

UNITED STATES OF AMERICA
COMMODITY FUTURES TRADING COMMISSION

OPEN MEETING TO CONSIDER CROSS-BORDER FINAL
GUIDANCE AND CROSS-BORDER PHASE-IN
EXEMPTIVE ORDER

Washington, D.C.

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P R O C E E D I N G S

(9:34 a.m.)

CHAIRMAN GENSLER: Good morning, this meeting will come to order. This is a public meeting of the Commodity Futures Trading Commission to consider Interpretive Guidance and Policy Statement Regarding Compliance with Certain Swap Regulations, or what we call cross-border guidance, and an exemptive order regarding compliance with these provisions, or phase-in of these provisions under Dodd-Frank.

I'd like to welcome members of the public, market participants, members of the media, as well as those listening to this meeting on the phone or watching the webcast. This is our 30th meeting to implement Dodd-Frank, and I would like to thank Commissioners Chilton, O'Malia, and Wetjen for their significant contribution to the efforts here today, as well as their efforts over the three years since

Dodd-Frank passed.

I do note with, after Commissioner Sommers' long and very dedicated service, that she is not with us, and they've rearranged the chairs, and I see, Commissioner O'Malia, you're back on my right.

COMMISSIONER O'MALIA: I've always been on your right.

CHAIRMAN GENSLER: Yeah, I know, I know, it feels good. And I've got Commissioner Chilton on my left. And Commissioner Wetjen on my far left, now. (Laughter) So, it's good. I wonder who arranged this seating. But this meeting is just shy of the third anniversary of President Obama signing the Dodd-Frank Act, and the law was historic, and it was an historic answer to an historic problem - the near collapse of the American economy driven, in part, by the unregulated derivatives marketplace. Congress and the

President were clear in their intention to bring transparency to this marketplace, to lower risk to the public, and ensure that the regulation of swap dealers and major swap participants.

And, in 2008, when both the financial system and the financial regulatory system failed the public, Americans paid the price with this crisis with their jobs, their pensions, and their homes. We lost 8 million jobs in that crisis and thousands of businesses shuttered. The swaps market was one of the central features of the crisis, and financial institutions operating complicated swaps businesses and offshore entities nearly toppled the economy. Congress responded. Americans are remarkably resilient, but the public really does expect us to learn from the lessons of the crisis. I think that they expect us to do everything possible to prevent this from

happening to any of us again.

And it's really straightforward, I think, even though we oversee, here at the Commodity Futures Trading Commission, a complex and sometimes difficult to understand market. My mom consistently asks me, Gary, what are swaps? But the questions the American people are looking for us to answer, really, are - have we lowered risk, have we brought about transparency to these markets, have we promoted competition and openness in these markets so that end users can get the greatest benefit when they seek to lower their risk and focus on what they do well - is employing people, innovating, and moving our economy forward? That's why reform matters.

Five years after the crisis and three years after Dodd-Frank passed, market participants are coming into compliance with common sense reforms that Congress and

the President laid out. Through Dodd-Frank and the rules that this agency has been able to put in place, no longer will the markets be closed and dark, and we will have transparency in the markets. In fact, throughout this year, for the first time, the public and regulators have benefitted from reporting the data repositories and reporting to the public. And later this year, starting, actually, in August, facilities called swap execution facilities will start so that the public can benefit from greater openness and competition before the transaction occurs. And by the end of this year, there's likely to be trade execution mandates for interest rate and credit derivative index products, as well.

The broad market has moved into central clearing earlier this year, with key phase-in dates later this year, as well, and we have 80 swap dealers, and,

yes, two major swap participants now provisionally registered. And with this new oversight, they're responsible for sales practice, recordkeeping and other business conduct that helps lower the risk to the public.

Yesterday, we too, we stepped forward and did another significant step when the European Commission and we announced a path forward regarding joint understandings with regard to cross-border derivatives.

And I want to publicly thank Commissioner Barnier, his Director General Jonathan Faull, and all of their staffs, and the staffs at the European Securities Market Authority and Steven Maijoor's leadership for the constructive collaboration throughout the reform process. We have different cultures and different political systems, and we're at times at different stages of development of

reforms, but I think this was a significant step forward in harmonizing and giving clarity to the markets as when there might be jurisdictional overlaps with regard to this reform.

Today, we are considering two important actions, the final guidance, as well as an exemptive order. And as you probably heard me say, if you, I recognize many of you here in this audience, the nature of modern finance is that financial institutions commonly set up hundreds, if not thousands, of legal entities around the globe. In fact, the U.S.'s largest banks each have somewhere between 2,000 and 3,000 legal entities around the globe, some of them have hundreds of them just in the Cayman Islands alone. We have to remind ourselves that the largest banks and institutions are global in nature, and when a run starts on any part of an overseas affiliate or branch of a modern financial

institution, risk comes crashing right back to our shores.

Or, in the other direction, if it's an EU financial institution and it has some guaranteed affiliate in the U.S. or overseas, that risk can go back, as well, to their shores. And that's why, together, in this path forward yesterday, both Europe and we recognize the importance of covering guaranteed affiliates, whether they're guaranteed affiliates of a U.S. Person or of an EU person. There's no question to me, at least, that the words of Dodd-Frank addressed this when they said that a direct and significant connection with activities and/or effect on commerce in the United States covers these risks that may come back to us.

And I want to publicly thank Chairman Barney Frank, who he and his staff, along with Spencer Bachus, Frank Lucas, and Collin Peterson's staffs reached

out to this Commission and reached out to the public to ask what was the best way to address this in statute, because they understood that risk can wash back to these shores. Lest we forget AIG that nearly brought down the U.S. economy. Lest we forget Lehman Brothers and its 3,300 legal entities, including a London affiliate that was guaranteed here in the U.S. and had 130,000 outstanding swap transactions.

Lest we forget Citigroup that had structured investment vehicles that were set up in the Cayman Islands, run out of London, and yet were at the center of the bailout - not one bailout but two bailouts of that institution. Lest we forget Bear Stearns that started us on this path in 2007, that had two sinking hedge funds that had to be bailed out by Bear Stearns, and, yes, those hedge funds were organized in the jurisdiction of the Cayman Islands. A decade earlier, I happened to be the, I'd

say, somewhat lonely Assistant Secretary of the Treasury and making a call to then Treasury Secretary Rubin from Connecticut to report that Long-Term Capital Management's \$1.2 trillion swaps book was not only going to go down within a day or two, and though I was in Connecticut and sure thought that's where this business was operated and run, it was incorporated in the Cayman Islands in a PO Box facility.

Lest we forget even last year, the reminder that branches of big U.S. banks can bring risk back here, and though they were not the risks as large as I've just relayed, JP Morgan Chase's Chief Investment Officer, credit default swaps were executed primarily in the U.K. branch. Each of those examples clearly had a direct and significant connection with activities and/or effect on commerce in the United States. Congress knew this painful history when it crafted the cross-border provisions

swaps market reform, and it's market participants asked the CFTC to provide interpretive guidance on Congress's word, we, too, I believe, have kept this painful history in mind.

And at the request of market participants - and, yes, it was at the request of market participants two and a half years ago - the CFTC started working on guidance, which was published for notice and comment last June, which we went out for further questions on in December, and I think we have greatly benefitted from that public input. But I think the guidance before us today adequately addresses those comments, those concerns, and I think appropriately interprets these key provisions of Dodd-Frank. And if I could just say four areas that I think really are important - that the requirements do cover swaps between non-U.S. swap dealers and guaranteed affiliates of U.S. persons, as

well as swaps between two guaranteed affiliates that are not swap dealers. In essence, the issue of risk importation.

The guidance does, as was proposed, recognize and embrace the concept of substituted compliance where there's comparable and comprehensive rules abroad where they exist. But the history of AIG, Lehman Brothers, Citigroup and the others, and the guaranteed affiliates, I think, is a strong lesson that Congress knew when we were approaching these issues. Secondly, the definition of U.S. person in this guidance captures the offshore hedge funds and collective investment vehicles that have their principal place of business here in the U.S., are majority owned by U.S. persons. Addressing ourselves to guidance, and yet forgetting the lessons of Long-Term Capital Management or Bear Stearns I don't think is what Congress wanted, and I'm pleased that the staff's recommendation

includes coverage of these types of entities.

