

UNITED STATES OF AMERICA  
COMMODITY FUTURES TRADING COMMISSION

OPEN MEETING ON TWO FINAL RULE PROPOSALS  
UNDER THE DODD-FRANK WALL STREET REFORM  
AND CONSUMER PROTECTION ACT

Washington, D.C.

Tuesday, December 20, 2011

## 1 PARTICIPANTS:

## 2 Commission Members:

3 GARY GENSLER, Chairman

4 BART CHILTON, Commissioner

5 MARK WETJEN, Commissioner

6 JILL E. SOMMERS, Commissioner

7 SCOTT D. O'MALIA, Commissioner

## 8 Staff:

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10 Presentation No. 1: Final Rule on Swap Data  
11 Recordkeeping and Reporting Requirements

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1 PARTICIPANTS (CONT'D):

2 Presentation No. 2: Final Rule on Real-Time  
3 Reporting of Swap Transaction Data

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

(9:36 a.m.)

CHAIRMAN GENSLER: Good morning. This meeting will come to order. This is a public meeting of the Commodity Futures Trading Commission to consider final rules under Dodd-Frank Act. I'd like to welcome members of the public, market participants, members of the media, as well as those listening to the meeting on the phone, and watching the webcast.

I'd like to thank each of Commissioners Sommers, Chilton, O'Malia, and Wetjen for their significant contribution in the rule-writing process, and particularly, though, today, I want to thank the CFTC's hardworking and dedicated staff.

Under Dodd-Frank, this agency has been tasked to overseeing the swaps market, as you've heard me say probably often, a market seven times the size of the futures market, and far more complex. And the staff is working incredibly long and hard hours to consider public comment, to

1 consider input, to get these rules balances, not  
2 against a clock, but to get these new rules of the  
3 road in place to make these markets more  
4 transparent for the public and safer for the  
5 American public.

6 I particularly want to express my  
7 gratitude, and I think it's probably the  
8 sentiments of all the Commissioners, that we hope  
9 that everybody at the CFTC and their families have  
10 a happy holidays in this holiday period. But it's  
11 the staff that truly makes all of us in this  
12 Commission better informed, makes any rules that  
13 we consider and actions we do more balanced and  
14 thoughtful, and, frankly, makes us look good, and  
15 I want to thank you.

16 As the year draws to a close, I'd also  
17 like to reflect on just this past year for a  
18 moment, and what's been accomplished. This time  
19 last year, the agency was writing proposals, and I  
20 think Commissioner O'Malia was telling me about  
21 Macie's Christmas gift list. In fact, I think  
22 that was at the December 16th meeting, just one

1 year ago. Now, the CFTC has substantially  
2 completed that proposal phase, and last summer, we  
3 turned the corner and started towards finalizing  
4 rules. And, so far, actually, have considered and  
5 finalized -- including some that were early on --  
6 20 final rules, and, potentially, with the two  
7 rules on transparency today, maybe 22.

8 Now, we have much to do after the first  
9 of the year, and we're working to complete these  
10 rules, as I say, thoughtfully, and not against a  
11 clock, and having received 27,000 public comment  
12 letters now; well over 1,100 meetings; and 14  
13 roundtables. And more roundtables -- there will  
14 definitely be more roundtables on some subjects  
15 we've announced. They'll be additional staff  
16 roundtables, as the staff comes forward and makes  
17 recommendations for additional roundtables on  
18 further Dodd-Frank subjects and even  
19 non-Dodd-Frank subjects. I think we benefit from  
20 these staff roundtables.

21 Some of the major rules we finalized in  
22 the transparency field, even before today -- large

1 trader reporting and swap data repository  
2 registration -- and both of those rules have  
3 actually gone effective. We've started to receive  
4 large trader information, starting November 21st  
5 of this year. And we've also had several entities  
6 now start the process of registering a swap data  
7 repository. And importantly, I would note that as  
8 we finalized the large trader reporting rule, many  
9 of the people sitting at this table right here --  
10 John Rodgers, who heads up our technology efforts,  
11 Rich Shilts, and others from the Division of  
12 Market Oversight; I suspect many others -- reached  
13 out to market participants to ease the process of  
14 compliance. They had a regular dialogue -- I  
15 think it was weekly, if not twice a week -- and  
16 staff also developed a guidebook of data  
17 standards, which can be found on our website. In  
18 a similar fashion, if we are to finalize the rules  
19 today on data reporting, the staff will do the  
20 same thing here, and I hope the market  
21 participants will -- as they did -- graciously  
22 make themselves available to those phone calls,

1 and we'd look to put out guidebooks and so forth,  
2 as well.

3 We've also finalized rules giving us  
4 more authority to effectively prosecute wrongdoers  
5 who recklessly manipulate markets and also rules  
6 rewarding whistleblowers, and these were effective  
7 August 15th and October 25th. And the  
8 whistleblower office here at the CFTC is now up,  
9 and we have a new director in place, which we're  
10 very pleased joined us just in the last -- I guess  
11 it was in the last week and a half or so.

12 We have rules establishing risk  
13 management and other requirements of clearing  
14 organizations, and those go effective over a  
15 period of time throughout 2012 because we phased  
16 much of that implementation. We finalized  
17 position limit rules that similarly have a phasing  
18 over a period of time, and critically await us  
19 finalizing other rule -- the definition rules. I  
20 hope that we can move on those soon, but it's  
21 likely that we'll move on the entity definitions.  
22 I know Commissioner Chilton will keep asking me

1 about product definitions and we're working with  
2 the SEC on that. But I think entity definitions  
3 will tee up with the SEC in January, but product  
4 definitions probably after that.

5 And we've also completed rules earlier  
6 this month on enhancing customer protection  
7 regarding investments of their funds. We hope to,  
8 in January, to take up further rules with regard  
9 to the segregation and protection of segregation  
10 for cleared swaps, as well.

11 But today, we're looking at Swap Data  
12 Recordkeeping and Reporting and Real-Time  
13 Reporting Rules. We did notice last week for this  
14 meeting an additional exemptive relief, which the  
15 five of us signed off on yesterday, so we won't  
16 need to take that up today. But this exemptive  
17 relief is regarding the effective dates of  
18 Dodd-Frank. Just as we'd done in June or July of  
19 this past year, we wanted to give the markets  
20 relief that until we finalize our rules that they  
21 can continue, in essence, along the path that  
22 they've been on. And so, we've finalized

1       exemptive relief yesterday, providing market  
2       participants that certainty.

3               In terms of today, I'll have statements  
4       of support for each of the rules, but in a  
5       nutshell, I think that they're both critical rules  
6       and go to the heart of what Congress wanted to  
7       address here, it's transparency. And one of the  
8       rules today is transparency to the regulators and  
9       the other is transparency to the public. Both are  
10      critically important because the more transparent  
11      a marketplace, the more liquid it is, the more  
12      competitive it is, and I think when it's more open  
13      and transparent, all the end-users get the benefit  
14      of lower costs in the marketplace. But, also,  
15      this first panel is going to talk to the data that  
16      goes to the data repositories for the regulators.  
17      That's critical so that the regulators and not  
18      just the CFTC can oversee the markets, police the  
19      markets for fraud and manipulation, but also  
20      regulators can see the data and help assess the  
21      risks in the system to the American public.

22               And I think that today, critically,

1 we're going to move forward on both of these  
2 rules, as many of the Commissioners wanted to do  
3 at the same time. There is a significant phasing,  
4 as the teams will go through, but the phasing, in  
5 some instances, goes out two and three years. But  
6 the initial dates do start I think it's July 16th  
7 of next year. So, even the first dates are out  
8 six or seven months.

9           And I think this will give regulators  
10 important information. By contract, in the '08  
11 crisis, there was a lack of market information to  
12 regulators and lack of market information to the  
13 public on this critical \$300 trillion derivatives  
14 marketplace.

15           I think today -- with that, I'm probably  
16 just going to turn it over to Commissioner  
17 Sommers.

18           COMMISSIONER SOMMERS: Thank you, Mr.  
19 Chairman. And, as always, thank the teams that  
20 have worked so hard to have the rules that we have  
21 before us today. Both of these rules are fairly  
22 large and very complex, and I understand how hard

1 you've worked to have them before us today. So,  
2 really appreciate everything you've done so far.

3 Today, we are considering very important  
4 data, recordkeeping, and reporting rules that are  
5 critical to ensuring that swap market activity is  
6 transparent to regulators and market participants  
7 alike. The rules that we are voting on today seek  
8 to strike a balance between obtaining necessary  
9 and timely market data while attempting to  
10 minimize the associated costs and burdens on  
11 markets and market participants. Make no mistake,  
12 these rules certainly have costs associated with  
13 them, but swap data recordkeeping and reporting  
14 are mandated by Dodd- Frank. Our job as  
15 regulators is to understand that legislative  
16 mandate, to identify the regulatory objectives  
17 that will give effect to that mandate, and set out  
18 to achieve those objectives in the least costly  
19 and burdensome way.

20 For the swap data recordkeeping and  
21 reporting rules to function properly, we need to  
22 ensure there is consistency among domestic and

1 international regulators when it comes to unique  
2 swap identifiers, unique product identifies, and  
3 legal entity identifiers. I appreciate all the  
4 work and consultation that has been done in this  
5 area, and I am encouraged that we are heading in  
6 the right direction. I look forward to discussing  
7 how we can ensure consistency among our domestic  
8 and international colleagues. I supported the  
9 data recordkeeping and reporting requirements that  
10 were proposed last November, and I intend to  
11 support the final rules today.

12 I did not vote for the real-time  
13 reporting proposals last December. Among my  
14 concerns were the differences between our proposed  
15 rules and the SEC's proposed rules, the block  
16 trade provisions, and the 15- minute time delay  
17 for reporting block trades. I am pleased that we  
18 will be re-proposing the block provisions, and  
19 that we have substantially revised the time delay  
20 provisions. Comment letters addressing these  
21 areas were very helpful and deserve credit for the  
22 Commission adopting a much more reasonable

1 approach in the final rules. I hope we follow  
2 this model in the future and adopt final rules  
3 that are much more reasonable than the rules we  
4 have initially proposed.

5           When it comes to swaps markets, I  
6 believe a reasonable, measured approach is  
7 critical. Swap markets developed without our  
8 involvement -- and we have little experience with  
9 these markets -- the truth is, we don't know what  
10 the full impact of our rules will be and don't  
11 know whether the assumptions we operate under are  
12 valid. Given this knowledge gap, it makes more  
13 sense to start with a broader, more flexible  
14 approach, and become narrower and more restrictive  
15 only as it is necessary and after we have  
16 sufficient experience and data to make these  
17 decisions.

18           I intend to vote for the real-time  
19 reporting rules but do have a couple of questions  
20 for the team. I want to hear about our  
21 cooperation and coordination with domestic and  
22 international regulators and whether we expect

1       there will be inconsistencies; how the timing of  
2       reporting requirements will work in the context of  
3       transactions that are executed and confirmed  
4       between parties in time zones halfway around the  
5       world; and whether we have any analysis that  
6       suggests the time delays we are setting in these  
7       final rules are the correct time delays.

8                 One last point I would like to make  
9       applies to a broader set of rules than the rules  
10      we are considering today. The preamble of the  
11      real-time reporting rules state that, a swap is  
12      economically related to a single contract, if it  
13      utilizes as its sole floating reference price, the  
14      prices generated directly or indirectly from the  
15      price of a single contract. The term is not  
16      defined in the rule text. The term "economically  
17      related" as well as "economically fungible" are  
18      also terms used in the context of other rules.  
19      The term "economically equivalent swap" appears in  
20      the Commission's final position limit rules,  
21      without much of a definition, and just two weeks  
22      ago the Commission voted on rules relating to the

1 determining whether a swap is made available to  
2 trade. Those proposed rules direct DCMs and SEFs  
3 to determine whether a swap is "economically  
4 equivalent" with another swap after considering  
5 each swap's material pricing terms, defining  
6 "economically related," "economically fungible,"  
7 and "economically equivalent" in a consistent way  
8 across all rules is important. If critical terms  
9 such as these are used in multiple places in  
10 Commission rules, the terms should have the same  
11 meaning each time they are used. I am not sure we  
12 have fully articulated definitions of these three  
13 very similar, yet different terms. I have  
14 concerns regarding the market implications as we  
15 continue to finalize rules without fully defining  
16 these similar terms.

17 Thank you, again, to all the teams, and  
18 I look forward to the discussions.

19 CHAIRMAN GENSLER: Thank you,  
20 Commissioner Sommers. Thank you, particularly, on  
21 the three different references to economically  
22 equivalent, fungible, and others, and I'm sure

1 once I get back from vacation, I'll get briefed on  
2 all of that. But it's a good point.

3 Commissioner Chilton?

4 COMMISSIONER CHILTON: Thanks, Mr.  
5 Chairman. Morning. Three points today. One,  
6 that this is an iterative process. As Commissioner  
7 Sommers was just talking about, we've taken the  
8 Block Trading Rule out of what we're doing today  
9 and it's because, under no uncertain terms, were  
10 we told that we got it wrong, quite frankly. And  
11 so, as we've said -- many of us over the last year  
12 -- if we get it wrong, we're going to acknowledge  
13 it and go back and try to rework it. So, it's  
14 been an iterative process to date, and the first  
15 point I want to make today is that it needs to be  
16 an iterative process as we go forward, also, that  
17 maybe there's something we don't know. Maybe we  
18 will learn something right away in what we've  
19 done, and we need to further clarify. I'm not  
20 saying we would do another rule, but we have  
21 options for interpretation, et cetera. And I'm  
22 not suggesting that these rules, in particular,

1 raise any specific concerns in that regard. I'm  
2 just saying that we don't check these off and say  
3 we're done with that; forget about it. It needs  
4 to continue to be an iterative process as we good  
5 forward with the implementation.

6 The second point is that -- and I've  
7 talked about this a little bit before, but these  
8 are another good two rules that show that there  
9 actually is economic activity that's generated  
10 through Dodd-Frank rulemaking. It's easy in this  
11 town to paint things as black and white -- and you  
12 hear a lot of people talk about the job-killing  
13 Dodd-Frank Bill -- and we've done many rules that  
14 actually will create economic activity, and it's a  
15 case here today. For example, with regard to the  
16 swaps data repositories, third parties will be  
17 allowed to further analyze that data and come up  
18 with all sorts of innovative things that they may  
19 wish to sell. And so, that's one example.

20 Another example would be the LEI -- the  
21 legal entity identifier and -- which is really  
22 historic. I mean, we are essentially creating a

1 Dewey decimal system for derivatives here -- first  
2 time ever -- and we have worked with our  
3 international colleagues on this. This isn't just  
4 the U.S. coming up with it. And there are all  
5 sorts of economic values that will come in the  
6 U.S., I think, because we're doing it first, but I  
7 think also to the industry globally.

8           And then, the last point -- and the LEI  
9 is a good example of this -- there's a story --  
10 Jeremy Grant wrote a story today in the FT and it  
11 says, well, maybe they're not moving forward in  
12 the EU as fast as people had anticipated, and  
13 maybe we're going to not move as fast. I think  
14 people shouldn't get the impression that we are  
15 somehow slowing down because there's not an  
16 interest. The mandate of Dodd-Frank is alive and  
17 well here. We know what we're supposed to do.  
18 So, don't confuse thoughtful with a lessened  
19 interest. We're being thoughtful in what we're  
20 doing. We're helping to create an environment for  
21 economic activity. So, anyway, we're on the  
22 ground. We're doing it, and today's just another

1 example, I think, of how the process actually has  
2 worked well.

3 Thanks, Mr. Chairman.

4 CHAIRMAN GENSLER: Thanks, Commissioner  
5 Chilton. Commissioner O'Malia? And we can find  
6 out about Macie.

7 COMMISSIONER O'MALIA: No chance on  
8 Macie. No reports on a Christmas list. She has  
9 been pretty good. It's day-by-day.

