

1 U.S. COMMODITY FUTURES TRADING COMMISSION (CFTC)

2

3 OPEN MEETING OF THE COMMISSION

4

5 Thursday, September 17, 2020

6 10:01 a.m.

7

8 Teleconference

9

10 CFTC Commissioners in Attendance

11 Heath P. Tarbert, Chairman

12 Brian D. Quintenz, Commissioner

13 Rostin Behnam, Commissioner

14 Dawn D. Stump, Commissioner

15 Dan Berkovitz, Commissioner

16 Alicia Lewis, Designated Federal Officer (DFO), Special
17 Counsel, Division of Clearing and Risk, CFTC

18

19 Also Present

20 Christopher Kirkpatrick, Secretary of the Commission

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1	AGENDA	
2	PRESENTATION	PAGE
3	1. Call to Order	5
4	2. Opening Statements	
5	Chairman Heath P. Tarbert	6
6	Commissioner Brian D. Quintenz	17
7	Commissioner Rostin Behnam	18
8	Commissioner Dawn D. Stump	21
9	Commissioner Dan M. Berkovitz	23
10	3. Final Rule: Amendments to Real-Time Public	
11	Reporting Requirements (Part 43)	
12	Final Rule: Amendments to Swap Data Recordkeeping	
13	And Reporting Requirements (Part 45)	
14	Final Rule: Amendments to the CFTC's Regulations	
15	Relating to Certain Swap Data Repository and	
16	Data Reporting Requirements (43, 45, and 49	
17	Verification)	
18	Staff Presentation (combined for the three matters)	
19	Dorothy DeWitt (Director, Division of	
20	Market Oversight)	27
21	Meghan Tente (Acting Deputy Director,	
22	Division of Market Oversight)	34

1	Kristin Liegel (Surveillance Analyst,	
2	Division of Market Oversight)	35
3	Thomas Guerin (Special Counsel,	
4	Division of Market Oversight)	41
5	Matthew Jones (Attorney Advisor,	
6	Division of Market Oversight)	44
7	Nancy Doyle (Senior Special Counsel,	
8	Office of International Affairs)	50
9	Kate Mitchel (IT Specialist, Office of	
10	Data and Technology)	52
11	Richard Mo (Special Counsel, Division	
12	Of Market Oversight)	56
13	Benjamin DeMaria (Special Counsel,	
14	Division of Market Oversight)	60
15	Eliezer Mishory (Acting Associate	
16	Director, Division of Market Oversight)	70
17	Motion	73
18	Commissioners' Questions and Discussion	73
19	Vote	173
20	4. Final Rule: Registration with Alternative	
21	Compliance for Non-U.S. Derivatives	
22	Clearing Organizations	

1	Staff Presentation	
2	Clark Hutchison, Division of Clearing	
3	And Risk (DCR)	178
4	Tad Polley, DCR	180
5	Motion	185
6	Commissioners' Questions and Discussion	186
7	Vote	217
8	5. Supplemental Notice of Proposed Rulemaking:	
9	Part 190 Bankruptcy Regulations	
10	Staff Presentation	
11	Robert B. Wasserman, Division of Clearing	
12	And Risk	219
13	Motion	228
14	Commissioners' Questions and Discussion	229
15	Vote	246
16	6. Closing Remarks	247
17	7. Adjournment	257
18		
19		
20		
21		
22		

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4
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P R O C E E D I N G S

CHAIRMAN TARBERT: Good morning. This meeting will come to order. This is a public meeting of the Commodity Futures Trading Commission. I would like to welcome members of the public and market participants, as well as those on the phone or watching our webcast.

I would also like to welcome my fellow commissioners, Commissioner Quintenz, Commissioner Behnam, Commissioner Stump, and Commissioner Berkovitz.

As always, we will begin with the Pledge of Allegiance. I will lead, and everyone is welcome to join.

(Pledge of Allegiance.)

CHAIRMAN TARBERT: Well, thank you very much. Today we will be discussing and voting on a number of important final rules. For each rule, we'll hear a staff presentation before the Commission deliberates and votes.

First, we'll have staff presentations and Commission deliberations related to three rules under Parts 43, 45, and 49 of the CFTC's regulations which

1 address swap data reporting, recordkeeping, and
2 verification. We'll then take a separate vote for each
3 rule.

4 Second, we'll consider a Final Rule on
5 Alternative Compliance for Non-U.S. Derivatives-
6 Clearing Organizations under Parts 39 and 140.

7 We'll then consider and vote on a
8 Supplemental Notice of Proposed Rulemaking for the Part
9 190 bankruptcy regulations.

10 At this time, we'll move to opening
11 statements. I'll go first, followed by my fellow
12 commissioners in order of seniority. Commissioners are
13 free to reserve their time to make a longer closing
14 statement, if they wish.

15 Right now, I'm going to make a single
16 statement, an opening and closing statement together,
17 so I'll just make one statement here at the beginning
18 of the meeting.

19 Well, I am pleased to support all of today's
20 rulemakings, which will significantly improve the
21 regulatory experience for market participants, at home
22 and abroad, while advancing the CFTC's oversight of the

1 derivatives markets.

2 But before I move on to discuss each of the
3 rulemakings we're going to vote on, I do want to
4 address one important topic not on the agenda today.

5 Much fanfare has been given, and deservedly
6 so, to the recent string of U.S.-led diplomatic
7 breakthroughs in the Middle East. While the CFTC's
8 undertakings certainly don't rise to the level of world
9 peace, we too have been hard at work on the
10 international stage.

11 When I took office 14 months ago, our most
12 pressing diplomatic issue involved what is known as
13 EMIR 2.2, the EU's amended regime for clearinghouse
14 regulation and supervision. At issue was how, post-
15 Brexit, the EU would treat derivatives clearinghouses
16 that are dually registered in the U.S. and have
17 European members.

18 So, early in my tenure we refreshed the
19 dialogue between our two sides. I also brought on new
20 leadership in the international space, Tom Benison, who
21 is Senior Advisor and Chief Negotiator for the CFTC on
22 International Agreements, and Suyash Paliwal, who leads

1 our Office of International Affairs.

2 And now, for more than a year since we began
3 negotiations, I'm pleased to report a mutually
4 beneficial agreement has been finalized. Earlier this
5 week, the European Council and European Parliament
6 approved legislation governing the implementation of
7 EMIR 2.2. These delegated acts will fill the EU's
8 regulatory objectives and responsibilities with
9 deference and international comity as to the CFTC's
10 supervision of U.S.-based clearinghouses with European
11 members. We expect that the delegated acts will be
12 published in the official journal of the European Union
13 later this month.

14 I want to thank Tom, as well as Suyash and
15 his team at OIA, for their hard work to achieve this
16 important outcome. I also want to thank my fellow
17 commissioners, all of whom played an important role in
18 making this happen, as well as my predecessor, former
19 chairman, Chris Giancarlo. It was really a team effort
20 and one that we can all be proud of.

21 Working together to build a coherent and
22 consistent cross-border supervisory framework for

1 cleared derivatives is truly paramount. To mark our
2 diplomatic breakthrough, my EU counterpart, Vlad
3 Dombrovskis, who is Vice President of the EU
4 Commission, and I just published a joint op-ed in the
5 Wall Street Journal, which you can find online. As we
6 state at its conclusion, "We enter a new chapter of the
7 transatlantic derivatives markets with optimism."

8 So, now on to today's rulemakings.

9 For me, today's rulemakings are important not
10 just for what they do but for how they do it. In
11 particular, there is a philosophical difference between
12 principle space and rule space regulation. Both are
13 critical frameworks for sound regulations, but each
14 must be applied where it's most effective and
15 appropriate.

16 CFTC has a long history of principles-based
17 regulation, which has helped our agency respond
18 flexibly to fast-moving markets and technological
19 innovation.

20 At the same time, there are situations that
21 call for rules-based regulation, which can promote
22 clarity and avoid confusion about what our regulations

1 require.

2 Well, the final rules on today's agenda
3 provide a live case study in principles- versus rules-
4 based regulation.

5 The first set of items on the agenda relates
6 to the Commission's swap data reporting rules, as I
7 mentioned. Data reporting is an area where clarity, a
8 core value of this agency, is particularly important,
9 and this makes a rules-based approach critical.

10 A major problem with the current swap data
11 reporting system is that the CFTC has not been clear
12 about the data that must be reported. This has led to
13 swap data repositories to come up with different,
14 sprawling lists of data fields that reporting parties
15 must provide. The system hasn't worked particularly
16 well, especially as our swaps markets become
17 increasingly global. A reporting party today might
18 have to provide numerous different data sets to
19 different regulators for the very same swap. Well,
20 that needs to change.

21 To that end, the final Part 45 Technical
22 Specification contains 128 reportable data elements,

1 each of which has a distinct and important function.
2 These fields reflect a hard look at the data we really
3 need to perform our regulatory mission.

4 In addition, the final Part 45 rule has
5 harmonized data reporting with the standards that, by
6 international efforts, were appropriate. This improves
7 the regulatory experience for market participants at
8 home and abroad while facilitating information sharing
9 among regulators. More importantly, our market
10 participants will now, finally, have clear guidance
11 about their reporting obligations.

12 Clarity, however, requires more. We must act
13 to ensure our derivatives markets remain open and free.
14 Public transparency is a bedrock of vibrant markets.
15 Our reforms to Part 43 promote transparency by
16 improving the public reporting of swaps in a variety of
17 ways.

18 In particular, the final Part 43 rule has
19 abandoned the 48-hour dissemination delay for block
20 trades, which will speed public access to trading data
21 and improve price discovery. At the same time, the
22 final Part 43 rule recognizes the importance of blocks

1 in preventing front running and other disruptive
2 trading. As a result, it takes a nuanced approach to
3 how block trades are determined, ensuring that blocks
4 serve their intended functions.

5 Last, data is only useful as it is accurate.
6 The final Part 49 rules help ensure data accuracy by
7 requiring SDRs to provide a means for reporting parties
8 to compare SDR data to their own books, correcting any
9 errors. While data accuracy has always been important,
10 the historic levels of market volatility in March of
11 this year revealed just how critical it is that our
12 swaps market data provide an accurate window into the
13 market, and today's final data rule makes that window
14 bigger.

15 For the first time, our data reporting rules
16 will provide insight into margin and collateral for
17 uncleared swaps, shining a light into what I have
18 called a black box of potential systemic risk.

19 In addition to the swap data reporting rules,
20 I'm pleased to support the Final Rule on the
21 Alternative Compliance for Non-U.S. DCOs. Unlike the
22 data rules, the Alternative Compliance Rule is a case

1 where principles-based regulation is the most
2 appropriate. The Alternative Compliance Rule
3 recognizes that certain foreign regulatory systems can
4 mirror the requirements for the CFTC's core principles
5 for DCOs. They may get there a different way, but the
6 end result is the same.

7 Principles-based regulation is most
8 appropriate when assessing alternative compliance.
9 Provided that foreign regulatory systems produce
10 similar outcomes as our own core principles, it makes
11 sense to afford them flexibility in how they do it.

12 In other words, they may have the same core
13 principles as us, but they may implement them
14 differently, through different detailed regulations.
15 As long as we reach the same result at the end of the
16 day, the rule allows the DCO organized outside the U.S.
17 to comply with our core principles through complying
18 with its home country's regulatory regime.

19 Now, of course, there are four conditions on
20 which that needs to occur.

21 Number one, we at the CFTC need to determine
22 that compliance with the DCO with its home country's

1 regulatory regime does, in fact, constitute compliance
2 with our core principles as set forth in our statute,
3 the Commodity Exchange Act.

4 Second, we need to verify that the DCO is in
5 good regulatory standing in its home country.

6 Third, we are going to do this for DCOs that
7 don't pose a substantial risk to the U.S. financial
8 system.

9 And finally, we're going to have a Memorandum
10 of Understanding or some kind of similar arrangement
11 with the home country regulator so we can get the
12 information we need to continue to evaluate the
13 relationship.

14 When it comes to international efforts and
15 cross-border regulation, I have often invoked the great
16 philosopher Immanuel Kant's categorical imperative, and
17 at a basic level he basically suggests before you apply
18 any rule, ask whether you'd like that rule applied to
19 you. I think this is an area where we agree with that,
20 and it's already bearing fruit, as I mentioned, with
21 the European Union, who has applied a similar rule in
22 their delegated acts.

1 Finally, I want to say that I support the
2 Part 190 Supplemental Rulemaking, which provides us one
3 specific aspect of the CFTC's proposed approach in the
4 highly unlikely event of a systemically important DCO
5 bankruptcy. Specifically, it would withdraw the
6 proposed potential six-day continued operation of a DCO
7 in bankruptcy. The withdrawal addresses concerns that
8 this provision -- and this is the stay provision --
9 would prevent a DCO's rules from qualifying as a
10 qualified master netting agreement, or QMNA, under
11 federal bank capital rules. QMNA is very important
12 because when I was in private practice, I often had to
13 look at complex agreements and determine, in fact, and
14 write a legal opinion as to whether they, in fact, were
15 a QMNA.

16 So if DCO rules don't have QMNA status,
17 clearing members that are part of banks and banks that
18 clear derivatives contracts through the DCO will face
19 much higher bank capital requirements than they
20 currently do. And this, of course, could create
21 potential disincentives for clearing. And with the G20
22 and all of our regime, all things being equal, we want

1 to make sure the incentive is there for clearing.

2 At the same time, of course, some period of
3 delay before contract termination is important to
4 facilitate the resolution of these systemically
5 important institutions under Title II of the Dodd-Frank
6 Act, if it's applicable. So for this reason, the
7 supplemental proposal would implement a stay period of
8 48 hours, which is the same stay period that is
9 encouraged by federal banking regulators in the context
10 of non-clearinghouse stays.

11 So one final important point on this is that
12 the stay would only become effective as part of the
13 CFTC and our Part 190 regulations if the Commission
14 finds that the federal banking regulators have taken
15 steps to make that stay consistent with QMNA status of
16 our rules. Unless and until the springing provision
17 becomes effective, there would be no stay of contract
18 determination if there was a bankruptcy of a
19 systemically important DCO.

20 I support this supplemental proposal because
21 it balances competing interests in a manner that
22 promotes financial stability. Specifically, it

1 preserves incentives for central clearing while
2 facilitating contract transfer or Title II resolution,
3 where applicable.

4 Finally, I encourage our fellow regulators at
5 the Federal Reserve, FDIC, and OCC to consider making a
6 48-hour stay for SIDCO-cleared contracts consistent
7 with QMNA status under their capital rules.

8 And with that, I conclude my remarks, and I
9 would like to recognize my fellow commissioners for
10 their opening statements.

11 Commissioner Quintenz?

12 COMMISSIONER QUINTENZ: Good morning, Mr.
13 Chairman. Thank you very much. I don't have an
14 official opening statement this morning, but let me
15 just echo your thoughts on the importance of our
16 partnership and work with the European Union to reach
17 an agreement that respects each of our jurisdictions
18 and expertise over our own regulated entities, while
19 also ensuring a level of cooperation that provides the
20 other with the information they need to feel confident
21 in the well-run, regulated status of cross-border
22 entities.

1 I'd like to congratulate you specifically, as
2 well as our European counterparts, for the very
3 thoughtful and well-tuned agreement that has been
4 reached. I think the ink is now dry on EMIR 2.2, which
5 is a process that has been consuming a lot of energy
6 and thought over the last four years or so.

7 I would also like to acknowledge the work, as
8 you did, of the prior chairman, Chris Giancarlo, for
9 all the thought and energy and conversation that he put
10 into trying to get to the agreement that was reached
11 today.

12 So my compliments to you and to my fellow
13 Commissioners for all the work that they have done on
14 this issue. And with that, I'll conclude. Thank you.

15 CHAIRMAN TARBERT: Thank you, Commissioner
16 Quintenz.

17 Commissioner Behnam?

18 COMMISSIONER BEHNAM: Thanks, Mr. Chairman.

19 Good morning to everyone. I hope everyone is
20 doing well. It's good to be back in a public meeting
21 setting.

22 Like Commissioner Quintenz, I don't have any

1 formal remarks, but I will quickly just acknowledge and
2 congratulate the entire Commission and the vision of
3 prior Commissions and, of course, our partners over in
4 the EU with respect to the agreement, a really great
5 step forward and one that I think we've all contributed
6 to in the past few years. It's great to see positive
7 movement on this front. I think it is, again, as we
8 said, the right outcome that will hopefully be a great
9 framework for a strong relationship in the future.

10 And to that end, regarding the matters that
11 we'll be addressing today, obviously very important
12 issues, reporting alternative compliance, which I sort
13 of bucket into the cross-border harmonization and
14 cooperation bucket; and then, of course, bankruptcy,
15 all very important matters, many of which, most notably
16 reporting going to sort of the core of the Dodd-Frank
17 post-reform, post-crisis reforms, I think this is a
18 positive step forward in supporting transparent, open
19 markets and providing the clarity that the market
20 deserves.

21 I do want to emphasize that as we take these
22 steps forward today, which in many respects are a long

1 time coming, it's important that the Commission engage
2 or remain flexible, listen and observe the markets as
3 they continue to evolve and grow. We certainly need to
4 be patient and make sure that we're doing things
5 properly, obviously within the bounds of the law, but
6 also that sort of fulfill the spirit of our core
7 requirements and our mission.

8 So, I look forward to the discussion today
9 and the comments certainly that we'll receive; and, of
10 course, making sure that we watch these markets mature
11 and grow over the years and do what's best so that we
12 can ensure that we're doing our job right.

13 And I, of course, acknowledge and thank my
14 fellow commissioners for their work. I know this is,
15 like the cross-border EU agreement, this is a team
16 effort, and I appreciate, Mr. Chairman, your leadership
17 and working together with all of you.

18 So thanks, and I'm looking forward to the
19 discussion.

20 CHAIRMAN TARBERT: Thank you, Commissioner
21 Behnam.

22 Commissioner Stump?

1 COMMISSIONER STUMP: Thank you, Mr. Chairman,
2 and good morning to everyone.

3 I, too, am very grateful for the coordination
4 that we have been able to exercise, both within the
5 Commission and abroad. I hope that the efforts that
6 have been made thus far will only provide a stronger
7 basis for the work we have yet to do on the
8 international regulatory coordination front.

9 Just a quick word about things we are doing
10 today. We are considering issues that are of
11 particular priority to me today and for which I and my
12 team have invested considerable time. So I wish to
13 thank them for the many long, hard hours they have
14 spent on the various issues we will be discussing
15 later, as have many, many people from the Division of
16 Clearing and Risk and the Division of Market Oversight
17 who have spent considerable time working with us and
18 trying to accommodate my views on the rules that we'll
19 be considering today, and I'm extremely pleased in
20 particular that we will be finalizing the improvements
21 to the Commission's swap data reporting rules.

22 I have always felt that the entire suite of

1 swap data reporting rules should be considered
2 holistically to ensure that the CFTC can deliver the
3 best regulations possible. I applaud DMO's
4 perseverance and commitment to adopting these rules,
5 and I'm very grateful for their attention, again, to
6 incorporating suggestions from my office.

7 I also am extremely appreciative to the team
8 that will be presenting later from the Division of
9 Clearing and Risk. They, too, have spent considerable
10 time with my team working through various matters that
11 I hold quite critical and as a priority and that we
12 have well-coordinated efforts to advance the clearing
13 mandate, and it's not something we can do in a vacuum
14 or in isolation, and the CFTC has acknowledged that our
15 regulatory partners across various jurisdictions
16 deserve comity and that we expect that that deference
17 will be reciprocated.

18 So I very much appreciate all of the teams
19 that have worked on the various issues we'll be
20 considering today and that we are advancing the ball.

21 I will reserve the rest of my comments for
22 the question and answer session. Thank you.

1 CHAIRMAN TARBERT: Thank you, Commissioner
2 Stump.

3 Commissioner Berkovitz?

4 COMMISSIONER BERKOVITZ: Thank you, Mr.
5 Chairman. We have a busy agenda today, with some very
6 important substantive issues, so I'll be very brief in
7 my opening remarks.

8 We're going to be considering rules today
9 that will improve the transparency of the swap markets;
10 another rule that's in furtherance of our efforts
11 towards harmonization of the regulation of central
12 counterparties; and improve our regulations, modernize
13 our regulations on the bankruptcy regime. All these
14 rulemakings, all these areas are extremely important,
15 and I'm pleased that we're making progress in each of
16 those areas.

17 And particularly, I do want to recognize, Mr.
18 Chairman, your efforts and the efforts that you have
19 noted of our staff, as well as our counterparts in
20 Europe on the agreement that has been reached and the
21 resolution of the issues that have been present for a
22 number of years. I think the favorable resolution of

1 these issues from our perspective and from our
2 counterparts' perspective is a very positive
3 development, and I want to express my appreciation for
4 you and your staff and my fellow commissioners and our
5 predecessors at the Commission and our counterparts
6 over in Europe for the cooperative spirit and the
7 results that we have achieved today. I do believe this
8 merits recognition.

9 The Alternative Registration Rule for
10 Derivative Clearing Organizations that we're going to
11 be considering today is one piece of that effort. And
12 therefore, as part of that effort, I'm supportive of
13 the rule that we're going to be considering today.

14 As you've outlined also, Mr. Chairman, we're
15 also going to be setting forth a proposal to address
16 one of the issues that commenters raised regarding a
17 Qualified Master Netting Agreement. It's very
18 appropriate for us to put this supplemental Notice of
19 Proposed Rulemaking out for public comment. The
20 solution to this issue that the Commission is advancing
21 I believe deserves public comment and scrutiny to
22 ensure that we get it right.

1 So I am very much looking forward to today's
2 rulemaking and making further progress.

3 I do also want to recognize the efforts of
4 Commissioner Stump and her staff. She has been
5 extremely persistent in advancing the consideration and
6 the development of rules to improve swap data
7 reporting. If I may say so, it's one of the less
8 glamorous areas that we consider. It's really about
9 getting into the nitty gritty of swap data fields and
10 consistency, and it's a lot of roll-up-your-sleeves
11 work. If we were in the building, it would be late
12 nights and conference rooms and florescent lights, I
13 think.

14 But regardless of where you do it, it's not
15 easy, and many of the improvements that we're
16 considering today have been the results of those
17 efforts and hard work over the years. So I do want to
18 recognize Commissioner Stump and her staff's efforts,
19 as well as Division of Market Oversight and everybody
20 else who has worked on these rules. As I said, it's
21 not glamorous, but it's really, really critical, and
22 I'm glad to see we're making progress on that.

1 So I thank you and I look forward to the
2 discussion.

3 CHAIRMAN TARBERT: Thank you, Commissioner
4 Berkovitz. I, too, concur in your recognition of
5 Commissioner Stump and her really pressing this issue
6 to ensure that it gets the ample time and focus that it
7 deserves.

8 With the close of opening statements, we'll
9 go ahead and move to our consideration of the final
10 Part 43, 45, and 49 swap data reporting rules. After
11 the presentation, the floor will be open for two rounds
12 of questions and remarks from each commissioner.
13 Following the close of discussion, the Commission will
14 vote on each rule separately. The final votes
15 conducted in this public meeting will be recorded
16 votes. The results of votes approving the issuance of
17 rulemaking documents will be included with those
18 documents in the Federal Register.

19 To facilitate the preparation of approved
20 documents for publication in the Federal Register, I
21 now ask the Commission to grant unanimous consent for
22 the staff to make necessary technical corrections prior

1 to submitting them to the Federal Register.

2 COMMISSIONER BERKOVITZ: So moved.

3 COMMISSIONER BEHNAM: Second.

4 CHAIRMAN TARBERT: Thank you. Without
5 objection, so ordered.

6 At this time, I would like to welcome the
7 following staff for their presentation.

8 From the Division of Market Oversight, we
9 have Director Dorothy DeWitt; we have Acting Deputy
10 Director Meghan Tente; we have Special Counsel Richard
11 Mo; Special Counsel Tom Guerin; Special Counsel Elie
12 Mishory; Special Counsel Ben DeMaria; Special Counsel
13 Israel Goodman; Attorney Advisor Matt Jones; and
14 Surveillance Analyst Kristin Liegel.

15 I'd also like to welcome, from the Office of
16 the Chief Economist, Research Analyst John Roberts;
17 and, from our Office of Data and Technology, IT
18 Specialist Kate Mitchel.

19 Dorothy and the entire team from DMO, ODT,
20 and our Chief Economist, the floor is yours.

21 MS. DEWITT: Good morning, Mr. Chairman and
22 Commissioners. Thank you for the opportunity to

1 present today.

2 Before we start our presentations, we would
3 like to take the opportunity to give everyone an idea
4 of the achievement that these final rules represent and
5 to recognize the many people who have made these final
6 rules possible.

7 We are presenting for your vote today three
8 final rulemakings that mark the culmination of many
9 years of effort and coordination, both with the
10 Commission and outside the Commission on an
11 international scale.

12 In 2017, the Division of Market Oversight,
13 Data, and Reporting Branch, which we may refer to today
14 as DAR, announced the Roadmap to Achieve High-Quality
15 Swap Status. The goals for the roadmap were to ensure
16 the CFTC receives accurate, complete, and high-quality
17 data on swap transactions for its regulatory oversight
18 rule; streamline reporting, reduce messages that must
19 be reported and other related elements; and evaluate
20 Parts 43, 45, and 49 of the Commission regulations to
21 identify provisions that need updating or changing to
22 meet these goals, and clarify obligations for reporting

1 counterparties and SDRs.

2 However, the Commission DMO, and particularly
3 the Data and Reporting Branch, have in reality been
4 working much longer than since 2017. They've been
5 working since the commencement of swaps data reporting
6 in 2012 to improve data quality and the reporting
7 systems for both the Commission and market
8 participants. These three final roadmap rulemakings
9 being presented today will work together to achieve the
10 roadmap goals of ensuring the Commission receives
11 accurate, complete, and high-quality data for swaps
12 transactions.

13 The three rulemakings proposed for
14 finalization today are, first, the Part 43 rulemaking,
15 which amends the Commission's regulations related to
16 the public reporting of swap transaction and pricing
17 data, including harmonization and standardization of
18 data fields, updated provisions relating to block
19 trades, and new requirements related to post-price
20 swaps and prime brokerage swaps.

21 Second, the Part 45 rulemaking, which amends
22 the Commission's regulation related to reporting swap

1 data for regulatory purposes, includes harmonized and
2 standardized data fields, swap data validation, and
3 updated regulations related to the legal entity
4 identifier, which will be referred to today as LEI; and
5 unique transaction identifier, known as the UTI.

6 And third, the Part 49 rulemaking, which
7 amends the Commission's regulations related to
8 verifying the accuracy of swap data and correcting
9 errors in swap data. It updates many Commission
10 regulations relating to swap data repositories, known
11 as SDRs, operation and governance.

12 Quality data is essential for every
13 Commission division and office to perform its
14 regulatory duties, and for the public to better
15 understand the swaps markets. We believe these roadmap
16 proposals will be immensely beneficial to the
17 Commission, market participants, and the public by
18 developing a swaps reporting regime that is more
19 standardized, more harmonized, more transparent, and
20 more user-friendly for everyone involved in our
21 markets.

22 These final rules also reflect an important

1 achievement because they serve as a model for globally
2 coordinated, data-driven policymaking. These final
3 rules and the global coordination efforts that went
4 into developing them reflect the CFTC's core vision, to
5 be the global standard for sound derivatives
6 regulations.

7 The team who crafted these final rules
8 engaged in extensive -- indeed, in my view, almost
9 unprecedented -- coordination with our colleagues
10 within the CFTC, with our market participants, and with
11 our U.S. and international regulatory counterparts to
12 ensure that these final rules will improve and optimize
13 our data reporting regime. This would not have been
14 possible without the contributions of a great many
15 individuals and organizations, and we would like to
16 thank many of them specifically before we turn to the
17 substance of the rules.

18 First, we would like to thank our CFTC
19 colleagues throughout the agency. They include our
20 colleagues within the Office of Data and Technology and
21 the Office of International Affairs. Their expertise
22 and leadership in coordinating the harmonization

1 efforts were invaluable.

2 We also want to thank our colleagues from the
3 Office of the Chief Economist, including Gloria
4 Clement, John Coughlan, Steve Kane, David Reiffen, and
5 John Roberts; from the Office of the General Counsel,
6 including Carlene Kim, Laura Bedain, Dana Dietrich, and
7 Mark Fajfar; and from other branches of the Division of
8 Market Oversight, including Israel Goodman, Jonathan
9 Laith, Phil Ramandi, and Roger Smith.

10 You may not hear from Israel, Jonathan, Phil
11 and Roger today, but each attorney in the other DMO
12 branches that contributed to these rules has performed
13 exceptionally and contributed significantly and
14 meaningfully to all three rules, reflecting the
15 admirable and collaborative teamwork that I'm so proud
16 to say is fundamentally the culture of not only DMO but
17 also the agency as a whole.

18 We would also like to thank our colleagues in
19 the Division of Clearing and Risk, the Division of
20 Enforcement, and the Division of Swap Dealer and
21 Intermediary Oversight for their crucial review of and
22 feedback on these proposals, especially those who

1 helped craft the final data fields, including Jeff
2 Hasterok and J.P. Rothenberg.

3 We'd like to thank the Chairman, each of the
4 Commissioners, and their staffs for their feedback as
5 we prepared these final rules.

6 We'd like to particularly recognize Dan Grimm
7 and Matthew Daigler from the Office of the Chairman for
8 their help in moving these rules forward to final
9 approval.

10 We also would like to recognize our
11 colleagues from other regulators who coordinated with
12 us for data harmonization efforts and provided valuable
13 feedback on the proposals. These include colleagues
14 from the Securities and Exchange Commission, the
15 European Securities and Markets Authority, also known
16 as ESMA, all of the members of the data harmonization
17 efforts under the auspices of CPMI-IOSCO, and the
18 Financial Stability Board.

