we have two scheduled for September and no  
4 doubt we'll probably schedule approximately two a  
5 month after that, and take them up when staff is  
6 ready to submit a recommendation and when the  
7 commissioners all have sufficient time to give  
8 feedback to the staff on those and bring them to a  
9 full commission action.

10 But until the CFTC completes its  
11 rule-writing process and implements and enforces  
12 these new rules, the public remains unprotected.  
13 Many will get the benefits of swaps, but we'll  
14 still have less transparency and greater risk than  
15 the Dodd-Frank Act envisions.

16 Before we hear from staff on the  
17 rule-writing I'd like to turn to my fellow  
18 commissioners. Commissioner Dunn.

19 COMMISSIONER DUNN: Thank you, Mr.  
20 Chairman. And let me start off with my  
21 congratulations to Commissioner Chilton on  
22 becoming a grandfather. It is truly, for you



1 younger folks, one of the real joys in life to  
2 become a grandfather. My two grandsons, Sam and  
3 Aidan are a constant source of joy and when you  
4 get to be Bart's age and my age you'll get to be  
5 part of that.

6 I want to thank you all for joining us  
7 today for our second meeting to consider final  
8 rules promulgated under -- pursuant to the  
9 Dodd-Frank Act. Today we will consider three  
10 final rules: Number one, Part 40 provisions  
11 common to registered entities; two, the process  
12 for review of swaps and mandatory clearing; and  
13 three, removing any reference to the reliance on  
14 credit ratings and Commission regulations, and  
15 we'll be proposing alternatives to the use of  
16 credit ratings.

17 Before even considering any final rules,  
18 I asked each rule-writing team to answer a set of  
19 questions. First and foremost among those  
20 questions is whether or not the proposed final  
21 rule adheres to the agency's principle-based  
22 regulatory approach, an approach that has served

1 the futures industry well both before and after  
2 the financial crisis. I'm concerned that the  
3 final rule regarding Part 40 is prescriptive and  
4 does not adhere to our principle- based approach.  
5 Despite staff's efforts to soften the rule in  
6 response to comments on our original proposal, I  
7 still believe that the requirements in the final  
8 rule regarding documentation are prescriptive in  
9 nature. Additional requirements for  
10 self-certification of products may unnecessarily  
11 delay exchange innovation for little or no  
12 benefits to the CFTC.

13 Part 40 also includes rules pertaining  
14 to rural certification for systemically important  
15 designated clearing organizations. Like both the  
16 CME and OCC, I believe the SIDCO attempting to  
17 implement a risk-reducing change should not have  
18 to wait 60 days to change their rules. While I  
19 understand that the CFTC must consult with the  
20 Federal Reserve regarding certain matters relating  
21 to SIDCOs, such consultation should not jeopardize  
22 public interest. This portion of Part 40 seems

1 not only to slow down a SIDCO seeking to reduce  
2 systemic risk, but it may slow down our ability to  
3 approve such change as well.

4           From early in the proposal rule phase of  
5 Dodd- Frank implementation I've stated my concern  
6 that budget constraints and the efforts of those  
7 who would delay, weaken, or eliminate Dodd-Frank  
8 would force us to be more prescriptive than we  
9 should otherwise be in promulgating our final  
10 rules. I fear that my concerns in this instance  
11 have come to fruition in this rule. If not, for  
12 our budget constraints I would vote against this  
13 rule. As it stands, I must weigh my disdain for  
14 prescriptive, perhaps restrictive, rules against  
15 the competing interest of having a rule that we  
16 can implement and enforce with an undersized and  
17 overworked staff.

18           I also expressed concerns and questions  
19 to the chairman's office and the rule team  
20 regarding the final rule on the process for review  
21 of swaps from a mandatory clearing. As has been  
22 the case throughout the process, the chairman's

1 office and rule team were accommodating in  
2 answering my questions, making necessary changes  
3 and working collaboratively with my office. I  
4 will continue to give the chairman high marks for  
5 conducting an open and transparent rulemaking  
6 process.

7 In addition to the final rules  
8 considered today, we are also considering a  
9 proposed rule on customer clearing documentation,  
10 timing of acceptance for clearing, and clearing  
11 members' risk management. While I, again, have  
12 concerns that this rule proposal is too  
13 prescriptive, I will look to the public comment to  
14 guide my ultimate decision on whether or not to  
15 vote for this rule.

16 I'd like to acknowledge that this week  
17 will mark the first anniversary of the Dodd-Frank  
18 Act. Over the past year the chairman and the  
19 staff have done a tremendous job moving forward on  
20 implementing Dodd-Frank despite limited resources.  
21 As we move forward in these coming months with the  
22 bulk of the new regulations required by

1       Dodd-Frank, I urge the chairman to place special  
2       emphasis on rules pertaining to the regulations of  
3       swap transactions, which were, in my opinion,  
4       largely responsible for the financial meltdown.  
5       With all of the Commission's new responsibilities  
6       under Dodd-Frank this is not a time for us to make  
7       significant changes to regulations pertaining to  
8       the future industry, which functioned properly  
9       during the financial crisis. We need to focus our  
10      limited resources on regulations that will provide  
11      real safeguards to our financial services  
12      industry.

13                I'd like to thank the staff at the CFTC  
14      for all their hard work on these important rules.  
15      The rule-writing teams have put in incredibly long  
16      hours answering different and time-consuming  
17      questions from the commissioners, and I know we  
18      can quite often be difficult. I appreciate their  
19      efforts and look forward to their presentations.

20                   CHAIRMAN GENSLER: Thank you,  
21      Commissioner Dunn. Commissioner Sommers?

22                   COMMISSIONER SOMMERS: Good morning.

1 Thank you, Mr. Chairman, and thank you to all the  
2 teams that have final rule proposals before us  
3 today. I again want to acknowledge the excellent  
4 staff work and convey my sincere appreciation to  
5 everyone who's working to get these final  
6 documents ready for Commission consideration. We  
7 are all very grateful to all of you for your  
8 commitment to this enormous challenge and I want  
9 to reiterate what I said last week: We could not  
10 do this without all of your hard work. So thank  
11 you to all of you.

12 This is the second Commission meeting to  
13 consider and vote on final rules with another  
14 meeting devoted on final rules planned for August  
15 4th. Although the final rules we have been  
16 considering thus far deal with discrete,  
17 standalone issues, complex issues dealing with  
18 market structure and business conduct standards  
19 are on the horizon. Finalizing those rules will  
20 be a difficult, uphill climb and we are beginning  
21 that difficult climb without a plan, and I believe  
22 that's a mistake.

1           As I have said many times, formulating  
2           and sharing with the public a thoughtful plan on  
3           how the Commission will logically sequence its  
4           consideration of final rules, along with a  
5           transparent implementation plan that will allow  
6           for a reasonable phased-in approach, is critical.  
7           I believe we run the risk of unnecessarily  
8           increasing uncertainty among market participants  
9           by continuing to roll out final rules in a  
10          piecemeal fashion, one meeting at a time, without  
11          this type of plan.

12           I support the final rules we are voting  
13          on today and have a few questions for the teams,  
14          but I'm concerned about the proposed rules. Both  
  
15          of the proposals were added just a couple of  
16          months ago to an already full agenda and they are  
17          not required by Dodd-Frank. These proposals  
18          involve complicated issues that market  
19          participants have spent countless hours  
20          addressing. I question whether our proposals  
21          recognize the complexity of the issues and the  
22          amount of work that has been done on sensible,

1 industry- driven solutions. As I have said  
2 before, I would like to see this Commission finish  
3 the job of implementing the requirements of  
4 Dodd-Frank before we turn our attention to these  
5 discretionary items.

6 I want to thank you -- thank the teams  
7 again and look forward to the discussion of the  
8 rules.

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

11 COMMISSIONER O'MALIA: Thank you, Mr.  
12 Chairman, and thank you to the teams who have  
13 done, again, yeoman's work. I echo Commissioner  
14 Sommers' sentiments that we couldn't do it without  
15 you.

16 Today the Commission will consider three  
17 final rules and two proposed rules. I support the  
18 final rules as they are non-controversial process  
19 rules. However, I have serious concerns with both  
20 the proposed rules as they rely on weak statutory  
21 authority, poorly articulate a necessity for  
22 either rule, and are neither justified nor



1 required under Dodd-Frank.

2 Today's draft rules regarding client  
3 documentation and clearing member risk standards  
4 were never previously mentioned during the months  
5 of intense rulemaking and seemed to be fabricated  
6 out of whole cloth. I have grown increasingly  
7 frustrated with the rulemaking process because  
8 there appears to be no specific plan or strategy  
9 for implementing these rules nor do we seem to be  
10 following President Obama's direction to ensure  
11 that the federal rulemaking process be done in the  
12 most transparent, responsible, and accountable  
13 fashion. I have requested specific reforms to  
14 improve the rulemaking process, but each request  
15 has been met with silence.

16 As we push forward, we are running out  
17 of time to make a correction. To be clear, if we  
18 fail to produce a final rule schedule and  
19 implementation plan the next time the Commission  
20 meets on August 4th, we render public input  
21 virtually irrelevant as the Commission barrels  
22 through its final rules this fall.

1           The President has taken three steps  
2           earlier this year to open up our rulemaking  
3           process. The first was in his Inaugural Address  
4           when he challenged the American people and the  
5           government to restore trust with the American  
6           people by creating an unprecedented level of  
7           openness in government.

8           Second, this past January, the President  
9           signed Executive Order 13563, to quote the  
10          President, "to root out regulations that conflict,  
11          that are not worth the cost, or that are just plan  
12          dumb." He actually said that.

13          Third, last week, the President signed  
14          Executive Order 13579 to extend the previous order  
15          to independent agencies. If the January directive  
16          wasn't clear, the new order should eliminate any  
17          doubt that agencies like the CFTC must go out of  
18          its way to ensure responsible rulemaking. We  
19          should undertake a more thorough cost- benefit  
20          analysis and make our process more accountable  
21          through increased transparency and openness, which  
22          our current process lacks.

1           In response to the near universal cry  
2           for additional information on rule implementation  
3           I've put forward two proposals to address the need  
4           for greater openness, transparency, and  
5           accountability. First, I've called that a  
6           detailed plan be produced that reveals the order,  
7           timing, and substance of the Commission's rules  
8           and specific dates as when we expected these rules  
9           to be implemented.

10           Second, I have requested that all final  
11           rules be published seven days prior to each public  
12           meeting. Today the public must wait days, if not  
13           weeks, for the Federal Register to publish  
14           proposed and final rules. My proposal would give  
15           the public a clear picture before the vote, not  
16           after.

17           The Commission has responded with  
18           silence to both proposals, cementing in my mind  
19           that the current process is inadequate. The  
20           Commission is tentatively scheduled to meet on  
21           August 4th. I hope the Commission will be able to  
22           vote on a final rule order, a draft rule order,

1 and implementation plan that will have the benefit  
2 of receiving public comment.

3 With regard to the rules before us  
4 today, Part 39 in specific, I must commend Eileen  
5 Donovan and her team for their work to establish a  
6 new process for reviewing swaps for mandatory  
7 clearing. I support this final regulation today.

8 However, market participants have  
9 requested greater certainty as to the criteria the  
10 Commission will use to determine whether mandatory  
11 clearing is appropriate for a swap. And given our  
12 emphasis on the clearing -- on clearing the  
13 mandate risk, I believe moving forward on  
14 mandatory clearing without written guidance is  
15 problematic and is also arguably an abrogation of  
16 our responsibilities under Section 2(h)(3)(D) of  
17 the CEA amended by Dodd-Frank.

18 Because this rule did not provide such  
19 specificity, I have drafted a letter right here  
20 that I'll be sending out to the market  
21 participants seeking their input on further  
22 defining the various thresholds and standards that

1 the Commission should consider in determining  
2 whether swaps should be subject to mandatory  
3 clearing. I hope to receive comments during the  
4 60 days prior to the effective date of the rule  
5 and such comments will inform staff discussions  
6 going forward.

7 Another concern I have with the rule is  
8 it overreaches in interpreting Section 723(a)(3)  
9 of Dodd- Frank. It leaves open the possibility  
10 that the Commission could impose capital and  
11 margin directly on end-users. This rule also  
12 permits the CFTC to impose capital and margin on  
13 bank dealers and MSP, a position which the Office  
14 of Comptroller probably disagrees.

15 With regard to the two proposed rules,  
16 the client clearing documentation and timing of  
17 acceptance for clearing and clearing member risk  
18 management, I oppose both rulemakings. The rules  
19 before us today seem to put the cart ahead of the  
20 horse. Neither rule is specifically mandated by  
21 Dodd-Frank nor are they well grounded in statutory  
22 authority. Further, it is unclear as to what

1 resources the Commission will utilize to enforce  
2 these two new optional rules.

3           Setting aside the flawed process in the  
4 development of these rules, the first proposal  
5 regarding client clearing documentation may be  
6 attempting to solve a problem that no longer  
7 exists. The proposal alleges that the voluntary  
8 annex to a voluntary model agreement from two  
9 industry associations may restrict open access to  
10 clearing and harm competitive trading. I  
11 understand that more than 60 market participants  
12 on both the buy-side and sell-side discussed the  
13 voluntary model agreement over a period of several  
14 months. The final agreement reflected an  
15 accommodation, even if imperfect, of their  
16 respective interests.

17           I'm very supportive of maximizing the  
18 effectiveness of clearing. I do not want  
19 artificial barriers to clearing such as needless  
20 credit or position limits. Based on the practices  
21 in the futures market, I am also quite certain  
22 that technology is available to ensure timely

1 acceptance of trades. However, as the second part  
2 of this rulemaking makes evident, the industry  
3 must still resolve a number of operational issues.  
4 Therefore, there may be certain types of  
5 documentation -- a need for certain types of  
6 documentation. Ideally, buy-side, sell-side, and  
7 clearing organizations will continue their  
8 dialogue to resolve these issues. Before  
9 substituting Commission judgment for private  
10 consensus, I hope the Commission will host a  
11 public roundtable and a Commission meeting to see  
12 if the restrictions and anti-competitive effects  
13 alleged in this rulemaking actually exist. And,  
14 if so, how we resolve these issues to everyone's  
15 satisfaction?

16           The second proposal regarding clearing  
17 member risk management fails to justify the costs  
18 in light of the benefits. First, as I mentioned,  
19 the proposal is neither mandated by the Dodd-Frank  
20 or the CEA. Second, the proposal would require  
21 the Commission to ascertain whether clearing  
22 members are following certain risk management

1 procedures. However, under another rulemaking,  
2 the Commission assigns the same responsibility to  
3 clearing organizations.

4           Given our resource constraints, the  
5 Commission should focus on supervising clearing  
6 organizations, the main bulwark against systemic  
7 risk. The Commission should ensure that clearing  
8 organizations are fulfilling their statutory and  
9 self-regulatory responsibilities, and adequately  
10 evaluating the risk management practices of their  
11 members. The Commission should not divert its  
12 resources to directly auditing clearing members,  
13 the failure of any one of which may not be  
14 systemic.

15           Frankly, I would rather see the  
16 Commission dedicate resources to developing  
17 real-time trade surveillance capabilities rather  
18 than developing a redundant oversight function  
19 that will require additional resources that we  
20 currently don't possess.

21           Mr. Chairman, I greatly appreciate the  
22 hard work of the staff and sincerely hope you will



1 provide an answer as to whether or not the  
2 Commission will publish a rulemaking schedule and  
3 an implementation timetable that includes dates to  
4 give the market and its participants an  
5 unambiguous strategy for implementing Dodd-Frank.  
6 I hope you will also commit to publishing a draft  
7 rule when you publish the notice regarding all  
8 Commission meetings. Thank you very much.

9 CHAIRMAN GENSLER: Thank you,  
10 Commissioner O'Malia. The staff will now make  
11 presentations considering the recommendations. I  
12 think first we're going to turn to Ananda, John,  
13 and Chris on the two proposals, if I recall.

