

UNITED STATES OF AMERICA  
COMMODITY FUTURES TRADING COMMISSION  
SECURITIES AND EXCHANGE COMMISSION

JOINT CFTC-SEC STAFF ROUNDTABLE ON IMPLEMENTATION  
PHASING FOR FINAL RULES FOR SWAPS AND  
SECURITY-BASED SWAPS UNDER TITLE VII OF THE  
DODD-FRANK WALL STREET REFORM AND CONSUMER  
PROTECTION ACT

Washington, D.C.

Tuesday, May 3, 2011

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A G E N D A

Panel One: Implementation of Clearing Mandates

KIM ALLEN  
SEC

JOHN RAMSAY  
SEC

EILEEN DONOVAN  
CFTC

JOHN LAWTON  
CFTC

MARK COX  
CME Group

CHRIS EDMONDS  
ICE Trust

DAN MAGUIRE  
LCH.Clearnet

WILLIAM "BILL" DeLEON  
PIMCO

JOSEPH BUTHORN  
BNP Paribas

DARCY BRADBURY  
D.E. Shaw & Co.

JOHN NICHOLAS  
Newedge USA

SAM PETERSON  
Chatham Financial

MICHAEL GREENBERGER  
University of Maryland School of Law

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A G E N D A

SHARON BROWN-HRUSKA  
NERA Economic Consulting

GARY O'CONNOR  
International Derivatives Clearing Group

Panel Two: Transaction Processing for Swaps and  
Security-Based Swaps

GREGG BERMAN  
SEC

CATHERINE MOORE  
SEC

RICK SHILTS  
CFTC

JOHN LAWTON  
CFTC

RICK McVEY  
MarketAxess

GEORGE HARRINGTON  
Bloomberg, LP

HENRY HUNTER  
MarkitSERV

JOHN OMAHEN  
SunGard

YVES DENIZE  
TIAA-CREF

MARTY CHAVEZ  
Goldman Sachs

SHAWN BERNARDO  
Tullett Prebon Americas

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A G E N D A

JAMIE CAWLEY  
Javelin Capital Markets, LLC

PAUL CUSENZA  
Nodal Exchange

GARRY O'CONNOR  
International Derivatives

Panel Three: Implementation of Data Reporting and  
Dissemination Rules

MICHAEL GAW  
SEC

TOM EADY  
SEC

DAVID TAYLOR  
CFTC

RICK SHILTS  
CFTC

MARISOL COLLAZO  
DTCC

JEFF GOOCH  
MarkitSERV

RAF PRITCHARD  
TriOptima North America

R.J. CUMMINGS  
ICE Trust

JIRO OKOCHI  
Reval

BILL THUM  
The Vanguard Group

## 1 A G E N D A

2 MERRITT THOMAS  
3 Barclays Capital4 JIM MORAN  
5 CME Group6 STEVE JOACHIM  
7 FINRA8 SHAWN BERNARDO  
9 Tullet Prebon10 WALLY TURBEVILLE  
11 Better Markets12 KARLA McKENNA  
13 International Organization for  
14 Standardization15 Panel Four: Considerations with Regard to End  
16 Users17 JOHN LAWTON  
18 CFTC19 RICK SHILTS  
20 CFTC21 GREG BERMAN  
22 SEC23 PETER CURLEY  
24 SEC25 PETER SHAPIRO  
26 Swap Financial Group27 WILLIAM DONOVAN  
28 U.S. Steel Pension Fund29 HEATHER SLAVKIN  
30 AFL-CIO

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A G E N D A

WALLY TURBEVILLE  
Better Markets, Inc.

RUSSELL WASSON  
National Rural Electric Cooperative  
Association

JOSEPH GLACE  
Exelon Corporation

SEAN COTA  
Cota & Cota

JIRO OKOCHI  
Reval

VERETT MIMS  
The Boeing Company

SAM PETERSON  
Chatham Financial

Also Present:

CHAIRMAN GARY GENSLER  
CFTC

\* \* \* \* \*

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

2 (9:35 a.m.)

3 MR. LAWTON: Good morning. Welcome to  
4 day two of the Roundtable on Implementation  
5 Phasing for Rulemakings under Title VII of the  
6 Dodd-Frank Act.

7 I'm John Lawton of the Division of  
8 Clearing Intermediary Oversight of the CFTC. I  
9 want thank again all of the panelists for  
10 participating, as well as thanking my colleagues  
11 from the SEC.

12 Before we get started, I should repeat a  
13 couple of points that were made yesterday for  
14 those of you who weren't here yesterday.

15 First, the purpose of this roundtable is  
16 to address issues regarding the sequencing of  
17 implementation. It's not to discuss the merits of  
18 any individual proposal. Staff in both agencies  
19 have been reviewing and will continue to review  
20 all the comments on the substantive issues related  
21 to each of the proposed rulemakings.

22 Second, I also want to point out that

1       this roundtable is not the only opportunity to  
2       comment on implementation issues. The agencies  
3       welcome written comments on these matters from the  
4       members of the public.

5               Finally, I should just address quickly a  
6       couple of housekeeping items. Please note that  
7       this meeting is being recorded and a transcript  
8       will be made public. Before speaking, please  
9       press the button on the microphone and a red light  
10      will come on. When you finish, please press the  
11      button again to turn the microphone off.

12              Okay, now I'd like to turn it over to my  
13      colleague, John Ramsay from the SEC, for a few  
14      opening remarks.

15              MR. RAMSAY: Thanks, John. I don't have  
16      much to say; I just, first of all, also want to  
17      express my thanks to the staff of both agencies  
18      for helping you put this together, including Kim  
19      Allen, my colleague from the Division of Trading  
20      and Markets to my left. We look at the clearing  
21      mandate as at that heart of Title VII reforms, and  
22      we recognize how important it is to the benefits

1 of central clearing that the mandatory clearing  
2 determination in particular is introduced in a way  
3 that appropriately takes account of the needs of  
4 end-users, the capacity and capabilities of  
5 clearing agencies, and the general market  
6 environment as it evolves over time. It's really  
7 a terrific group of analysts here, I'm very  
8 impressed by the group we've assembled, and I look  
9 forward to hearing what they have to say.

10 MR. LAWTON: Okay, let's get started  
11 simply by going around the table and having  
12 everyone introduce themselves.

13 MR. COX: Hi, my name is Mark Cox. I  
14 work in the CME Clearinghouse and I run the  
15 Clearing Solutions Group in New York.

16 MR. EDMONDS: Chris Edmonds, president  
17 of ICE Trust.

18 MR. MAGUIRE: Danny Maguire,  
19 LCH.Clearnet.

20 MR. DeLEON: Bill DeLeon, global head of  
21 Portfolio Risk Management, PIMCO.

22 MR. BUTHORN: Joseph Buthorn, head of FX

1 Prime Brokerage, BNP Paribas.

2 MS. BRADBURY: I'm Darcy Bradbury from  
3 the D.E. Shaw Group.

4 MR. O'CONNOR: I'm Garry O'Connor, IDCG.

5 MS. BROWN-HRUSKA: Sharon Brown-Hruska,  
6 National Economic Research Associates.

7 MR. GREENBERGER: Michael Greenberger,  
8 University of Maryland School of Law.

9 MR. PETERSON: Sam Peterson, Chatham  
10 Financial.

11 MR. NICHOLAS: John Nicholas, Newedge,  
12 USA.

13 MS. DONOVAN: Eileen Donovan, CFTC.

14 MR. LAWTON: Thanks, everyone. Okay,  
15 yesterday's discussion basically focused on  
16 infrastructure and market participants. Today's  
17 focus is on transaction compliance. CFTC did hand  
18 out a brief concept paper which identifies six  
19 aspects of transaction compliance: The clearing  
20 requirement, the trading requirement, real-time  
21 public reporting, reporting to data repositories,  
22 and swap dealer requirements, such as

1 documentation confirmation evaluation and position  
2 limits. A theme that we like to see in today's  
3 discussion would be the extent to which these  
4 topics can be addressed in parallel with  
5 sequencing within each group.

6           Okay, let's start out with a question,  
7 basically sort of a broad question. What types of  
8 sequencing makes sense for application of a  
9 clearing mandate? For example, within a group of  
10 swaps, should a mandate be phased in by the type  
11 of market participant?

12           MR. DeLEON: Hi, this is Bill DeLeon. I  
13 think it makes sense to have phase in of  
14 sequencing by product type by both the products  
15 that are being cleared, as well as the  
16 participants. They're going to be various  
17 different roadblocks associated with clearing in  
18 terms of setting things up and infrastructure, and  
19 it's important to realize that the ability of  
20 different players in the market to achieve these  
21 setup and infrastructure issues will proceed at  
22 different paces. In addition to that, it's

1 important to note that one of the goals of  
2 Dodd-Frank is to reduce systemic risk and by  
3 starting with the larger players, who are more  
4 capable, I think you'll get more risk reduction  
5 and kinks out of the system.

6           So, starting with swap dealers then  
7 major swap participants and then moving to  
8 end-users, either high-risk or low-risk because  
9 you'd find them in your rulings, would be the most  
10 beneficial sequencing in terms of getting things  
11 working and running. I think it's also important  
12 to note though that you don't want to have too  
13 much of a big bang effect where everyone is forced  
14 to go on a certain date given some of the  
15 implementation issues in terms of building the  
16 pipes, getting accounts approved, and the  
17 bottlenecks because if you think about how the  
18 system works, if you look at the dealers, there's  
19 a small, limited number relative to the number of  
20 accounts in the system.

21           If you look at major swap participants,  
22 we expect that to be a small number, and then

1       everybody else would be quite big. The issues  
2       that are going to arise are if you try to funnel  
3       all of the end-users in at once through the  
4       clearing brokers and then through the CCPs, you'll  
5       have massive bottlenecks and contention problems.  
6       So, you'll need to have time for people to get  
7       everything set up before you flip the switch and  
8       say you need to clear. So, I think it does make  
9       sense to sequence that, as well, in terms of  
10      giving people at time to do that from that  
11      standpoint, but it does make sense to answer your  
12      question to sequence the different groups.

13               MR. EDMONDS: I would add to that and  
14      agree most everything offered up. I would think  
15      if you look at it not only from the legislative  
16      intent but from the rule set, if we were to attack  
17      this from the standpoint of what was most  
18      systemically important first, I think that  
19      encompasses what Bill put out as those who are  
20      most prepared for it today based on size and  
21      scope, then have a volunteer period for those who  
22      want to be early adopters of that that are not

1 captured in that systemic realm that you made a  
2 find in the rule set, and then finally end up with  
3 the final mandate that everyone needs to meet at  
4 some point in time. But I think the lessons we  
5 learn not only by getting the biggest total  
6 systemic risk into the solution first and then  
7 those who volunteer to come along the way will  
8 give us the right roadmap for any tweaks that  
9 might be necessary as we move forward.

10 MR. NICHOLAS: I think one overriding  
11 concern or issue that I think the agencies should  
12 keep in mind when discussing sequencing and  
13 particularly phasing in sequencing by market  
14 participant is to be careful not to advantage or  
15 disadvantage any particular types of participants.  
16 I mean, I think to the extent that certain  
17 participants or categories are permitted to get  
18 into the mix earlier, customers will most likely  
19 gravitate towards those type of entities. So, I  
20 think it's important to keep the competitive  
21 landscape in mind.

22 MR. MAGUIRE: Hi, Dan. Agree with both

1 Bill and Chris there on the participant side.

2 Talking more about the product side of  
3 things in terms of how we see sequence or propose  
4 the sequence mandating there, I think again, so,  
5 yes, they were broken into sort of four different  
6 kind of areas.

7 One is making our product distinction  
8 one size doesn't fit all. So, you have to move  
9 the credit markets where the trades were more  
10 standard, maturity standard coupon so they're a  
11 little bit more standardized, interest rate swap  
12 market is a lot more idiosyncratic, so less  
13 standard. So, I think the Commission has got a  
14 tremendous job ahead of it in terms of defining  
15 what is actually going to be mandated, and I think  
16 over-prescription will allow for loopholes and  
17 equally under-prescription may allow for  
18 loopholes, as well. So, we need to be careful how  
19 we define that.

20 Giving an example, we have probably over  
21 50 percent of the local interest rate swap markets  
22 for our system, and we've done some analysis

1 around that, and using just 9 standard fields on  
2 there, an interest rate swap, we find that only 5  
3 percent of those trades actually match all these  
4 same economic fields. If we take more of those  
5 standard fields that the further up the scope you  
6 go, the less match you get. So, it's true that  
7 the interest rate swap market is not standardized  
8 in terms of what we see existing today.

9 In terms of the other aspects, we've  
10 also got to consider, I think, the higher liquid,  
11 higher volume type products first in terms of  
12 reducing systemic risk, so liquidity and  
13 participants are really a key part of that, and I  
14 guess similar to the points made yesterday by  
15 myself and others, we think it's important that we  
16 tie in with a lot of the broader international  
17 jurisdictions here to have a level playing field.  
18 CPSS-IOSCO and I are coming up with legislation  
19 rules, and we think as an organization it would be  
20 a good thing if we're aligned across the different  
21 jurisdictions to ensure that similar products are  
22 offered in similar jurisdictions.

1           And then I guess, finally, we don't  
2 necessarily want to -- I think there was another  
3 point made yesterday, as well, around going as  
4 fast as the slowest person. We think competition  
5 and innovation in clearing should be welcomed to  
6 get more onto the clearing platform. So, we want  
7 to make sure that there are enough incentives to  
8 all of the participants, ICMs, clients, DCOs that  
9 as they bring new products safely to the market  
10 for clearing that they're not stymied by maybe  
11 being the only people that do that.

12           MR. O'CONNOR: I think with respect to  
13 sequencing or fading in, I think it really, as  
14 you've probably experienced with the discussions  
15 that you've had with market participants over the  
16 past 6 to 12 months that it's really the only  
17 practical solution to getting this done. I think  
18 that if we wait until we have the perfect solution  
19 that covers all product for all people, we may  
20 never get started because that's a very, very  
21 heavy lift. So, I think it's sensible that we  
22 think about phasing in. I think the phasing in by

1 product and phasing in by participant type make a  
2 great deal of sense. I think that comments about  
3 keeping competition open, I don't think there's  
4 anything in your suggestion that would prevent  
5 somebody from participating, whether they wanted  
6 to be an early-adopter or not. So, I don't  
7 necessarily see that as a risk with the phased-in  
8 approach.

9 Now, we feel that within implementing  
10 Title VII is a complex question, so nobody should  
11 think that the answer wouldn't be complex, as  
12 well, and I think that you need to be somewhat  
13 nuanced with how you think about phasing in. So,  
14 in addition to participant type and product type,  
15 I think that it makes sense to give people hurdles  
16 that they need to hit over time. So, in an  
17 initial period, there's a certain floor in terms  
18 of the percentage of your portfolio that you need  
19 to contribute to clearing, and that grows over  
20 time. I think that there are some significant  
21 advantages in taking that approach in that we  
22 heard yesterday that there is a lot of

1 infrastructure being built and there's a lot that  
2 that infrastructure can do today, but as people  
3 have already mentioned, there would be bottlenecks  
4 if everybody tried to utilize that infrastructure  
5 at once and that infrastructure is not yet at full  
6 scale, despite the fact that many parts of it are  
7 operationally ready.

8           So, if we begin by phasing in with a  
9 percentage of people's portfolio, it allows us to  
10 get started without stressing the current  
11 infrastructure beyond its capability, and I think  
12 it'll also give the industry the opportunity to  
13 fully flesh out offerings. I think one of the  
14 concerns about people with large portfolios of OTC  
15 derivatives is the mandate and what it will  
16 capture. So, you don't want to get into a  
17 position where I have a large portfolio of OTC  
18 derivatives, I mandated to clear a portion of  
19 that, and the net result is that I have more  
20 counterparty exposure at the end of it rather than  
21 less. So, there are counterparty exposures  
22 residual in my un-cleared portfolio that my clear

1 portfolio was previously offsetting. And I think  
2 that if you phase in portions of portfolios, you  
3 allow people to manage that process somewhat so  
4 that they're not in position and you're giving the  
5 industry to fully flesh out product offerings so  
6 that when you do get to full mandate, more of  
7 somebody's portfolio is available for clearing.

8           So, I think from our discussions, I  
9 think there's industry support for that type of  
10 approach, but, again, I think it's a complicated  
11 problem that's going to be a complicated answer,  
12 and we need to be phasing in definitely the only  
13 way that the industry is going to be able to  
14 achieve this on a timely basis, but I think we  
15 need to be nuanced about how we approach.

16           MR. COX: I might use as a guide what  
17 has already been cleared in an existing solution  
18 for the major clearinghouses that credit clearing  
19 for buy side and sell side has been in effect for  
20 almost 18 months, interest rates are clearing  
21 initiatives for major buy side participants and  
22 sell side participants have been in effect since

1       October of last year, and both of those solutions  
2       have been very deliberately and very thoughtfully  
3       developed in collaboration with major participants  
4       from both the sell side and the buy side. So,  
5       maybe using that as a guide, you would meet  
6       Garry's concerns about making sure that you keep  
7       in mind competitive interest as you phase in the  
8       mandate, but also making sure it's a deliberate  
9       and thoughtful process about what's possible to  
10      clear and what the impact would be.

11               MR. PETERSON: Just to follow-up maybe  
12      on the concept of the competitive landscape and  
13      how that ties into all of this, if people want to  
14      offer any thoughts on dealing generally with the  
15      issue of access, broader open access to clearing.  
16      Both of our agencies in our various role proposals  
17      to date have said a lot about, put a lot of  
18      proposals relating to promotion of greater access,  
19      and sometimes that's tied up with dealing with  
20      potential conflicts of interest.

21               How do people see the connection between  
22      a clearing mandate and the open access issue, or

1 to put it a different way, are there particular  
2 markers or things that we should expect to see or  
3 that the regulators should push the clearing  
4 agencies to have in place before the clearing  
5 mandate or clearing mandates begin? Does anybody  
6 have any --

7 MS. BRADBURY: Yes, I guess as I listen  
8 to the conversation about mandating and how to  
9 phase that in, I come at it more from the  
10 perspective that you've raised, which is we really  
11 like access to clearing. I know there are a lot  
12 of people who are very concerned about being  
13 forced to clear. I think we actually have kind of  
14 the opposite perspective, which is that we would  
15 like access to clearing. And I worry when you  
16 talk about phasing in by types of customers, for  
17 example, or types of entities, people who are  
18 ready to clear today and who would like to have  
19 access once the rules are all established may be  
20 disadvantaged and not be able to do that.

21 I mean, at the end of the day, clearing  
22 your liquid swaps has advantages for customers. I

1 mean, we'll be able to compress trades more  
2 easily, we'll have less counterparty risk, we'll  
3 have fewer operational headaches. I mean, there's  
4 a lot of advantages to central clearing for the  
5 buy side, and I think we lose sight of that  
6 sometimes because we're so focused on what we have  
7 to make people do at the open of an access issue  
8 is extremely important to us, although buy side  
9 clearing is sort of theoretically available now.

10 It's actually used very rarely. There  
11 are very few contracts that are actually open to  
12 buy side participants, and so, I think opening up  
13 a broader range of contracts for buy side  
14 participants, once the margin rules are all kind  
15 of sorted out, and, obviously, I think market  
16 participants need some certainty about those  
17 things, that will be tremendous advantage to us  
18 because we'll all understand the rules and how  
19 they'll work. And then the rules of operation and  
20 things like portability of trades, all of those  
21 kind of technical things that have to happen that  
22 will really make it much easier for buy side

1 participants to participate. And we understand  
2 not everybody is going to want to do that day one,  
3 but if you phase it in by type of client, you may  
4 actually impede access for people who are ready.

5 MR. GREENBERGER: Yes, I think the  
6 question you posed about that there is a  
7 distinction between free and open access  
8 requirements that come from conflict of interest  
9 and ownership requirements and the phasing in  
10 issue. First of all, I want to say, generally,  
11 I'm supportive of phasing in. I think this is an  
12 answer to a lot of the complaints that this is all  
13 moving too fast and people won't be ready. The  
14 statute contemplates phasing in and I think  
15 phasing in is important, and I endorse your  
16 emphasis on that in the concept paper.

17 Secondly, I am concerned. I think you  
18 have a tightrope to walk in that if you just let  
19 you pose it in terms of who has rulebooks, who  
20 have processes in place, if you just on day one  
21 say, okay, these institutions that are ready can  
22 go and wait for everybody else, I think that will

1 have an adverse, competitive impact that is  
2 unrelated to conflict of interest and ownership.  
3 I think you do have to give new entrants some  
4 degree of time to catch up to the existing market.

5 I'm sympathetic to D.E. Shaw's concern  
6 that some people are ready and want to get going.  
7 But what the buy side is going to find out,  
8 they're going to have very few competitive options  
9 and an ability to compare pricing and competence  
10 if you just start with the people that are ready  
11 to go. I think the voluntary market that's been  
12 established demonstrates that the clearing  
13 facilities that get out first tend to dominate the  
14 market, and so, whatever the ownership  
15 requirements are, you've got a competitive  
16 disadvantage. On the other hand, you don't want  
17 to wait too long because you've got people who are  
18 anxious to use the clearing and the more things  
19 that are put into clearing eliminates systemic  
20 risk.

21 The other thing I would say about this  
22 idea that you're going to have bottlenecks and

1       overload is the transition rules in 723  
2       contemplate that all existing swaps don't have to  
3       be cleared and all swaps that are entered into  
4       before the clearing rules are finalized don't have  
5       to be cleared. Now, there may be voluntary  
6       clearance of those things, but the clearance  
7       requirements began after the rules are in place,  
8       which I think is another reason why in this  
9       tightrope walking you're going to do, there is an  
10      importance to put the clearing in place.

11               Finally, I think this idea that  
12      everybody around the world has to start at the  
13      same time is going to be exactly the kind of delay  
14      that D.E. Shaw is worried about. If we have to  
15      wait, everybody's going to be waiting for each  
16      other, and it's going to slow down the  
17      implementation of these rules. My analysis is the  
18      Dodd-Frank, while not adopted uniformly around the  
19      world, has been a template for the European Union  
20      and other regulators to decide how they're going  
21      to operate. I think a lot of the European Union  
22      agent regulators are looking to the CFTC on how

1       they're going to set this up. And I think both  
2       the comprehensiveness of the CFTC's regulation as  
3       well as its getting so much input from the markets  
4       as to how this clearing facility should be set up  
5       demonstrates to me that this will be a leader in a  
6       regulatory market and we shouldn't wait around to  
7       see what everybody else is going to do.

8               MR. BUTHORN: I just want to add a  
9       couple comments. I'm extremely sympathetic to  
10      that point of view. I think BNP is one of those  
11      organizations that is trying to get into the  
12      clearing business after not having had one for the  
13      preceding period of time. For us and I think for  
14      many banks, we oftentimes are the bottlenecks of  
15      the process because we have very high threshold  
16      for due diligence and documentation that we  
17      oftentimes have to cross. And that combined with  
18      many of the new rules within Title VII, in  
19      particular business conduct and others, are making  
20      that threshold higher, which is fine. We're  
21      enthusiastic about doing that and we will. But  
22      one thing I think to consider in terms of your

1 sequencing question is how can you, in effect,  
2 simplify that burden so that we can accelerate our  
3 implementation process?

4           And one way to do that, I think, is to  
5 allow us to focus on certain classes of clients  
6 first as opposed to others because if we're trying  
7 to deal with the whole world, real money managers,  
8 hedge funds, insurance companies, GSEs, it just  
9 expands the problem that we're trying to solve,  
10 whereas if we can focus on it from a (inaudible)  
11 and due diligence perceptive one set of clients  
12 first, we can relieve some of our internal  
13 bottlenecks, accelerate implementation, and become  
14 more competitive with banks that are very much in  
15 that space already where we are currently trying  
16 to catch up.

17           MR. DeLEON: I'd just like to comment on  
18 a few of the comments here. While I agree with  
19 many of them in concept, there are some things  
20 that I think we have a slightly different view on  
21 at PIMCO, and I think that are important to think  
22 about in terms of phasing.

1           One of the things that have come up is  
2           sort of the concept of phasing by dealer type, and  
3           the issue associated with breaking it down further  
4           than the three that have been defined by the  
5           regulatory agencies is that there's a fiduciary  
6           responsibility for each money manager or end-user  
7           to treat all of its clients in a similar way. So,  
8           prescribing percentage hurdles or different type  
9           of cutoffs based on size is something that goes  
10          against that generic rule that we have in our  
11          fiduciary responsibility and creates a conflict.  
12          So, as someone who's looking to clear and wants to  
13          clear, we want the ability to decide when it is  
14          best to clear, whether it's the beginning, middle,  
15          or end, and being forced to do it other than by  
16          the end date, it creates issues because you may be  
17          favoring certain clients or disadvantaging  
18          clients.

19                 The other point that Darcy brought up is  
20                 there are a lot of commercial things going on  
21                 pre-Dodd-Frank that Dodd-Frank mimics or is  
22                 improving upon, so there are commercial reasons

1 for wanting to clear sooner than later, especially  
2 for levered funds and for other vehicles.

3 For example, many levered funds or  
4 certain accounts need to post what's known as  
5 initial margin, which is standard in futures  
6 clearing, and that would be in CCPs and is also  
7 going to be mandatory for non-cleared trades after  
8 the prospective date is set. A lot of hedge funds  
9 and other players are forced to post initial  
10 margin already. This is done on a unilateral  
11 basis and not necessarily fully segregated or  
12 mandated or controlled by a third party. The  
13 dealers set what they think is initial margin,  
14 which is always a fair statement because it's a  
15 unilateral discussion. Moving those positions to  
16 central clearing would be a benefit to many  
17 players that have that situation and I think that  
18 was Darcy's point, not just before, but there's an  
19 incentive for those type of accounts, and PIMCO  
20 has some of those, to want to move sooner or  
21 later, as well.

22 And the only other thing I would add

1 about the sequencing thing, which hasn't been  
2 brought up, is the fact that there's also now  
3 rules proposed about at a certain date if things  
4 are not cleared, you will need to post initial  
5 margin on a unilateral basis for end-users to swap  
6 dealers. As a result of that, there's an  
7 incentive to want to clear sooner or be able to  
8 clear sooner because that is, as Garry pointed  
9 out, would create additional asymmetric,  
10 counterparty exposure.

11 Now, there is the ability to create  
12 tri-party agreements, but that's yet another  
13 operational burden. And I just want to point out  
14 that the sequencing needs to be thought about in  
15 terms of if you're going to sequence products and  
16 you're going to sequence groupings, we need to  
17 make sure that all of the regulatory bodies agree  
18 what the drop-dead date is and that it be after or  
19 close to the end of all the products for posting  
20 margin on non-cleared trades. Otherwise you'll  
21 wind up with a race condition where you will need  
22 to clear, otherwise you'll be posting these

1 unilateral margins.

2 MR. O'CONNOR: I think to avoid those  
3 issues, the best thing that we can do is start  
4 because the sooner we start, the sooner we can get  
5 infrastructure in place that's going to allow your  
6 fiduciary accounts to move on mass or leveraged  
7 accounts to move once the clearing members are  
8 able to support the offering.

9 So, I don't think it's easy, but I think  
10 the hardest thing about doing anything is  
11 starting. And I think that the phased-in  
12 implementation that needs to be nuanced, the  
13 phased-in implementation allows us to start.

14 MR. EDMONDS: I was going to head to  
15 Darcy's comment regarding the products. We talked  
16 a little bit yesterday on the panels around how  
17 especially in the world of credit default swaps  
18 it's the regulatory process that's ending up with  
19 two separate structures and harmonizing those  
20 things. I know it's consistent with not only the  
21 intended legislation, but some of the work that  
22 has been considered by the commissions. But

1       that's one example that we can't forget to Darcy's  
2       point about making sure that there is adequate  
3       capital efficient access to those products that  
4       the buy and sell side both need.

5                   CHAIRMAN GENSLER:  Let me just give it a  
6       shot because I wanted to ask something about  
7       Bill's, but since there are a couple of things I  
8       could probably -- one, credit default swaps and  
9       portfolio margining.  I would just say at least  
10      the chair of the CFTC has clearly heard you not  
11      just because of yesterday, but over the months.  I  
12      know some fellow commissioners are in the room,  
13      too, and, so, they can come to their own views,  
14      but I think that the SEC and CFTC, I hope, will  
15      really be working hard on at least portfolio  
16      margining and the credit default swap area where  
17      because of jurisdictional divides over in this  
18      building, we have some of the indices over in by  
19      Union Station that would be the single names and  
20      narrow base.  So, I think a lot of work needs to  
21      be done there and it would be helpful to get the  
22      best input, and I'm not saying we're there yet,

1 but I think we've heard them on that.

2 I had a question though. Bill, you were  
3 saying how to divide this up. Products are  
4 somewhat dependent on how the clearinghouse has  
5 come in. Under the statute, as I understand the  
6 statute, it's really the clearinghouses that  
7 submit to the CFTC or SEC products that they want  
8 to clear. And of course the clearinghouses,  
9 you're right, already are clearing significant  
10 portions of the credit market, the rates market,  
11 and even the energy markets. So, I suspect as we  
12 finish our rules sometime maybe this fall of 2011,  
13 that these clearinghouses will come in. And, so,  
14 there is a question for them as to when they plan  
15 to come in to start the 90-day public process.  
16 That's products.

17 But my question for you, Bill, is  
18 because I think the lawyers might agree with you,  
19 it's hard for us to do percentages. They might  
20 share your view even though it's not Garry's view,  
21 but my question is: Did you have a view on the  
22 three sort of buckets that we're in, the CFTC

1       concept piece? And it was put out there just to  
2       get reactions, too, but sort of a first bucket  
  
3       would be -- what was it -- dealers and hedge  
4       funds, and maybe a next bucket was other financial  
5       entities that don't do subaccounts, and then maybe  
6       a third was the subaccount group who have hundreds  
7       or thousands.

8                        So, it's that phasing of those three  
9       buckets, so to speak, all with the assumption, the  
10      third concept in the 13 concepts was that the  
11      clearinghouses when they're open for business had  
12      to be open for business for everybody, that they  
13      had to have access for everybody. So, it starts  
14      voluntary and then the mandate is sort of these  
15      three buckets, and I was curious where you were on  
16      that. And then the clearinghouses might answer  
17      when they think they're going to submit these  
18      swaps for a public process.

19                      MR. DeLEON: Thank you, Garry. Yes.  
20      No, I agree with your concept of the fact that the  
21      most important thing is that the exchanges be  
22      ready and accept. And our view is that as soon as

1 exchanges are ready, end- users will move at their  
2 own pace regardless of where they fall into any of  
3 these buckets. And the CCPs should not be set up  
4 to look at the definitions you've picked. They  
5 should say either you want to clear and you're a  
6 valid customer and you've met our requirements to  
7 become a customer through an FCM or not, and it  
8 doesn't matter what type you are.

