UNITED STATES OF AMERICA

COMMODITY FUTURES TRADING COMMISSION

ROUNDTABLE TO DISCUSS PROPOSED CHANGES TO REGISTRATION AND COMPLIANCE REGIME FOR COMMODITY POOL OPERATORS AND COMMODITY TRADING ADVISORS

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P R O C E E D I N G S

(9:00 a.m.)

MR. WALEK: I will have a few opening remarks and some housekeeping items, but before that I'd like to introduce our division director for the Division of Clearing and Intermediary Oversight, Ananda Radhakrishnan, to say a few words.

MR. RADHAKRISHNAN: Morning. Thank you, Kevin. And thank you for participating in this roundtable to discuss Proposed Changes to the Registration and Compliance Regime for Commodity Pool Operators and Commodity Trading Advisors. I appreciate everybody's participation in this roundtable and look forward to a lively discussion And before I start, I'm going to have the CFTC team introduce themselves, and perhaps we can go around and everybody can introduce themselves and then we can get the program started.

So, go ahead, Kevin.

MR. WALEK: I'm Kevin Walek, Assistant Director of the Audit and Financial Review Section

of the Division of Clearing and Intermediary Oversight.

MS. CHOTINER: Eileen Chotiner, senior compliance analyst, Division of Clearing and Intermediary Oversight.

MR. KENNEDY: Carl Kennedy from the Office of the General Counsel.

MR. McCARTY: Barry McCarty from the Division of Enforcement.

MS. OLEAR: Amanda Olear. Special Counsel, Division of Clearing and Intermediary Oversight.

MR. SCHEIDT: And I'm Doug Scheidt. I'm with the SEC, and I thank the CFTC staff for inviting us to participate today, and I'm anxious to hear everyone's views on these issues.

MR. NEVINS: My name is Matt Nevins, and I'm at Fidelity Investments.

MR. THUM: I'm Bill Thum. I'm from Vanguard.

MR. KING: I'm Steve King. I'm from PIMCO.

MR. BONANNO: I'm Peter Bonanno. I'm from Goldman Sachs Asset Management.

MS. BREGASI: Nevis Bregasi from MFS Investment Management.

MS. BAUR: Alison Baur, Deputy General Counsel at Franklin Templeton Investments.

MS. WOODING: Carol Wooding, National Futures Association.

MR. DRISCOLL: I'm Dan Driscoll, also from NFA.

MR. AMEDEO: I'm Bob Amedeo from the Altegris Companies.

MR. GRADY: John Grady from Steben & Company.

MS. JOE: I'm Alice Joe with the U.S. Chamber.

MS. SETZENFAND: I'm Jennifer Setzenfand with Federated Investors representing the Security Traders Association.

MR. LLOYD: I'm Tom Lloyd with Campbell & Company.

MS. McMILLAN: I'm Karrie McMillan with

the ICI.

MR. GROOME: My name's Todd Groome. I'm with Dalkeith Management Group, and I'm representing AIMA here today as their non-executive chairman.

MR. RADHAKRISHNAN: I notice we have some more people who haven't shown up yet, but I'm sure they'll show up, so take it away.

Kevin? Sorry?

MR. WALEK: They're going to be coming in --

MR. RADHAKRISHNAN: Oh, they're coming in later? Okay.

MR. WALEK: Just to start things off, today we're here to discuss how CFTC might harmonize its proposed regulations regarding Rule 4.5, 4.13, and any other relevant items that may have been in the CFTC-only, non- Dodd-Frank rulemaking, and I want to emphasize that this was a tangential non-Dodd-Frank rulemaking, so it is not strictly having to follow the deadlines and dates of the Dodd-Frank rulemaking. But these

things flowed tangentially from the items that were in Dodd-Frank that we were considering.

For those of you that know me, you're going to find this hard to believe. My role today is basically to moderate the panel, make sure the panel keeps moving and we make our deadlines, and not for me to talk.

We have had published those written comments that were submitted to us, so in consideration of the time constraints that we have today, we would like to ask all of you to summarize your comments rather than read them verbatim and to get to the key points. We are not here today to discuss or entertain philosophical arguments about whether or not there should be regulation. But, rather, we would like you to help us define and address those areas that are most amenable to harmonization. If your items are on a later panel than the one we're currently on -- some of you have looked at the agenda -- there are basically five substantive areas -- some of you are here to speak about 4.13 only, not 4.5.

Feel free to chime in at the appropriate times, but if it's not your panel feel free to pass to the next person who may actually have something to say about the particular substantive panel that we're on at the time. And I will keep you aware of which panels those are.

The first time around, because of the size of the table, I'm going to be starting on the right-hand side, working to the left, then I'm going to go from the left to the right, and then after that I may do some randomization that'll drive everybody crazy.

I want to remind everybody that we are still subject to the Administrative Procedures Act, and since there's no press at the table right now -- I was going to address to the press specifically that they should not construe anything that staff says, the tone of our questions, the direction of our questions, or anything related thereto to imply any decisions that could be made in the future or may be made in the future with respect to this rulemaking.

Further -- I'll do this for everybody here at the table -- the opinions that we may express are our own and do not reflect the opinions or decisions of the Commission.

Lunch -- everybody's favorite topic. As you notice, we have -- particularly the panelists -- we've had to move the schedule around from time to time. We are now scheduled to stop at 2 o'clock. But several of you at the table have called and suggested why don't we just skip the lunch hour and tighten up the schedule. So, how many of you would prefer to skip the 11 o'clock lunch, have a 15- minute break in lieu thereof, and work on through and possibly be done before 2? (Pause) I think it's the vast majority. And I think we've already warned one of the persons who's coming for the fifth group that that may happen and they should get here early.

As a courtesy -- this is for the audience as well and also the staff at the front table. As I notice, I forgot to do this myself. As a courtesy to everyone else, please check your

cell phones and put them on vibrate or, if not, simply turn them off.

Last but not least, I would like to thank both our colleagues from the SEC -- there are some in the audience I believe -- and our colleagues from the IRS who have been very helpful to us in this area, and we have held at least two meetings with those parties trying to get some clarity, and we greatly appreciate the education that they have given us over the past month or so with respect to their regulatory regimes in these areas.

With that, I would like to turn it over I think first to Doug in case he has any opening comments he'd like to make.

MR. SCHEIDT: Thank you, Kevin. As Kevin said, we have been invited by the CFTC staff to participate and observe here. And as Kevin mentioned, we have on at least two prior occasions worked and met with the CFTC staff on these issues, and we're anxious to see how those issues can get resolved and we're anxious to hear what

you have to say about them. So, thank you.

MR. WALEK: Amanda.

MS. OLEAR: First I'd just like to thank everyone for their flexibility and for their willingness to work with us to make sure that this roundtable could happen. And I would just like to say I look forward to hearing from everybody today, and I hope that this can be a real roll-up-your-sleeves, digging-in, you know, working- group-style discussion today, and I look forward to hearing from everybody.

MR. WALEK: Some of you have been fumbling with the microphones. Just so you know, when you push the little button, it turns on red and you'll know you're lit up. When you're lit up, you're on. If you want to say something to one of your colleagues and you don't want the rest of us to hear, push the button down so there's no light showing.

And with that, Matt.

MR. NEVINS: Thank you, Kevin. I'd like to start off by thanking the Commission for

putting this roundtable together and inviting me to participate.

My name is Matt Nevins, and I am Vice President and Associate General Counsel at Fidelity Investments. In this role my primary responsibility is providing legal support to derivatives for the Equity Division of our asset management business. This includes legal support for Fidelity's commodity funds and asset allocation products.

I'm here today as part of a group of four members of the Asset Management Group of the Securities Industry and Financial Markets Association. A bit of a mouthful, but we call it AMG for short. Fidelity is one of the many asset management firm members of AMG whose combined assets under management exceed $20 trillion.

The proposed changes to Rules 4.5 and 4.13 are of utmost importance to Fidelity and to the asset management industry generally. Both Fidelity and AMG have provided the Commission with detailed comment letters in response to both the

NFA petition and the CFTC's rule proposal outlining our concerns with the proposed changes and offering suggestions if the Commission does indeed proceed.

My remarks today are made on behalf of Fidelity, although our views are shared by many members of AMG, including those in attendance today.

A few words about Fidelity before I begin my substantive comments.

Fidelity Investments was founded in 1946 and is one of the world's largest providers of financial services, with assets under administration of $3.7 trillion, including managed assets of more than $1.6 trillion as of May 31st. Fidelity is, among other things, a market leader in asset management, offering a comprehensive line of retail and institutional investment management products, including over 400 mutual funds across a wide range of disciplines.

Fidelity is also a leading provider of asset allocation solutions for individuals and

institutions. Certain private pools and mutual funds, advised by Fidelity from time to time, use commodity futures, commodity options, and swaps for hedging and other investment-related purposes.

As an initial matter, Fidelity believes that the proposed changes to Rule 4.5 are not necessary, given the comprehensive and robust regulatory regime that governs mutual funds. Together, the Investment Company Act of 1940 and the related rules issued by the SEC for investors with enormous protections make mutual funds the preferred the investment vehicle for millions of Americans.

The '40 Act and a number of the SEC's related rules cover the same general areas of concern that the CFTC's Part 4 requirements address. However, the CFTC's approach to dealing with these concerns is materially different from the SEC's, which will create significant compliance burdens and costs for dual registrants if not properly harmonized. Accordingly, harmonization is of vital importance if changes to

Rule 4.5 are adopted.

Similarly, we do not believe that the changes Rule 4.13 should be made. Although private pools that rely on this exemption are not themselves subject to the '40 Act, their advisors are generally required to be registered with the SEC under the Investment Advisors Act of 1940 or soon will be as a result of Dodd-Frank.

The Advisors Act also addresses many of the same and comprehensive recordkeeping requirements and anti-fraud protections as the CFTC's Part 4 requirements.

In addition, we believe that it is appropriate for the Commission to maintain an exemption from CPO registration for advisors to pools that are sold only to sophisticated investors. Nevertheless, we understand that the Commission may wish to move forward with some form of changes to Rules 4.5 and 4.13.

Fidelity believes that are many other means for the Commission to achieve many of the objectives of its proposed rulemaking without

drastically increasing the regulatory burdens on asset managers. As proposed, advisors to most mutual funds that use commodity futures, commodity options, or swaps would be required to register as CPOs. One alternative to registration is to require enhanced disclosure for these funds through existing SEC mandated filings. This would obviously require coordination with the SEC. However, it would further the CFTC's goal of providing mutual fund investors with additional disclosure with respect to fees, performance, and other information.

In addition, we understand that the Commission is interest in obtaining additional data on pools that invest in commodity futures, commodity options, and swaps above certain thresholds. We believe that goal can be achieved without requiring CPO registration. The CFTC could, for example, require that some level of reporting be made for pools that are above certain thresholds, even if they remain excluded or exempt under Rule 4.5 or 4.13.

The Commission could also examine information gathered through this reporting process to determine whether any changes to Rules 4.5 and 4.13 are indeed necessary at all and if so use this information to establish the appropriate extent of changes.

In any event, if the Commission elects to proceed with changes to these rules, we believe that it is imperative for the Commission to appropriately tailor the changes so as not to cast too wide a net. Fidelity has made a number of recommendations on how to narrow the scope of the rule changes so as to only capture those mutual funds and private pools that may appropriately require additional oversight by the CFTC.

The basic premise of our proposal is that the CFTC should require registration only of a mutual fund or a private pool that takes active positions and a referenced investment through futures and options as its primary investment strategy. To that end, we recommend a number of adjustments to the proposed Rule 4.5 test, such as

eliminating the proposed marketing restriction or narrowing it so it only applies to funds that hold them out as managed futures vehicles.

In addition, we suggest exemptions for certain categories of funds, such as commodity funds whose commodity exposure is tied to an index, and fund of funds that invest in commodities only as part of an overall asset diversification strategy.

We believe that the same general principle should apply equally to Rule 4.13. I look forward to discussing our ideas in more detail during today's panel discussions. As noted earlier, we ask the Commission to harmonize its rules with those of the SEC for an entity that is required to be dually registered. There are important differences between the CFTC's and the SEC's requirements in significant areas, such as the content and timing of disclosure; the form of disclosure documentation; means of delivery and acknowledgment of the master documentation; reporting; recordkeeping; and investor access

among others.

In closing, I would like to thank the Commission for arranging today's dialog on this important matter. The inclusive collaborative approach taken by the staff to make sure that any changes that are made are workable and appropriate is indeed appreciated. I would like to thank the Commission for inviting me to participate in this important process.

MR. RADHAKRISHNAN: Let me ask a question of everybody, and please consider what I'm going to say when you make your remarks.

It's not going to be a surprise to me that you are going to say, "Back off," all right? So, I want you to think about this. And I've mentioned this in a different context. If you are a broker-dealer and you're registered with the SEC, if you engage in one futures contract for a customer, you have to be an FCN, right? So, regulation follows what it is you do, right? So, if you choose to get involved in an activity that implicates the jurisdiction of the CFTC and the

NFA, implicates the Commodity Exchange Act, implicates the Commissions regulations, why shouldn't you be regulated by us? And that's the question I want to ask.

And to me, it's not easy to say well, don't regulate us because you're regulated by the SEC, and with all due respect therefore the Act I think has different outcomes, different objectives than the Commodity Exchange Act. The regulations of the SEC have different objectives.

So, think about this as you, you know, make your remarks -- why should we regulate you? -- because, I mean, to me it seems to address some of the comments. That seems to be the theme -- don't regulate us because we're regulated by the SEC. I mean, in some instances we've attempted to harmonize our rules, but in other areas I don't know whether we can or should.

So, the question is, you know, apart from saying well, rely on the SEC, should we? And I'm not taking anything away from the SEC's regulatory scheme, but you are involving -- you

know, you are engaged in options and futures and now swaps, because you've seen that Dodd-Frank includes the word "swap" in the definition of commodity pool and operates in NCTA.

So, think about that as you make your comments. Thank you.

MR. WALEK: And I'm also going to be cutting you off a little bit faster as we move along, because at this rate the first panel will be done around noon.

Nonetheless, let's move on to Bill.

MR. THUM: Okay, I'd like to thank the Commission for inviting me to speak to the roundtable. As you know, my name's Bill Thum, and I'm principle and senior derivatives counsel at Vanguard headquartered in Valley Forge, Pennsylvania. Vanguard's one of the world's largest mutual fund firms. We offer more than 170 U.S. mutual funds with combined assets of approximately 1.7 trillion. Vanguard's mutual funds are subject to a comprehensive regulatory regime and are regulated under four federal

securities laws. As a part of the prudent management of our mutual funds, we enter into swaps to achieve a number of benefits for our shareholders, including hedging portfolio risk, lowering transaction costs, and achieving more favorable execution compared to traditional investments.

Vanguard has submitted a detailed comment letter summarizing our concerns and suggestions regarding the proposed changes to Rules 4.5 and 4.13. Particularly with respect to funds registered with the SEC, the proposed changes could raise significant added costs with respect to compliance with little if any commensurate added benefit to investors. A brief summary of our key points is as follows.

1. There is no current need for change, given the existing regulation by the SEC of registered funds and advisors.

2. If enhanced reporting and disclosure is warranted, we recommend leveraging the existing regulatory framework through coordination with the

SEC.

3. If the CFTC determines the cost benefit analysis justifies more substantive changes, then amend the proposal to only require CFTC registration for registered funds and private pools that take active positions in futures and commodities as their primary strategy and exempt registered funds tied to an index and fund of funds that invest in commodities as a part of a diversification strategy.

Thank you for you opportunity to share our views, and we'll look forward to participating in the roundtable today.

MR. WALEK: Stephen -- by the way, This is not THE Stephen King. He promises that Carrie will not appear -- not that Carrie, anyway.

MR. KING: I would also like to thank the Commission for holding this roundtable, and I appreciate the opportunity to participate. My name is Steve King, and I am a senior vice-president and attorney at PIMCO.

PIMCO manages a variety of '40 Act

funds, primarily in the fixed income space but also including several enhanced index funds that use derivatives on physical commodities for the passive exposure portion of their portfolio and several asset allocation funds that may invest in these enhanced index funds.

The proposed change to Rule 4.5 and the proposed rescission of Rule 4.13(a)(4) would impact nearly all of PIMCO's '40 Act funds. Nearly all the funds made from time to time utilize futures, options, or swaps on financial swaps for hedging and other investment-related purposes. In addition, the enhanced index funds I just noted utilize futures, options, or swaps on physical commodities to obtain the passive exposure that is part of each fund's strategy. For tax reasons, this exposure is typically obtained through the use of a wholly-owned offshore subsidiary.

PIMCO believes that the physical commodities are an important asset class for investors to have exposure due to the

diversification and inflation protection benefits of such investments. These benefits are particularly important when an investor has effectively delegated their asset allocation decision to PIMCO by investing one of PIMCO's asset allocation funds.

PIMCO agrees with the views expressed by Fidelity and the other members representing SIFMA AMG. We question whether there is any need for a change in Rule 4.5 or the rescission of 4.13(a)(4), as we are unaware of any problems that have arisen as a result of these rules. If the Commission nonetheless determines that changes are necessary, PIMCO believes that the market interstriction in the proposed amendment to Rule 4.5 is too broad and that trading restriction should be narrowed by either expanding the types of positions that would be included as bona fide hedges or by raising the 5 percent limit. We also believe that funds should be able to continue to use offshore subsidiary structures and rely on 4.13(a)(4).

Finally, to the extent that certain '40 Act funds are not able to claim the Rule 4.5 exclusion, we believe that the CFTC and the SEC must work together to harmonize their rules and to eliminate unnecessary and duplicative regulation.

In closing, I join Fidelity and others in commending the Commission for arranging today's roundtable in this very important matter, and I thank the Commission for giving me the opportunity to participate.

MR. WALEK: Thank you very much. Peter.

MR. BONANNO: Good morning. My name is Peter Bonanno, and I'm a managing director and associate general counsel at Goldman Sachs Asset Management, and I also serve as the chief legal officer and secretary for the Goldman Sachs Mutual Fund complex. I am participating in today's roundtable as part of the SIFMA Asset Management Group, and I, too, would like to express my appreciation to the Commission and the staff for organizing today's meeting on this very important matter.

GSAM shares the views of the other SIFMA AMG members that the proposed revisions to Rule 4.5 are not warranted in light of the substantial regulatory regime that already governs mutual funds today. Mutual fund shareholders, including those in mutual funds that invest in commodities, commodity futures, options, and swaps are protected by a range of substantive and disclosure-based provisions that have the collective effect of limiting the degree to which mutual fund managers may engage in risk taking, investment activities, and ensuring that investors receive informative and clear disclosures relating to a fund's investment strategies, key risks, and fees and expenses, among other items.

Nevertheless, to the extent that the Commission decides to proceed with modifications to Rule 4.5, we respectfully request that the Commission and staff make several changes before issuing the final rule.

First, the Commission should take steps to narrow the scope of the final rule to cover

only those mutual funds that engage in active investment strategies implemented substantially through the direct use of commodity futures, options, and swaps. We believe that narrowing the universe of mutual funds in this manner will address one of the primary concerns raised by the SIFMA Asset Management Group and other commentors, namely, that the proposed revisions to Rule 4.5 are overly broad and as drafted would have the potential to cause many types of mutual funds to be regulated as CPOs even where the investing commodity futures options and swaps, to a limited degree indirectly, through fund of fund structures are only a means to track a benchmark.

Second, in order to ensure that any mutual funds that would ultimately be required to be regulated as CPOs are able to continue their existing operations in largely the same manner as they are today, we respectfully request that the Commission collaborate with the SEC on harmonizing the key places where the two agencies have conflicting disclosure reporting or other

requirements. We believe that a collaborative approach of this type is necessary to provide a framework in which a dually regulated mutual fund could practically continue to operate as both a registered investment company under the Investment Company Act and as a commodity pool operator under the Commodity Exchange Act.

Finally, we request that any final rule also permit mutual funds relying on Rule 4.5 to continue to utilize wholly-owned subsidiaries for the commodities- related investment activities. In our view, these structures serve a legitimate tax purpose, and eliminating their availability for non-hedging-related purposes for those funds continuing to rely on Rule 4.5 would not serve a discernible public policy objective.

Thank you again for this opportunity to discuss these and other related issues regarding this important matter today.

MR. WALEK: Thank you, Peter. Nevis.

MS. BREGASI: Good morning. I also thank you for holding this roundtable and giving

us an opportunity to participate and share our views in what is to all of us a highly important piece of regulation.

My name is Nevis Bregasi and I'm a senior counsel at MFS Investment Management. MFS currently manages over 240 billion in assets, about 80 billion of which is distributed across 60 U.S. mutual funds within the MFS family of funds. My primary role in MFS is providing legal support relating to derivatives. I am participating today as a representative of the Association of Institutional Investors.

MFS agrees with the views that the other participants speaking before me already mention, so I will try not to repeat any of the points that they already made. We also think and question whether there really needs to be any changes to Rules 4.5, 4.13(a)(3) and (a)(4). But if the Commission foresees a need for changes to these rules, MFS would like to make three suggestions, which are really procedural suggestions.

The first one is that the Commission

should delay any further rulemaking on this proposal until the Dodd- Frank rules or the major part of the Dodd-Frank rules are finalized. And we believe that should be the case for three reasons. One, this rule is not required by Dodd-Frank; two, we think that having the Commission and the industry see some of the major Dodd-Frank rulemaking be finalized will help to see the effects of those rules on this proposed rule; and, three, the Commission and the industry will be allowed to focus their efforts first on finalizing and implementing rules that are required by Dodd-Frank.

The second suggestion on the procedural front would be to move -- before moving forward to this proposed rule, we ask that the Commission and the industry would be served well if the Commission collects certain data from the industry first. The Commission can require the industry to validate the number of filed exclusions under Rules 4.5 and 4.13(a)(3) and (a)(4); and it can collect data from the industry on the extent and

purpose of the use of commodity futures, options and futures, and swaps by entities that have filed those exclusions and used these instruments above certain thresholds. This would allow the Commission to provide a meaningful cost benefit analysis in the proposed rule, as it would be able to better estimate the potential cost of the proposal.

The third suggestion is that the Commission should re-propose the rule and make clear in such re- proposal its rationale for the proposed changes. Currently the Commission's proposal, with respect to 4.5, notes that it is nearly an appropriate point at which to begin discussions. As the relevant Dodd-Frank Act rulemakings become final and the Commission begins to collect additional data on the current exclusions or exemptions, we believe that a re-proposal will allow the industry to provide more appropriate, informed feedback to assist the Commission in drafting an appropriate and cost-effective final rule.

If the Commission decides to go ahead with the proposed rule as currently drafted, MFS agrees with the concerns and suggestions of the many participants that spoke before me, so I'm not going to repeat any of those arguments. MFS would support the view, though, that for those mutual funds that fail the re-propose test, the Commission should require registration with the Commission and certain reporting requirements but not subject those funds to the Part 4 requirements. To the extent that certain mutual funds are made subject to the Commission Part 4 requirements, it is imperative that the CFTC and the SEC work together to harmonize their rules and to eliminate unnecessary and duplicative regulation. This roundtable is clearly a huge step in the right direction and shows the Commission's thoughtful approach to this matter.

Thank you again for inviting me to participate in this process. MFS appreciates the Commission's efforts in arranging this roundtable and engaging in an open dialog with the industry

on the proposed regulation.

