

UNITED STATES OF AMERICA
COMMODITY FUTURES TRADING COMMISSION

OPEN MEETING TO CONSIDER ONE FINAL RULE UNDER
DODD-FRANK ACT

Washington, D.C.

Thursday, March 20, 2012

1 PARTICIPANTS:

2 Commission Members:

3 GARY GENSLER, Chairman

4 BART CHILTON, Commissioner

5 JILL E. SOMMERS, Commissioner

6 SCOTT D. O'MALIA, Commissioner

7 MARK WETJEN, Commissioner

8 Presentation: Final Rule on Customer Clearing
9 Documentation, Timing of Acceptance for Clearing
and Clearing Member Risk Management

10 JOHN LAWTON, Division of Clearing and Risk

11 CHRISTOPHER HOWER, Division of Clearing
and Risk

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P R O C E E D I N G S

(9:34 a.m.)

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3 CHAIRMAN GENSLER: Good morning. This
4 meeting will come to order. It is a Public
5 Meeting of the Commodity Futures Trading
6 Commission considers final rules under the
7 Dodd-Frank Act. I'd like to welcome members of
8 the public, market participants and members of the
9 media as well as those listening on the phone and
10 watching the webcast. I'd like to thank
11 Commissioner Sommers, Chilton, O'Malia and Wetjen
12 for their significant contributions to the
13 rule-writing process, and I also want to thank the
14 hard working and dedicated staff of the CFTC.

15 Today is our twenty-fifth open meeting
16 to consider Dodd-Frank rulemakings when we will
17 consider one final rule today on four topics all
18 related to clearing, customer clearing
19 documentation, the timing of acceptance for
20 clearing or what many people call the so-called
21 straight-through processing, allocation by asset
22 managers of bunched orders and provisions related

1 to clearing member risk management. Today's rule
2 is the result of significant public input on these
3 four different proposals and we've benefited
4 greatly from that public input.

5 In 2008 the swaps market helped build up
6 risk in the financial system that spilled over
7 into the real economy affecting businesses and
8 consumers across America. An important goal of
9 the Dodd-Frank Act is to prevent such risk in the
10 financial sector from again infecting the real
11 economy which I have noted in the past provides 94
12 percent of private- sector jobs. Today we'll
13 consider a rule that helps broaden market access
14 and promotes competition in the swaps market. The
15 rule will also help lower risk in these markets,
16 and though it is quite technical and some might
17 say it's sort of into the plumbing of the
18 derivatives marketplace, these rules today are
19 critical to promote access, lower risk and
20 ultimately help transparency in the market for
21 commercial end users in the real economy. Our
22 country will benefit from financial reform. In

1 fact, in addition, the financial side of the
2 economy will also benefit from greater
3 transparency and competition in the derivatives
4 markets. Importantly, investors, retirees,
5 homeowners and customers of pension funds, mutual
6 funds and community banks all will benefit from
7 lower cost and greater pricing information of a
8 more open and transparent market, and I believe
9 today's rule beyond helping out clearing and
10 protecting the clearinghouses will promote more
11 open access and broader access to these
12 transparent markets.

13 One of the primary goals of Dodd-Frank
14 is to lower risk to the public by increasing the
15 use of central clearing to promote the financial
16 integrity of the markets and the whole clearing
17 system. Today's rule is an important step toward
18 achieving these goals. It promotes broad access
19 to central clearing, increases transparency,
20 supports efficiency and of course bolsters risk
21 management. Specifically, the rule establishes
22 requirements for the documentation between a

1 futures commission merchant and its customers and
2 between a swap dealer and its counterparties. It
3 sets standards for the timely processing of trades
4 that minimize the time between submission and
5 acceptance or rejection of trades for clearing.
6 It requires bunched orders for swaps executed as a
7 block to be immediately accepted into clearing and
8 then allocated into individual accounts later in
9 the day. This is similar to rules that have been
10 on the books for years in the futures markets.
11 And it strengthens risk-management procedures of
12 clearing members to enhance market integrity.
13 We're working to finish Dodd-Frank rules and
14 reforms in a thoughtful, balanced way in a way
15 that carefully considers the costs and benefits of
16 each rule, not against the block but to protect
17 the American public and promote transparency. As
18 such, we're continuing to work with the Securities
19 and Exchange Commission on the entity definitions
20 rule, a critical reform for the regulation of
21 dealers and we hope to take this rule sometime
22 soon. There is much other work to be done on

1 products definition and other rules which we will
2 be working on through this spring.

3 We have completed 28 final rules to date
4 and potentially one more after today, and though
5 we've made great progress on these congressionally
6 mandated reforms to bring transparency and
7 competition in the markets, there is much yet to
8 do. I have confidence in the Commission and the
9 CFTC staff that we'll finish the remaining reforms
10 this year for the benefit of investors, retirees,
11 consumers and businesses in America. Before we
12 hear from staff, I'd like to turn it over to my
13 fellow Commissioners. Commissioner Sommers?

14 COMMISSIONER SOMMERS: Thank you, Mr.
15 Chairman. First I'd like to thank the rulemaking
16 team for all of their hard work and diligence in
17 packaging these rules together today. I think all
18 the work we've done on this has been really
19 important and a learning experience for sure for
20 me.

21 Today we are considering rules that
22 address the documentation between a customer and a

1 futures commission merchant that clears on behalf
2 of a the customer. The timing of acceptance or
3 rejection of trades for clearing by derivatives
4 clearing organizations and clearing members and
5 the risk-management procedures of futures
6 commission merchant merchants, swap dealers and
7 major swap participants that are clearing members.
8 The aim of these rules is to provide increased
9 access to clearing and competitive execution of
10 transactions, mitigation of counterparty credit
11 risk through central clearing, prompt, efficient
12 and accurate clearing using straight-through
13 processing, minimization of the time between trade
14 execution and acceptance into clearing, certainty
15 around posttrade allocation of bunched orders and
16 greater integrity to the markets in the clearing
17 system by setting out basic risk-management
18 requirements for participants in the clearing
19 process.

20 The goals that these final rules seek to
21 achieve are the right ones for our market and for
22 that reason I support them. However, I am

1 troubled that in finalizing the rules we continue
2 to require substantial modifications to common
3 business practices without recognizing the time
4 and costs it will take to comply. Any rules we
5 issue must be rules that are technologically and
6 operationally feasible for market participants.
7 The last thing we want to do at this critical
8 juncture is to create barriers to entry. We must
9 be mindful that while we create additional
10 opportunities for clearing, we do not undermine
11 the integrity of our clearing members or our
12 clearinghouses.

13 There are some entities that already
14 have the required technology to comply with these
15 rules, but other entities may have to build out
16 the appropriate system changes. Collectively
17 these changes are not insignificant and may
18 require these entities to come to the Commission
19 to request more time. To the extent market
20 participants require additional time or other
21 relief to comply with the technological
22 requirements that these rules may create, we have

1 delegated to the Director of DCR the ability to
2 consider granting such relief when warranted.

3 We took a similar approach in granting
4 this type of relief with our Part 20 large swap
5 trader reporting rules which we knew market
6 participants may unable to comply with. In that
7 instance, the Division of Market Oversight has
8 issued multiple no-action letters that apply
9 market-wide to assure market participants that the
10 division will not recommend enforcement action be
11 taken against a market participant for providing
12 noncompliant reports to the Commission. In that
13 context, we have recognized that when market
14 participants are acting in good faith and are
15 working toward compliance with the new rules,
16 relief is appropriate. If we again issue rules
17 that market participants cannot comply with, I
18 believe we must provide the appropriate relief.

19 One of the goals of Dodd-Frank was to
20 mitigate systemic risk. I believe that in
21 finalizing some of these rules, perversely we may
22 actually be concentrating risk in only the largest

1 firms that have the ability to comply with all of
2 the rules that we continue to layer on, thereby
3 actually reducing competition. Businesses whose
4 dealing operations are small may decide that it is
5 just too costly to comply with all of these rules
6 and I don't think that is the outcome that any of
7 us desire as we continue to implement this new
8 regulatory framework. Again, thank you to the
9 team for all their work and I look forward to
10 questions.