9           So, I agree with you there, and I would  
10 hope, yet again, as I think all the exchanges here  
11 are trying to do, to have all the products ready.  
12 So, that would help move things along, and then  
13 the bottleneck will just be getting the account  
14 set up. But I also agree with your concept of  
15 focusing on the biggest types first, which -- and  
16 then moving that along, but, obviously, they're  
17 going to be the legal issues with forcing things.  
18 And that's our concern is that we have a fiduciary  
19 responsibility to look at our clients because once  
20 we have a client, unless you have -- or the  
21 legislation, let me be clear, the legislation has  
22 set them as an MSP or a swap dealer, they sort of

1       just fall into this other category. So, we'll  
2       have an incentive from a commercial basis to move  
3       different type of account at a different rate.

4               CHAIRMAN GENSLER: But did you have a  
5       view on the three, dealers and hedge funds first,  
6       what was it, insurance companies? And maybe it's  
7       leasing companies and the like that are not  
8       Subaccount Land and Subaccount Land is people with  
9       lots of accounts like yourselves and the big  
10      mutual funds and so forth?

11             MR. DeLEON: Right. My view would be I  
12      think that makes sense. I don't know if other  
13      than the hedge funds which are MSPs, I don't know  
14      if you can legislate it or you can force it, but I  
15      think that that sequencing makes sense in terms of  
16      reducing systemic risks and achieving the fastest  
17      move. It's a question of, as I said, there's a  
18      dichotomy between what makes sense for moving  
19      things and wanting to focus on systemic risk  
20      versus the fact that the way you've defined  
21      things. And this is just the way the rules are  
22      written and sticking with the rule that I'm not

1 allowed to comment on the rule. The way they're  
2 defined, we can't force certain things. So, I do  
3 agree with your view that makes sense from a big  
4 picture, I just don't know if you can get the  
5 lawyers to approve it.

6 MS. BRADBURY: I guess since the issue  
7 of hedge funds being in one of the buckets, maybe  
8 I could just pipe up and it's sort of important to  
9 remember that we're not all the same, just like  
10 all long-only managers are not the same. And I  
11 think firms like ourselves who are very active in  
12 the futures market are much more ready to enter  
13 into a clearing of swaps because we have a lot of  
14 the expertise, the infrastructure, the  
15 relationships, the contracts. We're, I don't  
16 know, 80 percent of the way there already, and so,  
17 I would be hesitant. And maybe there's a firm  
18 that only does credit and all they do is CDS and  
19 they've never traded an exchange, traded -- so  
20 they don't have the infrastructure.

21 I know when you created in the margin  
22 rules these categories of high-risk financial,

1 don't like the name mind you, but leaving that  
2 aside for just a moment, I think those buckets are  
3 also a little difficult because they speak to  
4 whether your capital-regulated or not, which seems  
5 to me a little irrelevant in this context. So if  
6 you feel you need to have some clear guidelines or  
7 maybe there's a volume trigger if you have  
8 X-amount of swaps or something like that, but I  
9 also to kind of go back to an earlier point, I  
10 think phasing in by asset class also might be a  
11 useful way to think about it.

12           Interest rate swaps are by far and away  
13 the largest part of the market. It's a market  
14 that the dealers clear pretty routinely now, so  
15 it's not like you have to make the dealers clear  
16 interest rate swaps, they're already clearing  
17 them. I think I have some numbers, but I have the  
18 clearing agencies here, so I hesitate to use their  
19 numbers, but, I mean, they're clearing hundreds of  
20 thousands of these contract. These clearinghouses  
21 exist for years, have been doing this for a very  
22 long time, and it seem that just opening those up

1       might be a way to kind of get the whole thing  
2       going.  And, so, I guess if I were queen of  
3       derivatives for a day, I might start with interest  
4       rate swaps because I think there are a tremendous  
5       volume of liquid contracts available, but we'd  
6       love to clear everything, so I don't want to pick  
7       favorites here.

8                   MR. NICHOLAS:  Getting back to John's  
  
9       point about fair and open access, I mean,  
10      obviously, that is a mandate of Dodd-Frank and a  
11      key concern in terms of sequencing.  I mean, I  
12      think if you look at presidents in the securities  
13      and futures world for the rollout of major  
14      regulatory developments such as this one, it seems  
15      to me that, in general, it's been done on a  
16      product or asset class basis.  I think that that  
17      addresses systemic concern issues, while at the  
18      same time preserving competition and fair and open  
19      access, and that seems to be the way it's been  
20      done in many cases.

21                   MS. BROWN-HRUSKA:  I would just add, and  
22      maybe put some caution on those comments and in

1       some sense on the interest rate swaps. I mean,  
2       we've worked a lot with pricing interest rate  
3       swaps and cases involving them at NERA, and one  
4       thing we've seen is an incredible amount of  
5       diversity, and as Mark mentioned, idiosyncratic  
6       terms. And it's not an accident that there's a  
7       huge interest rate futures market that is  
8       developed to complement that OTC product space.

9       And so, I would actually caution against the  
10       assumption that IRS are amenable certainly as a  
11       product class to clearing, that there's, in fact,  
12       some staging within that asset class that is  
13       recommended just from a logistics perspective.  
14       And, again, I think this is a systemic risk area,  
15       as well, because I think that if you move too  
16       quickly on clearing, a mandate for clearing,  
17       there's a lot of IRS and interest rate risk  
18       management that may be deterred because you're not  
19       set up to do the transactions in the sort of  
20       prescribed manner.

21                So, I feel differently about CDS. I  
22       think that CDS has really somewhat less diversity

1 overall. Certainly different characteristics in  
2 terms of liquidity, but there is, I think, a real  
3 good argument for moving forward on clearing and  
4 self-execution there.

5 MR. O'CONNOR: If I could just comment I  
6 guess back on the interest rate swap side of  
7 things, so LCH.Clearnet today is clearing, we have  
8 over 50 clearing members. We have short of \$300  
9 trillion notional under management, of course many  
10 different currencies, and every single day, every  
11 single participant is collateralizing against our  
12 pricing and our marks. So, actually moving to  
13 clearing is actually you can counter that argument  
14 somewhat and say moving to clearing out one price  
15 rather than all the existing bilateral disputes  
16 you see in the market today under CSAs, et cetera.

17 So, I think moving to clearing actually  
18 in some ways helps price transparency and price  
19 discovery and brings consistency to the market to  
20 the extent that, tying with some of the other  
21 comments, we've also seen quite a few  
22 participants' approach is not just for new

1 business, but also looking to backload, as we call  
2 it, lift their existing portfolios into clearing,  
3 as well, for this exact reason, pricing to  
4 actually get one single version of the truth  
5 rather than having it there for bilateral  
6 disputes.

7           And I think tying Michael, Garry, and  
8 Chris' comments earlier, as well, around the sort  
9 of bifurcation of the portfolios. The statute  
10 says new trades and doesn't really say anything  
11 about existing, but I think in practical reality,  
12 bifurcating your option, but with your swap back  
13 as a problem in the first instance, as Garry said,  
14 if you then take your existing swap back, you're  
15 new, and you're existing bifurcate that again,  
16 portfolio managers like Bill and others are going  
17 to have a difficult job managing all the rest  
18 across all of their portfolios, which is split  
19 into different buckets.

20           So, I think whilst the statute may say  
21 only new business, I think the reality is you'll  
22 see a lot of people looking to lift their existing

1 portfolios, as well, even though it doesn't  
2 mandate that.

3 MR. DeLEON: Yes, and just to add to  
4 that, and Daniel touch on this, I think while  
5 there's a mandate to move certain products and  
6 certain things, it should be kept in mind though  
7 that certain products want to go with other  
8 products.

9 So, for example, if you look at the  
10 market now, there are several venues for clearing  
11 interest rate swaps, and we can argue the merits  
12 of all of them and they're all competitively-based  
13 and they're all open access. There is no good  
14 market right now for interest rate options. There  
15 is no good clearing mechanism for any of that, and  
16 if you look in many books where people will run  
17 balanced books, moving only one part and not the  
18 other, as Daniel pointed out and as Garry pointed  
19 out, will create more and not less risk in the  
20 system.

21 So, I would argue that if I had a choice  
22 of being forced to move all my interest rate swaps

1 without my options or I could wait and move both  
2 of them together, depending on my portfolio and  
3 its construction, I might want to move them both  
4 together as opposed to split because that would be  
5 risk-reducing, not risk additive. So, I think  
6 there's also a component of this which is while  
7 you want to mandate certain things, there is going  
8 to be a competitive pressure to move more products  
9 that aren't mandated together.

10 For example, cross-jurisdictionally, if  
11 I have a negative basis book or I have a CDS basis  
12 book where I have a correlation book of index for  
13 a single name, I'll have an incentive to want to  
14 move both the single name and the single index  
15 together because otherwise, yet again, I'll create  
16 more risk and split risk than I would otherwise  
17 because you'd have some stuff cleared. So that's  
18 effectively one counterparty with initial margin  
19 and then you'd have other stuff non-cleared with  
20 different counterparties with or without margins.  
21 So, you've now got no margining offset and no  
22 positioning offset.

1                   So, while we're talking about the  
2           phasing here, which I think is important in terms  
3           of forcing people to go, I think you need to  
4           realize that there are going to be market  
5           participants who will want to go faster on certain  
6           products than the phase-in as things become  
7           available.

8                   MR. O'CONNOR: I think that comes back  
9           to the point earlier, if we wait for the perfect  
10          solution, we may never get started. So, I  
11          appreciate that the phasing-in needs to be a  
12          period of significant length, that everybody has  
13          the opportunity to do what makes economic sense  
14          for them, that they're not forced to do something  
15          that doesn't make commercial sense. But and I  
16          take the Chairman's point that percentages may not  
17          work from a legal perspective, but you can achieve  
18          something similar by managing the windows under  
19          which mandates exist for different types of  
20          products and different types of people. And  
21          Bill's made a very good case for why some parts of  
22          his business might want to move on at the end of

1       that process rather than some parts of his  
2       business that might want to move earlier.

3                So, I think by managing those windows,  
4       you can achieve something very, very similar and  
5       something sensible that gets the ball rolling,  
6       doesn't force people to do things that don't make  
7       commercial sense and achieves a better clearing  
8       result as a whole.

9                On your point about a comment period on  
10       product, my understanding of the Act is that  
11       clearing organizations that were clearing product  
12       prior to enactment were grandfathered on that, so  
13       we have, in fact, already make application for  
14       those legacy products that we were clearing at the  
15       time.

16               CHAIRMAN GENSLER: I think John should  
17       go through or either Eileen, though I think you're  
18       accurate, we still have the public comment period.  
19       So, under a rule that Eileen Donovan and John can  
20       describe, it might be worthwhile to talk about  
21       that 90-day process.

22               MR. O'CONNOR: So, I was at risk of the

1 ball being in my court. I wanted to make sure --  
2 I knew it was in yours.

3 CHAIRMAN GENSLER: Now it's in -- yes.

4 MR. O'CONNOR: Okay, very good.

5 CHAIRMAN GENSLER: They can describe it,  
6 I think, right?

7 MR. LAWTON: First, to address the  
8 grandfathered products, basically, we talked to  
9 the clearinghouses because certain things, as you  
10 mentioned, are deemed submitted and clearinghouses  
11 have voluntarily given us information about the  
12 things that are deemed submitted. And basically  
13 the 90-day clock on those will start on July 15.

14 MS. DONOVAN: When the clock does start  
15 running though, there will be another 30-day  
16 public comment period on each group, category,  
17 type, or cost of swaps, so the Commission is  
18 posting for review. So, there will be another  
19 comment period.

20 MR. PETERSON: Bill, I think you  
21 anticipated maybe a question that I was going to  
22 ask a little bit earlier with respect to CDS,

1       which obviously is a product class that is of  
2       particular interest to those of us at the SEC.  
3       Interested in sort of views as to the sort of CDS  
4       index versus single name in terms of readiness for  
5       clearing, readiness for clearing mandates, harking  
6       to Chairman Gensler's point on portfolio  
7       marginining. And I should say that I think those of  
8       us at the staff and I think our colleagues at the  
9       (inaudible) and the CFTC staff are both very  
10      focused on the importance of making the  
11      environment work for portfolio margining for CDS  
12      in particular. The perception is that index  
13      products are typically more liquid than single  
14      names. Would it make sense to phase index  
15      products first to the extent that they're  
16      available in terms of clearing mandate or should  
17      CDS be considered together?

18                 MR. DeLEON: Unfortunately, the CDS  
19      market, while due to the big bang and small bang  
20      is much more homogenous than the rates market or  
21      other markets in terms of structure. I think  
22      going to Daniel's comments earlier, the CDS market

1 is much less homogenous along product lines  
2 because you have a much higher bifurcation of what  
3 is liquid versus what is illiquid. Obviously, if  
4 you stick with index or you stick with certain  
5 single names, they will be incredibly liquid,  
6 highly-traded, frequently quoted structures. If  
7 you move though to the non-standard dates in  
8 single name or even in index, and then as you  
9 start moving down the credit spectrum, you will  
10 wind up with things that literally trade by  
11 appointment or trade once or twice a week and some  
12 of those are even less.

13 So, there's going to be an issue there,  
14 and I agree that ultimately moving these to  
15 changes will increase price transparency or reduce  
16 the issue of price uncertainty, which leads to a  
17 lot of disputes. And there are no dealers at this  
18 table today, but I can tell you I have a lot of  
19 disputes with some of those names. And that will  
20 help reduce this because by being on an exchange.

21 So, I think you need to be careful about  
22 the assumption that they're all homogenous, single

1 name versus index. However, I do think that you  
2 could get a lot of risk reduction by moving index  
3 first. But, at the end of the day, you want the  
4 end date to be about the same because, ultimately,  
5 you want to have the whole product, both single  
6 name and index, and possibly tranches, which are  
7 even less liquid, sort of finalize the same date  
8 because you don't want to have the tale of certain  
9 single names not being cleared.

10           So, I think that from that standpoint,  
11 you could say index starts first, and, yet again,  
12 you'd have the commercial opportunity to trade and  
13 clear single names before the mandate kicks in.  
14 But the end date is what's important, is you want  
15 to have end dates coordinated where you say, okay,  
16 on this date, everything needs to get cleared.  
17 People will have the ability and desire to go  
18 before, depending on what's in their book, what  
19 they think their commercial makeup is, and what's  
20 best for their clients in terms of collateral  
21 management, what their view on the credit market  
22 is, et cetera, but you want to have the end dates

1 coordinated, and I think that's the important  
2 thing. Lots of people want to start before, and  
3 that'll be a question of what's commercially best,  
4 but the end date is what matters.

5           So, I would focus more on than that the  
6 start date of these things, and I don't know if  
7 you'll have the luxury of being able to delineate  
8 start dates for different parts of the index of  
9 the single-name market or you have to book that  
10 together. I haven't focused on that with my  
11 lawyers, but you probably have. But, clearly,  
12 certain names that will trade more frequently, I  
13 would want to see pushed before the less liquid by  
14 appointment names.

15           MS. BRADBURY: Yes, I think the  
16 single-name CDS that are components of the index  
17 ideally would come at the same time. I think even  
18 within single-name, I think the financial names  
19 are the ones that tend to be traded the most.

20           I mean, for example, we would use those  
21 essential as credit protection with our  
22 counterparties. So, if there's a bank that's

1 holding a lot of the initial amount for us, we  
2 have a big counterparty exposure to them a la  
3 Lehman Brothers, and so, being able to make those  
4 contracts clearable might be a very good thing.

5           The other interesting thing in CDS is  
6 that as you bring in end-users, non-dealers, the  
7 contracts that people will want to clear will  
8 change a little bit. Dealers tend to focus more  
9 on investment grade index, and there are many on  
10 the buy side who use high-yield index CDS because  
11 we might be trading distressed at or other things,  
12 and we need to hedge those with the high-yield  
13 index, and those are not currently a real focus on  
14 the dealer side, so they're not as commonly  
15 cleared. So, you will see some product evolution  
16 as you bring in new participants to the  
17 clearinghouse.

18           MR. MAGUIRE: Just speaking, hopefully,  
19 on behalf of all of the clearing house, I will  
20 risk that, it's all very interesting to hear about  
21 these sort of lower-liquidity, slightly more  
22 esoteric products coming into clearing. But I

1 think we just have to sort of have a sobriety  
2 about whether they can be cleared from a default  
3 standpoint, as well, or very well in a nice,  
4 peacetime liquid market environment, but these  
5 things change their characteristics during a  
6 default kind of event. So, I think what we're  
7 starting to see here is that the clearinghouses  
8 aren't going to become more systemic and important  
9 to the market.

10 Historically (inaudible) has been taking  
11 liquid- commoditized, standardized type products  
12 into a clearing environment. We're now sort of  
13 flipping that on its head a little bit and  
14 starting to think that clearing could make  
15 products more liquid, standardized, and  
16 commoditized. So, that's quite a structural  
17 change, and I'm not sure we're there yet.

18 So, I think we just need to be balanced  
19 in our view of what we bring in because the  
20 worst-case scenario is we're left with an illiquid  
21 single name or a very out- the-money swaption type  
22 product in a default scenario that we can't get

1 our self. And I think that needs to be considered  
2 soberly before we enter into going any further  
3 down the future in these slightly more esoteric  
4 products.

5 MR. EDMONDS: Yes, Dan, I would echo  
6 your comments. I mean, there's certainly what  
7 I'll call a lot of low-hanging fruit that can be  
8 moved in. I mean, if you look at the voluntary  
9 actions within the energy and commodity markets  
10 and how that evolved over time, I mean, it  
11 continued to grow, its confidence levels continued  
12 to increase.

13 To Darcy's point about all the names in  
14 the index, I mean, that's a capital efficiency,  
15 and I don't want to words in Darcy's mouth, but  
16 that's a lot to do with the capital efficiency  
17 associated with that. And they can have the right  
18 type of balance book, but as it relates to the  
19 financial names from a regulatory perspective,  
20 we're going to have to have a very honest  
21 conversation about the wrong-way risk associated  
22 with having pieces of the clearing names in the

1 index. But that's an exact product that a number  
2 of the market participants want to have access to,  
3 and that may not be the conversation that you're  
4 prepared to have day one. So, that will take some  
5 time.

6 MS. BROWN-HRUSKA: Yes, I think I agree  
7 -- I mean, Dan, I think we agree fundamentally  
8 because that's my concern, is that we don't get  
9 the cart before the horse, and we make sure that  
10 we allow -- I mean, the markets have really made  
11 great strides in clearing in the interest rate  
12 space and CDS spaces as you're really opening up.  
13 And I think that, again, we want to make sure that  
14 in some sense there is this sort of market-driven  
15 process that we respect, that we take the signal  
16 from. The asset managers who do have different  
17 risk profiles, whose asset classes do represent  
18 different degrees of counterparty credit risk,  
19 some being quite low and in the interest rate  
20 space some having a great deal of liquidity.

21 So, my caution would be consistent with  
22 the volunteer period, consistent with the sort of

1 sequencing, especially in the areas where there is  
2 not a lot of standardization and there is a great  
3 deal of variance in the risk profile.

4 MR. MAGUIRE: I think it's gone back  
5 onto the open access point, as well. From our  
6 perspective, from my firm's perspective, we're  
7 agnostic in terms of the sequence. I think those  
8 first were, I think we can all say this: We're  
9 open for business, we all want more clients and  
10 customers, quite frankly, so I don't think we're  
11 going to be prescribing dealers first, MSP second,  
12 asset managers third or whatever. I think, for  
13 us, the rules need to be finalized, then we can  
14 get our ducks in a row, get everything finalized  
15 from our perspective in terms of internal  
16 governance and other regulatory bodies, et cetera,  
17 but then open for business.

18 And I like the point Bill raised about a  
19 mandate rather than a start date. That's quite a  
20 neat way of dealing with it, and then having a  
21 voluntary period.

22 MR. LAWTON: One quick comment and then

1 one question. I have to correct something I said  
2 a few moments ago. Basically, for the  
3 pre-existing, pre-cleared swaps, the DCOs, and we  
4 have agreed that the clock would actually start  
5 when our process rules final, which may or may not  
6 be July 15.

7 And then with a question that follows  
8 onto what Dan just said, if on open for business  
9 the DCOs or clearing agencies were able to clear  
10 clients at all levels, and, early on, there was a  
11 mandate say for dealer-to-dealer trades, what  
12 would be a practical timeframe to then extend the  
13 mandates? So, you have voluntary clearing for  
14 those end-users who are ready to do it and those  
15 firms that were ready to accommodate it, and for  
16 others, you'd have some time to get ready what  
17 would be a time to transition into full mandatory  
18 clearing across the product for all market  
19 participants.

20 MR. DeLEON: I know Garry's not going to  
21 like my answer, but we still think it's probably  
22 18 months to 24 months to get everyone onboard

1 given the documentation issues associated with  
2 opening that money accounts with that many  
3 clearing organizations. There are just a massive  
4 number of accounts that are involved if you think  
5 about what's involved.

6           So, taking a simple example, if I want  
7 to open 2,000 accounts, I need to have all my  
8 possible counterparties open so that anywhere  
9 between 8 to 12 or possibly 15 because I need the  
10 best liquidity possible, I need at least 3  
11 clearing brokers to clear, and then I have to do  
12 that for each one of the exchanges I'm going to  
13 use. So, just using the ICE, LCH, CME, and if we  
14 did IDCG, right, that's four. So, you'd just do  
15 that, and then you take the rest of the buy side,  
16 that's the amount of documentation that needs to  
17 get opened, and every client needs to get  
18 approved. They have to do a KYC and all of the  
19 accounts need to get set up, all the custodians  
20 needs to set up the wire instructions. And that's  
21 just not something you can flip the switch for  
22 because there's legal negotiations involved, as

1 well as system work that needs to get done.

2           So, I'm just trying to say that not that  
3 certain firms couldn't move incredibly quickly to  
4 get that done, there's just a massive amount that  
5 needs to get done, and you need to get people to  
6 sign and negotiate documents. So, while everyone  
7 at this table who is offering to do clearing, I  
8 can tell you if I wanted to clear with them  
9 tomorrow, it wouldn't be possible because I'd have  
10 to go negotiate legal documents, I'd have to call  
11 and get things set up, and just setting all that  
12 up and getting everyone to focus is not a one-day  
13 event, unfortunately. I would love it if they  
14 would take our terms and say done, and we would be  
15 done in a day, but, unfortunately, they have their  
16 fiduciary responsibilities. So the commercial  
17 terms we want may not be the commercial terms  
18 they're willing to give, and that's not a negative  
19 statement on anyone's part, it's just what's  
20 involved.

21           So, to your answer, I think 18 to 24  
22 months is probably the right answer, although I

1 know Garry would like it to be much shorter.

2 CHAIRMAN GENSLER: You're answering  
3 (inaudible).

4 MR. DeLEON: Yes, I'm answering it as  
5 someone who's managing hundreds of subaccounts,  
6 and I'm just pointing out that even if I was  
7 managing 20, I'd have to -- and you think about  
8 how many hedge funds there are that manage between  
9 5, 10, 20-something, and Darcy could speak better  
10 to that, accounts, just the sheer numbers, because  
11 they're going to have to call and negotiate with  
12 everybody. So, there's just a bottleneck  
13 involved, and it's not a bad-faith bottleneck,  
14 it's just a physical bottleneck. And when LCH or  
15 CME gets hundreds of thousands of account-opening  
16 documents, they can't do that in a day. And I've  
17 spoken to Mark about this in particular, and I can  
18 tell you his response would be I'd love to open  
19 200,000 accounts tomorrow for the rest of the  
20 street, but I can't physically do it, and that's  
21 the issue.

22 MR. GREENBERGER: Yes, I think that the

1 point that the Chairman's made with Bill is that  
2 subaccounts, huge numbers of subaccounts can be a  
3 deferred process. I must say 18 months to 24  
4 months seems to me to be a very, very long period  
5 of time to accomplish something that's supposed to  
6 avoid systemic risks. While those subaccounts are  
7 waiting, you're not going to have clearing and  
8 you're not going to have capital requirements, et  
9 cetera, et cetera.

10 The other thing I would say is your  
11 discussion, you've listed four clearing  
12 facilities. I think in terms of Dan's talk about  
13 they'll be no anti-competitiveness, Dan's clearing  
14 facility will be open to all comers is what I  
15 understood he said. The issue isn't the  
16 competitiveness or who gets access to the  
17 clearing, the issue is how many clearing  
18 facilities are there going to be. And I think one  
19 of the heartening things about the discussion  
20 today reinforces my gut instinct that clearing is  
21 going to be a very attractive business and there  
22 may be more than four that you'll want to look to

1 if time is allowed for other entrance to catch up.

2 And the further point I would make is  
3 there will now be competition about the clearing  
4 facilities, and it may not be PIMCO's interest to  
5 take time to open accounts with every clearing  
6 facility, but to listen to those clearing  
7 facilities that are going to offer you better  
8 terms. The negotiation process you talk about is  
9 going to go much easier for PIMCO if you have a  
10 larger number of clearing facilities trying to do  
11 business with you than limiting it to the four  
12 you've already mentioned.

13 MR. COX: I would just like to add that  
14 I think it's very important that we stress that  
15 there be a mix of participants for any start date  
16 of mandatory clearing.

17 To Bill's point, I think the flip of  
18 that is that the task of registering thousands of  
19 accounts and taking on all this workflow is going  
20 to be important. That's going to incentivize the  
21 market if you have this mix of participants to  
22 develop the clearing services to tailor those

1 clearing services to those type of participants.  
2 It's going to drive the kind of operational  
3 efficiencies, it's going to serve the customers  
4 the most, and I think that my sense is that the  
5 intent on the act by Congress was to serve  
6 customers.

7           So, I think it might be important to  
8 make sure that there's a mix of participants, so  
9 as clearing evolves and as we tackle these  
10 operational issues and legal issues and account  
11 registration issues, that the in clients' needs  
12 are serviced. And that's only done if they are  
13 right there at the beginning of the mandate and  
14 not kind of delayed for other participants.

15           MR. PETERSON: I wanted to go back  
16 briefly to, again, Darcy's, I think, general point  
17 not to overwork it, but a distinction between  
18 access and clearing mandate.

19           To the extent that there are buy side  
20 firms out there that are prepared to clear, ready  
21 to clear, want to clear, to what extent should  
22 regulators focus on trying to nail down and make

1       sure that clearinghouses have appropriate open  
2       access provisions in place, whatever that means,  
3       before we can advance a focusing on individual  
4       clearing mandates so that those at some level, buy  
5       side participants who are prepared to and can deal  
6       with a risk management sense everything else are  
7       able to do so?

8               MR. EDMONDS: I don't believe until the  
9       Commission's finished the rule-writing and we  
10       adopt and become compliant with that rule-writing  
11       that that process can even start. And that's the  
12       big challenge. I think we would all take the same  
13       risk that Dan did. We would all like to have the  
14       rulebook finally done and say here it is, let's  
15       go, and let's have that give-and-take and hear  
16       back and talk about some of the commercial aspects  
17       that different types of customers might bring in.  
18       The problem is we're stuck in waiting on that  
19       rule-writing to be done in order to complete our  
20       rule set and not only certify it back to the  
21       agencies, but also put it out in front of the  
22       public and get that required feedback we need so

1 those conversations can begin in earnest.

2 MR. O'CONNOR: I would disagree to an  
3 extent. I think that Dan has an operational  
4 clearinghouse, he has a rulebook. It might not be  
5 compliant with the final rule set, he may have to  
6 do work on it, but he has a rulebook that he uses  
7 today, and he does a significant amount of  
8 business in today.

9 Mark has a rulebook; he's done business  
10 in his clearinghouse. People can use it if they  
11 choose to use it.

12 We have a clearinghouse, we have a  
13 rulebook. We have business inside the  
14 clearinghouse.

15 I have no doubt that those rulebooks  
16 will need to change to adopt to regulation, but to  
17 a greater or lesser extent. I mean, it is  
18 available today. So, the rulebooks are there.

19 MR. EDMONDS: And to be clear, Garry,  
20 I'm not talking about the current, I'm talking  
21 about the proposed changes because at least what  
22 we've heard, and I'd be interested to hear Bill,

1 Darcy's, and other's opinion, is they want to know  
2 what they're going to be going to, not where  
3 they're coming from necessarily.

4 MR. O'CONNOR: No, certainly you need  
5 certainty about what that rulebook's going to look  
6 like, and the further along we get in the  
7 rule-writing process, the closer we'll get to  
8 that, but you have many examples here at the table  
9 and elsewhere about commercial alternatives to  
10 clearing. Everyone's trying to present a good  
11 clearing model. The vast majority of the  
12 rulebooks that are out there today are going to be  
13 Dodd-Frank-compliant. We're talking about tweaks  
14 rather than rewrites of rulebooks so you have a  
15 lot of the information.

16 MR. DeLEON: Just sort of by way of sort  
17 of experience we've had here, and Darcy may be  
18 different, but, right now, the industry is working  
19 very hard to come up with new standard  
20 documentation for cleared derivatives, and this  
21 has been an ongoing process for quite a while.  
22 The industry, fortunately, is close to finalizing

1 it.

2 We think we've gotten through most of  
3 the major issues, but this has been a big industry  
4 thing. And one of the major issues that's come up  
5 and that's almost resolved and just by way of the  
6 rules, and this is not a comment on anyone in  
7 particular, is we don't know what the final staff  
8 rules are going to be. And we're trying to put  
9 language into this standard documentation based  
10 upon what we think the final staff rules will be,  
11 because depending on what those are and what the  
12 rules are in terms of doing a trade and getting it  
13 cleared and notification will change how  
14 commercially you act and what your  
15 responsibilities are.

16 So, there are things going on that the  
17 industry is trying to move ahead on to accomplish  
18 because they do want to clear. We do want to move  
19 this process along, but there are things that as  
20 not being finalized, we can't do or we have to  
21 estimate, which will require us going back and  
22 changing things or writing things in a more

1 open-ended manner.

2           So, this is not meant as a complaint,  
3 but just goes to, yet again, why the timeframe  
4 can't be flip a switch and do stuff tomorrow  
5 because not everything is known. And while we try  
6 to write documentation to think about that and  
7 this dealers, FCMs, banks, buy side, custodians,  
8 right, we just don't have all the facts and we  
9 will have to adapt things. Hopefully, we'll guess  
10 right and the adaptations will be minor, but there  
11 is a chance that something comes up which is very  
12 different than we thought and the documentation we  
13 wrote doesn't work.