Under the guidance, also foreign branches, like the JP Morgan's U.K. branch, of U.S. swap dealers possibly may also comply with Dodd-Frank through substituted compliance. I think we looked very closely at this, took a lot of public feedback, and have appropriately ring-fenced that it's truly in a branch where employees and the booking and the taxes are truly offshore in a branch, but this allows, if there is comparable and comprehensive regimes overseas and supervisory authorities overseas looking at those branches, that those branches, as well, can avail themselves to substituted compliance as offshore guaranteed affiliates would, as well.

And, lastly, that swap dealers, foreign or U.S., transacting with U.S. persons, whether they be in New Jersey,

Maryland, Michigan, Arkansas, Iowa -- I have to get all the right states -- anywhere, really, in the United States, they comply with Dodd-Frank's swap market reform. The guidance does provide, though, that U.S. persons can meet international people anonymously on, and not only our exchanges called designated contract markets, but also on the new swap execution facilities, as well as foreign boards of trade, and that international people can look to those trading platforms rather than concerning themselves or getting caught up in counting towards a swap dealer definition or the rules of Dodd-Frank. And I think that that was important to maintain and promote the liquidity of these three very important types of platforms - foreign boards of trade, swap execution facilities, and designated contract markets.

In conclusion, I will be voting in support of the guidance and the exemptive

order today. I'll say more about the exemptive order, but I think these are critical steps. They add to the nearly, I think it's 56 final guidance and rules that this Commission has adopted. We're well over 90 percent through the various rule and guidance writing. The markets are probably well towards halfway implementing these markets, and I have a deep respect for how much work market participants are doing to come into compliance.

With that, I think I'm going to turn it over to Commissioner Chilton.

COMMISSIONER CHILTON: Thank you, Mr. Chairman. And, yeah, we've done a whole lot because of your leadership. We've done a whole lot. And we've done all these rules, but without what we have the possibility to do today, it won't be, it won't reach its full effectiveness, everything that we have done. I'm just saying. It won't matter as much if we

don't do this thing, if we don't provide the guidance with the phased-in effective dates. Just saying.

So, I think it's really critical, and the reason is, the reason it wouldn't be effective is, as effective as it should, these other rules, is because, of course, we're interconnected, interrelated, interdependent, a bunch of inter markets, and there's more commonality of connections in the financial world than ever before. And so we learn that, as you say, Mr. Chairman, risk is a click of a mouse away, can shoot all around the globe, and that came home to roost in 2008. So my takeaway for the things we can do here today are twofold.

One, we can add certainty above everything else, that's what people said. We want, give us the rules. I mean, we want them done appropriately, but give us rules, let us know, we don't want to be

hanging out there any longer. So this provides certainty, and it provides a financial regulatory structure in a changing world with morphing markets. And the second thing that it does is that it's more cognizant of what's going on outside of our little universe here in the States, because these are interconnected markets, and that's why the phase-in of the effective dates is so critical. I don't think it can support this thing without it.

And so we've worked a lot, and I appreciate the effort of all my colleagues in this regard. I think we've come to a good place where we will have, this will result in more harmonized global regulations. A couple of times I've talked about the movie, Field of Dreams, you know where Kevin Costner hears the voice from the cornfields. Anybody? Nobody saw Field of Dreams? And the voice says, "If you build it, he will come." And that's how I

view what we're doing here and what the European union is doing. If we build it, and if the EU builds it, the rest of the financial world will come. The rest of the global regulators will come. They'll have similar and more harmonized regulatory regimes.

And that's good, not just for individual countries. It's good for the world. It's good for consumers. It's good for our economies. The last point I wanted to make is that I know there's a lot of naysayers out there, and we shouldn't do this, we couldn't do this, we don't have enough time, we didn't do this. But, look, the economic collapse was in 2008, Dodd-Frank was 2011, Dodd-Frank mandated we do this stuff by 2011, the G20 agreed that we should have the swaps reforms in place by December of 2012. As the Chairman said, we've had this guidance out there for a long time. It's been hanging around in

various forms. It didn't just sneak up on us. It's been here, and so, you know, we shouldn't have any reguphobia. Paranoia will destroy ya.

So, one of the things, out of an abundance of caution -- that famous Washington phrase, right -- out of an abundance of caution, we have inserted, and I am really pleased with this, the comment period for 75 days. And it's not window dressing. It's not a whoop-de-do. We need it. We want it. We got to have it. And I look forward to receiving comments and listening to them carefully, and if we have left a thread hanging loose, if we've got some kinks that we've got to work out, then we can address it.

Finally, I just wanted to thank the Chairman, and truly, Gary, for your leadership on this. I mean, the thing with the EU is just miraculous, very critical and important and time sensitive, but all

of your leadership has been just exemplary, and I thank you. It's an honor to work with you. But that also goes for Commissioner Sommers, who we miss, and Commissioner O'Malia and Commissioner Wetjen, who is always thoughtful and has been very thoughtful in the last couple of days, spending hours and hours on this, and I really do consider it an honor and personal privilege to work with each of you.

And, finally, and your staffs, by the way, who -- I mean, this has got to be the most complicated guidance, the most complicated thing we've done in the three years, at least from my experience, and all of our staffs have done just a super job, so thank them. And, finally, the professional staff at the table behind you and up in your offices watching. Just a mammoth undertaking. I couldn't thank you, I can't thank you more, and I think the

right thing to do is to honor your tireless work by approving this thing today. If we don't do so, it means that we go back to having markets that are unprotected and consumers and our economy is unprotected, and that's not the right thing to do. Just saying.

CHAIRMAN GENSLER: Thank you, Commissioner Chilton, very much. Commissioner O'Malia, welcome back from vacation.

COMMISSIONER O'MALIA: Thank you to the staff and my fellow Commissioners, and obviously the international regulators for all the hard work that they took to get here and develop this document. But, first, I'd like to say a few words. Despite the elaborate confusion of the chairs in order to cover up Jill's absence, it is important we do recognize, as the Chairman and Commissioner Chilton have done, she was obviously our ambassador to

the international regulatory body for a number of years and did an outstanding job working through these international issues, led the GMAC, she's very disciplined, careful, thoughtful, and knowledgeable. And, most recently, she led the successful investigation of the MF Global, which I think we'll all be thankful for as that proceeds.

So I do want to recognize her, and we'll certainly miss her, and it leaves not only a hole at the table, but a hole in the policy debate when you have somebody as experienced as Jill Sommers not participating in this discussion about cross-border regulation, which she has so much experience in. So, again, thank you to the staff and the Commission, and obviously, the international regulators for all the work to modify the cross-border document and the attendant exemptive relief and no-action letters that enabled us to

avert the regulatory train wreck that might have occurred had we not engaged our European colleagues in these last minute negotiations.

While the agreement is far from perfect and requires extensive no-action relief, it will take away, I will take away the positive experiences from this process, which is obviously to validate the ability and the desire to harmonize our rules with home country regulators who have the same goals, and, in fact, many of the same rules as the U.S. does. Mr. Chairman, as you well know, I consistently advocated for close engagement between the full Commission and fellow regulators to harmonize our rules, and in my discussion with the various international regulatory bodies, it's clear to me that the varying degrees of reform that are comparable, some are less, but some also exceed our own rules. And I would have preferred that the

Commission take the past year following the release of our proposed guidance that Commissioner Chilton noticed it was hanging around for the past year, to actually sit down and engage international colleagues and possibly engage IOSCO to determine how we could harmonize our rules and really engage in that substituted compliance determination that we're going to put after the rulemaking, or after the guidance process, not before.

But if we had done this in reverse, we could have put in place guidance that would have filled the gaps with the holes that we have recognized, taking into account where there might be shortcomings. Instead, we have chosen to impose statutorily weak guidance with all of its no-action riders and exemptions, with the promise of further negotiations. Given this process, however, it is my hope that the work lying ahead will be

undertaken in a more transparent manner and not done through the abused no-action process that lacks any formal Commission process or rigor. And, further, I hope that this process of substituted compliance will offer the opportunity for other regulatory bodies to engage directly with the full Commission so that we can better understand how our rules and theirs will work, and we can minimize the likelihood of regulatory retaliation, inconsistency, and duplication.