14 Do I have to -- oh, I also note that  
15 Commissioner Chilton is unable to join us today  
16 and he's becoming a grandfather as we just  
17 chatted. So he's requested that he be permitted  
18 to vote by limited proxy for all votes taken at  
19 this meeting, a procedure that we have utilized in  
20 the past. So to that end, I request unanimous  
21 consent to permit Commissioner Chilton's limited  
22 proxy voting for all subsequent votes taken at

1 this meeting. Without objection.

2 Now, I think I'm turning over to Ananda  
3 and his team.

4 MR. RADHAKRISHNAN: Thank you. John  
5 Lawton and Chris Hower are going to present the  
6 proposed --

7 CHAIRMAN GENSLER: Ananda, you might  
8 want to move the mike closer. I don't think they  
9 can hear you.

10 MR. RADHAKRISHNAN: Oh, I'm sorry. John  
11 Lawton and Chris Hower are going to present the  
12 proposal for the client clearing documentation and  
13 timing of acceptance of trades and risk management  
14 for clearing members. I'll turn it over to John.  
15 Thank you.

16 MR. LAWTON: Good morning. The proposed  
17 rules before the Commission address customer  
18 clearing documentation and the timing of  
19 acceptance or rejection of trades for clearing.  
20 The proposals are intended to facilitate customer  
21 access to clearing and to bolster risk management  
22 through timely processing of trades.

1                   Turning first to the customer clearing  
2           documentation, the proposal consists of three  
3           parallel rules that would apply to FCMs, to swap  
4           dealers and major swap participants, and to DCOs.  
5           The rules would prohibit certain arrangements  
6           involving FCMs, SDs, MSPs, or DCOs that would do  
7           the following: Disclose to an FCM, SD, or MSP the  
8           identity of a customer's original executing  
9           counterparty; limit the number of counterparties  
10          with whom a customer may enter into a trade;  
11          restrict the size of a position a customer may  
12          take with any individual counterparty apart from  
13          an overall credit limit for all positions held by  
14          the customer at the FCM; impair a customer's  
15          access to execution of a trade on terms that have  
16          a reasonable relationship to the best terms  
17          available; or prevent compliance with specified  
18          timeframes for acceptance of trades into clearing.

19                   The proposals are designed to facilitate  
20          open access to clearing by customers, to remove  
21          potential barriers to competitive execution of  
22          trades for customers, and to promote risk

1 management through timely processing. The Federal  
2 Register release would request comment on how  
3 effective the proposed rules would be in achieving  
4 these goals.

5           Turning to the second aspect of the  
6 proposed Federal Register release, which is the  
7 timing of acceptance or rejection of trades for  
8 clearing, again, the proposal consists of three  
9 parallel rules that would apply to FCMs, to swap  
10 dealers and MSPs, and to DCOs. Last March, the  
11 Commission proposed rules relating to the  
12 processing and clearing of customer positions.  
13 Included in that release was proposed Rule  
14 39.12(b)(7) regarding timeframes for clearing.  
15 Among other things the provision required DCOs to  
16 coordinate with designated contract markets and  
17 swap execution facilities concerning prompt and  
18 efficient processing of trading.

19           Recognizing the key role the clearing  
20 members play in trade processing and submission of  
21 trades to clearing, today's proposal would also  
22 require DCOs to coordinate with clearing members.

1 The proposal would also have a reciprocal rule for  
2 clearing members that are FCMs, swap dealers, or  
3 MSPs to provide reciprocal coordination with the  
4 DCOs.

5 As previously proposed, 39.12(b)(7)  
6 required DCOs to accept immediately upon execution  
7 all trades entered into on a DCM or SEF. A number  
8 of DCOs and other commenters expressed concern  
9 that this could expose DCOs to unwarranted risk  
10 because they would be unable to screen trades  
11 against applicable product and credit filters.  
12 While immediate acceptance for clearing has proven  
13 successful in a number of markets with central  
14 limit order books, it might be impractical at this  
15 time for some products and markets, particularly  
16 if trades are coming in to the DCO from multiple  
17 execution venues. Accordingly, today's proposal  
18 would modify 39.12(b)(7) to allow DCOs time to  
19 screen trades against applicable product and  
20 credit filters.

21 Acceptance or rejections for trades in  
22 close to real time continues to be crucial, both

1 for effective risk management and for efficient  
2 operation of trading of venues. So rather than  
3 prescribing any specific length of time, the  
4 proposal would require acceptance or rejection as  
5 quickly as would be technologically feasible if  
6 fully automated systems were used. This standard  
7 would apply to DCOs and to FCMs, SDs, and MSPs  
8 that were clearing members.

9 The proposal is intended to be a  
10 performance standard, not a prescription of a  
11 particular method of trade processing. It would  
12 allow flexibility to accommodate differences among  
13 products and markets. But as noted, the standard  
14 would tend to drive acceptance or rejection closer  
15 to real time, that is within seconds or minutes of  
16 execution, not hours or days of execution. The  
17 proposed release requests comment on whether this  
18 standard is appropriate and how practicable it is.

19 And that concludes the presentation on  
20 the first proposed rulemaking. Thank you.

21 CHAIRMAN GENSLER: Thank you, John, for  
22 that. I think I'll entertain a motion on the

1 staff recommendation.

2 COMMISSIONER DUNN: So moved.

3 COMMISSIONER SOMMERS: Second.

4 CHAIRMAN GENSLER: What's that? Oh, all  
5 right, I don't need that right now.

6 So with that, we'll take questions.

7 And, John, just if you can address the industry  
8 has been looking at this and certainly there's a  
9 model in the futures world as well, so how does  
10 this documentation that you're talking about  
11 compare and contrast to what's used in the futures  
12 world right now?

13 MR. LAWTON: Typically in the futures  
14 world I think there's bilateral agreements that a  
15 customer would have an agreement with his futures  
16 commission merchant that would go to acceptance of  
17 his trades for clearing. There's been discussion  
18 in the industry of trilateral agreements in  
19 connection with swaps which would include  
20 potentially the counterparty to the trade in the  
21 agreement. Again, going back to the futures  
22 world, when a trade is cleared there's no

1 particular need for the clearing member to know  
2 who the customer's counterparty was that make --  
3 it goes into a system, the trade's executed, the  
4 clearing member's going to have risk facing his  
5 customer, it's going to have risk facing the  
6 clearing house. It doesn't have any risk facing  
7 the counterparty. Any risk with regard to that  
8 counterparty goes to its clearing member.

9           This rule addresses the potential for  
10 bringing the counterparty into the agreement,  
11 which could have the effect of limiting the number  
12 of counterparties with whom a customer could  
13 trade, which could potentially affect its ability  
14 to receive effective execution of its trades. It  
15 also could potentially affect the speed with which  
16 a trade is processed if a clearing member not only  
17 has to check whether a customer's trade is within  
18 its limits -- overall limit that the clearing  
19 member has provided, but within some potential  
20 sub-limits, that it can only have a trade up to a  
21 certain size with a specified counterparty.  
22 Again, in the futures world that sort of thing



1 wouldn't exist. It doesn't matter who the  
2 counterparty is. There's just one overall limit  
3 that the FCM has established based on its judgment  
4 of the risk that the customer poses to it.

5 CHAIRMAN GENSLER: I support the  
6 proposed rulemaking on the customer clearing  
7 documentation and timing for acceptance. I think  
8 that it'd be very helpful to get industry and  
9 public market comment. But I do think that it  
10 helps promote access to central clearing and that  
11 that's the key here is that the asset managers and  
12 pension funds and small as well as large would be  
13 able to have access through clearing members and  
14 enter into these bilateral arrangements.

15 I also support it because the proposal  
16 actually re-proposes certain timeframe provisions  
17 in the Commission's proposed rule that we did  
18 earlier this year, I think in a February meeting,  
19 with regard to straight-through processing, and  
20 that there were commenters that came in on that  
21 proposal and straight-through processing and this  
22 is an example. Sometimes we're asked are we going

1 to re-propose? This rule actually re-proposes the  
2 straight-through -- a key aspect of  
3 straight-through processing that was -- a number  
4 of commenters thought was too limited and the  
5 staff thought it would be appropriate to  
6 re-propose something. But I look forward to  
7 hearing from the public and on both aspects, the  
8 re-proposal of certain aspects of straight-through  
9 processing and on the client documentation.

10 Commissioner Dunn.

11 COMMISSIONER DUNN: Mr. Chairman, this  
12 is a very important week. On Monday, the CMA  
13 announced that they were going to delist pork  
14 belly contracts, and that's an end of an era. But  
15 it does signify that there's change in this  
16 industry and there's constant change that goes on.  
17 I see this proposal as an effort for the  
18 Commission to get its arms around some of the  
19 changes that are taking place and have a better  
20 understanding. I'm not sure at this point whether  
21 I support it. However, I do support, as been my  
22 practice, of putting out proposed rules and

1 hearing from the public. I look forward to  
2 hearing the public's input on this proposed  
3 ruling.

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

6 COMMISSIONER SOMMERS: Thank you, Mr.  
7 Chairman. To be clear, I am supportive of the  
8 timing of acceptance for clearing changes and have  
9 no problem with that part of the rule, but I have  
10 a number of different questions with regard to the  
11 documentation part and must admit I think I'm  
12 confused. So I've gone through the actual  
13 execution agreement that we are, I guess,  
14 addressing through this proposal and I'm under the  
15 impression from the execution agreement that it  
16 intends to address -- and I'm quoting -- "the  
17 respective rights and obligations in the event a  
18 swap that is intended to be cleared fails to  
19 clear." That seems reasonable to me that a  
20 clearing firm would want some sort of confirmation  
21 that a swap that is intended to be cleared is  
22 going to clear.

1                   So our proposal suggests that these  
2                   arrangements potentially conflict with the  
3                   concepts of open access to clearing and execution  
4                   of customer transactions on DCMs or SEFs on terms  
5                   that have a reasonable relationship to the best  
6                   terms available. And I think where I may be  
7                   confused is do we have problems with the actual  
8                   execution agreement or do we have problems with  
9                   the annexes to this execution agreement?

10                   MR. LAWTON: I think that we are -- I  
11                   would say that we're requesting comment on whether  
12                   there's aspects of these agreements that might run  
13                   counter to the standards that are in the proposed  
14                   rules as implemented. So we're not specifically  
15                   saying there's anything wrong with anything that's  
16                   been posted out there. It more goes to as  
17                   implemented might they have the effects that we're  
18                   concerned about of potentially disclosing  
19                   information that doesn't need to be disclosed or  
20                   potentially limiting the access to competitive  
21                   execution by particular customers.

22                   COMMISSIONER SOMMERS: I think what I'm

1 concerned about is that this actually has the  
2 opposite effect. So if we say that this kind of  
3 documentation or these kind of agreements are not  
4 appropriate for clearing members to execute with  
5 executing brokers or customers of those executing  
6 brokers, then the clearing member may be less  
7 likely to want to take on the clearing risk of  
8 smaller entities. If they are not able to have  
9 this kind of confirmation that those swaps will  
10 clear, it may actually be a barrier to smaller  
11 entities to clear than, in fact, what we think it  
12 could do is give those entities greater access.

13 MR. LAWTON: One of the questions that's  
14 in the proposed release actually is would the  
15 proposed standards have the unintended consequence  
16 of, in fact, limiting open access in any way? I  
17 mean, we're definitely open to comments in that  
18 direction, saying if someone can demonstrate that,  
19 in fact, it would have the opposite effect of the  
20 intended effect, the Commission would want to hear  
21 analysis that supports -- if there's analysis that  
22 would support that point of view.

1                   COMMISSIONER SOMMERS:  And then I think  
2                   my last question is if you could explain to me how  
3                   that that type of agreement, execution agreement,  
4                   would conflict with transactions on a DCM or SEF  
5                   on terms that have a reasonable relationship to  
6                   the best terms available.  So how would those kind  
7                   of agreements actually limit you getting the best  
8                   terms available on a DCM or a SEF?

9                   MR. LAWTON:  If they had the effect of  
10                  limiting with whom you could trade, that you could  
11                  only trade with certain entities that had big --  
12                  that had deep pockets, so to speak, and you could  
13                  have a large limit with them.  There might be  
14                  smaller entities you might want to trade with, but  
15                  that you wouldn't be allowed to under the  
16                  agreement to execute with.  That's our  
17                  understanding that there's concern expressed out  
18                  there by market participants that they might end  
19                  up being limited to trading potentially with just  
20                  big dealers as opposed to others who might  
21                  actually, in a given instance, be offering a  
22                  better price.

1                   COMMISSIONER SOMMERS: And I think this  
2 is the part where I get confused. So you'd be  
3 limited to your -- who you could clear with?  
4 Because how would you know on a DCM who you're  
5 transacting with?

6                   MR. LAWTON: I'm not sure how often  
7 these types of agreements -- they might -- they  
8 may not be applicable to the DCM transactions. I  
9 think it's probably more likely to be applicable  
10 in circumstances of trading on a SEF or even  
11 purely bilateral trading where it may limit the  
12 potential counterparties.

13                   COMMISSIONER SOMMERS: Okay. Thank you.

14                   CHAIRMAN GENSLER: Could I follow up on  
15 Commissioner Sommers' question? It called my  
16 attention about the annex versus the agreement.  
17 This is -- for members of the public, this is an  
18 industry document which is referred to in this  
19 proposal that various industry associations came  
20 together, and there's a draft, I guess, standard  
21 agreement and then an annex. So Commissioner  
22 Sommers' question, without opining, John --

1       because I know you're being very careful, you  
2       don't want to opine on this is just a proposal; it  
3       hasn't gotten public comment; we don't even know  
4       if we'll finalize the rule in this way -- but  
5       without opining on the industry documentation,  
6       would I be right to assume that the agreement is  
7       bilateral or appears more bilateral, meaning  
8       between two parties, and the annex is that which  
9       is the trilateral or appears to be between three  
10      parties? Without trying to opine, is that  
11      directionally correct?

12                 MR. LAWTON: I think that's correct.

13                 CHAIRMAN GENSLER: That's correct. So  
14      to Commissioner Sommers' question, which is just  
15      sort of how I understood it, again, without  
16      opining to their agreement, we're looking for --  
17      if we vote this proposal out today, we're looking  
18      for input as to the proposal, but it's possible  
19      that the annex is -- there may be more comments as  
20      to how the annex relates to this proposed rule  
21      than the actual agreement itself?

22                 MR. LAWTON: Yeah, I expect that that



1 will be the case.

2 CHAIRMAN GENSLER: So I tried to answer  
3 that carefully, but it's the annex, I think,  
4 Commissioner Sommers. It's the -- that might run  
5 in conflict with this rule, not the agreement  
6 itself, without opining on the agreement. I  
7 think. Is that -- do I sort of roughly have that  
8 right?

9 MR. LAWTON: I think that's right.

10 CHAIRMAN GENSLER: I'm sorry,  
11 Commissioner O'Malia.

12 COMMISSIONER O'MALIA: Thank you. As I  
13 noted in my statement, you know, this is a  
14 complicated process and I think for all of us it's  
15 fascinating to anticipate what the market's going  
16 to look like, what the SEFs are going to look like  
17 as we go forward. We have a good understanding of  
18 what the DCM model is and we understand what the  
19 processing requirements -- and we like that. We  
20 want good competitive markets with plenty of  
21 participants without limitations. And we're  
22 beginning to develop this swap market, right, and

1       trying to figure out how that's all going to play  
2       out. And we're trying to anticipate where we're  
3       going on that, and it's complicated. And I think  
4       that that is really one of my biggest  
5       frustrations, as I noted, in my statement that  
6       this would really benefit.

7               The industry has developed this  
8       documentation, whether it's the bilateral or the  
9       trilateral, the annex, or the voluntary agreement.  
10      They're working through these processes. I would  
11      have preferred that we had a staff roundtable to  
12      develop and understand where this is going, maybe  
13      even a Commission meeting, because I find this  
14      very fascinating how all the operational  
15      challenges are going to be executed going forward.  
16      So I would have preferred more of a hearing  
17      process to develop this rule to figure out where  
18      the industry is and see if we can move them in a  
19      direction that is acceptable to everyone.

