UNITED STATES OF AMERICA
COMMODITY FUTURES TRADING COMMISSION

OPEN MEETING TO CONSIDER FINAL RULE ON FURTHER DEFINITION OF THE TERM "SWAP," FINAL RULE ON THE END-USER EXCEPTION TO CLEARING, AND PROPOSED RULE TO EXEMPT FROM CLEARING CERTAIN SWAPS BY COOPERATIVES

Washington, D.C.

Tuesday, July 10, 2012

PARTICIPANTS:

Commission Members:

GARY GENSLER, Chairman

BART CHILTON, Commissioner

JILL E. SOMMERS, Commissioner

SCOTT D. O'MALIA, Commissioner

MARK WETJEN, Commissioner

Presentation 1: Final Rule: Further Definition of "Swap," "Security-Based Swap" and "Security-Based Swap Agreement"; "Mixed Swaps" and "Security-Based Swap Agreement Recordkeeping

JULIAN HAMMAR, Office of General Counsel

LEE ANN DUFFY, Office of General Counsel

DAVID ARON, Office of General Counsel

STEVE KANE, Office of General Counsel

Presentation No. 2: Final Rule: End-User Exception to the Clearing Requirement for Swaps

ERIK REMMLER, Division of Clearing and Risk

EILEEN DONOVAN, Division of Clearing and Risk

JON DEBORD, Division of Clearing and Risk

PARTICIPANTS (CONT'D):

CAMDEN NUNERY, Office of the Chief Economist

ANANDA RADHAKRISHNAN, Division of Clearing and Intermediary Oversight

Presentation No. 3: Proposed Rule: Clearing Exemption for Certain Swaps Entered into by Cooperative

ERIK REMMLER, Division of Clearing and Risk

EILEEN DONOVAN, Division of Clearing and Risk

JON DEBORD, Division of Clearing and Risk

CAMDEN NUNERY, Office of the Chief Economist

ANANDA RADHAKRISHNAN, Division of Clearing and Intermediary Oversight

Also Present:

DAN BERKOVITZ, Office of General Counsel

DAVID STAWICK, Office of the Secretariat

PHYLLIS CELA

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P R O C E E D I N G S

(10:06 a.m.)

CHAIRMAN GENSLER: Good morning. I'm glad to call this 10 o'clock meeting to order. I apologize to the public and the media. This is a consensus process and it's always good to have discussions even on the dais of the day of the meeting. This meeting will come to order. This is a public meeting of the Commodity Futures Trading Commission, and I'd like to welcome members of the public, market participants and members of the media, as well as those listening at home and watching our webcast.

Today is our twenty-eighth open meeting on Dodd- Frank financial reform and we will consider tow final rules each of which are at the foundation of our overall swaps markets reforms. One is the joint rule with the Securities and Exchange Commission on further defining the term swap, security-based swaps and other products that come under swaps markets reforms. Secondly is an exception from required clearing for so-called end users or nonfinancial firms. In addition, we'll consider one related proposal, an

exemption from clearing for cooperatives acting on behalf of their members, end users. I'd like to thank Commissioners Sommers, Chilton, O'Malia and Wetjen for their significant contributions to the rule-writing process and the CFTC's hard- working and dedicated staff. We're working to complete common-sense rules of the road for swaps markets reforms, and with today's final actions, I would anticipate that we will have finished 35 final rules and have just over 15 to go, so that by the math you can see we're quite a ways into this. But particularly with today's foundational rules and having completed some others, the CFTC and SEC have already completed as you might know in April the first joint rule which further defined the terms swap dealer and securities-based swap dealer. Following on the SEC's unanimous approval announced yesterday with regard to the swap definition and the CFTC's anticipated action today, for the first time we will be requiring registration of swap dealers which will come under comprehensive regulation. This includes implementing already completed external and internal business conduct standards

which will help lower risk to the economy but also help protect special entities and the purchasers and users of swaps. Staff will also shortly provide to Commissioners for final consideration recommendations on swap relationship documentation and confirmation which will help also lower risk to the markets.

Furthermore, with the completion of these further product definitions, many other critical swap market reforms already completed by the Commission will come to life. This rule means that 2 months after the rule is published, light will begin to shine on the swaps markets for the first time. Initially, and I would say likely in September because our rule has to get to the Federal Register once we take formal action today, swaps price and volume information will be reported for the first time in real time to the public for interest rate products and credit default swap indices. Three months subsequently, such real-time reporting will begin for energy and other physical commodity swaps and these are all based on rules that this Commission finalized last December. Swap data repositories will also

receive data on all swaps transactions, giving regulators their first full window into these markets. We've benefited from some voluntary reporting in the data repositories, but we'll get a full picture. One swap data repository has already successfully registered with the Commission and we have at least four other parties working on their applications with staff.

Today's rule is especially meaningful also for the implementation of position limits. For the first time, limits will apply to the aggregate spot month positions including both futures and swaps. Spot month limits protect the markets against corners, squeezes and the burdens that may come from excessive speculation.

We'll also consider today another key rule, the end user exception to clearing. Consistent with congressional intent, this rule ensures that end users using swaps to hedge or mitigate commercial risk will not be required to bring swaps into central clearing. After today, the foundational rules bringing oversight to the swaps market will have been completed. The next major reforms we are set to consider relate to the

required clearing of swaps between financial firms. For over a century through good times and bad, central clearing in the in our futures markets has lowered risk to the broader public and Dodd-Frank's financial reforms bring this effective model to the swaps market at, least to the financial firm facing another financial firm. Clearing significantly lowers risk of this highly interconnected financial system which is particularly critical I believe given the current uncertainties emanating still out of Europe and the recent ratings downgrades of many of the world's leading banks. We've completed rules establishing clearinghouse risk- management requirements, the bulk of which went into place in May. The remainder will come into effect in November and I will be more specific on November 8. That will include key customer protection enhancements to collect margin on a gross basis and also something we call around here the LSOC rule, or legal segregation with operational comingling for swaps, a mouthful, but it helps protect the public.

Commissioners now are reviewing staff

recommendations on clearing requirement determinations and I expect if we are able to move this out for consideration for the public later this month, then the staff recommendations could be commented on by the public. These recommendations are based on clearinghouse submissions on swaps that they already clear. The staff recommendations begin with standard interest rate swaps and four currencies as well as a number of key credit default swap indices. Thus based on the Dodd-Frank 90-day clock, and Congress laid out a 90-day clock for making these determinations, the first clearing determination might be completed by October just before the gross margining and this key customer protection rule, the LSOC rule, takes effect.

Commissioners are also reviewing staff recommendations on the final rule on the implementation phasing of the clearing requirement. Commissioner O'Malia, how am I doing? I'm doing this early because you usually ask me later to lay all this out. The CFTC has also received substantial public input on the treatment for swaps among affiliates of the same

financial entity and there is a staff recommendation that we're all considering at this point as well, and I expect that we'll take that up shortly. We're also hoping to see from staff recommendations in two other areas related to electricity markets as well as something called conforming rules, and the conforming rules help us, but I think since we've made such significant progress to date it's now come to the time to start to look at these conforming rules as well.

Following the clearing rules, we'll look to finish the remaining transparency rules, the block rule and the swap execution facility rules. It's important that we fulfill these Dodd-Frank reforms to bring pretrade transparency to the swaps marketplace. The 2008 crisis led to 8 million jobs lost and millions of families losing their homes and thousands of businesses shuttering, and 4 years after the crisis and 2 years after Congress passed the Dodd-Frank reforms, the CFTC is well on its way to bringing those reforms to light. But I think it's critical that we finish the job, protect the market and promote more transparent and healthier

markets.

Beyond these swaps markets reforms, I think it's also crucial that the Commission continue to build upon customer protection regulation for both futures and swaps. The Commission has already adopted important amendments to Rule 1.25 regarding investment of customer funds, and as I mentioned, the rules related to grow margining and this LSOC rule, but we should now move to approving the National Futures Association proposal for greater controls for segregation of customer funds. We also look forward to staff recommendations to further enhance segregation of customer funds and CFTC staff is working on recommendations for enhanced internal controls and transparency regarding futures commission merchants handling such funds.

I'd like to close before I turn it over to other commissioners to talk about a topic beyond Dodd-Frank, to thank the Division of Enforcement for their hard work on the London Interbank Offered Rate case against Barclays. People taking out small business loans, credit

cards and mortgages as well as the biggest companies involved in complex transactions all rely on the honesty of this benchmark called LIBOR and other benchmarks similar to it for the cost of their borrowing. It courses through our entire economy and we all depend on it and banks must not attempt to influence LIBOR or other similar benchmarks based on concerns about their reputation or concerns about their profitability, their trading desk or the profitability of some other bank's trading desk. It's just not right. We need to have an honest rate at the heart of our financial system. The CFTC has and will continue to vigorously use our enforcement and regulatory authorities to protect the public, promote market integrity to ensure that these indices and other benchmarks are free of manipulative conduct and false information. With that I turn it over to Commissioner Sommers.

COMMISSIONER SOMMERS: Thank you, Mr. Chairman. Good morning. I want to begin by thanking the rulemaking teams that are before us today. The product team and the end- user team specifically have put a lot of hard work and many

hours into the rules that are before us today and I want to sincerely thank you for all of your efforts.

The rules we have before us today include the long- awaited final rules relating to the further definition of swap, the end-user exception to the clearing requirement for swaps and the proposed rules relating to the clearing exemption for certain swaps entered into by cooperatives. In my view, the primary goal in crafting these final and proposed rules has been to provide clarity to market participants regarding what instruments are not swaps and therefore are not subject to comprehensive regulation by the Commission and what transactions are not subject to the mandatory clearing requirement. An overly broad interpretation of the term swap or an overly narrow interpretation of the clearing exception would lead to unnecessary regulation of transactions that did not cause or contribute to the financial crisis and that do not lead to the accumulation of risk that would be of systemic significance. Such an approach would not be wise.

It appears to me that in large part we have made the correct determinations. I have questions about whether we have sufficiently addressed the concerns of the captive finance entities so they do not needlessly get swept into the definition of financial entity. I also have questions about whether we have taken the correct approach with nondeliverable foreign exchange forwards and whether they should be regulated as swaps particularly if Treasury exempts foreign exchange swaps and deliverable forwards from regulation. If Treasury issues such an exemption, we would be hard pressed to explain how the functional nature of deliverable and nondeliverable foreign exchange forwards and the risk posed by each are so different that they deserve different regulatory treatment. I'm also concerned that the way we have defined NDFs in the final rule is inconsistent with other major financial regulators and could lead to regulatory arbitrage. I'm supportive of the important additions to the end-user exception final rule which finally includes exemptions for small financial institutions from the financial entity

definition. Although I do not believe that Congress expressed a clear intent that the $10 billion total asset threshold was the only level we could consider, I am encouraged that we are also proposing to use our 4(c) authority to allow relief from the clearing mandate for cooperatives meeting certain conditions.

I will end by pointing out the obvious, the significance of this vote on the further definition of swap cannot be overstated. Many market participants are now off to the races and need to quickly register and come into compliance with vast new regulatory requirements. During the 60 days after these rules are published in the Federal Register, glitches and cracks may quickly become evident as they did when market participants attempted to comply with the Part 20 reporting requirements. Staff and the Commission must be ready to quickly respond to and fix the glitches pointed out by market participants to ease the transition into this new highly regulated environment. We will all benefit from an efficient nondisruptive transition if we keep in mind that a request for relief does not equal

an attempt to evade. I have long supported the approach being taken by the SEC to not require registration until the substantive portion of the swap dealer rules have been finalized. The more we can coordinate with the SEC on substance and timing the better it will be for the markets. Thank you again to the rule teams before us and I look forward to your presentations.

CHAIRMAN GENSLER: Thank you, Commissioner Sommers. Commissioner Chilton?

COMMISSIONER CHILTON: Good morning. Thank you, Mr. Chairman. Tonight in Kansas City is the baseball All Star Game. Does anybody know Bryce Harper from the hometown team? He's a position player, an outfielder I think for the Nats and he's the youngest position player ever to be called upon for the All Star Game. A reporter a few weeks back asked him a question that he thought was a silly question and his response was, "That's a clown question, bro." How these things happen on the internet is beyond me, but it became viral, it's all over, they're selling T-shirts, "That's a clown question, bro." I have a point. Believe me. Here it is. That

we're 2 years into Dodd-Frank and we've done a pretty good job, actually, under the Chairman's leadership and with a lot of pain and suffering on the staff's part and the Commissioners' part, as the Chairman was saying, we've done more than our share and this definitions domino really starts the ball rolling on 10 or 12 different rules so that it's critically important.