MR. WALEK: Thank you, Nevis. Alison.

MS. BAUR: Thank you. Good morning. I'm Alison Baur, and I'm Deputy General Counsel of Franklin Templeton Investments. Franklin Templeton Investments provides global and domestic investment management solutions managed by various platforms within Franklin, including Franklin, Templeton, Mutual Series, Fiduciary Trust, Darby and Bissett. We are based in San Mateo, California. We have more than 60 years of investment experience, and we manage over 735 billion assets under management.

Thank you for the opportunity to participate in the roundtable and to present the views of the Investment Advisors Association regarding the proposed amendments to 4.5, as well as the changes to 4.13.

The IAA, as you know, represents the interests of SEC registered investment advisor firms. And as you also know, IAA members that advise pools exempt under 4.5 as well as 4.13 are

already subject to the full panoply of SEC regulation and oversight. We strongly support effective and appropriate regulation of investment advisors, which are designed to protect investors. However, we are concerned and do believe that duplicative regulation by the CFTC over activities that are already extensively regulated by the SEC is unnecessary, costly, and burdensome and does not further invest our interests.

While we recognize that the CFTC is concerned that it does not have sufficient data regarding commodity pools and that it would like to enhance its information regarding such vehicles, we believe that the proposals are not needed to achieve these goals and that these objectives can be accomplished through an enhanced regulatory reporting approach.

Some of those suggestions would relate to enhanced reporting through the new amendments to ADV, as well as the new form PF that is being considered by the SEC, and we're certainly open to discussions regarding other enhanced reporting

obligations that would be able to get the CFTC the information that they need.

Putting aside those sorts of fundamental issues to the extent that we do need to harmonize the regulations that the CFTC is hoping to impose, we would like to discuss issues around improving and expanding the bona fide hedging exception as well as the 5 percent restriction. Also we believe that the marketing restriction currently being proposed is really expansive and one that we would like to discuss further.

Thank you very much for inviting me and for your consideration of these issues.

MR. WALEK: Thank you very much. Before I move to the NFA, I just want to let everybody know it's about 9:30 right now. Since we're adjusting the schedule, this panel is going to now run til 10 o'clock, so the first break will happen at 10 o'clock. Hopefully we'll be able to squeeze in a few questions, but if necessary we'll have some -- I already have some questions for this first section, so we may even slip over the break

with questions. So, hopefully we'll be very flexible today.

With that, Carol?

MS. WOODING: Thank you. Good morning. I'm Carol Wooding. I'm Associate General Counsel at National Futures Association. NFA fully supports amending regulation 4.5 to reinstate certain operating restrictions that are similar to those that an entity had to meet prior to 2003 in order to claim the 4.5 exclusion.

I think as you all know, we filed the petition for rulemaking last summer requesting that the Commission amend regulation 4.5 to reinstate certain trading and marketing restrictions. Although we still fully support the concept of amending regulation 4.5, after further consideration and consultation with managed fund representatives on both the mutual fund side and the public commodity pool side, we have developed a slightly different approach to the amendments, which we believe more precisely addresses the Commission's concerns and identifies these

concerns, and a full discussion of that proposal is in our comment letter, which is dated April 12th.

I won't go into the reasons we filed the petition for rulemaking, but I do want to say that when we did file it, we did not intend to eliminate these mutual fund product offerings. We recognized that simply reinstating the pre-2003 restrictions might effectively do that. Therefore, when the Commission published its proposed rules, we assembled an informal group of representatives from commodity pools, from mutual funds that offered these products, from private counsel who were experts in the Part 4 regulations, and private counsel who were experts in the Investment Company Act of 1940. With the help of this group, we developed an alternative approach, which as I said I think addresses both the CFTC's and the NFA's regulatory objectives and at the same time would not eliminate these product offerings.

Just very briefly, we recommend that,

first of all, the Commission should consider permitting the registered investment company's' investment advisor rather than the RIC itself to register as a CPO and then just list the RIC as a commodity pool with NFA. This eliminates the issues related to whether the RIC's independent directors need to be listed as a principle or registered as a CPO themselves.

We also recommend that the Commission adopt the percent threshold for non-hedge positions. Those RICs that exceed the threshold, however, would be required to register as a CPO and be subject to certain Part 4 requirements, including filing the new Form CPO-PQR. However, unless the CPO marketed the pool or, as I'll discuss later, should market the pool as a vehicle for directly or indirectly trading in on commodity futures markets, then the RIC would be exempt from other Part 4 requirements, including the ones that there is difficulty complying with on both ends, especially those related to the content and use of disclosure documents, monthly account statements,

and recordkeeping. We would, however, want that CPO to show that they are required to comply with similar requirements on the security side.

We also recommended that the Commission provide more clarity on the application of the no-marketing restriction. We recommend that the adopting release for any final changes to 4.5 should make clear that a RIC does not trigger the no-marketing restriction simply because it's promotional material or it's prospectus states that it trades commodity futures products or lists these instruments as those that it trades.

The Commission's release should also make clear, however, that if the fund's prospectus or marketing materials highlight the benefits of managed futures or that its name even indicates that it's a managed futures fund, that type of fund would be considered to have violated the no-marketing restriction.

We also wanted to make clear that we do not think that the sole determination of whether a fund is marketed as a commodity pool should be

based on how it describes itself and its marketing materials and prospectus. The Commission should make clear in its adapting release or by amending the language to the no-marketing restriction that the no-marketing restriction applies to a fund that should be marketed as a commodity pool and then provide guidance and criteria the fund should consider in making this determination. And in our comment letter we highlight a number of different factors that could be considered. Although we provided these factors, we also stressed that the Commission should not attempt to provide an exact formula, which would place the burden on the commodity pool to evaluate whether a pool that is a RIC is being appropriately marketed to potential investors in the context of the overall operation of the fund. If the RIC fails the no-marketing restriction, then there would be additional regulatory requirements beyond simply having to register as a CPO. The investment advisors for those RICs would have to comply with the Commission's Part 4 requirement, including those

related to the use of content and use of disclosure documents.

Finally, we recommended that the Commission consider permitting RICs to use their wholly-owned and controlled subsidiary for futures and options traded provided that the Commission put something into Regulation 4.5 whereby the CPO agrees to make the books and records of that subsidiary available to full inspection by the CFTC and NFA.

And just very briefly 4.13, NFA believes the Commission should reconsider rescinding the (a)(3) exemption. We believe the de minimis exemption allows both the Commission and NFA to focus their resources on those entities that are more directly involved in the futures markets and away from investment vehicles that are sold only to sophisticated investors who use their futures trading in a very limited manner.

We also recommend, however, that the Commission require that in order to claim this exemption the entity is regulated by the SEC.

So, thank you for giving me the opportunity to express NFA's views on these important issues.

MR. WALEK: Thank you, Carol, and I think Dan said he was going to pass until later when we're talking more specifically about 4.13.

With that, Bob?

MR. AMEDEO: My name is Bob Amedeo. Thank you for giving me the opportunity to participate.

I am the Executive Vice President and Director of Business Development for the Altegris Companies. The Altegris Companies are subsidiaries of Genworth Inc., a multi-national provider of insurance and other financial services. We act as the commodity pool operator to traditional commodity funds of over a billion dollars and to '40 Act registered commodity funds with approximately a billion dollars.

I also act as the NFA's CPO/CTA sub-advisory chairman and was asked by Tom Sexton's group to chair a special industry

committee to assist the NFA in examining various issues relating to the proposed amendments to Rule 4.5.

As Carol mentioned, the special committee included members representing traditional commodity pool operators, open-ended mutual funds and employee-managed futures, and other strategies, as well as attorneys who are expert on both the Commodity Exchange Act Part 4 regulations and the Investment Company Act of 1940.

As part of the process, the Committee examined a number of traditional long-only mutual funds that employ futures, swaps, and notes, as well as mutual funds that include managed futures strategies in their investment and trading approaches. We also examined the current Part 4 regulations and relevant portions of the 1940 Act and related relations.

Finally, members of the committee had conversations with representative from industry groups, major fund families, and attorneys

representing mutual funds and traditional commodity pools. Based on its findings, the committee made specific recommendations to the staff, which Carol described and which are incorporated into the NFA's comment letter.

In particular, we recommended a two-tier system for determining registration for operators of mutual funds and employed futures and swaps, mutual fund sales practices, and Part 4 requirements relating to disclosure documents and delivery requirements. We also discussed periodic reporting, recordkeeping, financial reporting, areas of conflict between the requirements of Part 4 regulations as they relate to registered commodity pool operators and the requirements of the 1940 Act, and -- most importantly -- specific suggestions relating to those conflicts.

In particular, we discussed and recommended areas where SEC and CFTC regulations might be harmonized in a way that would allow '40 Acts to continue to use futures in compliance with both Acts.

We believe that accessing futures markets through a mutual fund can offer potential advantages for some investors. They offer daily liquidity and pricing, easier access through publicly available internet platforms, and simplified tax reporting. Many investors are further comforted by the independent board oversight and third- party custody arrangements required for mutual funds, as well as by the use of NSCC centralized clearing.

When an investor buys shares in a mutual fund that trades a portion of its assets in futures, he's making an investment that is already highly regulated by the SEC. Those regulations provide significant investor protections. However, we recognize that the SEC's approach to regulation and the CFTC's approach to regulation differ in many material respects.

We are in favor of intelligent regulation and urge the CFTC and the SEC to work together to harmonize the conflicts between the Part 4 regulations and the requirements of the '40

Act.

Thank you.

MR. WALEK: Thank you, Bob. John?

MR. GRADY: Good morning, and thank you for allowing me to participate in the Roundtable.

I'm with Steben & Company, but I'm also here because I was on the advisory board that Bob just referenced. So much of what Steben & Company would otherwise have to say is incorporated into the NFA's excellent proposals and suggestions. But apart from our participation in that process, we submitted our own comment letters. Probably not surprisingly, we're very supportive of the Commission's initiative in the Rule 4.5 area.

We are a commodity pool operator. We operate a number of public and private pools, and if one were to say sort of what's our net position on what's going on, we think that the SEC regulatory regime at this point -- and it's a fairly emergent regime -- these funds that we're talking about, with all due respect to my colleagues, are fairly new in many cases -- and

I'm talking specifically about funds that emphasize managed futures, not just commodity investing but active positions -- to pick up the point that many of my colleagues on the panel have used -- these funds are relatively new, and I think that the result of SEC regulation alone is a fairly tortured structure and a fairly tortured disclosure environment and that therefore we think that the application of the Part 4 rules would be appropriate in investor interest to bring a good deal more clarity and oversight to the disclosure of how the techniques and how the managers and how the processes are run as well as the costs and expenses and risks are presented to shareholders from both the standpoint of the disclosure itself as well as the document delivery process.

Thank you.

MR. WALEK: Thank you, John. Alice?

MS. JOE: Good morning. My name is Alice Joe. I'm a senior director with the Center for Capital Markets Competitiveness at the U.S. Chamber of Commerce. The Chamber represents over

3 million businesses, organizations, and trades, including many of the mutual funds and hedge funds that will be impacted by the proposed amendment 04.5.

The Chamber has three key administrative concerns with the existing proposal. First, the proposed rule, we believe, is too broad; second, consideration of this proposal is unrealistic until Title XII regulatory structure is set; and, third, there has not been adequate consideration of the proposal's effects on the fund industry and the broader economy.

Let's address the concern that the proposal is too broad. The amendment to Rule 4.5, as it's written, could affect the entire mutual fund industry despite the fact that the February 11th proposal indicates that the amendments have been proposed in order to "stop the practice of registered investment companies offering futures-only investment products without commission oversight."

While we understand the Commission's

concern, we do not believe that the proposed amendments are reasonable in scope or application. According to a recent survey by the Investment Company Institute, out of 1154 registered investment companies, only 23 of these were identified as pursuing a futures-only strategy. A more reasonable approach to address the CFTC's concern would be to address futures-only funds in a more surgical manner or to draw the line somewhere between the 5 percent test and a futures- only fund.

On our second concern, the consideration of the proposed rule at this time is not realistic, and I'll let you know why. The promulgation of the multitude of derivatives rules under Title VII of Dodd-Frank has a direct impact on various aspects of the proposal, and they should be completed in full before this proposal is finalized. Until then, the fund industry cannot appropriately assess the costs, the burden, and the impact of any changes made in this proposal.

The Chamber's third and final concern is that adequate consideration has not been given to the facts of the proposal on the regulated funds industry or the broader economy. In 2003, the Commission gave very thoughtful consideration to the current rule by soliciting public input through a roundtable and advance notice of proposed rulemaking, a proposed rule, before concluding that the 5 percent test marketing restriction should be removed to liberalize the use of features by regulated funds "with the added benefits all market participants have increased liquidity." This is the antithesis of the Commission's February proposal to reinstate the 5 percent restrictions.

By ignoring administrative process, traditional administrative process, the Commission does not appear to have considered the potential adverse consequences that this proposal may have on market liquidity and the broader economy.

In conclusion, if the Chamber's position that the proposed amendments to Rule 4.5 be

withdrawn and re- proposed when the broader derivatives regulatory reforms contemplated by Title VII have been completed in their entirety and at that time, and only at that time, will it be appropriate to continue the discussion started at today's roundtable.

Thank you for the opportunity to express our views.

MR. WALEK: Thank you very much. Jennifer?

MS. SETZENFAND: Thank you. Good morning. On behalf of STA I would like to thank the Commission for the opportunity to speak here today.

The STA is a global trade organization for professionals in the securities industry. We provide a forum for our members to share their distinct perspectives on issues facing our securities markets. Our goal is to provide investors with the most liquid, transparent, and efficient markets in the world.

We are here today to provide comment

regarding CFTC's proposed Rule 4.5. In STA's view, the CFTC should not proceed to finalize the proposed changes for several compelling reasons. Mutual funds are investments that enable retail investors to save for their future. Mutual funds also represent a means of investing money in a diversified fashion. Futures products provide portfolio managers an alternative to manage risk and cash flow while they seek to obtain the stated objectives of a fund.

In our view, the case has not been made that the current exemption from dual registration with the SEC and CFTC contained in Rule 4.5 has been abused or presents significant risk to the investing public. The scope of the proposed changes would adversely impact thousands of mutual funds used by buy-and-hold investors, and the funds affected could include basic S&P stock funds or tax retirement savers -- hardly vehicles for speculation in the futures and options market.

STA shares the ICI's concern as to the public policy wisdom of subjecting so many broadly

held funds to dual registration requirements, and we note the many examples of contradictory requirements identified by the ICI in its letter to the SEC and CFTC dated April 12, 2011. Answering to two regulators would force mutual fund companies to constantly monitor two sets of regulation that could potentially conflict with each other.

Restricting a portfolio manager's ability to trade in futures would force him to trade in alternative investments, which could be inferior as measured by liquidity and tracking to the fund's objectives. The consequences of using alternative investments to futures could result in implicit losses or costs to investors.

Consideration also needs to be given to the impact that restricting a mutual fund's use of futures will have on the overall equity and derivatives markets. At this time, it is still not completely clear which types of funds might be impacted and to what degree. But it is clear that the compelling need for risk management tools is

present, even if the futures are not an accessible investment vehicle. If highly liquid futures products cannot be used, the unintended consequences of forcing that volume into alternative markets, such as options and ETFs, could have the effect of increasing volatility in markets where the regulators' goals have been to decrease volatility.

It is important to note that any additional costs imposed on mutual funds are costs imposed on pools of share holders who are the individual investors. The negative impact of cost is even greater on smaller fund companies who have fewer resources to absorb the additional expense associated with this dual registration.

In our view, the proposal needs more research and evaluation, and we request that the regulators consider forming a joint advisory committee consisting of representatives of both the CFTC and SEC and participants of the mutual fund industry to adequately study and fully vet the ramifications of the suggested regulatory

changes.

We also recommend that you extend this comment period to allow the joint advisory committee we have suggested here to have the time to perform the detailed research necessary.

Again, the STA appreciates the opportunity to provide our comment on this matter, and we look forward to having a dialog with the CFTC.

Thank you.

MR. WALEK: Thank you, Jennifer. Tom?

MR. LLOYD: Good morning. Thank you for the opportunity to participate in today's roundtable. My name is Tom Lloyd, and I'm the general counsel of Campbell & Company. Campbell & Company is one of the oldest commodity trading advisors and commodity pool operators in the United States. Campbell & Company has been registered with the Commission as a commodity trading advisor since 1978 and a commodity pool operator since 1982. Our subsidiary, Campbell & Company Investment Advisor, has been registered as

an investment advisor with the Securities and Exchange Commission since 2005 and with the CFTC as a CTA since December of 2005.

I am here today on behalf of Campbell as well as the Managed Funds Association and its members. I will be speaking about 4.5. My colleague, Marc Baum of Serengeti Asset Management, will be here later to speak on 4.13.

MFA is the voice of the global alternative investment industry. MFA's members are active participants in the commodities, securities, and over-the-counter derivatives markets and engage in a variety of investment strategies across many different asset classes. MFA members include commodity pool operators as well as advisors to the newer managed futures mutual funds, which have been the primary focus of the proposed revisions to Rule 4.5.

MFA believes that an investor or financial advisor should be able to fairly compare a managed futures mutual fund offering with a commodity pool offering and make an informed

decision on investing based on all relevant facts. The best way to make this happen is to harmonize the rules affecting the two types of funds such that an investor can set the two offerings side by side and view comparable information on each fund.

Accordingly, to the extent the Commission determines to amend 4.5, we respectfully encourage the Commission to, one, grant relief to a CPO offering a managed futures mutual fund from certain aspects of the performance disclosure and disclosure document delivery and acknowledgement requirements of the Part 4 regulations; two, grant comparable disclosure document and acknowledgement delivery relief to CPOs of traditional public commodity pools; three, extend Rule 4.26(a)(2) updating requirement from 9 months to 12 months; four, amend Rule 4.5 only with respect to the marketing test; and, five, provide a definition of marketing with respect to the marketing test to determine whether a fund is holding itself out or marketing itself as a managed futures fund.

One of the points that is particularly dear to my heart that I would like to focus the staff on is the disclosure document delivering acknowledgement requirements of Rule 4.21, which I know will be discussed in the second session, so I'll leave it there.

Thank you very much, and I anticipate participating in today's discussion.

MR. WALEK: Thank you, Tom. And I think there's going to be discussion later when we start asking our questions, quite honestly.

Karrie.

MS. McMILLAN: Good morning. I'm Karrie McMillan. I'm the general counsel of the Investment Company Institute.

The ICI is a national trade association of mutual funds and other registered investment companies, and I very much appreciate the time to be able to come here today.

I'd also like to thank the NFA for the hard work that it has done to refine its proposal and its willingness to meet with our members to

better understand some of the issues that have been involved. While we may still differ in some respects on the proposal, we really do appreciate the path that you've taken and particularly your willingness to understand our use of wholly-owned subsidiaries.

I'm going to stray from my script a little bit to address one of the comments that was made early on, which is that the CFTC and the SEC have different regulatory objectives here, because I actually think the objectives are very much the same. And let's go to the question of why regulate.

As far as Rule 4.5 is concerned, it's the same objective. It's good disclosure to investors who buy products. And the SEC is all about good disclosure. This may be done in a different way, which is what we're here to talk about in terms of harmonizing, but I think it does go to the need for the degree of substantive regulation of mutual funds.

Under the APA, the Commission is

required to balance the benefits to investors versus the costs to investors of the new rule. I think the benefits of a duplicative and sometimes overlapping or conflicting regulatory structure are elusory as many of the commentors and panel participants today have said. The costs, however, I think are substantial. The costs of this duplicative regulation will in March probably be passed on to shareholders.

And I think there's also a cost that we haven't talked much about, the investor confusion -- for example, of getting fee information under the SEC's fee table, and then the fee information under the CFTC's. It's going to look like, for the exact same credit they're paying different fees.

So, I think all of those costs need to be factored in.

To the extent that gaps have been identified and remain to be of concern by the CFTC, I agree with many of my colleagues here that the rules can be harmonized in a way that would

allow the same disclosure documents, ideally the SEC's disclosure documents, since that's what the funds are using, to incorporate some of the concerns that the CFTC has and to tailor those going forward.

In the event that the CFTC does determine that it needs to go forward in this area, as we have detailed in our comment letter, we think that the scope of the rule is overly broad and needs to be substantially modified and re- proposed. I echo the comments made by Nevis about the process in which that should take place and particularly the fact that we can't set an appropriate threshold until the margin rules have been finalized. We do, in our comment letter, offer one possible path to achieve that going forward step, and I won't summarize it now. I think we have a point of discussion about that later.

I'd like to close by thanking you again for the opportunity to be here.

MR. WALEK: And I'll give everybody a

secret. Karrie can actually confirm that we've been meeting with the SEC, because she happened to be in the waiting room while we were there for one of our meetings.

With that, I'll turn it over to Todd.

MR. GROOME: I had a similar experience when I was waiting on a meeting with you and about 10 people from the SEC walked out. So, I'm well aware of that.

Similar to Dan, I'm going to be focused on 4.13, so, Kevin, if you'd like, I'm happy to delay the comments.

MR. WALEK: That would be wonderful, because now I can say it's time for a break. And then we'll come back and we'll start with some questions.

I'm going to give you about 10 minutes, so if you can be back here by --

(Recess)

MR. WALEK: This next segment is actually to go to the agenda -- God forbid -- and I'm going to be combining the agenda items from

the first A, B, C, and D and the second A, B, and C; and maybe, if we're lucky, we'll get through those by about 10 after 10 or 10:50. I mean -- sorry -- 10 after 11 or 11:15 and then take another break there, okay? Because that's sort of my thought.

My first question up -- I'm actually going to lie. I'm not going to start over here since you're primarily 4.13. This is going to sort of be a toss-up question.

Clearly we've heard - no this is not Jeopardy. I'm not Canadian like Alex, but nonetheless.

With respect to what I think I've heard this morning and trying to consolidate that in the form of a question, it seems to me with respect to 4.5, if I were to pick the number one issue amongst the persons here at the table, it would be the marketing provision. Would that be reasonable? And if you want to throw in and add to that, please, please, you know, expand upon it if you want to. But it seems to me like marketing

is the key thing for most of you. ICI is sort of -- good.

MS. McMILLAN: I guess it depends on where you would come out on the threshold for the trading, because we really feel like we can't comment on where the trading restrictions should be. But the CFTC itself noted when it removed the restrictions in 2003 that the 5 percent was hard for people to live with at that time. With what we think will be the new margin requirements, the 5 percent is probably not going to work. So, assuming some rationalized flexibility about that, yeah, I do think that the marketing provisioning is pretty difficult to comply with as of right now.

MR. WALEK: We didn't plan this, but thank you for the segue.

Okay, I'm going to throw the -- I would like to ask the NFA first, but then toss it up to anybody else: With respect to the threshold, if you look at 4.13 -- I believe it's (a)(3)(B) -- there is a net notional value test, and as many of

us know, when we start playing with percentages it's like percentage increases in salaries. The more you make, the more that percentage gives you in absolute terms. I mean, we all play with numbers enough to know that one, all right? Okay, 4.13(ii)(B). There's a net notional asset value test, and in terms of -- and maybe we need to read it to you, but for those of you who may be familiar with 4.13, would that work for both 4.5 and 4.13 as the only test and get us away from the percentage test?