20             So let's see if we can kind of continue  
21      to make that happen in this rulemaking process.

22             CHAIRMAN GENSLER: Let me just say,

1 Commissioner O'Malia, I'm supportive of as many  
2 roundtables as this hardworking and diligent staff  
3 can fit in. And if they find the time to do that  
4 in the 60-day period or even if it's after the  
5 60-day, I'm certainly supportive of that on this.

6 COMMISSIONER O'MALIA: All right. Thank  
7 you. Now, let me get to my question because it's  
8 kind of the process issue. We developed this rule  
9 out of comment letters, concerns raised in two  
10 comment letters to Commission rulemakings. Other  
11 than these comment letters in which other  
12 communication -- what other communications did  
13 staff have with market participants on the FIA  
14 ISDA clearing derivatives execution agreement?

15 MR. LAWTON: Staff had some  
16 conversations, meetings, I think, with, broadly  
17 speaking, representatives of the buy-side and  
18 representatives of the sell-side; that there were  
19 some number of meetings and --

20 COMMISSIONER O'MALIA: Now, did any of  
21 these take place after the 16th in which the  
22 agreements were completed?

1                   MR. LAWTON: I'm not sure, but I think  
2 not, but I'm not certain.

3                   COMMISSIONER O'MALIA: I'm very -- I  
4 understand you've reached out to them, there were  
5 a lot of comments that came in for kind of the  
6 public. There were some concerns that were raised  
7 in April, I understand. The ISDA documentation,  
8 the FIA ISDA documentation proposing the voluntary  
9 agreement and annex came -- was completed in June  
10 and which included participants on both sides.

11                   Now, I understand not everyone agrees.  
12 In fact, yesterday I had a call with two of the  
13 largest buy-side participants and they came down  
14 on either side of this thing: Some said it was a  
15 problem, the other side said it wasn't a problem.  
16 So, you know, I understand that not everybody  
17 agrees on every part of this, but I really think  
18 it's best suited if they kind of work through this  
19 with our kind of assistance, if you will, maybe  
20 not necessarily this rulemaking.

21                   Now, let me ask you another question.  
22 The proposal states, "No futures commission

1 merchant providing clearing services to customers  
2 shall enter into an agreement that discloses to  
3 the futures commission merchant or any swap dealer  
4 or major swap participant the identity of the  
5 customer's original executing counterparty." Now,  
6 we know that certain SEFs may wish to operate  
7 using an RFQ on a disclosed basis. Would this  
8 rule prevent an FCM from acting as an executing  
9 broker and a clearing member on such a SEF?

10 MR. LAWTON: No, I don't think it would.  
11 I think that -- and if there's drafting  
12 clarification that would be needed, I mean, that  
13 would be something that would be appropriate for a  
14 comment. But the notion would be that if one is  
15 acting as a clearing FCM, one would not need to  
16 know who the counterparty was. If one is acting  
17 as an executing FCM, by the nature of your role  
18 you do know who the counterparty is, or least in  
19 -- certainly in an RFQ situation where you're  
20 responding to a Request for a Quote and you're  
21 executing on behalf of your customer. That's  
22 inherent in what you're doing.

1                   COMMISSIONER O'MALIA: Great. Well,  
2                   that's all the questions I have. I certainly look  
3                   forward to the roundtable and potentially a  
4                   Commission meeting on this going forward on the  
5                   execution.

6                   CHAIRMAN GENSLER: I thank you. I  
7                   think, Mr. Stawick, if you can call the roll.

8                   MR. STAWICK: Commissioner O'Malia?

9                   COMMISSIONER O'MALIA: No.

10                  MR. STAWICK: Commissioner O'Malia, no.  
11                  Commissioner Chilton?

12                  CHAIRMAN GENSLER: I'm reading a proxy  
13                  in favor of the motion to accept the staff on  
14                  comment, yes.

15                  MR. STAWICK: Commissioner Chilton, aye  
16                  by proxy. Commissioner Sommers?

17                  COMMISSIONER SOMMERS: No.

18                  MR. STAWICK: Commissioner Sommers, no.  
19                  Commissioner Dunn?

20                  COMMISSIONER DUNN: Aye.

21                  MR. STAWICK: Commissioner Dunn, aye.  
22                  Mr. Chairman?

1                   CHAIRMAN GENSLER: Aye.

2                   MR. STAWICK: Mr. Chairman, aye. Mr.  
3 Chairman, on this question the yeas are three, the  
4 nays are two.

5                   CHAIRMAN GENSLER: Thank you. I gather  
6 you're going to stay at the table, right?

7                   MR. RADHAKRISHNAN: Thank you. And next  
8 we will talk about the proposed rule that  
9 addresses risk management for cleared trades by  
10 clearing participants.

11                  MR. LAWTON: Good morning again. The  
12 proposed rules before the Commission address risk  
13 management procedures at FCMs, swap dealers, and  
14 major swap participants that are clearing members.  
15 Clearing members provide the portals by which  
16 market participants gain access to clearing and  
17 are the first line of risk management. The  
18 Commission has previously proposed extensive risk  
19 management standards at the DCO level. Given the  
20 increased importance of clearing under the Dodd-  
21 Frank Act and the expected entrance of new  
22 products and new participants into the clearing

1 system, assuring that there are effective  
2 safeguards in place at the clearing member level  
3 as well seems appropriate.

4           Bringing swaps into clearing will  
5 increase the magnitude of the risks faced by  
6 clearing members. In many cases, it will also  
7 change the nature of the risks as well. Many  
8 types of swaps have their own unique of risk  
9 characteristics. This increased concentration of  
10 risk in the clearing system combined with the  
11 changing configuration of that risk seems to  
12 warrant additional vigilance. The proposed rules  
13 would require FCMs, SDs, and MSPs that are  
14 clearing members to do the following:

15           Establish risk-based limits in the  
16 proprietary account and in each customer account.

17           Use automated means to screen orders for  
18 compliance with risk-based limits.

19           Monitor for adherence to risk-based  
20 limits. Conduct stress tests of all positions in  
21 the proprietary account and in each customer  
22 account that would pose material risk to the FCM



1 or a swap dealer or major swap participant that's  
2 a clearing member. I guess the -- I'm sorry, the  
3 customer part would not actually apply to swap  
4 dealers or MSPs because they would not be clearing  
5 customer positions, so that aspect would only  
6 apply to the FCMs.

7 Evaluate its ability to meet initial  
8 margin requirements at least once per week.

9 Evaluate its ability to meet variation  
10 margin requirements at least once per week.

11 Evaluate its ability to liquidate in an  
12 orderly manner the positions in its accounts and  
13 estimate the cost of liquidation.

14 And test all lines of credit. The  
15 proposal does not prescribe particular means of  
16 fulfilling these obligations. As was the case in  
17 the DCO rules, clearing members would have  
18 considerable flexibility in designing risk  
19 management procedures that meet these -- that  
20 would meet their needs. For example, the proposal  
21 would require stress tests to be conducted. It  
22 would not specify what inputs would be used. That

1 would be a matter within the judgment of the risk  
2 analysts at each clearing member, and that's,  
3 again, parallel to the way the stress testing  
4 rules were written for DCOs.

5 Over the past two years, Commission  
6 staff have discussed aspects of risk management  
7 programs with representatives of most clearing  
8 FCMs. The proposals before the Commission today  
9 is drawn heavily from what's been learned in those  
10 discussions. The proposed release requests  
11 comment on the extent to which clearing members  
12 have already incorporated components of the  
13 proposal into their risk management programs. The  
14 release also requests comment on the costs and the  
15 benefits of each component of the proposal.

16 And that concludes my presentation on  
17 that one. Thanks.

18 CHAIRMAN GENSLER: With that I'll  
19 entertain a motion to accept the staff  
20 recommendation on what I keep calling pre-trade  
21 risk filters for clearing, but I know it also has  
22 other monitoring and supervision and testing.

1                   COMMISSIONER DUNN:  So moved.

2                   COMMISSIONER SOMMERS:  Second.

3                   CHAIRMAN GENSLER:  I support this  
4           proposal.  I think it's important that all that we  
5           do and in the nature of Dodd-Frank is it helps  
6           lower risk.  And I think this does that at it's  
7           core, that swap dealers, major swap participants,  
8           and futures commission merchants and the like have  
9           some risk filters when trades are being submitted  
10          to clearing.  And this is really about that, about  
11          clearing, and that they be able to monitor their  
12          customers and their house accounts to make sure  
13          that they can meet the daily variation margin and  
14          also monitor and stress test with regard to if  
15          they have to liquidate a position.

16                   I think this is part of what's come out  
17          of a lot of industry roundtables in front of this  
18          Commission and even relates to the change in the  
19          marketplace, the marketplace that's become, at  
20          least in futures and securities, very  
21          electronic-traded and also has a lot of  
22          high-frequency trading.  That's not yet the case

1 in the swaps marketplace, but once swap execution  
2 facilities start to run over the next several  
3 years, one can imagine and actually predict that  
4 there'll be some electronic trading and swaps.  
5 That's what a swap execution facility will  
6 facilitate. But it's important when somebody  
7 meets at the swap execution facility that they  
8 know that the counterparty on the other side is  
9 guaranteed by a futures commission merchant and  
10 that futures commission merchant has done  
11 something to make sure that their counterparty is  
12 not putting in a trade, you know, whether there's  
13 a fat finger or something else, put in a trade too  
14 large.

15 I like that this says that they'd have  
16 to have policies and procedures that might include  
17 kill buttons, if I remember. Kill switches is it  
18 called?

19 MR. LAWTON: That's right.

20 CHAIRMAN GENSLER: I think it's very  
21 important that we continue on what I consider sort  
22 of the sister to this, is the testing and

1 supervision and exchange world. And I see Rick  
2 Shilts here, but hopefully, you know, that we'll  
3 have that as well because I think clearing and  
4 trading both benefit from some of these  
5 supervision by the clearing members and the swap  
6 dealers before trades are submitted for clearing  
7 and into exchanges.

8 So I don't really have any questions  
9 unless I got -- is there anything I said there  
10 other than the opinions, but the facts, did I sort  
11 of get what this rule does?

12 MR. LAWTON: Yes.

13 CHAIRMAN GENSLER: All right. Thanks.  
14 You don't have to opine on my opinions, but.  
15 Commissioner Dunn?

16 COMMISSIONER DUNN: Thank you, Mr.  
17 Chairman. As you're aware, I've long been an  
18 advocate for increasing our entire risk management  
19 throughout: How we operate within the agency, how  
20 the industry operates, how products are developed.  
21 And I think this proposal is one that I'm going to  
22 pay a lot of attention to as to what we get from

1 the public on how the individual clearing houses  
2 are assessing and managing the risk that they  
3 have. I don't know if there will be a best  
4 practices that may come out of this or not, but I  
5 am very, very interested in seeing what the  
6 industry as a whole has to say. And I think this  
7 is a proposal that, given what has happened in the  
8 last three years in financial services, it's time  
9 for us to take this hard look at risk management.

10 CHAIRMAN GENSLER: Thank you,  
11 Commissioner Dunn. Commissioner Sommers?

12 COMMISSIONER SOMMERS: Thank you, Mr.  
13 Chairman. I have a couple of different questions  
14 about how FCMs currently employ these kind of risk  
15 management procedures. Do we think that this is  
16 common practice for FCMs now? And how do we  
17 currently monitor that?

18 MR. LAWTON: We currently monitor it in  
19 two ways. There's the Risk Surveillance Group  
20 does actually go out and talk to firms, both  
21 clearing firms and actually large traders, so you  
22 learn a little bit about what the firm is doing by

1 talking to the trader that goes through the firm  
2 as well as by going to the firm directly and  
3 talking to them.

4           Secondly, we monitor it because the DCOs  
5 are monitoring to some degree -- or not to some --  
6 DCOs are monitoring what their clearing members  
7 are doing. Again, different DCOs have different  
8 levels of programs. I think some are more  
9 rigorous than others, but in the review of a DCO  
10 we will also learn what they've learned about what  
11 their clearing members are doing.

12           With regard to what the firms are doing,  
13 I think I'm very much generalizing, but I think  
14 there's some firms out there that probably won't  
15 have to change anything that they do today if this  
16 rule were to go into effect. There's other firms  
17 that probably would have to make changes that they  
18 -- and again, the degree of changes they might  
19 have to make would vary. I mean, some firms it  
20 might be that there's a timing thing, they don't  
21 do stress testing as frequently as this rule might  
22 require, but they're already doing it. Other

1 firms may not actually be doing formal stress  
2 testing, so they would have to develop some sort  
3 of program.

4 There's a lot of -- not a lot, but there  
5 are vendors out there who have stress testing  
6 products and a number of firms are currently using  
7 those, that they don't have to develop a stress  
8 testing system on their own, that there's vendors  
9 that are out there and their products are commonly  
10 used across a lot of firms. And again, they can  
11 be customized so that any given firm can decide  
12 what inputs they want to use, but they don't have  
13 to develop the software themselves from scratch.

14 COMMISSIONER SOMMERS: Have DCOs  
15 identified problems to us that they would like to  
16 see us promulgate rules to address?

17 MR. LAWTON: No, DCOs I don't think have  
18 ever suggested -- I mean, they've definitely  
19 identified problems, which, again, depending on  
20 the DCO they may go to the firm and say we think  
21 you should address this directly. But nobody --  
22 no DCO to my knowledge has suggested that we



1 propose a rule across the industry.

2 COMMISSIONER SOMMERS: And would this  
3 proposal basically take that responsibility from  
4 the DCOs and put it in the Commission so that it's  
5 now our responsibility to go out and monitor  
6 whether these FCMs have these kind of procedures?

7 MR. LAWTON: No. It'd be more parallel  
8 to the way, for example, in the financial auditing  
9 world, where you do have a DSRO that goes out and  
10 monitors, in the first instance, whether a firm is  
11 complying with the cap loan seg rules. But you  
12 also have Commission rules and the Commission is  
13 always available to go in itself and -- both as a  
14 check on how well the DSRO is doing and just as an  
15 independent check on the FCM.

16 In this case, I think what you would  
17 find is that different DCOs have different  
18 standards, so the effect of a rule like this might  
19 be to raise the standard at some DCOs. Again, at  
20 other DCOs there may not be any change because  
21 effectively what they're requiring would be the  
22 equivalent of what this rule would require. There

1       might be other people who might have to make  
2       changes to their program because perhaps the DCO  
3       rule wasn't as rigorous as -- at least in some  
4       components as what might end up in a proposal like  
5       this.

6                    COMMISSIONER SOMMERS:  I just want to  
7       make sure that I heard that correctly, that the  
8       DCO will be responsible -- or the DSROs will be  
9       responsible for compliance with this?

10                   MR. LAWTON:  Right.  Yeah, I'm sorry,  
11       there actually isn't a DSRO type of program at  
12       this point on the DCO side like there is with  
13       regard, again, to the longstanding programs for  
14       capital and segregation.  So it would be  
15       individual DCOs would continue to have  
16       responsibility to enforce their own rules and then  
17       --

18                   COMMISSIONER SOMMERS:  What about for  
19       these rules?

20                   MR. LAWTON:  They would not have  
21       responsibility for enforcing these rules.

22                   COMMISSIONER SOMMERS:  And so we would

1 have an additional -- we would be responsible for  
2 this, for implementing and monitoring.

3 MR. LAWTON: Right.

4 COMMISSIONER SOMMERS: Okay. So, and  
5 that would be new for us or this is something that  
6 the Risk Surveillance Group already does?

7 MR. LAWTON: It would be new in that  
8 there's a standard, a rule out there. I mean, the  
9 Risk Surveillance Group today monitors for these  
10 sorts of things and makes recommendations, but  
11 there's not really any mechanism other than saying  
12 -- and again, many times we have found that, in  
13 fact, the firms implement; that there have been  
14 times when we've identified something that was  
15 happening at a firm, talked to them, and they said  
16 that's a good suggestion, we're going to do that.  
17 But there's not really any authority at this  
18 moment if they decide it's a bad suggestion or not  
19 necessary.

