

1 COMMODITY FUTURES TRADING COMMISSION

2 PUBLIC ROUNDTABLE

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5  
6 AVAILABLE TO TRADE PROVISION FOR

7 SWAP EXECUTION FACILITIES AND

8 DESIGNATED CONTRACT MARKETS

9 WASHINGTON, D.C.

10 JANUARY 30, 2012

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1 COMMODITY FUTURES TRADING COMMISSION

2 ROUNDTABLE

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8 Commodity Futures Trading Commission  
9 Three Lafayette Center  
10 1155 21st Street, N.W.  
11 Washington, D.C. 20581

12 The meeting in the above-captioned matter  
13 convened, pursuant to notice, at 9:31 a.m. on Monday,  
14 January 30, 2012.

15 PRESIDING:

16  
17 RICK SHILTS, Director, Division of Market  
18 Oversight

19 NHAN NGUYEN, Moderator

20 Commodity Futures Trading Commission  
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P A R T I P A N T S :

REPRESENTING THE CFTC:

- ANDREI KIRILENKO
- NANCY MARKOWITZ
- BELLA ROZENBERG
- DAVID VAN WAGNER
- NADIA ZAKIR
- AMIR ZAIDI

1 PANELISTS:

2 PANEL ONE:

3 JEFFREY MARON, Markit  
4 WAYNE PESTONE, FXall  
5 THOMAS LaSALA, Chicago Mercantile Exchange  
6 PATRICK McCARTY, ICAP  
7 TRABUE BLAND, IntercontinentalExchange  
8 STEPHEN HUMENIK, Eris Exchange  
9 RICK McVEY, MarketAxess  
10 CRAIG PFLUMM, Coalition for Derivatives End-Users

11 PANEL TWO:

12 KARL COOPER, NYSE Liffe  
13 WILLIAM THUM, Asset Management Group of the  
14 Securities Industry and Financial  
15 Markets Association  
16 GEORGE HARRISON, Bloomberg  
17 HUGO BARTH, Association of Institutional Investors  
18 MICHAEL COSGROVE, Wholesale Markets Brokers  
19 Association, Americas  
20 LEE OLESKY, Tradeweb  
21 EVAN ARD, Evolution Markets  
22 PROFESSOR CHARLES JONES, Columbia Business School

23 PANEL THREE:

24 MARK SZYCHER, The Committee on Investment of Employee  
25 Benefit Assets  
26 DEXTER SENFT, International Swaps and Derivatives  
27 Association  
28 KEITH BAILEY, Barclays Capital  
29 JAMES CAWLEY, Javelin Capital Markets  
30 PROFESSOR MATTHEW SPIEGEL, Yale School of Management  
31 CHRISTIAN MARTIN, TeraExchange

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I N D E X

PAGE

Panel One: Procedure to Make a Swap Available to Trade	15
Panel Two: Factors to Consider to Make a Swap Available to Trade	73
Panel Three: Economically Equivalent Swaps	138

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

2 MR. SHILTS: My name is Greg Shilts, and I'm  
3 the director of the Division of Market Oversight here  
4 at the CFTC. I'm pleased to open this public  
5 roundtable to discuss the implementation of the trade  
6 execution requirement for swaps that was set forth in  
7 the Dodd-Frank Act.

8 In particular, we want to discuss the process  
9 for a Swap Execution Facility or a Designated  
10 Contract Market to make the swap available to trade.  
11 As you know, the Dodd-Frank Act brings  
12 over-the-counter derivatives under comprehensive  
13 regulation. Certain derivatives are to be traded on  
14 transparent trading platforms and cleared by  
15 regulated central counterparties.

16 The goal is to increase pre-trade  
17 transparency which will produce well-priced  
18 competition and greater liquidity. Open and  
19 transparent markets can benefit the entire economy  
20 and generate more competitive prices which will lead  
21 to more efficient markets and ultimately lower costs  
22 for companies and customers.

1           With respect to the trade execution mandate,  
2 Section 2(h)(8) of the Commodity Exchange Act, or  
3 CDA, requires all swap transactions subject to the  
4 clearing requirement to be executed on a Designated  
5 Contract Market, or DCM, or SEF, Swap Execution  
6 Facility, except where no DCM or SEF makes the swap  
7 available to trade.

8           The subject of today's roundtable focuses on  
9 a mechanism for implementing this trading mandate  
10 provision that was adopted by the Dodd-Frank Act.

11           This CFTC's Notice of Proposed Rulemaking for  
12 Swap Execution Facilities addressed the trade  
13 execution mandate in a limited manner while the  
14 Notice of Proposed Rulemaking for DCMs did not  
15 address this provision. Based on the public comments  
16 received on those proposed rulemakings, the CFTC  
17 recently issued a further Notice of Proposed  
18 Rulemaking to establish a process for making a swap  
19 available to trade and thus become subject to the  
20 trade execution requirement. The comment period for  
21 that proposed rulemaking ends on February 13th.

22           The proposed regulations set out a process

1 for implementing the available to trade statutory  
2 provision. DCMs and SEFs would submit to the CFTC  
3 either for approval or self-certification any  
4 determination that they have made that the swap is  
5 available to trade. Such determinations would be  
6 filed under the Commission's rule submission  
7 procedures. While an initial determination as to  
8 whether a swap is available to trade is made by the  
9 DCM or SEF, under this proposed procedure, the CFTC  
10 would also have a role in reviewing SEF and DCM  
11 filings.

12 Under the proposed rule, to make a swap  
13 available to trade, a DCM or SEF would be expected to  
14 consider certain factors. The factors cited in the  
15 proposal are: Whether there are ready and willing  
16 buyers and sellers; the frequency or size of  
17 transactions on DCMs, SEFs, or in the bilateral  
18 market; the trading volume on DCMs and SEFs and those  
19 executed bilaterally; the number or types of markets;  
20 bid-ask spreads; the usual number of resting firm or  
21 indicative bids and offers; whether a DCM's trading  
22 facility or a SEF's trading system or platform



1 supports trading in the swap; and any other factor  
2 that a DCM or SEF may consider relevant to making  
3 such an evaluation.

4 The Commission would then review the SEF or  
5 DCM submission for compliance with the CTA and  
6 Commission regulations. Under the proposal, once a  
7 swap is deemed available to trade and the DCM or SEF  
8 have made the initial filing as well as all other  
9 DCMs and SEFs that list the same swap or an  
10 equivalent swap must offer that swap or trade under  
11 execution procedures that provide appropriate  
12 pre-trade transparency.

13 If listed on a DCM, the swap must be executed  
14 on the DCM centralized market using a central limit  
15 order book or off-exchange consistent with the DCM's  
16 trading rules and core principles. If listed on a  
17 SEF, the swap must be executed under trading  
18 procedures that the CFTC would adopt in its final  
19 rules for SEFs.

20 Finally, the proposed regulations would  
21 require DCMs and SEFs to submit to the Commission an  
22 annual review and assessment of each swap that they

1 have determined is available to trade. These reviews  
2 would consider whether or not a swap should continue  
3 to be subject to the trading mandate. SEFs and DCMs  
4 also may note whether other swaps should be  
5 considered to be deemed available to trade.

6 The specific purpose of three panels today is  
7 to hear the opinions and advice of persons with  
8 diverse interests, experience, and points of view  
9 over the trading execution mandate, that is the  
10 available to trade provision of the Dodd-Frank Act.

11 We will devote a panel to each of the following  
12 topics: One, the process for implementing the trade  
13 execution mandate, considering specifically the  
14 filing procedures proposed by the CFTC for a DCM or  
15 SEF whereby it notifies the Commission that it has  
16 made a determination that a swap is available to  
17 trade;

18 Two, the factors that a DCM or a SEF would  
19 consider to make an available to trade determination;

20 And three, the meaning and parameters of an  
21 economically equivalent swap. With respect to this  
22 third matter, I should note that in order to avoid

1 any confusion, the staff is considering using a  
2 different term in any final rulemaking as the term  
3 "economically equivalent swap" is used in other CFTC  
4 rulemaking, such as position limits. This is an item  
5 mentioned by Commissioner Sommers at the last  
6 meeting.

7 I would like to thank the many distinguished  
8 panelists who have taken time out of their schedules  
9 and agreed to participate on these panels to discuss  
10 these subjects. I'd also like to thank the staff of  
11 the CFTC for their work in planning today's  
12 roundtable. The staff has been reading and analyzing  
13 the comments received to develop final rules that are  
14 consistent with the legislation and that take into  
15 account the issues and costs to be borne by market  
16 participants to come into compliance.

17 We look forward to hearing the thoughts of  
18 participants on the panel. The discussion will  
19 greatly assist us in drafting the final rules related  
20 to the trade execution requirement.

21 For the record, I would like to note that all  
22 statements and opinions that may be expressed and all

1 questions asked by CFTC staff are those of CFTC staff  
2 and do not represent the views of any commissioner of  
3 the Commission collectively. In order to ensure that  
4 we are able to hear the opinions of all of the  
5 participants on all the panels scheduled for  
6 discussion today, I encourage you to limit your  
7 remarks to the issue at hand.

8           Now I need to note a few housekeeping  
9 matters. I want to point out that this is not the  
10 only opportunity for interested persons to have input  
11 on these issues. The CFTC has opened a comment file  
12 where anybody can submit comments related to these  
13 implementation issues. Also, I'll note that the  
14 comment file is open until February 13th.

15           Please note that this meeting is being  
16 recorded and a transcript will be made public. The  
17 microphones are in front of you. Press the button  
18 and you'll see the red light. That means you can  
19 talk. Please speak directly into the mike. When  
20 you're finished, please press the button again to  
21 turn off the microphone. We also ask that you put  
22 any BlackBerries or cell phones away as they have

1     been known to cause interference with our system.

2             Before we start the panel, I would like to go  
3 through today's agenda. As I noted, we have three  
4 panels scheduled.

5             The first panel is entitled "Process for a  
6 DCM or SEF to Make a Swap Available to Trade". It  
7 will run for an hour and 15 minutes, after which  
8 we'll take a five-minute break.

9             Our second panel is entitled "Factors to  
10 Consider to Make a Swap Available to Trade". It also  
11 will run for an hour and 15 minutes. Then we'll take  
12 another five-minute break.

13             The third panel is entitled "Economically  
14 Equivalent Swaps" and will run 45 minutes.

15             We plan to conclude the roundtable discussion  
16 today around 1:15.

17             One other note: The restrooms are -- you go  
18 out to the back and they're at the far end and then  
19 to the left. Then we have coffee and all in the  
20 back.

21             So I would like to get started now with the  
22 first panel. First, I would like to go around the

1 room, the table, and let everyone introduce  
2 themselves.

3 I'm Rick Shilts, Director of the Division of  
4 Market Oversight.

5 MS. MARKOWITZ: I'm Nancy Markowitz, Deputy  
6 Director of the Division of Market Oversight.

7 MR. VAN WAGNER: David Vagner, Chief Counsel,  
8 Division of Market Oversight.

9 MR. ZAIDI: Amir Zaidi, Division of Market  
10 Oversight.

11 MR. KIRILENKO: Andrei Kirilenko, Chief  
12 Economist.

13 MR. PFLUMM: Craig Pflumm, Chatham Financial,  
14 representing the Coalition for Derivative End-Users.

15 MR. HUMENIK: Stephen Humenik, General  
16 Counsel, Chief Regulatory Officer of Eris Exchange.

17 MR. BLAND: Trabue Bland, Vice President of  
18 Regulatory Affairs, Assistant General Counsel of ICE.

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

20 MR. McCARTY: Pat McCarty, ICAP. I'm the  
21 Managing Director for Government Affairs.

22 MR. MARON: Jeffrey Maron, Markit.

1 MR. PESTONE: Wayne Pestone, Chief Regulatory  
2 Office, FXall.

3 MR. LaSALA: Tom LaSala, Chief Regulatory  
4 Officer for CME.

5 MS. ZAKIR: Nadia Zakir, Division of Market  
6 Oversight.

7 MS. ROZENBERG: Bella Rozenberg, Division of  
8 Market Oversight.

9 MR. NGUYEN: Nhan Nguyen, Division of Market  
10 Oversight. I'll be moderator at today's hearing.

11 MR. SHILTS: Thank all for your participation  
12 today. Now I would like to turn it over to Nhan who  
13 will summarize the topic of this first panel and lead  
14 off with the first question.

15 PANEL ONE: PROCEDURE TO MAKE A SWAP  
16 AVAILABLE TO TRADE

17 MR. NGUYEN: Thanks, Rick.

18 Panel One will focus on the process for a DCM  
19 or SEF to make a swap available to trade. Some of  
20 the concepts we'll be addressing include issues  
21 related to the use of Commission's rule approval or  
22 self-certification rules to notify the Commission and

1 the process for reviewing and assessing an existing  
2 available to trade determination.

3 So to quickly just sort of review the format  
4 before we begin, we'll have each panelist briefly  
5 respond to the question first, and then from there,  
6 we'll go in open discussion.

7 So now I'll start off with the first  
8 question, which you'll find a copy of in the folder  
9 in front of you. So the first question we'd like to  
10 ask is we'd like the panelists to provide their  
11 thoughts on the Commission's proposed procedure for  
12 notifying the Commission that it has determined that  
13 a swap is available to trade and particularly on four  
14 points:

15 First, whether the Part 40 rule filing  
16 provides the public with adequate notice on whether a  
17 swap has been determined to be available to trade;

18 Second, the amount of time that DCMs and SEFs  
19 should receive to make the same or economically  
20 equivalent swap available to trade once the  
21 determination has been approved or made effective;

22 Third, whether a DCM or SEF should be allowed



1 to submit an available to trade determination if it  
2 doesn't list the subject swap for trading; and,

3 Fourth, whether the Commission's proposed  
4 annual review and assessment of a determination is  
5 appropriate or not.

6 So we'll start with Mr. Pflumm.

7 MR. PFLUMM: Thank you. I appreciate the  
8 opportunity to represent the interests of end users.  
9 Like I said, I work with Chatham Financial and we're  
10 a consulting firm and we work with thousands of end  
11 users who are hedging risk.

12 As many folks would know, Title 7 originally  
13 was supposed to scope out end users. So the interest  
14 here is to mainly to identify the situations where  
15 end users may be impacted even though they may be by  
16 and large exempt from the clearing and trading  
17 requirements.

18 I think in terms of the process, it's like a  
19 process that end users won't be necessarily part of  
20 day in and day out, but yet it will affect end users.  
21 So by virtue of reviewing the process and the timing,  
22 I think two of the major themes that end users would

1 want to represent to you is the major concern that if  
2 a swap becomes available to trade, but isn't  
3 sufficiently liquid, that the process be sure to  
4 filter those out. Clearly, in terms of timing and  
5 the process of which is going through a review, I  
6 would say that it does seem as though a  
7 self-certification process and approval process,  
8 there seems to be potentially limited time for a wide  
9 universe of end users to be able to review, comment,  
10 understand what's happening, and be able to express  
11 those comments throughout this process.

12           So from the perspective of public notice, I  
13 would note that it seems as though being able to make  
14 the available to trade determinations available on a  
15 the website, either on the SEF or the Commission's  
16 website, does make sense, but it does seem somewhat  
17 potentially complicated for the universe of end users  
18 to stay up on that and then also be able to have a  
19 voice in that process throughout, expressing support  
20 or concern about potential swaps made available to  
21 trade.

22           With respect to timing, it strikes me from

1 the interim rules right now, it could be as quickly  
2 as 40 days from the time that a SEF or DCM submits a  
3 trade to be available to the point of which it is  
4 required, including all applicable timelines, and I  
5 think the end user community today, they may use  
6 SEFs, but they may not. That seems to be a very  
7 quick timeframe for end users to ensure that they  
8 can, you know, survey the market in terms of the  
9 potential SEFs, get ready, get prepared, and actually  
10 manage that.

11 It seems like a sizable change, one which I  
12 think that in the scope of Title 7 should reduce the  
13 burden on end users. We would hope for some more  
14 time in the range of six to nine months or more  
15 before it goes from being made available to trade to  
16 an end user needing to comply.

17 I think the overwhelming theme is, like I  
18 said, if the trade is liquid and the swap will trade  
19 at or a better spread than they're trading in the  
20 over-the-counter market today, we would like a little  
21 room for the concern. In the case where end users  
22 would be financial entities or captive finance units,

1 they may be subject to these trading requirements.

2 There's also impact for end users when they  
3 are executing a trade. They're facing a dealer that  
4 needs to lay off their risk, and if the available to  
5 trade requirements are subject to the dealer, it can  
6 decrease liquidity and also impact end users.

7 So it really comes back to reducing the  
8 burden and ensuring that the trades made available to  
9 trade are sufficient.

10 MR. NGUYEN: Thank you, Mr. Pflumm.

11 Mr. Humenik.

12 MR. HUMENIK: Thank you. Thank you again for  
13 the invitation to appear here today on the  
14 roundtable.

15 As you know, I'm from Eris Exchange. We were  
16 designated as a contract market on October 28, 2011.  
17 So we are the first designated DCM and very proud of  
18 that, but just to, you know, address the issue at  
19 hand here in terms of being available for trade, Eris  
20 Exchange is certainly supportive of rules where the  
21 DCM or SEF is given latitude in terms of making  
22 filings with the CFTC to say whether or not a rule is

1 made to available to trade -- or whether a swap is  
2 made available to trade, and I think we want to make  
3 sure that there is a process in place, but it's not  
4 an overly burdensome process, and when we look at it  
5 in terms of making self-certification of the product,  
6 we think that the questions that are addressed in the  
7 proposed rulemaking can be addressed there in an  
8 efficient manner, and I think it's important not to  
9 look at the made available to trade in a vacuum. I  
10 think we have to look at the totality of how the swap  
11 gets from clearing to trading.

12           So I think some of the questions that are  
13 addressed in the proposed rulemaking can also be  
14 addressed when a DCO actually makes the filing to say  
15 whether or not a swap should be subject to the  
16 clearing mandate. I think in that proposal, there is  
17 adequate time for the public to review and then  
18 comment on whether or not a swap should be subject to  
19 clearing. I think the made available to trade  
20 factors can be folded into that process.

21           So, again, I think what we are looking to see  
22 is that it's an efficient process; it's not a process

1 on top of a process and not to look at in a vacuum  
2 where we can actually have these sorts of made  
3 available to trade considerations addressed in the  
4 clearing determination, and when you think about how  
5 futures are listed and then traded under the  
6 traditional futures model, the initiator usually is  
7 the DCM, but the DCO obviously has been an important  
8 component of that analysis because you need a  
9 clearing house to actually agree to trade your  
10 product.

11 So for an exchange like Eris where we are  
12 just a DCM and we're not also a DCO, we have to look  
13 to our clearinghouse and have a discussion with them  
14 about any potential product that we want to list for  
15 trading.

16 So, again, I think there's a lot of, you  
17 know, factors at play here and we have to look at  
18 them not individually, but kind of wholistically at  
19 the whole process.

20 MR. BLAND: Hi. I'm Trabue Bland. I have  
21 very little to add to what Steve said. I mean, from  
22 ICE's perspective, we think that the made available

1 to trade determination should be wrapped into  
2 mandatory clearing determination.

3 Our reading of Dodd-Frank is it doesn't seem  
4 to require a separate process for made available to  
5 trade and that most of the factors in the made  
6 available to trade tests are very similar to the ones  
7 in the mandatory clearing test. So our position is  
8 that it should all be part of one test and viewed  
9 wholistically.

10 Thank you.

11 MR. McVEY: Rick McVey with MarketAxess. I  
12 also thank you for the invite today.

13 Just trying to separate the two issues on  
14 available for trading and the clearing and trading  
15 mandate, it's our assumption that the universe of  
16 available swaps for trading will continue to be  
17 significantly broader than the swaps that are subject  
18 to the clearing mandate. Even today, I believe that  
19 this is the case, and I can speak for the CBS market  
20 and MarketAxess specifically in that already today,  
21 if we count all the index series and maturities, we  
22 have approximately 500 unique index swaps available

1 for trading. If we move on to single name CDS, we  
2 have another 3,000 unique single names available for  
3 trading today.

4 So our assumption is that when we look across  
5 asset classes and across DCMs and SEFs, the universe  
6 of available swaps for trading will be exponentially  
7 broader than those swaps that are likely to be  
8 subject to the clearing mandate.