19 Finally, I would like to recognize and
20 commend the members of DAR, who have been working
21 tirelessly on these rulemakings since the proposal
22 stage, for their leadership and expertise in crafting

1 these exceptional final rules. Those members include
2 Meghan Tente, Richard Mo, Ben DeMaria, Elie Mishory,
3 Thomas Guerin, Kristin Liegel, and David Erin. You
4 will hear from those team members in today's
5 presentation as it is important to me that the team
6 within DAR that has rolled up its sleeves and worked
7 tirelessly for years on all three rules is in the best
8 position to present the details of the rules and answer
9 Commission questions.

10 I will now turn it over to Meghan Tente,
11 Acting Deputy Director of the Division of Market
12 Oversight within the Division of Market and Oversight,
13 to begin the staff presentation on the rules.

14 Before doing so, I want to take an extra
15 moment to thank her for her leadership orchestrating
16 the finalization of all three rules today.

17 Meghan, your leadership has been truly
18 exceptional, and we're grateful. Thank you.

19 Meghan, over to you.

20 MS. TENTE: Thanks, Dorothy.

21 And thank you, Mr. Chairman and the
22 Commissioners, for the opportunity to present today.

1 As Dorothy mentioned, the Commission received
2 the Part 45 swap data counterparties swap dealers
3 reports to swap data repositories. Since reporting
4 began in 2013, this means Commission staff has had
5 access to a significant amount of swap data that has
6 previously been unavailable.

7 Before we begin the rules presentations, we
8 thought it would be helpful for a brief overview on
9 some of the Commission's recent projects using the swap
10 data. Not all of the Commission's swap data projects
11 reach the public. Commission staff is very
12 conscientious of the highly confidential nature of the
13 data. So Kristin Liegel, a swap data analyst in the
14 Division of Market Oversight, will explain how the CFTC
15 uses swap data to provide a backdrop for today's
16 presentation.

17 Thanks, Kristin.

18 MS. LIEGEL: Thank you, Meghan.

19 And thank you, Mr. Chairman and
20 Commissioners, for the opportunity to present today.

21 I have been a member of the data and
22 reporting team since its formation in 2014, and I would

1 like to take a few minutes to briefly describe swaps
2 data usage.

3 Most Commission activities related to swaps
4 are likely using the SDR data at some level. As the
5 public is already aware, CFTC staff uses SDR data for
6 reports such as the entity-netted notional reports and
7 the weekly swaps reports. CFTC staff, however, also
8 routinely use SDR data in less public ways, such as to
9 help inform policy decisions.

10 Examples of this include no-action letters
11 and rulemakings such as the Swap Dealer De Minimis
12 Rule, the uncleared swaps margin rules, and, of course,
13 calculating the block size thresholds and cap sizes to
14 help ensure swaps post-trade transparency. Other
15 broader uses for the data include assisting other
16 regulators by providing statistics on swap trading
17 activity for the purpose of policy making or research.
18 We have done this for multiple Financial Stability
19 Reports.

20 The National Futures Association also has
21 access to Part 45 data and uses the data to perform
22 risk-based reviews of SDs. Staff also uses the SDR

1 data extensively for more detailed in-house analyses.
2 For example, the Division of Market Oversight uses SDR
3 data to create a dynamic analysis of swap trading
4 activity to show characteristics of the swap market,
5 such as dealer versus non-dealer volumes, U.S. and non-
6 U.S. trading volumes, SEF and OTC volumes, and activity
7 for specific products or by specific counterparties.

8 DMO's Market Intelligence Branch has used the
9 data to analyze the commodities markets, like reviewing
10 swaps trading activity in relation to current events,
11 including analyses related to crude oil, credit
12 indices, and other commodity and agricultural swaps.
13 MIB has also worked in cooperation with other
14 regulators in examining the swap participation of
15 municipal debt issuers and investors to understand
16 impacts on, and exposures to, swap markets and to
17 better understand the relationship between municipal
18 cash bond and swap market participation.

19 Other divisions use the SDR data as well.
20 For example, the Division of Clearing and Risk staff
21 reviews Part 45 data in conjunction with an examination
22 of a large bank clearing number with large interest

1 rate swap positions at major DCOs. The review sought
2 details on the clearing members's uncleared positioning
3 in relation to its cleared IRS exposure.

4 DCR staff also uses SDR data to monitor the
5 uncleared swaps markets and to review swaps that have
6 not been accepted for clearing by a derivatives
7 clearing organization and is required by Part 39 to use
8 SDR data, among other sources, to determine whether any
9 categories of swaps should become subject to mandatory
10 clearing.

11 DCR staff also uses the SDR data to evaluate
12 compliance with the clearing mandates. DCR staff
13 anticipates that once the data elements in this final
14 Part 45 rule are in effect, staff will be able to more
15 effectively tie data from Parts 39 and 45 to better
16 inform the surveillance and stress testing for the
17 cleared and uncleared swaps markets, and for the
18 related futures and options markets.

19 Lastly, staff uses the data to answer
20 questions such as: what activities do we see from non-
21 U.S. DCOs; what specific counterparties are active in a
22 specific market or product; or, how were specific types

1 of swaps affected by a credit event?

2 The Commission's Office of the Chief
3 Economist has used SDR data to complete many publicly
4 available research projects, including reports on the
5 relationship between notional positions and other risk
6 metrics for swap portfolios; swap activities using the
7 Secured Overnight Financial Rate, which is SOFR; the
8 evolution on CDS trading over the past several years;
9 the behavior of SDs in swaps and futures markets; and
10 uncleared margin phase-in and uncleared legacy swaps
11 exempt from margin and clearing.

12 In conclusion, SDR data is used in a wide
13 variety of ways, with plans to use the data for even
14 more projects and in ways that make the Commission more
15 efficient in performing its regulatory duties. We
16 believe that the changes to the swap data reporting
17 rules will only improve these analyses by providing
18 more standardized, cleaner data and help the Commission
19 expand its use of the data into even more useful areas.

20 Thank you.

21 MS. TENTE: Thanks, Kristin.

22 We hope that provides some context on how

1 staff uses the data. Many of the projects,
2 understandably, don't leave the Commission, but we
3 understand that swap reporting isn't of no cost to swap
4 dealers (or SDs) and swap data repositories (or SDRs).
5 So we're thankful for the chance to share some of our
6 work going on today.

7 We'll now move to the first staff
8 presentation for the Part 43 rule.

9 Section 2(a)(13) of the Commodity Exchange
10 Act directs the CFTC to make swap transaction and
11 pricing data available to the public to enhance price
12 discovery. In doing so, the CFTC must protect the
13 anonymity of swap counterparties, provide a
14 dissemination delay for block transactions, and account
15 for whether the public disclosure of this data will
16 materially reduce market liquidity.

17 The Commissioner's Office Part 43 rule
18 implementing the CEA or Commodity Exchange Act
19 requirements in 2012 and 2013. The goal of the Part 43
20 rulemaking before you today is to address certain
21 reporting challenges market participants have had with
22 real-time reporting and finish implementing the

1 dissemination delays for block trades.

2 The presenters today are Tom Guerin and Matt
3 Jones, Special Counsels in the Division of Market
4 Oversight. I'll turn it over to Tom now.

5 MR. GUERIN: Great. Thank you, Mr. Chairman
6 and Commissioners, for the opportunity to present.

7 The Part 43 rule that is before the
8 Commission today represents a significant improvement
9 to our existing swaps supporting framework. Perhaps
10 most importantly, the rule addresses the current lack
11 of standardization in real-time swaps reporting.
12 Currently, SDRs are allowed to require reporting
13 parties to represent the terms of swaps in various,
14 non-standardized ways. Anyone that wants to use the
15 public tape must learn and account for all of these
16 differences to understand and see total market
17 activity.

18 The rule addresses this lack of
19 standardization in three key ways. First, it
20 enumerates and defines each transaction term that must
21 be reported and disseminated. Second, it requires each
22 of those terms to be reported and disseminated in a

1 specific standard and format. And third, it requires
2 SDRs to validate that each report contains all the
3 required terms in the required standard format.

4 In practice, this means that a reporting
5 party can look to Part 43 itself in the future if they
6 have questions regarding what they are supposed to
7 report, and they can expect their SDR to tell them
8 whether what they report has been validated.

9 With respect to the time delays allowed for
10 block and large notional trades, the rule does not
11 represent any change from the existing rule. The
12 Commission had proposed a 48-hour delay for all block
13 and large notional trades, but the rule does not
14 implement that proposal.

15 The vast majority of commenters opposed a 48-
16 hour delay. Commenters expressed concerns that a 48-
17 hour delay would have a negative impact on
18 transparency, price discovery, and liquidity,
19 particularly for the most liquid products that
20 currently receive a 15-minute delay.

21 The rule recognizes the merit in these
22 concerns. Currently, block trades executed on or

1 pursuant to the rules of the SEF are eligible for a 15-
2 minute delay. This will not change under the rule.
3 These swaps will continue to be eligible for a 15-
4 minute delay.

5 The rule also addresses specific types of
6 market activity that are not addressed in the existing
7 rule, most notably post-price swaps. With respect to
8 post-price swaps, the rule allows reporting parties to
9 delay the reporting of those swaps.

10 A post-price swap is an off-facility swap for
11 which the price is not known at execution. The price
12 is not known because it is contingent on a later event,
13 such as the publication of an index level.

14 The rule adopts the proposal to permit
15 parties to delay reporting a post-price swap until the
16 earlier of the price being determined and the end of
17 the day on which the swap was executed. In practice,
18 this means that trades executed with a price based on a
19 specific index will likely not be reported until after
20 the index price is published. We expect the rule will
21 allow the majority of post-price swaps to have delayed
22 reporting and to be reported only after their price has

1 been determined.

2 Now, Matt Jones will explain the Commission's
3 implementation of the dissemination delays for block
4 trades. So, go ahead, Matt.

5 MR. JONES: Thanks. Thanks, Tom.

6 And thank you, Mr. Chairman and
7 Commissioners, for the opportunity to present on block
8 trades today.

9 Block trades are large notional trades
10 generally afforded a time delay before having their
11 prices disseminated. What constitutes a block depends
12 on whether the swap's notional amount is above or below
13 a certain threshold. Right now, market participants
14 continue to apply the initial appropriate minimum block
15 sizes set in Part 43 since the Commission has yet to
16 update the thresholds to the 67 percent notional level.

17 The initial appropriate minimum block sizes
18 include a 50 percent notional threshold for swap
19 categories within the IRS and CDS asset classes,
20 generated with a limited data set, and fixed threshold
21 for swaps within the FX and other Commodity asset
22 classes.

1 DMO intends for this rule to strike balances.
2 The rule balances the benefit of transparency against
3 the costs to counterparties required to disclose an
4 executed trade. The rule is also pragmatic. It
5 balances the benefits of more closely tailoring block
6 and cap sizes to specific products against the costs of
7 increasing regulatory complexity in over-designing the
8 protocol.

9 With this in mind, the rule updates the
10 current swap categories to better target those large
11 trades that merit block treatment, and makes conforming
12 changes to the Commission's block and cap size
13 methodology.

14 The rule revises the swap categories to
15 create more granularity to separate products based on
16 their liquidity profiles and remove credit default
17 swaps transacted on CDS roll days to avoid skewing the
18 block and cap thresholds for certain CDS categories.

19 In 2013, the Commission necessarily developed
20 the block trade regulations without the benefit of
21 Parts 43 and 45 swap reporting data. At times, the
22 current swap categories lump distinctive products

1 together to calculate a single minimum block size.
2 This rule establishes more granular swap categories for
3 each asset class based on factors material to the
4 products' liquidity profiles.

5 For example, the current regulation combines
6 U.S. dollar interest rate swaps and Japanese Yen
7 interest rate swaps together to generate a single
8 minimum block size by tenor. However, the trade size
9 of U.S. dollar IRS on U.S. exchanges is generally
10 larger than the trade sizes of Japanese Yen IRS traded
11 on these exchanges. By separating U.S. dollar IRS and
12 Japanese Yen IRS, the new rule sets block and cap sizes
13 better targeted to the individual product's liquidity.

14 Further, the rule adds additional swap
15 categories for CDS with optionality in response to
16 comments to the proposal. Specifically, commenters
17 noted some CDS products with optionality often trade in
18 relatively higher notional amounts than similar CDS
19 products without optionality. Upon review, the staff
20 determined including these CDS options meaningfully
21 raised the CDS category calculated block and cap
22 thresholds. Accordingly, the rule separates certain

1 CDS products with optionality into distinct swap
2 categories. For example, there will now be a swap
3 category for CDXIG and one for CDXIG options.

4 Commenters also raised concerns that
5 including CDS roll dates in the CDS data set may result
6 in significantly larger block and cap thresholds for
7 non-roll swaps. For almost all indices, the staff
8 confirmed this concern, and the new rule removes these
9 swaps to avoid setting significantly larger thresholds
10 for non-roll swaps.

11 With regard to the block and cap
12 methodologies, the rule removes non-liquid swap
13 categories from the block and cap calculations and
14 otherwise clarifies the 67 percent and 75 percent
15 notional calculations remain applicable for studying
16 the block and cap sizes.

17 The old rule combined some liquid and
18 illiquid products. In these cases, the block and cap
19 sizes reflect the liquid products only and are not
20 calibrated for the illiquid products. Further, an
21 illiquid product as a stand-alone category would not
22 trade frequently enough to establish robust block and

1 cap sizes based on the 67 and 75 percent notional
2 calculation methodologies.

3 Instead, the new rule sets the block size to
4 zero for these products with minimal to no trading, and
5 provides a cap size that does not rely on a notional
6 calculation.

7 Additionally, the new rule confirms that the
8 67 percent and 75 percent notional calculations
9 established in the old rule are applicable. The
10 Commission previously determined that the 67 percent
11 calculation was appropriate. However, in response to
12 comments advocating for a gradual phase-in for
13 attaining that threshold, the Commission adopted the 50
14 percent threshold as a temporary bridge measure. Staff
15 continues to believe that the 67 percent notional
16 calculation strikes an appropriate balance between the
17 benefits of transparency and the costs to swap dealers
18 and other market participants.

19 Further, the new rule should reduce the costs
20 to swap dealers and other market participants because
21 the 67 percent notional-based block size would only
22 apply to relatively liquid swap categories. As I

1 mentioned earlier, a block size of zero would apply to
2 the more illiquid swap categories, and these are, in
3 their nature, more sensitive to information leakage
4 impacting hedging costs.

5 Finally, I would like to leave you with a
6 final thought. I would like to stress that staff
7 focuses on notional amounts when thinking about
8 thresholds. DMO doesn't believe it is appropriate to
9 focus on trade counts as a benchmark because these
10 numbers carry less meaning. Trade counts are somewhat
11 arbitrary and tend to reflect a large number of very
12 small trades that provides little useful price
13 information for the market.

14 Thank you.

15 MS. TENTE: Thank you, Matt. And thank you,
16 Tom.

17 We will now continue to the Part 45 rule
18 presentation. As we already mentioned, the Commission
19 receives Part 45 data which Commission staff uses in
20 the ways Kristin described. The goal of the Part 45
21 rule before you today is to standardize the swap data
22 elements reported to SDRs, adopt technical guidance for

1 certain swap identifiers, and streamline the reporting
2 rules to alleviate unnecessary burdens.

3 The first Part 45 rule presenter will be
4 Nancy Doyle, Senior Special Counsel in the Office of
5 International Affairs. Nancy will help explain the
6 significance of the CFTC adopting CPMI-IOSCO technical
7 guidance for swap reporting in the Part 45 rulemaking.

8 MS. DOYLE: Thank you, Meghan.

9 Thank you, Mr. Chairman and Commissioners,
10 for the opportunity to present. Good morning.

11 For years, the CFTC has worked hard, in
12 coordination with our foreign and domestic regulatory
13 colleagues, to create internationally harmonized data
14 standards for swaps. This project has its genesis in
15 the September 2009 when finance ministers and the
16 Central Bank Governors of the group of 20 nations, or
17 G20, agreed to enhance the transparency of the OTC
18 derivatives markets by declaring that OTC derivatives
19 transactions should be reported to trade repositories,
20 and to further this we joined with and led efforts to
21 create internationally harmonized data standards,
22 including the UTI, unique transaction identifier, that

1 stamps each swap with a unique identifier worldwide so
2 regulators can globally aggregate and analyze swaps
3 without worrying about double counting.

4 We also led efforts to create a collection of
5 other harmonized critical data elements, called CDEs,
6 for swaps. Despite the clear G20 mandate for
7 transparency in OTC derivatives reporting, regulators
8 and market participants cannot have this global
9 transparency in swaps reporting unless there is some
10 harmonization on how key contract terms are represented
11 across jurisdictions.

12 There are over 100 of these critical data
13 elements, or CDEs, and we are also in the process of
14 implementing the unique product identifier, or UPI, and
15 the CFTC has helped to lead the technical guidance
16 drafting the UPI for swap transactions also.

17 These technical guidances, such as UTI and
18 the collection of CDEs, provide authorities with
19 uniform definitions, formats, and allowable values that
20 can be used to represent the terms of OTC derivatives
21 contracts reported to trade repositories. This project
22 has been highly visible in the international regulatory

1 community and has involved detailed coordinated work
2 between different international bodies and regulators.

3 The data standards were developed by CPMI-
4 IOSCO and embraced by the Financial Stability Board in
5 IOSCO itself. For example, in December of 2017, the
6 FSB published governance conclusions and an
7 implementation plan for the UTI.

8 We will all benefit from this greater
9 consistency, this lingua franca, for trading in swaps.
10 The swaps market is, of course, a global market with
11 substantial cross-border trading. Industry, too,
12 benefits from this harmonization. When jurisdictions
13 implement the harmonized technical guidances, market
14 participants will be able to utilize the same reporting
15 infrastructure to meet the requirements of the various
16 regulators worldwide.

17 MS. TENTE: Thank you, Nancy.

18 The second Part 45 rule presenter will be
19 Kate Mitchel, Business Analyst in the Office of Data
20 and Technology. Kate will explain how the Part 45 rule
21 will standardize the SDR data counterparties' report.

22 MS. MITCHEL: Thank you, Meghan.

1 And thank you, Mr. Chairman and
2 Commissioners, for the opportunity to speak.

3 As Nancy explained, under CPMI-IOSCO, the
4 CFTC and other derivatives regulators developed, sought
5 public consultation on, and then published technical
6 guidance on over 100 key data elements, including other
7 critical data elements (known as CDE). The technical
8 guidance provides direction to global authorities on
9 how to implement these data elements through harmonized
10 or standardized definitions, formats, and usage.

11 The CFTC proposed adopting many of these CDE
12 data elements in the reporting rules and developed a
13 technical specification outlining the data elements
14 required to be reported to and publicly disseminated by
15 SDRs.

16 The CFTC also proposed CFTC-specific data
17 elements outside of CDE that constitute a data set that
18 will permit the CFTC to perform its regulatory
19 responsibilities, as well as provide price and volume
20 transparency to the public.

21 In response to the proposals this past
22 spring, staff received over three dozen comment letters

1 on the data elements supportive of the Commission's
2 efforts to standardize the reporting of swaps data and
3 requesting that the Commission continue international
4 coordination to help reduce implementation burdens.

5 As an example, the CFTC currently collects
6 information from swap counterparties on the notional
7 amount of their swaps. The notional amount permits the
8 CFTC to understand the size of the market, as well as
9 the counterparty risk.

10 Some comments recommended including the
11 notional amount schedule data elements to improve
12 reporting and align with international guidance, as the
13 notional amount data element alone does not provide a
14 way to report changes in notional amounts, such as for
15 amortizing swaps. Responding to those comments, the
16 notional amount schedule data elements are reflected in
17 the rule.

18 Some comments requested clarity on certain
19 validations and on reporting at a leg level. Other
20 comments recommended alignment with ESMA on the event
21 model.

22 Further comments recommended including

1 additional CDE data elements to improve reporting and
2 align with international guidance, such as settlement
3 location.

4 Based on those comments, the revised
5 technical specification contains 128 data elements,
6 with approximately two-thirds of the data elements
7 being internationally harmonized, while one-third are
8 CFTC-specific.

9 For CFTC-specific data elements, there is not
10 currently a CDE data element that can adequately
11 provide the same information.

12 The publication of the technical
13 specifications, with harmonized data elements, will
14 ensure data quality improvements and allow staff to
15 aggregate swaps data within and across SDRs to fulfill
16 its regulatory responsibilities.

17 As other jurisdictions follow the CFTC and
18 implement the international technical guidances, global
19 aggregation can occur, which will meet the G20's goals
20 of improving transparency, mitigating systemic risk,
21 and preventing market abuse.

22 MS. TENTE: Thanks, Kate.

1 The third Part 45 rule presenter will be
2 Richard Mo, Special Counsel in the Division of Market
3 Oversight. Richard will present on the adoption of the
4 unique transaction identifier, or UTI, and legalized
5 entity identifier, or LEI, in Part 45.

6 MR. MO: Thank you, Meghan.

7 And thank you, Mr. Chairman and
8 Commissioners, for the opportunity to present.

9 The Part 45 rule currently before the
10 Commission represents a significant step towards the
11 Commission's adoption of international data standards.
12 Where the Part 45 previously required each swap to be
13 identified with a unique swap identifier, or USI, a
14 proprietary standard developed in the absence of a
15 global standard, the revisions to Part 45 adopt the
16 UTI. The UTI represents extensive efforts by staff and
17 our global counterparts to develop a uniform global
18 standard to identify each swap, culminating in the 2017
19 publication of the UTI Technical Guidance.

20 The comments to the proposal almost uniformly
21 supported the Commission's adoption of the UTI. In
22 this rule, the Commission first mandates each new swap

1 be reported with a UTI instead of a USI; second,
2 provides instructions on how to create the UTI; and
3 third, details who is responsible for creating the UTI
4 for each swap, where possible. The rule also seeks to
5 leverage existing reporting practices already in place
6 so as to reduce adoption burdens on market
7 participants.

8 While we originally proposed an end of 2020
9 compliance date for UTIs, the rule sets an 18-month
10 compliance date for all of Part 45 in response to the
11 comments received and more closely aligns the
12 Commission's adoption of UTI with those of other
13 jurisdictions. We note that even with an 18-month
14 compliance date, the Commission will still be among the
15 first authorities to adopt the UTI, in keeping with the
16 CFTC's vision as set by the Chairman of being the
17 global standard for sound derivatives regulation.

18 In addition to identifying transactions, the
19 final Part 45 rule also enhances the Commission's
20 ability to identify swap participants. The rule would
21 formalize the requirements for using LEIs to identify
22 counterparties, and the CFTC played a crucial role in

1 establishing the LEI in 2013 and serves on the
2 executive committee of the LEI Regulatory Oversight
3 Committee, or LEI ROC, a group of authorities from over
4 50 countries. I currently serve as the CFTC
5 representative to the LEI ROC.

6 The Part 45 rule currently before the
7 Commission also further reinforces the Commission's
8 commitment to the LEI by requiring those entities
9 posing the most systemic impact to annually renew their
10 LEIs, along with enhancements aimed to ensure that non-
11 reporting counterparties obtain LEIs. The comments to
12 the proposal almost uniformly supported the
13 Commission's adoption of the LEI.

14 Finally, I should mention that we hope to
15 transition governance of the LEI and other data
16 standards under one roof, fostering greater
17 collaboration among global authorities.

18 Thank you.

19 MS. TENTE: Thanks, Richard and Nancy, for
20 explaining the data harmonization aspects of the Part
21 45 rule.

22 The Part 45 rule also streamlines some areas

1 to ease reporting burdens where it will not impact the
2 Commission's responsibilities. Some highlights, almost
3 all of which were received favorably by commenters,
4 include that the rule would give swap counterparties
5 more time to report data by extending the time to T
6 plus 1 or T plus 2 from the much shorter deadlines we
7 have today.

8 The rule would also require one swap creation
9 data report at execution instead of the two we require
10 today. The rule would no longer require end-user
11 reporting counterparties to report quarterly swap
12 valuation data to SDRs. And finally, based on comments
13 received, the rule would exclude DCOs, or derivative
14 clearing organizations, from the requirement to report
15 collateral and margin data to SDRs, as the Commission
16 already receives collateral and margin information from
17 DCOs through other Commission regulations.

18 Together, staff believes the Part 45 rule
19 will harmonize our reporting with international
20 standards, standardize the data for CFTC users, and
21 streamline reporting to reduce burdens for swap
22 counterparties.

1 Thank you to the entire Part 45 team.

2 We will now continue to the Part 49 rule
3 presentations.

4 The CEA created swap data repositories to
5 receive data related to swap transactions and
6 disseminate that data to the public, as well as making
7 it available to the Commission, as applicable. The CEA
8 directs the Commission to describe standards for SDRs
9 in addition to the swap reporting standards.

10 The CFTC adopted Part 49 rules in 2011. The
11 goal of the Part 49 rule today is to create a more
12 effective and efficient swap data confirmation for
13 verification system, update and clarify requirements
14 related to data correction, and improve SDR operational
15 and governance requirements.

16 The first Part 49 rule presenter will be Ben
17 DeMaria, Special Counsel in the Data Reporting Branch
18 in DMO. Ben will explain the changes to swap data
19 verification and error correction.

20 MR. DEMARIA: Thank you, Meghan.

21 And thank you, Chairman Tarbert, for the
22 opportunity to present on this final rule. My name is

1 Ben DeMaria, and I am presenting part of the last
2 Roadmap rulemaking, which is commonly known as the
3 "verification rule."

4 The verification rule focuses on swap data
5 verification and data correction requirements for SDRs
6 and market participants, along with many other
7 improvements to governance and operational requirements
8 for the SDRs. It is intended to work in tandem with
9 the other two rulemakings; and, when combined, these
10 rules will serve to greatly improve the quality of data
11 available to the Commission and to the public.

12 I first have a few people that I need to
13 recognize. The final verification rule would not have
14 been possible without the contributions of many,
15 including my DAR colleague Elie Mishory, who joined the
16 CFTC exactly one year ago yesterday; Israel Goodman
17 from our Market Review Branch, who provided invaluable
18 writing and editing skills on very short notice; Gloria
19 Clement from our Office of the Chief Economist, who was
20 instrumental in creating the cost/benefit discussion;
21 Mark Fajfar from our Office of General Counsel, whose
22 thorough review and crucial guidance kept everything

1 legal; and Matt Daigler from our Chairman's Office, who
2 shepherded this rule through the final approval
3 process.

4 We'd also like to thank our many, very
5 employable, CFTC summer interns, who made impressive
6 contributions considering that they were never able to
7 even step foot in our office. This includes Marisa
8 Bou, Quinn Cockrell, and Rebecca Wolfe.

9 The first topic to cover for the verification
10 rule is the updated verification requirement. Swap
11 data verification is closely related to error
12 correction and generally requires the reporting
13 counterparties to check the swap data for their open
14 swaps that are maintained by an SDR on a regular basis.
15 Verification is intended to improve swap data quality
16 by enabling the discovery of errors in previously
17 reported, or erroneously unreported, swap data.
18 Verification complements the other data quality
19 provisions of the final rules by facilitating the
20 discovery of errors that would not be prevented by the
21 other requirements.

22 While validations and standardized data

1 fields, for example, will prevent required data fields
2 from being reported as blank or using the wrong
3 formatting, verification is intended to find plausible
4 but incorrect swap data that would pass through these
5 firewalls. An example of such an error would be a swap
6 reported with a value of \$1 million instead of the
7 correct \$10 million.

8 Verification is also backward-looking and can
9 lead to the discovery of errors in swap data that were
10 present before the validations and standardized data
11 fields are implemented, while validations and
12 standardized data fields can only prevent errors in
13 newly-reported data. Without verification, more data
14 errors would go undetected, or would not be detected
15 for an extended period of time, as the current
16 requirements for SDRs to confirm data have proven
17 inadequate to the task of discovering errors. The
18 revised verification requirements will lead to many
19 more errors being discovered and to those errors being
20 discovered earlier than they might have been under
21 current circumstances. This will lead to improvement
22 in data quality to the benefit of both the Commission

1 and the public.

2 The verification requirements we are
3 finalizing today differ in some ways from what was
4 proposed in May 2019. The proposed verification
5 approach required SDRs to make available to each
6 reporting counterparty open swaps reports containing
7 all of the swap data for that reporting counterparty's
8 open swaps on a regular basis, which was weekly for the
9 swap dealers, major swap participants, and derivatives
10 clearing organization reporting counterparties, and
11 monthly for all of the other reporting counterparties.
12 The proposal also required each reporting counterparty
13 to respond to the SDR with a verification of accuracy
14 or a notice of discrepancy within a specific timeframe.

15 In part based on the suggestions we received
16 in the public comments, the verification approach being
17 voted on today is simpler and more flexible for the
18 SDRs and market participants. The revised verification
19 approach will not require the SDRs to create regular
20 open swaps reports for reporting counterparties and
21 will not require the reporting counterparties to
22 respond to these open swaps reports.

1 Instead, the verification provisions will
2 require SDRs to provide a mechanism that allows
3 reporting counterparties to access and review the swap
4 data for their relevant open swaps on a regular basis,
5 which will now be monthly for the SD, MSP, and DCO
6 reporting counterparties, and quarterly for the other
7 reporting counterparties, and will not require the
8 reporting counterparties to respond to the SDRs with
9 specific messages. The requirements do not dictate the
10 form of the mechanism the SDRs will provide for
11 reporting counterparties.

12 As suggested by commenters, the revised
13 verification requirements also include a verification
14 and error correction log which will help the Commission
15 ensure compliance with the verification requirements.
16 We believe that this approach will be less prescriptive
17 and less burdensome for the SDRs and the reporting
18 counterparties. As it provides the SDRs with
19 flexibility when creating verification mechanisms, it
20 requires verification less frequently than the proposed
21 and eliminates unnecessary steps from the proposal,
22 such as messaging.