14           And I'll give you an example of that.  
15 We negotiated and many other people did, 18 months  
16 ago to start clearing certain documentation, and  
17 with the passage of Dodd-Frank, that documentation  
18 no longer works, which is why we're redoing all  
19 the standard documentation to be more  
20 Dodd-Frank-compliant. So, I have docs with ICE  
21 and CME and LCH to clear stuff on the client side,  
22 but given everything that's changed, we don't want

1 to use those docs anymore. So, there's a chance  
2 that if things are different than we think they're  
3 going to be, we have to renegotiate. So, this is  
4 not a complaint, this is just an operational,  
5 legal thing because we have fiduciary  
6 responsibility to our clients.

7 MR. PETERSON: Right. And just to be  
8 clear, I wasn't suggesting before that the  
9 regulators ought to force changes in market  
10 practice in advance of sort of finalizing rules.  
11 I mean, in part, the issues about open access and  
12 the obligations to ensure open access will be  
13 determined by what the final rules look like. I'm  
14 only sort of questioning whether the question of  
15 providing access could be considered and mandating  
16 access can be considered apart from the clearing  
17 mandate, per se.

18 MR. BUTHORN: But I think this is what  
19 always happens, right? I mean, we always in our  
20 markets get into a situation where we do things,  
21 we make changes, and then we have to change later  
22 on because we realize there were practicalities

1 about what we're doing that are different than the  
2 reality. I think from the dealer's perspective  
3 the key priority for us has to be during this  
4 phase that we simplify the considerations of how  
5 to get to clearing. And, to be frank, trading a  
6 clearing to your swap and giving it up to LCH is  
7 very similar and almost identical to doing a  
8 two-year swap or a five-year swap. There's very  
9 little distinction there.

10 What matters is what we have to do with  
11 our clients, to the Chairman's point before,  
12 around getting them documented, getting them  
13 through due diligence and getting them onboard,  
14 those are really key priorities. So, from our  
15 perspective, I think it's a very straightforward  
16 question. If the priority is timed and if the  
17 priority is to accelerate, which I think those are  
18 all good things for everybody, then what we have  
19 to do is focus on what simplifies the process at  
20 every potential bottleneck. And, for us, it's  
21 clearly in the documentation process, and I think  
22 that we've heard that.

1                   So, we would very much like to see as  
2 much from the regulators, as much delineation and  
3 simplification on those points as possible because  
4 that allows us to focus. It allows to take  
5 scarce, knowledgeable resources, deploy them  
6 against the clients and deploy them against the  
7 policies, the procedures we need to put in place  
8 for those clients, and then get this thing going.  
9 Otherwise, what'll end up happening is we'll be in  
10 a constant debate about this isn't done and that's  
11 not done, we can't do it yet because this isn't  
12 finished, and that's going to be a problematic  
13 debate if we're still having it a year from now.

14                   MR. GREENBERGER: One point I would make  
15 that I think arises from your question about,  
16 well, can we do certain things quickly and then do  
17 other things later on, do free and open access  
18 after we get the clearing process started, I think  
19 historically speaking, once you get something up  
20 and running and there's a methodology to it, it's  
21 very, very hard to then say, oh, we're going to  
22 add these fill-ups on, we're going to make it a

1 different way for people to get access or we're  
2 going to have different conflict of interest rules  
3 or ownership rules. I think it's imperative that  
4 when the clearing facility starts, that the  
5 clearing facility, for the public interest to  
6 understand immediately everything that it needs to  
7 comply with about who gets access, who has  
8 ownership, because if you don't, I'll tell you,  
9 you'll get the thing started, and six months,  
10 you'll want to do something else and you'll be up  
11 in front of Congress answering questions about why  
12 you're upsetting the clearing process by adding  
13 new rules. It should all be started at one time.

14           And I think the documentation is  
15 critically important, but I've just seen too many  
16 deals -- I don't practice law anymore. I used to  
17 practice law. I've seen too many deals get done  
18 really, really quickly when they need to get done  
19 quickly. Now, I'm not saying it should be a  
20 reckless time period, but this documentation  
21 problem, which I endorse and I compliment at the  
22 buy side for being so concerned about, that can be

1 done very, very quickly when it needs to get done  
2 quickly.

3 MR. PETERSON: Just --

4 MS. BRADBURY: I think in addition --  
5 oh, I'm sorry. Go ahead, Sam.

6 MR. PETERSON: Maybe just to add to that  
7 and just as background, I mean, we work with many  
8 small, financial end-users, I think most of which  
9 aren't looking forward to clearing. In regards to  
10 the point Michael just made, I think the  
11 documentation and steps can be taken very quickly  
12 for a large client that presents a big  
13 opportunity, but that is sadly not the case for  
14 many smaller, financial entities. And with where  
15 Title VII ended up, we're talking about a mandate  
16 for clearing that applies to thousands of  
17 financial end-users and many of which don't pose  
18 systemic risk and don't have the infrastructure in  
19 place right now, don't clear futures, or don't  
20 trade futures or clear trades right now.

21 So, to sort of jump back to the  
22 conversation that Darcy had with the Chairman, I

1 would support a sort of volume or size bucket in  
2 addition to the buckets in your concept paper to  
3 account for the fact that there are, for instance,  
4 many small banks that are very infrequent hedgers  
5 and should be accommodated in getting them set up  
6 for a clearing.

7 MR. GREENBERGER: I would just say it's  
8 a sad fact of life and you can look at the  
9 unregulated market and the ISDA standard  
10 agreements. The smaller entities, this is going  
11 to be a highly-standardized market in the end. To  
12 the extent it isn't now, I think with price  
13 recovery and documentation being developed and  
14 even small users' insistence on getting a hedge in  
15 place is going to mean that standardized products  
16 are going to be used. I don't see any small  
17 hedgers even getting from clearing facilities some  
18 kind of different documentation and big hedgers.

19 MS. BRADBURY: I was just going to say  
20 in addition to the rules specifically governing  
21 the clearinghouse, which are obviously important,  
22 and you all have that largely underway and have

1 received many comment letters, which I'm sure you  
2 read deciduously, but I think the capital margin  
3 rules will be really important.

4           Going back to a point that I think was  
5 made earlier, I think you can't put in place new  
6 margin regimes in un-cleared swaps until everyone  
  
7 has an opportunity to clear their swaps because  
8 it's supposed to be an incentive to clear, but if  
9 you don't actually have the ability to clear, it  
10 would be obviously a big penalty. But I think  
11 understanding the pricing at the end of the day is  
12 going to drive the marketplace. So, whether it's  
13 the dealers or the buy side understanding what the  
14 capital treatment is on the dealer side and  
15 understand what the margin rules are for  
16 everybody, I think we've all gotten over the idea,  
17 okay, clearing, it's going to happen, it's a fact.

18           We understand the legislation passed,  
19 and some of us are more enthusiastic than others,  
20 but now you're really looking at cost. What's it  
21 going to cost me to clear, what is the new margin  
22 regime look like? How can I get competition

1       between my dealers so I can get clearing brokers  
2       that work for me that will do portfolio margining  
3       within the clearing deal broker? There's a lot of  
4       different ways that you can tackle these, but I  
5       don't want to leave off that important thing that  
6       does fundamentally drive the economics of the  
7       marketplace, which is the margining regimes at the  
8       end of the day.

9                   MS. BROWN-HRUSKA: I would just note  
10       that, unfortunately, there's no clearing members  
11       here in terms of expressing their kind of progress  
12       toward achieving open access or at least not open  
13       access, but setting up relationships with the  
14       thousands of small customers that Sam mentions. I  
15       think that that's you have to have -- we kind of  
16       have to include the clearing members in the  
17       conversation and understand the process by which  
18       they go through to do due diligence with  
19       individual customers and manage the risks because,  
20       after all, they do assume the risk and provide  
21       credit to a vast number of users, and it's  
22       envisioned that they will play a central role.

1       So, I think it's very important that they also are  
2       considered sort of part of this process.

3               MR. MAGUIRE: I think coming back to  
4       what John's original question was on this about  
5       sort of the timelines and the DCO's perspective.  
6       Again, thinking about all of us, we have  
7       rulebooks, to Garry's point. We clear today  
8       actively and size in many different products. We  
9       will have new rulebooks; we will be  
10      Dodd-Frank-compliant when the new rules are  
11      finalized. We have a period of time, which we  
12      talked about on some of the panels yesterday,  
13      about the impediments or obstacles we have to go  
14      through to comply, but we will. We're open for  
15      business. We're all working on pipework and  
16      improvements and connectivity to make this more  
17      streamlined.

18              So, I think, in summary, I don't think  
19      really the clearinghouses are the real impediment  
20      to clearing here. I think it's the broader  
21      infrastructure that we need to consider. And I  
22      don't wish to be bullish around this, but I think

1 we will make sure we comply all the way through  
2 this. It's really, I think, the broader  
3 infrastructure, and, if you will, the ecosystem  
4 and the documentation, the client readiness, the  
5 FCM readiness, as well, that needs to be  
6 considered in terms of finding the timeline  
7 predominantly.

8 MR. DeLEON: I just wanted to be clear  
9 that when I say there's time required to do  
10 things, this is not meant as a bad-faith comment.  
11 But I do want to point out, though, that, yes,  
12 things can get done quickly, but you want to avoid  
13 the situation where two people come to the table  
14 to negotiate a document and it has to get done at  
15 the end of the day. Because when that happens,  
16 one player is not happy and one player takes  
17 advantage of the other. And getting to Sam's  
18 point, and I think you want to prevent that, and  
19 that's why it can't happen so quickly because  
20 large players or more sophisticated players will  
21 want to protect themselves, and there will be  
22 commercial interests, and these things will not

1 get done in a day. And even if they got done  
2 quickly, there is still a timeframe issue of  
3 getting these things done.

4           And I can tell you from experience  
5 because my firm has done this and all the people  
6 at this table have done this and the people in the  
7 audience, when you want to add an account to open  
8 and clear, it takes days to get done, even when  
9 documentation is standardized. You have to have a  
10 huge number of touch points. And I just want to  
11 point out that this is a physical fact, it's not  
12 like walking into a store and buying an iPad. And  
13 guess what? If you want to do that, there may be  
14 a backlog, and it may not be there, even though  
15 Apple would be more than glad to sell it to you.  
16 So, I just want to point out there are bottlenecks  
17 you can't get around.

18           MR. GREENBERGER: Bill, I'm not saying  
19 things should be done in a day. We're looking at  
20 the relativity between needing 18 and 24 months  
21 and setting something up in 6 months or 8 months  
22 or 9 months. That's what I'm talking about. I

1       said we should not have reckless timeframes, but I  
2       don't think we should have overly passive  
3       timeframes either.

4               MR. NICHOLAS:  Yes, just to address  
5       John's point about the timing of the open access  
6       issue, I mean, I think it is critical to address  
7       that upfront and as soon as possible, and  
8       particularly issues relating to eligibility,  
9       clearinghouse participation, I think to start the  
10      process and then address those issues after the  
11      fact.  I mean, it would put certain types of firms  
12      at a disadvantage, and I think some firms are  
13      reluctant to invest in the infrastructure required  
14      until they know for sure that they're going to be  
15      eligible.

16             MR. RAMSAY:  I wanted to maybe talk  
17      before we run out of time, which is very soon.  We  
18      touched on Europe very briefly, and I don't know  
19      whether there was a consensus on this or not, but  
20      is there a sense that it does not make sense in  
21      terms of our own timing in the U.S.  For clearing  
22      mandates to await the completion of a regulatory

1 regime applicable to clearing in Europe or what do  
2 people think about that?

3 MR. GREENBERGER: Well, I said earlier I  
4 think it would be a mistake. I think that what  
5 you set up is going to be a template and a model  
6 because I think it's well considered and you've  
7 had so much substantial input. If you play a  
8 waiting game, everybody is going to be waiting for  
9 the next person to move. Somebody has to move  
10 first. I think the SEC and the CFTC with the  
11 proposed rules in place, with the comments that  
12 you're getting in written form through these  
13 roundtables is going to be ready to go. And I  
14 perceive from this discussion a lot of interest  
15 from both the clearing side and the buy side to  
16 get started here. And I think if we do get  
17 started, I have a high degree of confidence we're  
18 going to set up a system that's not only going to  
19 prevent systemic risk, but it's going to be very  
20 profitable and lucrative at the same time with a  
21 lot of opportunities for people to contribute and  
22 take part in this. That's why I emphasized we

1 shouldn't be looking for clearing facilities, we  
2 should be looking at a lot more than four. I  
3 think that's going to be in everybody's best  
4 interest.

5 MS. BROWN-HRUSKA: I would never accuse  
6 this commission of waiting in this rule process.  
7 It seems to me that this group has done an awesome  
8 job of working very hard to move this process  
9 forward, but I also recall a very strong  
10 relationship with other jurisdictions in Europe  
11 and in the UK that are represented here. And I  
12 think it's critically important to interact on a  
13 very basic level going forward on the phasing even  
14 of these proposals.

15 I think there's the real risk that you  
16 could have flight of certain market users and  
17 intermediaries to that market if you move too  
18 hastily and create an environment that makes it  
19 difficult to go forward. On the other hand, I  
20 think that, again, this process is working well;  
21 we're seeing the SEFs come online. I think at  
22 that point I would second that point that we do

1       need to move forward on the SEF front. It's very  
2       important, but we need to do a very deliberate  
3       analysis of the requirements.

4               MS. BRADBURY: I guess I would be more  
5       worried if I thought two continents were coming  
6       out in a very different place. Certainly, the  
7       conversations we've had with regulators in Europe  
8       and if you look at the legislation, it will  
9       probably never be identical. The securities  
10      market and the futures markets are not regulated  
11      identically now, but I feel like there is  
12      convergence on the big ideas, and all of our  
13      counterparties are major, global institutions, and  
14      they're going to have a pretty common product  
15      offering at the end of the day.

16             So, I guess I wouldn't be a huge fan of  
17      waiting for them to catch up necessarily. The  
18      other thing is without actual legislation, in many  
19      ways, the European markets are ahead of us. I  
20      mean, we do much more automated trading of  
21      interest rate swaps that are European, for  
22      example, as opposed to in the states. It just

1 happens. They don't call them SEFs, right? But,  
2 so in many ways, the European market could be more  
3 advanced. Certainly, London has been kind of the  
4 headquarters of the swaps market for decades now,  
5 and, so, I imagine at the end of the day we'll  
6 kind of get to the same place, even if we do it in  
7 slightly different timing.

8 MR. EDMONDS: I would add that this is a  
9 global market, and behaving in a manner that is  
10 inconsistent with the recognition of that would  
11 seem to be irresponsible at this point. So,  
12 certainly, we need to lead. I think Congress made  
13 that decision when they worked on Dodd- Frank.

14 At the same time, the concerns that have  
15 been talked about here today and the issues that  
16 Bill raised of adding one more account, if we're  
17 going to add that one more level of bifurcation of  
18 that, the unintended consequences are going to be  
19 someone's at a competitive disadvantage. I don't  
20 know if any of us can handicap who that would be,  
21 but we certainly don't want it to be this  
22 infrastructure at the end of the day. When I say

1 "this infrastructure," the industry as a whole  
2 regulated by this agencies.

3 MR. O'CONNOR: I would compliment the  
4 commissions on the amount of work that they've  
5 done working with their international  
6 counterparts. I know that's clear in your  
7 proposed rulemakings and in testimonies of  
8 commissioners, that despite the enormous workload  
9 that you're under, you are reaching out and you  
10 are working with your international counterparts.

11 And to Darcy's point, I think that  
12 provided that you're ending up in the same place,  
13 the timing of when you'll end up in that place is  
14 probably less important than the form of the  
15 solution, and I think the form of the solution is  
16 already achieving a level of harmony that, to  
17 Chris' point, is not going to create sort of  
18 regulatory arbitrage in terms of financial  
19 infrastructure.

20 MR. RAMSAY: I think it's probably a  
21 good idea to break on the compliment to the  
22 agencies. (Laughter) So, yes, I guess a 15-minute

1 break. Thank you. This has been a terrific  
2 discussion.

3 (Recess)

4 MR. BERMAN: Hello and welcome to the  
5 second panel of day two of these roundtable  
6 sessions.

7 My name is Greg Berman. I am the senior  
8 advisor to the director of the Division of Trading  
9 and Markets the SEC. Catherine Moore, senior  
10 special counsel in the division's Office of  
11 Clearance and Settlement, joins me for the second  
12 panel, along with my colleagues Rick Shilts and  
13 John Lawton at the Commodity Futures Trading  
14 Commission.

15 I want to thank all of the panelists for  
16 joining us this morning to continue the important  
17 dialogue on the issues and considerations that may  
18 affect the implementation of new rules under the  
19 Dodd-Frank Act. We value the opportunity to hear  
20 reviews on the various implementation issues, and,  
21 in particular, on how to implement the rules in a  
22 manner that best achieves the purposes of the

1       Dodd-Frank Act and efficient and cost-effective  
2       manner.

3               As indicated in the agenda, this panel  
4       will focus on transaction processing for swaps and  
5       security-based swaps. In particular, the areas of  
6       focus for today's panel include trade execution,  
7       confirmation, documentation, and the submission of  
8       trades for clearing. In addition, we will discuss  
9       whether a phase-in approach is appropriate for  
10       some of these requirements and what types of  
11       objective criteria could be used for phased-in  
12       implementation.

13              I should note that the SEC is still in  
14       the process of proposing substantive requirements  
15       for some of these areas, with the exception of  
16       trade verification and acknowledgment requirements  
17       which the SEC proposed in January. As always, the  
18       input we receive today will help inform our  
19       approach as we continue the proposing process.

20              Before we begin, I'd just like to give  
21       everybody the opportunity to go around the room  
22       and introduce themselves. Perhaps we can start

1 over here.

2 MR. HUNTER: Henry Hunter, head of  
3 Product Development and Business Development at  
4 MarkitSERV.

5 MR. CUSENZA: Paul Cusenza, CEO of Nodal  
6 Exchange.

7 MR. CAWLEY: James Cawley, CEO of  
8 Javelin.

9 MR. BERNARDO: Shawn Bernardo, senior  
10 managing director, Tullett Prebon.

11 MR. CHAVEZ: I'm Marty Chavez, partner  
12 at Goldman Sachs.

13 MR. LAWTON: John Lawton, Division of  
14 Clearing, Intermediary Oversight, CFTC.

15 MR. SHILTS: Rick Shilts, CFTC Division  
16 of Market Oversight.

17 MS. MOORE: Catherine Moore, SEC.

18 MR. McVEY: Rick McVey, CEO of  
19 MarketAxess.

20 MR. HARRINGTON: George Harrington, head  
21 of Fixed Income Trading at Bloomberg.

22 MR. OMAHEN: John Omahen, SunGard.

1                   MR. DENIZÉ: Yves Denizé, director and  
2 associate general counselor at TIAA-CREF.

3                   MR. O'CONNOR: Garry O'Connor, IDCG.

4                   MR. BERMAN: Excellent. Thank you. To  
5 start off the panel, I'd like to start with a  
6 rather general question. Where do panelists think  
7 rules regarding transaction processing should come  
8 in the larger implementation sequencing?  
9 Specifically, are there contingencies that were a  
10 part of the implementation of one aspect of  
11 transaction processing prior to any of the others?

12                   MR. CHAVEZ: I'll take a stab at that,  
13 if I may. We're approaching the rule set from the  
14 point of view of a huge software project and  
15 really just thinking about it as software  
16 developers would and breaking it down. And so,  
17 one of the slogans that software developers have  
18 is make it right before you make it faster, and  
19 another one is do things concurrently and  
20 iteratively.

21                   And so, we've looked at all the rules  
22 and I took the opportunity to reread them to

1       prepare for this morning. I want to say it's an  
2       incredible and magnificent work and thoughtful  
3       dialogue. And so, now we're just going to look at  
4       the dependencies and say, for instance, the  
5       real-time public reporting of swaps. We can get  
6       to work on that right now. That would be the  
7       concurrent way of approaching software  
8       development, but to go live, you need first for  
9       SEFs and the execution to exist. You can get to  
10      work on SEFs right now, but the SEFs have to exist  
11      for certain kinds of transactions to have  
12      real-time reporting, and if you go back from SEFs,  
13      you need the swap trading relationship  
14      documentation in place, you need the reporting and  
15      recordkeeping obligations in place, you also need  
16      to know what you're going to do with clearing,  
17      which, in turn, depends on capital enlarging. So,  
18      we've done a very detailed dependency analysis of  
19      which ones need to come first.

20                 MR. CAWLEY: If I can jump in, this is  
21      something at Javelin we've given a lot of thought  
22      to. It's something that directly affects us as an

1 electronic execution venue, but it's also  
2 something that broadly concerns us all.  
3 Specifically, we feel that this is  
4 mission-critical to get it right out of the blocks  
5 because we think that trade execution/confirmation  
6 or acceptance into clearing, without that, you  
7 increase settlement risk, which in turn increases  
8 or lessens trade integrity and faith in the  
9 system. And, ultimately, it goes to the success  
10 of clearing, broadly speaking.

11 So, it's really something at a strategic  
12 macro level concerns us all, and something that we  
13 should address right out of the blocks, and it  
14 should be a standard that's set with your tutelage  
15 to which all of us subscribe to some minimum  
16 standard in terms of trade execution and  
17 confirmation of those trades.

18 MR. BERNARDO: I think that Tullett  
19 Prebon as an entity or broker, it really depends  
20 on how descriptive you make the rules because we  
21 currently operate as a SEF with pretty much all of  
22 the products that we're speaking about. So, the

1 phasing in of these different systems, whether it  
2 be for the execution, whether it be for  
3 connectivity for clearing, the trade reporting, we  
4 have a lot of the things in place. And, as Marty  
5 said, it takes time to do a lot of the things that  
6 we have to do to enhance either the existing  
7 platforms or to develop new ones. So, it really  
8 depends on how prescriptive you make the rules.

9 MR. HUNTER: To some extent, a lot of  
10 what's being asked for is already going on today.  
11 There's already clearing, there's already  
12 execution, electronic execution, there's already  
13 reporting going on, but it's happening to greater  
14 or lesser extent. But a large volume of  
15 transactions are already being confirmed and  
16 reported through existing trade repositories, and  
17 that would suggest that starting there is a good  
18 place because a lot of it is already happening.  
19 The next thing after that logically would be  
20 clearing in terms of what's already happening  
21 today, and, finally, the electronic execution  
22 piece. So, that sequence from a purely practical

1 perspective would make sense to us.

2 MR. CUSENZA: And building on that, I  
3 think that the concept, too, which talked about  
4 phasing and having the stuff in place makes a lot  
5 of sense. I think a lot of this discussion about  
6 phasing things and then phasing within items is  
7 important.

8 I would also add, for us at Nodal  
9 Exchange, we do electricity features, but we're an  
10 ECM, and we have to convert to either a SEF or  
11 DCM, and we're still not sure which is appropriate  
12 for us. And so, having time to then go through  
13 those rules and determine what is the right  
14 mechanism and for the grandfathering rules to be  
15 clear, and within the grandfathering, there's  
16 certain elements that will be conforming with  
17 immediately in terms of we already are today, but  
18 there's other items that are more complex that  
19 involve third parties.

20 For example, our clearing members have  
21 to be FCMs instead of general clearing members.  
22 We have to do that transition. We have to change

1       our boards and our voting for our company. And,  
2       so, all those things need to be worked out and  
3       they have to have time to do that, but some of the  
4       basic items because we do clear today, all of our  
5       contracts are cleared through LCH, can be done  
6       immediately. So, the phasing concept is very  
7       good.

8                   MR. HARRINGTON: I think from a  
9       Bloomberg perspective, one of the things that  
10      we're seeing right now, I agree with what Henry  
11      said, the connectivity I think is well underway  
12      today. So, with DDTC and the role that MarkitSERV  
13      plays, most players do have some sort of  
14      connectivity in there now from a reporting  
15      standpoint, so that does help accomplish CSDR from  
16      an electronic execution standpoint. Obviously,  
17      that's a space we play in, our competitors play  
18      in, as well, for both CDS and IRS. Those markets  
19      are definitely new markets. However, the growth  
20      that we're seeing in them now is certainly  
21      reflective that the market is moving towards  
22      accepting the electronic trading as a venue for

1 swap execution.

2 I think the area where we're still  
3 looking for guidance mostly falls in around the  
4 compliance and what the compliance left of the SEF  
5 is going to be. That's something where we're  
6 spending a great deal of our time. I said whether  
7 it be clearing, whether it be reporting, whether  
8 it be execution, the building blocks are there and  
9 construction is well underway. The piece that  
10 we're looking for, final guidance, as well as with  
11 some date guidance, but is what exactly that  
12 compliance left is going to look like.

13 MR. McVEY: I would echo those comments  
14 and just point out that of the three main  
15 components between electronic execution and trade  
16 reporting and central clearing, arguably,  
17 electronic execution today is the furthest along.  
18 There are multiple electronic execution venues  
19 already available in most asset classes today, and  
20 a big part of our readiness for self-registration  
21 and compliance will depend on the final rules.  
22 And one of the key things for those of us that

1 operate in credit where there is dual regulatory  
2 responsibilities between the SEC and the CFTC is  
3 the ultimate convergence of those rules.

4 We really hope that we're not coding the  
5 two separate sets of rules for one asset class,  
6 and I think if there is convergence of those rule  
7 sets, you will see that electronic execution  
8 venues are ready to qualify as SEF sooner. And  
9 the second part that George points out is really  
10 the compliance aspects of meeting SEF  
11 qualifications and where those final rules come  
12 out.

13 MR. O'CONNOR: And let me just, you  
14 know, couch it in the terms that IDCG is a  
15 clearinghouse. We don't sponsor an execution  
16 facility as such. But I'd echo Henry's comments  
17 that there's already reporting structures in  
18 place, as we've already heard, there's already  
19 execution structures in place and there is a great  
20 deal of clearing happening. I think that when you  
21 think about the phasing in of those particular  
22 items, I think part of it, as we've heard in the

1 previous panel, is about the open access  
2 considerations.

3           So, I think when you look at the  
4 electronic execution platforms in existence today,  
5 they're operating at a very commercial manner.  
6 Probably the biggest changes that they have to  
7 make is to sort of facilitate open access to those  
8 platforms, and I think that that's more difficult  
9 to do prior to a broad clearing mandate than  
10 after. I think once you have a broad clearing  
11 mandate, so you have, at least to an extent, made  
12 a common counterparty situation available to the  
13 various execution facilities, I think it's more  
14 difficult to develop broad open access execution  
15 facilities.

16           MR. DENIZÉ: As a financial end-user, I  
17 think, for us, one of the key components is that  
18 we had several expectations as to what the process  
19 is going to look like. For our organizations,  
20 we're not as entranced and as engaged as some of  
21 the larger industry players are, and so, we have a  
22 narrower focus and a narrow amount of resources

1       able to put to this problem. And to do this on  
2       the fly in a fashion where things continue to  
3       move, it's very difficult for us. And so, to have  
4       a settled expectation as to where the market has  
5       come out on a lot of these rules, our risk  
6       managers have to understand the counterparty  
7       credit issues, the margin and capital  
8       requirements.

9               Our accounting and legal folks have to  
10       work through the reporting, as well as the  
11       documentation process in a way that's logical and  
12       rational for us. And so, our hope is that the  
13       phase-in process and the dependencies are some  
14       settled expectations in terms of how the industry  
15       is coming forward with establishing this regime,  
16       but also to do so with clear concern about how the  
17       end-users -- the prior panel was talking about  
18       documentation.

19               I think it's very important that the  
20       end-users have appropriate voice in the process  
21       that were not given a fait accompli with respect  
22       to documentation or any of these decisions and

1       that our opinions are solicited in an appropriate  
2       time and an appropriate time of the process.  And  
3       hopefully, the timeline is not so short that those  
4       concerns are just put the side in the interest of  
5       expediency.

6                   MR. OMAHEN:  I think I can safely say  
7       that SunGard agrees with Goldman Sachs on this  
8       one, that it is a software project.  First, being  
9       a software vendor, I don't know how else we would  
10      view it.  But I think as looking at it as a  
11      software project, being able to define any one  
12      piece of it from front to back has great benefits  
13      to building out the rest of it because once you  
14      can actually crystalize requirements, you find  
15      that all the other work follows and becomes much  
16      easier.

17                   So, there are people that have to build  
18      those requirements, have to get down to that  
19      detail level, and we always find with other  
20      projects that until the data actually starts  
21      coming out, it's hard for us to really build  
22      around it.  You can see specks, you can go to

1 meetings, but until you actually see the data  
2 coming through, you just don't know what you're  
3 going to get. So, I think this kind of clarity on  
4 one section would have immense benefits for us.

5 MR. CUSENZA: I'd like to build on  
6 Rick's comment about the convergence of CFTC and  
7 SEC rules. We clear less liquid power contracts  
8 when we do that through an auction platform,  
9 coupled with OTC clearing, and this auction  
10 platform would be acceptable today as an ECM,  
11 acceptable as a DCM. It's acceptable in the SEC  
12 draft rules as a SEF, but in the pre-trade price  
13 transparency requirement of the SFTC rules for  
14 SEFs, it would appear to not be permitted as an  
15 auction platform. Of course, that's really  
16 important for us because if we want to become a  
17 SEF in terms of the time to do that kind of  
18 transition, it's important what the final rules  
19 will actually be. We hope in the final rules  
20 they'll be that convergence and auctions will be  
21 permitted in the CFTC-SEF definition, as well, but  
22 without that, there's a lot of uncertainty for us

1 as how we can move our current platform to the new  
2 world.

3 MR. SHILTS: I had a question.  
4 Yesterday, we talked about connectivity and  
5 infrastructure issues, and I don't want to talk  
6 about that again, but I wonder if people could  
7 touch on the specific arrangements, processes,  
8 agreements required for trading platforms and  
9 clearing entities, such as SEFs, to enable  
10 transactions to be submitted to clearing, and then  
11 also to talk about kind of the timeframes for  
12 getting these in place.

13 MR. McVEY: I'd be happy to. We run an  
14 all institutional electronic execution business at  
15 MarketAxess, and, in essence, our rulebooks are  
16 simply user agreements for institutional investors  
17 and dealer agreements for qualified broker dealers  
18 that make markets on the system. So, the  
19 agreements are already in place. We have today  
20 about 1,000 institutional investor firms that have  
21 signed up with user agreements in appropriately 80  
22 broker dealers, and there's been plenty of

1 investment going to not only the electronic  
2 execution engines, but also the post-trade trade  
3 reporting.

4 So, the readiness of the industry, I  
5 think, is getting very close with respect to the  
6 connectivity to the affirmation hubs and the prime  
7 brokers, and, ultimately, the clearinghouses. And  
8 I can say with confidence over the next three to  
9 six months, that those connections will be in  
10 place.