But it doesn't mean that we haven't been thoughtful. We've been thoughtful. And the rest of the government hasn't done so well. Only about a third of the rules are done. So we've been thoughtful, we've taken this time, but it has been 2 years. We've been pretty thoughtful over 2 years. And it amazes me that there are still people, some on Capitol Hill and some in the industry who say we want you to be thoughtful, but has Dodd-Frank really made a difference so far? Are we safer? Wait a minute. You told us to be thoughtful and to go slow and make sure we get the comments. Of course we're not that much safer. It's not in place yet. The same people who voted against it. So a lot of people still say we should repeal it, we should defund it, we should defang

it and if that doesn't work let's go to court. Take the regulators to court. We'll tie them up in knots for a while. So forget about 2008. Forget about the economic calamity. Look at MF, look at JP's losing streak, look at Barclays as the Chairman was talking about, look at an apparent loss at an FCM of hundreds of millions of dollars. There are recent examples out there for why we need thoughtful regulation. Do we need Dodd-Frank? That's a clown question, bro. Thank you.

CHAIRMAN GENSLER: Thank you, Commissioner Chilton. Good luck, Commissioner O'Malia.

COMMISSIONER O'MALIA: I'm not going to touch it. I would like to begin by thanking the teams who are about to present today, both the products team and the end-user team, who worked closely with me and my staff and I know the other Commissioners' staffs over the last several months and I'm pleased to vote for both the final rules and the proposal before us today.

As a whole, the three items we have today protect end users consistent with the

letter and spirit of Dodd-Frank and provide guidance and clarity with respect to the definition of swap. Additionally, these rules are the first to benefit from our recently signed memorandum of agreement with Information and Regulatory Affairs, OIRA, within OMB. I asked for some technical assistance and believe it or not some said it wasn't allowed and some said it couldn't happen. Here's proof it happened. And these rules are the recipient of the technical assistance and oversight from OMB and OIRA so that I'm grateful for their assistance. We can add to this and build on this in future rules and continue to work on this to build our quantitative analysis, but I'm very pleased that we were able to get this assistance and it's worked out. Thank you, Mr. Chairman, for your assistance on that.

Because both of these rules do establish appropriate baselines, they do include replicable and quantitative analysis when it's possible, and, three, considers a range of policy alternatives which are three foundational elements to good cost-benefit analysis. Today's product definition rules and the rule and the

interpretation will set in motion an implementation chain reaction. Nearly a dozen rules which Commissioners Chilton and Sommers and the Chairman have outlined will go into effect 60 days after this final rule and the interpretation as published in the Federal Register including registration, internal and external business conduct, dealer reporting, et cetera, that many of you have already outlined. I too predict that many of these companies will find the registration and compliance schedule to be very aggressive and quite challenging and we should be prepared for a wave of requests for no action relief and interpretations to our complicated rulemakings. On the list that you provided, Mr. Chairman, we have to be nimble enough to be responsive to provide the guidance and the clarity for these confusing rules. There are so many of them and so many different elements that sometimes they conflict with one another. We need to step into that gap and answer those questions immediately.

Notwithstanding my approval of today's rules, there are areas where I think we can

improve such as provisions on exemptive relief for counterparties dealing with municipal utilities and the availability of the one-pot margining regime which I think you left off of your list, Mr. Chairman. I know you're passionate about it, so let's make sure you get right on it. Both the final rules implementing the end-user exception and the clearing of swaps and the proposed pass- through clearing exemption for certain cooperatives are good policy solutions. I'm pleased that in the final rules we have provided legal certainty for clearing by small financial institutions as defined in Section 2(h) of the Commodity Exchange Act and the new Commission Regulation 39.6. I voted against the proposal of the end-user rule because we failed to fully address the issue of excluding small banks, farm credit institutions and credit unions from the definition of financial entity which would permit them to take advantage of the end-user exemption consistent with congressional intent. To paraphrase Senators Dodd and Lincoln, these small financial institutions did not get us into the crisis and should not be punished in the

implementation legislation that was meant to restore vibrancy to our financial markets. I applaud the coordination of the staff at the SEC and the Commission in jointly preparing approximately 600 pages to further define and interpret the term swap. Today's final product definition rule and interpretation will not subject forward transactions with embedded options to the swaps requirement under Title VII, and provides for the same transactions that satisfy a seven-part test. In essence, these transactions with embedded optionality can satisfy this test and qualify the forward exclusion if the predominant feature of the transaction is actual delivery. I am pleased that the final rule and the interpretation include an expansion of the Commission's interpretation of the forward contract exclusion to cover swaps in energy and other types of nonfinancial commodities. In order to meet these varying customer demands, national gas and electricity suppliers frequently enter into commercial transactions with embedded optionality as to the volume of energy that is physically delivered.

Since the publication of the final rule and interpretation will be the first time that the general public sees certain elements of this test, I believe that it is appropriate that the Commission seek further input to determine whether the test makes sense and does not frustrate the normal operations of end-users which this rule does.

As I noted earlier, I have a couple of concerns which I believe the Commission should address as soon as possible. The fact that the Commission is finalizing relief for small financial entities and proposing exemptive relief for cooperatives highlights the difficult situation that we have created for municipal utilities. Municipal utilities fall under the definition of special entity under Section 4(s) of the Act and were incorporated into the entities rule. In my dissent to the entities rule I criticized the swap dealer definition primarily for its focus on the activities-based approach as an entity itself. Oddly enough, the special entity sub-threshold focuses on the entity or rather the special entity but does so in a manner

that completely ignores the nature and the activities in which they engage. Municipal utilities primarily execute swaps with nonbank firms in regional electric and natural gas industries in order to manage their operational risk. Given the size of their operations, a single 100 megawatt trade could exceed the $25 million threshold provided in this rule. This could drive many nonbank firms away from dealing with municipal utilities in order to avoid the swap dealer designation. This will lead to less competition and pricing for hedging activities with these municipal firms. When you consider the commercial end- users in general and municipal utilities in particular did not cause or advance the financial crisis of 2008, it is difficult to justify imposing increased operational costs. Large municipal utilities like the Los Angeles Department of Water and Power are financially sophisticated organizations. Affording them protections more suited to small towns is like putting training on Lance Armstrong's bike, a nice gesture but not really necessary. The Commission should remove the regulatory burden

now being imposed on municipal utilities. This could be done by a new rule under Section 1(a)(49)(B) of the Act or at minimum providing some guidance to ensure the nation's largest power providers are not limited to whom they can trade and deal with.

Finally, building off of the momentum and collaboration between the definition and the SEC in the final products rule and interpretation, it is now time that the agencies propose a one-pot margining methodology to provide capital efficiency as envisioned by Congress. Section 713 of Dodd-Frank gave both the Commission and the SEC the authority to grant exemptions to allow futures commission merchants and broker-dealers to maintain customer funds in a single omnibus account which is much more capital efficient. A solution to this problem is long overdue and both commissions need to work together to implement a formal process to approve portfolio margining regimes. The Commission should set a goal of formally completing the rule by the time the clearing mandate becomes effective.

Again let me thank the teams for their

hard work, patience and willingness to consider options and I'm glad to support both rules today. Thank you.

CHAIRMAN GENSLER: Thank you, Commissioner O'Malia. Commissioner Wetjen?

COMMISSIONER WETJEN: Thank you, Mr. Chairman. I'd like to commend the staff as well for all their hard work on these rules before us today.

Congress tasked the commissions, two agencies with different statutory responsibilities and different histories, with jointly resolving key definitional issues that affect the scope of their respective mandates under Dodd-Frank. In a number of areas this has proved to be quite a challenge as the staff well knows, but the persistence and dedication of the professional staff at both agencies have produced a set of recommendations that I am pleased to support today.

Although the product definitions are important in their own right, they are even more significant because so many other aspects of the Dodd-Frank regime depend on them. The other

Commissioners have spoken about this at length. One headline yesterday read, "Floodgates on U.S. Derivatives Reforms Set to Open." Another stated, "Swap Definition Vote Set to Trigger Dodd-Frank Overhaul Cascade." Perhaps more than any other one rule, the final product definitions will enable us to fully usher in Dodd-Frank's important regulatory reforms for the swap markets. Swap dealers and major swap participants will be required to register and the Commission's compliance dates for certain transaction level requirements such as external business conduct standards and real-time reporting will take effect for transactions with U.S. persons. The Commission's spot month position limits for swaps referencing certain energy and agricultural commodities also will be effectuated. In short, the new swap regulatory regime is aging to become a reality. This regime will better protect American taxpayers from future financial crises. The regime and its implementing rules inevitably will short of perfection, but clearly its hallmarks, greater reporting as well as central clearing, will reduce systemic risk and bring

needed improvements to these markets that are so vital to the U.S. economy. And I believe that with greater consensus at the Commission supporting these implementing rules become more effective rules in the long run. As we complete the rulemaking process and pivot to implementation, it is appropriate for the Commission and its staff to remain open to public feedback on the compliance schedule that we are imposing. An approach at looking at the implementation of each final rule in isolation can underestimate the compliance challenges that lie ahead.

Turning to the product definitions themselves, I do believe they strike a proper balance. On the one hand, they provide an insurance that forward contracts and certain consumer and commercial transactions which have never considered to be swaps and which I am convinced Congress did not intend to be regulated as swaps are not swept up by Dodd- Frank. On the other hand, I am confident they are comprehensive enough to prevent relevant derivatives products from escaping the new regulatory structure through inadvertent loopholes. I reiterate

however my prior comments that our rulemakings must provide clarity. As I noted when the Commission finalized the entity definitions, it may not be possible to always come up with a bright-line test, but the lines we draw must be bright enough to provide sufficient clarity to market participants. I support the final product definitions release, but I am concerned that certain aspects may not meet that standard of clarity. In particular, I worry that the interpretation for forward contracts with embedded volumetric optionality in its seven-factor test could needlessly complicate commercial practices that I do not believe Congress intended to bring under Dodd-Frank. Accordingly, I thought it was essential for the release to pose further questions and request additional public comment on this topic and I thank the Chairman and my colleagues for accommodating these changes to the release. I look forward to reviewing the comments to make sure that we adopt the right interpretations. We also will be providing relief for users of trade options that meet the definition under the

Commission's recent interim final rule. This will allow the Commission to better consider the comments responding to that rule alongside those responding to today's release and will give market participants more certainty about the Commission's treatment of this important tools for risk management in the meantime. Again, I thank the Chairman and my fellow Commissioners for their flexibility in agreeing to this adjustment. Both of these rules will be better for it in the end.

Similarly, there is one comment that we have heard and which I have much sympathy for but which we have not accommodated well enough in this rulemaking. Several commenters told us that while it is important to know which products will be regulated as swaps by the Commission and which products will be regulated as security-based swaps by the SEC, it is equally important that the analysis for making that determination be simple and straightforward to apply. Unfortunately, that is not the case for some of the final rules that we are adopting today. The complexity of these rules is due in part to the lack of

information that the Commission and the SEC have in our possession regarding these previously unregulated products. It is my hope that as both agencies obtain data and develop experience with these products that we will not hesitate to revisit the tests we are adopting today to craft more streamlined rules that are tailored to the nature of these products. In the meantime, I encourage market participants to follow the guidance provided in the release. It advises that they may seek informal guidance from the agencies' staffs or use the process that we are establishing in these rules for seeking formal guidance from the agencies when there is uncertainty as to the results of a product analysis under today's rules. Such requests for guidance will enable us to assist market participants in applying these definitional rules to specific types of products. I also am pleased that the clearing mandate which is a centerpiece of Dodd-Frank's reform for the swap markets also is on the verge of becoming a reality with the Commission's adoption today of the end-user exception. The Commission already has

adopted rules governing derivatives clearing organizations, customer clearing documentation, timing of acceptance for clearing and clearing member risk management. We expect to issue our first proposed clearing requirement determination and a final compliance and implementation schedule in the very near term. Also before us is a proposed clearing exemption for certain swaps entered into by cooperatives. I support both of these recommendations. Mandatory clearing is important, but the risk-reducing benefits of clearing comes with certain costs. Congress was clear in its determination that those costs should not be borne by end-users that use swaps or hedge or mitigate their commercial risks and I believe that the rulemakings before us today implement the end-user exception in an appropriately balanced manner. They allow end-users to elect the exception without compliance burdens yet ensure that the Commission can monitor the use of the exception for abuse.

Thank you again to the professional staff for your hard work on the rules before us

today. I will address a few additional issues in my questions later.