20 COMMISSIONER SOMMERS: Okay. And my  
21 last question is, is it possible that in order to  
22 actually have a good risk management program an

1 FCM would employ things like these type of  
2 execution agreements, and that what we're doing in  
3 these two different rules is that we're saying  
4 that you can't have this even though it might be  
5 good risk management, but yet we're requiring risk  
6 management?

7 Sorry, you don't have to answer that.

8 CHAIRMAN GENSLER: Thank you,  
9 Commissioner Sommers. Did you have something?

10 No.

11 MR. RADHAKRISHNAN: No, I hadn't thought  
12 about that, but -- and I think the comment period  
13 will be great, you know, just to address the  
14 question that Commissioner Sommers asked.

15 MR. LAWTON: Yeah, I agree, that's a  
16 good question.

17 MR. RADHAKRISHNAN: Because what we're  
18 looking at in the execution side is the ISDA  
19 agreement is basically purely -- the FIA is purely  
20 execution. And here we're looking at it in the  
21 proposed rule that the Commission just voted on,  
22 it's on the clearing side. So I don't think the

1 proposed rule is saying don't do a good job of  
2 risk management. We just want to make sure that  
3 it concentrates on risk management and clearing as  
4 opposed to who you can execute with. I think  
5 that's the objective. The objective, as John  
6 pointed out in the previous rulemaking, was to  
7 make sure that clients had choice with respect to  
8 which FCM they could use to clear. And the worry  
9 is that, as it's been expressed to us, is that if  
10 you have a tri- party that an entity will exercise  
11 undue influence on a customer to say if you want  
12 my affiliate to clear for you, you have to trade  
13 with me or vice versa, if you want me to clear,  
14 you must execute swaps (inaudible) my swaps desk.  
15 So that is what staff is concerned about. That  
16 limits the choice that customers have with who  
17 they can clear with.

18 CHAIRMAN GENSLER: Commissioner O'Malia?

19 COMMISSIONER O'MALIA: Thank you. This  
20 proposal addresses some of the issues raised by  
21 the direct market access and the need to monitor  
22 and mitigate risk. The Commission's Technology

1       Advisory Committee, which I chair, has explored  
2       these same issues and offered thoughtful solutions  
3       based on independent research as well as a review  
4       of best practices and research put forward by FIA  
5       and others, as well as my understand that the  
6       separate rulemaking team is working on rules that  
7       specifically address the risk inherent to direct  
8       market access, which are also used by HFTs  
9       referenced by the chairman regarding testing and  
10      supervision as well as, I think, are DCM and SEF  
11      rulemaking teams who have also kind of positioned  
12      themselves to include more specifics.

13                    What guidance did you seek from the  
14      members of the Technology Advisory Committee and  
15      internal rulemaking teams who are tasked with  
16      specifically addressing these pre- and post-trade  
17      risk management tools?

18                    MR. RADHAKRISHNAN: I don't think we  
19      sought any guidance from the Technology advisory  
20      Committee. And I'm not aware of -- personally not  
21      aware of any proposed rulemaking on -- I know the  
22      chairman mentioned it, but I'm not sure what that

1 objective is.

2 COMMISSIONER O'MALIA: No, no, I'm  
3 talking about testing and supervision.

4 MR. RADHAKRISHNAN: Testing and  
5 supervision.

6 COMMISSIONER O'MALIA: And we talked  
7 about it quite a bit.

8 MR. RADHAKRISHNAN: Okay. But I think,  
9 for example, if we require people to establish  
10 credit and market base limits it'll probably be in  
11 line with the concerns that were expressed by the  
12 Technology Advisory Committee. The concern -- and  
13 forgive me, I'm not completely --

14 COMMISSIONER O'MALIA: Ananda, with all  
15 due respect, we have a document. We have a lot of  
16 work that's been -- that has gone into that. A  
17 lot of it's pre-trade risk functionality.

18 MR. RADHAKRISHNAN: Right.

19 COMMISSIONER O'MALIA: All of these  
20 things we've kind of addressed. The problem is  
21 when we're doing these things in an ad hoc manner,  
22 we're not -- you know, you have to answer

1 "probably" and "potentially" and "likely." And  
2 what we need to see is clear rules across all of  
3 these things so we can get clear best execution  
4 working with Rick's group and DMO and others.

5 MR. RADHAKRISHNAN: Well, I think these  
6 rules are designed to make sure that clearing  
7 members discharge their responsibility to manage  
8 risks appropriately. That's the (inaudible).

9 COMMISSIONER O'MALIA: I don't disagree  
10 with that goal either.

11 MR. RADHAKRISHNAN: Right.

12 COMMISSIONER O'MALIA: The problem is  
13 the words matter, the relationships matter, and  
14 understanding how this is going to work across  
15 market is really pretty critical. And my points  
16 in my opening statement about transparency,  
17 accountability, and responsibility, getting the  
18 rules to work well with one another are pretty  
19 important. And I have a little bit of frustration  
20 the way we're developing in an ad hoc manner just  
21 this popcorn approach to the rulemaking.

22 Let me -- so going forward, I think



1       there's probably role that the Technology Advisory  
2       Committee can offer some assistance in this venue  
3       and make sure that we've got some specific  
4       recommendations.  Because we actually -- we did an  
5       evaluation of best practices and put forward, you  
6       know, some very specific proposals.

7                 One of the concerns in the Technology  
8       Advisory Committee was -- and now this is maybe  
9       outside your immediate thing because we were  
10      looking at a lot of this execution, but also at  
11      the FCM level, there was concern about  
12      inconsistent application of these best practices.  
13      How would this rule fix it?  Would we mandate one  
14      standard across everybody or we continue with this  
15      kind of individual approach to risk management?

16                MR. RADHAKRISHNAN:  I think it has to --  
17      you have to allow for individual approaches to  
18      risk management because not all clearing members  
19      have the same risk.  So -- and that's why we're  
20      not saying, you know, one size fits all.  We're  
21      saying, you know, I think what these are -- these  
22      are establishing baselines, but I do think that we

1       need to leave it to the clearing member to make  
2       judgments because it depends on what kind of  
3       trades you're clearing. Some clearing firms may  
4       clear for a significant number of HFTs and others  
5       may not. And if you're clearing for an HFT there  
6       is a different approach, I think, to clearing --  
7       to risk management. In fact, if you're clearing  
8       for an HFT, if I were the clearer I'd be watching  
9       trades, executions going in and out constantly.  
10      Because if you accept the proposition that an HFT  
11      goes on flat, they may not be flat in the middle  
12      of the day.

13                 So, for example, it's entirely possible  
14      that an HFT could build up a significant position  
15      at the intraday cycle and I'll be able to pay or,  
16      you know, close out the position at a big loss.  
17      And if that person is not able to pay, then the  
18      clearing FCM will have to pay. So that's why we  
19      think that it's critical for one of the proposals  
20      to monitor for adherence to risk-based limits  
21      intraday and overnight. And that's why we --

22                 COMMISSIONER O'MALIA: And how is that

1 not being addressed in the DCO core principles?

2 MR. RADHAKRISHNAN: Well, we think that

3 --

4 COMMISSIONER O'MALIA: Especially on a  
5 case-by- case depending on which clearing members  
6 you're dealing with.

7 MR. RADHAKRISHNAN: Our approach is as  
8 follows. This is DCI's approach. Financial  
9 integrity is -- you've got two key sets of  
10 players: The DCOs and the clearing members. And  
11 we believe that it is appropriate to have rules  
12 for both sets of players. Because, no doubt, it  
13 is not in any DCO's interest to make sure -- to  
14 have a failure, but we do believe that the  
15 Commission also has a role because all of these  
16 will be Commission registrants. And as  
17 Commissioner Dunn pointed out, you know, with  
18 Dodd- Frank, if you look at the structure -- and  
19 I'm sure the Commission is aware -- there will be  
20 a tremendous amount of open interests going to  
21 DCOs, tremendous amounts of open interests going  
22 to FCMs. The risk that DCOs and clearing members

1 will have will increase exponentially, assuming  
2 that the clearing mandate works out and, you know,  
3 the objective of Dodd-Frank comes into fruition.  
4 So we think it's appropriate to have both sets do  
5 this.

6 COMMISSIONER O'MALIA: Now, this rule  
7 applies to both swaps and futures, right?

8 MR. RADHAKRISHNAN: Correct.

9 COMMISSIONER O'MALIA: Okay. I recall  
10 reading in the comment letter from Newedge, I  
11 think it was in the segregation comments, that  
12 they had proposed several recommendations for  
13 increased transparency on FCMs specifically. And  
14 we have our Excel spreadsheet that talks about  
15 available margin, et cetera, that we post. I  
16 don't recall the form number, but Newedge proposed  
17 that, you know, we need better transparency. How  
18 does this rule address those concerns  
19 specifically?

20 MR. RADHAKRISHNAN: I'm afraid I'm not  
21 familiar with what Newedge asked for, but --

22 COMMISSIONER O'MALIA: They were looking

1 at things like concentration of customers,  
2 exposure to assets, you know, just to give  
3 customers of FCMs a better understanding of the  
4 relation -- of what their FCM exposure might be.  
5 They had several specific recommendations.

6 MR. RADHAKRISHNAN: Okay. Right. This  
7 doesn't go to that. That particular -- I think,  
8 Commissioner, you're talking about this report  
9 that the Commission publishes of selected  
10 financial information and FCMs. And what that has  
11 is, you know, the required ANC, the excess, the  
12 required funds under segregation, and the access.  
13 The required funds under segregation will give  
14 everybody an idea of what the exposure is because  
15 this is --

16 COMMISSIONER O'MALIA: But does it give  
17 you the level of exposure where all of this is  
18 CDS, for example?

19 MR. RADHAKRISHNAN: Right.

20 COMMISSIONER O'MALIA: Would people know  
21 that from that report?

22 MR. RADHAKRISHNAN: No, no, they would

1 not know that.

2 COMMISSIONER O'MALIA: Or they wouldn't  
3 know whether there's a single large customer?

4 MR. RADHAKRISHNAN: Right. The worry  
5 with that is we also have Section 8 of the act.

6 COMMISSIONER O'MALIA: Of course we do.

7 MR. RADHAKRISHNAN: So the question is  
8 how do we find a balance between providing  
9 information, public information, about our  
10 registrants to the public and crossing that line?

11 COMMISSIONER O'MALIA: Maybe you could  
12 go back and look at the Newedge letter --

13 MR. RADHAKRISHNAN: Yeah.

14 COMMISSIONER O'MALIA: -- and see if any  
15 of those comments are relevant to this rulemaking.  
16 Commissioner Sommers raised a question that, you  
17 know, since we do charge DCOs with this  
18 responsibility what happens if there's a conflict  
19 between a DCO saying we propose this level of  
20 recommendation and the CFTC coming in and saying,  
21 no, we want something different?

22 Now with this new authority that we have

1 as opposed to working exclusively with the DCO --  
2 or not necessarily exclusively, but using that as  
3 our main -- addressing that to the core principles  
4 in the DCO rulemaking. Now we have kind of two  
5 different venues. How do we resolve conflicts?

6 MR. RADHAKRISHNAN: Between a DCO rule  
7 and the Commission's rule?

8 COMMISSIONER O'MALIA: Or, you know,  
9 DCOs surveilling for their customers. We come in  
10 with this new authority and say, well, we have  
11 different opinion. What happens when there's a  
12 conflict?

13 MR. RADHAKRISHNAN: Well, I think, first  
14 of all, we'll try and see if we can resolve the  
15 conflict and try and find out why there is a  
16 conflict. But at the end of the day, I believe  
17 it's -- I believe the Commission rules trump the  
18 DCO rules.

19 COMMISSIONER O'MALIA: Well, of course  
20 they do, but why couldn't we do that through the  
21 DCO is kind of my point.

22 MR. RADHAKRISHNAN: Well, I think --

1 well, John, did you want say (inaudible)?

2 MR. LAWTON: I was going to say that if  
3 we, over time, developed an interpretation of what  
4 the requirements are under this, I think we would  
5 then go into the DCO core principles and say we  
6 would probably require the rule which requires  
7 DCOs to have standards to come up to that. So I  
8 think that's what I would expect that we would  
9 recommend (inaudible).

10 COMMISSIONER O'MALIA: One final  
11 question. How many people will this new  
12 responsibility require to surveil it and manage  
13 it?

14 MR. RADHAKRISHNAN: If I would take a  
15 very educated guess, I'm going to say 20 people to  
16 go to -- you know, to the clearing FCMs.

17 COMMISSIONER O'MALIA: So we don't have  
18 this in our budget? Because this seems new to me,  
19 frankly. In the '12 budget, and certainly in the  
20 '11 budget it wasn't there, but in the '12 budget  
21 I don't think this responsibility is specified, so  
22 that's why I'm asking how many people.



1                   MR. RADHAKRISHNAN: I think we had  
2 mentioned it in the '12 budget because I think in  
3 the risk surveillance budget we always talked  
4 about going to the firms, not just to the DCOs,  
5 but going to firms and large traders to make sure  
6 that they're conducting appropriate risk  
7 management.

8                   COMMISSIONER O'MALIA: So how many new  
9 FTEs will we have in the DCO surveillance  
10 responsibility to kind of surveil core principles?

11                   MR. RADHAKRISHNAN: I don't know that  
12 number offhand. I can --

13                   COMMISSIONER O'MALIA: Fair enough.  
14 Thank you.

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

17                   MR. STAWICK: Commissioner O'Malia?

18                   COMMISSIONER O'MALIA: Nope.

19                   MR. STAWICK: Commissioner O'Malia, no.  
20 Commissioner Chilton?

21                   CHAIRMAN GENSLER: Aye by proxy.

22                   MR. STAWICK: Commissioner Chilton, aye

1 by proxy. Commissioner Sommers?

2 COMMISSIONER SOMMERS: No.

3 MR. STAWICK: Commissioner Sommers, no.  
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 yeas are three, the  
11 nays are two.

12 CHAIRMAN GENSLER: Thank you, Mr.  
13 Stawick. Thank you, John and Ananda and Chris.  
14 And with that I think that the majority having  
15 voted on both of those, it'll be sent to the  
16 Federal Register and posted on our website post-  
17 haste. You'll be able to post them actually  
18 today. I'm for the same transparency Commissioner  
19 O'Malia's for, that we should post these the day  
20 we -- the day --

21 MR. RADHAKRISHNAN: (inaudible)

22 CHAIRMAN GENSLER: No, he has other

1 suggestions maybe earlier, but I don't see no  
2 reason why we don't do it the same day and we  
3 should put that out.

4 MR. RADHAKRISHNAN: I think that's been  
5 the practice. The teams have sent it to --

6 CHAIRMAN GENSLER: I know we have a  
7 different on this other piece --

8 MR. RADHAKRISHNAN: Okay.

9 CHAIRMAN GENSLER: -- but the same day  
10 let's put it up on our website.

11 MR. RADHAKRISHNAN: Yeah, absolutely.

12 CHAIRMAN GENSLER: Eileen, are you going  
13 to come up next? Do you have the seat?

14 At this time I'd like to welcome Eileen  
15 Donovan, John Lawton, and Ananda Radhakrishnan,  
16 all from the Division of Clearing and Intermediary  
17 Oversight. Eileen has been the team lead on this  
18 important role, and so I hand it over to I suspect  
19 Eileen's probably going to take the lead here. Is  
20 that right? Or? I'm not trying to pick amongst  
21 you. Thanks.

22 MS. DONOVAN: Good morning. The final

1 rule before the Commission is --

2 CHAIRMAN GENSLER: You might want to  
3 bring the mike a little closer to you.

4 MS. DONOVAN: Okay, sorry. Good  
5 morning. The final rule before the Commission  
6 establishes a process for the review of swaps for  
7 mandatory clearing. This rule has four parts.