11 CHAIRMAN GENSLER: Thank you,
12 Commissioner Sommers. If I might just say that
13 the part about relief, I share your views on that.
14 I'm glad that the Division of Market Oversight has
15 done what they've done. I'm glad we've allowed
16 similar authorities delegated in this proposed
17 rule. I think it came with your help and that's
18 why it's in there. Commissioner Chilton?

19 COMMISSIONER CHILTON: Thanks, Mr.
20 Chairman. Sometimes regulators have to nudge the
21 market or market participants and sometimes we
22 have to raise the bar a little bit. I think we're

1 raising the flag today with the straight- through
2 processing and I echo a lot of what Commissioner
3 Sommers said. Often when I hear Commissioner
4 Sommers talk I say she's so smart and she's so
5 right on these things, how can we disagree with
6 the outcome because today most of what you said I
7 not only agree with, but I think we're coming out
8 the same place on so that's a pleasure.

9 The last thing is about the cost because
10 we've talked a lot about this in here in our
11 individual speeches. I want to make the point as
12 I've made recently that this is part of the
13 process, that this rule isn't the be all, end all,
14 that the cost benefit isn't the be all, end all.
15 It's an important part, but all of these things
16 are part of this big mosaic of Dodd-Frank. And
17 when we think about the cost to companies which we
18 absolutely need to do and we need to think about
19 how it's going to impact businesses and markets
20 and we don't want to lessen competition, but when
21 we think about that we also have to think about
22 this in light of this huge economic crisis and the

1 cost of not having regulations. What did a decade
2 of deregulation do? I've said a bunch of times
3 about how the regulated futures market operated
4 very well. No company went down in the crisis
5 because of their regulated futures positions. But
6 the OTC market, that's the big kahuna that we're
7 getting, this hundreds of trillions of dollars,
8 and if we don't get this mosaic right as I've
9 talked about before, the balancing act, we're not
10 going to protect consumers. So we need to get
11 these things in place.

12 I appreciate the speed but also the
13 deliberateness by which the Chairman has brought
14 forward the rules. I know it's been tough for a
15 lot of us to try and keep up with them at times.
16 But to be honest, I think we need to double our
17 efforts because the American people are relying on
18 us. If we do this right -- if we're getting a
19 rule wrong then we need to slow it down, but we've
20 showed we can do that. We're almost a year
21 behind. We've showed that we can slow down. I
22 think we need to look, Mr. Chairman, at some of

1 these rules that are coming up and I'd like to see
2 us do several or two or three when we get these
3 meetings a couple of times a month so that we can
4 get these things in place. I think it will be
5 good for markets, it will be good for consumers
6 and I think ultimately it will be good for the
7 economic engine of our democracy. I thank all the
8 staff and I thank my colleagues for their work on
9 this good rule.

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

12 COMMISSIONER O'MALIA: Thank you, Mr.
13 Chairman. Good morning. Today the Commission
14 will consider one final rulemaking combining four
15 groups of rules that the Commission has proposed
16 in separate rulemakings relating to customer
17 clearing, the timing of acceptance for clearing,
18 the allocation of bunch orders after clearing and
19 clearing member risk management.

20 I thank John Lawton and his team very
21 much for their hard work and their tenacity in
22 reviewing dozens of comment letters and addressing

1 some of my concerns in this final rulemaking.
2 Unlike certain of our other rulemakings, each of
3 the group of rules attempts to be nonprescriptive
4 and aims to establish an efficient yet flexible
5 framework. In general I support the principles
6 underlying the prohibition against certain
7 provisions in customer clearing documentation and
8 the establishment of rules for the postallocation
9 of bunched orders and the development of
10 straight-through processing to reduce latency
11 periods between execution and clearing. As I have
12 said before, clearing is a complicated process,
13 but I believe a market-driven technology solution
14 can and will provide that swaps execution operates
15 as smoothly as it does in the futures market so
16 that I do support that effort to get rid of the
17 documentation.

18 Today's final rulemaking appropriately
19 combines the customer clearing documentation rules
20 with a group of rules regarding the timing of
21 acceptance for clearing also known as
22 straight-through processing. I've always favored

1 market participants who have expressed concerns
2 regarding the use of trilateral agreements. I
3 concur that trilateral agreements could result in
4 anticompetitive behavior. I'm also convinced that
5 technology and not elaborate documentation will
6 access to on-boarding in trading and clearing.
7 Additionally, the final rulemaking includes rules
8 that require clearing members maintain adequate
9 standards of risk management. Essentially, these
10 rules provide the Commission with the ability to
11 go after clearing members who fail to maintain
12 these standards. These rules call into question
13 whether the Commission continues to view the
14 designated self-regulatory organizations, the DSR0
15 model, as viable on going forward. I've said in
16 the past that DSR0s are the frontline supervisors
17 of all intermediaries such as clearing members.
18 In light of the MF Global collapse, however,
19 several questions arise regarding whether the
20 Commission should do more to review DSR0s'
21 supervision practices, but this rule would not
22 have changed anything related to MF Global. Under

1 the Commission's final core principles rulemaking,
2 DCOs or derivative clearing organizations, are
3 required to self-certify the rules with the
4 Commission. Under Core Principle D, a DCO must
5 ensure that it possesses the ability to manage
6 risk associated with discharging responsibilities
7 including the establishment of credit risk limits
8 on clearing members. With today's clearing member
9 risk-management rules, the Commission is taking
10 the position that the DSRO model is not enough and
11 that to some extent direct regulation is
12 necessary. I disagree with this redundant
13 regulatory approach. Further, since the
14 Commission is committed to developing MF Global
15 related reforms for both DSROs and futures
16 commission merchants, the Commission have waited
17 to finalize this group of rules to avoid
18 regulating in an ad hoc manner. As I stated
19 previously, the Commission continues to play hide
20 the ball by not providing sufficient details
21 regarding the implementation timeline. This rule
22 is no different and highlights the fact that the

1 sequencing of our rules his haphazard and we seem
2 to be going out of our way to make the schedule as
3 complicated as possible. The compliance schedule
4 fails to account for interdependencies between
5 rules of the dealer definition, determining which
6 swaps will be subject to mandatory clearing and
7 establishing guidance for the registration and
8 regulation of SEFs. I've urged the Commission
9 countless times to make sense of these
10 implementation timelines.

11 President Obama has demanded a more
12 comprehensive analysis from our regulatory
13 agencies than what is presented in the
14 Commission's rules here today. While the
15 cost-benefit analysis is better than in some
16 recent rules and includes an appropriate baseline
17 that is not tied to an arbitrary assumption, it is
18 flawed in two major areas: one, the lack of
19 qualification, and, two, the failure to conduct
20 any research or sophisticated analysis. To prove
21 my point regarding quantification, this rule's
22 cost-benefit analysis does not contain one single

1 number or even a dollar sign. How can a rule
2 setting standards for clearing fail to offer one
3 estimate when market participants have been
4 clearing swaps for over a decade? I find it hard
5 to imagine that the Commission could not survey
6 market participants to discern the range of
7 possible outcomes. I continue to believe that our
8 cost- benefit analyses are a crucial part of each
9 and every rulemaking and we can't continue to
10 disregard statutorily mandated responsibilities
11 to, one, set appropriate baselines, two, to
12 conduct research or utilize sophisticated survey
13 techniques, and, three, based on the research of
14 those surveys to provide a quantification of
15 potential costs.

16 Unfortunately, I am unable to support
17 the final rules for three specific reasons.
18 First, we failed to develop a clear schedule that
19 integrates other rules. Second, the rule
20 undermines the self-regulatory approach of DCOs to
21 manage FCM risk management and calls into question
22 the entire DSRO oversight regime by substituting

1 Commission judgment for the judgment of DSR0s.
2 This new approach is a solution in search of a
3 problem. Finally, I believe the cost-benefit
4 analysis suffers from a lack of quantitative
5 analysis. I know that the Commission is capable
6 of much more. The question remains, however, if
7 we are able to slow down our rulemaking to do the
8 actual work. My dissent on this rule should not
9 take away from the deep appreciation I have for
10 the hard work of the staff or my desire to
11 implement an effective straight-through processing
12 regime that eliminates the need for unnecessary
13 and limiting documentation. Thank you, Mr.
14 Chairman.