10 CHAIRMAN GENSLER: All right.

11 COMMISSIONER O'MALIA: All across  
12 America, families are trekking to the mall looking  
13 for the perfect Christmas and Hanukkah presents.  
14 The most sought-after holiday gifts are the  
15 high-tech gadgets. These gadgets are promised to  
16 make life better by staying in touch, staying  
17 informed, and, of course, looking cool.  
18 Therefore, it is fitting that the Commission is  
19 devoting the first night of Hanukkah and last few  
20 days of Christmas to gifting two final rules on  
21 data and technology. Both rules enhance the  
22 quality and quantity of information available

1 regulators, market participants, and public at  
2 large.

3           The rules have as their goal improved  
4 transparency, price discovery, and market  
5 integrity. I have no doubt that the data is  
6 critical to performing our oversight mission, and  
7 our investment in technology is critical if we are  
8 to perform our mission competently. And I will  
9 have a couple of questions regarding technology  
10 and where we are in our investment.

11           I greatly appreciate the cooperation of  
12 the Commission staff and thank both rule teams for  
13 their hard work to develop these rules in much  
14 greater flexibility than the proposals. I intend  
15 to support both rules. I believe both of these  
16 rules, in their final iterations, have made great  
17 strides to accommodate market participants' input,  
18 while balancing the needs of the Commission's own  
19 needs. I remain, however, concerned that the  
20 frustrating -- with the frustrating complexity,  
21 which is amplified by the fact that several key  
22 definitions have yet to be finalized and the

1 re-proposals have yet to be revealed.

2           However, I believe it is an appropriate  
3 time to put these rules out in order to permit  
4 technology build- outs to occur on both sides, the  
5 market and the Commission.

6           Today's two rules serve two important  
7 goals. The first, important swap transaction,  
8 level data, will be made available to the market  
9 to improve transparency, price discovery, and  
10 market integrity. Second, reporting will fulfill  
11 our own regulatory mandate, including systemic  
12 risk mitigation, market monitoring, and market  
13 abuse prevention.

14           I recognize these rules will require  
15 market participants to build out complex and  
16 costly technology systems. And I think  
17 Commissioner Chilton and I see two sides of the  
18 same coin: The cost-benefit and analyses of both  
19 rules identify that each rule will impose costs of  
20 more than \$100 million on the American economy,  
21 thus making each rule a major rule.

22           Including these rules, this brings our

1 current total of major rules promulgated by the  
2 Commission to seven, which means that the handful  
3 of Dodd-Frank rules we've addressed so far have a  
4 minimum impact on the American economy of at least  
5 \$700 million. Even with these substantial costs,  
6 the final rules did take into account many  
7 important steps to minimize the burden and to  
8 avoid redundant reporting requirements as compared  
9 to their draft proposals.

10 The two final rules have harmonized  
11 their implementation and compliance timelines to  
12 avoid forcing market participants to meet  
13 disparate deadlines. For each of the rules, I  
14 would like to outline some of the specific changes  
15 that were made to accommodate the comments offered  
16 by market participants, which were very helpful.

17 The final data keeping rule requires  
18 reporting of important swap data at a swap's  
19 creation and over the course of its life. All  
20 essential data will be provided in a timely  
21 fashion so that regulators have an up-to-date  
22 picture of a given swap at any point.

1           The first improvement to a rule is the  
2           streamlined reporting approach, where reporting is  
3           done by the reporting counterparty that the  
4           Commission believe has the easiest, fastest, and  
5           cheapest access to data. Importantly, for swaps  
6           executed on a SEF or DCM -- designated contract  
7           market -- and then cleared, reporting  
8           counterparties no longer need to report any  
  
9           creation data to SDR and this will eliminate  
10          redundant reporting.

11          Second, the rule provides staggered  
12          reporting timelines depending on the asset class  
13          and the status of the counterparty. This phasing  
14          recognizes the many significant differences  
15          between asset classes and the counterparties.

16          Third, the final rule now leaves certain  
  
17          technical decisions to the market. First, market  
18          participants have discretion to determine whether  
19          to report information on a life cycle or snapshot  
20          basis for any asset class. Second, it allows  
21          counterparties to report data to an SDR in any  
22          electronic normalized format acceptable to the

1       SDR. These revisions recognize industry practices  
2       and afford much needed flexibility.

3               With regard to the real-time rule, I was  
4       particularly skeptical when this proposal was  
5       introduced in November of 2010. The proposed rule  
6       was vague, fell short of providing concrete  
7       direction, and did not follow statutory  
8       requirements that any rules we prescribe take into  
  
9       account whether public disclosure of such swap  
10      information will reduce market liquidity -- a  
11      significant concern of the end-user communities  
12      and a statutory requirement. While I remain  
13      concerned about the complexity of this rule, as  
14      well the interconnection with the upcoming  
15      re-proposal regarding block sizes, I believe this  
16      rule has significantly improved from its draft  
17      form.

18              This rule provides for reasonable  
19      interim solutions, such as universal time delays  
20      and interim caps on the reporting of notional and  
21      principal amounts until such time as appropriate  
22      minimum block sizes are established when the rules

1 are finalized. These interim solutions are  
2 necessary to protect market participants  
3 conducting bilateral swaps in more illiquid  
4 markets through an upcoming re-proposal.

5           The real-time public reporting rule  
6 addresses many concerns that were expressed by  
7 end-users. Specifically, the rule provides a  
8 longer time delay for end-users that are reporting  
9 parties to come into compliance with the real-time  
10 reporting requirements. Additionally, the final  
11 rules provide for the phasing in of longer time  
12 delays with respect to bilateral swaps in which at  
13 least one party is an end-user. As such end-users  
14 may not have the technology or infrastructure  
15 readily available to report such swaps to the SDR.

16           The final rules, data fields, and time  
17 delays have been coordinated with the swap data  
18 rule and recordkeeping rules, thus enabling  
19 end-users to mitigate costs in reporting swap data  
20 to an SDR.

21           I suspect that many participants will  
22 find the reporting timetables, which are both

1 participant- and asset class-dependent, confusing,  
2 and is frankly too long and too complex to attempt  
3 to describe in this statement. So, I'll ask the  
4 team to do that. However, I believe the rule is  
5 far more accommodating than the proposal.

6 I understand the market will still have  
7 many questions related to the reporting of block  
8 sizes and provisions relating to public  
9 dissemination of off- facility swaps. These rules  
10 will be coming, including the re-proposal of the  
11 block rule.

12 There are certainly many market  
13 participants who will benefit from a more focused  
14 dialogue with these new rules. I do appreciate  
15 the hard work of the teams and certainly their  
16 patience in helping me understand these confusing  
17 rules.

18 I would like to wish all my colleagues  
19 and the Commission staff a very happy and safe  
20 holiday going forward. Thank you.

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

1                   Commissioner Wetjen?

2                   COMMISSIONER WETJEN: Thank you,  
3 Chairman Gensler. Thank you, also, the  
4 professional staff for their efforts on these  
5 rules. A tremendous amount of work has gone into  
6 these technical and detailed rulemakings, and I  
7 appreciate that you have remained open to changes  
8 concerning the recommendations before us.

9                   The recent financial crisis was caused,  
10 in part, by a dearth of information about  
11 derivatives exposures throughout the financial  
12 markets. The two rules before us today are  
13 intended to increase transparency and to help us  
14 avoid the type of market disruption experienced in  
15 2008.

16                  This isn't part of my prepared remarks,  
17 but I was actually serving in Congress during the  
18 fall of 2008, and know from experience just how  
19 big of a challenge it was that the regulatory  
20 community did not have information about  
21 derivatives exposures, and I think the more  
22 important point about this that had they had that

1 information -- it's not clear for sure, but  
2 perhaps -- both the regulators and Congress might  
3 have responded differently to the crisis. So, I  
4 think what we're doing here is extremely  
5 important.

6 First, the regulatory reporting rules  
7 ensure that the Commission has the necessary  
8 information to monitor systemic risks and craft  
9 appropriate regulatory responses when needed.  
10 Second, the real-time reporting rules equalize  
11 access to pricing information, which will benefit  
12 commercial firms and consumers.

13 I also will be supporting both final  
14 rules. But I am mindful of the potential effects  
15 of the public- reporting rule that have been  
16 raised in the comment letters and during my  
17 meetings with market participants. Congress  
18 itself recognized that post-trade transparency,  
19 though essential, could impair market liquidity in  
20 some circumstances and instructed that our final  
21 reporting rules account for this risk. We are,  
22 therefore, faced with potentially conflicting

1 objectives. Congress directed us to "make swap  
2 transaction and pricing data available to the  
3 public," but it also directed that we protect the  
4 anonymity of counterparties and avoid reporting  
5 requirements and timelines that diminish liquidity  
6 or adversely affect pricing.

7 I believe, however, that the staff's  
8 final recommendations strike an appropriate  
9 balance between these objectives. They set forth  
10 a measured reporting regime that is consistent  
11 with the language and intent of the Dodd-Frank  
12 Act. In order to protect market liquidity, the  
13 public reporting rules permit delayed reporting of  
14 swap transactions and will phase-in the  
15 implementation of shorter delays over a limited  
16 timeframe. In effect, all trades will be reported  
17 as block transactions until the Commission later  
18 establishes large notional and block thresholds,  
19 and does so in a manner that accounts for  
20 liquidity differences between and within asset  
21 classes.

22 Today's regulations also establish

1 specific rounding conventions and permit the  
2 masking of trades above preliminary thresholds to  
3 account for execution and hedging risks and to  
4 protect the identity of market participants. This  
5 draws on the success of the TRACE model in the  
6 fixed income markets. And I am pleased that the  
7 regulations were revised to differentiate between  
8 market participants and to further differentiate  
9 between asset classes, with important anonymity  
10 protections for swaps in certain physical  
11 commodities.

12 Commercial end-users and small market  
13 participants will not carry the reporting  
14 obligations in most cases. Where they do, they  
15 will be given additional time and will be able to  
16 report in a single, coordinated transmission to  
17 the swap data repository of their choice.

18 With respect to the regulatory reporting  
19 rules, the Commission is taking important first  
20 steps that will lead to the development of  
21 universal legal entity, product, and swap  
22 identifiers. This information will enable the

1 Commission and other regulators to aggregate data  
2 and effectively perform regulatory  
3 responsibilities. Having comprehensive swap data  
4 in a standardized format is essential to assessing  
5 systemic risk, conducting market surveillance, and  
6 supervising market participants.

7           As a final note, I am cognizant of the  
8 fact that these rules may not provide absolute  
9 clarity on every point, notwithstanding the  
10 staff's laudable work to make them as  
11 comprehensive but flexible as possible. To be  
12 sure, there are a wide variety of participants in  
13 these markets. There must be reporting  
14 consistency if we are to fully realize the  
15 benefits of transparency, and the application of  
16 these rules likely will require ongoing guidance  
17 to those responsible for compliance. The staff  
18 has assured me that it will continue to engage  
19 with the public and market participants throughout  
20 the implementation process.

21           I want to thank the staff again for  
22 their commitment in this regard, and for their

1 hard work on these rules. Thank you.

2 CHAIRMAN GENSLER: Thank you,  
3 Commissioner Wetjen. Thank all the Commissioners  
4 and excellent team. You know, we could introduce,  
5 or just -- who's going to take the lead, David?

6 So, David Taylor, who's been our team  
7 lead; Anne Schubert, who also seems to be in each  
8 of our offices on this rule; Rick Shilts and  
9 Andrei Kirilenko and John Rodgers, who are all  
10 division directors of market oversight, our chief  
11 economist, and our technology -- because this rule  
12 has really been a collaboration around market  
13 oversight, economics, and all of the economists  
14 have been involved in this, it's just remarkable,  
15 and data. And then Dan and -- well, see, Dan  
16 Berkovitz, you didn't want to be at the table  
17 anymore. Bill Banwo is here instead -- all right  
18 -- the real person in the Office of General  
19 Counsel. So is it, David, you're going to take  
20 the lead?

21 MR. TAYLOR: Good morning, Mr. Chairman  
22 and Commissioners. Before I begin, I would like

1 to thank my fellow team members for their help in  
2 preparing the final rule I'm about to present,  
3 dedicated staff from the Divisions of Market  
4 Oversight, Enforcement, Clearing and Risk, and  
5 Swap Dealer, and Intermediary Oversight; and from  
6 the Offices of International Affairs, the General  
7 Counsel, the Chief Economist; and last, but not  
8 least, Data and Technology, including staff from  
9 Chicago and New York, as well as Washington, were  
10 essential to completing this final rule.

11 Today's staff is recommending that the  
12 Commission adopt a final rule regarding swap data  
13 recordkeeping and reporting requirements, a rule  
14 we believe is crucial to fulfilling the  
15 transparency, market supervision, and systemic  
16 risk mitigation purposes of the Dodd-Frank Act.  
17 This final rule will govern the reporting of swap  
18 data to swap data repositories, or SDRs. Its  
19 fundamental goal is to ensure that complete data  
20 concerning all swaps subject to the Commission's  
21 jurisdiction is maintained in SDRs, where it will  
22 not be disclosed publicly, but will be available

1 to the Commission and other financial regulators.

2 In preparing this final rule, staff has  
3 considered and evaluated the 75 comment letters  
4 received, as well as extensive input from  
5 roundtable participants and consultations with  
6 U.S. and international regulators. We especially  
7 focused on comments regarding ways that  
8 recordkeeping and reporting burdens could be  
9 reduced.

10 The final rule maintains the fundamental  
11 aspects of the proposed rule issued by the  
12 Commission in December last year. It also adjusts  
13 a number of aspects of the rule to streamline  
14 reporting and minimize burdens where possible,  
15 especially for swap counterparties who are not  
16 swap dealers or major swap participants, while  
17 continuing to require swap data reporting that  
18 will fulfill the objectives of the Dodd-Frank Act.

19 The recordkeeping provisions of the  
20 final rule are based on the Commission's existing  
21 recordkeeping regulations. The rule generally  
22 calls for registered entities and counterparties

1 to keep records relating to swaps throughout the  
2 existence of each swap and for five years  
3 following final termination of the swap. Records  
4 kept by registered entities, swap dealers, and  
5 major swap participants must be readily accessible  
6 during the life of the swap and for two years  
7 thereafter and retrievable from storage within  
8 three business days during the remainder of the  
9 retention period. To reduce recordkeeping  
10 burdens, the final rule permits non-SD/MSP  
11 counterparties to keep records in either  
12 electronic or paper form and requires that such  
13 counterparties be able to retrieve records within  
14 five business days throughout the retention  
15 period.

16           The data reporting provisions of the  
17 final rule require reporting of swap data from  
18 each of two important stages of the existence of a  
19 swap -- the creation of the swap and the  
20 continuation of the swap over its existence until  
21 its final termination. To ensure timeliness,  
22 accuracy, and completeness with respect to data,

1 the rule requires reporting of two types of data  
2 relating to the creation of a swap. The primary  
3 economic terms of the swap verified or matched by  
4 the counterparties at or shortly after the time of  
5 execution, and all of the terms of the swap  
6 included in the legal confirmation. To ensure  
7 inclusion of primary economic terms necessary for  
8 regulatory purposes, the rule specifies minimum  
9 primary economic terms -- or, as it's now called,  
10 PET data -- that must be reported for swaps in  
11 each asset class.

12 The final rule requires continuation  
13 data reporting over the life of the swap. This  
14 includes reporting of all changes to the primary  
15 economic terms of the swap and reporting of the  
16 valuation of the swap.

17 The final rule, as some Commissioners  
18 noted this morning, adopts a streamlined reporting  
19 regime that requires reporting by the registered  
20 entities or swap counterparties that the  
21 Commission believes have the easiest, fastest, and  
22 cheapest access to data, and those most likely to

1 have the necessary automated systems. The purpose  
2 of this regime is to reduce the burden on all  
3 market participants and enhance market efficiency  
4 while continuing to fulfill the purposes of the  
5 Dodd-Frank Act.

6 Here are several important ways in which  
7 this is achieved. For swaps executed on a SEF or  
8 DCM and cleared by a DCO, non-SD/MSP  
9 counterparties will have no reporting obligations,  
10 and dealers and MSPs will only be required to report  
11 valuation data. SEFs and DCMs will report all  
12 creation data as soon as technologically  
13 practicable after execution, and DCOs will report  
14 continuation data.