8 The first part implements the provision  
9 of Section 745(b) of Dodd-Frank that requires the  
10 Commission to prescribe criteria, conditions, or  
11 rules under which the Commission will determine  
12 the initial eligibility or the continuing  
13 qualification of a DCO to clear swaps. Under the  
14 rule a DCO would be presumed eligible to accept  
15 for clearing any swap that is within a group,  
16 category, type, or class of swaps that the DCO  
17 already clears. A DCO that plans to accept for  
18 clearing any swap that is not within a group,  
19 category, type, or class that the DCO already  
20 clears would be required to request a  
21 determination by the Commission of its eligibility  
22 to clear the swap. To receive such a

1 determination a DCO would have to submit to the  
2 Commission a written request that addresses its  
3 ability to maintain compliance with the DCO core  
4 principles if it accepts the swap for clearing,  
5 particularly the sufficiency of its financial  
6 resources and its ability to manage the risks  
7 associated with clearing the swap, especially if  
8 the Commission determines that the swap is  
9 required to be cleared.

10           The second part of the rule concerns the  
11 submission of swaps to the Commission by a DCO.  
12 Section 723(a)(3) of Dodd-Frank provides that it  
13 shall be unlawful for any person to engage in a  
14 swap unless that person submits such swap for  
15 clearing to a DCO that is registered under the CEA  
16 or a DCO that is exempt from registration under  
17 the CEA if the swap is required to be cleared.  
18 Section 723(a)(3) also requires a DCO to submit to  
19 the Commission each swap or any group, category,  
20 type, or class of swaps that it plans to accept  
21 for clearing so that the Commission may review  
22 such submission and determine whether the swap or

1 swaps described in the submission are required to  
2 be cleared.

3           The rule requires the DCO submitting  
4 swaps to the Commission to provide certain  
5 information to assist the Commission in its  
6 review, including a statement that addresses the  
7 five factors that the Dodd-Frank Act requires the  
8 Commission to take into account when reviewing a  
9 swap submission. Those five factors include:  
10 Existence of significant outstanding notional  
11 exposures, trading liquidity, and adequate pricing  
12 date; the availability of rule framework capacity,  
13 operational expertise and resources, and credit  
14 support infrastructure; the effect on the  
15 mitigation of systemic risk; the effect on  
16 competition; and the existence or reasonable legal  
17 certainty in the event of the insolvency of the  
18 relevant DCO or one or more of its clearing  
19 members.

20           The rule would also require the DCO to  
21 provide a statement of its eligibility to clear  
22 the swap; product, participant, and pricing

1 information; the applicable rules, manuals,  
2 policies, or procedures; and a description of the  
3 manner in which it has notified its members of the  
4 submission. The Commission must receive the  
5 submission by the open of business on the business  
6 day preceding the DCO's acceptance of the swap for  
7 clearing. The Commission would post the  
8 submission for a 30-day public comment period and  
9 make its determination no later than 90 days after  
10 receiving the submission.

11 The third part of the rule concerns  
12 Commission- initiated review of the swaps. The  
13 Dodd-Frank Act requires the Commission on an  
14 ongoing basis to review swaps that have not been  
15 accepted for clearing by a DCO to make a  
16 determination as to whether the swap should be  
17 required to be cleared. Under the rule if no DCO  
18 has accepted for clearing swaps that the  
19 Commission finds would otherwise be subject to a  
20 clearing requirement, the Commission must  
21 investigate the relevant facts and circumstances  
22 and within 30 days of the completion of its

1 investigation issue a public report containing the  
2 results of the investigation. The Commission  
3 would take such actions as it determines to be  
4 necessary and in the public interest, which may  
5 include establishing margin or capital  
6 requirements for parties to the swaps.

7           And finally, the last part of the rule  
8 concerns the stay of a clearing requirement.  
9 After making a determination that a swap or group,  
10 category, type, or class of swaps is required to  
11 be cleared, the Commission on application of a  
12 counterparty to a swap or on its own initiative  
13 may stay the clearing requirement until it  
14 completes a review of the terms of the swap and  
15 the clearing arrangement. If the Commission  
16 decides to issue a stay it would have 90 days to  
17 complete its review of the clearing of the swap.  
18 Upon completion of the review the Commission could  
19 determine, subject to any terms and conditions as  
20 the Commission determines to be appropriate, that  
21 the swap must be cleared or that the clearing  
22 requirement will no longer apply.



1                   And thank you. That's the end of my  
2 presentation.

3                   CHAIRMAN GENSLER: Thank you, Eileen. I  
4 support the final rulemaking to establish a  
5 process for review and designation of swaps for  
6 mandatory clearing. And one of the primary goals  
7 of the Dodd-Frank Act was to lower risk through  
8 moving the standardized swaps to central clearing,  
9 not all swaps, many swaps, customized swaps,  
10 bilateral. Many end users will be able to hedge  
11 that which they want by not using a clearing  
12 house. There won't even be a clearing mandate for  
13 non-financial end users, but the financial end  
14 users would still be able to do their customized  
15 swaps.

16                   But Congress said there should be a  
17 process about this mandate and I think this final  
18 rule is consistent with the congressional  
19 requirement that the clearing houses themselves  
20 who are eligible to clear swaps then submit swaps  
21 to us and put it out to public comment based on  
22 five statutory provisions. I think we've that

1 taken into consideration numerous comments. I  
2 think it was only about 30 comments or 18 or  
3 something, if I remember the count. Twenty, was  
4 it?

5 MS. DONOVAN: Twenty-six.

6 CHAIRMAN GENSLER: Twenty-six, there you  
7 go. But what I took away from the commenters was  
8 trying to lessen some of the burdens of these  
9 regulatory filings, and I think I want to  
10 compliment Eileen and the others on this team for  
11 taking into consideration those comments.

12 So I don't have any questions, but I'm  
13 supposed to ask for a motion. I'm sorry, I forgot  
14 that part. That's important. A motion on the  
15 staff recommendation on a final rule on a  
16 mandatory clearing process.

17 COMMISSIONER DUNN: So moved.

18 COMMISSIONER SOMMERS: Second.

19 CHAIRMAN GENSLER: So now I state that I  
20 support it, but any questions? Commissioner Dunn?

21 COMMISSIONER DUNN: Thank you. As I  
22 stated earlier, I've asked a number of questions

1 to the division and the rulemaking team, and on  
2 this I had asked how many folks it would take to  
3 implement that. I believe the answer was for DCIO  
4 approximately 20, is that correct?

5 MR. RADHAKRISHNAN: Commissioner, in  
6 response to your questions, we had said an  
7 additional five, five FTEs to work on the mandate  
8 determinations based on the President's request  
9 2012. The President in the budget requested 70  
10 FTE for the clearing policy and risk surveillance  
11 subprogram and we had planned to allocate 5 for  
12 the mandate determinations.

13 COMMISSIONER DUNN: So it'd be five on  
14 this. Is this in addition to the 20 that you  
15 talked about on the other proposed rule?

16 MR. RADHAKRISHNAN: Yes.

17 COMMISSIONER DUNN: How do you intend to  
18 implement this if we don't get increased budget?

19 MR. RADHAKRISHNAN: I think the issue  
20 will have to be a prioritization of work. So what  
21 DCIO will recommend to the Commission is that we  
22 do the things that we're required to do and then

1 with respect to those that we may not be required  
2 to do, they may have to take a backseat until we  
3 finish the things that we're required to do.  
4 These mandate determinations have to be made  
5 within a 90- day period.

6 COMMISSIONER DUNN: Thank you.

7 CHAIRMAN GENSLER: Thank you,  
8 Commissioner Dunn. I just -- Ananda, this 20 --  
9 I'm sorry, because I was conferring with Sara --  
10 there's a Risk Surveillance Group in Chicago right  
11 now.

12 MR. RADHAKRISHNAN: Correct.

13 CHAIRMAN GENSLER: And so maybe I'm not  
14 following you, but on the earlier proposal, and it  
15 was just a proposal, but doesn't the Risk  
16 Surveillance Group in Chicago already -- I mean,  
17 of course, they have other duties, but that group  
18 would have to take on this, you know, if we were  
19 to finalize the Futures Commission.

20 MR. RADHAKRISHNAN: Correct.

21 CHAIRMAN GENSLER: So it'd be --

22 MR. RADHAKRISHNAN: That group, yeah.

1 CHAIRMAN GENSLER: It's that group.

2 MR. RADHAKRISHNAN: Right.

3 CHAIRMAN GENSLER: So were you saying --

4 I don't remember the size of the Risk Surveillance

5 Group in Chicago, but it's 20 including --

6 MR. RADHAKRISHNAN: Right now they're

7 22.

8 CHAIRMAN GENSLER: Right now they're 22

9 and so that would have to grow.

10 MR. RADHAKRISHNAN: Yeah.

11 CHAIRMAN GENSLER: Okay.

12 MR. RADHAKRISHNAN: Yeah.

13 CHAIRMAN GENSLER: Commissioner Sommers?

14 COMMISSIONER SOMMERS: Thank you. I

15 have a couple of different questions about the

16 process that I think I'd like to clarify, and

17 especially for those people who were very

18 concerned about this process through the comment

19 period. So the process for reviewing

20 pre-enactment swaps that are currently being

21 cleared, those swaps were deemed submitted to us

22 on July 21, 2010, but we had agreements from all

1 of the DCOs to extend that 90-day period, the way  
2 I understand it, for making that determination.  
3 Is that correct?

4 MR. RADHAKRISHNAN: That's correct.

5 COMMISSIONER SOMMERS: So we're  
6 currently operating under that extension from DCOs  
7 that currently clear swaps.

8 MR. RADHAKRISHNAN: Correct.

9 COMMISSIONER SOMMERS: So does that  
10 extension of time also apply to swaps that they  
11 started clearing post- enactment? So it's not  
12 pre-enactment, it's also post- enactment swaps?

13 MR. RADHAKRISHNAN: No, because I think  
14 by the statute the deemed submission -- and  
15 correct me if I'm wrong -- was -- the deemed  
16 submission was in relation to pre-enactment, swaps  
17 already being cleared pre-enactment.

18 COMMISSIONER SOMMERS: Only. So only  
19 pre- enactment swaps. Anything that is currently  
20 being cleared, but being cleared post-enactment, a  
21 DCO would have to formally submit to us, they're  
22 not deemed submitted.

1 MR. RADHAKRISHNAN: Correct.

2 COMMISSIONER SOMMERS: The effective  
3 date of this rule, would that affect the clock on  
4 the extension or does the clock start running  
5 again, another 90 days after the effective date of  
6 this rule?

7 MR. RADHAKRISHNAN: I think the  
8 arrangement we had with the DCOs was that it  
9 wouldn't start until 90 days after the effective  
10 date of this rule.

11 COMMISSIONER SOMMERS: So 90 days after  
12 the effective date of this rule, if we're not  
13 prepared to make a determination we'd ask for  
14 another extension.

15 MR. RADHAKRISHNAN: Correct.

16 COMMISSIONER SOMMERS: Okay. And is it  
17 possible that we would decide at the conclusion of  
18 that 90 days that we're not prepared or that the  
19 answer is, no, these swaps are not yet mandated  
20 for clearing, we need another 60 days, we need  
21 another 180 days in order to make a mandatory  
22 decision because there may -- for a number of

1 different reasons?

2 MR. RADHAKRISHNAN: That is possible,  
3 yeah. That is possible because we --

4 COMMISSIONER SOMMERS: But we have the  
5 ability to do that.

6 MR. RADHAKRISHNAN: Yeah. Because we'll  
7 have to go through the five factors and the  
8 Commission will have to be satisfied that the five  
9 factors are satisfied.

10 COMMISSIONER SOMMERS: And how will we  
11 -- what's the process for reviewing those  
12 decisions? So we considered the five factors --

13 MR. RADHAKRISHNAN: Yeah.

14 COMMISSIONER SOMMERS: -- but how often  
15 do we consider those five factors? And what's the  
16 review of the decision? If we -- if you can  
17 contemplate that we have the ability to make a  
18 decision that, no, these swaps that are currently  
19 being cleared are not mandated to be cleared, how  
20 do we go back and review that decision?

21 MR. RADHAKRISHNAN: I think the  
22 Commission can at any time of its own volition go



1 back and examine whether any class, category, type  
2 of swap has to be cleared. So I think the  
3 Commission has the flexibility to do that. So I  
4 guess --

5 COMMISSIONER SOMMERS: Why would we  
6 initiate that? I mean, I guess from your  
7 perspective what would change? What would you be  
8 looking for?

9 MR. RADHAKRISHNAN: Probably new  
10 information because one of the factors is -- let  
11 me get to the factors -- outstanding notional  
12 amount, liquidity, and so on. So, yeah,  
13 significant outstanding notional exposures,  
14 trading liquidity, and adequate pricing data. So  
15 if it were to transpire that the Commission  
16 believes that that factor is not met because of a  
17 dearth of information, all the information we have  
18 is from DCOs, but the way I look at it a  
19 significant outstanding notional exposure doesn't  
20 just relate to cleared swaps because there may be  
21 other swaps which are uncleared. Staff will  
22 probably go to other sources by the -- publicly

1 available sources. But it could well be that we  
2 don't have enough information, the Commission is  
3 not satisfied.

4 But I think one of the things that might  
5 -- really would help us is SDRs. If a lot of  
6 stuff is reported to SDRs, then the Commission has  
7 an avenue to get this information. So it could be  
8 that once SDRs are registered and, you know, they  
9 start operating, the Commission could be in  
10 possession of information that will allow it to  
11 make a determination.

12 COMMISSIONER SOMMERS: So getting more  
13 accurate information would be helpful.

14 MR. RADHAKRISHNAN: Yes, yes,  
15 absolutely.

16 COMMISSIONER SOMMERS: The next set of  
17 questions I have are on eligibility  
18 determinations. So the rules provide that a DCO  
19 is presumed eligible to accept for clearing any  
20 swap that is within a group, category, type, or  
21 class of swaps that a DCO is already clearing, but  
22 that this presumption is subject to Commission

1 review. If a DCO wishes to accept a new type of  
2 swap for clearing it must ask the Commission for  
3 an eligibility determination.

4 So do we have a time period in which we  
5 need to make that determination?

6 MR. RADHAKRISHNAN: We don't have a set  
7 time period.

8 COMMISSIONER SOMMERS: And will we be  
9 making those eligibility determinations on DCOs  
10 that currently clear swaps?

11 CHAIRMAN GENSLER: Eileen, why don't you  
12 just answer?

13 MS. DONOVAN: Sorry. No. No, because  
14 they would be presumed eligible to clear the swaps  
15 that they're already clearing.

16 COMMISSIONER SOMMERS: Okay.

17 MS. DONOVAN: Only if like, for  
18 instance, they're clearing interest rate  
19 (inaudible) swaps and suddenly wanted to do CDS,  
20 that we may have to revisit their eligibility.

21 COMMISSIONER SOMMERS: That would  
22 initiate another --

1 MS. DONOVAN: Right.

2 COMMISSIONER SOMMERS: -- a type. A  
3 different asset class would initiate another  
4 determination.

5 MS. DONOVAN: Right.

6 COMMISSIONER SOMMERS: Okay. And how  
7 will we make those determinations? Will it be a  
8 Commission determination by Commission order? How  
9 will we do that? And will we seek comment?

10 MR. RADHAKRISHNAN: I would envision it  
11 to be a Commission action. And I think it makes  
12 sense to get public comment on it.

13 COMMISSIONER SOMMERS: Another area that  
14 I have some concern about, but I do believe we've  
15 addressed in the final rule, is with regard to  
16 making a determination that a swap must be cleared  
17 if no DCO has accepted it for clearing. So if you  
18 could just walk through how you would anticipate  
19 that process working. Why would we make that kind  
20 of determination if no DCO has accepted a swap?