MS. WOODING: You know, our committee actually considered that as one of the factors that they could use as the threshold tax, and they went back to the 5 percent limit. This is actually -- this tax is something that we actually recommend that might be something that you could look at to see whether a fund should be marketing itself as a commodity pool. So, the committee went back and forth on a different ways to measure it and concluded that any fund that is doing a significant amount of futures trading -- and they

concluded the 5 percent was a significant amount -- should at least be registered with the CFTC, not necessarily have to comply with all Part 4 requirements.

MR. WALEK: And not that I disagree with that NFA or your panel, but I did some numbers across the board, across different commodities. In some commodities I wasn't even tickling a fraction of the risk to a fund, whereas other commodities at 5 percent I was almost at my hundred percent net notional value. So, that's my problem with the percentage test, and I think so many -- I think I saw Tom over here nodding his head when I was talking about that --

MR. LLOYD: Yes, and the thing is, like, for example, if it's a bond future, you know how you can -- you need to control a lot more, you know, to get the risk that you want, whereas you can, you know, with another -- you know, with an S&P 500 futures or something you don't need to control as much and therefore put as much risk to get the risk for your portfolio that you want to

get. So, that's why it sort of cuts both ways.

The notional value test can also kind of, like, blow it out of -- you might have to have a huge notional value to get a given risk in one market, whereas you don't need a very big notional value to get a given risk in the other market, and the margin requirements are kind of designed to take that into account. That's why I think -- for full disclosure, I also served on the NFA working group -- but that was sort of my point that I raised in the discussions that we had. So, it sort of cuts -- we think it cuts both ways.

MR. WALEK: Bob.

MR. AMEDEO: Yeah, just to further that point. When you start looking at funds that trade some Euro dollars and some short-term interest rates where the margin requirements are very low but the notional size of the contract is very high, the net notional number gets distorted really quickly so that particularly for some of the more traditional loan-only funds that might be using short-term interest rate -- futures --

substitutes for short-term interest rates, you're going to have very high net notional values, which I think is going to distort that calculation.

MR. WALEK: Anybody else want to make a comment on the net notional test? Matt?

MR. NEVINS: Sure. You know, we support using the initial margin as the right factor. I think that Tom and Bob have spelled out why that makes sense to continue to use that as the correct measure as opposed to notional. As far as the actual percentage amount, as others around this table have pointed out earlier today as well, you know, I think it's necessary if swaps are being included in the mix to take a look at what the margin requirements are going to be for swaps both uncleared and cleared going forward and to factor that into the appropriate level for percentage test.

While I have the floor, if I can answer your original question, too, you know, I wholeheartedly agree with you, Kevin, that, you know, if you're thinking about scope in general,

the marketing restriction is probably the biggest factor that most of us are focused on as making sure that it's appropriately narrowed and tailored to pick up just those funds that you think require regulation with the CFTC as CPOs. What I would just say is that I think the best way to look at it is sort of a broader, holistic approach to what the key ingredient is here. It's not just looking at the marketing test. It's looking at the thresholds and the test in general. So, the way I would start looking at this is thinking about which funds are the types of funds that require that additional oversight with the CFTC and then creating your test to capture those funds as opposed to coming up with thresholds and saying okay, well, we think this works, so we think that a 5 percent initial margin test is going to work -- or we think that a marketing restriction that takes the following qualitative factors -- you know, the following 10 qualitative factors into account is the best way to do it.

What we propose -- and I outlined this

briefly in my opening statement -- is requiring that any registered investment companies that utilize commodity futures or commodity options to take active positions as their most substantial portion of their investment strategy -- the sort of funds that you look to capture -- and then you create the test to get to those sorts of funds. So, where we're talking about the marketing restriction, I would suggest that that be narrowed to pick up just those funds that hold themselves out as managed futures strategies. And we've heard a lot of people around this table today use those words, "managed futures strategies."

The way that we would look at managed futures vehicles is that they are those that use trading algorithms to spot market trends and take active positions as I've just defined them by frequently trading commodity options and commodity futures to both long and short investments. I think that's the appropriate scope that should be looked at when you're talking about the marketing restriction, and then I think that when you're

talking about the other more quantitative elements of the test, again, you don't want to take to broad of a brush, so you should factor in percentages that are going to really capture those funds that are heavy derivative users that you think require the additional oversight.

Lastly, I think it makes a lot of sense to spell out certain types of funds that should be exempt from registration, those that don't create the level of risk that require that amount of additional CFTC oversight, and those would include, for example, commodity funds that are tied to an index or commodity exposure that's tied to an index that get that exposure to investors -- that commodity exposure to investors -- as part of their overall asset allocation mix through the use of derivatives like futures, options, and swaps. It would also include fund of funds that are designed to provide exposure to commodities as part of their overall investment mix.

MR. WALEK: Okay, if I might here -- and I'm thinking out loud; this is just literally from

what I'm hearing and so it's not been cooked in any fashion -- I'm thinking in terms of analysis of variance, okay? For those of you who don't know analysis of variance, you don't need to, all right? And you start getting a cascading effect. So, you've got an issue you analyze and you see how two other issues apply to that, and they may increase or decrease the correlation to what you're trying to solve, all right? So, if I'm cascading down -- because I started thinking along this line earlier -- is that marketing ties to who do you have as the CPO who has to take the test, which is -- we haven't touched on yet, we'll touch on later on today. The size of the fund, as you say -- and there could be different types of entities. Even within RICs you've closed-end funds, which eventually I'm going to come around to Steven about. PIMCO has at least two, and probably the rest of you have close-end funds out there, too. But as you're walking down this path, what I'm seeing is not one test fits all, again from what I'm hearing here. What I think we're

looking for, and I don't know if this panel can do it today, but what test fits what RIC -- or, in the worst case scenario, what test fits best. And I think you're getting me part way down the path, but I'm not all the way there.

With that, I'm going to toss it up for anybody.

MR. NEVINS: Well, I'll start off. I generally agree with how you just laid it out, and again I think that the best way to do it is to have a mix of tests the way that I just outlined it with appropriate exemptions for those sorts of funds that we all agree don't raise to the level of needing additional oversight.

MR. WALEK: Were you going to include -- and I see, Tom -- I'll get you next. Were you going to include as ones we should capture those that we're doing an index type of strategy?

MR. NEVINS: No, no, my view would be that funds that are tied to an index -- they're getting their exposure in a way that's tied to an index -- should be exempt, because, again, those

are not funds that are taking active positions, so the use of derivative instruments are less risky in general.

MR. WALEK: What about an intentional short fund, a contrarian fund who's intentionally using the commodities markets because they can't do enough in the securities markets to get the level of exposure they want, and in fact they're only at 5 percent but that 5 percent actually, even that particular market, will exceed the hundred percent notional test?

MR. NEVINS: I would think that fund would be exempt.

MR. LLOYD: Sure, and I'm going to put my MFA hat on, because this is one of the points where the MFA recommendations differ slightly from NFA's recommendations.

The NFA's recommendation is, on this point, to basically not use the bona fide hedging or 5 percent tax but rely solely on the marketing restriction. In other words, don't look at, you know, a specific number because of all these

different issues. And if a fund -- and, again, this gets back to, I think, Matt's point on who do you really want to regulate here? You know, do you really want to get or do you really want to, you know, regulate and take jurisdiction over the specific types of funds that NFA pointed to in their original proposal, which I call managed futures mutual funds, all right? And that would be either -- and I think one of the points is, you know, well, let's not consider fund of funds.

But if you have a multi-manager -- I mean, basically the funds that were the very focus of this were in fact fund of funds, but they were fund of funds or what we call multi-manager funds that hold themselves out as getting their significant returns from managed futures. You know, so, if your goal is to really focus on those funds, you know, the 5 percent test is really not relevant but really, but really the marketing restriction, and there have been -- you know, in NFA's proposal and in MFA's proposal there have been some objective standards that you could

consider, and Matt's raised a couple. There are ways to kind of get at that if that's really what your goal is.

And so, again, it does get back to what really is your goal, you know? Is your goal to focus on those funds or is it to, you know, grab a -- you know, and how do you define it and what does it do to a short-bias fund or something like that?

So, anyway, that's NFA's position on it.

MR. WALEK: This actually brings me around to Nevis' earlier point. Actually she's got her light on.

I'll let you speak first.

MS. BREGASI: I think I was just going to say that all this discussion just brings out the two points about, one, collecting data, because we need to know what are the funds out there and what are they using, what are they doing, and for what so that you understand which funds you're trying to cover; and then also re-proposing it so that it's clear, the goal, as

to which types of funds you are trying to get to. I think if you have the data, it make it a lot easier to do what Matt said, which is first just look to understand which funds you want to cover and then draft the rules so that you cover those funds.

And for us with the marketing restriction, I think one of the issues is that while we understand that the 5 percent tax has its own limitations because it's a number, it's an absolute number, and the marketing restriction is sort of at the other extreme, which is it's extremely subjective, and when it comes to registration you sort of want a bright-line test or as much of a bright-line as possible. So, we would definitely vote for a marketing restriction that's not overly subjective.

MR. WALEK: You just made me flash back to my earlier pre-law life where I like to consider myself in a data wonk phase between subjective and nonobjective probabilities and their use in what you just said, because

traditionally what we would say is you collect the data first before you determine what policy you want to establish, because if you don't do that, you don't have the objective nature of the thing you're analyzing. But in that vein, here's the chicken-and-egg problem I have because I've got the lawyer hat back on: How do we implement PF or PQR or whatever to get the data if I don't have the registrant?

MS. BREGASI: Can't you require -- can't you change the exclusions and exemptions so that certain data have to be given to you in order to qualify for the exclusion and exemption?

MR. WALEK: The only thing we have -- and I was going to -- is a special call, but, boy, I mean, last time we did a special call was about 1987, I think. Yeah, so, I mean, we have done it. But it was with reluctance that the industry was responding, and I don't know how much -- and we had to be very careful even with a special call. I think we may still be subject to the OPM standard on what becomes a data collection

instrument and how many entities we can collect the data from. But I'm not sure.

MS. McMILLAN: But couldn't you do a rule that would essentially say if you want to rely on 4.5 as it currently exists we file your notification but you'd have to provide certain basic information about who you are, how you trade, and so on so that you can get that information? It would be a rule proposal subject to notice and comment. It would follow all of the APA conditions but would give you the data that you want from exactly the entities that you're looking at, which are the ones that are currently relying upon the exclusion.

MS. BREGASI: Yeah, that's exactly what I was going to say.

MR. WALEK: Again, do the special --

MS. BREGASI: I was just going to say that it's a file 4.5 notice. Condition it on filing the form PF or even, yeah, the CFTC form as well. To provide you with that information that you need to make sure that you're monitoring the

marketing appropriately.

MR. WALEK: I'd have to look into this a little bit further, because there are some other intricacies in terms of the logistics, because we're looking -- as most of you from the proposed rulemaking, we're looking to NFA to possibly be our data collection facility. And I don't believe we can delegate -- maybe we can -- a special call to NFA for non-NFA members. But, again, that's something I have to look into.

MS. CHOTINER: I just wanted to make one clarification, which -- for Kevin --

MR. WALEK: Thank you.

MS. CHOTINER: -- which is that I'm not -- I mean, this is of course just discussion at this point, but it's not necessarily in the form of form PF or PQR.

MR. WALEK: Right. We need something else.

MS. CHOTINER: I mean, you know, we're just talking here, but if, you know, just in terms of consideration that it would -- I would sort of

see that it would not necessarily have to be that detailed.

MR. WALEK: And I'm underscoring -- I'm not saying yes; I'm not saying no. I'm saying it's an interesting idea. I'm just seeing given the current budgetary constraints, unless something happened last night while I was sleeping, the lack of being able to exceed the debt ceiling and various other staffing constraints, I see this as being a difficult hurdle for us to do. Even though my training in the other field would say you get the data first, I'm not seeing it in this current political and budgetary environment. But we're hearing you. Trust me, I'm hearing you.

MS. BREGASI: I was just going to say also that it also depends on how much data you're asking for. So, if you keep it to a minimum data you actually need to understand who you want to regulate, then it's going to make it a little bit easier to handle it.

MR. WALEK: Appreciate that. Todd.

MR. GROOME: Kevin, I know I said our comments are really focused on 4.13, and they are, but this conversation is obviously spilling over into 4.13 and data and what have you. So, I actually -- you know from many conversations with us our focus is registration fine but let's figure out who you're going to register and what you're going to do with registration, because our concern is the margin of cost really after registration of all the reporting, examination, what have you. And so we're very concerned about the duplication between the SEC and the CFTC overlap, and then increasingly for our members around the world the same thing is happening obviously in the U.K. Where it's been for years, but it's also happening in Hong Kong, Singapore, Australia, what have you, with increased regularity now. So, we're very concerned about the duplication.

But the thing you and I have debated in the past, and it seems like it's right back on the table for this conversation right now, is what are you trying to regulate -- not even who but what,

and I think what's more important than who -- and our focus has always been, certainly with the SEC conversation and I believe with you as well, has been -- really this is leading into Dodd-Frank and others -- is really focusing on systemic risk analysis and trying to improve market analysis and risk analysis more than a lot of other goals. And if that's the case, I don't think trying to figure out what data you need is that hard. What you really need to figure out is the coverage you need to get a representative sampling from the audience you're targeting to get that information, which is a very different exercise.

MR. BONANNO: Yeah, I would just echo those comments and say that, I mean, I think you raised a very legitimate point about the potential burden from a regulatory or from an NFA perspective, and I think, as many of the commentors said as we went around the table, the potential outcome of the rule, at least as proposed, I think could be a potentially overwhelming result in terms of the number of

potential funds or entities that would be covered. So, from the standpoint of determining how best to proceed in terms of arriving at exactly what you want to focus on, some sort of up-front data collection exercise, again, has to be appropriately focused on what is most meaningful. But I think at the end, it might actually result in the consumption of fewer resources from a regulatory oversight perspective.

MR. WALEK: With that in mind, I'd like to ask -- well, actually, I've got William.

MR. THUM: I just wanted to build on Tom's point about the relative merit of the two tests. And right now certainly the marketing test is going to pick up just about every fund. If you start it from a perspective of narrowing the marketing test along the lines that Matt has described in terms of active management as a primary purpose and use that as a threshold for getting basic reporting in the door. And then as the usage of the derivatives cross a certain threshold, then have that be at the threshold for

registration. So, you have the reporting to narrow the range of entities that have to report based on a very narrow marketing test and then have registration based on height and usage, whether it's 5 percent or possibly more may make sense. But that would build on what Tom was mentioning, as well as Matt.

MR. GRADY: Bob, I know you had --

MR. AMEDEO: No, thanks.

MR. GRADY: One of your points goes to something we talked a great deal about in our NFA discussions, and that is the two tiers of industry participants, some of whom are really in an active trading mode and many others who are using the instruments themselves to gain exposure in, in some cases, pure hedging techniques, if you will. But when Matt mentions the index piece, I just kind of want to weigh in. We had a lengthy discussion as to whether the index approach can provide that kind of bright line that you mentioned where people understand that if I'm in an index mode I must not be active; if I'm not

active, I'm not covered. You can now have indices that are, in effect, active management -- I don't want to say disguise, that's suggests some ill intent, but indices that reflect an active trading style, the CTA index, even a trading index like the DTI is proffered as an index but it's actually a trading strategy -- so we worry when we looked at this, and I put my Steben hat on probably more so than the NFA hat, although I did weigh in to the effect in our discussions. The index, out, can swallow the otherwise application of the, what do you want to call it, the non-exclusionary exclusion of the application of 4.5 to register on. So, if all you have to say is I'm chasing an index, I'm out, I think you'll be amazed at how much comes out that actually we think we want to keep in.

MR. NEVINS: Okay. Well, thank you, John, and I certainly understand that point. That said, you know, I think it's worthwhile to still consider the index idea, and maybe there's a way to just take a more granular approach to what

indices are allowed to be exempt because they're more passive in nature than those that you're alluding to -- some, you know, for lack of a better word, bespoken indices that are designed to essentially give you an active trading strategy. So, that may not be a question that we can answer sitting around this table today, but that may be something that we should think about, maybe some food for thought, because I do think it's very valuable to consider funds, especially commodity funds, that get their exposure in a way that's tied to an index that are long-only, that are, you know, long-term liquidity providers for the market place, and they provide a great service for our retail investors by giving them a diversified asset class and commodities to round out their equity and fixed income investing. So, I do think that it's very worthwhile to consider those funds for exemption. Again, how you define which ones are in and which ones out is something we can certainly discuss further.

The reason I turned my light on before

-- I was really following up on a point that Bill raised, and it's something that a bunch of us have discussed and commented on as well.

You know, so far we've talked about the marketing restriction, and we've talked about the 5 percent test, and then I've put out this notion of okay, well, you should really just pick up funds that are taking active positions. There's another element of this as well, and that's the hedging piece of this. So, you know, for purposes of the 5 percent test, modified hedging as defined under the CFTC regs is exempt.

One thing that, you know, we would put forward for consideration -- I know others have made this point as well -- is should you take a broader view of what gets excluded for that 5 percent test? So, we understand that bona fide hedging is what it is under the CFTC's definition, but are there other types of use that should not be considered for testing the quantitative element of this test? And really what I'm getting at is what I would consider things that are not active

positions.

So, using futures, options, swaps to equitize cash, again trying to get exposure that's tied to an index, we can define, you know, how index is appropriately described. And using these instruments for risk management and risk mitigation -- the portfolio, duration risk, and the like you know, there are very legitimate uses of derivative instruments that don't neatly fall into the bona fide hedging definition but may be the sort of derivative usage that you don't need to pick up here.

MR. AMEDEO: Matt made the point that I was going to make, and that was that perhaps looking at this problem from the 5 percent test in expanding what was included or not included in that 5 percent might be an approach that would be a filter that could be used as a starting point.

Our committee looked at this question, because there's such a broad continuum of users of futures within the '40 Act world, and there are folks that express their long equity positions

using futures, which may or not be who you want to regulate, and that is one of the issues I think all of us are up in the air about. I think the question is who are you trying to catch? What is it you're trying to regulate? And there's such a broad continuum of users of futures from people that express long positions using futures to people who use actively managed futures approaches within a '40 Act fund as part of their strategy.

One of the things we talked about at the committee level was looking at defining that 5 percent test in a different way but also looking as -- the second part of that, the marketing test -- rather than trying to develop a single test, which was going to catch everyone, which we found virtually impossible to do, using a set of indicia that one would look at in determining whether a fund is marketing or is holding itself out as marketing or should be registered. And to the extent that we could develop a series of indicia that the industry could look at that would give us indicators as to whether a fund was being marketed

as a fund, coupled with a broader definition of what the 5 percent test is, I think you could fine tune the regulation to cover who you want without including everybody who uses futures in a '40 Act format.

MR. WALEK: Karrie?

MS. McMILLAN: If I could respond to that, we looked also at the PV letter and the MFA letters and some of the others to see if we could develop that, and I think the conclusion at the end was that while those factors are helpful in determining, I think as maybe Nevis had said, it's very important when you're talking about registration to make sure you know if you're in our out of the box. And I'm a '40 Act lawyer, so I reference everything by my experience. But there's a similar test under the Investment Company Act, and it's as difficult at times to determine whether you've hit that threshold or not, and a lot of money and lawyer time can be spent trying to get an opinion to determine if you're there, and having written those opinions,

it can be very hard to make that determination. The stakes are high. So, I guess I would caution against a lot of criteria unless they're weighted very carefully so that people can take the subjective factors and put it into some sort of objective answer, because it really does expose the fund or the advisor to substantial liability if they were to get it wrong, or you're talking about a lot of CFTC staff time answering, as Doug knows, requests for no action really for interpretive guidance about whether something is or is not in that right box.

MR. AMEDEO: Yeah. Just to be clear, that test -- the marketing test would be applied after the application of an expanded 5 percent test so that the first filter, as I said earlier, would be whether the fund was intended to be caught using the 5 percent test, and the 5 percent might exclude equitizing positions; it might exclude a whole series of clearly defined criteria, which would potentially eliminate a large number of funds who are obviously not using

futures as a speculative tool, leaving the remainder to apply the indicia test for marketing purposes.

MS. McMILLAN: I think that could work better. I just -- my only caution is just not too many criteria and not an open-ended type of thing. We're trying to apply -- just as a more recent example, the SIFI factors where you have this long list from Congress and no waiting to it and nobody knows what they mean, including I think the FSOC at this point. So, just to try to draw from that experience, in the SEC criteria, the case law is that there are five factors; the first two are the most important. That helps. It's not perfect, but it helps.

MR. WALEK: Steve.

MR. KING: My concern was such a test, though, would be some of the factors that you would consider, like that would capture some of the other funds that wouldn't be intended to be captured I think, such as if you look at the fund's name, that would capture a commodity fund

that is an index fund. It would also capture a commodity fund that's an enhanced index fund. If you looked at the source of the fund's income, the commodity index fund would have all commodity income, commodity enhanced index fund would have - the majority of its income would likely be commodity income. So, by t hose tests you would capture the kinds of funds that we've been talking about that we think should be excluded.

MS. McMILLAN: But, Steve, I think Bob said that that marketing test would only apply after you've applied those exclusions. So, if you are a passive fund, you would never get to the marketing test if I understood correctly.

MR. KING: That's correct.

MS. McMILLAN: So, you have to already --

MR. KING: Well, I mean, after the 5 percent, though, right?

MS. McMILLAN: After the 5 percent and presumably --

MR. KING: But we don't know whether the

percent will result in --

MS. McMILLAN: The threshold, let's put it that way, the threshold. And I think that, as Matt was saying, you know -- and we have a lot of this in our comment letters -- well, there are a lot of reasons why funds use these things. I don't know whether -- and I'm just doing this now so you guys can jump on me if I'm wrong -- but whether it helps to thinks of these other uses, these what we characterize as risk management tools, these things that are used to further the securities aspect of what they do, at least in the non-passive. So, you have a bond fund and you're using a swap to change your duration. That's not speculating in the futures market or in the swaps. That is using it to keep your securities position as you've disclosed to investors. You have an S&P 500 fund. You get a lot of cash at the end of day. You want to put it work. So, you do a swap on an index. That's not a speculative swap; that is furthering your security purpose. So, whether that kind of an analysis is helpful in

distinguishing the types of things that are more active or more passive uses, for lack of a better phrase, of those kinds of instruments, whether that would help.

MR. WALEK: In the consideration of time, this particular item I think could be a roundtable by itself from what I'm hearing here, because you've got my mind going in 16 different directions. What I would like to ask -- and I'll make the point now that I was going to make later in the day, which is that we plan on leaving the record for this meeting open for three weeks, and any issues that you would like to expand upon resulting from this meeting, you are free to expand upon those and get those to us, and they will be published.

MS. OLEAR: I would say additionally, to the extent that anyone would feel compelled to have further conversations with us in person as opposed to in writing, you may contact me. I think everybody has my -- everyone should have my telephone and e-mail address, and we can work

toward setting them up. But you do need to contact me within the next two weeks, because at some point we are going to have to cut off meetings, because we do have a rule to write. So, like I said, in two weeks -- within the next two weeks, if you want to have a meeting, contact me.

MR. WALEK: The next question I have, though, is the discussion that Bob just went through with what was part of the NFA meeting group -- is that something that is private, or is that something that the NFA could share with us at the staff level? And maybe you need to go back and check.