15 For facility swaps, the DCO will report  
16 both creation data and continuation data if the  
17 swap is accepted for clearing within the deadline  
18 for PET data reporting by the reporting  
19 counterparty. This will provide an incentive for  
20 increased clearing of swaps. Here to, non-SD/MSP  
21 counterparties have no reporting obligations.

22 Where a counterparty is required to

1 report, the rules minimize the reporting burden by  
2 providing that the reporting counterparty is a  
3 dealer or an MSP, wherever possible. In response  
4 to comments, the final rule makes foreign SDs or  
5 MSPs the reporting counterparty. When neither  
6 counterparty is an SD or MSP, but one is a  
7 financial entity as defined in the Dodd-Frank Act,  
8 in response to comments the rule makes the  
9 financial entity the reporting counterparty.

10 The reporting deadlines in the final  
11 rule are coordinated with the dissemination delays  
12 in the Part 43 Real-Time Reporting Rule in order  
13 to reduce burdens by permitting a registered  
14 entity or reporting counterparty to fulfill  
15 obligations under both rules by making a single  
16 report.

17 The final rule also extends and phases  
18 in reporting deadlines; for example, where the  
19 longest proposed rule deadline for reporting by a  
20 non-SD/MSP counterparty was 24 hours, the final  
21 rule calls for reporting within 48 business hours  
22 during the first year of reporting, 36 business

1 hours during the second year, and 24 business  
2 hours thereafter. These deadlines now exclude  
3 hours on weekend days and legal holidays, as  
4 requested by commenters. Deadlines for SDs and  
5 MSPs, while shorter, are also phased in over three  
6 years, and longer deadlines are provided in the  
7 more complex, other commodities asset class.

8           The final rule calls for reporting  
9 changes to the primary economic terms of a swap  
10 during its continuation in a manner that ensures  
11 that data in the SDR remains current and accurate.  
12 Where the proposed rule required use of the life  
13 cycle reporting method in certain asset classes  
14 and use of the snapshot reporting method in  
15 others, the final rule does not mandate either  
16 method and leaves the choice to market  
17 participants in order to reduce burdens.  
18 Non-SD/MSP reporting counterparties will not be  
19 required to report valuation data for cleared  
20 swaps. That will be done by the DCO. And for  
21 uncleared swaps, they will only be required to  
22 report valuation data on a quarterly rather than a

1 daily basis. While the proposed rule called for  
2 possible reporting related to contract intrinsic  
3 data, master agreements, credit support  
4 agreements, and collateral, the final rule does  
5 not require such reporting.

6 The final rule follows the proposed rule  
7 in calling for reporting of three unique  
8 identifies: A unique swap identified, or USI,  
9 that will tie together all data reported for a  
10 given swap; a legal entity identifier, or LEI,  
11 that will provide a precise, universal means of  
12 identifying the counterparties to each swap; and a  
13 unique product identifier, or UPI, and product  
14 classification system that will identify the  
15 underlying asset or assets of each swap. These  
16 identifiers will be crucial regulatory tools for  
17 linking data together across counterparties' asset  
18 classes, repositories, and transactions, so that  
19 regulators can actually use the data and SDRs to  
20 fulfill the purposes of the Dodd-Frank Act.

21 The final rule takes a first touch  
22 approach to USI creation but excuses non-SD/MSP

1 reporting counterparties from this task. The rule  
2 takes note of the substantial progress toward an  
3 international LEI made by a global industry  
4 initiative and by international regulators. It  
5 also sets out technical and governance principles  
6 and reference data requirements for the LEI to be  
7 used in recordkeeping and reporting under the  
8 Commission's jurisdiction. The rule also provides  
9 for Commission designation of a UPI and product  
10 classification system, when a system meeting  
11 Commission requirements has been developed.

12 To prevent data fragmentation, the final  
13 rule requires that all data for a given swap must  
14 be reported to a single SDR, the one to which data  
15 is first reported for the swap. The final rule  
16 follows the proposed rule in permitting  
17 third-party facilitation of data reporting, in  
18 providing for reporting to the Commission if there  
19 should be an asset class for which no SDR accepts  
20 data, and in providing for reporting of errors and  
21 omissions discovered in previously reported data.

22 In response to comments, the final rule

1 permits voluntary supplemental reporting by market  
2 participants not required to report and provides  
3 for minimum information to be included in such  
4 reports in order to prevent double counting of the  
5 swaps involved.

6 The final rule follows the proposed rule  
7 with respect to required data standards, directing  
8 SDRs to provide data to the Commission in the  
9 format required by the Commission, while  
10 permitting SDRs to accept data in various formats.

11 Finally, the final rule responds to  
12 comments by phasing in the beginning of compliance  
13 by asset class and by counterparty type. It  
14 establishes three compliance dates: Compliance  
15 date one, the date on which registered entities,  
16 dealers, and MSPs must begin compliance with  
17 respect to swaps in the credit and interest rate  
18 asset classes, will be the later of July 16, 2012,  
19 or 60 days after issuance of Commission  
20 definitions of swap, swap dealer, and major swap  
21 participant; compliance date two, the date on  
22 which registered entities, dealers, and MSPs must

1 begin compliance for swaps in the equity foreign  
2 exchange, and other commodity asset classes will  
3 be 90 calendar days after compliance date one;  
4 compliance date three, the date on which  
5 non-SD/MSP counterparties must begin compliance in  
6 all asset classes will be 90 calendar days after  
7 compliance date two and 180 calendar days after  
8 compliance date one. This will give non-SD/MSP  
9 counterparties additional time to develop and test  
10 automated systems and prepare for compliance, and  
11 these dates are the same compliance dates in the  
12 Part 43 Real- Time Rule, so that, again, these  
13 reporting obligations can be aligned.

14 That concludes my remarks, and we will  
15 be happy to answer any questions you may have.

16 CHAIRMAN GENSLER: Thank you, David, and  
17 the team. The Chair will now entertain a motion  
18 to accept the staff recommendation concerning the  
19 final rule on data reporting.

20 MR. SHILTS: So moved.

21 COMMISSIONER CHILTON: Second.

22 CHAIRMAN GENSLER: As I had mentioned, I

1 support this rule and enormously grateful to the  
2 team and the public that's given so much input. I  
3 do have a few questions, if I might?

4 First, this rule addresses all of the  
5 swap data that happens after the effective dates,  
6 starting, I guess, next July 16th for some part of  
7 the market. Is that correct?

8 MR. TAYLOR: Yes.

9 CHAIRMAN GENSLER: So, for the  
10 pre-effective date swaps, whether they're prior to  
11 the President signing the bill in July of 2010,  
12 which will call pre-enactment swaps, are the swaps  
13 entered into after the enactment, but before the  
14 effective date, which I gather we have another  
15 term called -- what's it's called -- transition  
16 swaps?

17 MR. TAYLOR: Historic, yeah.

18 CHAIRMAN GENSLER: What are they called?

19 MR. TAYLOR: You have pre-enactment  
20 swaps and transition swaps, together those are  
21 historical swaps.

22 CHAIRMAN GENSLER: All right. So, while

1 I'll use your term historical swaps, I gather, but  
2 if you can tell the public this does not yet  
3 address the historical swaps, and we need to come  
4 back to do something which is Part 46, or does  
5 this address historical swaps?

6 MR. TAYLOR: No, that's correct, Mr.  
7 Chairman. Historical swaps will be addressed by a  
8 companion rule. I'm sure all five of you will be  
9 delighted to know it is a smaller rule that will  
10 be forthcoming early in the new year, and it will  
11 be in Part 46.

12 CHAIRMAN GENSLER: Okay. So, I look  
13 forward, and I'm sure the other Commissioners,  
14 after you take a well- deserved holiday break,  
15 that we see what you want to recommend to us on  
16 the historical swaps.

17 My second question is, do you know if  
18 the Federal Register prints color?

19 MR. TAYLOR: I don't, and we're going to  
20 ask about that. We will try to find a way to show  
21 the color differences in black and white --

22 CHAIRMAN GENSLER: Well, if I can --

1 MR. TAYLOR: -- if we can.

2 CHAIRMAN GENSLER: -- I mean, this is  
3 just one example of one of the color charts of  
4 implementation phasing that this team has put in.  
5 But can you maybe assure, if not by today, by  
6 tomorrow, but hopefully today, you get these --  
7 this chart on implementation phasing and also you  
8 have on pages 70 and 72 these wonderful diagrams,  
9 that they be up on our website, so that -- and  
10 this partly addresses Commissioner O'Malia's  
11 concern that I think that the team has done an  
12 excellent job about implementation phasing and  
13 thinking that this is not one size fits all. If  
14 it's an interest rate swap and it's done on a swap  
15 execution facility and it's cleared, that's one  
16 circumstance that's going to be effective July  
17 16th next year and would be reported pretty  
18 readily to a data repository.

19 If on the other end of the spectrum it's  
20 two energy firms that are not swap dealers, and  
21 they're doing something that's a customized trade,  
22 that's not cleared, they're going to get a lot

1 more time, and it's going to be very different.  
2 And I think these pages on 70, 72 -- and the  
3 Federal Register may or may not do color, but our  
4 website does, and if you can put these up, I think  
5 it'd be helpful, too, and partially addresses  
6 Commissioner's O'Malia's point, but it helped me a  
7 lot.

8 And then I have two other questions. In  
9 all of this you talk about interest rate swaps,  
10 and I take it that when you define rates, that  
11 includes cross-currency swaps, is that correct?

12 MR. TAYLOR: That's correct, and that  
13 was in response to a number of comments from the  
14 market.

15 CHAIRMAN GENSLER: Okay. But then  
16 separately, on what's called FX swaps, which is a  
17 separate category, can you tell me what happens?  
18 How does this rule tie into what the Treasury may  
19 be doing about FX swaps?

20 MR. TAYLOR: My understanding, Mr.  
21 Chairman, is that Dodd-Frank itself provided that  
22 regardless of what the Treasury may do in

1 exempting FX transactions, they will have to be  
2 reported to SDRs. So, the rule follows the Act in  
3 that respect.

4 CHAIRMAN GENSLER: Okay.

5 MR. TAYLOR: The remaining transactions,  
6 it would fit into that asset class we put together  
7 as foreign exchange transactions, one part of  
8 which is what the bill defines as a foreign  
9 exchange swap, and we provide for reporting of  
10 those.

11 CHAIRMAN GENSLER: And that reporting,  
12 if I recall, starts nine months after, so it would  
13 be starting October 16th instead of July 16th, is  
14 that correct?

15 MR. TAYLOR: That's correct.

16 CHAIRMAN GENSLER: And then, the last  
17 question, David, and I apologize, it's just a  
18 technical clean up. Could you look at Page 228?  
19 And I noted this just as I was walking in the room  
20 to you, if later you could take a look to see if  
21 there's one phrase in this paragraph A which is  
22 for a non-swap dealer counterparty that is a

1 financial entity under 2h(7) that I just wonder --  
2 this might be a technical clean up -- maybe needs  
3 to also be in next paragraph B, as I was rereading  
4 this last night.

5 MR. TAYLOR: We'll be happy to take a  
6 look, Mr. Chairman and make a technical  
7 correction, if needed. I think it's correct the  
8 way it reads, and I actually think it reads the  
9 way it reads because of a request you made.

10 CHAIRMAN GENSLER: It might well be --

11 MR. TAYLOR: It's --

12 CHAIRMAN GENSLER: -- that I don't  
13 remember, but just take a look to see if there's  
14 any technical thing.

15 MR. TAYLOR: The key there is in the  
16 next paragraph, subparagraph B. We are granting  
17 extra time, but we're only -- you know, a longer  
18 reporting deadline, but we're only doing it for  
19 somebody who's not a dealer MSP, is not a  
20 financial. So, that's why it's in one paragraph  
21 and not the other.

22 CHAIRMAN GENSLER: Yeah, the end-users

1 that we've all -- following congressional intent

2 --

3 MR. TAYLOR: Yes.

4 CHAIRMAN GENSLER: -- giving a lot of  
5 deference to. This gives that deference, you  
6 think?

7 MR. TAYLOR: Yes.

8 CHAIRMAN GENSLER: Okay. Good. That's  
9 just really why I'm raising it.

10 Commissioner Sommers?

11 COMMISSIONER SOMMERS: Thank you, again,  
12 to this team and to David for all that he has done  
13 with regard to coordination with international  
14 regulators, and that's really the focus of my  
15 questions today.

16 David, I guess my first question would  
17 be, if you could explain what you've done so far  
18 to coordinate with international regulators and  
19 whether you believe there will be any  
20 inconsistencies in what we are doing today and  
21 what they -- we hope -- eventually will do.

22 MR. TAYLOR: Thank you, Commissioner.

1 We have had, as you noted, an extensive series of  
2 coordination meetings, not only with the SEC and  
3 the OFR in the United States about international  
4 aspects of this, but with a series -- we met with  
5 international regulators from 25 countries -- I  
6 won't read the whole list -- but the Financial  
7 Stability Board, the International Monetary Fund,  
8 the Bank for International Settlements, the OTC  
9 Derivatives Regulators Forum, and the OTC  
10 Derivatives Supervisors Group, the European  
11 Central Bank, the European Commission, like five  
12 other European organizations, the International  
13 Organization for Standardization and the  
14 Association of National Numbering Agencies. And  
15 the CFTC also chaired the CPSS-IOSCO Data Task  
16 Force that has produced a report ultimately for  
17 the G-20 about data reporting to repositories and,  
18 in particular, that recommended the LEI. We  
19 actually drafted the LEI sections of that report.  
20 Our principals for the LEI are very closely  
21 aligned with the principles in the OFR Policy  
22 Statement in the CPSS-IOSCO data report with the

1 approach that the SEC is taking and with the  
2 principles that have been discussed at the recent  
3 FSB-led LEI workshop, and that are being discussed  
4 now by an FSB-led small expert group that is  
5 preparing recommendations for international  
6 governance of the LEI system.

7 In some sense, we're going first. This  
8 rule, to my knowledge, is going to be the first  
9 one in the world that fulfills the commitment that  
10 the G-20 made right after the financial crisis  
11 that all OTC derivatives should be reported to  
12 trade repositories by the end of 2012. So, I  
13 can't entirely answer whether we are precisely  
14 aligned with everyone else because we're first.  
15 But, to our knowledge, we've coordinated as  
16 closely as possible.

17 COMMISSIONER SOMMERS: Thank you. And  
18 certainly cannot express how much appreciation we  
19 have because I know it hasn't been easy, but it  
20 doesn't work if there isn't global adherence to  
21 these standards. I mean, it's -- the usefulness  
22 dissipates considerably if we're the only ones

1       doing this. So, appreciate all your hard work  
2       there.

3                       With regard to the LEI utility, I had  
4       some concerns regarding the governance of that  
5       body and would hope that you could explain how we  
6       intend to ensure that this utility is abiding by  
7       the standards and principles that have been set  
8       out by international regulators.

9                       MR. TAYLOR: Sure. That concern,  
10      Commissioner, is shared by regulators across the  
11      world, and it has really driven -- it drove things  
12      in the CPSS-IOSCO Task Force. It drove the  
13      holding of the international LEI workshop that the  
14      FSB led at the end of September, and it is driving  
15      a group that the G-20 asked to have formed, a  
16      small group of international regulatory experts on  
17      this issue that had its first meeting earlier this  
18      month. The Commission is participating in that  
19      group and is going to come out by April -- which  
20      that may seem like a long time to some of us  
21      sitting here, but, trust me, in the international  
22      context, that is lightening speed -- with some

1 clear recommendations for the governance and  
2 control of the utility that will issue LEIs.

3 The point is, really, the LEI, to be  
4 fully effective, needs to be a global LEI. It  
5 needs a consensus and an adoption by the whole  
6 world, and it needs, therefore, to come from a  
7 single source. But that means that regulators,  
8 starting with the Commission -- because we, again,  
9 are first in the world to mandate the use of the  
10 LEI by means of a rule, but other regulators will  
11 have the same interests -- need a way to ensure  
12 that throughout its operation, the whole LEI  
13 system follows governance principles that have  
14 been laid down by regulators.