11 MR. CAWLEY: You ask about trade  
12 connectivity between SEFs and clearinghouses in  
13 terms of the way we see that at Javelin in terms  
14 of connectivity is we view it on a pre-trade and  
15 post-trade vis-à-vis trade confirmation and  
16 verifying margin for customers to trade. We have  
17 a strong view that SEFs should be required to  
18 deliver trades on a real-time basis to  
19 clearinghouses, and that clearinghouses, likewise,  
20 should accept that trade in real-time and respond  
21 equally in real-time with an affirmation or with a  
22 rejection, and that that it's really incumbent

1 upon, therefore, the CCP and their constituent  
2 FCMs to improve their internal latency to ensure  
3 that trade connectivity or trade affirmation  
4 internally between the FCM and the CCP comes back  
5 in near real-time.

6           We think that on a post-trade basis,  
  
7 broadly speaking, a customer, from customers we  
8 speak to, they're happy to have no trade if  
9 there's a rejection on one side. If, indeed, the  
10 trade is reported to them in real-time, that it's  
11 rejected or accepted. Likewise, on a pre-trade  
12 basis, to take a more proactive approach.

13           When we speak to FCMs, they talk about  
14 selecting their full tolerances, if you will, on  
15 customers within the clearinghouse as if to say,  
16 well, once the trade is done, as it comes to the  
17 CCP, don't send me every trade for me to opine on  
18 on a micro basis, but let me set those full  
19 tolerances at the beginning of the day and let me  
20 update them real-time on all my customers  
21 throughout the day at the clearinghouse, and that,  
22 we think, is very positive. It improves the

1 latency and the round-trip on that trade  
2 affirmation or confirmation process.

3           Likewise, we would advocate, as do  
4 others, and I believe that this is the case with  
5 some of our competitors right now, that we could  
6 take that information as an execution venue from  
7 the clearinghouse and actually project it back to  
8 the customer on our user interface or UI, if you  
9 will, at the CEF level such that the customer  
10 would not unknowingly exceed their own margin  
11 limits. Then, likewise, the CEF could come in and  
12 impose some type of one step beyond fat-fingering  
13 on a trade, but prevent them from trading in  
14 excess of their margin if they were to attempt to  
15 do it knowingly. So, that's sort of a more  
16 proactive approach. We're told from certain CCPs  
17 that they have that plumbing. We certainly have  
18 that capability and it exists in other listed  
19 derivatives marketplaces today.

20           That all is born from what we see as a  
21 last look option that FCMs have currently in the  
22 OTC derivative marketplace, which is not the case

1 in less derivative space where the FCM, in fact,  
2 agrees to accept all trades until they reject  
3 them. So, the owners in those marketplaces really  
4 to say, well, we'll accept all trades on a  
5 customer until such time that we tell you not to  
6 accept those trades. We think that that works  
7 well for two reasons: One is the onus is really  
8 on the FCM to determine and to enforce credit and  
9 margin on their own individual customer, but,  
10 also, possession is nine-tenths of the law, and  
11 they have the ability to liquidate the underlying  
12 account if that customer runs afoul of the margin  
13 limits.

14 MR. SHILTS: And those are interesting  
15 comments, but could you kind of explain how that  
16 kind of helps us as far as implementation?

17 MR. CAWLEY: Well, I think it goes back  
18 to my original comment, which is in order to have  
19 successful clearing, the optimal solution is to  
20 have best trade integrity to know that if a trade  
21 is executed and that the workflow is thus that the  
22 customers have got confidence in the overall

1 process, without that confidence in the system,  
2 people will be loathed to submit trades to  
3 clearing and to execute on SEFs.

4 So, we speak to customers. They say,  
5 well, look, we see the benefits of trading on SEFs  
6 and some of us offer trade annuity, which from a  
7 customer's standpoint, customers really like, and  
8 they like to get the prospect of evening trading  
9 amongst themselves. But the downside to that is  
10 well, who am I trading with? So, what happens on  
11 the other side if the trade gets rejected?

12 MR. O'CONNOR: I think with regard to  
13 implementation, what it means -- and I think  
14 they'll all very, very good comments -- I think  
15 what it means is to successfully execute on an  
16 electronic platform, certainty of transaction is  
17 very important for people. That's a core of what  
18 you're saying. So, in order to have that  
19 certainty of transaction, you need to have the  
20 pipes in place connecting to clearinghouses, which  
21 are able to give a timely response, whether that's  
22 real-time or near to real-time back to the

1 execution venue so that people will have that  
2 confidence that what they're doing on the screen  
3 or what they're doing on the system, be they  
4 various or multiple, they know that they're  
5 actually doing.

6           So, I think that gives you some clues  
7 about, as we did in the first round-trip, what  
8 things you need in place and in what order you  
9 need them in place to implement successful  
10 electronic execution.

11           MR. LAWTON: Yes, that sort of leads to  
12 a natural phasing in the statute of clearing  
13 mandate proceeds trading mandate, and we're  
14 wondering what sort of timeframe should there be.  
15 Say that a clearing mandate is on day one, when  
16 should a trading mandate follow? How long in  
17 time, and what should be the steps?

18           MR. CAWLEY: Well, I think from a  
19 mandate standpoint, you'd obviously want to have a  
20 tight window on that, but from a business  
21 standpoint, in a competitive environment, I would  
22 be surprised if you gave a mandate for clearing

1       that execution venues would not ready themselves  
2       in anticipation for fear that they be left out. I  
3       would say that it would be unusual from where we  
4       sit, and we'd certainly welcome it from our  
5       competitors, that they wait for the last rule to  
6       get written and then become effective before they  
7       start to turn on and accept trades. From where we  
8       sit, we'll be looking primarily in where you are  
9       in your clearing mandate because, as I said,  
10      yesterday, you could have if you reverse the order  
11      and require execution first and not clearing, you  
12      might be open for business, but there would be no  
13      impetus to clear, so there'd be no trades to be  
14      done. So, but I guess you'd want to have a tight  
15      window, but I'd be mindful of looking to the  
16      competitive forces at work in the marketplace to  
17      accelerate that.

18                   MR. HARRINGTON: I think it'd really  
19      important to speak for a moment about the role of  
20      standards, and the commissions have definitely  
21      taken leadership here in terms of unique product  
22      identifiers and unique swap identifiers,

1 algorithmic derivatives or descriptions for  
2 derivatives. Standards are crucial to get the  
3 documents and the plumbing in place.

4           So, just take a brief example, if you'd  
5 got 10 participants and they're all going to  
6 negotiate bilaterally, that's 45 documents, and  
7 that might be doable. But if you've got 1,000  
8 participants and they're all going to negotiate  
9 bilaterally or they're going to connect to systems  
10 bilaterally in a customized way, that's 499,500  
11 different negotiations, and there just aren't  
12 enough lawyers in the world to do that.

13           So, it's really important to make all of  
14 this work in a timely way and to be able to answer  
15 your question about how much time in between one  
16 mandate and another for the agencies to take a  
17 strong stand that the industry adopt standards.  
18 That's going to make a scale and that going to  
19 enable us to do this in what a computer geek would  
20 call linear time rather than quadratic or  
21 exponential time.

22           MR. O'CONNOR: You don't want to get

1       yourself in a position where you mandate something  
2       on a tight timeframe and deliver a monopoly result  
3       to somebody. So, you do need to give the industry  
4       time to get the infrastructure in place and the  
5       contracts in place that support a broad and  
6       successful operation.

7                   MR. HARRINGTON: I think if you look at  
8       the technology that goes into someone who's going  
9       to connect to a clearinghouse and just submit down  
10      for clearing, and then you actually look at the  
11      putting electronic execution on top of that, the  
12      technology challenge there always from our  
13      standpoint is not large, and, therefore, the  
14      timing there from an implementation standpoint is  
15      something that couldn't be done very closely.

16                   I think the much broader question,  
17      though, and this was sort of touched in the  
18      earlier panels and certainly in earlier panel  
19      discussions that we've had here, is what makes  
20      sense from a product standpoint? In other words,  
21      yes, you could rush and say technology can do  
22      real-time reporting, technology can do electronic

1 execution, technology can do real-time submission  
2 to clearing. That's all great, but if you build a  
3 product that's not usable by the community, that's  
4 a much greater fear.

5           So, whether you're talking about are the  
6 indices the first ones, that would make sense or  
7 investment grade or index underliers? Those are  
8 the much more important questions to determine  
9 versus what is the ability of the technology  
10 because technology can move very fast, and, as  
11 we've seen in these markets particularly,  
12 sometimes it moves much faster than the business  
13 actually can move.

14           MR. HUNTER: Yes, I would just echo that  
15 sentiment, as well. With regard to technology, a  
16 lot of which we agree is already in place to some  
17 extent for certain products and processes, but  
18 once you change business processes, that is the  
19 real challenge, and it's the overlay between those  
20 two, in particular. A point I want to make is  
21 with regard to timing, not of implementation, but  
22 of individual transactions and whether they can be

1 submitted in real-time and so on. Imposing  
2 tighter requirements to put stuff through in  
3 real-time may actually be more of a challenge  
4 because it requires business process change than  
5 if the requirements may be initially or even in  
6 the longer term are looser, but people meet them  
7 voluntarily because there's no reason not to, and  
8 that limits them from having to make sudden and  
9 large business process changes.

10 An example would be allocation of trades  
11 by fund managers to subaccounts. That's a process  
12 today which happens post-trade. It can be done  
13 quite quickly, it can sometimes take longer, but  
14 forcing trades to be submitted within prescriptive  
15 timeframes would require business process change,  
16 which, in turn, would delay implementation.

17 MR. CUSENZA: Yes, I was just going to  
18 echo what George was saying in terms of I think  
19 that's the concept when you mandate clearing and  
20 trading. It should be different likely by product  
21 because some products are going to come in much  
22 more established than others and they're ready to

1 go, it could be even simultaneous. It depends on  
2 what the product category is. Whatever you do, I  
3 would set it up in a flexible way, such that  
4 you're able to mandate those dates differently  
5 depending on what the category is or the contracts  
6 you're looking at.

7 MR. McVEY: I agree with the points that  
8 have been made. I would make a slightly different  
9 point. I think electronic execution provides  
10 critical ingredients for central clearing. It is  
11 the electronic execution venues that are going to  
12 create real-time data and trade velocity  
13 information that will help central clearinghouses  
14 manage their risk. And I think even determining  
15 which swaps are trading actively enough to manage  
16 the risk in a clearinghouse partly comes from the  
17 data that would come on the back of electronic  
18 execution venues. So, in most cases, I think  
19 these things are attached at the hip and I would  
20 certainly suggest that the timing on those  
21 mandates should be very similar.

22 MR. BERMAN: I'd like to come back to

1 something that I think, Marty, you started off  
2 with. I think a few times you referenced the  
3 whole software paradigm, and in your opening  
4 comments, you talked about sort of backing up from  
5 real-time reporting and going backwards. If we  
6 take that paradigm and we go all the way  
7 backwards, ultimately, you get to the end-user.  
8 And I don't think I'm overgeneralizing, but among  
9 all the participants, I think TIAA-CREF represents  
10 the ultimate end-user. I think there was a  
11 comment before about Apple. I have no idea how  
12 YouTube works, but all I know is that it's 3:00 in  
13 the morning, I can download videos of the royal  
14 wedding, et cetera. So, it's sort of just  
15 magical.

16 So, how, if you backup everything  
17 ultimately to the end-user, how do you think about  
18 both staging and from an end-user perspective, how  
19 do you think about what you basically need from  
20 all of the participants around and what order  
21 would be best for you?

22 MR. DENIZÉ: Thinking from a taskforce

1 or a project team inside our company, we have to  
2 know the rules, and I think that's perhaps facile  
3 for this group, but it's certainly important  
4 because we just have a cascade of decisions that  
5 flow from that, including, as I mentioned before,  
6 our risk management, our IT, even our audit  
7 processing and policies and procedures all have to  
8 flow from that. So, clear and determined rules.

9 We talked about the product phase-in,  
10 and I'm handling the policy issues first, but the  
11 product phase-in is very important. And for us,  
12 there's a governance issue about how those  
13 products get mandated to clear, get mandated to  
14 trade, and having an opportunity either  
15 individually or as a community to participate in  
16 that process. It's important so we can also both  
17 have input, but also plan appropriately as to what  
18 that phase-in is going to look like on a  
19 product-by-product basis.

20 And then as an end-user, we want a  
21 fairly facile way to hook in. Hopefully, the  
22 kinks have been worked up. Hopefully, the

1 inter-dealer experience has been tested  
2 sufficiently as a first phase, for instance, of  
3 implementation to work out the kinks, and then  
4 we'll be able to be handed some fairly clear  
5 direction as to how the process is going to be  
6 on-boarded and so forth. And I think some of that  
7 has been occurring, but I think, as some of the  
8 other panelists have said, until the ground the  
9 clears, the dust is settled, we won't have that  
10 clarity for ourselves. And, again, it's just very  
11 difficult to hit a moving target. And so, I think  
12 as an end-user, we'd appreciate having some of  
13 that worked out ahead of time.

14 MR. CHAVEZ: I think, as Yves pointed  
15 and as you observed, again, standards are access  
16 to getting all of this to work and to do it  
17 robustly and rapidly.

18 So, you gave the YouTube example. The  
19 great thing about YouTube is that you can go to  
20 pretty much any smartphone or any browser and it  
21 just works. You don't have to do any special  
22 work.

1           And, so, it'd be really important and  
2 particularly for the end-users, as a dealer, we  
3 have literally hundreds of people reading the  
4 rules and beginning to build software and to think  
5 about all the dependencies, but the thousands of  
6 end-users, this would be a relatively small corner  
7 of their business. So, for them to get successful  
8 on with us and the infrastructure providers, it's  
9 really important to adopt the standards first.

10           MR. BERNARDO: I guess from a broker's  
11 perspective, we've been building these platforms  
12 for the various products long before the rules  
13 were even written or even before Dodd-Frank  
14 because, depending on the product, as the products  
15 evolve and maybe become more efficient through the  
16 use of electronics, and they can capture those  
17 efficiencies, we've actually been rolling them out  
18 in different product sectors. So, I think it's  
19 obviously important. The implementation, I think,  
20 the connectivity to clearing is one of the things  
21 that should be done first. So, the connectivity  
22 to a swap data repository, but we obviously, as

1       brokers, need non-discriminatory access to that  
2       clearing. And then the execution, we have the  
3       platforms in place, we can develop those  
4       platforms, but they should come at a later date.

5               MR. LAWTON: There was a discussion in  
6       the previous panel about potentially clearing  
7       mandates being applied by market participants.  
8       So, for certain types of market participants  
9       getting subject to a clearing mandate earlier than  
10      others.

11             Would the same sort of thinking apply  
12      with regard to a trading mandate? Are there  
13      distinctions you would make between a clearing  
  
14      mandate and a trading mandate with regard to  
15      market participants?

16             MR. CAWLEY: I think we thought about  
17      this, too. It's dangerous to start segmenting out  
18      the client base to say, for example, that dealers  
19      go first. That would certainly put us at, I  
20      think, extreme competitive, I would say, at a  
21      considerable sustainable competitive disadvantage.  
22      Liquidity is combustible and it's sticky and, with

1 all due respect to Sean and Tullett, we wouldn't  
2 want to give an inter-dealer first look at the  
3 business first such that dealer to customer  
4 platforms be somehow handicapped.

5           So, you really want to give that a good,  
6 hard, long look, vis-à-vis the competitive aspects  
7 or the anti- competitive aspects that that might  
8 ensue, and that would certainly stifle or could  
9 stifle considerable innovation and competition in  
10 the space that would ultimately have negative  
11 impacts and transparency and customer choice. So,  
12 one has to be very careful how you start to self-  
13 select and start having guys subscribe to it.

14           Away from the anti-competitive  
15 standpoint, there's also a liquidity standpoint  
16 for customers. Does that mean then the customers  
17 get a worse shake on a trade because there's less  
18 liquidity in that pool to begin with because only  
19 a small segment of that marketplace is required to  
20 trade? There's been talk about, well, you have  
21 end-user exemptions where they're not required  
22 necessarily to post margin and so forth. But,

1 ultimately, we see those customers coming on, as  
2 well, being for the simple reason that you're  
3 going to see a tighter bid offer spread in a more  
4 transparent market.

5           So, as you consider that, two things:  
6 One is the anti-competitive aspect and giving one  
7 group of SEFs a competitive advantage over  
8 another, but, also, to the restrictions and the  
9 negative impact and the unintended consequences  
10 that could occur vis-à-vis execution and cost of  
11 execution in transparency if you were to say,  
12 well, one group goes first and another group goes  
13 second.

14           MR. CUSENZA: I would also say that in  
15 terms of any tiering, that that should be done  
16 depending on what the market is if you do do the  
17 tiering. Like, for example, our market, which is  
18 a power market, I don't see where the tiering  
19 would necessarily be a useful thing for the  
20 trading requirement, but that may be different of  
21 other markets, and so, therefore, it's important  
22 to have a flexible approach there.

1                   MR. McVEY: I would just add there's a  
2 lot of talk about implementation by client  
3 category or client segment. Our observation is  
4 that the OTC derivative markets are much more  
5 concentrated in terms of trading activity than the  
6 securities markets. And I would have thought that  
7 it makes some sense to look at overall trading  
8 activity levels or open interest as a way to make  
9 sure that the most active and most sophisticated  
10 derivative market participants are being phased in  
11 to the new regulations first, irrespective of  
12 their client segment. And we're all hoping that  
13 with central clearing, we will see much broader  
14 market participation in swaps, but it is a  
15 highly-concentrated market today. And it is those  
16 users, whether they come from the dealer  
17 community, the hedge fund community, investment  
18 management community that I think are most capable  
19 of embracing the new regulations and the new rules  
20 the soonest.

21                   MR. O'CONNOR: I think your question is  
22 should we look at phasing-in by type of

1 participant and to the execution facilities, and I  
2 would ask a couple of questions in response. And  
3 number one: What do you think you would achieve  
4 by doing that? Because as you've already heard  
5 from panelists today, if you mandate a narrow  
6 section of the market for execution, there may be  
7 some value in doing that, but you're really  
8 reinforcing what's already there today because we  
9 have those sort of facilities today.

10 And the second question that I'd ask you  
11 is: Why would you need to do that?

12 I think there's been consensus at this  
13 panel, I think, that data connectivity needs to  
14 come first, the clearing needs to come second, and  
15 execution comes third after those things are in  
16 place. There's some debate about the speed of  
17 those transitions, but there's consensus on the  
18 order. So, if you've already got data connection  
19 and you've already got clearing in place, I'm not  
20 sure what you achieve by then phasing in by  
21 participant the execution facility because there's  
22 already been a lot of work done.

1           MR. CHAVEZ: The commissions have an  
2           excellent construct for phasing in the trading  
3           mandate, which is the concept of made available to  
4           trade on a SEF. And, so, with those, with a lot  
5           of thought given to what that actually means,  
6           number of participants, number of transaction  
7           size, diversity of client participation, I think  
8           you will get to the right answer without having to  
9           mandate a particular group of clients go first.

10           MR. SHILTS: Are there any thoughts on  
11           once there is a determination for mandatory  
12           trading, how long the delay should be before it  
13           actually goes into effect for a particular swap?

14           MR. McVEY: Are you asking the question  
15           from an end-user perspective or from a staff  
16           provider?

17           MR. SHILTS: Anyone who would have to  
18           comply with the requirement, as well as for SEFs  
19           to be -- presumably, there would be some SEFs that  
20           are offering this product already if there was a  
21           determination that it would have to be mandatorily  
22           traded, but to make this a requirement that this

1 particular swap or category of swap now is subject  
2 to the mandatory trading requirement? I mean, the  
3 determination today and it starts tomorrow, I'm  
4 just interested in what types of things we should  
5 think about in terms of what types of delays  
6 should there be before it actually goes into  
7 effect and anyone that wants to trade the swap,  
8 unless they're subject to an end-user exemption,  
9 would have to then do it on a SEF or DCM.

10 MR. McVEY: Purely speaking as a  
11 perspective SEF, I think the practical matter is  
12 that we believe after the rules are finalized, we  
13 would need appropriately 180 days to make sure  
14 that our trading system and surveillance system  
15 comply with that final set of rules. Having said  
16 that, a lot of that has to do with what the final  
17 rules say, and I talked earlier about the hopeful  
18 convergence of the SEC and CFTC rules, and Paul  
19 followed on as well. And we obviously are  
20 offering requests for quote or auction-based  
21 technology and credit today, and clients have  
22 embraced that because it is the most competitive

1 form of electronic execution available to them.

2 We compete directly with Central Limit  
3 Order books; we've offered Central Limit Order  
4 books in the past. Our clients are finding that  
5 in certain asset classes, requests for quote  
6 technology is where they're getting the best price  
7 and the most efficient trading technology. So, if  
8 we're permitted to continue to offer requests for  
9 quote without being forced to simultaneously offer  
10 Central Limit Order book technology, then I think  
11 our readiness will come very shortly after the  
12 rule set is finalized. If there are significant  
13 changes that those of us that offer RFQ technology  
14 have to make to our trading businesses or Central  
15 Limit Order books have to make to theirs, then I  
16 think the implementation dates would need to be  
17 pushed out further. And it's clear that there  
18 will be competition space with both Central Limit  
19 Order books and RFQ systems, and our view would be  
20 to let the market decide and let people compete  
21 with the technology that they think best serves  
22 their client base.

1                   MR. HARRINGTON: Rick took the macro  
2 path to that answer, and I fully agree with that.  
3 On a more micro level, and this gets a little bit  
4 more into the weeds, but the best example that I  
5 can look back is where we connect to CME and ICE  
6 and LCH and IDCG, and those CCPs all have a  
7 product set that they clear, and it's literally  
8 down to they will clear a five-year IBM CDX  
9 contract, and with that, market provides red  
10 codes, which are actually identifiers. And then  
11 in our system, we basically have a clearing  
12 eligibility file that we maintain.

13                   So, on a micro level, I think that it's  
14 important to note that you're going to have two  
15 things. Number one, there's going to be a  
16 mandatory clearing requirement, and then there's  
17 going to be the second requirement of made  
18 available for trading. It almost pushes some of  
19 the questions back, and our comment letter will  
20 reflect this, that what level of detail are we  
21 going to have either from the regulators, whether  
22 it be the CFTC or the SEC as far as something has

1       gone to that level. And if it is as macro enough  
2       as that, we're going to identify let's just say  
3       the underling 125 names in the CDX on the run  
4       index contract. Then we would know very clearly  
5       which ones we would require that when you came on  
6       to our system, you're going to trade that has to  
7       direct to the SEF offering or you could trade at  
8       voice and process it or whatever it may be.

9                So, really, it's a matter of what level  
10       of detail and what level of granularity that we  
11       get from the commission. We would push for more  
12       because you could simply say that now we're  
13       putting Proctor and Gamble -- Proctor and Gamble  
14       has now been deemed made available for trading, we  
15       flip the switch, and it's on and it's almost  
16       immediate. If it's something where made available  
17       for trading is in a grey area where we can  
18       determine whether or not, maybe it is, maybe it's  
19       not, we're not sure how to interact. That just  
20       creates a lot more difficulty for us as a  
21       provider.

22               MR. CAWLEY: Just coming back to what

1 Rick said at a macro level, I agree with Rick.

2 First, a couple of set-in points there.

3 One, you want to look at is the compliance with  
4 the rule sets as you promulgate them, but, also,  
5 as staffs prepare for those, there are entities  
6 out there, such as Rick's, that are trading today.  
7 So, again, getting back to my earlier point, no  
8 one's necessarily going to wait for the last rule,  
9 the ink to dry on the last rule before they start  
10 trading for fear that they lose market share. So,  
11 in anticipation of those rule sets, people are  
12 going to be trading once clearing becomes  
13 effective, and it would be our expectation.

14 MR. DENIZÉ: I'll take a view again from  
15 the end-user's perspective. I think identifying  
16 the bucket of trades that we either do at that  
17 point or intend to be doing in the near future  
18 once that's been determined to be a mandated  
19 trade, adjusting our system requirements, whether  
20 it's for changes to the margin process, changes to  
21 the confirmation process, changes to the trading  
22 process, including the RFQ, whatever the process

1 that's going to be applied to those trades. Any  
2 related incremental documentation and any changes  
3 to our policies and processes, again, from a risk  
4 management perspective, all of that in an end-user  
5 perspective when someone's not trading on a daily  
6 basis or in the volume, as some of our colleagues  
7 here on the panel, is going to take some time. I  
8 don't have a date for you, but I didn't want to  
9 kind of lay that out for you in terms of the types  
10 of steps that we would have to go through once  
11 that announcement was made and the adjustment  
12 would have to be made.

13 MR. BERNARDO: I know we keep saying the  
14 implementation and we're talking about  
15 electronics, but I don't want the voice brokers to  
16 be forgotten about here because, even today, we're  
17 talking about phasing in the electronics and  
18 putting all these systems in place. The voice  
19 brokers are actually doing these trades today in  
20 all of the product areas that we're talking about.  
21 So, some of the products may become fully  
22 electronic, like the Treasury market, other

1 markets are going to be hybrid, where you are  
2 going to have voice intervention, and then other  
3 markets are just going to use some of the  
4 platforms, whether it be for display purposes and  
5 to send these trades through the Swap Data  
6 Repository and to clearing. But the voice brokers  
7 are doing these trades today, because, again,  
8 we're talking a lot about implementation and  
9 platforms and how they're going to operate. We  
10 actually operate the markets as we speak.

11 MR. CHAVEZ: To briefly get back to your  
12 question on the gap between when a swap is made  
13 available for trading and when everyone must  
14 mandatorily trade it on a SEF, again, the  
15 standards are just so important here. The beauty  
16 of YouTube is that people put a lot of work into  
17 the HTML standards and the browser standards, so  
18 any end-user can just go get a browser and it  
19 works. We will need to create the same kind of  
20 thing here. To the extent we do that, it will be  
21 very easy for end-users to plug in. If we don't  
22 have the standards and the proper foundation, it

1       could be extremely hard and take a long time.

2                   MR. LAWTON:   Going back to the comment  
3       that was made a moment ago about end-users need a  
4       certain amount of time to get their procedures in  
5       place, could you go a little bit more into detail  
6       which aspects, for example, confirmation,  
7       documentation, valuation?  When you're dealing  
8       with it, there's going to be requirements for  
9       dealers to have certain policies and procedures,  
10      and then the question would be:  How do the  
11      end-users fit into that?

12                  MR. DENIZÉ:  On documentation alone,  
13      most end-users who are moving from LTC derivatives  
14      transactions into the clearing and the mandatory  
15      clearing and the mandatory trading space are  
16      facing new documentation in each case.  And as we  
17      transition to those different type of  
18      documentation, those are changing, and so, we'd  
19      have to adjust those.  Those govern all the  
20      agreements, all the transactions that are going to  
21      take place.  They do deal with conflict, dispute  
22      resolutions, and so forth, and so, they spinout

1       into our own processes and policies as to how to  
2       manage those contractual relationships and so  
3       forth.

4               The valuation process, we have our own  
5       internal valuation process that has to both  
6       reflect and respond to the ability to either  
7       question valuation, dispute it if possible or if  
8       appropriate, and under what circumstances to do  
9       that. And, so, those processes have to be laid  
10      and be established.

11             In terms of trading, the trading process  
12      for the end-user, as Marty was indicating, if it's  
13      easy to hook in and it's all standardized, that  
14      that makes it easier for us. If it's multiple  
15      vendors, multiple types of systems, John is here  
16      from SunGard.

17             I mean, as any number of software  
18      vendors out there, we have to go through RFP  
19      processes that talk about the costs involved, how  
20      easily they match and mesh with our own systems,  
21      and there's a fairly long testing process to  
22      implement those software and process changes or

1 technological changes. And some of those just  
2 aren't standard to the industry because we all  
3 have legacy systems. We all have quite strange  
4 systems, unfortunately, within our shops, and to  
5 adjust all of that to even a single best in class  
6 YouTube experience requires some adjustment.

7 So, we as end-users, and certainly I as  
8 an end- user, certainly aren't suggesting that the  
9 time should be infinite, but, we do want the --  
10 and we encourage the commission to keep asking  
11 these questions about the detail, and we'll  
12 continue to provide that detail as we can.

13 MR. BERMAN: Can I ask a detailed  
14 question about some of the information flow? So,  
15 if you have to trade something that is on a SEF,  
16 would you be trading that primarily using an  
17 interface provided by the SEFs itself or would you  
18 be using your own systems and, therefore, require  
19 more of a programmatic connectivity to the SEFs,  
20 which would obviously take longer than opening up  
21 YouTube or SEF application on the iPhone and  
22 typing in the swap that you want to trade?

1           MR. DENIZÉ: I think, interestingly, it  
2 goes to the types of trades we're talking about,  
3 as well. One of the reasons I think we have RFQ  
4 versus some type of ticker approach on the SEF  
5 trading is because we don't know what type of  
6 liquidity and volume we're going to have on  
7 certain types of trades. And I think the industry  
8 is continuing to indicate that we're going to need  
9 RFQ approaches because we won't have the liquidity  
10 and volume to have that more automated process.  
11 And so, something like an RFQ would be different,  
12 but I view that a bit more manual than seeing a  
13 ticker trade or something more automated in terms  
14 of a process.

15           We as a current OTC derivatives trader,  
16 we appreciate the elements of the RFQ process and  
17 we look forward to a SEF process that, when robust  
18 and sufficiently liquid and sufficient volume,  
19 provides a set price transparency by all means,  
20 but if we need to get all our trades done and RFQ  
21 is a middle ground, then we'll have to pursue that  
22 appropriately.

1           MR. HARRINGTON: I would just add to  
2 that as a SEF provider, and I think I'll let Rick  
3 comment, but I would think that he would probably  
4 agree that, I mean, that's an area where we  
5 compete as SEFs, as well. So, obviously, we're  
6 going to build a platform, we're going to try and  
7 build the best breed. We're going to try and  
8 gather the best full liquidity, but then when you  
9 do all those things on the surface, that's great.  
10 But, a lot of times, in at least the electronic  
11 trading business, a lot of the wins or losses is  
12 what your level of integration is. So, offering.

13           So, yes, you've got the front end, but  
14 you can directly route trades into the end-user's  
15 OMS. They can do their allocations, they can go  
16 through all their internal processes, and then use  
17 that connectivity that you, as a provider, give  
18 back to them. So, I think that's a space where  
19 differentiate ourselves or attempt to  
20 differentiate ourselves.