CHAIRMAN GENSLER: Thank you, Commissioner Wetjen. I want to thank all of my fellow Commissioners because these three documents today have really been collaborative documents and each of you have put a lot of time, effort and good judgment into these as the public could even see going on as we delayed the start of the meeting here. Everybody said that the next two or three months is going to be critical, but it goes well beyond that two or three months and as we pivot, if I can quote your words, Mark, from rule-writing to implementation there is going to be a lot of questions, this has already occurred for the last nine or twelve months, a lot of questions as Commissioner Sommers said even on Part 20, large trader reporting. We do look forward to the public asking our excellent staff questions and where appropriate for us to smooth this transition rather than stick firm to some date if there are issues that come to fore on certain provisions from certain market participants. We want to work with you. We are

limited by funding and I will say this, we would have been far better off if we had more staff onboard right now, but we will do our best and I think it is appropriate and I agree with every Commissioner who said implementation we want to work smoothly, work with market participants and hear the issues. What was the word used, Commissioner Sommers? The glitches and cracks that we'll find. And to Commissioner O'Malia, I think there are many things you have agreed on on policy, in fact probably 90-plus percent we've agreed to, but on this portfolio margining we very much are in synch, and maybe working on this great effort of joint collaboration with the Securities and Exchange Commission on the products rule and the entities rule and others, we can build on that and try to do this portfolio margining but it does take two commissions and two staffs.

With that I think I will turn it over to Julian Hammar and Lee Ann Duffy who have been leading this team for many moons, with David Aron and Steve Kane to present the staff recommendation on the joint rule with the SEC on further defining swaps and other products.

MR. HAMMAR: Good morning. Today staff is recommending that the Commission adopt final rules and interpretations that further define the term swap, security- based swap and security-based swap agreement, providing for regulation of mixed swaps and addressing books and records requirements for security-based swap agreements. As the Chairman mentioned, this is a joint rulemaking with the Securities and Exchange Commission.

I'd like to thank my CFTC colleagues on the definitions team who are with me here today including from OTC Leon Duffy and David Aron, from the Chief Economist's Office Steve Kane and members of the team from other divisions including Kathy Banner, Ken McCracken, Jason Schoeffler, Rose Troya, Somi Song, and our SEC colleagues including Robert Cook, Brian Bussey and the SEC team for their contributions to this final rulemaking.

In developing the final rules and interpretations, we reviewed more than 140 comments in response to the Notice of Proposed Rulemaking that the Commissions issued last year.

We met with market participants, trade associations and other members of the public. We had many meetings with our SEC colleagues and consulted with staff of the Federal Reserve as well as the prudential regulators, the Treasury Department including the new Federal Insurance Office, as Commissioner O'Malia mentioned, the Office of Management and Budget considerations and the Environmental Protection Agency with respect to environmental commodities.

All of the comments and consultations we've had have been very informative. Although the overall framework of the final rules is the same as what was proposed, as a result of these comments and consultations, staff is recommending a number of changes and clarifications to the proposal that we believe have improved the rules and interpretations.

As the Commission is aware, the Dodd-Frank Act contains detailed and specific definitions of the terms swap and security-based swap which were designed to comprehensively cover previously unregulated derivatives including interest rate swaps, currency swaps, commodity

swaps, equity swaps and credit default swaps. Many commenters pointed out, however, through the rulemaking process that expansively certain parts of the statutory definition could cover products such as insurance that traditionally have not considered to be swaps and nothing in the legislative history of the Dodd-Frank Act suggests that Congress intended such products to be regulated as swaps or security-based swaps. The proposal addressed these concerns by clarifying that certain products are not swaps or security-based swaps and this approach is maintained in the final rules.

With respect to insurance, the final rules provide a safe harbor for traditional insurance products that are provided by regulated insurance providers and will not be regulated as swaps or security-based swaps. Contracts that satisfy either the product test or are included of enumerated traditional insurance products in accordance with the provider test will not be considered swaps or security-based swaps. In response to comments, the final release would increase the number of products included in the

enumerated list and included in rule text rather than interpretation as was proposed. The final release clarifies that a contract that does not fall within the safe harbor is not necessarily a swap or a security-based swap, but that further analysis of the facts and circumstances is required. The release also includes an insurance grandfather provision for existing insurance contacts which will not have to be run through these tests and the rules as a result.

The proposing release also requested a comment on the treatment of guarantees of swaps and security-based swaps. The final release includes an interpretation by the CFTC that a guarantee of a swap is an integral part of the swap and therefore the term swap includes guarantee of such swap to the extent that a counterparty to a swap position would have recourse to the guarantor. Staff is preparing a separate release that deals with the regulatory consequences of this interpretation including applicable reporting requirements. The SEC interprets guarantees of security-based swaps to be securities under federal securities laws. The

SEC plans to address reporting requirements for guarantees in a separate rulemaking.

In addition, the proposal included interpretation clarifying that certain consumer and commercial arrangements that historically have not been considered swaps or security- based swaps such as mortgage rate locks and contracts to purchase nonfinancial commodities like home heating oil should not be considered swaps or security-based swaps. The final release retains the interpretation, but in response to comments, expands lists of transactions that are not swaps or security-based swaps. To name a few, these include certain residential fuel storage contracts, consumer options to buy, sell or lease real or personal property and certain consumer guarantees of personal obligations like credit cards and auto loans. The proposal includes an interpretation clarifying the scope of the forward contract exclusion for nonfinancial commodities that is included in the statutory swap definition. Forward contracts, that is, contracts for deferred shipment or delivery are excluded from futures regulation. The Dodd-Frank

Act excluded from the swap definition "any sale of a nonfinancial commodity or security for deferred shipment or delivery so long as the transaction is intended to be physically settled." Although the working of those forward exclusion is slightly different than the forward exclusion applicable to futures because there is legislative history in the Dodd-Frank Act indicating that Congress intended that the Commission interpret the two exclusions in the same way which was supported by commenters, staff recommends that the Commission consistently the two exclusions as was proposed. The final interpretation further clarifies that book out transactions in nonfinancial commodities that meet the requirements specified in the Brent interpretation and are effectuated through a subsequent separately negotiated agreement should qualify for the forward exclusion from swaps and futures. Because the interpretation extends the Brent interpretation to all nonfinancial commodities, the final release as proposed withdraws the 1993 energy exemption which applied to energy commodities other than

oil, but in response to comments clarifies that the alternative delivery procedures mentioned in the energy exemption continued to apply. Also in response to comments, the final release provides a number of clarifications with respect to the forward exclusion. It clarifies that oral book outs are permissible under the Brent interpretation if they are followed by written or electronic confirmation. It also includes an interpretation of the term nonfinancial commodity which generally means an agricultural or exempt commodity that can be physically delivered. Under this interpretation, contracts involving environmental commodities such as allowances, offsets and renewable energy credits may qualify for the forward exclusion. As Commissioner Wetjen mentioned, interpretation concerning forwards with embedded volumetric optionality which is in response to a wide range of contracts discussed by commenters is also provided. Commenters in the energy industry in particular asserted that many of their transactions contain volumetric optionality meaning optionality as to the amount of the

commodity that can be delivered and should be considered forwards, while prior CFTC guidance restated in the proposal covered price optionality only. Under the final interpretation, if among other things the volumetric optionality in a contract is due to physical factors or regulatory requirements beyond the control of the parties, it may qualify for the forward exclusion. Because this is a new interpretation for the CFTC, the release includes request for public comment on this interpretation and questions. Other guidance addressed certain types of contract in response to comments as well as certain typical contract provisions such as liquidated damages and renewal evergreen provisions that do not disqualify transactions for the forward exclusion.

While as I mentioned at the outset that the definition of swap and security-based swap are comprehensive, the final rules clarify that a few types of transactions in particular are swaps or security-based swaps. For example, foreign exchange forwards and swaps are defined as swaps subject to the Treasury secretary's

determination to exempt them from the swap definition. Even if the Treasury secretary determines to exempt them, however, the statute provides that certain provisions of the CEA apply to FX forwards and swaps. The final rules reflect this and as proposed clarify that certain FX products do not fall within the definitions of FX swap and FX forward so that they are not subject to Treasury's determination to exempt. These products include foreign currency options, nondeliverable forwards, foreign exchange currency swaps and cross-currency swaps. The final rules and interpretations also add as proposed certain non-FX products to the swap definition such as forward -- agreements. In response to comments, the final release adds an interpretation concerning certain FX spot transactions that are not subject to the CEA and a clarification that retail forward certain options subject to the CEA's retail FX regime are not swaps or security-based swaps. The final release then turns to the relationship between swaps and security-based swaps. The release principles from the proposal about how

transactions that are subject to Title VII of the Dodd-Frank Act which are referred to in the release as Title VII instruments are to be classified as swaps, security-based swaps or mixed swaps. It also retains clarifications about how Title VII instruments are classified in specific areas such as interest rates, monetary rates and yields. Additional guidance is provided in response to comments that total return swaps on two or more loans generally are swaps and that one type of TRS, a quanto equity swap, is a security-based swap. The release also addresses Title VII instruments based on futures contracts which generally are swaps subject to CFTC regulation. The proposal requested comment on the appropriate classification of Title VII instruments based on futures on foreign sovereign debt that have been exempted for purposes of futures trading by the SEC. In response to comments, the final release includes rules which provide that if certain conditions are met, these instruments will be swaps under the CEA..

The release then turns to the term narrow-based security index in the

security-based swap definition. In general, with respect to Title VII instruments and security indexes, the CFTC has jurisdiction over such instruments on broad-based security indexes, while the SEC has jurisdiction over Title VII instruments on narrow-based security indexes. The final rules clarify as proposed that the existing criteria for determining whether a security index is narrow based in the past guidance of the Commissions regarding those criteria in the context of security futures apply to Title VII instruments. Credit default swaps are also subject to this same jurisdictional division. CDSes on broad-based indexes are regulated by the CFTC, while CDSes on narrow-based indexes as well as CDSes on single names or loans are regulated by the SEC. The final rules retain the new CDS focus criteria from the proposal for determining whether a CDS is based on an index that is a narrow-based security index. A couple of clarifications though have been made in response to comments such as that the criteria apply to loan index CDSes if the reference entity borrowers are issuers of securities, and certain

technical adjustments to the rules have been made. The release does not make any substantive modifications to the proposed rules with respect to mixed swaps, security-based swap agreements, the process for members of the public to request a joint interpretation from the Commissions or the CFTC's anti-evasion rules, although the CFTC is providing additional anti-evasion guidance in response to comments. The team and I would welcome any questions you may have. Thank you.

CHAIRMAN GENSLER: Thank you very much, Julian, for that presentation. And thank you everybody for that. The Chair will now entertain a motion to accept the staff recommendation on this final rule.

COMMISSIONER SOMMERS: So moved.

CHAIRMAN GENSLER: The motion being made and seconded, I support the final rule. I had a couple of questions. David Aron, does that button say something important for us?

MR. ARON: No. It's just 7 U.S.C. 1a(47), the citation of the swap definition.

CHAIRMAN GENSLER: 7 U.S.C. 1a(47). And you had that button made up?

MR. ARON: I also had this button made up for Julian.

CHAIRMAN GENSLER: Mr. Swap.

MR. HAMMAR: I refuse to wear it.

CHAIRMAN GENSLER: Thank you. Before I say that I support this, I wanted to ask a couple of questions about some things we did in the past. You mentioned, Julian, the energy policy statement? I'm trying to remember exactly the words.

MR. HAMMAR: The energy exemption.

CHAIRMAN GENSLER: The energy exemption. With this vote that we're likely to take shortly, the energy exemption goes away because of the intersection of Dodd-Frank and this? I want to confirm is that correct?

MR. HAMMAR: That's correct.

CHAIRMAN GENSLER: Then I don't remember the footnote, but I want to confirm on the record again that the swaps policy statement that was done by this Commission in the late 1980s was superseded by Dodd-Frank, but what footnote is that? Footnote 228 I'm told says that Dodd-Frank supersedes it. Is that correct?

MR. HAMMAR: Correct.

CHAIRMAN GENSLER: By superseding it, that means in essence by act of Congress that it goes away. Is that correct?

MR. HAMMAR: That's right.

CHAIRMAN GENSLER: If somebody is looking for guidance, now they look here for guidance as opposed to those two provisions?

MR. HAMMAR: That's correct.

CHAIRMAN GENSLER: I support the final rulemaking. To implement Dodd-Frank reforms required us to further define the word swap and I'll have a longer statement for the Federal Register. We've worked by closely with the Securities and Exchange Commission with consultation with the Federal Reserve on these final rules. I think the statutory definition laid out by Congress was quiet detailed, but I think these final rules and interpretations are consistent with that which was detailed by Congress and we sought significant public comment starting with an Advanced Notice of Proposed Rulemaking and then a proposal and then of course this final rule and 2 years of meetings and input.

Interest rate swaps, currency swaps, commodity swaps including energy, agricultural and metal swaps, broad-based index swaps such as index credit default swaps that have been in the news recently around the JP Morgan Chase's chief investment officer, they're all swaps and will come under this significant reform that this agency has been tasked by the Congress to do. This is the day that many members of Congress and this Commission see as fulfilling the mandate that you asked us to fulfill to bring this reform to life. In preparing this final rulemaking, we've gotten excellent comments from the public and are trying to provide guidance where we can, but there is no doubt going to be more questions in the future.