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

17 COMMISSIONER WETJEN: Thank you, Mr.
18 Chairman. Last week I attended for the first time
19 the FIA's Annual Conference and there participated
20 on a panel on clearing and trade execution. I
21 found the panel and the conference as a whole
22 extremely valuable. I heard many viewpoints about

1 market developments and the Commission's rules
2 which added color to the picture already presented
3 to us in formal comments submitted to the
4 Commission. Like the meetings I've had with
5 interested parties since my arrival at the
6 Commission, the conference reflected the fact that
7 the markets and entities this Commission regulates
8 are experiencing enormous change. The Commission
9 itself is undergoing significant change as its
10 mission has evolved and responsibilities have
11 increased. I sensed last week that all of us who
12 care about these markets are finding the changes
13 to be a bit unsettling, exciting or both.

14 These observations also apply to the
15 rule before us today. There is hesitation from
16 some market participants that the rule would not
17 permit adequate and necessary risk management for
18 dealers and clearing FCMs and that time is needed
19 to invest in necessary technology upgrades.
20 Others argue that the technology already exists,
21 little time is needed to adopt it and they are
22 eager to deploy it in order to seize opportunities

1 that will come with mandatory clearing. Again, in
2 my conversations I have heard both sides of the
3 debate, but the latter argument was much closer to
4 a consensus view. For example, from my
5 discussions on the panel, the overwhelming
6 consensus appeared to be that risk-management
7 concerns relating to trade breakage are not
8 pressing ones. I recognize that not every
9 viewpoint was presented on the panel; indeed,
10 we've heard other viewpoints in the comment
11 letters. But in practice, neither counterparty to
12 a trade has an interest in a trade breaking which
13 was true before today's rule was proposed and will
14 remain so. In fact, the energy swap markets'
15 transition to a posttrade clearing solution after
16 experiencing disruptions from the fall of Enron.
17 They continue to serve as the best evidence that
18 real-time trade acceptance is possible with
19 minimal breakage. This also suggests that risk is
20 being adequately managed through that mechanism
21 and thus counterparty credit concerns should not
22 necessarily limit access to liquidity.

1 Additionally, my discussions last week
2 and in comment letters, FCMs and sell-side
3 liquidity providers and by-side firms noted that
4 certain provisions in trilateral agreements
5 ostensibly designed to help manage customer credit
6 risks may be unnecessary and counterproductive to
7 the push for clearing. Moreover, as noted,
8 existing clearing arrangements in the energy space
9 demonstrate that markets can operate without the
10 provisions prohibited by today's rule. There also
11 were firms at the conference that exhibited their
12 technology for clearing services that explained
13 how their products are available today and could
14 be deployed rapidly for use. I understand their
15 interest in saying so, but the evidence they
16 displayed was compelling.

17 For these and other reasons I will be
18 supporting the staff's recommendations on customer
19 clearing documentation, timing of acceptance and
20 rejection of trades and risk- management
21 procedures. They are intended to ensure that all
22 market participants will have open access to

1 clearing and competitive execution and that
2 clearing members will have strong risk-management
3 systems in place to prevent disruptions to the
4 markets and the clearing system. I am persuaded
5 they will help the marketplace achieve these
6 goals. The rule will not interfere with but,
7 rather, expedite the arrival of a competitive
8 landscape for clearing FCMs, DCOs and dealers who
9 will compete on at least two fronts, transparency
10 and how they manage risk and their technology to
11 enable best execution. This market dynamic will I
12 believe lead to the continued development of
13 technology solutions with the support of a
14 reasonable regulatory deadline. Risk management
15 is one of the keystones of the market for cleared
16 swaps, but it must not be done in a way that
17 impairs open access or competitive execution.
18 Counterparty risk can be mitigated by reducing as
19 much as possible the delay between execution and
20 acceptance. The rule we are considering today
21 will require SEFs and DCMs to be able to effect
22 straight-through processing. It also will require

1 clearing FCMs to coordinate with DCOs to ensure
2 that trades are accepted for clearing as quickly
3 as technologically practicable. And for swaps
4 subject to mandatory clearing, dealers will be
5 required to submit the swaps to the DCO as soon as
6 technologically practicable after execution. The
7 rule also specifies risk-management standards for
8 clearing members and requires periodic stress
9 tests of positions held at DCOs. I believe these
10 recommendations will provide an appropriate nudge
11 to the market to embrace the change to clearing
12 even more quickly than it has. As always,
13 however, the Commission must ensure that these
14 timelines realistically account for the
15 operational challenges that will confront market
16 participants. Aggressive timelines that are not
17 realistic could dampen competition between firms
18 and ultimately hurt the consumers we are aiming to
19 protect. I want to make note of Commissioner
20 Sommers's comments and mention that I agree with
21 the point that she made that if you have an overly
22 aggressive timeline that you could have this

1 perverse effect of dampening competition between
2 FCMs which is not a desired outcome. This is
3 consistent with my previous statements that the
4 Commission must take a measured approach to our
5 regulations, and in this case this means we must
6 encourage an orderly transition from the markets
7 as they exist today to a multilateral trading and
8 central clearing model. I believe that the rule
9 before us will do that. I also want to thank the
10 staff for their efforts on this rule and their
11 hard work in the preparation of this rulemaking.
12 Thank you.

13 CHAIRMAN GENSLER: Thank you,
14 Commissioner Wetjen. With that staff will make a
15 presentation concerning the recommendations and
16 afterward we'll have some questions for you. I
17 don't know who's going to take the lead, but Chris
18 Hower, John Lawton, Ananda Radhakrishnan and Hugh
19 Rooney who is appearing for the first time here
20 from the Division of Clearing and Risk. Then Cam
21 Nunnery from the office of Chief Economist who has
22 done fabulous work on every part of this rule.

1 MR. RADHAKRISHNAN: Thank you, Mr.
2 Chairman. Before I turn it over to John Lawton I
3 would like to highlight the purpose behind these
4 rules which we state in the Federal Register
5 release: one, to increase customer access to
6 clearing, two, to facilitate the timely processing
7 of trades and, three, to strengthen risk
8 management. All of these three areas I believe
9 are appropriate for the Commission to issue
10 rulemakings so that the market participants know
11 what the expectations of the Commission are. I'm
12 very appreciative of the efforts of the team. I
13 think they've done a lot of hard work and I'll
14 turn it over to John. Thank you.

15 MR. LAWTON: I should point that Hugh
16 Rooney is from our Chicago office and in
17 particular worked on the risk- management piece of
18 this rule.

19 The Federal Register release before you
20 today contains three sets of related rules which
21 come from four notices of proposed rulemaking.
22 The first addresses the documentation that a

1 market participant enters into before clearing to
2 an FCM or trading opposite a swap dealer or major
3 swap participant. The second addresses the
4 procedures to be followed when trades are
5 submitted for clearing. The third set addresses
6 clearing member procedures for risk management.
7 I'll talk about each set in turn.

8 Staff is recommending that these rules
9 be handled as a package because they are
10 intertwined in both their purpose and their
11 effect. For example, if you bolster risk
12 management at the clearing member level, trade
13 processing could be done more quickly because
14 orders have been screened before execution.
15 Similarly, if trade processing is accomplished
16 more quickly, it becomes easier for firms to
17 expand access to a broader range of market
18 participants because the length of time in which
19 they're exposed to counterparty risk is shortened.

20 With that overview, turning first to the
21 documentation rule, this set contains three
22 parallel rules applying to FCMs, swap dealers and

1 MSPs and DCOs. The rules prohibit these regulated
2 entities from entering into arrangements that do a
3 number of things including disclosing the identity
4 of the original executing counterparty, limiting
5 the number of counterparties with whom a client
6 can trade, restricting the size of the positions a
7 client can trade with any individual counterparty,
8 impairing a client's access to execution on terms
9 reasonably related to the best terms available or
10 preventing compliance with the processing
11 timeframes also moving forward in this rule
12 package.

13 The Commission received 38 comments on
14 this aspect of the proposal. Thirty commenters
15 generally supported it, eight expressed concerns
16 and not everybody addressed every aspect of the
17 proposal. The commenters in support included
18 asset managers, market makers, trading platforms,
19 DCOs and some dealers. The commenters in
20 opposition were predominantly dealers.