15 So, we've very carefully laid out in the  
16 rule governance principles that must be followed  
17 by any LEI whose use we mandate. We've also noted  
18 that the Commission will have a means to embody  
19 later any further principles for governance that  
20 come out of the international meetings on this  
21 subject.

22 COMMISSIONER SOMMERS: Do you foresee

1 any sort of complications with compliance if there  
2 is more delays with other countries implementing  
3 their rules? So, you know, even though our  
4 deadlines are either July or 60 days after the  
5 definitions, what if other countries aren't until  
6 2013? Does that create complications for us or  
7 for the workability of this?

8 MR. TAYLOR: And let me ask, are you  
9 focused still on LEIs or more generally?

10 COMMISSIONER SOMMERS: I think in  
11 general.

12 MR. TAYLOR: We have both the advantages  
13 and disadvantages of being the trailblazers, but I  
14 think this will work in practice. A great number  
15 of swaps are subject to our jurisdiction, and I  
16 believe we're giving appropriate lead time for the  
17 industry to prepare, once they've seen this rule,  
18 to set up and test their automated systems, so  
19 that reporting can actually work when it is  
20 supposed to start in the phased approach that  
21 we've taken. And we do have the advantage that  
22 the swaps marketplace, unlike regulators, is

1 international. So, major firms are going to set  
2 up to comply where they must with this rule, and I  
3 think that will help in future phases.

4 My understanding, in general, is that  
5 the rules that are coming in our wake -- for  
6 instance, the European Commission will be doing  
7 rules over the course of the next year; are going  
8 to be taking the same fundamental approach that we  
9 take -- they may differ in some details, but this  
10 phased approach actually may have benefits.  
11 Lessons can be learned from our lead and taken  
12 into account. As Commission Chilton mentioned  
13 earlier, this will remain an iterative process and  
14 we will have ways to make adjustments when we see  
15 they're needed.

16 COMMISSIONER SOMMERS: Thank you.

17 CHAIRMAN GENSLER: Thank you,  
18 Commissioner Sommers. I might add that Jackie  
19 Mesa and I were honored to be over in this  
20 collective meeting in Paris that had been  
21 arranged, and you've done so much internationally,  
22 as well, and at the meeting, we informed folks

1 that we were likely to consider this rule. They'd  
2 all received an actual document, the actual draft  
3 text -- Hong Kong, Singapore, Japan, Canada,  
4 Europe, the U.S. Did I miss anybody, Jackie?

5 So, we've gotten whatever feedback  
6 directly in the text, but, as David said, we'll be  
7 a little ahead of them in timing. And on the LEI,  
8 they were very constructive and felt it was -- I  
9 mean, it's an international organization. We're  
10 not going to run this, right? We're not running  
11 the LEI, somebody else is.

12 MR. TAYLOR: The whole world will do it  
13 together in the end.

14 CHAIRMAN GENSLER: Yeah, okay.  
15 Commissioner Chilton?

16 COMMISSIONER CHILTON: Thank you.  
17 David, I had a colloquy with Mr. Radhakrishnan in  
18 an earlier meeting concerning the issue of  
19 bundling, and it's my understanding that our  
20 intent is to treat DCOs and SDRs equally in this.  
21 I know it's not recognized specifically in this  
22 rule, but is that your understanding, as well,

1 with regard to this rule?

2 MR. TAYLOR: Yes, Commissioner. I  
3 think, in general, that's correct. Although I  
4 should say, our rule does not specifically address  
5 a bundling rule issue. We wouldn't be the right  
6 rule to do that.

7 My understanding is that the SDR rule,  
8 which is already final, bars bundling of services  
9 by an SDR. And maybe for the public I should just  
10 explain briefly. We're not allowing SDRs to say  
11 if you want to report data to us, that's fine, but  
12 you also have to buy our expensive back-office  
13 services or, you know, some other service that we  
14 offer. You have to be able to come and simply buy  
15 the reporting service, if that's all you want to  
16 do. And I know some market participants have  
17 urged the Commission to apply that same principle  
18 with DCOs. That would, my understanding, have to  
19 be done in rules for DCOs. It's not a swap data  
20 reporting rule issue.

21 COMMISSIONER CHILTON: Good. Thank you.  
22 I have another question regarding competition.

1           This bundling is competition, too, but  
2           the rule says that SDRs have to make the pricing  
3           data available in a non- discriminatory manner  
4           through the Internet or through some other  
5           electronic data feed that is widely published, in  
6           a machine readable format, and they should do this  
7           as technologically practicable.

8           And so, my question is, in part, this  
9           keeps the SDRs from playing favorites by giving  
10          somebody a competitive advantage over someone  
11          else; what recourse do market participants have if  
12          they are concerned that an SDR is not providing  
13          the information in either a user-friendly readable  
14          format or not making the information available as  
15          technologically practicable?

16          MR. TAYLOR: That's actually, probably,  
17          in my view, the best question of the day because I  
18          get to pass it off. That's actually Part 43.

19          COMMISSIONER CHILTON: Oh, okay. Okay.

20          MR. TAYLOR: Our data --

21          COMMISSIONER CHILTON: Yeah, I'm sorry.  
22          I'm confused.

1                   MR. TAYLOR: -- is invisible to the  
2 public, it's just visible to regulators. It's the  
3 part that goes out in real-time reporting that  
4 would involve that.

5                   COMMISSIONER CHILTON: Yeah, yeah, yeah,  
6 right. Okay. Thank you.

7                   We allow in here for voluntary  
8 reporting, which was sort of new to me and I was  
9 sort of surprised when we were briefed on it that  
10 people were interested in a voluntary reporting.  
11 Can you talk about that a little bit?

12                  MR. TAYLOR: Sure. I think we were  
13 mildly surprised, as well. Although I will say  
14 allowing voluntary supplemental reports, as we're  
15 calling them, is another way that we're aligning  
16 ourselves as closely as we can with international  
17 regulators. As you probably know, most of the  
18 rest of the world, it is one difference we have  
19 with them. Most of the rest of the world, as I  
20 understand it, is intending to require both  
21 counterparties to report. That's what's going on  
22 in voluntary reporting in rates and credit now.

1       There are some obvious advantages to that in terms  
2       of, you know, double-checking the accuracy and  
3       currency of the data, but there's a greater burden  
4       involved.

5                   The Dodd-Frank Act calls for a single  
6       reporting counterparty regime, and so, we have  
7       followed that, although nothing in the Act  
8       prohibits voluntary additional reporting. And we  
9       actually got several comments asking us to confirm  
10      that voluntary reporting by people not required to  
11      report was permitted and that we should provide  
12      for that. We heard from end-users, from  
13      repositories, from international regulators, and  
14      from roundtable participants, all suggesting that.  
15      We found it was technologically feasible to do  
16      that, and it could have benefits for data accuracy  
17      and also for counterparty business processes. And  
18      so, what we've done in the rule is to say we will  
19      permit these reports, but we built in a modest set  
20      of safeguards to be sure there's no double  
21      counting.

22                   If you're making a voluntary

1 supplemental report, you need to include an  
2 indication that this is a VSR. You need to  
3 include the USI for the swap that was officially  
4 reported, so that the records can be linked up and  
5 it's not double counted. You need to include the  
6 identity of the SDR, where the first report went,  
7 if this voluntary report is going somewhere else.  
8 You need to include the LEI of the counterparties.  
9 Just enough data to be sure you can sync up these  
10 records.

11 This is also going to be useful in the  
12 international context because the law, in some  
13 other countries, may require a counterparty, who  
14 for us is a non-reporting counterparty, to report  
15 somewhere else, and that, therefore, links up with  
16 the way we addressed what we call international  
17 swaps in that context. We'll be able to exchange  
18 our USI with the identifier used in another  
19 country, so that both sides don't double count.

20 COMMISSIONER CHILTON: I really commend  
21 you and the team for coming up with something  
22 that's adaptable to that, and I just think it's an

1 interesting note that people want to voluntarily  
2 report. This isn't a mandate for some folks and  
3 they want to voluntarily report.

4 And I have one other question. Mr.  
5 Kirilenko, even today, we've talked about the size  
6 of the swaps market that Chairman said 300  
7 trillion, Bloomberg reported it was 700 trillion.  
8 Do you have an idea or do you have a source what  
9 you think the size of the swaps -- the OTC swaps  
10 market is?

11 MR. KIRILENKO: I think the latest  
12 number that's -- and it links very closely to this  
13 day when we're going -- and we have these rules in  
14 front of the Commission that have to do with  
15 reporting. So, at some point, we'll actually know  
16 for sure what the size of this market is. The  
17 latest number that has sort of been used is a  
18 number reported by the Bank for International  
19 Settlements, which is the number based on the  
20 survey. So, the bank goes out and does a survey  
21 of market participants, and that number, I  
22 believe, is a little bit over \$700 trillion in

1 notional.

2 COMMISSIONER CHILTON: Okay. And maybe  
3 300 will be our part of the --

4 CHAIRMAN GENSLER: I was just  
5 referencing that the U.S. size is judged to be  
6 somewhere about half of it --

7 SPEAKER: Yeah.

8 CHAIRMAN GENSLER: -- but also the  
9 controller of the currency has historically  
10 surveyed the top 25 -- or maybe it's the top 50,  
11 I'm not sure --

12 MR. KIRILENKO: Institutions, right?

13 CHAIRMAN GENSLER: Yeah, bank holding  
14 companies. And that adds up to about -- in the  
15 U.S. -- just under 300 trillion. That data's  
16 about six months old.

17 COMMISSIONER CHILTON: The reason I ask  
18 is for two reasons. One, part of the whole -- and  
19 Commissioner Wetjen had to deal with this when he  
20 was Hill, but, you know, part of the diatribe  
21 against Dodd-Frank was if you pass all these  
22 rules, you know, the swaps market is going to

1 shrivel up and die. And it actually -- in  
2 actuality, it's been the other way, that's it's  
3 actually grown, it's expanded. And so, I'm not  
4 saying that there's a direct cause and effect, but  
5 it certainly didn't have what some of the  
6 naysayers said, the impact that it might have.

7           And the second point is that while you  
8 have these numbers -- and of anybody in this  
9 entire building, I'm glad our chief economist has  
10 the numbers, but there's still some discrepancy as  
11 to what numbers we're talking about, and to me,  
12 that just shows the urgency that I was talking  
13 about earlier with the mandates of the law that we  
14 don't know. That we -- yeah, until we get these  
15 reporting and recordkeeping rules in place, we  
16 don't have all these trades on our radar screen.  
17 You know, once in a while they come in like a UFO  
18 and we have to deal with them, but we're not much  
19 safer than we have, despite what the Germans said  
20 about all the great things that we've done. Until  
21 we get these things all in place and get them done  
22 right, we're still not much better protected.

1           So, again, just to reiterate that we're  
2 going forward and I think this is a good rule, and  
3 I thank David, you and your team. And for the SDR  
4 folks, you have precursor of my question. Thanks.

5           CHAIRMAN GENSLER: You know,  
6 Commissioner Chilton, you've highlighted something  
7 Congress foresaw, that this data was going to be  
8 really important to regulators, but they also  
9 mandated that we, at least twice a year, aggregate  
10 and summarize it and put it out in some summary  
11 form. It would be my hope -- it may not happen  
12 quickly -- that we take the lessons from this  
13 agency that we've for decades put out weekly data  
14 that aggregates something. Now, that's not going  
15 to happen immediately, and Congress said we only  
16 have to do it twice a year, but I would hope that  
17 we could move in the direction using technology to  
18 hopefully put aggregate data out that's relevant  
19 and helps the markets.

20           COMMISSIONER CHILTON: Thanks.

21           CHAIRMAN GENSLER: Commissioner O'Malia?

22           COMMISSIONER O'MALIA: David and Anne,

1       you did a great job to inform us and put this rule  
2       together. So, I'm grateful for that.

3               I have a number of questions here that  
4       probably don't need extensive answers but want to  
5       touch on a wide range of issues here. You talked  
6       about the phasing approach, and I'm curious as to  
7       what the factors you considered in determining the  
8       rates and credit asset classes would be subject  
9       to, what were the phasing criteria that you  
10      considered for those two to get them ready for the  
11      July 16th reporting deadline?

12              MR. TAYLOR: Sure, Commissioner. Our  
13      phasing plan really responded to numerous comments  
14      and a good deal of input from roundtables that the  
15      Commission held. One key for us was that the  
16      industry said quite clearly that they needed six  
17      months after the final rule is passed to prepare  
18      and test automated systems and connections, and  
19      that made sense to us. We also learned that the  
20      asset classes vary in, if you like, maturity.  
21      Credit and rates already have considerable  
22      reporting going on. That situation is different

1       than some of the other asset classes. So, we took  
2       that into account, and then we also considered  
3       that additional time was needed for what I call  
4       the "nons" -- the non-dealers, non-MSPs -- who are  
5       less likely to already have automated systems and  
6       staff for this purpose, and that led us to phase  
7       by both asset class and counterparty type.

8                COMMISSIONER O'MALIA: Thanks. In  
9       questions raised by Commissioner Sommers and then  
10      also by Commission Chilton was this international  
11      coordination, and you outlined where you've  
12      coordinated. But there's one provision that's  
13      frustrating international jurisdictions, and  
14      that's the indemnification provision. That  
15      actually may go so far as to fracture our data  
16      collection. Countries may be prohibited from  
17      relying on U.S. SDRs and requiring to set up their  
18      own. Some jurisdictions simply are -- it would be  
19      illegal for them to indemnify this. Where does  
20      that stand? How are we solving that?

21               MR. TAYLOR: I'll answer that briefly,  
22      and Dan Berkovitz may want to add something about

1 the latest developments. That isn't directly  
2 addressed by our rule, but, of course, we're very  
3 aware of it and have participated in meetings  
4 about it.

5 In general, my understanding is that  
6 Commission legal staff are searching for an  
7 appropriate way to make memorandums of  
8 understanding or other arrangements with  
9 international regulators so that the Commission  
10 could, in fact, share data with them all --

11 COMMISSIONER O'MALIA: It's a statutory  
12 direction. How do we waive through a memorandum  
13 our statutory requirements? I don't want to  
14 belabor that point. I'd rather -- maybe if Jackie  
15 could kind of respond to some of this, what the  
16 international concerns are, and, I mean, this is  
17 pretty important as to how we're going to unify  
18 all our data here.

19 MS. MESA: Mm-hmm. It is an important  
20 point. We have been working quite closely with  
21 international regulators on this point because a  
22 big concern is to have direct access to the data.

1       There are two ways that foreign regulators can  
2       access data and trade repositories, if we regulate  
3       that repository unless the indemnification  
4       provision applies. One is they can always get it  
5       through the CFTC for their regulatory needs, and  
6       provided they have appropriate confidentiality  
7       around that data we give them. And second, this  
8       was codified in the rule and Dan can also speak to  
9       this, but if that foreign regulator also registers  
10      the trade repository, then they can, in their own  
11      right, have direct access to the data without  
12      indemnification. Those are two ways. And that  
13      satisfies many of the foreign authorities, but not  
14      all, so, we're continuing to work with foreign  
15      regulators and thinking internally about  
16      additional ways within the law to give them that  
17      data. But it is a provision that, of course, we  
18      are going to abide by, and so, it's a little bit  
19      tricky. But, Dan, I don't know if you want to add  
20      a little bit more?

21                   MR. BERKOVITZ: I think that Jackie has  
22      correctly characterized where we are in terms of

1 the avenues for which a foreign regulator can get  
2 access to the SDR data under the SDR rule. One of  
3 the things we are looking at based on, as Jackie  
4 said, the feedback from the foreign regulators as  
5 to the scope of that rule and what it permits and  
6 doesn't is whether there are additional  
7 circumstances beyond those which are already  
8 provided in the SDR rule which a foreign regulator  
9 could get direct access without indemnification.  
10 And that's something we're looking at the legal  
11 options there, whether there is, indeed, any more  
12 flexibility under the statute.

13 COMMISSIONER O'MALIA: Thank you very  
14 much. I'm sorry to spring this on you, Jackie.  
15 We weren't planning on it.