9 Our view is also that we should find an  
10 efficient and cost effective methodology for not only  
11 making swaps available for trading, but making that  
12 information clear to market participants so that they  
13 have certainty. We too agree that our reading of the  
14 statute was that the trading mandate would be  
15 directly linked to a clearing mandate, that if a swap  
16 had already been determined to have sufficient  
17 liquidity and activity and open interest and subject  
18 to the clearing mandate, then it would automatically  
19 be subject to the trading mandate.

20 MR. McCARTY: My name is Pat McCarty. I'm  
21 with ICAP. ICAP is going to register as a SEF as  
22 well as a security-based SEF. We are one of the



1 largest inter-dealer brokers and we are very, very  
2 active in the interest rate swap FX and CDS markets.

3 I think we would violently agree with some of  
4 the comments we have just heard from our friends here  
5 at Eris, ICE, and MarketAxess. While process is good  
6 and we would like to have input, I agree with the  
7 Coalition for Derivative End Users that it's  
8 important for their ability to express opinion. I  
9 would agree that rapping the MAT process into the  
10 mandatory clearing determinations would probably make  
11 some sense because there seems to be a little  
12 redundancy in terms of the analysis.

13 To the extent that the Commission comes out  
14 with mandatory clearing determinations, probably it  
15 should be presumptive if the SEF has listed a  
16 contract for trading and, in fact, it's made  
17 available for trading as that is following the  
18 futures model, exchanges list contracts so that  
19 people can trade them, and that is I think a very  
20 important thing to keep in mind.

21 The burden of or the redundancy of the MAT  
22 filing and slow-down in terms of getting things to

1 trade seems to be antithetical to what Dodd-Frank  
2 wanted to do, which was to put these markets out  
3 there in terms of being efficient, transparent, and  
4 trading.

5 Thank you.

6 MR. MARON: Jeff Maron for Markit.

7 Markit's core mission is to trade products  
8 and services on the financial markets pretty much  
9 with swaps that enhance transparency and reduce risk  
10 and improve operational efficiency. In reviewing the  
11 questions that you put forward, our view is that  
12 applications to the CFTC should open for public  
13 comment for at least 60 days from new filing, that it  
14 should be sufficiently granular by tenure or a range  
15 of tenures so that when things get listed, it's not  
16 just, for example, a two-year IRS gets listed.  
17 That's fine, but a two-year IRS that starts two weeks  
18 from tomorrow may not be sufficiently liquid to be  
19 available for trading.

20 There ought to be a committee to review  
21 regularly, perhaps quarterly to make sure the  
22 criteria upon which they were set out and made

1 available for trading remain in place. So we will  
2 look through the criteria that was set out, for  
3 example, have spreads narrowed or have they widened,  
4 are there more frequent or less frequent activity in  
5 the market, is there more market interest or less  
6 market interest, that is what is the criteria that  
7 was set out in the recommendation and do they  
8 continue to hold forward and perhaps an annual review  
9 is not frequent enough for this to take place.

10 As a result of basing all of this on  
11 objectively measurable and reasonable factors, if the  
12 Commission cannot make its designations, then perhaps  
13 the OFR or the NFA or some other organization would  
14 be delegated to have that responsibility rather than  
15 individual SEFs or DCMs that might have a conflict of  
16 interest, perhaps, in that process.

17 We also believe that the MAT should be phased  
18 in based on date over a period of time. Perhaps a  
19 way to look at it is through a period of years and  
20 give people the opportunity to look back and see the  
21 success of those and adjust methodology. Taking that  
22 step forward, this might be a mechanism we could look

1 to rather than going all at once to the process.

2 Thank you.

3 MR. PESTONE: I am Wayne Pestone from FXall.

4 It's our intention to register as a SEF upon the  
5 completion of the rules for non-deliverable forwards  
6 and FX options.

7 I think we would agree that if the two  
8 processes would be harmonized between mandatory  
9 clearing and made available for trading, we agree  
10 with the other panelists that from what we're seeing,  
11 there might not be an overlap and that available for  
12 trading may be much more fine as was discussed in the  
13 opening meeting.

14 Our concern, particularly for things like  
15 non-deliverable forwards where every day can be a  
16 different contract, the made available for trading  
17 process could be quite onerous and perhaps day,  
18 another filing. We also think that any of these  
19 decisions should be made off of a large sample of  
20 data, and as mentioned in the filing, we think at the  
21 outset, we're not going to have that data.

22 So it's our feeling that there should be some

1 delay for any filing to occur until we have at least  
2 six months, maybe a year's worth of data from the  
3 reporting so that both the public and the Commission  
4 can have adequate data to make these decisions.

5 Further, while it may be not particularly in  
6 a SEF's best interest, we think for the market as a  
7 whole, there should be a longer period for everyone  
8 to weigh in. We would be in favor of a 30-day  
9 comment period for any of the filings to give more  
10 competitors as well as the public a chance to give  
11 all sides and then have the Commission decide. If  
12 that decision is made, then because of, perhaps, the  
13 difficulty in implementing the mandatory trades,  
14 especially on a platform that's not trading that  
15 product, we think it should be at least a 90-day  
16 period before that would be become effective.

17 MR. LaSALA: Thank you. Tom LaSala, CME.

18 A point Wayne just made, it may be that the  
19 analysis or the MAT is a bit more fine or granular  
20 than that of the clearing mandate. With that in  
21 mind, as we see it, we would think that, you know, a  
22 40.5 or 40.6 process driven by or initiated by a SEF

1 or a DCM would not, in fact, be the proper means to,  
2 in fact, go forward with what's effectively a trading  
3 mandate, which would be basically a marketwide  
4 effect.

5 We think that when we look at the situation,  
6 and I'll say plural, the SDRs, we'll be gathering the  
7 data. The Commission will, in fact, have data within  
8 the SDR marketwide to look at. We believe that the  
9 Commission then should institute a process, an  
10 announcement period, notify us on a special page on  
11 their website that they commenced engagement of the  
12 MAT review.

13 At the conclusion of that where it's deemed  
14 something to be mandatorily traded, the market -- I  
15 think as proposed, it's a 30-day requirement. In our  
16 estimation and experience, we've got certain service  
17 level agreements with various clearing firms,  
18 vendors. Thirty days would simply be just too tight  
19 a time period.

20 We would think that 60 to 90 days would be  
21 most appropriate for that, but again, I think the  
22 main concept that we're putting forth here is that

1 if, in fact, there is a more granular look at trading  
2 versus clearing, the notion that any SEF or DCM kicks  
3 off in terms of processing, what they submit in my  
4 estimate or our estimate is their own data. It's  
5 unclear to me what benefit that serves. The  
6 Commission would, in fact, have the data. That  
7 actually then goes to the notion as proposed the  
8 yearly submission.

9           You know, it doesn't seem clear why any  
10 individual SEFs or DCMs would be making yearly  
11 submissions when, in fact, the Commission would have  
12 full access to the data through the SDRs.

13           Lastly, if, in fact, the MAT determinations  
14 were rendered, we think it's appropriate that the  
15 Commission would be conducting the yearly reviews.  
16 If they were going to determine that something is no  
17 longer mandated, then there would be a comparable  
18 process for removing that standard and there should  
19 be comparable time for the marketplace, 60 to 90  
20 days, to respond to that.

21           Thank you.

22           MR. NGUYEN: Thank you. Now we'll open up

1 the panel for questions from staff.

2 MR. SHILTS: I want to start out with maybe  
3 just more of a clarification, because a number of  
4 people made the same comment as we discussed before  
5 this began.

6 In a sense, I think just to clarify, the view  
7 of some is that the determination for what is made  
8 available to trade should be concurrent with the  
9 clearing determination and that it would involve the  
10 same criteria and then separately or related to that  
11 is the idea that if something is made available to  
12 trade, that people, those that are here, have the  
13 view that a listing be made available.

14 MR. BLAND: That's my view. I wouldn't say  
15 the process should be concurrent. It should probably  
16 be the same process. I mean, you're looking at  
17 clearing a swap. You should make sure that it has  
18 sufficient liquidity to ensure it's available to  
19 trade.

20 So it seems to me that when you look at the  
21 factors, they are roughly the same for the made  
22 available to trade determination and the mandatory



1 clearing determination.

2 MR. McVEY: We would agree with that, and we  
3 can't today envision a scenario where a swap that is  
4 subject to the clearing mandate would not be made  
5 available to trade on a DCM or a SEF. As I  
6 mentioned, I think, already today, the universe of  
7 available swaps is much wider than where we'll end up  
8 doing the clearing mandate.

9 MR. McCARTY: We agree to the extent that the  
10 Commission is looking at and making mandatory  
11 clearable determinations, they're already looking at  
12 the standardization of the open interest and high  
13 notional volume of swaps that are out there. So one  
14 would expect, as Rich has said, that, in fact, it's  
15 going to be a subset of all the swap contracts out  
16 there.

17 It may be that they're the ones with the most  
18 volume in them and the most notional volume  
19 outstanding, but I think that's the 80-20 rule coming  
20 up in terms of the 20 percent of the contracts have  
21 80 percent of the volume in them and that would be  
22 the mandatory clearable ones. From that point of

1 view, I think that SEFs and DCMs will obviously be  
2 listing those contracts for trading because they are  
3 the most liquid and most people are interested in  
4 having.

5 MR. MARON: I appreciate that perspective and  
6 understand why folks would head down that path. We  
7 only caution that as we roll this out, we do so in a  
8 manner that allows us to measure each step.

9 MR. HUMENIK: I think I agree with kind of  
10 putting the process together and, you know, I think  
11 it's important to note too that when a SEF does make  
12 its self-certification, it does have to go through  
13 certain analyses when it makes that filing with the  
14 Commission, which one of the factors there is to make  
15 sure that in listing the swap for trading, that the  
16 SEF will be complying with the core principles and,  
17 again, I think that hasn't been mentioned, but it's  
18 kind of a check on the overall process of making  
19 something available to trade, that there is a  
20 certification by the SEF that occurs upon making that  
21 filing.

22 MR. LaSALA: I'd just simply add again, as I

1 stated earlier, if, in fact, the data the Commission  
2 is considering with regard to the clearing mandate is  
3 as granular as -- as comparable to clearing and  
4 trading, then it seems like that type of a singular  
5 approach could, in fact, work. If it's different  
6 though, at least as contemplated, then the points I  
7 made earlier, I'd just be restating.

8 MR. SHILTS: I think we're going to be having  
9 a roundtable to talk about some of the clearing  
10 considerations later in February. So, I mean, as I  
11 understand that point of view, let's just say for  
12 argument sake that the Commission decided that there  
13 is a distinction, that the clearing determination is  
14 done initially and then there is a separate  
15 determination for the made available to trade. I  
16 understand the comments that it should be the same,  
17 but again, I can't speak for the Commission.

18 Just assuming that's the case, does anybody  
19 have any thoughts on the proposal or the process in  
20 that vein?

21 MR. McVEY: If I could jump in here, I guess  
22 this would give you an opportunity to clarify for us

1 whether it's expected that SEFs and DCMs are going to  
2 have to actually file under Part 40 to list all of  
3 the swaps which they are going to be permitting  
4 people to trade on the facilities, because to the  
5 extent -- your first question is about whether the  
6 public has sufficient time to see what's going on.  
7 If, in fact, we are expected to file under Part 40 to  
8 list it and then at some point in the future, come  
9 back with another filing under the MAT -- so you  
10 actually get two bites at the apple under Part 40,  
11 the listing and then the MAT -- one would think that  
12 if, in fact, you have those two opportunities as well  
13 as the mandatory clearing determination, which  
14 obviously made available for trading doesn't really  
15 apply or have any effect unless it's a mandatory  
16 clearable swap -- I mean it's not a swap which the  
17 Commission has identified as being subject to  
18 mandatory clearing -- there is no mandatory execution  
19 requirement.

20 So if one wants to provide process, one would  
21 think that, in fact, a listing process, the mandatory  
22 clearable process, and then the MAT process, that

1 would be three opportunities for the public to come  
2 in and talk about a particular swap or class of swaps  
3 and whether, in fact, they actually should be  
4 eligible for trading or provided for trading.

5 MR. SHILTS: That's something that we're  
6 looking at in the comments and will be addressing in  
7 the final rulemaking for the Swap Execution  
8 Facilities and whether there would be distinctions  
9 between what we carved out as kind of the required  
10 transactions, those that have to be done, those that  
11 are subject to made available to trade provisions and  
12 they're permitted and whether there would be  
13 differential treatment.

14 So I can't say right now how that will work.  
15 That's something we're thinking about in terms of  
16 what the requirements will be for certification to  
17 filings with respect to different type of swaps that  
18 are being listed.

19 MR. McVEY: I would just say that if we don't  
20 end up with a direct link between the clearing  
21 mandate and made available for trading through the  
22 trading mandate, I would strongly encourage the

1 Commission to find ways to automate the process of  
2 what would be made available for trading based on  
3 trading activity, liquidity open interest, and  
4 various swaps.

5 I do think that the second process that's  
6 being considered is going to add a significant amount  
7 of cost and time and effort not only to the  
8 Commission, but to all market participants and all  
9 DCMs and SEFs, and certainly for most asset classes  
10 and most swap areas, I think through the data that's  
11 already available, it's very clear which swaps have  
12 sufficient activity to be subject to the clearing  
13 mandate and should be available for trading.

14 So any way to automate that so that you are  
15 not sitting on 30 applications from different SEFs  
16 across every asset class -- there could be 25 or 30  
17 thousand swaps in the end -- I think would provide a  
18 service to the industry to make it cost effective and  
19 efficient.

20 MR. SHILTS: Any other thoughts on that?

21 MR. BLAND: I'll just echo everyone else.

22 The more process you add to listing a swap or

1 anything else, we ask for flexibility. Everyone at  
2 this table runs a SEF or a DCM. I mean, we make it  
3 our business by finding swaps that -- or products  
4 that people want to trade, and the more process we  
5 add to that, it seems to me that it might slow down  
6 the whole process of Dodd-Frank in coming up with  
7 clearable swaps and swaps that are available to  
8 trade.

9 MR. SHILTS: Yes.

10 MR. HUMENIK: Just one thought too in terms  
11 of the process and review: In terms of the  
12 self-certification process, if the Commission, you  
13 know, believes it needs a little more time for the  
14 first swap the SEF says it will make available for  
15 trading, instead of having the self-certification  
16 process is two days, you actually require prior  
17 approval by the CFTC for the first swap that a SEF  
18 lists. This way, there would be an opportunity for  
19 the Commission and the entity to have a dialogue  
20 about product and just about the SEF in general,  
21 because as I think about the DCM process that Eris  
22 Exchange went through and other ECMS go through, it's

1 a 180-day process.

2 So there's a lot of opportunity for the staff  
3 and the Exchange Execution Facility to get to know  
4 each other, get to know the product, get to know how  
5 the facility work, and to the extent that SEFs are  
6 going to have a provisional application process where  
7 there won't be that rich dialogue between the CFTC  
8 and the execution facility, perhaps that first filing  
9 that a SEF makes could provide that opportunity to  
10 have an enhanced dialogue and then it will allow the  
11 process to get rolling and get rolling in short order  
12 as well.

13 MR. VAN WAGNER: Can I actually stipulate  
14 something? Because I think, Steve, you started going  
15 in this direction. I think we are envisioning a  
16 filing that would happen -- it's not a filing similar  
17 to a contract filing such that it's self-certified  
18 and could be made available to trade two days later.  
19 I think we're viewing it as different from a contract  
20 filing.

21 We are viewing it as an actual evaluation by  
22 that DCM or SEF that this has been made available for



1 trading and I think we would view it as a  
2 non-product, and so basically it would be 10 days in  
3 review unless we decide to hold it over for 90, and I  
4 think these will be held over for 90 and that's not  
5 going to be a shock to anybody, and then built into  
6 that would a 30-day comment period.

7           Is that kind of process sufficient time?  
8 I've heard some people talk about 60 days of comment,  
9 but reviewing something for 90 days with 30 of it  
10 being a public comment period, does that work?

11           MR. MARON: I think if most are going through  
12 the 90-day process -- let's just say the 90 days  
13 includes the 30-day comment time -- it should give  
14 folks enough time to review that process, to go  
15 through it, and then to explain what's going to  
16 happen with liquidity.

17           The other problem is the SEPs only have a  
18 narrow perspective of what the liquidity instrument  
19 looks like; whereas, you have a much broader view and  
20 allow other folks to come in weigh in on their  
21 perception of it as well.

22           MR. McVEY: I'm trying to determine a

1 scenario where the Commission would want to limit the  
2 swaps available for trading on a SEF or a DCM.  
3 Again, our assumption is that the clearing mandate  
4 will apply to a very limited set of swaps, and if the  
5 trading mandate is triggered off of that clearing  
6 mandate, there could only be a subset and a narrow  
7 set of swaps that are going to fall under the  
8 clearing and trading mandate; but I would think that  
9 the Commission would share the objectives of the  
10 industry to have a very broad universe of swaps  
11 available.

12 No one is required to trade those swaps  
13 electronically if they're not subject to the trading  
14 mandate, but I would think that it would be  
15 completely consistent with the intent of the statute  
16 to make a very broad universe of swaps available for  
17 trading and I see no reason why the Commission would  
18 want a separate application process for that to wait  
19 for approvals.

20 MR. VAN WAGNER: Maybe that's the question  
21 that Rick started to go in this direction before. Do  
22 any of you think that the trading mandate swaps, in

1 fact, should be a subset of the clearing mandate  
2 swaps? Is everybody viewing it as synonymous?

3 MR. LaSALA: David, I didn't view it  
4 necessarily as synonymous. Others may. I thought  
5 there was some differentiation being made, but it's  
6 not absolutely clear to me what level of granularity  
7 will be looked at in the clearing mandate versus the  
8 trading mandate.

9 As I stated earlier, if, in fact, it is  
10 different, to follow a point that Rick McVey made a  
11 couple of moments ago, to me, it doesn't seem that --  
12 it seems unproductive to have a multitude of SEFs or  
13 DCMs making these requests when, in fact, the  
14 Commission would have available to it through the  
15 SDRs the type of data that it could make an informed  
16 decision.

17 So, again, if there is a differentiation here  
18 and they are going to be separately determined, it  
19 would seem that with regard to the trading mandate,  
20 the Commission should pull the trigger on that and  
21 drive that process, serve public notice, and then  
22 disclose its determination. It's clearly for SEFs

1 and DCMs to respond.

2 MR. McCARTY: I'd just point out I think I  
3 agree with Tom on this as well as Rich. To the  
4 extent that Congress wanted to provide process to  
5 people related to swaps and sort of the clearing and  
6 trading, it's very clear that on the process that  
7 Congress envisioned in terms of people arguing about  
8 or providing input, was that whether something is  
9 mandatory clearable, and it goes on and on and on  
10 about that.

11 As we both know, what's in the statute  
12 related to executions, very, very small, and it  
13 wasn't intended, I believe, to provide a second  
14 process. I think it was supposed to be joined and so  
15 that would be kind of be a point of view. It seems  
16 as if putting the MAT on top of mandatory clearing is  
17 delaying the trading swaps as opposed to facilitating  
18 them.

19 MR. SHILTS: I asked a question about that.  
20 You're right. There's a very detailed process to be  
21 made for the clearing mandate. It really isn't a  
22 process for made available to trade. This proposal

1 was a way to try to come up with a process, but just  
2 following through for those that share the view that  
3 it should be the same, do you envision any sort of a  
4 process or how, in fact, would it work once the  
5 Commission made a clearing determination for a  
6 particular -- mandatory clearing determination for a  
7 particular swap? How does it get communicated? How  
8 do industry participants know that a particular SEF  
9 or DCM is actually trading, it's made available to  
10 trade? What is the process? How does one -- because  
11 if you don't, you're in violation of the statute.

12 So how does that work in your mind?

13 MR. McCARTY: I think the idea was that  
14 people would be watching the mandatory clearing  
15 determination process very, very closely. There  
16 would be a lot of input from industry as well as I  
17 think watched by the SEFs and DCMs. To the extent  
18 that the Commission itself is identifying individual  
19 contracts as well as classes of contracts, I think  
20 that the industry is on notice.

21 As I said before, I think there is a  
22 presumption that many of the SEFs are going to be

1 listing contracts which have been identified by the  
2 Commission as being mandatory clearable. I think it  
3 would be actually very logical as part of a business  
4 plan for a SEF to say we would like to basically  
5 identify those contracts which the Commission has  
6 already identified as being mandatory clearable and  
7 we will list those, because those contracts are  
8 required to be executed on a SEF or a DCM if they are  
9 there.