21           MR. McVEY: Yes, and I would echo that  
22 if you look at electronic trading today both in

1 the fixed income markets, as well as the OTC  
2 derivative markets, clients are using the  
3 platform's front end, and the most active clients  
4 are doing integration work into the OMS system.  
5 So, ultimately, they will be directly connected so  
6 that orders can flow directly from their blotter  
7 into an execution venue, and then completed trades  
8 back into their blotter for clearing. But I think  
9 many of the connections have already been made.  
10 There are many potential SEFs that already have  
11 critical mass in terms of client and dealer  
12 connections in place today.

13 MR. CAWLEY: Just I would echo both what  
14 Rick and George has said. I think some of the  
15 proof in the pudding is going to be in terms of  
16 connectivity, API connectivity on a pre-trade and  
17 post-trade basis, not just the front-end GUI or  
18 user interface or UI, or to use Marty's analogy,  
19 the YouTube interface.

20 One point, while we're on the subject of  
21 YouTube interface is I think it's fair to say that  
22 we want to get this right. One thing, to continue

1 the YouTube analogy is there have been several  
2 versions of YouTube and Internet Explorer before  
3 they essentially got it right, and I don't think  
4 anyone here is saying for a second, and correct me  
5 if I'm wrong, that we're expecting it all to be  
6 done right on day one, and then for it to be set  
7 in stone and for us not to make changes.

8           One of the great things about technology  
9 is that the new technology is coming into the  
10 realm every day, and one of the clear  
11 differentiating factors who with clearinghouses  
12 and electronic venues is how we deploy and utilize  
13 that new technology as it becomes effective. So,  
14 again, it took many iterations for some of this  
15 technology to get within the YouTube or the  
16 Internet Explorer space. And I would expect that  
17 over the course of the next 5 to 10 years, as this  
18 market migrates into central clearing and a fully  
19 electronified markets, you're going to see the  
20 same type of innovation.

21           MR. O'CONNOR: The only word of caution  
22 I would offer is that there's no mandate to watch

1       YouTube and there is a mandate to use these sorts  
2       of facilities. So, it's going to get better over  
3       time, but there is an obligation for us to not get  
4       it wrong on day one.

5               MR. CHAVEZ: Indeed. It'll be crucial  
6       to take an iterative approach. The perfect is the  
7       enemy of the goods. So, we definitely want to  
8       pick milestones.

9               I'll just draw in an example from the  
10       fed letter process during the crisis. So, the fed  
11       would challenge the industry and say what are the  
12       statements that are false today and they will all  
13       be true three months from today and get everybody  
14       to buy in and just keep doing it and doing it? We  
15       will converge to a great answer, but with that  
16       kind of approach, we can get to workable answers  
17       soon.

18              MR. CUSENZA: Maybe just to build on  
19       that a little bit, with July 16 approaching  
20       quickly, to provide some clarity of what happens  
21       then, July 16 and what's the status of the  
22       situation, grandfather and other things would be,

1 of course, very helpful for the markets.

2 MR. HUNTER: Yes, I think each of these  
3 products have different liquidity pools, as we  
4 heard before. So, some products are more  
5 susceptible to trade fully electronic, some need  
6 to remain voice or have some sort of voice  
7 intervention. So, as you write the rules,  
8 depending on how prescriptive you make them, you  
9 really don't want to rule out certain things and  
10 hurt markets and low liquidity.

11 MR. BERNARDO: Yes, I think the markets,  
12 while you reference the fed process earlier on,  
13 the fed commitments are quite good at coming up  
14 with solutions once mandates are in place, and  
15 they know what the target is, are quite good at  
16 saying, okay, let's get that infrastructure built,  
17 and competitive pressures, as well, will dictate  
18 their providers offer good solutions. One thing  
19 we would recommend is that those choices are  
20 allowed. There isn't a prescriptive approach to  
21 saying this is how SEFs must connect to DCOs or  
22 how counterparts must report their trades what

1 particular mechanisms they should use. So, that  
2 ability to choose and use the optimal  
3 infrastructure is the thing that's going to work  
4 out the best in the long run.

5 MR. BERMAN: Can we drill down on that  
6 just a bit? I think the common theme over both  
7 today and all the panels is that a lot of this is  
8 already happening, there are SEFs, there are  
9 clearinghouses, there is lots of transaction  
10 processing, there is a phasing possibility of the  
11 huge influx of new requirements that will trade.  
12 But when it comes to transaction processing are  
13 there specific new requirements coming out of  
14 Dodd-Frank that you say even though we have a lot  
15 of aspects of straight through processing today,  
16 there is one aspect or two aspects that it's  
17 completely new, that would need to be built that's  
18 not captured in current workflow?

19 MR. CHAVEZ: I think the poster child  
20 example to your question would be the give-up  
21 agreements for client clearing of OTC derivatives.  
22 It is a brand-new thing, it is a really important

1       thing to get right, and here, the Commission's  
2       leadership, together with the collaboration that's  
3       already happening in the industry to come up with  
4       a fully standard give-up agreement, and then we  
5       all get into a protocol, and one day, we adopt  
6       that agreement. That'll be crucial for getting  
7       this to work.

8               MR. HUNTER: There are additional data  
9       elements that are being asked for that aren't part  
10      of the process today, for example, execution  
11      timestamps and standard identifiers. So, it's not  
12      a radical departure from what happens today. The  
13      process is broadly the same, but there are  
14      definitely some real implementation considerations  
15      that are going to come into way to provide that  
16      extra data.

17             MR. HARRINGTON: From an execution to a  
18      reporting and to clearing standpoint, I think  
19      everyone's made the point that those elements are  
20      there. The big major difference as a provider and  
21      as a SEF provider is on the detailed level of  
22      compliance that we're being asked to conduct.

1           And one of the things that we commented  
2           on was that given that the SEF offering that we're  
3           planning on bringing to the market will be for  
4           clearing only eligible swaps and then they'll be a  
5           DCM in place on every single transaction that gets  
6           done, a lot of the regulatory oversight will  
7           already be being accomplished by those elements.  
8           And, therefore, what we're pushing back on or  
9           hoping to get some regulatory relief on is that  
10          given that there's already so much regulatory  
11          oversight taking place because of the DCM, and  
12          because of the DCO, why, as the SEF, do we have to  
13          come in and do a third level of pretty much asking  
14          for the same level of detail if we verify that  
15          those elements are in place? That's the major  
16          change of something that's not there at all today  
17          and something that would be a new requirement.

18                 MR. CHAVEZ: To pick up George's point  
19                 very briefly, the swap trading relationship  
20                 documentation, that's going to be another very  
21                 substantial area of undertaking.

22                 So, for instance, exchanging documents

1 on how to value swaps and how to value them in the  
2 absence of market inputs is a mind-bendingly  
3 difficult problem you could fill libraries with,  
4 with very boring PhDs on that topic of how to  
5 value even interest rate swap. So, that's going  
6 to take a lot of work for the industry to get  
7 right, as well.

8 MR. CAWLEY: If I can just chime in on  
9 that one point, when it comes to documentation, I  
10 think it's fair to say that, broadly speaking  
11 across all facets of OTC clearing, whether it be  
12 documentation, workflow, technology, a lot of the  
13 building blocks are already there. Trade is  
14 certainly going on, clearing is going on, and it's  
15 a question of whether you port those, that  
16 experience and those aspects into this  
17 marketplace, and most of us and all of us probably  
18 are to a certain extent with our own individual  
19 companies.

20 Broadly speaking from a market  
21 standpoint, we disagree with Marty. We don't  
22 think we are putting men on the moon when it comes

1 to documentation vis-à-vis Execution Give-Up  
2 Agreements. The FIA historically in the list of  
3 derivatives context has done a really good job of  
4 standardizing some very simple, straightforward  
5 documents that can be universally adopted. We  
6 need to be mindful when we consider that  
7 documentation for the OTC context that we don't  
8 attempt to start to put in workflows that are  
9 going to limit open access and competition in this  
10 space. It's something we're very mindful of  
11 doing, and we look to give open access as a SEF  
12 going forward. We don't want to deny access. We  
13 also don't want to have documentation forced upon  
14 us that we weren't included in drafting.

15 It's something that Yves from TIAA-CREFF  
16 mentioned. Don't come to us in the eleventh hour  
17 and say you have to adopt this documentation.  
18 There is this fair degree of autonomy with SEFs  
19 granted under Dodd-Frank and as seen so far from  
20 the rule sets suggested and promulgated by the  
21 commissions. We are licensed entities, and we  
22 expect to be licensed entities with our own rule

1 sets and our own procedures and so forth. And one  
2 of the mission-critical things that we're looking  
3 for there, frankly, is documentation to offer  
4 fair, open, and unfettered access with appropriate  
5 rule sets attached to those such that there is  
6 liquid and transparent trading, and so, we'd be  
7 very mindful. But, again, coming back to it,  
8 we're not putting men on the moon with this  
9 documentation.

10 I've heard yesterday and today that  
11 hundreds of thousands of man hours, the need to go  
12 into this, and how do you segment out the market?  
13 Do you take the most active guys first? And I  
14 think Rick mentioned that earlier within the  
15 context of if you're going to segment out the user  
16 base, how do you approach it? And I think that's  
17 not a bad way to start approaching it as you  
18 consider the 80/20 rule and adoption as the rule  
19 sets go forward.

20 When it comes to documentation  
21 specifically, you've got standardized documents.  
22 You're not reinventing the wheel on every

1 document. Yes, there are clearing agreements  
2 today with simple addendums that can be attached  
3 to cover OTC derivatives. These are addendums  
4 attached to existing documentation. There is  
5 existing documentation within the FIA context for  
6 list of derivatives that can be ported into the  
7 OTC space. We need to be mindful that as that  
8 porting goes on, that it's done in a thoughtful,  
9 neutral manner such that access is not somehow  
10 diminished for one group over another within the  
11 context.

12 But, again, coming back to this, a lot  
13 of these things are, they're currently in use, and  
14 it really behooves us, especially with  
15 documentation to learn from some of the  
16 documentation that we already have today.

17 MR. BERMAN: A big theme over the last  
18 few days has been around phasing in, and I think  
19 I've heard phasing in around client type, phasing  
20 in around product type.

21 Should we be considering phasing in  
22 around implementation of some of these technical

1 issues in terms of maybe phasing in over what data  
2 elements should be required, phasing in things  
3 don't require to give up versus required to give  
4 up, or is that so well contained that it's not  
5 necessarily something that really should be on the  
6 table?

7 MR. O'CONNOR: I think you just need to  
8 give people time to conform. I'm not sure that  
9 you add any value by phasing in based on the  
10 operational complexity of someone's business  
11 versus somebody else's. I think you need to give  
12 all participants sufficient warning, and then time  
13 to conform.

14 MR. CUSENZA: Yes, I would just add that  
15 in having the time and flexibility to allow people  
16 to conform is an important piece.

17 For example, we clear as an ECM, but we  
18 have to be now clearing or facilitating as a SEF  
19 or a DCM. We may be able to meet most or if not  
20 99 percent of the requirements. There may be some  
21 that are unique to us that can be difficult and  
22 work with the commission to basically say we will

1 conform at this set date and this certain process,  
2 and so, it can be managed that way. I'm going to  
3 guess those items could be different for different  
4 entities, and so, having some flexibility to allow  
5 the commissions to have the ability to flexibility  
6 say well, everything but, you've got to do this  
7 next, and then manage us individually would be  
8 probably a good way to do that.

9 MR. McVEY: Yes, and I would just follow  
10 on, I agree with that comment. I would also say  
11 we're big fans of temporary registration for SEFs,  
12 that is SEF is meeting the majority of core  
13 principles described by the commissions. We think  
14 they should qualify for temporary registration and  
15 there should be a follow-on period from that where  
16 they would need to fully comply with all of the  
17 regulations. But I think if you do that, you'll  
18 find that more SEFs are ready to go sooner than  
19 would otherwise be the case if you require full  
20 compliance of every one of the final rules.

21 MR. CHAVEZ: There are a number of  
22 examples of successful big builds in the industry,

1       whether it's Trace or the Euro or MiFID-1 or the  
2       DTCC Trade Information Warehouse, where part of  
3       the success has been lay out requirements and then  
4       progressively tighten them over time.

5               So, to give another example from the SEC  
6       cash equity market rules, recently that the  
7       reporting limit went from 90 seconds to 30  
8       seconds, and it was very easy to do because we  
9       were already at 90 seconds. If it had gone right  
10      to 30 seconds from the outset, that would have  
11      been difficult. So, as one concept end of the day  
12      reporting, and then one hour and then five minutes  
13      and then five seconds is something that would work  
14      well as opposed to going immediately to the  
15      desired outcome.

16              MR. BERMAN: Well, I'm sensitive. We're  
17      standing between everybody and lunch. So, since  
18      it is 12:30, I think I'll just take the  
19      opportunity to thank all of the panelists, and I  
20      think we regroup here at 1:30. Thank you.

21                      (Whereupon, at 12:27 p.m., a  
22                      luncheon recess was taken.)



1 appropriate block trade sizes and position limits.

2 To get going with that we'll be asking  
3 some questions and then we'll -- whoever wants to  
4 comment just, again, just press the red button to  
5 turn it on and then press it again to turn it off.

6 So before we start off with the first  
7 question, let's go around the table and introduce  
8 everyone. I'm Rick Shilts, the director of the  
9 division of Market Oversight at the CFTC.

10 MR. EADY: Tom Eady from the SEC.

11 MR. GAW: Michael Gaw, SEC.

12 MS. COLLAZO: Marisol Collazo,  
13 Depository Trust and Clearing Corp.

14 MR. GOOCH: Jeff Gooch, MarkitSERV.

15 MR. PRITCHARD: Raf Pritchard,  
16 TriOptima.

17 MR. CUMMINGS: R.J. Cummings,  
18 Intercontinental Exchange.

19 MR. OKOCHI: Jiro Okochi, Reval.

20 MR. THUM: Bill Thum, The Vanguard  
21 Group.

22 MS. MCKENNA: Karla McKenna,

1 International Organization for Standardization.

2 MR. TURBEVILLE: Wally Turbeville,  
3 Better Markets.

4 MR. JOACHIM: Steve Joachim, FINRA.

5 MR. MORAN: Jim Moran, CME Group.

6 MR. BERNARDO: Shawn Bernardo, Tullett  
7 Prebon.

8 MS. THOMAS: Merritt Thomas, Barclays  
9 Capital.

10 MR. TAYLOR: David Taylor, CFTC.

11 MR. SHILTS: And thank all for  
12 participating today.

13 We'll start off, I guess, with the first  
14 question, kind of talking about data reporting to  
15 swap data repositories, and maybe to get initial  
16 thoughts on when you think that swap dealers and  
17 major swap participants, and then looking at other  
18 participants and other counterparties, including  
19 end-users, would be ready to commence data  
20 reporting to swap data repositories. And also  
21 noting what considerations we should take into  
22 account as we phase in these various requirements

1 and whether asset class should be a major  
2 consideration.

3 MR. GOOCH: Do you want me to kick off  
4 on that one? I think it depends on if you look at  
5 the rules as you've written them there's a number  
6 of different data types people are expected to  
7 pass over. I think on the basic level, you know,  
8 the confirm of principle economic terms, which is  
9 largely the same data set I think is, you know,  
10 available today electronically and the credit  
11 market already goes into the Trade Information  
12 Warehouse. I think that piece can be done  
13 relatively quickly.

14 I think where you'll get, you know,  
15 bigger delays either in terms of the real-time  
16 reporting of the reduced information set which can  
17 be facilitated on the current networks but does  
18 require some changes, particularly some of the  
19 more complex trades, I think the SEFs will talk  
20 probably at some point about, you know, that flow  
21 being relatively quick, which I think is correct,  
22 but I think for some of the bilateral trades

1 that's more of an issue in terms of capturing it.

2 I think also there's a number of things  
3 you've defined in terms of collateral information,  
4 other types of post-trade information, which  
5 require a longer (inaudible). So I would say the  
6 core data is largely electronified already and  
7 group (inaudible) quite quickly by the majority of  
8 participants. I think some of these other things  
9 would then need a little bit of phasing in, in the  
10 current vernacular of the last two days,  
11 (inaudible) bringing some of the other  
12 requirements.

13 MR. TAYLOR: You --

14 MR. PRITCHARD: Sorry.

15 MR. TAYLOR: Let me just do a follow-up  
16 question, if I may. You sort of referenced the  
17 credit asset class in that answer. Are you  
18 directing that specifically to credit or do you  
19 think that's generally across the asset classes or  
20 are there differences?

21 MR. GOOCH: I think if you look at  
22 credit we have and 99 percent of the trades

1       electronified already. In the interest rate asset  
2       class, you know, on trade day real- time we're  
3       sort of getting 85 percent and probably higher in  
4       the U.S. Frankly, it's a global number. I think  
5       that's relatively in good shape. You look at some  
6       of the other asset classes -- Jiro should think  
7       about this -- the equity is a lot further behind  
8       foreign exchanges, past the commodities market, a  
9       very sophisticated (inaudible). So it's probably  
10      a bit more of a patchwork quilt. You have to keep  
11      reminding me we're talking about lots of different  
12      asset classes. I tend to focus on the credit  
13      equities in most of my answers.

14                   MR. PRITCHARD: Yes. I think we'd agree  
15      with a lot of what Jeff is saying there that, you  
16      know, the different asset classes have their  
17      different characteristics and the electronic  
18      platforms that support them are at different  
19      stages of their sort of development and evolution  
20      and readiness.

21                   I think what we would observe from our  
22      experience is in terms of the systemic risk

1 monitoring goal largely being served by the  
2 capturing of the daily continuation and valuation  
3 data across all trades, we're currently seeing  
4 over 75 percent across all asset classes through  
5 our commercial platforms, including the primary  
6 economic terms of these trades along with daily  
7 valuations and the exposures on over four million  
8 trades on a daily basis, for example. And so, you  
9 know, that I think speaks to the fact that in  
10 terms of realizing one of the key systemic risk  
11 monitoring benefits, there aren't any real  
12 dependences on technologies or standards or  
13 current activities really impeding the rapid  
14 realization of that goal.

15 MR. OKOCHI: Jiro Okochi, Reval. So I  
16 would say there's two answers to that question.  
17 Are swap dealers ready? Of all the 200 swap  
18 dealers and the major swap participants, I'm not  
19 sure everyone is ready today. But assuming they  
20 could be ready with the data they have, you know,  
21 I think that's another part of the answer. If  
22 it's getting the data in the right format, that

1 can take some time depending on the reporting  
2 entity.

3 And then I'd say it's the work --

4 MR. SHILTS: When you say take some  
5 time, if people could comment on how -- what do  
6 you, you know, estimate? What would be like a  
7 reasonable time period?

8 MR. OKOCHI: It's very hard to say  
9 depending on, you know, which trades are going to  
10 be the unclear-type trades, which trades are maybe  
11 customized to the business segment they're in, if  
12 they're in all asset classes, what kind of volumes  
13 they have. What kind of systems the different  
14 desks have. So, oftentimes, the commodities desk  
15 will have a different trading system, different  
16 data warehouse than say the interest rate does.  
17 But I think it's not just the data. It's also the  
18 workflow around that data. So just sending the  
19 data in is half of the interface workflow, but all  
20 of the utility tools around exception reporting,  
21 et cetera, I think will be as big of a concern.  
22 It's just sending the data in.

1           And lastly, getting the data that's not  
2 yet completely defined. You know, the end-user  
3 clearing exemption data to, you know, the unique  
4 product identifiers, the unique counterparty  
5 identifiers. You need to get all that kind of  
6 squared away first.

7           MR. THUM: I think from Vanguard's  
8 perspective we are gratified by the CFTC staff's  
9 issuance of the concepts and questions on  
10 implementation and we largely agree with the  
11 concepts that are laid out there. We think that  
12 probably once the final rules are in place there  
13 needs to be a period for the market to digest the  
14 rules and build the infrastructure to accommodate  
15 the rules. But we think one of the first  
16 priorities should be the nonpublic reporting of  
17 general trading data. And we think that's  
18 important to inform the decisions that have to be  
19 made with respect to block trade sizes, delays  
20 related to releasing information, related to  
21 public information, related to block trades, and  
22 also to make an appropriateness determination with

1       respect to position limits.

2                   So we think that you've got it right in  
3 terms of the sequencing that you've laid out and  
4 the concept release. And we think that following  
5 an initial period for the market to digest the  
6 rules and to develop the infrastructure, then  
7 collecting the data, is the first step.

8                   MR. TAYLOR: How long do you think that  
9 digestion period needs to be?

10                   MR. THUM: Well, I think that's a  
11 question. And, you know, I think it's hard to sit  
12 here today and say that. I think that the  
13 Commissions should come up with a time, whether  
14 that's after the rules are published, whether  
15 that's three to six months and then engage in a  
16 regular series of meetings with the different  
17 market participants, particularly if it's going to  
18 be on data reporting, you're going to have to be  
19 meeting with the swap dealers, with the MSPs, with  
20 the SDRs, to see that their infrastructure is in  
21 place to be able to meet the deadlines and, you  
22 know, to effectively crack the whip where

1 necessary to get them in line to be able to  
2 collect that data because we don't think that you  
3 can make informed decisions on block trade sizes  
4 or delays or position limits until you have that  
5 information.

6           So clearly we've got implementation in  
7 terms of market infrastructure, collecting the  
8 data, then determining which swaps are  
9 standardized for clearing. Then from there  
10 determining which standardized swaps are available  
11 to trade and having mandated a phased rollout of  
12 mandates relating to party type and product type  
13 starting with the dealers and the MSPs and moving  
14 eventually through to asset managers, like  
15 ourselves, and end-users, but focusing on products  
16 as well, such as the most liquid range of interest  
17 rate swaps and credit default swaps and then  
18 building from there to the less liquid types of  
19 products.

20           MR. TURBEVILLE: It strikes me that a  
21 lot of what I know I've gotten from other  
22 roundtables and absorbed some information. I have

1 a little bit of experience in the market myself.  
2 But it strikes me that the packets of information  
3 associated with these transactions are by and  
4 large not huge packets of information. And we've  
5 got a couple of things going for us. One is that  
6 each one of these trading institutions actually  
7 has to record that information in their own  
8 systems, or if they're not recording it in their  
9 own systems they don't know actually what's going  
10 on with their own books, which I think is not  
11 true. I think they're actually able to record it.  
12 We also know that trade information, trade data  
13 has been successfully sent many times and to many  
14 places as the markets have emerged.

15           The one thing that struck me just from  
16 listening to the roundtables was that more  
17 complicated transactions are actually recorded, if  
18 I got it right, are actually recorded in the  
19 systems of the trading firms, not in their more  
20 complicated form but broken down and disaggregated  
21 into simpler units. And one of the things I'm  
22 sort of interested in is is it a deterrent to

1 getting things launched that if the regulators are  
2 requiring transaction- based information as  
3 opposed to risk-based information which would take  
4 a more complicated transaction and record it in a  
5 simpler way.

6 By the way, we actually think it should  
7 be -- the regulations should be talking about the  
8 simpler forms rather than transaction-based but I  
9 just wondered if it's accurate to say that's  
10 actually something that needs to be addressed --  
11 transaction-based versus risk-based information.

12 MR. OKOCHI: My comment to that would be  
13 that when the dealers do that it's probably  
14 because they're in a different hedge book and it's  
15 not, you know, it could be an option volatility  
16 book for the embedded component of the swap versus  
17 an interest rate book for the coupon of a  
18 structured debt instrument. I'm not sure it's  
19 that they're --

20 MR. TURBEVILLE: Yeah. The point is if  
21 the regulations say it's a transaction-based  
22 recordation into the SDR as opposed to the

1 risk-based recordation, which you're suggesting in  
2 two different books, is that an issue?

3 MR. GOOCH: I think the issue is not so  
4 much about the availability information. Every  
5 dealer books these trades in their books every  
6 day. I mean, they always get electrified. The  
7 question is just how quickly. I think if you're  
8 doing a flow interest rate swap off an electronic  
9 execution venue you have the electronic format.  
10 In seconds it can be made available. If you've  
11 done some very complex swap trade with an embedded  
12 option which maybe you can break up a little bit,  
13 then you might have, you know, people working from  
14 the paperwork for several hours to enter it into  
15 the system. It gets electrified. I think the  
16 issue and the challenge, you know, in terms of  
17 business process for people is what do they now do  
18 if they have to take the basics of that trade and  
19 make it available in 15 minutes, they have to  
20 fundamentally change the way they book it. It's  
21 not the trade data is not going to be available,  
22 it's just a question of how long it takes. It

1 always gets there because they have to run risk at  
2 the end of the day. They always have it in some  
3 form in their system eventually.

4 MR. TURBEVILLE: They certainly do. I'm  
5 just asking sort of a simple question. Is it --  
6 are the rules -- are the rules requiring SDRs to  
7 carry transactions as opposed to disaggregated  
8 risks? The disaggregated risks they'll have? I'm  
9 sure that's true. And the only concern I would  
10 have is if you had to reaggregate it somehow and  
11 when you actually record it to the SDR.

12 MS. COLLAZO: Well, if I can just speak  
13 to that. You know, we tend to see the transaction  
14 model as a way in which the regulators aren't  
15 going to be able to see the audit trail, if you  
16 will, from taking it from a position or risk  
17 perspective back to the transactions. And you  
18 know, from our understanding and having spoken  
19 with yourselves, is that -- there's two objectives  
20 here and one is understanding the exposure in the  
21 market which is a risk- based view, but the other  
22 is understanding from a market abuse perspective

1 and just monitoring what are the records that make  
2 up that position. And to do that you have to have  
3 the transactions.

4 And so, you know, the model, and I think  
5 when you look at it per asset class, we, you know,  
6 at DTCC we tend to have two perspectives here in  
7 the sequencing. One is as regulators you do need  
8 to see the transactions, we think, because you  
9 need to see both essentially. You need to see the  
10 risk and then you need to be able to go back and  
11 understand what led to that risk exposure.

12 Two is being informed about the data I  
13 think is absolutely correct. So separate  
14 reporting from dissemination for the moment and  
15 see the information flowing through and understand  
16 what does that look like. So how do you formulate  
17 your views on block trade and on what the  
18 liquidity impact could be? So certainly we've  
19 talked, you know, and you've heard conversations  
20 from many folks on the potential for liquidity  
21 impact. But this allows you to actually form a  
22 basis of what does that do before public

1 dissemination actually happens.

2           And, you know, the third thing really is  
3 when we talk about swap data repositories and the  
4 information, look at where trades have been  
5 electronically confirmed. Or what is the most  
6 natural asset class that should go first as far as  
7 electronic confirmation? Certainly, our  
8 experience from the Trade Information Warehouse is  
9 the CDS market is very ripe for that. Interest  
10 rates, we think, you know, is probably the next  
11 logical place, perhaps FX, equities, and then  
12 commodities last because that tends to be much  
13 more end-user to end-user-based.

14           And I guess just the last thing to say  
15 there is there is an existing process today and we  
16 need to be mindful that there is a process that  
17 does allow for the most sophisticated high volume,  
18 you know, users, such as, you know, the dealers to  
19 submit a technical capability of flowing  
20 information through but also supports the buy side  
21 end-user in a more simple form of either web-based  
22 or spreadsheet upload.

1           And so I think we have to be cautious  
2       from, you know, at least from a regulatory  
3       perspective as to the scope of data when we talk  
4       about phasing and implementation. If you look at  
5       pieces within an asset class then you're not going  
6       to have a full market view. And that to me is an  
7       important objective, an overarching objective of  
8       what you're looking to do here, is to have that  
9       market view. So, you know, we tend to think of  
10      the phasing on a per asset class basis, not  
11      necessarily by financial entity under that.

12           MR. EADY: A question here. Yesterday  
13      there was some discussion among some of the  
14      participants or the firms represented here about  
15      when they would be ready or open for business and  
16      some of the SDRs were represented. And I think a  
17      lot of it, you know, the conversation centered  
18      around, well, it depends what the final rules look  
19      like, which is certainly understandable. I'm  
20      curious here for those who are panelists who are  
21      currently thinking about registering as SDRs,  
22      which products are you considering being an SDR

1 for or which type of swaps? And at what date --  
2 assuming that the rules as currently proposed by  
3 both the SEC and CFTC are adopted in substantially  
4 the same form as final rules, how soon would you  
5 be ready to accept trade reports from the  
6 participants who are obligated to do so and for  
7 which products?

8 MR. CUMMINGS: I can start that one. I  
9 guess at the risk of requesting to go first, I  
10 think commodities is probably the outlier in this  
11 group. We've been -- ICE has been clearing energy  
12 commodities for almost nine years and reporting to  
13 the CFTC daily trade capture messages, including  
14 transaction-based information, user-based  
15 information, lifecycle events related to  
16 positions, offsets, deliveries, for almost five  
17 years running now for price discovery contracts.  
18 So as far as commodities as an asset is concerned,  
19 we're pretty far ahead.

20 ICE does plan to apply for SDR  
21 recognition. You know, if we're talking solely  
22 for transaction venues that ICE operates it's a

1 very short walk. I think Bill said maybe three to  
2 six months. That seems about right. But that  
3 leans on a lot of benefits that the commodities  
4 market has developed over a longer period of time,  
5 which is standardized APIs, standard transactions,  
6 experience in high frequency trading, you know, a  
7 lot of data that's moving through in real-time and  
8 real-time reporting off of our transaction  
9 systems.

10           It's not difficult from that aspect but  
11 I think some of yesterday's panels discussed, you  
12 know, how do SEFs connect and what protocol would  
13 they have to write to for an open access  
14 clearinghouse? What protocols would an SDR  
15 support for one to multiple DCOs who supported a  
16 swap that was for all intents and purposes  
17 identical across DCOs? I think that, you know,  
18 that question is unknown right now depending on  
19 which players decide to register as SEFs, for  
20 energy commodities in particular. But the  
21 protocols that we would put out would closely  
22 mirror what's already in place today.

1           MS. COLLAZO: I'll guess I'll add at the  
2 risk of going second. So, you know, we think that  
3 from the asset class perspective, obviously with  
4 credit derivatives having over 95 percent of  
5 trades electronically confirmed that that is an  
6 asset class that is also ripe for initial  
7 implementation. But we are very much mindful of  
8 some of the proposed rules and language that the  
9 SDR needs to demonstrate the ability to  
10 accommodate all swaps of the asset class. And,  
11 you know, with respect to that we feel that we  
12 have a model that allows for all the electronic  
13 confirmation but also we have a model that allows  
14 for the paper confirmed trades to be represented.  
15 Those are represented currently today on a trade  
16 basis or much more on a risk basis.

17           With the Trade Information Warehouse, we  
18 understand there is work that we'll need to do to  
19 bring that more compliant with Dodd-Frank, though  
20 we would urge some consideration about how paper  
21 confirmations are reported and looking at a very  
22 light set of details that would allow an image

1 copy of the confirmation to be submitted initially  
2 as part of the phasing-in approach.