1 We also believe that this more streamlined
2 approach will help achieve the Commission's swap data
3 quality goals, as open swaps data will be checked on a
4 regular basis and the compliance will be increased due
5 to the increased accountability. When combined with
6 the updated error correction requirement, this will
7 dramatically improve the quality of swap data.

8 Closely related to the verification
9 requirements, the second topic to address for the
10 verification rule is the updated error correction
11 requirements. Swap data verification will facilitate
12 error correction by leading counterparties to discover
13 errors, but the error correction requirements are
14 broader than just errors discovered during
15 verification. Both the current error correction
16 requirements and the requirements under this final rule
17 require data to be accurate and complete, and require
18 errors to be corrected as soon as technologically
19 practical after the errors are discovered, regardless
20 of how those errors are discovered.

21 Thorough and timely error correction is
22 essential to meeting the Commission's goals for high-

1 quality data, and the changes to the error correction
2 requirements in this final rule are designed to meet
3 that goal. The Commission proposed to update the error
4 correction requirements in Parts 43 and 45, and to
5 codify error correction requirements in Part 49. This
6 final rule does the same and, like the proposal,
7 includes functionally identical error correction
8 requirements for Parts 43 and 45, for consistency
9 purposes.

10 As with the verification requirements,
11 however, the error correction requirements we are
12 finalizing today differ in some ways from what was
13 proposed. The proposed error correction requirements
14 added a backstop to the current "as soon as
15 technologically practical after discovery" timing
16 requirement, which would limit the time to correct
17 discovered errors to 3 business days. The proposal
18 would also have required a market participant that
19 could not meet the 3-business-day correction timeframe
20 to immediately inform DMO and to include an initial
21 assessment of the scope of the errors and an initial
22 remediation plan.

1 In part based on suggestions received in
2 public comments, the updated error correction
3 requirements to this final rule are clearer, more
4 flexible, and less burdensome for the SDRs and market
5 participants, compared to the proposal. The revised
6 error correction requirements will provide a longer, 7-
7 business-day backstop for correcting errors and, if
8 necessary, require a market participant to inform DMO
9 within 12 hours of the market participant determining
10 that it will not meet the error correction deadline.

11 The updated notification requirement includes
12 the initial assessment of scope of errors, but only
13 requires an initial remediation plan with that
14 notification if one is available.

15 Another change in the updated error
16 correction requirements based on a public comment is a
17 limit on the timeframe for error corrections. Both
18 current error correction requirements and the proposal
19 require data to be corrected without time limits. The
20 updated error correction requirements in this final
21 rule will still require correction of all swaps,
22 including so-called dead swaps, but also limits error

1 correction for each swap to the applicable
2 recordkeeping retention period for that swap under
3 either Part 45 or Part 49, depending on the market
4 participant.

5 Finally, the updated error correction
6 requirements in this final rule also include a specific
7 definition of the word "error." The definition is
8 included for clarity purposes and does not change the
9 current scope of what constitutes an error, but makes
10 abundantly clear that an error includes any present but
11 incorrect data; any data that is missing, whether that
12 be a single data field or the data for the entire swap;
13 and any data that has not been updated properly,
14 including the failure to properly terminate a swap.

15 We believe that this approach to error
16 correction will be less burdensome and more clear for
17 market participants. It provides more time to correct
18 errors before notifying DMO and includes fewer
19 requirements related to that notification. This
20 approach also limits error correction to the applicable
21 record retention period and clearly defines what
22 constitutes an error and how the SDRs and other market

1 participants are to correct any errors.

2 We believe that this approach will help
3 achieve the Commission's data quality goals, especially
4 in conjunction with the other requirements being
5 finalized today, as the error correction requirements
6 will provide a specific backstop for when data errors
7 must be corrected, accountability for correcting errors
8 in a timely manner, and strong incentives to report
9 correct data in the first place in order to avoid the
10 error correction requirement.

11 We will be very happy to answer any questions
12 you may have about the error correction and
13 verification requirements after our final presentation
14 from my Data and Reporting Branch colleague and the
15 person who was absolutely instrumental in getting these
16 rules done on time and in the quality that they are,
17 Mr. Elie Mishory.

18 MR. MISHORY: Thank you, Ben.

19 And thank you, Mr. Chairman and
20 Commissioners, for the opportunity to describe the
21 other provisions in this final rulemaking.

22 But first, I have to acknowledge Ben's

1 exceptional work on this project. Ben not only drafted
2 the proposal, he laid out the vision for what the final
3 rule should look like. He poured the foundation; and
4 then, of course, he added his finishing touches to the
5 rule that we are presenting today.

6 In addition to the error correction and
7 verification provisions that Ben just described, the
8 final rule before the Commission includes a number of
9 amendments to the SDR operational and governance
10 requirements in Part 49. Some of these changes
11 eliminate burdensome requirements. Some improve the
12 Commission's ability to fulfill its oversight
13 responsibilities. And some of these changes
14 consolidate and clarify the regulatory requirements
15 applicable to SDRs. These amendments were generally
16 very well received by industry and the public.

17 The final rule removes the burdensome
18 requirements that SDRs file Form SDR each year while
19 also modifying other SDR filing requirements related to
20 equity interest transfers and transfers of
21 registration. The final rules also codify the
22 requirements for SDRs to send open swaps reports to the

1 Commission. This will add important standardization to
2 the reports that will increase their utility to the
3 Commission.

4 The final rules add needed clarity regarding
5 the responsibilities that SDRs have in providing data
6 to the Commission, both by direct electronic access and
7 by regular data transfers to the Commission. The final
8 rules also facilitate the Commission's oversight of
9 SDRs and the Commission's ability to timely perform its
10 various roles under Part 49. These improvements are
11 but a few of the important improvements that this
12 rulemaking accomplishes, in addition to the error
13 correction and verification rule.

14 Thank you very much.

15 MS. TENTE: Thanks, Elie and Ben, and the
16 entire Part 49 team.

17 That concludes the staff presentations for
18 the three SDR reporting rules. We are happy to answer
19 any questions the Commissioners may have.

20 CHAIRMAN TARBERT: Well, thank you very much,
21 Meghan and Dorothy and the entire team, everyone that
22 spoke and everyone that didn't speak.

1 This is Chairman Tarbert, and I think that
2 was an insightful presentation; and again, I want to
3 thank you all for the outstanding work in preparing
4 these three significant rulemakings for Commission
5 consideration.

6 To begin the Commission's discussion and
7 consideration of these rulemakings, I'll now entertain
8 a motion to adopt the three final swap data reporting
9 rules under Parts 43, 45, and 49 of the CFTC's
10 regulations.

11 COMMISSIONER BERKOVITZ: So moved.

12 COMMISSIONER BEHNAM: Second.

13 CHAIRMAN TARBERT: Thank you.

14 I'd now like to open the floor for
15 Commissioners to ask any questions about the data
16 rules. I will begin. We'll do so in order of
17 seniority. I will begin, and I have only, I think,
18 three questions, and I'll try to make them brief.

19 First of all, for those that are watching out
20 there, or listening in the public, it would be useful
21 just to provide some context on how the lack of
22 standardization currently challenges the effectiveness

1 of our real-time reporting system for swaps. I don't
2 necessarily need a catalog, but I think if someone
3 could just give me a couple of real-life examples, or
4 maybe even a vignette, a story of maybe frustration by
5 a market participant where the improvement is needed in
6 our rules and how we basically made that adjustment,
7 particularly Parts 43 and 45, to make that possible.

8 MR. GUERIN: Thank you for the question,
9 Chairman. I think the best context for the challenge
10 brought about by the lack of standardization is simply
11 the widespread confusion as to how to comply with our
12 rules.

13 We get calls from compliance departments at
14 rather sophisticated entities that can't figure out how
15 to report trades; and this is a regular occurrence. It
16 makes us wonder about the people that aren't calling
17 us. But I think in the future the ability for us to
18 point them to Part 43 and the technical specification,
19 I think that will help these entities figure out why
20 their trades are getting rejected and perhaps take some
21 of the frustration off for them.

22 But I would briefly note the confusion

1 extends to the users of the tape as well, because when
2 reporting parties don't know where to look for how to
3 fill out a field, they often fill out the field
4 incorrectly, and the result of that is that users of
5 the tape see many trades that look unusual to them, and
6 they don't know if they can rely on these trades, and
7 very often they just ignore them.

8 And so I think the challenges caused by the
9 lack of standardization are on both sides, the
10 reporting entity side and the public user.

11 CHAIRMAN TARBERT: Right. So we've created
12 sort of additional burdens on market participants that
13 are actually reporting and cause confusion on their
14 side. But then, of course, the whole point of this is
15 ultimately to get some transparency in the market. And
16 so if someone is about to make a trade, an ultimate
17 client or customer, a pension fund wants to figure out
18 what's the going price for certain types of swaps,
19 garbage in/garbage out. They see the data. If the
20 data is not good or it's conflicting or it's not
21 standardized, it doesn't help for price discovery and
22 transparency, as well.

1 Terrific. I think that was very helpful.

2 Let me move to a couple of questions on Part
3 49, because this is very important. Of course, I
4 mentioned the garbage in/garbage out issue. Right now,
5 or under our final rules, we're going to provide that
6 market participants must correct any errors within 7
7 business days after discovery. And then if those
8 errors aren't corrected within those 7 days, then we're
9 requiring people to report, to notify the CFTC and sort
10 of describe the errors.

11 Maybe just briefly touch on that and why the
12 notification is so important, and also how we can
13 imagine a situation where someone identifies an error
14 but can't correct it within more than a week's time,
15 effectively.

16 MR. DEMARIA: Thank you for that question,
17 Mr. Chairman. This is Ben. Happy to answer for you.

18 The importance of the notification
19 requirement is because the Commission needs to always
20 have an idea of the quality of the swap data that is
21 available to us. We use it, as we talked about
22 earlier, for many, many different things, and if there

1 were significant problems with the accuracy of that
2 data, we might need to amend the projects we're working
3 on or otherwise accommodate that reality. It's also,
4 of course, that the requirement, or this notification
5 requirement is very good incentive for people to not
6 only report data correctly in the first place but also
7 to correct it as soon as possible in order to avoid
8 having to send us the notification and any available
9 initial remediation plan.

10 The situations where someone might take
11 longer than a week often depend really on the amount of
12 data that is wrong or exactly what was causing the
13 problem. We've had many times over the years where
14 someone's system had to be redesigned, or they couldn't
15 even tell right away what the problem exactly was, and
16 it takes time for market participants to do that and to
17 find what the error is, fix the error so that there's
18 not more bad data being reported, and then to go back
19 and do all of the corrections.

20 We generally consider something that would
21 take longer -- anything that is going to take less than
22 a week is going to be a relatively minor error and

1 should be relatively quick to fix. We will see that
2 it's been corrected in the data as it comes in, so
3 we'll know where the swaps were corrected and what is
4 the correct data for those swaps now. But anything
5 taking longer than a week is probably a more
6 significant issue that can seriously affect our ability
7 to do our role as a regulator. So we need to know
8 about that as soon as we can find out.

9 CHAIRMAN TARBERT: Terrific. Very helpful.

10 And one final question, and this is also on
11 Part 49. This was the one proposed rule that was
12 actually proposed among the swap data rules prior to my
13 coming on board as Chairman, and I note that the final
14 verification process that's embodied in our final rule
15 today is actually different than the one that was
16 proposed in a number of important respects, and maybe
17 just sort of explain, if you could, the policy
18 rationale for those changes.

19 MR. MISHORY: Thank you, Chairman. This is
20 Elie. Great question.

21 There are two competing interests, or if you
22 wanted to frame it as you did in your opening remarks,

1 maybe hypothetical imperatives at play here. The
2 first, obviously, is to ensure data accuracy,
3 compliance with the requirements of the Act or the
4 Commission's regulations. But the second is to
5 maximize the efficiency of the process and to keep the
6 burden on market participants as low as we can, but
7 again only to the extent that the rules will fulfill
8 their intended goals.

9 So as described in our presentation by Ben,
10 the proposed rule put a considerably larger burden on
11 SDRs and the reporting counterparties. In
12 consideration of the comments that we received, staff
13 determined that it's appropriate to rebalance a bit,
14 and we believe verification will achieve its intended
15 result of finding and correcting errors in swap data
16 with considerably less burdensome and a more efficient
17 structure that we've included in the final rule.

18 So in sum, the final rules are intended to
19 strike the appropriate balance between the benefits of
20 improved swap data quality and the burden on market
21 participants.

22 CHAIRMAN TARBERT: Terrific. Thank you so

1 much.

2 With that, I'm finished with my questions.
3 I'd like to turn it over to Commissioner Quintenz.

4 COMMISSIONER QUINTENZ: Thank you, Mr.
5 Chairman. And just as a point of clarification, are we
6 scheduled to have two rounds of questions on this
7 topic, or are we --

8 CHAIRMAN TARBERT: Yes, we are. We're
9 scheduled to have two rounds, so there's another bite
10 at the apple.

11 COMMISSIONER QUINTENZ: Okay. Then I'll
12 break up some of what I'm going to say and save part of
13 it for the second round.

14 Thank you to you. Thank you to the team. I
15 hope everyone listening can tell, not only by the
16 number of presenters that we had but by their eloquence
17 and expertise, how significant of an effort it has
18 been, and over such a long period of time, requiring
19 all of that expertise to get these rules in front of us
20 today in a way that is, for many of them, harmonized or
21 agreed to in an international perspective so that we
22 truly can meet a goal of Dodd-Frank, which is to have a

1 global look into the swaps market and ensure that we
2 are monitoring for potential systemic risk.

3 So let me maybe just start with the Part 49
4 rules, and I just had a brief question. I think you've
5 covered this a little bit, but I just wanted to see if
6 we could highlight how the final framework that the
7 reporting counterparties must follow in verifying that
8 swap data will be more efficient from the perspective
9 of both the reporting counterparties and the SDRs than
10 what was in the proposed framework.

11 MR. DEMARIA: Thank you, Commissioner. This
12 is Ben again. Happy to answer that for you.

13 Basically, we are eliminating a number of
14 things from the proposal that just weren't necessary.
15 That includes the SDRs actually having to create these
16 individual open swaps reports for their customer
17 reporting counterparties that have any open swaps at
18 the time, and also eliminating the need for the
19 reporting counterparties to respond to each of those
20 reports to the SDR with a separate and distinct message
21 that was basically a thumbs up or a thumbs down on
22 whether they had found any errors.

1 After we got those comments, and we had
2 actually already thought of an approach that included
3 utilizing a mechanism ourselves many years ago but
4 decided not to pursue it originally, having the SDRs
5 create a mechanism that is just available whenever it
6 is needed, and for a reporting counterparty to be able
7 to sign in, that reporting counterparty can perform the
8 verification as it sees fit, as long as it meets our
9 parameters. It really just eliminates the extra steps
10 that weren't needed and we think will go much faster.
11 It will also encourage people to -- it will make it
12 easier for people to automate the process and to find
13 the errors in a much more efficient manner, really.

14 COMMISSIONER QUINTENZ: That's great.
15 Thanks, Ben. Thanks for all the hard work on this.
16 I'm going to be very pleased to support it today.

17 I would also like to note that the amended
18 SDR rules adopted, or that we hope to adopt, today are
19 largely consistent with the SEC's rules for security-
20 based SDRs, and I expect that that consistency will
21 reduce costs and ease compliance burdens for entities
22 registering as data repositories with both of our

1 agencies, as well as for the reporting counterparties
2 submitting data to both SDRs and security-based SDRs.

3 I'd like to just quickly move to my statement
4 on Part 45 and then ask maybe a couple of follow-up
5 questions based on it.

6 I'm very pleased to support the amendments
7 today to Part 45 regulatory reporting, which hopefully
8 represent the beginning of the end of this agency's
9 longstanding efforts to collect and utilize accurate,
10 reliable swap data to further its regulatory mandates.

11 There is frequently a trade-off between being
12 first and being right, and that is especially true when
13 it comes to regulation, and specifically true when it
14 comes to the CFTC, its historical approach to data
15 reporting. Although the CFTC was the first regulator
16 in the world to implement swap data reporting
17 requirements, in my opinion it did so only in a
18 partial, non-descriptive and non-technical fashion,
19 which has led to the fact that even today, more than 10
20 years after Dodd-Frank, the Commission has great
21 difficulty aggregating and analyzing data for uncleared
22 swaps across swap data repositories.

1 Remember, at one point in the past, the
2 effort on this reporting framework was described as
3 building a railroad, and I think, from all of the work
4 that I've seen, I think that that's an apt description,
5 although I don't think that the right way to build a
6 railroad was to let each state decide how wide they
7 wanted to make the tracks. And I'm pleased that today
8 we're finally moving away from that approach and have a
9 very consistent framework that we can implement and
10 that will correspond to those implemented overseas.

11 Since the CFTC first implemented its swap
12 data reporting requirements, the CFTC has continued to
13 lead global efforts to reach international consensus on
14 those reporting requirements so that derivatives
15 regulators can finally get a clear picture of the
16 uncleared swaps landscape. I would like to recognize
17 the diligent efforts of the DMO staff to finally get us
18 over the finish line.

19 Today's amendments to Part 45 will provide
20 the Commission with homogeneous data that it needs to
21 readily analyze swap data for both cleared and
22 uncleared swaps across jurisdictions. The final rule

1 eliminates unnecessary reporting fields and implements
2 internationally agreed-to critical data elements, or
3 the CDE fields, consistently, with the detailed
4 technical standards put forth by CPMI-IOSCO.

5 And along those lines, I would like to
6 commend Commissioner Stump for her data initiative and
7 for all her hard work on this and the other data rules
8 in front of us.

9 I've also long supported providing additional
10 time for market participants to meet their regulatory
11 reporting obligations given that it is a matter of
12 being right and not first. The latter regulatory
13 reporting deadline in this final rule will help
14 counterparties report the trade correctly the first
15 time instead of reporting an erroneous trade that then
16 needs to be corrected later. This change also more
17 closely harmonizes the CFTC's and ESMA's reporting
18 deadlines.

19 For the first time, the final rule also
20 requires swap dealer reporting counterparties to report
21 daily margin and collateral information for uncleared
22 swaps to the Commission. However, the final rule would

1 not require DCO reporting counterparties to report
2 margin and collateral information with respect to
3 cleared swaps. Instead, the Commission is going to
4 continue to rely on the comprehensive margin and
5 collateral data reported by DCOs pursuant to Part 39.

6 Importantly, in order to alleviate burdens on
7 small reporting counterparties, non-swap dealer and
8 non-major swap participant reporting counterparties are
9 not required to report valuation margin or collateral
10 information to the Commission.

11 Although this final rule represents the
12 lion's share of regulatory reporting requirements, it
13 is not quite the capstone of the Commission's reporting
14 efforts. The CDE technical guidance did not harmonize
15 many data elements that are relevant to the physical
16 commodity and equity swap asset classes. More work
17 needs to be done with respect to how certain data
18 elements should be reported, including how the prices
19 and quantities of physical commodity swaps should be
20 reported, and how swaps on customized equity baskets
21 should be represented. I know DMO will continue to
22 play an active role through CPMI-IOSCO's CDE governance

1 process to ensure that additional guidance and
2 specificity are provided regarding the data elements
3 for these asset classes.

4 I support the CFTC's efforts to adopt the CDE
5 fields, the most basic data elements that are critical
6 to the analysis and supervision of swaps activities in
7 a manner identical to other jurisdictions' reporting
8 fields.

9 So let me just quickly ask two questions
10 based on some of the comments I just read. The first
11 is with respect to those physical commodity and equity
12 swap asset classes.

13 Does DMO have an estimated timeline for when
14 that additional work to refine the CDE technical
15 guidance may be completed? And does DMO expect that
16 additional amendments will be needed in the future to
17 the Commission's technical specifications to reflect
18 that updated guidance?

19 MR. MO: Sure. Commissioner Quintenz, this
20 is Richard Mo. DMO and ODT are active in the CDE
21 governance process. We do not have an estimated
22 timeframe, but we will continue to work with our

1 international counterparts to further refine the CDE
2 data elements for the equities and commodity asset
3 classes. In the future, the Commission will likely
4 need to update its rules to adopt the new updated CDE
5 technical guidance for these asset classes. And when
6 it does so, the public will have an opportunity to
7 comment on the updated data elements.

8 COMMISSIONER QUINTENZ: Great. Thank you
9 very much for that, Richard.

10 And with regard to the new collateral and
11 margin reporting required of swap dealers and major
12 swap participant reporting counterparties, how many of
13 those fields are currently required by ESMA to be
14 reported to trade repositories in the European Union?

15 MS. MITCHEL: Hi. Thank you for the
16 question, Commissioner. This is Kate Mitchel.

17 Out of the 15 margin and collateral data
18 elements that the CFTC is adopting, nine of those are
19 currently required by ESMA. And of those 15, 11 are in
20 CDE, the international guidance and were also proposed
21 by ESMA in their consultation, which is not yet final.

22 COMMISSIONER QUINTENZ: Okay, great. Thanks

1 so much, Kate, and thanks for your hard work on this,
2 as well.

3 Mr. Chairman, with that, I think I'll reserve
4 my comments on Part 43 for the second round, and high
5 compliments to all the staff on two great work products
6 on these rules specifically. Thank you.

7 CHAIRMAN TARBERT: Thank you very much,
8 Commissioner Quintenz.

9 Commissioner Behnam?

10 COMMISSIONER BEHNAM: Thanks, Mr. Chairman.

11 I have a statement that I will post to the
12 website later on or perhaps after we vote this
13 particular rule set out. But I do want to take a few
14 minutes to thank the entire team. There are many, and
15 I would just echo Commissioner Quintenz' comments and
16 the Chairman's comments about everyone who contributed
17 to this, which is many, many people and many different
18 divisions, obviously starting with the DMO, but of
19 course OCE, OGC, International, and all the individuals
20 who have been a part of this, many of whom, or at least
21 a few who have since left the Commission, at the
22 Commission level and the staff level.

1 And then a special thanks, just to repeat
2 what is 100 percent deserved, to Commissioner Stump for
3 her work and her staff who did all the work on this.
4 It's really just a key, key part of our regulatory
5 framework and one that makes our markets better, makes
6 our jobs easier, makes us able to do our jobs easier,
7 and I think really supports transparent, safe, healthy
8 derivatives markets. So kudos to her and all the work
9 that she's been doing in this space.

10 First, I just want to make a quick comment
11 that I don't have any questions regarding Part 49, at
12 least any above and beyond what has been mentioned so
13 far, but I would just commend the team again for their
14 work in that space. Data quality obviously is,
15 literally the heart of this matter in the discussion
16 that we're having today. So I think improving Part 49
17 is a huge step forward, and I am pleased to be
18 supporting that element of this rule set.

19 Regarding Part 45, just a few questions I'd
20 like to start off with for the team, and the first is
21 about the specific data standards that we chose for
22 reporting swaps to the SDRs, and I'd appreciate if we

1 could get a little bit more into the specifics of how
2 we got to where we are specifically with respect to the
3 ISO 20022 and what discussions developed and how they
4 evolved over the course of time, ultimately landing in
5 the discussion that's in the preamble regarding where
6 we are and why that is the best outcome, and really
7 what was the deliberation leading up to this decision
8 so that we could get to this final conclusion.

9 MS. MITCHEL: Thank you for the question,
10 Commissioner. This is Kate Mitchel again.

11 I'm in the Office of Data and Technology, and
12 it was a recommendation by ODT to adopt ISO 20022.
13 From a technical perspective, one transmission protocol
14 is optimal. So one protocol or standard provides
15 consistency of the data from the source, in a common
16 format, regardless of the SDR, and that will lead to
17 better data quality.

18 If the data is reported using different
19 transmission protocols in the life cycle, it's then
20 subject to interpretation by the SDRs. It could be
21 transformed or translated within their system before it
22 gets to the CFTC. So these successive layers of

1 transformation inject ambiguity and data quality
2 issues.

3 ISO 20022 is an international standard. It's
4 very well known in financial services. ESMA has
5 already mandated it for other reporting rules,
6 including their SSTR. They've also mandated it for
7 their current trade repository reporting to ESMA, and
8 they've proposed it for their derivatives reporting to
9 TRs in their consultation earlier this year.

10 So from a global perspective, having a
11 consistent standard or protocol for reporting such as
12 ISO 20022 would reduce reporting burden, streamline
13 processing, and allow industry to leverage scaled
14 solutions, bringing down the cost of updates.

15 COMMISSIONER BEHNAM: Thanks, Kate. That's
16 perfect. Thanks for the response. Thanks for
17 correcting me on 20022. I missed a statement earlier,
18 I'm sure. A lot of data folks are laughing right now,
19 but that's fine.

20 MS. MITCHEL: It's common.

21 COMMISSIONER BEHNAM: And I would just say
22 that, really, your response really goes to the heart of

1 what we're doing today, right? It's about
2 standardization, it's about a level playing field, and
3 it's about reducing burdens and costs that firms, that
4 compliance individuals, that regulators need to do to
5 sift through data. There are many steps and many
6 elements to that process, and I think it's incumbent on
7 all of us to do what we can, and I think today is a
8 great step forward in reducing unnecessary burdens so
9 that we can get to the heart of the matter in a more
10 efficient and effective way.

11 So that's great to hear, and I'm also very
12 pleased with and grateful to ODT for their
13 contributions and their work and their advice to DMO so
14 that we could get to this final decision today.

15 The second question is about proprietary
16 data. The preamble -- and it might be the rule itself,
17 if you could help me clarify that -- was including some
18 elements of proprietary data to the SDRs beyond what
19 the Commission mandates. So if you could sort of help
20 me understand again how we got to this specific place
21 and whether or not there are any risks associated with
22 the SDRs holding this proprietary data, and why we're

1 concluding it's in the best interest of the Commission
2 to include this particular information.

3 MS. TENTE: Sure. This is Meghan. I can
4 answer that.

5 DMO is trying to avoid the problem we have
6 today where SDRs have created hundreds of their own
7 data fields because the CFTC wasn't specific enough as
8 to what should be required. But at the same time, we
9 realize SDRs might have good reasons for having some
10 proprietary data fields that they need for their
11 internal purposes. So we're clarifying in the preamble
12 the rule that SDRs could add a small number of
13 additional data elements in a narrow scope for internal
14 processing purposes, but otherwise they cannot add
15 additional data elements.

16 We think this finds the right balance between
17 allowing certain limited elements necessary for SDRs to
18 conduct its business, and CME has a suggestion that we
19 address in the preamble on this issue, and we think
20 it's the best way to do it.

21 COMMISSIONER BEHNAM: Thanks, Meghan. Again,
22 I appreciate that response. I think with any

1 information that's proprietary, or any information more
2 generally, it's sensitive to what we collect, what we
3 choose to collect, what we choose not to collect, and
4 obviously it's incumbent on the agency, all government
5 agencies, to make sure that we have systems in place so
6 that we're protecting stakeholders' information. So I
7 appreciate that. I'm glad that that sort of dialogue
8 and that analysis went into the final decision-making
9 process, and it seems like we came out with the correct
10 decision. So I appreciate that, and I appreciate your
11 time in considering that.

12 My final question for this round has to do
13 with a specific question that was in the NPRM, Question
14 36, which dealt with dealing trades. This issue comes
15 up within the context of the de minimis thresholds, the
16 insured depository institution exemption, IDI. I'm
17 just curious, did we receive comments with respect to
18 this specific question? What were the general
19 responses? And ultimately, I think the Commission, or
20 at least the division is choosing to recommend to the
21 Commission to not include dealing trades, or at least a
22 group of them. Can you help me walk through the

1 analysis with respect to that specific question and the
2 engagement and interaction you had with commenters in
3 response to that specific question? Thank you.

4 MR. MO: Yes, sure, Commissioner. This is
5 Richard. Yes, we did receive several comments on this
6 question, including from ESMA, from the DDDC, from
7 GFXC, from BP and CEWG and FIA. All commenters were
8 opposed to reporting fields for identifying dealing
9 trades. The scope of the comments was the basis for
10 DMO not recommending including these reporting fields.

11 Some of the comments we received included
12 people believing this was confidential and proprietary
13 information for reporting counterparties and whether
14 third-party submitters such as confirmation platforms
15 would have access to this information; that this wasn't
16 a necessary component of a swap transaction, and other
17 similar comments that it goes beyond the purposes of
18 post-trade reporting; that collecting this information
19 at the time of execution would be operationally
20 challenging, while others believe it would limit
21 flexibility; it would change the character of the swap
22 and ability to manage risk at the portfolio level as

1 the character of the individual trade may change when
2 placed in the context of a larger portfolio.

3 In summary, based on all the commenters who
4 responded in opposition for reporting fields for
5 identifying dealing trades, that's the reason behind
6 DMO's recommendation to the Commission not to adopt
7 those proposals.

8 COMMISSIONER BEHNAM: Thanks. I appreciate
9 that response. It makes sense.

10 Like I mentioned, I will be supportive of
11 Part 45. But as we continue to evaluate our rule set
12 and the direction that we're heading in the future, I
13 would encourage the division and my colleagues to
14 remain vigilant with respect to this. I perfectly and
15 understandably appreciate the responses we got from a
16 large constituency of market players, and I understand
17 the decision and why we are going in this direction,
18 but I would just encourage us to keep vigilant on
19 overseeing this particular part of the market so we can
20 make sure we can better assess risk as it arises.

21 Mr. Chairman, I'm going to pause for the
22 first round here and I'll keep my remaining questions

1 for the second round. Thank you, and thanks again to
2 the entire staff and the team for truly great work.

3 CHAIRMAN TARBERT: Thank you very much,
4 Commissioner Behnam.

5 Commissioner Stump?

6 COMMISSIONER STUMP: Thank you, Mr. Chairman.
7 I'm actually going to continue the theme that the Chair
8 started with my own recent, real-world woe. Over the
9 weekend, my daughter and I attempted to assemble a
10 small piece of furniture from a less-than-perfect
11 instruction manual. We engaged in significant
12 improvising and many assumptions as to what the
13 instructions actually required. And apologies to my
14 father, who would be horrified to learn that at one
15 point I resorted to using superglue simply because I
16 found the hardware package to be woefully lacking.