10 Now, to the extent that people would know  
11 that, in fact, a SEF or a DCM has listed a contract,  
12 as you suggested in the proposal, the Part 40 process  
13 requires the listing of a contract by a SEF or a DCM  
14 to make a filing with the Commission which will go  
15 onto the Commission's website and that the SEF and  
16 the DCM would actually be required to put that on  
17 their own website as well. So there's, I guess, a  
18 certain amount of transparency to the market related  
19 to that.

20 MR. McVEY: We would have no problem  
21 whatsoever with an annual notification process where  
22 as a SEF, we are notifying the Commission of what is

1 available for trading, and perhaps in the original  
2 registration process, all SEFs could be asked to do  
3 that. I can commit to you that at least within the  
4 narrow world of asset classes of the CDS, that not  
5 only Market Axess, but to my knowledge, many of our  
6 competitors will list any swap that's going to be  
7 subject to a clearing mandate and thousands more  
8 beyond that.

9           So this is where I think that the process is  
10 becoming a bit redundant and it's adding additional  
11 cost and uncertainty to the industry that doesn't  
12 need to be there. It's my assumption that if it has  
13 sufficient liquidity and activity to be subject to  
14 the clearing mandate, it will be available on a  
15 separate DCM, and I think that the annual  
16 notification process would be a cost effective way to  
17 the Commission to know all swaps that are available  
18 for trading, and I'm quite certain that the  
19 collection would be a much broader universe than  
20 anything that's being contemplated for the clearing  
21 mandate.

22           MR. SHILTS: I think in one of the -- I don't

1 know that it's an issue, but one of the difficulties  
2 of trying to assess this is that the Commission, we  
3 haven't made determinations about particular swaps  
4 under the clearing mandate. I guess the assumption  
5 is that that would involve or require that they have  
6 this breadth of participation and liquidity, and I  
7 can see how maybe it's the same argument that would  
8 apply, but if the Commission were to decide -- I  
9 mean, there's many swaps out there that are listed  
10 that are cleared that have activity, and if the  
11 Commission were to decide that those were subject to  
12 the mandatory clearing requirement, then one may  
13 wonder should they also be subject to the mandatory  
14 trading execution requirement.

15 But it's a question and, again, the  
16 Commission, we haven't made those determinations, but  
17 if you make that assumption, it's like what Tom was  
18 saying. There's a differential there between or a  
19 different criteria for those that meet the mandatory  
20 clearing versus those that meet the mandatory  
21 trading. They may be the same. Ultimately, the  
22 Commission will have to decide. I think there may be



1 differences of opinion or different views as we talk  
2 about this.

3 MR. PESTONE: To answer the earlier question,  
4 I think we believe that the made available for  
5 trading is more of a subset of the mandatory  
6 clearing, at least as we understand it, and  
7 particularly if we try to understand an example in  
8 our market, you know, it could be that a certain  
9 currency pairs are made mandatory cleared, but within  
10 that product, we don't know where the lines will be  
11 for what's made available for trading. Is this going  
12 to be standard fixing dates or will we have many odd  
13 dates, and some people would call those legitimate as  
14 far as activity, but they can be traded sporadically,  
15 and the question of, again, how many of those filings  
16 will all be together, as I said, you can have  
17 200-something days in a year and does that mean we  
18 have to make filings for each one, times each  
19 currency pair?

20 We would like some clarity on that,  
21 especially, I guess, depending on where you come out  
22 with the economically equivalent. What does that

1 mean? You know, is a 15-day one equivalent to a  
2 17-day one? That would make a big difference for  
3 people like us in our market.

4 MR. PFLUMM: I would echo those thoughts.  
5 From an end user perspective, end users are using  
6 these to often times customize and hedge their risk.  
7 [Inaudible] which structurally may be suitable for  
8 clearing. It may not always be that way and,  
9 therefore, again, echoing the comments or seeing what  
10 is deemed made available to trade as a subset of  
11 those that are mandatory cleared allows for a proper  
12 check and balance to ensure that trades that are  
13 mandatorily cleared have such liquidity in the  
14 trading venue, and while many trades today can be  
15 done by voice or electronic trading, the venue where  
16 the liquidity exists is important.

17 I don't think we can presume that a trade,  
18 just because it is deemed mandatorily cleared, will  
19 have sufficient liquidity across all trading  
20 platforms outside of voice trading.

21 MR. MARON: We would echo that. Clearing is  
22 similar but different from the trading liquidity

1 determination in that it's transient and may well be  
2 that a one point in time, sufficient liquidity exist  
3 in a given period, but it's not consistent and,  
4 therefore, can't be held to be constantly trade in  
5 that manner.

6 MR. McCARTY: I would like to just make two  
7 points here on mandatory clearing. I would consider  
8 them to overlap as opposed to having a subset for  
9 trading. I guess to the extent that mandatory  
10 clearing determination is made by the Commission, it  
11 should be reserved for most highly standardized, the  
12 most highly open interest and highest notional volume  
13 swaps that are out there. It's not supposed to  
14 extend to the very, very, I guess, transient  
15 liquidity which, in fact, is being referenced here by  
16 others.

17 I think, also, the issue that is being  
18 discussed here about you can be mandatory clearable  
19 at one point in time and then actually move off of  
20 that at another point in time, again, our original  
21 thought was to basically say hook MAT into the  
22 mandatory clearing determinations. It means the

1 Commission, if it decides that something is no longer  
2 mandatory clearable, then, in fact, the made  
3 available for trading determination and the  
4 requirement for mandatory trading goes away.

5           So if the Commission is vigilant on this in  
6 terms of deciding and keeping an eye on mandatory  
7 clearable contracts and the amount of volume and  
8 liquidity in them, then it will, in fact, be able to  
9 say or adjust this mandatory clearing determination  
10 and, therefore, the SEFs and the DCMs are not going  
11 to have to actually analyze it and look at from their  
12 point of view, but you can look at from the SDR  
13 and/or the industry point of view.

14           That would be our thought.

15           MR. PFLUMM: If I could maybe pose a  
16 question. In the sense that a trade is deemed  
17 mandatorily cleared and between the time that it's  
18 mandatorily cleared and prior to trading, if the  
19 spreads from where it's trading in voice in today  
20 explode out to where there isn't liquidity, is it  
21 just to continue down the path of mandatory trading  
22 because they are synonymous?

1           I think that's the part where it's difficult  
2 to see how they can be tied together without some  
3 proper check and balance. The fact that they can be  
4 structurally cleared, but may not have liquidity in  
5 the proper venue, it seems to be a different factor.

6           MR. McCARTY: I guess Congress was very --  
7 you know, watching the issue about -- and considered  
8 the issue of whether or not, in fact, every swap  
9 contract which be cleared should be cleared. They  
10 considered that and rejected it. There was a concern  
11 about basically DCOs listing every swap contract  
12 under the sun, and they decided that, in fact, the  
13 commissions would actually be in a better position  
14 and not have a self-interest, of basically an  
15 economic interest in terms of saying if it's  
16 clearable, then it shall be cleared. It reserved the  
17 mandatory clearable standard to be determined by the  
18 Commission.

19           So as we've talked about here earlier, it's  
20 supposed to be reserved for only those swap contracts  
21 which have huge notional volumes in them outstanding,  
22 but they have huge standardization, and so it's only

1 the very liquid ones. There shouldn't be that kind  
2 of periodic, I mean, dodging in and out between being  
3 mandatory clearable and, therefore, being required to  
4 trade. You know, it shouldn't be something which is  
5 episodically something that comes up every other day.  
6 It should be only those things which everyone would  
7 agree are, basically, the largest contracts out  
8 there.

9 MR. HUMENIK: I would echo the comments on  
10 standardization, and the mandatory clearing process,  
11 I think is something the Commission would have to be  
12 very mindful as it's reviewing the DCOs' filings and  
13 the public comments as well. In terms of making  
14 something subject to mandatory clearing, you know,  
15 should be standardized, and on Eris Exchange, we list  
16 interest rate swap futures contract and the reason we  
17 can list it and put it and put it in a central limit  
18 order book is because it's a standardized contract  
19 and you have streaming quotes and you have liquidity  
20 in a product like that and, again, I think as we  
21 evolve into the new Dodd-Frank world, we really do  
22 need to think about getting it moving, and the way to

1 do that, again, is towards looking to the  
2 standardized products and get those subject to the  
3 clearing mandate and then having a trading mandate  
4 follow soon after that.

5 MR. McCARTY: I think Steve made a very  
6 important point and Richard raised it earlier.  
7 There's an awful lot of standardized swaps out there  
8 that, in fact, many of us are going to be listing for  
9 trading. I think the Commission ought to be looking  
10 at the Part 40 process and permitting us to sort of,  
11 I guess, truncate or shorten that process.

12 If all of us are listing exactly the same  
13 contracts, then I don't think that there's going --  
14 we don't want to burden the staff with basically  
15 redundant filings. There should be a streamlined  
16 process to permit all of us to actually put those  
17 contracts up and get them trading much more quickly  
18 than the standardized process in the futures world  
19 where the contracts aren't fungible and they actually  
20 are specific to the particular DCM or the particular  
21 clearinghouse.

22 That's an important thing, and if you really

1 want to help us get up and running, in fact, we would  
2 ask to have a more streamlined process on that.

3 MR. HUMENIK: One thing I would just add too  
4 is that, you know, as things are traded, there is  
5 information, obviously, that comes from that,  
6 actually, assists the clearinghouse in marking the  
7 position. So, again, it's important that the  
8 clearing mandate and trading mandate follow one  
9 another close in time so you can have that  
10 information that comes from the trading which allows  
11 the DCO to evaluate things like VAR in terms of,  
12 again, moving things forward and reducing systemic  
13 risk.

14 MR. SHILTS: I think in a lot of the  
15 discussion when people are talking about -- those  
16 with the view that the trading and clearing mandate  
17 go together and kind of view that as something made  
18 available to trade really means the listing of the  
19 product on the SEF and DCM. I'm just interested in  
20 either policy or legal or comments about the fact  
21 that Congress didn't say this. They said make  
22 available to trade and, you know, any thoughts on why



1 we should interpret that to mean listing and either  
2 from a policy or legal standpoint?

3 MR. PFLUMM: Maybe from a legislative intent  
4 perspective, Senator Blanche Lincoln made comments  
5 regarding this very point stating that the Commission  
6 should evaluate not just whether the swap execution  
7 [inaudible] or identifies the swap as a candidate for  
8 trading, and then it goes on to say there must be a  
9 minimum amount of liquidity.

10 So I think that distinguishing factor was  
11 made through the legislative intent.

12 MR. McCARTY: I would just suggest as well  
13 that the fact that to the extent that the mandatory  
14 clearing determinations require a certain amount of  
15 standardization, huge notional volumes outstanding,  
16 open interest considerations, that was a proxy for, I  
17 believe, liquidity, expecting that, in fact, there  
18 would be trading volume based on that. If the  
19 Commission goes in the opposite direction and  
20 actually pulls in contracts which have very little  
21 clearing, then, in fact, it almost, you knows, dooms  
22 people to basically having problems where they'll

1 have contracts listed on their SEF or exchange which  
2 never get any volume, which I don't think is in the  
3 best interest of DCMs or SEFs.

4 MR. BLAND: I'll just add maybe the term  
5 "made available to trade" is a trading platform, not  
6 a trading facility, and the term "listing" is  
7 probably not appropriate for a SEF, but since  
8 everything else -- so maybe that's a distinction  
9 there. Again, going to back Senator Lincoln's  
10 letter, she says a minimum amount of liquidity to be  
11 clearable.

12 MR. McVEY: I would echo that. I think the  
13 distinction was made in recognition of the  
14 differences in OTC markets versus listed exchange  
15 markets and the fact that many swaps are tailored  
16 swaps that trade less frequently and may still be  
17 available on a SEF with market participants  
18 interested in trading them electronically, but they  
19 may not have sufficient liquidity to be either  
20 subject to the clearing or the trading mandate.

21 I would just say that I think there's an  
22 example of that in our universe in bonds as well. We

1 have about 110,000 unique bond securities available  
2 for trading on MarketAxess. Only about 2,000 unique  
3 bonds trade each day, but our clients sure like the  
4 fact that they're all available at such time that  
5 they determine that there's a trade that does fit on  
6 the platform. If they would like to engage  
7 electronically with the dealer community,  
8 electronically through the MarketAxess system, those  
9 bonds are available and some of them trade  
10 infrequently, but the efficiency and the competition  
11 and the transparency are all there at any time  
12 investors and dealers determine it's appropriate to  
13 trade those bond electronically.

14 MR. NGUYEN: With the remaining time, we  
15 would like to go into our second question, which is  
16 -- and, you know, some of your comments have  
17 certainly alluded to this point, but we'll see if we  
18 can flush it out further, which is should the  
19 Commission establish a process to determine when a  
20 swap that's been determined, previously determined,  
21 to be made available to trade is no longer available  
22 to trade, and in your answer, if you could consider,

1 for example, what that process would look like, who  
2 it should apply to and who should make that  
3 determination.

4 We'll start with Mr. Pflumm.

5 MR. PFLUMM: I think I might answer and echo  
6 what I've been saying earlier, which is I'm  
7 envisioning a scenario where, initially, it seems  
8 very likely that those that are mandatorily cleared  
9 and mandatorily available to trade might very well be  
10 synonymous, but over time, it's likely that the  
11 fluctuations in the market, the liquidity and other  
12 factors we've been discussing could change and,  
13 therefore, a process by which something that was and  
14 structurally can be cleared is later then not  
15 suitable for trading, that process should be clear to  
16 the market participants.

17 I would come back to the same key concept  
18 before, providing a mechanism for a market  
19 participant such as end users to be able to voice  
20 that concern and be able to trigger that type of a  
21 review, I think would be worth while. I also think a  
22 process needs to be clear that if one SEF or one DCM

1 chooses not to make that trade available for trading,  
2 how does that affect the rest of the market? What  
3 happens from there? Does that mean no others then  
4 need to make it available or does it still need to be  
5 traded on their SEFs, and I would also assert that  
6 timing would be important.

7           If a particular trade that's structurally  
8 clearable is then later not liquid enough over time,  
9 over the life of this process, then I would hope that  
10 it would be able to be removed from the mandatory  
11 trading requirement quickly so market participants  
12 could execute where it is most efficient,  
13 particularly for end users who need to hedge risk.

14           MR. HUMENIK: I think the CFTC should  
15 definitely list those products which are made  
16 available to trade by a SEF or a DCM. I think there  
17 should be, you know, a repository of sorts that you  
18 would be able to know which products are and which  
19 are not.

20           I think one things in terms of something  
21 being made available to trade, if the SEF no longer  
22 lists it, there's probably any number of reasons why

1 it may not. One could be that it's not trading,  
2 there's no revenue. So it doesn't make sense to list  
3 that product.

4 So I think it kind of goes back to, you know,  
5 in a sense, the market will decide how often  
6 something is traded on an execution venue as opposed  
7 to whether it's block traded. So I think there's a  
8 consideration that needs to be made there, and all of  
9 this is to say that, you know, if something is no  
10 longer made available to trade, it might not be the  
11 best approach just to automatically take it off that  
12 list, because market conditions can change and it  
13 could come back to the point where it's made  
14 available to trade.

15 So if there is a process, it needs to be  
16 thought out and, you know, whether it's a yearly  
17 process or a quarterly process, I think there, again,  
18 needs to be that notification to the public whether  
19 -- that takes two forms, the SEF's or the DCM's  
20 website, but also the CFTC's website as well.

21 MR. BLAND: It seems awfully confusing to me  
22 to have swaps that are legally bound to trade and all

1 of a sudden, you don't have to trade them. They're  
2 popping in and out, doing all these quarterly tests  
3 and, you know, all these filings.

4 I mean, again, to me, we are getting wrapped  
5 around a lot talk about of the products. It seems to  
6 me there seems to be an assumption based on the  
7 rulemaking that everything that is cleared is,  
8 therefore, clearable under Dodd-Frank. If that's the  
9 case, then maybe all these tests are necessary, and  
10 it seems to me if you meet Dodd-Frank and there were  
11 a certain subset of cleared trades that are  
12 clearable, those should be standardized and fairly  
13 stable and not be popping in and out of existence and  
14 we're not going to have all of the tail end  
15 considerations.

16 That's my comment.

17 MR. McVEY: I would echo that and, again, I  
18 think the data will be available, and most of it  
19 already is, to determine when activity in a swap  
20 contract is fallen below a level where it should be  
21 mandatorily cleared and subject to the trading  
22 mandate.

1           So I think the Commission will have that data  
2 and at such time that a swap lacks sufficient  
3 liquidity to be subject to the clearing mandate, I  
4 think that that notification should be made public to  
5 the marketplace, and as a result, that would no  
6 longer have any connection to the trading mandate.

7           MR. McCARTY: I agree with Rich.

8           MR. MARON: The available to trade  
9 determination is not a find and forget designation.  
10 [Indecipherable.]

11           We believe that designation -- a review of  
12 designation is required based upon pre-defined and  
13 agreed metrics and aggregate data, that liquidity  
14 swap is the best proxy for suitability as a continued  
15 participant and that the liquidity of products that  
16 trade [indecipherable] a number of factors included  
17 such as trade frequency, average size, bid-offer  
18 spread. We believe the review would require the  
19 Commission to collect details of these criteria and  
20 document designation and, importantly, similar to the  
21 original MAT determination, the Commission should not  
22 expect SEFs and DCMs to perform the reviews given



1 that they would only be able to observe a fraction of  
2 the market liquidity.

3 MR. PESTONE: I think we would agree quite a  
4 bit with that approach. I think we would be in favor  
5 of something that's an objective type of test for  
6 de-MATing, if you will, so that it doesn't seem like  
7 any of the platforms would really have an incentive  
8 to de-MAT. I mean, they would want to keep them  
9 around probably as long as they could, but if there  
10 is some objective measurements that the entire market  
11 knows and the Commission know and you can tell it's  
12 coming and then that would be started by either the  
13 platforms or the Commission itself, and then I think  
14 once that determination is made, there needs to be  
15 some time to take that off of mandatory trading and  
16 that could be a mirror image of putting a MAT on, and  
17 then this way, I don't think we're looking at that  
18 many changes and we'll all know that it's coming  
19 similar to other markets.

20 MR. LaSALA: If it's suggested by many of the  
21 panelists here that the clearing mandate is, say, the  
22 golden standard and it is as granular in effect as

1 what we deem -- if, in fact, that's the case, I think  
2 the points that others have made that when it's  
3 appropriate to maybe move off of a clearing mandate,  
4 it would seem that the MAT would be taken care with  
5 it; however, if it's not, as I stated earlier, if  
6 there is going to be some type of a more granular  
7 look, the theme that I've been trying to stress here  
8 today is that whether it be driving a MAT standing or  
9 driving the MAT standing away, no DCM or SEF should  
10 be able to drive that process which effectively has  
11 marketwide implications, and in that context, the  
12 Commission should be the sole owner of, in fact,  
13 engaging that process, relying upon marketwide data  
14 that they will be in possession of, and making public  
15 their review for MAT engagement or disengagement.

16 Thank you.

17 MR. SHILTS: That's an interesting point,  
18 because I think one of the concepts or whatever that  
19 we had talked about is in a sense that making the  
20 clearing determination, it's clearly a Commission  
21 decision or process and public notice and all of  
22 that, but then the trade execution mandate, which

1 there's no process being mentioned in a sense raises  
2 the question about how does this obligation get  
3 transmitted into the marketplace in the sense it's  
4 just by a separate DCM having to list it? There's no  
5 federal dictate, mandate, whatever that's involved  
6 with that. It's just you've got to look around and  
7 see if somebody is trading it.

8           So to some extent, I think that's what the  
9 staff was thinking about in the sense of developing a  
10 process where there is some formal recognition that  
11 the swap now is subject to the trading mandate. I  
12 understand the comments about, Well, you link with  
13 the same trade clearing. You know, I understand  
14 those thoughts, but I think there was this other view  
15 that if they're not the same, there's no -- what's  
16 the process for telling the world that you are a  
17 trader, but you now must -- you can't do this  
18 bilaterally anymore and you must get it executed on a  
19 separate DCM. How is that done? I don't know if  
20 anybody has any thoughts on that.