MR. DRISCOLL: We'd be glad to share any information we have either in writing or verbally and to sort of expand on the thought processes that the committee and staff went through in formulating our comment letter.

MR. WALEK: Thank you very much. I'm going to move on now so that we do move a little bit. We're getting close to that -- yeah, so maybe we may get to harmonization sometime this

century. I now have 10:46 on my clock, so I'm going to be moving us on now to who should register as a CPO. And I know several of you have made points about this, but I also want to ask the question not only who should register as a CPO but do we need to change the tests. And I don't know -- whoever wants to start the discussion on that, because the tests may not be necessarily indicative of the kinds of things -- like swaps, so. Recognize another CFTC's tests, but is there something -- is that a part of the problem? Because some of you in your comment letters have said that you've got members that don't want to have to take the test. Is it the test per se, taking the test per se, or it is the nature of the subject matter of the test not being necessarily indicative of what they're doing?

MR. NEVINS: I'll be brief. I'll start off with your first question.

So, I think that, from our perspective, it should certainly be the advisor and not the fund who's required to register as a CPO. I think

logically that makes the most sense when we're thinking about who the commodity pool is.

I'll use the register investment company context since we've been talking mostly about 4.5 so far. The commodity pool is the fund itself, so the operator would logically seem to be the advisor. I think administratively that would be a lot easier from our side of the table.

I would imagine from the regulator side of the table and NFA's side of the table that it would also be easier for them to administer, you know, filings on an advisor level rather than thousands -- and I'm probably underestimating that -- of filing at the fund level. I think it also works out more logically when you're looking at the CPO regulations in general -- and I know that this is one that's had a lot of discussion to date and that's whether if you have a registered investment company that falls into the commodity pool definition under a revised 4.5, the trustee's or director's for that registered investment company would also be required to register as

well, which would be, I think, a result for the industry.

It would be a bad result, again, from an administrative perspective and it could be very difficult to, you know, administratively require individuals that serve as directors to these funds to actually submit as a CPO and become subject to all the CFTC requirements related to that.

MR. WALEK: Is this a problem for all of the RICs, or is it a problem for just the CFC-affiliated entities?

MR. NEVINS: No, I think it's RICs in general, Kevin, and, you know, again, the thinking here is that if it's such an administrative hardship -- and I think it would be -- it could create a disincentive for very good directors to want to serve on boards of fund companies.

MS. BAUR: I think it's also an issue for private funds as well, many of which are organized as corporations which also have boards. So, I think that you would see the same issue on the private fund side.

MR. NEVINS: Yeah, I would just echo that I think it would be a bad outcome for mutual fund trustees to have to register as CPOs. For the reasons Matt mentioned and also just as a practical matter, they neither are handling the investment program for the fund directly -- they perform a governance function only -- nor are they, in their field, selling or distributing fund shares. So, it's hard to craft the rationale for why directors would be caught up in that rubric, and so to the extent that the fund as opposed to the advisor would be the required entity to register as a CPO, it takes you down that path of having to grapple with that issue.

MR. AMEDEO: I think one very practical issue is that under the Commodity Exchange Act CPOs have joint and several liabilities for violation of the Commodity Exchange Act. I think under the business judgment rule for directors and trustees of '40 Act companies, they are protected by the Business Judgment Rule and their liability is somewhat limited. So, I think requiring

directors and trustees to register expands their legal liability substantially, and I think it would be a terrible disincentive for someone to serve as a director.

MR. WALEK: So, what I'm hearing -- you know, if I'm hearing this correctly -- the group, not necessarily as a whole but a large part of the group, think that that might be a reasonable approach -- is having just the investment advisors register in this context, which would be also more parallel with what happens on the SEC side. Is that what I'm hearing?

Dan. And then -- Dan, then John.

MR. DRISCOLL: So, I think that's right, and I think that's what everybody is saying. That's why NFA believes that would be the best result. I can tell you on the futures side, the individuals that have to take the exam, if you're a director of a commodity pool operator and you're not part of active management not involved in sales, you don't get registered as an AP, you don't have to take the test. So, I think that

would also be consistent with how it works in the traditional commodity pool context.

I can tell you that we do have -- NFA does have certain waivers that are available to particular APs of commodity pool operators where the fund is primarily in securities and that the individuals are not involved in the futures part of the fund. So, there are also waivers available on the issue of swaps. Right now the series 3 clearly doesn't have anything about swaps, because none of the rules are in place and we haven't created a special exam there. So, going forward there may very well be waivers and new tests created with regard to swaps. So, I think from NFA's viewpoint the last thing we would want to do is require people to take a test that has no real applicability to it and that there is really no public policy reason to do it just because they fit into a box. So, I think from an NFA staff viewpoint, to the extent that any new firms get registered we would certainly take into consideration all of those factors.

MR. LLOYD: Go ahead.

MR. GRADY: Thanks, Tom. To your point, Amanda, that at some point you're going to start writing rules, or at least the language for a rule, if you're going to go down the path of having the advisor register as the CPO, I think it's important to remember the advisor is here by contract and can be terminated if we keep a '40 Act concept in mind here for a minute by notice without condition upon a notice period provided in the contract not to exceed 60 days.

So, as Doug and Karrie and many others here know, the replacement of an advisor is one of the important considerations that a board of a mutual fund has to, from time to time, consider either because of issues involving the advisor, whether it's mergers, acquisitions, business failures, and sometimes just simple failure to perform as hoped for or failure or refusal to serve for a reasonable fee.

So, there are a lot of reasons why the board might be looking for a new advisor. And if

in doing so it has to make sure it limits itself to advisors who are also CPOs, it's going to narrow the field of replacement advisors/CPOs. And what it's done on the '40 Act side is to spawn rules, exemptive relief, and no-action letters, all trying to get at how quickly can a board react to an emergency when the registered status of its advisor is not necessarily certain or it limits the ability of the board to replace an advisor with another one. So, again, it's probably -- you can probably out-think yourself in terms of trying to come up with all the scenarios, but it is an issue. Certainly when you're replacing advisors, if they have to have a separate registered status, that of CPO, it's certainly going to play at some point in the future.

MR. LLOYD: And just to follow up on what Dan said, I mean, this obviously, in the traditional commodity pool structure -- you know, the fund sponsors is, you know, the general partner of the fund, the commodity pool operator, and frequently is the CTA on the fund as well.

So, having the advisor register would be consistent with that structure on the typical commodity pool, although not a hundred percent, because you can have, you know, fund of funds.

And also, you know, to follow up on John's point, it would then develop a group of advisors who are registered and who would register to be in the business. So, you know, it would be -- you know, the period of replacement obviously would be difficult, but you would end up with, you know, registered advisors who are also CPOs who are therefore qualified to serve in this capacity, so.

MS. McMILLAN: If I could just add on to that, we of course agree that the advisor should be the one to register. But as we noted in our comment letter, I think, since he raised the question of the test, thought should be given to what exams the advisor CPO should be subject to, because the advisor's not selling the fund. The principal underwriter sells the fund; the advisor provides investment advice. It's a different

role. And so, just as you are -- if you decide to go forward with rules, if you do go down that route to think about that and need to have some suggestions for that in a comment letter.

MR. NEVINS: If I could just add on to what Karrie just said and follow up on Dan's point as well.

You know, I'm not sure from an examination perspective whether it matters too much whether it's the advisor or the fund that's registering. My understanding is under current Commodity Exchange Act provisions 3.12(h)(1)(ii) to be specific. There is an exemption for registered representatives that have passed their Series 7 or Series 63, so, you know, under the NFA's rules, from what I understand, for each CPO there is at least one required associated person, so I think that -- this is really following up on what Karrie just said -- it raises the question of whether it's the fund or an advisor as to who that associated person should be, and apparently that would be the party that would be required to take

the Series 3 examination. But I think in any case, you know, if you've got people that have a Series 7 and 63 that are selling your funds, then those folks would be exempt.

MR. LLOYD: Yes, I was going to say, not to make things even more complicated, but which advisor -- many funds are sub-advised, so I would say in that context the manager, the main advisor would be the one that you would want to register.

MR. WALEK: Yeah, that was going to be my next question, so thank you for raising it.

Again, in consideration of time, I'm going to shift right now to disclosure requirements.

Now, from the opening statements, one of the things that I think I've heard is the need to harmonize -- we're talking about harmonization here now -- the need to harmonize the disclosure with respect to fees. And we have on the CFTC side the NFA's break-even table, which actually flows from CFTC regulations, and we have a slight variation on the SEC side.

If I could get anybody out here to explain to me what you need to be different or to be changed on the CFTC side or what you would like to see changed on the CFTC side to make them more compatible, or vice versa.

MS. OLEAR: I was going to say you don't necessarily have to limit it to recommendations to the CFTC, because to the extent that you believe that our regime is more workable, we certainly have a representative fro the SEC who is here to listen to any suggestions that you might have. Okay, I'll take the plunge. Again, I'm most familiar with the SEC's regime, which provides a standardized fee table, which allows for a lot of comparability among funds. Just to make -- I guess my comments are going to be more to make sure we're all understanding what the SEC does, because there has been some concern that the use of a wholly-owned subsidiary doesn't capture the fees and expenses of the underlying funds.

Most of the members we've talked to don't even charge fees at the wholly-owned

subsidiary level, because they're just charging it to themselves and it flows up. There are some structures where CTAs and those fees and expenses may be charged at that level. And, as we said in our comment letter, we would fully support having full disclosure of those fees and having that be brought up through the fee disclosure process. So, I think that the concerns that were rightfully expressed by some of the commentors that there may not be as complete fee transparency as you get through these different layers could be dealt with by pulling those into the fee table from the SEC and providing comparability.

I'm not as familiar with the break-even statement, but there is a portion that follows the fee table in the SEC's fee table disclosure, so it's right up front that people get, which shows how much you would pay in terms of fees and expenses for being invested in the fund for various points in time, making certain assumptions as to rate of return and the amount of money invested. So, it's, I think, a thousand dollars.

Maybe they adjusted it for inflation since I used to draft those. But basically you multiply your investment by the number and you get a cost of how much it's going to cost you to be in that fund. So, by equivalence you could say that's how much I need to break even.

So, this is, I think, a good example of how things are done differently, but they are designed to get the same information to investors. And so if the CFTC could get comfortable that that does provide the comparable information of what they are seeking to achieve, that might be a way that would be something where you wouldn't have to do dramatic changes or harmonization but to say okay, this is being covered by item 2 of the SEC's registration document.

MR. WALEK: Tom.

MR. LLOYD: Yeah, I think Karrie is right in the primary concern of at least -- putting my Campbell & Company hat on here now -- of, you know, the commodity pool operator world was that the -- and, Amanda, I actually like the

CFTC's tables better, but that's, you know, my personal view, but -- and the reason I --

You know, it had -- the break-even table concept, you know, has all these fees, which in its traditional commodity pool will capture the 2 percent or the 2 and 20 or whatever it is that's paid to the underlying manager -- or to the manager, right? And the concern I think, which I think Karrie may have touched on the way to address it, but if you can get those underlying fees, because you've got your subsidiary and your subsidiary is investing in commodity pools and there's a 2 and 20 down there that's nobody sees -- and I don't think it works to have that mentioned in a footnote, because you've got a table, and I've -- you know, I deal with our marketing guys and they come in and they go wait a minute, here's our table, here's their table. It looks like, you know, we have a 2 percent higher break-even point than they do. And if you can filter that up through and whether you call it the CFTC table or you call it the SEC table and you

can include that such that you can set them side by side and they make some sense and a person can say okay, I want to look at these two on how to know, do they show the same types of fees, you can really do that. And so I don't necessarily know that you have to change yours. You know, however you can do it. If you do it with enhanced disclosure in the SEC table, then that would be fine. It's just, you know, from a business perspective having people able to look at the same thing is I think what got our attention and I think got a lot of the CPO world attention on it.

MR. WALEK: In terms of enhanced disclosure, would that be in the form of a narrative or tabular in your opinion?

MR. LLOYD: In my opinion, it should be in a table. It should be -- you should be able to look at it, because if you look at it -- because a table has -- like, I think the '40 Act table has, you know, total fees. There's a number, right? And if that total fee number doesn't include the 2 and 20, then you're really not getting to where

you want to be, which because here's -- I mean, I was also, in a prior life, you know, a lawyer to the retail sales division of a broker-dealer, and let me tell you, they're looking at those fee numbers. I mean, they're looking at those numbers and they're going okay, this is break-even, here's the expense load, here's the expense load. So, that's my view.

MR. WALEK: Bob?

MR. AMEDEO: Yeah, one of the things that we've talked about was the possibility that the SEC would allow essentially the bottom line figure from the CFTC's Part 4 table to be included as an acquired fee expense or acquired fund expense so that the possibility of doing a CFTC calculation -- and it may need to be modified, because the CFTC calculation, as you know, is a break-even, not a percentage of assets -- and there's a difference in terms of how those numbers are presented -- but perhaps there might be a solution in using the acquired fund expense line as a place to put the fees associated with the

underlying subsidiaries or underlying investment funds.

MR. GRADY: I agree with both Tom and Bob in that regard. There is a tradition on the mutual fund side of including the fees of underlying funds if the fund is substantially exposed to underlying funds and even bringing up performance fees into the fee table if that's a principle investment of the underlying fund. The problem is that in many cases people say well, this is a small investment; it's only 25 percent or less of the fund's assets and it's in a controlled foreign corporation. But from a return standpoint, that investment is driving the bulk of the returns of, to Tom's words or phrase, the mutual fund -- the managed futures mutual fund. So, I think that one of the reasons why I don't think we've seen the underlying fund fees come up into the table is they don't appear to be a major investment of the mutual fund unlike the case where a mutual fund is a fund of funds. But when Tom referred to them as fund of funds, I think

that's an accurate description of what they are in terms of where they're driving their returns. Their assets may not be, from a balance sheet standpoint, entirely devoted to the production of managed futures returns but from the engine of what's driving returns it's the investment -- the underlying funds are with the CTAs themselves -- and bringing that up into the table we think is important as well as -- and here's something that I think that is a long-range issue, and that's the question of brokerage, because the two regimes come down very differently on whether you count brokerage as part of the basis of the investment or whether you show brokerage as an expense of the fund in the table and the two commissions come out very differently for accounting reasons on that question. Obviously, the break-even that the CPOs deal with includes brokerage as an expense and then also allows the interest income off of the fixed income portion to be, in effect, counted as a contrary item for that and other expenses. So, there are some meaningful differences. And I

understand from a world accounting basis that there are proposals to move, and the mutual fund industry has weighed in I think in opposition to them to move all accounting so that brokerage is part of the expense rather than part of the basis of the fund's investment. That's obviously a development secular to this discussion.

MS. McMILLAN: If I could weigh in on that matter. Sorry.

MR. KING: I was going to weigh in on that point as well and maybe about the same thing that Karrie's about to say.

But, I mean, the primary difficulty there is on fixed income securities where there's no commission but it's a spread, it's very difficult to quantify that transaction cost.

MS. McMILLAN: Same idea. The SEC has studied this before. Other international organizations have studied this before. And if we were looking only at a world where you had brokerage, I don't think it would be a problem, but when you're comparing that then -- if you want

to compare mutual funds, then you would have disparate costs because your fixed income funds would look different from your equity funds, and that's why this comes out pretty consistently that you don't include brokerage. There may be a way that that could be disclosed as a footnote or separate line item or something like that, but in terms of putting it into the fee table, it would make the mutual funds misleading. That's the reason. An equity or a bond fund or a balanced fund versus an equity fund or something like that.

MR. GRADY: Although, interestingly, global accounting developments might actually overtake the distinctions that you're making, which are reasonable and rational, and they supported the decisions made by the Commission to date in terms of how the fee table is proposed. But to some extent, we may all be forced to deal with the impact of global accounting pronouncements.

MS. McMILLAN: If we do, it makes this discussion a lot easier.

MR. GRADY: Yeah.

MR. LLOYD: And I think this does double back to, you know, again, who do you pull into this, right? If you pull into this the funds that you sort -- the fund groups that you were really focused on, these are probably less of an issue, because they're not doing that. You know, their underlying brokerage is in futures trading.

MR. WALEK: It's that cascade again. All right, with that, why don't we -- unless somebody's got something they want to add and throw in right here, this is a good time to take our next break, and we'll make this, what, a 10-minute break? I think I've got -- let's see what time I've got here. I've got 11:08. Let's make it a nice round -- you can be back here at 11:20.

(Recess)

MR. WALEK: For those of you who don't know, and during the next break, which I'm probably going to be trying to take at about 12:30, there is -- and full disclosure, I am not

an owner, have no interest in the place, but the Port of Piraeus is right here, it's part of this building, towards the front, and if you have a blood sugar issue or something and you need to eat something, please feel free to do so, because I may have to do so myself. I can already feel the tingling sensation, so to speak, and that's not a positive one.

MS. OLEAR: To the extent that you don't want to go to Port of Piraeus and you're not interested in leaving the building, there are, you know, vending machines down near the restrooms. If you make a right coming out of the room, for those of you who haven't been down there already, there are both liquid refreshments and food available in vending machines down there.

MR. WALEK: Now that Ananda is back, we can't let him know that the last panel was actually productive. With that, I'm going to start now on the disclosure, delivery and updating requirements. And now playing back off of the opening comments again, I want to throw a question

out there. Again, referencing my earlier statement, this does not mean I like this necessarily as the idea, but I want to throw this out there for some people to discuss, and that is, what would you think, as a group, if we move towards, and hopefully you're familiar with the most recently published ETF requirements with respect to delivery and the like, what would you guys think of that scheme as a regime for 4.5 and 4.13 entities if we go through with the rulemaking? And with that, Eileen, do you have anything more you want to add to it? Okay. With that, whoever wants -- okay, Carol.

MS. WOODING: I think everyone probably would think that's a good idea. I know our committee thought it was a very good idea. But there was one caveat, we also thought that the Commission should consider giving the same relief to traditional commodity pools also.

MR. LLOYD: Carol, thank you for the segue. As I said, this is obviously something that's near and dear to my heart. But, yeah,

going to that type of a structure for, you know, public commodity pools and, you know, and obviously the future mutual funds, you know, it really -- it's a very workable structure, and it, you know, recognizes the technology advances, the use of the internet, the ease of delivery, and the ease of access, and it would be a very efficient way to, you know, to keep everything -- to get investors informed, as well as giving them the opportunity to review the full disclosure documents or prospectus or whatever it is.

MR. WALEK: How about our mutual fund families over here? No comment, okay.

MS. MCMILLAN: They're quiet. This is Karrie. As we put in our comment letter, we think that that would be a workable solution. There may be a few little tweaks which we've identified in our comment letter that would be necessary, but the principal and the framework would be very workable.

MR. NEVINS: Kevin, I'll just chime in real quick.

MR. WALEK: Okay. Thank you, Matt.

MR. NEVINS: You're welcome.

MR. WALEK: I was hoping somebody on this side would.

MR. NEVINS: Yeah -- no, I think that we'd have to study, you know, a little bit more closely the commodity ETF relief that's now been codified. And we may, agreeing with Karrie, have some comments on the edges, but I would certainly agree with the notion that having document delivery being done electronically and acknowledgement done electronically is something that should apply across the board for any commodity pools that are subject to CFTC's jurisdiction, so we would encourage that approach.

MR. WALEK: Keep in mind that we may have some scope issues here involved, too, in terms of the APA, but I appreciate your comments on that point. I had a feeling you guys would answer that way with respect to that one, so that's one of our easiest areas. Past performance reporting, that one, and in some of the comment

letters and in some of the subsequent meetings we've had seems to be a touching issue. Karrie, I had a feeling you'd be one of the first ones up. Go ahead.

MS. MCMILLAN: This is one where -- I mean, I can see either way. It's actually not an SEC issue as much of a FINRA issue. FINRA is the analog to the NFA, and they have taken a position that you can't put the past performance in a mutual fund perspective. They govern mutual fund advertising. So we would need to work with somebody who's not currently at the table.

I was at the SEC when those no action letters were done. I could go either way. I see the rationale as to whether or not it should be in there. I'll let my members, you know, talk about whether they feel differently, but this is definitely one where there is a direct conflict, would absolutely have to be resolved before this proposal were to go forward, and I think it's one where people should have the ability to do notice and comment and be able to comment on that, as

well.

MS. BAUR: Yeah, I would certainly agree. I mean we certainly see this on the mutual fund side, as Karrie noted, but we also see it on the private fund side, as well, because FINRA does regulate the marketing materials that are provided by private funds. And certainly from the Franklin Templeton standpoint, I think that our view is that we should be able to provide that information if we think it's fully and appropriately disclosed. But the wrinkle for us has historically been that FINRA has taken a very strong position that the information should not be disclosed. So it is a definitely conflict on both the mutual fund side, as well as the private fund side.

MR. AMEDEO: I just want to make a clarifying point. I don't think FINRA has any jurisdiction of what goes into the prospectus, it is only the marketing materials that are affected. So to the extent that the past performance issue is a prospectus issue, I think this is an issue

that needs to be resolved between the two commissions. I agree that FINRA does have jurisdiction over marketing material and tends -- and enforces it aggressively, but I don't think this is an issue -- I don't think FINRA is a player in this discussion for purposes of what goes into the prospectus.

MS. MCMILLAN: Thanks for that clarification, Bob. One other thing just to be reminded, I don't know where the SEC would come out on this, but to the extent that a fund is putting performance of a private SEC fund that's excluded under SEC rules into public documents, there may be some concern that you are then doing an indirect public offering of that say hedge fund or private fund. And so before a U.S. mutual fund would be comfortable about putting that information in, that would be something that would have to be addressed and provided comfort on, as well.

MR. LLOYD: Speaking as -- we actually -- public commodity pools, you know, do have

marketing materials that are reviewed by FINRA, so the past performance is not included in the marketing materials because we know FINRA takes that, but it is included in the prospectus. And the private offering -- the Reg D issue is dealt with by describing performance on a portfolio basis. In other words, instead of saying the X fund, instead of saying the Campbell Fund Trust, which is a private offering, we have the portfolio that that invests in, which is the Campbell Managed Futures portfolio. So the past performance that's given in the -- I don't know if it's even -- it may be given in part two, but it's in there that satisfies the CFTC requirements, it's not included in the marketing materials, and it's not on a portfolio basis, not on a private fund basis to alleviate the Reg D issues.

MR. WALEK: With respect -- oh, sorry, Peter.

MR. BONANNO: I was just going to make one point, that, you know, for all of us with mutual fund complexes sitting at the table, we

offer a wide range of funds, some of which would be in scope for potential 4.5 reform and some of which would have nothing to do with this. So my point is that I think to avoid investor confusion across the mutual fund landscape, across all types of products, that whatever the outcome here is, and I agree with Karrie, I could see both sides of this, but I think the solution needs to be kind of a holistic one that would cover the mutual fund industry taken as a whole, not to have two standards. So you would have a past performance obligation that may be required for prospectus only with respect to funds that would be brought and scope here, and then for funds that are not in scope, have a different standard. I think that goes down the path of creating sort of I think a confusing landscape for investors to understand.