One area is that the CFTC does not regulate forward contracts. That's under the Commodities and Exchange Act. And over the decades there have been a series of orders and interpretations of cases that market participants have come to rely on regarding that exception for the difference between futures and forwards and forwards with embedded options. And consistent with that history and he Dodd-Frank

Act as Julian said earlier, excluded any sale of nonfinancial commodity or security for deferred shipment or delivery so long as the transaction is intended to be physically settled. That's a quote from statute. I believe that what we're doing today, the interpretation and the exclusions therein, are consistent with our precedent and consistent with what Congress laid out. But in response to many commenters, we provide a lot of increased clarity on the forward exclusion from futures regulation. The final release also provides guidance regarding something called forwards with embedded volumetric options, a mouthful again, something that probably 2 years ago I did not focus on I would say when we started this exercise. But they're used within the electricity markets, and there were a lot of comments particularly from the electricity markets that we addressed and I think they were good comments. I hope when people take a look at this final release that they see that we've been thoughtful in what we've done, but we've also asked for some further comment as well.

Consistent with Dodd-Frank, insurance

products will not be regulated as swaps, and I think Julian did an excellent job laying that out. We also have addressed consumer commercial transactions, and have taken care of in this release my favorite one that when I guarantee my daughter's credit card or debit cards, I have two girls at college, that apparently is not a swap. Julian, can you confirm? I want to make sure.

MR. HAMMAR: That's correct.

CHAIRMAN GENSLER: This was a special comment that you did take care of. Thank you. I think some public members also beyond me raised that. It provides also clarity with the distinction between a swap and a security-based swap. As Commission Wetjen said, there still may be questions out in front of us. The rule provides for a process of requesting joint interpretations in circumstances where you have questions. And there have been a lot of years where market participants have come to the SEC and CFTC and have asked is this a future or a security, maybe it's a swap or a security- based swap? We've laid out a process. I think it's a good process. I think it will address what has been some frankly

frustration of market participants over the years. The working relationship with the SEC is terrific know but that doesn't mean that it will always be as terrific so that we did lay out a process to address that. Lastly, the final release also has specific provisions to guard against transactions that are willfully structured to evade Dodd-Frank.

Again I want to express my appreciation for the dedication and work of Chairman Shapiro and her fellow Commissions at the SEC as well as the staff, Robert Cook, Brian Bussey, Amy Starr, Donna Chambers, Kristie March, Andy Schoeffler, Wenchi Hu, John Guidorz and Sara Otte. It has been a true partnership. I also want to thank the hard- working staff here of Julian Hammar and Lee Ann Duffy who have been co-leading this. I would say Terry Arbit, you're now on this side of the stage but you were our first team lead on this and we couldn't have gotten here without the work you've done, Terry on this; Eric Juzenas, Steve Case, David Aron and so many, many others. I particularly want to come back to Chairman Shapiro. It's been a remarkable partnership and

these two joint rules are the first two final rules that the SEC is doing on derivatives, and though there are -- I think the Commissioners at the SEC put a lot of other things a little bit to the side and helped us get this over the line. They didn't necessarily have to do that and I am deeply appreciative that they worked with us to get this hopefully across the line. With that I turn it over to Commissioner Sommers.

COMMISSIONER SOMMERS: Thank you, Mr. Chairman. I have a couple of questions on the nondeliverable Forex forwards. My understanding of the way a deliverable versus a nondeliverable Forex forward would work is that they're pretty much functionally equivalent. So my question for the team is how we've drawn this distinction and why we've drawn this distinction between the deliverable versus nondeliverable.

MR. HAMMAR: The way a nondeliverable forward contract works is that it's cash settled usually in U.S. Dollars, so in one currency, but the statutory definition of foreign exchange forward requires an exchange of two currencies so that because there is no actual exchange under a

nondeliverable forward, staff didn't think that we had the authority to further define an NDF as a foreign exchange forward, but they do meet the swap definition. That said, the comments did express concerns about competitiveness of U.S. Companies with respect to markets where NDFs are traded and they're primarily in many countries that have currency controls. The biggest one I think is Korea. It may be something that the Commission could address later in terms of a 4(c) petition or something like that if it's determined that some Dodd-Frank Act requirements wouldn't be suitable for NDFs. But as a definitional matter, we didn't believe we had the legal authority to say that they're not swaps.

COMMISSIONER SOMMERS: Thank you for that explanation. I would say that without some sort of more concrete evidenced of congressional intent in this area that I would be hopeful that this is something that we will continue to look at and may be able to down the line fix. My other question is related, whether or not we know how other global regulators will treat these types of products and if they have any intention of

treating them in the same way.

MR. HAMMAR: I'm not sure if we know they will be treated, although anecdotally as seen from articles and so forth that NDFs seem to be part of the discussions in terms of people wanting to clear them all over the world.

MR. ARON: I want to add that on functional equivalence, there are a number of products that are functionally equivalent like if there is going to be a swap cleared and traded on an exchange then it's pretty similar to a futures, but yet we have pretty different regulatory regimes and then the narrow-based index versus broad-based index there is a line at 9 and 10 and the SEC regulates them one way and we regulate them a different way, futures can be decomposed into options but we have different authority over those, so there has to be a line somewhere and these fall on the swap side.

COMMISSIONER SOMMERS: I don't disagree with that. However, I'm not sure if I agree that that's a very good reason for this. The other question with regard to this issue is obviously the Treasury decision on whether to exempt swaps

and deliverable forwards would have a great impact on this. Do we have any idea about Treasury's timing on their decision?

MR. HAMMAR: First I would say that Treasury did agree with us with respect to NDFs. In in their proposed determination they did indicate that NDFs would not be covered by the secretary's determination. I think our understanding is that they will be considering the final exemptive determination shortly after action on the product definitions is taken by our Commissions.

CHAIRMAN GENSLER: Commissioner O'Malia?

COMMISSIONER O'MALIA: Channeling Commissioner Chilton, I hope this isn't a clown question. Julian, you mentioned a 4(c) exemption for NDFs. How do we provide a 4(c) if you said the statute doesn't allow for it?

MR. HAMMAR: That would be an exemption say from the substantive requirements applicable to swaps that we can exempt from -- and then from the definition.

COMMISSIONER O'MALIA: Certain

clearing requirements or other things?

MR. HAMMAR: Right.

COMMISSIONER O'MALIA: In my question I'm going to focus on the forward contracts, and in what we've laid out here in this interpretation there's a bit of a process here and I'm going to run through a couple of process questions and you can lay out what it's going to be so that everybody will understand what this does. We've added several questions to the end of the forward exclusion discussion regarding the zero delivery volumetric options. Going forward, please explain the process by which the Commission will address comments received in response to these questions. And will there be any particular time period that the public has to respond to these comments, what will be the result of process and when can they expect a result? What is the turnaround? They're going to submit comments and we're going to review them. Then what happens? Are we going to take further question or what? And what is the controlling legal authority in the meantime?

MR. HAMMAR: We have put in a 60-day

comment period for people to comment on the questions. We think it is an interpretation of the Commission so market participants can rely on it. Since the Commission hasn't talked about volumetric optionality before and we did have a lot of comments from the electric industry and so forth about these types of contracts, they will be able to rely on it. What we're trying to do with this request for comments is to make sure that we're getting it right because it is a new interpretation for us. But it would be 60 days and we'll take a look at the comments that we receive and it's up to the Commission on how you want to take action on it, but we'll make a recommendation and I think we'll go from there.

COMMISSIONER O'MALIA: But we will be making a recommendation based on essentially a final interpretation or is that not certain?

MR. HAMMAR: You could say it's like an interim final interpretation, but the Administrative Procedure Act doesn't have such a thing it's my understanding because interpretations aren't subject to notice and comment, rules are, but that doesn't mean an

agency can't ask for comment on an interpretation and that's what we're doing to try to get it right.

COMMISSIONER O'MALIA: In the interim, what type of relief if any will the Commission be willing to provide market participants on these issues? Is this something where we're going to wait for the comment period to end, formulate our final guidance and them move forward within the 60-day period because all of this implements after the comment period? All of this is final. That happens to occur on the same date.

MR. HAMMAR: The relief will go into effect at 60 days so they'll have that relief. If we need to make adjustments to it, we'll try to make adjustments as quickly as possible.

COMMISSIONER O'MALIA: Steve, I know you've worked on this cost-benefit analysis and we've made some improvements to this one. Can you briefly highlight how we've made some of these improvements in general, and was it as painful as people thought it might be?

MR. KANE: There were two really substantive changes we made. We had to consider not just the assessment costs of whether it's a

swap or not or a security-based swap, we also had to consider the programmatic costs to consider the rules that were effectuated, by product definitions being effectuated and also the subsequent rules that come. So we had to take all of Title VII and consider it in total in this rulemaking, that was something we hadn't done before and then of course the baseline being the status quo.

COMMISSIONER O'MALIA: I think the baseline is critically important. It wasn't Dodd-Frank that made us do it. In determining our estimates, it's actually the current baseline.

MR. KANE: Let me say to clarify that we did the baseline, the status quo for informative purposes. We still feel that we're bound under 15(a) in our discretion which would be starting where the statute starts.

COMMISSIONER O'MALIA: Is this a major rule?

MR. KANE: It's a major rule because it effectuates major rules.

COMMISSIONER O'MALIA: What economic impact does it have? It's a $100 million annual

economic impact at a minimum? Is that what the determination was?

MR. KANE: Yes.

COMMISSIONER O'MALIA: And each of the other rules like the external business conduct, internal business conduct, all of those are major rules as well. Right?

MR. KANE: We checked a few of the rules. If any single rule that's effectuated is a major rule, then it forces this one to be a major rule.

COMMISSIONER O'MALIA: Thank you.

CHAIRMAN GENSLER: Thank you, Commissioner O'Malia. Commissioner Chilton?

COMMISSIONER CHILTON: Thank you. I want to thank staff for our hard work. It's been a long one. You've been working on this for months and months and I know it's been a pain and I've been part of that pain so that I understand. I feel your pain.

I wanted to thank Terry Arbit who was one of the good attorneys when I was going through the confirmation process, when Jill and I were going through, and Terry really helped me out and did a good job. He's helping Commissioner Wetjen

now. He made a bunch of I think very positive technical changes that make this rule read better. So I'm thanking Terry and his boss Commissioner Wetjen for those technical changes.

I do have some questions about the technical generically. There is this issue that I want to get to in a moment that my colleagues have talked about, the forwards with volumetric optionality. As the Chairman said, it's a mouthful. But save that from the other things, the other technical. The SEC after months and months, and I don't have to go into how long it took and why it took so long. They voted on it on Friday, it was 5-0, they passed this thing that we've been waiting for that I've criticized them for at times and we got this thing. Then we had all of these subsequent to the passage. We had all of these very good technical changes. It's a pretty document. It reads better. But one question I had is, are there any policy questions again absent the forward issue? Are there any policy issues that are addressed of any significance, Julian, in the technicals or are they merely technicals?

MR. HAMMAR: I would say they are technicals.

COMMISSIONER CHILTON: What we've done in the past on some things that are de minimis in nature and make something better and look pretty is that we've used delegated authority and we've dealt with it many times in interpretative guidance. I'm going to get to the forwards issue, but with regard to the technicals, we do these technicals, we put them in the rule, then the guys that I've been complaining about for 8 months who finally did the rule, we're sending it back to them again. It's like how many times do you got to be punched in the guy? Maybe they don't care about this stuff is what I'm told, the SEC. This is so far in the weeds on our bus, CFTC's bus, the SEC doesn't care about it, and I'm told by staff that our staff really believes that the SEC will just do this. It might happen by osmosis. It just might happen. But I'm a little skeptical. So that's one issue. Notwithstanding that I think these technicals are very good technicals and it reads better, and prettier is not the best word I'm sure, but it's what I came up with now, so very

pretty.

Now this forwards with volumetric optionality. That's the policy change here. I've talked with the folks who've come in and talked with Commissioners about the importance of forwards and I agree they're important. I agree they should continue. And as my colleagues have talked about, they are not on our bus. Forwards aren't our jurisdiction. So that's the law. They're not ours. But I'm a little concerned that if you go back to the financial crisis, complexity in financial products is really what got us. People didn't know what was what. Things were unleveraged. I'm a little concerned that these good forwards, the forwards that had been used for legitimate purposes, are going to morph sort of chimerical. Remember the mythological creature with the lion's head, the goat's body and the snake's tail? They're sort of going to morph. They don't necessarily have to, but that's what I want to ask a couple of questions about, Julian. What we're doing in here, and follow me if you will, guys, is we are excluding all forwards. An exclusion is different than an exemption. Yes,

an exemption. An exemption is you could still have bells and whistles. So we're exempting you, but you got to report, you got to do this, whatever bells and whistles we determine to put on. And exclusion is you're off the bus. You might say but you just said that the law said that forwards aren't on your bus. So why do you have a problem with it? It's because of the potential chimerical nature of what the forwards could become. Again, I want forwards. I want them to be able to use them. I understand they're important. But I don't want to create some chimerical product or I don't want to open the door for the possible creation of a chimerical product that is a forward yet has embedded as part of the contract a commodity option and a commodity option is on our bus. That's ours. The question really comes to delivery of the physical product. Julian, what happens if a forward which again is off our bus contains some optionality and it does not deliver for some reason? I'm not saying it's some nefarious reason. It could be an emergency. It could be for some other reason. You described, Julian, when you were talking about I think the

seven factors or a couple of the factors, but if there is a failure to deliver, if they book out this forward and they don't take delivery because to me it looks like a swap then again on our bus, a swap, but if it's forward and it doesn't take delivery, what happens?