21           Your comments made me think of that  
22 discussion.

1 MR. LaSALA: Yes.

2 MR. McCARTY: I think the thing is, as I said  
3 before, that any of the swaps which actually are  
4 identified by the Commission as being mandatory  
5 clearable, I think will be listed by multiple SEFs  
6 and DCMs, at least based on what I've heard. So I  
7 guess the thing is that people should be presuming  
8 that, in fact, that's going to happen.

9 As we talked about before, the question is  
10 are we going to basically require all SEFs and DCMs  
11 to follow the Part 40 process in terms of listing  
12 those swaps for trading on their facilities, and I  
13 think the answer is yes. You haven't said that  
14 clearly yet, but I think Rich was suggesting that  
15 there's a dividing line between mandatory clearable  
16 with required versus permitted.

17 We need some clarity around that, but there  
18 is a public process that mirrors what you've just  
19 been suggesting with the MAT side of the equation  
20 using Part 40 to make filings so that people will  
21 know that these contracts are available for trading.

22 One other thing I would just point out is

1 that it's -- I guess the futures model, the exchange  
2 if it wants to actually have people trade contracts,  
3 it lists it, and so I think to the extent that  
4 statute says that it's made available to trade, at  
5 least in the futures world, that would have been that  
6 they listed it. So I think maybe there's a little  
7 bit too much of a focus on the words not being listed  
8 and made available for trading, but as we know in the  
9 futures world, if a DCM wanted to list it or to make  
10 it -- to let people trade it, it had to list it.

11 MR. McVEY: I agree with that and I think all  
12 of us have said that we believe that the universe of  
13 swaps that are suitable for the clearing mandate are  
14 fairly narrow in number, but very large in terms of  
15 market activity and volume. You know, it would seem  
16 that a separate approval or application process for  
17 made available to trade would imply that there's some  
18 concern that some of those swaps may not be available  
19 on any SEF or DCM.

20 I think that you would be surprised by how  
21 many SEFs and DCMs are already offering those swaps  
22 today, and you will have the opposite impression when

1 you hear from all of us on the swaps that are  
2 available for trading on our platforms if those swaps  
3 are broadly available today and there's plenty of  
4 competition and all of us that are looking forward to  
5 being SEFs have been investing very heavily in the  
6 space for years, and I think you'll be pleasantly  
7 surprised at how many different places those swaps  
8 are available for trading.

9 MR. NGUYEN: So I have one question related  
10 to, I guess, the process of determining something is  
11 no longer available to trade. I know a lot of you  
12 echoed that the Commission should have that  
13 responsibility, and then when the Commission makes  
14 that determination, does that sort of contemplate  
15 that there could be some sort of public comment  
16 period? Because, you know, a determination like that  
17 has, obviously very broad implications for other DCMs  
18 and SEFs.

19 MR. MARON: Yes. There should be a public  
20 comment period, but I would suggest that that's  
21 putting quite a bit of responsibility on the  
22 Commission on a frequent basis. It may well be that

1 the Commission looks to the market participants on an  
2 ad hoc basis to come back and say although this  
3 determination was made a period of time ago, it's no  
4 longer valid; let's not wait for the periodic review,  
5 whether it's quarterly or annual; let's jump in now  
6 and revisit that and then have the public comment  
7 period for that.

8 MS. MARKOWITZ: I just have a quick question.  
9 The statutes says unless the SEF or DCO makes that  
10 swap available for trade. So, Rich, you don't think  
11 that will ever be the scenario?

12 MR. McVEY: I certainly don't within the  
13 assets classes that we trade and are knowledgeable  
14 of, and I haven't heard anything to the contrary from  
15 the other panelists today. So I believe that the  
16 universe of swaps that are available for trading on  
17 potential SEFs or DCMs is already significantly wider  
18 than the clearing mandate will ever be.

19 MR. BLAND: If it has the liquidity, they'll  
20 put on the screen. So that's the way it works.

21 MR. McCARTY: I don't think we have a problem  
22 with the process for de-MATing something or

1 de-mandatory clearing something. It can't be a very  
2 short period of time similar to, I guess, for listed  
3 contracts by certification. Everything is driven by  
4 the Commission. If the Commission wants to say and  
5 actually recognize that there's a lack of liquidity  
6 in a particular contract, it should no longer be  
7 mandatory clearable which will then basically negate  
8 the mandatory execution requirement.

9 I think we're fine with basically the  
10 Commission making that determination and doing it  
11 quickly as opposed to drawing it out. That may  
12 actually hurt the market and the market participants  
13 if you keep the mandatory clearing and the mandatory  
14 execution requirement on too long.

15 MR. NGUYEN: Does anyone have any more  
16 comments or questions?

17 Then we'll bring our first panel to a close.  
18 I'd just like to thank all of the panelists again for  
19 taking time out of their busy schedules to be with us  
20 and to participate today.

21 We'll take a brief recess and we'll convene  
22 our second panel at eleven o'clock. Thanks.



1 [Recess.]

2 PANEL TWO: FACTORS TO CONSIDER TO MAKE A SWAP  
3 AVAILABLE TO TRADE

4 MR. SHILTS: Okay. Nhan will introduce the  
5 next topic.

6 First, let's go around and have the  
7 participants on this panel introduce yourselves.

8 MR. COOPER: Good morning. I'm Karl Cooper.  
9 I'm the Chief Regulatory Officer at NYSE Liffe U.S.

10 MR. OLESKY: I'm Lee Olesky, CEO of Tradeweb.

11 MR. HARRINGTON: George Harrington, head of  
12 Fixed Income Trading at Bloomberg.

13 MR. JONES: Charles Jones. I'm a finance  
14 professor at Columbia Business School.

15 MR. ARD: I'm Evan Ard with Evolution  
16 Markets. I'm a managing director there.

17 MR. BARTH: Hugo Barth. I'm a portfolio  
18 manager representing the Association of Institutional  
19 Investors.

20 MR. THUM: I'm Bill Thum. I'm a principal at  
21 Vanguard and here today representing SIFMA Asset  
22 Management Group.

1 MR. COSGROVE: Michael Cosgrove. I'm  
2 managing director of the GFI Group. I'm here today  
3 representing the Wholesale Markets Brokers  
4 Association of America.

5 MR. SHILTS: Thanks to all. I'll turn it  
6 over to Nhan to introduce the topic and ask the first  
7 question.

8 MR. NGUYEN: Thanks, Rick.

9 So the second panel will focus on the factors  
10 for a DCM or a SEF to consider to make a swap  
11 available to trade. So in this discussion, we'll  
12 discuss the merits of our proposed factors, which  
13 I'll review in a moment, as well as any factors that  
14 the panelists think that a DCM or a SEF should take  
15 into account.

16 So for the benefit of those who weren't  
17 listening and also panelists, let me just review it  
18 the eight factors the Commission has proposed that a  
19 DCM or a SEF should consider when making a swap  
20 available to trade.

21 Those are, the first one is whether there are  
22 ready and willing buyers and sellers;

1           Second, the frequency or size of transactions  
2 of DCMs, SEFs, or those done on a bilateral basis;

3           Third, the trading volume of DCMs, SEFs, or  
4 bilateral transactions;

5           Fourth, the numbers and types of markets;

6           Fifth, the bid-ask spread;

7           Sixth, the usual number of resting or  
8 indicative bid and offers;

9           Seventh, whether a DCM's trading facility or  
10 a SEF's trading system or platform supports trading  
11 of the swap;

12           And, lastly, which is a broad one, any other  
13 factors that the DCM or SEF may consider relevant in  
14 making the evaluation for a particular swap.

15           So we'll just start. The first question is  
16 we'd just like the panelists to provide their general  
17 thoughts on these proposed factors, starting with Mr.  
18 Cooper.

19           MR. COOPER: Well, thanks for inviting me to  
20 come. I appreciate the invite.

21           Let me start off with maybe a little bit of a  
22 caveat similar to what the Commission staff said at

1 the beginning of the speech, that it's only their  
2 opinion. I'm not even sure that my comments reflect  
3 my opinion in light of the fact that there's so many  
4 moving pieces still open in terms of not having a  
5 swap definition finalized, not knowing how all of the  
6 other parts of the SEF rulemaking may land, the DCM  
7 rulemaking.

8           So with that caveat, let me say first that we  
9 generally share some concerns that many of the  
10 commenters made that maybe there should be greater  
11 safeguards built into the MAT decision, and if the  
12 Commission, you know, is unwilling to move away from  
13 the 10-day certification process, we do think that  
14 the eight factors are helpful in giving greater  
15 clarity about what SEFs and DCMs should be speaking  
16 to in those certification filings.

17           I am heartened by David's comment that the  
18 staff would probably be looking to move to a 90-day  
19 process for many of these filings, which would give  
20 staff greater time to think about some of the issues  
21 posed; but with regard to the factors, I mean,  
22 they're really just a list of topics that are

1 relevant to the process. We would suggest they don't  
2 give still enough guidance, but instead of getting  
3 into some sort of prescriptive regs around each of  
4 these factors, like numerical thresholds, we would be  
5 suggesting that perhaps there could be greater  
6 detailed principle space guidance around each of the  
7 factors.

8           So, you know, in saying that, we are thinking  
9 of kind of the old guidance that there used to be for  
10 enlisting a futures contract, considering the  
11 deliverable supply and having a proportionality  
12 between that and the position limits at least during  
13 the spot month. That type of principle-based  
14 guidance could be applied to each of these factors.

15           To just give an example, with regard to the  
16 frequency or size factor, you could have  
17 principle-based guidance that would focus on the  
18 proportion of small transactions versus large  
19 transactions, the proportion of the aggregate volume  
20 that comes from the small transactions versus the  
21 larger transactions, and so that kind of  
22 principles-based guidance, I think would be very

1 helpful in terms of SEFs and DCMs actually  
2 establishing a showing that a particular swap should  
3 be made available for trading.

4 MR. OLESKY: Good morning. Thank you for  
5 inviting me. I guess at the risk of being a little  
6 controversial, we do have a proposal I would like to  
7 put out there. It's a challenging sort of chicken  
8 and egg situation when it comes to evaluating  
9 liquidity and whether or not things should be  
10 available to trade and traded on SEFs.

11 So I think there's an awful lot of moving  
12 pieces. As Karl pointed out and others have said,  
13 there's still quite a bit that needs to be defined  
14 here to really understand how this is all going to  
15 fit together.

16 So our thought is to actually set something  
17 out initially where we essentially agree to a  
18 universe of what should be available to trade and  
19 freeze that for a one-year period so that the market  
20 participants, the platforms, the proposed SEFs, the  
21 potential SEFs, everyone understands the universe  
22 that we're dealing with for the first year as we are

1 all trying to adjust to this new environment.

2 I think that would give us a lot of  
3 operational benefits as we expect to be a SEF  
4 ourselves in terms of monitoring activity in the  
5 marketplace, having to make technical adjustments as  
6 we're rolling out a new system on potentially a daily  
7 basis. I think that would be very confusing to our  
8 customers and would be very confusing to the market,  
9 the several hundred participants that are out there  
10 that current trade swaps electronically and trade CDS  
11 electrically.

12 So the idea is to develop a universe, which I  
13 think can be put forward pretty clearly by market  
14 participants as to what is currently traded  
15 electronically, what's priced electronically. The  
16 vast majority of the market, certainly in terms of  
17 the volume of activity you're talking about, probably  
18 over 80 percent of the instruments, I think we can  
19 accomplish an awful lot by just setting out something  
20 that we can all know what it is the first year, then  
21 taking information over the course of year and start  
22 to use more slightly subjective or objective criteria

1 for determining how things are rolled out in the  
2 future.

3 In that regard, it's fixed. It's set. The  
4 market will understand what it is, and all of us who  
5 need to develop technology to support these markets  
6 will have an idea of what we need to do, and I think  
7 that there are those of us at the table -- Tradeweb  
8 as an example, has traded over a hundred thousand  
9 transactions in the interest rate swaps in the last  
10 five years. We have a pretty wide universe for  
11 receiving electronic pricing and we're transacting  
12 every single day.

13 I won't speak for my colleagues, but I'm  
14 pretty sure others around the table are similar to  
15 Tradeweb, trading a lot of CDS and interest rate  
16 swaps electronically and we can submit that  
17 information, and rather than making it a burden for  
18 the CFTC or a burden for the market, come up with a  
19 collective solution that can stand for the first year  
20 and accomplish the objectives, really, and the policy  
21 objectives of Dodd-Frank.

22 MR. HARRINGTON: Thank you. Good morning.



1 Bloomberg today is a large provider of  
2 electronic execution in the credit default swap,  
3 interest rate swap, and FX swap space and we are  
4 dedicated to registering as a Swap Execution Facility  
5 under Dodd-Frank.

6 Made available for trading, or MAT, is a key  
7 issue for Bloomberg as an important variable in  
8 defining the SEF landscape. Our hope is that the  
9 final MAT rule will assure a level playing field so  
10 that no one SEF can prematurely force to market a  
11 swap in order to gain a competitive advantage.

12 We believe that the legislation and proposed  
13 rules regarding MAT certification, public notice, and  
14 reasonable waiting period before imposing a trade  
15 execution requirement will help assure this. We are  
16 concerned, however, about the ability of a SEF to  
17 reverse trading by forcing a swap into a SEF trading  
18 protocol where there's no actual trading market for  
19 this instrument. A premature or unsubstantiated SEP  
20 MAT certification may effectively end trading in a  
21 product where there is insufficient liquidity to meet  
22 proposed SEF trading protocols, i.e., less than five

1 market makers in an individual product.

2 We believe the Commission should address this  
3 concern by requiring a notice and comment period for  
4 all MAT certifications, not just for those MAT  
5 self-certifications for which the agency determines  
6 to issue a stay beyond the initial 10-day review  
7 period. We believe that a robust opportunity for  
8 public comment will be especially important and  
9 valuable in the early stages of implementation of  
10 these MAT rules and related mandatory execution  
11 regime.

12 As the industry and agency work together  
13 through the factors that justify MAT determinations  
14 and assemble a reservoir of common understanding  
15 about how these rules should be properly applied, the  
16 notice and comment period will benefit the markets as  
17 a whole. Following the notice and comment period,  
18 the Commission can either confirm or reject the SEF's  
19 MAT certification if, among other reasons, there is  
20 insufficient evidence of liquidity or the other  
21 articulated factors to justify required trading by a  
22 SEF.

1 Thank you.

2 MR. JONES: Good morning and thanks to the  
3 Commission and the staff for holding this roundtable.  
4 I'm a financial economist, and I think a lot about  
5 how things trade. So let me provide some  
6 economics-based views here of some of this.

7 Regulations, obviously, are appropriate if  
8 there is a market failure of some sort. Those market  
9 failures can take lots of different forms, public  
10 good problems, externality, can't be internalized,  
11 information asymmetries, moral hazard. The list goes  
12 on.

13 In the swap world, I think clearing is,  
14 obviously, the clearest case of a market failure.  
15 When it comes to trading, regulating swap trading,  
16 there are also some similar kinds of arguments that  
17 we can put into place. Liquidity has strong network  
18 effects. Fungibility and standardization are  
19 probably strong public goods. Transparency is  
20 probably a public good too and limiting market power  
21 may be relevant here as well.

22 I also understand that statutes are going to

1 impose some restrictions on what the Commission is  
2 going to do here, but I would urge the Commission to  
3 think hard about each of these economic first  
4 principles to make sure that there is, indeed, a  
5 market failure that requires fixing.

6 I'll give you an example. I'm talking about  
7 trading now and you'll see how this relates to the  
8 made available to trade distinction in just a second.  
9 For example, first, trade transparency rules are  
10 probably easier to justify than severe  
11 pre-transparency requirements that would have the  
12 effect of basically picking winners and losers.

13 Limiting the kinds of trading based on  
14 pre-transparency can have big consequences. For  
15 instance, in the securities markets, we adopted Reg  
16 NMS and they created a huge number of winners and  
17 losers, in particular for better or worse, it  
18 basically ended floor trading. The NYSE was a huge  
19 loser in terms of market share directly as a result  
20 of adopting Reg NMS. So that's something to keep in  
21 mind.

22 Now, what does this have to do with factors

1 to consider in making a swap available to trade?

2 Well, the factors to consider are going to depend on  
3 the consequences of those decisions.

4 So it sort of comes back to the earlier point  
5 that there a lot of balls up in the air and it's hard  
6 to sort of pin down these factors and we don't know  
7 exactly what the designation is going to mean.

8 So the tougher the restrictions on trading, I  
9 think the higher the bar should be. If you're going  
10 to allow a phone-based upstairs markets to continue  
11 that just forces the parties to print their trades  
12 through a SEF or a DCM, then the bar for mandating  
13 trading could be fairly low; but if you are going to  
14 require a great deal of pre-trade transparency, I  
15 that the bar should be quite a bit higher, and that  
16 might mean a subset of firms that are mandatorily  
17 cleared are going to be mandatorily traded, if that's  
18 what it means.

19 Now, in terms of factors to consider, I think  
20 all the list of factors are appropriate. I can't  
21 imagine making this mandatory trade determination  
22 before there is some history of having the swap

1 already listed and trading already on a DCM or a SEF.

2 I also think the listed factors are  
3 sufficiently vague. I don't think it's possible at  
4 this stage to come up with objective criteria and  
5 that may be appropriate down the line, but I think  
6 it's just too difficult at this point. So I think  
7 that the criteria that we've listed here seem to make  
8 a lot of sense.

9 I want to go back to something that Rich  
10 McVey said in the last session, which is I would urge  
11 the Commission and the staff to think about parallels  
12 with other financial markets. Rich mentioned the  
13 U.S. bond market and I think the U.S. bond market has  
14 very close parallels to the swap market. In the bond  
15 market, for instance, most liquid bonds are traded on  
16 electronic platforms, but not exclusively on  
17 electronic platforms and thousands and thousands of  
18 less active bonds trade in dealer markets.

19 So rather than mandate specific forms of bond  
20 trading, the SEC has encouraged post-trade  
21 transparency with its TRACE initiative, and part of  
22 the rationale for that is the presence of individual

1 investors in the bond market, and individual  
2 investors are virtually absent from the swap market,  
3 and so I think the Commission should be very careful  
4 in making sure there's a strong case for stricter  
5 trading and transparency regulation in this market  
6 compared to what we currently see in, say, the U.S.  
7 bond market.

8           Finally, my last suggestion is I noticed a  
9 fair bit of confusion, I think, in what the phrase  
10 "available to trade" actually means. I think that --  
11 my understanding of this, and people can correct me  
12 if I'm wrong, is that that phrase really means in the  
13 context of what's being proposed here, it means  
14 required to trade or mandated to trade on a SEF or  
15 DCM.

16           I realize available to trade is actually the  
17 language in the statute, but I think we should  
18 probably define a term and use a different phrase  
19 here. We should use required the trade or mandated  
20 to trade or something like that instead of available  
21 to trade, because I think outsiders are just going to  
22 be hopelessly confused from day one if we're talking

1 about availability to trade as being mandated to  
2 trade.

3 MR. ARD: Good morning and thank you also for  
4 the opportunity to present at the panel this morning,  
5 this roundtable.

6 As I mentioned before, I'm with Evolution  
7 Markets. Evolution Markets is an introducing broker,  
8 and unlike -- we're a midsized firm, and unlike some  
9 of the other brokers who have testified this morning  
10 or will continue to testify this morning, we  
11 specialize in niche energy and environmental markets,  
12 markets. Unlike the interest rate markets where  
13 liquidity is an issue in a lot of the issues brought  
14 up during the first panel regarding making these  
15 contracts available to trade, a mandated trade  
16 execution would impact liquidity, and I think that's  
17 an important consideration I would like to bring to  
18 the table.

19 In some cases, illiquidity drives in the  
20 energy and environmental market in the OTC market  
21 despite there being similar look-alike contracts  
22 listed on DCM currently, futures contracts on DCMs.



1 As such, the MAT process is an important one.

2 I know there was some speaker this morning  
3 earlier who questioned whether there was a need for  
4 an additional process. We believe that there is  
5 because that additional process with the factors that  
6 are presented in the proposed rule will provide an  
7 opportunity, you know, essentially for the Commission  
8 to get it right and to make sure the contracts that  
9 are made available for trading and have a trading  
10 execution mandate, they can thrive in a SEF or DCM  
11 environment.

12 To that point, you know, of the eight  
13 factors, we certainly agree that all of those factors  
14 are appropriate as stated before. There's certain  
15 factors that we would highlight as being particularly  
16 important probably for the niche energy environmental  
17 markets and, you know, one would be the frequency or  
18 size of the transaction. I agree with an earlier  
19 presenter this morning saying that there should be a  
20 separate consideration of those.