21 MR. RADHAKRISHNAN: Well, that's a good  
22 question. The response is that the Commission has

1 the legal responsibility to do so. So some people  
2 have argued that it doesn't make any sense to make  
3 a determination if no DCO is going to clear it  
4 because it may be an empty determination. But I  
5 guess what I can predict is why a DCO may not want  
6 to clear a swap. It may be that the Commission  
7 gets information that a sudden category of swaps  
8 -- it's a no-brainer that has to be cleared, but  
9 because of what's happening structurally at DCOs,  
10 nobody wants to clear it. It could be. I don't  
11 know.

12 COMMISSIONER SOMMERS: Because the  
13 statute prohibits us from forcing a DCO to clear  
14 something, I mean, what do you think we would do?  
15 Have a roundtable and talk to all DCOs about why  
16 nobody's clearing?

17 MR. RADHAKRISHNAN: I think that's a  
18 fair question. I think that's a fair question.  
19 For example, you know, before Dodd-Frank we had  
20 conversations with DCOs -- and this was before the  
21 language was finalized -- and I asked a question  
22 as to whether there were any classes of

1 standardized swaps that you will not -- that  
2 somebody will not clear? And this doesn't apply  
3 to us because -- everybody said equity swaps, that  
4 they are standardized, but nobody wants to clear  
5 them because they cannot model the risk. Now, to  
6 me that's a very critical piece of information  
7 there. If somebody doesn't know how to model the  
8 risk -- either doesn't know how to model the risk  
9 or knows how to model the risk and it'll be so  
10 expensive that nobody will want to clear it or  
11 nobody wants to take the risk.

12           So I guess what I'm saying is, we just  
13 don't know what people will tell us. And so  
14 that's why I think that -- and I guess that's why  
15 Congress gave us a responsibility for two reasons.  
16 I'm guessing, one, because they're worried that,  
17 you know, people will collude and not clear  
18 something. So it would stand to reason that,  
19 logically, if you would make the first  
20 determinations with respect to things that the  
21 people are already clearing. But I guess my  
22 answer is I just don't know, so.

1 COMMISSIONER SOMMERS: Thank you.

2 CHAIRMAN GENSLER: Commissioner O'Malia,  
3 just before -- I just -- Ananda, I think that --  
4 if I recall, and Dan Berkovitz is here, I mean,  
5 Congress included this provision that we could  
6 initiate a review. And we say clearly -- I think  
7 it was good that we said this in the preamble --  
8 that the Commission anticipates that initially  
9 mandatory clearing determinations would only  
10 involve swaps that are either already being  
11 cleared or that a DCO submits to clearing.

12 MR. RADHAKRISHNAN: Right.

13 CHAIRMAN GENSLER: I mean, we're going  
14 to first let the clearing houses come to us.

15 MR. RADHAKRISHNAN: Right.

16 CHAIRMAN GENSLER: And they're already  
17 clearing and, I mean, in the interest rate swap  
18 world the largest clearing house has close to \$300  
19 trillion notional amount of interest rate swaps in  
20 it.

21 MR. RADHAKRISHNAN: Right.

22 CHAIRMAN GENSLER: And we've been

1 regulating them for 10 years, along with the FSA.

2 MR. RADHAKRISHNAN: Right. Broad-based  
3 index CDFs.

4 CHAIRMAN GENSLER: Broad-based index  
5 CDFs are being cleared.

6 MR. RADHAKRISHNAN: Energy.

7 CHAIRMAN GENSLER: Energy, and actually  
8 it has lowered the risk in the energy market  
9 significantly these last 8 or 10 years post the  
10 Enron. So, in the energy and the interest rate  
11 and the index space --

12 MR. RADHAKRISHNAN: And some  
13 agricultural as well, Mr. Chairman.

14 CHAIRMAN GENSLER: So, I mean, I think  
15 it's important that the Commission has actually  
16 said here what we've said, that we anticipate  
17 initial mandatory clearing determinations would  
18 involve the swaps that are already being cleared  
19 or a clearing house wants to clear.

20 MR. RADHAKRISHNAN: Yep.

21 CHAIRMAN GENSLER: I mean, this is going  
22 to take a while. I mean, but the Congress still



1 has this back -- you might consider it a backup  
2 authority on which we could initiate something  
3 from time to time. In the future we might, but I  
4 think initially this is what we've said and if we  
5 all vote for it I think that's a good statement of  
6 where we are.

7 But, I mean -- Dan, is there anything

8 you -- no? Commission O'Malia?

9 COMMISSIONER O'MALIA: Well, Mr.

10 Chairman, I think you've highlighted an important  
11 point. In the futures markets, it's voluntary.  
12 In this, we're mandating it. There's no statute  
13 that says you have to clear future space. This --  
14 we are mandating it. This is a different breed of  
15 cat and we're going into this not knowing exactly  
16 how these things trade, what features they're  
17 going to be, how they're going to pre-price, what  
18 type of liquidity, et cetera.

19 A feature that I've asked for in terms  
20 of guidance -- I mean, what are the criteria that  
21 we're going to use going forward? So I think it's  
22 a valid point, but this is a bigger challenge than

1 simply saying it's a one size fits all futures  
2 model because it's not. And we have our --

3 CHAIRMAN GENSLER: I don't think I said  
4 that.

5 COMMISSIONER O'MALIA: No, you didn't.

6 CHAIRMAN GENSLER: Okay.

7 COMMISSIONER O'MALIA: But I'm just  
8 agreeing with you actually.

9 CHAIRMAN GENSLER: Okay. All right.

10 COMMISSIONER O'MALIA: In some of the  
11 comment letters we received, they'd asked --  
12 market participants had asked for more  
13 transparency and clarity on some of the substance.  
14 And specifically they had asked what are the  
15 criteria the Commission will be using going  
16 forward in determining what's clearable, et  
17 cetera?

18 How do you reconcile one little lie  
19 moving forward on mandatory clearing without  
20 guidance and -- in Section 2(h)(3)(D). The  
21 section states, "The Commission shall adopt rules  
22 for reviewing a derivatives clearing

1 organization's clearing of a swap or a group,  
2 category, type, or class of swaps that it has  
3 accepted for clearing."

4 There's some broad categories that the  
5 statute gave us, but it gives no balance as to how  
6 we're going to determine which are more relevant.  
7 What's important? What standards are going to be  
8 within those categories? And I'm just sensitive  
9 to the market that they've asked for some more  
10 information.

11 MR. RADHAKRISHNAN: I'm sorry. I'm to  
12 find it at 2(h)(3)(E)?

13 COMMISSIONER O'MALIA: 2(h)(3)(D).

14 MR. RADHAKRISHNAN: Okay. 2(h)(3)(D) --  
15 I'm sorry, maybe I'm misunderstanding this, but I  
16 think that's what we're trying to do, which is to  
17 comply with 2(h)(3)(D). I may be missing  
18 something.

19 CHAIRMAN GENSLER: Eileen, do you want  
20 to join us? Eileen?

21 MS. DONOVAN: Right. I mean, that was  
22 the basis for this rulemaking, yes.

1                   COMMISSIONER O'MALIA: Yeah, but people  
2                   have asked for additional guidance and we haven't  
3                   been specific. I mean, we've had this discussion.

4                   MR. RADHAKRISHNAN: Guidance with  
5                   respect to the factors?

6                   COMMISSIONER O'MALIA: Yeah.

7                   MR. RADHAKRISHNAN: Okay. So I don't  
8                   know whether this is the place for guidance. To  
9                   me, you know, one approach I would take is  
10                  Congress has given us the factors to consider, I'm  
11                  not sure what additional guidance we could give  
12                  because -- the way I look at it, the Commission  
13                  will have to seek comment as to whether, let's  
14                  say, you know, interest rate swaps have to be  
15                  cleared?

16                  And I would imagine that the Commission  
17                  would be asking questions with respect to the  
18                  factors. So are you suggesting that -- are the  
19                  commenters suggesting that the Commission have a  
20                  view?

21                  COMMISSIONER O'MALIA: Well, the  
22                  commenters did ask about different waiting of the

1 various factors, the importance of the factors,  
2 what the minimum standards of the factors were.

3 MR. RADHAKRISHNAN: Right.

4 COMMISSIONER O'MALIA: So they did ask  
5 for several specific areas which we did not  
6 provide specificity on. And so one of the  
7 concerns I have is, if we're going to move forward  
8 on a case-by-case basis, a --

9 MR. RADHAKRISHNAN: I think we have to.

10 COMMISSIONER O'MALIA: So, if we do --

11 MR. RADHAKRISHNAN: I think we have to  
12 move on a case-by-case basis because the asset  
13 classes are different.

14 COMMISSIONER O'MALIA: The asset classes  
15 are different, but is that the only factor?  
16 Because if we move forward on a case-by-case basis  
17 -- and maybe Dan wants to weigh in on this --  
18 doesn't that really open us up to potential legal  
19 challenges such as those relating to arbitrary and  
20 capricious action?

21 MR. RADHAKRISHNAN: Dan knows what your  
22 plan is, but with respect to the comment that

1 maybe some of the factors should have more weight,  
2 I don't know whether the statute allows us to do  
3 it because Congress gave us five factors and I  
4 think we have to consider the five factors.

5 COMMISSIONER O'MALIA: No doubt, but on  
6 a case- by-case basis, then we seem to be ignoring  
7 2(h)(3)(D) which says a rule -- because if we're  
8 going to implement this separately -- when we have  
9 an obligation, the Congress told us to implement a  
10 single rule. I think we're kind of caught up in  
11 this debate here.

12 CHAIRMAN GENSLER: Dan, do you want to  
13 address this?

14 MR. BERKOVITZ: Generally the agency has  
15 the flexibility, as Ananda's been talking about,  
16 to do -- in a situation like this to either do a  
17 rulemaking with additional guidance --

18 COMMISSIONER O'MALIA: Which is what  
19 (3)(D) specifically says.

20 MR. BERKOVITZ: Or it could, as Ananda's  
21 explained, do it on a case-by-case basis and say  
22 we will consider the statutory factors, weigh the

1 statutory factors, put out its determination for  
2 public comment, get the public comment, and then  
3 make a determination based upon the record. As  
4 you've noted, its determinations would have to be  
5 rational, could not be arbitrary and capricious.  
6 And to a certain extent, if the agency chooses to  
7 proceed on a case-by-case basis, it would be  
8 developing essentially case law as to how it's  
9 applying the factors and that would become the  
10 body that would guide the future determinations.

11 So, if you made a certain determination  
12 with respect to one particular type of swap and  
13 how the factors were weighted, that would guide  
14 the agency in its future determinations. So you  
15 could do it either through the rule or through a  
16 case-by-case determination with a sufficient  
17 explanation of the rational basis for that.

18 COMMISSIONER O'MALIA: All right. Well,  
19 I assume this has the votes. I'm going to vote  
20 for it, but I am sensitive to the questions asked  
21 by commenters that they want a little more  
22 granularity on what the Commission's priorities

1 are in determining what a swap will be.

2 I'll send the letter out and I hope in  
3 the 60 days it will get some -- the market does  
4 provide meaningful comment as to what relevant  
5 factors they think are in the market. And then we  
6 adjust that and maybe reflect on that as we  
7 develop this case-by-case evaluation.

8 All right. My second question is  
9 targeted at the inner connections between this  
10 rulemaking and other rulemakings. What definition  
11 of swap is this rulemaking using?

12 CHAIRMAN GENSLER: Dan, you want to go?

13 MR. BERKOVITZ: The rulemaking does not  
14 rely on a specific definition, but clearing  
15 agencies or clearing organizations would be able  
16 to submit instruments they would consider swaps  
17 and the Commission could proceed to evaluate those  
18 prior to the completion of definitional  
19 rulemaking.

20 COMMISSIONER O'MALIA: So if we have a  
21 clearing requirement effective before the  
22 definition of swap, that won't matter?



1                   MR. BERKOVITZ: This doesn't impose the  
2 clearing requirement itself, this --

3                   COMMISSIONER O'MALIA: But if we do have  
4 a clearing requirement and we have swaps that have  
5 to be cleared, the definition of swap is somewhat  
6 --

7                   CHAIRMAN GENSLER: Commissioner O'Malia,  
8 I'll help you out. I'm in the same place you are  
9 on this. I think this is a process role, and an  
10 important process role where clearing houses might  
11 come to us in 2 to 3 months and start that 90-day  
12 clock. But I think, like you and maybe other  
13 Commissioners, I think any mandate that has, you  
14 know -- a legal mandate should come after we've  
15 finished that swap. We're only further defining a  
16 swap.

17                   I think everybody knows what a two-ear  
18 interest rate swap is, but the further defining  
19 the swap rule, I think the comment period closes  
20 July 22nd. It's emblazoned in me. And I talked  
21 to Chairman Shapiro yet again yesterday, at the  
22 tail end of the Financial Stability Oversight

1 Council, and the importance of -- once that closes  
2 to get our mutual staffs summarizing comments and  
3 finalizing that as well as finalizing the entity  
4 definition thing. I mean --

5 COMMISSIONER O'MALIA: Right.

6 CHAIRMAN GENSLER: I mean, I think what  
7 the five of us could compete on our enthusiasm and  
8 finalizing those joint rules, but I'm right with  
9 you on finalizing those.

10 COMMISSIONER O'MALIA: Thank you.

11 COMMISSIONER DUNN: Mr. Chairman --

12 CHAIRMAN GENSLER: I'm not putting out a  
13 schedule for it because I just don't know. I  
14 mean, I would love to say we're going to finalize  
15 it in September, but I think it's going to take  
16 longer. I mean, I think it's going to be, you  
17 know, into the fall for the entity definition one,  
18 and on the product definition one the comment  
19 period hasn't closed yet, so.

20 I'm sorry, Commissioner Dunn?

21 COMMISSIONER DUNN: I was going to ask  
22 for you to give us an estimate, but I guess you

1 just did.

2 COMMISSIONER O'MALIA: No, push him on  
3 it.

4 CHAIRMAN GENSLER: My best estimate is  
5 that on the entity definition it's post-Labor Day,  
6 for sure. And I don't see it happening in  
7 September because we and the SEC both like to get  
8 to what's called a "pens down" version and, you  
9 know, get commissioner feedback on that "pens  
10 down" version promptly. But it's possible that  
11 we'll get that "pens down" version on the entity  
12 definition in August and try to schedule it for  
13 the September 22nd meeting, but I think it's more  
14 likely in October.

15 And then on the product definition rule,  
16 since the comment period hasn't even closed yet,  
17 it's probably going to take us past Labor Day to  
18 summarize the comments, get them to 10  
19 commissioners instead of 5, of course, in that  
20 case. And we're probably talking about closer to  
21 that Thanksgiving period, but I don't want to --  
22 you know, this is -- we're not going to bring a

1 document to you all and to a vote unless it's  
2 really gotten the feedback from, you know, all of  
3 you and, obviously, the SEC commissioners as well.

4 It's one of the challenges on doing a  
5 precise schedule with precise dates. It sort of  
6 flies in conflict of getting it right and getting  
7 the balance. And I think that come November, we  
8 may well be most likely taking up the exemptive  
9 order again, given those facts and circumstances,  
10 and looking at whatever other relief we need.  
11 Because I don't want to try to manage against a  
12 clock. It's more important to get it balanced and  
13 get it right and get all the inputs from staff and  
14 commissioners.

15 COMMISSIONER O'MALIA: Let me go to my  
16 next question. Do you believe that the Commission  
17 has the authority under CEA Section  
18 2(h)(4)(B)(iii) to impose capital and margin  
19 requirements on banks, swap dealers, and bank  
20 major swap participants?

21 MR. RADHAKRISHNAN: I think the document  
22 says that we will act -- the Commission will act

1 in accordance with other regulations, you know,  
2 (inaudible).

3 COMMISSIONER O'MALIA: Here, I can read  
4 it for you, if you --

5 MR. RADHAKRISHNAN: Yeah.

6 COMMISSIONER O'MALIA: "Footnote 10  
7 states, the Commission would consult with the  
8 Prudential regulators before taking action under  
9 Regulation 39.5(c)(3)(iii), which would include  
10 margin capital."