3 So taking the approach of what is mostly  
4 electronified in asset class, we think credit is  
5 the first one to go. And then we would see  
6 interest rates, you know, as the next logical one.  
7 Certainly, our plan is to register as an SDR.  
8 Currently, our firms recognize us as the  
9 repository for credit, as well as for equities.  
10 And there are RFPs going on right now, one through  
11 ISDA for rates and one through AFME for FX. And  
12 so we're sort of respectful of that process.

13 MR. EADY: So is that answer that --  
14 let's say the final rule was adopted on -- I'll  
15 just pick a date for sake of the argument here --  
16 July 1st.

17 MS. COLLAZO: Right.

18 MR. EADY: -- that you would virtually  
19 be ready immediately to accept trade reports for  
20 the asset classes that you just mentioned?

21 MS. COLLAZO: Well, there's some work  
22 that still needs to be done with respect to the

1 additional field. And so there is an append -- we  
2 need to append the existing records that we have  
3 with additional information as they flow through.  
4 So there is going to be --

5 MR. EADY: As you plan through those  
6 things, how long do you think that will take?

7 MS. COLLAZO: Based on our information  
8 it's about six months. Six, you know, months at  
9 the lower end, nine months at the higher end that  
10 we would see as far as being ready with the  
11 industry. Because, again, what we need to be  
12 mindful of, I think we need to go back to the  
13 connectivity discussion in that we need to ensure  
14 that all the firms are able to submit the  
15 additional information that is needed and that the  
16 flow of information, not just for firms but from  
17 all the relevant parties submitting downstream to  
18 the SDR to enable that 100 percent coverage is --  
19 that all the necessary upgrades are being made.

20 MR. EADY: Well, that speaks to the  
21 participants' readiness to report that information  
22 to you.

1 MS. COLLAZO: That's right.

2 MR. EADY: But you'll be ready to  
3 receive it.

4 MS. COLLAZO: That's right.

5 MR. EADY: That's what I'm getting at.  
6 Okay. And in your case, R.J., you said basically  
7 three to six months?

8 MR. CUMMINGS: That's for --

9 MR. EADY: For commodities?

10 MR. CUMMINGS: For commodities,  
11 probably. What I would comment is what Marisol  
12 said, is that, you know, the SDR, the way it's  
13 been drafted is contemplating taking trades from  
14 SEFs and DCOs for different types of lifecycle  
15 events. I mean, there are other rules pending  
16 related to the DCO, at which point a DCO would be  
17 ready to submit a trade to an SDR based on a  
18 confirmation. So right now that's unknown.  
19 Whether the SDR could accept them or not doesn't  
20 mean that the DCO is going to be in a position on  
21 that same timeframe to report its transactions on  
22 the timeframes that have been outlined in the

1 rules.

2 MR. EADY: Right, but you'd be ready to  
3 accept it if they were? Is that right?

4 MR. CUMMINGS: Excuse me.

5 MR. EADY: No, no--but you as an SDR,  
6 you're going to register as an SDR?

7 MR. CUMMINGS: Yes, for commodities.

8 MR. EADY: So you'll be ready to accept  
9 the report presuming that the people who are  
10 obligated to send them are in a position to send  
11 them to you?

12 MR. CUMMINGS: I think we're in a -- for  
13 commodities, we're in a very different position  
14 from the other asset classes because of the  
15 standardization that already exists in the market.

16 MR. JOACHIM: We have no plans to  
17 register an SDR but we do have recent experience  
18 with creating data repositories with Trace in the  
19 last two years. We've probably done, and maybe  
20 this will help you, we've probably had the  
21 bookends of complexities. We did agency  
22 debentures, which was a commoditized product that

1 was well known, well traded, well identified with  
2 pretty simple rules, pretty homogeneous as a  
3 product, and that took us about six months to  
4 create the data repository to collect the data and  
5 also plan for dissemination at the same time. And  
6 we had a strong foundation already built with  
7 corporate -- with similar corporate bonds.

8 We're about to do asset-backed to  
9 mortgage-backed securities, which is kind of the  
10 other end of the game. There's a portion of the  
11 market that's homogeneous since the agency  
12 mortgage-backed securities, TBAs in particular,  
13 but the rest of the marketplace is particularly  
14 bespoke, customized, highly unique, a tremendous  
15 number of variety of instruments, probably similar  
16 in size to a lot of the issues is almost the 1.3  
17 million CUSIPs, instruments that are identified in  
18 the group. And that's probably taken us from  
19 beginning of planning almost two years, including  
20 the industry to get ready to do it, to do it  
21 right, to cover all the different wrinkles and  
22 different instruments.

1           So if I was going to plan and think  
2 through each of these instruments as to what I  
3 would think through as an appropriate timeframe  
4 and a fair timeframe to expect, you'd have to look  
5 at the level of standardization that exists and  
6 preconditions. And I think we've heard a couple  
7 of places where there is a fair amount of that and  
8 six months looks like about the right time. But I  
9 would say that if you're thinking about markets  
10 that have very little infrastructure in place,  
11 very little standardization, not much  
12 commoditization, I don't think it's unreasonable  
13 to think you're going to need to spend at least 18  
14 months to 2 years to be ready to have all the  
15 pieces in place to ensure that you're collecting  
16 uniform data that is usable by regulators, as well  
17 as prepare for dissemination in the long term and  
18 that the industry is ready to provide that  
19 information.

20           MR. MORAN: At CME, we're looking to  
21 have a service in rates -- in interest rates -- in  
22 energy and commodities. We kind of look at the

1 SDR functions as being very similar to functions  
2 we already perform as a DCO. You know, we  
3 warehouse the trades. We record them with  
4 regulatory information. So to the extent a  
5 product is listed in clearing and it comes in, you  
6 know, for the most part, we're pretty close there.  
7 There are a couple of caveats. One is, you know,  
8 some of the rules are not finalized. There's a  
9 lot of discussion about data points that may  
10 change. Different identifiers that are not yet  
11 created. So obviously those would have to be  
12 incorporated into the structure at whatever point  
13 they're created.

14 So that -- and the other piece of that  
15 is the current rules require that if somebody is  
16 listing a swap they need to take in parts of the  
17 uncleared market that are reported. This would  
18 involve some development. I'm not exactly sure on  
19 what the timeframe is for that but it would be our  
20 intent to extend the SDR service to also include  
21 reporting for the uncleared market.

22 MR. PRITCHARD: Yes, we operate the

1 rates repository at the moment and we see 3.9  
2 million live rate swaps on regulator basis through  
3 that. As mentioned, we also, through our  
4 commercial services, receive a huge number of  
5 primary economic details and valuations across all  
6 asset classes. So we don't see a large dependency  
7 on getting that part of the data repository  
8 requirements ready. I think the intradata, the  
9 real-time data, is what we'd be adding and the  
10 timeframes that we talked about, three to six  
11 months seem perfectly realistic. To put our basic  
12 receptor, the parties could send that data, too.  
13 And one of the points we've advocated in our  
14 discussions is that the turnover in the rates  
15 market is not that high. There's thousands of  
16 trades a day is the volume of business that goes  
17 through the interest rate swap market. So it's  
18 not a huge sort of fire hose of new intraday data,  
19 but that real-time aspect. And I think the key  
20 point that a number of the other panelists have  
21 referred to is that a repository can put out a  
22 receptor that SEFs or parties can put the data

1       into but getting the industry as a whole connected  
2       up to that and reliably, you know, comfortable  
3       with their ability to comply with these  
4       regulations, 15 minutes or 30 minutes, that's, you  
5       know, that puts some pressure on the respondent.  
6       Maybe Tommy does a trade to be really sure that  
7       he's got a mechanism in place to discharge his  
8       obligations and that potentially is a greater  
9       dependency in terms of the timeframes.

10               And then the point I think Marisol  
11       mentioned is a good one. It's easy to get the  
12       high percentage of relatively standardized trades  
13       flowing through but including the smaller tail of  
14       the more complex trades and making sure that  
15       you're compliant with the full prescriptions of  
16       the rulemaking for those more complex trades could  
17       take some time.

18               MS. THOMAS: Sorry. I think it's  
19       important to look not at just the asset class but  
20       the products within the asset class. So, for  
21       example, in commodities, the stuff that's already  
22       trading on ICE, you know, is not a problem. And

1 simple swaps that mimic futures that are already  
2 trading, those are also very simple. So I think,  
3 you know, looking at it on both the product and an  
4 asset class will be very important.

5 I also think, you know, it's very  
6 difficult to pin down these times and therefore,  
7 the way to accelerate getting this done would be  
8 to have some sort of phased implementation process  
9 where, you know, there's a risk-free trial period  
10 where everybody is trying to get their stuff into  
11 the SDRs and, you know, there's no penalties  
12 because people are working through the kinks in  
13 their systems and trying to get this done.

14 And then as you have, you know, you can  
15 create certain triggers which, you know, if you  
16 see that, you know, these are very liquid  
17 products. Okay, well, you know, people seem to be  
18 getting them into the SDRs and this data looks  
19 sensible to us, let's start disseminating this  
20 publicly, et cetera. And then as you progress  
21 those products from, you know, your most liquid  
22 standard products, which you can move quickly on

1 to the less liquid, more customized products that  
2 are more difficult, you know, you can accelerate  
3 the process. You can get people putting stuff  
4 into these SDRs faster with the stage process, I  
5 think.

6 MR. OKOCHI: Jiro Okochi, Reval. So we  
7 plan on registering for three asset classes:  
8 Interest rates, FX, cross commodities. We're  
9 technically ready now since we currently host all  
10 of this data, primarily on the uncleared-type  
11 trades for end-users, since that's our major  
12 client-base. We think we can stand up a similar  
13 environment and add the additional data points in  
14 five months and three weeks.

15 MR. THUM: From the buy side  
16 perspective, one other issue that is relevant, I  
17 think, is, again, who is putting that information  
18 into the SDR? And when we're trading with a US  
19 dealer, certainly we'd expect the U.S. Dealer to  
20 be putting that information in. An issue for us  
21 will be when we're trading with a non-U.S. bank or  
22 dealer, I think the way the rules are currently

1 written would require us to put the data in. And  
2 we would like to have the non-U.S. dealer have the  
3 requirement to put the information into the SDR.  
4 I think if it's going to be put onto the buy side  
5 to do that, then it would require significant  
6 additional work to be able to do it where we think  
7 the relative merit and expertise probably lies  
8 with the dealer, U.S. or non-U.S.

9 MR. EADY: So if you were to have to  
10 undertake that responsibility, how long do you  
11 think it would take for you to be ready to do  
12 that?

13 MR. THUM: I think it's hard for me to  
14 estimate that. I think our expectation is that we  
15 won't have to do that. Certainly, we track all of  
16 our trades. We have detailed operations and  
17 systems to keep track of them, value them, margin  
18 them, and otherwise so we have the data in-house.  
19 And we actively risk manage it. However, the  
20 connectivity to report that data to the SDR is  
21 another thing, and we think that that connectivity  
22 should come dealer to SDR as opposed to buy side

1 to SDR.

2 MR. SHILTS: I'd like to turn to a  
3 little different subject here. As I think you had  
4 mentioned before, some of the various provisions  
5 of Dodd-Frank may require having certain data,  
6 data from the SDRs, for example, in setting block  
7 trade sizes.

8 And in terms of implementation, I wanted  
9 to get people's thoughts on what we might or the  
10 Commissions might want to do with respect to SEFs  
11 or designated contract markets. Setting block  
12 trade sizes for swaps, say, in this kind of an  
13 interim period after they're up and operational  
14 but before we may have the data to actually do the  
15 calculations and setting the block trade sizes.  
16 And whether the SEF should be doing that, and if  
17 so, on what types of criteria should they be  
18 looking at?

19 MR. THUM: Right. We think again, as I  
20 mentioned previously, that the issue of liquidity  
21 and the impact on liquidity needs to be assessed.  
22 And the relative liquidity between the products

1 needs to be considered when assessing a block side  
2 delay related to public dissemination of the  
3 information or indeed position limits. So we do  
4 think that once the data is able to come into the  
5 SDR and be reported to the commissions, that the  
6 determination can be made, while initially by the  
7 SEF in terms of a relative liquidity analysis  
8 based on looking at the most liquid product. And  
9 again, we're talking about all swaps trading down  
10 to standardized swaps that can be clearable down  
11 to standardized swaps that can be made available  
12 for trading on a SEF. Looking at that most liquid  
13 standardized trade that's made available for  
14 trading and then comparing every other trade that  
15 is made available trading to that and then  
16 developing -- instead of having a static block  
17 size, have a relative block size based on a  
18 comparison of the liquidity from the most liquid  
19 product through the least liquid product. So we  
20 also think that for the most liquid product  
21 certainly at the outset as opposed to the upper 95  
22 percent of trading liquidity, we think that the 80

1       percent level makes more sense. We think that if,  
2       for the most liquid --

3               MR. SHILTS: I guess I'm not really  
4       focusing on what the ultimate criteria are that we  
5       establish for setting the blocks. I'm really  
6       trying to get an idea irrespective of what the  
7       commissions decide ultimately --

8               MR. THUM: Right.

9               MR. SHILTS: It's in this interim period  
10       before we are able to actually make calculations  
11       based on the criteria that's adopted. How should  
12       we permit SEFs or others to set block trade sizes  
13       absent the data. What kind of criteria -- what  
14       should they look at in terms of setting block  
15       trade sizes and who should do it?

16              MR. THUM: I think it's going to be very  
17       hard for a SEF to make an analysis based on  
18       liquidity when the data isn't there. So I think  
19       that in terms of -- we feel that the focus of the  
20       earliest point of implementation should be on risk  
21       reduction as opposed to price transparency or some  
22       of the other objectives. So some of those

1 objectives I think day one are going to have to be  
2 compromised while the data is being gathered. So  
3 in the absence of having the data to come up with  
4 a clear analysis of liquidity to set SEF block  
5 sizes, then there's going to have to be a much  
6 more generic and delayed reporting of things like  
7 the size of trades. And maybe that would have to  
8 be based on buckets of trade sizes -- say 10  
9 million and under would be 1 bucket, 10 million to  
10 50 million would be a bucket, 50 million plus  
11 would be a bucket -- so that there would be some  
12 public dissemination at end of day but that that  
13 information could not be used for the negative  
14 purposes that we've all been talking about in  
15 terms of releasing actual trade sizes and pricing  
16 prematurely.

17 MR. BERNARDO: I would agree with that.  
18 Because if you take six months or longer to gather  
19 data and focus on the trade reporting, from a  
20 SEF's perspective, a Tullet Prebon's perspective,  
21 we can handle the trade reporting. We can handle  
22 the reporting to the SDR. We do that currently.

1 It doesn't matter which means of in-state commerce  
2 that we're executing. We'll take care of the  
3 reporting. We'll do that as we do now. And then  
4 six months down the road figure out what is the  
5 correct block trade size for each particular  
6 product and maturity. And I would also give  
7 yourself leeway to change that, you know, six  
8 months after that. Depending upon the data and  
9 the market environment you can alter it again.  
10 That's, again, my opinion.

11 MR. OKOCHI: One other approach could be  
12 just take a nominal dollar amount, \$10 million,  
13 and look at the PV01 of any instrument and say if  
14 the PV01 is greater than \$X million, that's a  
15 large enough trade. It's reported. Just try and  
  
16 make it greater than X million notional or 500  
17 million notional. So you can set up some basic  
18 parameters that way.

19 MR. TURBEVILLE: In terms of  
20 implementation, we went around and talked about  
21 how soon will you be able to actually be a  
22 receptacle for the information? What wasn't

1       discussed was how soon will you be able to  
2       disseminate?  And dissemination is sort of -- it's  
3       said, it's statutory that you must disseminate.  
4       It's in the regulations that you must disseminate.  
5       It doesn't say really what dissemination is.  But  
6       I was wondering whether -- we answered, you know,  
7       three to six months, six to nine, whatever the  
8       number was.  That was about becoming a receptacle.  
9       All of this isn't that important if you're going  
10      to become a receptacle and receive and then at a  
11      later date become a disseminator.  Isn't that  
12      right?  Because it's about the release of  
13      information.  So there could be a natural  
14      progression from receiving data, understanding  
15      better what the appropriate block trade sizes  
16      might be, and then disseminating.  If that's the  
17      order in which people think it's going to go.

18               MR. GOOCH:  I think that's the important  
19      point that Wally makes.  I think a lot of this  
20      data is available today.  I'm going to go to my  
21      (inaudible) current rates in equity market have  
22      every trade pretty much in databases today.  So in

1 terms of some of these processes to analyze that  
2 data, I think some of that could start relatively  
3 soon. I mean, clearly to my mind the emphasis  
4 will be on getting the SDRs registered because at  
5 that point you have full and unfettered access to  
6 all of the data you want to look at. I think  
7 that's probably your start point for analysis as  
8 opposed to when it becomes mandatory to report to  
9 SDRs because most large participants already do it  
10 on a voluntary basis. Some of the small guys  
11 don't and there will be a mandatory day for them.  
12 But to be honest, you're trying to identify very  
13 liquid products in the first phase, not analyze  
14 the nuances of very illiquid ones. So if you're  
15 missing a couple of small trades from the  
16 corporates it probably doesn't make a lot of  
17 difference.

18           So I would think the key day is  
19 registration when you can start getting full  
20 access and start thinking about it as opposed to  
21 when the slowest guy is going to start reporting  
22 in because you're going to get receptacles that

1       are, you know, 90 to 95 percent full on day one is  
2       my guess. And then, you know, maybe not quite the  
3       timeliness you want. Maybe you're missing the old  
4       field but I think you're going to start a pretty  
5       rich place in terms of sequencing. And certainly,  
6       you know, back to the conversations yesterday, if  
7       we're going to have this ordering of reporting,  
8       clearing, execution, then you need to be getting  
9       that reporting piece sorted out fairly early to  
10      move onto the other decisions.

11               MR. GAW: Jeff, you said in your earlier  
12      comments that some configurations would be  
13      necessary to existing systems and processes to  
14      support real-time reporting. I was wondering if  
15      you or other panelists could provide some detail  
16      on those additional configurations and how long it  
17      would take to make them.

18               MR. GOOCH: Sure. There's two types of  
19      changes to my mind that are needed. One, which is  
20      relatively straightforward which is that there's  
21      some additional fields. I think Henry mentioned  
22      this on an earlier panel, that technically it is

1 not there in the feeds today. Timestamps is one.  
2 People don't tend to record the place of  
3 execution, which is a requirement. So there are a  
4 couple of those which don't fundamentally change  
5 any of your analysis but there's some work to do  
6 to be able to receive those and for people to send  
7 them. Some participants will find them very easy,  
8 some won't, but I think it's just depending on  
9 what they happen to have in their system.

10 I think the bigger issue is, you know,  
11 around this issue of timing issue. Basically, put  
12 a requirement to send most things in 15 to 30  
13 minutes, you know. If you're in a major, you  
14 know, dealer-to-dealer market, that's not going to  
15 be a problem. The interest rate market, for  
16 example, generally starts coming in a matter of,  
17 you know, certainly less than 10 minutes. I don't  
18 think that's going to cause too many issues. The  
19 other extreme is your fund manager has to get the  
20 subfund allocations in within 15 minutes in order  
21 to get confirms out in 30. For some guys that  
22 could be a major challenge. They struggle to do

1       it by the end of the day given compliance checking  
2       rules and things they have. So I think it's the  
3       ramifications in terms of business process that  
4       makes the big difference. You know, this  
5       conversation we're doing about some of the complex  
6       trades, they're all getting electrified on the  
7       day; they're not all getting electrified in 30  
8       minutes. To require that of people would  
9       basically mean that, you know, guys on desks will  
10      be sitting there entering stub records to meet the  
11      reporting requirement quickly, then booking it  
12      properly later. Maybe that's what we need to do  
13      but that's the sort of thing that will take a  
14      little bit of time and a little bit of discussion.

15               MR. TURBEVILLE: But it's also  
16      critically important to actually get the  
17      information in a sensible, usable form as opposed  
18      to information that's not usable, but soon.

19               MR. GOOCH: That's why I think rather  
20      than creating a false process to get something  
21      quickly on a trade that's not going to get  
22      publicly disseminated anyway, it's not that kind

1 of business, you know, give people a bit more time  
2 to the end of the day so they can do it properly.  
3 The regulators still get their access. It clears  
4 (inaudible) that's a different issue. But I don't  
5 think we're talking about problems with those kind  
6 of products.

7 MR. SHILTS: I think Chairman Gensler  
8 has a question.

9 CHAIRMAN GENSLER: I have a question  
10 back to the earlier. I noticed that a number of  
11 you will be trying to register in rates and  
12 commodities and equities, so there will be some  
13 competitive SDRs and so forth. But I was curious  
14 how does that relate to this ISDA process that I  
15 understand -- if anybody is willing to raise their  
16 hand and tell us a little bit about -- I know  
17 there's nobody from -- I don't think officially  
18 from ISDA -- but their process of going out for a  
19 request for proposal in a number of SDR classes.  
20 And how it relates to that and, I mean, if you're  
21 not the winner of some ISDA process -- we're not  
22 involved in that -- what that means.

1                   MR. GOOCH:  Somebody's not responding.  
2           Do you want me to give my understanding?  Because  
3           I'm not bidding in the ISDA process so I can  
4           probably avoid embarrassing anybody else.

5                   As I understand that, having read the  
6           document, is that the (inaudible) on a voluntary  
7           basis, most of the major players globally report  
8           into SDRs.  For the ODRF, the group of global  
9           regulators have put out a requirement.  You know,  
10          that was a process requested by the regulatory  
11          community a while back.  The ODRF, as I understand  
12          it for rates in particular, increased the level of  
13          detail they require.  ISDA has gone back and asked  
14          someone to bid to produce that.  I don't think  
15          legally that's an SDR or an MA compliant European  
16          solution.  That's a voluntary solution on a global  
17          basis to meet a requirement to the coalition of  
18          regulators, I guess.  Some of you guys sit on that  
19          coalition and probably determined what you want.  
20          So I don't think it was trying to end around any  
21          kind of competitive position in the U.S. or Europe  
22          or anywhere else as I understand it.  There's a

1 requirement regulator put on major dealers and,  
2 you know, major swap participants using your  
3 terminology, but (inaudible) on a voluntary basis  
4 and they need somewhere to put it. It would be  
5 very helpful, obviously, if that was the same  
6 solution as required to (inaudible).

7 CHAIRMAN GENSLER: I guess my question  
8 is is what's the timing? What's the deadlines?  
9 And for those of you who are, you know, do you  
10 still plan to be SDRs if you don't get the nod  
11 from -- it's not technically an SDR but I suspect  
12 anybody who wins that is going to register as a  
13 SDR.

14 MR. GOOCH: I believe the timing was  
15 September for live but I didn't read it that  
16 closely because I wasn't responding.

17 MR. CUMMINGS: I think the application  
18 deadline was the end of April.

19 CHAIRMAN GENSLER: That's for rates or  
20 is it also for commodities?

21 MR. CUMMINGS: It's for commodities.

22 CHAIRMAN GENSLER: Commodities?

1           MR. CUMMINGS: I think it's safe to say,  
2           at least from ICE's perspective, that if ISDA  
3           doesn't nominate an SDR proposal, it won't  
4           materially change our plans to register as an SDR.

5           MR. SHILTS: Any other comments on that?  
6           Go ahead.

7           MR. DeLEON: The current process right  
8           now is going on and there's a bid process which  
9           has gone out. There were 13, I believe -- it was  
10          11 or 13 proposals that is now down to 4. And  
11          members of ISDA, there's a working group, will be  
12          meeting on that later this week, actually, to  
13          review the final proposals to choose an SDR for  
14          the industry for rates. There is already an  
15          approved credit one and there are other RFPs  
16          running for the other products.

17          So to the extent that the original one  
18          that was accepted was not going to be Dodd-Frank  
19          compliant or G-14 for the commitment letter  
20          compliant, this process was done again. So ISDA  
21          is rerunning that process and the other RFPs have  
22          gone out for other products. So the dealers plan

1 to use this to be compliant for regulatory reasons  
2 with their prudential regulators, as well as there  
3 is a chance that this becomes the SDR. One issue  
4 that obviously has come up is if there are  
5 multiple SDRs, then you're going to have the  
6 SDR-squared problem, which will be that you will  
7 then need -- all the regulators will need to  
8 aggregate between SDRs and make sure they're not  
9 double or triple counting positions to get a full  
10 look. So that is something that people are  
11 focused on but you, as the regulator, and we've  
12 spoke to the SEC as well on this, that is an issue  
13 that people are aware of and there is a concern.  
14 But the ISDA process will be final -- the RFPs are  
15 being reviewed and as I said, they are down to  
16 four now.

17 MR. SHILTS: Thank you. We've got a few  
18 more topics here so we'll try to get those in  
19 quickly. One, if we could just get some quick  
20 thoughts on again looking at block trades and the  
21 provisions for block trading is there will be a  
22 delay in the reporting. And I was wondering what

1 the thoughts are as far as whether there is  
2 specific things to think about in terms of type of  
3 trade or asset class as far as implementing the  
4 delays, the length of the delays and what we  
5 should be thinking about coming up with final  
6 rules.

7 MS. COLLAZO: If I could just speak on  
8 it. One of the things which goes back to my  
9 earlier statement about dissemination, you know,  
10 coming later that you get the opportunity to look  
11 at the information. If you look at credit  
12 derivatives, for example, there is a different  
13 size that you normally see in the way that trades  
14 and standard trades are traded with respect to  
15 sovereigns versus corporate, for example. And so  
16 you see very much a different, you know, notional  
17 that gets traded. The notional on sovereigns are  
18 much, you know, higher.

19 And so once you start to receive some of  
20 that information, I think those are some of the  
21 conclusions that you'll start to find in the data  
22 is that even within an asset class certain

1 products will trade -- have different, you know,  
2 trading patterns and how that informs -- how block  
3 logic should work, you know, subsequently. So,  
4 you know, that's one example that I would say that  
5 you could look to as to the notional size and CDS.

6 MS. THOMAS: I think it's the same with  
7 commodities as well. I think, you know, you need  
8 to be looking at the liquidity and the volume in  
9 those markets. I mean, because most of our  
10 transactions are, you know, obviously  
11 customer-based transactions, we will do large  
12 hedging programs where we will take on a large,  
13 you know, chunk of risk for a client and we may  
14 not be able to hedge that in the market for weeks  
15 or even months depending on the liquidity in  
16 smaller, more niche commodity markets. So I think  
17 it's important to look at the volume in the  
18 individual markets and how often that trades.

19 MR. SHILTS: Does that vary at all by  
20 asset class or type of product or just volume  
21 exclusively?

22 MS. THOMAS: It varies by product within

1 the asset class. So asset class commodities, you  
2 know, oil or WTI will be very different from a  
3 small basis gas location. So it's important to  
4 look at the individual products.

5 MR. BERNARDO: I would think not only  
6 the product but even the maturity as well. It's  
7 going to be different for every product class.  
8 It's going to be different for maturity. It will  
9 absolutely be different and the Trace Model or the  
10 model that they use is probably a good model to  
11 follow. Again, you phase it in. You start off  
12 with longer times, and if it works and everybody  
13 is meeting their requirements and you think that  
14 you can shorten them, shorten them to a lesser  
15 time.

16 MR. JOACHIM: In fact, what we did was  
17 we had a team of academic analyzing the data for  
18 us looking at liquidity and all the factors we  
19 just talked about to see empirically what they  
20 could actually see because what you hear from  
21 people, stories told, they're usually very  
22 different than the empirical evidence that you can

1 tell. But you'll need a team of people to look at  
2 this empirically and see what the impacts are as  
3 best you can. It will never be QED but it will  
4 give you an indication. It will be an informed  
5 decision, better than an uninformed decision.

6 MR. EADY: One thing that I wanted to  
7 ask about was both the SEC and the CFTC rule make  
8 reference to certain unique identifiers for legal  
9 entities, products, and transactions. I wanted to  
10 get from Karla's point of view what we should  
11 expect in terms of the possibility of, for  
12 example, a legal entity identifier, unique  
13 identifier being available according to an  
14 internationally recognized standard.

15 MS. MCKENNA: Thank you Tom. In terms  
16 of background and context, the technical committee  
17 that I manage for ISO is solely dedicated to the  
18 development and maintenance of standards for the  
19 financial services area of business. So this is  
20 the area where the ISO and the BIC, the market  
21 identifier code, currency codes, et cetera. So  
22 it's out of this family of standards that we set

1 our sights on solving the legal entity identifier  
2 for business and financial transactions' solution  
3 for the marketplace and for regulators.

4 We started sometime last year and we  
5 filed a draft standard based on the qualifications  
6 and the requirements that we had seen published so  
7 far by the industry and by regulators in March of  
8 this year. The ISO process is made up of a  
9 succession of consensus-building exercises,  
10 reviews, and agreements. And so we started the  
11 process in March of this year and on a very  
12 aggressive but realistic timeframe, we think that  
13 we could have a published LEI standard by next  
14 summer, probably by July of 2012. That breaks  
15 down into two to three sessions or rounds of  
16 review and comment and updating of the standard.  
17 We actually reached a number of milestones this  
18 week. When we put together in ISO a standard  
19 that's code based, we need to appoint somebody who  
20 is going to look after it. I like to call it --  
21 and that's called a registration authority in  
22 ISO-speak. We've picked a registration authority

1 to put forward in the standard in order to be able  
2 to do functions like assign and maintain and  
3 validate entities for legal entity identifiers and  
4 that is Swift with the aid of Avox, a subsidiary  
5 of DTCC. And we also look forward in the next  
6 round of review to be able to insert that  
7 information and have that role fulfilled in the  
8 standard.

9 We also agreed to appoint a working  
10 group in order to handle, or as we call them,  
11 dispose of the comments that come in and to handle  
12 the review process between now and the last round  
13 of voting that we have within ISO. So that is  
14 where we are at this point. And we offer this as  
15 a solution, both to industry and to regulators,  
16 for the collection and dissemination of  
17 information.

18 MR. GAW: A follow-up question to the  
19 panelists. If sort of a consensus standard does  
20 not develop or particular identifiers are needed  
21 for say products or transactions which as I  
22 understand it might not be in the near term future

1 for ISO, what implementation issues will there be  
2 to develop say SDR-specific nomenclature systems?