21 Staff is recommending that the
22 Commission adopt the rules with one clarifying

1 change that's responsive to the comments. As
2 mentioned, staff believes that these rules will
3 increase competition in both execution and in
4 clearing, that they will facilitate processing of
5 trades thereby reducing risk and that they will
6 decrease the opportunity for conflicts of interest
7 both at FCMs and swap dealers. To give an
8 illustration of these points, for example, if a
9 market participant is limited as to how many
10 counterparties he can trade with or as to how
11 large a position he can take with any individual
12 counterparty, he seems to be less likely to get
13 the best price. Moreover, potential
14 counterparties would also be denied the
15 opportunity to trade with him, potentially
16 affecting the price they could get. This would
17 impair overall market liquidity and price
18 discovery. Staff notes that the types of
19 provisions prohibited by these rules have never
20 been in place in the cleared futures markets and
21 we believe that the processing and risk-management
22 rules to be discussed in a moment address many of

1 the concerns that the prohibited provisions were
2 originally designed to address. The clarifying
3 amendment that we're putting in would make it
4 explicit that nothing in these rules prohibits a
5 dealer or MSP from placing a limit on the amount
6 of trading that it will do with a particular
7 counterparty. The rules only prohibit them from
8 placing limits on the amount of trading that the
9 counterparty can in turn do with third parties.

10 Moving to the second set of rules, are
11 the processing rules, they addresses the handling
12 of trades by various participants in the clearing
13 process. Here we have seven rules in the package,
14 one trade submission by swap dealers and MSPs, two
15 for trade processing by markets as parallel rules
16 for DCMs and SEFs, two for trade acceptance by
17 clearing members, again there are parallel rules
18 for FCMs and swap dealers, one for trade
19 acceptance by DCOs and then one as mentioned for
20 the distribution of allocation information for
21 bunched orders and I'll talk about that in a
22 moment.

1 These processing rules generally provide
2 for coordination among the parties to facilitate
3 processing up and down the chain. They generally
4 set a performance standard related to what is
5 technologically practicable. The goal is to
6 achieve timeframes that are as close to real time
7 as possible. This is in the best interests of all
8 market participant because it promotes efficient
9 trading and reduces risk for parties at all points
10 in the clearing process. The commenters generally
11 supported the thrust of these rules, but there was
12 some disagreement as to how much can be achieved
13 in the near term. Generally, by-side participants
14 and trading platforms and DCOs were perhaps more
15 optimistic than sell-side participants about how
16 soon straight-through processing can be achieved.

17 Turning to bunched orders, the
18 processing rules also contain a provision that
19 essentially adapts the procedures that have been
20 used for futures trades to swaps. Stepped back, a
21 bunched order is a trade placed by an account
22 manager on behalf of multiple clients which is

1 executed as a block and then allocated afterwards
2 in pieces to individual client accounts. As I
3 mentioned, the rule would apply to swaps to
4 procedures that have been place in futures for a
5 number of years. A single clearing member accepts
6 the entire block for clearing at the time of
7 execution and then the account manager after the
8 fact allocates the pieces out to the individual
9 client accounts which may be located at multiple
10 clearing members. This procedure allows the
11 account manager to obtain the efficiency of
12 executing the trade as a block and the risk-
13 management protection of having a clearing member
14 who guarantees the entire block at the time of
15 execution and up until it can be allocated among
16 the individual accounts at their respective
17 clearing members.

18 The third set of rules that are in the
19 package today addresses clearing member risk
20 management. Here again there are two rules that
21 are parallel rules for FCMs and for swap dealer
22 MSPs. The two rules differ insofar as FCMs may

1 clear on behalf of customers while swap dealer
2 MSPs may only clear for proprietary accounts. As
3 the Commission knows, last October the Commission
4 approved extensive risk-management rules for DCOs.
5 Given the increased importance of clearing under
6 the Dodd-Frank Act, the expected entrance into
7 clearing of new products and of new participants,
8 protections at the clearing member level as well
9 as at the DCO level, seem appropriate.

10 Specifically, bringing swaps into clearing will
11 increase both the magnitude and the nature of
12 risks that clearing members will be facing going
13 forward. The rules require FCMs and FCM SPs that
14 are clearing members to do a number of things.
15 These include establishing risk-based limits for
16 each account, screening orders for compliance with
17 the limits, monitoring for adherence with the
18 limits both intraday and overnight, conducting
19 stress tests, evaluating periodically their
20 ability to meet margin requirements, evaluating
21 their ability to liquidate positions if necessary
22 and testing lines of credit. The rules do not

1 prescribe the particular means of fulfilling any
2 of these obligations. As was the case in the DCO
3 rules, clearing members will have considerable
4 flexibility in designing risk-management
5 procedures that meet each of these requirements.
6 For example, the rules do not specify the size of
7 limits that must be set for any account.
8 Similarly, the rules do not specify the terms of
9 the stress tests that will be used by any clearing
10 member. In each case, this will be a matter of
11 judgment that the clearing member's
12 risk-management team would make subject of course
13 to oversight by the Commission for general
14 compliance with the rules. In response to the
15 comments, staff recommends that the Commission
16 modify the rules as they apply to give-ups and
17 bunched orders. In each case, the changes would
18 recognize that receiving clearing firms cannot
19 prescreen orders. For example, in the case of
20 bunched order, the receiving firm must communicate
21 to the executing firm what the account limit is
22 for each particular account that's in the bunch

1 and then it is up to the account manager to make
2 sure they do not allocate a position that exceeds
3 that limit, therefore raising the chances of it
4 being rejected by the clearing receiving member.
5 This concludes my presentation and we'd be happy
6 to try to answer any questions.

7 CHAIRMAN GENSLER: Thank you, John. At
8 this time I'll entertain a motion to accept the
9 staff recommendation.

10 COMMISSIONER SOMMERS: So moved.

11 COMMISSIONER CHILTON: Second.

12 CHAIRMAN GENSLER: Thank you. I support
13 today's final rulemaking on clearing which I think
14 will promote market participants' access to
15 central clearing. I think through promoting that
16 access to central clearing it is a critical piece
17 also in promoting market transparency. It will
18 foster competition as well. I think it in essence
19 helps democratize the markets with ultimately
20 greater competition and access to central clearing
21 will lower cost to end users throughout the
22 economy. I think they will also be able to rely

1 on bolstered risk-management rules. I have a
2 longer statement that will be entered into the
3 record, but I have a couple of questions on a
4 number of areas. The first is on the compliance
5 dates. John, you may have said it, but if you can
6 say what the compliance date is. I think I know
7 the answer but I want to make sure that the public
8 hears it clearly.

9 MR. LAWTON: The Federal Register
10 release provides that the compliance date will be
11 October 1. There is a further complication in
12 that some of the rules that apply for example to
13 DCMs, FCMs or DCOs, the compliance date will be
14 October 1 for those. For swap dealers, MSPs and
15 SEFs, the compliance date would later of that or
16 the date at which other necessary rulemakings
17 become effective.

18 CHAIRMAN GENSLER: Though I have every
19 anticipation that we will finish these entity
20 definition rules well before October 1, you're
21 saying we've put it out there that if for some
22 reason there is not swap dealer registration by

1 then, it's later than October 1?

2 MR. LAWTON: That's right, and the same
3 for the SEF rules.

4 CHAIRMAN GENSLER: Also we will if we
5 finalize here delegate to Ananda some discretion
6 if futures commission merchants and swap dealers
7 say they have a technological challenge or
8 economic challenge to move forward. Is that
9 correct?

10 MR. LAWTON: Right. As there was a
11 precedent in the internal business conduct rules,
12 it's essentially the same sort of language and
13 procedure where the division director can receive
14 requests from individual applicants for extended
15 periods based on something not being technically
16 or economically practicable.

17 CHAIRMAN GENSLER: I may be speaking to
18 broader market participants because I know some of
19 them had hoped that we would have this be shorter
20 than October 1, say July 1, but I want to clarify.
21 Nothing in this though limits somebody from doing
22 all of this earlier. If a futures commission

1 merchant wants to offer this in May or June,
2 they're allowed to. Is that correct?

3 MR. LAWTON: That's right. Our
4 understanding is that that are people who are
5 capable of doing that and have done it and there
6 are competitive factors that lead people to
7 potentially do it earlier than that date.

8 CHAIRMAN GENSLER: For some of those out
9 there who may be disappointed, this is a
10 Commission process and I think we've come out with
11 the right result go give a little bit more time
12 and to give some discretion to the division
13 director because maybe not every one of the 50 or
14 60 clearing firms that clear today or futures
15 commission merchants will be ready and to
16 recognize that not all of them are the same. I
17 think this was a good, balanced approach for those
18 who may have wished we had done it earlier. I
19 think this is the right side of things.