I believe the Commission has worked too hard to develop the principles and the standards that will encourage greater transparency, open access to clearing and trading, and improved market data. I want to work with other home country regulators to ensure that there is not the opportunity for entities to exploit regulatory loopholes. The stark reality is that the Commission is not the global

regulatory authority that it may think it is, and it does not have the resources to support such a mission. Therefore, our best and our most effective solution is to engage in a fully transparent discussion in the substituted compliance, and to do so immediately.

When I voted in 2012 to issue for public comment the proposed guidance, I made it clear that if I had been asked to vote on the proposed guidance as final, my vote would have been no. I then laid out my concerns relating to the Commission's unsound interpretation of 2(i) of the CEA, which covers the extraterritorial application of the CEA swaps provisions. Regrettably, the final guidance fails to address these concerns as I have discussed, and it represents a regulatory overreach based on a weak foundation of thin statutory and legal authority. Just as the proposed guidance, the final guidance

misinterprets section 2(i) of the CEA, is inconsistently applied in different activities, and blurs the lines between interpretive guidance and rulemaking, and gives insignificant consideration to international law and comity.

Section 2(i) of the CEA, as amended by Dodd-Frank, provides, in part, that the Commission's swap authority "shall not apply" to foreign activities unless these activities "have a direct and significant connection with activities in, or effect on, the commerce of the United States." This provision is clearly a limitation on the Commission's authority, and it follows that the Commission must properly articulate how and when the "direct and significant" standard is met in order to apply the Commission rules to swap activities that take place outside the United States. The final guidance, however, fails to do so. Instead, it

treats section 2(i) as a ready tool to expand authority rather than as a limitation.

And the statutory analysis section of the final guidance is insufficient, relying heavily on a comparison with other statutory language whose wholly different context renders the comparison useless, because the proper foundation for the standard has never been laid. The rest of the document includes sporadic references to direct and significant, without explaining or justifying the various requirements being placed on market participants. In an effort to mitigate the broad reach of the guidance, and in a moment of humility, the Commission will agree to delay the application of certain agreement elements of the swap regulation, largely to accommodate the last minute finalization of this guidance.

The exemptive order, in broad

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terms, provides relief ranging from 75 days to apply the expanded U.S. persons to December 21st for entity-level and transaction-level requirements for U.S. Swap dealers in specific jurisdictions as well as further extensions for transaction-based rules. And in its failure to address this matter earlier, the Commission has included a 75-day comment period on the exemptive order, seemingly as an acknowledgment of the Administrative Procedure Act, but clearly not in compliance with this binding Federal statute. I support the additional time to allow market participants to comply with the last minute guidance, but I cannot support a final order that blatantly ignores the statutory required comment periods for Commission action, especially when I advocated for a relief package that would have provided for public comment over a month ago.

Mr. Chairman, I've prepared a more thorough dissent that I ask be included in the Federal Register and the record of this meeting. Let me close by thanking the staff again, and the Commission, and our fellow international regulators for their cooperation in avoiding regulatory disaster that should have never been contemplated, let alone narrowly averted. I will look forward to a more transparent and inclusive discussion between the Commission and other home country regulators to harmonize our rules before the next deadline of December 21st. Thank you.

CHAIRMAN GENSLER: Thank you, Commissioner O'Malia. Commissioner Wetjen, before I turn over, I just want to thank you, particularly, for all that we've done together on this guidance. I think it is far better, given the many hours that we have spent since last June and July. Some people in the media focused on this week,

but I can't imagine how many hundreds of hours you and I have spent together, but I knew we were going to make a breakthrough when, earlier this week, Commissioner Wetjen shared with me his own nicknames for his staff, and I knew that's when we were absolutely, we were going to get to this day. So I thank you.

I'm not going to share those nicknames, but it's up to you, Commissioner Wetjen.

COMMISSIONER WETJEN: I've embarrassed my staff enough. Thanks, Mr. Chairman, and forgive me for my cough, but I'm trying to get through this statement. Several weeks ago in London, as the Commission intensified discussions on a number of cross-border issues, I spoke about three key objectives that must be achieved in a workable cross-border framework. First and foremost, I said that the Commission's cross-border policy must

protect U.S. taxpayers and the stability of the U.S. financial system.

Second, I said it must embrace a substituted compliance approach that supports an efficient and sound derivatives market structure, while also ensuring a level competitive landscape for the firms operating within it. And, finally, I said the cross-border guidance must be clear and workable. I am confident that the guidance and exemptive order before us today will adequately meet these objectives. I am therefore prepared to support them. Risk associated with derivatives is mobile. It can migrate rapidly across borders and modern financial markets.

All of us have observed that, while financial activities abroad may be confined to local markets, the rights and responsibilities that flow from these activities often are not. In light of this fact and in reaction to the financial

crisis, Congress authorized the Commission to oversee activities conducted beyond U.S. borders in appropriate cases. Congress was purposefully less clear about what the appropriate cases might be, leaving it instead to this Commission to make those judgments. The guidance makes rational policy judgments about what those appropriate cases are today.

The foreign branches of U.S. banks operating overseas and other foreign entities benefitting from the credit support of a U.S. firm will be required to register if they are active dealers in the swap markets. With registration, of course, the public is assured that such entities implement risk management programs, report their swap activities, abide by capital standards, and manage credit risk in compliance with margin and clearing requirements. I noted in London that it is paramount that the Commission

seek to achieve its regulatory objectives in a manner that respects the limits of U.S. law and the resource constraints of U.S. and global regulators.

I acknowledged then, and I acknowledge now, that the Commission must tread carefully with respect to activities occurring solely on foreign soil, especially those involving only foreign firms or foreign affiliates of U.S. firms. I am persuaded, however, that affiliates benefitting from the financial support of a guarantor in the aggregate do carry the potential to directly and significantly affect the health of the U.S. Financial system. In many credit arrangements, risk flows directly back to the U.S. firm providing the guarantee. I think it appropriate for the Commission to seek to contain the risks associated with swap dealing where those activities occur.

In many cases, the guarantor

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itself is prudentially regulated. That might argue in favor of simply applying additional risk regulation to that entity. Prudential regulation, though, has taken into account risk importation issues for decades. It alone has not always prevented risk management failures, and the resulting threats to the stability of the financial system. The guidance, therefore, brings guaranteed affiliates within the Dodd-Frank regime. It also takes the practical approach of allowing that non-U.S. Affiliate to abide by risk management practices required by the jurisdiction in which it is located, so long as the Commission deems those practices comparable to U.S. law and sufficiently comprehensive.

This approach strikes an appropriate balance between asserting the Commission's regulatory interests and recognizing the interests of other regulators. The swap markets, as we all

know, are global. The guidance, therefore, supports an efficient and sound market structure by permitting U.S. persons to trade and clear swaps with non-U.S. persons through markets and clearinghouses outside the U.S. so long as they are regulated in a manner that is "essentially identical" to Dodd-Frank. This enormously consequential policy adjustment translates to open competitive derivatives markets. It will mean efficient and liquid markets.

A global regime such as the one now contemplated in the guidance is the best means to avoid Balkanization of risk and risk management that would have benefitted no one. In fact, the fragmentation and regionalization of markets that I believe likely would have developed under the earlier proposals also would have exposed the U.S. financial system to risks that are unnecessary, needlessly complex, and difficult to

predict and contain. I want to thank Chairman Gensler for his flexible thinking on this particular topic during the past several weeks. Indeed, perhaps more than any other policy decision in this guidance, the Commission's resolution of this important policy issue best explains the accord we just reached with the Europeans on the cross-border regulation of derivatives.

There are two technical points I would like to mention, however. First, while I support the practical outcomes of the no-action letters that allow Eurex and LCH SA to clear U.S. dealer swaps pending completion of their applications to register with the Commission, I believe this relief should have been delivered through formal Commission action. Likewise, the no-action letter that finds the various risk-mitigation requirements under EMIR to be "essentially identical"

should have been a Commission action. In the future, I expect these determinations will receive the full input and legal force of the Commission.