21 In a lot of the OTC markets, you'll see high  
22 volume transaction, yet the frequency of transactions

1 may be small. You also see odd lots, especially in  
2 energy markets where counterparties are looking to  
3 meet specific hedge requirements. Some of these  
4 counterparties may not necessarily be end users in  
5 actual positions and they may have a different  
6 entity.

7           Also, I think the bid-ask spread is  
8 particularly important. In a lot of energy and  
9 environmental commodity markets, bid-ask spreads are  
10 wide and there is a need for broker assistance in  
11 bringing those bid-ask spreads together to find the  
12 right price from the marketplace, and it should be --  
13 some of these contracts listed on a DCM or a SEF,  
14 made available for trading on a SEF and, therefore,  
15 have a trade execution mandate, there may not be an  
16 opportunity to not only provide liquidity, but  
17 provide price discovery necessary to execute.

18           Also, another factor to consider is the  
19 notional value of the open interest. You know, if  
20 there is considerable open interest in a contract  
21 currently on a DCM, that would have to be ultimately  
22 listed on a SEF. I think that's another

1 consideration that may be important to me.

2 Thank you.

3 MR. BARTH: I'm representing the Association  
4 of Institutional Investors, and we're comprised of  
5 some of the oldest and largest and most trusted  
6 investment advisors in the United States. We manage  
7 money for institutions, but ultimately for  
8 individuals through pension plan, ERISA funds, mutual  
9 funds, etc.

10 You know, a lot of us, we recognize the  
11 significance of this role and we are here to voice  
12 our concerns on certainly liquidity issues, because  
13 ultimately, the costs of all of this are going to hit  
14 individuals. So we appreciate the opportunity to  
15 have a seat at the table today.

16 We think the CFTC should really determine  
17 which swaps are available to trade. I know that's  
18 Panel One, but I think the dealer community, buy side  
19 community, along with the swap repository information  
20 you're going to have in conjunction with the SEFs  
21 will be a lot of information for the CFTC to  
22 consider.

1 Available to trade should be determined at  
2 the most granular of levels, not based on groups or  
3 categories, etc. I think the example of Investment  
4 Grade 17 Index, it may be really liquid and trade 250  
5 million in a half-basis point market, but not  
6 necessarily all the constituents on IG-17 are liquid.  
7 We don't think the SEFs or DCMs should be allowed to  
8 submit swaps as available to trade that they don't  
9 already list.

10 Furthermore, if it does list the swap, they  
11 should be able to show us that there is a willingness  
12 to trade on the platform and liquidity will be there  
13 when they do. The available to trade determination  
14 shouldn't be based on, quote, any other factor that  
15 the SEF or DCM may consider relevant. We think we  
16 are in agreement that it should be based on a set of  
17 objective criteria, a lot of which you've already  
18 mentioned. Bid-ask for us is certainly a key factor  
19 and that ultimately ends in the cost of the  
20 investment process.

21 We believe a review should be held more than  
22 annually. It should be, again, based on the

1 granularity of the instrument. If it's an IG-17 --  
2 I'll use that again -- it rolls semiannually. Maybe  
3 the review should be then.

4 In the panel prior, we talked about some of  
5 the trades that could be clearable and mandatorily  
6 traded, but if you look at an investment grade index,  
7 as it rolls down the curve, it becomes an off-the-run  
8 index. Volumes drop precipitously, and there are  
9 situations where maybe making no longer sense.

10 Lastly, we do think that there should be a  
11 formal notification process. One of our biggest  
12 concerns is that you are going to be trading  
13 something bilaterally and then it becomes determined  
14 available to trade and we may not have compliance up  
15 and running in time to make sure that all individual  
16 accounts that we're trading on behalf of can meet  
17 those requirements. So that, from our standpoint, is  
18 another front-end cost of doing business in this  
19 manner.

20 So I look forward to the questions and  
21 answers, but those are some of the key factors that  
22 we think are important.

1 MR. THUM: Hi. I'm Bill Thum. I'm a  
2 principal at Vanguard. Vanguard is an SEC registered  
3 investment advisor, managing over 1.5 trillion in  
4 assets under management with 170 U.S. mutual funds  
5 and nine million shareholder accounts.

6 The SIFMA Asset Management Group is a  
7 collection of asset managers with assets under  
8 management exceeding \$20 trillion, representing  
9 clients including registered investment companies,  
10 State and local pension funds, ERISA plans, and  
11 private funds. So we're the buy side, and while we  
12 have been very supportive of the rulemaking around  
13 the reporting and clearing of swapping, we have  
14 considerable concerns related to the rulemaking  
15 appropriate to trading of swaps due to concerns  
16 relating to pricing and liquidity.

17 We share the concerns mentioned by  
18 Commissioners Sommers and O'Malia when the proposed  
19 rule was released. We are concerned with the  
20 significant falloff in liquidity, and increase of  
21 pricing, and also an inability to hedge exposures if  
22 the trading mandates are put in place without a

1 careful consideration of impact on liquidity.

2 We've submitted letters related to the  
3 overall limitation of the Dodd-Frank rulemaking and  
4 have recommended a phased rollout over a two-year  
5 period, focusing first on reporting, second on  
6 clearing, and finally on trading with the reason for  
7 that so that sufficient data can be gathered in a  
8 reporting phase to inform the decisions related to  
9 the trading mandate in terms of the made available to  
10 trade definition, the block trade size, the block  
11 trade reporting.

12 The impact of getting the trading mandates  
13 wrong, I think is also recognized in the recent  
14 reporting rules that were put out in December where  
15 there is an obvious distinction between trades that  
16 are entered into on a SEF and trades that are entered  
17 off facility with no clearing so that the SEF trades  
18 are released with the information related to the SEF  
19 made public in the first year in 30 minutes, the  
20 second year in 15 minutes, with a longer delay  
21 between one to four hours for trades not entered into  
22 on the SEF in the first year and up to two hours in

1 the second year.

2 The concerns that we have, to reiterate some  
3 of the points made by Commissioners Sommers and  
4 O'Malia, include that while the factors that have  
5 been listed make sense to us, there are really no  
6 standards attached to those factors. So we are  
7 concerned that, first of all, there's not a  
8 requirement for all of the factors to be addressed  
9 with any one of the factors that can be raised by a  
10 SEF in terms of its determination presented to the  
11 CFTC.

12 The CFTC then can assess that determination,  
13 but we question how that assessment can be made when  
14 those standards have actually been attached to the  
15 factors themselves. So we are concerned that,  
16 effectively, the decision making in terms of the MAT  
17 determination is turned over to the SEF or the DCM  
18 and we'd prefer the approach that has been proposed  
19 by the SEC where there is much more involvement by  
20 the Commission to actually assess the proposals based  
21 on objective factors and thresholds.

22 So in terms of the preferred approach, again,



1 we would seek more Commission involvement, ideally  
2 assessing the SEF and DCM proposals against a set of  
3 standards rather than simply factors. The factors  
4 must target liquidity and establish those objective  
5 standards and leverage the data that is gathered  
6 through the reporting process using the SDRs. The  
7 CFTC must balance its interest in promoting pre-trade  
8 price transparency against the increased costs and  
9 lower liquidity that could arise if trading mandates  
10 are put in place prematurely in a way that negatively  
11 impacts liquidity.

12 Contrary to some of the comments that were  
13 made earlier this morning, we feel very strongly that  
14 listing of the trade on a SEF is not sufficient to  
15 qualify for the trading mandate and, certainly, while  
16 we expect that many of the trades that are mandated  
17 for clearing will also be mandated for SEF trading,  
18 we don't believe that all of the trades mandated for  
19 clearing will be mandated for SEF trading. Instead,  
20 there should be a critical analysis of the actual  
21 liquidity presented by the specific products to make  
22 that determination.

1           In terms of the factors, we look at a number  
2 of things that are not actually mentioned in the  
3 proposal. One is the SEF infrastructure, and we feel  
4 it's important that the SEF itself is set up in a way  
5 and is analyzed to determine that it is adequate to  
6 digest all trading in a relevant swap. Once a swap  
7 is mandated to trade on a SEF, no more trading will  
8 take place in the over-the-counter market.

9           In terms of participants, we feel the SEF  
10 should be connected to participants that trade a  
11 significant volume of the relevant swap and at  
12 actively, quote, two-way prices. We've had  
13 conversations with SEFs and there seems to be schools  
14 of thought. One is to get all the SEFs that are --  
15 all of the trades that are mandated for clearing  
16 listed on the SEF and then have that be the basis of  
17 the proposal for the made available for trading.  
18 Another approach is to reach out to the sell side and  
19 to develop relationships between the sell side and  
20 the SEFs to make sure that there is active market  
21 making that will take place on the SEF within the  
22 particular products. We certainly favor the latter

1 approach.

2 In terms of the products, to focus on  
3 liquidity, we feel that the swap's trades must happen  
4 with significant volumes in terms of number of  
5 trades, the size of trades and the number and type of  
6 market participants. We look for a quarterly  
7 assessment compared to a one year look-back and,  
8 ideally, if a swap currently trades on SEF with a  
9 sizable percentage of overall market for such swap,  
10 that swap would fall into the category of made  
11 available for trading.

12 We also think that there should be a greater  
13 emphasis on public comments and there needs to be an  
14 effective notification when the SEF makes its  
15 presentation to the CFTC that a particular swap is up  
16 for consideration for the MAT determination, and we  
17 feel that there should be at least 30 days to respond  
18 to a SEF or DCM proposal. We also support the  
19 suggestion in one of the comments, comment letters,  
20 that, particularly, if the CFTC does feel it has  
21 adequate capacity to make the assessments, perhaps  
22 there could be a participant committee made up of

1 swap dealers and the buy side to assess the  
2 information coming in from the SEF and then make a  
3 recommendation based on the factors and standards so  
4 that the CFTC can make its final analysis.

5 In terms of time for compliance, we think  
6 there also should be a period after a swap is  
7 accepted for made available for trading so that the  
8 market has time to digest that determination and that  
9 there's adequate time to establish connectively  
10 between the parties that need to trade the swap and  
11 the venue on which they can trade. We look for 60  
12 days following a determination under Section 2(h)(8)  
13 of the Commodity Exchange Act and a 30-day period  
14 following a determination that a swap is economically  
15 equivalent.

16 Just as we look for a quarterly assessment of  
17 liquidity to make a determination of made available  
18 for trading, we also feel there should be a  
19 recertification quarterly as to whether or not a  
20 particular swap continues to qualify for the trading  
21 mandate.

22 So, again, while our members support

1 reporting and clearing, due to the size and scope of  
2 the swaps market, we urge caution in formulating  
3 rules for mandatory trading and public reporting. We  
4 think that the Commission should focus on making  
5 informed decisions based on data coming out of the  
6 swap data repositories, that there should be a  
7 requirement for robust SEF infrastructure to be able  
8 to accommodate all trading in a particular swap, that  
9 there are objective standards again which the factors  
10 can be measured, that there is a time for public  
11 comment, that there is a delayed implementation, and  
12 that there is regular recertification once a  
13 determination is made.

14 Thank you.

15 MR. COSGROVE: Good morning. I'm here this  
16 morning representing the Wholesale Markets Brokers  
17 Association of America. Our members are the world's  
18 largest executing facilities for swaps and, in fact,  
19 our members have been executing swaps for as long as  
20 there's been the swaps.

21 We enjoy greater commercial success in direct  
22 proportion to the transparency, liquidity, and

1 breadth of market. So in regard to this particular  
2 discussion, our narrow commercial interests, I think  
3 are entirely in line with public interest.

4           There seems to be a presumption, actually, on  
5 the part of a number of commenters this morning that  
6 the definition for acceptable means of execution for  
7 swaps made available to trade have already been  
8 decided. If that's so, I'm unaware of that. I  
9 understand under Dodd-Frank that any means of  
10 interstate commerce was specifically authorized as  
11 acceptable for the execution of swaps, and if, in  
12 fact, that's case, then I would like to associate  
13 myself with the comments of my co-panelist from  
14 Columbia, and that is that provided Swap Execution  
15 Facilities and DCM are permitted to select the most  
16 acceptable form of execution for the particular  
17 market in question, I would recommend setting the bar  
18 somewhat lower than we might otherwise suggest.

19           If, on the other hand, a swap made available  
20 for trading must trade on an electronic central limit  
21 order book, then I think the bar must be set far  
22 higher, because while there are many swaps that trade

1 and while many swaps are highly liquid, very  
2 standardized, and suitable for an electronic order  
3 book, many markets would be destroyed by the  
4 requirement that swaps be forced to trade on an  
5 electronic central limit order book or that a RFQ  
6 minimum requirement is in force or the 15-second rule  
7 is in force.

8           So I think it is very, very important and  
9 very much -- this sort of goes back to an initial  
10 comment about that there a lot of moving pieces.  
11 Depending on upon the availability of different types  
12 of execution fpr different markets, I think we would  
13 propose very different levels of determination,  
14 settings the bar at different levels for determining  
15 whether a swap is made available for trading.

16           As regards the eight particular factors, they  
17 all seem okay. I think they're very sensible. I  
18 don't think that anyone would necessarily argue with  
19 any of these.

20           I look forward to participating in the  
21 discussion.

22           MR. NGUYEN: Thank you. We'll now open it up

1 to general discussion on the eight factors if the  
2 staff has questions.

3 MS. ROZENBERG: I have just a clarification  
4 question for Mr. Pflumm.

5 You propose -- in addition to the factors  
6 that are listed in the proposal, you said, you  
7 mentioned, that you would like some SEF  
8 infrastructure factors, and if the Commission were to  
9 follow that approach, how would it be consistent with  
10 the fact that a MAT determination has to also be made  
11 by DCMs as well?

12 MR. THUM: Right. I think that's a good  
13 question. I think that falls into the comments that  
14 have been made about implementation generally. So  
15 there needs to be adequate time for the SEF to  
16 develop the infrastructure, and building on the  
17 Tradeweb comments earlier, there needs to be the  
18 robust infrastructure and connectivity across the  
19 DCOs, the other components -- let me refer to my  
20 notes here -- the FCMS, DCOs, and the SDRs as well as  
21 the participants on both sides of the market to  
22 create the critical mass to allow for trading to be



1 mandated on a particular SEF.

2           So I don't think that the SEF infrastructure  
3 needs to be a factor to be considered in assessing  
4 whether a particular swap needs to be made available  
5 for trade, but there needs to be time for the market  
6 to develop the infrastructure to allow for that  
7 critical mass, because once the SEF makes its  
8 presentation in assessing a made available for trade  
9 determination and once that's accepted by the CFTC,  
10 then there would be no more over-the-counter trading  
11 in a particular swap.

12           MR. SHILTS: Most people seem to suggest that  
13 the factors that we identified generally make sense.  
14 I think Professor Jones said sufficiently vague or  
15 something to that effect. I was just wondering does  
16 anybody think that it makes sense that the Commission  
17 should at this time come up with more detailed  
18 standards or criteria, flushing out the standards, or  
19 is that something that we should potentially think  
20 about later as we gain my experience?

21           I'd just like to get your views on that.

22           MR. OLESKY: I have a comment. This is a

1 very complex discussion because it's  
2 three-dimensional chess. Professor Jones made the  
3 point this is now mandatory trading we're talking  
4 about. That's absolutely right. This is not about  
5 available to trade.

6 Everything, once it's available to trade,  
7 must be traded through a SEF. So you've got that  
8 issue. We don't have a lot of the rules in place.  
9 We are not going to have a lot of the rules in place.  
10 The infrastructure is not going to be set.

11 I don't think it's about coming up with the  
12 perfect criteria. Our view is let's just focus on  
13 the process for a second. Maybe I'm on the wrong  
14 panel, but our idea is let's get the comments in on  
15 what that universe should be initially. There's  
16 enough activity out there among various market  
17 participants to give a pretty clear view of what can  
18 be priced electronically, what is currently traded  
19 electronically. That's a fairly expansive universe.  
20 Present that to the CFTC. Let's let everyone comment  
21 on it and have an iterative process and set it for a  
22 year, and then we're going to be taking in a lot more

1 information.

2 I think one of the challenges here is this is  
3 going to be an evolving marketplace. So as much as  
4 we -- I think these were all very thoughtful comments  
5 and I don't think I disagree with anything I heard,  
6 but everything is going to keep changing over the  
7 course of the next few years as we move into this new  
8 environment. Whether it's more electronic or  
9 continues to be voice, that's still a question out  
10 there, how many SEFs there are going to be, what's  
11 the infrastructure needs of the clients and dealers.

12 This is going to constantly evolving. So  
13 possibly the best -- you know, our view is let's fix  
14 it for a year. Let's get some more information into  
15 the marketplace and have a defined universe that  
16 we're dealing with. At least then, one of the pieces  
17 of the puzzle here is set, because we've got too many  
18 pieces that are going to be moving around and I think  
19 they're all absolutely dependant on each other.

20 So the sooner we get to fixing things, I  
21 think the better.

22 MS. ROZENBERG: I've got just a quick

1 follow-up question. When you say let's get the swaps  
2 and sit for a year, are you proposing the process,  
3 the proposal in Part 40 process or are you suggesting  
4 using a different process?

5 MR. OLESKY: Honestly, I'm not sure what the  
6 right answer is. I think having just a mechanism  
7 that gives folks a chance to come up with the  
8 universe, present it to the CFTC -- maybe I'm  
9 speaking too broadly and not precisely -- and letting  
10 the market comment on that, coming out with that  
11 universe and then giving folks six months to build to  
12 that and ready themselves for that new universe. At  
13 least that gets one element fixed, and then we can  
14 start to then figure out the rest of the pieces as  
15 they come into play.

16 I think it's a fluid situation with mandatory  
17 trading where different market participants will  
18 submit different things and it's going to be coming  
19 in on a regular basis quarterly, weekly, monthly.  
20 I'm just thinking about the challenge of running a  
21 company, and I'm sure this applies to many folks, all  
22 of the market participants in keeping track of what

1 is a new mandatory requirement on a particular  
2 instrument.

3 Things will be coming in and go out. There  
4 will be more liquidity, less liquidity, de-listing,  
5 listing. This will be a very complex thing, I think,  
6 to have under control for hundreds of market  
7 participants, let alone, you know, the regulator.

8 MR. VAN WAGNER: Just to clarify, so are you  
9 positing that there's going to be a set stable group  
10 of products that the assumption is that everything --  
11 I don't know if we can get agreement on that, but  
12 there is some minimum that everybody will sort of,  
13 you know, try it out there for a year and see? Is  
14 that what you're positing?

15 MR. OLESKY: Right. What we're proposing is  
16 something like that. That's not forever. That's a  
17 let's fix it for the first year.

18 There's obviously, you know, different  
19 phasing in of trading requirements for different  
20 market participants as things have been proposed.  
21 That's not finalized yet either, but just to fix  
22 some.

1           I think you'd be surprised. We've traded  
2 over a hundred thousand derivative transactions on  
3 Tradeweb and I'm sure if we went to our other  
4 colleagues, the numbers would go up and up and up.  
5 The universe is not massive. It's fairly well  
6 defined.

7           Someone raised the question of things have to  
8 be traded. Things are traded electronically.  
9 Markets are being made in an electronic manner for a  
10 lot of instruments. By the way, it's a significant  
11 percentage of all of the market volume.

12           MR. HARRINGTON: If I could, I just want to  
13 follow up on one of Mr. Thum's comments regarding the  
14 SEF infrastructure being truly prepared. I think  
15 that actually raises a greater question that needs to  
16 be considered, and that is the SEFs themselves, keep  
17 in mind, are not liquidity providers. We are not  
18 making markets. We are pools of liquidity where  
19 liquidity buyers will come in and put a market onto  
20 our individual platform.

21           Now, the made available for trading rule and  
22 having the made available for trading

1 self-certification process sitting in the SEF itself  
2 inherently can create, not necessarily will, but  
3 could create a conflict of interest where a SEF would  
4 want to drive trading onto its platform or onto the  
5 electronic format to allow them to participate.

6           So I think that this is something that I know  
7 that all of us who are currently providing something  
8 SEF-like today where we have electronic execution on  
9 our systems, that we've all been working very, very  
10 hard for the last few years with the CCP community,  
11 with the dealer community, with the ISDA  
12 Documentation Committees to really move the process  
13 from OTC to central clearing. I think that is a  
14 great point, because what we would not want to have  
15 is a product rush into SEF-type trading before the  
16 market infrastructure is ready for it, before the  
17 pipes are ready for it.