20 A second area is on risk management, if
21 I could tease something out. I don't want to
22 speak for Commissioner O'Malia, but I think that

1 was the area that he had the most concerns with in
2 his statement. There are two points to this.
3 There is a list of risk-management procedures
4 we're asking futures commission merchants to do,
5 and then as Commissioner O'Malia highlighted, it's
6 also who's asking them. Do we do it directly or
7 do we let the self-regulatory organizations do it?
8 May I focus on the first part of that? This list
9 that we've talked about, I've taken from staff
10 that it is really a list of best practices without
11 being too prescriptive. Is that correct?

12 MR. LAWTON: That's right. Our
13 understanding is that most if not all firms do
14 these sorts of things today.

15 CHAIRMAN GENSLER: If I recall, about a
16 year ago didn't the FIA come together and make
17 some recommendations in this area about risk
18 management or was it some other industry group?
19 So many different groups have some forward.

20 MR. LAWTON: I believe it was the FIA.

21 CHAIRMAN GENSLER: And that helped us in
22 making the original proposal in this area.

1 MR. LAWTON: Right.

2 CHAIRMAN GENSLER: I support all four
3 areas, but I want to speak to this one for a
4 moment because I think it's so critical. I think
5 this is an important area particularly as our
6 markets have so dramatically changed from people
7 trading on the floor in Chicago and New York and
8 elsewhere on the futures markets to electronic
9 trading and then trades can be sent into a
10 clearinghouse in nanoseconds by algorithmic
11 traders, high-frequency traders or just people who
12 are trying to hedge their markets, I think it is
13 critical that they all have financial integrity.
14 What does that mean? It means that somebody is
15 guaranteeing that trade in the clearinghouse.
16 What this rule fundamentally says is if you're
17 going to send it in as a customer of a futures
18 commission merchant, the futures commission
19 merchant has to make sure that you're within the
20 limits before it's sent there. Is that correct,
21 Ananda? I see you are about to say something. Is
22 that right?

1 MR. RADHAKRISHNAN: It is. Also the
2 broader point is that the Commission has the
3 responsibility to avoid systemic risk and to
4 ensure the financial integrity of all transactions
5 subject to the Commodity Exchange Act. Therefore,
6 staff believes that it is entirely appropriate for
7 the Commission to issue rules directed at
8 registrants for risk management apart from the
9 fact, as to the point we've made, that this is
10 already a best practice, I do think that it is
11 entirely appropriate for the Commission.

12 CHAIRMAN GENSLER: I share that view. I
13 support this rule. We have other rules for
14 futures commission merchants. I think it's
15 critical to have these as well because it means
16 that other participants in the market when they
17 enter the market, it could be a corporation trying
18 to hedge its interest rate risk, it could be a
19 farmer or rancher trying to hedge their risk in
20 the corn or wheat markets, that they know that on
21 the other side of the trade there might be a
22 speculator or there may be a high-frequency

1 trader, but that high-frequency trader,
2 algorithmic trader or speculator has to send their
3 trade through a futures commission merchant that
4 in essence has a pretrade risk filter, so that
5 that is why I support this. Thank you.
6 Commissioner Sommers?

7 COMMISSIONER SOMMERS: Thank you, Mr.
8 Chairman. I have a couple of different questions
9 with regard to the submission of swaps for
10 clearing to DCOs so that the requirements that are
11 within the swap dealer and major swap participant
12 requirements and how those actually are
13 coordinated with what a DCO already has in place.
14 Mechanically I have questions about how we define
15 close of business, because the way the rule is
16 written it requires that swap dealers and major
17 swap participants for swaps that are subject to
18 the mandatory clearing requirement submit those
19 swaps for clearing no later than the close of
20 business on the day of execution, and for those
21 swaps that are not subject to the mandatory
22 clearing requirement, no later than the next

1 business day after execution of the swap. There
2 were a couple of different comments on the timing
3 with regard to late in the day and what would be
4 practical for submission if it's already after a
5 DCO's cutoff time. If we could talk about how
6 that works and whether or not the DCOs have a say
7 in how these submitted, the timing.

8 MR. LAWTON: Currently DCOs have
9 different cutoff times. We didn't define close of
10 business in the rule. We've put clarifying
11 language in the Federal Register release that
12 makes the point that close of business for this
13 purpose would be close of business at the DCO at
14 which you're clearing. Our understanding is that
15 currently people are well aware of what the cutoff
16 time is at each DCO, they're also aware of their
17 own processing times and that they tend to not do
18 trades too close to the close of business because
19 they want to get them in and get them cleared so
20 that they don't face any increment of risk where
21 it's not yet been accepted for clearing. I think
22 as to the question if someone did execute a trade

1 at 6:59:59 and close of business was 7:00, I think
2 they probably missed the DCO's cutoff and in fact
3 it would have to be submitted for clearing the
4 next day. Again, our anecdotal understanding is
5 that people are aware of that and try to get their
6 trades done, and as I said, they're aware of their
7 own processing speed so that they try to get their
8 trades done quickly enough and they are of how
9 quickly an affirmation platform can react and how
10 quickly their FCM can react such that they can get
11 their trades done whatever it takes, a minute or
12 two, before the DCO cutoff time to get them in.

13 COMMISSIONER SOMMERS: My concern would
14 be that that would not be considered out of
15 compliance with this rule, that if the DCO has a
16 cutoff time of 7:00 p.m. and your execution was
17 actually 6:59 yet you miss the cutoff time, that
18 by submitting it for clearing the next day, we
19 would still consider that complying with this
20 rule.

21 MR. LAWTON: Yes, I think we would.

22 COMMISSIONER SOMMERS: I think that

1 those are all of my questions.

2 CHAIRMAN GENSLER: Thank you,
3 Commissioner Sommers. Commissioner Chilton?

4 COMMISSIONER CHILTON: Thanks, Mr.
5 Chairman. I wanted to talk just a little bit
6 about cost-benefit analysis. I don't know if
7 that's one of yours or if Andrei needs to help out
8 on this one. This document is 124 pages long and
9 45 pages of it is the cost-benefit analysis, more
10 than a third. Length does not equal substance
11 always, so just because there's a third of it
12 that's dedicated to that doesn't mean that it
13 can't be better. Frankly, I think there are ways
14 it could probably be better, but I'm convinced
15 based upon the talks with you that we've done
16 everything that we are legally required to do.
17 When I say it could be better, it can only be
18 better if we get help from the industry, and I'm
19 not talking about just this rule, but there is
20 this weird self-fulfilling prophecy that exists.
21 So we go out and we take comments and we ask tell
22 us how this is going to impact your industry.

1 Then we either get crappy information or
2 information that we can't use or share with the
3 public or we get no information, then we put a
4 rule out and they say you have a crappy cost-
5 benefit analysis and then they take us to court.
6 We got to sort of act like a team here as an
7 industry. You can't have it both ways. I
8 actually find myself in agreement with
9 Commissioner O'Malia with regard to we want to get
10 the best possible cost-benefit analysis we can.
11 But again, the cost- benefit analysis is a part of
12 the process. That's not our goal. The goal is
13 the reg. It includes the 45 pages, but it's not
14 just the 45 pages. I guess my only question is
15 have we done everything that we are required to do
16 as good as we can with regard to the legal
17 requirements of a cost-benefit analysis?

18 MR. NUNNERY: I am happy to speak to
19 that and, yes, I believe that we have.

20 COMMISSIONER CHILTON: I hope to the
21 extent that we get other information on rules
22 going forward that we can analyze it more, get

1 more in-depth stuff, but it's a two-way street
2 here. We got to hear this stuff from the
3 industry. I'm not saying that the industry as a
4 general matter doesn't respond. Sometimes they
5 do. They gave us some advice on this one. But I
6 think we can all do better, and the ultimate goal
7 I think is getting these rules done in a
8 thoughtful way. Thanks very much.