Second, while for now we are requiring the European clearinghouses or foreign boards of trade to register with the Commission, the final guidance contemplates a mutual recognition framework in which trading and clearing venues may compete fairly for U.S. business if they operate under "essentially identical" regimes. For instance, in the European Union, it is expected that European law will soon provide for the registration of new trading venues called organized trading facilities. The Commission will have the flexibility under the guidance to examine the requirements applicable to these new platforms and determine whether they are "essentially identical" to U.S. law, and therefore suitable for U.S. participants.

Similarly, the guidance clarifies that such trading venues may register as swap execution facilities or petition for recognition as exempt SEFs.

Toward this end, the Commission should undertake a rulemaking soon to implement a petition process for regulated trading venues abroad that might seek recognition as exempt SEFs. The Commission staff is also developing a rulemaking to govern the process for recognizing exempt DCOs. In addition to providing for an efficient market structure, the guidance avoids creating unfair advantages for certain firms over others, or for certain legacy business structures over others. The guidance now reflects the policy that if the activities of, and risk presented by, firms or business structures are not materially different, the Commission will not treat such firms or business structures differently. Foreign branches and

guaranteed affiliates that are registered dealers will abide by the same policies under the same circumstances.

For markets to operate efficiently, competitively, transparently, and safely, market participants must know whether U.S. law applies, whether U.S. law conflicts with the laws of foreign jurisdictions, and whether they are doing what the law requires. Based on the Commission's joint statement with the European Union yesterday, together with the Commission's documents today, market participants now should have a good understanding of the rules of the road for conducting swap activities on our two continents, which continue to host the vast majority of swap activity globally. Although some call for more time, the Commission was not in a good position to delay these policy judgments any longer. Global market participants deserve

regulatory certainty, and today's guidance and exemptive order provide it.

This week's accord with our friends and partners in Europe, moreover, empowered the Commission to adopt this policy even before the important work of delivering on the G20 commitments was complete on that continent. Inevitably, there will be questions arising from the guidance and exemptive order, and perhaps issues unaddressed in these documents that should have been. But I am convinced that, in sum, the most important questions have been answered clearly enough for now.

Finally, and based on today's facts and circumstances, the exemptive order provides sufficient adjustment time for the marketplace and appropriate incentives for foreign regulators to bring their regimes in line with Dodd-Frank. It could turn out that these compliance dates are too aggressive with respect to certain

requirements. In that case, the Commission must listen and respond to market participants and other regulators who bring legitimate compliance challenges to its attention.

Again, I want to thank the Chairman for his flexibility and tireless work over the last several weeks. It was only a short while ago that I publicly expressed skepticism that the Commission would be able to finalize these documents today. The Commission was able to pull off this impressive feat under a relatively truncated timeline -- how's that for an understatement -- only because of the Chairman's leadership and consensus-building. And I want to thank the Commission's professional staff, who have worked day and night to bring the guidance and exemptive order over the finish line today. I appreciate your efforts, and the American public owes you a

debt of gratitude for the important service you have provided that is now reflected in these important policies. Thank you very much.

CHAIRMAN GENSLER: Thank you, Commissioner Wetjen, Commissioner O'Malia, and Commissioner Chilton for all of your input. And I just want to say, Commissioner O'Malia, though it doesn't sound like today you'll be able to support this, your input throughout this 14 months has been so valued, and I think the guidance is better for that input, even if we weren't able to bridge the gap.

Before we turn to the staff to present, I want to just turn to one other item which is important. I hope this is all right. But, at this point, I'd like to just raise an issue. With Commissioner Sommers not being with us now, the matter of the leadership of the Global Markets Advisory Committee, or what we sometimes

call it, GMAC, here. We have a number of advisory committees, as you may know. Commissioner O'Malia has shown great leadership on the Technology Advisory Committee. Commissioner Sommers did so on the Global Market Advisory Committee. But now with her no longer being on the Commission, I'd like, I'm pleased to announce today that Commissioner Chilton will be taking on her responsibilities.

And under the charter of the Global Markets Advisory Committee, the Commission must vote on the designation of Commissioner Chilton as what's technically called the sponsor of this advisory committee, so I would appreciate and entertain a motion to designate Commissioner Chilton as the sponsor.

COMMISSIONER O'MALIA: Before we start that, can I ask a question of Commissioner Chilton on his priorities for the GMAC, and now that we have the

important substituted compliance requirement before us, we have a vague process, but it certainly could benefit through a formal, open, transparent process, which invites foreign regulators, home country regulators, to participate in defending their regulatory regimes before the Commission before we, the Commission, not the staff, but the Commission, makes a decision on this.

Are you going to put that on the agenda as an immediate objective?

COMMISSIONER CHILTON: Yeah, we spoke about it briefly before the meeting, and I think it's a super thing that we should do. I mean, this substituted compliance isn't going to be something that we look at one time, take a snapshot, and then call it quits. It's going to be an evolving and morphing thing, and I think the GMAC can play a really important role in that regard. In general, these markets

are changing so fast that we need to think anew about them, and so I look forward to doing that with my colleagues, but with the GMAC. I mean, it's really an epic endeavor in which we're involved here, we've never done anything like this before globally. So, yeah, we'll do that, Commissioner O'Malia, and we'll do a lot more, too.

COMMISSIONER O'MALIA: Well, I'm happy to move his nomination.

COMMISSIONER WETJEN: Second.

CHAIRMAN GENSLER: And I am delighted and support Commissioner Chilton filling the big shoes of Commissioner Wetjen on this. So do I hand it to you, Melissa, or do I do it? I hand it to you. Thank you.

MS. JURGENS: This is a vote on the designation of Commissioner Bart Chilton as a sponsor of the Global Markets Advisory Committee. Commissioner Wetjen?

COMMISSIONER WETJEN: Aye.

MS. JURGENS: Commissioner Wetjen,
aye. Commissioner O'Malia?

COMMISSIONER O'MALIA: Aye.

MS. JURGENS: Commissioner
O'Malia, aye. Commissioner Chilton?

COMMISSIONER CHILTON: Aye.

MS. JURGENS: Commissioner
Chilton, aye. Mr. Chairman?

CHAIRMAN GENSLER: Aye.

MS. JURGENS: Mr. Chairman, aye.
Mr. Chairman, on this matter, the ayes have
four, the noes have zero.

CHAIRMAN GENSLER: We have matters
of two other advisory committees, as well,
and with all respect, I'm just going to go
through those, as well, because that's
where we are. But I want to say we're also
considering establishing a new advisory
committee to be headed by Commissioner
Wetjen, and it's to be named the Market
Risk Advisory Committee. We're not able to
take a vote today, because we're working

with the General Services Administration Committee Management Secretariat to approve this new committee, but I think that we will greatly benefit as a Commission by pulling together a group of outside individuals of diverse backgrounds to give us advice on broad issues of market risk.

But I thought I'd just turn to Commissioner Wetjen if he wanted to say any comments. There's not actually a vote, but just --

COMMISSIONER WETJEN: I just appreciate your support, Chairman, in our discussions about this advisory committee, your willingness to consider the creation of a new one. And I also want to thank the folks in OGC who have been advising me on how best to go through this process, and we're hoping to get this up and running very soon. Thank you.

COMMISSIONER CHILTON: I think you'll do a great job at this, Commissioner

Wetjen, and one of the things I talked about back in April was listening to end users more, and I suggested we do an end-user advisory committee, but, really, the effort of what we're looking at with an end-user advisory committee can be consumed by the risk committee, because it's all about risks, so I look forward to working with you on the end-user component, which I know you care deeply about also, as part of your work with that advisory committee.

CHAIRMAN GENSLER: And just so I can finish the trio, here, our Agricultural Advisory Committee will meet in this room on Thursday, July 25th, from 9:00 a.m. until the early afternoon. The committee is now, though I am technically the sponsor under the charter, and am proud to be the sponsor, the committee is chaired by Dr. Randall Fortenbery, and we look forward to that meeting.

Now, with that, I think it is time

for me to turn over to the excellent --

MEGAN WALLACE: Page 3.