16 Legal entity identifiers. Last week, we  
17 had a Technology Advisory Committee meeting on  
18 which we received comments on data standardization  
19 and they noted that the industry goal is to  
20 deliver 50,000 LEIs by June of 2012. That would  
21 obviously work well with our July 16th deadline,  
22 but are they the right 50,000, kind of the right

1 entities reporting the right data? I assume they  
2 would be the largest entities and, therefore,  
3 those are your first movers in this rule. Do you  
4 have any concerns that this is not on track or we  
5 wouldn't be ready with this current proposal as  
6 announced last week?

7 MR. TAYLOR: No, Commissioner. It seems  
8 that that is going to work. We've worked very  
9 carefully to try to align our start date with the  
10 progress the industry is actually making. Real  
11 briefly, the 50,000 number, although it's an  
12 approximation, is the number of counterparties  
13 that the industry estimates will have to report  
14 under our rules. So, actually, on July 16, you  
15 would need only a subset of that number, which  
16 would be the counterparties in rates and credit.

17 I want to commend the industry  
18 initiative that has gone forward with the LEI.  
19 They've been very cooperative, and they're taking  
20 the lead, going ahead, cleansing data, preparing  
21 to give LEIs -- you know, once our rule is there  
22 -- so that LEIs will be available when they're

1 needed for reporting.

2 COMMISSIONER O'MALIA: On the UPI,  
3 you've stated that the Commission can designate  
4 it, but you didn't provide any details on  
5 timetable or criteria. Do you want to elaborate  
6 on those?

7 MR. TAYLOR: I think in that area, out  
8 Technology Advisory Committee is already doing a  
9 considerable amount of work. It's coordinating  
10 with an industry initiative in that area. It's  
11 probably not quite as far down the road as the LEI  
12 initiative, which is why we were less prescriptive  
13 in the rule. But my understanding is that that's  
14 on track, it will happen, we'll take input from  
15 the industry, and when a system is available, it  
16 will go forward.

17 COMMISSIONER O'MALIA: So, would you  
18 characterize our UPI initiative as the ability to  
19 designate them, but a placeholder until a solution  
20 can be developed?

21 MR. TAYLOR: To some extent because you  
22 need a complete product classification system,

1       which I understand the industry is well along the  
2       road to producing.  There will always be a small  
3       number of swaps they say bespoke in the industry  
4       that are so individual you won't be able to put a  
5       label -- a UPI itself -- on them.  They'll have to  
6       be described using the taxonomy.  But the great  
7       majority of swaps, you'll be able to give a UPI  
8       and that's coming along very well.

9                   COMMISSIONER O'MALIA:  Good.  We'll keep  
10       that team working on that to give you the tools  
11       you need.

12                   Let me close with technology.  We have  
13       DMO and John Rogers, our chief technology guy.  
14       You said you had -- you know, the industry said,  
15       hey, we need six months to comply with this.  How  
16       much time does the Commission need to comply with  
17       this, and where do we stand in terms of our  
18       ability to access all of this SDR data, the  
19       ability to aggregate it, implement automated  
20       solutions to kind of address the concerns that  
21       Commissioner Wetjen raised with analyzing and  
22       aggregating risk data?

1                   This is not, you know, we're doing it.  
2           I'm looking for some specifics as what systems are  
3           we putting in place, when are they going to be  
4           ready, and how much will it cost?

5                   MR. ROGERS: Well, at this point, we are  
6           just beginning the activity of getting -- of  
7           discussing getting access to SDRs. As everyone, I  
8           believe, is aware, we have applications that are  
9           in place to form SDRs, so we're reaching out to  
10          those entities to discuss how to get access to  
11          them. I expect that we have the infrastructure --  
12          well, I believe we have the infrastructure in  
13          place to get that access. It's just a matter of  
14          the process that we will go through in order to  
15          gain that access with each SDR.

16                   We're looking at access so that people  
17          can examine data, but then, also, we'll be talking  
18          about access to reports that will be coming off of  
19          the SDRs, and how we'll be able to get access to  
20          those, as well, and how we might be able to bring  
21          -- you know, ask for data to come from the SDR or  
22          new reports to be generated based on that. So,

1 that's an activity that's already underway.

2           We have been working on not specifically  
3 related to the SDR data, but generally speaking,  
4 related to the rules as they become final, so, for  
5 example, Part 20 or Part 39, access -- or the  
6 definition of the data standards that we will need  
7 to have in place so that we can begin to collect  
8 data and load them into repositories. So, in the  
9 example of the Part 20 data, we have been  
10 receiving data since November 22nd. With Part 39,  
11 we don't have a standard in place, but we're  
12 working towards that in accordance with the rule  
13 timelines that have been set out. In particular,  
14 for the Part 20 data, we have tools available  
15 presently to have people begin to examine data --  
16 tools like SAS and that sort of thing -- so that  
17 we can begin to analyze it already.

18           In terms of systems that we need to  
19 build, we have lots of systems work that we need  
20 to do from --whether it's -- and they are  
21 different, have different timelines depending upon  
22 what we're talking about, and we're really in the

1 analysis phase of that. So, for example, in the  
2 financial surveillance area, we are looking at  
3 data relative to risk, whether it's in interest  
4 rate swaps or credit default swaps, and  
5 determining data standards around those areas and  
6 figuring how we can leverage the technology that  
7 we already have in place to take advantage of it.  
8 We're also acquiring systems products, not  
9 actually building systems, but products that will  
10 help us with further analysis. And as we go  
11 through this process, we'll be determining whether  
12 -- you know, what systems we need to build on top  
13 of that, but that's pretty much the state that  
14 we're in.

15 We know that we're going to have to  
16 build certain capabilities from a systems  
17 perspective. For example, a portal in order to be  
18 able to collect information to automate electronic  
19 forms, again, to help us collect information; a  
20 registration system for entities to apply, whether  
21 they be DCOs or SDRs or SEFs; whistleblower  
22 capability; and things of that nature. So,

1       there's a wide array of things that we're focusing  
2       on.

3                   COMMISSIONER O'MALIA: Do you intend to  
4       have this built-out by the end of 2012?

5                   MR. ROGERS: Not in every case. I would  
6       expect that in 2012 that we will have some portal  
7       capability, and I believe that we'll have some  
8       electronic forms capability in place.  
9       Registration is also a primary focus of ours. I  
10      believe that -- well, what we are intending to do  
11      is to do these things in an iterative approach and  
12      in phases, so we will have a release. But then, I  
13      believe -- I expect that we will be building upon  
14      them as time goes on, so certain capabilities in  
15      2012, but then continuing on into 2013, as well.

16                   COMMISSIONER O'MALIA: Do you have a  
17      specific cost, what it's going to take to  
18      build-out for any of these in 2012?

19                   MR. ROGERS: Not specifically system by  
20      system with me, no, I'm sorry.

21                   COMMISSIONER O'MALIA: Okay. Rick, can  
22      I ask you a question about DMO's analysis? What

1 do you need in terms of automated capabilities to  
2 take all the data that David's mandating be  
3 collected and turn it into something useful to  
4 establish risk parameters and other -- I mean,  
5 what are you looking for, specifically?

6 MR. SHILTS: We've been working closely  
7 with John, and we're trying to -- or getting --  
8 have a process now, so we can start looking at  
9 some of the data that's in some of the SDRs now  
10 that's been submitted, and also looking at the  
11 data that we're getting in under the swap large  
12 trader, the Part 20 rules, and in the context of  
13 looking at the -- what's there and what types of  
14 alerts and what types of oversight, surveillance  
15 and what to do, and we're -- in that context we  
16 have a new deputy director for our surveillance  
17 group, and we're kind of thinking about the best  
18 way to be organized within our surveillance  
19 section to take on these additional  
20 responsibilities. So, I can't tell you right now  
21 exactly what types of alerts and systems we would  
22 need because we're still trying to figure out

1 exactly what's there and what the data looks like.  
2 We're getting some initial information from the  
3 swap large trader reports. And once we start  
4 looking more closely at what's in the data in the  
5 SDRs, then we'll try to -- you know, working with  
6 John, Andrei, and others, and trying to come up  
7 with the types of alerts and surveillance  
8 mechanisms we would need, and then how -- what's  
9 the best way to implement that, whether it's to  
10 buy software to develop systems in-house or  
11 whatever, but I can't tell you right now because  
12 we're still trying to get a better feel for  
13 exactly what the data looks like and the scope of  
14 the information (inaudible).

15 COMMISSIONER O'MALIA: Can you give me a  
16 top 10 list of the top 10 most important  
  
17 surveillance things you need in terms of what this  
18 data will provide you? I mean, the data is a  
19 foundation for everything that we're going to do  
20 going forward, with analyzing risk, position  
21 limits, et cetera. What are your -- in terms of  
22 priorities, what are your top 10 in working with

1       Andrei or working with anybody, Ananda, as well?  
2       We're trying to understand what -- so we can stay  
3       focused on the highest priorities, so we can give  
4       John the wish list and get specific because it  
5       sounds like we're still in an iterative process,  
6       as he noted, about what we want to work on first,  
7       and we don't have the resources to chase down  
8       everything. So, we need to really focus and  
9       prioritize on these issues. That's all I have,  
10      Mr. Chairman.

11                 MR. TAYLOR: Mr. Chairman, before you go  
12      on, should I respond a little further to one  
13      question Commissioner Chilton asked?

14                 CHAIRMAN GENSLER: Absolutely.

15                 MR. TAYLOR: My bad. I misunderstood  
16      where he was trying to go with one question, and  
17      it's actually an important question, and we have a  
18      good answer for it.

19                 CHAIRMAN GENSLER: Is it better than the  
20      one that you can punt to Jeff?

21                 MR. TAYLOR: Yes.

22                 COMMISSIONER CHILTON: Look, these rules

1 are interrelated, is the point. Go ahead.

2 MR. TAYLOR: They are. They are. And,  
3 you know, the question for Jeff will also be  
4 important, but I think, Commissioner, where you  
5 were trying to go in terms of our rule is do we do  
6 something to ensure that registered entities and  
7 reporting counterparties, especially the "nons,"  
8 have an easy way to report data to an SDR, and we  
9 do.

10 In our rule on data standards, first of  
11 all, says that an SDR must provide data to the  
12 Commission in the formats that we determine, and  
13 the rule actually delegates to the chief  
14 information officer the ability to tell SDRs from  
15 time to time exactly how we want this done. But,  
16 very importantly, it also delegates to the chief  
17 information officer the authority to tell an SDR  
18 whether it needs to use a particular standard or  
19 standards in order to accommodate the needs of  
20 different communities of users. So, if small  
21 non-SD/MSP counterparties need to be able to  
22 report in a certain way to an SDR, we will have

1 the authority to ensure that SDRs take data in  
2 that way.

3 COMMISSIONER CHILTON: Thanks for the  
4 clarification. Thank you.

5 CHAIRMAN GENSLER: Thank you.

6 COMMISSIONER WETJEN: Thanks, Mr.  
7 Chairman. I wanted to thank the team, again,  
8 especially for the informative briefing you  
9 provided a week or two ago. And David, I also  
10 enjoyed our discussion about some of your outside  
11 interests and hope some of those recent  
12 performances came off without a hitch.

13 MR. TAYLOR: They did, although I guess  
14 I would observe when I give a downbeat the singers  
15 all come in together and they all sing in harmony,  
16 and I'm not sure that quite compares to this  
17 experience. (Laughter)

18 COMMISSIONER O'MALIA: You got a 5-0  
19 vote. What are you complaining about? (Laughter)

20 COMMISSIONER WETJEN: David, do you care  
21 to respond? (Laughter)

22 MR. TAYLOR: No, we're delighted with

1 the vote.

2 (Laughter)

3 COMMISSIONER WETJEN: I've had the  
4 opportunity to meet with a number of people in  
5 addition to your team, and included in those  
6 meetings were some folks from the asset management  
7 community. And I wondered if you could just  
8 remind me and walk me through, again, how this  
9 final rule treats, with respect to the universal  
10 swap identifier, a contract that gets allocated  
11 post execution?

12 MR. TAYLOR: Sure. And that's a bit  
13 complicated, but we hope we've clarified it in a  
14 way that will make this workable for the industry.  
15 Real briefly, our understanding is that in that  
16 context, typically a dealer does a swap with a  
17 firm that's an agent for its clients. The agent  
18 firm is not actually the counterparty of the  
19 dealer. The clients of the agent, in fact, have  
20 ISDA agreements or similar agreements with the  
21 dealer. The dealer knows collectively who they  
22 are and is willing to enter into swaps with them,

1 but at the moment of this first trade with the  
2 agent, it doesn't know exactly which clients are  
3 involved. The agent then, immediately afterwards,  
4 allocates the results of that original swap to its  
5 clients. It's a complicated process. It's not  
6 really algebraic because clients have  
7 particular requirements, and it then -- the agent  
8 then informs the dealer who its counterparties  
9 actually are. And we felt that it was very  
10 important to have information on that whole  
11 situation.

12 First of all, because real-time  
13 reporting needs to occur as soon as  
14 technologically practicable after execution, and  
15 also because it's important to regulators to have  
16 a current picture of the swap market, it's  
17 necessary for that original swap between the  
18 dealer and the agent to be reported, but,  
19 obviously, because the actual counterparties are  
20 the clients, once allocation has turned that  
21 original swap into several component swaps, you  
22 need to know about those as well.

1           And so, what we've provided is that the  
2     reporting counterparty, typically the dealer here,  
3     has to create a USI for that first swap with the  
4     agent and report it. It will report in that  
5     report the LEI of the agent as an agent, but it  
6     won't yet know the LEIs of its counterparties.  
7     Once it learns from the agent who the  
8     counterparties are, it will then also report those  
9     swaps, but it will include in those reports the  
10    original USI of the first swap, so that the SDR  
11    can link up all of these different transactions  
12    into one record and there won't be double  
13    counting.

14           COMMISSIONER WETJEN: That was going to  
15    be my follow-up question, but that process  
16    addresses any concerns about double counting, it  
17    sounds like.

18           MR. TAYLOR: We think so.

19           COMMISSIONER WETJEN: Just one other  
20    question. A number of concerns were raised in the  
21    comments and in my meetings about some of the  
22    burdens on some of the smaller market

1 participants, and in the case of an uncleared  
2 swap, I wondered if you could describe what the  
3 reporting burdens would be for some of these  
4 various entities. For example, we had an  
5 interesting conversation with one group where we  
6 were reminded that, in some cases, you have a  
7 counterparty that can be a small family -- and  
8 just picking a state out of nowhere, Kansas --  
9 whose family might be sitting on a bunch of  
10 natural gas reservoirs and they're selling that  
11 commodity to a variety of different companies.

12 So, how does a rule, in that example,  
13 treat the wildcatter family from Kansas and the  
14 company is buying that commodity from the family?

15 MR. TAYLOR: Commissioner, we've tried  
16 to alleviate the burden for counterparties in that  
17 sort of situation, to the fullest extent we can  
18 and still fulfill the mandate of the Act that all  
19 swaps have to be reported. I mean, first of all,  
20 that counterparty will only have to report if it's  
21 in a swap with another non, because if there's a  
22 dealer, an MSP, the burden falls on the dealer or

1 the MSP. If this swap is transacted on a facility  
2 and it's cleared, there's no reporting at all for  
3 that counterparty, and even if it's not cleared --  
4 not mandatorily cleared and not executed in a  
5 platform, if the counterparty gets it accepted for  
6 clearing, the DCO will take over reporting at that  
7 point.

8 Just checking my notes, here. If it's  
9 an on- facility, uncleared swap, that counterparty  
10 would only need to report continuation data during  
11 the existence of the swap. If it's an  
12 off-facility, uncleared swap, we've extended and  
13 phased in the creation data reporting deadlines to  
14 a considerable extent. That was the question  
15 about the clause the Chairman asked earlier. That  
16 counterparty would get considerably extended  
17 deadlines, and weekends and holidays are no longer  
18 included in that period.

19 We've also lengthened the deadline for  
20 reporting changes to primary economic terms for  
21 these counterparties during the life of the swap,  
22 and we only ask for valuations to be reported on a

1       quarterly basis instead of the daily basis that's  
2       going to be required of dealers and MSPs. If the  
3       other counterparty is a foreign dealer or MSP, the  
4       burden is still going to fall on them. In  
5       response to comments from "nons," we've also  
6       differentiated if there is a financial entity on  
7       the other side of the swap, the burden will be  
8       placed on the financial entity. So, we've taken  
9       the burden away from your wildcatter family in  
10      Kansas, everywhere we can.