MR. HAMMAR: We have to take a look at the particular facts in question. With respect to a book out, that would be okay under the Brent interpretation guidance if it's between commercial participants and it's a separately subsequent negotiated agreement meaning it can't be an automatic thing that you and I can just say on delivery. We both separately have to agree that delivery can be cancelled. I guess what you're getting at is in the context it's really that former case where if the contract says you can cancel it, and what we are saying in this release is that actual delivery is important, but at the same time we're also saying the seventh element of the seven-part test which says that if there is volumetric optionality, it has to be due to physical factors or regulatory requirements beyond the parties' control. What we were

thinking of was contracts particularly with electricity where you have things like heat waves like we've just been experiencing or the weather which cause varying demand. Or these are things like the RTOs and ISOs may require companies to curtail their power usage from the grid so that we have optionality there and that would be the regulatory types of requirements we were thinking of. Under that seven-part test the overall facts and circumstances, the Commission's traditional way of looking at forwards, still applies so we will still be looking at the facts and circumstances.

COMMISSIONER CHILTON: Thank you. If I'm a commercial and I enter into a forward and embedded in there may be my commodity option to buy at certain prices, et cetera, and at the end something happens, there's a heat wave and I don't need it, I can get out of it. And it seems like a totally reasonable circumstance and there are others I'm sure that people would describe too. Again if it's forward it's totally off the Dodd-Frank bus. No margin. No capital requirement. No reporting. No enforcement.

Nothing. Totally off. Here's what we know. There are attorneys out there hawking ways around Dodd-Frank. Somebody I know went to a conference the other day, and this has come to us, we're going to tell you how to get around it, not this thing specifically. But we know that that's part and parcel of our society. That's what happens. Here is my second question, Julian. What if I decide I want to get out of it because I can make more money or I won't lose as much money or whatever the circumstance is that didn't have anything to do with the weather? You just said that we would frown upon it or it may not meet the test, but is there a requirement if I get out of it, if I book it out the forward that's off our bus? Is there a requirement that I tell the agency I've gone ahead and I've booked this out? What if 10 percent of my forwards are booked out, or 20 percent or 30 or 50? Is there any requirement on the commercial to report to this agency whether or not they've booked out and not taken delivery?

MR. HAMMAR: No, but that is consistent with the Commission's prior interpretation of Brent.

COMMISSIONER CHILTON: There is no requirement here. Okay.

CHAIRMAN GENSLER: Are you meaning to use the words booked out or cash settled? Because booked out in the Brent interp means something different I think than just cash settled.

COMMISSIONER CHILTON: Don't take physical delivery. Don't take physical delivery. Your answer is the same. Right?

MR. HAMMAR: Yes, that's right. Why if it's booked out there is no reporting requirement. It just as I say has to be done through a subsequent --

CHAIRMAN GENSLER: Julian, that's booked out. Booked out means moving the transaction to another party as contrasted to purely cashed settled, a cash settled option where somebody has a choice.

MR. HAMMAR: That's right.

CHAIRMAN GENSLER: That's different than booked out isn't it?

MR. HAMMAR: That's correct because a book out is a separate agreement, whereas what you just described as a cash settlement would be part

of the contract.

COMMISSIONER CHILTON: A book out could also be internal, our own. You could have another contract where you wouldn't take physical delivery but you could do something else so you could just do it internally yourself. The point in either one of these is that it's not taking physical delivery.

CHAIRMAN GENSLER: Yes, but I think his answer would be different if it's not a book out. If it's just purely a cash settled option, isn't that a swap?

MR. HAMMAR: Yes. That's correct.

CHAIRMAN GENSLER: I know that the public listening might think what's the difference between a book out and a cash settled option, but there is some distinction back to this Brent interpretation of 20-some years ago is there not?

MR. HAMMAR: Right. The cash settled option would be embedded within the contract meaning that I can exercise it without having to get Commissioner Chilton's permission if I'm contracting with him. But with the Brent

interpretation, I would have to get his permission to book out the contract and cancel it.

CHAIRMAN GENSLER: I know it's like way into details that I myself sometimes get confused on, but Congress said commodity options are swaps did they not?

MR. HAMMAR: Yes, and the release says that.

CHAIRMAN GENSLER: That's what Congress said.

COMMISSIONER CHILTON: I'm saying that they would call it a forward, it would not be required, and I'm okay with a forward not being on our bus. That's the law. No problem. I like forwards. I'm okay with forwards. We've got all of these changes. We've got all of these good technical changes which are sort of the grass and I'm worried that this provision is sort of a snake in the grass, that it's lurking in there and it's going to be used. It may not, but that it's possibly going to be used, that somebody will call it a forward and then they will not take delivery, they will go ahead and use it as an evasive mechanism. Potentially it could be the new Enron

loophole and I think that's just icky. I'm not sure what to do about it, but it's a concern I have and I don't think we're reached the right balance on it.

CHAIRMAN GENSLER: I'm going to turn to Commissioner Wetjen, but could I ask two technical questions? I don't know if anybody from the Division of Enforcement is here. Julian, you and Lee Ann are going to get this one. As to our jurisdiction over forwards, is it not the case that we still have antifraud and antimanipulation authority over commodity contracts entered into in interstate commerce? Here's Dan Berkovitz. Dan, you can come up to the mike too because I want to make sure we have something on the record for all future enforcement actions. I would not want a bunch of really thoughtful lawyers in this audience thinking we gave up something and I want to make sure that the record is clear to all those attorneys out there in the world.

MR. BERKOVITZ: Antimanipulation authority extends to the commodity itself.

CHAIRMAN GENSLER: Could you say it louder and closer to the mike?

MR. BERKOVITZ: The Commission's antimanipulation authority extends to involving the commodity itself in addition to the futures and the swaps.

CHAIRMAN GENSLER: I want you on the record as the General Counsel, it extends to forwards?

MR. BERKOVITZ: Yes, it would.

CHAIRMAN GENSLER: I want to make sure that there is something that is still on our bus. It might still leave you with that feeling of icky, but I just wanted to make sure.

COMMISSIONER CHILTON: It does. First of all, thank you. I appreciate that and appreciate Mr. Berkovitz's statement. For us to take an enforcement we sort of got to get some information and if it's not required that they report, these forwards that have turned into swaps, again there may be a legitimate reason for some of them, but I'm worried that all of a sudden we're going to see chimerical products that are created in using this little provision which I think is trying to fix a good thing, trying to deal with forwards in an appropriate way, but I think

we've missed the mark on it and that it could be expanded. That's exactly the type of thing that happened in 2008. There were lawyers out there last week talking about ways around this. If we don't get the information, if we're not even getting it as a baseline on our radar screen, how the heck would we do any enforcement to begin with or why would we do any enforcement? How would we be alerted? So that's my concern.

CHAIRMAN GENSLER: The current concern being valid, I want to make sure I have something on the record. Phyllis Cela who is the Chief Counsel and Deputy of the Division of Enforcement, the question is, are forwards under our enforcement authority for fraud and manipulation, et cetera?

MS. CELA: Yes. Section 6(c)(1) and Rule 180.1 which the Commission promulgated recently both address contracts of sale of a commodity in interstate commerce which would include forward contracts. And in the antimanipulation provision, 9(a)(2), there is also price manipulation for commodities in interstate commerce which forwards would

include.

CHAIRMAN GENSLER: I'm not taking away from your concern, but I want to make sure that's for the public.

MR. ARON: There is also the whistleblower authority. I don't know if that totally addresses your concern, but that may be one way we could get information about if people are intentionally trying to evade.

CHAIRMAN GENSLER: Commissioner Wetjen?

COMMISSIONER WETJEN: Thanks, Mr. Chairman. Thanks to the team. I also want to add my thanks to Terry Arbit who has been helping me shortly after I became a Commission and he's been extremely valuable in helping me work with you guys and the SEC and the rest of my colleagues here on this particular rule, so I wanted to thank Terry.

Originally I wasn't going to ask this, but in light of the recent discussion here on the dais I figured I would. We do have a section in this rule and in the preamble discussion concerning antievasion, do we not, Julian?

MR. HAMMAR: Yes. That's correct.

COMMISSIONER WETJEN: I think there were some important changes made I believe from the proposal or changes to the proposal that now appear in the final concerning a seenter (?) requirement. Isn't that correct?

MR. HAMMAR: Yes, that is in there.

COMMISSIONER WETJEN: Isn't it also the case that if someone were to try and create a so-called chimerical product that was designed to evade or was designed to qualify as a forward rather than a swap and it was willfully in order to avoid the swap regulatory regime, couldn't the Division of Enforcement bring an action against the parties to that instrument?

MR. HAMMAR: Yes, that's correct.

COMMISSIONER WETJEN: The one other question I had is a follow-up to a question that Commissioner O'Malia asked. He asked about what kind of relief we're providing in this release. What are people going to do in the meantime while we go out for comment in particular on these questions concerning the forwards with embedded volumetric optionality? One of the other things

I mentioned in my statement as well is that I think one of the other things we do here in this release is we also provide some relief under the trade option interim final rule that we recently passed and I wondered if you could walk us through that.

MR. HAMMAR: The release mentions that CFTC staff will be preparing no action relief with respect to the trade option exemption until December 31 of this year.

COMMISSIONER WETJEN: I wanted to ask this question too because again I think it responds in some respects to some of the concerns raised by Commissioner Chilton. The idea here with both this release and extending the compliance date for the trade option rule is so we can gather more information. We have a series of questions laid out in the interpretative guidance concerning the seven-part test that we put together in the release. But I think we're making very, very good policy here and we're referring in particular to some of these types of instruments or contracts we don't know that much about including capacity contracts, transmission services agreements and tolling agreements.

These are three in particular that we mention in our release and they are ones that we don't have a lot of information about, but they're ones that are used quite frequently by market participants in the electricity field as you alluded to. By asking for comments about our guidance, we are acknowledging that we need to learn more about more and in some cases some of these agreements might be forwards, in other cases they might be trade options and depending on which column you're in, the instrument is going to be treated differently. In the case of forwards it's excluded completely as Commissioner Chilton and others have mentioned. But I think this is actually very, very good policy because we're looking at these two rules together, we're reviewing the comments to both rules together and the Commission is going to try and sort out based on those comments whether or not the seven-part test is right enough and accurate enough and if it's not we can adjust. Certainly once the rule becomes effective as we just discussed, there is this antievasion authority that can be relied upon if it's quite clear to the Commission that

someone is purposefully designing an instrument to avoid regulation by the Commission. I also think that, Commissioner Chilton, some of your concerns are very good ones, but I think that they are well addressed in the release. I think that's all I have on this rule, but thanks again to staff. I appreciate your help.

CHAIRMAN GENSLER: Thank you, Commissioner Wetjen. May I ask one? If a contract, electricity, natural gas, oil, any physical product, meets five or six parts of the seven- part test but not all seven, is it still a swap?

MR. HAMMAR: It wouldn't satisfy the forward exclusion.

CHAIRMAN GENSLER: So it's a conjunctive that's an "and," one, plus two, plus three, all the way down to seven?

MR. HAMMAR: That's right.

COMMISSIONER WETJEN: Or it could be an option too.

CHAIRMAN GENSLER: It could be an option, but Congress says an option is a swap and then we by another release said trade options might get

limited regulatory treatment. Is that correct?

MR. HAMMAR: That's correct.

CHAIRMAN GENSLER: So Congress defined options as swaps, but we by other regulatory treatment said it's under limited treatment of enforcement authority, some reporting position limits and a couple of things for swap dealers if I remember. Is that right?

MR. HAMMAR: Yes.

CHAIRMAN GENSLER: Thank you. Are there any other questions? Mr. Stawick, if you wish to call the roll.

MR. STAWICK: Commission Wetjen?

COMMISSIONER WETJEN: Aye.

MR. STAWICK: Commissioner Wetjen, aye. Commissioner O'Malia?

COMMISSIONER O'MALIA: Aye.

MR. STAWICK: Commissioner O'Malia, aye. Commissioner Chilton?

COMMISSIONER CHILTON: No.

MR. STAWICK: Commissioner Chilton, no. Commissioner Sommers?

COMMISSIONER SOMMERS: Aye.