CHAIRMAN GENSLER: Oh, I have to do page 3. I'm apparently told I'm supposed -- the staff will make presentations concerning the recommendations on the cross-border guidance and cross-border phase-in exemptive order. After each presentation, the floor will be open for questions and comments from each of the Commissioners. Following these discussions, the Commission may take votes on the recommendations as presented. All final votes conducted in this public meeting shall be recorded votes, and the results of these votes will be included in their relevant Federal Register release, including your longer piece.

I first just ask unanimous consent to allow staff to make technical corrections to the documents voted on today

prior to sending them to the Federal Register. Without objection? So ordered.

COMMISSIONER O'MALIA: No objection.

CHAIRMAN GENSLER: And then, at this time --

COMMISSIONER WETJEN: Mr. Chairman?

CHAIRMAN GENSLER: I'm sorry.

COMMISSIONER WETJEN: On the technical corrections, we talked about this a little bit. There might be a number of them, given the short time frame that we've had to have the staff draft all this up, so we look forward to continuing to work with the staff, and we'll get those changes based on our review that reflect the agreement to the staff as quickly as possible.

CHAIRMAN GENSLER: Absolutely. And so, for the public, that means, though we normally do put these things on the

website today, if one of the documents goes on the website and the other doesn't, and it's over the weekend and so forth, you'd understand. We just want to make sure that it's technically exactly what we have. I mean, we all have a voting document from last night, and my review is, I think that's pretty much there, but, of course, we want to make sure. And everybody will see that.

At this time, I'd like to welcome Jonathan Marcus, our General Counsel; Carlene Kim, Deputy General Counsel; Laura Badian all from the Office of General Counsel; Sarah Josephson, our Director of Office of International Affairs; Gary Barnett, who runs our Division of Swap and Intermediary Oversight; Erik Remmler, who is the Deputy Director to present their thoughts and recommendation on cross-border.

But before I do, I just want to

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thank not only the six of you, but probably the couple of dozen or three dozen other people that, for these last really 18 to 20 months of thinking through these issues, have just put an enormous bit of dedication, energy and thought into this, including many late nights this week. So thank you.

MS. KIM: Good morning, Mr. Chairman and Commissioners. Today staff is recommending that the Commissioner approve interpretive guidance and policy statement regarding the cross-border application of the swaps provisions of Title VII of the Dodd-Frank Act.

First, before we get into the details, on behalf of my colleagues in the Office of General Counsel, I would like to thank staff in the Division of Swap Dealer and Intermediary Oversight, Office of International Affairs, Division of Market Oversight, and Division of Clearing and

Risk for all of their hard work, advice, and support during the drafting process. My special thanks goes to Mark Fajfar and Laura Badian in the OGC Office for their exceptional dedication and hard work in bringing us to here today. And I would be remiss if I did not acknowledge the special contributions of Dan Berkovitz, Jackie Mesa, and Terry Arbit. They're no longer with the agency, but each played a critical role in developing the guidance.

This Interpretive Guidance and Policy Statement is intended to provide greater legal certainty and clarity to U.S. and non-U.S. market participants regarding their obligations under the Commodity Exchange Act with respect to their cross-border activities. In particular, the guidance addresses the circumstances under which a non-U.S. Entity would be required to register as a swap dealer or MSP, and the extent to which Dodd-Frank

requirements would apply to such registrants. It also provides a general framework for a substituted compliance regime under which the Commission would permit a non-U.S. registrant to comply with comparable and comprehensive requirements in its home jurisdiction.

The guidance also addresses the extent to which Dodd-Frank provisions would apply to transactions between non-registrants. I'll now pass the microphone to Laura Badian who will describe the key elements of the guidance.

MS. BADIAN: Good morning, thank you. Let me first turn to the interpretation of the term "U.S. person," a foundational element of the guidance. As proposed, the term was intended to encompass those persons whose activities, either individually or in the aggregate, have a direct and significant nexus to U.S. commerce within the meaning of section

2(i). In addition, the term "U.S. person" is a useful concept when considering the extent to which U.S. transaction-level requirements should apply to swap transactions.

The term "U.S. person" is largely territorial-based. The definition would include natural persons that are U.S. residents, as well as corporations, business entities, and funds that are organized in the United States or have their principal place of business here. In addition, collective investment vehicles, such as hedge funds and commodity pools, are included in the interpretation of the term "U.S. person" if they have their principal place in the United States. Such collective investment vehicles or funds also would fall within the term "U.S. person" if they are majority owned by "U.S. persons," but there is an exception for collective investment vehicles that are

publicly offered but not offered to U.S. Persons.

Turning to the Dodd-Frank requirements, for purposes of applying the swap provisions of the Dodd-Frank Act to cross-border swap transactions, the guidance divides these requirements into two basic categories. First, entity-level requirements apply to a swap dealer or major swap participant firm as a whole. For example, entity level requirements would include such things as capital adequacy, chief compliance officer, and swap data repository reporting. In contrast, transaction-level requirements generally apply on a transaction-by-transaction basis, and include, for example, clearing margin, real time reporting, and trade execution requirements.

Transaction-level requirements generally apply to swaps between non-U.S.

swap dealers and MSPs with U.S. persons and with guaranteed affiliates, but these swaps would generally be eligible for substituted compliance in the case of swaps with guaranteed affiliates. Dodd-Frank Act transaction-level requirements generally do not apply when the swap is between a non-U.S. swap dealer or major swap participant and a non-U.S. Person that is not a guaranteed affiliate. Where a swap is executed anonymously between any non-U.S. swap dealer or major swap participant and a U.S. person on a registered DCM or SEF and cleared, the non-U.S. person generally will be considered to have satisfied the transaction-level requirements that apply to such a swap transaction.

As Carlene mentioned, and many of you have mentioned, there's a substituted compliance regime set forth in the guidance. Under the substituted compliance

regime, if the Commission issues a comparability determination for a given entity- or transaction-level requirement, the Commission generally would permit an applicant to substitute compliance with the requirements of the relevant home jurisdiction's law and regulations -- or in the case of foreign branches of U.S. swap dealers, the foreign location of the branch -- in lieu of compliance with the corresponding requirement under the Commodity Exchange Act and our regulations.

The guidance broadly describes the process and the factors that it would consider in making this comparability assessment. A couple of things to emphasize here. First, comparable and comprehensive does not mean that we would look for identical regulations abroad. Rather, we would take into account all relevant factors, including the scope and objectives of the relevant regulatory

requirements, and the comprehensiveness of the foreign regulators' supervisory compliance program when you make this assessment. Second, this assessment does not entail a rule-by-rule analysis, but rather the Commission would make this assessment on a category-by-category basis.

With respect to guaranteed affiliates, the guidance recognizes that non-U.S. persons, which are affiliated with a U.S. person, may present the potential for systemic risk to the U.S. financial system because such swaps are guaranteed by a U.S. person. So, for example, swaps entered into by non-U.S. swap dealers with guaranteed affiliates of U.S. persons would be subject to Dodd-Frank Act requirements, as are swaps with U.S. persons, but the transaction with the guaranteed affiliate would be eligible for substituted compliance. Swaps between two guaranteed affiliates that are not swap dealers would

also be subject to certain Dodd-Frank requirements that apply to non-swap dealers, but with substituted compliance available.

A swap between a non-U.S. person and a foreign branch of a U.S. swap dealer, or between two foreign branches, is eligible for substituted compliance and is not counted towards the de minimus threshold for swap dealer registration if the swap is bona fide with a foreign branch based on factors such as whether the employees negotiating and agreeing to the terms of the swap, other than employees with ministerial functions, are located in the foreign branch, or another foreign branch of the U.S. bank. Another factor would be whether the foreign branch or another foreign branch is the office through which the U.S. bank makes and receives payments and deliveries under the swap.

With respect to the swap dealer de minimis calculation, the Commission's policy under the guidance is that a U.S. person or a non-U.S. Person that is a guaranteed affiliate should generally count in its swap dealer de minimis calculation all of its dealing swaps, whether with U.S. or non-U.S. counterparties. However, a non-U.S. person that is not a guaranteed affiliate should generally count swaps with U.S. persons and swaps with certain guaranteed affiliates. However, a non-U.S. person that is not a guaranteed affiliate may exclude any swaps that are entered into anonymously on a registered DCM, SEF, or foreign board of trade and cleared.