3 MR. GOOCH: So we spent a little time  
4 with our customers and some of the proposed SDRs  
5 as well. I think it breaks down -- we need to  
6 look at each identifier separately. I think the  
7 LEI identifiers could be enormously powerful when  
8 it comes but it's going to take a while to create  
9 a standard and the codes created for the entities.  
10 So I think at the moment we certainly use BIC in  
11 the interest world and the DTCC warehouse IDs in  
12 the credit world. You know, a little bit of a  
13 hybrid of the two, but moving to BIC in the equity  
14 world. I think we can run with those for the time  
15 being and then when the time comes, an available  
16 map to them because the reality is every  
17 participant has varied embedded co-structures in  
18 their underlying systems. Every RMS has different  
19 structures. Every vendor does. People are not --  
20 it's going to take a decade or more for everyone  
21 to switch to this to be their core underlying  
22 identifiers. So to start with, people are going

1 to send what they have, you know, they'll rely on  
2 people like (inaudible) or SunGard or other  
3 vendors to map for them to the new codes that  
4 eventually they'll change their underlying codes  
5 to be there. So there I think it's a relatively  
6 easy transition. You just have to be careful  
7 across multiple SDRs. That causes an issue.

8 I think transaction identifiers, there's  
9 a lot of good discussion around workflows and the  
10 CFTC and SEC have taken slightly different  
11 approaches there. I think there's a little bit  
12 more work needed to agree how that's going to work  
13 but I think that's a fixable problem. I think  
14 product identifiers is the much tougher one to  
15 work out how you create them, who creates them,  
16 what are they used for. Again, I think people  
17 will map to them once they're known but that's  
18 something I think is a much tougher thing to do.  
19 From our perspective, we'll wait for the standard  
20 to emerge and then work out how we take our trade  
21 details and create the code out from them which  
22 I'm sure we can without a problem. But I think

1       that's going to be a much tougher one. And that  
2       probably isn't a critical path for some of the  
3       public dissemination, you know, we talked about  
4       earlier on in terms of how that's going to work.

5       I think there are some interesting debates to have  
6       there.

7                   MS. MCKENNA: Just to follow on from  
8       that, we are -- now that we have identified the  
9       registration authority within ISO starting  
10      discussions with the regulators and the industry  
11      about ways that we could preassign or preregister  
12      some of the participants in the first round and  
13      maybe use that as a model going forward, there  
14      will be a time in the ISO-consensus process where  
15      we no longer accept comments in the process, so we  
16      will know what the structure and what the data  
17      attributes that will be attributed to the LEI will  
18      be. So even before the standard is approved and  
19      published in its final form we will know what the  
20      technical aspects will be and we can discuss  
21      around possible preregistration of the first round  
22      to make it available.

1                   MR. CUMMINGS: I think with regard to  
2 the product identifiers, one of the things that  
3 the Commission needs to be sensitive to is that  
4 where a product identifier already exists in the  
5 market, and as the de facto standard, for instance  
6 in credit the read ID, that can be subject to  
7 being withheld from SDRs or DCOs based on maybe an  
8 arbitrary licensing decision by one or more  
9 competitors in the marketplace. So that lends  
10 itself to finding an international independent  
11 group that can define and administer product  
12 identifiers that maybe across asset classes would  
13 work.

14                   MR. PRITCHARD: If I could just make a  
15 point there about following on from what Jeff said  
16 about the transaction identifiers, I think one  
17 thing that sets up the requirement for the  
18 uniqueness of those is the way the rules are  
19 formulated so that a transaction may be reported  
20 by multiple types of entity over its life -- the  
21 SEF or the clearinghouse or the party -- and that  
22 obviously sets up a big requirement for

1 consistency and to use the same identity. You  
2 know, a solution to that is obviously to fall back  
3 to just having one type of entity report on a  
4 transaction over its life and that gets us past  
5 the dependency on that unique transaction  
6 identifier being around.

7 MR. TAYLOR: If we were to end up with a  
8 system where transaction identifiers or a unique  
9 swap identifier was a random number generated and,  
10 therefore, was done following a first touch  
11 approach, do you all have a view as to how quickly  
12 something like that could get implemented?

13 MR. CUMMINGS: I think the first touch  
14 approach is probably a bad idea if you're talking  
15 about multiple SEFs originating transactions on a  
16 first touch basis into multiple DCOs. Talking  
17 about reporting of lifecycle events on the same  
18 day for the same instrument for the same maturity  
19 across multiple DCOs, it's going to be hard for  
20 not only the DCOs to keep up with that, the SEFs  
21 to keep up with that, looking laterally and  
22 vertically you run the risk of putting in

1 identical swap identifiers into one or many SDRs.

2 MS. COLLAZO: So, I agree that is a  
3 challenge of the uniqueness. You absolutely have  
4 to have a model in place that allows for unique  
5 identifier, you know, random in nature to ensure  
6 against the duplicate IDs. One of the challenges  
7 when we looked at how you address the USI in the  
8 workflow is in order for an SDR to be able to meet  
9 the requirements under the rules and be able to  
10 reconcile between messages and in order for the  
11 reporting parties as well to be able to do that  
12 you have to have an audit trail and you need to  
13 have a unique ID that is unique in all instances.  
14 And, you know, difficult to implement though  
15 theoretically, that's the model that has to  
16 prevail.

17 You know, if you look at what we did for  
18 credit in the Trade Information Warehouse, we had  
19 to establish that central trade record ID to  
20 enable firms to talk the same language in the  
21 message that they recognize and the trade they  
22 recognize. So it is important but it is, you

1 know, no small feat to implement. So, you know,  
2 we actually ended up, you know, debating which  
3 model is better. Should the SDR issue or should  
4 it be a first touch approach? And from a workflow  
5 perspective, if you look at it, you know, in the  
6 workflow, first touch makes sense but again, the  
7 challenge is going to be who that USI issuer is  
8 and how that information flows down from the SEF,  
9 through the DCO, maintained by the reporting party  
10 and tracked.

11 MR. SHILTS: Is there a last --

12 MR. CUMMINGS: I think there's -- an  
13 additional point is that each one of these  
14 entities through the lifecycle of that trade is  
15 going to assign its own unique ID to the  
16 transaction as it touches it and works it through  
17 its workflow. The USI, while valuable, someone  
18 generates it, is probably going to be a  
19 concatenation of multiple values across the  
20 systems that the trade moves through. The  
21 participants, they offload transactions at  
22 multiple points in the workflow and lifecycle of a

1 trade. So a USI that has to travel uniformly  
2 through these systems and be updated across the  
3 multiple entities that are a party to that  
4 transaction, either the FCM, the end user, the  
5 SEF, it seems like a lot of back and forth if you  
6 settle on the first touch approach.

7 MR. GOOCH: Yeah, I think there's a very  
8 interesting (inaudible) access element to this  
9 which is it's very technologically easy to create  
10 a unique identifier generated locally at first  
11 touch making the string very long. Anybody in the  
12 IT department does that all the time. That makes  
13 it very easy. The trouble is you get something  
14 that's then so long that, you know, all the big  
15 participants are fine because they talk on APIs.  
16 They don't care whether there's 20 characters, 500  
17 characters, it just flows down the pipe. Any  
18 smaller guy who relies on CS spreadsheets or  
19 screens then has a real problem of importing that.

20 On the other hand, if you try and shrink  
21 it in order to keep uniqueness, you have to put a  
22 code in that's unique to the SEF or the SDR or DCO

1 or something, you know, you can concatenate those  
2 things together and then some people really get  
3 nervous about their trade forever being tagged for  
4 the rest of its life with details of how it was  
5 first executed which, you know, worries some  
6 people as well. So I think there's a balance  
7 there to strike between complete anonymity, you  
8 know, which is perfect but then you have a  
9 consequence because some small users, they're  
10 going to have to, you know, have record keyboard  
11 skills to accurately type this stuff off screens.

12 MR. SHILTS: All right, we've gone 5, 10  
13 minutes over. It was a good discussion. So I  
14 want to thank all the panelists for their  
15 participation today. We'll take I guess about a  
16 15-minute break which was scheduled -- we'll try  
17 to start here around 10 till. Thank you.

18 (Recess)

19 MR. CURLEY: Okay, thanks every one.  
20 This is our fourth session today and the last  
21 session in the two-day joint roundtable on  
22 implementation for Dodd-Frank. We appreciate all

1 the comments contributed by participants to this  
2 point and are grateful to everyone who has stuck  
3 it out right to the end.

4 My name is Peter Curley from the SEC and  
5 this panel focuses on implementation matters  
6 associated with commercial end-users, nonfinancial  
7 entities that use swaps and security-based swaps  
8 are -- to hedge or mitigate commercial risk in  
9 particular -- are given special consideration in  
10 both the Commodities Exchange Act and the Exchange  
11 Act. So it's certainly appropriate to give time  
12 and attention to the particular implementation  
13 challenges that arise for them. Like in the other  
14 panels, we're going to try to focus really on the  
15 implementation issues and not on interpretative  
16 issues, rather things associated with the  
17 rule-making. There's been a lot of time for that  
18 and this is more of a nuts and bolts session, if  
19 we can make it that way.

20 And so some of the things we'd like to  
21 cover are the compliance practices and other  
22 associated matters important internally for

1 end-users associated with the proposed rules,  
2 international timing and coordination issues that  
3 might arise that are unique to the end-user  
4 community, and related matters of that kind. We'd  
5 also like to discuss whether the requirements  
6 should be phased in by asset class-type of market  
7 participant or other facts and the point of view  
8 that the end-users might have on points like that.

9 So before we begin I'd like to just go  
10 around the table and have everyone introduce  
11 themselves and identify who they represent. So we  
12 can start over with you, Peter.

13 MR. SHAPIRO: Peter Shapiro, Swap  
14 Financial Group. We're an advisor to end-users.  
15 Our business includes a heavy number of what would  
16 be called under the act special entities,  
17 governments, nonprofits, as well as nonfinancial  
18 for-profit businesses.

19 MR. DONOVAN: Thank you. I am Bill  
20 Donovan, vice president of Investments for the  
21 United States Stone Carnegie Pension Fund. I'm  
22 also here on behalf of CIEBA, the Committee for

1 the Investment of Employee Benefit Assets, which  
2 represent over 100 of the largest pensions plans  
3 in the United States.

4 MR. WASSON: I'm Russ Wasson with the  
5 National Rural Electric Cooperative Association.  
6 We have 1,000 members that serve about 43 million  
7 people in the United States with electric energy.

8 MR. OKOCHI: Jiro Okochi, CO of Reval.  
9 We provide derivative management solutions to over  
10 500 corporates, primarily end-users.

11 MR. GLACE: Joe Glace, chief risk  
12 officer for Exelon Corporation. We have  
13 generation as well as utilities in both Chicago  
14 and Philadelphia.

15 MR. PETERSEN: Sam Petersen, Chatham  
16 Financial. We're a consulting firm that works  
17 with both nonfinancial and financial end-users.

18 MR. TURBEVILLE: Wally Turbeville,  
19 Better Markets, a nonprofit, nonpartisan  
20 organization interested in implementation of the  
21 Dodd-Frank Act and most recently a repeat  
22 performer on roundtables.

1                   MS. SLAVKIN: Heather Slavkin, AFL-CIO.  
2                   We represent 12 million working people across the  
3                   country.

4                   MS. MIMS: Verett Mims. I'm assistant  
5                   treasurer of the Boeing Company, the largest U.S.  
6                   exporter in the country. So we have three issues.  
7                   One, we're a commercial end-user; two, we're one  
8                   of those CIEBA members as having a large pension  
9                   fund; and three, we have a captive finance  
10                  program.

11                  MR. COTA: I'm Sean Cota. I'm a  
12                  retailer of petroleum products in Vermont. I'm  
13                  chairman of the board of the Petroleum Marketers  
14                  Association of American, past president of the New  
15                  England Fuel Institute. We represent virtually  
16                  all the heating oil that's sold in the United  
17                  States and 90 percent of all the retail gasoline  
18                  sold. And we've done trading in commodities a  
19                  long time.

20                  MR. LAWTON: John Lawton, Division of  
21                  Clearing, Intermediary Oversight, CFTC.

22                  MR. SHILTS: Rick Shilts, director of

1 Division of Market Oversight at the CFTC.

2 MR. BERMAN: Gregg Berman from the SEC.

3 Thank you.

4 MR. CURLEY: Great. Thanks, everyone.

5 So just to kick off I'd like to ask a relatively  
6 general question regarding the types of issues  
7 overall that are important to end-users when it  
8 comes to implementation, both on the  
9 infrastructure side and also with respect to their  
10 own internal compliance matters.

11 MR. PETERSEN: I guess I'll sort of  
12 start it off. So working with a wide variety of  
13 firms, including firms that would neither be  
14 classified as a swap dealer or a major swap  
15 participant and may at times be entering into  
16 trades with firms that are neither classified as a  
17 swap dealer nor a major swap participant, one of  
18 the issues that comes into play is the reporting  
19 requirement and also the items that an end-user  
20 would have to report in order to be exempt from  
21 clearing. And I think a general concern or maybe  
22 an observation is that, you know, we've met with

1 CFTC staff and SEC staff on this and we certainly  
2 appreciate the thoughtful rule that was put forth  
3 on the end-user exemption, but based on how it's  
4 deemed that one satisfies those 10 to 12 pieces of  
5 information, for instance, that requirement could  
6 either be fairly easy to satisfy or it could be  
7 more burdensome in nature.

8           And knowing that it's only recently come  
9 out and there's a lot of understanding yet to be  
10 done on the margin rules, depending on the asset  
11 class that an end-user is trading in and depending  
12 on whether they're trading with a bank swap dealer  
13 or a non-bank swap dealer, there are a variety of  
14 concerns that end-users have related to those  
15 margin rules and many of them are very practical  
16 rules related to negotiating documentation with  
17 dealers, credit support arrangements, et cetera.

18           MR. SHAPIRO: Just to chime in briefly  
19 in support of what Sam was saying, in terms --  
20 particularly in terms of the reporting with regard  
21 to how the end-user generally meets its financial  
22 obligations, if it could be done as a standing

1 report rather than with every transaction, we know  
2 this would help our clients vastly on  
3 implementation. If it could be simply a standing  
4 report, even if it had a check-the-box saying no  
5 changes from the last report. We're concerned  
6 about just people missing and not getting it  
7 right, having compliance issues unnecessarily and  
8 about having, you know, too great a burden that  
9 would be provided. With the requirement, of  
10 course, then you would say if there were a  
11 material change that must, of course, be added.

12 MR. OKOCHI: My comment would be to  
13 commend the CFTC for coming out with basically  
14 what we viewed as as check-the-box, burden of  
15 proof approach as opposed to extensive  
16 documentation to prove that you're commercially  
17 hedging a risk. So in our opinion and in our  
18 client's opinion, there wasn't a lot of uproar  
19 around the end-user exemption rule that came out.  
20 I think where we should get a lot of interesting  
21 comments would be around the margining aspects,  
22 even though there could be threshold allowed. It

1 does appear that CSAs would be required by all  
2 nonfinancial end-users entering into derivatives.  
3 I think that's going to raise more issues than the  
4 actual proof that you can be exempt from clearing.

5 MR. WASSON: In our markets, the  
6 majority of our transactions are with other  
7 end-users. We do transactions with swap dealers  
8 and major swap participants or those entities we  
9 suspect will become swap dealers or major swap  
10 participants, but in our markets where we have  
11 nonfinancial commercial entities dealing with each  
12 other, we don't really have collateralization or  
13 margin requirements. I mean, those are exceptions  
14 rather than the rule. So where they exist you may  
15 have unsecured credit thresholds but they're set  
16 high because our counterparties are perceived to  
17 be low risk. We've been doing business this way  
18 for 80 years where the credit analysis is done  
19 between the counterparties. And so rather than  
20 dealing with someone on exchange where you don't  
21 know who the counterparty is, we know very well  
22 who our counterparties are.

1           And so in our markets, we typically  
2 provide types of assurance, such as letter of  
3 credit, letters of credit or sometimes physical  
4 assets, but not typically cash or treasury  
5 securities. And we don't deliver margin  
6 electronically or even daily. Our swaps don't  
7 even settle on a daily basis typically. And the  
8 valuation exposures are not agreed to necessarily  
9 by the counterparties except in a termination-type  
10 event sort of scenario. So our commercial hedging  
11 needs from an electric utility point of view are  
12 very geographically specific and they're highly  
  
13 customized and they contain a great deal of  
14 operating and transmission contingencies and  
15 optionality but not optionality in the sense that  
16 you might have been thinking of in the sense of  
17 with respect to physical delivery or not, but  
18 optimality with regard to what is going to be the  
19 demand for electricity because it constantly  
20 changes. When we leave this room and turn out the  
21 lights, it's going to affect the load of whatever  
22 utility is serving this building. And so as the

1 CFTC might have thought of futures markets where  
2 you have specific quantities are delivered at  
3 specific times, it doesn't exist in the electric  
4 industry that way.

5 MS. MIMS: The same thing for us in  
6 terms of our commercial use of derivatives. Thank  
7 you for the FX exemption, by the way. For us, if  
8 we needed to enter into some type of commodity  
9 hedge, we would be precluded from hedging unless  
10 we get hedge accounting. And right now we're not  
11 margining. We're not setting aside margin for any  
12 of our OTC trades. And so you can imagine if say  
13 we had a liquidity crisis, you know, to issue  
14 commercial paper, in essence you're now saying you  
15 need to go out and raise more money just to  
16 satisfy that initial and variation margin  
17 requirements. So it's definitely a concern for us  
18 because we prefer to use that cash to develop  
19 aircraft and create jobs, not to have it set aside  
20 for something that we, too, have been doing for a  
21 very long time quite successfully.

22 MR. COTA: I guess my -- in general, the

1 check- the-box criteria, I think, works. We do  
2 both futures and a variety of different derivative  
3 options for hedging of heating fuels in  
4 particular. It sometimes is a cash -- the  
5 derivatives cost me more. The futures cost me  
6 less, but there's a cash flow issue. So it's all  
7 baked in in one part or the other. So from an  
8 implementation standpoint, we really don't have a  
9 large concern as an industry as to how that's  
10 going to come up in the other criteria. But for  
11 the qualifications and the check-the-box, I think  
12 that makes sense.

13 MR. TURBEVILLE: For folks that  
14 generally are proponents in the comment letter  
15 process of more disclosure, that's us, have to  
16 agree with you guys fundamentally. Peter, you  
17 made a good point about the check-the-box and  
18 really recognizing that these transactions are  
19 often part of our program. The swap -- the  
20 end-user's swap exemption is based on a  
21 swap-by-swap analysis. But in fact, the swaps are  
22 actually part of a program and we think it's

1 sensible to do so. However, we also think it's  
2 sensible that as you look at doing the program,  
3 that the disclosure is programmatic. So how  
4 you're going to satisfy your obligations with  
  
5 regard to this hedging program and then  
6 check-the-box as swaps come through is a good  
7 idea. But also, this is the disclosure that this  
8 is the hedging program that we're entering into,  
9 and these swaps are attached to that hedging  
10 program we think is a very important factor. And  
11 we've suggested perhaps that SDRs can keep files,  
12 not necessarily the high tech files with  
13 gazillions of bits of information but files that  
14 recognize for each end-user this is the hedging  
15 program and these are the swaps that we've done in  
16 regard to that hedging program. I wonder if  
17 that's the kind of thing that you guys might be  
18 interested in.

19 Joe, we go way back so --

20 MR. GLACE: Absolutely. And, yeah, we  
21 actually agree that the check-the-box is a good  
22 approach and we need sort of a standing disclosure

1       because we're very transparent. We have a very  
2       transparent hedging program. That's what we do.  
3       We actually try to -- we guarantee our cash flows  
4       over the next several years forward and we're not  
5       focused on things like real-time exposures or  
6       real-time reporting, if you will, because this is  
7       a long-term program. So that's, again, we think  
8       these ideas are good ideas. We think -- I echo  
9       the point of having a standing election until  
10      something changes, if you will, so we can continue  
11      to flow business under our normal operations.

12                 MR. TURBEVILLE: And the idea of  
13      identifying it by a hedging program, this is an  
14      asset or a contract or a need for fuel or whatever  
15      the heck you guys do. This is what we're hedging  
16      and these are the swaps that we're doing under  
17      that hedging program. And by the way -- and this  
18      is how we intend -- this is how we can pay them  
19      off and nothing has changed.

20                 MR. GLACE: Correct.

21                 MR. PETERSEN: Just to maybe add to  
22      that, I mean, I guess it depends on what you mean

1 by this is how we intend to pay them off. I mean,  
2 that could be a little bit of information or a lot  
3 and certainly we don't think it was the intent of  
4 Congress to have a requirement that end-users  
5 prove any of the items in that list for the CFTC  
6 notification. So I guess that's an example of one  
7 of the areas where I think it depends on how you  
8 interpret the items even in the proposed rule.  
9 And depending on how you interpret that, it could  
10 be an easy thing. A check-the- box-type approach  
11 could qualify or it could be something more  
12 onerous. So, for instance, the requirement that  
13 an SEC filer has to get board approval in order to  
14 opt out of central clearing, I mean, that right  
15 there, depending on how you read that, that could  
16 be a major problem for many end-users or it could  
17 be not that big of a deal. Again, it's a matter  
18 of how that's actually required to be complied  
19 with.

20 MR. TURBEVILLE: Yeah, you found things  
21 that we could agree on. But I think because  
22 likely we would say these are the kinds of things

1     you would need to do to show how you can pay,  
2     these are the board approval rule we would  
3     support, but in terms of the process, I think we  
4     would be in agreement, forgetting the substantive  
5     roles of what you show, the process of a hedge  
6     program checking off and then a different issue is  
7     the substantive rule of what you have to say which  
8     we probably wouldn't agree with you on.

9             MR. OKOCHI: I would just add, so I  
10     would say most companies that are entering into  
11     derivatives already have Board approval to enter  
12     into derivatives risk management policy.

13            MR. TURBEVILLE: And the hedge program  
14     somewhere (inaudible).

15            MR. OKOCHI: And financial obligations  
16     to meet the swap, otherwise they wouldn't be able  
17     to enter into the swap with a swap dealer anyway.  
18     So I think the check-the- box is good. I think  
19     the unintended consequence could be the swap  
20     dealers who may feel they're on the hook to make  
21     sure that that trade was a commercial hedge. What  
22     other information might they ask for even though

1 it may not be a requirement under the rules?

2 MR. CURLEY: Maybe just to play out that  
3 a little bit further in terms of people's  
4 confidence in passing on information to the SDR  
5 and particular interaction with the counterparty,  
6 the dealers who may be involved in that reporting  
7 process. We've had some comments indicating their  
8 different levels of concern that might arise  
9 depending on exactly how the connection is made.  
10 So do one or two of you have comments along those  
11 lines or thoughts?

12 MR. OKOCHI: Well, I think again the  
13 good news on the U.S. side is only one  
14 counterparty is supposed to report, whereas on the  
15 EC side there could be situations where end-users  
16 would have to report to the SDR. So I think  
17 that's less of a burden to end-users.

18 You know, I think the data, the 10, 12  
19 sets of data that would be required that swap  
20 dealers or the reporting entity would have to  
21 report to the SDR, that's again not a monumental  
22 task. Again, I think it would be a question of

1       how would they know that that information that was  
2       reported to them is confirmed? So it's one thing  
3       confirming the trade execution data. It's another  
4       thing confirming, you know, can I see your board  
5       resolution that allows you to do your first  
6       commodity swap. So I think again the unintended  
7       consequences could be the additional reporting  
8       that the swap dealers would feel the need to  
9       obtain.

10               MR. TURBEVILLE: This is not real-time.  
11       This data I would assume is going to happen -- is  
12       going to go into files. It's not going to be the  
13       real-time data reporting necessarily and it can  
14       actually be reviewed and corrected if there's  
15       errors and that sort of thing because this is  
16       actually a sort of record of the justification of  
17       the qualification of the swap as an end-user swap.  
18       So that's something to consider, too. That it's a  
19       little bit different from the real-time data  
20       that's going to be publicly disseminated.

21               MR. WASSON: Well, we're concerned about  
22       the public dissemination of some of this

1 information because it's never been available to  
2 the public before. And in our industry,  
3 particularly the electric industry, the concept of  
4 real-time reporting really has no meaning because  
5 many of us don't actually know what our, you know,  
6 our billing cycles are until the 30 days or so  
7 have passed. You know, the concept of real-time  
8 reporting for a financial institution is fine  
9 because they're choosing which transactions to  
10 enter into and they have the ability to capture  
11 that data. But for an entity like a utility,  
12 which has a public service obligation to serve  
13 everyone in their territory and the data is  
14 constantly changing, there is no mechanism really  
15 by which we can affect real-time reporting at  
16 least in the analogous where you're thinking of it  
17 for a financial institution.

18 MR. SHILTS: With respect to reporting,  
19 whether it be for real-time or other reporting to  
20 data repositories, could people comment on how  
21 they think end- users might comply with any  
22 reporting requirements? Would you be expected to

1 establish or build your own in-house proprietary  
2 systems or use third-party providers or secure  
3 internet connections or whatever? And how might  
4 that affect any phased implementation?

5 MR. DONOVAN: If I might from a pension  
6 fund perspective, as the gentleman from Vanguard  
7 said earlier, we would be anticipating that the  
8 buy side not have to report, that the sell side  
9 would. But from what we understand, the rules  
10 would require us to report if they don't. So we  
11 have to be ready for that and that's a monumental  
12 task for us to get ready in order to take on all  
13 of the reporting, dissemination of information,  
14 and so forth, on the chance that it might occur.  
15 So we'd like some more clarity that really if the  
16 burden is on them and it does not come back to the  
17 buy side because we're just not set up to do it.

18 MR. SHILTS: Can you also elaborate  
19 exactly what the burden is?

20 MR. DONOVAN: Obviously, there are  
21 systems that have to connect between the parties,  
22 you know, and just to give you an idea of, you

1 know, your people from Wall Street here get up and  
2 talk about their systems and their people and the  
3 effort they're putting into this, you know, and  
4 perhaps devoting maybe 100 people to get  
5 Dodd-Frank implemented. I have one accountant,  
6 one systems specialist, and one programmer -- or  
7 half a programmer actually. So those two and a  
8 half people have to do all this. And, you know,  
9 it takes time from the investment side as well.  
10 So all the things that need to be done, it's going  
11 to have to be done by a very few amount of people.

12 MR. PETERSEN: Just to add to that, just  
13 to sort of put some categories to this issue of  
14 what an end-user would have to report, the  
15 gentleman from Vanguard mentioned the case or the  
16 concern with if an end-user is doing a trade or  
17 buy side or end-user firm is doing a trade with a  
18 non-U.S. dealer according to the rule, if they're  
19 not a U.S. person, then the end-user would  
20 actually have to report. So that's one case.

21 Another case, a comment, it's not  
22 uncommon in the commodity space, and especially

1 the energy space where you will have two firms  
2 that are end-users, you know, not swap dealers,  
3 not major swap participants. So that's another  
4 case where you'd have end-user reporting.

5 And then another one you'll have cases  
6 where many, you know, community or regional banks  
7 actually offer derivatives to their customers.  
8 It's expected that many of them would not be swap  
9 dealers and certainly many of them are small and  
10 do a very low number of trades. And again, they  
11 would likely be the reporting party there.

12 In terms of the burden, you know, having  
13 worked through the question of how one of our  
14 firms might have to satisfy the reporting  
15 requirement, it's a question of building on an  
16 internal system or it's a question of at a minimum  
17 being able to do some sort of data dump that can  
18 be pulled into one of these firms that will likely  
19 register as swap data repositories. In addition,  
20 there's obviously costs associated with that,  
21 especially if you have to hire staff, but also  
22 just in paying for the reporting service and maybe

1 Jiro would be able to add to how an end-user might  
2 do that.

3 MR. GLACE: Typically, we would actually  
4 see a prototypical format, file format from somebody  
5 who is going to accept the data. We'd have a  
6 sandbox, a trial period in which the past data,  
7 you know, this counterparty is X. I know them as  
8 Y. Do we have to map these tables? Et cetera.  
9 So it's all about data and moving the data in a  
10 consistent and reliable manner. And that just  
11 costs money and time to get the work done and you  
12 have to sort of find, you know, typically when  
13 we've done these, we just did ERCOT Nodal. That  
14 was a couple of years in the making where again  
15 there's a lot of participants honing in on the  
16 data model, if you will, that's been exposed by  
17 the -- in this case, ERCOT. You know, that we  
18 actually have to submit the data to. And then  
19 everybody sort of has a trial period and works  
20 through all that EDI, Electronic Data Interchange,  
21 for lack of a better word. It's just a lot of  
22 mechanics and a lot of costs and a lot of systems

1 focused to get that type of work done to do it  
2 reliably and do it well.

3 MR. WASSON: And I would just like to  
4 say that whether it's a third-party provider or  
5 whether we are building out the infrastructure  
6 ourselves to do the reporting, it's our customers,  
7 it's our members, it's our owners that are going  
8 to bear the burden because the cost is going to  
9 flow directly to them. Because in cooperatives,  
10 our customers are our owners. There are no  
11 third-party shareholders where cost could be  
12 shifted. And so whatever cost we incur for  
13 compliance with respect to Dodd-Frank, those costs  
14 are going to flow through to the electric bills of  
15 our 43 million consumer-owners in the United  
16 States.

17 MR. OKOCHI: I do believe the rules say  
18 though whenever it's technologically feasible.  
19 So, you know, PDF for FX, technologically  
20 feasible. So that would be a cheaper way to do  
21 it.

22 MS. SLAVKIN: I understand that there

1 are additional burdens that go along with  
2 transacting in the swaps market with the  
3 implementation of Dodd-Frank, but it seems to me  
4 that there are certain things that are not being  
5 addressed in all of your comments. You seem to be  
6 focusing on the problems that it will create for  
7 your business, but these rules are being put in  
8 place to protect the safety and soundness of the  
9 system so that folks like my members don't have to  
10 spend their taxpayer dollars again to bail out big  
11 financial institutions. And it seems to me that  
12 the data reporting requirements that were proposed  
13 in both the CFTC's and the SEC's rules were not  
14 really that burdensome, but the information that's  
15 going to be provided to the regulators as a result  
16 is essential in order to ensure things like the  
17 end-user exemption is correctly applied. That if  
18 an institution is a major swap participant it's  
19 captured by the regulations and that the  
20 regulators have the ability to monitor systemic  
21 risk. And I think, you know, these nitpicks about  
22 the various troublesome aspects of the regulation

1 are ignoring the bigger picture.

2 MR. PETERSEN: Just to sort of respond  
3 to that, I mean, perhaps I should have been more  
4 positive at the outset and talked about what I  
5 like about the reporting requirement. But I think  
6 it's extremely important. I don't think by large  
7 measure end-users ever opposed it. So I  
8 absolutely agree that it's critical to improving  
9 the derivatives markets and to giving the  
10 regulators the tools they need to detect risk and  
11 take steps to reduce and mitigate risks.