9 COMMISSIONER SOMMERS: Will the
10 gentleman yield?

11 COMMISSIONER CHILTON: Absolutely.

12 COMMISSIONER SOMMERS: I have a comment.
13 I think that one of the points with regard to the
14 cost-benefit analysis that is incumbent upon us to
15 consider are the comments that we continually get
16 and we reject based on the fact that they don't
17 comply with the deadlines that we have set.
18 Commenters will say we can comply with this but it
19 will take an enormous upgrade for us system wide
20 which reasonably may be done within 9 months to 12
21 months. But if you're going to require it in 60
22 days, we're going to have to take everybody who we

1 have working in our IT department and put them on
2 this project.

3 COMMISSIONER CHILTON: Right.

4 COMMISSIONER SOMMERS: Is that feasible
5 and is that what we should be requiring? Is that
6 reasonable?

7 COMMISSIONER CHILTON: What we should do
8 is provide the sort of safe harbors that I think
9 we have in this rule where we allow for greater
10 time in certain instances where we hear that, or
11 like we did in the last rule, provide not an
12 escape value, but a temporary escape valve, and
13 we've done that in this rule where we provided the
14 division director the authority to say, no, you
15 can't do it. I think those are determinations
16 that -- we can't make every determination about
17 individual companies, but I take your point.

18 COMMISSIONER SOMMERS: I don't disagree
19 with that. But last time we did that we did it on
20 the dais and today we did it last night so that I
21 didn't even know it was there until today.

22 COMMISSIONER CHILTON: The good thing is

1 it's in the rule. I'm not saying that this
2 process is always as neat and tidy as it should
3 be, but the important thing is we get there. I
4 think we agree a lot more than we disagree on the
5 cost- benefit. Sometimes I think it looks like
6 we're maybe further apart here. It's part of the
7 law. It's 15(a) of the Commodity Exchange Act.
8 It's been there forever. We all agree that it
9 needs to be done, we want to get it done well, but
10 some of this is uncharted territory. We didn't
11 regulate these hundreds of trillions of dollars of
12 swaps so we don't know what was going on which is
13 why we need the input from the industry, but I
14 don't agree with Commissioner Sommers. Thanks,
15 Mr. Chairman.

16 CHAIRMAN GENSLER: I thank both of you.
17 I think that cost-benefit considerations go to
18 each aspect when we consider a rule. In this
19 particular circumstance even on the client
20 clearing documentation we made changes based on
21 comments about swap dealer risk management. Is
22 that technically cost-benefit or is it just

1 prudent to give them more chance to do the risk
2 management? It's both. I would say I'm
3 personally influenced every time somebody comes to
4 my office with this is what a commenter is saying.
5 I ask what is the benefit and what's the cost of
6 each of those even when it's not quantified? I
7 think that each of the five Commissioners do a lot
8 of that. Not to mention the overall cost which
9 are harder to quantify, but we know that 8 million
10 Americans lost their jobs and we had a financial
11 crisis so that Congress has said let's move to
12 standard products being cleared and today's rule
13 helps move that overall mission or that overall
14 thing of Congress. I'm glad for move from a
15 shorter implementation date to 6 months. I'm glad
16 we included the delegation as we did in the last
17 one. I'm glad we're not doing it on the dais.
18 Commissioner O'Malia?

19 COMMISSIONER O'MALIA: Thank you. I
20 appreciate Commissioner Chilton's comments. We
21 don't disagree. He wants good data from the
22 industry. We want good rules that have good data

1 in them. To Commissioner Sommers's point, we have
2 to be fair about what we're asking them in terms
3 of what we can expect them to deliver and the
4 timeframes we're going to deliver them. They have
5 a massive throughput of data and they're trying to
6 understand it, and to quantify it we're asking
7 them a lot. We also have that same obligation.
8 So I'm glad to hear that we're not that far apart
9 and that Commissioner Chilton raised this issue.
10 It's important to me, and I said in my opening
11 statement that this is a better rule than the last
12 one by far. The baseline was more accurate, it
13 was accurate I think, but we still suffer from the
14 lack of quantitative analysis. As I said, there
15 wasn't a single dollar figure in there. In the
16 PRA there actually are dollar figures. We
17 actually surveyed the industry. That didn't make
18 it over the line into the cost-benefit analysis
19 which is odd, but we can't ignore and not look
20 because it's hard. That's where I fear we aren't
21 looking because is the document done by NIRA in
22 working with the ISDA research staff on the cost-

1 benefits of mandatory electronic execution
2 requirements for interest rate products? November
3 2011. This is broader than what we're addressing
4 specifically here, but this is addressed in this
5 document. Did you include this research, these
6 quantified costs in our cost-benefit analysis?

7 MR. NUNNERY: We did not reference it
8 specifically, though I am familiar with that
9 study.

10 COMMISSIONER O'MALIA: The industry post
11 when we put out the draft rule on documentation
12 banning it, they moved. Dealers might not have
13 wanted to move. They moved. They joined with the
14 buy side and they've been working through an
15 organization to resolve the straight-through
16 processing issue to develop a technology solution
17 much like we have in the futures markets. They
18 are meeting on a regular basis. In fact, they're
19 going to be the third panel of our TAC advisory
20 committee on the 29th. Did we include their
21 solutions in this document?

22 MR. NUNNERY: I have joined one of the

1 TAC meetings and am familiar with some of the work
2 that they're doing. One of the pieces that we
3 felt was very important in this rule was to allow
4 the industry to develop the solutions that they
5 felt are most appropriate. To your comments
6 earlier, providing an approach that established
7 certain timing requirements but not a specific
8 solution that we would endorse, the Commission was
9 very important to us so that I think the
10 cost-benefit analysis reflects that.

11 MR. LAWTON: May I add one point? I
12 think it would be helpful as one of the other
13 Commissioners said if the commenters have these
14 studies, if they actually attach them to their
15 comment letters. Then they would be officially in
16 the record.

17 COMMISSIONER O'MALIA: This was
18 submitted?

19 COMMISSIONER SOMMERS: I don't know who
20 submitted it and when.

21 COMMISSIONER O'MALIA: I think the
22 Chairman made it, Commissioner Chilton made it,

1 I'm sure Commissioner Wetjen sat on that panel and
2 made it in his opening statement, the industry has
3 to solve this problem. This is a technology
4 solution. We didn't mandate which way they go and
5 if the DCM or the DCO or the SEF or the FCM puts
6 the credit checks in, we said it just has to get
7 done by a specific date as to Cam's point just a
8 moment ago. So that it's really up the industry
9 to do it and I hope we've given them the time to
10 do it. I appreciate that we moved this from the
11 draft. Why October 1?

12 MR. RADHAKRISHNAN: We thought that
13 would be sufficient time for people. This is not
14 new. People know that this is coming, and we
15 thought that we'd give them sufficient time to
16 October 1, 6 months from now, to come up with a
17 solution. We understand that people have been
18 working on solutions and we thought that it would
19 give people enough lead time to get a solution in
20 place.

21 COMMISSIONER O'MALIA: But it's not
22 based on any conversation with the industry? It's

1 our own estimate?

2 MR. RADHAKRISHNAN: That's right.

3 COMMISSIONER O'MALIA: And its
4 relationship to mandatory clearing? When is
5 mandatory clearing going to --

6 MR. RADHAKRISHNAN: That I don't know.
7 I guess staff's objective is to make a proposal to
8 the Commission very early in April, and if all
9 goes well, hopefully we'll get the first
10 determinations done 3 months after that together
11 with the implementation schedule so that I'm
12 guessing right now the middle of October if things
13 go well.

14 COMMISSIONER O'MALIA: For mandatory and
15 not the voluntary?

16 MR. RADHAKRISHNAN: Yes, for mandatory.

17 COMMISSIONER O'MALIA: So that we're not
18 far.

19 MR. RADHAKRISHNAN: No.

20 COMMISSIONER O'MALIA: By weeks,
21 apparently.

22 CHAIRMAN GENSLER: If you think we put

1 it out in April, you're thinking the 90-day
2 process runs to July.

3 MR. RADHAKRISHNAN: Right.

4 CHAIRMAN GENSLER: When you referred to
5 October it's months later when it kicks in for
6 what may be the first group.

7 MR. RADHAKRISHNAN: That's right.

8 CHAIRMAN GENSLER: What we proposed was
9 the dealer group in some of the high-volume funds.

10 MR. RADHAKRISHNAN: That's right.

11 That's right.

12 COMMISSIONER O'MALIA: Would the general
13 prohibition to disclose the identity of a
14 customer's original executing counterparty
15 contained in 1.7(2)(a) 23608(a) 3912(a)(4)(V) of
16 the Commission's regulation in this regulation
17 have an effect on the request for quoting systems
18 offered by SEFs? For example, assume that an FCM
19 had been charged by a customer to execute a swap
20 transaction on a customer's behalf, would an FCM
21 be able to lawfully execute that transaction using
22 an RFQ that discloses the identity of a customer's

1 counterparty?