11 MR. RADHAKRISHNAN: Well, actually --  
12 because I think we are saying, you know -- page  
13 21, "Commission notes that with respect to swap  
14 dealers and major swap participants it will not  
15 impose marginal or capital requirements under  
16 39.5(c)(3) that defer from final Commission  
17 regulations on marginal capital for uncleared  
18 swaps."

19 And then the document says, "Further,  
20 the Commission does not foresee that it would take  
21 action under 39.5(c)(3) to impose margin or  
22 capital requirements on any swap counterparty

1 permitted under final Commission regulations to  
2 exercise the end user exception to mandatory  
3 clearing."

4 COMMISSIONER O'MALIA: Dan, do you  
5 believe that we have the authority? Yes or no on  
6 that? To set it on bank dealers?

7 MR. BERKOVITZ: I think this footnote  
8 was -- and this addressing here was to address the  
9 difference -- to reconcile the various statutory  
10 provisions and so, in attempting to do that it  
11 said, obviously, we have the concerns on -- as  
12 you've talked about -- so we have to reconcile  
13 these various provisions. And that's what we  
14 would do.

15 COMMISSIONER O'MALIA: Let me turn to  
16 the end- user exemption. We have language in the  
17 preamble that says, "The Commission does not  
18 foresee that it would take action under the final  
19 Commission regulation" to exercise end-user  
20 exemption to -- essentially, the Commission does  
21 not foresee applying capital margin on end users.

22 I'm a little concerned because I thought

1 Congress was pretty clear about this. And  
2 certainly the Dodd- Lincoln letter to follow that  
3 was pretty clear about this. "Does not foresee"  
4 kind of has some wiggle in it. Why did we include  
5 those words?

6 MR. RADHAKRISHNAN: I think it's because  
7 of -- you know, as Dan pointed out, you've got  
8 different statutory provisions, right? Because  
9 the statute provision says, you know, "The  
10 Commission can take such actions as the Commission  
11 determines to be necessary and in the public  
12 interest, which may include requiring the  
13 retaining of adequate marginal capital by parties  
14 to the swap, group, category, type, or class of  
15 swaps."

16 COMMISSIONER O'MALIA: So does that --  
17 that's the standard end-user exemption?

18 MR. RADHAKRISHNAN: It trumps that  
19 provision.

20 CHAIRMAN GENSLER: Commissioner O'Malia,  
21 maybe the word came from me. I was trying to be  
22 respectful of the process that we hadn't finalized

1 the rule. That's all. I don't foresee that we're  
2 going to do it, but we have a proposal outstanding  
3 and that -- on the margin issue, the margin  
4 proposal we put out is clear that we're not  
5 imposing any margin on -- dealers don't have to  
6 collect margin from end users, but it's a  
7 proposal. So it may have just been me, just that  
8 it hasn't been finalized.

9 I think it might help, subject to the  
10 comments, but not trying to envision what the  
11 final action would be, that it would be consistent  
12 with what was proposed. In fact, that was --

13 COMMISSIONER O'MALIA: All right. Well,  
14 I just hope that I --

15 CHAIRMAN GENSLER: I don't think there's  
16 any difference between you and me on the end user  
17 margin issue.

18 COMMISSIONER O'MALIA: Then we really  
19 shouldn't put it in -- you know, insert  
20 uncertainty into the language, but I take you at  
21 your word and, hopefully, the comments will  
22 reflect -- and, hopefully, the language in the



1 final form will be much more certain for the end  
2 users on that one.

3 That's all I have. Thank you very much.  
4 Eileen, great job.

5 CHAIRMAN GENSLER: Mr. Stawick?

6 MR. STAWICK: Commissioner O'Malia?

7 COMMISSIONER O'MALIA: Yes?

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

10 CHAIRMAN GENSLER: Aye by proxy.

11 MR. STAWICK: Commissioner Chilton, aye  
12 by proxy. Commissioner Sommers?

13 COMMISSIONER SOMMERS: Aye.

14 MR. STAWICK: Commissioner Sommers, aye.  
15 Commissioner Dunn?

16 COMMISSIONER DUNN: Aye.

17 MR. STAWICK: Commissioner Dunn, aye.  
18 Mr. Chairman?

19 CHAIRMAN GENSLER: Aye.

20 MR. STAWICK: Mr. Chairman, aye. Mr.  
21 Chairman, on this question, the ayes are five, the  
22 nays are zero.

1                   CHAIRMAN GENSLER: Thank you, Mr.  
2                   Stawick. Thank you, Eileen and John and Ananda,  
3                   Dan, for your cameo.

4                   And I gather, at this time, I'd like to  
5                   call Bella Rozenberg and a team up -- Joe, Tom,  
6                   Riva, and Rick from the Division of Market  
7                   Oversight, and Phyllis from the Division of  
8                   Clearing and Intermediary Oversight -- to present  
9                   the staff's recommendations regarding the final  
10                  rule on certain provisions that are common to  
11                  registered entities. or what often in the industry  
12                  is referred to as Part 40.

13                  Assuming Bella is taking a lead here?

14                  MS. ROZENBERG: Yes. Good morning, Mr.  
15                  Chairman, Commissioners. Today's staff is  
16                  recommending that the Commission approve the final  
17                  rulemaking to implement rule certification and  
18                  approval procedures for existing registered  
19                  entities such as designated contract markets and  
20                  derivatives clearing organizations, and for new  
21                  registered entities such as swap execution  
22                  facilities and swap data repositories. The

1 rulemaking also prohibits event contracts based on  
2 certain excluded commodities, establishes special  
3 procedures for certain rule changes proposed by  
4 systemically important derivatives clearing  
5 organizations -- SIDCOs -- and provides for  
6 staying of review periods for certain novel  
7 derivative products pending the resolution of  
8 jurisdictional determination.

9           Following the publication of the  
10 proposed rulemaking on November 2, 2010, the  
11 Commission received 10 comment letters. Staff  
12 carefully reviewed the comments and made a number  
13 of changes to address commenters' concerns. The  
14 final regulations establish a new timeline  
15 mandated by Dodd-Frank for self-certified  
16 submission of new rules and rule amendments.

17           A new rule or rule amendment will become  
18 effective 10 business days after the certified  
19 rule or rule amendment is received by the  
20 Commission. The Commission may stay the initial  
21 review period for an additional 90 days if the  
22 submission includes novel or complex issues or is

1 certified with inadequate explanation or is  
2 potentially inconsistent with the Commodity  
3 Exchange Act.

4 The Commission must provide a 30-day  
5 public comment period within the 90-day review  
6 period. The new rule or rule amendment will  
7 become effective 90 days after the certification  
8 is stayed unless the Commission objects to the  
9 certification.

10 Notably, the Dodd-Frank Act mandates the  
11 above- mentioned timeline for self-certified rules  
12 and rule amendments, but not for self-certified  
13 new products. The timeline for filing products  
14 for self-certification remains unchanged and that  
15 is the Commission must receive a submission at its  
16 headquarters by the open of business on the  
17 business day preceding the product's listing.  
18 Also, the final regulations have been modified to  
19 address certain concerns raised by the comment  
20 letters.

21 Specifically, with respect to the  
22 product and rules certification filings, as

1 requested by a number of commenters, the final  
2 regulation eliminates the requirement that a  
3 registered entity must include with its submission  
4 documents relied upon in determining that a new  
5 product or a new rule or rule amendment complies  
6 with the Commodities Exchange Act.

7           To balance the staff need for  
8 information to carry our reviews while conserving  
9 staff resources and also to alleviate the  
10 commenters perceived burdens of complying with a  
11 documentation requirement, the final regulations  
12 only require the submission of a concise  
13 explanation and analysis of a product or a rule or  
14 a rule amendment. And in the case of a new  
15 product submission, such concise explanation and  
16 analysis must provide a simple reference to data  
17 sources.

18           Furthermore, in consideration of a  
19 number of comments, the final regulations do not  
20 adopt the previously proposed provision requiring  
21 a registered entity to certify that it has rights  
22 to use or reference third party prices. Also, to

1 streamline the product certification process for a  
2 significant number of swap contracts, the final  
3 regulation permits SEFs and DCMs to certify within  
4 a single submission one or more swaps without  
5 submitting each swap and its supporting  
6 information to the Commission if the class of  
7 swaps meets certain conditions that are specified  
8 in the regulations.

9           Moreover, to further streamline the new  
10 products submission process, the regulation  
11 permitting DCOs to submit products accepted for  
12 clearing only under the forthcoming provision of  
13 39.5, and not under Part 40.

14           With respect to certification procedures  
15 for submission of rules by SIDCOs, in accordance  
16 with Section 806 of the Dodd-Frank Act, the  
17 regulations require SIDCOs to provide the  
18 Commission with a 60-day advanced notice to any  
19 proposed change to its rules or procedures that  
20 could materially affect the nature or level of  
21 risk presented by the SIDCO. The regulation  
22 allows the SIDCO to implement the proposal change

1 if the review period lapses without Commission  
2 action. The rule would allow the Commission  
3 during the 60-day review period to extend the  
4 review period for an additional 60 days if the  
5 proposed change raises novel or complex issues.

6 Turning to the provision relating to  
7 event contracts, essentially the final rule  
8 remains unchanged from the proposed rulemaking.  
9 The final rule prohibits the listing, trading, or  
10 clearing of certain products that are based on  
11 excluded commodities that involve terrorism,  
12 assassination, war gaming, or an activity that is  
13 unlawful under any state or federal law. These  
14 activities are specifically enumerated in the  
15 statute.

16 In addition, the rule provides that the  
17 listing, trading, or clearing of products  
18 involving activities that are similar to the  
19 activities that are prohibited by the statute and  
20 that the Commission determines to be contrary to  
21 the public interest would be prohibited and would  
22 be enumerated in the future rulemaking.

1                   Furthermore, if the Commission  
2                   determines that a submitted product involves or  
3                   may involve one of the prohibited activities, the  
4                   Commission will request that the registered entity  
5                   suspend the listing or trading of this contract  
6                   and will conduct a 90-day review to determine  
7                   whether the product violates the prohibitions on  
8                   certain event contracts. Upon completion of its  
9                   review, the Commission will issue a determination  
10                  order.

11                  And finally, the rules authorize the  
12                  Commission to stay the product certification or  
13                  approval review period for novel derivative  
14                  products that have elements of both the security  
15                  and a commodity futures and options contract  
16                  pending the issuance of a final determination  
17                  order as to whether the Commission or the SEC has  
18                  jurisdiction over the product.

19                  That concludes my remarks. I would be  
20                  happy to take any questions.

21                  CHAIRMAN GENSLER: Thank you, Bella.  
22                  The chair will now entertain a motion to accept



1 the staff recommendation on the final rule related  
2 to Part 40?

3 COMMISSIONER DUNN: So moved.

4 COMMISSIONER SOMMERS: Second.

5 CHAIRMAN GENSLER: Okay, thank you. I  
6 support the final rulemaking to establish a  
7 process for certification and approval of new  
8 rules and rule amendments for various registered  
9 entities, designated contract markets, and the  
10 clearing houses, and the new registrants, the SEFs  
11 and the data repositories.

12 The Dodd-Frank Act established enhanced  
13 review and certification of new rule and  
14 amendments, and I think the final regulations here  
15 provide the procedural guidance for the various  
16 entities. I appreciate Bella and the team's work  
17 on the rule itself and taking the commenters and  
18 trying to lower the burden. In some instances,  
19 though, it was Congress that really did change  
20 something. And it was just not two areas because  
21 I know Commissioner Dunn and I have had a lot of  
22 conversations about this.

1                   One is with relations to event  
2                   contracts, those contracts Bella mentioned on  
3                   anti-terrorism and the like. And even gaming, I  
4                   guess, is in the statute, right?

5                   MS. ROZENBERG: Yes, in the statute.

6                   CHAIRMAN GENSLER: So the designated  
7                   contract markets and swap execution facilities  
8                   will be able to move forward on products with  
9                   great certainty. I don't envision -- nor does  
10                  anyone, I think, envision that we're back in the  
11                  1980s and '90s of product review, but Congress had  
12                  a specific provision that we're not supposed to do  
13                  event contracts like these. So I think the rule  
14                  is consistent with what Congress laid out, but  
15                  that is something that I know we've chatted a lot  
16                  about.

17                  And then secondly, on Title 8, if a  
18                  clearing house is deemed systemically important by  
19                  the Financial Stability Oversight Council and we  
20                  -- you know, we're they're primary regulator here  
21                  at the CFTC. We have to provide more time. I'm  
22                  hoping that we cannot run 60 days to figure out

1       whether something is risk reducing or risk  
2       enhancing, but apparently Congress wanted that  
3       additional time so that the Federal Reserve and  
4       other regulators could take a look at it as well.

5               MS. ROZENBERG: Yes.

6               CHAIRMAN GENSLER: But I support the  
7       rule because I think it does what Congress said to  
8       do and it addresses industry comments.

9               Commissioner Dunn?

10              COMMISSIONER DUNN: Thank you, Mr.  
11      Chairman. I have no questions on this. I  
12      commented extensively in my opening statement on  
13      this particular proposal. I do hope that future  
14      commissions do not see this as the instrument in  
15      which they can begin going through product review  
16      on every issue that comes forward from the  
17      exchanges. I have a lot of reservations on this.

18              As you point out, it is part of the  
19      statute and we have to follow the statute. I just  
20      hope that future commissions show a good amount of  
21      restraint as the implement this rule.

22              CHAIRMAN GENSLER: I share your view

1 about product review. If I recall the history of  
2 this, it was just about when movie futures were  
3 being debated, and I think some of these  
4 provisions on the event contracts and anti-gaming  
5 were topical to certain senators and members of  
6 the House of Representatives at the time. Thank  
7 you.

8 Commissioner Sommers?

9 COMMISSIONER SOMMERS: Thank you. I  
10 have a couple of different questions with regard  
11 to the SIDCO parts of the rulemaking for Phyllis.

12 In the part of the rulemaking that's  
13 specific to the SIDCOs there was one, Part 40.10  
14 with regard to DCOs and their supervisory agency,  
15 and it had been suggested to us that we clarify  
16 that language with regard to SIDCOs and who their  
17 supervisory agency would be. And in the final  
18 rule before us today it says that we intend to act  
19 by revising the definition of systemically  
20 important derivatives clearing organization in a  
21 future final rulemaking to clarify that a SIDCO is  
22 a financial market utility that has been

1 designated by the FSOC to be systemically  
2 important and for which the Commission acts as the  
3 supervisory agency.

4 Can you tell us which future final  
5 rulemaking this will be part of?

6 MS. DIETZ: Yes. As you may recall,  
7 there have been a series of rulemakings to  
8 implement DCO core principles and within those  
9 rulemakings we have proposed some definitions, and  
10 one of the definitions that was proposed was a  
11 definition of systemically important derivatives  
12 clearing organization.

13 And as proposed the language did not  
14 take into account dual registrants. So that if  
15 you are, for example, the Options Clearing  
16 Corporation, you're registered with both the SEC  
17 and the CFTC. The way we had phrased the  
18 definition, if you are a DCO and you are deemed to  
19 be systemically important, then you are subject to  
20 this provision. And that was not as precise as it  
21 should have been because it had the unintentional  
22 result of taking a DCO, a dual registrant, and --

1 even if their supervisory agency were the SEC, we  
2 would say you have to file the rules with us. And  
3 indeed, Section 806 says that you file with your  
4 supervisory agency. So, it would either be the  
5 SEC or the CFTC, but it wouldn't be both.

6 So, noting this issue, rather than  
7 building in a definition into this rulemaking, we  
8 decided it was better to just go ahead. When we  
9 do the DCO definitions, we will make the change  
10 there. Right now nobody's been designated as  
11 anything. There's no confusion. We'll put the  
12 change in there and then that will serve as a  
13 useful definition for all other references to the  
14 systemically important derivatives clearing  
15 organizations.