MR. WALEK: With respect to other issues, other disclosure issues -- I can see the red light again unless, Doug, did you want to -- with respect to other disclosure issues, I think we've hit the biggest ones, but what other areas

do you see there need to be harmonization, and is the harmonization with respect to substance or location? And when I say location, location in whether it's, you know, front part, back part, whether it's in, you know, different filings, that kind of thing. So if you could be clear, if you have a substantive issue, also is there a location issue? Matt.

MR. NEVINS: Okay. So just one thing I'd point out, and maybe it's a question for Doug or an issue for Doug. The summary prospectus rules mandate that you're only allowed to include what's required by the form. So to the extent that any of our funds would be subject to the part four requirements and wanted to continue using a summary prospectus, which is an initiative that mutual fund companies have put a lot of time and energy and cost into rolling out over the last few years, we would just ask that that be squared, the requirements of any additional disclosures be squared with whatever the summary prospectus requirements are.

MR. LLOYD: So is the fee table and the summary prospectus --

MS. MCMILLAN: Yes.

MR. LLOYD: Okay. So whatever changes you would make to the fees that we discussed before would roll up to that and be in the summary prospectus? Okay, thank you. Because I know the break even table has to be in the first part of the document.

MS. MCMILLAN: It's going to find its way onto the first page of the summary prospectus. Echoing what Matt says, that's very important. We spent a lot of time getting that summary prospectus and investors like it. Going to another disclosure area, just to point out, some of this is timing, so the annual reports, monthly statements, things like that are different. That's not as much of a location as a timing. Also, audited financial statements, the nine months versus the 12 months, could cause -- if we had to do that on a nine month basis for mutual funds, particularly as Peter said, there's a lot

of different funds in the complex, you want to have your auditors in and doing everything and not have to come in constantly to work on this, and so that could cause a lot of cost and problems. So we would recommend moving to the 12 month standard really for both regimes. And I think that the CPO folks don't object to that, but I won't speak for them.

MR. LLOYD: No, I mean we strongly support that, at least I do for our recommendation at MFA and personally.

MR. GRADY: And I agree from Steben's standpoint, moving to that 12 month standard makes a lot of sense. I guess it probably makes sense to just interject that we'd hate to see the bifurcation of disclosure documents. So you get your mutual fund prospectus, then you get your sort of CPO disclosure document that comes with it.

It's been proposed that you would create sort of a supplement to the prospectus, delivered with it as a second document in the package or a

second document to look at online. I don't think that's what we're in support of, because we think that if you're really going to harmonize, you should be able to do it in one document as opposed to have investors say what's this other thing, I don't know, that looks like it doesn't even belong with the first part, these different terms, and it seems to have a different purpose, so I'm just going to ignore it.

MR. LLOYD: And just to follow up on the 9 month/12 month distinction, I mean we literally just went through this, where, you know, your annual, you know, you do your audits at year end, 12/31, and your nine months has expired, and so you don't really have your audits done yet, and I know there are ways that we deal with it, and it is dealt with.

But if you had a 12 month time period you would say, okay, we're going to do the audits this time, we're going to file X, we're going to do it the same time every year, and it would be very consistent and it would make the operational,

again, you know, expenses to the -- we actually ended up having to do two filings because we did one without the new audited financials and then one with the new audited financials, so, again, just to pile on that we support that.

MR. AMEDEO: Also, consideration in connection with the filing is that, under the current NFA rules, the document has got to be filed subject to the 21 day review period. As a practical matter, that makes it virtually impossible to do that in the 40 Act world, to be able to shut the offering down while the documents are being revised, so I would suggest that that would be something else that you'd want to look at carefully.

MR. WALEK: What is the parallel for you on the SEC side as to the 21 day rule? Because there's an amendment cycle over there, as well.

MR. GRADY: Right, there's a 60, or a 75 day amendment process, there's an instant effective amendment process, it depends on sort of whether you qualify for immediate effectiveness,

which actually can go out as far as 20 days. So you can project even your instantly effective -- effectively non- reviewed update in an amendment form and project it forward to a specific date if you want to kind of get in and get settled.

MS. MCMILLAN: I'd just like to respond to what John said about trying harmonize documents versus having multiple documents. I think in a perfect world, harmonized is best, but we did a lot of studies just at the SEC in doing the summary prospectus, the idea that a layered approach in using the value of technology is very beneficial, and I think there have also been some papers done about electronic technology is the way of providing investors with information, good information, and so I don't think that -- I wouldn't be so locked into trying to get everything into one document, that doesn't make sense. As long as it's very clear to investors where they can get more information and that it's important that they should read that information, and the way that it works through the summary

prospectus is that there's hyper links and there's ways to get to the documents, the supplemental documents very clearly, and there's rules about how long those documents have to remain on the Fund's web site and so on.

And so I think that kind of a model has worked very well. And, you know, as you talk with the SEC, I would encourage you to think about something like that.

MR. WALEK: Well, that was going to be -- I was going to ask a question about it, if we were to even consider going to the ETF style model, which would be online, it's sort of a seamless web -- with hyper links, it's sort of seamless web whether it's one document or two documents or three documents because a hyper link in effect makes that file folder potentially a single document.

MS. MCMILLAN: Right, and it also has the benefit that there can be other materials that may not be part of the required materials, but the investor is there and they can get it, they can

read more, they can learn more, and so we think it provides a more holistic investor education experience for them to go that route than just simply be given a piece of paper, particularly if it's a big, fat piece of paper that they're probably going to be intimidated and not read.

So not investors in our studies really want all of that, but some do, and this way it provides a very easy way for them to get all of it in one place.

MR. WALEK: Any other comments with respect to -- Steve.

MR. KING: I guess -- actually it's a question for Doug, I guess. If there were two documents, then what would be the treatment of the CFTC document under the securities laws? Would you review it, would it be part of your N1A? I don't know how that would work.

MS. OLEAR: I don't think Doug is in a position to comment on that, because I think, speaking for Doug.

MR. SCHEIDT: My whole goal here was to

not say a word. You know, I would suspect that any SEC discloser reviewer would care about how the fund was being presented, whether it was from a commodities future side or from an SEC side, so I think that the reviewer would probably want to see how it was presented, and, you know, that would raise presentation issues.

MR. WALEK: Okay. We've touched tangentially on -- I've got to learn how to answer like you do. But nonetheless, moving on a little bit, we touched a little bit on the annual report filing, but there's also -- on our side, there would probably be a quarterly reporting requirement.

MS. CHOTINER: Monthly.

MR. WALEK: Monthly, I'm sorry, monthly. I'm thinking of 4.7, but here would be monthly, right. That's why they're here. But in terms of the reporting requirements on the mutual fund side, the registered investment company side, is that a significant problem to do monthlies, number one, and number two, what kind of time frame would

you prefer if not monthly, and then, three, what kind of turnaround time, number of days after the end of the reporting period? And whoever wants to take that can take it. Somebody must want it. Matt.

MR. NEVINS: Yeah, I think it would be an additional burden for our funds. We do do quarterly reporting today, and semi-annual reporting to shareholders, we think that that's sufficient, and we'd like to continue operating under the SEC requirements as far as frequency of reporting goes. Again, I think that the burdens on us would really involve the additional cost of putting that information together, getting those filings in, et cetera, et cetera, and it's quite an operation for any mutual fund company.

MR. DRISCOLL: As a long time futures regulator, I think one of the reasons why there's always been monthly reporting is because you don't have daily liquidity, you don't know what your net asset value is each day, so at least from my personal perspective, where you can know each day

what your net asset value is, it diminishes, in my mind, the requirement to have monthly versus quarterly reporting.

MR. WALEK: The way they're structured would be an argument in favor of less regularized reporting.

MR. DRISCOLL: In my view, yes.

MS. OLEAR: I'll pile on that I think that the information that the shareholders would want and need are available as the regime currently exists. To the extent, again, that anything could be deemed to be missing, in terms of, you know, broad information, posting on a web site, would be far better than trying to have that being mailed out, particularly in a retail regime where you have lots and lots and lots of investors often going through intermediaries, that information goes to the brokers, and it gets set out, and it is done at considerable expense, it's more than just the mailing costs and the printing costs that are involved.

MS. MCMILLAN: And I would just add that

those expenses are going to be born by the shareholders, so I mean I think that's something that we shouldn't lose track of.

MR. WALEK: That was going to be one of my broader questions for later, but I want to hit it now since it just came up again. I keep hearing that the costs are all going to be born by the participants, and I wonder, you know, given the structure of the pool, the operation of the entity, the operation of the CIV, how likely is that all to be born by the participant?

MS. MCMILLAN: At this point, the way that most of the fund disclosures work is that shareholder communications reporting disclosure of those types of things are fund level expenses, not advisor expenses. The advisor always has the ability to waive its expenses, so it could do that, but if it follow the traditional advisory agreement of how this all gets whacked up, this would be considered in most circumstances to be a shareholder expense.

MR. WALEK: So, in fact, I wanted to go

down that path, and I'm glad you went down there for me, is that if I look at the mutual funds out there now, I can see anything from a.8 all the way up to one and a half, a two, whatever, and that's -- basically I'm looking at the size of the fund, it looks like that's whether or not they decide to charge the participant, and it's not an automatic pass to the participant, because they can choose to waive.

MS. MCMILLAN: They can choose to waive. Most funds waive and jump in, because I'm speaking really broadly, but when you're starting up a fund, you tend to waive your fees and expenses, because spreading those expenses over a small group of investors is a lot of expense on a few people. Once your fund gets pretty big, there are certain economies of skills which has that all go down. Some of it may have to do with your distribution network. As I said, if you pay broker dealers to distribute this, there's certain fees that are embedded in doing that that are not necessarily set by the broker dealers.

So there are, you know, there are different times when people may waive for fees, but my expectation is, an ongoing expense like this, the mailing expenses and things like that, would be something that is for the - the CFTC thinks it's for the benefit of the shareholders, and so it would be charged to the shareholders.

MR. WALEK: Now let me take the next twist and I'll come to you after that, Bob. My next twist is, if we go the ETF route and it's online, what's the cost, and isn't it substantially decreased?

MS. MCMILLAN: The cost definitely goes down because you don't have the mailing and distribution costs, but you do still have the fact that it's a regulatory requirement, and people don't take that lightly, and so these guys can really tell you, you want to try to do a regulatory filing that has all of the liability and the headline risk and the enforcement risk and everything else that goes along with the regulatory filing. That document is going to be

prepared and reviewed by reams of people, internal and outside, and so there is still a cost to doing that.

MS. CHOTINER: Just to make one clarification, which is that the monthly reporting requirement, or quarterly if you're, you know, in that category, is to participants and is not a regulatory filing. So I mean it is, you know --

MS. BAUR: I think we'd still take the position, though, that it's a regulatory obligation, even though it's not a filing requirement, and would be born by the shareholders. Of course, as Karrie noted, I mean there are fee waivers that can take place, as well as expense caps, so, you know, it is possible and likely that in some situations, advisors will ultimately bear that cost, but it starts out as a shareholder expense.

MR. WALEK: And, Bob, I missed you again.

MR. AMEDEO: You raised the question I was going to point to, which was the possibility

that the statement could be posted on the internet.

MR. WALEK: Thank you. I appreciate the comment, though, on the side, because the costing troubles me and we want to make sure that we're as complete as possible on the cost benefit side of things. But it's been very hard, as Nevis also pointed out, if we had data, but it's been very hard to get at the cost benefit issues, and we're trying to delve into that area as best we can.

Next I want to move into controlled foreign corporations and the CFC issue. Now, we've talked about that somewhat earlier in the context of wholly owned subsidiaries, we've talked about it in the context of it would be okay -- it may be okay for some if we were to bring those or pass up the line and the disclosure of the fees, because those usually happen in these wholly owned subsidiaries or CFC's, but what other concerns or considerations might there be for the way we have proposed 4.5 to the CFC community? Are those the only issues? Are there other issues that you see?

If we were to handle those two issues, you don't care? Anybody want to jump in on that? Bob.

MR. AMEDEO: This is a 4.13 issue, but many of the subsidiaries rely on 4.13 as an exemption from, I'm sorry, from CPO registration. And to the extent that 4.13 is amended, that may very well remove the ability for those firms or those companies to rely on that exemption.

MR. NEVINS: I'll just add onto -- sorry. I'll just add onto Bob's comment here. It is a 4.13, generally speaking. Most of us that have the CFTC structures file a 4.13(a)(4), so it's more of a 4.13 issue. Getting back to some of the comments I made at the outset here, to the extent that there are carve outs that are established for a changed 4.5, we would suggest that those same carve outs apply equally to 4.13.

So if you had a commodity fund, for example, that used a wholly owned subsidiary to invest in commodities through swaps, futures options, and that commodity exposure was tied to an index, then we would ask that that fund and the

subsidiary, the CFC, be exempt from CPO registration.

MR. WALEK: Okay. I have a little trouble crafting this question. But I understand the 4.13(a)(4) issue and the fact that some of these CFC's are using 4.13(a)(4), but interesting enough to us, the issue of CFC's came up first with respect to 4.5. And so I have to admit, I'm starting down my head, the waters are muddied rather than clarified as to what the lines of issues are between 4.5, getting rid of it or changing -- I'm not getting rid of it, but changing it to the way we want to change it, 4.13(a)(4), getting rid of it, and the CFC issue. And so there's not a question there, I realize, but could someone out there please help me get these compartmentalized a little bit better? Tom.

MR. LLOYD: Well, I think if you look back on when the issue first arose, I think as we talked about earlier, the issue was full disclosure of fees as they filter down through the CFC, right, and if we address that the way we've

talked about addressing that, then I think from the commodity pool operator's perspective, then you've got some pretty good equal disclosure. And I don't think anybody has an issue with the CFC as far as it just exists, and it being there for tax purposes, which everybody understands. So that's, you know, so that was the issue I think that drove the concern about the CFC in the beginning.

MS. MCMILLAN: Yeah, I think the initial proposal seemed to imply that we would not be able to use CFC's at all, so that was a major concern for registered investment companies that need the structure for tax purposes, and this, we've said, has been blessed by 50 or so IRS rulings. I think that part of the concern hopefully has been addressed, but there was misinformation about how and why they were used. There were certainly statements made in the Wall Street Journal that they were used to avoid regulation and to evade regulation. We went a little crazy on that because they're definitely not. The 40 Act has a provision that says you can't do indirectly what

you can't do directly, so you can't use your CFC to avoid other -- the 40 Act requirements. The IRS rules specifically say, or the private letter rulings specifically say you have to comply with the leverage requirements.

And so I think that to the extent that there are concerns about the CFC's and whether the regulators can get a full handle on those, they can be addressed by the flow up of fee information, which is already being done. If it's a wholly owned subsidiary, it's already coming up, so let's be clear about that. That was a little bit confusing on the last panel.

But also, to the extent that the regulators want to understand what the CFC's are doing and have that transparency to make the books and records of those entities available to the CFTC or to the NFA so that they can look at those, and I know you had that in your comment letter and we're fully supported of that, as well.

MR. GRADY: Yeah, some of the points that Karrie is referring to are actually comments

that were made in a Wall Street Journal story that quoted our chairman, so I assume we want to answer any questions that would be suggestive that we misrepresented the situation or unfairly characterized the CFC. I think --

MS. MCMILLAN: Reporters don't always get it right.

MR. GRADY: That's right. And she did a great job of shuttling back and forth between you and us to try and understand if we were saying the same thing or saying different things the same way. I think that when we look at the CFC, we do see a bit of almost a fun house mirror effect, because although certain CFC's used to transmographie, if you will, commodity income into good income for subchapter M purposes as a legitimate use of an offshore vehicle, it's also fair to point out that this offshore vehicle becomes, for many of the funds, the principal driver of returns.

It's not just a 25 percent investment from the standpoint of the total portfolio, it is

the driver of the managed futures returns, the driver. So if anybody here could explain to me from the disclosure documents that the funds are using how they're investing in the CFC and what they're actually doing in the CFC, it would surprise me, because I can't find it. I'm a 40 Act lawyer from way back and I can't figure out from disclosure documents exactly what level of gearing is being used, what kind of investments are being made, what kind of underlying funds are being chosen, what the fees of the underlying funds are.

We all talk about the fact of leverages being permitted there, I totally agree with that point. We're not talking about leverage, we're talking about trading levels, we're talking about gearing, we're talking about risk, we're talking about underlying funds with significant fees that may be embedded inside the fund, and therefore, they don't look like performance fees paid by the mutual fund, but downstream, they are performance fees nonetheless being paid to CTA firms that are

charging them in compliance, possibly with the Investment Advisors Act, but who can tell.

So we weren't attacking performance fees paid by mutual funds, which are fulcrum fees. So in that article, we were very clear to say we're talking about advisor act issues, not 40 Act issues, which are the fulcrum fees, which are a legitimate form of mutual fund fee that is different than the two and 20 that the CTA is charging. So what we're suggesting is that, more than just fee disclosure, but actual operating assessment. What is going on down there, pulling that out from a -- this is a 25 percent investment, so it's sort of a part of our portfolio to -- this is the engine for our returns for these managed futures mutual funds.

Let's look at what's going on in there, let's look at what the fees are, let's also look at what the strategies are, the gearing is, the leverage, that's where I'm saying I think the part four regulations and the experience of the CFTC staff and the NFA staffers, in looking at these

structures and pulling the details out into the documents is what investor protection will be served by. So sorry for the soap box.

MR. NEVINS: I'm glad I get to follow that one up, thanks, John. So let me just ask you a question actually because I want to make sure we're on the same page. When you're referring to these funds that use CFC's, and you're talking about managed futures strategies, are you talking specifically about managed futures the way that I was alluding to them earlier, or are you talking about, you know, commodity funds, commodity mutual funds that are using CFC's to get their commodity exposure?

MR. GRADY: We are talking - I am talking about the sort of actively exposed, actively managed futures mutual funds.

MR. NEVINS: Okay, thank you, because that's what I interpreted, as well, but I just wanted to make sure we're all on the same page, so thank you for that clarification. So the point that I was going to make was, and this is really

responsive to Kevin's question, how do you guys - how should you look at these things? So from my perspective, I look at the CFC wholly together with the parent mutual fund. It is part of the same overall structure.

So technically speaking, the way that we do it at Fidelity today for our commodity funds, and I think others follow the same path, we file a 4.5 exclusion for the parent fund, and a 4.13(a)(4) for the subsidiary. One way of potentially looking at this in the future is, to the extent that there's a changed 4.5, and you are going to look at that structure together holistically, which is the way that, again, we look at it at Fidelity, it's the way that I think that the SEC looks at it, I don't want to speak for Doug, but I think that that's fair to say, I think it's certainly the way that the IRS looks at it, as well. Under the private letter ruling that many of us have, you are required to follow certain SEC guidelines at the CFC level, as well, namely, and most importantly, the restrictions on

leverage that are contained in 18F for the 40 Act applied at the CFC level, in addition to at the parent level.

And I would propose that you look at - you codify into 4.5, that you look at the subsidiary together with the parent fund for whatever exemption or exclusion remains under a changed 4.5.

I will just add onto what Karrie was saying, and I know that this is consistent with what Bob and John were getting at, as well, that, you know, we're certainly open to the idea, and this came out of the NFA comment letter, of making sure and codifying that the fee disclosure for fees charged at the CFC level are transparent to investors in the parent fund, and also to provide any access to books and records. So we don't think that those are unreasonable requests that the NFA has made.

So, again, the way that I would look at it is, to the extent that you're making changes to 4.5, 4.13, look at it holistically; to the extent

that you've got a commodity fund that's getting exposure to commodities in a way that's tied to an index through these CFC's, then exempt them, and if, using John's example, you have what's really a managed futures fund that's using a CFC, that may be a different story.

MR. AMEDEO: Kevin, I think this question goes to the heart of this whole discussion, because, in my mind, once you decide who you want to regulate, what are the entities that need additional regulation and will be excluded from the 4.5 exclusion, then the question just becomes one of what kind of disclosure do you want and what kind of reporting do you want.

But the first thing that has to be done is, you have to parse out the people that don't fall within the group of people you want to regulate. Once you do that, whether they - you take a 40 Act that has a CFC that trades futures directly from the CFC, and there are those - there is that structure, there are structures where you have the fund, the CFC, and the CFC essentially

investing in a series of funds that provide commodity exposure, all this becomes is a question of disclosure about what the underlying operations and fees are.

But before you can get there, you have to decide, are you trying to regulate the long only funds that use futures, are you trying to regulate the target date funds that use futures, the funds of funds that use futures, and I think once you decide that, the rest of the regulation falls in line pretty quickly, because it's just a matter of disclosing what's going on at the various underlying levels in the fund's document.

MR. LLOYD: Point well taken. And just to follow up on that, keep in mind that it's just not the fees that are being charged to the CFC, but the fees being charged by the pools into which the CFC is investing, which I think both of you guys pointed out.

MR. AMEDEO: To the extent that that is one structure.

MR. LLOYD: And the gearing and all of

that stuff.

MR. AMEDEO: That is a structure. There are also structures where the CFC does all of the futures trading directly at the CFC level.

MR. LLOYD: That's correct. But you'd want to consider how to bring in both of those structures and how to cover both of those structures.

MR. WALEK: I think we may have to have some conversations, I don't know how we can do that, though, with the timeframe. Nonetheless, okay, I'm ready to move on now, actually to 4.13. You have more? Okay. Even though it's earlier than we planned on, let's take a ten minute break and we'll move on to 4.13 after the break.

(Recess)

MR. WALEK: Well, I was a bit too successful getting back on schedule, and as a consequence, our colleagues from the IRS missed part of the CFC discussion. So if I could trouble everybody, my understanding of where we are right now, at least from the earlier part of the CFC

discussion, is that, for some at the table, on the commodity regulation side, commodity pool side, that the issue is primarily one of disclosure and having disclosure passed up through.

From the ICI, I've been able to discern that some of those disclosures being passed up the line are probably okay. From the rest of the discussion, there's some issue as to what makes a commodity -- what makes a CFC a commodity pool sufficiently deriving its income from the commodity side of the picture that it should be within our regulatory regime, and as a consequence -- is that close, John, trying to put it into a real nut shell?

MR. GRADY: Yes.

MR. WALEK: Okay. So in terms of the issue, it's not so much of whether it's offshore or onshore, it's a wholly owned subsidiary that is not being fully disclosed at the top level.

MR. GRADY: And in fairness, I made some statements about, you know, the managed futures mutual funds that don't apply to every single

managed futures mutual fund, even the active ones, to use the language Matt is careful and his colleagues are careful to point out. But I was talking generally about what we're seeing in that space.

MR. WALEK: So if I may ask the next question then, is it not so much that we could have a rush to offshore by entities or is there still that possibility?

MR. GRADY: I mean I think the rush to offshore, if there is one, is because the situs of the controlled foreign corporation determines whether you pay tax, determines a number of other economic elements, and therefore, at least in my firm's view, to the extent that the bulk of the returns of the vehicle from a managed futures standpoint, maybe even all of the returns in the managed futures investment strategy were going to come through the foreign corporation. You did have what looks to be a movement of U.S. assets at least through an offshore domicile, that is, much less subject to U.S. regulation and oversight.

MR. WALEK: Bob.

MR. AMEDEO: I just want to take issue with that, because fund families have being using CFC's for a number of years now, and the primary purpose for using a CFC has nothing to do with obfuscating disclosure, it has nothing to do with trying to push business out of the U.S. into foreign hands. There have been offshore commodity pools for years, as you know, Kevin. The primary purpose people use CFC's in 40 Act companies is to convert bad income, which is income from the trading of commodity contracts, futures contracts on real commodities, into income that is good income for 40 Acts purposes, period.