2 MR. LAWTON: I don't think that that
3 would be prohibited.

4 COMMISSIONER O'MALIA: Thank you. The
5 internal business conduct rulemaking states that,
6 "The Commission generally would not view as
7 improper making available discounted clearing
8 services in connection with trading activities."
9 Do regulations 1.72(a) and 23608(a) negate this
10 statement, and why or why not?

11 MR. LAWTON: I don't think that they're
12 inconsistent. Again, the general intention of the
13 documentation rule is disclosing the identity of
14 third-party counterparties.

15 COMMISSIONER O'MALIA: To the extent
16 that 1.7(1)(a) and 23608(a) would not permit an
17 FCM to offer clearing services to a customer to
18 reduced rate in exchange for the customer using an
19 affiliated SD or MSP for swap execution, should
20 this rulemaking clearly state that there exists a
21 prohibition or not? Do we need to clarify that?

22 MR. LAWTON: I'm sorry. Can you repeat

1 that question?

2 COMMISSIONER O'MALIA: To the extent
3 that 1.7(1)(1) and 23608(a) would not permit an
4 FCM to offer clearing services to a customer at a
5 reduced rate in exchange for the customer using an
6 affiliated SD or MSP for swap execution, this
7 rulemaking should clarify that shouldn't it?

8 MR. LAWTON: I think we do not think
9 that it prohibits that.

10 COMMISSIONER O'MALIA: That's all I
11 have.

12 CHAIRMAN GENSLER: Thank you,
13 Commissioner O'Malia. Commissioner Wetjen?

14 COMMISSIONER WETJEN: I'm starting to
15 get used to Commissioner O'Malia stealing my
16 thunder so I always have to behind him. I guess
17 great minds think alike.

18 CHAIRMAN GENSLER: Over the years
19 somebody will come behind you and you'll get to
20 steal their thunder too.

21 COMMISSIONER WETJEN: I was going to ask
22 some questions about the interplay between the

1 mandatory clearing determination by the Commission
2 and this rule, but as I said, Commissioner O'Malia
3 just asked some good questions about that. The
4 only thing I would add is I think it makes some
5 sense to have compliance with the straight-through
6 processing requirements come before the mandatory
7 clearing determination which it sounds like is
8 likely to be the outcome. Is that right?

9 MR. RADHAKRISHNAN: Yes. The other
10 thing we should not forget is that we don't want
11 to discourage voluntary clearing. A lot of
12 voluntary clearing takes place right now. The CME
13 has some traction, so we want make sure we don't
14 discourage that.

15 COMMISSIONER WETJEN: But this way under
16 the likely turning of events here we'll have the
17 interconnectivity between all the different
18 participants in place before the mandatory
19 determination comes down from the Commission.

20 MR. RADHAKRISHNAN: Yes.

21 COMMISSIONER WETJEN: The last thing I
22 wanted to say, it's not really related to the

1 rule, is another observation about the conference
2 last week. As I said earlier, I gained a great
3 deal from that and learned a lot. I was happy to
4 see all of my fellow Commissioners there. That
5 was my first one, so I learned the hard way that
6 getting through that week requires a tremendous
7 amount of stamina. I see a lot of people in the
8 room who were there and I was impressed by a lot
9 of their stamina last week. I hope I can follow
10 suit as best I can next year when we all go back,
11 including you, Mr. Chairman.

12 CHAIRMAN GENSLER: I did notice you left
13 the bar a little earlier than I, but Commissioner
14 Sommers and I were still -- Commissioner Chilton,
15 I was also going to compliment John Lawton on
16 something.

17 COMMISSIONER CHILTON: Thanks, Mr.
18 Chairman. My only comment about the FIA event is
19 that it's a good event and you do get a lot of
20 industry feedback, I did and I appreciate and it's
21 a helpful thing to hear from people. There are
22 not a lot of consumer organizations out there, not

1 a lot of average folks representing the American
2 public. It's pretty much people involved in these
3 markets. And as I say, very helpful, but that's
4 the side you're getting and I appreciate it. I
5 want to continue to get it.

6 I wanted to go back because Commissioner
7 O'Malia, and not to beat a dead horse here because
8 I think we're making progress on this cost-benefit
9 thing. And then you mentioned and it piqued my
10 interest, the NIRA study that you said we did get
11 this information but it didn't make it across the
12 line to be included in here. I may be mistaken.
13 Was that in a comment on this rule, the NIRA
14 study, or is that on the SEF rule?

15 MR. NUNNERY: We did not receive that
16 study as a comment in response to this rule.

17 COMMISSIONER CHILTON: There is a NIRA
18 study. There is documentation out there. Did you
19 look at it? It's my understanding it was sent in
20 on the SEF rule. Would you just disregard it
21 because it wasn't sent specifically in on this
22 rule?

1 MR. NUNNERY: I don't know what rule it
2 was submitted in response to, but it was not
3 submitted in response to this rule.

4 COMMISSIONER CHILTON: I want to make
5 sure because if you're saying they didn't send it
6 to the right file then we sound like bad
7 government.

8 MR. RADHAKRISHNAN: Here's the issue. I
9 may be a bit strict on this, but people need to
10 realize that these are not neophytes in the
11 industry. If you want to make a comment to a
12 particular rule, the comments are out there, we
13 tell you what the date is, send it in. So if you
14 send it over the transom hoping that we would read
15 it, it's difficult because as you know, staff is
16 concentrating on a particular rule, there are
17 thousands of documents floating around in the
18 Commission and it's difficult for us to pinpoint
19 one particular rule.

20 COMMISSIONER CHILTON: Are you saying
21 that they sent it to the wrong file intentionally?

22 MR. RADHAKRISHNAN: I think they sent it

1 to the wrong file. The other issue I think is an
2 APA issue which is the APA has a particular
3 provision and so if we consider a particular
4 document that was not submitted in response to a
5 rulemaking, are we then opening ourselves up to
6 consider every document that's being sent to the
7 Commission?

8 COMMISSIONER CHILTON: We probably don't
9 want to go down that road with me because I've got
10 other issues on that topic. Is anybody at the
11 table familiar with this study that Commissioner
12 O'Malia and now I have referred to?

13 MR. RADHAKRISHNAN: Not me.

14 MR. NUNNERY: I know of the study. I'm
15 not intimately familiar with it.

16 COMMISSIONER CHILTON: What I've heard
17 about the study is that it's fairly opaque and
18 that it might not be relevant to this which is
19 maybe why they didn't send it in. But like I
20 said, I think there's room for improvement.
21 You've done everything that you can. Section
22 15(a) of CEA says there are five things that we

1 are supposed to consider in cost- benefit. I'm
2 not going to read all of them. The first one is
3 protection of market participants and the public.
4 And the fifth one, so two of the five, is other
5 public interest considerations. How do you
6 consider what the other public interest
7 considerations are? The bailout was \$700 billion.
8 Is that a consideration because we didn't have
9 regs?

10 MR. NUNNERY: Absolutely it is a
11 consideration what the systemic risk mitigation
12 effects of the rules are. I think one thing I
13 should point out in response to some of this is
14 that first of all as we suggested we did carefully
15 consider all of the costs and the quantified
16 values that were submitted to us. Beyond that, I
17 think it's also important to recognize that there
18 was general consensus around this rule regarding
19 the benefits, so Commissioner Chilton as you are
20 referring to, the benefits of increased speed of
21 processing, the benefits of reduced time between
22 execution and clearing determinations, there was

1 broad consensus within the industry about the
2 benefits of those superseding the costs
3 notwithstanding the fact that some of the costs
4 were not quantified.

5 MR. LAWTON: May I add one point? There
6 was one commenter who tried to quantify the
7 benefits, and as I recall and we're trying to get
8 the exact cite, they said there was a \$15 billion
9 benefit from these rules collectively.

10 CHAIRMAN GENSLER: Did I see that
11 General Counsel Berkovitz was trying to get the
12 attention of the Commission? It's up to you, Dan.