18           So I think that that is a great factor that  
19 should definitely be considered before a  
20 self-certification is very verify and, therefore, SEF  
21 trading is mandated.

22           MR. ARD: I think we somewhat share the

1 concern that was raised by George just now about the  
2 economic incentive of certain execution facilities to  
3 list contracts perhaps before they are really ready  
4 for exclusive electronic trading. What we're talking  
5 about here is once the made available for trading  
6 determination to made, yes, it is a mandate to  
7 execute, and I think the need to ensure that there's  
8 liquidity in those particular swaps is essential, and  
9 this process is essential to ensuring that that  
10 essentially perverse economic incentive doesn't  
11 ultimately impede liquidity in certain types of  
12 swaps.

13 So, therefore, to your specific question,  
14 Rick, on is it beneficial to have specific standards  
15 and criteria set, I think it is.

16 The infrastructure question, I hadn't really  
17 thought of it before. I think that's another good  
18 factor to include, but certainly one good step would  
19 be to provide more standards and more flushing out of  
20 the factors that have been delineated already by the  
21 Commission.

22 MR. BARTH: It's clear that there are a lot



1 of products out there today that are easily traded  
2 electronically and if mandated today, it would be  
3 okay. There are certainly others that we aren't  
4 there yet, and it's really the willingness of market  
5 makers to make markets that drive the process.

6 So that's why we really want the buy side to  
7 be involved in the decision making process. We want  
8 to know who are going to make markets and how much  
9 risk they're willing is offset, and just because it  
10 trades liquidly in the OTC market doesn't necessarily  
11 mean it's going to trade liquidly in a traded  
12 electronic environment that's mandated by you all.

13 So I think, again, the buy side input is key  
14 here, and then from a compliance standpoint, the  
15 infrastructure, we do need to -- you know, if some  
16 random SEF decides they're going to make a trade  
17 available and we're not hooked up, we've got issues.

18 MR. HUMENIK: I think that the issue as to  
19 whether or not standards could be set at present, I  
20 think that while, indeed, we appreciate an objective  
21 standard to be established, I think that we all  
22 probably acknowledge it's premature to do that, which

1 is why we've also made comments in our letters that  
2 implementation of the trading mandate should be at  
3 the end of the process and some of these issues  
4 should be considered there.

5 I think in terms of the factors that have  
6 been proposed, while each one of them one gets at the  
7 issue of liquidity, I think our issue is that the  
8 present rule proposal doesn't appear to require that  
9 all of the factors be assessed with information  
10 presented on each one of the factors and then having  
11 the CFTC be the ultimate arbiter as to whether or not  
12 that critical mass has been established.

13 What we would not like to see is a SEF making  
14 a consideration of two of the factors where, indeed,  
15 some other factor that it posits as being relevant  
16 and then saying that, indeed, the product should be  
17 determined to be made available to trade without  
18 sufficient public involvement, comment period, and  
19 then without the CFTC having the ultimate decision  
20 making.

21 So I think it's probably premature for those  
22 standards to be set at present. Maybe ultimately

1 they can be set, but at this point, at least the  
2 factors should all be considered. The SEF should be  
3 presented with information with respect to all of  
4 them and then there should be much more heavy  
5 involvement by the CFTC in assessing those factors  
6 and the quality that the SEF has presented.

7 MR. ZAIDI: Just a question about the  
8 execution method. I think all the panelists brought  
9 up that maybe the factors should differ based on the  
10 execution methods. Can you talk a little bit about  
11 that and maybe how the factors would look if we kept  
12 what was in the proposal now or if there was  
13 something a little bit different where it was more  
14 flexible that could be used, things like that, how  
15 the factors would look under that scenario?

16 Thanks.

17 MR. COSGROVE: My personal background is very  
18 commodity centric for the last 30-plus years, and so  
19 looking at the North American energy markets as an  
20 example, if the voice were permitted, you know, and  
21 many to many voice, not somebody in a room with two  
22 telephones doing a quiet deal, but kind of many to

1 many, that represents a sort of a technological  
2 extension of an open outcry market. Provided that  
3 were acceptable, I think that our members would be in  
4 favor of a far broader range of transactions  
5 qualifying as being made available for trading. Of  
6 course, this kind of speaks -- this is us talking on  
7 a book too, because we're SEFs. Ideally, everyone  
8 has to trade everything that they need to trade with  
9 us and we can make a little money and everybody has  
10 to trade.

11 Having identified that, I do think that it is  
12 in the public interest to have as broad a range of  
13 instruments made available for trading provided the  
14 markets are not harmed in so doing. So I think that  
15 by providing a greater flexibility for different  
16 modes of execution that are suitable to each unique  
17 market, it provides a greater basis for extending  
18 that made available for trading category to a broader  
19 range of markets.

20 Does that answer your question?

21 MR. ZAIDI: Yes, and maybe if you could talk  
22 about, also, how the proposal was put out, if that's

1 going to be the case for a final, how would the  
2 factors be more constrained or a higher level?

3 MR. COSGROVE: I'll take the most liquid  
4 energy markets, the most liquid OTC energy markets  
5 currently in North America, Henry Hub Natural Gas  
6 Swap, the ICE LD-1 and NYMEX NM and the PJM West Hub  
7 contract. Those are probably the two most liquidly  
8 traded energy swaps in North America today.

9 If you look at ICE's volumes -- which is  
10 public information. I'm not giving anything away  
11 here -- about 71 percent of their PJM West Hub  
12 business is currently voice broker, blocked in, about  
13 78 percent. About 41 percent of Henry Hub business  
14 is done by voice brokers and blocked in.

15 Now, electronic trading represents a  
16 significant benefit to users and users will gravitate  
17 toward that when it represents the best value they  
18 can obtain. In spite of that, the benefits of that  
19 in the two most liquid OTC energy markets in North  
20 America, a very high proportion continue to trade  
21 voice, and it's more burdensome when you trade in  
22 voice than when you simply click on a screen. There

1 are other checks and balances that users must observe  
2 when there's a human intermediating a transaction,  
3 and yet there's still a very high percentage of these  
4 trades that are voice brokered.

5           So I think, you know, if that was prohibited  
6 for transactions made available for trading, it would  
7 have a very direct negative impact on a broad range  
8 of markets, and if, in fact, it would have a negative  
9 impact on the most liquidity traded markets, I think  
10 the negative impact would be far greater for the  
11 natural gas basis markets and the northeastern PJM  
12 power basis markets and so forth.

13           So I think it's very, very important to  
14 preserve optionality on the part of SEFs and market  
15 users in each of these markets so that they can  
16 determine what works best. Ultimately, as markets  
17 become very liquid and standardized, they go on the  
18 screen, but they don't -- forcing that prematurely  
19 can be very damaging in a way that we all want to  
20 avoid.

21           MS. MARKOWITZ: I have a question. Would you  
22 then -- because there's one execution method on a

1 DCM. So would you suggest or are you proposing that  
2 you have separate standards for trading for DCM  
3 versus a SEF?

4 MR. COSGROVE: I think a DCM is listing  
5 future contracts, and futures by nature are generally  
6 standardized, vanilla. The vast majority of the open  
7 interest and volume in most futures contracts trades  
8 on the very short end of the curve.

9 So I think that while the futures market is a  
10 very successful, long established market and  
11 something with which the Commission is extremely  
12 familiar, that model doesn't fit the OTC markets. I  
13 don't think it fits the OTC markets particularly well  
14 at all, and I think that the various swap markets  
15 that exist currently are utilizing different  
16 transactional media because that's what works.

17 So, yes, I would say that it's important to  
18 have different standards for swaps and future because  
19 I think swaps and futures are fundamentally very,  
20 very different models.

21 MS. MARKOWITZ: I meant different standards  
22 between the swaps on DCMs versus swaps on SEF.

1           MR. COSGROVE: It's a good question. I don't  
2 know. I'd have to think about it.

3           MR. OLESKY: I want to take that question  
4 because I'm a little bit confused. Isn't it really  
5 the -- this is what is going to apply to the market  
6 participants, not really the platform?

7           So if you're a buy side institution, sell  
8 side institution, and it's available to trade, which  
9 means you mandatorily have to trade it, you have to  
10 trade it on something. So I'm not sure how you could  
11 have a difference between, you know, an exchange and  
12 a SEF. I'm not sure what that means.

13           Does that mean that as an individual, if I'm  
14 on the buy side or the sell side, I can make a  
15 choice, am I going to trade it on an exchange or I  
16 can trade it OTC?

17           MS. MARKOWITZ: My question was basically in  
18 relation to the comments that the standards are  
19 dependant upon the type of execution methods  
20 allowable in a SEF and, therefore, since there is one  
21 execution method on the DCM and we make the made  
22 available to trade determination, when you look at



1 the DCM, you don't have various different standards.  
2 You have one standard.

3 MR. COOPER: Well, this raises my favorite  
4 topic, which is Rule 9 under the DCM rulemaking, and  
5 since we don't quite know where the staff and the  
6 Commission is landing on that, to the extent that  
7 where you land provides more flexibility for DCMs to  
8 entertain block trades that would more akin to voice  
9 brokering, the better, because I think you get more  
10 transactional volume on a DCM which is your most  
11 highly regulated execution platform.

12 I think that would best serve the public  
13 policy and public interest.

14 MR. VAN WAGNER: In other words, a looser  
15 core principle mind standard argues that -- I'm not  
16 sure -- a higher threshold for making the trade  
17 execution or a lower threshold on which we mandate  
18 the trade execution?

19 MR. COOPER: That's right.

20 MS. ZAKIR: I had just a quick follow-up  
21 question to Mr. Thum's comment. You said that there  
22 could result in lower liquidity for contracts that

1 are prematurely designated as made available to  
2 trade. Can you elaborate on that? Because I know  
3 some of the panelists have touched on this as well.  
4 A DCM or a SEF could certainly list or offer a swap  
5 on its facility absent the made available for trade  
6 designation.

7 So I'm just interested to know what you view  
8 as the implications of the made available to trade  
9 designation.

10 MR. THUM: Sure. So I think, for example, if  
11 a trade is mandated to be traded on a SEF and, for  
12 example, Vanguard were to enter into a block trade  
13 and the reporting requirement or the timing for  
14 public reporting was the accelerated timeframe, the  
15 swap dealer that may be offering that trade may have  
16 concerns about off-loading its position before the  
17 market generally knows of the trade that has been  
18 done and, because of that, either may look for a  
19 higher price when it enters into the swap or, indeed,  
20 it may not want to trade the swap at all on a block  
21 size and we may have enter into multiple small size  
22 swaps to get the same exposure or hedging

1 characteristic. So that's one example.

2 Also, as well, simply by connectivity, as we  
3 mention by other members of the panel, if a  
4 particular SEF has obtained a made available for  
5 trade designation and any member of the buy side is  
6 not connected to that SEF, then there has to be  
7 connectivity established before trading can continue.

8 So, again, there could be a possibility where  
9 trading in a particular product is constrained due to  
10 the premature made available for trading  
11 determination.

12 MR. NGUYEN: With the remaining time, let's  
13 move on to our second question, which is going back  
14 to the factors, when a DCM or SEF are evaluating  
15 these factors, should they consider their activity on  
16 their own market, the activity of the same swap, or  
17 an economic equivalent that another DCM or SEF or the  
18 amount of activity in the same swap or economic  
19 equivalent that's primarily or solely available on a  
20 by bilateral basis?

21 And, again, we'll start with Mr. Cooper.

22 MR. COOPER: We would be concerned if a SEF

1 or DCM could in making the MAT determination look  
2 primarily to other markets, particularly the OTC  
3 market, because of the conflict, potential conflict  
4 of interest that folks have mentioned. They could be  
5 overly tempted to try to file first and get some sort  
6 of first move advantage when you don't have that  
7 volume on your marketplace, and I think that would be  
8 poor public policy, to look to volume that exists  
9 elsewhere to try to force that volume to move to your  
10 platform, and to follow up on some other folks'  
11 comments here about the plumbing, the plumbing comes  
12 to this question, I think.

13 I think the only futures exchange in the  
14 United States has used three different clearinghouses  
15 in the last three years -- [inaudible].

16 MR. NGUYEN: Sorry, sir. Could you speak  
17 into the mike?

18 MR. COOPER: Using three different  
19 clearinghouses in the last three years has certainly  
20 brought to my attention the complexities of having  
21 all these different clearing arrangements and just  
22 the legal work that goes into negotiating the

1 clearing service agreements and just the  
2 technological plumbing, all that work is very  
3 important, and to have some sort of premature MAT  
4 declaration based on volume elsewhere when you don't  
5 have that infrastructure -- and No. 7 does speak to  
6 the SEF trading systems, but I want to make sure that  
7 that includes the clearing connections that will be  
8 necessary to get those trades after execution off to  
9 the clearinghouse.

10 MR. OLESKY: We don't like the question  
11 because it just goes back to the points that have  
12 been made here. When you're giving to individual  
13 companies the ability to set a standard for mandatory  
14 trading for the whole market, we just think that's a  
15 bad way of going about public policy. I think that's  
16 already been articulated quite well by a number of  
17 panelists here.

18 Whether it's good intentions or bad  
19 intentions, it creates a situation where clients need  
20 to figure out how to get connected to the individual  
21 companies once they've got the determination. I just  
22 think that's a bad way of going about things.

1           So it's actually the question itself that we,  
2 you know, are uncomfortable with. Whether individual  
3 companies are assessing what they're doing themselves  
4 or with the rest of the market is doing is something  
5 that we don't think is good policy, we go back to the  
6 proposal of at least for the first year, you know,  
7 having a proposal sent in to the CFTC, the CFTC  
8 giving a comment period so the entire market can  
9 evaluate whether or not it's legitimate, setting that  
10 in stone for a year, and then, frankly, coming up  
11 with something more objective for the long term that  
12 will take into consideration all the various changes  
13 that are going to be occurring in the marketplace  
14 which we just can't forecast right now.

15           We think there's enough there today to get  
16 started and rather than let the great get in the way  
17 of the good, let's come up with something that's  
18 concrete, fix this in stone, and go on.

19           MR. HARRINGTON: I think Lee is absolutely  
20 right. I mean, this question, absolutely a SEF or  
21 DCM should consider their own liquidity that's going  
22 to their platform, and it does go back to the point

1 regarding having an infrastructure that's really  
2 ready to handle it.

3           So we keep sort of skirting around the issue  
4 of -- coming back to the issue of if you do have a  
5 prescriptive trading protocol that means that each  
6 inquiry that goes out, you need to have five dealers  
7 available and ready, you have to look back at that  
8 MAT assessment, and before someone is going  
9 self-certify, you certainly would need to be able to  
10 say for these products, we consistently have more  
11 than that readily available all the time.

12           There is a very dangerous element to this  
13 where I could look over someone else's shoulder and I  
14 know there's trading going on in your SEF and,  
15 therefore, I'm going to certify it. I probably don't  
16 care in that case whether or not there's three or  
17 five or seven. I just want to either from a  
18 competitive standpoint drive business to my platform  
19 or hurt my competitors.

20           So I think this one needs a lot of  
21 consideration and a lot of thought.

22           MR. JONES: I completely agree with

1 everything that the commenters have said so far. I  
2 mean, I think if you rephrase this question to say,  
3 you know, in evaluating the factors, should the  
4 Commission consider all of these three, I think  
5 answer would absolutely be yes, but by putting this  
6 on an individual DCM or SEF, that's a very different  
7 animal.

8 MR. ARD: Not surprisingly, considering the  
9 comments that we've had already, I mean, I think you  
10 understand that we wouldn't think that taking into  
11 consideration the bilateral market would be the right  
12 way to go. You know, just because something finds a  
13 place, liquidity in the OTR market, it doesn't  
14 necessarily mean it's going to translate to a DCM or  
15 SEF.

16 You know, the energy markets which we are  
17 most familiar with are littered with contracts that  
18 have been put up on DCMs, particularly since  
19 Dodd-Frank has been introduced that have zero  
20 liquidity. They're just not the right contracts, and  
21 a somewhat similar contract that's broker assisted in  
22 the OTC market -- there has to be certain factors for



1 the reason that's taken place.

2 So I guess the answer is no.

3 MR. BARTH: We agree with that. We don't  
4 think the OTC market is the right place to look.  
5 Again, as I've stated, the willingness of people  
6 making markets is impacted when you move electronic  
7 trading. It's just a fact.

8 So while there are plenty of instruments out  
9 there electronic that's liquid, there will be many  
10 market makers. There will be lots of volume and  
11 average transaction sizes will be larger, there are  
12 plenty that aren't; and so even the certification  
13 process, it would be good if we had a say in where we  
14 think the market makers are making their markets.

15 At the end of the day, we are going to go  
16 where the liquidity is, where the bid-ask spreads are  
17 the most narrow, and I think it's all in our best  
18 interest in this room to make sure whatever we  
19 choose, that we keep that liquidity in full force.

20 MR. THUM: Yeah. It really is a question as  
21 to whether the SEF has created the better mousetrap,  
22 you know, effectively to get the business in. Is it

1 more economical? Is it more efficient to do the  
2 trading on the SEF? And that should prove out over  
3 time with respect to many of the products that are  
4 going to be cleared, but to have that determination  
5 made prematurely, certainly in the presentation to  
6 the CFTC, a comparison between bilateral market and a  
7 market that's actually trading on that particular SEF  
8 would be a relevant thing to consider, but I agree  
9 with the other commenters that that should prove out  
10 where the SEF itself is demonstrating that it has  
11 effectively captured the market through its not  
12 mandated trading and, therefore, proves that there is  
13 an adequate market to be able to take all of the  
14 volume from the existing OTC market that otherwise  
15 exists.

16 MR. COSGROVE: I have nothing to add to this.

17 MR. KIRILENKO: From what I understand the  
18 panelists have sort of alluded to and have said there  
19 is a greater acceptance of [inaudible].

20 My question is these factors are sort of  
21 supposed to evaluate what you and some people alluded  
22 to. That first information is collected through the

1 mandatory reporting. Then there is some evaluation  
2 made by the Commission based on mandatory reporting  
3 and what should be made available for trading  
4 mandatorily available because in order to ensure  
5 pre-trade transparency and concerns are that not all  
6 these instruments are good for that, not all market  
7 structures are good for that, and there will be  
8 winners and losers in this. There will be -- you  
9 know, some of the instruments that are now traded  
10 bilaterally will be now traded on platforms.

11 So there is tradeoff here between pre-trade  
12 transparency, which is a public good, and potentially  
13 some reallocation of the grants associated with sort  
14 of current trading practices.

15 My question is or maybe some of you would  
16 like to sort of elaborate a bit, is what do you think  
17 is the -- in terms of -- what do you think are the --  
18 maybe I'll a say a little bit more.

19 I'm not aware of any studies, as Professor  
20 Jones said, of corporate bond market on trades that  
21 say that introducing additional post-trade  
22 transparency resulted in the reduction of liquidity

1 in particular instruments. So many of you say that  
2 there would be reduction of liquidity there. There  
3 may be as we introduce additional sort of market  
4 structures.

5 So my question is as we move to pre-trade  
6 transparency, what do you think is sort of the  
7 relevance of process question that we should ask  
8 along the way? How should we evaluate it?

9 Because post-trade is different, as somebody  
10 alluded to. There are different requirements to  
11 report trades in a post-trade sort of environment.  
12 There are some delays. Some of them are reported in  
13 real time. Some of them are reported with delays.

14 So with the data that will be coming, it's  
15 not going to be equal data. So you can't really sort  
16 of bundle them together and say this is more liquid,  
17 this is less liquid.

18 My question is if somebody could elaborate or  
19 give some thoughts on what are sort of the relevant  
20 issues as we evaluate post-trade transparency data  
21 and what some of those contracts are? What are the  
22 concerns that we should keep in mind when we're

1 moving towards a pre-trade mandate?

2 MR. THUM: Well, this raises the whole issue  
3 of block trades. So I think at least my  
4 understanding of your questions is so that, you know,  
5 the concern as I mentioned previously is that for  
6 those of us that manage across many portfolios, we  
7 tend to bunch up trades to put on a large position at  
8 one time. It's very economical and efficient.

9 If that position enters the marketplace and  
10 is disclosed to the market generally before the  
11 dealer has a chance to lay off its position that it's  
12 taken by entering into other trade with and  
13 effectively everyone in the market is armed with  
14 information that the position is coming, the price  
15 will go up and the swap dealer will have suffered by  
16 winning the bid of doing the trade.