MR. STAWICK: Commissioner Sommers, aye.

Mr. Chairman?

CHAIRMAN GENSLER: Aye.

MR. STAWICK: Mr. Chairman, aye. Mr. Chairman, on this question the yeas are four, the nays are one.

CHAIRMAN GENSLER: The ayes having it, then we will be sending it along with the SEC to the Federal Register. I probably at some point have to have a vote on technical amendments. Should I do it now or should I do it later?

MR. STAWICK: You may do it at any time.

CHAIRMAN GENSLER: I ask for unanimous consent to accept on this and the other two things we'll do today, technical amendments absent objection. Thank you very much. We'll hand it over to Erik and others on the clearing and risk team. I'd like to welcome Ananda Radhakrishnan, Eileen Donovan, Erik Remmler, Cam Nunery and Jon DeBord, many from the Division of Clearing and Risk and Cam from the Office of Chief Economist to discuss their staff recommendation on the end-user exception to clearing requirement and subsequently to this provision on cooperatives.

Ananda or Erik?

MR. RADHAKRISHNAN: Thank you, Mr. Chairman, and I'd like to thank the commissioners and their staffs for their valuable comments as well as --

CHAIRMAN GENSLER: Pull the mic just a little closer.

MR. RADHAKRISHNAN: I'd like to thank the commissioners and their staffs for their very valuable comments on this final rule and the proposed rule and for the team for their hard work. I'm going to turn it over to Erik Remmler and Eileen Donovan.

MR. REMMLER: Thank you, Ananda. Good morning, still, commissioners.

CHAIRMAN GENSLER: You may move the mic closer. I'm sure it's my hearing.

MR. REMMLER: Okay. The final rule before you now would implement what is commonly referred to as the end-user exception to the swap clearing requirement in the Dodd-Frank Act. Before I get into the particulars of the rule we would like to recognize the hard work and contribution of the staff of the Division of Clearing and Risk as well as of the Offices of the

General Counsel and the Chief Economist. Finalizing this rule was truly a team effort and all of the folks who worked on it contributed significantly to making it a better regulation.

This rule was originally proposed and published for public comment on December 23, 2010. The Commission received over 2,000 comment letters and held over 30 meetings with interested parties, all of which are posted on the website.

The statutory background for this rule is that in Section 723 of the Dodd-Frank Act requires that any swap that is entered into by two parties must be cleared, if required, by the act unless the swap is submitted -- I'm sorry, it is unlawful for parties to engage in a swap unless they submit the swap for clearing to a derivatives clearing organization. The Dodd-Frank Act also establishes an exemption from this clearing requirement, which is codified in 2(h)(7) of the Commodity Exchange Act, for swaps entered into by non- financial entities for the purpose of hedging or mitigating commercial risk. The act defines what a financial entity is and provides limited exceptions from that definition.

It also directs the Commission to consider whether to exempt certain small financial institutions from the definition of "financial entity." In doing so, small financial institutions would be permitted to use the end-user exception as well.

Turning to the final rule before you, it has four paragraphs. The first largely reiterates the basic provisions of the exemption in the act. Paragraph B sets out the reporting requirements that would be triggered if the exemption is elected. Paragraph C provides the criteria for what is hedging or mitigating commercial risk that must be complied with to elect the exception. And paragraph D would implement a small financial institution exemption. I will address the first two paragraphs and Eileen, my co-lead, will address the last two.

Paragraph A largely reiterates the basic exception provisions of the Dodd-Frank Act and provides that to elect the exception for a swap, the counterparty must not be a financial entity as defined in the act; must be using the

swap to hedge or mitigate commercial risk, criteria for which are provided in Section C of the rule; and must report the information required by Section B of the rule.

Section B is the reporting section and it requires that on a swap-by-swap basis the parties report that the exception is being elected and who the counterparty is that is electing the exception. These two pieces of information are necessary for the Commission to know that the exception is being used..

In addition, paragraph B requires reporting of information about the electing counterparty. This reporting can be done either on a swap-by-swap basis or an annual basis. The information that must be reported regarding the electing counterparty is whether it's a financial entity and, if so, under what exemption from that definition it is using to elect the exception.

Second, the parties must confirm that the swap is hedging or mitigating commercial risk.

Next, notice of how the electing counterparty satisfies its obligations with

regard to non-cleared swaps must be reported, which is a specific requirement in the Dodd- Frank Act.

And finally, for elected parties that issue securities or file reports under the Securities Exchange Act of 1934, the Commission must be notified whether a committee or the board of the electing counterparty has approved the decision to enter into non-cleared swaps. That reporting requirement was necessitated by Section 2(j) of the Commodity Exchange Act.

I would just point out with regard to the reporting requirements, in the proposed rule we received quite a few comments about the reporting requirements with regard to the end users, and the commenters indicated that most of these requirements will not change from one swap to the next and that periodic reporting should be allowed rather than swap-by- swap reporting. In consideration of those comments we added the option for annual reporting by the electing counterparty.

MS. DONOVAN: As Erik mentioned, Section 2(h)(7)(A)(iii) of the Commodity

Exchange Act requires that for a swap to qualify for the end-user exception the elected counterparty must be using the swap to hedge or mitigate commercial risk. Paragraph C of the rule sets out the criteria for determining whether a swap hedges or mitigates commercial risk for purposes of the exception.

The criteria are virtually the same as the criteria for hedging or mitigating commercial risk recently adopted by the Commission in connection with the definition of "major swap participant." Paragraph C lists several types of commercial risks that would qualify and includes swaps that qualify as bona fide hedging for purposes of position limits and swaps that qualify for hedging treatment under accounting standards. The rule also specifies that a swap does not qualify if it is used for a purpose that is in the nature of speculating, investing, or trading, or if it's used to hedge or mitigate the risk of another swap unless the other swap itself is used to hedge or mitigate commercial risk.

And finally, paragraph D covers the exemption for small financial institutions.

Section 2(h)(7)(C)(ii) of the Commodity Exchange Act directed the Commission to consider whether to exempt small banks, savings associations, farm credit system institutions, and credit unions, particularly those with total assets of $10 billion or less from the definition of "financial entity" used in the end-user exception. While the proposed rule did not include any specific language for an exemption, the Notice of Proposed Rulemaking did request comments on a number of questions related to a possible exemption. Based upon those comments the final rule exempts banks, savings associations, farm credit system institutions, and credit unions with total assets of $10 billion or less from the definition of "financial entity," making such institutions eligible for the end-user exception.

We welcome your questions.

CHAIRMAN GENSLER: Thank you. I'm going to move back to my seat.

The chair will now entertain a motion to accept the staff recommendation on this final rule on end-user exceptions.

COMMISSIONER SOMMERS: So moved.

COMMISSIONER CHILTON: Second.

CHAIRMAN GENSLER: I support this final rule. I want to thank the team on working this through, I think working it through with the public, working it through with five commissioners, all of whom have been very engaged on this. One of the primary goals of Dodd-Frank is to lower risk of this interconnected financial system, and swaps tie together so much of the financial system: Insurance companies, banks, hedge funds, leasing companies, but also the largest swap dealers around the globe. Based on Bank of International Settlement statistics it's estimated somewhere a little bit more than 90 percent, maybe 91 percent, of the notional value of swaps around the globe are between financial entities and other financial entities. And Congress moving forward said we've got to lower the risk of this interconnected system and bring those swaps into central clearing. But the 9 or 10 percent that's with non-financial firms, particularly those hedging or mitigating risk, are not going to be required to come into central clearing, but get a choice.

Congress made that policy choice. We're supportive of that. A similar policy choice was actually made recently in Europe, in the European Parliament working with the European Commission. So I think this is a critical foundational rule to effectuate the intent of Congress that non-financial end users have this choice. Farmers, ranchers, manufacturers, other end users get the benefit of a lower risk financial system and if they want to use clearing, they can; if they don't, they don't need to.

I think we also benefited this final rule establishing clarity and clear lines. Commissioner Wetjen speaks about that in a number of rules, but I think this rule has benefited from a great deal of your input. And Commissioner Wetjen and I have spent probably three months chatting, but I think it's been very constructive and we've gotten to, you know, greater clarity in this role.

We've taken up the issue that Congress said we shall consider. When Congress says we shall consider, here we are, we have considered it in taking up this small financial institution

exemption, the $10 billion or less exemption for small financial institutions, including small banks, savings associations, farm credit systems, and credit unions..

So I'm going to support this rule, but I turn it to Commissioner Sommers.

COMMISSIONER SOMMERS: Thank you, Mr. Chairman. I have a couple of different questions on the captive finance companies issue. And understand that this is not an easy issue because the way the statute's written it's not perfectly clear who qualifies and I know we got a lot of comments on this. There have been a number of members of Congress who have made it clear to us that they intended for us to allow these types of companies to qualify for this exception. And in some of the comment letters we were asked to create a simple test to determine who could qualify with regard to this, the two-pronged 90 percent test. And can you explain why we didn't end up doing that?

MR. RADHAKRISHNAN: I think it's because the test is in the statute. And the issue is if you stray from the statute, then -- the

question is if you stray, what line are you going to draw? If you're going to draw some other line, then you're ignoring the statute.

In our view -- well, the Division's view, the statute is very clear. It may not be perfectly written, in which my response is then it's up to Congress to fix it. And with all due respect to members of Congress who want us to do things, they're the lawmakers, not us.

And I'm really expressing a personal opinion, I'm very concerned about the Commission or the staff recommending things to the Commission to give effect to somebody's intention as expressed in a letter somewhere. We have a statute to look at and I urge the Commission not to stray from the statute.

So the statute has a two-pronged test. One, the definition of a financial entity does not include an entity whose primary business is providing financing and uses derivatives for the purpose of hedging underlying commercial risk relating to interest rate and foreign currency exposures, 90 percent or more of which arise from financing that facilitates the purchase or lease

of products. So the exposures, 90 percent of the exposures or more have to arise from financing that facilitates the purchase or lease of products and then 90 percent or more of which are manufactured by the parent company.

So the staff thought that that was pretty clear. It may be that this was put in for and benefits certain companies. It is what it is. We thought that that was a very clear test and so we just didn't know what other test we could provide.

COMMISSIONER SOMMERS: And so we've chosen to read the statute as those two prongs have to be read separately --

MR. RADHAKRISHNAN: Exactly, right.

COMMISSIONER SOMMERS: -- yet you have to meet both tests in order to qualify.

MR. RADHAKRISHNAN: Right, correct. Correct.

COMMISSIONER SOMMERS: So, you know, I think that this may be an area where if we have not gotten it right, that Congress may choose to revisit because I do not disagree with you that this is not crystal clear. When you take into

consideration somebody's specific business use of this type of exception, you know, will we, on a case-by-case basis, be able to allow somebody to take advantage of this exception if it's not clear to them in reading the statute whether or not they qualify?

MR. RADHAKRISHNAN: I think there have been some people who commented about certain activities. And I think -- well, two things. One, people have invited us to just ignore one of those prongs, which I submit we cannot do. Two, some of them -- the question relates to 90 percent or more of which are manufactured by the parent company. Right?

So somebody says I got a car dealership and, you know, I got a Volkswagen dealership and a Subaru dealership. Right? But I'm in the business of selling cars, so does it apply for both of them? And the answer -- and let's say the captive company is a Volkswagen company. I'm not picking on Volkswagen, but, you know, it just happens. So can they qualify if they finance Subarus? The answer is no, they can't because it says, "90 percent or more of which are

manufactured by the parent company." So if you're VW Credit and you're providing financing for buying Subarus because the guy who's your dealer happens to sell both VWs and Subarus, you can't take advantage of this exception.

So basically what I'm saying is if it's VW Credit or Ford Credit, 90 percent or more of the sales have to be sales of Ford Motor cars.

COMMISSIONER SOMMERS: Okay, thank you. I do think this may end up being an issue for some people.

My next question, again, to reiterate, I'm very encouraged to know that we have included the exception for the small financial institutions. Even though we decided to stick with the 10 billion, at least it's in there.

Footnote 80 suggests that we're in harmony with the SEC on their proposal. Did the SEC also propose a $10 billion threshold? What are we --

MS. DONOVAN: Yes.

COMMISSIONER SOMMERS: Oh, okay.

MS. DONOVAN: Yes, they haven't finalized the rule, but the proposal was taken --

COMMISSIONER SOMMERS: But their proposal was also the $10 billion threshold.

MS. DONOVAN: Yes.

COMMISSIONER SOMMERS: Thank you. One other small issue is in the Preamble it talks about what a swap dealer would do in case of a limited designation and how they would potentially take advantage of an end-user exception if they've been deemed a swap dealer, but maybe only for one commodity. Could you explain how that might work?

MR. RADHAKRISHNAN: I think the provision you're referencing in the Preamble was talking about the need for swap-by-swap reporting of use of the end-user exception so that if a limited designated swap dealer were electing the end user exception for swaps for which it is not a designated swap dealer, the Commission would know that and would know that it's correctly electing the exception.

