

UNITED STATES OF AMERICA
COMMODITY FUTURES TRADING COMMISSION

MARKET RISK ADVISORY COMMITTEE MEETING

Washington, D.C.
Monday, June 27, 2016

1 PARTICIPANTS:

2 Opening Statements:

3 CHAIRMAN TIMOTHY G. MASSAD

4 COMMISSIONER SHARON Y. BOWEN

5 COMMISSIONER J. CHRISTOPHER GIANCARLO

6 PANEL 1:

7 SUSAN O'FLYNN
Morgan Stanley

8 KEVIN McCLEAR
9 Intercontinental Exchange

10 DENNIS McLAUGHLIN
LCH.Clearnet
11 Kimberly Taylor
CME Group

12
13 PANEL 2:

14 ROBERT STEIGERWALD
Federal Reserve Bank of Chicago

15 HERBERT HELD
Federal Deposit Insurance Corporation

16 R. PENFIELD STARKE,
17 Federal Deposit Insurance Corporation

18 CHARLTON TEMPLETON
Federal Deposit Insurance Corporation

19
20 PANEL 3:

21 ROBERT STEIGERWALD
Federal Reserve Bank of Chicago

22 JEFFREY BANDMAN
Commodity Futures Trading Commission

1 PARTICIPANTS (CONT'D):

2 HERBERT HELD
Federal Deposit Insurance Corporation

3
4 R. PENFIELD STARKE
Federal Deposit Insurance Corporation

5 CHARLTON TEMPLETON
Federal Deposit Insurance Corporation

6
7 ROBERT WASSERMAN
Commodity Futures Trading Commission

8

9 * * * * *

10

11

12

13

14

15

16

17

18

19

20

21

22

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

2 (10:02 a.m.)

3 MS. WALKER: Good morning. As MRAC's
4 designated federal officer, it is my pleasure to
5 call this meeting to order.

6 Before we begin this morning's panels, I
7 would like to turn to Commissioner Sharon Bowen,
8 the MRAC sponsor, for the welcome. Chairman
9 Massad, Commissioner Giancarlo, and Commissioner
10 Bowen will then give their opening remarks.

11 COMMISSIONER BOWEN: Good morning and
12 welcome everyone. I'm going to be really brief
13 and turn it over to the Chairman.

14 CHAIRMAN MASSAD: Well, thank you.
15 Well, first, let me just express my appreciation
16 to Commissioner Bowen and her staff, and all the
17 members of the Market Risk Advisory Committee for
18 all the work that's gone into this meeting, and
19 for your presence here today.

20 And let me also thank the rest of our
21 staff, as well as the staff of the FDIC who is
22 here today with us. We really appreciate your

1 involvement. And, of course, I'm always pleased
2 to be here with my fellow Commissioner Giancarlo
3 as well.

4 You know, the agenda for this meeting
5 was set some time ago, needless to say. So we
6 won't include any discussion of the U.K. vote to
7 exit the European Union.

8 But let me just say that the CFTC has
9 been closely monitoring the markets that we
10 regulate. And on Friday, as well as thus far
11 today, they have functioned in an orderly manner,
12 notwithstanding the volatility that has followed
13 the vote.

14 And we will continue to monitor these
15 markets closely. We'll continue to work with the
16 clearinghouses, and the exchanges, as well as
17 other regulators to do all that we can to insure
18 that they continue to function properly.

19 So turning to today's agenda, let me
20 begin by saying that the Advisory Committee
21 meetings that we have always provide a great
22 opportunity for us as commissioners, as well as

1 our staff, to hear from stakeholders about
2 important developments, and to get input on the
3 many issues that we may be considering.

4 And, of course, we'll be benefitting
5 from that input today. For example, we will hear
6 more about the CCP Risk Management Subcommittee's
7 draft recommendations to enhance coordination
8 among clearinghouses and default management.

9 Today's meeting will also serve another
10 important purpose, which is that our staff,
11 together with FDIC representatives, will provide
12 all of you here, as well as the public generally,
13 with an update on a number of the important
14 efforts taking place regarding planning for
15 resolution of central counterparties, or CCPs.

16 It's my understanding that the FDIC will
17 first provide an overview regarding resolution of
18 Global Systemically Important Banks, or GSIBs.
19 And that's very relevant to resolution of CCPs for
20 a few reasons. In particular, because GSIBs often
21 have affiliated clearing members, or they provide
22 custodial or settlement bank services to CCPs,

1 and, therefore, GSIB resolution has a potential to
2 impact the resilience of our clearinghouses.

3 And following that, FDIC and CFTC staff
4 will discuss planning for the resolution of CCPs.
5 And as you will hear, a lot of work has already
6 gone on. And that's true at both the domestic and
7 international levels.

8 I believe we're going to hear about the
9 international standards that were -- concerning
10 resolution of CCPs that were developed some time
11 ago by the FSB, as well as the relevant provisions
12 of Dodd-Frank that pertain to this.

13 We'll hear about the work of the FDIC
14 together with the CFTC to develop resolution
15 strategies in light of that legal framework and
16 those standards. And I just want to note again my
17 appreciation for the close and collaborative
18 working relationship we have had with the FDIC on
19 this.

20 And you'll hear about the many ongoing
21 work streams that are taking place both
22 domestically and internationally, including the

1 work done by the Cross Border Crisis Management
2 Group on this topic.

3 I think we're going to touch on the
4 distinctions between recovery and resolution
5 planning. But, unfortunately, beyond noting those
6 distinctions, I don't think time will permit us to
7 discuss all the work being done on recovery
8 planning.

9 Let me just say that our staff has been
10 extremely busy in this area as well, both in terms
11 of developing strategies and standards, as well as
12 just working with our international colleagues to
13 develop resolution strategies.

14 And you might say that all this reflects
15 the priority that the CFTC is placing on what I
16 might term the 3 Rs for CCPs, obviously, not
17 Reading, 'Riting and 'Rithmetic, but in this case,
18 Resilience, Recovery, and Resolution Planning.

19 Those things have been a priority of
20 mine since taking office. They are a priority of
21 regulators around the world as evidenced by the
22 agreement of international and U.S. regulators

1 last year to implement a four-part work plan to
2 look at resilience standards, recovery and
3 resolution planning, and interdependencies among
4 clearinghouses and clearing members, and I'm
5 pleased that we at the CFTC are leading much of
6 this work.

7 And these issues are top of mind not
8 just for us, not just for those in Europe, but
9 also for people in Asia. I just returned from a
10 trip out there, and I discussed these issues with
11 regulators and market representatives in some
12 detail.

13 I spoke at a conference in Shanghai of a
14 new organization called CCP 12, an organization of
15 clearinghouses that many of the clearinghouses
16 represented here today are involved in.

17 So, again, I think this is a very timely
18 and productive meeting. I thank Commissioner
19 Bowen for, and her staff for, organizing it. I
20 thank, again, the presenters, and I look forward
21 to the discussion.

22 COMMISSIONER GIANCARLO: Thank you,

1 Chairman. Commissioner Bowen always has
2 impeccable timing, but I don't think that even she
3 could have predicted the impeccable timing of
4 having our Market Risk Advisory Committee take
5 place today in the wake of what's happened in
6 Europe over the last few days.

7 And I think it shows the commitment of
8 this Commission, as well as the CFTC staff, to
9 examining market risk, and understanding it, and
10 looking for continued ways to mitigate its impact
11 on market environments.

12 It is a great privilege to be here
13 today. I think you have all seen the commitment
14 that the three commissioners make to our advisory
15 committees, and to the important matters that are
16 discussed at that, and that continues through
17 today's meeting.

18 So with that, I just want to thank all
19 of the participants for being here. None of these
20 matters happen without a lot of preparation and
21 work in advance. I think sometimes just the
22 meeting itself is one one-tenth of the work that

1 goes into the preparation and getting ready for
2 it. So it's with a lot of gratitude that we
3 express to all of you as members for your work on
4 these committees.

5 Thank you. Look forward to a good
6 hearing today.

7 COMMISSIONER BOWEN: Thank you. Welcome
8 to the June 27th, 2016 meeting of the Market Risk
9 Advisory Committee. I am excited to be the
10 sponsor of this committee, which brings together a
11 diverse group of market participants to discuss
12 the important topics of systemic risk, and the
13 evolving structural changes in our derivatives
14 markets.

15 Before beginning our meeting today, I'd
16 like to say a few words about the recent British
17 Referendum. In the next few months, and even
18 years, we, as regulators, will need to make many
19 decisions in light of this new reality.

20 In the days or weeks to come, the
21 industry and others who observe these markets will
22 have a better sense of what are the temporary

1 versus the long-lasting effects. I believe that
2 this committee, which is composed of industry,
3 academicians, regulators and public policy groups,
4 will be a key source of advice and analysis to the
5 Commission.

6 So now, let us just turn to today's
7 meeting. First, I'd like to thank the Chairman,
8 and also Commissioner Giancarlo today, for your
9 support for the work of this committee.

10 Second, I'd also like to thank the
11 committee members, our guest speakers, and the
12 commission staff for their work and participation
13 in today's panel discussions.

14 And last but not least I would like to
15 thank the logistical staff led ably by Margie and
16 Altonio, who worked tirelessly behind the scenes
17 to set the stage for these meetings.

18 I have the bittersweet task of saying
19 goodbye to some of our valued members, while
20 welcoming some new members to our committee.

21 First, the members who have left the
22 committee: Emily Portney, formerly of JP Morgan;

1 Sunil Cutinho of CME Group; Scott Flood of Citi;
2 Robert Anderson of the Committee of Chief Risk
3 Officers; Bill Hale of Cargill; and Lee Olesky of
4 Tradeweb. To Emily, Sunil, Scott, Robert, Bill
5 and Lee, thank you for your valuable contributions
6 to the committee's dialogue, and for the unique
7 perspectives that you brought to the table on
8 these important issues. You will definitely be
9 missed.

10 We are fortunate, however, to add new
11 members to our committee, who also bring valuable
12 expertise and a diversity of perspectives:

13 Thomas Coyle, who is Vice President and
14 General Counsel, General Manager, rather, of
15 Chicago and Illinois River Marketing, who brings a
16 vital perspective of agricultural end-users.

17 Scott Zucker, Chief Administration
18 Officer of Tradeweb, who brings the important
19 perspective of swap execution facilities;

20 Jim Taylor, President of Global
21 Operations, Technology & Risk of the CME Group,
22 who has had a long and well-regarded career in

1 clearing; and

2 Robert Steigerwald, Senior Policy
3 Advisor of the Chicago, Federal Reserve Bank of
4 Chicago, who brings considerable expertise on a
5 number of topics including CCP recovery and
6 resolution.

7 Tom, Scott, Tim, and Robert, welcome to
8 the committee.

9 I'd also like to take the opportunity to
10 thank Tom Kloet for his leadership of the CCP Risk
11 Management Subcommittee, which will be presenting
12 today. The draft recommendations that we will
13 discuss today are largely due to Tom's efforts.

14 Tom, while staying on the subcommittee,
15 will be giving up his leadership role, and Susan
16 O'Flynn, whose played a critical role in the
17 efforts of this subcommittee so far, will be fully
18 taking over the reins. So thank you, Tom and
19 Susan.

20 Today, we will discuss three topics that
21 are of critical importance to the market: How
22 CCPs and better coordinate their efforts to

1 prepare for the default of a shared clearing
2 member; how the FDIC, as a resolution authority,
3 would address the resolution of a bank, who is, or
4 is an affiliate of, a clearing member; and, three,
5 how the FDIC staff, under the Title 2 framework,
6 would work together in the unlikely event of a CCP
7 resolution.

8 Our first panel on CCP coordination is a
9 continuation of a conversation that we started
10 about a year ago. At our first MRAC meeting in
11 April, 2015, our CCP members presented their
12 default plans, and the MRAC discussed the
13 strengths and weaknesses of those plans. From
14 that discussion arose two questions: How can the
15 CCPs' plans better reflect the likely market
16 conditions during a default; two, how can CCPs
17 better coordinate their efforts to prevent, and
18 manage, a participant default?

19 At our November, 2015 meeting, our CCP
20 Risk Management Subcommittee led a discussion on
21 the possible recommendations in response to the
22 former question. And today, they will do the same

1 in response to the latter question. I very much
2 look forward to this conversation today.

3 I'm also very pleased to have guests
4 from the Federal Deposit Insurance Corporation
5 along with our staff to discuss two very important
6 issues of market stability, bank resolution, and
7 CCP resolution.

8 In regard to bank resolution, in the
9 case where the bank being considered for
10 resolution, is an affiliate of a clear member, it
11 is important that our two agencies work together
12 to make sure that we do not duplicate, or
13 undermine our mutual efforts. Likewise, in
14 preparation for a CCP resolution, the FDIC, which
15 is the resolution authority of CCPs, and our
16 agency, which is the primary regulator of CCPs,
17 would clearly have to work together. So I'm
18 really eager to hear the viewpoints of both
19 agencies today.

20 I want to thank you all for joining us.
21 And now we will turn it over to our Designated
22 Federal Officer, Petal Walker, who will introduce

1 our first facilitator and panel.

2 MS. WALKER: Thank you for your opening
3 remarks. As noted in today's agenda, our first
4 panel discussion will cover enhancing CCP
5 coordination and default management, discussion of
6 draft recommendations of the CCP Risk Management
7 Subcommittee.

8 I would like to introduce the
9 facilitator for this first panel, Ms. Susan
10 O'Flynn, Managing Director and Global Head of CCP
11 Strategy, Governance, and Optimization for Morgan
12 Stanley. Ms. O'Flynn has worked tirelessly in the
13 subcommittee to produce recommendations on two
14 occasions, and has definitely thought deeply about
15 these issues, and she will facilitate our first
16 panel.

17 MS. O'FLYNN: Okay, good morning
18 everyone. Thank you to Chairman Massad,
19 Commissioners Bowen and Giancarlo, and, of course,
20 Petal, for your opening comments. As well, I'd
21 just like to reiterate a welcome to the new
22 members of the MRAC.

1 Today, obviously, the first panel is on
2 the recommendations and enhancing CCP coordination
3 of the CCP Risk Management Subcommittee. And as
4 Commissioner Bowen said, this is in response to a
5 number of the recommendations that were made in
6 last November's meeting. I think you will find in
7 today's session that there is definitely some real
8 coordination between the sell, the buy side, and
9 the clearinghouses around this, what can be done
10 with regards to CCP coordination. So I think it's
11 going to be a good demonstration of the
12 partnership that has emerged through this process.

13 So with that, I'm going to turn over to
14 a series of questions. On the board here, you'll
15 see the actual recommendations here, 1 to 5, which
16 our clearinghouse representatives will refer to.
17 But without any further ado, I will move to the
18 questions.

19 So the first question: How can CCPs
20 improve their communication with each other prior
21 to, and in the midst of, a default that involves
22 the shared clearing member? How can CCPs enhance

1 their communication with the Commission prior to
2 and during a default?

3 With that I will just to Kim to begin.

4 MS. TAYLOR: I think the communication
5 is a very important element of market stability.
6 So in every crisis that I have been involved in
7 over the many years that I have been involved in
8 clearing, there has been, naturally, good
9 communication within the industry, among the
10 industry and the regulatory community, and even
11 among the CCPs globally on certain aspects, but
12 this recommendation of the working group came
13 forward and suggested that we firm that up
14 specifically with respect to the default
15 management process, the groups of people who would
16 be running the auction process to liquidate the
17 portfolios of the clearing members if there were a
18 default situation.

19 So we recommend that, and have made some
20 progress on creating a global directory of all of
21 those parties, and putting them in a process of
22 routine contact because when you're facing a

1 crisis, actually, it's good, you form good
2 relationships in a crisis, but it's better to walk
3 into the crisis with relationships already formed.

4 So the recommendation here is that the
5 default management branches of clearinghouses have
6 ongoing communication in both peacetime and then
7 have coordination in wartime.