The issue I think John has been talking about is a different issue, and that is, aside from the why the CFC is used, the legitimate purposes for which the CFC is used, is there enough disclosure about what is going on at the CFC level in light of the underlying purposes of the CFC, they're designed to provide tax benefits, but they're also the vehicles through which the

commodity trading is done. And I think -- I don't mean to speak for John, but I think the issue that's being raised is not the question of whether the CFC has a legitimate use, it's whether there is sufficient disclosure of the underlying CFC operation.

MR. NEVINS: Yeah, I'd really just like to second what Bob was saying. The reason that CFC's are used by registered investment companies is a tax reason at the registered investment company level. Again, this is not a tax reason that is being used by mutual funds to be cute, to get around tax laws, or to nefariously hide any sort of income, it's far from it.

As Bob was alluding to, commodities investments by registered investment companies are not qualifying income under IRS guidelines, which could cause mutual funds to lose the tax treatment that's beneficial for our investors. If they lose that pass through tax treatment, then they get taxed at the fund level and the shareholder level. And the IRS and the SEC has been comfortable with

these structures.

So I would just, you know, really just second everything that Bob said, that, you know, there is no intent for those of us that use these structures to hide or not be fully transparent about what they do. If there are those that think that additional disclosure is required, we're certainly open to that conversation. I would lastly just add, I want to just make one caveat on some of the statements I made right before the break, because it was really Fidelity's approach to filing for our CFC's under 4.13(a)(4). I should stress that it's my understanding that others do take a different approach, and there are those that have the view that, and I'm not sure what the right answer here is, but there are those that have the view that CFC's, the subsidiaries themselves, are actually not commodity pools, and therefore, there is no need to make any filing whatsoever for those entities, that they're covered under the 4.5 exclusion.

MR. WALEK: Okay, Peter.

MR. BONANNO: Just to chime in similarly to Matt, I think what was illuminating about the earlier discussion is that there appear to be a wide range of practices with CFC's. You know, our practices sound very similar to what Matt's described. To the extent we have CFC's, they are part and parcel of the top tier fund, and with respect to, you know, key control aspects, the way our products are run from a board oversight and governance standpoint, from a disclosure angle, the way we think about transparency, risk control, monitoring, I mean you really can't find a distinction between the top level product and the CFC, I think it's all part and parcel, the same. To the extent that there are practices elsewhere in the industry that don't provide that level of transparency or disclosure, I think that would make sense to bring everything up to a level playing field.

MR. WALEK: Karrie.

MS. MCMILLAN: I would like to go back to what Matt said before, about looking at this

from a holistic point of view. I think this might be why some take the idea that the 4.5 covers both the fund and the CFC for registration purposes. But in following on what Peter said, this is really one fund, it's only for tax purposes that it has to be split into two. And so funds look at it as if it is all one fund.

When you're thinking about disclosure, as in disclosure to investors, as opposed to information available to regulators, to me, disclosure to investors is what are the risks involved with my investment, what is my fund doing, and how is it going about achieving that, but not in super granular detail. They want to know the basics of how all this happens. From a holistic point of view, the nuts and bolts of the CFC, I would argue, are not as relevant, maybe available in the supplemental materials or something like that, but that's not the heart of what they're getting. The fact that they're doing it may be a risk disclosure, that they're investing in a Cayman Islands fund, and that

there's different regulation or something like that, but I don't know that it's subject to the same type of disclosure that John's talking about.

However, for a regulator to oversee what's going on, I think you do need a different level, and that's why I think the books and records and that kind of transparency is very valuable for a regulator to make sure that things are operating in the way that the funds are representing and what they're saying is being done.

So as you're thinking about what the new rules should be, think about whether this is disclosure that goes to investors and how much they need and want, and then whether it's something that you need from a regulatory purpose, because I think the answers may be different and it would drive different outcomes in terms of where you finally come out.

MR. LLOYD: And just to tie that back, you know, from the investor's level, obviously, you know, sort of the flow up of the fees from the

underlying CFC and the pools that they invest in, the management performance fees, gearing, and things that John mentioned, that's the type of thing that an investor would want to see and we'd like to see, and I think ICI has talked about, you know, working up into the fee table and that type of thing.

MR. WALEK: That reminds me of what my tax law professor said about 30, oh my God, that many years ago, and that is that tax evasion is illegal, tax avoidance is a right, which I always had trouble with, but nonetheless, I think that's what I'm hearing here, is that as long as the rules allow for it, and the rulings allow for it, have at it. So CFC's are okay, but let's have more disclosure.

MR. GRADY: And I think -- again, I don't want to reiterate a point I made earlier, but I think the reason why we are focused on this issue is that the 25 percent investment is the driver of the returns of the vehicle, at least those that call themselves managed futures mutual

funds, and that's not typically the case in a mutual fund, even one that invests its assets across a number of asset classes to derive a balance to return or otherwise, but again, it may be at 25 percent, so less than half, obviously a quarter of the assets of the fund perhaps are in the CFC, but that investment is the driver of the managed futures returns. And again, there are exceptions, there are funds that can split their commodities investing, so that some of it's inside the CFC, some of it's outside, I'm not casting dispersions on the concept of the CFC, I'm saying given its importance, its critical importance to the returns that investors are seeking from their investment in the fund, the amount of light that you can put on it and the amount of explanation and disclosure you can get around what it's doing can only help investors.

MR. WALEK: Steve.

MR. KING: I would just say, at least in the case of our funds, there's full disclosure of the strategies and the risks at -- it's the same

as in the fund. I mean it's carried out through the sub for tax reasons and it's clearly disclosed in the prospectus. Also, the risks of having the offshore subsidiary are disclosed. And the holdings are consolidated. I mean you see everything, the results of the sub's operations are included in the fund's operations. We test compliance at the fund level, basically disregarding the subsidiary, with the exception of seg assets, where we do it at the sub level. And then also with regard to fees, there's full disclosure, and we waive all fees. So essentially I mean we would rather not have the sub. I mean it would be less costly to not have the sub, but for tax reasons, we need it in order to have good income.

MS. MCMILLAN: Can I just ask John -- you said that mutual funds don't get all of their returns from, you know, a sub in the same way that these do, I just take issue. You could have a fund, a balanced fund that says it's going to get, you know, a small slice from a money market fund

and half of the rest from a balanced fund and half of the rest from an equity fund, and you would not find the disclosure saying this is how -- this is the equity fund, this is how it operates, this is the leverage of the equity fund, and then the same thing for the balanced fund, you get it all together.

This is what our fund is doing. We may invest in other funds that provide these returns, but you don't get that level of detail, and I guess I'm still struggling with why it should be different in this case.

MR. GRADY: I think that it comes down to, for example, and the example you've used, the fund's overall goal is a balanced return from a series of asset classes. If it achieves that through funds that are either registered or otherwise, you're going to be at the whole representing the sum of the individual investments. In the case of a managed futures mutual fund, you can more or less ignore 75 percent of the fund's operations. Now, some funds

do more or less with their fixed income side than others to try to accentuate the fixed income returns, but a fund that says managed futures in its name is driving -- and its objective, and it purpose is to drive managed futures returns for shareholders, and so it's really the only part of the entire portfolio that is actually driving those returns that are the central investment focus of the fund. That, to me, separates it from a fund that invests in other funds in order to achieve a broad objective.

And in this case -- and to Steve's point, it is -- the character of the investment in the CFC is different than the character of the investment of the remaining 75 percent, they're as different as night and day. You've got fixed income securities in the 75 percent piece outside of the CFC, and you've got investments in underlying funds or with separate accounts in CTA's, and other devices that are designed to drive managed futures returns, so you really have extremely different purposes between the two

segments of your portfolio. And I'm saying we're kind of allowing the disclosure to be consistent with the idea that this is just 25 percent, when really what you want to say is, this is it, and everything else is basically liquidity for the vehicle.

MS. MCMILLAN: I guess I disagree, though. To me, maybe it's just coming down to identifying exactly where it's coming from. But at the end of the day, the investor's returns and the risks and the strategies and everything else are the blend of everything in that fund. And so if the primary risk and return is coming from the CFC, then those risk disclosures and the strategies will be, you know, this is what our strategy is and this is where our risks are, and they may not say this comes from the CFC part of it, but the investor will know that's what they're getting and what they're not getting.

So maybe it's a little bit more about semantics than trying to track through where everything is coming from, but again, I go back to

-- from the investor's point of view, do they care which segment of the portfolio it's coming from when at the end of the day the risks are a part of the blend and the returns are part of the blend.

MR. KING: I mean before we had the offshore sub, before there was a need for it, we did the same thing in the main fund, and the disclosure was exactly the same as it is now, with the exception of the disclosure about being able to do that through the sub and the risks of having that sub; other than that, it's fully transparent.

MR. GRADY: Do you invest the sub in underlying funds that have their own expense structures and CTA's and separate fees?

MR. KING: No; the sub is just used for doing the activity and would give rise to bad income.

MR. GRADY: And there are a number of managed futures mutual funds, and I've got to be quiet because Bob deserves a chance to talk. But I do think there are funds in this room that do things directly that pose far fewer

transparency/opaqueness issues than I'm raising with respect to the examples that I'm using, but I think it's a distinguishing element that the funds that we're really focused on are having to do pooled investing underneath the CFC. The CFC is not the investing vehicle, per se, the CFC is a conduit to a series of underlying investments that have their own fees, their own advisors, their own structures, their own conflicts, their own gearing, their own leverage, and those are the things that we want to see much more brought up into the overall disclosure document for the reasons I was saying earlier.

MS. MCMILLAN: I'm going to jump ahead of Bob just to say we agree with that. I think what we talk about mostly is when it's a wholly owned subsidiary and it really is as if it is the fund; if the tax laws were changed, it would be done exactly as it is with different funds.

MR. AMEDEO: And I think -- two issues, one, I disagree in part with John's characterization. There are a number of funds

that trade futures, that trade managed futures directly through the CFC so that it's one structure. The structure John's referring to is the CFC investing in some underlying pools.

And to some extent, I agree with what his characterization of the need for full and fair disclosures. Look, this is about materiality, what is material to the investor, and Karrie's point is that if you look at the fund holistically, from the top down, if you disclose all that's material about that fund's operations, by definition, you are going to include the underlying investments that the fund makes and the characterization of those underlying investments where they are the driver of the returns for the fund. Whether it's granular or whether it's not granular, in the end, it's the information about what's happening below the line that everybody is concerned about.

MR. WALEK: To get an IRS ruling today in this area, what representations -- Matt, I'm going to start with you because you seem to know

everything today anyway, no, in all seriousness, what are the representations that are required for you to apply or get the IRS ruling? And the reason I'm asking this is, what I'm potentially hearing here, I'll even hold my hand out and show my cards, is that maybe this is a place where we need to undertake more dialogue with the IRS as to how these things operate.

MR. NEVINS: Thanks, Kevin.

MR. WALEK: I'll warn you ahead of time.

MR. NEVINS: I'll take that as a compliment. I don't have a copy of our private letter ruling in front of us, and I, frankly, can't answer that question in detail. However, what I can tell you is that you're required to basically represent that the parent fund is going to be compliant with the 40 Act, that the subsidiary, as I mentioned earlier, itself will be compliant with Section 18(f) and the guidance under 18(f) relating to coverage, and the consequent restrictions on leverage that can be used in the fund. Again, that needs to be made at

the subsidiary level and at the parent fund level.

Other than that, I would happy to work with you guys, you know, after today and get you some more information to the extent you'd like that. I don't know if any of my colleagues have anything else to add.

MR. WALEK: Does anybody want to add anything on that in terms of the representations that have to be made? Okay.

MS. MCMILLAN: There's an express representation that the CFC will comply with the 18(f), which is the senior security, and then there's also the 25 percent limitation. I'm not sure if you'd put that in. There may be some more that I'm forgetting, but I know those are still in there.

MR. WALEK: How is the 25 percent calculated?

MS. MCMILLAN: Oh, shoot, I shouldn't have opened my mouth. Matt, do you know?

MR. WALEK: The bottom line is, you can provide that for the record, but I'm sort of

curious about how that is calculated, because in the earlier discussion on percentage --

MR. NEVINS: We'll get back to you on that one, as well, Kevin. But there are a series of other regulations that -- they're under tax language, it's called regulated investment companies, also RIC's, must comply with, and there are tax diversification tests and the like that will apply, including this 25 percent restriction, but we can follow up.

MR. WALEK: Does anybody up here have anything more on the CFC issue? Anybody out there want to say anything more about the CFC issue at this point? I think -- I neglected books and records earlier, even though I touched on them tangentially, I didn't get into great detail on books and records. What areas may we harmonize with respect to books and records and how, you know, what kind of thoughts do you guys have? No, Matt, you don't get to start this time, I'm going to start on this side of the room, although Karrie --

MS. MCMILLAN: See, I wasn't turning my light on because I was afraid I would get the same thing. Mutual funds by and large keep their books and records with their service providers who are the ones that are handling those records. So, for example, a custodian has a large amount of them, but there may be transpirations, there may be other service providers that do, as well. Through a written agreement with those service providers, it is agreed that the records are the records of the fund and that the service provider will make them available to the SEC or regulators as requested, and we would suggest that the same be done for these types of funds, as well.

As far as I know, there's never been a problem with the SEC getting the records because a service provider has failed to or been unwilling to provide those, but that could be something you could ask them in your dialogue with the SEC.

MR. NEVINS: I guess it's my turn now. So I would agree with everything Karrie just said, and I would just add, I know that we've made this

point before, registered investment advisors are required to disclose in their form ADV all the locations of their books and records. So it's no secret, and it's publicly available information, it's already out there. So, again, we'd like, you know, further leeway as far as, you know, where you can hold your records. We do hold them, you know, a company like Fidelity, we have offices all over the country, and, in fact, globally, and we hold our records in all of our different offices and in -- off site with third party service providers.

The other sort of related point that I would make on this is investor access to information of the commodity pool. And it's something that we probably need to understand a bit better, it's CFTC Rule 4.23, how this would work in practice. But one of the concerns that we have is that if investors have the ability to, at a moment's notice, get access to the holding information of any of our funds, that that could create selective disclosure issues under SEC

rules.

I'm not sure how those two are squared together, but there are prohibitions that registered investment companies must follow on selectively disclosing information on portfolio holdings to their investors.

MR. WALEK: On that, I was going to lean either towards Dan or anybody from the commodity side with respect to your experiences with someone asking to inspect their books and records. Last I had heard from most of the commodities borrowers is that they never had one, anybody come in and request it, is that -- what's your experience?

MR. GRADY: I haven't been with a company as long as we've been in business, but I'm not aware of any such request actually being made on us.

MR. WALEK: So maybe there's no need for the rule.

MS. MCMILLAN: Yes.

MR. AMEDEO: We have had a request from a limited partner to inspect some books and

records in a very specific case. They didn't cite the statute, or the rule, but we recognized that we had an obligation to deliver per their request.

MR. WALEK: Dan.

MR. DRISCOLL: And I don't remember that. I can't remember any single instance of it coming up either.

MR. WALEK: Yeah, I hear your point on that, too. Yeah, most of the time it's with respect to inspecting the trading -- if the trading of the principal is being -- is available for review, and that's where I've seen it come up the most, which is a rule you didn't mention, so, you know, there's that. With respect to 18, I think it's 18-96, staff, help me, 18-96, we're familiar with that, but we've got a rule out there that applies to I believe wholly offshore, I'm sorry, it's a letter advisory that applies to fully offshore entities that we've had in place for several years now, since 1996, in fact. But to make a long story short, if you are familiar with that, would that solve the problem, if we

open that up for these types of entities? And that may be something you need to respond to expo facto.

MR. NEVINS: Agreed; I'm not familiar with it, to be honest.

MR. AMEDEO: Could you give a little more detail about the letter?

MR. WALEK: Yeah, 18-96, my recollection, and maybe I should have Eileen talk about it more because I think she's dealt with it more, I don't know if she's willing to; do you want to?

MS. CHOTINER: Well, I would have to also refresh my memory a bit. But I mean it deals primarily with entities that are offering pools entirely outside the United States, but are located or have some, you know, business conducted in the United States. And there is a provision in there -- so it basically deals with exemption from most of the requirements that would apply to CPO's, but it does have a component that deals with books and records. And I honestly would have

to go back and reread it as to the details of that, but I think that might be the, you know, the part that could apply. But we -- I mean, I had not considered that in this context, you know, prior to now, so --

MS. OLEAR: It's my understanding of 18-96 that the relief that's given is, we're permitting these entities to keep their books and records offshore instead of onshore as opposed to necessarily -- I don't know that it necessarily contemplated the use of a third party service provider for maintenance of those records, but at least it is a consideration that we've dealt with in the past, and it may provide a way forward.

MR. WALEK: Staff has been nodding their head no to me, but I also remember, at a time when we were in the old building, for me, I have to mark time where I was -- what building I was in with the CFTC, but I remember a letter that we issued, and I thought we issued many of them, that allowed onshore persons to keep their books and records at a location that was not their main

business office. If it was one of their other entity -- let's say they had three offices, one in Colorado, one in Virginia, and one in New York, and New York was listed as the main business office, they could keep it at one of the other locations. But again, it's not exactly a third party in the classic sense, but what I'm suggesting is, maybe there's room for us to move in that direction. Dan.

MR. DRISCOLL: Well, from NFA's viewpoint, by the way, there are other classes of commission registrant that don't have the same restrictions, so I don't -- FCM's are allowed to keep their records in more than one spot, they just have to disclose. So it's different for pool operators than it is for other classifications. As far as we're concerned, in order to do examinations and get information quickly, we need to be up-to- date on where the records are, that's the most important thing.

MR. WALEK: So it's disclosure of where the records are is most important?

MR. DRISCOLL: And not so much --

MR. WALEK: Where.

MR. DRISCOLL: -- the home office.

MR. WALEK: Okay. So that's one that I think, again, we may be able to consider. Alison.

MS. BAUR: Yeah, I was just going to say that I think disclosure is certainly important, you should know where the records are, but I think, you know, certainly speaking with Franklin Templeton hat on, we have trading operations that are in different places then where our advisory entity is located. So I mean we're going to have records depending upon what the issue is in many, many different places, and we're able to get those very quickly. But to expect that just because the advisory entity is located in one place, that all records are going to be there, I think, you know, is not going to be realistic in many cases.

MR. WALEK: I think under our rule 1.31, isn't it 72 hours? And I don't know how that would work for NFA.

MR. DRISCOLL: Well, we have rules and

interpretations that -- because we have a number of members that are located offshore in some countries that we probably wouldn't want to travel to necessarily, and there is a requirement that they have to provide all of their -- they have to tell us a location in the United States that they could provide all of their required records within 72 hours, I think it is.

MR. WALEK: So we'll take that one under advisement. Other books and records issues? Bob, I'm sorry, Bob.

MR. AMEDEO: I think to some extent this issue has been addressed in your ETF relief, because although ETF's aren't a direct corollary, they, like us, don't have necessarily a privity with the underlying client to get books and records of name, address, number of interests held and so forth and so on. So I would suggest that the ETF model might be one that the staff look at.

MR. WALEK: If there's no more on books and records, I'm going to move us, if everybody is amenable, I don't think we need another break this

soon, moving onto the real 4.13 discussion. And, Todd, I'm going to let you take your first shot.

MR. GROOME: Thank you very much, Kevin.

MR. WALEK: Starting with this side and working backwards.

MR. GROOME: Thank you. A lot of the conversation this morning, I know not directly related to 4.13, though, is, we've crossed over this path a few times, so apologies if I cover some themes at least which I think have been raised.

I'm the Non-Executive Chairman of the Alternative Investment Management Association, known as AIMA, based in London. We have approximately 1,250 corporate members spread out around 40 different countries in the world. Our membership is also quite diverse professionally, and that's relevant for our comments in that the submissions we've made to yourselves and the SEC over the last couple of years, and on the Hill before that, have been made up of working groups from that broad geographic and professional

diversity, so it's very much a hedge fund industry comment that we try to tend to provide.

Related to that, in February of '09, very quickly after the November, '08 G-20 meetings here in Washington, D.C., AIMA came out with a policy platform to try to be very clear as to where we were looking to become involved in the conversation.

We strongly support all the efforts to address potential systemic risk analysis and to approve the transparency to regulators, which we understand really to be the driving force of the G-20, and, as well, with Dodd Frank and many starting points. This also includes clearly the broader regulatory coverage of certain markets and institutions, not least of which hedge funds.

In that February, '09 platform, I would just highlight four particular points which I think are relevant to today's conversation in 4.13 in particular. We came out very early and supported the mandatory registration of managers or private fund advisors in the jurisdictions in

which they operate. Second, we supported the periodic reporting of systemically relevant information to those supervisors, and we use our language very carefully. We think focusing on the advisor, which came out earlier in this conversation as appropriate, and we think focusing on systemically relevant information to improve the FSOC and other type of analysis should be the key focus here.

Third point, very important for a global industry like ourselves, we called for, in support of the G-20 call, for a globally consistent and coordinated approach in this exercise. Indeed, anything that deviates from a coordinated and consistent approach to our industry simply represents increased marginal costs in trying to comply with what's happening. Given that we're involved in so many different countries, our managers would have investors all over the world trade in different markets, if we have to, file in different jurisdictions, the costs ring up quite quickly.

And then fourth, something I also heard mentioned earlier this morning, we came out and supported de minimis thresholds, that the marginal cost for smaller managers and mid sized managers to come up with some of this compliance would be significantly great, and the information, quite frankly, that they contribute to that systemic risk analysis is not that material and what we think is the end game.

So those principals are really driven. At AIMA, our thinking over the last two and a half -- three years in dealing with Capital Hill, the SEC, the CFTC, Treasury, the FED and others involved in this conversation. Now, with regard to 4.13 and the proposed elimination of the exemptions under (a)(3) and (a)(4), if you follow those principals, we have a number of concerns that we've raised in particular in our letters.

First, very simply, as proposed, advisors in the United States and internationally, and not just private fund advisors of the hedge fund type, but much broader, would be subject to

multiple and in very many cases different registration and reporting regimes. And as I said earlier, this simply rings up for us a marginal cost conversation.

We support the regulatory objectives, particularly as it addresses greater transparency and improved systemic risk analysis, but we believe those objectives can be realized in a more cost effective and regulatory effective way. In the United States, the CFTC and the SEC have repeatedly said they're looking to implement substantially similar regimes, or the language I think that's often used, regimes creating substantially -- putting regulated entities in a substantially similar situation, and we support that. But we think that, increasingly, that's not where we might end up. We see very different regimes emerging between the CFTC and the SEC.

And then when you extrapolate that internationally and look at the U.K. FSA, you look at Hong Kong, Australia, and Singapore, which are advancing relatively faster than many other

jurisdictions, and now the EU, which is also chiming in on a regional level, that overlap and difference begins to become quite significant.

With regard to specific requests and proposals, we have very simply asked the CFTC to consider that they provide registration exemptions similar to the SEC. It could be done in two very broad based ways. You could exempt any advisors that are already registered with the SEC or that have been deemed exempt from registration with the SEC. And with regard to that second aspect, you could, therefore, use the private fund advisor exemption proposed by the SEC, or the foreign private fund advisor exemption with respect to non-U.S. managers, either one would get us to that final point.