COMMISSIONER SOMMERS: But how, I guess, practically will that work? When somebody has been deemed by us to have the limited designation, will that be in some sort of unique entity

identifier that they are a swap dealer for one specific commodity?

MR. RADHAKRISHNAN: I believe that is what is contemplated, yes.

COMMISSIONER SOMMERS: Okay, thank you.

CHAIRMAN GENSLER: Thank you, Commissioner Sommers. Commissioner Chilton?

COMMISSIONER CHILTON: Thank you. Thanks to the team for your good and hard work on this.

Could somebody, I don't know who's appropriate, explain the difference between hedging in this context? You know, hedging runs through a bunch of the rules that we're doing. It's at the very core of, you know, the Commodity Exchange Act. So we've got it in position limits, but we also have it, you know, people talk about it with regard to the Volcker Rule. So what is the difference between hedging in this context for end users and the Volcker Rule hedging?

MR. RADHAKRISHNAN: Dan's going to answer that.

COMMISSIONER O'MALIA: Hey, Commissioner Chilton, maybe you could ask also in

the context of swap dealer definition as well.

COMMISSIONER CHILTON: Yes.

COMMISSIONER O'MALIA: Because that's a different definition.

COMMISSIONER CHILTON: Yes, correct, good addition.

MR. BERKOVITZ: In each of these instances in the swap dealer, the major swap participant, position limits is another context, which it is. The end-user exception and the Volcker Rule, the analysis starts with the actual text of the statute and see whether the words are similar or different. In the end-user exception the terminology and the phrase is, "hedging or mitigating commercial risk." And obviously, also one looks at the purpose of the statutory provision interpreting the language. So the hedging or mitigating commercial risk, this is for the purposes of the clearing exception for non-financial entities who are hedging or mitigating commercial risk can take advantage of the end-user exception.

In the Volcker Rule, which seeks to limit proprietary trading by certain financial

institutions, there's an exception from the proprietary trading. And I'll just read the statutory language because it is very different from what we have in the end-user exception. In the Volcker Rule the exception is for "risk mitigating hedging activities in connection with and related to individual or aggregated positions, contracts, or other holdings of a banking entity that are designed to reduce the specific risks to the banking entity in connection with and related to such positions, contracts, or other holdings."

So it's a very different statutory language, it's a different statute. In fact, it's the Bank Holding Company Act versus the Commodity Exchange Act, so they're in two different contexts. The analysis under each statute would be you have to look at any specific context wouldn't necessarily be the same in both circumstances.

COMMISSIONER CHILTON: So essentially, to put in layperson's terms, commercials under the Commodity Exchange Act, they're hedging a business risk and it's a hedge when they enter into it. The Bank Holding Company Act where

Volcker is really just deals with the bank's financial institutions. And once you enter into the hedge under the proposal in Volcker, you have to monitor that hedge to keep tabs on it to make a determination whether or not it continues to be a hedge.

And the reason for the difference, also, I mean, they're two separate statutes and one's not ours, but, you know, the commercials that are hedging their risk, they're not systemic risks to our economy like financial institutions. I mean, these commercials are at the very heart of what we do and hedging your risk is like the basics of why you have a derivative industry. So is that pretty much correct?

MR. BERKOVITZ: Those are correct.

COMMISSIONER CHILTON: Thank you.

CHAIRMAN GENSLER: Commissioner Chilton, if I can engage you and maybe the staff, but I think that what we're doing here is appropriately doing a very broad interpretation of hedge or mitigate commercial risk because Congress wanted non-financial companies to get a choice. I mean, there may be occasionally a

non-financial company that's speculating and it's truly not hedging or mitigating commercial risk, but I think we have in front of us a very broad definition of hedge and mitigate commercial risk. I think when Congress used that word "hedge" in the Volcker Rule, they would be probably pretty disturbed with us if we had such a wide remit there that it would swallow up the proprietary trading band.

So if we had to have only one, and maybe this goes to Commissioner O'Malia's question, if we had to have only one way to define what hedging is for all three of these rules, we might not line up with congressional intent. I think congressional intent here was be very liberal with the definition so that any non-financial entity other than a true speculator can kind of meet this end user thing. I don't think that's what Congress intended necessarily in every place. Yes, but that's how I think of it.

COMMISSIONER CHILTON: Agreed.

CHAIRMAN GENSLER: Can I ask a follow-up on Commissioner Sommers' question because it just -- before I turn? In the release that we have

in front of us, Erik or Ananda, we do, I think, address this captive finance and I think in a way that's very helpful to the commenters when they asked. I mean, they asked several questions, but the one that I was most focused on and I worked with staff on and I think a number of commissioners worked on pages 19 and 20 is that captive finance companies had asked the Commission whether "financing that facilitates the purchase or lease of products," which I think is a quote from the statute, "should be measured on a single entity or consolidated." We went through that. I think we addressed that.

And then we go further, "Captive finance companies discuss ways in which finance companies might facilitate," and they focused on the word "facilitate" in the statute and how we might interpret that word "facilitate." And I was pleased that we ended up -- and one of the reasons I'm supporting this is that, you know, commenters asked, well, if you were selling the engine or the boat and the engine and the boat have to come together, how do we interpret the word "facilitate"? Because you might be selling the

engine or the boat in the financing. And these keywords are, "The Commissioner agrees," this is on page 20, "The Commission agrees that the word 'facilitates' as used in Section 2(h)(7)(C)(iii) should be interpreted broadly to include financing that might indirectly help to facilitate the purchase or lease of products."

So, I mean, that was a key provision that I think a lot of us, you know, weighed in on. It was important to a number of commissioners' offices. I just want to make sure I -- I mean, Erik?

MR. REMMLER: Yes, that's correct. In terms of interpreting the word "facilitates" in this provision we provided guidance that we would interpret it broadly. I would also add that we received a number of questions regarding what does "90 percent manufactured" mean? Does it require that the components also be manufactured? And we indicated that, no, the manufacturing would look to the final act of actually putting the product together and not that the parent corporation needs to manufacture 90 percent of all components.

CHAIRMAN GENSLER: Thank you. I'm sorry to interrupt the flow, but Commissioner O'Malia?

COMMISSIONER O'MALIA: Thank you very much. I don't know whose question I'm building on, but one of them regarding the Bank Holding Company Act and this financial entity or this Treasury affiliate issue that we've discussed a little bit here..

Treasury affiliates may fall under a Bank Holding Company Act designation, one of their company's affiliates, and, therefore, we can't provide them this exclusion, is that correct, under our rules because they're not under our rules? They're under the Bank Holding Company Act, is that correct?

MR. REMMLER: In terms of interpreting what that provision, what the Bank Holding Company Act means, no, we said that that is within the jurisdiction of the Federal Reserve.

COMMISSIONER O'MALIA: I just have one other question. International financial institutions, foreign central banks, and foreign governments, according to the Preamble these entities are not subject to the clearing

requirement under 2(h). How does the inapplicability of this clearing requirements affect the applicability, if at all, of the recent cross-border guidance that we've provided? What is that relationship? Do these rules work at cross purposes or are they consistent?

MR. RADHAKRISHNAN: To be honest with you, I haven't read the Cross-Border Release, but I would suspect that if we say that these are not financial entities, I'm not sure whether the Cross-Border Release would capture them as swap dealers. This has to go to whether you got a clear or not, but.

CHAIRMAN GENSLER: Dan, you want to come up to the table as one of the key authors of the Cross-Border Release?

MR. BERKOVITZ: And I have to ask, sorry, if you could repeat the question.

COMMISSIONER O'MALIA: Sure. International financial institutions, foreign central banks, and foreign governments, under this release, the end user, these entities are not subject to the clearing requirement. And I'm just wondering is that consistent with where we are on

cross- border?

CHAIRMAN GENSLER: I think in your first category you're reading is a term from the release that basically relates to multilateral --

COMMISSIONER O'MALIA: Right.

CHAIRMAN GENSLER: -- like the World Bank.

COMMISSIONER O'MALIA: The World Bank, correct.

CHAIRMAN GENSLER: The World Bank, the IMF.

COMMISSIONER O'MALIA: IMF, correct.

CHAIRMAN GENSLER: Et cetera.

MR. BERKOVITZ: That is consistent with what we actually did in the swap dealer definition and the entities definitions rules, where --

COMMISSIONER O'MALIA: They're exempt in that.

MR. BERKOVITZ: From that. From the registration requirement, from that..

COMMISSIONER O'MALIA: Okay. So my question was regarding the cross-border, what is it?

MR. BERKOVITZ: I'd have to check. It's

not inconsistent with what we did on cross-border.

COMMISSIONER O'MALIA: Okay.

CHAIRMAN GENSLER: Yes, and I think it is -- I mean, if we're allowed to try to do this, but I think that in the Cross-Border Release if you are an international banking organization and you're dealing with a sovereign, that sovereign's not a U.S. person. I mean, that would be correct, right?

MR. BERKOVITZ: Correct. That's correct. That's correct.

CHAIRMAN GENSLER: So to use Dan's term, it's not inconsistent, but it's sort of because they're non-U.S. Persons. I think it wouldn't count towards the de minimis probably is you're doing it, you know, out of your -- you know, Deutsche Bank is doing it or somebody else.

MR. BERKOVITZ: That's correct.

COMMISSIONER O'MALIA: Thank you, Dan. That's all I have.

CHAIRMAN GENSLER: Commissioner Wetjen?

COMMISSIONER WETJEN: I want to build

on one of Commissioner O'Malia's questions. He was talking about financial entities and how they're defined under the rule. But it is the case under this rule that there are instances when a financial entity can avail itself of the end-user exception, correct?

MR. REMMLER: Yes, that's correct.

COMMISSIONER WETJEN: And does the rule provide for sufficient flexibility to provide the exception for a variety of different types of corporate structures? And to be more precise, sometimes in a corporate family the entity that's actually facing the market can take a variety of shapes and forms, but I believe it was the intent of the release to allow for any number of different forms and still provide that the end-user exception can be made available to those companies. Isn't that the idea?

MR. REMMLER: The provision in the act that defines financial entity is fairly specific and complete. And the act also provides certain exemptions from that definition that are specific, for example, the captive finance corporation company provision. This small financial

institution provision that's in the rule would apply to all small financial institution with regard to -- I think you're asking more about entities within corporations that may be financial entities. Is that correct?

COMMISSIONER WETJEN: That's correct.

MR. REMMLER: Okay. Those entities, if they're not financial entities as defined in the act, but are trading for the corporate enterprise, they themselves would be non- financial entities, and if they're hedging or mitigating commercial risk could use the end-user exception. If they are financial entities and they don't fall within one of the exemptions provided in the act, then they would not be able to use the end-user exception.

There is an exemption from the definition of financial entity in the act that we haven't discussed here yet, which provides for financial entities trading on behalf of affiliates. That provision specifically says that those entities, even if they're financial entities, can elect the end-user exception if they're trading on behalf of and as agent for the

affiliates.

COMMISSIONER WETJEN: Yes, that's the part of the discussion I was referring to, so I'm glad you provided that response. I don't have any further questions.

CHAIRMAN GENSLER: I thank you. I'm just going to follow on something Commissioner O'Malia said. It's not a question, but to state that it's laid out in the document and footnote 16 and around pages 9 and 10 that the international financial organizations, like the World Bank and the IMF, are sovereigns themselves, or central banks; that we did end up aligning, in essence, where the Europeans are. Because in the European provisions recently passed by the European Parliament those were not in the mandatory clearing. And so the question before this Commission, and we got a lot of public comment on, are they non-financials or financials? Of course, central banks have the word "bank" in it, but sovereigns don't. And so I think we came out in the right place here not only as a matter of international comity and law, but also so that we're best aligned with the European clearing

mandate as well as best we can.

Mr. Stawick?

MR. STAWICK: Commissioner Wetjen?

COMMISSIONER WETJEN: Aye.

MR. STAWICK: Commissioner Wetjen, aye. Commissioner O'Malia?

COMMISSIONER O'MALIA: Aye.

MR. STAWICK: Commissioner O'Malia, aye. Commissioner Chilton?

COMMISSIONER CHILTON: Aye.

MR. STAWICK: Commissioner Chilton, aye. Commissioner Sommers?

COMMISSIONER SOMMERS: Aye.

MR. STAWICK: Commissioner Sommers, aye. Mr. Chairman?

CHAIRMAN GENSLER: Aye.

MR. STAWICK: Mr. Chairman, aye. Mr. Chairman, on this question the yeas are five, the nays are zero.

CHAIRMAN GENSLER: The vote being unanimous we will send it along with any technical edits and corrections to the Federal Register. My compliments to the team, but you get to stay here for one more turn at the wheel. Erik or Eileen,

whoever's presenting?