8 MS. O'FLYNN: Dennis, Kevin, would you
9 like to comment any further?

10 MR. McLAUGHLIN: I'll just make one
11 comment. I think that it's not only CCPs who have
12 to communicate between themselves, but also
13 regulators who have to communicate between
14 themselves and the various CCPs that are involved.

15 So we can only go so far, but there is a
16 role, I think, here that needs to be clarified
17 exactly what those communication channels would
18 look like.

19 MR. McCLEAR: Hi, Susan. I have a
20 couple of thoughts. One, I want to follow up on
21 something Kim said that's so important.
22 Communications based on good relationships. And I

1 can tell you that we, CCPs, have good
2 relationships, and we're regularly communicating.
3 We sit on a lot of the same organizations
4 together. Chairman Massad referenced the CCP 12.

5 There's also the, ASIC, Association of
6 Systemic Important Clearinghouses. We sit on
7 panels together. FIA regularly is the, we know
8 each other well. The global directory will help,
9 that's good, but we know each other. We know who
10 to reach out to.

11 You could imagine on Friday we were
12 talking to each other about the Brexit situation.
13 So I just want to confirm -- one of the questions
14 up there is CCP should establish and maintain
15 communications. We have good communication
16 channels in place. We do communicate well.

17 MS. O'FLYNN: Okay. Thanks for that.
18 Just there's a little bit of a volume issues, so
19 if everyone can really speak into the microphone I
20 think that will be very helpful.

21 And if any of the other subcommittee
22 members want to ask a question, just turn your

1 name tag, you know, vertical, please.

2 Okay. Second question. How can CCPs
3 better coordinate the scheduling of traders who
4 help with the default management process so that
5 trading desks are not overtasked during a time of
6 crisis?

7 MS. TAYLOR: With the advent of the
8 over-the-counter clearing, CCPs need to use a
9 different process to liquidate the portfolios than
10 they typically would have used historically to
11 liquidate very liquid futures positions.

12 You can go to the market to liquidate
13 those. You could auction them, but you don't have
14 to. With the OTC products, you generally need to
15 auction the products, and because the liquidity is
16 certainly there, but it's less readily accessible
17 to CCPs, there needs to be better coordination
18 with traders in the market for purposes of hedging
19 the portfolio, and for purposes of running the
20 auction process.

21 What comes with that is the need for the
22 bank clearing members, the clearing members who

1 participate in these markets, to second a trader
2 to the CCPs for default management purposes, and
3 because there are multiple CCPs, and generally
4 speaking when we're in a situation like this, we
5 would expect that there would be a default by the
6 clearing member at multiple CCPs at the same time,
7 there is the possibility for a drain on the
8 resources of the system, of the desks, to provide
9 traders.

10 So the CCPs have determined that it is
11 valuable to coordinate the rotation of clearing
12 members serving on the various default management
13 committees so that one desk won't be called to
14 produce a trader for multiple CCPs at the same
15 time if that is at all avoidable.

16 And we think that that will help
17 alleviate the default management process putting
18 further strain on the markets at a time when there
19 is already market, significant market stress, and
20 significant stress potentially at the bank
21 clearing members, who are providing these traders.

22 As far as progress, CME and ICE have

1 already started to work on the coordination of the
2 rotation of the traders, and we expect that other
3 clearinghouses will also join in that process.

4 MR. McLAUGHLIN: Yeah, I think, I agree
5 with everything Kim says. I think one thing
6 that's important to note is that you don't need
7 one trader for every bank on the default
8 management committee of every CCP.

9 The trader, once they, at least for LCH,
10 once they're seconded onto the Default Management
11 Committee, no longer represent the bank. They
12 represent, they act for LCH. We take the
13 Blackberry at the door. They sign things. So
14 they're acting for LCH.

15 So the idea of having a critical mass of
16 traders, one for every bank at every CCP during
17 the default management crisis, is not realistic
18 anyway. So I think it can be narrowed down if
19 we're very good at coordinating who is sitting on
20 which committee.

21 MR. McCLEAR: So I agree that the
22 coordination of the rotation will be a big help.

1 But as Kim said, it really comes down to the
2 clearing members' resources. It's their traders,
3 as Dennis says that they're seconding to us. They
4 come to work for us. They have to sign paperwork
5 that says that they're working for us, and that
6 they won't talk to their firms about the
7 positions.

8 One thought I have is when we started
9 clearing the credit default swaps in 2009, we
10 worked closely with our clearing members, and our
11 Risk Committee to establish the Default Management
12 Committee, where you have the seconded traders.
13 And the thinking was, as Kim pointed out, there's
14 some discretion that needs to be exercised with
15 respect to putting on the hedges. There was also
16 a concern that the clearing house was new to the
17 market, and would need the expertise of the
18 traders.

19 Well, one, we've become more familiar
20 with the market. We've been clearing CDS for
21 seven years now, and big volumes and open
22 interest. And, two, we have a process where on a

1 daily basis, we're establishing what we call the
2 first order hedges. So we're looking at the
3 clearing members' positions, and we see what we
4 need to do to hedge those positions if there's a
5 default. So there's less need for the traders to
6 help us with that.

7 So maybe, my point is, I think we
8 continue to need the traders to help us, but maybe
9 we don't need three. At ICE Clear Credit, we
10 second three traders. Maybe we can work with our
11 clearing members and our risk committees. Maybe
12 it's two, maybe ultimately it's one. But that
13 might help the pressure with respect to resources
14 too.

15 MS. O'FLYNN: Just an observation as a
16 clearing member, who, obviously, has volume at all
17 those three clearing houses, I think this is one
18 of the key kind of heavily-debated November
19 recommendations around clearinghouses coordinating
20 to insure that no one firm is effectively sending
21 two people to two different clearing houses in the
22 event of a clearing member default.

1 I think there's also, incumbent on the
2 clearing members to be, to have a centralized kind
3 of coordination effort and, certainly, to insure
4 that there is real kind of scrutiny as to what is
5 being committed, and also understanding, the bench
6 that's being left behind to be able to manage and
7 trade the highest risks.

8 So I think it's very much a, you know,
9 clearing members have really started to focus on,
10 and, obviously, it is very much a two-way process.
11 So I think, you know, looking at where things were
12 this time last year, I think there's been with
13 coordinating rotation of traders, and
14 clearinghouses do, and clearing members doing
15 joint full fire drills like we (inaudible) in
16 Europe in February, all of those processes help
17 clearing members to be kind of more coordinated
18 along and in partnership with the clearinghouse.

19 MS. TAYLOR: And I would just add as a
20 follow up to some of the points that Kevin was
21 making, I think there are a number of things that
22 can contribute to less need to rely on a large

1 number of traders.

2 One is, as Dennis mentioned, we don't
3 need a trader from every firm on any of these
4 default management committees. I think we might
5 impanel five clearing members who might need to
6 participate in any one default exercise.

7 So that is a factor. Rotating the
8 firm's differently across the three of us, or the
9 multiple CCPs, to reduce the duplication is one
10 way. But also taking advantage of changes in the
11 market, as Kevin said, or advances in the
12 electronic trading and visibility, and
13 readily-accessible liquidity that does not need to
14 be accessed as much, only through the dealer
15 mechanisms will also help in that as the market
16 changes over time.

17 And if we get to a point where the
18 liquidity is as visible and readily accessible in
19 the size that is needed for the CCPs to liquidate
20 that is available in the listed futures markets,
21 then the reliance on a broad set of traders can be
22 further reduced.

1 MS. O'FLYNN: Okay, question 3. Can
2 CCPs engage in regular joint full fire drills in
3 order to better understand how their mutual
4 markets interact during the default of shared
5 clearing members. Kim?

6 MS. TAYLOR: This is a question that has
7 been out there for a long time. I remember CCP
8 default drills being done on a coordinated global
9 basis back in the nineties. So from time to time,
10 the CCPs do endeavor to drill together.

11 Even if we have drilled together, we
12 endeavor to coordinate in the time of crisis. I
13 remember conversations during the Lehman situation
14 between ICE, who was about to take over clearing,
15 LCH, who was doing the clearing, and CME, who had
16 newly taken over the NYMEX clearing about whether
17 or not there was something we could do on a
18 coordinated basis with the energy portfolio of
19 Lehman.

20 So this coordination is a well known
21 goal of the CCPs to manage collectively the
22 systemic risk that is facing the industry at a

1 time of crisis is something that we're all very
2 focused on.

3 Now, one of the best ways to make sure
4 that that works well in practice is to practice
5 doing it, and so there is a recommendation by the
6 group that there would be simultaneous or joint
7 default drills.

8 There have been some examples of it.
9 The example in Europe that Susan mentioned, and,
10 also, CME has done coordinated default drills with
11 individually a couple of CCPs, ourselves as well.
12 So there is a movement to start this process.

13 The default management process really is
14 the first part, I consider it part of resilience,
15 but it, also, if it fails, it can be the first
16 step toward moving into the place where the CCPs
17 need to use their recovery tools, and so it needs
18 to be performed in a way that is set up to
19 minimize the process of needing to move from
20 resilience into recovery, and to maximize a good
21 outcome. Drilling this jointly can only help in
22 that regard.

1 the trades, but that may or may not
2 be the case. We have no say of
3 knowing a priori whether that's the
4 case.

5 So in actual fact, there may be a role
6 here for a regulator to give us taps on the
7 shoulder and say you should talk to each other in
8 this particular example, because then we could
9 actually save a lot of, if you like, money that we
10 would waste in the auctioning process, or in
11 trying to defuse the risk.

12 MR. McCLEAR: So fundamentally, practice
13 is a really good thing. All of our clearinghouses
14 that I saw, the clearinghouses here today and
15 elsewhere, regularly conduct very formal default
16 drills. They're very structured. We have
17 playbooks that are an inch thick, and it's good.

18 I think ultimately, we can get to a
19 similar structure for cross clearinghouse default
20 drills, but it'll be involved. The good side of
21 that is that it allows the clearing members and
22 others to practice handling multiple clearinghouse

1 default processes. But it's a project.

2 I saw recently that FSAC issued its
3 annual statement, and it's annual statement it has
4 a section on clearinghouses. And what they've
5 recommended is that clearinghouses get together.
6 Both the public and private sector more broadly
7 should get together in an informal setting, maybe
8 similar to this, have a roundtable exercise, a
9 tabletop exercise to get input on the process of
10 involvement in the process from a broader group.

11 MS. O'FLYNN: Okay. Question 4. How can
12 CCPs better coordinate their auction processes so
13 that market participants are prepare for auctions
14 of various CCPs?

15 MS. TAYLOR: I think one of the take
16 aways that we all had, and that we heard from the
17 marketplace after the Lehman situation was that it
18 would be good if the kind of input/output process
19 of the auction was coordinated or standardized so
20 that everyone would, when bidders were receiving
21 information from CCPs, they would be receiving it
22 in similar fashion. The auctions would be

1 described and run under similar terms and
2 conditions that everyone in the market would
3 understand up front, and not have a lot of
4 questions and potential for confusion at the time
5 of the auction.

6 So the Default Management Working Group
7 came up with a document. It's actually a fairly
8 sizeable document. It's on the table over at the
9 side, and it is the Uniform CCP Terminology for
10 Default Management Auctions. It lays out the
11 descriptors associated with the auction process so
12 that if clearinghouses agree to adhere to this
13 type of format, and the bidding parties could
14 actually prepare in advance to be in a position to
15 understand the output that they're going to get
16 from the CCPs in order to come up with their bids,
17 because there is not a lot of time that is allowed
18 for in this process, and so we need the market
19 participants who are going to be bidding to be
20 able to understand and act very quickly once they
21 have received the information from the CCPs.

22 So this is, I believe that this will,

1 this document will go a long way toward avoiding
2 the potential for confusion in the case of a
3 default situation.

4 MR. McLAUGHLIN: Yeah, I read the
5 document. We agree with the gist of what's going
6 on there. It's good to have standardized formats
7 and templates to help the auction.

8 I think though, one of the things that
9 we have to look at is why would an auction fail in
10 the first place. This is only really lubricating
11 our process. Other structural issues which may
12 lead to the failure of an option, we have done
13 some work on that, and we have found that one of
14 the biggest reasons for failure is that if you
15 have a member who defaults, and there's very few
16 members on the other side of that market, so to
17 speak, who have kind of the opposite positions,
18 then you're really exposed to the whim of one or
19 two members bidding in the auction in the first
20 place.

21 So we think one thing that might be
22 useful is to try and insure that we monitor that

1 situation so the markets don't become lopsided,
2 and that can easily happen in the clearing space.

3 So I think there's more to do. It's
4 good first step, but there's more to do.

5 MR. McCLEAR: So I agree that this
6 Uniform Terminology Agreement is a really good
7 document. And there was a lot of work that went
8 into it. I think there were eight clearinghouses
9 that participated. And I think it' a good start.
10 To be effective though, I think it really needs to
11 be incorporated into the respective
12 clearinghouses' processes, and I think that will
13 happen over time.

14 At ICE, we were in, fortunately, a
15 unique position in that we're in the process of
16 building out our Automated Default Management
17 System. And so we're using this document to build
18 out the, and help with the specs of our Automated
19 Default Management System.

20 MS. O'FLYNN: Okay. Question 5. Are
21 there any other ways that CCPs can coordinate more
22 effectively in order to mitigate the effect of a

1 default of one or more significant clearing
2 member?

3 MS. TAYLOR: You know, there are a lot
4 of ways that CCPs can coordinate in times of
5 crisis. And Dennis actually mentioned one of the
6 areas that I think we'd love to see some ongoing
7 and continuing improvement. In terms of the
8 communication, would be between the regulators of
9 the GSIBs, and the CCPs, because there is a time
10 period during which you can observe some
11 deterioration usually, but in a lot of cases, the
12 primary supervisor has more information about that
13 than other parties in the marketplace, and I know
14 that there are concerns about sharing any of that
15 information, but the more that the -- the failure
16 of multiple GSIBs is the, really, realistically,
17 the only thing that can potentially threaten the
18 ongoing viability of the CCP mechanism.

19 The CCP mechanisms are structured to
20 withstand the default of X number of large
21 clearing members. They are funded for two. They
22 are generally structured to cover the default of

1 more than two, but there is kind of by definition
2 a process where the CCPs are not structured to
3 necessarily withstand the default of, let's say,
4 five or more large GSIB participants.

5 So the more that the CCPs have
6 coordination up front with supervisors of the
7 GSIBs, the better positioned CCPs will be to act
8 in a default situation, and to coordinate their
9 actions in a default situation.

10 One of the ways that we have discussed
11 also working together is on coordination on the
12 porting of customers, and there are certain things
13 that can be done there. There is kind of
14 preplanning about who would be able to take on
15 customers. There is also some standardization of
16 tools in inputs and outputs that could be used by
17 the CCPs that the market participants could
18 benefit from.

19 I think we've discussed whether we
20 should include the porting of customers in the
21 default drill process so that that is also an
22 element that is practiced by the industry.

1 But the one situation where the CCPs, I
2 think, did work quite effectively together to
3 transfer customers would be the MF Global
4 situation. It's an unprecedented situation in the
5 U.S. futures industry in that there was a default
6 of a large clearing member with a shortfall in
7 customer funds, and the CCPs were able to work
8 together quite successfully to get the positions
9 and a good part of the money, good portion of the
10 funds to the clients from a clearing member in
11 bankruptcy very quickly.

12 So I think that using that as an
13 example, we would like to broaden the potential
14 for coordination to include other types of product
15 sets where because of, in a lot of cases, because
16 of the regulatory capital implications, the
17 porting of customers is somewhat more problematic
18 and less attractive to the surviving clearing
19 members than it used to be in the past.

20 So I think this is an issue where the
21 industry should need to work together to insure
22 that when there is a situation where customers

1 need to be ported, all elements of the industry
2 work together to kind of alleviate the potential
3 for there to be a refusal to take quick customers
4 because of the immediate severe capital impacts.