17 I'm left wondering if our finished product
18 will stand up to the test of time, and it actually
19 occurred to me that this experience correlates to swap
20 data rules in that our instructions needed to be
21 refined to ensure that we can build a better data set
22 and avoid the frustration on the part of the data users

1 and, if you will, the data manufacturers, hopefully
2 without the use of superglue or duct tape going
3 forward.

4 I would like to acknowledge that in 2013 the
5 Commission tackled a very difficult task of being the
6 first mover to implement swap data reporting
7 regulations, and we've learned a lot since then, and
8 there have been tremendous improvements made to ensure
9 that our expectations are clear and that the finished
10 product, that data that we require to do our job, is
11 improved.

12 So I'm pleased today that the final rule will
13 clarify the obligations and processes for reporting
14 swap data that will result in substantial improvement
15 to the quality of the data being presented both to the
16 public and to the CFTC.

17 I expect much of the public attention devoted
18 to the final rules will focus on the unfortunate
19 process by which the Commission is advancing the block
20 trade threshold. And while I acknowledge that the
21 process surrounding blocks was less than transparent
22 and poorly communicated, that criticism does not reside

1 with the staff, who worked diligently to improve our
2 instruction manual. And the neglecting to distinguish
3 the many other aspects of the final rule that deserve
4 positive reception would be unfortunate and an
5 oversight in recognizing the tremendous improvements
6 the rule-writing changes have made to our reporting
7 regime.

8 While this may not be the most exhilarating
9 rule set we as the Commission debate, I believe that
10 because it forms the foundation for so many other
11 obligations we seek to fulfill, I count it among the
12 most important of the rules we consider, and I wish to
13 thank all of the folks who worked on this, those who
14 are presenting today, those who helped develop the
15 cost/benefit analysis, those who provided legal
16 assistance in designing the rules such that we can
17 advance them properly.

18 I have only a few questions, and before I ask
19 my questions with regard to Part 49, I want to give a
20 special thanks to Ben and his team for being receptive
21 to some concerns I had with the original proposal and
22 for helping us to refine the final rule such that I

1 think it is a tremendous work product, and I'm very
2 happy to support it.

3 The original version of Part 49 did not
4 adequately address validation requirements or the
5 rejection of submissions of swap data to SDRs. The
6 final rule today clearly lays out a requirement for
7 SDRs to validate incoming messages and reject if they
8 are not complete or follow the CFTC's prescribed
9 format.

10 I was hoping you could walk us through a
11 scenario and how it would work with what you all
12 envision to be the back and forth between the SDR and
13 those reporting in order to increase the completeness
14 and the standardization of the accuracy that is
15 eventually transmitted to the CFTC. I'm not sure if
16 Ben or Elie should take that one, but any sort of
17 information you'd like to supply with regard to how we
18 will expect the SDRs to manage this would be helpful.

19 MR. DEMARIA: Commissioner, just a point of
20 clarification, are you asking about the verification
21 requirements that I went through, or are you asking
22 about the validation requirements that are on the data

1 when it's first reported?

2 COMMISSIONER STUMP: I'm sorry. I may have
3 said verification. I meant validation.

4 MR. DEMARIA: Okay. Thank you.

5 Well, I know that, having kind of written the
6 original proposal for it, the idea is that we don't
7 want data that isn't going to be useful for the
8 Commission or for the public, data that will be more
9 difficult to use, to be taken into the SDRs and then
10 for it to be either publicly disseminated or provided
11 to the Commission. It makes it much more difficult for
12 us to do our jobs when the data is in an unusable
13 format. So the validation requirements, what they're
14 intended to do is to at least ensure that all of the
15 data looks like the way it's supposed to look. For
16 example, someone could not put in numbers when the only
17 allowable value is letters.

18 The SDRs currently have something in the way
19 of validations that they apply but without these
20 requirements we're going to be finalizing today,
21 hopefully. Those validations are inconsistent. People
22 are not required to respond to them as overtly, et

1 cetera. So the system hasn't worked as well as it
2 should have.

3 What we are hoping to finalize today should
4 solve a lot of those problems, and because failing a
5 validation during the reporting will mean that the
6 person doing the reporting has not satisfied the
7 requirements yet, it provides a very big incentive for
8 someone to immediately go make the data look the way
9 it's supposed to look and re-report it so they can meet
10 the deadlines.

11 COMMISSIONER STUMP: Great. And we expect
12 that the SDRs will be having constant dialogue with the
13 reporting counterparties to ensure that that is the
14 case, I assume.

15 MR. DEMARIA: Yes, yes. And I will note that
16 SDRs now are generally very good about having dialogue
17 with their customers on issues, from either customers
18 reporting issues to the SDRs regarding the data or the
19 SDRs talking to them. But the validation requirements
20 today will make that official and will require both
21 parties to actively participate in order to make the
22 data higher quality by the time it arrives to the

1 Commission or goes to the public.

2 COMMISSIONER STUMP: Thank you.

3 Now, turning from validation to verification,
4 I want to say that I concur with the changes in the
5 final rule to the process for verification, such as the
6 frequency as to which reporting counterparties must
7 verify the accuracy of their data at the SDR and the
8 length of time they are afforded to correct any errors.

9 For the benefit of those listening, what is
10 the role of the reporting counterparty, and what is the
11 obligation on the SDR in this verification process?

12 MR. DEMARIA: Ben again. I'm happy to answer
13 this one.

14 So, the reporting counterparty's job is to
15 sign in or otherwise use the mechanism. I shouldn't
16 say sign in because the SDRs can create mechanisms as
17 they see fit. But for the reporting counterparty to
18 use the mechanism that the SDR uses, or if they use
19 more than one SDR, all of the SDRs they use, to review
20 the data that is available for them through that
21 mechanism, compare it to their own books and records
22 for that data, and if there is anything that doesn't

1 match, that immediately triggers the error correction
2 requirement because that is discovery. This could be
3 data that they discover -- I accidentally reported \$1
4 million instead of \$10 million, I need to fix that --
5 or that they tried to terminate a swap and the SDR did
6 not process that termination correctly for some reason,
7 such that a swap shouldn't be open anymore but for
8 whatever reason it's still considered open, all of
9 those kinds of errors, if they see them during the
10 verification process, the reporting counterparty
11 immediately has their error correction requirements
12 triggered.

13 On the SDR's side, their job is to create and
14 provide the mechanism for the reporting counterparties
15 to use and to make sure the reporting counterparties
16 can use that mechanism at least as often as our
17 regulations require the reporting counterparties to be
18 doing verification, which is monthly for the dealers
19 and such, and quarterly for the non-dealers.

20 The SDR could certainly allow people to use
21 the mechanism more often to check data if they like,
22 but that's their role: to just facilitate basically the

1 reporting counterparties doing their half of
2 verification, and to do so in a timeframe and with a
3 frequency that is required to make the whole system
4 work.

5 COMMISSIONER STUMP: Great. Thank you so
6 much.

7 Again, those are the only questions I have
8 with regard to Part 49, and I do very much appreciate
9 again Ben's efforts and the entire team's efforts to
10 refine this, and I think that I'm very happy to support
11 the final rule. I think it is a tremendous product.
12 So thank you all for working with me and my team on
13 getting us to where we are today.

14 I have only one question with regard to Part
15 45, and I'm not sure if Nancy or Kate or you guys can
16 determine, once I ask the question, who should respond,
17 but I wanted to talk a little bit about substituted
18 compliance.

19 While efforts have been made to harmonize, if
20 possible, each jurisdiction's reporting rules, and I
21 think that's fantastic, but undoubtedly we are going to
22 retain some unique characteristics across

1 jurisdictions, and substituted compliance is essential,
2 especially considering the global nature of the swaps
3 market and that 56 percent of CFTC's registered swap
4 dealers are non-U.S. persons.

5 So I'm wondering if the Division is planning
6 to soon consider such analysis for the granting of
7 substituted compliance determinations with respect to
8 swap data reporting regimes in other jurisdictions. I
9 don't know who that is, if it's DMO, ODT, or OIA who
10 should answer that question, but I appreciate any
11 response.

12 MS. TENTE: This is Meghan. I can say this
13 for DMO and then, Nancy, if you have anything to add,
14 but the current CFTC cross-border guidance requirements
15 for substituting compliance are pretty extensive. They
16 include having reciprocal access to another country's
17 data, having direct access to that data, and turning it
18 into an MOU or similar arrangement. There are a number
19 of steps involved in substituted compliance that
20 involve somebody else engaging with us.

21 So I think staff has been pretty focused on
22 these rules, and these are a really important first

1 step towards that. But we really have to get these
2 adopted and implemented before we turn to substituted
3 compliance.

4 COMMISSIONER STUMP: Well, if no one else
5 wants to respond I would simply say that, yes, I very
6 much appreciate this. This has been a tremendous list,
7 and I know we needed to have this foundational piece in
8 place before we could turn to substituted compliance
9 considerations. But I do hope that it will become a
10 priority for not only the division but for the
11 Commission to advance that sort of analysis in the near
12 term.

13 So, thank you all so much. Again, I am very
14 happy to support Part 45, Part 49, and Part 43, but I
15 think I will reserve my questions on Part 43 for the
16 second round. Thank you.

17 CHAIRMAN TARBERT: Thank you very much,
18 Commissioner Stump.

19 Commissioner Berkovitz?

20 COMMISSIONER BERKOVITZ: Thank you, Mr.
21 Chairman. I, too, would like to start out by thanking
22 all the staff that have worked on these three rules, a

1 tremendous amount of work that spanned a long period of
2 time. There have been many consultations, lots of
3 coordination, and it's been an issue that has been
4 frustrating, I know, for many in the industry--the lack
5 of standardization, and internationally there have been
6 efforts to correct that. And I'm very proud of the
7 agency, that we're actually in the forefront of the
8 efforts internationally, and domestically, obviously,
9 to improve swap data reporting, because it is a
10 critical function and responsibility.

11 One of the lessons from the financial crisis
12 was really that federal regulators need a handle on
13 market data, and I think staff has done an excellent
14 job of describing all the uses of this data and how
15 valuable it is for our regulatory function. Real-time
16 reporting is critical to market transparency. So I
17 wanted to thank all the staff for their fantastic work
18 on this. I'm very glad we're here today.

19 I'm going to ask a number of questions
20 initially on Part 43, the real-time reporting. Part
21 43, real-time reporting, is, again, part of the Dodd-
22 Frank directives to the Commission to establish real-

1 time price reporting, and we have seen there have been
2 many academic studies, comments by market participants,
3 market analysts, of the value of market transparency
4 and how the swap markets have significantly improved
5 price discovery, lowered-- transaction costs, lowered
6 spreads. It has really benefitted end users in this
7 country and the American economy, the structure that
8 we've set up.

9 Today's rule, Part 43, is in furtherance of
10 that effort and pursuant to the statute. The statute
11 doesn't make price transparency the sole consideration
12 in these, in real-time reporting, and the statute also
13 directs us to establish appropriate block sizes so that
14 market liquidity is not impaired and so that these
15 larger trades can take place, too. If you have very
16 short reporting times for very large trades, then
17 effectively you'd be disclosing the price of those
18 trades and make it more expensive for swap dealers or
19 the parties who need to hedge those transactions to
20 offload the risk. So they'll have larger spreads
21 before they enter the transactions, which ends up with
22 lower prices for the end users.

1 So the block sizes have to be a balance
2 between providing price transparency and ensuring that
3 these large transactions can go on at reasonable cost
4 for the dealers.

5 Initially, the Commission set the block
6 thresholds at 50 percent and always anticipated at some
7 point we'd go up to 67 percent, and the rulemaking
8 today is a furtherance of those efforts, as well as the
9 statute itself.

10 In terms of where we are today, I just want
11 to review the bidding here. The proposal proposed both
12 increasing the block sizes from the 50 percent level to
13 the 60 percent level, and at the same time the proposal
14 included a longer delay than we have under the current
15 regulations, under the 50 percent level, to a 48-hour
16 delay. So it both proposed increasing the block sizes
17 as well as the time delay. And as explained in the
18 preamble, many of the comments that we received were
19 critical, as was I at the time this was proposed, of
20 the 48-hour delay.

21 I just want to ask the staff, is that
22 essentially a correct representation of the bidding so

1 far, the increase to 67 percent and the accompanying
2 48-hour delay? And then we received comments on that?
3 Maybe you could just go ahead and respond to that
4 situation and then characterize the comments in
5 response on the 48-hour delay.

6 MR. JONES: This is Matt, and thank you for
7 the question. As you were asking, I'll just make a few
8 clarifications. You're exactly right about the
9 proposed time delay. That was proposed in the NPRM,
10 and it was something we requested comments on and
11 considered the comments carefully for.

12 As far as the 67 percent block threshold,
13 that was not proposed in the NPRM. The NPRM relied on
14 the 67 percent threshold that is the post-interim
15 threshold that is under the regulations to be in effect
16 upon the Commission implementing it in due course as
17 instructed in the regulations. So that wasn't
18 something proposed.

19 But I would also note that we definitely
20 considered the comments on this threshold, and we
21 carefully reviewed and considered why we were
22 comfortable with keeping the 67 percent threshold.

1 As you know, in that initial process with the
2 2010 NPRM and the 2013 final rule, they did go through
3 that process, and when they sought to balance the
4 competing goals that you've mentioned already of
5 transparency and liquidity, we support that still, and
6 we continue to believe that the 67 percent threshold is
7 the right threshold as we continue to learn more about
8 this market, the academic literature, comments that
9 continue coming in.

10 Thank you.

11 MR. GUERIN: This is Tom Guerin. I would
12 just follow up on that very briefly and note that
13 you're exactly right on the comments on the 48-hour
14 delay, Commissioner. We received 18 comments, 15 of
15 them opposed the 48-hour delay, and I think the only
16 real contention in the comments was their opposition to
17 48 hours, although a number of commenters also did
18 favor the status quo.

19 COMMISSIONER BERKOVITZ: In those comments in
20 opposition to the 48 hours, was it clear to the
21 commenters who were commenting on it -- did the
22 comments contain a statement that the 48 hours was too

1 long at the 67 percent level, or was it you can't go to
2 48 hours because we're at 50 percent? Was it clear
3 that the comments were commenting on 48 hours at 67
4 percent level?

5 MR. GUERIN: I think that for many
6 commenters, they thought 48 hours was inappropriate at
7 any level. So I think they generally wrote their
8 comments separately, although Matt is right that we did
9 not request comments on moving to 67 because it's in
10 the current statute, but people commented regardless.

11 But with respect to 48 hours, I think the
12 commenters' main focus was on the difference between 15
13 minutes currently for the most liquid products and how
14 inappropriate it would be for those most liquid
15 products to move from 15 minutes to 48 hours.

16 COMMISSIONER BERKOVITZ: Let me ask, isn't
17 the delay period integral to the block size? I mean,
18 because whatever the delay is, isn't it integrally --
19 it's the other side of the same coin? I guess people
20 could have commented that 48 hours is inappropriate for
21 any block size, right? I would think it would be
22 commenting on 48 hours in the abstract rather than

1 associated with a specific block size, if you
2 understand my question. Aren't the two necessarily
3 intertwined?

4 MR. GUERIN: This is Tom Guerin. I would
5 note that we agree that they both affect transparency
6 in different ways.

7 Matt, I don't know if you wanted to comment
8 on how intertwined they are?

9 MR. JONES: Yes, I'll be happy to do so. The
10 67 percent threshold impacts the information that
11 people can receive, while the 2-day delay would impact
12 how quickly they receive it. So you can definitely see
13 that if you receive information slower, especially for
14 a volatile market and a faster-moving market, the
15 information has less value.

16 It's a separate and somewhat distinct issue
17 that if you receive lower quantity trades only and not
18 the higher quantity trades, you will also receive less
19 price information because, as we found in the
20 literature that supports, the higher transactions tend
21 to have -- the larger quantity transactions tend to
22 have more meaningful price information. So those are

1 really the trades that provide the information that the
2 market is looking to in their price discovery and
3 transparency interests.

4 So you can make the information less valuable
5 by making a delay that's indefinite. You can also just
6 take away that information by not -- or you can make
7 that real time by giving it faster. So as the time
8 delay approaches zero, you'd expect the delay might not
9 be as big an issue. And also, that means that the
10 delay that we set up is most important to consider on
11 its own, but also it's very important to consider that
12 if you get these things wrong, they can exacerbate each
13 other. So the problems aren't just stand-alone
14 problems. If you make the delay too long and the block
15 too small, you haven't just added, you've multiplied
16 problems.

17 COMMISSIONER BERKOVITZ: I think what you
18 just said is the point I was trying to get at and
19 determine whether those have been considered as you
20 evaluated the comments that 48 hours is too long. What
21 did you do in terms of determining -- let me go back.
22 I guess I just want a point of clarification.

1 You said we didn't propose the 67 percent,
2 that number was in the original regulation, that
3 eventually it contemplated that we'd go to that level;
4 correct? Is that why we -- you said we didn't propose
5 it. I just want to follow up on that and try to
6 understand.

7 MR. JONES: We didn't propose it, but we
8 still support it, and we supported it in the sense that
9 the NPRM and the final rule went through this process
10 of considering it, and the information that was
11 gathered then and new information leads us to the same
12 conclusion that the 67 percent threshold is
13 appropriate. That is not with regard to the delay
14 time, and in this sense, when we factor in the delay
15 time, our concern is more that if we were to stick to
16 50 percent, which we did not believe was appropriate,
17 we believe that the harm from the acceptably low
18 threshold would be exacerbated by the longer time
19 delay, and that's what we were stressing in the NPRM
20 and in the open meeting for the NPRM previously.

21 COMMISSIONER BERKOVITZ: Okay, I got it. So
22 you did go through it. You went back and you got the

1 comments, and many commenters said 48 hours was too
2 long. And if I'm stating this incorrectly-- my
3 understanding in reading the document is that many
4 commenters said the 48 hours was too long. You went
5 back and you described in your descriptions to us,
6 previously in the presentation, a number of the swaps
7 that you had taken out of certain categories and
8 adjustments you made, what should be considered options
9 on credit, certain risk-reducing swaps, things like
10 that. You said those should not be counted in order to
11 get an accurate set that could be subject to the
12 shorter delay times at the 67 percent level. Is that
13 correct?

14 So you've gone back and looked at -- to what
15 extent have you gone back and looked at each of the
16 categories to see whether the application of the
17 current delay times to the 67 percent level achieved
18 that appropriate balance that you've talked about?
19 Have you done that on a granular level for each of
20 these categories?

21 MR. JONES: Yes, that's right. For each of
22 these categories we took the 67 percent threshold,

1 which we continue to believe is the right level, and we
2 tried to tailor it to the product and liquidity profile
3 that we believed was appropriate for the specific
4 product, and we did that on a swap category basis.

5 So in the prior rule, a lot of the tension --
6 they didn't have a lot of data, so they really sought
7 to provide threshold block levels for basically the
8 entire market. But the thing is that a lot of the
9 market in terms of product isn't necessarily the same
10 as a lot of the market in terms of volume. So what
11 we've done now is we really focused our thresholds on
12 the high-volume swap categories in parts of the market,
13 and for those products that truly may not trade at all,
14 or may trade once a month, or may trade a couple of
15 times a day but really have low liquidity, we just took
16 them out of the picture for purposes of the calculation
17 because we recognized that the calculation methodology
18 wasn't going to be robust for them and that the 67
19 percent treatment wasn't appropriate for them.

20 So when we saw something that we thought
21 wasn't appropriate to have 67 percent threshold, we
22 definitely addressed that.

1 COMMISSIONER BERKOVITZ: You led into my next
2 question. How do we know whether 50 or 67 percent --
3 how do you determine what the right level is? It's my
4 understanding that we set it at 50 percent, 67 percent,
5 it was set up previously. But when you make this
6 determination for swap category, you mention liquidity.
7 One thing I hear from market participants is they say,
8 well, if you set it at this level, it takes me right
9 now, for this class of instruments, it takes me two
10 hours to shop it around and get the hedge, so I can't
11 do this in 15 minutes.

12 Do we have that kind of data? Do we know
13 what the hedging times are? Do we look at hedging
14 times, or are you looking at liquidity only? Or do you
15 look at a combination? What are the factors that go
16 into the appropriateness of the shorter delays at 67
17 percent?

18 MR. JONES: This is a tough question, and
19 there's no definitive answer for how you measure
20 liquidity, and certainly the people who find themselves
21 doing a hedge trade with a time delay are much more
22 sensitive to the challenges they're facing and perhaps

1 are not able to appreciate the benefits of their trade
2 to the overall market and the indirect benefit to them
3 from everyone engaging in transparency.

4 However, we do have access that goes beyond
5 what these market participants can see. They cannot
6 see the caps trades. They have delays with many of the
7 trades, and sometimes if there's a trade with
8 inaccurate information in it or some noise in a
9 reported field, it's fairly easy for us to evaluate
10 what's going on and to see how things are happening.
11 Commenters often have come to us -- well, not often,
12 but on occasion have said, hey, this costs me money to
13 do this, or this doesn't work well because it was too
14 expensive. We always ask them to show us that example.
15 To date, we have actually not seen a compelling example
16 that someone has provided us. We welcome anyone who
17 can show us one because we'd be very interested in
18 seeing it, of how their trade cost more because of
19 this.

20 That being said, that's not the end of the
21 balancing act. We have to also consider the benefit to
22 the overall market. In terms of that, we look at what

1 the general -- we have done some minimal review of
2 price dispersion. We've looked at things like price
3 lag. We've looked at various other factors, not on a
4 full-study basis, but we've also taken people's
5 comments and we've looked at the academic literature
6 that supports the standards that we're applying, and
7 that's where we came to on it.

8 COMMISSIONER BERKOVITZ: Okay, I appreciate
9 that. And in this effort, did you work with the Office
10 of the Chief Economist, and did they have input into
11 these analyses as well?

12 MR. JONES: The Office of the Chief Economist
13 has definitely reviewed the liquidity profiles of all
14 of the products and had input in recommending the 67
15 percent threshold was still appropriate and supporting
16 that threshold. The Office of the Chief Economist,
17 given the challenges of doing a study, have not engaged
18 in a study on this issue due to the challenges of doing
19 studies and how difficult it can be to take out all the
20 noise. I'm not sure that that's something that we can
21 look forward to in the future. But I'm sure that if it
22 was ever possible, the Office of the Chief Economist is

1 going to be very interested in it.

2 COMMISSIONER BERKOVITZ: Okay, thank you.

3 I want to turn to slightly different aspects
4 of this. One of the comments that we received is a
5 SIFMA comment. I'll just read from the comment letter
6 for the benefit of the audio audience here. SIFMA
7 stated the following, more a concern about what they
8 would consider the high block level size at 67 percent.
9 "Unobtainably high block thresholds will put SEFs at a
10 competitive disadvantage with non-U.S. trading
11 platforms and shift execution and trading business away
12 from the U.S. Given that the Commission issued trading
13 venue equivalency to major EU multilateral facilities
14 and organized trading facilities which permit trading
15 via an RFQ to one, regardless of whether an instrument
16 is subject to the EU mandatory trading obligation,
17 there is a strong likelihood that U.S. firms will be
18 inclined to satisfy their mandatory trading obligation
19 by executing trades on these recognized trading
20 venues."

21 So they're saying, basically, if you do this,
22 this trading is going to move overseas to MTF and OTF

1 that we've given equivalence to, and we'll lose this
2 market.

3 How are we responding to this comment?

4 MR. GUERIN: This is Tom Guerin, Commissioner
5 Berkovitz. So, in the rule, we state that we find that
6 statement to be speculative and we think that it's
7 unlikely to occur. But we understand and we certainly
8 do not intend to create opportunities for arbitraging,
9 competitively disadvantage U.S. SEFs. So in the rule,
10 the Commission commits itself to monitor trading in our
11 markets affected by the rule for any such migration or
12 arbitrage.

13 COMMISSIONER BERKOVITZ: Okay, I appreciate
14 that. I strongly support that language that you put in
15 there, and I think that's the appropriate response.

16 We've granted equivalency to MTFs, and this
17 is part of the effort that we're celebrating today,
18 working with our international regulators, that we
19 recognize their facilities. There are two benefits.
20 One is recognizing an MTF or an OTF, which we just did
21 a number of them in our last meeting. We recognized a
22 number of other facilities, and I supported that.

1 The situation was basically that U.S.
2 companies were having difficulty providing liquidity
3 overseas or participating in non-U.S. markets because
4 the non-U.S. markets were concerned about having to
5 register as SEFs if they had U.S. customers. So we
6 recognized their facilities. We made determinations
7 that their regulatory regime was comprehensive and
8 comparable to ours. That enables U.S. market
9 participants to participate in these non-U.S. pools of
10 liquidity, and I think that's the correct approach and
11 that way we benefit from that approach, as do our
12 counterparts.

13 What that regime is not intended to do is to
14 create an avenue to take U.S. markets and move them
15 overseas to this different regulatory regime. We've
16 been through many rulemakings. We've done this
17 rulemaking, we did our prohibition of name give-up, and
18 fundamentally our swap trading regulations are three,
19 all our transparency requirements for the U.S. markets,
20 as SIFMA identified.

21 I'm glad to see that SIFMA has identified
22 this as a negative consequence to the U.S. markets.

1 But as these market participants are saying this is
2 going to happen, I think we have to take that concern
3 very seriously and make a statement saying that it's
4 not what we intend, we do not want to see this outcome,
5 and we're going to be watching and, if necessary, we
6 would take appropriate action, if indeed it occurs.

7 But I, too, hope, as the Commission is
8 indicating in the preamble language, that it's not our
9 intent, hope that it doesn't occur, think it's remote,
10 but in my view that is not why we're granting
11 recognition to foreign regimes or providing
12 comprehensive and comparable regulation.

13 So, we'll watch for that and hope that it
14 doesn't occur. But, frankly, if we get it right here
15 in the U.S. and we have the appropriate times and
16 appropriate market transparency, it won't happen
17 because people will want to trade in the U.S. and our
18 markets will be strong, and I'm very proud of the work
19 that this agency has done over the years to make our
20 markets so strong and internationally competitive and
21 be really growing in liquidity, and we've seen it even
22 in the turbulent times earlier this year. Our markets

1 have been very resilient in times of stress. The U.S.
2 is still the leading global market in both capital
3 formation and risk management, and it's due to our
4 market participants, and it's due to a solid regulatory
5 foundation.

6 So if we get it right, if we've got this
7 balance right here between real-time price transparency
8 and yet providing appropriate block sizes--and you've
9 put in a tremendous amount of work and done the
10 analysis, and I certainly hope that we got it right--
11 I'm confident enough to go ahead with this final rule
12 on that. But our markets will be strong and liquidity
13 will stay here in the U.S.

14 But should it not, should there be some folks
15 who think it's advantageous to try to get a liquidity
16 pool on us over there, we'll be monitoring it.

17 And let me just ask on the follow up, do we
18 have the capability with swap data? Would we be able
19 to see it? Would we be able to see such a migration of
20 liquidity over to non-U.S. facilities? Do we have that
21 type of insight so we can see it?

22 MR. GUERIN: We do. We have the ability to

1 see the platform on which all registered entities,
2 anyone in our jurisdiction, where they're trading.

3 COMMISSIONER BERKOVITZ: Excellent,
4 excellent. Okay.

5 Well, thank you for the answers. I do have
6 further questions, but I will reserve them for the
7 second round.

8 Thank you, Mr. Chairman.

9 CHAIRMAN TARBERT: Thank you, Commissioner
10 Berkovitz.

11 Well, let's go ahead and begin the second
12 round. I am up, but I think all my questions were
13 answered in the first round. Of course, in my opening
14 statement I expounded upon the reasons why I'll be
15 supporting all three rules.

16 So in the interest of time, I will go ahead
17 and pass the baton back to Commissioner Quintenz.

18 COMMISSIONER QUINTENZ: Thank you, Mr.
19 Chairman. I have one prepared question but maybe a few
20 others, given the discussion that just occurred, and
21 then I'm going to read my statement on this rule.

22 I think as a follow-on to the discussion that

1 just happened, I want to try to clarify what has been
2 said, that commenters supported or opposed when they
3 were discussing the 48-hour threshold, and I want to
4 make it clear, or at least if I'm wrong I can be
5 corrected, that even though some opposed needing to
6 move to 48 hours for everything, including the very
7 highest liquid products, that did not mean that they
8 supported moving to the status quo, and it doesn't mean
9 that they supported moving to 15 minutes necessarily.

10 However, I think they basically only have two
11 choices. One was what was proposed, or the other is
12 the status quo. So I don't believe it's fair to
13 characterize the comments as being overwhelmingly
14 against moving to 48 hours and therefore supporting the
15 status quo, because almost all, if not all save one, of
16 the comment letters that came from participants in the
17 marketplace, as opposed to those who had an opinion
18 that are not in the marketplace, view this as a balance
19 between an increased block threshold and an increased
20 reporting time.

21 I think it's important to think about what we
22 will do and when we will do it if we start seeing

1 negative consequences from this rule, which I believe
2 will happen. I'll get to this in my thing. I don't
3 believe hope is a good strategy for finalizing a rule,
4 and there is a delay that has been built into the
5 effective compliance for the block thresholds to allow
6 for the Commission to review the data, the better data
7 that we will now get because of these rules.

8 So that leads to my first question, which is
9 with the benefit of the new data reported after the
10 compliance date of that data, does DMO expect to review
11 the new block trade thresholds calculated using the 67
12 percent figure to ensure that they are appropriate?

13 MS. TENTE: Right. This is Meghan,
14 Commissioner Quintenz. I think staff views the
15 extended compliance date as a benefit here for the
16 reason you just described. Since it's going to be 30
17 months or two-and-a-half years and Commission staff is
18 supposed to analyze the block levels annually, we're
19 going to go through a few cycles of looking at the data
20 and applying the block thresholds to the data, and at
21 the point when we're receiving the new data we will
22 apply the thresholds to that new data.