Stated in general terms, the Commission's interpretation on aggregation allows both U.S. persons and non-U.S. persons in an affiliated group to engage in swap dealing activity up to the de minimis threshold. The swaps of an affiliate,

either U.S. or non-U.S., that is a registered swap dealer are excluded. When the affiliated group meets the de minimis threshold in the aggregate, one or more affiliates inside or outside the United States would generally have to register as a swap dealer so that the relevant swap dealing activity of the unregistered affiliates remains below the de minimis threshold.

CHAIRMAN GENSLER: I didn't know if there was more presentation or not. No? OK. So, the Chair will now entertain a motion to accept the staff recommendation concerning the cross-border guidance.

COMMISSIONER CHILTON: So moved.

COMMISSIONER WETJEN: Second.

CHAIRMAN GENSLER: Thank you. I support this guidance, given all that I said earlier, so I won't repeat it again, but I think this guidance appropriately balances the international harmonization

efforts. What I've come to learn is this word about international comity, but most importantly, the protection of the American public in bringing transparency to these markets, and the reality of modern finance that global financial institutions guaranteed, in any jurisdiction, can bring risk back to that jurisdiction. And I think that's what's critical and the core of what is direct and significant connection to or effect on U.S. commerce.

So I support this guidance, and I also want to thank publicly the Securities and Exchange Commission for tireless and consistent input over these last 18 or 20 months of considering these issues.

Commissioner Chilton?

COMMISSIONER CHILTON: I'm fine, thank you.

CHAIRMAN GENSLER: Commissioner O'Malia?

COMMISSIONER O'MALIA: Thank you.

Very interested in the substituted compliance program on page, I think -- well, I don't know what the new draft, last night's draft says, but I think one draft I had is page 208 had a statement in there, there's going to be an outcomes-based, and Laura, you basically indicated that it would be outcomes-based. You didn't say those words, but is that what you meant in your summary of your description of the process?

MS. BADIAN: Right. But, of course, we would look to see whether the requirements in the other jurisdictions are comparable and comprehensive to ours.

COMMISSIONER O'MALIA: So one area that I'm kind of wondering about is data reporting. As I understand it, we will require direct electronic access for every, in order to be, as the first test, direct electronic access without any legal barriers; is that correct?

MS. KIM: Yes, unfettered access.

COMMISSIONER O'MALIA: Do we provide the same for international and the same unfettered access to our SDRs, to every other regulatory entity?

MS. KIM: I'm going to look to my colleagues in the Division of Market Oversight.

MS. NATHAN: Morning.

COMMISSIONER O'MALIA: Good morning.

MS. NATHAN: Our ability to provide direct unfettered access to our foreign counterparts is somewhat constrained by the statutory provisions of Dodd-Frank, which require, in Section 728 of Dodd-Frank, 21(d) of the CEA, that such access must be accompanied by an indemnification agreement. We have done, at the staff and at the Commission level, as much as we believe we're able to do, consistent with the Dodd-Frank Act, to find

ways to accommodate foreign regulators where we think we can.

COMMISSIONER O'MALIA: Now, thank you very much. Now, it also says as a second condition that we will insist on a comparable form and format of the data. Does that mean we get to dictate to foreign SDs, I mean TRs that they have to develop, they have to collect the same data we are and in the same format that we're collecting it in order to be comparable?

MS. NATHAN: I don't know that that's strictly true, and because I'm not a data expert, I may not be able to give you the answer that you're looking for, but I think the idea is that the data has to be sufficiently comparable so that it has some utility to our surveillance staff and ODR, ODT/ODR, I forget what the division is called, so that they can use it appropriately and so that it can be aggregated.

COMMISSIONER O'MALIA: So I'm trying to understand how an outcomes-based and a form and format requirement is consistent. Because demanding a foreign entity meet our form and format doesn't sound like an outcomes-based, that sound like a very much more granular specific. How do we reconcile these two?

MS. NATHAN: It is, by definition, I think, a more technical requirement than some of the others. However, we think and we are working with Srini and John Rogers to come up with a protocol that would allow us to find, say, that, while their data is not identical to ours, it can be made useful in some way so that it does not have to be identical.

COMMISSIONER O'MALIA: That goes right up until we get to large trader reporting, correct? And that we will demand -- there is no substituted compliance in this proposal for large

trader reporting?

MS. NATHAN: That's correct.

COMMISSIONER O'MALIA: How are we going to compel non-U.S. persons to report, to comply with our large trader reports?

MS. KIM: My understanding is, and my colleague in DMO, she will correct me if I misstate anything, but my understanding is that, currently, non-U.S. persons do report, submit to the extent that they trigger reporting requirements under Part 20. They do so report.

COMMISSIONER O'MALIA: That wasn't the question. How are we going to enforce somebody else who doesn't feel like they need to comply with large trader reporting under this guidance?

CHAIRMAN GENSLER: I think that if Laura and Susan turn your mic off, it would help, just the feedback. But, now, David Van Wagner.

MR. VAN WAGNER: Yeah. I mean,

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just the premise, of course, is, the requirement in the first instance is only going to be going out to SDs and clearing members. So that's, as a threshold, you'll have to do that, and they are actually reporting this data already.

COMMISSIONER O'MALIA: So you're saying that you would use the registration as the hook to compel them to report?

MR. VAN WAGNER: I think that's right.

COMMISSIONER O'MALIA: But it doesn't, the large trader language doesn't -- I think it's on, I don't know what it's on, I keep -- 236, it says for non-U.S. persons. It doesn't limit it, and there's a variety and --

MR. VAN WAGNER: Right, right, for the overlays --

COMMISSIONER O'MALIA: A variety of different large trader references sprinkled throughout this document --

MR. VAN WAGNER: Correct.

COMMISSIONER O'MALIA: That it's tough to understand.

MR. VAN WAGNER: Granted. But the overlay, of course, is part 20 itself. I suppose we could frame within that, I mean, we would bring forth the part 20 references and make it clear that part 20 --

COMMISSIONER O'MALIA: So it's only clearing members and swap dealers. But, I mean, it is possible that you could have somebody who is neither one of these entities that is of significant size to trigger the reporting, couldn't you?

MR. VAN WAGNER: Sorry.

MS. FLOOD: So, in terms of periodic reporting obligations of large positions under part 20, the requirements are for clearing members, swap dealers and also DCOs have reporting obligations. There are certain recordkeeping requirements that would be applicable to

non-clearing member, non-swap dealer entities that have large positions, there are recordkeeping requirements. And I believe that the way that the rule works --

COMMISSIONER O'MALIA: Large trader rule part 20?

MS. FLOOD: Part 20.

COMMISSIONER O'MALIA: Yeah.

MS. FLOOD: The, in terms of the recordkeeping requirements for those entities -- so these would be non-clearing members, non-swap dealers who have these recordkeeping obligations -- they are able to maintain those records generally in the form that they would in the normal course of business. So the thought is that, if you have these recordkeeping requirements, the burden shouldn't be too onerous.

But, in addition to that, I just want to clarify that part 20 applies to physical commodity swaps that have a linkage, either directly or indirectly, to

a specified list of U.S. listed physical commodity futures, so --

COMMISSIONER O'MALIA: So somebody trading on the Matif wheat contract could be currently a non-swap dealer, a regional bank, for example, that could have a sizable position of a linked contract. How do we compel them to report? Is that the linkage, or does it have to be actually linked to the U.S. contract?

MS. FLOOD: Well, the linkage is to the U.S. contract. That triggers the reporting obligation under part 20. And the view as expressed in the guidance, as I understand it, is that that linkage, the fact that these swaps are deemed to be economically equivalent to U.S.-listed physical commodity futures, that is a direct and significant connection to activities in the U.S. market. Anybody, my colleagues can correct me if I'm wrong, but I do not believe that, under the Futures

Large Trading program, there is a concept of substituted compliance, for example.

I think that the threshold is if you have the large reportable positions in the covered futures contracts, you are required to report under the Futures Large Trader Reporting regime.