5 MR. McLAUGHLIN: Yeah, in the porting of
6 customers, it's becoming more and more problematic
7 given the capital requirements some of these buy
8 side players can bring onto a member so that the
9 way is not very smooth.

10 And we are talking about, for some of
11 the large buy side, we're talking hundreds of
12 accounts that need to be ported in a matter of a
13 day or two. It's very, very onerous the actual
14 process.

15 So it would be useful if there some
16 alleviation of some of the, and I'm talking about
17 temporary, of some of the requirements so we can
18 on board them, and have some kind of holiday for a
19 few days while we work through the process of
20 meeting the know your customer, anti money
21 laundering protocols, because after all, they
22 would have been board at somewhere else, or they

1 would have been working for some other, or part of
2 some other member's portfolio in another CCP, so
3 surely inheriting that to another CCP should be
4 much easier than if they were just off the street
5 and nobody had a clue who they were.

6 So there are things that could be made
7 easier here. Apart from the process on voiding
8 and technology wise and, or just physically moving
9 accounts, just there are some obstacles which
10 could really prevent timely porting that I don't
11 think are necessary, and they could be, we could
12 have some kind of leeway for a few days or
13 something to get those out of the way so we can
14 complete the port and keep that client alive, so
15 to speak, because after all, they were still
16 paying margin. They are probably fine. The issue
17 is with the member who defaulted.

18 So I think keeping a client in a state
19 of limbo for a while, while the defaulted member
20 is being dealt with is a highly desirable outcome.

21 MS. O'FLYNN: (inaudible) we'll get some
22 questions. So we have -- I'm just going to go to

1 Michael first.

2 MR. MODLOCK: Thanks, Susan. So we
3 heard at the start about the importance of
4 resilience. And we've heard some really good
5 things about the way the CCPs are working
6 together. I think what I'd like to add as an
7 observation to day is that, as Kim pointed out,
8 it's likely that the membership of a defaulting
9 member is going to be across multiple CCPs. And
10 Dennis made an observation about the limitations
11 of CCPs to be able to work together because of the
12 directional risk and in not knowing what each
13 other have got.

14 So what I'd like to think is that the
15 head of any default scenario, we as an industry
16 have one as much as we could proactively, and
17 Susan, as a clearing member, what could we do with
18 clearing members and CCPs, and third-party
19 providers together proactively ahead of a default
20 so that the default management process in normal
21 markets as we've discussed good practice, how
22 could we reduce risk ahead of that scenario, and

1 even going into panel two where we're going to
2 cover some of the improvements and actions of the
3 regulators in a default, how do we see the
4 regulatory view of proactive and reactive
5 opportunities?

6 MS. O'FLYNN: Cliff.

7 MR. LEWIS: Just a general point that
8 (inaudible) perspective implies
9 consent, and what my colleagues
10 have been talking about, old
11 friends have been talking about is
12 your clearinghouse is in complete
13 agreement.

14 Two points. First point is one thing
15 not to forget, and, Susan, you're a good example
16 of this, that there's a huge amount of bottom up
17 coordination that has resulted in huge
18 improvements in the coordination prospects across
19 different CCPs, and that's because the risk
20 committees in many cases are made up of the same
21 people. That's been a huge driver that's, I
22 think, been, honestly, as important as what the

1 regulators have been doing is the people that have
2 skin, have a lot of skin in the game are looking
3 at this as you would hope they would, and said,
4 hey, wait a minute. Here are the things we really
5 need to focus on, and these are, like I say, the
6 guys on the firing line.

7 Second point is notwithstanding the
8 Chairman's admonition not to focus on the last
9 couple of days, let me just observe that the last
10 couple of days have been an excellent example of
11 how the system is working, and is much stronger, I
12 believe, than before.

13 Moreover, and this is an important
14 general point with one recommendation. It also
15 demonstrates the benefit of, pardon me for putting
16 this in a way that sometimes is described
17 negatively, but centralizing a lot of the risk,
18 and, certainly centralizing the processing of the
19 tickets has been hugely beneficial to the market.

20 Now, you may have noticed that some
21 banks have been quite proud of the number of
22 tickets they've been able to process. That's in

1 part because in the past everyone has prayed for
2 an event like this on a Friday so people can
3 beaver away on the weekend. It's one of the
4 reasons why declaring a member in default on a
5 Friday is so helpful in terms of porting, porting
6 members.

7 The fact of the matter is, however, that
8 the system I'm not sure could have operated
9 successfully without this kind of centralized
10 processing, and, critically, recognition of
11 lawsuits, which in some ways was the catastrophic
12 element on the AIG CDS mess, which was even worse
13 because people were aware of it before it
14 happened. It was a train wreck people were
15 waiting for years. Remember, Alan Greenspan
16 giving a speech about it four years before the
17 crisis.

18 The final point I'd make in that regard
19 is a point which we aren't really talking about
20 which is how important getting the margining
21 regimes right is in advance of the crisis,
22 because, again, if you look at the actual

1 experience before, over margining of prospective
2 at risk members is as dangerous in some ways as
3 under margining. It's procyclical. All sorts of
4 problems on that, and my only observation is that
5 as the clearing houses are all making how
6 important the clearing house movement to portfolio
7 margining is, because only with portfolio
8 margining are you really able to see albeit at a
9 CCP individual basis what the total net risk
10 position of a particular clearing member is.
11 Portfolio margining is a huge part of trying to
12 prevent a default, and it's a huge part of
13 simplifying the default process.

14 Now, obviously, different products need
15 to be handled in an auction differently. You
16 know, it's completely different. The rates
17 complex from swaps from CDS, but this portfolio
18 margining get the focus where it ought to be,
19 which is the at risk clearing member. Thank you.

20 MS. O'FLYNN: Kristen.

21 MS. WALTERS: Thanks, Susan. So thank
22 you very much, and you are certainly hugely

1 proponents of the work that's been done on the
2 coordination said, very important, obviously makes
3 a difference. You know, I think from my
4 perspective thinking about last Friday, I think
5 the market has functioned well in many different
6 areas, including in this space, but I don't think
7 that should give us any false sense of comfort
8 about the risk that we actually do face.

9 So remember that this even while, you
10 know, not expected to go in the direction that it
11 did, was we were extremely prepared as a market.

12 So the way that we responded was in a
13 highly coordinated way across buy and sell sides
14 firms, clearing firms, and everything went without
15 a hitch.

16 However, this type of environment, or
17 that type of example doesn't happen very often.
18 So usually, we're faced with, you know, very
19 unexpected volatility of markets. It happens
20 quite episodically, tail events, and no one is
21 prepared.

22 And so I think last Friday just made me

1 consider the fact that we need, well, what we're
2 doing is, is effective, and it's in the right
3 direction. I think we need to do more.

4 And just referencing some of the
5 comments that Kim made about kind of porting of
6 customers during a default, and maybe think about
7 what kind of keeps me up at night based on what
8 I've heard from this committee over the last year.

9 And I think one of the things that I'd
10 like to see us address in future sessions and have
11 a broader discussion about, is around the porting.
12 So I, if memory serves me correct, I believe at
13 least three clearing members of MRAC have talked,
14 Morgan Stanley, Susan, correct me if I'm wrong,
15 Goldman Sachs, as well as JP Morgan, have talked
16 about their kind of grave concerns about the
17 ability of some of the clearing members to be able
18 to actually effectively port positions in the
19 instance of default for a variety of reasons, but
20 I believe, if recollection serves me correct,
21 capital constraints, and other issues that are
22 affecting clearing members kind of post-regulation

1 after financial crisis which were quite warranted.

2 So my concern, particularly given the
3 fact that there is, you know, a very, there are a
4 very small number of clearing members. They're,
5 basically, clearing members on every single
6 exchange or CCP around the world. And in the
7 instance of a default, I'm very concerned that
8 we're not in practice able to actually port
9 positions, customers, and so on and so forth.

10 So, perhaps, for a future meeting, but I
11 think it's something that's important to have a
12 dialogue about.

13 MS. O'FLYNN: Gerald.

14 MR. BEESON: I think building on
15 Kristen's comment, the other point here is we, and
16 I think rightly so given the topic, we do focus in
17 terms of the (inaudible) of piece of how are you
18 (inaudible) with the porting of positions in
19 default scenario, but with a number of these
20 things I think there's also the fact that what you
21 practice during normal market conditions can be a
22 precursor to making sure we have an orderly

1 functioning of the market during a stress
2 condition. And I think we all realize that the
3 actual porting of positions is time intensive,
4 manual, by appointment. If we can all move toward
5 having not just (inaudible) I think was, Kevin to
6 your comment on working on your automated default
7 management, how we basically move that same type
8 of automation into the normal daily process of
9 porting positions, you know, easily among
10 different FCMs over time such that we can make
11 that process in a stress scenario, you know, that
12 much less of an impact into the marketplace.

13 MS. O'FLYNN: And this is the comment
14 from me, and I think it ties back to what Michael
15 said earlier, and the next panel, obviously, it's
16 going to be critical to understand how GSIB
17 regulator and the CCP regulations coordinator
18 around the process of default, and to understand
19 as well, especially where it's a large clearing
20 broker, how the sequencing will work and what is
21 actually happening to the clients of that
22 defaulting clearing broker. Are they portioning

1 away, and who is left at that clearing broker
2 which in theory may or may not have another
3 clearing broker. You know, we need to, I think
4 that's an open point that we continue kind of to
5 debate, but we should, you know, hopefully touch
6 on that in the next panel.

7 And I -- Kim. Beg your pardon.

8 MS. TAYLOR: A couple of things in
9 response to what Kristen was talking about about
10 porting. I think we mentioned it when we talked
11 originally, but it's probably worth highlighting
12 it.

13 The way that the leverage ration treats
14 the margin of customers is not good in peacetime,
15 but it is a killer in wartime. The very best,
16 most credit worthy set of clients tend to be also
17 highly directional and, therefore, their positions
18 generate a decent amount of margin. And those
19 customers will need to be able to port, and it
20 will become very difficult, capital will be scarce
21 at this time, and taking a double hit for taking
22 the exposure of the client, and taking a hit for

1 the margin that you hold when, honestly, that nets
2 out, that margin nets out and covers the risk is
3 going to be problematic.

4 And one of the things that has happened
5 over time when there were crises in the futures
6 industry, which is when most of the problems
7 happened before the, at least the U.S. CCPs were
8 clearing a lot of over-the-counter products.

9 The CFTC was always very thoughtful, and
10 reasonable, and very good crisis managers
11 themselves in terms of not making things worse by
12 being kind of draconian about the letter of the
13 rules, the (inaudible) would be a good example
14 when some funds were tied up, or the reserve fund
15 would be another good example. When some of those
16 funds were tied up, the commission assume that
17 their value went to zero, and increased the
18 capital requirement by the full amount.

19 They did a haircut and kind of phased in
20 people's ability to re-up their capital. Now that
21 the CCPs' members are much more heavily regulated
22 by or constrained by the regulations that applied

1 to them in other markets than just the markets
2 that the CFTC is the primary supervisor for, I
3 think there's a risk that that same kind of cooler
4 head might not prevail in the same way that it has
5 historically. So that's something that I think it
6 would be good if the regulatory community were
7 able to work through an advance that would make it
8 easier for it to happen in a crisis.

9 MS. O'FLYNN: Marcus.

10 MR. STANLEY: Just on this leverage
11 ratio issue, I mean, I think there is a basic kind
12 of common sense thing where the more solvent and
13 the more well capitalized clearing members are
14 going into a crisis situation, the more room we're
15 going to have to manage that crisis by potentially
16 easing up on those rules on a temporary basis
17 during the crisis situation.

18 And I take the point that there's,
19 there's a crisis management coordination issue
20 with the banking regulators and with the federal
21 reserve, but I just find it hard to believe that
22 those regulators are going to be saying over a

1 couple of weeks' period, over a month's period,
2 we're not willing to work with these capital rules
3 in an emergency situation like the failure of a
4 clearinghouse.

5 And I think advanced coordination on
6 what happens during that situation could be a good
7 idea, but fundamentally I think that the more
8 solvent clearing members are going into that
9 situation the stronger a position we're going to
10 be in.

11 MS. O'FLYNN: Kim. Oh, okay. Question
12 6, and we've formerly addressed a number of these,
13 but we'll just go through. Are there any
14 operational, legal, logistical or other barriers
15 to CCP coordination, and, if so, can they be
16 overcome?

17 MS. TAYLOR: I actually do think that
18 we've talked kind of in general about a lot of
19 those, although I will say that I think there
20 probably is difference of opinion among CCPs, and
21 maybe it's a jurisdictional thing because I think
22 in CME's view, we have, we have an MOU with the

1 various global CCPs, and we feel comfortable that
2 we would have the ability to share in a time of
3 crisis management information, enough information
4 about the position and exposures that we are
5 facing to be able to identify whether there is an
6 opportunity to work with another CCP to kind of
7 (inaudible) those off, or coordinate the
8 liquidation of those positions, because as Dennis
9 mentioned, it would be beneficial to the
10 marketplace for the CCPs to be able to avoid going
11 to the open market for positions that actually are
12 offsetting, but, as they say, it takes two to
13 tango, and so if only one CCP in the mix is
14 comfortable sharing the information, then it will
15 be more difficult to coordinate kind of
16 consolidated, or a cooperative liquidation of
17 positions as opposed to running two separate
18 auctions.

19 So maybe what we need to do is make sure
20 that in various jurisdictions there is protection
21 for the CCPs to be able to share the information
22 in a crisis management if that is necessary beyond

1 what is provided in the MOUs.

2 MR. McLAUGHLIN: Yeah, I think this is a
3 -- I keep coming back to that point, but I think
4 there's a role here for the CFTC to help us over
5 this obstacle that we have because the CFTC
6 obviously would know the relative positions inside
7 each CCP, and would be able to tell us whether or
8 not we should talk or not. So it's just an idea.

9 MR. McCLEAR: I agree with Kim generally
10 that we're in a position to coordinate. But as
11 Dennis alluded to earlier, we have to be careful
12 when we get to the more specific areas of
13 coordination. For example, coordinating an
14 auction.

15 It's important to remember we have
16 different rules, different regulators, different
17 regulations, different laws, we're in different
18 jurisdictions, they're different bankruptcy
19 regimes.

20 So to get to the ultimate goal of having
21 the coordinated auction of the defaulting clearing
22 members' positions across clearinghouses around

1 the world that are in different time zones, let
2 alone different jurisdictions, it's along row to
3 hoe, and it's going to be quite a process, and
4 we're going to need the cooperation of the
5 regulators, and the lawmakers, and the clearing
6 members, and the market participants. It's a big
7 deal.

8 MS. TAYLOR: And I agree with that, and
9 I wasn't necessarily advocating one big coordinate
10 auction. I was advocating circumstances where I
11 think there would be pieces of portfolios where
12 you would be able to identify that you had
13 opposite sides, and close those out without, and
14 then auction a smaller, a smaller portfolio on an
15 individual basis, because I do agree one big
16 auction would be very highly unachievable.

17 I do want to say one other thing though
18 about places where I think the continued focus on
19 improving the way the process works is important.
20 And one of those is the fact that CCPs are proven
21 over time to be excellent at resilience, and
22 excellent at what we're now calling recovery,

1 which we called default management before.

2 So, the, and, you know, there's been
3 good regulation and good legal basis for CCPs over
4 time, but there's also been good behavior by the
5 CCPs in understanding risk management, and
6 understanding the systemic role that they play in
7 the marketplace, and in understanding the
8 importance of promptness, and clarity, and
9 preserving value in the way that the default
10 management situations have been run.

11 One of the things that I'm concerned
12 about in the current environment is that there
13 seems to be a build-up of a desire for resolution
14 to happen sooner in the process, and I think the,
15 I think the CCPs have proven over time that
16 they're really good at recovery, and I think that
17 policy goal, the market's goal, should be that the
18 CCPs recover. And so I have a concern that we're
19 going to end up in a world where resolution is
20 going to be tempted to preempt recovery, and I
21 think we should be aware of that, and try to guard
22 against that across the system so that the CCPs

1 have the ability to use their recovery tools and
2 get back to a state where, remain in a state where
3 they are functioning in their role in the
4 marketplace.