1 So the compliance delay actually works with
2 the other changes we're proposing because it gives
3 market participants and the CFTC a chance to implement
4 those changes, and from the benefit of everyone getting
5 on that same page, kind of moving forward from there
6 instead of trying to do everything at once.

7 COMMISSIONER QUINTENZ: Okay. Thank you for
8 that, Meghan. I appreciate that. There is language in
9 the preamble that says the Commission expects to use
10 the new and improved data to analyze the best way to
11 apply the thresholds and make any adjustments, as
12 appropriate. And there's also language that says the
13 Commission intends to take action as necessary to
14 ensure the AMBS's and cap sizes are appropriately
15 tailored. And I think that that is a very, very
16 important thing for us to do.

17 I am disappointed that the 67 percent
18 threshold, which was decided upon a number of years
19 ago, before the regimes took hold and that framework
20 was created, is basically being adopted, in my view,
21 without really a lot of analysis around whether or not
22 it is appropriate. So I think it is very important

1 that the Commission use the benefit of data to ensure
2 that it's making the right determination, because there
3 is going to be a tradeoff here.

4 And I think that leads to my statement. So
5 if everyone could indulge me, I would like to read it
6 at this point.

7 The Commodity Exchange Act specifically
8 directs the Commission to ensure that real-time public
9 reporting requirements for swap transactions, number
10 one, do not identify the participants; number two,
11 specify the criteria for what constitutes a block trade
12 and the appropriate time delay for reporting such block
13 trades; and three, take into account whether public
14 disclosure will materially reduce market liquidity.

15 The Commission has long recognized the
16 intrinsic tension between the policy goals of enhanced
17 transparency versus market liquidity. In fact, in 2013
18 the Commission noted that the optimal point in this
19 interplay between enhanced swap transaction
20 transparency and the potential that in certain
21 circumstances this enhanced transparency could reduce
22 market liquidity "defies precision."

1 I agree with the Commission that the ideal
2 balance between transparency and liquidity is difficult
3 to ascertain and necessarily requires not only robust
4 data but also the exercise of reasonable judgment,
5 particularly in the swaps market, with a finite number
6 of institutional investors trading hundreds of
7 thousands of products, often by appointment.

8 Unfortunately, I fear the balance struck in
9 this rule misses that mark. The final rule before us
10 today clearly favors transparency over market
11 liquidity, with the sacrifice of the latter being
12 particularly more acute given the nature of the swaps
13 market and some of the products and the contracts that
14 will be affected.

15 In the final rule the Commission asserts that
16 the increased transparency resulting from higher block
17 trade thresholds and cap sizes will lead to increased
18 competition, stimulate more trading, and enhance
19 liquidity and pricing. In my view that's wishful
20 thinking and it is no basis upon which to predicate a
21 final rule of this importance.

22 As numerous commenters pointed out, this

1 increased transparency comes directly at the expense of
2 market liquidity, competitive pricing for end users,
3 and the ability of dealers to efficiently hedge their
4 large swap transactions. While the Commission hopes
5 the 67 percent block calculation will bring about the
6 ample benefits it cites, I think the exact opposite is
7 probably the most likely outcome. I remain unconvinced
8 that the move from 50 percent notional amount
9 calculation for blocks to 67 percent notional is
10 necessary or appropriate, and unfortunately the
11 decision to retain the 67 percent calculation, which
12 was adopted in 2013 but never implemented, was not
13 seriously reconsidered in this rule. Instead, in the
14 final rule the Commission asserts that it extensively
15 analyzed the costs and benefits of the 50 percent
16 threshold and the 67 percent threshold when it adopted
17 the phased-in approach in 2013. That was in quotes.

18 But respectfully, I believe that that
19 statement drastically inflates the Commission's prior
20 analysis. I have no doubt that the Commission
21 "analyzed" the costs and benefits in 2013 to the best
22 of its ability. However, the reality is that in 2013,

1 as the Commission acknowledged in its own cost/benefit
2 analysis, "In a number of instances, the Commission
3 lacks the data and the information required to
4 precisely estimate the costs owing to the fact that
5 these markets do not yet exist or are not yet fully
6 developed." That seems like there's a lot of data
7 that's missing to precisely estimate costs, in my view.

8 In 2013, the Commission was just standing up
9 its SEF trading regime, had not implemented its trade
10 execution mandate, and had adopted interim time delays
11 for all swaps, meaning that in 2013, when it first
12 adopted this proposal, no swap transaction data was
13 publicly disseminated in real time. But now, seven
14 years later, the Commission has a robust competitive
15 trading framework and a successful real-time reporting
16 regime that results in 87 percent of interest rate swap
17 trades and 82 percent of credit default swap trades
18 being reported in real time.

19 In light of that sea change that has occurred
20 since 2013, I believe the Commission should have
21 undertaken a comprehensive review of whether the
22 transition to 67 percent block trade threshold was

1 appropriate. In my opinion, the fact that currently 87
2 percent of IRS and 82 percent of CDS trades are
3 reported in real time is evidence that the transparency
4 policy goals underlying the real-time reporting
5 requirements have already been achieved.

6 In 2013, the Commission, quoting directly
7 from the congressional record, noted that when it
8 considered the benefits and effects of enhanced market
9 transparency, the "guiding principle in setting
10 appropriate block trade levels is that the vast
11 majority of swap transactions should be exposed to the
12 public market through exchange trading." The current
13 block sizes have resulted in exactly that, the vast
14 majority of trades being reported in real time.

15 The final rule, acknowledging these
16 impressively high percentages, nevertheless concludes
17 that because less than half of total IRS and CDS
18 notional amounts are being reported in real time,
19 additional trades should be forced into real-time
20 reporting. And again, I reach the exact opposite
21 conclusion. By my logic, the 13 percent of interest
22 rate swaps and 18 percent of CDS trades that currently

1 receive that time delay represent roughly half of
2 notional for those asset classes. In other words,
3 these trades are huge. In my view, these trades are
4 exactly the type of outside transactions that Congress
5 appropriately decided should receive a delay from real-
6 time reporting in giving us this authority.

7 Despite all of these very significant
8 reservations, I'm going to vote today for the real-time
9 reporting rules before the Commission for several
10 reasons.

11 First, I worked very hard to ensure that this
12 final rule contains many significant improvements from
13 the initial draft we were first presented, as well as
14 the original proposal which I supported. And I would
15 like to personally thank the staff for having multiple
16 calls with me and my team and for being open to the
17 solutions that we suggested.

18 For example, in order to make sure the CDS
19 swap categories are representative, the Commission
20 established additional categories for CDS with
21 optionality. In addition, the Commission is also
22 providing guidance that certain risk reduction

1 exercises, which are not arms-length transactions, are
2 not publicly reportable to swap transactions and
3 therefore should be excluded from the block size
4 calculation.

5 Secondly, while most of the changes to Part
6 43 rules will have a compliance trade of 18 months, the
7 new block and cap sizes will not be affected and
8 compliance will not be required until one year later,
9 providing market participants with a 30-month
10 compliance period and the Commission with an extra 12
11 months to revisit this issue with actual data analysis,
12 as good government and well-reasoned public policy
13 demands.

14 This means that when any final block and cap
15 sizes do go into effect for the amended swap
16 categories, it will be with the benefit of cleaner,
17 more precise data resulting from the very important
18 improvements in this Part 43 rule.

19 It is my firm expectation that DMO staff at
20 that time will review the revised block trade sizes in
21 light of that new data to ensure that they are
22 appropriately calibrated for each swap category, just

1 as is written in the preamble.

2 In addition, as required by the rule, DMO
3 will publish the revised block trade and cap sizes a
4 month before they are effective. I am hopeful that
5 with the benefit of time and cleaner data and public
6 comment, the Commission can, if necessary, recalibrate
7 the minimum block sizes to ensure that they, in fact,
8 strike the appropriate balance built into our statute
9 between the liquidity needs of the marketplace and the
10 goals of transparency.

11 To the extent market participants also have
12 concerns about maintaining the current time delays for
13 block trades given the move to the 67 percent
14 calculation, I encourage them to reach out to all of us
15 at any point consistently, to DMO, to myself, to my
16 fellow Commissioners, over the intervening 30-month
17 window. That timeframe is more than enough to further
18 refine the reporting delays, as necessary, for the new
19 swap categories based on sound data.

20 That concludes my statement. I would like to
21 compliment the staff for their hard work on this. I
22 echo what Commissioner Stump had said before, which is

1 that the views that I just expressed should be in no
2 way interpreted as not supporting the wonderful work of
3 the team that has been involved in this very difficult,
4 complicated rulemaking, and I will be voting in favor
5 of that work.

6 Thank you, Mr. Chairman.

7 CHAIRMAN TARBERT: Thank you very much,
8 Commissioner Quintenz.

9 Commissioner Behnam?

10 COMMISSIONER BEHNAM: Thanks, Mr. Chairman.

11 I'm a little torn here, because I think
12 there's been a lot of great discussion so far, and I
13 sort of contemplated reading my statement, which I
14 mentioned earlier will be posted to the website very
15 shortly. Commissioner Berkovitz asked some great
16 questions. Commissioner Quintenz did as well, and I
17 appreciate Commissioner Quintenz' statement.

18 If it's not clear to the public, which I
19 think has been made clear with even just those two,
20 those most recent questions, and then all of our first-
21 round questions, this is a very difficult issue. This
22 has been a very challenging issue for the Commission,

1 for each of us to balance really between, at least in
2 my view, moving the markets towards transparency, which
3 is a key element of our statute, the Dodd-Frank Act,
4 but then also moving in a measured way and ensuring
5 that we're following both the statutory requirements
6 but not undermining the integrity of the marketplace
7 itself, the stakeholders themselves and really
8 disrupting what I think we all share in terms of the
9 best interest of a healthy market.

10 This specifically with respect to the delay,
11 the reporting delay, and the block sizes has been a
12 very, very challenging issue to balance, a lot of
13 individuals and a lot of stakeholders advocating, and I
14 commend all of them for that.

15 I'm going to only ask one question. Many
16 questions were asked, and I had thought about by
17 Commissioner Berkovitz, but then I'll make a brief
18 comment after the question is answered, and it may have
19 been at least in part addressed, but I do want to sort
20 of make a commitment to stakeholders out there before I
21 conclude this second round.

22 I think for the team, just one last question,

1 and it's a holistic question because, like I said, a
2 lot of the more specific questions I asked about the
3 interrelationship between the thresholds and the delay
4 and the decisions that were made between the proposal
5 and this final going in one direction with respect to
6 the delays, a very different direction than the NPRM
7 but also being consistent with the block thresholds.

8 How much consideration and analysis was
9 looked at with these two specific elements of the NPRM
10 together versus separately? I think it seems obvious
11 what the answer will be in this case, but what I found
12 specifically for myself to be very challenging in the
13 past few weeks as we deliberated this, especially I
14 think internally my staff with DMO, and then externally
15 with stakeholders, is that it's easy to
16 compartmentalize each of these issues on their own, but
17 really everything we do in terms of regulating and
18 overseeing markets, and everything stakeholders do in
19 terms of participating in markets, is interconnected,
20 right? And you can't pull one string without really
21 affecting another sort of dynamic or part of the
22 marketplace.

1 So have we decided, has the division decided
2 to change its position with respect to the delay
3 period, 48 hours being the proposal, versus what is
4 currently in place, anywhere between 15 minutes and 24
5 hours? How much consideration in total or just sort of
6 ad hoc was given when you made the decision to continue
7 with the 67 percent move that was originally proposed
8 in the NPRM?

9 MR. JONES: Thank you. This is Matt.

10 So, as we were previously discussing, and
11 I'll just expand on that, the staffs definitely
12 considered the interplay between the current threshold
13 of 67 percent and the proposal to extend the delay to 2
14 days, to 48 hours. And as we discussed in the open
15 meeting for the proposal, DMO made it clear that it
16 supported the 67 percent threshold independent of the
17 time delay, but that the extended time delay and lower
18 threshold would create and exacerbate the transparency
19 problem, and that's what I was mentioning before, that
20 it's not just an additive problem. They complement
21 each other in creating a much bigger problem.

22 So you can imagine that the threshold delay

1 becomes less relevant if the time delay approaches
2 zero. You can also imagine that as the time delay gets
3 greater, the threshold becomes more relevant. However,
4 we have the benefit that it was very easy for us,
5 relatively easy for us to appreciate the balance of 67
6 percent in the context of the current 15-minute delay,
7 because when we're looking at our swap data right now,
8 we get all of it with the block delay of 15 minutes
9 generally, with a number of exceptions, and we get the
10 size of the trade. So we can see what the impact is on
11 pricing for these different size trades. We can see
12 the lots and lots of little trades that don't have good
13 value to them. We can see the trades at 50 percent of
14 the threshold, notionally speaking, and we can see the
15 trades that go above 67 percent, and we can appreciate
16 what the price differences are looking at them between
17 these trades. And we can also account for how many
18 trades are going on in the market that would allow
19 someone to hedge these positions.

20 So it makes it easier for us to be confident
21 of what is an appropriate balance, recognizing that
22 people can differ on that, but it makes us more

1 comfortable with supporting it based on the 15-minute
2 delay, based on the current delay, which in many cases
3 is 15 minutes.

4 COMMISSIONER BEHNAM: Thanks, Matt. Thank
5 you.

6 I would just end with one brief comment. I'd
7 like to associate myself with most of the questions,
8 many of the questions that Commissioner Berkovitz
9 asked, and the answers, specifically regarding
10 international competition and not putting anyone at a
11 competitive advantage by our rule set. I think we have
12 to be very careful about that and ensure that we're
13 doing what we can at all times to ensure that we're
14 supporting U.S. markets, obviously working with our
15 foreign colleagues to ensure a level playing field. We
16 need to be ensuring that we're keeping markets here in
17 the U.S. robust and safe and the strongest in the
18 world, as they have been for decades.

19 And then I'd like to just comment on
20 Commissioner Quintenz' points about moving this
21 forward. I've heard many, many times, both on this
22 issue and on other policy issues, that if we go down

1 this hole or if we go down in this direction, it's
2 going to be hard to change or to pivot, and in at least
3 this specific case where we will be the beneficiaries
4 of more and better data in the weeks to come, I wholly
5 support Commissioner Quintenz's comments about this
6 Commission, knowing that it's a number of months out,
7 and I personally stand ready to listen, of course, and
8 to act, if necessary.

9 This was, like I said, a very, very difficult
10 balance between two binary decisions in many respects.
11 I am erring on the side of supporting this part of the
12 reporting rule as well, erring on the side of
13 transparency and moving the ball forward in what has
14 been a years-long effort, and thank you to the team for
15 this. But if there are mistakes, if there are
16 unintended consequences, without doubt, I think it's
17 incumbent and necessary and it's the responsibility of
18 the Commission to act swiftly to ensure that we're
19 doing our job to fulfill our statutory requirement and
20 to ensure that markets here in the U.S. remain the most
21 robust, healthy, and transparent in the world.

22 Mr. Chairman, I'll stop there. Again, just

1 thanks to the entire team across the board on this
2 very, very big, important rule. It's a big day, I
3 think, for the Commission to be moving forward on the
4 reporting requirements, and I'm hopeful that we'll be
5 successful in all aspects.

6 But again, if we're not, or if we have things
7 to fix in the future, I think the flexibility of the
8 Commission will prove to be effective in addressing
9 stakeholder concerns in the weeks and months ahead.

10 Thank you.

11 CHAIRMAN TARBERT: Thank you very much,
12 Commissioner Behnam.

13 Commissioner Stump?

14 COMMISSIONER STUMP: Thank you, Mr. Chairman.

15 I think all of my colleagues have done a
16 great job of explaining the struggle we had in trying
17 to balance elements of the statutory obligations we
18 have to both provide transparency to the public and
19 also to ensure that things are publicized in a way not
20 to disclose identities and sizes of transactions in
21 order to ensure liquidity is preserved, so I won't
22 belabor that point.

1 And while I can appreciate the compelling
2 comments we received when we proposed 48 hours versus
3 15 minutes as the time delay for displaying block
4 transactions and the need to address that, what I'm
5 struggling with is that even though we didn't propose
6 changes to the progression in the calculation from 50
7 percent to 67 percent, as is established in the
8 underlying regulatory text, the public commented on a
9 move from 50 percent to 67 percent, which was assumed,
10 but they commented in the context of a 48-hour time
11 delay that we presented in the proposal as opposed to a
12 15-minute delay, which is what we're finalizing.

13 So I have just a few questions that I want to
14 ask to help establish for the public or better
15 understand the timeline that we also have to take into
16 consideration. So my first question for the team is
17 when did the Commission originally propose block sizes?

18 MR. GUERIN: It was in March 2012,
19 Commissioner.

20 COMMISSIONER STUMP: Okay. And when did the
21 Commission first mandate swap trading?

22 MR. GUERIN: That was a little over a year

1 later, in May 2013.

2 COMMISSIONER STUMP: And when did the
3 Commission start to receive swap data that was reported
4 to swap data repositories?

5 MR. GUERIN: We started receiving swap data
6 at the very end of 2012, so October or November 2012.

7 COMMISSIONER STUMP: Here again is my
8 concern, and I want to try to make this point as
9 succinctly as possible. So the foundational premise in
10 the rules before us is essentially that a previous
11 Commission decided to apply a certain block threshold
12 with a trigger to later move to a more limiting block
13 number before swap trading was mandated and before
14 receipt of swap data from the swap data repositories,
15 and we are now following that path even in light of the
16 concerns raised by commenters and in the context it was
17 raised by commenters of a 48-hour delay.

18 It is my recollection that both the 50
19 percent and the 67 percent were less than scientific in
20 terms of how and why they were chosen in 2012. So the
21 concern I have is that years ago the Commission decided
22 to move to apply certain statistical calculations, not

1 knowing if P50 or P67 or P75 would yield the results
2 that Congress intended. I cannot say for certain
3 whether the original calculations were appropriate. It
4 was based on limited available data such as public data
5 that was not applicable to our jurisdictional swaps
6 market, and it was constructed well before the
7 regulations had impacted the swap trading mandate, and
8 the data that it should have theoretically relied on
9 from the swap data repositories wasn't even available,
10 much less reliable.

11 So we have based block sizes and the
12 available swap execution method on a calculation
13 contrived without the benefit of data from swap data
14 repositories. Though I may not be happy that the
15 Commission is left to grapple with an arbitrary metric
16 set by a former commission, even they, in 2012 and
17 2013, recognized the importance of considering such
18 information before proceeding. The original block
19 rules that a former commission put in place spoke of
20 the commission updating the threshold once it had one
21 year's worth of reliable data. Has the Commission ever
22 updated the block sizes under those stipulations?

1 MS. TENTE: This is Meghan. The updates
2 proposed in February would have been the first updates
3 under the new threshold, and we recognize that time has
4 passed since the block trade rule was adopted in 2013.
5 I think our response to that is the staff support of
6 the longer compliance period. We recognize that people
7 like to be able to plan, and the annual evaluation
8 requirement suggests some planning they could make, and
9 that didn't happen, and we think at this point that the
10 30-month compliance date with updates to the rules,
11 combined with the new categories and how we tried to
12 approach better calibrating the blocks, all this
13 combined strikes the right balance between what the
14 Commission should be doing, what the Commission is
15 doing now and what the Commission wants to do in the
16 future, all in the motivation of promoting
17 transparency.

18 COMMISSIONER STUMP: Thanks, Meghan. And I,
19 too, hope that we are able, over the course of 30
20 months, to have more reliable information and a better
21 assessment. But I will take the fact that we have not,
22 since the original rules were finalized, updated the

1 block sizes under the stipulations that were presented,
2 I'll just take that to mean that the staff and the
3 Commission did not have reliable data at their disposal
4 prior to -- and may not still. We are very hopeful
5 that we are going to have much more reliable data as a
6 result of the wonderful improvements we're making
7 today.

8 So I just say that all to say that I believe
9 the numbers were arbitrarily selected. I believe there
10 was an acknowledgement at the time that they couldn't
11 be relied upon until we have reliable data. And I
12 believe that we should have considered that in the
13 context, perhaps, of the proposal if there was an
14 inclination to reverse course on the time limitation,
15 which again I support a narrow limitation on the time
16 in order to be more transparent. I am happy to support
17 15 minutes in most cases, but I think the public should
18 have been afforded an opportunity to comment on the
19 entire context.

20 So, just a couple of additional questions.
21 I'm aware that the staff has calculated new block sizes
22 based on the higher block thresholds and the currently

1 available data. The effective date for the block
2 component of the rule is 30 months, as we have
3 discussed. At the same time, the rule text states, and
4 I quote, "The Commission shall establish by swap
5 categories the appropriate minimum block size, and no
6 less than once each calendar year thereafter the
7 Commission shall update the appropriate minimum block
8 sizes."

9 So I really hope we can share with market
10 participants those businesses and operations that are
11 impacted by this policy, the results of our analysis of
12 the higher block thresholds for the new categories
13 based on currently available data. Are we sharing the
14 results of our block calculations concurrently with
15 these rules being published in the Federal Register?

16 MS. TENTE: This is Meghan. I can take that,
17 too.

18 Staff proposed in February the rule changes,
19 and with those we published the draft appropriate
20 minimum block sizes. The intent all along has been to
21 publish the new block sizes under the adopted rule when
22 we adopt the proposal.

1 Now it's a little different because the
2 extended compliance date means that those numbers won't
3 be effective, and the 50 percent thresholds that are in
4 the rule now will continue to be in effect, but we do
5 see the value in sharing that information with market
6 participants so that they can come to us if they have
7 problems or questions and have anything they want to
8 add to it or discuss.

9 I will say I think staff's enthusiasm for
10 this rule does kind of relate to publishing that data
11 and sharing it. The Commission has gotten a lot of
12 data over the past seven years since the rules were
13 adopted. I think this kind of ties into -- we wouldn't
14 say it was unreliable, but if you look at what the
15 Commission has pursued in terms of data over the last
16 eight years, it always seems like the messaging has
17 been we just have to take this one data initiative
18 before we have the reliable data and can start using
19 the data.

20 But for staff, we've been using the data all
21 along, and we hope that this final Part 45
22 standardization is kind of that last step to kind of

1 end that eternal quest for perfect data and show people
2 that we have the data we need and here's how we're
3 going to start using it, in this case to promote
4 transparency.

5 COMMISSIONER STUMP: Well, I share your --
6 it's a chicken and egg problem. I share your quest for
7 perfect data, but I recognize that there have been
8 calculations made in this regard, and I think that to
9 the extent there's value in making those public such
10 that the public has a greater insight into this
11 thinking of the division, I think that is definitely
12 worthwhile.

13 Shifting gears just a little bit, the
14 proposal for this rule has applied the same original
15 methodology from before, but did we change how the
16 calculation was constructed in-between the proposal
17 phase and what we're voting on today?

18 MR. JONES: The calculation was not changed
19 from the proposal and today in terms of how the 67
20 percent threshold is done. We did change the swap
21 categories, and that means that the 67 percent
22 threshold will apply to those new swap categories, not

1 the old ones.

2 COMMISSIONER STUMP: Right. And in addition
3 to the categories, did we make changes within the
4 calculation as to how we will arrive at the adjusted
5 gross notional amount?

6 MR. JONES: We specifically -- are you asking
7 between the proposal and the final, or are you asking
8 about changes --

9 COMMISSIONER STUMP: Yes, yes.

10 MR. JONES: No, no.

11 COMMISSIONER STUMP: From proposed to final.

12 MR. GUERIN: I would just add in here, Matt,
13 the only thing we've done and that we've addressed in
14 the rule is we removed a limited subset of trades based
15 on comments. So we removed trades around roll periods
16 and CDS swaps, and then we also stressed in the
17 preamble to the rule that some types of swaps are not
18 publicly reportable. So I think those were perhaps two
19 changes that might affect the thresholds on the edges.

20 COMMISSIONER STUMP: Okay. So we published
21 the proposed block size alongside the proposal and
22 allowed the public to review and comment. Have we

1 published anything, such as the specific values for
2 each block category, in the interim of how these block
3 sizes are going to change to solicit comments and allow
4 market participants to weigh in on those changes?

5 MS. TENNTE: This is Meghan. I can take this
6 one. We didn't publish any updates in the meantime. I
7 think, with the open rulemaking period, staff is always
8 incredibly careful about what we share to not get in
9 the way of the Commission's process or create any
10 issues. The intent all along has been to share the
11 updated numbers when we adopt the rules. And at the
12 same time, we spent a lot of time explaining what we
13 did in the preamble to the rule, so we hope that people
14 really look at that and try to understand what was the
15 data set we were looking at-- what did we start with,
16 what did we take out, what did we adjust for, what did
17 we change from the proposal to the final-- so they can
18 really trace our steps and get comfortable with the
19 process as much as they can given that it's all
20 internal work product.

21 But I think when we publish the rules in the
22 Federal Register and all this is on the website,

1 they're really going to get a full picture of our
2 approach and what we're trying to do and how we're
3 getting there.

4 COMMISSIONER STUMP: And I would commend the
5 team. I read the preamble, and it is very well
6 written, and I think it does provide clarity as to how
7 we arrived where we are today. I do think -- my own
8 personal view is perhaps all of those things should
9 have been available for the public to consider before
10 we finalized. However, I don't want to take away from
11 the phenomenal work that you all have done and all of
12 the time and attention that was devoted to helping us
13 work through this.

14 That concludes my questions, but I just want
15 to make a quick statement. I believe that the driving
16 force behind the substantial re-write of the swap data
17 reporting rule set is that the staff was not confident
18 in the quality of the data and an overhaul was needed
19 to provide the Commission with complete and accurate
20 information such that we can have data-driven
21 policymaking.

22 I feel strongly that the majority of the

1 matters before the Commission today improve the quality
2 of the data available for our analysis and for the
3 public information, and I hope that we will be better
4 able to review reliable data to inform our analysis
5 pertaining to blocks. That's the good news.

6 Unfortunately, the outcome with regard to
7 blocks is predetermined under this rule. In 30 months
8 the Commission will move forward with making fewer
9 swaps blocks eligible. Perhaps we will find that this
10 is the correct outcome, but in light of the changes
11 made after we proposed the rule, changes to how the
12 calculation is constructed and the additional new
13 categories, I would have preferred to have had the
14 benefit of public comment before going final.

15 I believe the more prudent course of action
16 would be to finalize the remainder of the rules before
17 us today, put aside any Commission action on block
18 changes, thereby holding the line on the time delay to
19 15 minutes, and also preserving 50 percent until the
20 Commission and the public can consider the changes
21 being put forward, and the Commission has the benefit
22 of the new, more reliable data.

1 However, that is not the question before the
2 Commission, and as such, there is no formal mechanism
3 for the public to opine even though we are delaying
4 implementation of the block changes for 30 months.
5 Given that this will likely extend well beyond many of
6 our terms of office, I intend to ensure it is not
7 another instance of kicking the can down the road for
8 someone else on a future Commission to deal with.

9 I would like an agreement here today from the
10 Chairman that he will promptly publish the calculated
11 block sizes and the new categories and convene a
12 roundtable hearing or similar forum with potentially
13 impacted market participants, especially the end users
14 in these markets -- those who manage their kids'
15 college savings and teacher retirement plans -- well
16 before the implementation deadline. It is my view that
17 this should be done through a formal comment period.
18 If that's not to happen, then I wish to arrange an
19 informal comment opportunity to more appropriately
20 discuss these matters.

21 CHAIRMAN TARBERT: This is Chairman Tarbert.
22 I'll jump in, since this was addressed to me.

1 First of all, thank you for that,
2 Commissioner Stump. As I've said before, our data
3 rules today are the result of a robust public comment
4 process, and I believe they will improve the
5 transparency in our markets and, as I said, at the same
6 time accomplish the goals of block trades.

7 But I always think we should be focused on
8 getting better. That's good government, and I'm more
9 than happy to support such a public discussion on the
10 topic of calculating block thresholds both as they
11 apply to real-time reporting, as well as any impact on
12 execution methods. As a responsible regulator, we must
13 adjust the data information. If we see data
14 information and market dynamics evolving, then I think
15 we act accordingly.

16 And to your very specific question of putting
17 out those block sizes with the new categories, those
18 new calculated block sizes, yes, we'll absolutely do
19 that soon after we get the relevant data.

20 COMMISSIONER STUMP: Great. And I thank you
21 for that, Mr. Chairman. And I would also like to seek
22 a commitment from you that after we have a more formal

1 public forum to consider comments, that should the
2 information presented through such public engagement
3 evidence significant changes are warranted to preserve
4 the utility of block transactions, that you will commit
5 to amending the calculations.

6 CHAIRMAN TARBERT: Yes. Just to be clear,
7 when I think about my role as Chairman, I go first to
8 the mission statement, which is the one that all of us,
9 the entire agency, voted on about a year ago, and that
10 mission statement focuses on integrity, resilience, and
11 vibrancy of U.S. derivatives markets. So based on
12 that, I certainly commit to supporting changes to our
13 block trade calculations in the event that further
14 public discussions, data, and anything else show that
15 changes are needed.

16 In fact, this has been my approach throughout
17 my tenure as Chairman. Our recent cross-border rules,
18 for example, this past summer did, in fact, revisit
19 prior regulations in light of new developments, in that
20 case namely Europe and other jurisdictions implementing
21 the G20 standard. So when it comes to block trades
22 specifically and our rules in general, I think we

1 should go where the data takes us. And if the data
2 show that our approach to these final rules needs to be
3 adjusted, then I'll support doing so.

4 COMMISSIONER STUMP: Great. Thank you very
5 much. I would say that I, too, believe that we should
6 constantly be doing a look-back and a review of our
7 role. I think it's what the G20 leaders expected of us
8 when they initially established the parameters for a
9 better regulated swap market.