13 MR. BERKOVITZ: I wanted to clarify on
14 the NIRA study. The NIRA study came in and I
15 believe it was a comment addressed to the entities
16 definitions rulemaking.

17 COMMISSIONER O'MALIA: There is a
18 separate NIRA study on entities. This is on
19 electronic execution. It's good to hear that
20 people are knowledgeable of this including our
21 chief economist because they read it. And to your
22 point, Commissioner Chilton, it's not opaque.

1 It's not any less opaque than our rule because our
2 rule doesn't contain a single dollar figure in it
3 so that it is useful. The fact that we may be
4 dancing on the head of a pin whether we submit it
5 on this rule or the other rule, the fact is we've
6 got to survey the industry in our first analysis.
7 What are we talking about here? How did we
8 develop these rules? We can't ignore at that
9 point the research out there. A google search
10 would have turned this thing up. Let's not hide
11 behind some regulatory construct here that gives
12 us an excuse not to survey the industry.

13 CHAIRMAN GENSLER: Let me say that I
14 think that this group is doing an excellent job.
15 I think the chief economist and the 15 people in
16 that group and all of the folks in the Division of
17 Clearing and Risk deserve a big compliment for
18 what they've done on this rule in considering the
19 costs and benefits. We had an active public
20 comment period where dozens of commenters came in.
21 I know it's not a voting thing, but 5 to 1 they
22 supported these things and they pointed out the

1 benefits which are broad market access, benefits
2 of lowering the barriers to promote competition
3 and benefits of promoting central clearing which
4 is at the core of what Congress asked us to do.
5 But I do think also that we have to make sure that
6 commenters understand if they want to get our
7 attention to something, please tell us what rule
8 you're sending it on, and it would be enormously
9 helpful if they sent in quantifications. I know
10 that's a challenge, I know that some have done it,
11 but only have done it. I see Andrei Kirilenko
12 wants to say something.

13 MR. KIRILENKO: If I may, I think
14 Commissioner O'Malia and Commissioner Chilton and
15 others are pointing out a very important point in
16 us being proactively engaged with discovering the
17 costs and the benefits. I'd like to point out
18 that in this particular rule we did engage and
19 find out that there currently exists technological
20 solutions to these issues and to the extent that
21 the industry already has technological solutions
22 and to some extent have deployed these

1 technological solutions made us acknowledge that
2 the costs that the industry decided to put into
3 these efforts in some cases have been borne. We
4 proactively engaged in finding out that the three
5 or four firms already have deployed technological
6 solutions to that extent.

7 It is a fair point that how much more
8 proactive can we be if we are not given what we'd
9 ideally like to have. I think we are constrained
10 as others have pointed out by what we can do under
11 the Act and what we're required to do under the
12 Act and the industry collaboration especially
13 industry collaboration to the extent that it
14 creates a public record would be extremely
15 appreciated.

16 COMMISSIONER O'MALIA: To your staff and
17 to you, Andrei, I think you've got the baseline
18 right. Dealers have been clearing swaps for a
19 decade. That's not the issue here. There are
20 some other factors about bringing the next team
21 on, and this whole industry effort after the
22 documentation rulemaking in August when we first

1 did this one, the triparty. Right?

2 CHAIRMAN GENSLER: That feels about
3 right.

4 COMMISSIONER O'MALIA: They said it's
5 clear that the Commission isn't going that way and
6 they said we're going to put an end to it. What's
7 the next step? How do we get these people in
8 place to get straight-through clearing and get the
9 credit checks done among a variety of SEFs? We've
10 got the benefit in the futures market of near
11 vertical straight-through processing today, a
12 clearinghouse through an exchange at CME, we've
13 got another through ICE. That's very
14 straightforward. The SEF universe which the ISDA
15 document addresses in some of the nuance as it
16 relates to swaps is important because you have a
17 more horizontal structure. It's a different
18 technology and totally achievable. I don't
19 disagree with that one bit, but it does have a
20 cost and there is a time element. How fast? How
21 much do you spend over what period of time to get
22 this done? That's what I'm concerned about.

1 CHAIRMAN GENSLER: We did get the
2 benefit and I know Commissioner O'Malia and I have
3 chatted about this, that one trading platform,
4 it's in our notes on page 29 and when the press
5 gets this thing on the website you'll be able to
6 see it. It was Javelin that actually put through
7 \$4.1 billion of trades. There were only 21
8 interest rate swaps so it's not like it was
9 thousands of them, but they did put this last
10 December. The range took 1.3 to 1.9 seconds.
11 They didn't do it for us. They did it because as
12 you said the industry is preparing, but it was
13 very helpful that Javelin or some other commenter
14 sent in this record, told us about it, we were
15 able to talk to them about and that's part of the
16 record. With all respect, ISDA knows how to make
17 something part of the record. The International
18 Swaps and Derivatives Association is big. It's an
19 association of some of the most powerful,
20 well-funded organizations that are thoughtful.
21 They know how to get something into the record,
22 and I think this team is just doing a terrific

1 job. I think, Dave Stawick, it is now your turn.

2 MR. STAWICK: Commissioner Wetjen?

3 COMMISSIONER WETJEN: Aye.

4 MR. STAWICK: Commissioner Wetjen, aye.

5 Commissioner O'Malia?

6 COMMISSIONER O'MALIA: No.

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

8 Commissioner Chilton?

9 COMMISSIONER CHILTON: Aye.

10 MR. STAWICK: Commissioner Chilton, aye.

11 Commissioner Sommers?

12 COMMISSIONER SOMMERS: Aye.

13 MR. STAWICK: Commissioner Sommers, aye.

14 Mr. Chairman?

15 CHAIRMAN GENSLER: Aye.

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

17 Chairman, on this question the yeas are 4, the

18 nays are 1.

19 CHAIRMAN GENSLER: I thank you, Mr.

20 Stawick. With the yeas having it and a majority

21 supporting the rule, I want to thank the staff. I

22 think I also need unanimous consent to allow staff

1 to make technical changes, but I didn't see
2 anything on the dais so maybe there's not much to
3 do without objection. I also was going to note,
4 John Lawton, is it now 20 years that you have had
5 a St. Patrick's Day tradition?

6 MR. LAWTON: Thirty-two.

7 CHAIRMAN GENSLER: Thirty-two years that
8 John Lawton has had a tradition where he invites
9 all the staff of the CFTC and some friends to a
10 certain watering hole near Capitol Hill. They
11 start at breakfast time and he said he made a
12 record. You had 78 people this year. Is that
13 right?

14 MR. LAWTON: Right. We had a record
15 number of records broken.

16 CHAIRMAN GENSLER: A record number of
17 records broken. We're not going to go there, but
18 Commissioner Wetjen, maybe next year you'll be
19 joining St. Patrick's Day.

20 COMMISSIONER WETJEN: I'm a step ahead
21 of you, Mr. Chairman.

22 CHAIRMAN GENSLER: You were there?

1 COMMISSIONER WETJEN: I was there.

2 CHAIRMAN GENSLER: All right.

3 COMMISSIONER WETJEN: I was one of the
4 78. I know if it was a record to have a
5 Commissioner there. That might have been a record
6 in itself.

7 MR. LAWTON: In fact it was.

8 CHAIRMAN GENSLER: So to speak about
9 stamina, Commissioner Wetjen, I need to see if I
10 can keep up with him. But my hat is off to you.

11 MR. LAWTON: I think what happened at
12 the Tune Inn was in the public interest and there
13 were a lot of consumers represented there.

14 CHAIRMAN GENSLER: There were a lot of
15 consumers. I bet that somewhere behind the Tune
16 Inn somebody is hedging something in the grain
17 markets that needs this rule, so thank you and
18 with that I'll take a motion to adjourn the
19 meeting.

20 COMMISSIONER SOMMERS: So moved.

21 COMMISSIONER CHILTON: Second.

22 CHAIRMAN GENSLER: All in favor?

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(Chorus of ayes.)

CHAIRMAN GENSLER: The meeting is
adjourned.

(Whereupon, at 10:55 a.m. the
PROCEEDINGS were adjourned.)

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CERTIFICATE OF NOTARY PUBLIC

DISTRICT OF COLUMBIA

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

(Signature and Seal on File)

Notary Public, in and for the District of Columbia

My Commission Expires: January 14, 2013