5 The other thing that I have some
6 concerns about about the way that the recovery and
7 resolution process, the kind of global discussion
8 that's taking form is that there seems to be a
9 goal of having the plans laid out to the Nth
10 degree. We're gonna do this then, and then we're
11 gonna this, and we're gonna do this, and we're
12 gonna do this.

13 And the thing that has also been true of
14 every crisis that we have faced is that they have
15 all presented slightly differently. It's going to
16 be very difficult to come up with a plan that is
17 going to be the best optimization of actions and
18 time lines for every situation that you might
19 face.

20 It's I think, I agree with the police
21 objective of having the whole process be kind of
22 better thought out and better documented in

1 advance so the idea of having plans that lay out
2 what the tools are, I think that's a really good
3 idea.

4 I'm cautious about the fact that it
5 could, because if a CCP puts in its rules, I mean,
6 especially in the U.K., as an example, if they
7 have rules about default management, and they
8 follow those rules, they have a safe harbor from
9 the insolvency process. And if they have rules,
10 and they don't follow their rules, they don't have
11 a safe harbor.

12 So the less flexibility they have to act
13 according to the circumstances, I think we could
14 face a situation where we potentially impair the
15 outcome.

16 So I would encourage the industry to
17 think about these plans as tool kits rather than
18 step-by-step enumerations of the exact order of
19 actions that will occur because you need some
20 flexibility to respond to the situation that
21 you're facing.

22 MS. O'FLYNN: Kevin or Dennis, any

1 comments? Okay. Kristen.

2 MS. WALTERS: So I think that Kim's
3 comments are very helpful. I think it's important
4 to balance what she's saying. I mean, certainly,
5 you know, we think about the three Rs, Resilience,
6 Recovery, and Resolution kind of in that order,
7 and we've been mostly talking about resiliency in
8 this forum and what to do.

9 I do think that, you know, as I've
10 stated before, while the goal is always recovery,
11 there does come a point where resolution is
12 necessary, and I think that we've talked about
13 when the default waterfall has actually been
14 eliminated that that's a trigger point from our
15 perspective when resolution should happen, and it
16 should happen very quickly to protect, our view is
17 that as soon as, you know, point of non viability
18 has occurred, the best chance of eliminating
19 positions through the auction process is when
20 you're as close to being kind of (inaudible) as
21 possible.

22 So I would just reiterate what I've said

1 on behalf of Black Rock in the past is that while
2 it's not a preference and recovery is a
3 preference, similar to banks which do follow a
4 very structured step-by-step process administered
5 by FDIC when recovery is no longer possible, and
6 banks do get resolved very successfully.

7 My strong view is that a similar process
8 that should follow a highly structured approach
9 should exist and be followed for CCPs as
10 necessary. And, you know, from our perspective,
11 the ultimate reason is that once the default
12 waterfall has been eliminated, the remaining, you
13 know, capital is, essentially,

14 (inaudible) margin. And we talked
15 about the fact that at

16 least in my view, and I think the view
17 of Angela and 30 large other asset managers, is
18 that under no circumstances should client, non
19 defaulting client margin, VM or IM, we've talked
20 about the fact that IM is not allowed under CFTC
21 regulations, but certainly the use of variation
22 margin should not be an option to continuing along

1 the path of recovery.

2 And, you know, just to clarify, you
3 know, I agree with what Kim has stated, and I do
4 think that recovery is first and foremost, but I
5 just want, you know, to talk the other side of
6 that argument because I think it's important
7 particularly when you hit non viability.

8 CHAIRMAN MASSAD: Can I just clarify
9 that, Angela? You're saying variation margin
10 (inaudible) should not be an option
11 in the recovery phase, but, rather,
12 should be reserved for the
13 resolution phase?

14 MS. WALTERS: Variation margin should
15 never be used period because it doesn't belong, I
16 mean, it belongs to non defaulting clients. So I
17 think what we've said, I mean, it's, you know, I
18 don't say this currently, but it's, you know,
19 essentially, non defaulting clients are taxpayers.
20 They are not, and they're not willingly or
21 knowingly putting their money at risk. They're
22 under the impression that it's collateral that

1 are taxpayers, but we're also trying to come up
2 with plans that don't use taxpayer money, per se,
3 which is, obviously, a much broader set of people
4 than those who participate in the futures market.

5 MS. WALTERS: Right. So in that context,
6 what I think is that CCPs are by and large, with
7 some exceptions, for profit entities that benefit
8 from the clearing mandate. So clearing members
9 participate. There's a cost of clearing. It's
10 increasing.

11 I think the best approach forward is to
12 have as much transparency as possible. Even if it
13 means increasing fees to end users, we would much
14 prefer to give our end user clients, and our
15 fiduciary accounts, you know, the option to
16 continue using products at a higher cost.

17 I'm, obviously, not a proponent of
18 higher costs, but it does look like what's
19 happening with capital requirements, markets in
20 general, the cost of clearing is going up, but we
21 still have to have sufficient loss absorbing
22 capacity in the instance of default.

1 So I think it should come from, you
2 know, very robust margin methodologies that
3 determine exactly how much margin is needed up
4 front even if it costs more money to end users of
5 the products, especially our clients, and larger
6 amounts of capital put aside by the CCPs
7 themselves.

8 So we've talked about amounts at least
9 as large as the largest clearing member, so in
10 that 8 to 12 percent range, but not using non
11 defaulting margin of clients.

12 MS. O'FLYNN: Michael.

13 MR. MODLOCK: I just want to revisit the
14 piece before about the ability for CCPs to
15 coordinate in the auction. And, again, how much
16 of that can be done in advance where the clearing
17 members are able to focus in a default scenario on
18 serving their clients, and how much of the bulk of
19 the risk, which we know overall might be
20 relatively neutral, but is likely to be
21 directional at a given cleared venue, or
22 bilaterally, and that risk could be substantially

1 reduced in advance of any auction process?

2 MS. O'FLYNN: Kim.

3 MS. TAYLOR: I was wanting to weigh in a
4 little bit on the topic of the variation margin
5 gains you're cutting, which I also am a believer
6 in the sanctity of client money.

7 So I think where CME is not in favor of,
8 certainly, initial margin haircutting, and I agree
9 it's not really allowed in the U.S. jurisdiction
10 anyway, but on the topic of variation margin
11 gains, haircutting I think what I would say is
12 that when you're talking about the kind of tail
13 end of recovery of a CCP, or then later than that
14 if you hop over into the resolution phase of a
15 CCP, I think we really are talking about the tail
16 of the tail of the tail.

17 And not that we shouldn't plan for the
18 almost unthinkable to happen because we should,
19 but what has to happen in order for a CCP to get
20 even into the place where they would be using the
21 default fund has got to be something that is far
22 worse than the crisis of 2008, because no CCP has

1 used anything but the margin of the defaulting
2 firms in order to satisfy that situation.

3 So what has happened if we are at this
4 point is that there has been a total failure of
5 the bank supervision regime, and a big economic
6 hit like economic policy has failed in some
7 significant way. Right? It is a case of kind of
8 global economic and financial chaos.

9 And so under the circumstances where
10 you're way out in the tail, you need to make
11 choices about what is an appropriate way to kind
12 of cost benefit analyze that. And so I think
13 that's why we got to a point where for purposes of
14 the kind of end of recovery, variation margin
15 gains haircutting seemed like it was an
16 appropriate thing to do mostly because it provides
17 everything we're trying to do in default
18 management, and in the recovery process is
19 designed to try and incent the proper behavior of
20 the remaining clearing members to participate in
21 the default management process.

22 And so by having their gains haircutted,

1 it puts them in a position where, obviously, if
2 other clearing members are gaining on these
3 positions, it's likely that the defaulting firm is
4 losing on these positions, and so it suck up a
5 dynamic which make the losing positions of the
6 defaulter more attractive. It increases the
7 alignment of interests, we think, in the auction
8 process. So that is why we ended up getting there
9 at the, you know, in the tail of the tail of the
10 tail.

11 MS. WALTERS: Yeah, I think, I
12 definitely understand like where you're coming
13 from, and the logic behind it. And I think
14 potentially, you know, other, you know,
15 (inaudible) participants or others
16 could get comfortable. I think the
17 issue that is difficult is that we
18 don't have good transparency into
19 the adequacy of loss absorbing
20 capacity, so I think, you know, the
21 quantitative disclosures, the
22 numbers that actually started, you

1 know, coming out as a result of
2 that it's very helpful, but it's
3 just a number, and we don't have
4 details into the underlying margin
5 methodologies, the stress testing
6 that was done.

7 So I think in order to think about what
8 you do in the tail of a tail, we would have to
9 have good understanding with transparency and
10 disclosure around how the loss absorbing capacity
11 was actually calculated. And particularly, how it
12 changes in wartime, which is, and I believe the
13 FSB or some of the other international regulators
14 have begun talking about standardized regulatory
15 oversee and stress tests for CCPs for precisely
16 that reason.

17 So if the capital pool is sufficient, I
18 understand where you're coming from, and no one's
19 gonna argue with the tail of a tail type of
20 scenario. It's just that I think the loss
21 absorbing capacity at least on the other side of
22 the table is not clearly known at present.

1 MS. O'FLYNN: Kevin.

2 MR. McCLEAR: I just want to follow on
3 quickly to what Kim was talking about, especially
4 since we're in a public forum here.

5 It's really important to understand the
6 clearinghouse's risk management practices, and as
7 Kim says, what we're talking about is the tail of
8 the tail of the tail.

9 So, obviously, we have our margin
10 standards, but with respect to the default
11 resources, we're at a minimum of cover too,
12 meaning we have to cover the two largest defaults
13 of our clearing members. And we're talking about
14 some of the world's largest financial
15 institutions.

16 And that cover two standard is without
17 assessments. When you throw in assessments
18 rights, we're really covering four, five, maybe
19 six of the world's largest financial institutions
20 defaulting to us.

21 Kristen, and to your point,
22 traditionally the clearinghouses' default process

1 or (inaudible) was when we got to the end of the
2 waterfall, we'd wind down. But now -- and
3 rightfully so. Since we're systemically
4 important, there's more and more focus on what
5 happens next. And, in fact, we're required by
6 regulation to deal with uncovered losses. When we
7 get to the end of the waterfall, what do we do?
8 How do we address the uncovered losses.

9 And, really, we don't like variation
10 martin gains haircutting. It's an ugly tool. But
11 it's really, we've thought about this a long time.
12 We've worked with the clearing members. We've
13 worked with the regulators. It's really the only
14 solution.

15 Now, I was in London, and I won't name
16 the regulator, international regulator made a
17 suggestion that I think makes sense and it ties
18 into what we're about to discuss with respect to
19 resolution, you know, maybe we can build into our
20 rule books that Resolution Authority has, because
21 we're worried about their tools, and I agree with
22 Kim that we need to allow the clearing house rule

1 book to apply before the Resolution Authority
2 steps in. We need that X ante before the event.
3 Certainty for the marketplace, for our clearing
4 members, it's very important.

5 But one possible solution might be to
6 give the Resolution Authority, we could bake this
7 into our rule books, the right to step in at the
8 end of the waterfall, and to make one more final
9 assessment. Maybe the assessment's limited to the
10 amount of the guarantee contribution, but then the
11 Resolution Authority would be in a position to
12 make the determination working with the regulators
13 as to whether there would be an unattractive
14 systemic impact of various margin gains
15 haircutting.

16 I'm glad you referenced the public
17 quantitative disclosures. We do believe that
18 those give you your answers. And I want you to
19 also, hopefully, and others that don't have the
20 transparency that our risk committee, our clearing
21 members, and the regulators that they see to
22 understand that they are watching us closely.

1 We have our risk committees. We have
2 the regulators looking at our margin practices,
3 our guarantee fund practices, our default
4 practices. All of this is highly scrutinized not
5 just by one regulator, the CFTC, who sits here
6 today, but the FCC, the Fed, the Bank of England.
7 There's a whole host of regulators overseeing our
8 clearinghouses.

9 MS. O'FLYNN: Okay, Marc, I think you're
10 going to be our last speaker before we quickly
11 wrap up.

12 MR. STANLEY: Thanks. I just wanted to
13 follow up on something Kristen said, and maybe
14 summarize my understanding of what she said.

15 That, Kristen, you felt that you would,
16 you would be willing to pay more up front, or you
17 felt your customers would be willing to pay more
18 up front for more assured loss absorbency capacity
19 than, rather than, risk variation haircutting?

20 MS. WALTERS: So what I was attempting
21 to say is that what we would like to do is give
22 our clients the ability to choose. So right now

1 from a fiduciary capacity, you know, our clients
2 believe that their margin is, is recoverable
3 unless there's an actual default that involves
4 them.

5 So, however, that's not necessarily true
6 in the instance that variation margin haircutting
7 is done. So what I think would be preferable, if
8 the cost of clearing is, indeed, going up, I do
9 think that there are signs across many different
10 institutions that it is going up, and might
11 continue to go up for a variety of reasons that
12 we've talked about before.

13 If that's true, we would like to
14 disclose to our clients and give them the option
15 of do they want to pay the additional cost and
16 continue using cleared products? Do they want to
17 remove hedges? Do they want to use other
18 financial instruments, cash instruments?

19 So as a fiduciary, our role is to give
20 as much information as possible to our clients and
21 let them make the decision about their investment
22 decisions.

1 MR. STANLEY: But as a fiduciary you
2 feel like it might be in your client's best
3 interests to pay a higher cost of clearing in
4 order to avoid a situation where unpredictably
5 their margin could be at risk?

6 MS. WALTERS: I think it's very
7 important for all participants in centrally
8 cleared activities to understand the true cost of
9 clearing, the cost of default, and the adequacy of
10 loss absorbing capacity in peace and wartimes.

11 And I think the quantitative disclosures
12 are a step in the right direction, but they're,
13 certainly, a very step if you think about what
14 regulated banks report around their risk
15 management activities.

16 So I'm a proponent in more information
17 so that all participants can make better
18 decisions. And I do feel as a fiduciary that we
19 are currently impaired when it comes to doing due
20 diligence on CCPs so we don't, the CCPs have been,
21 you know, very helpful, lots of dialogue. It's
22 just the level and detail of information that we,

1 that we receive from CCPs versus our OTC bank
2 counterparts is very different, and we would like
3 it to be at the same level as bank
4 counter-parties, and bilateral transactions.

5 MS. O'FLYNN: Just conscious of time,
6 and quickly wrap up, and I think it brings a
7 natural end to this discussion, which, certainly,
8 got more lively as we went on.

9 Question 7. What role, if any, should
10 the Commission play in encouraging greater
11 coordination amongst CCPs in the default
12 management process?

13 MS. TAYLOR: Here again, I think that
14 we've covered some instances of this. Dennis had
15 mentioned a couple of cases with the Commission
16 helping to facilitate CCP information sharing.
17 And I think we also mentioned instances where we
18 think it will be important for the CFTC work with
19 banking supervisors, for example, about
20 information sharing coming, including CCPs when
21 there is, you know -- it would be good for CCPs to
22 know in advance of GSIB being shut down that that

1 was coming in order for us to help plan, and I
2 recognize in saying that the kind of public policy
3 stance around the safety of the bank information,
4 so I fully realize what I'm saying, but I think
5 that CCPs are kind of part of the financial system
6 fabric in a very important way.

7 And I also think there is an important
8 role for the CFTC and other kind of front line
9 supervisors of CCPs to help insure that the, that
10 resolution doesn't preempt recovery. I do think
11 that there is a need for the supervisors to kind
12 of, who understand the best, the ways in which
13 resiliency and recovery will work to help insure
14 that there is an opportunity that is preserved for
15 those things to occur, and, you know, and work
16 before there is a preemptive action taken by the
17 resolution authorities because I think the entry
18 of the resolution authorities as the appropriate
19 time I think is appropriate.