10 So with that, that concludes my remarks.
11 Again, tremendous gratitude towards the team who worked
12 on these and worked with our team and helped over the
13 course of many years before I arrived at the
14 Commission, but more specifically within the past two
15 years. I very much appreciate the opportunity to work
16 with you all.

17 Thank you, Mr. Chairman.

18 CHAIRMAN TARBERT: Thank you, Commissioner
19 Stump.

20 Commissioner Berkovitz?

21 COMMISSIONER BERKOVITZ: Thank you, Mr.
22 Chairman. I appreciate the discussion that we just

1 had. All the remarks from all the Commissioners I
2 think are very informative. I think there is probably
3 pretty solid agreement going forward as to what we need
4 to do going forward. There is probably some variation
5 in how we got here and why we're here today, but that's
6 appropriate and that's fine. But going forward, I
7 think there's pretty widespread agreement.

8 But I want to go back and just make sure I
9 understand what we're doing today in terms of what
10 happened in the past. I was here at the agency when
11 much of this was being considered initially. At that
12 time, as was noted, there was no data. I mean, what is
13 the appropriate block size? Without any data, the
14 Commission had to choose a number. Fifty percent?
15 Sixty-seven percent? What's the right number you start
16 with?

17 So the Commission put down 50 percent. I
18 don't think the 50 percent had -- at the time, it was
19 the best they could do; they chose it. But there was
20 the thinking that, well, in the interest of
21 transparency, we think we could go up to 67 percent,
22 but we want to get the data, so let's get the data,

1 let's review the data, and it's going to require
2 Commission action to move it up. And it's been a
3 while. So the goal always was to get this balance at
4 the right place. I don't think the Commission in
5 2012/2013 said absolutely, 50 percent is the wrong
6 place, but it didn't know. So it set up this process
7 with the 67 percent.

8 But that sort of is the background for the
9 rulemaking. I want to restate where we are and just
10 confirm that this indeed is the case.

11 The Commission is implementing thresholds
12 adopted in 2013 after notice and comment and that by
13 regulation were to be implemented after an SDR had
14 collected data for a year, a threshold that has been
15 met and surpassed after April 2014.

16 These amendments thus reflect a policy
17 continuation that effectuates the essential substance
18 of what is in originally promulgating Section 43.6. As
19 supported by a refreshed analysis below, including
20 information not available to the Commission in 2013,
21 the Commission continues to view the fundamental policy
22 judgments that supported its 2013 decision to prescribe

1 the 67 percent notional amount calculation after an
2 initial introductory phase-in period, now elapsed and
3 sound. For reasons discussed below, the Commission
4 does not find comments to the contrary to be
5 persuasive.

6 So, is it correct that we just didn't accept
7 the 67 percent, said we've got to do it? From the
8 preamble here, "supported by a refreshed analysis
9 described below, the Commission continues to view it as
10 appropriate." We've considered the comments and
11 decided that the contrary comments were not persuasive.
12 We did the analysis, in other words. That's what I was
13 talking about in the first round. We took 67 percent,
14 how does this apply to essentially what are the current
15 timeframes, and is that appropriate, and we made
16 numerous adjustments. We made numerous adjustments to
17 the categories to which swaps are included, and even
18 excluding certain types of swaps.

19 So there is analysis behind what we're doing.
20 We're just not taking 67 percent and saying, well, they
21 decided that in 2013. Is that correct?

22 MS. TENTE: Right. This is Meghan. I think

1 that summarizes exactly what we're trying to explain,
2 the preamble. You know, there is revisiting the 2013
3 rule and completely redoing it, and redoing an analysis
4 to understand where they came out, at 50 and 67, that
5 phase-in approach, and we considered that when we
6 developed this rulemaking. But ultimately we decided
7 to stick with that approach and instead look forward to
8 how we could improve that instead of re-questioning and
9 re-analyzing that analysis.

10 And so the preamble, it does get confusing,
11 but we are trying to focus on how we can improve it and
12 better calibrate what the rule tells us to do, and
13 that's where a lot of the work comes in, especially
14 with those CDS options and making sure that the levels
15 are right and not inflated. We are trying to avoid
16 causing any problems. We recognize that this is a
17 change and it might be a significant change, but we're
18 trying to find the right way to make sure that change
19 doesn't cause unintended consequences or be bigger than
20 it has to be.

21 COMMISSIONER BERKOVITZ: Okay, thank you.

22 We actually got some comments -- did we get

1 some comments that 67 percent was too low? Some
2 commenters commented on that?

3 MS. TENTE: Right, we did. There were a few.

4 COMMISSIONER BERKOVITZ: I view what we're
5 doing today as a continuum. Given the directive in the
6 Dodd-Frank Act for real-time reporting and appropriate
7 block sizes, the Commission took an initial stab at it
8 a number of years ago, 50 and 67 percent, and said
9 we're going to look at the data and then adjust this in
10 2014. We're a little beyond that now, and so it's
11 time. We're a lot beyond that now, so it's time for us
12 to address this again and look at the most recent data,
13 analyze it and see what are the appropriate timeframes
14 that go with that data. And seeing this document, I'm
15 supportive of proceeding to a final rule today on the
16 basis of the analysis that the staff has done.

17 Tom, as you described, we have data that
18 other folks haven't seen, the interested community.
19 The market participants haven't seen this analysis yet.
20 So we'll put it out there and we'll get comments on it.

21 But today, just like 2013, the initial rule
22 wasn't the end, and we're going to analyze more data.

1 Today is not the end either. I fully support
2 everything the other Commissioners have talked about,
3 Commissioner Quintenz, Commissioner Stump, Commissioner
4 Behnam, what the Chairman just said, about starting as
5 soon as this goes out, have people comment on it,
6 continuing to analyze that data.

7 This whole process from the beginning is
8 using the best available data to get the best available
9 real-time reporting requirements and the best available
10 block sizes that will optimize all these
11 considerations. It didn't end with the 2013 rule; it
12 doesn't end with this rule. It's going to go forward.
13 As Commissioner Stump said, this isn't going to end
14 with everybody's term in office. Well, 30 months,
15 believe it or not, is still within my term of office.

16 So I'm going to be living with this thing,
17 and I'm fully committed to that process that you've
18 outlined. So I fully support the continued use of the
19 best available data to continually refine Commission
20 decisions, and I think also the discussion today I
21 think is one reason, what I talked about earlier, we
22 have such strong markets.

1 This Commission, as far as I've been
2 associated with it, both working at the Commission and
3 observing it -- and I hope it's shared, I believe it's
4 shared -- we want to get it right. Everybody on the
5 Commission is interested in making our markets vibrant
6 and strong for the benefit of the American economy, not
7 just for the people that depend on these markets to
8 manage risk, but we need a strong, vibrant financial
9 system that provides liquidity for that. So we need
10 the liquidity providers to be able to do it, but we
11 need on the other hand the people who take the
12 liquidity to get really good pricing.

13 I think we've done a pretty good job so far
14 of getting that balance right, and that's why our
15 markets are so strong. That's why derivative markets
16 are strong and the industry has confidence in this
17 agency's ability to get it right.

18 So we're going to proceed, and we're going to
19 take the data, and we're going to get it right. I'm
20 not saying we got it wrong today. I think we got it
21 right, but we can improve it with better data, of
22 course. That's always the case.

1 So I'm fully committed to that, working with
2 all my colleagues, whoever is here whenever I'm here,
3 towards this goal, and the staff as well.

4 Thank you, Mr. Chairman, and I thank my
5 colleagues.

6 CHAIRMAN TARBERT: Thank you very much,
7 Commissioner Berkovitz.

8 Before we, I guess, proceed to a vote, let me
9 ask if anyone in DMO has any further comments or
10 responses.

11 MS. DEWITT: This is Dorothy DeWitt again,
12 Director of Division of Market Oversight. I did want
13 to close by saying that, as you noticed, I've remained
14 silent throughout the bulk of this presentation and the
15 Q&A session. As I mentioned at the beginning in my
16 initial remarks, that's in large part because I think
17 the team that did the work and that has the expertise
18 is best positioned to answer your questions, and also
19 because there's the opportunity to be able to defend
20 the rule that they've worked so hard on.

21 But it's also not insignificantly driven by
22 my desire today to listen to the discussion and the

1 debate on this, knowing ahead of time that this would
2 be a difficult and challenging issue that has
3 significant implications in a number of different ways.

4 I wanted to just clarify, saying that on
5 behalf of the DMO, we as a division want to associate
6 ourselves with the Chairman's remarks. But as a
7 reasonable regulator, in addition at the staff level
8 supporting the Commission, we agree that we must
9 analyze and adjust, as appropriate, as data and
10 information and market dynamics evolve, our policies,
11 our rules, and our other activities and actions that we
12 take. We hope that we've developed over the years and
13 have a track record of being nimble and able to move
14 swiftly and flexibly, but we are committed to doing so
15 and continuing to do so to ensure the integrity,
16 resilience, and vibrancy of the market.

17 So I want to thank the Commissioners for
18 having a robust debate and for helping inform us as we
19 go forward and think about this and receive data in
20 approaching the months as they come. Thank you very
21 much.

22 CHAIRMAN TARBERT: Thank you, Dorothy.

1 Okay. Is there any Commissioner who is not
2 prepared to vote?

3 (No response.)

4 CHAIRMAN TARBERT: Okay. Hearing none, Mr.
5 Kirkpatrick, would you please call the roll for the
6 votes to adopt each of the three final swap data
7 reporting rules?

8 MR. KIRKPATRICK: Thank you, Mr. Chairman.
9 This is the Secretary speaking.

10 The part of the motion now before the
11 Commission is on the adoption of the final rule on
12 amendments to Part 43 Real-Time Public Reporting
13 Requirements.

14 Commissioner Berkovitz?

15 COMMISSIONER BERKOVITZ: Commissioner
16 Berkovitz votes aye.

17 MR. KIRKPATRICK: Commissioner Berkovitz
18 votes aye.

19 Commissioner Stump?

20 COMMISSIONER STUMP: Commissioner Stump votes
21 aye.

22 MR. KIRKPATRICK: Commissioner Stump votes

1 aye.

2 Commissioner Behnam?

3 COMMISSIONER BEHNAM: Commissioner Behnam

4 votes aye.

5 MR. KIRKPATRICK: Commissioner Behnam votes

6 aye.

7 Commissioner Quintenz?

8 COMMISSIONER QUINTENZ: Commissioner Quintenz

9 votes aye.

10 MR. KIRKPATRICK: Commissioner Quintenz votes

11 aye.

12 Chairman Tarbert?

13 CHAIRMAN TARBERT: Chairman Tarbert votes

14 aye.

15 MR. KIRKPATRICK: Chairman Tarbert votes aye.

16 Mr. Chairman, on this matter, the ayes have

17 5, the noes have zero.

18 CHAIRMAN TARBERT: Thank you very much.

19 I'm pleased to announce that the ayes have it

20 and the motion to adopt the Part 43 final rule is

21 hereby approved.

22 MR. KIRKPATRICK: The next part of the motion

1 now before the Commission is on the adoption of the
2 final rule on amendments to the Part 45 Swap Data
3 Recordkeeping and Reporting Requirements.

4 Commissioner Berkovitz?

5 COMMISSIONER BERKOVITZ: Commissioner
6 Berkovitz votes aye.

7 MR. KIRKPATRICK: Commissioner Berkovitz
8 votes aye.

9 Commissioner Stump?

10 COMMISSIONER STUMP: Commissioner Stump votes
11 aye.

12 MR. KIRKPATRICK: Commissioner Stump votes
13 aye.

14 Commissioner Behnam?

15 COMMISSIONER BEHNAM: Commissioner Behnam
16 votes aye.

17 MR. KIRKPATRICK: Commissioner Behnam votes
18 aye.

19 Commissioner Quintenz?

20 COMMISSIONER QUINTENZ: Commissioner Quintenz
21 votes aye.

22 MR. KIRKPATRICK: Commissioner Quintenz votes

1 aye.

2 Chairman Tarbert?

3 CHAIRMAN TARBERT: Chairman Tarbert votes

4 aye.

5 MR. KIRKPATRICK: Chairman Tarbert votes aye.

6 Mr. Chairman, on this matter, the ayes have

7 5, the noes have zero.

8 CHAIRMAN TARBERT: Thank you.

9 I'm pleased again to announce that the ayes
10 have it and the motion to adopt the Part 45 final rule
11 is hereby approved.

12 MR. KIRKPATRICK: The last part of the motion
13 now before the Commission is on the adoption of the
14 final rule on amendments to the Regulations Relating to
15 Certain Swap Data Repository and Data Reporting
16 Requirements.

17 Commissioner Berkovitz?

18 COMMISSIONER BERKOVITZ: Commissioner
19 Berkovitz votes aye.

20 MR. KIRKPATRICK: Commissioner Berkovitz
21 votes aye.

22 Commissioner Stump?

1 COMMISSIONER STUMP: Commissioner Stump votes
2 aye.

3 MR. KIRKPATRICK: Commissioner Stump votes
4 aye.

5 Commissioner Behnam?

6 COMMISSIONER BEHNAM: Commissioner Behnam
7 votes aye.

8 MR. KIRKPATRICK: Commissioner Behnam votes
9 aye.

10 Commissioner Quintenz?

11 COMMISSIONER QUINTENZ: Commissioner Quintenz
12 votes aye.

13 MR. KIRKPATRICK: Commissioner Quintenz votes
14 aye.

15 Chairman Tarbert?

16 CHAIRMAN TARBERT: Chairman Tarbert votes
17 aye.

18 MR. KIRKPATRICK: Chairman Tarbert votes aye.

19 Mr. Chairman, on this matter, the ayes have
20 5, the noes have zero.

21 CHAIRMAN TARBERT: Thank you very much.

22 The ayes have it, and the motion to adopt the

1 Part 49 final rule is hereby approved.

2 Congratulations, everyone, particularly those
3 that worked on the rule from our staff.

4 Well, now we are going to move to our second
5 agenda item, which is our final alternative compliance
6 rules for DCOs. We will hear a staff presentation, and
7 then after that presentation Commissioners will be able
8 to ask questions about the rule.

9 At this time, I'd like to welcome the
10 following staff for their presentation on today's Final
11 Rule for Alternative Compliance for DCOs.

12 From the Division of Clearing and Risk,
13 Director Clark Hutchison; Deputy Director Eileen
14 Donovan; and Associate Director Tad Polley.

15 Clark, Eileen, and Tad, the floor is yours.

16 MR. HUTCHISON: Hello. Can you hear me okay?

17 CHAIRMAN TARBERT: Loud and clear.

18 MR. HUTCHISON: Thank you, Mr. Chairman.

19 My name is Clark Hutchison, and I am the
20 Director of the Division of Clearing and Risk.

21 Good afternoon, Mr. Chairman.

22 Good afternoon, Commissioners, and hello,

1 fellow staff. Literally, long time no see.

2 I'm addressing you from my home in New
3 Jersey, and I extend to you my warmest regards and
4 sincere wishes of good health. I'm hoping that it
5 won't be too long before we can once again be
6 considering rulemakings face to face.

7 This afternoon I am pleased, along with my
8 very able staff, to be presenting a final rule that
9 will establish an alternative compliance framework for
10 registered DCOs organized outside of the United States.
11 Very simply stated, this rule will allow a non-U.S. DCO
12 that clears swaps for U.S. persons to meet the CFTC's
13 DCO core principles by complying with its home
14 country's regulatory regime as long as that non-U.S.
15 DCO has not been determined by the Commission to pose
16 substantial risk to the United States financial system.

17 In preparing this final rule, we in the
18 Division of Clearing and Risk have received invaluable
19 assistance from our CFTC colleagues. So I, along with
20 my staff in DCR, Eileen Donovan, August Imholtz,
21 Abigail Knauff, Joe Opron, and Tad Polley, would all
22 like to extend their sincere appreciation to our

1 colleagues in the Office of the General Counsel and the
2 Office of the Chief Economist and the Office of
3 International Affairs and in the Division of Market
4 Oversight for their time, effort, and very patient
5 assistance in preparing this rulemaking. To you, thank
6 you all again.

7 Now I will ask my colleague in DCR, Tad
8 Polley, to present this final rule to the Commission.

9 Tad, over to you, please.

10 MR. POLLEY: Thank you, Clark.

11 Good afternoon, Mr. Chairman and
12 Commissioners. Thank you for the opportunity to
13 present. My name is Tad Polley. I'm an Associate
14 Director in DCR's Clearing Policy Branch, and I will be
15 providing an overview of the final rule that you're
16 considering today, including some changes from the rule
17 as initially proposed.

18 In July of 2019, the Commission proposed
19 changes to its registration and compliance framework
20 for DCOs affecting DCOs organized outside of the United
21 States. The changes would permit eligible DCOs to be
22 registered with the Commission but comply with the core

1 principles for DCOs set forth in the Commodity Exchange
2 Act as is required for registered DCOs through
3 compliance with its home country's regulatory regime,
4 subject to certain conditions and limitations.

5 Five of the 15 DCOs currently registered with
6 the Commission are organized outside of the United
7 States. These DCOs are registered or have comparable
8 status in their respective home countries, which means
9 they are required to comply with the Commodity Exchange
10 Act and Part 39 of the Commission's regulations, as
11 well as their home country regulatory regimes, and they
12 are subject to oversight by both the Commission and
13 their home country regulators.

14 There is significant variation among these
15 DCOs, however, regarding the extent to which they clear
16 swaps for U.S. persons. The final rule seeks to allow
17 for greater deference to foreign jurisdictions so as to
18 reduce overlapping supervision and regulatory
19 inefficiencies while retaining the Commission's direct
20 oversight over non-U.S. DCOs that are of heightened
21 supervisory interest due to the extent of their U.S.
22 clearing activity.

1 To assist the Commission's assessment of its
2 supervisory interest in a particular non-U.S. DCO, the
3 final rule establishes a definition of "substantial
4 risk" based on the risk the non-U.S. DCO presents to
5 the U.S. financial system, as well as respect for
6 international comity.

7 Under the substantial risk test, registration
8 with alternative compliance is generally not available
9 to a non-U.S. DCO that satisfied the two prongs of the
10 test: first, it holds 20 percent or more of the
11 required initial margin of U.S. clearing members for
12 swaps across all registered and exempt DCOs; and
13 second, 20 percent or more of the initial margin
14 requirement for swaps at the DCO is attributable to
15 U.S. clearing members.

16 The definition further provides, however,
17 that the Commission may exercise discretion in
18 determining whether the DCO satisfies the test in
19 certain close cases that I will return to shortly.

20 Under the final rule, a non-U.S. clearing
21 organization that does not pose substantial risk will
22 be eligible for registration as a DCO subject to

1 alternative compliance if: one, the Commission
2 determines that the clearing organization's compliance
3 with its home country regulatory regime would satisfy
4 the DCO core principles; two, the clearing organization
5 is in good regulatory standing in its home country as
6 represented in writing by its home country regulator;
7 and three, a Memorandum of Understanding or similar
8 arrangement satisfactory to the Commission is in effect
9 between the Commission and the clearing organization's
10 home country regulator.

11 If an application is approved by the
12 Commission, the DCO will largely be permitted to comply
13 with its home country regulatory regime rather than the
14 Commission regulations in Subpart B of Part 39.
15 Because it will be permitted to clear swaps for
16 customers through registered FCMs, it will, however, be
17 required to fully comply with the Commission's customer
18 protection requirements.

19 The DCO will also be required to comply with
20 the swap data reporting requirements in Part 45 of the
21 Commission's regulations and with certain ongoing and
22 event-specific reporting requirements that are more

1 limited in scope than the reporting requirements for
2 existing DCOs.

3 Under the final rule, a new Subpart D of Part
4 39 will contain the eligibility criteria, conditions,
5 and reporting requirements applicable to registered
6 DCOs subject to alternative compliance.

7 After considering the comments received in
8 response to the proposal, the final rule before the
9 Commission adopts the amendments largely as proposed.
10 Many of the changes from the proposal are non-
11 substantive clarifying revisions, but I would like to
12 take a moment to briefly discuss two changes contained
13 in the final rule.

14 First, several commenters expressed concern
15 about the Commission exercising discretion on the
16 substantial risk determination as a whole based on only
17 one of the two prongs of the substantial risk test
18 being close to the applicable 20 percent threshold.
19 The final rule clarifies that the Commission will only
20 exercise discretion with respect to any individual
21 prong that is close to a threshold. This was what was
22 intended in the proposed rule as well, but the final

1 rule was revised to clarify this point.

2 Second, the titles of proposed Subpart D and
3 regulation 39.51 were modified to change the term
4 "alternative compliance" to the more descriptive
5 "compliance with core principles through compliance
6 with home country regulatory regime." This change was
7 made to underscore in the text of the amendments that
8 DCOs that operate pursuant to this framework are
9 registered DCOs that comply with the DCO core
10 principles.

11 We hope that this information has been
12 helpful, and we'd be happy to answer any questions that
13 you have. Thank you.

14 CHAIRMAN TARBERT: Well, thank you very much
15 for that informative presentation and terrific work on
16 this rulemaking.

17 To begin the Commission's discussion and
18 consideration of the rulemaking, I'll now entertain a
19 motion to adopt the final rule on Registration with
20 Alternative Compliance for Non-U.S. Derivatives
21 Clearing Organizations Under Parts 39 and 140 of the
22 CFTC's Regulations.

1 COMMISSIONER BERKOVITZ: So moved.

2 COMMISSIONER BEHNAM: Second.

3 CHAIRMAN TARBERT: Thank you.

4 I'd now like to open the floor for the
5 Commissioners to ask any questions about the data
6 rules. And again, we'll go by seniority, so I will
7 begin.

8 I'd just like to make sure I frame this for
9 the public who may be listening in, so I'll ask simple
10 yes/no questions, if at all possible, if I'm able to
11 ask.

12 So, first of all, we've got a bunch of DCOs
13 out there. A number of them are based in the United
14 States, but a number of them are based, as you said,
15 outside the United States, and they want to be full-
16 service clearing organizations with U.S. members and
17 U.S. customers. And in order to do that, they've got
18 to register with us; correct?

19 MR. HUTCHISON: Yes.

20 CHAIRMAN TARBERT: Excellent. And right now,
21 if you register with the CFTC as a full-service DCO,
22 you obviously have to comply with what we call our core

1 principles; correct?

2 MR. HUTCHISON: Yes.

3 MR. POLLEY: That's right.

4 CHAIRMAN TARBERT: And those are spelled out
5 in the CEA; correct?

6 MR. POLLEY: Yes.

7 MR. HUTCHISON: Yes.

8 CHAIRMAN TARBERT: And in addition to that,
9 we have detailed regulations that implement all, or at
10 least most, of those core principles, and those are
11 contained mainly in Part 39, and also pieces in Part
12 140; correct?

13 MR. POLLEY: That's right.

14 CHAIRMAN TARBERT: Okay. But the question
15 arises, then, if these rules are really detailed and
16 you're a foreign DCO, you probably also have detailed
17 rules and regulations in your own jurisdiction, just
18 like our DCOs in our jurisdiction may want to have
19 foreign members, and they would be subject potentially
20 to all the rules and regulations in those other
21 jurisdictions; right?

22 MR. POLLEY: Correct.

1 CHAIRMAN TARBERT: And so what we're doing
2 here is actually essentially as follows. We're saying,
3 number one, if you are a really big DCO and you pose a
4 substantial risk to the United States, and I would say
5 obviously if you rise to the level where you pose
6 actually a systemic risk to the United States -- and
7 right now we don't have any foreign clearinghouses that
8 pose a systemic risk, at least we have not adjudged
9 that through the FSOC, but we certainly I think have
10 maybe one or more that pose a substantial risk -- to
11 those clearinghouses we're saying, you know what,
12 because you're big, you're important to the U.S.
13 financial system, if you register with us, you've got
14 to comply with not only our core principles but the
15 rest of our rules and regulations; correct?

16 MR. POLLEY: Yes, if they satisfy the entire
17 substantial risk test. That's correct.

18 CHAIRMAN TARBERT: Right. Okay. But if
19 you're not a substantial risk and you're based
20 overseas, then what we're saying is, hey, if you've got
21 a regime that effectively satisfies our core
22 principles, then we're going to allow you to use your

1 home country rules and regulations and not have to
2 comply with all of our detailed rules and regulations,
3 assuming that for every core principle there is a
4 foreign counterpart.

5 MR. POLLEY: Yes, for the most part. There
6 will be some requirements that we'll still be insisting
7 upon, most notably in the customer protection area.

8 CHAIRMAN TARBERT: Correct. Okay. Yes, and
9 I'm aware of those. But that's essentially what we're
10 doing here.

11 MR. POLLEY: Right.

12 CHAIRMAN TARBERT: And this is something that
13 I think makes sense, because we're essentially offering
14 comity to foreign jurisdictions where they have rules
15 and core principles that are similar to ours and often
16 lead to the same exact outcome. So I think this is a
17 sensible approach. I don't think I have any questions
18 at this point. I just want to make sure I tease it out
19 so anyone that's listening can understand at a high
20 level what we're trying to accomplish.

21 So again, I'm very pleased to support this
22 rule. I know a lot of effort went into it. And I also

1 want to thank former Chairman Giancarlo. This rule was
2 actually proposed at the very end of his tenure as
3 Chairman. I was happy to sort of pick it up, make
4 further refinements and help us get into the position
5 that we are today to finalize it.

6 So, with that, I will hand it over to
7 Commissioner Quintenz.

8 COMMISSIONER QUINTENZ: Thank you very much,
9 Mr. Chairman. I think this rule, as are and were the
10 swap data rules and the forthcoming final proposal,
11 hopefully to be finalized, on bankruptcy, I think
12 really make this a great day for this Commission.

13 I would like to, first of all, echo your
14 acknowledgement and recognition and gratitude to former
15 Chairman Giancarlo for thinking of this framework and
16 proposing it, and to the former DCR Director Brian
17 Bussey, who put a lot of thought and work into doing
18 it. But certainly notably to Clark and Eileen and Tad
19 for continuing to work on this and talk about it with
20 me and my team and all of us at the Commission to get
21 this across the finish line today; and to compliment
22 you, Mr. Chairman, for taking up that torch and

1 finalizing something that I think really is significant
2 because it, in my view, very appropriately recognizes
3 when something poses that direct and significant risk
4 to the United States through that substantial risk
5 test, which we can all debate about, but eventually
6 lines have to get drawn where they are, but I think we
7 ended up at the right spot.

8 I think when this was initially proposed, I
9 think there could have been some abroad that may not
10 have viewed it as being sincere, or may have viewed it
11 as part of a negotiation strategy. I have always
12 viewed it as something that made good sense and good
13 policy.

14 As we think about the global swaps market and
15 how it operates and entities that play a significant
16 role in furthering that liquidity and providing
17 protections for customers and the financial system and
18 allowing risk transfer to occur, I think we can think
19 about the appropriate way to regulate that in a few
20 ways.

21 One is to try to harmonize with all
22 international regulations so that each entity can

1 follow the same set of rules. I think that's really
2 too far-fetched of an idea given how much discussion
3 and positive disagreement there can be within our own
4 Commission on some of these rules and regulations and
5 procedures and policies.

6 But the other way, which I think this rule
7 significantly embraces and actually lead the way on,
8 was showing deference to the expertise of the foreign
9 regulator to manage the entity in its jurisdiction with
10 appropriate information sharing and cooperation that I
11 think is also enshrined in this rule, along with MOUs
12 that we have with existing regulators and that we're
13 going to continue to work on and develop and publish
14 with other regulators. I think that's really the right
15 way to think about this. It's not to abdicate our
16 responsibility but it's to recognize the expertise of
17 others and their sovereignty while ensuring that they
18 are cooperating closely with us and we with them.

19 So I'd like to recognize that, and let me
20 just ask a couple of quick questions to help drive some
21 of those points home.

22 As we look abroad -- and, Mr. Chairman, you

1 described that there are a number of entities out there
2 that are DCOs. Some are large and some are small, and
3 some have different regulatory constraints that may
4 qualify or may not qualify for this kind of treatment.
5 But does DCR believe, or is there a ballpark estimate
6 of how many DCOs abroad would be eligible to elect this
7 alternative status that we adopt today?

8 MR. HUTCHISON: Tad, do you want to go ahead?

9 MR. POLLEY: Sure. I think we're not sure
10 exactly what we're going to get. I think that there is
11 one that we expect probably will seek this. There are
12 two more that are eligible that may or may not.

13 COMMISSIONER QUINTENZ: Thank you. And the
14 reason I ask that is because while that may seem --
15 one, two, or three may seem like a small number. The
16 fact of the matter is that they will likely represent a
17 significant amount of activity and opportunity that can
18 be brought into this regime, and those will be located
19 in jurisdictions of significant importance not only for
20 us and our relationships abroad but in terms of more
21 free market capitalism and appropriate risk transfer.

22 So I think it's important to acknowledge that

1 anyone who seeks to apply and gets recognized under
2 this, if they are eligible, can constitute a
3 significant achievement under this framework. So I
4 think it makes it very worthwhile.

5 I guess from more of a CFTC-specific view,
6 can someone maybe discuss how the alternative
7 registration framework that we're hopefully adopting
8 today could decrease the burdens for DCR staff in
9 approving new DCO registrants and honoring compliance
10 with existing DCO regulations?

11 MR. HUTCHISON: Sure. Commissioner Quintenz,
12 it's Clark Hutchison. As you know, my team in DCR does
13 do a lot of work with DCOs generally as part of our
14 remit, and I think in adopting this rule today the team
15 will have fewer rule submissions and annual compliance
16 reports to review. That would be number one. I think
17 that applications for registration with alternative
18 compliance will be simpler to review than applications
19 to become a registered DCO generally. Our exam team
20 will have fewer quarterly and annual financials to
21 review, and all of this will end up allowing us to
22 better focus on the DCOs that we supervise.