11                COMMISSIONER WETJEN: Thank you for that  
12      response. Mr. Chairman, I knew Kansas produced a  
13      lot of great things, but I didn't realize it also  
14      produced natural gas. That was one of the many  
15      things I learned in the few weeks.

16                CHAIRMAN GENSLER: Thank you,  
17      Commissioner Wetjen, for reminding of Kansas. I  
18      bet you that Commissioner Sommers knew that,  
19      though.

20                COMMISSIONER WETJEN: Basketball, market  
21      regulators, natural gas.

22                COMMISSIONER SOMMERS: And I also think

1 -- just should clarify for the record that you  
2 were randomly picking Kansas, not suggesting it  
3 was nowhere, right? (Laughter) Right. That's what  
4 I thought.

5 COMMISSIONER WETJEN: Absolutely.

6 CHAIRMAN GENSLER: I'm not touching  
7 that. (Laughter) If there are no further  
8 questions, I'd ask Mr. Stawick to call the roll,  
9 and then I have some assignments after that,  
10 though, so don't leave.

11 MR. STAWICK: Commissioner Wetjen?

12 COMMISSIONER WETJEN: Aye.

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

15 COMMISSIONER O'MALIA: Aye.

16 MR. STAWICK: Commissioner O'Malia, aye.  
17 Commissioner Chilton?

18 COMMISSIONER CHILTON: Aye.

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

21 COMMISSIONER SOMMERS: Aye.

22 MR. STAWICK: Commissioner Sommers, aye.

1 Mr. Chairman?

2 CHAIRMAN GENSLER: Aye.

3 MR. STAWICK: Mr. Chairman, aye. Mr.  
4 Chairman, on this question, the ayes are five,  
5 the nays are zero. And I would note that the  
6 vote is unanimous in the affirmative.

7 CHAIRMAN GENSLER: As the ayes have it,  
8 unanimously the staff recommendation will be sent  
9 to the Federal Register. But before you standoff,  
10 since I'm going on vacation and I might not see  
11 you all, I'm going to do this in a public meeting.  
12 There are a few assignments that just came out --  
13 and if I've missed something -- but on the  
14 smallest stuff, David Taylor, if you could make  
15 sure that the color charts that we referenced --  
16 and work with Steve Adamske, get it up on the  
17 website because I think they're -- we shouldn't  
18 wait for the Federal Register to see if they're  
19 color charts. You were going to check on that  
20 Page 228, but also, Part 46, you know, you'll get  
21 some rest and then come back to us on the  
22 historical swaps.

1           I think that Commissioner Sommers raises  
2           an excellent point. So, Rick, can I identify you  
3           as the lead to work all of these different roles  
4           that might refer to economically equivalent or  
5           economically fungible, or the various terms that  
6           Commissioner Sommers referenced in the rules? Can  
7           you kind of coordinate and come back in January  
8           and brief the five of us on just -- and how you  
9           see it? Because most of them are in the Division  
10          of Market Oversight.

11           I think this was going to happen anyway,  
12          but, John, Rick, and probably David and a bunch of  
13          others, to do just as you did in large trader  
14          reporting, to reach out to the market  
15          participants, and maybe as promptly, right after  
16          the holiday, as they want have those biweekly or  
17          twice a week calls and certainly do a guidebook on  
18          this because I think that was deemed to be helpful  
19          in the large trader, that you'll do that. But if  
20          I can give John, you, a special assignment --  
21          because I think Commissioner O'Malia's points  
22          resonated quite with me -- can you come back to us

1 in January with a specific technology plan for how  
2 we'll be ready by July 16th? And it may be  
3 phasing; it may be that not everything's going to  
4 happen July 16th, but when the SDRs are getting  
5 this information, starting July 16th, I think we  
6 should have direct technology hook- up and that  
7 the backbone's working. But if, in January, you  
8 could present and certainly work closely with all  
9 of us, particularly Commissioner O'Malia because  
10 he runs the Tech Advisory Committee, it would be  
11 really helpful to have that.

12 And then one other thing that I  
13 mentioned, and I know Andrei -- and you and I have  
14 talked about this about five times already -- but  
15 can you come up with a game plan maybe in January,  
16 as well, working with John as to how come --  
17 starting July, maybe we could start to aggregate  
18 some of this information, and, just as we do in  
19 the weekly commitments, a trader's report;  
20 obviously, work with Rick's people, as well. But  
21 if would take the lead on that, Andrei, as to --  
22 you know, maybe we could even start doing some

1 aggregate stuff next summer or fall, depending  
2 upon what you come up with, so.

3 COMMISSIONER WETJEN: Can I say one  
4 other thing?

5 CHAIRMAN GENSLER: Yeah.

6 COMMISSIONER WETJEN: I also want to  
7 mention that I found Commissioner O'Malia's Tech  
8 Advisory Committee meeting very valuable in terms  
9 of getting prepared for this meeting. A lot of  
10 what was covered there was very useful information  
11 that helped me a lot. So, I just wanted to  
12 mention that.

13 CHAIRMAN GENSLER: Thank you all. And I  
14 guess now we can get Jeff, and some of you will  
15 stay at the table. But the real-time reporting  
16 team, thank you all, and have a happy holiday by  
17 the way.

18 David, do I need at some -- David  
19 Stawick, do I need to do one of those -- the  
20 unanimous consents on technical clean-ups?

21 MR. STAWICK: Yes, and I believe that  
22 that's programmed toward the end.

1 CHAIRMAN GENSLER: But I can do it now?

2 MR. STAWICK: You may do it now.

3 CHAIRMAN GENSLER: So, absent objection,  
4 do I do it? You know, I'd seek unanimous consent  
5 that they can make whatever technical clean-ups.  
6 Not hearing any objection --

7 MR. STAWICK: Duly noted.

8 CHAIRMAN GENSLER: All right. Don't we  
9 have name cards for two of you? I mean, you  
10 know, when -- oh, Dan brings his own. Jeff  
11 Steiner, Tom Leahy, I guess, will be taking the  
12 lead somewhere here on real-time reporting.  
13 Susan, it's good to see you back at the table.  
14 Ever present on these rules, Rick Shilts, the head  
15 of Division of Market Oversight. Dan McKeever's  
16 going to represent the Office of Chief Economist.  
17 Do you want to introduce yourself because I can't  
18 remember your last name?

19 MR. SHAFER: Jason Shafer from OGC.

20 CHAIRMAN GENSLER: Yeah. But Dan's  
21 behind you. But he trusts you.

22 Jeff or Tom?

1                   MR. STEINER: Thank you, Chairman  
2 Gensler and Commissioners. I'd like to thank the  
3 team for all of the --

4                   CHAIRMAN GENSLER: Pull the mic closer  
5 to you, maybe.

6                   MR. STEINER: Sorry. I'd like to thank  
7 the team for all of their hard work and the long  
8 hours on this final rule: Tom Leahy; Susan  
9 Nathan; Jason Shafer; Laurie Gussow; George  
10 Pullen; and Dan McKeever; additionally, the  
11 division directors and various staff throughout  
12 the different divisions. And, additionally, I  
13 would like to thank all of the Commissioners and  
14 their staffs for their insightful comments  
15 throughout this process.

16                   Section 727 of the Dodd-Frank Act added  
17 to the Commodity Exchange Act new Section  
18 2(a)(13), which establishes standards and  
19 requirements related to real-time reporting and  
20 the public availability of swap transaction and  
21 pricing data. This section directs the Commission  
22 to promulgate rules providing for the public

1       availability of such data in real-time, in such  
2       form, and at such times as the Commission deems  
3       appropriate to enhance price discovery.

4               CEA Section 2(a)(13)(C) establishes the  
5       four categories of swaps for which transaction and  
6       pricing data must be reported to the public in  
7       real-time. Because these categories together  
8       comprise all swaps, the real-time reporting  
9       requirements apply to all swaps, including those  
10      swaps executed on or pursuant to the rules of a  
11      registered swap execution facility or a designated  
12      contract market, and those swaps executed  
13      bilaterally and not pursuant to the rules of a SEF  
14      or DCM, which we refer to in the rule as  
15      off-facility swaps.

16             With regard cleared swaps, CEA Section  
17      2(a)(13)(E) directs the Commission to prescribe  
18      rules that: One, ensure that publicly disclosed  
19      information does not identify the participants;  
20      two, specify the criteria for determining what  
21      constitutes a large notional swap transaction or a  
22      block trade for particular markets and contracts;

1 three, specify the appropriate time delay for  
2 publicly disseminating large notional swaps or  
3 block trades to the public; and four, take into  
4 account whether public disclosure will materially  
5 reduce market liquidity.

6 CEA Section 2(a)(13)(E) does not require  
7 explicitly that the rules promulgated by the  
8 Commission contain similar provisions for  
9 uncleared swaps; however, in exercising its  
10 authority under CEA Section 2(a)(13)(B), which  
11 states, "To make swap transaction and pricing data  
12 available to the public in such form and at such  
13 times as the Commission determines appropriate to  
14 enhance price discovery, the Commission is  
15 authorized to prescribe rules similar to those  
16 provisions in CEA Section 2(a)(13)(E) for such  
17 uncleared swaps."

18 On December 7, 2010, the Commission  
19 published a Notice of Proposed Rulemaking,  
20 entitled "The Real-Time Public Reporting of Swap  
21 Transaction Data," which solicited public comment  
22 on proposed regulations implementing the mandate

1 of CEA Section 2(a)(13). The proposed rules were  
2 set out in a new section, Part 43. Proposed 43.1  
3 set out the purpose, scope, and rules of  
4 construction, while proposed definitions of terms  
5 and processes relevant to real-time public  
6 reporting were specified in Section 43.2.

7 Proposed Section 43.3 established the  
8 method and timing for real-time public reporting  
9 and dissemination of swap transaction and pricing  
10 data. This rule also delineated the  
11 responsibilities of swap counterparties, SEFs,  
12 DCMs, and SDRs, and established procedures for  
13 recordkeeping, corrections of errors and omissions  
14 and hours of operation.

15 Proposed Section 43.4 specified the  
16 format in which swap transaction and pricing data  
17 would be publicly disseminated and rules relating  
18 to anonymity.

19 As proposed, Section 43.5 prescribed the  
20 criteria for determining what constitutes a large  
21 notional swap or a block trade, and it also  
22 specified the appropriate time delays for the

1 block trades and large notional swaps.

2 Finally, Appendix A to proposed Part 43  
3 described all of the data fields that were to be  
4 publicly disseminated.

5 The Commission received comments from 88  
6 different interested parties. These parties  
7 represented potential swap dealers, end-users,  
8 service providers, industry associations,  
9 potential SDRs, academics, and others. Staff has  
10 considered all of these comments, as well as  
11 comments received in numerous roundtables, in  
12 developing this final rule. Commission staff has  
13 also coordinated with other U.S. regulators and  
14 has also spoken with international regulators on  
15 this issue.

16 This final rule governs the method and  
17 timing of real-time public reporting, the swap  
18 transaction and pricing data to be publicly  
19 disseminated, and the time delays for public  
20 dissemination of swap transaction and pricing  
21 data. The final rule takes into account whether  
22 public disclosure of swap transaction and pricing

1 data will identify the parties to a swap or the  
2 business transactions and market positions of any  
3 person, as well as the effects on market  
4 liquidity.

5 In addition, in developing the final  
6 rule, staff has considered the costs and benefits  
7 to market participants and registered entities in  
8 light of the five broad areas of market concerns  
9 specified in CEA Section 15(a). While the  
10 Commission has adopted the Part 43 rules -- or  
11 plan -- hopefully adopts the Part 43 rules,  
12 substantially as proposed, there are several  
13 salient changes from the proposal.

14 First, I want to note, as many of the  
15 Commissioners have noted before, two aspects of  
16 the regime for real-time public reporting that are  
17 not covered or addressed in this final rule and  
18 will be the subject of a further Notice of  
19 Proposed Rulemaking. Specifically, the final  
20 rules do not address the categorization of swaps  
21 and the determination of the appropriate minimum  
22 size relating to block trades and large notional

1 off-facility swaps. This means that until the  
2 Commission were to establish an appropriate  
3 minimum block size for a swap or a group of swaps,  
4 the time delays specified in the final rule will  
5 apply to all publicly reportable swap transactions  
6 that do not have appropriate minimum block sizes.

7 The final rules also do not address the  
8 public dissemination of certain publicly  
9 reportable swap transactions in the other  
10 commodity asset class that: One, are not executed  
11 on or pursuant to the rules of a SEF or DCM; two,  
12 listed in an Appendix B to Part 43; or, three,  
13 economically related to a contract listed in  
14 Appendix B to Part 43. As a result, such publicly  
15 reportable swap transactions that don't fall into  
16 those categories, would not be subject to the Part  
17 43 rules at this time, and would be addressed in  
18 the further Notice of Proposed Rulemaking.

19 While the proposing release permitted  
20 SEFs and DCMs to report data, either to an SDR or  
21 to a third-party service provider for public  
22 dissemination, the final rule requires that all

1 swap transaction and pricing data must be reported  
2 to the appropriate SDR regardless of whether the  
3 swap is executed on or pursuant to the rules of a  
4 regulated trading platform or bilaterally  
5 executed.

6 SDRs must then ensure the public  
7 dissemination of all publicly reportable swap  
8 transactions. The final rules would permit the  
9 use of third parties to assist in both reporting  
10 and public dissemination requirements under Part  
11 43. However, the obligation to report or publicly  
12 disseminate would remain with the reporting party,  
13 SEF, DCM, or SDR, as applicable.

14 The definition of publicly reportable  
15 swap transaction, which describes which swaps are  
16 subject to the rules of Part 43, has been modified  
17 from the proposing release to state that the swaps  
18 that must be reported and publicly disseminated  
19 pursuant to Part 43 must be either: One, any  
20 executed swap that is an arm's length transaction  
21 between two parties that results in a  
22 corresponding change in the market risk position

1       between the two parties; or, two, any termination,  
2       assignment, novation, exchange, transfer,  
3       amendment, conveyance, or extinguishing of rights  
4       or obligations of a swap that changes the pricing  
5       of the swap. This modification to the definition  
6       means that certain internal swaps between  
7       affiliates, as well as portfolio compression  
8       exercises, to the extent that they are not  
9       executed at arm's length, would not be publicly  
10      reportable swap transactions, and thus, not  
11      subject to the reporting and public dissemination  
12      requirements of Part 43 at this time.

13                 The final rules include various other  
14      changes in response to comments and consultation,  
15      including changes to the data fields that are  
16      required to be publicly disseminated. Also, the  
17      final rules delete any additional recordkeeping  
18      requirements beyond those required with respect to  
19      timestamps as such requirements are not necessary  
20      given the recordkeeping requirements and other  
21      Commission regulations. Further, the anonymity  
22      provisions in 43.4 have been clarified from the

1 proposing reliefs.

2           The final rules provide time delays for  
3 public dissemination that differ based on the  
4 method of execution, underlying asset, and market  
5 participant, among other things. Time delays are  
6 described in Section 43.5, as well as Appendix C  
7 to Part 43. The time delays for public  
8 dissemination will be phased down over a two-year  
9 period, beginning on the relevant compliance  
10 dates, and I would stress that those time delays  
11 have been coordinated with the Part 45 time delays  
12 for reporting. Additionally, all notional amounts  
13 of publicly reportable swap transactions will be  
14 rounded and capped when publicly disseminated.

15           In response to comments received, the  
16 compliance dates for this final rule will be  
17 phased in based on asset class, method of  
18 execution, and type of market participant. The  
19 first compliance date will begin on the later of  
20 July 16, 2012, or 60 days after finalizing certain  
21 other rules. Additional compliance dates will  
22 occur 90 days and 180 days following the first

1 compliance date. There's a chart, which is very  
2 similar to the chart that's been floating around  
3 for the Part 45 rules, and I think that chart  
4 would be made available on the CFTC website.