COMMISSIONER O'MALIA: Thank you. Sarah, have we shared the requirement for direct electronic access in the form and format with the EU, and have they agreed that this is fine in order to achieve substituted compliance?

MS. JOSEPHSON: Have we shared -- can you --

COMMISSIONER O'MALIA: Have we shared the requirement that we're going to insist on direct electronic access without any legal barriers and insist on the same form and format?

MS. JOSEPHSON: Right. I think the best way to answer that question about

direct unfettered access is to step back for a moment and explain just how much work we've been doing in this area with our colleagues internationally, both on a multilateral level and bilaterally in terms of being able to get to a good understanding of access to the data, but then also you'll see reflected in the path forward document that went out yesterday morning that we do have certain issues around data.

But, generally speaking, we're working through those collaboratively with our colleagues in terms of being able to use that data in a meaningful way to be able to sort through, understand, analyze it, aggregate it where that's possible. And I think there's a broad understanding right now about issues related to that, we've had numerous, numerous conversations, and my colleagues both at this table and behind us can tell you about many of those

conversations, and I think we're working through that.

COMMISSIONER O'MALIA: But on the issue of direct electronic access, they don't have any problems, as far as you're aware of?

MS. JOSEPHSON: That I'm aware of, no, I think that the --

COMMISSIONER O'MALIA: Saving the privacy laws --

MS. JOSEPHSON: Yes.

COMMISSIONER O'MALIA: Which was the answer I was looking for.

MS. JOSEPHSON: With the exception of privacy blocking and secrecy laws that have been well documented, yes.

COMMISSIONER O'MALIA: Thank you. Jonathan, can we talk a little bit about our legal and enforcement authority under the cross-border guidance, as opposed to rulemaking. What enforcement and legal authority does guidance give us?

CHAIRMAN GENSLER: You might want to your button.

COMMISSIONER O'MALIA: Turn on your mic.

MR. MARCUS: The guidance reflects the Commission's interpretation of 2(i) and it also reflects what the, I saw a statement from the agency as to how it intends, at this time, to apply and enforce section 2(i). And when the enforcement authority comes from the statute, from 2(i), and also from the rules that would, the rules the Commission has already promulgated that would then apply based on the interpretation of section 2(i). So that's, but the guidance itself is not binding strictly. We couldn't go into court and counter the complaint, list a violation of the guidance as an actionable claim.

But the guidance does tell market participants what the Commission's current

views are about how 2(i) applies in the cross-border context, and the statute gives us that enforcement authority.

COMMISSIONER O'MALIA: Susan, can I ask you to come back to the table, I forgot a question on data. There's a footnote, it was 472, I have no idea what it is now, it's certainly not 472 in the latest, the last two documents I was looking at. But it said swap dealers have to report to an SDR. We went through this with CME rule 1001. Does that mean are we going to revisit the same problems that we had before?

CHAIRMAN GENSLER: And, again, Jonathan, you might want to turn off your mic. I'm just helping.

MS. NATHAN: I'm not sure I understand your question.

COMMISSIONER O'MALIA: So before rule 1001, where we said the clearinghouse could be the party reporting to the SDR. I

believe an earlier footnote said that -- it was 472, it's not there anymore, it's changed but it says that swap dealers have to report to an SDR. Are we going to have the same problem -- maybe you guys know what the new footnote is.

MS. NATHAN: I don't know the answer.

CHAIRMAN GENSLER: Which footnote is it now, Susan?

MS. NATHAN: It's, I'm sorry, it's 501.

CHAIRMAN GENSLER: Is it 468? Because I'm reading 468.

MS. NATHAN: No, it's on page 219.

CHAIRMAN GENSLER: I think Commissioner O'Malia might be referring to what was now --

MS. NATHAN: Perhaps we're not referring to this same thing, but --

CHAIRMAN GENSLER: It's on page 203, footnote 468.

MS. NATHAN: All right.

COMMISSIONER O'MALIA: It seems as though it's changed, but does this fix that issue?

CHAIRMAN GENSLER: I think, because this, Commissioner O'Malia, I think this looks that this is now --

COMMISSIONER O'MALIA: It doesn't say swap dealer.

CHAIRMAN GENSLER: Yeah. Because your point is well taken that it shouldn't say swap dealer, because in those other circumstances, it might be somebody else. So let's make sure just, if there's another footnote, as well, that we just ensure that Commissioner O'Malia's, what I'll call clean-up, is addressed.

COMMISSIONER O'MALIA: And I would also, footnote 501 also may have some bearing on this, as well.

CHAIRMAN GENSLER: So you look at footnote -- Carlene and Susan, if you look

at footnotes 501 and 468 and just ensure that what Commissioner O'Malia is suggesting --

COMMISSIONER O'MALIA: Can I ask on the timetable in process for substituted compliance, I guess this goes to Erik or Gary. Since, Erik, I think you're reviewing the submissions thus far from which countries?

MR. REMMLER: We've received submissions now as of this morning from all six jurisdictions where we have registered swap dealers. That includes the EU, Switzerland, Hong Kong, Australia, Canada and I think -- did I forget any -- Japan.

COMMISSIONER O'MALIA: And what is your timetable for reviewing those and making a determination on substituted compliance?

MR. REMMLER: We received, the first one we received was in late April, but most of them have come in very

recently, and so we're in the process of reviewing them. I expect that the reviews, it's a process of first the staff reviewing the submissions, developing an understanding of the regulations, guidelines, and laws of each jurisdiction, that are referenced in the submissions and then having conversations with, consulting with market participants and regulators in each of the jurisdictions. So that process, I expect, will take a matter of months.

COMMISSIONER O'MALIA: And what role will the Commission play in that process?

MR. REMMLER: My understanding is that, as the staff works through their review of these submissions and comes up with recommendations for the Commission, the Commission will then consider them and make a determination with regard to substituted compliance.

COMMISSIONER O'MALIA: How will you brief the Commission if we have questions for the international regulators, how will we be in contact with them? Will there be an open meeting, other than possibly what Commissioner Chilton is going to organize through GMAC?

CHAIRMAN GENSLER: Can I make a suggestion? I think that each of the Commissioners should be as active as they wish with Erik, time permitting, but with Erik, Gary Barnett, Sarah, and getting briefings and advice and sharing Commissioner's advice to the staff. This is ultimately a Commission determination, so I think that should be welcomed, and I hope that Erik and the team, in terms of the regulators-to-regulators what many of the international regulators have asked is for there to be collaboration and ongoing consultation, which there will be, naturally, really spearheaded by Sarah,

Gary, and Erik directly at the staff levels. But I think Commissioners should --

COMMISSIONER O'MALIA: Well, I want to make sure there is a process, and if they want to come up with a process to continuously kind of update the Commission on what they're working on and where they are in terms of the submissions, because I think, in some regards, you're going to have some probably very disappointed regulators that believe they are equivalent, and that might have a different outcome than they expect, and we will have a problem, and I don't want to be facing that at the 11th hour.

I'd want to know it in maybe the 5th or 6th hour before we get to some deadline that forces us to make a bad decision or a rush decision, when none of this has to happen if we engage publicly and transparently.

CHAIRMAN GENSLER: I think that we're on a similar path to have regular updates, Commission briefings or Commissioner briefings, because it's within the Sunshine Act, but to have briefings in writing and oral. Now that we have all six, if Erik and Gary, you can come up with a process within the next two weeks, that's a real process that we all know on how you're going to keep us updated on the six jurisdictions, and your initial thoughts, and then as they are ongoing.

COMMISSIONER O'MALIA: Sarah, I'd also recommend that you ask foreign regulators if they'd like to participate in some sort of dialogue, if they want to come defend their submissions or talk about their submissions. I think that would be very helpful to have an understanding of what they're thinking and how they execute their own regulations and where they believe they're comparable. So I would

welcome that opportunity, so when you speak to them, please pass on that request.

MS. JOSEPHSON: Yes, we will do that.