1 So the advantage of allowing comity with our
2 fellow regulators in other jurisdictions, doing much of
3 the work that they would do anyway, and we taking
4 advantage of their good work, allows us to have to do
5 less work ourselves in an appropriate way, and also
6 allows us to focus on things that we might need to
7 focus on more in times of volatility, like in April and
8 May. So all in all, this would be very helpful to us
9 in our workload.

10 COMMISSIONER QUINTENZ: Thank you, Clark. I
11 think that's a really important point, that not only
12 does this right-size the regulatory burden on the
13 foreign marketplace or the foreign registrant who could
14 take advantage of this, but I think it right-sizes the
15 regulatory resources that we have at the Commission to
16 focus on our own markets, which represent a significant
17 amount of the global swaps market.

18 With that, Mr. Chairman, I don't have any
19 further questions. I will release a statement in
20 strong support of this rule, and I'm so grateful to you
21 and to the team for bringing this forward. Thank you.

22 CHAIRMAN TARBERT: Thank you very much,

1 Commissioner Quintenz.

2 Commissioner Behnam?

3 COMMISSIONER BEHNAM: Thanks, Mr. Chairman.

4 And thanks to the entire team for your work on this.

5 It's certainly a long time coming. I appreciate your
6 work and commitment.

7 I think, as the Chairman pointed out early on
8 this morning or earlier in the meeting, this is a
9 significant part of a larger context of the U.S. and
10 the CFTC trying to continue our dialogue with our
11 foreign counterparts and strengthen our relationships
12 to better support our global markets.

13 With that, just a few questions for the team.
14 You had mentioned that it's hard to draw lines in the
15 sand, and there are always going to be questions about
16 where we choose to put the stake down, but in this case
17 it's the 20 percent line, and I'm sure this was
18 discussed at the proposal back in July of 2019. But if
19 you don't mind, just for the sake of this discussion
20 before we vote on this matter, can you share with us
21 the relevance of the 20 percent threshold?

22 And specifically in context, I think there is

1 a recognition in the preamble that there are other
2 factors which we will consider as a Commission. So
3 when you have a line drawn at 20 but then you have
4 other factors, how does that all come together in order
5 to make a clean decision about what's in and what's
6 out?

7 MR. HUTCHISON: Let me start and --

8 MR. POLLEY: I can --

9 MR. HUTCHISON: Oh, go ahead, Tad, if you'd
10 like to. Go ahead.

11 MR. POLLEY: Okay. The other factors come
12 into play when you have a case that's close to one of
13 the thresholds. So we're acknowledging that you
14 shouldn't have a hard line where 20.1 percent generates
15 one result and 19.9 generates another. So, in
16 recognition of that, the Commission's discretion comes
17 into play if you have cases that are somewhat close.

18 There are a number of factors that we can
19 look at that are not captured. While we think that the
20 initial margin numbers that are used in a substantial
21 risk test primarily are the most significant thing that
22 we're looking at, we acknowledge there could be other

1 factors that could come into play, and one example
2 would be if a DCO, while it's not going to meet the 20
3 percent threshold for U.S. clearing activity across all
4 DCOs, it might be very big in one particular product,
5 and that could potentially raise issues for us, and we
6 want to be able to account for that in determining the
7 outcome of the test. So that's how the discretion kind
8 of fits in with the bright-line thresholds that are
9 kind of the primary ingredient.

10 COMMISSIONER BEHNAM: Thanks, Tad. A quick
11 follow-up. You used the example of 19.9 and 20.1, and
12 I think in a situation like that, it certainly merits
13 other factors to push the decision in one direction or
14 another. But I could easily see a market participant,
15 a DCO who falls at 23 percent or 22 percent, nothing
16 that's so clean and easy, that's so tight to the 20,
17 coming in and trying to leverage the factors to push
18 that decision in a direction that would be more
19 favorable to them.

20 So have you thought about are we truly
21 drawing a hard line? And if not, if we're going to be
22 flexible on that line, what does that really mean in

1 terms of where we stop considering outside factors and
2 just stick to our guns, so to speak, and truly have a
3 hard line in the sand?

4 MR. POLLEY: Yes, that's a very good
5 question. The way that we describe it in the preamble
6 is it's going to be somewhat of a sliding scale. So as
7 you get further away from the 20s, you're going to have
8 to have a lot more in the way of these additional
9 factors in order for the discretion to end up making
10 the decision at the end of the day.

11 So while I know that that introduces -- I
12 mean, we're trying to primarily have a test that can be
13 implemented fairly easily and predictably while still
14 allowing the Commission to consider these other
15 factors. That does introduce, as you're getting at, it
16 introduces some element of imprecision, but we think
17 it's appropriate that the Commission be able to
18 consider factors other than the primary initial margin
19 numbers.

20 COMMISSIONER BEHNAM: Thanks. I appreciate
21 that and certainly look forward to seeing it in fact
22 come into play. I know you suggested that there's not

1 going to be many DCOs that necessarily avail themselves
2 of this in the short term. But as it evolves and as we
3 do come into situations where it becomes more of a case
4 by case analysis, then I certainly look forward to how
5 the implementation and how the system is actually
6 working in practice.

7 Another question in regards to a U.S. --
8 we're using substantial risk and, obviously, the 20/20
9 test. If a non-U.S. DCO has business in multiple
10 areas, has dealings with multiple clearing members,
11 U.S. clearing members, and is sort of parked in
12 different places, that separately it might not
13 aggregate to be 20 percent but in the aggregate it's
14 over 20 percent, I know that's not how we're looking at
15 this, but do you kind of get the gist of my question?

16 We're looking at one entity in a silo, as
17 opposed to looking at the total exposure, the total
18 risk of an entity across the U.S. Is that right? And
19 if that is, in fact, right, is that being considered,
20 as opposed to the more siloed examination of an
21 entity's risk exposure to the U.S.?

22 MR. POLLEY: Well, first of all, you have

1 that correct. I mean, the test is designed to look at
2 the DCO level. So we're looking at the U.S. clearing
3 member activity at the DCO level. The Commission is
4 not constrained in terms of what it can consider in
5 applying its discretion. So if there was something
6 about those interrelationships that came into play
7 given the particular business being done at a given
8 DCO, that could be considered there.

9 COMMISSIONER BEHNAM: Thanks. Another thing
10 that I think we should be very careful and cognizant
11 about in the future is when we look at risk
12 holistically, as opposed to individually, whether by
13 individual DCO or to the clearing member.

14 The last question I have before I wrap up has
15 to do with the definition of U.S. clearing member.
16 Just as a point of context, the Commission voted in
17 favor of passing a revised cross-border rule, or at
18 least codifying a rule as opposed to guidance this past
19 July. How does the U.S. clearing member definition
20 compare to the U.S. person definition, or at least what
21 analysis was taken into consideration given the recent
22 rulemaking (inaudible)?

1 MR. POLLEY: Yes. So, it's going to be
2 somewhat broader in the way that the -- it will
3 automatically apply to the parent. So it's not -- and
4 we thought that was appropriate because of the way that
5 the risk can flow to the parent.

6 I don't know if Eileen has anything to add on
7 that. But I think part of what this definition is
8 seeking to achieve is just to be more clear so people
9 know exactly how it's going to play out.

10 But, I don't know, Eileen; do you have
11 anything to add on that?

12 MS. DONOVAN: Sure. Hi, Commissioner Behnam.
13 It's Eileen. I think, in defining U.S. clearing
14 members for purposes of the test, we were trying to
15 take a very conservative approach in terms of what
16 would constitute U.S. activity, whereas in other
17 circumstances we would be taking a narrower view of
18 what constitutes a U.S. person in terms of whether or
19 not someone has to register or meet certain
20 requirements for us, and that's not what we were doing
21 here. We were just trying to take a very sort of broad
22 view of what might impact the U.S. So whereas you

1 might not normally consider a non-U.S. clearing member
2 with a U.S. parent to be sort of a U.S. entity, we
3 thought that their activity nevertheless should be
4 counted as U.S. activity for the test.

5 COMMISSIONER BEHNAM: Thanks, Eileen. I
6 appreciate that, and that's good to hear.

7 One last question. I know I said that was my
8 last, but if you don't mind, indulge me here for a
9 second, Mr. Chairman.

10 You mentioned in your question and answer
11 period how even -- kind of the breakdown of how this
12 works and why it works well, and how it is reliant on
13 our relationships with our over-the-counter colleagues
14 in understanding and appreciating their rule sets and
15 ensuring that they are equivalent in many respects to
16 what we expect of our U.S. market participants, and
17 just sort of leveraging that comparability to reduce
18 burdens and regulatory hurdles across the globe.

19 What tools do we have at the CFTC to ensure -
20 - to make sure that rules when they are changed, or
21 principles when they are changed overseas and that
22 would affect, in fact, our understanding of

1 comparability arrangement, should be revised or
2 reviewed to make sure that alternative regimes are up
3 to date?

4 MR. POLLEY: There's a reporting requirement
5 within 39.51 that will require the DCO to notify us of
6 changes to the home country regulatory regime so we can
7 stay on top of that.

8 COMMISSIONER BEHNAM: Great, that's great. I
9 appreciate that. I think it's important to know that
10 we will be staying on top of this, that it's required
11 by rule, and that as things change and evolve, as they
12 often do, we will be right there to make any changes if
13 they're necessary.

14 Mr. Chairman, thanks for that. I probably
15 went a little bit over, but I appreciate your time.
16 And thanks to the team for all their work. It was a
17 great step forward, again, towards our effort to
18 harmonize with our counterparts overseas. I look
19 forward to supporting this rule. Thank you.

20 CHAIRMAN TARBERT: Thank you very much,
21 Commissioner Behnam.

22 Commissioner Stump?

1 COMMISSIONER STUMP: Thank you, Mr. Chairman.

2 As you know, I have long been passionate
3 about being committed to advancing a coordinate
4 approach to the regulation of global CCPs. When we
5 proposed this rulemaking, I expressed my belief that
6 international regulatory partners should all be
7 committed to resetting and recognizing that our shared
8 interest in advancing derivatives clearing could be
9 best achieved by respecting each jurisdiction's
10 successful implementation of the principles that were
11 agreed to in 2009 in the midst of the financial crisis
12 to advance global clearing of OTC swaps.

13 As was discussed at the onset of the meeting,
14 we have made considerable progress toward that
15 objective, and we are much better positioned today than
16 we were even just a year-and-a-half ago, when we
17 proposed this rule. I want to commend everyone who was
18 involved in working with the European Commission. As
19 was noted earlier, they have now adopted their
20 Delegated Act regarding the European Union's
21 supervision of third country CCPs, under which we do
22 not expect that any U.S. domiciled derivatives clearing

1 organization will be designated as a Tier 2 Third
2 country CCP.

3 And likewise, we at the CFTC are recognizing
4 the benefit of deference today, and we seek to adopt a
5 rule that would allow a registered DCO recognized
6 outside of the United States to comply with the
7 Commodity Exchange Act's DCO core principles by
8 complying with its home country regulatory regime.

9 I applaud this progress and the many
10 individuals who contributed to making it happen. But
11 we must not rest on our laurels. Our work here is not
12 done. And while we are maintaining a requirement that
13 registered DCOs availing themselves of this rule comply
14 with the swap data reporting requirements in Part 45 of
15 the Commission's regulations, as well as certain
16 ongoing and event-specific reporting requirements, as I
17 noted during consideration of the previous rule, I am
18 hopeful that the CFTC will soon turn to considering
19 substituted compliance for our reporting rules, which,
20 as I said, were considered earlier today but have a
21 relevance to this rule, as well.

22 I am heartened by the acknowledgement in the

1 preamble of today's Part 45 rulemaking that we are open
2 to further ways to cooperate with our foreign
3 regulatory counterparts in the supervision of trade
4 repositories, including, for example, and I quote,
5 "when and how the Commission should grant swap data
6 reporting substituted compliance determinations for
7 DCOs domiciled in non-U.S. jurisdictions with similar
8 swap data reporting requirements, permitting recording
9 of swap data to a foreign trade repository to satisfy
10 Commission swap data requirements under appropriate
11 circumstances."

12 As you know, this is one of the elements of
13 this rule that continues to rely on compliance with
14 CFTC regulations specifically, and I am hopeful that at
15 some point in the future, when our swap data rules are
16 better aligned with European and other jurisdictions,
17 that we will be able to coordinate data exchange and
18 data access such that we can consider more deference in
19 this case.

20 Furthermore, finalizing this rule does not
21 eliminate the need to consider exempting comparably
22 regulated foreign central counterparties from

1 registration with the CFTC pursuant to the express
2 authority provided for in the Commodity Exchange Act
3 and added by the Dodd-Frank Act. I anticipate that the
4 Commission will soon consider finalizing the rule we
5 proposed in July of 2019 whereby U.S. customers would
6 be allowed to use a foreign intermediary, but not a
7 futures commission merchant, to access a foreign
8 central counterparty that is exempt from registration
9 with the CFTC.

10 I continue to maintain that U.S. customers
11 deserve optionality in how they access a third country
12 CCP if we are to fully achieve the goals the G20 laid
13 out. These are CCPs that do not present substantial
14 risk to the U.S. financial system and are subject to
15 regulations that are comprehensive and comparable to
16 our own. To that end, I hope that the Commission will
17 consider an approach that would allow U.S. customers to
18 utilize an FCM also to access an exempt DCO.

19 While I don't have any questions, I thank you
20 all for indulging me and allowing me to make this
21 statement because I am very, very committed to
22 continuing this discussion. Our work is not done. It

1 likely will never be done when it comes to
2 international coordination. But I do want to thank the
3 Chairman and the staff of the Division of Clearing and
4 Risk and the Office of International Affairs for their
5 efforts on cross-border clearing matters over the past
6 several years, and in particular the amount of time and
7 energy they've spent working with me and my office over
8 the past two years, and I look forward to continuing
9 our engagement on these topics.

10 Thank you, Mr. Chairman.

11 CHAIRMAN TARBERT: Thank you very much,
12 Commissioner Stump.

13 Commissioner Berkovitz?

14 COMMISSIONER BERKOVITZ: Thank you, Mr.
15 Chairman. And again, congratulations to you and to the
16 team, to Tom Benison and Suyash Paliwal and everybody
17 presently on the staff in OIA, and former Commission
18 Chairman Giancarlo. I think this rule today is one
19 component of the progress that people have been working
20 towards for many years to harmonize the treatment of
21 central counterparties and provides truly for cross-
22 border markets and clearing.

1 I just want to build upon -- Commissioner
2 Behnam asked a number of questions that I had about the
3 thresholds, and I just want to follow up a bit on the
4 point made by Commissioner Stump about FCMs and
5 clearing.

6 So, to clarify, this proposal, or this rule I
7 should say, not proposal, this rule, the non-U.S. DCO
8 would still have to comply with CFTC and U.S.
9 regulations concerning clearing? Excuse me, I mean
10 customer protection.

11 MS. DONOVAN: Yes. Commissioner Berkovitz,
12 this is Eileen. Yes. I mean, just as registered DCOs
13 do now, it will remain the same for registered DCOs
14 subject to alternative compliance.

15 COMMISSIONER BERKOVITZ: And as Commissioner
16 Stump indicated, they have to use a U.S. registered
17 FCM? Customers?

18 MS. DONOVAN: Yes, that's correct.

19 COMMISSIONER BERKOVITZ: U.S. customers do.
20 And why is that? Why didn't we just give full
21 substituted compliance across the board? Why did we
22 carve out the customer protection area?

1 MS. DONOVAN: The feedback we got from some
2 of our currently registered non-U.S. DCOs was that they
3 wanted to be able to offer U.S. customer clearing
4 through FCMs because they wanted to be able to be seen
5 as being equal in that regard with U.S.-based DCOs and
6 be able to offer U.S. customers the same level of
7 protection.

8 COMMISSIONER BERKOVITZ: Is it considered an
9 advantage to be able to -- I guess it's an advantage to
10 them in terms of getting U.S. customers to be able to
11 offer the level of protection that U.S. customers will
12 get at a U.S. DCO?

13 MS. DONOVAN: Yes, that's the feedback we
14 received.

15 COMMISSIONER BERKOVITZ: So this is something
16 the market wants, but also from a customer protection
17 standpoint do we feel that our protections are better,
18 so to speak, than others? Or is there, other than the
19 the standards of DCOs, are there other reasons for
20 choosing our customer protections to maintain them?

21 MS. DONOVAN: I mean, I think, at least up
22 until this point, it has been our interpretation of the

1 statute that that's what 4d requires.

2 COMMISSIONER BERKOVITZ: What is the
3 experience with -- do we have experience with
4 bankruptcies of U.S. customers who have gotten
5 entangled in foreign bankruptcies versus a U.S.
6 bankruptcy and the provisions applied to either DCOs or
7 derivative transactions? Do we have a record on this?

8 MR. WASSERMAN: Eileen, do you want me to
9 take this?

10 MS. DONOVAN: Yes, please. Go ahead, Bob.

11 MR. WASSERMAN: This is Bob Wasserman. I
12 think it's fair to say that the experience of the U.S.
13 bankruptcy regime which applies to positions held
14 through FCMs at DCOs -- on the one hand, obviously, any
15 time an FCM goes into bankruptcy, it's a bad thing; and
16 any time customers don't have access to all of their
17 funds and positions on a continuous basis, they're not
18 getting what they should have.

19 With that understood, the experience that
20 we've had in bankruptcies, such as Refco, such as
21 Lehman, I think it's fair to say that customers who
22 enjoyed U.S. bankruptcy protection fared very well and

1 got access to most of their funds and their positions
2 much more quickly, and we were able to port things over
3 to healthy FCMS on a much more rapid basis than was the
4 case in analogous proceedings that happened for foreign
5 intermediaries.

6 COMMISSIONER BERKOVITZ: Okay. Is it an
7 analogous situation to look at MF Global, what happened
8 to MF Global and their bankruptcy, U.S. law versus non-
9 U.S. law?

10 MR. WASSERMAN: Indeed. I mean, I would say
11 that -- well, I should note that some of the laws may
12 have changed since the result of that experience, but
13 I'd say very different approaches had taken place, for
14 instance, in the U.S. versus, say, the U.K. And while
15 things ultimately worked out well in the U.K. part of
16 the bankruptcies of the affiliated entities, it took
17 much, much longer for that to happen, years versus
18 days.

19 COMMISSIONER BERKOVITZ: That's significant.
20 I appreciate those answers, and I do think that U.S.
21 bankruptcy laws and customer protections--protections
22 that are ordered by our regulations--are sound and

1 solid, and Congress has mandated them for a reason. I
2 think it strengthens our markets.

3 Bob, while you're there, in terms of that
4 regard, some people may say, well, customer choice.
5 Customers may choose to -- they may prefer to go over
6 to some foreign market and say, well, I'll take the
7 risk of less bankruptcy protection, I'm a sophisticated
8 investor, let me choose if I want to take that risk, I
9 don't need Big Brother watching over me in this regard.

10 But in terms of the bankruptcy, the code and
11 the structure -- for example, if you have an FCM that
12 goes bankrupt, that becomes insolvent or goes into
13 bankruptcy-- it's not just a question of individual
14 customers. This is also a systemic -- I don't
15 necessarily mean a threat to the entire financial
16 system, but systemic at least in terms of the market
17 and that clearinghouse and related participants,
18 because it's all intertwined, what one customer would
19 be able to get from the FCM versus the other customer
20 be able to get from the FCM. So you're not necessarily
21 just affecting yourself. The ecosystem that you're
22 operating in is affected by the bankruptcy provisions.

1 Is that an accurate way to view it?

2 MR. WASSERMAN: Let me tease that apart just
3 a little bit. I think structurally in order for this
4 to work, essentially the reason why the U.S. bankruptcy
5 approach works so well is that by treating customers
6 and customer accounts at FCMs on an omnibus basis, you
7 don't have to -- MF Global on the U.S. side, there were
8 37,000 customers. So to treat each of them on a
9 bespoke basis, there's a lot of accounting and
10 calculation and such that needs to be done. To the
11 extent that customers are treated on an omnibus, pro
12 rata basis, that's what makes it practicable to have
13 these transfers happen so very quickly and efficiently.
14 So if you were to try to treat customers individually,
15 that would be very difficult.

16 With that said, I do think that these
17 benefits to customers benefit both the customers and
18 the broader financial system, and frankly I think folks
19 come to the U.S. because -- obviously, I'm not an
20 entirely unbiased observer, but I think how well the
21 bankruptcy provisions work is, if you will, a
22 discriminator in favor of coming to the U.S. because,

1 of course, our bankruptcy provisions apply to anyone,
2 any customer of an FCM. It doesn't matter whether
3 they're U.S.-based or otherwise.

4 COMMISSIONER BERKOVITZ: I appreciate that,
5 and I appreciate this discussion, and I fully support
6 the dichotomy that we have here in this DCO provision,
7 that we can find comparability on these other aspects
8 of our regulations and provide that the home country
9 jurisdiction's regulations can satisfy our core
10 principles, except for in the customer protection area
11 because of the key importance of that, because of
12 statute, and because of the policy reasons that we've
13 just discussed.

14 So I'm glad to see that U.S. customers
15 continue to be protected under U.S. bankruptcy law in
16 this approach, and again I thank you all for all the
17 work on this, and I'm supportive of the provisions.

18 CHAIRMAN TARBERT: Thank you very much,
19 Commissioner Berkovitz.

20 Are the Commissioners prepared to vote? Or,
21 let me ask you this: Is there any Commissioner not
22 prepared to vote at this time?

1 (No response.)

2 CHAIRMAN TARBERT: Okay. Since that is the
3 case, all Commissioners are prepared to vote, Mr.
4 Kirkpatrick, will you please call the roll for the vote
5 to adopt the final rule on Registration with
6 Alternative Compliance for Non-U.S. Derivatives
7 Clearing Organizations under our Parts 39 and 140?

8 MR. KIRKPATRICK: Thank you, Mr. Chairman.
9 This is the Secretary speaking.

10 The motion now before the Commission is on
11 the adoption of the final rule on Registration with
12 Alternative Compliance for Non-U.S. Derivatives
13 Clearing Organizations under Parts 39 and 140.

14 Commissioner Berkovitz?

15 COMMISSIONER BERKOVITZ: Commissioner
16 Berkovitz votes aye.

17 MR. KIRKPATRICK: Commissioner Berkovitz
18 votes aye.

19 Commissioner Stump?

20 COMMISSIONER STUMP: Commissioner Stump votes
21 aye.

22 MR. KIRKPATRICK: Commissioner Stump votes

1 aye.

2 Commissioner Behnam?

3 COMMISSIONER BEHNAM: Commissioner Behnam

4 votes aye.

5 MR. KIRKPATRICK: Commissioner Behnam votes

6 aye.

7 Commissioner Quintenz?

8 COMMISSIONER QUINTENZ: Commissioner Quintenz

9 votes aye.

10 MR. KIRKPATRICK: Commissioner Quintenz votes

11 aye.

12 Chairman Tarbert?

13 CHAIRMAN TARBERT: Chairman Tarbert votes

14 aye.

15 MR. KIRKPATRICK: Chairman Tarbert votes aye.

16 Mr. Chairman, on this matter, the ayes have

17 5, the noes have zero.

18 CHAIRMAN TARBERT: Thank you very much.

19 I'm pleased to say that the ayes have it and

20 the motion to adopt the final rule is hereby approved.

21 Well, our final agenda item for today is a

22 Supplemental Notice of Proposed Rulemaking for the Part

1 190 Bankruptcy Regulations.

2 To present on this issue is also from the
3 Division of Clearing and Risk, our Chief Counsel and
4 Senior Advisor who we recently just heard from, Bob
5 Wasserman.

6 Bob, the floor is yours.

7 MR. WASSERMAN: Thank you, Mr. Chairman; and
8 thank you, Commissioners. I very much hope that
9 everyone is in good health.

10 Before I start, I would like to in particular
11 thank my OGC colleagues, and particularly Mark Fajfar,
12 for an extraordinarily timely review and some really
13 critical help in drafting this supplemental proposal.
14 Of course, any errors that remain are mine.

15 So, on April 14th, the Commission approved a
16 proposal to update comprehensively its commodity broker
17 bankruptcy rules, Part 190. Based on the comments
18 received, an important part of that proposal has caused
19 a great deal of concern. Today, the supplemental
20 proposal would withdraw that part of the proposal and
21 replace it with an alternative designed to steer
22 between Scylla and Charybdis, which has potential risk

1 to financial stability on the one side, and harmful
2 treatment under bank capital requirements for FCM
3 exposures to systemically important DCOs on the other.

4 Subpart C of the Part 190 regulations
5 proposed in April would establish a bespoke set of
6 regulations applicable to the bankruptcy of a DCO.
7 Within Subpart C, Section 190.14 addresses operation of
8 the estate of the clearing organization after the
9 bankruptcy commences, which is often referred to as the
10 "Order for Relief." Part of 190.14 was a proposal that
11 was intended to provide a brief opportunit, after the
12 Order for Relief, to enable paths alternative to
13 liquidation, namely resolution under Title II of Dodd-
14 Frank or transfer of clearing operations to another DCO
15 -- in cases where a short period of continued
16 operation, no more than six days, might facilitate such
17 an alternative path.

18 The aim of that proposal, found in Sections
19 190.14 (b) (2) and (3), was to avoid a DCO's bankruptcy
20 filing having an irrevocable consequence of termination
21 of clearing operations, an event that, in the case of a
22 SIDCO, would likely be disruptive of markets and

1 possibly the broader United States financial system.

2 However, a number of commenters indicated
3 strong concern that this approach, if it were
4 effective, might interfere with DCO rules concerning
5 closeout netting for the purposes of bank capital
6 requirements. These requirements are established by
7 the regulators of the banks and bank holding companies
8 that many clearing members are affiliated with or part
9 of, namely the FDIC, the Federal Reserve, and the OCC,
10 who are referred to collectively as the Prudential
11 Regulators.

12 In order for clearing members that are bank
13 affiliates to treat their exposures to DCOs on a net
14 basis, those rules must fit within the definition of
15 what is called a qualifying master netting agreement,
16 or QMNA, under the regulations of the Prudential
17 Regulators.

18 That definition requires that any exercise of
19 rights under the agreement will not be stayed or
20 avoided under applicable law in the relevant
21 jurisdictions, other than under the Federal Deposit
22 Insurance Act, Title II resolution, or similar laws in

1 foreign jurisdictions. And unfortunately, a Chapter 7
2 bankruptcy does not fit within that list. And thus, to
3 the extent that any proposed rule under Part 190 acts
4 as a stay, it would undermine the QMNA status of DCO
5 rules. That outcome is simply unacceptable.

6 We have already dealt with the problems
7 created by the supplementary leverage ratio, and we
8 would never recommend doing anything that would attract
9 harmful treatment under bank capital requirements.

10 As a result, today's supplemental proposal
11 would withdraw proposed Sections (b) (2) and (3) of
12 190.14. Instead, the supplemental proposal uses a
13 different means of fostering the Title II resolution of
14 a SIDCO, for a brief period after a bankruptcy filing.

15 Resolution under Title II is designed to
16 address cases where the failure of a financial company
17 and its resolution under the Bankruptcy Code would have
18 serious adverse effects on financial stability in the
19 United States. The FSOC has determined under Title
20 VIII of Dodd-Frank, that the failure of either of the
21 two SIDCOs would likely threaten the stability of the
22 broader U.S. financial system.

1 The process for placing a financial company
2 into Title II resolution, also referred to as key-
3 turning, is deliberate and intricate. In the case of a
4 SIDCO, this would include a detailed written
5 recommendation by each of the FDIC and the Federal
6 Reserve, concerning eight statutory factors, and the
7 Secretary of the Treasury would need to make a
8 determination, in consultation with the President of
9 the United States, that each of seven statutory factors
10 is met. Following that determination, the board of
11 directors of the financial company may acquiesce or
12 consent to the appointment of the FDIC's receiver, or
13 there may be a period of judiciary review, which may
14 extend to 24 hours.

15 By contrast, a voluntary petition in
16 bankruptcy immediately constitutes an Order for Relief.
17 Accordingly, there exists a possibility that in the
18 unlikely event that a SIDCO would consider bankruptcy,
19 the SIDCO could file for bankruptcy before the key-
20 turning process to place that SIDCO into Title II
21 resolution would have completed. And while Title II
22 would automatically result in the dismissal of the

1 prior bankruptcy, if that prior bankruptcy filing were
2 to immediately and irrevocably result in the
3 termination of the SIDCO's derivatives contracts with
4 its members, that result would greatly undermine the
5 potential success of any subsequent Title II
6 resolution.

7 The supplemental proposal would first stay
8 the termination of SIDCO contracts for a brief time
9 after bankruptcy in order to foster the success of the
10 Title II resolution if the FDIC is appointed receiver
11 in such a resolution within that brief time. But
12 second, it would do so in a manner that does not
13 undermine the QMNA status of SIDCO rules.

14 As we've seen, the present regulations of the
15 Prudential Regulators make any stay under Part 190
16 inconsistent with QMNA status for DCO rules. Thus, to
17 meet that second goal, the prudential regulators must
18 take action sufficient to change that result.

19 Now, in a number of analogous cases, the
20 Prudential Regulators encouraged a limited stay period
21 that begins with the commencement of the bankruptcy
22 proceeding and ends at the later of 5 p.m. of the

1 business day following the day of the commencement of
2 the proceeding and 48 hours after the commencement of
3 the proceeding. For simplicity, I will just refer to
4 this as a 48-hour stay.

5 While the stay period and the Prudential
6 Regulators' rules does not apply to a contract with a
7 SIDCO, or indeed any other central counterparty, in
8 bankruptcy, it would appear more likely that the
9 prudential regulators would be comfortable with, and
10 thus willing to make changes to the QMNA definition
11 that would conform to, a stay period that is of
12 identical length to a stay period that they already use
13 in other contexts. Thus, the supplemental proposal
14 would provide for a 48-hour stay.

15 Unlike the original proposal, there would be
16 no continued collection of payments of initial or
17 variation margin during the stay period. Rather, the
18 termination of the contracts outstanding at the time of
19 the Order for Relief would simply be stayed for the
20 stay period.