16 COMMISSIONER SOMMERS: Thank you for  
17 clarifying that.

18 CHAIRMAN GENSLER: Commissioner Sommers,  
19 it's just as we use the word "foresee" and this  
20 has "intent," I'm just sharing -- I support this.  
21 I mean, it's not a --

22 COMMISSIONER SOMMERS: No, my only

1 clarification is which rulemaking we were going to  
2 fix this in.

3 My other question is with regard to the  
4 60-day advanced notice of any rule change that  
5 would decrease risk for SIDCOs, and there were a  
6 number of different commenters that had an issue  
7 with waiting the 60 days time period. And so in  
8 the final rulemaking we talk about how the  
9 Commission could notify the SIDCO in writing that  
10 it does not object to the change before that  
11 60-day time period is up. My question is with  
12 regard to the 10-day for Commission review. Is it  
13 somewhere in between? It has to be at least 10  
14 days, but it can't be more than 60? Is that how  
15 those kind of risk-reducing changes would be dealt  
16 with?

17 MS. DIETZ: I think we have interpreted  
18 the 60 days as it's the statutory timeframe, but  
19 we can always notify people in less than 60 days.  
20 And based on Title 8, it would not preclude  
21 notifying people in five days or nine days.

22 COMMISSIONER SOMMERS: Okay, it doesn't

1 have to be at least 10?

2 MS. DIETZ: That is how we've  
3 interpreted it.

4 COMMISSIONER SOMMERS: Okay, thank you.

5 CHAIRMAN GENSLER: Thank you,  
6 Commissioner Sommers. Commissioner O'Malia?

7 COMMISSIONER O'MALIA: I have no  
8 questions.

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

11 MR. STAWICK: Commissioner O'Malia?

12 COMMISSIONER O'MALIA: Aye.

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

15 CHAIRMAN GENSLER: Aye by proxy.

16 MR. STAWICK: Commissioner Chilton, aye  
17 by proxy. Commissioner Sommers?

18 COMMISSIONER SOMMERS: Aye.

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

21 COMMISSIONER DUNN: Aye.

22 MR. STAWICK: Commissioner Dunn, aye.



1 Mr. Chairman?

2 CHAIRMAN GENSLER: Aye.

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

6 CHAIRMAN GENSLER: I thank you, Mr.  
7 Stawick. I thank the Commissioners and I thank  
8 the team for their excellent work across  
9 divisions.

10 Tom, now you get to go back and do  
11 real-time reporting and all that we need to do  
12 there. And Bella, you get to go back and do your  
13 SEF summaries and get things to the Commissioner  
14 and Phyllis. We look forward to -- with  
15 transparency maybe we'll address the clearing  
16 rules in late September or the risk management  
17 part of the clearing rules, which would include  
18 this. So, thank you all very much.

19 At this time I'd like to welcome Ward  
20 Griffin of the Office of General Counsel; Ananda  
21 back again. Ananda, did you get any sleep last  
22 night?

1 MR. RADHAKRISHNAN: Just a bit.

2 CHAIRMAN GENSLER: Not for two days. To  
3 present the staff recommendations in the final  
4 rule.

5 Ward, there's a lot of ways that people  
6 start out the day when they're a team lead, but I  
7 have to say that as team leads go you started out  
8 this day like no other team lead maybe past or  
9 even in the future. But the e-mail that we all  
10 got this morning, I mean, the public might want to  
11 know. Ward's e-mail to all of us that somehow you  
12 had misplaced your two bowties and the colors of  
13 those bowties. Were you successful in retrieving  
14 those bowties yet?

15 MR. GRIFFIN: Unfortunately, no. But  
16 I'm glad you bring it up as we know it's all being  
17 webcast here today and if any of the members of  
18 the public happen to come across a couple of  
19 bowties in downtown D.C., I'd appreciate the  
20 heads-up.

21 CHAIRMAN GENSLER: I just want to let  
22 everybody know. What was it, orange and what?

1                   MR. GRIFFIN: Orange and blue,  
2                   University of Florida colors; and another one was  
3                   a variety of colors.

4                   CHAIRMAN GENSLER: I see, all right.  
5                   Well, I'm glad -- I hope that you'll be able to  
6                   secure those bowties, Ward, and I thank you for  
7                   all your hard work on this. But it's over to you,  
8                   Ward.

9                   MR. GRIFFIN: Thank you, Mr. Chairman,  
10                  Commissioners. I sit before you this morning to  
11                  present the final rule titled: Removing any  
12                  reference to or reliance on credit ratings in  
13                  Commission regulations, and proposing alternatives  
14                  to the use of credit ratings.

15                  But before I begin, I'd like to take a  
16                  moment to thank the commissioners and your staffs  
17                  for your thoughtful comments throughout this  
18                  process. I would also like to thank Jon DeBord of  
19                  the Division of Clearing and Intermediary  
20                  Oversight for his assistance; Andrei Kirilenko and  
21                  Steve Kane of the Office of the Chief Economist  
22                  for their work with this rule; as well as our

1 colleagues and the other financial regulators with  
2 whom we've engaged in interagency discussions of  
3 the issues surrounding credit ratings. Finally, a  
4 special thank you to Adrienne Joves, who proceeded  
5 me as -- or preceded me, excuse me, as team lead  
6 of the Credit Ratings Team.

7           The impetus for this rule arises from  
8 Title 9 of the Dodd-Frank Act, specifically  
9 Section 939(a) of the act. Section 939(a)  
10 requires agencies to take three actions by July  
11 21, 2011.

12           First, each federal agency must review  
13 any regulation issued by the agency that requires  
14 the use of an assessment of the creditworthiness  
15 of a security or money market instrument and any  
16 references to or requirements in such regulations  
17 regarding credit ratings.

18           Second, each federal agency must modify  
19 any regulations identified by that review by  
20 removing any reference to or requirement of  
21 reliance on credit ratings, and by substituting an  
22 alternative standard of creditworthiness as the

1 agency deems appropriate. To the extent feasible,  
2 federal agencies should seek to establish uniform  
3 standards of creditworthiness for use by each such  
4 agency.

5 Third, Section 939(a) directs each  
6 federal agency to report to Congress a description  
7 of any regulatory modification made pursuant to  
8 939(a).

9 To carry out the directive of Section  
10 939(a) the Commission reviewed its regulations and  
11 identified several references to credit ratings.  
12 The identified regulations could be categorized  
13 into two groups: First, those that rely on  
14 ratings to limit how Commission registrants may  
15 invest or deposit customers funds; and second,  
16 those that require disclosing a credit rating to  
17 describe an investment's characteristics.

18 On November 2, 2010, the Commission  
19 issued a rule proposal addressing two such CFTC  
20 regulations. And after considering the public  
21 comments received in response to that proposal the  
22 final rule is presented for your consideration.

1 The two CFTC regulations to be amended by the  
2 final rule are as follows: Number one, Regulation  
3 1.49, which places qualifications on the types of  
4 depositories in which futures commission merchants  
5 and derivatives clearing organizations may place  
6 customer funds; and two, Regulation 4.24, wherein  
7 credit ratings are used to help disclose to  
8 customers the characteristics of investments. I'd  
9 like to take a moment and describe how each of  
10 those regulations will be affected by this final  
11 rule.

12 In relevant part, Regulation 1.49  
13 restricts the types of foreign depositories into  
14 which futures commission merchants and derivatives  
15 clearing organizations may place customer funds.  
16 Specifically, a non-U.S. bank or trust company  
17 must either, one, have in excess of \$1 billion of  
18 regulatory capital; or two, issue commercial paper  
19 or a long-term debt instrument that is rated in  
20 one of the two highest rating categories by at  
21 least one nationally recognized statistical rating  
22 organization. The final rule before you would

1 remove all ratings requirements from Regulation  
2 1.49 as the Commission originally proposed.

3           Consequently, should the final rule be  
4 adopted a futures commission merchant or  
5 derivatives clearing organization may only deposit  
6 customer funds in a non-U.S. Bank or trust  
7 company if the non-U.S. bank or trust company has  
8 more than \$1 billion of regulatory capital.

9           Turning now to Regulation 4.24, the  
10 current regulation requires commodity pool  
11 operators to disclose to its customers the  
12 characteristics of the commodity and other  
13 interests that the pool will trade, including, if  
14 applicable, their investment rating. The final  
15 rule adopts the amendments proposed in November,  
16 which would remove the reference to ratings in  
17 Regulation 4.24 and replace that reference with  
18 the phrase "creditworthiness." The preamble of  
19 the final rule before you reiterates the point  
20 that commodity pool operators may still choose to  
21 reference an investment rating to describe the  
22 creditworthiness of an investment in its

1 disclosures. However, the commodity pool  
2 operator, as appropriate, should make an  
3 independent assessment of the creditworthiness of  
4 those investments.

5 That concludes my prepared remarks.  
6 Thank you again for your time this morning and I'd  
7 be happy to answer any questions that you have.

8 CHAIRMAN GENSLER: Thank you very much,  
9 Ward. And the chair will entertain a motion to  
10 accept the staff recommendation on the removal of  
11 credit ratings.

12 COMMISSIONER DUNN: So moved.

13 COMMISSIONER SOMMERS: Second.

14 CHAIRMAN GENSLER: Thank you. I support  
15 the final rulemaking to remove references to  
16 credit ratings, Title 9 of the Dodd-Frank Act  
17 actually, provided that all of -- not just the  
18 CFTC, but other regulators do similarly. And this  
19 removes it from two of our regulations that Ward  
20 just described. I think that we addressed it in  
21 -- last week in one of the rules, too. We did  
22 some rating agency piece, if I remember. Is that



1 right, Ward?

2 MR. GRIFFIN: There was a piece that was  
3 addressed actually in the Part 40 rule.

4 CHAIRMAN GENSLER: Part 40, all right.

5 MR. GRIFFIN: There was a reference --

6 CHAIRMAN GENSLER: So it was earlier  
7 today.

8 MR. GRIFFIN: Correct, correct. That  
9 was in Appendix A of Part 40 -- the former  
10 Appendix A of Part 40.

11 CHAIRMAN GENSLER: And there is one  
12 other piece of this actually in a proposed rule  
13 where we have a proposed rule with regard to  
14 customer funds, so there's a piece in the customer  
15 funds rule. But I support this. I think you've  
16 found a way through this. I know some other  
17 regulatory agencies have a greater challenge with  
18 this, but I think that this is a good approach for  
19 us.

20 Commissioner Dunn?

21 COMMISSIONER DUNN: Thank you, Mr.  
22 Chairman. I support this and I commend Ward and

1 his team for putting this together. And Ward,  
2 just for your information, I keep a couple of ties  
3 in my office in case I spill something. One of  
4 them's a bow-tie, so if you ever lose all three of  
5 the ties at once, come see me.

6 MR. GRIFFIN: I do appreciate the  
7 officer, Commissioner Dunn. Thank you.

8 CHAIRMAN GENSLER: It's a heck of an  
9 offer because I'm not sure, I don't know about  
10 Commissioner O'Malia, but I don't keep any spare  
11 bowties in my office.

12 Commissioner Sommers?

13 COMMISSIONER SOMMERS: I don't have any  
14 questions. Thank you.

15 CHAIRMAN GENSLER: Commissioner O'Malia?

16 COMMISSIONER O'MALIA: Thank you. Yeah,  
17 I have conventional ties, regular ties, Ward.

18 I don't have any questions. Well done.  
19 Thanks for your work on this. The -- I guess I'm  
20 interested to understand what is being done  
21 internationally. We have -- you know, obviously  
22 we're not internationally banning credit rating

1 agencies. Every day last week I think I read a  
2 different credit rating agency having an opinion  
3 about our debt situation going forward. But it  
4 makes me wonder are our rules similar to  
5 international rules on this issue?

6 MR. GRIFFIN: Well, certainly 939(a) of  
7 Dodd-rank incorporated a restriction that  
8 internationally has, as far as I know, not been  
9 raised. And I know that in the course of our  
10 interagency discussions, you know, there is -- and  
11 speaking frankly, there is some question as to  
12 appropriate alternatives to the use of credit  
13 ratings. There is not a silver bullet, so to  
14 speak, that would apply to all asset classes, all  
15 types of investments, all entities equally. And  
16 so there has been an ongoing dialogue within and  
17 among the various U.S. financial regulators with  
18 respect to appropriate alternatives. And so I  
19 know that dialogue is ongoing.

20 But to your question as far as  
21 internationally, I'm not aware of there being  
22 similar restrictions in foreign jurisdictions.

1 COMMISSIONER O'MALIA: Thank you.

2 CHAIRMAN GENSLER: Thank you,  
3 Commissioner O'Malia. Mr. Stawick, you don't have  
4 the bowties either, do you?

5 MR. STAWICK: I do at home.

6 CHAIRMAN GENSLER: But you have them at  
7 home. You might want to keep one for work.

8 MR. STAWICK: I will now. I will do  
9 that, Mr. Chairman.

10 CHAIRMAN GENSLER: Thank you. Mr.  
11 Stawick, you want to call the roll?

12 MR. STAWICK: Commissioner O'Malia?

13 COMMISSIONER O'MALIA: Aye.

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

16 CHAIRMAN GENSLER: Aye by proxy.

17 MR. STAWICK: Commissioner Chilton, aye  
18 by proxy. 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 question the yeas are five, the  
6           nays are zero.

7                   CHAIRMAN GENSLER: Thank you, Mr.  
8           Stawick and Commissioners. Thank you, Ward and  
9           Ananda. Thank you, Ward, that we can have a  
10          little humor at your e-mail and expense and  
11          everything. But if we see somebody with orange  
12          and blue University of?

13                   MR. GRIFFIN: Florida.

14                   CHAIRMAN GENSLER: Florida, we'll know.

15                   MR. GRIFFIN: I appreciate it.

16                   CHAIRMAN GENSLER: When Mr. Stawick's  
17          wearing that bow-tie one day we'll know.

18                   So let me just see if there's any things  
19          I'm supposed to do because sometimes I ask  
20          unanimous consent at this point to allow staff to  
21          make technical corrections to documents voted on  
22          today prior to sending it to the Federal Register.

1 Sometimes that's just to make sure it's in the  
2 right format for the Federal Register. Without  
3 objection.

4 Our next scheduled meeting is on August  
5 4th, and the subjects of the rulemaking presented  
6 at that meeting will be published at least seven  
7 days before the meeting. We had calendared a  
8 whistleblower I think for this week, but I think  
9 that we'll be looking -- hopefully, that on August  
10 4th. And we'll see what other things we can take  
11 up.

12 I mean, we all know it because we have  
13 it front of us, but to the extent people get  
14 comments back in on the swap data repository  
15 registration rule, I think that's a very important  
16 one. A lot of market participants have actually  
17 asked for that to be early so that they could be  
18 registered and the data maybe could start to be  
19 collected in these data repositories. We have a  
20 couple of other possible ones that are all in your  
21 hands, so we'll see if seven days before the 4th  
22 we're going to do them, then we'll put them on the

1 website.

2 And I think we have two meetings  
3 calendared for September right now.

4 So with that I'll entertain a motion to  
5 adjourn the meeting and also congratulate -- maybe  
6 we should do a motion to congratulate Bart Chilton  
7 on becoming a grandfather, too.

8 COMMISSIONER DUNN: So moved.

9 CHAIRMAN GENSLER: All in favor of that?

10 SPEAKER: Aye.

11 CHAIRMAN GENSLER: Aye, yeah. We'll  
12 give him an official motion.

13 On adjournment?

14 COMMISSIONER DUNN: So moved.

15 COMMISSIONER SOMMERS: Second.

16 CHAIRMAN GENSLER: All in favor? Aye.

17 GROUP: Aye.

18 CHAIRMAN GENSLER: The Commission stands  
19 adjourned.

20 (Whereupon, at 11:59 a.m., the

21 PROCEEDINGS were adjourned.)

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CERTIFICATE OF NOTARY PUBLIC

DISTRICT OF COLUMBIA

I, Stephen K. Garland, 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: May 31, 2014