5 COMMISSIONER O'MALIA: Hey, Jeff. Can I  
6 ask you a question?

7 MR. STEINER: Yes.

8 COMMISSIONER O'MALIA: It's identical,  
9 right?

10 MR. STEINER: Yeah, it -- well --

11 COMMISSIONER O'MALIA: You said, it's  
12 somewhat similar or --

13 MR. STEINER: No. No, no. It is -- the  
14 phrasing in is identical to everything.

15 COMMISSIONER O'MALIA: That's what we  
16 need to hear.

17 MR. STEINER: It is a different chart,  
18 however. And I'd also like to point out that,  
19 just to reiterate, that the final rules do reflect  
20 close coordination with the data recordkeeping and  
21 reporting final rule with respect to these  
22 compliance dates, the data fields to be publicly

1 disseminated and reported, time delays, and other  
2 various aspects, to ensure consistency, and in an  
3 effort to mitigate costs of reporting for  
4 reporting party SEFs and DCMs.

5 Thank you, and we'd be happy to answer  
6 any questions.

7 CHAIRMAN GENSLER: Thank you, Jeff. The  
8 Chair will entertain a motion to accept the staff  
9 recommendation concerning the final rule.

10 COMMISSIONER SOMMERS: So moved.

11 COMMISSIONER CHILTON: Second.

12 CHAIRMAN GENSLER: Thank you. I support  
13 the final rule. I will have two or three  
14 questions, but I support the final rule to  
15 implement the real-time reporting mandate that  
16 Congress put in Dodd- Frank. I think that the  
17 public reporting regime for swaps is a critical  
18 component. As much as it's important that  
19 regulators get a window into this market, this  
20 will, for the first time, give the broad public a  
21 window. It will have time delays. We've decided,  
22 as Commissioner Chilton and others have noted, to

1 seek further public comment and re-propose the  
2 block rule itself, and I think it's only  
3 appropriate given the comments that we got on the  
4 initial block rule, and that the block rule that  
5 we -- I see Carl Kennedy sitting there. He was  
6 working on that. That when we do the block rule,  
7 that we'll get a lot of public comment, but  
8 they'll be just as these final real-time rules  
9 are, more nuanced and be different for different  
10 asset classes, rather than that which we had  
11 originally proposed, which was really across the  
12 board similar.

13 But, in the meantime, the public will  
14 get real-time reporting, even with time delays  
15 for small and large transactions. And I think  
16 that that's critical because it will give the  
17 public information similar to what's worked for  
18 decades in the securities and futures markets;  
19 that real-time reporting after the trade happens,  
20 what's called post-trade transparency, lowers  
21 costs for market participants and consumers.

22 And in response to commenters, the final

1 rule does provide for a phasing of compliance.  
2 And I thank you, Jeff, so you can put the color  
3 chart, the same color chart, also, up on the web.  
4 But my first question is, Jeff, will you also put  
5 this color chart up?

6 MR. STEINER: Sure.

7 CHAIRMAN GENSLER: This, Commissioner  
8 O'Malia, is different than the color chart --  
9 well, maybe they just did it for me? I don't  
10 know.

11 MR. STEINER: We did.

12 COMMISSIONER WETJEN: That looks  
13 proprietary, Mr. Chairman.

14 CHAIRMAN GENSLER: Is this a proprietary  
15 color chart?

16 MR. STEINER: No. I have other copies  
17 here if other Commissioners would like to see  
18 them. (Laughter)

19 CHAIRMAN GENSLER: Yeah, you better get  
20 them to other Commissioners. But this is on -- I  
21 think it's very important that the proposed rule  
22 to help protect anonymity not only had time

1 delays, but it had masking of a certain size, and  
2 if you remind the listeners what we proposed, and  
3 then what this chart does.

4 MR. STEINER: Right. In the proposal we  
5 had proposed a \$250 million cap across the board,  
6 so if a -- and that's for asset classes. So, if a  
7 swap was executed at \$400 million, what would be  
8 publicly disseminated would be 250 million plus.

9 We've gone with a slightly different  
10 approach, based on comments that we've received  
11 and conversations with other U.S. regulators for  
12 the different asset classes. So, we've actually  
13 broken down the interest rate asset class into  
14 three different segments.

15 So, we have a 0 to 2-year would be \$250  
16 million cap; 2 to 10 would be a \$100 million cap;  
17 and 10+ would be a \$75 million cap. For FX, we  
18 have a \$250 million cap. For the other commodity  
19 asset class, we have a \$25 million cap; for  
20 credit, we have a \$100 million cap; and for  
21 equity, we have a \$250 million cap. So, we've  
22 slightly adjusted those.

1           CHAIRMAN GENSLER: So, I think that this  
2 rule provides the public the post-trade  
3 transparency, but it also accomplishes Congress'  
4 goal for anonymity and consideration of liquidity,  
5 that there's time delays and there's this masking  
6 of the larger trades in terms of sizes. The color  
7 chart's just helpful for a guy like me, you know,  
8 reading rule text.

9           And we'll come to the block rule. We'll  
10 get public comments on a re-proposed block rule  
11 and finalize that, and once it's finalized,  
12 there'll be some portion of the market that's  
13 small, not blocks, that will be reported as soon  
14 as technologically practicable. Is that correct?

15           MR. STEINER: Right. When the block  
16 size -- as a block size -- defined term is  
17 appropriate minimum block size is set for a  
18 particular swap or a group of swaps, anything that  
19 would be below that appropriate minimum block size  
20 would be publicly disseminated as soon as  
21 technologically practicable, and the idea is that  
22 everything that is at or above that block size

1 would receive the time delays that are laid out in  
2 Section 43.5 and Appendix C of this final rule.

3 CHAIRMAN GENSLER: My final question,  
4 Jeff, is related to something called 43.3 -- and  
5 you and I talked about this yesterday, so you know  
6 my question -- is that we say in 43.3 -- and I'm  
7 seeking clarification here -- but we say in 43.3  
8 that the swap execution facility, or the  
9 designated contract market, has to send this  
10 information to the swap data repository, and we  
11 give them some circumstances where they could  
12 disclose this information earlier to market  
13 participants.

14 MR. STEINER: That's correct. The term  
15 that's been floating around for that, some market  
16 participants and others have called it --

17 CHAIRMAN GENSLER: And you can bring it  
18 closer to your mic.

19 MR. STEINER: Some market participants  
20 have referred to that as the embargo rule or  
21 whatever.

22 CHAIRMAN GENSLER: Right. But this is

1 just one of those circumstances similar to  
2 Commissioner Sommers' earlier comment on  
3 economically equivalent. The term "market  
4 participant" here, I just wanted some  
5 clarification because today many trading platforms  
6 provide this information to subscribers, and I  
7 just want to ensure that what we're doing here  
8 doesn't stop market participants that currently do  
9 provide subscription services, that they can  
10 continue to do that.

11 MR. STEINER: Right. You're correct.  
12 The language just states market participants. And  
13 what the intent behind that was, was to include  
14 persons with trading privileges on the platform,  
15 as well as other eligible market participants that  
16 would subscribe to the SEF or DCM for information  
17 services.

18 CHAIRMAN GENSLER: So, I just wanted to  
19 clarify that, and I don't know whether fellow  
20 Commissioners want to ask their questions, but  
21 whether we put a footnote or something because I  
22 think it would be a sort of --

1 MR. STEINER: Yeah, absolutely.

2 CHAIRMAN GENSLER: -- reverse course if  
3 the large trading platforms or these aspiring SEFs  
4 that are currently exempt commercial markets  
5 couldn't continue to do what they're doing.

6 MR. STEINER: Yeah, that's right.

7 CHAIRMAN GENSLER: All right.

8 COMMISSIONER SOMMERS: I actually do  
9 have a question about that.

10 CHAIRMAN GENSLER: No, please do.

11 COMMISSIONER SOMMERS: If you're  
12 broadening the definition of market participant in  
13 --

14 CHAIRMAN GENSLER: No, just for this.  
15 It's just for this purpose.

16 COMMISSIONER SOMMERS: -- this rule. I  
17 understand that. Does that have any implications  
18 for market participants -- the definition of  
19 market participants as it applies to other rules  
20 if they're not really market participants?

21 CHAIRMAN GENSLER: That's not my  
22 question, so I don't want to do that. I just

1 would not want this to somehow limit the current  
2 practice that aspiring SEFs currently sell -- you  
3 know, when I was re-reading this, I was worried  
4 that somehow we'd be limiting people doing what  
5 they already do.

6 MR. STEINER: I mean, we could certainly  
7 state in there, if there was a footnote or  
8 something, that --

9 CHAIRMAN GENSLER: I can't hear you,  
10 Jeff.

11 MR. STEINER: We could certainly state  
12 that it would be limited to this particular rule.  
13 It is not a defined term in our rule. We do  
14 discuss it in the preamble, though, so.

15 CHAIRMAN GENSLER: No, I don't --

16 MR. STEINER: Yeah, we could clarify  
17 that.

18 CHAIRMAN GENSLER: So, I'll let  
19 Commissioners ask their question. My question is  
20 just, I didn't take this to mean that it would  
21 limit what current practice is. That's what --

22 MR. STEINER: That's right.

1                   CHAIRMAN GENSLER: You know, that these  
2 exempt commercial markets or DCMs currently do  
3 something, that somehow we were going to stop them  
4 from doing what they currently do. Whatever  
5 language allows people to continue to do what  
6 they're doing would be helpful, is what I'm trying  
7 to -- but maybe somebody could help write a  
8 footnote with you --

9                   MR. STEINER: Sure.

10                  CHAIRMAN GENSLER: -- to do that.  
11 Commissioner Sommers?

12                  COMMISSIONER SOMMERS: I just have a  
13 couple of questions -- whether or not the CFTC and  
14 the SEC have coordinated on these rules. It was  
15 one of my biggest concerns in the proposal phase,  
16 and if we know, at this point, that the time  
17 delays are going to be consistent with what the  
18 SEC is doing?

19                  MR. STEINER: We absolutely have been  
20 coordinating with not only the SEC, but with the  
21 Federal Reserve Board and with the Treasury, and  
22 we've sent over drafts of our rules to ensure that

1 -- you know, for feedback and comments.

2           Regarding the SEC, it's been I guess  
3 over a year now since their proposal's been out,  
4 so I know that through conversations they're  
5 thinking on certain points where we might have  
6 differences in this final rule from the proposal,  
7 some of their thinking has evolved. You know,  
8 there were some differences with respect to  
9 definition of publicly reportable swap  
10 transaction, the time delays, as you mentioned,  
11 but I've shared -- I've been talking and we've  
12 shared these documents with them, and at least at  
13 the staff level, they didn't think that there  
14 would be anything that would be inconsistent. I'd  
15 also point out that, you know, their markets are  
16 slightly different, too. So, if there were  
17 inconsistencies or differences, I think that they  
18 would be justified based on the markets.

19           COMMISSIONER SOMMERS: Although there  
20 may be some asset classes that -- like credit,  
21 where it would be odd to have different time  
22 delays.

1 MR. STEINER: Right.

2 COMMISSIONER SOMMERS: So, I'm just  
3 hoping that there's coordination.

4 MR. STEINER: That's right. And we've  
5 shared everything that we have with them.

6 COMMISSIONER SOMMERS: Okay. My other  
7 question with regard to the time delays is how we  
8 deal with swaps that are executed in different  
9 time zones? If you have a U.S. market participant  
10 and an Asian market participant, how are we  
11 dealing with the difference between executing a  
12 swap, confirming a swap, and having a time delay  
13 of 24 hours?

14 MR. STEINER: Sure. Just to point out  
15 that the requirement to report the real-time data  
16 for a reporting party, SEFs, and DCMs is as soon  
17 as technologically practicable. That definition  
18 -- it's a defined term. It's very -- I think it's  
19 identical to what we proposed and it's broad to  
20 allow for a lot of flexibility in reporting times;  
21 however, we do have time delays for public  
22 dissemination, and those time delays match up with

1 the time delays that are in the Part 45 rules that  
2 the Commission just voted on.

3 The rule requires SDRs to be able to  
4 accept and publicly disseminate that information  
5 that's reported to them -- 24 hours a day, 7 days  
6 a week, we provide for them to be able to certify  
7 with the Commission for closing times for  
8 maintenance. And, additionally, the rule would  
9 require that what's publicly disseminated be  
10 publicly disseminated with a universal coordinated  
11 time stamp, so that the time stamps globally would  
12 be the same, and people would be able to compare  
13 those transactions that are executed in -- you  
14 know, with a party in Japan, to a party in Europe,  
15 to a party in the U.S.

16 Specifically, to the example that you  
17 had with a party in, let's say, Tokyo or  
18 somewhere, to the extent that that swap is between  
19 two non-swap dealers, non-MSPs, the time delays  
20 are in business hours for those if there's a  
21 non-SD/non-MSP. So if the swap were to take place  
22 at 12:00 p.m., Friday, Tokyo time, the clock would

1 start ticking from the time of execution there,  
2 and the time delay -- the requirement would still  
3 be as soon as technologically practicable to  
4 report that swap, but the time delay for public  
5 dissemination by the SDR wouldn't occur until  
6 12:00 p.m. the following Tuesday. And that's to  
7 take into account that the non-dealers, the  
8 non-MSPs, might not have the systems or staff in  
9 place, and we wouldn't want to require them to  
10 bring someone in on the weekend to report this if  
11 they couldn't do it.

12 We don't have those business -- those  
13 same -- it's a little bit more strict --

14 COMMISSIONER SOMMERS: Right.

15 MR. STEINER: -- for SEF- and  
16 DCM-executed. You know, if it's  
17 platform-executed, we believe that the technology  
18 should be there to report those.

19 And, also, with respect to bilateral  
20 swaps with a dealer or a MSP, we think that they  
21 should also have the ability to report within the  
22 time frames for the Part 45 rules, which, you

1 know, you could leverage that same data reporting  
2 stream, which is linked up to our public  
3 dissemination timelines.

4 There are a couple of other nuances  
5 where we provide some additional leeway for if  
6 there's an end-user in a bilateral transaction,  
7 just as David described for the Part 45 rules.

8 COMMISSIONER SOMMERS: Okay. Thank you.

9 CHAIRMAN GENSLER: Commissioner Chilton?

10 COMMISSIONER CHILTON: Thanks for your  
11 great work on this, the whole team.

12 Jeff, it's my understanding that if a  
13 transaction is not subject to the clearing mandate  
14 -- for example, a swap in which an end-user is  
15 using the clearing exemption -- then it gets four  
16 hours and then two hours, right, and after the  
17 first year, the two hours? If at least one party  
18 is a swap dealer or MSP, is that the case? For  
19 example, when you have an airline trying to hedge  
20 their risk sort of far out the curve on crude oil  
21 swap, for example?

22 MR. STEINER: Yes. The swap in the

1 example you described, the reporting times would  
2 be four hours the first year and then two hours  
3 after the first year, if at least one party were a  
4 dealer. I would point out a couple of things,  
5 though, to address your specific scenario about  
6 the hedging.

7           If a swap is not executed on a SEF or  
8 DCM or is not one of the 28 contracts plus  
9 (inaudible), and those 28 contracts are the same  
10 contracts that were listed in the position limits  
11 rule or economically related to those contracts,  
12 then it would not be subject to these final Part  
13 43 rules at this time. Those swaps will be  
14 addressed in the re-proposal. A lot of that has  
15 to do with anonymity concerns on how to publicly  
16 disseminate those. So, jet fuel, for example,  
17 would not be covered under these final rules, if  
18 it was executed over-the-counter. If it was  
19 executed on a SEF or DCM, it would be. But a swap  
20 where the underlying asset is -- let's say NYMEX  
21 heating oil -- that would be covered since it's  
22 one of the contracts that are listed. These 28

1 contracts have very liquid futures and underlying  
2 cash markets.

3 The second thing I would note is that  
4 the notional amount that's publicly disseminated,  
5 as we discussed, would be capped for the other  
6 commodity asset class at 25 million. So, what the  
7 market would see -- the public would see, would be  
8 25 million plus. So, a really large trade would  
9 only see that value. We think that the combo of  
10 the caps and the time delays, along with the fact  
11 that a chunk of the market that won't be subject  
12 to the rules at this time, would be adequate to  
13 lay off risk.