20 The entry of the resolution authorities
21 ahead of the time when it's time for resolution
22 probably is actually a market destabilizing event.

1 MS. O'FLYNN: Dennis?

2 MR. McLAUGHLIN: Yeah, I just in
3 addition to what Kim said, I think the porting
4 puzzle is probably the biggest conundrum, one of
5 the biggest conundrums we face, and any help from
6 the Commission in dealing with that would be
7 gratefully received. Particular, things like
8 facilitating a process from a client, who is in
9 good shape paying margins. Everything is fine,
10 but they just happen to be a client of a member
11 who is in default. It's not the client's fault.
12 How to find a home for that client, we really, I
13 mean, we can't really do it by ourselves. We can
14 do it to some extent, but we really need help on
15 that.

16 MS. O'FLYNN: Kevin.

17 MR. McCLEAR: I'll just say quickly at a
18 very high level that this Committee and this
19 process answers that question, what role can the
20 CFTC play. This is a really good process. What
21 you see today is the MRAC, but underneath it I
22 have to look at my chart because it's gets

1 complicated. We have a CCP Risk Management
2 Subcommittee that's been discussing all these
3 issues. Below that we have the CCP Coordination
4 Sub Subcommittee. And then below that we've had
5 the CCP Working Group that's made up informally of
6 all our clearinghouses here and the staff
7 representative.

8 So there's been really good discussion.
9 We really do from a clearinghouse perspective
10 welcome these discussions. We believe in
11 transparency. And so I think this has been a
12 really good process. Thank you.

13 MS. O'FLYNN: Clifford.

14 MR. LEWIS: Other than not worrying so
15 much about the paisley swan event, I would urge
16 two very specific items where I think the
17 Commission can do a lot of work, and we've talked
18 about one which is portability.

19 But in particular, I think the only
20 realistic solution for a big clearing members to
21 default is consistent with your acceptance of
22 gross margining, which, by the way, as you know,

1 Mr. Chairman, is not what my friends in Frankfurt
2 do, but they agree that's the right way to do it.

3 But gross margining makes sense if you
4 actually could have an interim step where
5 realistically, the clearinghouse is gonna have to
6 hold customer margins for some period of time.
7 You can't get this done in a day.

8 So even on a Friday, I think for a JP
9 Morgan or a Goldman going toes up, it would take
10 longer, and I think that's something that you
11 guys, there are various things, specific things
12 that you guys can fix.

13 Related to that in a point that has been
14 made by Kris and others is I'm surprised nobody
15 has focused on trying to fix the U.S. bankruptcy
16 provision, which we all know about, and don't like
17 to talk about.

18 I know it's really hard, and I
19 understand that the, the different committees on
20 the Hill and what not, but I just think as you
21 have highlighted issues like the unintended
22 consequences of SLR, and other things, I think

1 just getting this out, because I know that in the
2 30 years I've been involved in the industry, I was
3 always very casual about saying customer funds are
4 not at risk, period.

5 And we only recently discovered that,
6 actually, bankruptcy judges may have a different
7 view about that. And I think there are legal ways,
8 you guys know this better than me being smart
9 lawyers, at least highlight it. Maybe there are
10 interim fixes like tri-party custody of margin
11 money as a choice that costs more to the customer
12 if they want to pay a little bit more to try to
13 make it harder for the bankruptcy judge to get at
14 it, but it may not work. I'm not, I don't want to
15 practice law without a license.

16 I'm cognizant of Mark Twain's comment
17 about people that represent themselves.

18 MS. O'FLYNN: Okay. Okay. So -- oh,
19 pardon.

20 CHAIRMAN MASSAD: Cliff, to that point,
21 I'm not quite sure I understood the point, but so
22 maybe afterward we can, we can follow up on that.

1 But let me just say a couple of quick
2 things. First, thanks, everyone. I thought it
3 was a very good discussion. And Kim's point, some
4 of the others have, I think, referred to it about
5 resolution not preempting recovery.

6 I think that's a very good point, and I
7 guess I would also phrase it maybe slightly
8 differently, which is that resolution planning
9 should not create incentives that undermine
10 recovery, meaning that as we think about these
11 things, we have to plan for both. We have to go
12 through the recovery planning, we have to go
13 through the resolution planning. Obviously, we
14 hope that we never get to either of them. But I
15 think it's very important as we work through these
16 issues that we don't create potential incentives
17 in the way we think about resolution that might,
18 for example, give participants -- that might cause
19 participants to have less incentive to participate
20 in an auction, for example, because they think
21 they might get a better deal in resolution.

22 And there are other ways that this can

1 play out also. So I think that there is a
2 tension, or there's a relationship between these
3 two things that we have to very much keep in mind.
4 I think the FDIC in our discussions has also been
5 quite aware of this dynamic.

6 Finally, let me just apologize to
7 Kristen. I think I misspoke when I first
8 referred, I called you by a different name. I
9 think I called you Angela because you're sitting
10 next to one another.

11 MS. WATERS: I didn't even notice. So
12 no apology is necessary.

13 CHAIRMAN MASSAD: Thanks.

14 MS. O'FLYNN: Okay. Well, I just want
15 to say thank you to everyone on the Committee
16 today for your contribution, and at times, lively
17 debate. And I'll hand it back to Petal if you've
18 any more comments.

19 MS. WALTERS: So thank you, Susan, for
20 facilitating that panel. We will be starting
21 again in about ten minutes, about 11:45. This
22 will be our only break for the morning. I'm sorry

1 -- yeah, that's right. The only break for the
2 morning, so just keep that in mind. Panels
3 and 3 will go right into each other.
4 Thank you.

5 (RECESS AT 11:35 a.m.)

6 MS. WALKER: It is my pleasure to call
7 this meeting back to order. As noted in today's
8 agenda, our second and this panel discussions,
9 respectively, will cover FDIC staff presentation
10 on GSIB resolution. And then CFTC and FDIC staff
11 presentation on CCP resolution.

12 I would like to introduce the
13 facilitator for our second and third panels, Mr.
14 Robert Steigerwald, who is the Senior Policy
15 Adviser and Financial, I'm sorry, Senior Policy
16 Advisor for Financial Market at the Federal
17 Reserve Bank of Chicago. Robert needs no
18 introduction to this community given his extensive
19 work and deep thought on these matters.

20 Thank you, Robert. I'll turn it over to
21 you.

22 MR. STEIGERWALD: Thank you, Petal.

1 That's very kind of you. Thank you for that
2 introduction. And thank you to Commissioner Bowen
3 for asking me to be a part of this committee, and
4 to Chairman Massad for welcoming me here. I'm
5 quite honored to be a part of this committee.

6 And I'm going to try to set a good
7 example for the panelists on the next two sessions
8 by speaking loudly and clearly into my microphone.
9 Hopefully, that will help the folks in the back of
10 the room, and those who are listening in remotely.

11 Well, Petal, you've put me to work right
12 away in my first meeting, and so that's the best
13 way I think to learn the workings of this
14 committee. I'm happy to facilitate this panel.
15 Let me briefly introduce the speakers in the next
16 two panels:

17 Mr. Jeff Bandman, Acting Director of the
18 Division of Clearing and Risk at the CFTC;

19 Robert Wasserman, Chief Counsel in the
20 Division of Clearing and Risk;

21 Herbert Held, Deputy Director, Systemic
22 Resolution Planning and Implementation Group at

1 the Federal Deposit Insurance Corporation;

2 R. Penfield Starke, Assistant General
3 Counsel in the Receivership Section at the FDIC,
4 and Charlton Tempelton, the Chief of Resolution
5 Planning at FDIC.

6 That's the hardest work that I have been
7 assigned for purposes of these two panels. The
8 speakers have arranged a sequence for their
9 presentations, and I will now hand the discussion
10 over to them.

11 MR. HELD: Thank you. I'd like to start
12 and say that since the enactment of Dodd-Frank,
13 the FDIC has been working very closely with the
14 Federal Reserve Board to make sure that the forums
15 are in a position where they can fail under the
16 Bankruptcy Code, a whole process of the living
17 wills, and that that is the preferred strategy for
18 the resolution of a global SIFI under the
19 Dodd-Frank regime.

20 Title 2 of Dodd-Frank, which is the
21 Orderly Liquidation Authority, provides a backup
22 to that in case that liquidation under the

1 Bankruptcy Code would not facilitate an orderly
2 resolution.

3 And under Title 2, our goals, our main
4 goals are to minimize the systemic risk of the
5 failure. Make sure that the costs for the failure
6 are borne by the owners, creditors, and if
7 necessary, the financial industry, and not the
8 U.S. taxpayers, and that culpable management is
9 removed.

10 Title 2 gives the FDIC many of the same
11 powers over SIFIs that we have long exercised in
12 managing failed bank receiverships, and the FDIC
13 has a very long history of managing thousands of
14 failures of banks (inaudible) systemic effect on
15 the economy.

16 Under Dodd-Frank, we have a pretty
17 complicated looking process for invoking our
18 authority. The Fed and the FDIC, two-thirds of
19 their boards have to vote for making a
20 recommendation to the Secretary of Treasury. In
21 cases where the main subsidiary is a broker
22 dealer, the SEC is a key turner rather than the

1 FDIC. And for insurance companies, the Federal
2 Insurance Office is the key turner rather than the
3 FDIC.

4 For all non insurance company, non
5 banks, the FDIC would be the key turner, and for
6 any institution where the bank is the largest
7 operating sub, the FDIC would be the key turner.

8 Once the recommendations are made, the
9 Secretary of Treasury makes the determination
10 after consulting with the president.

11 Financial companies are offered a
12 judicial hearing to be held within 24 hours after
13 the determination unless they acquiesce to the
14 appointment, and only after that hearing can the
15 FDIC be appointed receiver.

16 This schematic is a lot scarier than I
17 think reality. It shows the process for
18 appointment and the various parties that are
19 involved. And this is not very different from the
20 systemic determinations that we had to make back
21 in 2008 and 2009 when systemic determinations were
22 made on the bank level for the FDIC to do

1 resolutions of some of the largest banks.

2 The process is complicated, and it has
3 lots of players. They have to make
4 recommendations, and their boards have to vote
5 with a super majority.

6 The reality is that in a crisis, these
7 recommendations were made quickly, and the
8 Secretary of the Treasury acted quickly, and the
9 agencies were very coordinated in their response
10 to the crisis.

11 We have worked closely with all the
12 agencies involved in planning for this tree keys
13 process knowing what each role, each agency's role
14 is, what the recommendations that have to be made,
15 and who would make them, and what information the
16 Secretary of Treasury would need.

17 MR. STARKE: Okay. We're going to talk
18 a little bit about powers that are available to
19 the FDIC has receiver for a GSIB. As Herb
20 mentioned before, and it's noted at the top of the
21 slide, the powers, the statute that makes Title 2
22 is very similar to the powers in the FDIA for

1 banks. We'll talk later about the CCP resolutions,
2 but even with, even a GSIB resolution, even the
3 statute looks the same, the process is gonna be
4 somewhat different because the facts would be so
5 different.

6 But in any case, the first sub bullet
7 notes that the receiver stands effectively, as we
8 say, stands in the shoes of the failed company,
9 and succeeds to all the rights, titles, powers,
10 and privileges. Cover financial company is the
11 term used in Dodd-Frank for the company that had
12 failed.

13 As we do for smaller banks now, we have
14 the ability to have a bridge financial company so
15 that the company can fail, and yet it's operations
16 can be maintained in an ongoing entity. The
17 bridge company is chartered by the FDIC so that's
18 the change that's, we've around since 1934, but
19 have never chartered a bank or a company until
20 now, and would unlikely do so in a GSIB
21 resolution.

22 We have the power to transfer assets and

1 liabilities without obtaining consent. Obviously,
2 it's critical that the transfer be made at the
3 moment that the receiver of the FDIC is appointed
4 as receiver, so that will override contractual as
5 well as statutory limits on transfers.

6 For claims that are not transferred to
7 the third- party, including the bridge, they would
8 remain behind. The FDIC runs an administrative
9 claims process in the receivership, and typically
10 provides receiver certificates to other than
11 administrative claims. In the event that the
12 claimant doesn't agree with the FDIC's
13 determination, it's free to go to court as long as
14 it does so within 60 days. And it can pursue the
15 claim in court on a de novo basis. The record
16 creating by the FDIC in denying the claim won't be
17 relevant.

18 One of the thoughts in working on Title
19 2 is that there be some, that the FDIC put
20 together a proposal, a process where claimants who
21 were turned down might have the ability to settle
22 rather than having to go to federal court and, you

1 know, be engaged in litigation for a significant
2 period of time.

3 We talked about transferring assets and
4 liabilities in general. Specifically, there is
5 the ability to transfer GFCs.

6 Qualified financial contracts are
7 generally derivatives as well as repos, and
8 securities lending transactions. So as long as
9 those contracts are transferred within one
10 business day of the failure, any rights to
11 terminate in the contracts would be overridden for
12 that day. And to the extent it's transferred to
13 another financial institution. including the
14 bridge, that termination rights would be
15 overridden in their entirety.

16 And then, finally, there is a 90-day
17 stay against termination of non GFC contracts. In
18 fact, even those that have defaulted prior to the
19 FDIC being appointed as receiver, the FDIC being
20 appointed as receiver, the FDIC can maintain those
21 contracts if it needs them in the short term.

22 So moving on, so we're going to focus on

1 the accountability aspect of Dodd-Frank.
2 Obviously, with the significant failures, there
3 was a concern in the last crisis for their lack of
4 accountability to managers of failed companies.

5 As, you know, Herb noted, accountability
6 is one of the major tenets of Title 2, along with
7 financial stability and mitigated moral hazard.
8 This responsibility has been a significant focus.
9 Obviously, officers and directors can be, or must
10 be removed. As officers and directors of failed
11 company, they effectively are removed from that
12 company by the receiver taking their authority.
13 They can also be removed from being in the
14 financial industry in general going forward.

15 There is an additional provision that
16 executives who were substantially responsible for
17 the failure can have their salaries for the prior
18 two years before a failure clawed back, and, you
19 know, put in the receivership estate to help pay
20 creditors.

21 And, finally, there is a priority of
22 payments scheme as in any insolvency regime. In

1 Title 2, it looks very much like the bankruptcy
2 scheme with one major difference. Rather than all
3 wage earnings being given a priority, all wage
4 earners except for senior executives and directors
5 are subordinated. In fact, they are paid after
6 subordinated debtholders are paid in full, so
7 effectively they would be recovered immediately
8 before equity to try and limit their benefit from
9 running the company that had failed.

10 And then a third topic that we want to
11 go over generally is the Orderly Liquidation Fund.
12 This is a fund for the FDIC to use to help in its
13 resolution activities under Title 2. The FDIC had
14 suggested that this be pre-funded in the runup to
15 Dodd-Frank. That did not carry the day. So it is
16 a ex-post fund. Treasury will have to raise money
17 to provide to the FDIC. I think in dealing with
18 GSIB or CCP failures, it's clear that temporary
19 public funding could be very valuable,
20 particularly in the short run. It's the FDIC's
21 preference to try and have the failed company, to
22 the extent it's in a bridge, raise it's own

1 funding, but in the short run, there is money
2 available. It is not unlimited immediately. The
3 FDIC is able to borrow 10 percent of the value of
4 the assets on the most recent financial statements
5 of the failed company, and shortly after that.

6 But in any event, within 30 days the
7 FDIC can borrow based on the fair value of the
8 assets available for repayment in the failed
9 company. That's a fairly broad definition, but it
10 does not include assets which are not part of the
11 estate. There's still a lot of calculation.
12 Generally, it's intended that the FDIC get a
13 fairly small amount initially, and when it gets to
14 10 percent, and then when it can make a showing of
15 the assets that are available for repayment. When
16 the Treasury get more in our initial determination
17 for CCP resolutions, it appears that because IM
18 would be included in the

19 percent calculation, and then probably
20 not, at least currently, in the 90 percent. The
21 10 percent and the 90 percent may be very similar
22 numbers, meaning that they would be a fair

1 limitation on the amount that could be borrowed
2 for a CCP resolution.