17 So our concern has been that while for many  
18 swap products, certainly many swap products that are  
19 going to be cleared as standardized swaps, there  
20 probably is adequate liquidity in small volumes to  
21 allow the market to function in a way that will not  
22 negatively impact liquidity. As you enter into the

1 less standardized end of the spectrum and the larger  
2 trade size, then the liquidity issues come to the  
3 fore and the ability to get a large trade done  
4 effectively and efficiently is compromised by  
5 premature reporting, and while we have argued for  
6 longer reporting delays than the Commission actually  
7 adopted or at least ratified, the reporting rules  
8 that came out last month do recognize in the present  
9 time, at least, a distinction between trades that are  
10 done on a SEF and trades that are done off a SEF in  
11 terms of the time delay for reporting those large  
12 trades.

13 MR. HARRINGTON: I think it's a difficult  
14 comparison, if not impossible comparison, to make to  
15 say, Well, look at TRACE and look at corporate bonds  
16 and then use that to project what's going to happen  
17 when we have real-time reporting of swaps and we have  
18 MAT, slash, SEF trading of CDS mainly because you can  
19 still trade corporate bonds bilaterally. In fact,  
20 Bloomberg, Tradeweb MarketAxess, the kind of dealer  
21 space, of all the corporate bond offerings, we  
22 feature multi-dealer trading, and almost consistently

1 we're looking at our own data internally. You know,  
2 larger size trades will go bilateral. Smaller size  
3 trades will go multi-lateral.

4 So you can't compare, you know, one to the  
5 other because of the fact that you're going to have  
6 -- you're not forcing -- you're not allowing  
7 bilateral trading to take place; therefore, it's a  
8 very difficult comparison to make.

9 MR. OLESKY: If I could just expand on both  
10 Bill and what George said, you know, this is one of  
11 the reasons our position has been let's make sure  
12 there is as much flexibility in modes of execution as  
13 we possibly can, still accomplishing the objectives  
14 here, but let's not limit things to order book  
15 activity. Let's not limit them to RFQ. Let's allow  
16 for a variable of different modes of execution given  
17 that there are just an almost unlimited number of  
18 variations here in terms of the types of instruments  
19 that are traded, the size that's traded, and the  
20 that's liquidity associated with it.

21 So, you know, being flexible and at the same  
22 time being mindful of, Okay, we want more efficient,

1 you know, electronic markets with central  
2 counterparty and clearing and all of those objectives  
3 and transparency, but at the same time, the  
4 flexibility on the front end to allow different modes  
5 of execution, which is essentially all of that  
6 evolved really to suit the market needs on all these  
7 different instruments and different instances,  
8 whether it's large side, block trades, more limited  
9 single CDS, or a way off-the-run Treasury. You know,  
10 there's very different dynamics of each one of those  
11 markets for liquidity provisions, so allow for  
12 different ways of transacting. Even in a regulated  
13 environment, you'll have SEF and you have other  
14 regulated marketplaces.

15 MR. JONES: I think if you actually mandate  
16 the use of RFQs or central limit order books, if  
17 that's the form of the pre-trade transparency you had  
18 in mind, you're going drastically change the way  
19 these things trade, and I think you will eliminate  
20 the large trade. What will end up happening is  
21 people will be forced to -- you will have smaller  
22 sizes just like people will be force to do things in



1 smaller size and basically leg into whatever position  
2 they're looking for.

3 So that will have big effects if you actually  
4 mandate that.

5 MR. ARD: Just to what Professor Jones said,  
6 I mean, that increases costs to the person who's  
7 doing the transaction the more transaction they have  
8 to enter into and exposes them to more risk during  
9 those transactions and ultimately, especially for  
10 certain markets where you're hedging, you know, it  
11 could have economic costs to it as well.

12 So I think that's something to take into  
13 account.

14 MR. NGUYEN: I think we'll bring the second  
15 panel to a close. Thank you very much to our  
16 panelists for a very interesting discussion and for  
17 taking time out of busy schedules to be here with us  
18 today.

19 We'll take a short break before the third  
20 panel and we'll try to convene at 12:30. Thanks.

21 [Recess.]

22 PANEL THREE: ECONOMICALLY EQUIVALENT SWAPS

1           MR. SHILTS: We would like to begin the third  
2 panel here, the economically equivalent swaps  
3 discussion.

4           As I said earlier, in the final rulemaking,  
5 we'll need to come up with a different term to kind  
6 of address this concept since we use that same term  
7 in other rulemakings.

8           To start off, if the panelist could go around  
9 and introduce themselves.

10          MR. SENFT: I'm Dexter Senft. I'm a managing  
11 director with Morgan Stanley, here today representing  
12 ISDA.

13          MR. SZYCHER: Mark Szycher, Vice President of  
14 Risk Management, General Motors Pension Plan. Today,  
15 I'm here representing CIEBA, the Council on  
16 Investment of Employee Benefit Assets.

17          MR. SPIEGEL: I'm Matthew Spiegel, Professor  
18 at Yale School of Management, and I'm not  
19 representing anybody other than my own views.

20          MR. BAILEY: I'm Keith Bailey. I'm managing  
21 director at Barclays Capital focused on E-commerce  
22 and market structure.

1           MR. MARTIN: Christian Martin, CEO of  
2 TeraExchange.

3           MR. CAWLEY: James Cawley, CEO of Javelin  
4 Capital Markets.

5           MR. SHILTS: I'll now let Nhan discuss the  
6 subject of this roundtable and introduce the first  
7 question.

8           MR. NGUYEN: Thanks, Rick.

9           This panel will discuss the Commission's  
10 proposed definition of economically equivalent swaps,  
11 and I'll go right to the question, which is whether  
12 the Commission's proposed definition of an  
13 economically equivalent swap is appropriate. In sort  
14 of giving your thoughts on that, we would like you to  
15 focus on four points, which is:

16           First, who should make this determination,  
17 the Commission or the DCM or SEF;

18           Second, what factors should be considered in  
19 identifying economic equivalence such as material  
20 pricing terms, which is what the Commission has  
21 proposed;

22           Third, if a DCM or a SEF would be required to

1 make an economically equivalent swap available to  
2 trade, then should it also submit reasoning as to why  
3 the swap in question is or is not economically  
4 equivalent;

5           And, lastly, if a particular swap has been  
6 determined to be available to trade and, therefore,  
7 subject to the trade execution requirement, how could  
8 the Commission ensure compliance with the  
9 requirement, especially for economically equivalent  
10 swaps.

11           We'll start with Mr. Senft.

12           MR. SENFT: Thank you and thank you for the  
13 invitation today.

14           I inherited Lee Olesky's chair. So I'm going  
15 to follow Lee Olesky's lead and say that perhaps  
16 there is a controversial point of view to be had and  
17 that is that regardless of whether the definition of  
18 economically equivalent swap is appropriate, we don't  
19 think it's necessarily and it's actually potentially  
20 dangerous. At best, the concept of economic  
21 equivalence, we think is going to prove extremely  
22 difficult to define in a manner that's fit for

1 purpose, meaning something general enough and that  
2 satisfies your purpose and your regulatory intent,  
3 but specific and unambiguous enough that it can be  
4 put into practice.

5 ISDA's position a year ago based on its March  
6 8th comment letter is that economically equivalent  
7 swaps should rely on the market's understanding, and  
8 that means fungibility. Now, when it comes to  
9 fungibility, the only acceptable substitute for a  
10 swap is that swap.

11 What we heard in the last panel uniformly is  
12 that liquidity matters. If you disregard the concept  
13 of liquidity, you're at risk of making some swaps  
14 obsolete by making them available to trade,  
15 mandatorily traded too soon. Well, if you believe  
16 that and liquidity matters, then economically  
17 equivalence doesn't.

18 Unfortunately, even swaps that have identical  
19 contract terms, identical cash flows, identical  
20 credit risk are not necessarily equivalent in the  
21 eyes of the market. This would be especially true  
22 if, for example, they were traded on different CCPs

1 where you have different bids and offers, different  
2 settlement prices potentially, different volumes,  
3 different open interest, certainly different  
4 liquidity, and that doesn't seem like economic  
5 equivalence to us.

6           If you carry that argument further, making a  
7 swap that's available to trade on one SEF, on set of  
8 SEFs and one CCP and by an economic equivalence  
9 argument saying it must now be mandatorily traded  
10 where the second CCP is involved, this could actually  
11 disadvantage the second CCP. If it harms the  
12 liquidity, it would otherwise result in the trades  
13 that go there.

14           So we think surely this is not what the  
15 Commission intended, was to make it more difficult  
16 for startup CCP to get some volume and liquidity.

17           We suggest a simpler solution. We think the  
18 CFTC can abandon the concept and just go in favor of  
19 a general anti-evasion rule. In other words, if the  
20 concern exists that dealers or others would make  
21 minor adjustments to the terms of a swap with the  
22 primary intent to make it non-economically equivalent

1 and thereby evade the mandatory trading rule, use the  
2 power that you have -- we believe it's in Section  
3 2(h)(4) of the Commodity Exchange Act as amended --  
4 and just make it clear that that's not acceptable.

5           So I guess I would close by saying that we  
6 urge the CFTC not to allow economic equivalence to  
7 serve as a back door that a SEF or a DCM could use to  
8 force mandatory trading where the swap would not  
9 otherwise qualify based on liquidity or other  
10 considerations.

11           MR. SZYCHER: By way of background, CIEBA  
12 member consist of the corporate plan sponsors with a  
13 hundred of the largest pension plans in the United  
14 States. CIEBA members manage and oversee in excess  
15 of \$1.4 trillion of defined benefit and contribution  
16 assets on behalf of 17 million plan participants and  
17 beneficiaries.

18           Regarding the determination of economically  
19 equivalent swaps, ideally, we believe the Commission  
20 is in the best position to determine whether a swap  
21 is economically equivalent to another swap. Many  
22 respondents to the proposed rule have pointed out

1 that SEF and DCM have a vested economic interest tod  
2 designating the swaps on their platform as available  
3 for trading even if those swaps lack the  
4 characteristics such as ample liquidity, the  
5 platforms lack connectivity and sufficient number of  
6 market makers that would be necessary for a properly  
7 functioning marketplace.

8 Furthermore, the proposed rule appears to  
9 provide a back door mechanism by which a swap could  
10 be deemed available for trading solely by virtue of  
11 being economically equivalent and that is, perhaps, a  
12 less drafted, somewhat more precisely that swap even  
13 if it did not otherwise meet the characteristics yet  
14 undefined.

15 Some participants, including some on prior  
16 panels, have suggested an industry committee make  
17 this determination. We would be supportive of that  
18 initiative, although we don't think that's the only  
19 one that would necessarily work, though we believe  
20 that the CFTC would be impartial, thus a better  
21 arbiter of whether a swap is economically equivalent.  
22 We urge the Commission to adopt the standard that's



1 identified as quantifiable, objective, and  
2 verifiable. Reducing the subjective nature of the  
3 determination makes the process less subject to  
4 conflicts of interest, more transparent regardless of  
5 the entity making that determination.

6           Regarding the factors that should be  
7 considered in identifying economically equivalence,  
8 certainly Mr. Senft's comments are very pertinent  
9 with respect to any swap that is identical in every  
10 characteristic and perhaps may not meet the standard.  
11 Perhaps we can throw a slightly less restrictive  
12 definition than may work from a pension plan  
13 perspective.

14           Broadly speaking, pension plans use swaps to  
15 match cash, for example, for benefit payments and to  
16 offset changes in the fair values of plan investments  
17 or liabilities. Furthermore, ERISA requires that  
18 plans operate in a cost effective manner. So  
19 economic equivalence must include all of these  
20 factors. Specifically, we propose a definition of  
21 four prongs, all of which would need to be met to  
22 assert economic equivalence:

1           First, nominal amounts of currencies and  
2 timing of cash flows must be materially equivalent  
3 irrespective of market conditions.

4           Second, the upfront premium or pay to  
5 receive, if any, must be equal, again, regardless of  
6 market conditions.

7           Change in the mark to market value must be  
8 equivalent on a day-to-day basis.

9           And, lastly, that any optionality, for  
10 example, the options exercise of any delivery  
11 features, for example, cash versus physical, must  
12 also be substantially similar.

13           Regarding the third part of the question, the  
14 DCM is required to make economically equivalent swap  
15 available to trade and it must submit reasoning as to  
16 why swap is or is not economically equivalent. We do  
17 feel strongly that a SEF or DCM which makes an  
18 assertion might submit its analysis to the CFTC as  
19 well as to the market participants for scrutiny,  
20 public comments, and, as mentioned many times  
21 previously today, such an assertion necessarily  
22 triggers perhaps a phase-in time for the trade

1 execution mandate for that swap and, furthermore,  
2 should be sufficiently unambiguous, transparent, and  
3 verifiable. In most cases, this exercise would be a  
4 check of a box and thus not generate needless work or  
5 needless controversy.

6           Lastly, regarding the swap being available to  
7 trade and assuring compliance, we would suggest first  
8 off that perhaps the same compliance requirement  
9 would exist in terms of the clearing mandate and we  
10 thus urge the Commission to adopt a similar solution.  
11 Secondly, strictly speaking, it might be suggested  
12 that the Commission could ensure compliance by  
13 analyzing every swap offered on every DCM and every  
14 SEF to determine economic equivalence. Well, as a  
15 practical matter, we recognize the enormous burden  
16 that would place on the Commission's limited  
17 resources.

18           Lastly, another manner to perhaps accomplish  
19 this same goal is the Commission can require each SEF  
20 and DCM to regularly conduct analyses whether any  
21 swaps on their platforms are economically equivalent  
22 and certify that they are in compliance with this

1 requirement.

2 Thank you.

3 MR. SPIEGEL: Let me start with the current  
4 definition being proposed of roughly two swaps are  
5 economically equivalent if we say so is not really a  
6 definition by the common use of the word definition.  
7 In fact, it's not going to be what you're going to  
8 do. Eventually, you all are going to have to come up  
9 with a real definition, whether it's adjudicated one  
10 swap at a time or whether it's put in a writing ahead  
11 of time. Whatever it is, it's going to involve some  
12 sort of quasi-bright line rule where on one side,  
13 you're equivalent and on the other side, you're not.  
14 I mean, as a practical matter, that's what's got to  
15 happen.

16 What I'm going to say now is it almost  
17 doesn't matter what your definition is because one of  
18 two things will happen with a contract. Either this  
19 will turn out to be a success -- and I'm going to go  
20 - I think TRACE actually is a good example. TRACE is  
21 -- bonds generally TRACE because the investor like  
22 them and so the issuers like to see their bonds

1 TRACE. We don't see a large market of issuers trying  
2 to get around TRACE. They don't do that, and to the  
3 degree you see people getting around 144 is to get  
4 around SOX, Sarbanes-Oxley, not to get around TRACE.  
5 It's a different problem for that. They like TRACE.

6 If investors like having these swaps trade on  
7 SEF, it won't matter what your definition is, because  
8 anyone who tries to create a derivative that doesn't  
9 wind up on one of these exchanges won't see any  
10 volume and so they won't bother.

11 Now, in terms of trying to get an ironclad  
12 rule that's going to work, let me just give you a  
13 quick example of something that's going to be  
14 incredibly problematic. Suppose you had a swap  
15 agreement of some sort that covered a three-year  
16 period. Now suppose I -- and it's trading on one of  
17 the SEFs. Suppose I offer a new one that trades for  
18 -- covers a one-year period. Is that equivalent?  
19 What I offer one that starts a year from now and then  
20 covers the final two years? Is that equivalent?  
21 What if I offer them both at the same time? Is that  
22 equivalent? What if I offer one of those contracts

1 and someone else offers the other contract and  
2 someone could then piece them together themselves?  
3 Is that equivalent?

4 I mean, you're never going to get around  
5 this. There is an infinite array of these thing that  
6 I can come up that will get around any definition you  
7 come up with, and if you are really good at reining  
8 this in and people don't like it, either you'll shut  
9 down the market because there's no liquidity --  
10 that's why they don't like it -- or they'll go  
11 overseas where you can't touch it, in which case the  
12 only externality will be shutting down the U.S.  
13 market for this stuff.

14 So in my view, the definition is not so  
15 important as it is to make sure that it's good enough  
16 to let liquidity happen in the contracts that you  
17 guys have mandated be traded or a particular  
18 exchange.

19 Thank you.

20 MR. BAILEY: Thank you.

21 The way that I read the rule is that it  
22 actually protects the SEF that has made an

1 application and the SEF that has not made the  
2 application. To the extent that there is an  
3 identical product, fungible product, that is traded  
4 on both SEF A and SEF B, "A" makes the application  
5 and is successful. The way that I read the rule  
6 without this provision, all the liquidity would have  
7 to go to SEF A at the expense of SEF B, and so the  
8 process makes it essentially when any SEF makes the  
9 application, it does so on behalf of the entire SEF  
10 community. In that respect, that second SEF will get  
11 it on short notice, but perhaps will be in a position  
12 where it qualifies as mandatory execution for the  
13 product.

14 Then, of course, it also protects the SEF  
15 that has made the application because to the extent  
16 that that is successful and there is another SEF that  
17 is offering something substantially not identical,  
18 then it would preclude the marketplace from moving  
19 exclusively to the other SEF and, therefore, have to  
20 mandatorily clear and so forth.

21 So I think in some respects, you need to have  
22 something that does achieve at least the first of

1 those two, and one of the things that makes the  
2 tension a little harder is that we expect, and I  
3 think it is desirable, that the definition of what  
4 actually has to mandatorily execute on a SEF is  
5 extremely precise at the time. I just refer to the  
6 European view on this. In Article 27, it says shall  
7 publish and maintain on its website a register  
8 specifying in an exhaustive and unequivocal manner  
9 the derivatives that are subject to the obligation to  
10 trade on a venue.

11           So you're going to have a very specific set  
12 of circumstances that will apply and I think it's  
13 right. So then if you then apply a test to that, an  
14 economic equivalency test to something that's  
15 necessarily strict, it's quite difficult to widen it  
16 to such a way that it actually does capture what you  
17 are looking to achieve.

18           We think the solution, such as it is, is that  
19 the process is that on the application by a SEF,  
20 other SEFs that feel that they trading comparable  
21 products who obviously at this point have not taken  
22 it upon themselves to submit an application would be



1 encouraged to do so and that would come to the  
2 regulators who would make a collective assessment of  
3 all of those who fall into that scope. They would  
4 have to substantiate their position, each of them.  
5 This does put you, the CFTC, in a position of having  
6 to make that assessment, which we think is also  
7 prudent. It has the benefit of eliminating  
8 uncertainty and giving adequate notice to all of the  
9 market that this is about to be required, and it  
10 provides for deliberation and decision for a product  
11 that's soon to be traded exclusively on a SEF under  
12 the eight factors rather than just deeming that  
13 economic equivalence would meet these tests. I think  
14 from my colleague on the panel that I think we can  
15 all cite instances where the metrics of a swap are  
16 essentially identical, but that the transaction will  
17 price at difference levels. This process would also  
18 have the advantage of avoiding the problem of the  
19 SEFs having incentive to apply.

20 I also endorse -- as a practical point here,  
21 I think a SEF that has a product that by all accounts  
22 would appear to meet the standards has the right

1 motivation to make the application. So while I  
2 respect the need for this provision, I wonder how  
3 widespread it will be in practicality. When we look  
4 at it quickly and sort of dimensions of difference  
5 that swaps might have, I would submit that there are  
6 a number of softer terms that are relevant. A CDS in  
7 a case where a determinations committee is final as  
8 to whether or not there's been a default is quite  
9 different from which is not that trades differently,  
10 prices differently, the liquidity is different. We  
11 have instances where, as we said, I think in the case  
12 of how options actually exercise and the specific  
13 details around how those matters work. We also know,  
14 of course, that a five-year swap is not a five-year  
15 two-month swap.

16 So in the term structure of the marketplace,  
17 we submit that a swap against a One-Month LIBOR  
18 albeit paid monthly is not the same as a swap against  
19 a Three-Month LIBOR paid quarterly. Those are across  
20 the tenure of the yield curve and it's identical, but  
21 they actually do trade differently and they trade at  
22 different spreads.