With regard to reporting, we've also requested and proposed that the CFTC and the SEC work together much more closely, whether the outcome is something looking like foreign PQR, PR, or PF at the SEC, we're relatively neutral, but we'd like to see one form begin to come together

and be consolidated between the two agencies.

If that's not possible, we'd like to see one agency take the lead and then basically attempt to share that information between the two other agencies, and ultimately, of course, with many other agencies as it goes up through Treasury into the FSOC process.

We think whatever reporting regime emerges, it needs to have two very distinct goals, one, for tracking what's happening in the industry, which we think could be very basic information filed annually and updated annually, and the other for the systemic risk analysis. On the systemic risk analysis, we think the old 80/20 rule is still very much appropriate to think about here, and we believe it's something the SEC is also doing with their work. Where I understand the SEC, where they may be looking at gross exposures rather than net exposures within the management companies and their funds, are still looking to get about 75 to 80 percent coverage of the industry as they gather information from the

FSOC process.

In the United States today is approximately 240 advisors with a billion dollars or more of assets under management on a net basis, but they represent 82 percent of assets under management in the hedge fund industry. So through that simple 80/20 process, you begin very quickly to get a targeted group where you can get a very representative sample of what the hedge fund industry can contribute to the FSOC analysis.

And finally on reporting, we encourage the CFTC and the SEC to work together to develop common thresholds and an information focus of the information gathered. Similar to what we see emerging in the U.K., Hong Kong, Europe and elsewhere, there seem to be distinctions drawn around managers anywhere from zero to 150 million of AUM, where very little information is gathered, or what I refer to as tracking information to find out who's in the industry, what strategies are being followed, and what trends they can gather from small funds in the industry. This also

represents only three to four percent of assets under management in this country, and it's pretty much a similar number globally.

The second threshold tends to be a number between 150 million, or in Europe, 100 euros, and one billion AUM. Here you have about 15 percent of assets under management in this country by the hedge fund industry, and we think something approximating Schedule A, a foreign PQR, would be appropriate with the elimination of some of the position level data that is currently included in there, and probably updated annually, because once again, the purpose would seem to be to track what is happening in the industry.

And then finally, for the billion dollar club, the billion AUM up managers, that is where we see Schedule C having most application, where we would encourage it to be updated semi-annually, 30 to 45 days after the period, not 15, as proposed, and the information would very much focus on tracking systemically relevant information as is currently the goal under foreign

PF and certainly what's been implemented for a number of years at the FSA. So I'll be happy to answer questions based on that.

MR. WALEK: I think next on the 4.13 was going to be Marc, with your opening comment.

MR. BAUM: I'm going to try to cut down on our comments. Thanks for the opportunity to participate today. My name is Marc Baum, and I'm the General Counsel and the Chief Compliance Officer for Serengeti Asset Management. Serengeti oversees investments predominantly made in North America that are focused on sector dislocations, uncovered or misunderstood opportunities, and liquidations. We're based in New York City.

I've spent 25 of my 27 years as a practicing lawyer in- house at regulated financial services firms, from broker dealers, through banks, through hedge funds, that's my context. I'm here today to speak on behalf of the MFA and its members. I believe that the participants here are familiar with what we do, and we've introduced ourselves today and what our activities are, so

I'll jump ahead.

MFA has consistently, as you know, supported intelligent and well informed regulation of the U.S. securities and futures markets through the Dodd Frank legislative process. We also have consistently endorsed the notion that our regulators benefit from market and participant information and appropriate funding to be able to discharge the regulatory responsibilities effectively. We're very concerned, however, with the Commission's proposed rescission of private pool exemptions, because we believe, by and large, the exemptions have worked, and rescinding them would require many registrants that are now or will be subject to SEC registration to become dually registered with the CFTC and subject to redundant, unnecessary and inefficient regulation.

Dual registration can be excessively burdensome for registrants, though especially for smaller ones like Serengeti, and as the Commission and the SEC's regulatory compliance requirements, as has been noted, may be similar, but still

different in many respects.

You know, we believe that with respect to private pools that have an investment advisor registered with the SEC, rescission of the private pool exemptions is unnecessary to achieve the public policy objectives of Dodd Frank, that the preservation of private pool exemptions is consistent with current law and interagency comedy and that the Commission still will receive information it needs from the new form PF, the SEC, and exchanges, even if the Commission retains the private pool exemptions. MFA believes that the Commission should work with the SEC and other members of the Financial Stability Oversight Counsel to implement an information sharing framework for systemic risk data, and we've said that. And the Commission should review and analyze form PF data before considering whether rescission of the private pool exemption is necessary.

We think that such information will help inform the rulemaking process, if necessary, by

providing the Commission with information on the number of market participants engaged in trading commodity interest and the scope of their activities.

We have also provided the Commission with some alternatives to rescinding the private pool exemptions. Specifically with respect to 4.13(a)(3), we believe the Commission, under an information sharing framework with the SEC, should retain the exemption in 4.13(a)(3) for a pool that is not engaged primarily in trading commodity interest and that has an investment advisory registered with the SEC.

We believe that this recommendation is consistent with Dodd Frank, which attempts to minimize dual registration as demonstrated by the preservation expansion of the exemptions from advisory registration under the CTA for advisors not primarily acting as a CTA, that do not act as a CTA to any commodity pool that is engaged primarily in trading commodity interest. The advisor's act contains similar exemptions.

In our view, consistent with Dodd Frank, a pool operator should not have to register with the CFTC as a CPO if its commodity pool is not engaged primarily in trading commodity interest. Also, given that the Commission will have access to a great deal of information on private pools such as through form PF, larger trader reporting, and swap data repositories, we believe the Commission will have the information it needs to over -- the cost as has been noted associated with rescission of the private pool exemptions would greatly exceed, we believe, the limited benefit from dual registration.

We have proposed, in letters to the Commission, and in our written submission proposal about possible tiering, ranging from de minimis, as was discussed, to a broader regulatory structure. I'm happy to discuss that if necessary. But again, MFA believes it makes the most sense for the Commission to retain 4.13(a)(3) for a pool that does not engage primarily in trading commodity interest and that has a

registered investment advisor. Thank you.

MR. WALEK: Thank you, Marc. I think next on 4.13 was going to be Dan.

MR. DRISCOLL: And Carol really summarized NFA's view on 4.13. I'll reiterate that NFA has always been a big proponent of 4.13(a)(3), asked for it for a number of years before it was actually adopted, and before that time, as Ananda mentioned with FCM's, if a fund did just one futures contract, it raised the specter of having to register as a commodity pool operator, and we don't think that makes any sense with regard to the use of regulatory resources.

One or two sort of related things, under the current 4.13(a)(3) and (a)(4), there's a requirement to file an exemption notice with NFA at the time you're claiming the exemption, but there's no follow-up required, so we really have no way of knowing what the status is of all of the 12,000 entities that have sought an exemption, so we fully endorse the Commission's proposal for 4.5, 4.13 and 4.14 to have an annual

recertification qualification for any exemptions you have.

The last thing, which is just one of my personal pet peeves is, it hasn't happened a lot, but there have been a few entities and individuals that filed for exemptions under 4.13(a)(3) and (a)(4) who, prior to that, had had their CFTC registrations revoked or have been tossed out by NFA, and if you could find a way to make those types of entities ineligible for the exemptions, that might be a wise thing to do.

MR. WALEK: Martin, you're actually the last panel, but since you're here, why don't -- you're the last person I think to give an opening statement, so why don't we give it now, unless you'd rather hold it until later?

MR. LYBECKER: I don't really need to make an opening statement, I'm here to represent the Private Investor Coalition, our partner, a private law firm, they're my client, and unlike the rest of the people here, I think I'm here to give you information about the family office world

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MR. WALEK: Exactly.

MR. LYBECKER: -- and why they deserve an exemption.

MR. WALEK: So we'll hold it until that issue actually comes up. And as you can see, we have the relevant person from the SEC who just finalized a rule on family offices, so if we have any problems, hopefully she can help us out. Okay. With that, my first question on the 4.13 actually goes to, again, the threshold issue, or the calculation. If we were to maintain some sort of a de minimis test, what should that de minimis test be?

MR. BAUM: Bigger than we are. No --

MR. LLOYD: Much bigger than you are.

MR. BAUM: Much bigger, much, much bigger.

MR. WALEK: Well, this came up earlier in the context of 4.5, as well, and I have some concerns any time we use percentages for your benefit, because percentages of bigger numbers can

be bigger numbers.

MR. BAUM: Absolutely.

MR. WALEK: And so I'm not a fan of percentages, and that's why I'm asking isn't there anything else out there that we might be able to consider?

MR. BAUM: You know, so we offered a percentage rule, I'm sure there are actually other ways to measure this. You know, the tension is, you're always going to be dealing with funds of vastly different sizes, so I don't know how you can get fully away from something in there, and I don't think absolute dollar numbers make sense either for the same reason.

MR. GROOME: I would approach it this way, I think you need to have two objectives, tracking and systemic risk, and they're very distinct and different objectives, and I think what you gather and how frequently you gather it will be very different if those are your two objectives.

The second would be, I think for

simplicity purposes -- well, let me back up, if you think of the evolution of this process in different parts of the world, the UK probably stepped out first, and Hong Kong second, and they had an ambition when they started to gather all kinds of information, tremendous amounts of information from tremendous amounts of firms, and they quickly realized that they got an information overload very quickly and began to fear that they were perceived in knowing a lot more than they actually did because they had so much information sent to them so frequently.

So from your perspective, I think -- and I have a sense that the colleagues from the SEC have moved in this direction because of an internal conversation in the SEC as to whether to use NAV or gross exposure, that it's almost a non-starting conversation because the end point is the same and that is, they're looking for somewhere around 75 to 80 percent of the industry to provide systemic risk type reporting, which will automatically take you to something

approximating 220 - 240 type of managers in the United States, and about 400 globally. So backing into your answer is another way of saying it. So, therefore, if you want to take a billion AUM on an NAV basis, you're done. If you want to do it on a gross exposure basis, you're going to have a larger number, but you're still going to end up with about 200 to 220 reporting entities of what you call Schedule C, or the SEC calls form PF.

MR. WALEK: Okay. Why don't we approach this in a very delicate way because we're concerned about -- I know why you're concerned about 4.13 and who is or is not there, because it will drive who files the form, okay. We weren't planning on not being concerned today about form PF and form PQR, but I think I understand why you're raising it, is because if you're in, you're in, and you have to file the form, and that's where AIMA's concern is the most and not who's being regulated?

MR. GROOME: Who's being regulated, you have to define what regulation is, and regulation

here really is oversight and not regulation, per se, I would call it more you're trying to learn what's happening inside these entities and look through these entities to markets and make a risk analysis, at least that's what's been happening with the FSA and in Hong Kong, where there's relatively more experience, that's where they've ended up.

MR. WALEK: So let me just pause that this is sort of a devil's advocate kind of thing. If there were not a data collection instrument being proposed, PF, PQR, whatever, then everything else doesn't matter to AIMA?

MR. GROOME: No, I wouldn't say everything doesn't matter. We were asked this question actually very earlier in the House process on Dodd Frank, and we said we -- we provided public comment that if you wanted to register everybody in the industry, we would not oppose that. It's what you do with registration which begins to drive up significant marginal costs to our members.

MS. BAUR: Yeah, so, you know, in addition to the comments I made about 4.5, I also represent the IAA and obviously have a constituency with respect to 4.13. But certainly, you know, from our standpoint, I think that we are very willing and able to provide whatever regulatory reporting is necessary for you to monitor systemic risk. So certainly, you know, I think form PF goes a long way towards that, you know, I think PQR, if there is additional items of information that are needed to address your monitoring concerns, that's something that we could certainly live with. I think our concern, though, is with conflicting regulations, substantive regulation, and so our position has been that, you know, with respect to the Advisors Act that already provides a robust framework for many regulatory issues, and so our concern is not seeing conflicting regulation on the CFTC side, but certainly on a reporting side, we're willing to give you what you need.

MR. BAUM: And we would echo that.

We're very happy providing information. I mean we've been in it at both commissions, we've had issues around the frequency, because we've tried to make the frequency make sense given other parts of our business, and that came up in the 4.5 conversation, but it really is the issue of dual regulatory, you know, it's not an information issue, we perceived this an issue of you all getting the information that you needed, and we trying to operate under one logical consistent regulatory framework.

MR. WALEK: Dan, what -- I know it's hard to -- because we don't have the second side of the aging test yet, it's hard for you to determine how many people will be out there that may come back in if we do 4.13. At the same time, do you think we're going to have a large migration back in or are they going to migrate to 4.7 or change their business model?

MR. DRISCOLL: Well, about 12 questions there, Kevin, so I'll see how many --

MR. WALEK: I intentionally did that,

Dan.

MR. DRISCOLL: -- of them I can try to deal with. As I said, I think there's 12,000 entities that have filed exemptions, and it's close to 30,000 funds, and almost all of those came in since 2003, when (a)(3) and (a)(4) were adopted. And since that time, we have had a reduction in the number of pool operator registrants and members. I think that maybe they went down by a total of 500 or 600. So my best guess is, I don't think you're going to see 12,000 firms coming in, but you could potentially see 400 - 500 - 600 new firms come in, sort of undoing what happened over the last eight years.

MR. WALEK: Given the fact that there may be more of an undoing than a new population coming in, isn't it likely that they already know how to handle the regulatory regime? Maybe I unfairly ask you that and I should ask the other persons on the panel.

MR. DRISCOLL: Well, if we're presuming that there are firms that were registered before,

yeah, I guess that's - I guess that's true. We do point out in our comment letter that if you do away with (a)(3) and (a)(4), there needs to be an ample amount of time so that firms can actually assess their business, determine what they want to do, give them time to staff up if they need to staff up, give them time to actually go through the registration process, ask questions.

So, personally, I don't think it's so much that they don't know how to deal with the regulatory process. I am empathetic to the fact that, you know, nobody wants multiple regulators, if everybody could have one, they would probably -- they might prefer that. So I don't think it's without cost, but I don't think it's so much that they just don't know how to deal with regulation.

MR. WALEK: In the NFA letter, if I remember correctly, I think you said earlier, either you or Carol mentioned that you do support continuation of, in some form, (a)(3) and (a)(4), (a)(3), just (a)(3)?

MR. DRISCOLL: Yeah.

MR. WALEK: Okay, just (a)(3), sorry.

MR. DRISCOLL: Well, and we don't -- we haven't asked for the repeal of (a)(4), we were just silent about that in our letter.

MR. WALEK: Okay. In that context, is that largely due to -- I think you mentioned that you don't think that the cost benefit is there; is that from the audits that you've done at NFA or --

MR. DRISCOLL: Yeah, I mean over the years we've dealt with having all of these -- a lot of firms out there that, because they're registered members, you have to go do examinations, you have to spend time on them, and we didn't feel, after many years of doing that, and now I'm not talking about cost benefits for the industry, I'm talking about cost benefit for the regulator --

MR. WALEK: Regulator.

MR. DRISCOLL: -- that is just didn't seem to be the wisest use of our resources. And, of coursed, the same holds true for the firms, so it just magnifies that cost benefit analysis.

MR. WALEK: We have Todd and then Marc.

MR. GROOME: A couple things, maybe first back with Dan. When you said 400 to 500 or 400 to 600 may migrate, who are they, are they U.S. firms, I mean what do they look like? Because we were asked that question, as well, by Amanda and Kevin, and so we had an initial number, and sort of a process of full registration with SEC/CFTC versus getting into an NFA world, we had people say to us in - interestingly not the U.S., but the UK, Hong Kong, Singapore and Australia, 3,000 to 3,500 entities, not just hedge funds, but asset managers broadly, would have to do something in the United States because of either their investor population or they trade futures of some incidental number and they'd be caught up.

Subsequent to that conversation, we were asked to go back and look harder at that number, and so we expanded it throughout Europe, looking with a number of European entities, and that number has grown to something in the 5,000 - 6,000 range.

MR. DRISCOLL: And like I -- it was a shot in the dark when I said the numbers I did, and it only reflected the change in the membership since before 2003. Now, obviously in eight years, there are new entities out there that would have - that didn't exist before 2003 that do now, so I -- there's nothing scientific about me saying that. I just --

MR. WALEK: I just -- sorry.

MR. DRISCOLL: So I would just indicate that I don't think that all 12,000 would come in, certainly it's less than that. And then, of course, when you add swaps to the mix --

MR. WALEK: That's right.

MR. DRISCOLL: -- that adds a lot, too. So it's hard -- I think if somebody has got a really precise number, that's great, but I was just taking a shot in the dark.

MR. WALEK: And I think the other thing - the other thing I'd ask you in terms of your numbers, because when we start throwing numbers around in this industry, it's sort of fascinating

because it depends on what we're counting, and your 600 I think was commodity pool operators. Your entities may have been --

MR. GROOME: Swaps.

MR. WALEK: -- the entities operated by somebody, and so there could be --

MR. GROOME: Our numbers --

MR. WALEK: -- so his pool -- there could be four pools per commodity pool operator, which would be 2,400 entities, and I think yours was the number of entities.

MR. GROOME: Advisors.

MR. WALEK: Yours was the number of advisors, which is, again, different than ours, because a CPO could have five or six advisors.

MR. GROOME: And we did consciously ask the question, commodity interest has been redefined for swaps, you'd be caught if you have investors in the United States and/or you trade relatively insignificant number of futures in the United States, and so that's where that number came from, and we not only bounced that through

our national groups, but we actually talked to public authorities, regulators in those countries, and the numbers - these are all estimates, so I totally agree with you there, and so they take them with caution. But we double checked through the public authorities, and they thought the numbers were rationale.

MR. WALEK: And right now, your number -- since you actually surveyed the swaps issue, that's probably the only number we've got right now that's even tied to anything. Marc and then Matt.

MR. BAUM: So I'm responding to a couple of points. One, we were going to find out part of this when registration occurred over at the SEC, that's been put off for a little bit, but to Dan's point, now, I think what we have to understand is, this 2003, there's enormous change within -- one of the things about hedge funds, very dynamic business, historically low (inaudible) to entry, and huge numbers start each year, huge numbers fail each year, and so you're going to be, you

know, and, in fact, much of the industry was gearing up for regulation for the very first time, putting aside the 80/20 part of this.

So I think if you're living in the 80/20 part, you know, this is a marginal change, it's not very big. For lots of the rest of the business, and I've worked in big places and small places and a billion dollars is still small to me, you know, this is the first time they're gearing up for being regulated at this moment, they do not have the internal expertise, they are developing the internal expertise, and, in fact, industry-wide, for its real compliance with this kind of stuff, there is not nearly enough industry expertise, you know.

People are wondering whether there's enough for the SEC regulatory system, it is marginal when you add another set of regulators, but there's not remotely enough experience across the entire business to service both of these unless there is, in fact, if you choose to implement it, a large period of time just to train

people in order to do this.

MR. WALEK: I'm going to go off the sheet here for a second, because what's just hit me a little bit in terms of -- particularly because of Todd and Marc's conversation is that what we've got is, you know, two -- again, I'm talking about my cascade, but I'm thinking of two heads here, one is the registration process, and then the other is everything else that follows on because you're registered, okay.

And what we're talking about primarily is harmonization with the SEC on the everything else. And even though we didn't intend to have the data collection as part of that, it's important -- it now flashed in my brain, maybe a little later, that we have these two sides or two heads. In that context, okay, in that context, and - I don't want the rest of the day to go into the PF and the like, assuming there has to be a data collection, of the other regulatory issues, those that need to be harmonized, what is most important? And if a couple of you just want to

give me your one, two and three of that to help me out, because I know a couple of you would make the data collection one, from what I'm hearing, okay. But other than the data collection, what would be one, two and three, with regard to 4.13 or 4.5?

MR. GROOME: I'm not sure I fully understand, but let me try to answer it this way.

MR. WALEK: Okay.

MR. GROOME: Number one, we would encourage you to ask yourself, and ask yourself right there next to the SEC, what is it you're trying to achieve through the process of both registration and reporting? And I think the answer will be, you want to have a greater clarity of who's out there in the industry as an advisor, that's what I call tracking, that's getting on your radar screen and gathering basic information, and I think second, and I think, in all fairness, more importantly, is the systemic risk analysis aspect of this feeding into FSOC, where my 80/20 rule I think is going to be applicable, in fact, it's probably something closer to ten percent of

the industry providing, you know, 80 percent of that, and so it's a very different approach, Kevin.

And let me just clarify something I said earlier, registration, we've never been opposed to, but we're not supportive of many different types of multiple registration, certainly in the same country, but ideally not even registering in three or four different countries. So we certainly would like to see one registration worked out between the CFTC and the SEC, because some of those same people will have registration requirements outside of the United States, and then you multiply that concern through examination and reporting processes if they are also different time frames, different data, and different thresholds to who has to do what.

MR. WALEK: That's helpful. Maybe I can help clarify. Ananda has helped me a little bit with what I'm trying to ask I think here. One is, okay, you have to register. Once you register, then you have other requirements, i.e.,

disclosure, reporting, record keeping. Part of the reporting is your financial reporting, the other part of your reporting would be the data collection that we're talking about doing, okay.

Assuming that the data collection is a fait accompli which you don't want to assume, but assuming that's the case, of the other three, are the harmonization issues mostly in disclosure, are they mostly in reporting, or are they mostly in record keeping? If we were to expend limited resources in trying to harmonize the issues in those three areas, where would our time at the staff level be spent best?

MR. BAUM: I would say all of those things, what you're looking for is -- can I sort of try to -- so start at the beginning of the process, start at the registration statement, the basic information about the firm. It could be that, you know, the same form about the basic information about the firm. You know, if you harmonize and say, you know, here's what you're doing for SEC registration, here's what you're

having to do for -- and CFTC, you know, it's the joint SEC/CFTC.

And then you go, you know, everything sort of begins to leave from that, and so what you're looking for is, figuring out, you know, to the extent you can harmonize in all of those areas, because it shouldn't be, you know, for registrants, it shouldn't be that different. None of these things should truly be, you know, this is an age old tension, that different, but, you know, it starts with, you know, if you started on the information and think that, again, the burdens for smaller firms to give you everything you want are much greater than the burdens for bigger firms to give you everything you want, and that's where this gets complicated, which is when you have, even on form PF, this has been an ongoing conversation, is, it's this thing that, you know, as the D.E. Shaws of the world begin within their firms, then they've talked about this for MFA, you know, they begin to figure out how long that's going to take them and what their needs for

personnel are for that.

That's a vastly different issue, same information request to a firm much smaller. And so all of those things, to the extent that you have to, you know, figuring out what is this additional information you really need, do you truly need it, and then, if so, we're very happy to work with you if it can get distilled in a way that we can actually give you information that's helpful.

(Discussion off the record.)

MR. WALEK: Okay. Now we're better off. I guess we can only have a limited number on at the same time. All right. Again, we're sliding off into the data collection instrument, and I'm hearing you, I'm hearing what you're saying with respect to the data collection instrument, but I'm also trying to focus my resources on what I need to do.

Now, I will tell you, just to disabuse some people at the table of a couple of things that I've heard today that trouble me greatly is

that you have down here what a person from one part of the SEC who's working on a team that -- well, she's done most recently the family fit issue that's come up, but she's also been working with a team that's done the data collection.