14 Additionally, just one other thing is  
15 that if one of those -- if it was between two  
16 end-users, as was mentioned previously, they would  
17 receive significantly longer time delays.

18 COMMISSIONER CHILTON: Okay. Thank you.  
19 I don't have any other questions.

20 CHAIRMAN GENSLER: Thank you,  
21 Commissioner Chilton.

22 Commissioner O'Malia?

1                   COMMISSIONER O'MALIA: I'd like to,  
2                   Jeff, build on that a little bit. What are the  
3                   requirements -- let me ask this, how can you walk  
4                   me through the analysis performed in order to  
5                   ensure that the rules appropriately take into  
6                   account whether public disclosure will materially  
7                   reduce market liquidity as required under Section  
8                   2?

9                   MR. STEINER: Sure. We really read  
10                  through every comment and had a lot of interaction  
11                  with market participants regarding our proposal, a  
12                  lot of really great feedback. And we talked with  
13                  them about the various asset classes, the states  
14                  of the asset classes, and, you know, where  
15                  liquidity lies, and in combining the time delays,  
16                  which we had proposed a 15-minute time delay for  
17                  block trades. And we're not addressing the sizes  
18                  for those block trades at this time, but what the  
19                  final rule will do for SEF- or DCM-executed trades  
20                  and also trades subject to mandatory clearing in  
21                  which there's a dealer, the first year would be a  
22                  30-minute time delay, and then it would reduce

1 down to 15 minutes. That, combined with the caps,  
2 we believe, you know, during this period would  
3 adequately protect the liquidity in these markets.  
4 I think the caps, based on the conversations,  
5 would achieve that.

6 COMMISSIONER O'MALIA: Well, I think you  
7 have correctly adjusted these to accommodate the  
8 market, based on the comments that we've received.  
9 But going forward, what do we need to think about  
10 if somebody says, hey, this actually isn't working  
11 for us -- whatever swap it is or contract or  
12 participant? Is there a solution set going  
13 forward or is that -- do we have to come up with  
14 another rulemaking based on kind of the actual  
15 trading behaviors?

16 MR. STEINER: I think that -- and anyone  
17 else can, you know, express their opinion -- I  
18 think that, you know, as Commissioner Chilton  
19 mentioned, obviously, it's an evolving process,  
20 and what these rules do is introduce post-trade  
21 transparency to the market, so it's certainly an  
22 introduction to the marketplace. And I would

1       imagine that in the block trade re-proposal, I  
2       know that we're providing time delays here, and  
3       the block trade re- proposal is going to set the  
4       appropriate groupings of swaps, as well as the  
5       appropriate sizes for those swaps.  So, those  
6       things I think can be taken into account going  
7       forward from the comments that are received from  
8       that, as well.

9                COMMISSIONER O'MALIA:  So, we have  
10       another shot using the block trade rules to do  
11       this.  But we obviously won't have data or  
12       experience to inform those decisions, and I  
13       recognize we can't wait to do the block rule.  
14       What happens post-block if something is out of  
15       kilter?

16               MR. STEINER:  Well, I can't speak for  
17       exactly what's going to be in the block rule, but  
18       would anticipate that there would be a sort of  
19       look back based on the data that's collected in  
20       order to adjust sizes appropriately.

21               COMMISSIONER O'MALIA:  All right.  
22       Thanks.  Do you want me --

1                   MR. KIRILENKO: -- Commissioner, since  
2                   you asked for clarification, and someone wants to  
3                   add. I think these two rules, Part 43 and Part  
4                   45, interact very well. I'm hearing that. As we  
5                   collect data on the going through to swap dealer  
6                   repositories, one of the particular variables or  
7                   one of the particular sort of data points that it  
8                   will be collecting, is sort of what kind of  
9                   inventory of contracts to different or major sort  
10                  of participants carry? That is -- and that would  
11                  be indicative of just sort of how the marketplace  
12                  is changing. And as we see that the marketplace  
13                  is changing, we'll anticipate -- just like the  
14                  example in the TRACE market shows, you will see,  
15                  you know, dealers carrying a particular type of  
16                  inventory, and that would be indicative to us that  
17                  the change in the marketplace reflects whatever  
18                  this rule intended.

19                  COMMISSIONER O'MALIA: And I appreciate  
20                  that. I think you got it right. But what is the  
21                  mechanism in the rule? And I guess the data will  
22                  inform us about block sizes. I guess that's the

1       only --

2                   MR. STEINER: I was just informed that  
3 the intent in the re-proposal, one of the -- one  
4 of an alternative would be to -- and please,  
5 someone correct me if I'm wrong -- to allow the  
6 DMO director to adjust sizes if they notice that  
7 something was off or something like that.

8                   COMMISSIONER O'MALIA: Okay. Thank you.  
9 Can you please walk me through the real-time  
10 reporting requirements for inter-affiliate  
11 transactions and how you define inter-affiliate  
12 transactions?

13                   MR. STEINER: Sure. We don't define  
14 inter- affiliate transactions. What the final  
15 rule does is it has a definition of publicly  
16 reportable swap transaction. That is limited to  
17 those swaps that are executed at arm's length,  
18 that result in a corresponding change in market  
19 risk between the parties, and it also has the  
20 other language about termination, assignment,  
21 novation, exchange, et cetera, that result in a  
22 change in the price.

1           Additionally, in that definition, we  
2 provide examples of transactions that are not  
3 arm's length, that would not fall under the  
4 definition. That would include internal swaps  
5 between 100 percent owned subsidiaries of the same  
6 parent, as well as portfolio compression  
7 exercises, and, you know, these examples are not  
8 exhaustive, but they -- the standard under the  
9 definition is really what needs to be met, which  
10 is the arm's length standard.

11           COMMISSIONER O'MALIA: So, you could  
12 have an affiliate that is less than 100 percent?

13           MR. STEINER: Again, the standard in the  
14 rule is arm's length, so I would imagine that it's  
15 possible, but, you know, I mean --

16           MR. LEAHY: I think one of the things  
17 we're trying to avoid is the reporting of  
18 transactions that don't face the market because  
19 those transactions may have misleading price  
20 information.

21           COMMISSIONER O'MALIA: And I don't  
22 disagree with that. I think that's a great

1 response, but I think in the rule, your example as  
2 an affiliate is 100 percent, but the definition --  
3 the actual test is this arm's length test. And I  
4 think that people may be confused a little bit if  
5 they read the footnote that says it's 100 percent  
6 as an example, you could have put 71 percent, I  
7 guess. But --

8 MR. STEINER: That's right. But we do  
9 clarify that the examples are not exhaustive and  
10 that there is a possibility that -- I mean,  
11 certainly, if it doesn't meet the test of arm's  
12 length, and as Tom just mentioned, we wouldn't  
13 want those.

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

16 CHAIRMAN GENSLER: Thank you very much,  
17 Commissioner O'Malia.

18 Commissioner Wetjen?

19 COMMISSIONER WETJEN: Thanks, Mr.  
20 Chairman. Thanks again to the team for all your  
21 hard work on the rule, and thanks for the  
22 conversations we had concerning the rule.

1           I was going to build on, a little bit,  
2           the questioning by Commissioner O'Malia. You  
3           know, in some places, with respect to the masking  
4           provisions, there appears to be some  
5           differentiation between -- or within, rather,  
6           asset classes, and that's not done in the area of  
7           time delays, and I don't disagree with the  
8           judgment to do it in this way, but I was just kind  
9           of curious why it's done or why you don't  
10          differentiate within asset classes with respect to  
11          the time delays, but do so in the masking  
12          provisions?

13                 MR. STEINER: With respect to the time  
14                 delays, we do have a differentiation with respect  
15                 to the other commodity asset class for the  
16                 bilateral swaps. The other four asset classes,  
17                 they have different compliance dates, so, as we  
18                 mentioned, the interest rate and credit would  
19                 begin July 16th, and then 90 days after, the other  
20                 three, but we do have a distinction for the other  
21                 commodity asset class based on comments that we  
22                 received and conversations that we've had. I

1 think consistency and many market participants  
2 would participate in multiple asset classes, so we  
3 chose to go the route of the caps to protect, and  
4 just for internal use, we think that it made more  
5 sense to go that way.

6 COMMISSIONER WETJEN: Thank you.  
7 There's also this requirement that uncleared swaps  
8 be reported. And as I understand it from  
9 discussions with both your team and market  
10 participants, a lot of times these swaps will have  
11 -- or they'll have contained in the pricing some  
12 type of counterparty risk. I mean, is there -- I  
13 guess how and why is the pricing information for  
14 these swaps relevant if there is, in fact,  
15 embedded in the pricing some kind of counterparty  
16 risk, which is, you know, obviously, unique to  
17 that counterparty?

18 MR. STEINER: So, these swaps would have  
19 a designation that they're bespoke or an  
20 indication that it's a pure bilateral swap. We do  
21 have a data field that breaks out, but doesn't  
22 break out credit separately. Credit's not

1       separately reportable.  It's just sort of the  
2       difference in price, so that prices can be  
3       compared across different -- similar types of  
4       swaps.  But we believe that the public  
5       dissemination of this data will actually provide  
6       market participants and the public with a clearer  
7       understanding of the depth of a particular market,  
8       the frequency and trading in that market, and the  
9       pricing of transactions with the same or similar  
10      underlying assets.  And that, combined with the  
11      designation of -- that it's a bespoke transaction  
12      would enable market participants to actually  
13      utilize that data.

14                    COMMISSIONER WETJEN:  That's all I have,  
15      Mr. Chairman.

16                    CHAIRMAN GENSLER:  Thank you,  
17      Commissioner Wetjen.  I'm going to ask unanimous  
18      consent first.  If we can drop a footnote in the  
19      appropriate page to the question I asked Jeff, but  
20      it would be whatever footnote Mr. Auten, who works  
21      with Commissioner Sommers, and Eric Uzanis have  
22      worked out back here, or will work out in the next

1 six hours or whatever, you know, obviously, making  
2 sure that other Commissioners -- that it just  
3 narrowly basically says that DCM and exempt  
4 commercial markets, what they do now is still --  
5 fits in this thing; that somehow, that we're not  
6 gumming that up.

7 COMMISSIONER O'MALIA: Mr. Chairman,  
8 you're asking for unanimous consent that we get a  
9 unanimous solution before we make the change, or  
10 --

11 CHAIRMAN GENSLER: No, no. I'm just --  
12 that we accept whatever these -- I mean, they have  
13 -- you've worked out some footnote, right?

14 COMMISSIONER O'MALIA: All right. As  
15 long as we all see it and agree to it.

16 CHAIRMAN GENSLER: Yeah. Mr. Stawick?

17 MR. STAWICK: Commissioner Wetjen?

18 COMMISSIONER WETJEN: Aye.

19 MR. STAWICK: Commissioner Wetjen, aye.  
20 Commissioner O'Malia?

21 COMMISSIONER O'MALIA: Aye.

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

1 Commissioner Chilton?

2 COMMISSIONER CHILTON: Aye.

3 MR. STAWICK: Commissioner Chilton, aye.

4 Commissioner Sommers?

5 COMMISSIONER SOMMERS: Aye.

6 MR. STAWICK: Commissioner Sommers, aye.

7 Mr. Chairman?

8 CHAIRMAN GENSLER: Aye.

9 MR. STAWICK: Mr. Chairman, aye. Mr.  
10 Chairman, on this question, the ayes are five,  
11 the nays are zero, and the results of this vote  
12 is unanimous in the affirmative.

13 CHAIRMAN GENSLER: The ayes having it,  
14 the staff recommendation is accepted, and it will  
15 be sent to the Federal Register.

16 Our next scheduled public meeting is  
17 Wednesday, January 11th. The subjects of the  
18 rulemaking will be presented one week in advance  
19 on the website. And if there's no other -- okay,  
20 there's -- I did the technical corrections.

21 Commissioner O'Malia?

22 COMMISSIONER OMALIA: Well, on the

1 subject of the schedule, I would note, in your  
2 opening remarks, you said thoughtful and not  
3 against the clock, and I appreciate that. Several  
4 other Commissioners have referenced it, and I  
5 would even note that in David Taylor's rule that  
6 the data reporting requirements accommodate  
7 holidays. Now, we are obviously approaching some  
8 significant holidays, and we have a hearing on --  
9 a meeting on the 11th in which we're going for. I  
10 understand there's probably going to be a meeting  
11 on the 17th as well. That's a short week. That's  
12 only obviously a week to take on additional work,  
13 and I would hope that before you leave on your  
14 vacation, that you would give us our to-do list,  
15 and see if we can absolutely get that nailed down,  
16 so we know exactly what we need, we know which  
17 teams are going to have to be here over the  
18 holidays to respond to our questions because the  
19 17th -- due to the fact -- normally, we have two  
20 weeks in between meetings.

21 CHAIRMAN GENSLER: Yeah.

22 COMMISSIONER O'MALIA: We won't have

1 that and, you know, we move the 5th to the 11th,  
2 and I'm fine with that, but --

3 CHAIRMAN GENSLER: I think I did that at  
4 the request of the Commission.

5 COMMISSIONER O'MALIA: I completely --  
6 because the 5th was a tough time frame to meet, as  
7 well, but if you could, before you leave, that we  
8 would have that sense among the Commissioners so  
9 we know exactly what we're working on because  
10 staff needs --

11 CHAIRMAN GENSLER: There --

12 COMMISSIONER O'MALIA: -- to take it  
13 with on their holiday.

14 CHAIRMAN GENSLER: I'll do this all  
15 publicly. There's five pens-down versions right  
16 now that we know of. There's this segregation for  
17 cleared swaps, and I would hope that we could  
18 possibly consider that on that first meeting in  
19 January. There's registration for the swap  
20 dealers and MSPs. There's both external and  
21 internal business conduct. The internal is just  
22 the, you know, what sometimes I call

1 internal-internal. It's not the documentation, as  
2 you know. And there's the -- I'll call it 4.15,  
3 the CPO rule.

4 We're hoping in the next days to get all  
5 of you the entity definition, pens-down version.  
6 It's in very good shape, but it's still working  
7 its way through with the SEC and CFTC, and I think  
8 that's within days. So, those are the six  
9 possible for consideration in January, and I would  
10 be hopeful that we could maybe do segregation, the  
11 external business conduct, and the registration  
12 rule, possibly. But it's depending upon your  
13 feedback and input, and we'll -- as I say, we're  
14 not going to do this against a clock, we're going  
15 to do them based on the feedback and input. And  
16 if you all -- you know, but I know it's all flight  
17 schedules and everything. If everybody says,  
18 well, let's move the 17th a few days and move that  
19 back a week, you know, I'd have to work with  
20 everybody's schedule. And if you want to make the  
21 17th the following week, the 24th or the 25th,  
22 depending upon -- I'm open to that, too, if that

1 works for folks here.

2 COMMISSIONER O'MALIA: Thank you very  
3 much.

4 CHAIRMAN GENSLER: Since I'm going on  
5 vacation, did I -- I did it all before I'm leaving  
6 on vacation.

7 COMMISSIONER O'MALIA: Yes, do you  
8 empower staff to negotiate on your behalf?  
9 (Laughter)

10 CHAIRMAN GENSLER: Usually. Usually.

11 COMMISSIONER O'MALIA: We look forward  
12 to your return.

13 CHAIRMAN GENSLER: Yeah. If there are  
14 no further Commission business, I want to thank  
15 everybody for all their work. I think these are  
16 two incredibly important rules for the public, but  
17 I also want to wish you and your families well on  
18 this holiday time, and I will probably see you  
19 after the New Year.

20 Do I have a motion to adjourn the  
21 meeting?

22 COMMISSIONER SOMMERS: So moved.

1 CHAIRMAN GENSLER: All in favor? Aye.

2 GROUP: Aye.

3 CHAIRMAN GENSLER: Great.

4 (Whereupon, at 12:05 p.m., the  
5 PROCEEDINGS were adjourned.)

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CERTIFICATE OF NOTARY PUBLIC

DISTRICT OF COLUMBIA

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

(Signature and Seal on File)

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Notary Public, in and for the District of Columbia

My Commission Expires: January 14, 2013