3 And one of the tenets of Dodd-Frank, of
4 course, is that there will be no taxpayers losses
5 involved with these resolutions, so there are
6 several ways that the Act insures that.

7 The first, which I just discussed, is
8 there is a limited amount that the FDIC as
9 receiver can borrow from the Treasury.

10 Second of all, in the priority scheme,
11 the OLF is treated as DIP financing would be in
12 bankruptcy, and is repaid as priority making its
13 repayment extremely likely.

14 However, if all else fails, there's the
15 requirement that the FDIC assess the GSIB
16 industry, those companies that are designated
17 under Title 1 to be assessed by the FDIC and make
18 payments back to insure that the OLF is repaid in
19 full.

20 MR. TEMPLETON: I am going to talk a
21 little bit about international engagement. And
22 I'll start out by just mentioning, I guess, that

1 my Chairman Grover on a couple of occasions has
2 noted that we really have an ongoing process among
3 key jurisdictions to work to develop relationships
4 that really will serve to foster the basis for
5 cooperation in the event of failure of a GSIB.
6 And this really has been a major priority for the
7 FDIC over the past couple of years.

8 So, we really think of international
9 engagement to address obstacles to GSIB resolution
10 in three primary ways: Bilateral, multilateral,
11 and institution specific.

12 So what does this mean? Bilateral work
13 includes really our great involvement with the
14 single Resolution Board, or SRB, and that extends
15 to the ECB or European Central Bank.

16 It also includes our close involvement
17 and regular engagement with the U.K., the European
18 Banking Union member states such as France and
19 Germany, as well as Switzerland and Japan.

20 The multilateral work includes our work
21 with the Financial Stability Board, or FSB, which
22 really is coordinating important work to develop

1 guidance for banks, insurance company center
2 Counter Parties or CCPs in the space of resolution
3 planning. And as you can imagine, we're, of
4 course, quite involved with those particular
5 efforts.

6 With respect to institution specific
7 efforts, the Crisis Management Groups, or CMGs,
8 are really pivotal to the communications among
9 home authorities as well as key host authorities
10 in terms of really drilling down into the
11 resolutions actions and building out the details
12 of implementing a resolution plan, and trying to
13 avoid reflexive ring fencing.

14 I'll say just one thing now regarding
15 information sharing agreements because I think
16 we'll cover that a little bit more in Segment 3.
17 But I would like to discuss a joint process that
18 we've developed with our colleagues at the Federal
19 Reserve Board for outreach with respect to the
20 Title 1 plans. And this is really to insure that
21 we're responsive to our colleagues at other
22 agencies, and are able to provide them with

1 feedback and analysis on the plans themselves, as
2 well as facilitating access to the plans where the
3 agencies have a bona fide interest in a particular
4 firm, and are either a home or host authority.

5 Just to give a few example on the
6 bilateral side, earlier this year, we participated
7 in a number of exercises including a table top
8 hosted by the authorities in Switzerland, as well
9 one in Germany.

10 With our European counterparts, we have
11 both formal and informal working groups with the
12 European Commission, and the Single Resolution
13 Board, or SRB, and this really includes engagement
14 at all levels of the organization including staff
15 secondments.

16 Turning to the U.K., which, of course,
17 is very important to the U.S. in the sense that
18 all of our, if you look at our GSIBs, you know,
19 the majority of their asset are outside the U.S.,
20 or held in the U.K. The FDIC is really built upon
21 the efforts of our principal level exercise that
22 we conducted in late 2014 with principals on all

1 the U.K. Regulatory bodies, as well as the U.S.,
2 and we really continue to work very closely with
3 them building on that effort with weekly and
4 monthly calls to engage on a variety of cross
5 border resolution planning efforts.

6 And then, lastly, the FDIC hosted a
7 bilateral exercise with authorities in Japan to
8 discuss cross border resolution issues including
9 funding and liquidity models, continuity of access
10 to FMI, (inaudible) protocol and some other key
11 issue.

12 In terms of multilateral outreach, I'll
13 touch on just a couple of issues with which the
14 FSB is involved. With respect to the maintenance
15 of critical functions and resolution, there are a
16 couple of work streams I'd like to mention.

17 First, the FDIC is co-chair of the FSB's
18 Cross Boarder Crisis Management Group for
19 Financial Market Infrastructures. And I believe
20 Chairman Massad, I think mentioned that earlier,
21 this group is really doing very important work
22 considering guidance with respect to the

1 resolution of the CCP in the event of the material
2 financial distress or failure of the CCP.

3 Another work stream is considering the
4 issue of continuity of access to financial market
5 infrastructures. Specifically, this is concerned
6 with issues related to maintaining access to the
7 critical services of FMIs during the resolution of
8 a GSIB itself to support the, excuse me, the
9 payment clearing and settlement activities of the
10 GSIB.

11 The FDIC also co-chairs the bail in and
12 execution of work stream, which is considering
13 issues related to valuation, securities issuance,
14 and so forth, really getting into the details of
15 how that process would work.

16 And then finally, the internal TLAC
17 Working Group is working to develop guidance based
18 on the FSB Term Sheet that was issued late last
19 year.

20 Going on to institutions specific
21 engagement, the Crisis Management Groups, we have
22 established CMGs for our seven GSIBs, and have

1 identified the key host jurisdictions, which means
2 have CMGs for Bank of America, GPMC, Bank of New,
3 York, Mellon, Citigroup, Goldman, Morgan Stanley,
4 and State Street. And in addition to these GSIBs,
5 we've also established a domestic CMG for Wells
6 Fargo.

7 Beyond the GSIBs, we've also established
8 CMGs for the two Global Systemically Important
9 Insurance Companies, in this case, AIG, and
10 Prudential.

11 And then finally, we're evaluating CMGs,
12 potentially one or more, for systemic cross
13 borders Central Counterparty Parties, and I think we'll
14 probably talk about that in the next segment a
15 little bit.

16 And then just one last comment, I guess,
17 with respect to CMGs in general. For the past
18 couple of years, we've actually had the firms
19 participate for a half day in the CMGs, and I
20 think that's been a really positive development to
21 that, that particular effort, and they generally
22 send in staff to present on a few issues related

1 to, that are fairly topical that were extending at
2 that point talking about GSIB resolution. And,
3 you know, prior topics included things like their
4 global funding and liquidity plans, the global
5 communication plans, and resolution, and so forth.

6 I think that's the end of our --

7 MR. BANDMAN: Before we go into the
8 second presentation, we thought we would see if
9 there are any questions from the members of the
10 Committee about the -- the first presentation from
11 the FDIC. I'll start with one question.

12 You know, the Chairman had alluded,
13 Commissioner Bowen, about some interconnectedness,
14 and, obviously, one of the elements of the
15 relevance of a GSIB resolution to CCP resolution
16 has to do with the critical services that these
17 banks provide to CCPs, and I would be interested
18 in now the FDIC thinks about, you know, the
19 impacts of a GSIB resolution in terms of the
20 relationship to continuity and services to a CCP,
21 custodian, settlement, or otherwise.

22 MR. STARKE: So from a legal standpoint,

1 we're talking about receiver that hasn't been
2 created, and, you know, I couldn't make any
3 commitments on their behalf. Obviously, these are
4 systemic institutions by definition. That's why
5 we're dealing in Title 2, so that I think there
6 are some policy concerns that might need to be
7 raised, and I'd defer to her about those.

8 MR. BANDMAN: Herb?

9 MR. HELD: Under our single point of
10 entry strategy that the FDIC has put forward, the
11 top tier holding company in one of these
12 institutions would be placed into receivership.
13 And the operating companies would be able to stay
14 open and operate business as usual.

15 The debt equity at the parent level
16 would be left behind in the receivership, so it
17 would basically have a balance sheet consisting of
18 its investments, debt (inaudible) of it's
19 subsidiaries, and on the liability side, it would
20 basically have zero.

21 So it would be well capitalized at the
22 parent. They'd be able to use that source of

1 strength to convert existing debt from their
2 subsidiaries into equity to recapitalize the
3 subsidiaries, and that's the ideal situation.

4 If a subsidiary is hopelessly insolvent,
5 provides no value to the group, then we wouldn't
6 be able to support it from the parent because it
7 wouldn't make any economic sense, and it would
8 have to go into its own resolution regime.

9 So one good things about the U.S. GSIBs
10 is that they do have a fairly robust level of debt
11 at the parents. The parents holding companies are
12 relatively clean. Hopefully, over time they will
13 become cleaner, with the Federal Reserves proposed
14 regs.

15 So the single point of entry is feasible
16 if losses are not beyond the loss

17 (inaudible) capacity of the
18 corporation.

19 MR. STEIGERWALD: Otherwise a question
20 -- oh, I see. Marcus.

21 MR. STANLEY: So two questions. One is
22 in terms of the Title 1 Living Will process, it's

1 my understanding that there's a lot of emphasis
2 there on making sure that the resolution planning
3 process provides for adequate liquidity for the
4 company as it goes into bankruptcy in order to
5 maintain critical operations.

6 Could you talk a little, does that
7 intersect at all with how a failing clearing
8 member, would a failing clearing member in
9 bankruptcy be expected to have any capacity to
10 provide liquidity still to a clearhouse, or how is
11 that planned for?

12 MR. HELD: I mean, part of their
13 liquidity planning is to estimate the amount of
14 liquidity that they would need to keep their
15 memberships in the financial market utilities
16 going. So it can be hard to operate one of these
17 institutions smoothly unless they have access to
18 the markets, and the markets are going to require
19 them to post their collateral, and meet their
20 market call.

21 So within, in the plans, they are
22 working with all the CCPs to figure out kind of

1 their needs, and figure that into their living
2 wills and their liquidity calculations as to who
3 much liquidity they would have to have at the time
4 of failure.

5 So definitely, keeping the access to
6 financial market utilities is a very important
7 part of the living wills.

8 MR. STANLEY: And that might actually
9 prevent them from defaulting in some sense, at
10 lease to the clearing house.

11 MR. HELD: Yeah, if their projection is
12 right, they should have sufficient liquidity on
13 hand to prevent them from defaulting.

14 MR. STANLEY: And just a quick second
15 question. In terms of the credit line in Title 2,
16 the Treasury liquidity line, what exactly is
17 included as an asset of the CCP that could be
18 loaned against? You mentioned IF.

19 MR. STARKE: So it's a fairly aggressive
20 definition. It's basically assets that are owned
21 by the institution, so assets that are held in
22 trust would not be included, and to the extent,

1 you know, assets were ring fenced by another
2 jurisdiction, they wouldn't be included, but
3 everything else that could be deemed an asset
4 would be valued and would be included.

5 MR. STANLEY: Including memberships?

6 MR. HELD: Sure. I mean, we will a
7 evaluation process, and I'm not exactly sure
8 they're worth or would be in that situation, but
9 they would definitely be included.

10 MR. STEIGERWALD: Any other questions
11 before we proceed to the next part of the
12 discussion?

13 Seeing none, why don't I turn it back to
14 the panelists?

15 MR. BANDMAN: Great. Thanks. And can we
16 bring up the other presentation and go to slide 3.
17 Well, that's happening.

18 So first of all, on behalf of DCR, my
19 colleagues and my fellow presenters, we would like
20 to thank Commissioner Bowen and her staff for
21 inviting us to present, as well as Chairman
22 Massad, and Commissioner Giancarlo for their

1 support of the work, important work of the Market
2 Rise Advisory Committee.

3 You know, I'd like to thank the FDIC,
4 Herb, Chuck, and Pen for the preceding
5 presentation on GSIB resolution, and their
6 collaboration with us on the presentation we're
7 about to go through on DCO resolution.

8 And we also are very appreciative of the
9 very collaborative important work on CCP
10 resolution that we're working on with the FDIC
11 both domestically and internationally.

12 And finally, I'd also like to thank my
13 colleague, Bob Wasserman, as well as the staff of
14 the DCR, DCR, Division of Clearing and Risk and
15 FDIC, who assisted in working on today's
16 presentation, including Kirsten and Andrea
17 Goldsmith.

18 Finally, if we could just go briefly to
19 slide 2. Oops, no, that's 3. Yeah. Just the
20 disclaimer. The views expressed today are solely
21 those of the presenters. I'm sure that goes for
22 my FDIC colleagues as well, and the information is

1 not necessarily the view of the agency or any
2 departmental presentation.

3 So if we could go to Slide -- perfect.
4 Thank you. So CCP resolution is an important and
5 timely topic, and I'm very pleased that we are
6 having today's meeting. And much of the dialog
7 today (inaudible) to the discussion from members
8 of this Committee after the presentation.

9 You know, as was pointed out earlier,
10 Chairman Massad referred to the 3 Rs. In addition
11 to resolution, there is CCP resilience and
12 recovery. You know, we very much hope to never be
13 in a position where we actually have to implement
14 all the important coordination and planning that's
15 being discussed today.

16 CCP resilience has been and remains a
17 core critical priority of the CFTC, as well as
18 other regulators in the international community.
19 That by in itself has been and could be the
20 subject of many presentations, but, obviously, is
21 not the subject for today, but we do note it's
22 importance, including the ongoing day-to-day work

1 of risk surveillance and risk management done by
2 the CCPs, as well as by the clearing members, and
3 by regulators, including our surveillance branch.
4 There's important work being done around the world
5 on margin methodology and stress testing. The CPM
6 (inaudible), FSB, and other groups,
7 and the focus on CCP resilience is
8 critical.

9 And again, as has been noted, the work
10 on resolution, although there is an element of
11 continuity, it's separate from, but bears an
12 important relationship to the work on CCP recovery
13 rules, CCP recovery plans, and I will note that CCP
14 recovery rules and plans has been a major focus of
15 our division of clearing and risk, and will be a
16 major focus for the remainder of the year, and we
17 expect to be providing some public guidance on
18 recovery rules and recovery plans in the not too
19 distant future that we hope will inform this
20 debate.

21 Turning now to the focus of today's
22 presentation at the Market Risk Advisory

1 Committee, the slide, if we could stay with Slide
2 3 for a few minutes, few moments more, we'll go
3 through, first of all, as a background, some of
4 the international agreements regarding CCP
5 resolution including the, some important
6 documents, they key attributes published in 2011,
7 the FMI Annex published in 2014. We'll also talk
8 about international development of strategies, the
9 U.S. Statutory framework, some of the
10 coordination we're doing together, and then we'll
11 eventually go to some of the kind of current
12 issues and challenges.

13 But I do think it's important before we
14 get into kind of today' issues that there be some
15 focus on kind of the context, and actually how
16 much has already been agreed, and how much
17 important work has already been done in the topic
18 of DCO or CCP resolution, resolution planning and
19 strategies.

20 And to really delve deeply into the
21 challenging issues today requires the appreciation
22 of that foundation. And, you know, I was

1 searching as we were preparing for this, this
2 presentation for an analogy to this, and at least
3 the one I came up with was first year of law
4 school in property class, and, you know, not to
5 diminish the extreme importance of that, but, you
6 know, we jumped in property class immediately into
7 the most tricky edged situations, the law against
8 perpetuities, life and being plus 21 years, and
9 all the intricacies of what that meant, and, you
10 know, we sort of jumped into that, but without
11 really establish there's such a body of developed
12 understanding, important work that's been over the
13 years.

14 And so as we tackle the important
15 challenges that remain, I think it's very
16 important to understand the context around it. So
17 people realize we're not just starting from
18 nowhere, but there's an enormous amount of work
19 that's been done to get us to the point where we
20 are, and I think that's one of the things I hope
21 everybody will take away from that.

22 So if we could go on to Slide 4 briefly,

1 key attributes. This was work that was done in
2 the kind of the, primarily in the central banker
3 and Prudential regulator focusing on financial
4 institutions with, I think, a primary focus on
5 banks.