You've got Doug from the team that handles the 4.5 issues, and we've been talking about harmonization. I've also been talking with David Vaughn, et cetera, with respect to harmonization and form PF. We've been working on that data collection form since, I think it's now almost -- it'll be two years in October, not on that form, per se, but on the data collection instruments, starting with FSA and IOSCO, okay. We've been working for two years, and, in fact, I'm going to the IOSCO TCFUE meeting on August 2nd. All of this stuff is throwing together.

In terms of harmonization on that, we have been working on the form, I don't think we've had a meeting where we haven't met on the form together with also the other members of the FSOC. And so this issue that we haven't -- the FSOC

hasn't talked to us, we've met with those people on those -- on the FSOC on a regularized basis, okay, so it has been harmonized. And so, likewise, we've been talking with Doug about harmonizing other stuff. That's why I want to try and get down to the nitty gritty. I don't want to know if it's disclosure generally, I want to know if it's disclosure item on this issue that we need to fix, if it's disclosure item this issue we need to fix, because we have been going round and round and round.

There was a harmonization panel, I think it was mentioned by the Chamber of Commerce, which actually wasn't part of this rulemaking process, that was directed by Congress and needs to be addressed separately. So it doesn't make this a violation of the APA.

Nonetheless, we have started with that harmonization conference, which Doug -- I think David Vaughn was on it, and Doug, as well, we've had meetings on this on a regularized basis, and what's troubling me is, we keep coming back to the

same point.

We have generalized areas, but give me the specifics as to what we need to fix, okay. And sorry for that little bit of getting on my soap box, but I feel it's going around and around on the same points. Now, some of the things I hear we're fairly close on, and I think, you know, depending on how things go, you know, we'll see what you guys think in the end, but the bottom line is, what are the specifics, okay. And coming back to form PF and PQR, that's not the point today for another issue, for another day, tell me line item by line item what you don't like or what you think is inconsistent with the SEC's.

MS. BAUR: So, Kevin, I can't give you a line item by line item analysis, which I know is what you just asked for. What I can say is that from the disclosure standpoint for investment advisors, for the last number of years, maybe even going back ten years, as we were talking about with Doug earlier this morning, the SEC has been working on changes to form 80B, and finally we've

gotten the changes adopted, and so we're now trying to absorb those and distill those and figure out how those are going to apply to us.

So I think from the investment advisor standpoint, we're trying to focus on how to comply with these new rules, and to have another layer of additional rules I think would be very challenging at this point. So I mean from the advisor's perspective, I think that that's currently what we're dealing with on the disclosure side.

MS. CHOTINER: Can I just make a procedure?

MR. WALEK: Yes.

MS. CHOTINER: Procedural issue, three to four microphones seems to be the limit, so if we can try to keep it to three, it seems like four might have triggered the outage, so just --

MR. WALEK: And I appreciate that comment, but I will tell you that one of the things that we will do on our side is, we are looking at the things that have just been done by the SEC, and we will bring ours into line with

what they've been working on to the extent that it's appropriate, or that we don't have a definitional difference because of our statute.

Some of the issues that arise are actually statutory definitional differences and some are regulatory definitional differences. To the extent we can make the fixes, we can make them, but we may not be able to fix all of those little minute things, but we'd like to know line by line what they are, okay.

And again, we said the record is open for three weeks, but that's really what we're looking for here, and the same thing with harmonization. You've helped a lot here, because there are some specifics that I've gotten today, I got three pages worth of specifics that we can work on and work at in greater detail, some of which we've already discussed with Doug, and so I think we're working along those lines. So even though I may have sounded nasty there, I don't mean to be too nasty. With that, anything else in the 4.13 area that you want to raise, the

4.13(a)(3) area, (a)(4) is coming up later.

MR. NEVINS: Can I quickly make a comment?

MR. WALEK: Sure.

MR. NEVINS: So really just to tie it all together, you know, I fully support the idea of maintaining a de minimis exception for 4.13(a)(3), I think that that's something that should be implemented in any rule change here. We discussed a little bit earlier on the 4.5 panels this morning, it's our view that any changes that, or any carve outs rather that are included in a change to 4.5 should be considered equally for changes to 4.13, both (a)(3) and (a)(4).

But when we're talking about things like, you know, resource requirements and cost and the like, and just thinking through some of the numbers that Dan threw out at the NFA, and this was the point I was going to raise earlier, I'm glad that Todd and Dan hit upon it, now that we have swaps into the mix, you know, I don't know if the numbers of exemptions that are on the books

today are adequately going to capture the marketplace of who could be required to file under a revised 4.13. So you're talking about a lot of potential players. And it's an interest to us at Fidelity because we have an institutional management business, so we manage other accounts other than mutual funds, commodity pools, ERISA accounts and the like that use other exemptions here, but we do rely on 4.13, as well. So, again, it's an interest to us, and I think that it certainly makes sense to think about the scope of the potential filers and to appropriately adjust whatever final rule goes into place here to pick up those categories that you think really require that additional level of oversight.

MR. GROOME: You asked the question reporting disclosure, books and records, harmonization, where are the priorities, and just to back up what Marc said, we're not trying to overreach, but the answer really is as much as possible harmonize, it really is, and that's -- and where I would take that to the next level of

the conversation is, and I apologize in repeating myself in some respect, ask what it is you're trying to achieve, if it's just tracking who's in the industry, we understand that, registration goes one large step to get there, but not all the way, use some form of basic, relatively basic annually gathered type of information to track who's in the industry, what strategies are being pursued, how the growth of the industry is going on, because that's relevant information for you and, for FSOC for that matter, and then secondarily, if your information is much more on the systemic risk side, which is where I read most of the G-20 calls, the Dodd Frank calls, that's a very different approach.

And so when I look at Schedules A, B and C within PQR, I do see substantial differences from PF, not least of which is on the threshold side. There are very small people providing -- may have to provide position level data to someone like yourself under Schedule A, which they would not have to do under PF, because they wouldn't be

caught at all, they might even be an exempt advisor under the SEC approach.

And the SEC has an exempt advisor reporting approach, which maybe I'm wrong, but I've broadly described as a tracking mechanism to see who's in the industry, because the information is basically so basic. So I apologize, but go back to what is it you're trying to achieve through the -- everything above registration.

MR. WALEK: We'll take a longer look at Schedule A and see what's there, because that does help. Believe it or not, we were scheduled to take a break now for five minutes, and we're exactly where we were supposed to be, so we're taking a five minute break. When we come back, we will be talking about 4.13(a)(4), and starting off with the family office issue, and then the foreign commodity pool issue, pool operator issue.

(Recess)

MR. WALEK: Okay. I want to start this panel off with the family office issue, and what is the family office issue? In at least one

comment letter that I'm aware of, if not multiple comments letters, okay, it was raised that by doing away with 4.13(a)(4), what would happen to a family office, and how would it, you know, or should they be exempted or do they fall, you know, what was going to happen?

And as I mentioned, our colleagues over at the SEC have already dealt with the family office issue, and so I guess the real question is, in terms of what we're working on, one of the thoughts is, well, we can just adopt what the SEC did, or by cross referencing it, or are there still issues. And so with that, I guess I would turn it over first to Martin. Are there other issues that still need to be addressed in this area?

MR. LYBECKER: How about if I answer that, but not make it the very first answer that you hear?

MR. WALEK: Okay, however you want to handle it, however you want to handle it.

MR. LYBECKER: So let's start with

describing what we're talking about, because it seems to me you're, more than anything else, and I think Sarah and Doug would say the same thing, is that you are missing information, and you'll make much better decisions if you know what you're talking about.

MR. WALEK: Absolutely.

MR. LYBECKER: Okay. It usually turns out that one or more persons, through their economic prowess, has created wealth, and when they have progeny, there is - the family will want to preserve the wealth, share the wealth with their children. Usually there's charitable and community involvement, so there's a lot of good reasons why families band together.

It isn't necessarily that they start in the first generation. I'll use real people so that we make this not hypothetical. Bill Gates' father wasn't the one who founded Microsoft, but Bill -- certainly are a family office, and the Gates Foundation certainly is a charitable foundation that is of some consequence. Bill has

been generous to his parents, his grandparents, and his sister, and his children. But if you count generations, it's him, and then you have to count generations up to see what the family actually looks like.

Others that started much more earlier in our economic life, ones in the 1800's, there are families who made the things that plowed the prairie and gave us corn. Those families had family offices starting in the 1880's. The one I'm thinking about formed a corporation, put all the shares of the family company in the corporation, something every lawyer at this table would gasp at, but you have to remember, it's 1880, they thought that was a wise idea, and we didn't have income taxes until 1910, so it seemed perfectly sensible to them to do it that way.

It causes lots of problems, and the two of them know both statutes apply to that situation. So I have a very interesting client. Others, the family wealth was there, and there is a patriarch, someone that you can point to, but

they didn't decide to band together until the second and third generations. So in the family office parlance, when you ask about if they use -- the first thing they usually tell you is where they are, and they'll talk about G-2, G-3, G-4, it's the first, second, third generation from the person they're thinking was the patriarch, and he may have been the one who created the family wealth, he may not have. You can look at the Rockefeller's and figure out what Senator Rockefeller would be compared to his great grandfather.

To the extent that you're talking about family offices, you also have to sort of think of volume, and I'm going to use -- it's easier to talk about compass than it is anything else. Almost always, whoever created the family wealth will take care of his parents, maybe his grandparents, but, of course, he's more likely than not to be married, so you have a spouse and her family coming into the family office. They'll take care of all of their siblings. So down one

or two generations, you end up with aunts, nieces, nephews, because everything gets populated north, east, south, east and west, and then obviously what you're doing is counting how far down.

We have one particular family office that didn't get formed until they were all at the G-4 level, so every single person was a cousin. They had common ancestors, but no common parents, I mean immediate parents. Sometimes the family office was formed by the patriarch and he was there to protect his family, so he set up trusts, and when the children died, their part of the wealth was made part of the family office, and so the thing that owns the family office is the trust that gave an irrevocable trust from the early 1900's or 1800's that gave the money to the family office.

Others have been formed at sort of the far end, where professional managers have told the family, it's really insane for you to all invest alone, you should invest together, you'll have much greater buying power, and we can deal with

you better that way.

So the person who formed the family office is actually the professional management. Most families don't manage their own money, that is, the family members aren't involved. And when you get to the third, fourth and fifth generations, the difference is that the first person may have been immensely wealthy personally, but usually by the time you get to the third and fourth generation, the difference is, they all go to work somewhere, but they have very nice vacations and they might have a boat and a bigger house than you would otherwise expect, but when you look at what the family has got, we're still talking about a lot of money. So before you were trying to demographics, the group I represent is a coalition that was formed out of the whole family office industry. There's 60 of them. I couldn't guess at the average assets under management per family, but it has to be in the billions.

There are 2,500 family offices in the United States, and I have no way of measuring what

the effect is. But as we've -- okay, period. Family offices have bumped into the Investment Advisors Act routinely, and they've bumped into your statute. And I'm not going to tell you about your law, that's not my business.

But on the Advisors Act side, we had a lot of rubber. You could find ways -- there was an exception for private investment advisors, and we all got used to counting to 14. You could use your fingers and your hands, but somehow you had to find a way to get to 14, and if you did, then you would - all the things being equal, you could rely on the private advisor exception.

So, of course, Dodd Frank threw us out along with private equity funds, hedge funds, and venture capital funds by repealing Section 203(b)(3). Private -- family offices have -- many of them have grown beyond a size that could have supported counting to 14 no matter how creative you were in doing that. So folks like the Rockefellers and the Pitcairns have given up on being a private family and have started what both

Sarah and Bob, I'm sorry, Doug would characterize as a business, and indeed, they have formed mutual funds, done all sorts of things, and there are companies that manage assets for private families, including companies like Bessemer Trust, U.S. Trust and Northern Trust.

So there's all sorts of ways that they can manage their assets and work their affairs. At the end of the day, the family office almost always does all the tax returns, all the personal accounting, and they may or may not have anything to do with the actual investments, their role may be limited to looking at private investment alternatives, hedge fund prospectuses, and then letting the family choose, or they may have some advisors who choose. There's lots of different ways they manage their wealth, it all depends.

We have one family in Florida who -- almost all the families have some sort of core asset, and if you think of it the way John Grady would, they've got a core asset that's some part of the S&P 500, so the last thing they're going to

do is go out and replicate -- they're never going to buy S&P 500 index funds because they already did that with the company that was their family wealth. So you tend to find them in the '50s and '60s being the people who were the seed capital for Infotron or Genentech or something like that. They went to some other part of the risk factor, right, to offset the balance, the S&P 500 risk they already had.

The point is, some of them outgrew Section 203(b)(3), and I, among others, filed exemptive applications with the SEC under what was then Section 202(a)(11)(f), and our argument was that there was no federal interest in regulating the family. The family office existed solely for the family, it was for the benefit of the descendents of some common ancestor, and so they were much more likely to take care of themselves and take care of each other than others would be.

There was no compelling federal interest, and I would have said, one of the ancillary benefits is, you didn't have to have

spats between brothers and sisters in federal district courts where the SEC would show up as an expert witness on whether or not spitting on the sidewalk was a breach of fiduciary duty, right. I mean they got rid of them, and that I always thought was a really good thing, all the things be equal, then at least it was in divorce court, or, you know, orphans court or something. There were at least 12 or 13 of those applications that were processed between 1940 and the time of Dodd Frank. There was no ability to get an exception for family offices in the House bill, but there was in the Senate, and it shows up in the initial drafts of the Dodd Bill, as Section 409, and stayed in.

There was only one amendment that was made, it was on the floor of the Senate by then Senator Lincoln, who put in a grandfathering provision that's completely incoherent and had to have been written on the back of an envelope by one constituent who didn't know what he was doing, but it's there. Otherwise, everything was the same from the beginning.

And the understanding from the beginning was that the SEC had no, I'll speak for you, but you can speak for yourself, had no interest in regulating family offices, and so it was one of the few times when I worked on something where there was no opposition, but they did want, and the statute passed with rulemaking to define what was a family office, so that's what you alluded to.

All right, for rulemaking purposes, once you've said family, then you've actually got to figure out what that means. And in our modern times, leaving everything else, there's a whole lot of social policy questions that pop up that are not a lot of fun to deal with, and we've I think managed to get all of that out of the rulemaking, otherwise, we would have had a dispute about what DOMA means forever, okay.

So it's fairly standard, you bounce up against practical problems. If the organizing principal is, everything is connected by blood, and you're all lineal descendants, as soon as you

have a non-blood relative, it gets a little harder to explain why that's a really good idea.

So stepmothers, adopted children, step-children, gay and lesbian children, all of the normal social problems are right there, and once you hit any one of them, it all has to depend on lineal descendants, you basically have a circuit breaker, and that is difficult, okay.

So I was very grateful that from the beginning, the SEC staff showed real sensitivity to that. And we processed an exemptive application with probably the worse set of conditions in it, factual conditions, basically in order to give them an opportunity to handle that. It was done deliberately on behalf of the community. So it was husband and wife, they got a divorce, kids go with the mom, he remarries, she comes with children, the children are in their teens, and at that point, it is very hard to explain why you have to adopt them, they are step-children, they've living in the house, but in the greater scheme of things, the point is that if

the wealth husband takes everybody into his house, it's pretty hard to explain why Advisors Act policy should explain who's part of the family and who's not.

And gratefully, we didn't have to have that conversation, and there was only two really rogue and random comment letters in the comment file that they had to deal with, so that was good.

But after you've figured out what the nuclear family is, then you have to figure out what the rest of the family is. So the way we always proposed it was to figure out who the person you wanted to point out was, and you can't say it's the person who created the wealth, because he wasn't necessarily the one that created the family office. But you've always -- to the extent that anybody here is married, you know you've got another side of your family you inherited on the day that you got married, so if you follow life down through descendants, you have a spouse whose family thinks she belongs in the family, too, so you've got to find a way to deal

with mother-in-law, sisters, brothers, all from the non-ancestor side of the family, and siblings.

So it's north, south, east, west, families preserve their wealth through a lot of different things, usually trusts, they have a lot of different ways to set up trusts, many families support foundations. I'll name the one that's the most obvious, the Bill and Linda Gates Foundation, it's not only their money, their personal money, but at this point, it's Warren Buffet's money that comes in in a segment every single year, and that they must spend every single year.

I'm not saying anything isn't a public record, so, you know, that's why I keep using them, and everybody knows them, so it's easier than trying to make up a mythical family.

But the point is, families support all sorts of foundations, some of their own personal foundations, some are the things they feel strongly about. Almost everybody, if you've done your own personal estate planning, discovers that when in all of the imaginary lawyer discussions

about who's died, you have to make everybody in the family die in one horrific, you know, hypothetical plane crash or car crash, then what you want to do is always what the person says, and not surprisingly, people frequently don't want their money just to escheat and pay off the debt of New York State or the United States, they would like it to go somewhere else, and so you often find charities.

So one of the distinguishing features about this is, tax exempt institutions who are both income beneficiaries and remain -- but are not clients in the sense that there is any investment advisory relationship between the family and the foundation. That's not true of Bill and Linda Gates, but that's something else again.

And then there's always people invest. In the same way that you had a discussion earlier about subsidiaries, that's exactly what people do. If you want to develop a strip mall, you create a limited partnership, it has a general partner, the

general partner is normally an employee of the family office or a member of the family office, that general partner decides what the limited partnership does, the limited partnership offers its interest to the family, everybody -- no one has personal liability, it's tax planning efficient, but you look around and there's all sorts of stuff, and in the old days, we used to have to figure out how you counted that stuff towards 14.

In the last application that was processed, the staff was gracious enough to buy until we got one more concept, which was that it's very hard for family offices to keep their employees unless you can offer them incentives. And so we argued that the key employees, who were the ones actually involved in developing the investment advice to the extent the family always did that, ought to be allowed to co-invest with the family, and that was allowed.

So family turns out to be more complicated than you might think. It's not only

the nuclear family, but all the people become part of the family, looking north, both sides of the husband/wife pyramid, and it's siblings, so you get nieces and nephews, and then down, where you look south, and then all the ways in which the money is invested, because the family is actually giving investment advice in some respect or another to all of those things.

You asked the comment at the beginning, we've had the family office rule for a couple of weeks, we've had a number of meetings, we've had a lot of conversations about it, and I've been quoted publicly to say, and I believe it to be true, that the division is to congratulated. They went from a rule that, with all respect, was 100 percent unsatisfactory, or some other number higher than that if you can do that in math, to a rule that was to 95 percent satisfactory.

There are things that we're still mulling over, and I've opened the door to more discussions. Now that the rule has been adopted, the rulemaking period isn't there, and we can go

talk in a way that's a little more comfortable.

But more than anything else, I'm going to do a plebiscite, so we'll know amongst -- and get information. So we'll actually know this problem doesn't work for 65 families, this problem doesn't work for 100 families, this -- whatever it is, so I don't want to characterize things as didn't work, there are things that I think there are -- I would, again, with all respect, are probably drafting errors, where there's a singular used and the plural makes more sense, you know, that's one thing.

There are things where parts of whole families disappeared because of the genealogy and the way they defined the term ancestor. We may have to go after -- ask for some sort of amendment to deal with that. As I said to Doug before, there's, you know, we live in Washington, there's 88 keys on a piano, you know, we can figure out which way to deal with each problem, but it's not over, and thankfully the comment -- the extended period for compliance means that we've got nine

months to figure this out and there's really no one who's going to be opposed to any of this.

We've also, for whatever it's worth, and just so you know, Representative Ben Sarlin and others have submitted a bill in the House, it's HR 2225, that would deal with family offices, and to cut to the chase, it would take away the SEC's ability to define the term family and would put instead a definition of family that's more like what -- is patterned more the way we did it in our comment letter, and that's just -- I mean all things being equal, that's what we would always prefer your own work, and I won't even begin to comment on the likelihood that something that comes out of that committee can get past in this Congress or any Congress.

MR. WALEK: Thank you very much. I don't think you could have been more thorough that that, I appreciate the time you took to put that together, and I think it helps us, and it may help the SEC, as well. And what I would ask, though, is that anything you plan on sharing with the SEC,

if it's in the near future, or even in the longer future, please, if you would not mind sharing that with us, as well, so that we can take the benefit of your knowledge in this area.

MS. OLEAR: And as we continue to work and consider whether or not our adoption of a family office's exemption would be appropriate, I know that I will be in contact with you, if that is all right.

MR. LYBECKER: That's fine. I actually did that a capella, without written preparation.

MS. OLEAR: We're going to have a transcript.

MR. LYBECKER: I understand, that's why I did it.

MS. OLEAR: So we appreciate that.

MR. WALEK: And so if there's anything you need to correct, it'll be --

MR. LYBECKER: No, what I didn't want to do is just read something to you, so --

MR. WALEK: Yeah, I appreciate that, we definitely appreciate that. Next up on our agenda

is foreign commodity pool operators, and I'm guessing that, Todd --

MR. GROOME: Yes; in large part, I think we've talked about it under the last session, under 4.13, in many respects, or I tried to bring it out. The foreign private advisor exemption as proposed by the SEC is something we would like to see applied here. I mean, once again, just to quickly summarize, multiple registration, different registration, different -- multiple and different reporting requirements is what we're trying to avoid.

We're trying to avoid it here in this country between the CFTC and the SEC, and then, as I alluded to in my initial comments, you multiply that when you think that another 25 percent of the industry is in the UK, you add more now with the EU process out of Brussels, and Hong Kong, Singapore and Australia are also very important jurisdictions in this conversation for our industry sector.

MS. OLEAR: So if I can just -- so would

your group be comfortable if we were to adopt something that would be substantively identical to what -- or at least propose something that would be substantively identical to what the SEC is going to be operating under?

MR. GROOME: I believe so, yes, in the sense that, you know, we are not opposed to information sharing and all of that, so if we ended up in a place where say a UK advisor may or may not be registered with the SEC for business reasons, as well as regulatory, and they do file reports with the FSA, and they share them with the SEC, and the SEC shares them with you and/or directly or through the FSOC treasury process, that's the result that we envision as the appropriate end game.

MR. WALEK: Marc.

MR. BAUM: Yeah, just one minor point, which is, you know, our issue, to the extent -- our understanding is the Commission thinks it's sort of with this exemption in place, they're sort of certain system -- systemically important pools

that might be caught up under the SEC that you're not seeing, and the only thing we would say is that, you know, to the extent they fall outside your oversight at this point, you know, we recommend that the Commission figure out, again, figure out how to get -- the information is somewhere, and if it's at the SEC at this point, figure out how to get it without taking away, you know, without, you know, sort of craft your conclusions narrowly rather than broadly.

MR. WALEK: Okay. Anybody else have anything on the foreign commodity pool issue, or 4.13(a)(4), otherwise generally, or not generally? It looks like -- I see no red lights coming on, and it's 2:00, so you guys did a marvelous job, and I appreciate everything you've provided us with. We are truly working towards harmonization, whether you believe it or not, and whether I sound like it or not, but nonetheless, I appreciate your time and trouble because I know this has been, you know, takes something away from your regular work day, but we are taking it seriously.

(Whereupon, at 2:00 p.m., the PROCEEDINGS were adjourned.)

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CERTIFICATE OF NOTARY PUBLIC

DISTRICT OF COLUMBIA

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

Notary Public, in and for the District of Columbia

My Commission Expires: May 31, 2014