1           So the moment you start to get into any kind  
2 of space where you're accepting that those kinds of  
3 variation fall within the economic equivalent  
4 criteria, you're introducing a variety of products  
5 that have quite different characteristics. The only  
6 one that I can think that there is a strong case for  
7 would be if you had a compounding LIBOR feature that  
8 compounded at the interval of the LIBOR to pay  
9 consistently with the fixed rate. That is a  
10 substantially economic position, but I would imagine  
11 that that would also be a mandate to clear as well  
12 and, therefore, be suitable for trading on a SEF, but  
13 that would price the same and have the same  
14 liquidity.

15           Even a swap that has LIBOR plus a spread  
16 against the fixed rate isn't necessarily the same as  
17 a swap against LIBOR against the -- taking value from  
18 one side to the other doesn't necessarily make the  
19 difference, though, obviously, it's easy enough to do  
20 that. I think when I spoke to my traders, their  
21 primary concern is in the first place [inaudible],  
22 but in the second place, the customers who tend to

1 have that requirement are hedging something very  
2 specific and it behooves us to make sure we've spoken  
3 to them and understand fully what they are doing to  
4 make sure that they don't make a mistake.

5 Then, of course, in the CDS market, there's a  
6 variety of difficulties in pricing CDS which all have  
7 the market pricing depending on whether you run  
8 through 105 SEF coupon or you actually pay for the  
9 product up front.

10 So we think there's a variety of very  
11 different trades that will run the risk of falling  
12 within the net of materially the same pricing terms  
13 and so we encourage a fungibility test also and that  
14 we think to provide the mechanism adjusted in the way  
15 that I described or something that makes a more  
16 uniform application across the marketplace on any  
17 given time, that that would be sufficient to meet the  
18 purpose.

19 Thank you.

20 MR. MARTIN: First, thank you, the CFTC  
21 staff, for inviting me today. I guess right off the  
22 bat, we talked about who should make the

1 determination, the Commission, the DCM, or the SEF.  
2 We favor the balanced approach set forth by the  
3 CFTC's rule proposal under which the DCM and the SEF  
4 would conduct the initial analysis and leg work and  
5 then submit it to the CFTC for its review and  
6 oversight. Beyond that, as we indicated in our  
7 comment letter, we believe that consideration of  
8 economically equivalent swaps that are currently  
9 listed for trading on a DCM or SEF generally should  
10 be made at the same time as the MAT determination.

11 In the context of what factors should be  
12 considered in identifying economic equivalence, in  
13 addition to material pricing terms, you know, given  
14 that Congress chose to use a term does not already  
15 have an established regulatory definition in  
16 financial markets, it is, therefore, necessary to  
17 identify relevant factors based on the regulatory  
18 objective to be achieved. On this point, while I  
19 know that Congress also chose to use the term  
20 "economically equivalent" in the context of open  
21 access for DCOs, it strikes me a different regulatory  
22 purpose or objective is applicable at the

1 trading stage and as contrasted with the clearing  
2 stage in the life of a swap.

3 In other words, while the basic determination  
4 on MAT has been taken up and discussed in great  
5 detail on the previous two panels earlier and so is  
6 not an immediate focus of this panel, it is relevant  
7 to consider the regulatory purpose for the  
8 economically equivalent determination in the context  
9 of the MAT determination. In particular, it is  
10 reasonable to anticipate that the CFTC's final rule  
11 on the MAT determination will involve some  
12 consideration of the extent of liquidity available  
13 for a particular swap.

14 Accordingly, it would seem to me it would  
15 make sense to analyze the factors relevant to  
16 considering economic equivalence at the SEF or DCM  
17 level in an analysis that focuses on kinds of factors  
18 that would be relevant to a trader who is comparing  
19 two different swaps as possible substitutes.

20 MR. CAWLEY: Thank you for inviting me to  
21 participate today. I actually don't have any  
22 prepared comments, but let me respond by addressing

1 first the comments in general and then let me  
2 specifically drill down to economically equivalent.

3 By our read of the Dodd-Frank Act, you know,  
4 it's really not subject to debate. It really sits  
5 that the SEF makes the determination based upon  
6 several factors. One of the things that we think is  
7 -- if you look at the DFA, Congress was very detailed  
8 in how they considered made available for clearing  
9 and they arrived at a five-factor model and they did  
10 not do that for made available for trading. We think  
11 the reason for that is very simple.

12 By the plain language of the Act, it says  
13 that if it's available to clear, it shall trade on a  
14 SEF unless there's an end user on one side and  
15 certainly it's within the realm of the SEF to make  
16 that determination.

17 Why do we think that? We also think that in  
18 terms of the plain language of the Act, we also think  
19 that they didn't offer the five factors for made  
20 available for trading because some of those factors  
21 would be redundant. There's two factors within the  
22 five-factor model for clearing that contemplates

1 tradability and volume and so forth. Let's just call  
2 them tradability.

3           We think that if something clears, it must  
4 have traded Cogito ergo sum, I think therefore I am.  
5 If I clear, therefore, I have traded. I don't have a  
6 Latin for that, but I would say that if you consider  
7 the alternative, which is that if something clears  
8 and it's not available to trade, I think you open a  
9 very dangerous door. Notwithstanding the logical  
10 arguments that can be made up, it opens the door to  
11 argue that something shouldn't trade on SEF, but  
12 still is mandated to be cleared. That's a very  
13 dangerous door in the context of what we've gone  
14 through in last few years and the lack of  
15 transparency in the marketplace.

16           You have to remember the role of the SEF as  
17 contemplated by the statute as one of pre-trade  
18 transparency, and where we sit -- trade transparency  
19 is defined by two things. One is the ability for the  
20 customer to see an order before the trade occurs and  
21 also to have access to that price.

22           So when you then consider what's made



1 available for trading, you have to see within that  
2 context. It's a very dangerous door to open.

3 That said, we do enjoy the fact that Congress  
4 has given the SEF the ability to make its own  
5 determination. We welcome comment, you know, help  
6 from the CFTC and from the SEC making this  
7 determination. We looked at your eight-factor rule.  
8 We think it makes sense. It gives the SEF ultimate  
9 flexibility.

10 I would like to question, you know, before I  
11 go into market equivalence, I would like to question  
12 the notion of liquidity. I wasn't here for the  
13 earlier panels, but I would like to address it  
14 anyway.

15 There's a notion that if something is traded  
16 on a SEF that somehow it won't fit. The liquidity  
17 will disappear and the market will cease to function.  
18 I think that is wrong to assume. I think that if you  
19 build the right execution methods into the SEF, and I  
20 think you have by your proposed rules with central  
21 limit order books for liquid product and RFQ for less  
22 liquid product.

1           I think that RFQ gives tremendous  
2 flexibility, whether it be directed RFQ or not for  
3 investors and market practitioners to do what they do  
4 today, whether it be a customized swap with several  
5 bells and whistles or whether it be a straight  
6 vanilla linear swap based on the Three-Month LIBOR  
7 Index. I think that if somebody is willing to make a  
8 market or two people come together, a buyer and  
9 seller and they agree to terms, we think that should  
10 happen on the SEF. We think that the downside to  
11 that is quite overstated here.

12           Let me paint an example. If two people come  
13 in and they trade or if a SEF lists something to  
14 trade and two people come and they trade that and  
15 they trade only once and through the review process,  
16 then the CFTC comes in in an orderly fashion and  
17 says, Well, look, this thing isn't working, we should  
18 probably de-list it, has there been harm to the  
19 marketplace? Well, we would argue, no, there hasn't  
20 because that's one more trade that happened in a  
21 transparent context where the market got to see the  
22 trade occur that it historically hasn't been able to

1 see.

2 Now we do think and we read some of the  
3 comments letters and we agree with some of them that  
4 talk about categorizing some of the swaps into  
5 various basket in an attempt to sort of make sense of  
6 these. Let me talk about market equivalence. Again,  
7 I apologize I don't have prepared comments, but I've  
8 listened to my colleagues on the panel and some of  
9 them, frankly, I disagree with.

10 You know, as a bond trader and swaps trader  
11 that started at Solomon and worked at Lehman and Bank  
12 of America, I can tell you one way to do it is what  
13 market practitioners do today. The one thing you  
14 should look at economic equivalence, quite frankly,  
15 is what we use to hedge swaps today.

16 So we disagree with the narrow assertions  
17 that you should look and say one coupon or one swap  
18 down to its finite coupon. We think that that is  
19 nonsensical, with all due respect, because no one  
20 does that in the marketplace today. As a five-year  
21 trader, if I need to trade or hedge five-year swaps  
22 and there's no liquidity in the five-year, I do the

1 next best thing, is I hedge using threes and sevens  
2 or I hedge using fours and sixes.

3           So when you look at swaps, the best thing to  
4 do is to consider them in class, not in terms of -- I  
5 mean, there is an infinite amount of swaps available  
6 to trade on a yield curve. So for you guys to figure  
7 out how many angels should dance on the end of a pin,  
8 with all due respect, I think it's a little bit  
9 farfetched. I think the easier way to do is what the  
10 market does today, and that is say, Look, for LIBOR  
11 swaps, whether they be a One-Month -- and with all  
12 due respect, Keith, or a Three-Month LIBOR, when you  
13 come in to me as a customer, I'm going to hedge that  
14 using the Three-Month LIBOR and then put it all in  
15 one curve, because swaps tend to change. They change  
16 over time. So the easiest thing to do is to say what  
17 can I hedge with. You can hedge a five-year swap  
18 with a one-year 30-year swap and that hedge will work  
19 if the curve doesn't start to pivot, but, you know,  
20 if I believe it's going to pivot as a swap trader, I  
21 will then build that into the price.

22           So I would argue that you should really look

1 at it in terms of class. One, you have an  
2 eight-factor model. We would urge you to look at it  
3 on a risk-adjusted basis and look at market breadth  
4 within other maturity bucket or other contexts.

5 In terms of linear swaps -- actually, before  
6 I do that, let's talk about amortizing swaps. An  
7 amortizing swap is nothing more than a layer of swaps  
8 staggered in maturity. So as a swaps trader, what I  
9 do with this is I break it into their component parts  
10 and hedge them accordingly and price them and then  
11 quote that price accordingly.

12 With non-linear swaps, say a ten or a five,  
13 I'll go into the options market and I'll hedge that  
14 risk.

15 My point is that there's many ways for me to  
16 hedge that risk and I do it on a portfolio basis. In  
17 terms of pension funds and asset-liability managers,  
18 I would hazard to -- let me just improve upon what  
19 you just said, Mark. You actually don't look at cash  
20 flows per se. You look at the duration of your  
21 portfolio, which the whole notion is not to look at  
22 the cash flow. So it really, again, brings it back

1 to portfolio management. You look at the duration of  
2 your assets and the duration of your liabilities and  
3 hedge them accordingly.

4           So we would ask for -- we think you're in the  
5 right area. We think that you should open your  
6 flexibility and consider risk adjusted or market  
7 breadth and liquidity and really what other  
8 instruments can I use to hedge particular a swap.  
9 Can I use -- and, really, there are no bounds. If  
10 I'm willing to pay the gamma of my hedge, if I want  
11 to be expensive and be inefficient, I could hedge a  
12 five-year swap with a one-year 30-year basket. I'm  
13 less likely to do that because liquidity, it gives me  
14 that flexibility.

15           So I would say there's a class of swaps that  
16 we know in the marketplace that are LIBOR swaps that  
17 are dollar denominated.

18           MR. SHILTS: A question going to back to Mr.  
19 Senft had mentioned the idea that we don't really  
20 need a provision that deals with [inaudible]  
21 acknowledging that maybe this is something that's  
22 almost impossible to do any way.

1 I'm just kind of curious what the others'  
2 views are on whether or not a different approach to  
3 this would be to not have a specific provision for  
4 dealing with economically equivalent swaps to kind of  
5 tighten the anti-evasion provision, but just to have  
6 a specific more detailed anti-evasion provision in  
7 our rules.

8 MR. SENFT: You know my view.

9 MR. SHILTS: Any other thoughts?

10 MR. SZYCHER: I think, perhaps, you get to a  
11 similar place with that proposal. We would just  
12 suggest from a legal certainty perspective first that  
13 to the extent that the anti-evasion provision is  
14 better defined how Mr. Cawley presented it or any  
15 other way would be desirable and, furthermore, a safe  
16 harbor being provided for market participants, a good  
17 faith effort was made or just because a SEF or DCM  
18 decided that the swap on their platform happened not  
19 to be economic equivalent and the Commission  
20 disagreed, that we, in fact, as market participants  
21 who perhaps didn't trade on SEF would have or should  
22 have by virtue the Commission's determination were

1 not, in essence, sucked into some liability as a  
2 result.

3 MR. SPIEGEL: I think that a vague definition  
4 to start off with isn't going end up as a vague  
5 definition to end with. Will this create the legal  
6 litigation for fighting over this? Because what will  
7 happen is if people went around it, it will create  
8 contracts that will then cause litigation. It will  
9 leave whoever is assigns this job to and enter the  
10 court. The courts will then have to determine  
11 whether or not some contracts -- lord only know what  
12 some judge is going to think, and that will be  
13 the new rule and it will be a much brighter line  
14 rule, because the alternative is to say something  
15 like, Well, the Patent Office issues patents and then  
16 the person holds the patent determines if someone has  
17 infringed, which is roughly the proposal, to have the  
18 SEF determine if its contract is being traded or some  
19 contract is equivalent, some other contract is  
20 equivalent to what it's trying to trade. So that's  
21 not going to fly eventually.

22 We should just get to the end point of where



1 we have to wind up with, which is ultimately some  
2 fairly bright line rule, and I would suggest create  
3 one and live with it. Like I said, if this  
4 experiment works, that is having these SEFs create a  
5 liquid environment that traders like, you won't have  
6 anything to enforce. Right? No one will try to get  
7 around it because other contracts that don't trade on  
8 SEF won't trade.

9           So it's completely self-enforcing, but I  
10 think it's more important that there's a rule that we  
11 all understand more than what the rule is in  
12 particular, but it's got to be a rule we can all see  
13 so that you don't wind up with years and years and  
14 years of litigation. That will just make this thing  
15 a wreck.

16           MR. BAILEY: I would agree with Dexter's  
17 points. I do think it's a question of reminding  
18 ourselves that we're in a world of mandating clearing  
19 of a product here. So I respect, actually, that the  
20 same issue arises in the question of mandating  
21 clearing. I think if we start putting [inaudible],  
22 we can expect to get a call, and I'm not enough of a

1 lawyer to know how that would pan out, but I think it  
2 gives sufficient protection and it should be very  
3 evident when the structure of a product that is a  
4 variance from what it might normally look like, I  
5 think that -- I'm not sure.

6 MR. MARTIN: In picking up on the mandatory  
7 clearing, the equivalency, the debate will usually  
8 rest around the DCO simply for collateral and margin  
9 requirements. They'll be slightly different. So  
10 then you get into a de facto that it's equivalent,  
11 but it's a different asset and it's certainly not  
12 fungible.

13 Everyone is going to price one asset versus  
14 the other when it comes to trading execution.  
15 Certainly, I echo the comment of getting to a final  
16 rule certainly helps the market move forward no  
17 matter how it shakes out.

18 MR. CAWLEY: Yeah. I would say that I  
19 wouldn't equate fungibility with equivalence. That's  
20 a dangerous road to go down. You know, I understand  
21 that when we talk about market equivalence, there are  
22 different points on the curve across a certain index

1 family liquidity that liquidity changes, but the  
2 equivalence is still the same.

3 In terms of -- you know, we would favor, you  
4 know, flexibility as we navigate into this and, again,  
5 we like the eight-factor rules that you propose.  
6 Also, we urge that you consider the risk adjusted and  
7 consider the hedgability and market breadth in  
8 addition to market depth at different points of the  
9 curve.

10 What I mean about that is when I say market  
11 depth, the liquidity of a particular instrument,  
12 whether you are a seller, it's the number of bids at  
13 that current price. Is there enough depth there?  
14 Market breadth would be to consider different points  
15 along that curve for you to hedge, you know, that  
16 point and it is liquidity -- likewise, liquidity at  
17 those points. So that's what I mean by market depth  
18 and market breadth.

19 Again, these are what traders use today.  
20 Swap traders use a portfolio approach. We're not  
21 trading widgets. It's not apples and lemons. It's  
22 not IBM stock. We look at a one-stop curve. We

1 consider swaps all in relation to that curve. I  
2 think's that's a good place to start. You're looking  
3 for swap curve and then that changes, and, of course,  
4 it changes by index.

5 In you look at Fed Funds swaps, dollar Fed  
6 Funds swap might not be as economically equivalent to  
7 LIBOR swaps. LIBOR as an index for Euros might not  
8 be equivalent, might not be economically equivalent  
9 to dollar swaps, but we would favor broad classes and  
10 looking at not necessarily fungibility, but the  
11 equivalence and equivalence should be partially  
12 defined by the ability to hedge that risk up and down  
13 the curve.

14 MR. SHILTS: We are almost out of time, and  
15 kind of related to that, but I don't remember who  
16 made this comment -- I didn't make a note of that,  
17 but I thought someone in the context of economic  
18 equivalence, someone had mentioned that they thought  
19 the location of the clearinghouse should be a  
20 material factor in that determination.

21 I'm just not clear how clearing -- the  
22 clearinghouse specified should be considered as a

1 factor in making this determination. Ultimately, the  
2 Commission may decide, for example, that with a  
3 10-year interest rate swap to make something subject  
4 to the mandatory clearing, but it would mandatory  
5 clearing at CME. You have to have the clearinghouse  
6 and the DCO. Presumably, the trade execution mandate  
7 date will then go to that swap, the 10-year interest  
8 rate swap, not the 10-year interest rate cleared at  
9 CME.

10 So maybe I misunderstood it. I thought  
11 someone had mentioned that.

12 MR. SENFT: I'm the one guilty of bringing up  
13 the clearinghouse issue. I am not suggesting that  
14 that should be part of your definition of economic  
15 equivalent for the simple reason that I don't think  
16 you should have a definition of economic equivalent.

17 My point in raising it is that we expect that  
18 we will see a marketplace that has materially  
19 different trading characteristics from all manner of  
20 economically important factors for swaps that are  
21 otherwise identical that have cleared elsewhere. So  
22 they are not, indeed, substitutable because there is

1 no interoperatability between clearing houses  
2 generally, but if there were, then they would become  
3 fungible and then that would be an acceptable  
4 definition.

5 MR. BAILEY: If I could just make one point,  
6 I want to be clear that I'm not suggesting that swaps  
7 on the One-Month LIBOR should not mandatory trade on  
8 SEFs. I'm simply saying that the definition should  
9 be extremely specific. It could be endless and  
10 include everything, but it should very specific.

11 So to that extent, I think fungibility still  
12 holds.

13 [Mr. Cawley gestures.]

14 MR. SHILTS: This might be the final word.

15 MR. CAWLEY: We can actually sit here all day  
16 and talk about this, but I do agree with Keith. I  
17 think the definition to the consider the endless  
18 possibilities, again, I bring it back to what market  
19 practitioners do, one has dealers, which I've been  
20 one in the past and they do today, and also on the  
21 flip side of what we have as the buy side is using  
22 these as hedging and speculative tools.

1           So one thing on the clearinghouse, to address  
2 that, again, fungibility, we anticipate although a  
3 swap is clearing on LCH, there is no  
4 interoperatability between them and CME, we do expect  
5 because we do have counterparty risk, we do  
6 anticipate through our many conversions with dealers  
7 and buy side, we expect the spread market to occur  
8 where people will be looking to sell LCH, buy CME  
9 because they want to hedge that exposure with the  
10 risk managers saying we want you to do this at a  
11 portfolio basis, very akin to what corporate bond  
12 desks do today using index going into the close to  
13 hedge overnight risk; but, also, so we do -- again,  
14 it brings it back to not fungible, but certainly  
15 equivalent.

16           Certainly, within that then, there is going  
17 to be difference of liquidity and there will be  
18 different margin regimes and that will all get pegged  
19 into the spread, whatever it is.

20           That's it.

21           MR. NGUYEN: Any other questions or comments?

22           I would like to thank the panelists for

1 taking time out of your busy schedules today to  
2 participate in our discussion of economic  
3 equivalence, and that will bring the third panel to a  
4 close.

5 Rick, do you have anything?

6 MR. SHILTS: Just to thank everyone for  
7 participating today. This is very helpful to us as  
8 we move forward in developing the final rules for  
9 this rulemaking and others.

10 So thanks again to everybody.

11 [Whereupon, at 1:20 p.m., the meeting was  
12 adjourned.]

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Dated this 10th day of February, 2012

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