6 But then if we go to Slide 5, there's a
7 document, the FMI Annex, and we're going to be
8 talking a lot about that in the beginning of
9 today's presentation. I'm going to give a brief
10 overview, and then I'm going to turn it over to my
11 colleague, Bob Wasserman, to do a bit of a deeper
12 dive into that.

13 But that's a very, very important
14 document for folks to read and understand because
15 it informs the core of what we all talk about.
16 And so that is something, a document that was
17 published in October of 2014 actually by Financial
18 Market Infrastructures. It includes not just
19 CCPs, but other type of infrastructures, you know,
20 such as trade, data repositories, among others,
21 but, and yeah, there was a big focus on CCPs.

22 The constituents who worked on that

1 included international prudential regulators such
2 as, you know, the FDIC, central bankers, and
3 market regulators, so it represented an enormous
4 effort. It was chaired by Paul Tocker, who at the
5 time was Deputy Governor of the Bank of England.
6 And building on the key attributes, it was issued,
7 really, it was designed as guidance for national
8 authorities, yet also with cross border
9 cooperation and implications for a CCP resolution
10 in mind.

11 And among the many important, high level
12 principals, goals, and objectives that were agreed
13 in the FMI Annex included, your know, what are the
14 objectives of CCP resolution? What is the scope
15 of the work of CCP resolution? What should be
16 powers and authorities be in the resolution, and
17 the resolution authority context? What are some
18 of the principles around the, the considerations
19 around the time of entry into resolution? How
20 should FMI contracts be treated in resolution?
21 What sort of information sharing should there be
22 among regulators? And what kind of resolution

1 planning should take place at the authority and at
2 the FMI level?

3 So as some of the work that's been today
4 that will be discussed in further detail is
5 delving into some of the strategy, some of the
6 technical aspects, how do we fine tune some of
7 those, how we reach agreement. It's very
8 important for all of us to bear in mind that a lot
9 of consensus and mutual understanding has been
10 reached on these issues.

11 And with that, I'll turn it over to my
12 colleague to take us through the FMI Annex in more
13 detail.

14 MR. WASSERMAN: Thank you, Jeff. And so
15 as Jeff was saying, there were quite a number of
16 entities that worked together to come up with the
17 FMI Annex. I should note that there was a great
18 deal of coordination between the folks working on
19 the FMI Annex and resolution, and CPMI IOSCO work
20 on recovery that was published at the same time.

21 And that, of course, is because as
22 Chairman Massad alluded to earlier, there is a

1 really tight relationship between recovery and
2 resolution. And I'll talk a little bit more about
3 as we talk about some of these highlights for FMI
4 Annex.

5 And so the objectives set forth in that
6 FMI Annex are financial stability, of course,
7 which is always the key consideration, but as
8 well, continuity of critical FMI functions, which
9 is quite important financial stability, and as
10 well, avoiding exposing taxpayers to loss. And
11 we'll talk a bit more about that later.

12 And what the Annex establishes is that
13 an effective resolution regime, this is what we're
14 trying to accomplish, is one that achieves
15 continuity and timely completion of critical
16 payment clearing, settlement and recording
17 functions.

18 And timely, of course, in the context of
19 an FMI, and specifically a central counter party,
20 is a really demanding standard because,
21 essentially, CCPs need to continue functions
22 everyday. And so it requires a very high standard

1 of planning and understanding in order to allow
2 the CCP to do what it needs to do, which is to
3 have continuous operation, and as well, timely
4 settlement of obligations, and as well, continuous
5 access of participants to collateral. And we'll
6 talk a little bit more about that later.

7 Go to 7 please. Now, in terms of the
8 timing of entry into resolution, I should note
9 here that this is when a resolution authority
10 should be able to put a CCP into resolution. And
11 so this is not saying and at this point you point
12 you must put an entity into resolution. Indeed,
13 one of the basic tenets is that resolution is a
14 discretionary decision. That is to say, it
15 doesn't happen automatically.

16 And, of course, FDIC colleagues had
17 explained the whole key turner process, and so
18 what we have here is then when a authority should
19 be able to put the entity into resolution. And
20 speaking as well to some of the issue that Kim had
21 raised earlier.

22 And so one possibility is recovery

1 measures are exhausted, and have failed to return
2 the FMI to both viability and continuing
3 compliance with legal and regulatory requirements,
4 or if they are not reasonably likely to be able to
5 do that within the time frame required.

6 Now, on one hand, I should note that in
7 order to get here, and this is alluding to some of
8 the discussion we had at the end of the last
9 panel, in order to get here, first, there would
10 have had to be a failure of an entity with
11 extraordinarily large exposures. Almost certainly
12 going to be one of those GSIBs.

13 To the extent that as was alluded to in
14 the last panel, there would be a goal to keep the
15 operating entities ongoing, and to keep, and to
16 maintain their access to FMIs.

17 Well, in order to maintain excess to a
18 Central County Party, you must timely complete all
19 of your obligations, which means you will not have
20 defaulted. And so, in other words, one
21 requirement of our being here is that despite that
22 planning, there was, in fact, a default.

1 In other words, not only was there,
2 essentially, a failure of one or more GSIB, but
3 the relevant resolution authorities had decided
4 either not to intervene, or to intervene, but not
5 to follow the plan of maintaining continuous
6 access.

7 And so again, a very, this sort of goes
8 to that whole tail of the tail point. We're here
9 because it's our duty to analyze this, and to be
10 sure that we cover all possibilities. But this
11 goes to how unlikely some of these possibilities
12 are.

13 Moreover, remember that CCPs are subject
14 to the PFMI, and certainly for member defaults
15 must address comprehensively any potential credit
16 loss. So in other words, the

17 (inaudible) that has been alluded
18 to before, that is what is required
19 in terms of pre-funded resources
20 that the CCP is holding in its
21 hands.

22 But in addition, under the PFMI, the CCP

1 is required to address comprehensively any
2 potential credit loss. Now, that is going to be
3 based on both pre-funded and committed resources,
4 but, yes, and we'll talk a bit more about this
5 later, just as in the insolvency counterfactual,
6 at the very, very end, one probably is looking at
7 gains based haircutting, otherwise known as
8 variation margin haircutting.

9 Let's go to 8, please. So the powers of
10 the Resolution Authority, as was alluded to
11 before, the Resolution Authority is going to step
12 into the shoes of the entity. And so, in other
13 words, it would have the power to enforce
14 unexhausted obligations of clearing members to
15 make cash calls, as well as to either accept
16 positions of the defaulting participant, if those
17 are powers are, in fact, in the rules of the CCP,
18 certainly, the power to right down equity, gains
19 based haircutting, and tariff.

20 Let's go to 9. Now, I want to very
21 clearly delineate the difference here between
22 gains based haircutting on the one hand, and

1 initial margin haircutting on the other.

2 I know in many ways they, there is,
3 either way, it's pain. And, you know, pain is
4 pain, to be sure. But I think both doctrinally,
5 legally, there are some extraordinarily important
6 differences.

7 And so on the one hand, the Annex says
8 that engaging VM haircutting must respect to the
9 rules of the FMI and the hierarchy of claims under
10 the insolvency regime.

11 The requirements for initial margin
12 haircutting are more stringent yet. Only where
13 initial margin is not insolvency remote, where
14 it's consistent with the legal framework, and
15 where it's consistent with the FMI rules.

16 And speaking, I can speak with respect
17 to the U.S. Arrangements. Initial margin is
18 remote from insolvency. Writing down initial
19 margin is not consistent with the legal framework,
20 and it's certainly not consistent with any of the
21 rules of any of the DCOs.

22 And so initial margin haircutting is

1 quite simply in the U.S. off the table. I think
2 that is true in a number of other jurisdictions as
3 well, but I am speaking specifically with respect
4 to the U.S.

5 I would note gains based haircutting is
6 in many ways the insolvency counterfactual.
7 Obviously, it's important that there be limits
8 there, and that's something as well that we are
9 looking at in terms of things like recovery.

10 Let's go to 10. The Annex is aware, or
11 manifests an awareness, of the systemic concerns
12 around things like partial tear-up. And so in
13 considering whether to do that, the Resolution
14 Authority is directed to consider the impact on
15 both mismanagement of the participants and
16 financial stability.

17 As was alluded to, I think, in the last
18 panel with respect to banks, one very real
19 possibility is to transfer the CCP to a bridge, or
20 its functions to a bridge.

21 Going to 11. The Annex as well
22 encourages CMGs for FMIs that are systemically

1 important in more than one jurisdiction. And I
2 should note that there is presently a survey going
3 on being conducted by CPIM IOSCO, and the results
4 of which will be tabulated and turned over to the
5 relevant FSB Group, which is the FMI Cross Border
6 Crisis Management Group, to assess which
7 jurisdictions consider which CCPs to be
8 systemically important, and, thus, the tabulation
9 will reveal things about where FMIs are
10 systemically important in more than one
11 jurisdiction, and as well, the importance of
12 recovery and resolution planning.

13 And, finally, and I know I'm running out
14 of time, on 12, the Annex talks about the
15 importance of (inaudible) assessments, and as
16 well, the importance of making information
17 available.

18 And with that, I'm going to turn over to
19 the FDIC colleagues for 13.

20 MR. STARKE: Okay. I mean, you could
21 certainly join in here, Bob. We're talking about
22 the FMI CBCM. It's an FSB group that consists of

1 members from all the G20 countries I think, has
2 five or six U.S. members, including Bob and
3 myself.

4 You know, we've done some basic work.
5 We've met here in Washington in December. We met
6 in March in Amsterdam, and a couple of weeks ago
7 in London, put together a long background paper
8 kind of setting out what the issues are with CCP
9 resolution, and now are working on a discussion
10 note that, hopefully, will be available for
11 industry comment towards the end of the summer.

12 Ultimately, there's a hope that there
13 will be a longer guidance paper put out for
14 comment at the end of the year on the various
15 topics of interest of CCP resolution. Certainly,
16 I think it's fair to say we're far from total
17 agreement within the group. Frankly, Bob and I
18 agree on more things than a lot of my Foreign
19 Resolution Authority colleagues do.

20 So there's still much to be discussed,
21 and I think it will be extremely helpful to get
22 input from the industry at the end of the summer,

1 and then again at the end of the year.

2 MR. STARKE: Anything you want to add,
3 Bob? All right.

4 MR. WASSERMAN: No.

5 MR. STARKE: All right. Thank you.
6 Then let's move to the statutory framework for
7 DCOs. Obviously, the primary insolvency regime for
8 a DCO is the Bankruptcy Code in which case the
9 FDIC would have no involvement, which would be
10 grand, but my understanding is this is limited to
11 only Chapter 7, actual liquidation and bankruptcy.

12 And just to be clear, CCPs are not even
13 if designated under Title 8 of Dodd-Frank, they're
14 not subject to the living will process of Title 1,
15 the goal of which is to get large systemic
16 financial companies to be resolvable under
17 bankruptcy. That is not a goal for DCOs or CCPs
18 in general.

19 There are significant criteria that have
20 to be met in order to a Title 2 liquidation, one
21 of which is that Title 2 would have a better
22 result than bankruptcy, and I think given the

1 current state of the Bankruptcy Law, that's a
2 relatively low bar.

3 We certainly believe that DCOs, FMU's in
4 general, are subject to Title 2. Only financial
5 companies can be resolved under Title 2, and
6 whether your financial company is based on
7 definitions supplied by the Federal Reserve,
8 always their preference that we not say that
9 anything would be (inaudible) too until it
10 actually is and a decision is made, but I think
11 it's reasonable to say that the CCPs clearing
12 activities are financial in nature.

13 So assuming that Title 2 applies, you
14 can see the four sub bullets at the bottom:
15 Create a bridge; transfer assets, provide OLF
16 funding, and enforce contracts, including the
17 rulebook. Sounds very similar to my discussion of
18 the rules under Title 2 for GSIBs, and then, of
19 course, the process would be exactly the same.

20 Want to jump in?

21 MR. WASSERMAN: Quickly. I just will
22 note, as Pen alluded to, under Chapter 7, a DCO

1 would be a commodity broker, and basically under
2 the Bankruptcy Code a commodity broker cannot
3 enter Chapter 11 reorganization. It would have to
4 go through a Chapter 7 liquidation which means, of
5 course, it's ability to continue to provide its
6 critical function would end.

7 MR. STARKE: Thank you, Bob. And moving
8 on to 15, I front ran this a little bit talking
9 about the resolution of a DCO to say it would have
10 to be determined at the time whether it was a
11 financial company. We certainly believe that
12 clearing activities are.

13 And I think, frankly, this second bullet
14 came from you, Bob. The notion is that there is a
15 discussion of complying with some of the
16 liquidation provisions of Chapter 7 and bankruptcy
17 that relate to DCOs, and it's hard to imagine that
18 even Congress would have put that in if they
19 weren't contemplating DCOs being liquidated under
20 Title 2 (inaudible) Liquidation Authority. So
21 that's the purpose of that.

22 And I think it makes good sense.

1 Thanks, Bob. And defer I would defer to Herb.

2 MR. HELD: The FDIC and CFTC have worked
3 together extensively on resolution, on the issues.
4 Last year, we executed a memorandum of
5 understanding on information sharing, and we've
6 got a number of interagency exercises.

7 Bob is a frequent visitor to our
8 conference rooms, and we have learned a lot from
9 him in our planning exercises. And, also, we've
10 worked together with Bob on presentations to the
11 FOC, the Financial Stability Oversight Council.

12 MR. BANDMAN: Okay. If I could just add
13 one thing. I think, also, we, really, as I
14 mentioned at the outset, you know, greatly
15 appreciate the collaborative relationship we have.
16 You know, it's, we have this structure in the U.S.
17 Where the CFTC is the kind of authority with
18 respect to recovery, and the FDIC is the
19 resolution authority. Other jurisdictions don't
20 necessarily have that structure. And,
21 fortunately, we had a very collaborative
22 relationship both domestically, as well as when we

1 work with our international counterparts, and that
2 is really a very important thing to have because,
3 you know, recovery and resolution, you know, the
4 planning and kind of the rules in the CCP rule
5 book are a bit of a continuum, but it's one we
6 greatly value and appreciate.

7 MR. WASSERMAN: And going to 17, and so
8 as part of this planning that we've been
9 discussing, SIDCOs, as well, which is the
10 Systemically Important DCOs, and as well those
11 entities that have opted into that regime have to
12 maintain viable plans for recovery or orderly
13 wind-down.

14 And as we've been discussing here, there
15 is a very close relationship between the recovery
16 plans, and resolution planning both in terms of,
17 in terms of avoiding, frankly, resolution, but as
18 well in terms of having a full range of power, of
19 things that the FDIC could do if they had to step
20 into the shoes of a CCP.

21 And so part of that coordination that
22 Jeff was referring to has been discussions around

1 recovery planning and discussions around the
2 recovery plans of the individual entities.

3 In addition, we have a rule that says
4 that the SIDCOs have to have procedures providing
5 both CFTC and FDIC with information that may be
6 necessary for that planning, and, indeed, the DCOs
7 have been engaging in a great deal of stakeholder
8 consultation concerning development of recovery
9 plans.

10 And I know that's been a very
11 fascinating set of discussions because, of course,
12 considering what might happen in these sort of
13 tail of a tail of a tail events, is not fun. But
14 I think it has been a very healthy process, and I
15 think a lot of progress has been made. Thanks.

16 MR. WASSERMAN: Going to 18? And so as
17 we've been saying, there is a important
18 relationship between recovery and resolution.
19 There is a clear boundary though. So as we've
20 been discussing, resolution happens when and if,
21 at least in the case of DCOs in the U.S., when and
22 if the keys are turned.

1 And so, there is, in fact, a clear
2 boundary. During recovery, the CCP remains in
3 control. Once those keys are turned, the FDIC
4 would be stepping in. And so that is, I think, a
5 very important and clear boundary so that you know
6 where you are.