MR. REMMLER: Thank you, Mr. Chairman. The proposed rule that is now before you relates to the exemption of certain swaps entered into by cooperative entities. It would allow these entities to not clear swaps that would otherwise be subject to the clearing requirement under the Dodd-Frank Act. The cooperatives to which this proposed rule would apply would otherwise be ineligible for the end-user exception to clearing that the Commission just adopted because they are financial entities with total assets in excess of $10 billion.

These cooperatives, however, are membership entities that act in the financial markets on behalf of their members and enter into swaps for the benefit of their members. The members of these cooperatives could themselves elect the end- user exception. If the proposed rule is adopted, the members of the cooperatives could continue to access the financial markets through their cooperatives and also receive the benefits of the end-user exception that would be available to their members. In effect, the rule

would pass through the end-user exception available to the cooperative members, to the cooperatives themselves.

I note that the proposed rule is being considered by the Commission under its authority provided in Section 4(c) of the Commodity Exchange Act to exempt certain classes of transactions or contracts and classes of market participants..

The rule as proposed would add a new Part 39.6(f) to the Commission's regulations and consist of four parts. The first paragraph provides that exempt cooperatives, which is defined in the rule, may elect not to clear a class of swaps that is identified in the rule. Section 1, which defines the term "exempt cooperative," includes cooperatives that exist as cooperative entities under federal or state law and that meet two conditions: First, the cooperative must be a non-swap dealer, non-major swap participant financial entity as defined in the end-user exception portion of the act; second, all of the cooperative's members must either be eligible for the end-user exception or be cooperatives

themselves whose members are eligible for the end-user exception. The purpose of this definition of "exempt cooperative" is to limit the class of cooperatives that could use the proposed rule to those entities for which all of their members could themselves elect the end-user exception.

Section 2 of the proposed rule limits the swaps for which the exemption applies to swaps entered into with a cooperative's members in connection with originating loans or swaps that hedge or mitigate risks associated with member loans or member loan-related swaps.

The last section of the proposed rule requires reporting of the swaps for which the exemption is elected. The reporting requirements are identical to the reporting requirements of the end-user exception.

And with that, I'll take any questions you may have.

CHAIRMAN GENSLER: Thank you. The chair will now entertain a motion to accept the staff recommendation on this proposed exemptive rule.

COMMISSIONER SOMMERS: So moved.

CHAIRMAN GENSLER: You want to second it for me?

COMMISSIONER CHILTON: Second.

CHAIRMAN GENSLER: Great. I support the proposed rule that would permit certain cooperatives to choose not to clear member-related swaps. And I've got a little bit further statement on it, but I have one question before I go on.

In the rule we just finalized on the end-user exception, we also take up the coop issue with regard to captive finance companies, if I remember. What happens? Is there sort of a captive finance coop analog as well, if I remember, in the document? I gave my document to Eric, so he took it. Eric Juzenas.

MR. REMMLER: I don't recall discussing cooperatives in the captive finance provision specifically, although there may have been some comments from cooperatives.

CHAIRMAN GENSLER: Okay, so --

MR. REMMLER: And in regard to those comments, they commented on a number of sections on the end-user exception rule requesting that

coops be given --

CHAIRMAN GENSLER: Well, I just remember there's one coop and I didn't know where we took care of it, whether it's here or over in the other place, that's in the Rural Electric field that has a coop that works in that field.

MR. REMMLER: The National Rural Utilities Cooperative Finance Corporation is a cooperative that provided a number of comments on the end-user exception.

CHAIRMAN GENSLER: Okay, so that might be what I was thinking.

MR. REMMLER: They would be included here under this exemption as well.

CHAIRMAN GENSLER: So I think one of the primary goals of Dodd-Frank was, again, to bring into clearing finance companies facing finance companies in this interconnected financial system pose less risk to the U.S. taxpayers than 90+ percent of swaps that are entered into by financial companies. But also, Congress provided the non-financial exception, which we just finalized moments ago.

And I think that cooperatives acting on

behalf of and are, in essence, an extension of their members, it's something this agency has a great deal of experience with, working with agricultural cooperatives and rural electric cooperatives for decades, but particularly in the agricultural field. And I think Congress has addressed this in numerous ways and numerous times since the 1930s about cooperatives and what they mean about how they are; in essence, act on behalf of and, if I can use a colloquial word, an extension of their members. Thus I believe it's appropriate that cooperatives made up entirely of their members that could individually qualify as an end-user exception also qualify as, in essence, as we've come to call this, a pass-through if they're entirely made up end users.

We do have two tailored, narrow conditions as well in the document. And I might not get the words quite right, but you'll confirm for me, hopefully, Erik, but one is the swaps entered into with the members of the cooperative are in connection with originating loans for the members, and so it's sort of tied to these members. It's not about some cooperative, you know, going

out and competing with other financial institutions and just providing swaps for the general public. Is that right?

MR. REMMLER: Yeah, that's correct.

CHAIRMAN GENSLER: So it's really swaps who act as an extension of their members and entering into swaps -- I mean, cooperatives acting as an extension of their members and entering into swaps in connection with those loans.

And two, that it's swaps entered into by a cooperative to hedge or mitigate risk associated with their member loans. So, you know, they might need to offload their risk upstream, but --

MR. REMMLER: Correct.

CHAIRMAN GENSLER: So I'm supportive of this. I look forward to comment. We are putting it out for 30 days comment, is that right?

MR. REMMLER: Yes.

CHAIRMAN GENSLER: Which is a little shorter, but I think is appropriate because it's really about trying to provide clarification notes to these pass-throughs before we have a

clearing requirement that might come into being in the fall. I think it'd be appropriate that this be a 30-day comment period.

So, Commissioner Sommers?

COMMISSIONER SOMMERS: Thank you, Mr. Chairman. If you could just describe the type of exception we're trying to allow and how the actual look-through is going to work. So, you know, the structure of these type of coops and who is actually qualifying under the -- sorry, above the 10 billion.

MR. REMMLER: Cooperatives that are financial entities under the definition in the Dodd-Frank Act, that have assets of $10 billion or less, would, of course, now qualify as small financial institutions and would have the end-user exception available to them. However, those that have assets in excess of $10 billion obviously would not.

In order for a cooperative of that size to qualify, all of its members either themselves have to be end users or small financial institutions, or be cooperatives whose members are end users or small financial institutions. I

mean, that last piece is sometimes being referred to as a double pass- through because we look through the cooperative that is a member to its members. And that provision is included in the proposal because a number of the finance cooperatives, particularly in the agricultural space, are themselves cooperatives of cooperatives, in effect.

COMMISSIONER SOMMERS: There may actually be members of a coop that are above the 10 billion that have to look then to their members in order to qualify for this exception.

MR. REMMLER: That's correct.

COMMISSIONER SOMMERS: Okay. What types of swaps are going to qualify under this exception? So you said in the rule that there would be classes of swaps that we would identify.

MR. REMMLER: The rule provides that the exemption can be elected for swaps entered into with members in connection with originating loans or swaps used for hedging or mitigating risks related to member loans or member loan- related swaps. Many of the comments on the end-user exception rule that we received from cooperatives

indicated that that is, in fact, what they use swaps for: Member-related loans and hedging interest rate risk. And one of the reasons that they indicated that we should have provided them with relief is because they believe those types of swaps tend to be less risky. And in the interest of drawing this exemption fairly narrowly in recognition of the systemic risk issues that clearing mitigates, we included that limitation in the rule.

COMMISSIONER SOMMERS: So presumably, this is interest rates and commodities?

MR. REMMLER: Since it relates to loans, it's most likely going to relate to interest rates.

COMMISSIONER SOMMERS: But commodity swaps can be allowed as well?

MR. REMMLER: I'm trying to think of an instance where that would be the case, where they would be related to member loans, and I don't think there would be an instance and that commodity swaps would be included.

COMMISSIONER SOMMERS: From what I recall, didn't we end up adding commodity swaps

into the IDI exception in swap dealer? Well, there is a part in the rule text that we do refer to the provisions of IDIs that were in the swap dealer definition, I think. Isn't the 1.3(ggg) --

CHAIRMAN GENSLER: Yes.

COMMISSIONER SOMMERS: So we tie it to that definition. I was just wondering if it would also provide for commodity swaps?

MR. REMMLER: That provision identifies what is a swap in connection with originating loans. And we included the tie-in in order to be consistent.

CHAIRMAN GENSLER: Yes. And I think, Commissioner Sommers, since you and I somewhere late in the -- that was in the swap dealer definition, yes, arrange that, you're absolutely correct. We did work through something and this should be -- I think this is meant to be consistent with that and I think you are correct that we did end up with a provision tailored in the swap dealer definition that, in certain circumstances, loans in connection with -- I'm sorry, swaps in connection with a loan may be related to commodities. I mean, that was a provision that

worked out -- well, maybe it was Mike Ott late one night and Erik Juzenas that we worked out.

COMMISSIONER SOMMERS: I guess because the rule, this proposal, is tied to the IDI provisions in swap dealer, I would encourage those cooperatives who have an interest in this to look carefully at that provision, to look at the timeframes, and to make sure that that actually works for the type of relief they're looking for here. Thank you.

CHAIRMAN GENSLER: Commissioner Chilton?

COMMISSIONER CHILTON: Thanks. Thanks to the team. I'm curious in coming up with this if we've talked with the primary regulator for the farm credit system, the Farm Credit Administration.

MR. REMMLER: Yes, we've consulted with them.

COMMISSIONER CHILTON: And did they have any words of wisdom for how we -- are there things in this proposal that we've taken from them that we think are pretty important or they thought were important?

MR. REMMLER: Yes, we had a number of discussions with them and requested certain data from them with regard to the cooperatives that they regulate, which was very useful in helping craft this rule.

COMMISSIONER CHILTON: Okay. Well, I look forward to any comments that they may have. Maybe we've included everything they thought was needed here, but, whenever there's a frontline regulator, you know, they're looking after all the farm credit institutions' capital, and I want to make sure that we pay particular attention to anything that they say.

So I think you guys did a pretty good job and I thank you.

CHAIRMAN GENSLER: Thank you, Commissioner Chilton. Commissioner O'Malia?

COMMISSIONER O'MALIA: I have no questions. Thank you.

CHAIRMAN GENSLER: Thank you, Commissioner O'Malia. Commissioner Wetjen?

COMMISSIONER WETJEN: As always, Commissioner Sommers asked very thoughtful, probing questions, so I just want to associate

myself with some of her questions, and I also would encourage the commenters to make sure that the issue concerning our treatment of the IDI exclusion in this release is consistent with how it was done in the swap dealer definition rule. I think the intent was to fully embrace the IDI discussion from the dealer rule in this document.

But as I said, I think Commissioner Sommers asked some good questions. I think commenters should be sure to provide thoughtful comments on that issue. Thanks.

CHAIRMAN GENSLER: Mr. Stawick?

MR. STAWICK: Commissioner Wetjen?

COMMISSIONER WETJEN: Aye.

MR. STAWICK: Commissioner Wetjen, aye. Commissioner O'Malia?

COMMISSIONER O'MALIA: Aye.

MR. STAWICK: Commissioner O'Malia, aye. Commissioner Chilton?

COMMISSIONER CHILTON: Aye.

MR. STAWICK: Commissioner Chilton, aye. Commissioner Sommers?

COMMISSIONER SOMMERS: Aye.

MR. STAWICK: Commissioner Sommers, aye.

Mr. Chairman?

CHAIRMAN GENSLER: Aye.

MR. STAWICK: Mr. Chairman, aye. Mr. Chairman, on this question the yeas are five, the nays are zero.

CHAIRMAN GENSLER: The vote being unanimous, this, too, will be sent to the Federal Register with any technical changes. Maybe there aren't any on this one.

If there is nothing else -- Commissioner O'Malia, you don't need to ask what the next schedule is, right?

COMMISSIONER O'MALIA: You summarized it nicely, thank you.

CHAIRMAN GENSLER: I put it up front. So I thank the staff. I thank the SEC again for enormous partnership. I think this is a very significant day for the American public. Congress asked and directed this agency to put in place financial reforms to oversee the swaps market. Now with these foundational rules completed I think much of what the public needs will be coming to light. But we will take to heart that we want to work with members of the public,

large and small alike, and try to sort through that this be a smooth transition and this work on the benefit of markets, transparency, and the public. So I thank you.

A motion to adjourn the meeting?

COMMISSIONER CHILTON: So moved.

COMMISSIONER SOMMERS: Second.

CHAIRMAN GENSLER: All in favor?

GROUP: Aye.

CHAIRMAN GENSLER: All in favor, good. The meeting is now adjourned.

(Whereupon, at 12:36 p.m., the PROCEEDINGS were adjourned.)

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CERTIFICATE OF NOTARY PUBLIC

DISTRICT OF COLUMBIA

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

(Signature and Seal on File)

Notary Public, in and for the District of Columbia

My Commission Expires: January 14, 2013