12 I think it's just a question of cost  
13 benefit. If we're talking about a relatively  
14 small part of the market in which the reporting  
15 entity would not be a swap dealer or major swap  
16 participant, it's not necessarily a nitpick. I  
17 mean, what you might consider to be a nitpick  
18 might actually be a big deal for a firm. And  
19 again, that firm in many cases is a firm that is  
20 simply trying to do right by their business and  
21 hedge their business risk. So that's one point.

22 And then on a second point, I agree that

1       these issues, they don't necessarily have to be  
2       impediments to reporting. And I think the  
3       gentleman from Reval seems positive that there are  
4       ways we can find sort of solutions or ways to  
5       comply with these rules that don't require a great  
6       deal of cost or burden for end-users. I'm simply  
7       raising the concern that if they do, that would be  
8       a negative and it would be a consequence that we  
9       don't need to bear.

10               MR. SHAPIRO: It's probably worth just  
11       giving an illustration of an end-user to end-user  
12       transaction which are a relative rarity, Sam. I  
13       assume you see them as relative rarities as well  
14       in your practice. I'm just thinking of an example  
15       that we've had where the City of New York, one of  
16       our clients, did a transaction with one of the --  
17       a related entity, the New York City Housing  
18       Finance Corporation, where one side had one set of  
19       exposures it wanted to get rid of and the other  
20       side wanted to acquire. And it was one of those  
21       perfect matches that you do. There was no  
22       systemic risk issue that would come from this. If

1     you're not feeling good about the banks, what this  
2     did was it made it so it disintermediated the  
3     banks from standing in the middle and taking  
4     profit out of each side. Simple, straightforward.  
5     But what it would do is make it so that under  
6     these rules the folks entering into this  
7     transaction would no longer be able to rely upon a  
8     bank to do the reporting requirement and would  
9     have to do it themselves.

10                 So realizing that that's a legitimate,  
11     you know, imposition upon them, it should be done  
12     intelligently, it should be done carefully, and it  
13     should be done with something that would allow  
14     them to have the leeway and the time to be able to  
15     comply with it. It's not the risk item that I  
16     think we're looking at. It's a rarity but it does  
17     occur.

18                 MR. TURBEVILLE: And when it's not a  
19     rarity, Exelon, for instance, another, you know,  
20     large, sophisticated utilities, have risk systems,  
21     deal capture systems, which capture all of the  
22     data that is necessary to identify the

1 information, roughly speaking.

2 MR. GLACE: Most of the data.

3 MR. TURBEVILLE: Most of the data that  
4 is going to go to the SDR. So as Joe was saying,  
5 for folks that do it with some regularity, they  
6 are also going to be the people that have the  
7 systems that pick it up. I would guess the real  
8 issue is absolute time periods. Once it gets into  
9 the system it can be instantaneously transmitted  
10 over. The question is how long does it take you  
11 guys to get it into your system?

12 MR. SHILTS: Chairman Gensler.

13 MR. GLACE: That's another key issue, is  
14 we actually don't do real-time reporting on the  
15 trade floor today. We're more of a daily close.

16 CHAIRMAN GENSLER: I don't remember  
17 exactly how we asked questions on each of our  
18 rules but what I'm taking just listening here,  
19 that there are some transactions that are between  
20 end-users or what Sam calls non-dealer, non- MSPs.  
21 But, you know, commercial end-user to commercial  
22 end-user, I think we asked questions in the swap

1 data repository and the data rules about how to  
2 treat these, but since we've reopened our comment  
3 letters, you know, it would be helpful if you  
4 think whether it's facts, and PDF was mentioned,  
5 or whether it's a GUI interface, you know, just an  
6 easy so that it's sort of the least cost to end-  
7 users but still the information comes in. It  
8 would be helpful to just, you know, I'm just  
9 mentioning to help give this Commission, you know,  
10 guidance within those rules on that matter.

11 And I thank Sam for mentioning there are  
12 other avenues, of course, you know, that some of  
13 the trades might be end-user to de minimis dealer.  
14 So there might not be a dealer because they're de  
15 minimis and, you know, things like that. But --

16 MR. CURLEY: And one of the topics we've  
17 been asking about consistently is phasing of the  
18 implementation. And we touched on it a moment ago  
19 but in terms of your own views on phasing in these  
20 requirements or where the end- user community  
21 would fall in the phasing process, would you have  
22 a preference for being earlier or later in the

1 process? Is there any risk or concern on your  
2 part that being later in the process, for example,  
3 might mean you would be presented with a fait  
4 accompli as one of the earlier panelists had  
5 mentioned?

6 MR. COTA: Sean Cota here. Following up  
7 on the chairman's comments on the end-user, we do  
8 end-user to consumer contracts all of the time.  
9 There are thousands of them that we do. And  
10 previously it was described that that's going to  
11 be fully exempt and that's terrific because  
12 otherwise it would be a nightmare.

13 But as to the timing, the retail  
14 petroleum industry is -- Rome is burning and  
15 people are fiddling. We need to do things  
16 immediately. The amount of leverage and the  
17 impacts that these are making in the derivative  
18 markets showing up and the DCM markets are huge  
19 and pronounced. The differential that has emerged  
20 between the WTI contract and the BRINK contract,  
21 people will debate that it's about fundamentals.  
22 It's not about fundamentals. It's about leverage

1 and moving these trades from a somewhat regulated  
2 market to an unregulated market.

3 The other markets need to know that  
4 we're serious. They need to know the timing of  
5 that. They need to know what the game plan is.  
6 We have the same set up as 2008, only the largest  
7 players that buy and sell the world oil market,  
8 multiples per day, now have access to the Fed  
9 window. So when this thing comes apart, and it's  
10 going to come apart, the longer you wait, the  
11 bigger the boom and the bust cycle will be. So I  
12 would say do it now.

13 MR. WASSON: We do have some points we'd  
14 like to make on sequencing if you would indulge  
15 me.

16 Since we're non-financial end-users, we  
17 recommend sequencing the final rules and  
18 implementation of the rules in the new markets as  
19 follows. First, define the scope of the CFTC's  
20 new jurisdiction over non-financial commodity  
21 transactions by finalizing the definitions of  
22 swap, defining non-financial commodity, and

1 providing certainty on the question of all  
2 requested and anticipated exclusions and  
3 exemptions from non-financial commodity options to  
4 the public interest exemptions for tariff products  
5 and between the Federal Power Act 201(f)-type  
6 entities.

7 In other clear congressional mandates,  
8 to avoid overlap and regulatory uncertainty, we  
9 need clarity in our business. If we don't need to  
10 spend 2011 dollars on understanding and  
11 implementing CFTC's new rules, those are dollars  
12 that we can put to good use on reliability and  
13 energy infrastructure projects.

14 Secondly, we would encourage the CFTC to  
15 enter into the statutory MOUs with federal energy  
16 regulators and analyze the information the  
17 industry already provides to regulators such as  
18 FERC, the EIA, and the EPA, to reduce the  
19 duplicative regulatory costs and burdens that may  
20 be weighing down our economy.

21 Third, establish recordkeeping reporting  
22 rules I clear and common sense terms and provide

1 for a CFTC light regulatory scheme for  
2 non-financial entities new to the CFTC regulatory  
3 regime, commercial end-users without systems and  
4 personnel that the CFTC assumes would be present  
5 if we were financial entities.

6 Fourth, proceed to define rules and  
7 constructs, new market infrastructure entities,  
8 and construct new market infrastructure entities,  
9 define and register market professionals, such as  
10 swap dealers and MSPs, and test the regulatory  
11 structure on financial products first -- those  
12 that can be easily standardized, moved to  
13 exchanges, accepted by transaction reporting  
14 entities, and cleared.

15 Fifth, within an asset class, sequence  
16 the implementation such that transactions between  
17 SDRs and MSPs, once those entities are defined,  
18 registered, and tested, are regulated well before  
19 transactions to which non-financial entities are  
20 parties.

21 Sixth, provide a CFTC office to assist  
22 commercial end-users, especially those who need

1 non-financial commodity swaps and options to hedge  
2 commercial risk in understanding the new  
3 regulatory regime which once again is sort of a  
4 CFTC light approach to regulation.

5           And finally, provide significant time  
6 for different types of commercial end-users,  
7 whether they be Fortune 100 or global entities or  
8 small not-for-profit electric cooperatives, to  
9 watch and learn and to choose to participate in  
10 the new regulatory structure or not participate,  
11 and to register and assume a place in the new  
12 CFTC-regulated swaps markets.

13           Thank you.

14           MR. DONOVAN: Could I make a comment  
15 regarding the phasing of buy product. It seems  
16 that if we're attempting to control and mitigate  
17 systemic risk, those are the products that should  
18 go first in the cycle. Pension plans used  
19 interest rate swaps which were not the cause for  
20 any issues in the last recession. And much like  
21 with the Treasury exempting foreign exchange  
22 swaps, we felt that interest rate swaps are the

1 same way so that others ought to go first that  
2 present the greatest risk to the system and have  
3 perhaps a narrower participation than interest  
4 rate swaps which are very broad. And that we  
5 might get the biggest bang for the buck right out  
6 of the gate.

7 MS. MIMS: And I would like to echo  
8 those sentiments because Boeing entered into a  
9 long-duration strategy which we thought was a  
10 great thing in terms of mitigating, you know, our  
11 notion of matching up our plan's liability. So we  
12 don't see this as pension security for our current  
13 employees and retirees if we're saying we want to  
14 enter into interest rate swaps to mitigate more  
15 surplus volatility, but now we're seeing that  
16 because we don't have the ability to net and we're  
17 just, you know, long one way, that we can probably  
18 be like further disadvantaged than the swap  
19 dealers themselves because, like I say, we have no  
20 offset. And so if nothing else I think that's the  
21 reason why we're saying, yes, phase it in because  
22 we don't see those interest rate swaps as being

1 real systemic risks. It's more likely that on a  
2 go-for-it basis we may even delay that depending  
3 on how this is implemented. So I think we  
4 definitely want to see how it rolls out. So I  
5 agree with you guys.

6 MR. TURBEVILLE: One of the problems  
7 with talking about instruments that weren't the  
8 cause of the near ruin of the financial system of  
9 the developed world the last time, the instruments  
10 that will be the next problem probably are  
11 different instruments. Right? So we sort of view  
12 the whole Dodd-Frank system as a fabric and that  
13 it's quite important not to think of one type of  
14 instrument or one type of participant in the  
15 marketplace as by itself lacking in systemic risk  
16 when the whole system is designed to work  
17 together. The Dodd-Frank system is designed to  
18 work together and not to be peeled away one part  
19 at a time because each individual part is  
20 nonsystemically risky. The Bank of England  
21 estimated that somewhere between -- I believe the  
22 figures are \$60 trillion and \$120 trillion of

1 wealth was lost to this world as a result of the  
2 losses of the financial crisis.

3           And so that being the case, it's  
4 important that the whole thing be viewed together,  
5 and recognizing that, you know, let's all try and  
6 make it work but by the same token not try to talk  
7 about individual pieces as individually  
8 nonsystemically risky when the whole structure is  
9 designed to support the system.

10           MR. DONOVAN: I'd agree that the whole  
11 system has to eventually work together, but I  
12 think it's practically impossible to implement the  
13 whole thing at one fell swoop. So while we're  
14 talking about phasing and implementation --

15           MR. TURBEVILLE: Right.

16           MR. DONOVAN: -- is that certain things  
17 have to happen first and the things that should  
18 happen first were those that posed the most  
19 systemic risk the last go-round. And perhaps the  
20 participants in that arena are still posing the  
21 systemic risks such as hedge funds.

22           MR. TURBEVILLE: Possibly so the

1 participants do. But I think -- my point is just  
2 that it's a slippery slope to start talking about  
3 taking a piece because each individual piece, no  
4 matter, you know, the banks, the insurance  
5 companies, the hedge funds, each one argue their  
6 particular piece isn't individually systemically a  
7 threat. So that's what the issue is.

8 MR. DONOVAN: But if you do look at the  
9 facts, I think the facts support who is the most  
10 -- who poses the most risk.

11 MR. SHAPIRO: I think there's perhaps an  
12 easier way to slice which is large-small. And,  
13 you know, I think that's one of the things you'd  
14 look at. You raised correctly, Peter, I think,  
15 the issue about people being concerned about being  
16 last in and not having their interests heard. So  
17 we would want to see, for example, the major  
18 governmental and major nonprofit institutions be  
19 in but there's a tremendous difference in  
20 implementation for someone like, for example, you  
21 know, Harvard or University of California versus  
22 Olin College of Engineering or Simmons College or

1 something like that, all of whom I mention because  
2 they're swap users. There's a big difference  
3 between somebody like Memorial Sloan-Kettering  
4 with a \$3 billion endowment than a smaller urban,  
5 you know, hospital system in Elizabeth, New  
6 Jersey, like Trinitas. In some ways you could  
7 make sure that the interests of the whole group is  
8 met by making sure that the larger issuers get  
9 their issues out first. Again, just in terms of  
10 Wally's comments, I don't think anybody's talking  
11 about exemption anyone. We're talking about how  
12 we'd roll it out.

13 MR. SHILTS: Just in terms of that, how  
14 -- do you or others have any thoughts on timing in  
15 rolling it out if you did like a large-small  
16 breakdown as you're talking about?

17 MR. SHAPIRO: One of the beauties of  
18 timing it in this way is that there's some  
19 learning that the ecology of the market will have  
20 that way among the larger users, their counsel,  
21 their advisors, the dealers who will work with  
22 them as it's adapted. I think that the distance

1       between the initial adaption and the final  
2       adaption by everyone should really need be no more  
3       than a couple years.

4               MR. OKOCHI: I think we're talking about  
5       a couple different things. So the phasing in, do  
6       you phase things in because you're trying to test  
7       how things will work? Versus the view I would  
8       have is if you're looking to layer things in to  
9       allow for people to plan and resource, you really  
10      need to know the whole scope. So all of Russell's  
11      points really kind of point to -- unless you  
12      really know the end game -- to the level of detail  
13      that may impact your requirements, it's hard to  
14      say, well, I want to go first or last. So I think  
15      that's a big question. Do you want to set up a  
16      big beta test site for all of this for 12 months  
17      to see how it works and then come back, set final  
18      rules and requirements, and then phase in the  
19      implementation or not?

20             MR. SHILTS: Chairman Gensler.

21             CHAIRMAN GENSLER: Russell, can I just  
22      ask -- and I apologize. You may have said this.

1 I walked in and out -- because I took your point  
2 is about pension funds so I was wondering whether  
3 it was about the special entity provisions of  
4 Dodd-Frank or --

5 MR. WASSON: Not pension funds. We do  
6 have some special entities in our industry that  
7 are regulatory in nature.

8 CHAIRMAN GENSLER: Right, right.

9 MR. WASSON: You know, not affiliates.

10 CHAIRMAN GENSLER: So let me ask a  
11 question maybe about special entities. Was there  
12 any sense of -- there's a lot in Dodd-Frank, the  
13 statute, even before you get to our rules -- to  
14 protect pension funds and municipalities. And  
15 hopefully we'll finalize those rules and we'll be  
16 consistent and protect those parties. And I know  
17 it's something that Heather and others have worked  
18 a lot, hard on. Was there a sense that -- of any  
19 phasing with regard to the protections for these  
20 pension funds? The protection for the  
21 municipalities or would that be at the same time?  
22 This is swap dealers and how they deal with these

1 pension funds and special entities.

2 MR. SHAPIRO: The trickiest issues that  
3 we see on the special entities side have to do  
4 with communication between the dealer and the  
5 special entity. And that's, you know, the area --  
6 we are only always on the special entities side.  
7 We're always facing the dealer, fighting with the  
8 dealer, making sure that we get as far a deal as  
9 possible out of the dealer. But we want a free  
10 flow of ideas on that. You know, it's just a  
11 critically important thing. We hate the notion  
12 that suddenly there'll be a chilling effect on  
13 ideas, even what would be characterized as  
14 recommendations.

15 Our clients overwhelmingly view dealer  
16 recommendations with healthy skepticism. We know  
17 there are those out there who do not. We know  
18 there are those out there who are not well  
19 advised. Those things need to be clarified before  
20 you implement, and we think there needs to be  
21 time. But by all means, implement quickly with  
22 the big guys so that we can get the system

1 working.

2 CHAIRMAN GENSLER: So am I hearing you  
3 would -- because I shouldn't speak for Congress,  
4 but I think Congress did side with the special  
5 entities in those provisions. And you're saying  
6 correct?

7 MR. SHAPIRO: Correct, yeah.

8 CHAIRMAN GENSLER: And so however we end  
9 up in the final rules, you're saying that all  
10 special entities be protected from the same day or  
11 just some get protected early? Because this is a  
12 little hard for me to think how if you side with  
13 the special entities, how do you say only some get  
14 protected 60 days later and some get protected 12  
15 months later?

16 MR. SHAPIRO: That's a very tricky  
17 question. You'd think --

18 CHAIRMAN GENSLER: That's why I'm asking  
19 you the question.

20 MR. SHAPIRO: Yeah. You'd think you'd  
21 want to protect everyone out of the chute. The  
22 question really is how you nail down some of the

1       trickier questions on communication. NACUBO, the  
2       National Association of College and University  
3       Business Officers, submitted a thoughtful comment  
4       to the draft regs where they talked about the  
5       notion of sophistication and the difference among  
6       their own membership between those who deal in the  
7       billions and those who deal in the millions. And  
8       in terms of the ability to be able to have that  
9       end-user certify that he was not relying on the  
10      dealer to provide advice so that there's clarity  
11      to that dealer and clarity frankly to himself and  
12      his own board, that he was able to digest these  
13      things on his own, chew them up, and spit them  
14      out. I think you'd want -- it's interesting to  
15      look at that kind of carve out. It would be very  
16      different from one set of users to another. The  
17      notion that we need to protect Swenson and Yale  
18      Endowment, thought of as one of the most  
19      sophisticated groups of investors in the world,  
20      the same way that you'd have to protect a pension  
21      or retirement system at one of the rural electric  
22      co-ops that we work with, you know, one looks like

1 a big hedge fund. The other guy looks like a  
2 special entity.

3 MR. COTA: The question is timing and  
4 how you're going to prioritize. There are two  
5 different levels. The prioritization of the risk  
6 and the prioritization of what you can accomplish.  
7 And I think scale matters more than the type. I  
8 think the Treasury's preannouncement that they're  
9 going to exempt \$4 trillion a day of trading and  
10 FOREX was a huge mistake. And although FOREX  
11 didn't take the system down, it didn't take it  
12 down simply because the Fed agreed to print money  
13 and give it around the world to even banks in  
14 Libya.

15 So I think scale matters in your  
16 implementation priorities, but you also need to  
17 have an end game. I'm in the petroleum business.  
18 We deal with the EPA. The EPA has lots of rules.  
19 We have a law from 1973 that got reviewed in the  
20 early '80s and was never implemented and we are  
21 now in the ninth extension of the rule  
22 implementation. At a certain point it gets to be

1 a joke. And the regulators are undermined because  
2 people think that they'll never actually  
3 accomplish the end goal so why should I even try  
4 to comply?

5 And so the bad actors continue to get  
6 away damaging the industry and the good actors get  
7 punished because it costs them more because they  
8 implemented early. So I think there are two  
9 different stages in that regard. One is scale.  
10 The second is you need to have a timeline at the  
11 end that you need to implement things and  
12 everybody needs to know. They need to be on the  
13 same page at that date.

14 MR. WASSON: I'd also just like to  
15 comment that many of us file 723 exemption  
16 requests last August and the Commission correctly  
17 stated that they would wait until 90 days before  
18 the effective date of the Act to reconsider those  
19 requests. And I think we're at that time right  
20 now. And of course, the 723 would grant you a  
21 year's exemption from the effective date of  
22 Dodd-Frank. And I think that would be

1       exceptionally helpful for many smaller entities  
2       that are going to find these rules. In fact, this  
3       whole language we're talking about is foreign --  
4       it's a foreign language to us. And so it would  
5       enable us to have more time to prepare so we'd be  
6       most grateful if those 7023 exemption requests  
7       could be reconsidered at this time.

8               MR. CURLEY: I would like to introduce a  
9       question about public companies and any unique  
10       considerations associated with the proposed rules  
11       for end-users or for public companies or some  
12       special factors associated with recording or the  
13       processes of recording, and any thoughts that  
14       people might have on that, both for larger  
15       companies and smaller, public companies.

16              MR. PETERSEN: Just to bring that topic  
17       up again, and it was said earlier that, you know,  
18       many public companies already have hedging  
19       policies in place that allow them to enter into  
20       trades over the counter and that's correct.  
21       However, those policies or resolutions would not  
22       necessarily meet the requirements related to the

1 end-user exemption. I hope they do. It's just a  
2 question that we have. So certainly, that is one  
3 specific area that I know a lot of our public  
4 end-user clients are very concerned with just  
5 because they read it and they don't know what it  
6 means. And again, it could on the one hand be  
7 read where, you know, you simply amend an existing  
8 resolution and periodically -- and hopefully not  
9 too frequently -- reaffirm that or perhaps just  
10 refer back to that on a trade-by-trade basis, or  
11 at its worst it can mean that the Board actually  
12 has to get together every time you have to do a  
13 trade, which is obviously nonworkable.

14 So again, I hope it's an issue that can  
15 be resolved, but depending on how that plays out  
16 between now and the final rule, that could be a  
17 major implementation hurdle for end-users. And  
18 frankly, it could be an impediment to hedging  
19 risks.

20 MR. TURBEVILLE: Consistent with what we  
21 were talking about earlier, I think the notion  
22 should be, and I believe it is, talking about a

1 hedge program and what assets should be hedged.  
2 Some of the folks where know that I did other  
3 things prior to doing this and I saw any number of  
4 companies -- largely energy companies, at one time  
5 or another, companies like Calpine, even dating  
6 back to ENRON and some of the others -- ran into  
7 grave issues when it came to what they were doing  
8 with hedging -- whether they were hedging or  
9 trading. And I think it's actually quite a good  
10 thing to make certain that when companies are  
11 entering into hedging programs that it is a big of  
12 a solemn event and they actually adopt the -- at  
13 the highest levels, the policy of hedging certain  
14 assets. If you listen to calls -- analysts' calls  
15 regarding a lot of these companies, one of the  
16 major things they talk about is their hedging  
17 programs because it's very central to them. And  
18 to the extent it's central to them, it's also a  
19 great risk for them as well.

20 So we applaud the notion of making  
21 certain that here's what's going to be hedged,  
22 here's our program, and it's actually a program

1 that's actually consensually entered into at sort  
2 of the highest levels of the company. We think  
3 it's a great idea.

4 MR. GLACE: We agree with your comments  
5 so that the Board meets and approves policies and  
6 programs and that the Board is not involved in  
7 transactional activity. That's just got to get  
8 fixed if it's a problem because that's not going  
9 to work as was earlier pointed out. But again, if  
10 the Board does approve the hedging programs,  
11 approve the risk policies of the entity, and  
12 that's their role.

13 MR. TURBEVILLE: It's a very big thing  
14 for your company and others like you. This  
15 program is very important and central to the value  
16 -- your shareholders' value.

17 MS. MIMS: True, for every hedging  
18 program we enter into we actually have a white  
19 paper. We call it a risk mitigation strategy  
20 document. So the controller of each of the  
21 business units involved in the hedge and the CFO,  
22 depending on the dollar limit, have to sign off on

1       them. So because we have a very stringent policy,  
2       yes, I am concerned about every time we needed to  
3       enter into something and prove that we still get  
4       the exemption that it would require Board  
5       approval. I would think that a one- time  
6       corporate resolution would do the trick and that  
7       each subsequent hedge would just, you know, be  
8       grandfathered in to that first resolution. I'm  
9       just not sure what your thinking is on that.

10               MR. CURLEY: I think today it's more of  
11       an implementation point. And so what I'm hearing  
12       from you is that it's relatively consistent across  
13       public companies to have a policy if that kind or  
14       more practices so that there wouldn't be as much  
15       of a timing or implementation concern driven by  
16       that factor if that's a fair statement. So thank  
17       you for that input.

18               And then I'd like to follow on with this  
19       in reference to international factors. We haven't  
20       talked so much about the cross-border issues but I  
21       know that it is a topic that comes up, even among  
22       relatively small companies. It's part of their

1 business now in a global market. And just how is  
2 it that with respect to end-users in particular,  
3 international factors might be taken into account  
4 for purposes of implementation concerns. Are  
5 there rules outside the United States that we  
6 should think about in terms of implementation and  
7 how it affects the end-user community.

8 MR. PETERSEN: This is an issue that has  
9 come up quite a lot with our clients over the last  
10 year and I think one major concern is that they  
11 just -- our clients want to know going forward if  
12 they have international operations or, you know,  
13 hedge at different entities, which set of rules  
14 they need to be worried about, you know, they have  
15 the question of, you know, how far do the U.S.  
16 rules sort of reach? So with respect to that, to  
17 the extent that the agencies could provide clear  
18 guidance in the rules related to those points,  
19 that would certainly be appreciated. And  
20 obviously, this is a scenario that's going to be a  
21 boon for many law firms going forward.

22 There are other issues just to briefly

1 talk about margin again. I mean, it seems to me  
2 that margin is an area where right now the  
3 European proposal appears to be quite different  
4 than what the agencies here have proposed, which  
5 of course could be easy for a firm that does have  
6 international operations to consider doing trades  
7 abroad.

8 MR. OKOCHI: I think the difference in  
9 information threshold versus the clearing  
10 threshold could be something that U.S. companies  
11 should have to be mindful of when doing  
12 derivatives overseas.

13 MR. CURLEY: Okay, we are just about at  
14 the end of our time so if you have another  
15 question.

16 MR. SHILTS: Yeah, it's kind of a  
17 follow-up on something we talked about earlier.  
18 It sounds like some of the key concerns with  
19 respect to end-users who may have to report goes  
20 to I guess resources, limited resources to develop  
21 whatever needs to be done. But I was wondering,  
22 if you could comment on how should the commissions

1 think about that in terms of any sort of phased in  
2 implementation? You know, considering the  
3 resource issue. I mean, what -- in context,  
4 ultimately everybody will come into compliance.  
5 So what might you think about is kind of a  
6 realistic timeframe?

7 MR. COTA: From this group of end-users,  
8 they would like it done immediately, as soon as  
9 possible. We don't care where the paperwork is.  
10 We are going out of business rapidly because  
11 there's no control over these markets. So do it  
12 now.

13 MR. SHAPIRO: I'm thinking about it in a  
14 slightly different way. And that is just thinking  
15 about the way in which I've watched the  
16 over-the-counter market evolve itself since the,  
17 you know, late 1980s. As it moved from initially  
18 larger, more sophisticated users, down to smaller,  
19 more frequent users. And one of the things that  
20 clearly happened was the overwhelming number of  
21 the transactions are dealer to end-user. The  
22 dealer, in essence, is the one who will carry the

1 water of making it happen. Your regs  
2 intelligently impose almost all the burden in that  
3 direction to make sure that it happens.

4 Thinking about the implementation of  
5 these regs, doing it from large to small, having  
6 the dealer basically get the plumbing working for  
7 that first year, I don't think it really should  
8 take longer than a year, two max. I don't know if  
9 anybody around the table thinks that it needs to  
10 be longer than two years before it's 100 percent  
11 implemented.

12 I'd be curious, you know, for anybody --  
13 Russ or Sam, if you've got anybody there that you  
14 think that would be too short a time.

15 MR. TURBEVILLE: On the reporting side,  
16 it's actually -- it's the usual event issue, isn't  
17 it? Isn't it because these are events that don't  
18 happen very often?

19 MR. SHAPIRO: It is.

20 MR. TURBEVILLE: Typically, that's not  
21 going to get any better or worse in a year, is it?

22 MR. SHAPIRO: No, but the, you know, the

1 ecology will evolve. I think that's the key  
2 thing. People will get used to it. This is how  
3 it's done. It's not how it's done now. It's how  
4 it's going to be done based upon what the  
5 commissions do.

6 MR. DONOVAN: Could I make a comment,  
7 Peter, as well? I would agree with what you said  
8 earlier. If we do go from large to small, we're  
9 very concerned that the largest dealers are going  
10 to set the precedent and the models at the outset  
11 and we're going to be left with it at the end. So  
12 the smaller users, although they may have more  
13 time, they may end up with a model that they  
14 really don't want or don't have the ability to  
15 work with very well. So I'd agree entirely with  
16 what you had said earlier. And I think the  
17 process that you're going through here, being very  
18 deliberate about it and getting these comments is  
19 what I would suggest that you continue before  
20 doing anything -- rushing in quickly. So I  
21 commend you on what you are doing.

22 MR. WASSON: And we would commend you as

1 well. I think one of the things, before we start  
2 talking about timeframes, is that we need  
3 certainty with respect to just exactly what it is  
4 we're dealing with. And so when we talk about  
5 product definitions, for example, Terry, I  
6 suspect, when product definitions come out, you're  
7 going to be asking for additional comments on  
8 electric utility-type industry products that  
9 perhaps are unclear whether they're swaps or not.  
10 And as the chairman indicated, you know, the  
11 30-day period where you're opening up all these  
12 past NOPRs, that's greatly appreciated but first  
13 off, when does the 30-day period start? And  
14 secondly, can we have a final product definition  
15 and then start the 30-day period because then we  
16 would know what we're dealing with. But if we  
17 open up all the NOPRs before we have a final  
18 product definition, then we're sort of behind the  
19 8-ball in the same position we've been in this  
20 whole process but we've had to comment on various  
21 NOPRS where we don't know the most basic elements  
22 of how it might impact us.

1                   MR. PETERSEN: Just to add to that, I  
2 mean, I think just off the top of my head I would  
3 expect that most firms could get ready in two  
4 years. However, I definitely echo Russell's  
5 concerns and point of view regarding, you know,  
6 it's probably better to ask that exactly question  
7 after we have a more final set of rules. I so  
8 hope that this is, you know, the first of many for  
9 a where we can ask these questions.

10                   MR. CURLEY: All right. Well, I think  
11 we've just about reached the end of our time for  
12 this panel and the end of the day with Chairman.

13                   Yeah, please.

14                   CHAIRMAN GENSLER: Two things. One, the  
15 final definition of (inaudible).

16                   MR. SHILTS: Did anybody have any last  
17 comment before we close?

18                   MR. COTA: You guys have a huge job.  
19 You're all understaffed, you don't have enough  
20 money, and the future financial system depends on  
21 you doing it well. So I appreciate all the time  
22 and effort you guys do.

1 MR. CURLEY: All right. Thank you very  
2 much.

3 MR. SHILTS: Thank you.

4 (Whereupon, at 3:58 p.m., the  
5 PROCEEDINGS were adjourned.)

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