7 MR. STARKE: So with regard to timing,
8 this is an issue that we've given a lot of
9 discussion to with out FSB Group.

10 You know, Kim, I think you set it up
11 well. You know, the goal is not to go in too
12 early. In the unlikely event that this ever
13 happened, I, of course, wouldn't be able to prove
14 that we didn't go in too early because one we're
15 in, we're in, and otherwise, that's just the
16 counterfactual.

17 But there's no question that I think for
18 all resolution authorities the best resolution is
19 the one that doesn't happen.

20 And even if you look at some of the
21 proposals around the world, say, reserving the
22 last cash call for the resolution authority, you

1 know, that's only a presumptive notion, and I
2 think in all circumstances, if the resolution
3 authority took a look and saw, well, there's one
4 more cash call left. I could really use that in
5 resolution. If the view was that that cash call
6 would restore those CCPs to viability, I think in
7 all cases that would be allowed to happen in
8 recovery, and there would be no resolutions.

9 So I think it's particularly important
10 for resolution regimes that don't provide
11 temporary public financing there is gonna be more
12 need to go in and have cash calls available.

13 You know, as we've discussed, under
14 Title 2, there is the ability to provide OLF on a
15 temporary basis, and should give us more
16 flexibility in timing.

17 So, you know, we're looking at the FDIC
18 for as much flexibility as possible, obviously, to
19 avoid resolution if necessary. On the other hand,
20 if it's clear at any point that either (a)
21 recovery won't work, or that the recovery is
22 leading to a lack of financial stability, the

1 resolution authority will need the ability to go
2 in earlier in the waterfall, and that's kind of
3 the way we're looking at it now.

4 MR. WASSERMAN: So we've talked a lot,
5 including in the very first session, about
6 incentives. And one thing is quite critical here,
7 which is that in developing resolution strategies,
8 and as we've discussed, that's a lot of the work
9 that's going on right now both domestically and
10 internationally, it's important to be sure that
11 the strategy, you know, you want the strategies to
12 be effective, but you also want to be careful of
13 the incentives that you set.

14 And, certainly what you don't want to do
15 is set a resolution strategy which incentivizes
16 clearing members to say, well, maybe I'm not going
17 to participate actively in that auction, because I
18 don't, maybe that would bring this thing into
19 resolution, and I might have some advantages from
20 that.

21 And so these are calculations that need
22 to be made in undertaking and in developing the

1 resolution strategies which affects a lot of what
2 we're discussing here.

3 MR. STARKE: So I have not been asked to
4 talk about incentives, but I did want to make the
5 point that no one wants an incentive for clearing
6 members to go into resolution, but, you know,
7 there are several ways to deal with that.
8 Obviously, getting rid of the incentive is one
9 way, but providing incentives to stay in recovery
10 would counterbalance that, and then, of course,
11 providing incentives to avoid resolution would
12 also be a factor.

13 So just briefly on that. I want to talk
14 a little bit about the differences between DCOs
15 and banks. As far as resolution planning is
16 concerned, you know, I mentioned earlier the
17 living will process is not applicable to DCOs, but
18 the recovery process in which the CFTC and the
19 FDIC have been engaging in I think will be very
20 helpful to the FDIC in it's resolution planning.
21 You know, the first issue, of course, is
22 understanding the company, and we've had the

1 benefit of working with the CFTC. We are actually
2 mentioned in their recovery plan rules, which we
3 greatly appreciate.

4 If I can go off topic for a second, it's
5 kind of ironic that pursuant to the statute in
6 Title 2, there's really no legal reason for having
7 the CFTC involved in a DCO resolution. But I
8 think, you know, at the FDIC we would realize that
9 we were fools if we did not partner with them
10 every step of the way in the resolution, and, you
11 know, we're very fortunate to have a good working
12 relationship now to help us build resolution plans
13 so we would have an idea of where to start if this
14 ever came about.

15 So the resolution planning is a little
16 different, but I think the result will be the
17 same. But, you know, obviously, the big
18 difference between DCOs and banks in resolution
19 planning is the loss absorbing capacity.

20 Banks by their nature, bank holding
21 companies issue a lot of long-term debt, are
22 required to have TLAC now, and, you know, where

1 the losses fall is much clearer in the banking
2 industry. You know, from a resolution
3 perspective, it would certainly be better that
4 DCOs had more loss absorbing capacity. Obviously,
5 the impact on business as usual clearing costs are
6 a factor there.

7 So I think those are the, the primary
8 differences.

9 MR. WASSERMAN: Again, one would note
10 that, (inaudible) called TLAC, in fact, CCPs do
11 have some very significant loss absorbing
12 capacity. Specifically, the cover two pre funded
13 guarantee fund is a very important part of loss
14 absorbing capacity as are cash calls, and, indeed,
15 to the extent one looks at it as a subordination,
16 the gains based haircutting is as well loss
17 absorbing capacity.

18 And so there is, you know, I've
19 sometimes been of the view, especially when we
20 look at things like the pre funded guarantee fund,
21 that actually TLAC is actually something that
22 almost started with CCPs because that kind of

1 mutualized default resource is something that
2 we've had, you know, for many, many decades.

3 MR. BANDMAN: Just to add to that. I
4 mean, some ways you can look at a CCP as 100
5 percent TLAC. You know, it's there completely to
6 provide loss absorbing capacity and mutualization.

7 And there is another consideration
8 present with regard to CCPs where it's a bit
9 different from a bank in that their fundamental
10 characteristic is that, you know, the CCP, you
11 know, it does, there is risk in a CCP. It's job
12 is, you know, it's job is managing risk as opposed
13 to taking on risk because it has directional
14 positions.

15 And, you know, to be balanced against
16 the question of, you know, kind of how much loss
17 absorbing capacity should there be in a CCP, and
18 who should provide it, you know, there's a kind of
19 a moral hazard issue where those who are
20 introducing the risk, you know, can, you know, it
21 needs to be looked at that they are the ones who
22 are bearing the risk of loss. And if an entity

1 that's the one introducing the risk is the one
2 that's going to be the one that absorbs the
3 losses, then you have to look at what incentives
4 that creates for the parties that are taking the
5 risk in the market, which are a bit different from
6 the CCP.

7 MR. STARKE: But, Bob, just to be fair,
8 I was talking about loss absorbing capacity in
9 resolution, and to the extent you use a cash call
10 and recovery that's not loss absorbing for a
11 resolution. Honestly, if it's retained for the
12 resolution authority, that does have resources.

13 MR. WASSERMAN: I just want to
14 reemphasize something we discussed before, which
15 is that the importance of continuity of critical
16 functions, and given the time scale that DCOs and
17 other CCPs operate under, which is to say needing
18 to operate literally every business day, that
19 emphasize the need for the very excellent
20 cooperation that we've had between ourselves and
21 our FDIC colleagues, because it is critical that
22 you're almost basically taking the controls while

1 the plane's still in the air. And, happily,
2 there's been, as I think we've demonstrated here
3 today, significant cooperation, coordination, to
4 allow that to happen if ever, heaven prevent, we
5 needed to.

6 MR. HELD: So I guess I'll end on the,
7 congratulating ourselves on our regulatory
8 cooperation. I mean, it's very important for the
9 FDIC both in planning for the failure of a DCO,
10 and in our planning on, for the failure of a GSIB
11 itself. Because continuity of services from the
12 DCOs is vital to make sure that they will continue
13 in resolution for a GSIB, and then working on the
14 failure of a CCP which is, you know, is very
15 difficult, (inaudible) to the bank resolutions.

16 And on information sharing, the recovery
17 plans that the DCOs are preparing now act as
18 really our window into the operations of the
19 companies just like the living wills do on the
20 banks.

21 MR. STEIGERWALD: It seems that this
22 would be an opportunity for members of the

1 committee to ask questions, and I see we have one
2 down here.

3 MR. LEWIS: Two questions. One sort of
4 bureaucratic. Is the team in FDIC that is working
5 on the DCO resolution process the same that is
6 looking at how an FCM would be treated in a bank
7 resolution process?

8 And the more general question is just to
9 get very precise about whether FDIC has a view on
10 this, would it be expected that a bank going down
11 would have transferred, would have ported its FCM
12 customers prior to it reaching the resolution
13 phase? Or is it envisioned that the, that that
14 would happen in resolution?

15 Obviously, the timing of examples of FCM
16 problems have never reached to the scale of a
17 systemically important bank. And if the answer is
18 you haven't, that why I'm just curious.

19 MR. HELD: So all resolution planning
20 would be under my section. So we do both the
21 banks and the DCOs. Whether its clients would be
22 ported prior to resolution or after I think would

1 depend on the circumstances. You know, if you
2 have a GSIB that's in trouble, and kind of slowly
3 deteriorates, then they may be selling off
4 valuable parts of the company in order to raise
5 capital and reduce their asset size.

6 Things happen very quickly. It's
7 probably not be able to happen, and we'll have to
8 deal with the customers in resolution.

9 MR. WASSERMAN: I guess I would note
10 though to the extent that the FDIC comes in with
11 the single point of entry at the top and keeps the
12 FCM operating, then it seems to me there would not
13 be, again, there would not be an FCM failure, and,
14 thus, not necessarily a need to transfer anyone,
15 assuming, again, the decision is to keep the FCM
16 operating.

17 If the FCM were to be subject, on the
18 other hand, to liquidation, then under Title 2,
19 the relevant proportion, the relevant provisions,
20 excuse me, of Sub Chapter of the commodity broker
21 provisions would be applicable.

22 MR. STARKE: Well, and, of course, the

1 possibility that companies that are subsidiaries
2 of company and receivership would self liquidate
3 is fairly great. But I would think there would be
4 less benefit to assuming that portability had
5 already taken place for our planning purposes. If
6 it has, I think that's great, but I think we'd
7 want to plan --

8 MR. LEWIS: What do the living wills
9 suggest, if that's public? Do they, because they
10 must address that in terms of the approach that
11 the banks will take.

12 MR. STARKE: In general, they talk about
13 solvent wind down in bankruptcy for their broker
14 dealers and FCMs. So they basically are thinking
15 that customers are going to want to move their
16 accounts, and that they're not going to be engaged
17 in new business, so it's a matter of how quickly
18 can they either sell the customer base, or arrange
19 to have the customers ported to another
20 institution.

21 MR. STEIGERWALD: Kim?

22 MS. TAYLOR: Thank you, gentlemen, for

1 your discussion today. I was glad to hear,
2 actually, anytime a regulator or a potential
3 resolution authority acknowledge that it's
4 important for a resolution not to preempt
5 recovery, and it's also important for a resolution
6 not to create incentives that undermine recovery.
7 I think those are good statements to hear.

8 I do have a question and a, I guess your
9 key process. It looks like in Title 2, there was a
10 provision made for the entities that are subject
11 to Title 2 to have the primary supervisor of those
12 entities participate in the decision about putting
13 those entities into resolution.

14 And so the SEC is there if it's a broker
15 dealer, the insurance authorities are there if
16 it's an insurance company, and the Federal Reserve
17 is there if it's a bank. But if this process were
18 intended to apply to CCPs, it seems that there's a
19 very important branch of that chart that includes
20 the CFTC that is missing, and I have a concern
21 about that on a couple of levels.

22 One is that it amounts to resolution

1 without representation, which is, you know, a
2 little bit un-American, but I also find that it is
3 resolution that's lacking kind of the balance of
4 power that would come from the primary
5 supervisor's view, and the potential resolution
6 authority's view, and it seems that in the other
7 cases there needs to be agreement, and it seems
8 that that protection is, is missing in this case,
9 which leads me to wonder if the, if Congress
10 actually intended this process to apply to CCPs
11 why the protection isn't there.

12 MR. STARKE: So there are so many things
13 that I've been led to wonder about since I started
14 reading Dodd-Frank.

15 Our analysis of the statute is a little
16 different, and I would make one correction. You
17 said the Fed was there because of bank holding
18 companies.

19 The Fed's there because they're the Fed.
20 They're always there. So, and we think that's
21 just great.

22 But our analysis is that in the

1 insurance industry, and at the broker dealer
2 industry there are different resolution regimes.
3 You know, the state resolution for insurance
4 companies and SIPIC, and for those reasons, the
5 primary federal regulator was brought in.

6 There are -- well, first of all, you
7 know, you don't have to be designated under Title
8 1 to be subject to Title 2. If the systemic asset
9 manager were to fail this Friday, they would be
10 put into Title 2 and the SEC would not be
11 involved.

12 So I don't think it's a question of, you
13 know, having the primary federal regulator there.
14 It has to do with the insolvency regimes. But as
15 I said, I don't think the FDIC could be more
16 dedicated to working with the CFTC if it were, you
17 know, specifically in the statute. Clearly, they
18 need to be involved.

19 You know, at the end of the day, it's a
20 decision about financial stability, so the
21 condition of the CCP is a factor, but there are
22 others.

1 But I don't think Congress intended to
2 exclude CCPs because the CFTC was not a key
3 turner.

4 MR. STEIGERWALD: Richard.

5 MR. MILLER: Yeah. Yes, Robert. I have
6 more or less a question that was similar to Kim's
7 about the authority issue because I've noted
8 academic literature that has argued that
9 resolution authority does not apply to DCOs, and
10 I'm wondering if, Robert, you doing anything to
11 counter that argument in the atmospherics?

12 MR. WASSERMAN: So I have noted some
13 academic literature myself. I've even noted
14 academic literature that says that Bankruptcy Code
15 does not apply to DCOs.

16 First Amendment is very strong, and
17 folks are free to say whatever they want however
18 misguided it might be. And so I would note just
19 again for the record that it is very clear that
20 the Bankruptcy Code applies to DCO's. That they
21 fit very clearly within that statutory frame work.

22 Similarly, with respect to Title 2, and

1 we did not burden this group with a point-by-point
2 analysis of how you get there, but, basically, the
3 activities that DCOs and other CCPs undertake are,
4 in fact, financial in nature, and fit within the
5 various regulations that the Fed under 4K, and the
6 FDIC under, basically, Title 2 and somewhat
7 mimicking 4K did as financial in nature.

8 And again, for those who say, well, wait
9 a minute, though. There's nothing in Title
10 that explicitly mentions DCOs, so how
11 could they be (inaudible), or even with a
12 structural argument, as Kim was referring to, but
13 as Pen noted before, when you look, and this time
14 we did get straight down to the subsection level,
15 210M mentions member property under Subchapter 4
16 of Chapter 7. Member property is solely relevant
17 to a clearing, a DCO, which is a commodity broker,
18 and so, in fact, there is, I think, a very clear
19 congressional intent that DCOs are, in fact,
20 eligible under Title 2, else they would not have
21 mentioned member property which doesn't apply to
22 anyone else in the world.

1 MR. STEIGERWALD: Thank you. Let me
2 turn the discussion back to Petal.

3 MS. WALKER: In keeping with our agenda,
4 I'd like to thank Robert Steigerwald for leading
5 the last two panels, and I'll turn to Commissioner
6 Bowen for closing remarks.

7 COMMISSIONER BOWEN: This was a great
8 discussion, and I really do want to thank the
9 guest panelists today, particularly, the members
10 from the FDIC for coming today. It's a tough
11 topic, resolution. Preferably, we won't need it,
12 but it's best for us to plan for it in any event.

13 But, Susan, thank you. I know Tom just
14 left. Want to thank Tom and the subcommittee for
15 all of your work. And Chairman, would you like
16 to say anything? Okay.

17 With that, everyone travel safely, and
18 thank you so much again.

19 MS. WALKER: The meeting is adjourned.
20 MRAC members, you do have some paperwork, so if
21 you can submit those to me if you have it, that
22 will be great. Thank you.

1 (Whereupon, at 1:23 p.m., the
2 PROCEEDINGS were adjourned.)

3 * * * * *

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22

CERTIFICATE OF NOTARY PUBLIC

DISTRICT OF COLUMBIA

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

(Signature and Seal on File)

Notary Public, in and for the District of Columbia

My Commission Expires: March 31, 2017