21 Now, this would be far from ideal. Risk
22 levels would increase during the stay period, as the

1 design of CCPs is based on daily collection of payment
2 of variation margin, as indeed our regulations require.

3 However, in a context where the SIDCO is
4 already in extremis and collection and payment of
5 variation margin is impracticable, such a stay may be
6 the best available among a list that is limited to
7 painful choices as compared to, for instance, an
8 immediate and irrevocable termination.

9 I would also note that the supplemental
10 proposal only applies to SIDCOs and not to other DCOs.
11 That is because there is a low likelihood that a DCO
12 that is not a SIDCO would be the subject of a Title II
13 resolution.

14 As I've noted before, in order to avoid
15 undermining the QMNA status of SIDCO rules, no stay
16 provision regarding DCO contract termination rules may
17 be made effective as an element of the DCO bankruptcy
18 provision in Part 190 unless and until each of the
19 three prudential regulators take action to make such a
20 stay provision consistent with such QMNA status.

21 It is, I think, our common goal to complete
22 the work of amending Part 190 in one coherent

1 rulemaking. Moreover, the inclusion of such a stay
2 provision contingent on action by the Prudential
3 Regulators might well encourage those prudential
4 regulators to take that action promptly.

5 Accordingly, the Supplemental Proposal
6 provides for what might be called a springing
7 provision; that is, the implementation of the stay
8 provision would become effective only after each of the
9 three prudential regulators has publicly taken action
10 sufficient to make it consistent with the QMNA status
11 of SIDCO rules. Moreover, in order for the stay
12 provision to become effective, the Commission would
13 first need to issue an order confirming that the
14 prudential regulators' actions are, in fact, each
15 sufficient to make such a stay provision consistent
16 with the QMNA status of SIDCO rules.

17 Of course, as a practical matter, before
18 recommending such action to the Commission, staff would
19 work with staff at each of the prudential regulators to
20 confirm their understanding. Nonetheless, to provide
21 yet further assurance that we won't inadvertently
22 undermine the QMNA status of SIDCO rules, under the

1 proposal the Commission would be required to provide an
2 opportunity for public comment limited to this issue
3 before issuing such an order.

4 By providing for a brief post-bankruptcy stay
5 period for SIDCO contracts but making the effectiveness
6 of that provision contingent on prior action by the
7 prudential regulators, we can pass safely between
8 Scylla and Charybdis and promote financial stability
9 without incurring damaging treatment under the
10 prudential regulators' bank capital requirements.

11 Thank you very much.

12 CHAIRMAN TARBERT: Thank you very much, Bob,
13 for that excellent presentation.

14 This is Chairman Tarbert. To begin the
15 Commission's discussion and consideration of this
16 proposal, I'll now entertain a motion to adopt the Part
17 190 supplemental rulemaking proposal.

18 COMMISSIONER BERKOVITZ: So moved.

19 COMMISSIONER BEHNAM: Second.

20 CHAIRMAN TARBERT: Thank you. Okay.

21 Well, I will now open the floor for
22 Commissioners to ask any questions about this

1 supplemental proposal. I'll begin just by saying that,
2 as Bob and others know, this is sort of an area of
3 interest of mine personally.

4 I have been working closely on the
5 interrelationship between the financial system and
6 insolvency rules for nearly a decade, but I also
7 remember back when I was a first-year law student, 22
8 years ago -- and, in fact, it was in September of 1998
9 -- when Long-Term Capital Management failed, and it was
10 a big debate at that time that the bankruptcy stay on
11 derivatives contracts, on swaps, was actually a
12 problem. So, of course, the bankruptcy code was
13 amended to create qualified financial contracts, not
14 subjecting them to the stays so people could close out.

15 Now you fast-forward 10 years later, the 2008
16 financial crisis. Well, the qualified financial
17 contracts are not subject to the stay, and you had
18 Lehman Brothers and other institutions, particularly
19 Lehman Brothers -- that's the main example -- where
20 Lehman's failure led to immediate termination and a big
21 perceived loss of value to the markets, as well as a
22 sense that it was very difficult for Lehman to continue

1 to operate and transfer itself to potentially a buyer
2 to resolve, essentially, Lehman Brothers, that it
3 complicated matters. And more importantly, unlike the
4 LTCM scenario, many people in the market felt that the
5 immediate termination actually caused a massive loss of
6 value.

7 I'll pause there just to see if Bob generally
8 concurs with what I said, noting that I'm not speaking
9 in technical terms but in layman's terms.

10 MR. WASSERMAN: No, I think I do. I will
11 note that -- and I need to tease apart two things,
12 because even under Title II, where there is that sort
13 of pause once the keyturning happens, we do need to
14 make sure that obligations to make payments to a CCP
15 are not stayed, and they're not stayed under Title II.

16 In this case, though, we're dealing with --
17 and the reason for that, of course, is we don't want to
18 have a knock-on effect of having the problem at the
19 intermediary, the clearing member going into Title II,
20 have a knock-on effect on the CCP. And the basic
21 structure of the CCP, you need to have every day either
22 payment or default, one or the other. A stay would

1 only be inimical to that.

2 Here what we're dealing with is a CCP that is
3 already in extremis, right? The condition here is that
4 the CCP -- or the DCO, rather, or the SIDCO has filed
5 for bankruptcy. In any event, you're not going to be
6 getting payment in the first couple of days, and
7 perhaps much longer in a DCO bankruptcy. That would
8 simply be impracticable, unlike some of the transfers
9 we've done with FCMs.

10 So this is sort of a way to make the best of
11 a bad situation and give a brief time for the
12 keyturning process to finish. I don't know if that
13 answers your question, Mr. Chairman.

14 CHAIRMAN TARBERT: No, no, it does. The
15 issue, though, is not so much here that people are
16 concerned about a stay on closeout netting for the sake
17 of -- there's a sense that to have the stay here would,
18 in fact, preserve value, would allow for something
19 beyond just sort of a liquidation. The issue, rather,
20 is not a philosophical debate, at least from most of
21 the comments that we got on closeout netting, the
22 ability to be able to do that instantaneously or to

1 have the stay, but rather if you have that provision in
2 there, to have the stay, it could be undermined in
3 central clearing more generally, because at this point
4 in time such a provision would arguably, on its face,
5 or even more than on its face, be at odds with the
6 qualifying master netting agreement rules under the
7 banking regulators.

8 MR. WASSERMAN: I guess I would say two
9 things. First, the biggest concerns in hearing from
10 the commenters and in talking to them, I think the
11 biggest concern is under QMNA. I mean, as noted in the
12 proposal, the stay is not something that is -- it is a
13 painful choice, it is a painful choice.

14 I would note that there are some DCOs out
15 there -- not all, but there are some -- who explicitly
16 say that even in their closeout netting provisions, the
17 closeout and the termination would not happen for some
18 days after bankruptcy. So I think fundamentally that
19 is not a big problem. But all of the choices in this
20 sort of situation are bad ones, and the question is how
21 can you minimize the harm.

22 CHAIRMAN TARBERT: That's right. No, no.

1 And just to be clear, we are dealing with what I hope
2 is such a small probability that no one will ever see
3 it in their lifetimes, but it's incumbent upon us to
4 plan for it nonetheless and game it out, in part
5 because I think gaming it out also provides some
6 clarity and can ultimately inform choices that people
7 make today or in the future.

8 So from your comments I think it's clear that
9 if the -- let's just walk away from a DCO at this point
10 and just stay with a regular financial institution, a
11 regular financial company that's not a DCO, and let's
12 say that it falls under Title II of the OLA, or Title
13 II of the Dodd-Frank Act, the OLA, a bank holding
14 company or something like that. There, the 48-hour
15 stay would apply by operation of law, would potentially
16 apply; right?

17 MR. WASSERMAN: Again, once you go into Title
18 II, there is a stay that applies automatically,
19 basically to give the FDIC a chance to actually take
20 control and get things going. That applies until 5
21 p.m. on the next business day. And then in the event
22 the contracts are transferred, the next day it would

1 become permanent. Given that the FDIC's standard
2 approach to resolution is to transfer the important
3 contracts to a bridge entity, thus that would
4 effectively happen, and that would apply even in the
5 context of a SIFI or an important financial institution
6 or a SIDCO.

7 CHAIRMAN TARBERT: Right, right. But if
8 we're outside of the OLA and we're just in bankruptcy,
9 the federal regulators have recognized, for purposes of
10 the QMNA definition, the bankruptcy of certain
11 entities, or the allowing of a stay in certain kinds of
12 bankruptcy but not necessarily at this point the one
13 that we're contemplating.

14 MR. WASSERMAN: Indeed. Transparency compels
15 me to admit that part of that is because we have wanted
16 them to stay away from involving central
17 counterparties. But upon the further intellectual
18 development of this, we realized that in this very
19 narrow context, it is important to be able to have this
20 kind of a stay.

21 CHAIRMAN TARBERT: Right. So they have gone
22 beyond just simply the OLA, which is sort of automatic

1 by operation of law, and have, in fact, been sending it
2 to the bankruptcy procedures. I think what we're
3 trying to do is link our stay to their recognition or
4 further rulemaking. So the situation that we're
5 contemplating here, the insolvency, the bankruptcy
6 code, the insolvency of a SIDCO, is also covered.

7 MR. WASSERMAN: Yes, and I think the actions
8 that they've taken, both in terms of their values and
9 in terms of basically encouraging very strongly what's
10 known as the ISDA stay protocol, has been really,
11 again, to foster resolution, foster the opportunity for
12 resolution. So the hope is that having them --
13 basically have just a small addition to something they
14 have already done, even the way and to the extent they
15 have already done it, that that would be a much
16 simpler, a much more comfortable step for them to take
17 than something that's very different.

18 CHAIRMAN TARBERT: Okay, great.

19 Well, I thank my fellow Commissioners for
20 indulging me in this, but I think it is really
21 important. Again, I've emphasized the importance of
22 finalizing Part 190, which would update our bankruptcy

1 rules for the first time in 37 years because, again,
2 the customer protections, everything that isn't --
3 Commissioner Berkovitz touched on this -- they're all
4 very good, but you don't know how good they are until
5 you actually need to use them in an insolvency
6 situation. So it is really important that we game
7 things out.

8 With that, I will turn to Commissioner
9 Quintenz.

10 COMMISSIONER QUINTENZ: Thank you, Mr.
11 Chairman. And thank you, Bob, for putting the
12 supplemental before us to try to air a potential
13 solution to some of the concerns that have been raised
14 that could still allow us to go final with the
15 bankruptcy rulemaking by the end of this year.

16 Let me just ask quickly if that is still a
17 possible scenario, to review the comments on this
18 supplemental and try to meet that target.

19 MR. WASSERMAN: Absolutely. I mean, this is
20 a very narrow issue. We have been and are continuing
21 to work on incorporating the comments on the rest of
22 Part 190 and address those and basically ultimately the

1 final rulemaking. So the work on -- this is very, very
2 important, but it really is a fairly narrow issue
3 within that. So the other 97 percent of text, if you
4 will, is already being worked on, and that's continuing
5 on in parallel, and then we will obviously take on the
6 comments on this with respect to how staff recommends
7 to the Commission to deal with this narrow issue. But
8 all of the rest of that work is ongoing and continuing
9 in parallel.

10 COMMISSIONER QUINTENZ: Okay, great. Thank
11 you. And given how you described the challenges around
12 this particular issue, I am sure and have already heard
13 a lot of questions and -- I don't want to say concerns,
14 but different points of view around what the
15 supplemental proposal is trying to do. I believe it's
16 important to put it forward so that those comments can
17 be officially received and reviewed, but I also wanted
18 to make sure that through the supplemental proposal we
19 are retaining all flexibility in reaching that final
20 product to go in multiple directions, as opposed to
21 being limited by what this particular supplemental
22 proposal is asking.

1 MR. WASSERMAN: Yes. I think it's fair to
2 say that this is a proposal, and obviously in making
3 our recommendation to the Commission and determining
4 what to do, we'll be taking into account all of the
5 comments that we get on that proposal. And so, while I
6 think this is, in fact, a good way of walking this very
7 narrow tightrope, at the end of the day, after the
8 comments, the Commission might decide to go with this
9 or the Commission might decide not to go with it. So
10 certainly that is not constrained, and again,
11 everything else is being worked on in parallel.

12 COMMISSIONER QUINTENZ: Okay, thank you.
13 Thank you for that assurance.

14 I don't think I have any questions. Again,
15 Bob, grateful for your work on this in short order, and
16 I'm pleased to support this to put it out for that
17 public comment.

18 Thank you, Mr. Chairman.

19 CHAIRMAN TARBERT: Thank you, Commissioner
20 Quintenz.

21 Commissioner Behnam?

22 COMMISSIONER BEHNAM: Thanks, Mr. Chairman.

1 And thank you, Bob, for your work on this supplemental.
2 I certainly appreciate your comments about meeting the
3 preexisting timelines. I would just caution against
4 predicting too much out of the future. There's always
5 a lot that can happen, and I think we have to be
6 cognizant of what the stakeholders say and making sure
7 we get this right. It's been a long time coming, this
8 bankruptcy reform, as has been frequently noted. I
9 think we need to make sure we get it right before
10 wrapping it up in the next few months.

11 But that said and sort of in that vein, I
12 just have a question mostly about process, given that
13 this came up unexpectedly in the past, in the recent
14 past. There's no rule text in this supplement; is that
15 correct?

16 MR. WASSERMAN: Yes.

17 COMMISSIONER BEHNAM: What exactly are we
18 sharing with the public here that we want them to
19 comment on?

20 MR. WASSERMAN: So, I think it's fair to say
21 that what is being proposed is fairly presented. I
22 will note on the typed-script at pages 11 to 12 there's

1 a bullet-point summary of what exactly is being
2 proposed. That fits within the presentation I just
3 gave. But I would, to a certain extent, speak under
4 the control of my colleagues from OGC to the extent
5 that I think this does indeed meet the requirements of
6 the Administrative Procedures Act, but I will defer to
7 them to speak to that.

8 COMMISSIONER BEHNAM: If they'd like to jump
9 in, that's fine. If not, I trust that obviously this
10 has gone through the rigors of the agency and it's up
11 to snuff to be put out for public comment.

12 My larger point in this is that we have to be
13 careful in the next few months as we consider this, as
14 we consider the public comments, and obviously take a
15 few days, if not weeks, to get it published in the
16 Federal Register. If we truly do have December as a
17 target, notwithstanding the reality, Bob, to your point
18 that this is one small part of the larger proposal, a
19 lot will depend on what we hear back and whether or not
20 this fits into the rule nicely and if it's clean enough
21 that we can move forward with the preexisting timeline
22 that we've had.

1 I am glad to support this. Bob, thanks again
2 for your work, and thanks to everyone who had to work
3 on this in short order to get it done.

4 But I just would emphasize to my colleagues
5 and the public that I hope we'll be careful and remain
6 vigilant in being cautious and patient to make sure
7 that, once and for all, we get this bankruptcy
8 revision, which is much needed, correct.

9 Thanks, Mr. Chairman. That's all for me.

10 CHAIRMAN TARBERT: Thank you, Commissioner
11 Behnam.

12 Commissioner Stump?

13 COMMISSIONER STUMP: Thank you, Mr. Chairman.

14 I would like to take the opportunity to thank
15 a few folks, as well. I want to extend my thanks first
16 to the commenters that brought to our attention the
17 risk that our original proposal might inadvertently
18 undermine the qualified master netting agreement status
19 of DCOs. I think that it is in that spirit that we
20 have put the underlying rule together, and I think
21 these are all benefits not only from the input of the
22 commenters but the potential that such a technical rule

1 may, in fact -- we may find mistakes, and we may find
2 items that require reconsideration by the public.

3 Certainly, that was not our intention, and it
4 is imperative that our regulations work with, and not
5 against, the bank capital requirements established by
6 the banks' prudential regulators.

7 I look forward to receiving comments on
8 whether the supplemental proposal accomplishes that. I
9 want to thank Bob Wasserman and the Office of the
10 General Counsel for crafting a process to provide the
11 public an opportunity to weigh in on the effectiveness
12 of any forthcoming action by the banking regulators
13 before the relevant provisions of this Part 190 were to
14 take effect.

15 And because the supplemental proposal no
16 longer contains the type of limitations and
17 qualifications that were included in the original
18 proposal, I also think it is important that we receive
19 comments regarding the implications of imposing this
20 type of mandatory stay on the netting and closeout of
21 contracts with SIDCOs that might become the subject of
22 a bankruptcy case.

1 So, with that, again, I have no questions. I
2 thank everyone who has contributed thus far to making
3 this rule -- and it is a monumental rule -- to making
4 this rule the best rule we can have. An overhaul of
5 Part 190 is no small task, and so many people deserve
6 our gratitude.

7 With that, I'll turn it back to you, Mr.
8 Chairman.

9 CHAIRMAN TARBERT: Thank you very much,
10 Commissioner Stump.

11 Commissioner Berkovitz?

12 COMMISSIONER BERKOVITZ: Thank you, Mr.
13 Chairman. I think the issues have been well laid out
14 as to the issues addressed in the proposal, and I'm
15 glad to see that in an instance like this where a new
16 issue arises due to feedback by commenters, that the
17 Commission is considering an approach that was not in
18 the proposal in response to those comments, that we're
19 putting it out for public comment. Although in such an
20 instance of something being a logical outgrowth of a
21 proposal, the APA requires it to be put out for notice
22 and comment before you can go final. But it's also

1 good practice for the reasons just described by a
2 number of colleagues, to seek public comment on this
3 from all interested parties.

4 So I'm glad the issue has been identified and
5 that we're seeking public comment on the resolution of
6 the issue.

7 In response to the discussion about the
8 timeline for going final on this, what's the timeline
9 in this proposed supplemental for comment? How long do
10 commenters have after it's published to comment?

11 MR. WASSERMAN: So, I will note it is stated
12 as 30 days after publication in the Federal Register.
13 I would defer to Secretariat colleagues, but I would
14 hope that we might, before it gets published in the
15 Federal Register, that the document would go up on the
16 website. But the actual timeline would be based on the
17 Federal Register publication.

18 COMMISSIONER BERKOVITZ: That would be great.
19 I hope we can get it out to the public on our website
20 as soon as possible, and I would just note that the 30
21 days is a relatively short time period. So I urge
22 commenters to recognize that and get us the comments

1 quickly.

2 Just a final note. Bob, you mentioned the
3 Greek mythology and us trying to narrowly go through
4 Scylla and Charybdis in this. I thought at the end of
5 the day, in the Greek spirit, that we eventually do
6 relieve you of the Sisyphean task that you've been at
7 for a number of years. So with that goal in mind, I'm
8 pleased to support this rule.

9 MR. WASSERMAN: Thank you.

10 CHAIRMAN TARBERT: Thank you, Commissioner
11 Berkovitz. And absolutely, we've had the new practice
12 in line with our transparency to see if we can get out
13 draft rules soon after the open meeting, if not the
14 same day. I don't know what our capacity is, but we'll
15 get the Supplemental Notice out ASAP.

16 I think with that, we have concluded our
17 question and answer period. May I ask whether there is
18 any Commissioner who is not prepared to vote?

19 (No response.)

20 CHAIRMAN TARBERT: Okay. All Commissioners
21 appear to be prepared to vote.

22 So, Mr. Kirkpatrick, would you please call

1 the roll for the vote to adopt the proposed
2 Supplemental Notice of Proposed Rulemaking for Part 190
3 Bankruptcy Regulations?

4 MR. KIRKPATRICK: Thank you, Mr. Chairman.
5 This is the Secretary speaking.

6 The motion now before the Commission is on
7 the Supplemental Notice of Proposed Rulemaking on the
8 Part 190 Bankruptcy Regulations.

9 Commissioner Berkovitz?

10 COMMISSIONER BERKOVITZ: Commissioner
11 Berkovitz votes aye.

12 MR. KIRKPATRICK: Commissioner Berkovitz
13 votes aye.

14 Commissioner Stump?

15 COMMISSIONER STUMP: Commissioner Stump votes
16 aye.

17 MR. KIRKPATRICK: Commissioner Stump votes
18 aye.

19 Commissioner Behnam?

20 COMMISSIONER BEHNAM: Commissioner Behnam
21 votes aye.

22 MR. KIRKPATRICK: Commissioner Behnam votes

1 aye.

2 Commissioner Quintenz?

3 COMMISSIONER QUINTENZ: Commissioner Quintenz

4 votes aye.

5 MR. KIRKPATRICK: Commissioner Quintenz votes

6 aye.

7 Chairman Tarbert?

8 CHAIRMAN TARBERT: Chairman Tarbert votes

9 aye.

10 MR. KIRKPATRICK: Chairman Tarbert votes aye.

11 Mr. Chairman, on this matter, the ayes have

12 5, the noes have zero.

13 CHAIRMAN TARBERT: Thank you very much.

14 I'm pleased to say that the ayes have it and
15 the motion to adopt the Supplemental Notice of Proposed
16 Rulemaking for the Part 190 Bankruptcy Regulations is
17 hereby approved.

18 With that, I will ask the -- well, first I'll
19 ask my fellow Commissioners, or I'll give the floor to
20 my fellow Commissioners for an opportunity to make any
21 closing statements.

22 As indicated in my opening statement, I will

1 not make a closing statement, but I'll just make a
2 simple observation, which is that September 16th, 2019,
3 which was a year and a day ago, was our first open
4 meeting together of these five Commissioners. It's an
5 honor to work with these four individuals. They and
6 their staffs are amazing. And this is our 15th open
7 meeting today together.

8 So, the Commission is busier than it's ever
9 been, and we're even busy in the midst of one of the
10 biggest crises facing our nation, as well as the
11 Commission COVID. But we haven't missed a beat.
12 Thanks to our great staff, my fellow Commissioners, and
13 everyone at the Commission. I'm very grateful.

14 Commissioner Quintenz?

15 COMMISSIONER QUINTENZ: Thank you, Mr.
16 Chairman.

17 Similar to that, and speaking of an
18 anniversary -- I don't have an official closing
19 statement myself, but today in the year 1787 the
20 Constitution of the United States was signed. And
21 while I think the government has evolved in a way that
22 maybe our Founding Fathers didn't necessarily

1 anticipate, I would hope that they would view, if they
2 could, our discussion and debate and interest in
3 serving the public in a transparent way that bears
4 accountability for the results and the reactions that
5 our decisions provoke very favorably.

6 It's an honor to serve in this role, and it's
7 an honor to serve with you and all my fellow
8 Commissioners each and every day, and especially during
9 these meetings.

10 I would like to recognize how many staff were
11 involved in the rules that we have today. You heard
12 from so many and, across each of those rules, I think
13 multiple offices and divisions were represented. If we
14 were to have this meeting in person, as I hope we get
15 to do soon, I think if the staff who had worked on
16 these rules had been present, we would have filled up
17 our entire hearing room with our very dedicated and
18 talented employees. Hopefully they can feel that
19 they're still being recognized today in a different
20 format.

21 Speaking of that, Mr. Chairman, while we have
22 so many of those dedicated and knowledgeable employees,

1 each of our Commission offices only has a few, and I'm
2 lucky to have three of the best -- Kevin Webb, Margo
3 Bailey, and Peter Kals -- who have worked very hard on
4 all these rules, like they have consistently since I've
5 been at the Commission and are going to continue doing
6 into the next few weeks and months. I'm so grateful to
7 them for their work to evaluate these rules critically
8 and fairly and let me adjudicate and vote on them.

9 Thank you, Mr. Chairman, for your leadership.

10 CHAIRMAN TARBERT: Thank you very much,
11 Commissioner Quintenz.

12 Commissioner Behnam?

13 COMMISSIONER BEHNAM: Thanks, Mr. Chairman.

14 I concur with Commissioner Quintenz'
15 comments. Happy Constitution Day. I appreciate his
16 remarks, and I think our Founding Fathers would be
17 proud, if they could.

18 And I do want to thank again all the staff
19 for a tremendous amount of work today, not exactly the
20 issues that rise to the occasion of being particularly
21 divisive, but they are critically important, and it's
22 great to see that we were able to come up with

1 unanimous support, and also the commitment that came
2 from all of us to continue being very disciplined in
3 overseeing the market on a day-to-day basis and making
4 changes as we need in a very immediate timeframe so
5 that we don't lag behind the ever-changing dynamics of
6 our really amazing market.

7 So, thanks to all the effort by all the
8 divisions and all the staff, and special thanks to my
9 staff -- Laura Gardy, David Gillers, and especially
10 John Dunfee -- on these particular rules, the reporting
11 rules.

12 And definitely a lot of credit, of course --
13 we started this morning announcing the EU deal, which
14 has been a long time coming. Special thanks to OIA and
15 the division staff, and Tom Benison and (other
16 name(inaudible) for their work, and all their staff who
17 contributed to that effort over the past few years, and
18 previous staff as well.

19 So, thanks. Hope everyone is doing well, and
20 I look forward to more meetings in the future.

21 Thank you, Mr. Chairman.

22 CHAIRMAN TARBERT: Thank you very much,

1 Commissioner Behnam.

2 Commissioner Stump?

3 COMMISSIONER STUMP: Thank you, Mr. Chairman.

4 I have no closing statement, and I have
5 nothing of particular historical relevance to share,
6 although I would note that September is the month in
7 which Commissioner Behnam, Commissioner Berkovitz and I
8 were all sworn into our terms of office. So happy CFTC
9 birthday to them.

10 And I will just take the opportunity in that
11 context to say how much I enjoy working at a commission
12 where there is true bipartisan cooperation.

13 So, thanks to everyone for the remarkable
14 meeting and the tremendous effort. Thank you.

15 CHAIRMAN TARBERT: Thank you, Commissioner
16 Stump.

17 Commissioner Berkovitz?

18 COMMISSIONER BERKOVITZ: Thank you, and I
19 thank my colleagues. I would also, again, like to
20 thank the staff and thank my staff -- Erik Remmler,
21 Sebastian Pujol, and Lucy Hynes -- for their work on
22 the rules we are considering today.

1 We just had -- I see we're slightly over the
2 five-hour mark for today's meeting. In order to be
3 able to do a five-hour meeting and be able to
4 intelligently discuss hundreds of pages of rules that
5 we've had before us really depends upon the whole team
6 of people supporting us Commissioners to be able to
7 distill the important points to focus where we need to
8 focus on and to engage in the discussion that we had
9 today.

10 So there's a tremendous amount of work that
11 goes into enabling us to have this discussion today,
12 and I want to thank my staff and also their work with
13 the divisions and the staffs of the other Commission
14 offices in terms of setting the stage for today's
15 meeting and getting us to where we could approve these
16 five rules.

17 A couple of other points. One is, in
18 recognition of Constitution Day -- it wasn't part of
19 the Constitution in 1789, but the First Amendment to
20 the Constitution is particularly relevant in a way that
21 doesn't get attention so much. When we talk about
22 public comment, and we've been talking about a public

1 comment period and how appropriate it is to get public
2 input, the First Amendment has a number of rights that
3 we're all very familiar with, and the most important
4 right that we have in this country as Americans really
5 sets this country apart from much of the world in terms
6 of going in this direction back in 1789, certainly the
7 First Amendment to the Constitution.

8 The First Amendment, we're all familiar with
9 the freedom of religion, freedom of speech, of the
10 people and the press, the freedom of the press, the
11 right of the people to peaceably assemble. But the
12 last right in the First Amendment is the one that
13 doesn't get the attention that the others get, and
14 that's the right to petition the government for a
15 redress of grievances.

16 That's a First Amendment right that people
17 have, to petition government for redress of grievances,
18 and that's much of what we do when we seek public
19 comment and input from the public. We're not a bunch
20 of bureaucrats in Washington creating these things in a
21 vacuum. There's a whole public participation process.
22 So it's really fundamental to our American democracy,

1 the public participation.

2 I think we've been working, Mr. Chairman,
3 towards potentially our next meeting. I hope that our
4 next meeting we can do by Webex so that the public can
5 actually see us and see the staff and see the
6 Commission and put a face associated with what we're
7 doing so we're not all just a bunch of faceless
8 bureaucrats.

9 I think video -- we get the job done by
10 audio, but I think video will enhance it. And if we
11 can get the technology, I know folks are working on it,
12 but I would certainly think it would enhance our public
13 interaction if we can go to that for the next meeting.

14 So I thank everybody that did make this
15 meeting possible. Our technology people have been
16 great during the whole pandemic in facilitating our
17 work from home or wherever we're working remotely from,
18 enabled the agency to continue functioning, everybody
19 working remotely. The IT people have been making this
20 happen for us around the clock for the past six-and-a-
21 half months or so. So I'm looking forward to them
22 getting us to the next stage of our interaction with

1 the public.

2 So again, thank you all, I appreciate it.

3 CHAIRMAN TARBERT: Thank you, Commissioner
4 Berkovitz. And, yes, we are working to get the video
5 up and running so when people speak they will appear on
6 video. That said, if you do go to our Webex site, I'm
7 pleased to say that we are not faceless bureaucrats.
8 Each of our pictures is up there, and yours looks
9 mighty handsome, I will say.

10 So with that, I will ask whether there's any
11 other Commission business.

12 (No response.)

13 CHAIRMAN TARBERT: Okay. Well, thanks again
14 to all who attended today in the public, as well as my
15 fellow Commissioners and the entire staff of the CFTC.

16 There being no further business, I'll
17 entertain a motion to adjourn the meeting.

18 COMMISSIONER BEHNAM: So moved.

19 COMMISSIONER BERKOVITZ: Second.

20 CHAIRMAN TARBERT: Terrific. Those in favor
21 of adjourning the meeting will say aye.

22 (Chorus of ayes.)

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CHAIRMAN TARBERT: Those opposed, no.

(No response.)

CHAIRMAN TARBERT: The ayes have it.

Again, thanks to everyone.

This meeting is hereby adjourned.

(Whereupon, at 3:09 p.m., the meeting was
adjourned.)