COMMISSIONER O'MALIA:

Commissioner -- last question, I apologize. Commissioner Wetjen mentioned the no-action letter that went out, I believe yesterday, regarding the risk management. Now, this is an indefinite letter of no-action, which comes right before what Erik and everybody are working on to find comparability. And I know we're under some deadline of some sort we've created, but why did we give indefinite relief when we're about to make a comparability determination going forward? And, furthermore, this guidance requires us to review every four years all of our substituted compliance, yet this is a permanent kind of relief.

So I'm trying to understand how this process works, and when the Commission

gets to make the decision, and when no-action letters substitute for Commission decision, and especially when it's permanent.

CHAIRMAN GENSLER: Can I try to address it? I think that document appropriately reflects, I apologize, I can't remember the page number, but appropriately reflects that such actions where foreign regimes are essentially identical be brought to this Commission and, I can't remember the exact words, but that that's the presumptive approach. This negotiation with Europe, this was an important feature of this negotiation that they requested, and we've done this elsewhere in other circumstances where we've done no-action letters, so it was a part of it. But it's definitely the intention and I think in the guidance to do such things at a Commission level.

COMMISSIONER O'MALIA: Well, I

think we've taken the no-action process and what should have been limited relief, carefully chosen selective relief, and turned it into an abused process that is, frankly, creating regulation and undermining the Commission decisions, frankly reversing some Commission rules. And that's a dangerous precedent, especially in one document, you give us ultimate decision to make substituted compliance, and then take it away through a no-action letter. So I think we definitely need some processes here, to understand what, when, and how we're going to be using these things, because these are usurping the Commission decision process right here.

MS. KIM: Can I just add a statement? The guidance that's being considered for approval today acknowledges your concern about the use of no-action letter, and it states that, it acknowledges the concern that you just articulated. So

it expressly states that, going forward, any prospective, essentially identical findings will be made largely by Commission order, but we also retain the flexibility to do so through Commission staff no-action process. So --

COMMISSIONER O'MALIA: So, you say you don't like the no-action process, but you reserve --

MS. KIM: No, no, I didn't say --

COMMISSIONER O'MALIA: It anyway to protect our ability to do it.

MS. KIM: Anything about not liking the no-action letter process --

COMMISSIONER O'MALIA: Well, I thought you said that you raised the same concerns I did --

MS. KIM: No --

COMMISSIONER O'MALIA: Which is -- no?

MS. KIM: I'm agreeing, I'm agreeing with your concern about

inappropriate use of no-action letter, I didn't say anything about whether, in this context, as used in the "essentially identical" finding, was inappropriate. But we also have to, I think we all agree that there is need for Commission staff to retain the flexibility to use no-action process to address certain specific situations. And I think, when I say I acknowledge your concern, and it's reflected in the guidance, is that the Commission commits to minimize the potential for abuse by committing to use the Commission level order, as opposed to staff no-action letter, in any future findings regarding essentially identical.

COMMISSIONER O'MALIA: Well, then

--

MS. JOSEPHSON: Can I --

COMMISSIONER O'MALIA: Would it make more sense if we went, in this news release, talking about the agreement with

Europe, which is a positive, we list two other no-actions regarding FBOs and other things that we're going to be doing. Why don't we do those in either substituted compliance or rule change?

MS. JOSEPHSON: Perhaps it would make sense for me to just jump in for a moment, here, and --

CHAIRMAN GENSLER: Would you bring the mic closer?

MS. JOSEPHSON: Okay. To mention the specific letter that you reference does build off of a very close and collaborative and very constructive relationship that we have had with the European Union and specifically the European Commission and the ESMA, the Markets authority in Europe, to look at the rules that have been finalized under EMIR. So their statutory and regulatory framework, so both the legal, the law and the regulations to do the side-by-side comparison of those rules.

And I would compliment and thank very much our colleagues at both the European Commission and also ESMA for the work that they have done to basically be able to demonstrate to us, and we were in discussions about looking at specific requirements, and they were reflected in that letter.

So it's the trade confirmation rules, portfolio reconciliation and compression, documentation in terms of valuation and dispute resolution, and looking at rules that have been finalized under EMIR and under Dodd-Frank, our rules in part 23 for swap dealers and major swap participants and recognize that they're essentially identical, so when you have that sort of joint jurisdiction, that you can recognize that. And, again, that's not inconsistent with a substituted compliance determination, which will occur in due course, and has been --

COMMISSIONER O'MALIA: But it makes the substituted compliance irrelevant when you precede it with a no-action letter.

MS. JOSEPHSON: It doesn't, I don't think it makes it irrelevant, I think they're separable concepts, both legally and intellectually.

COMMISSIONER O'MALIA: But what is, if it's a Commission decision and a no-action -- what is, you've got dual path, here, that you could either do it no-action or you could do it, you know, in the guidance, the important guidance we have that is going to define how we deal with people internationally, it says that it's a Commission decision through substituted compliance.

MS. JOSEPHSON: I think where we are today reflects the reality of the situation, and as we look at the markets and we have two sets of rules that have --

COMMISSIONER O'MALIA: Who looks at the markets, who gets to make this decision?

MS. JOSEPHSON: I think the decision is being made, you know, again, as we move forward --

COMMISSIONER O'MALIA: Who?

MS. JOSEPHSON: Well, at times, as Carlene was mentioning, I think we have the authority to use staff no-action where appropriate, we also have, in the Commission decision making process, which we are all very much familiar with.

CHAIRMAN GENSLER: I would also note two things, Commissioner O'Malia. Often, and probably pretty consistently, regulatory bodies would want this Commission to act as the full Commission. So I think that, too, tends to that. This circumstance was one where the European Commission wanted us, at least at the staff level, to do something sooner than could

possibly be done, but it's fully described and discussed in the guidance. Secondly, regulatory commissions, not just this one, have used staff no-action type letters probably for a few decades. When I was asked to chair this Commission, one of the things Congress asked, the Senate asked is could we inventory. And you remember this inventory of 700 no-action letters that, over the last 20 or so years, we couldn't go back 35 years, but probably over the last 20 years that we inventoried and put it all on our website, that was 700 before. And, yes, over these last four years, we've probably added another 100 to 150, but it is something that is a tool of regulatory agencies like ours.

COMMISSIONER CHILTON: Mr. Chairman, two things. One, I almost chimed in on your previous concern, Commissioner O'Malia, about not learning about these things at the 11th hour, and I agree, we

need some process, whatever people come up with, whether or not it's showing us a list every week and telling us where people are, who's come in, sort of like we're doing on this SEF rule, every week, they tell us who's applied, et cetera, so that we do find out ahead of time. But then, to this point about the no-actions, the no-actions actually allow us, I think, to be more nimble and quick, because it delegates it to the staff.

Now, we can, at any time, say, hold on, we're not comfortable with that at all. It requires diligence on our part, but I think that will avoid the no-action process, will avoid your previous concern about finding things out at the 11th hour about substituted compliance. So I guess it's in the eye of the beholder, but all of it comes back to the job that we're supposed to do to ensure that the appropriate authority is granted,

designated as staff, but not too much at times if they're going astray.

COMMISSIONER O'MALIA: Well, I'd be interested to know -- I'm told that the no-action process is just that, no action by the Commission, as well, and that we don't have a say, it's not a Commission decision, therefore, it's not subject to notice and comment, it's not subject to other things. So it does have a lower standard in terms of kind of the Administrative Procedure Act. So, on one hand, it's a very nimble tool, but on the other hand, it is an end-run around some of these transparent and rulemaking processes. We do have, in just Dodd-Frank alone, over 100 exemptions, 20 of them, I believe, are indefinite, which turns that into a rulemaking, if, in my opinion. If you say the rule is X and then say except for Y, and you make that indefinite, that turns into reversing Commission action, that is a

rulemaking, in my mind, and that is probably something we need to be very careful with.

So we have a process, you know, we're engaging with them, they're submitting it, and to on and off, turn on and off the Commission's authority to use a rulemaking or a no-action relief, I don't, I don't feel as comfortable with the no-action relief. And I think we've crossed a line in how we've used them, and the frequency in which we use them, especially in terms of how you understand what the rules and times and conditions. Because it's not in the rule, right, you've got to go to our website, you've got to check it out, you've got to go through the 100 or so ones that we found, like, oh, does this apply to the rule that I'm looking at in the Code of Federal Regulations or not?

It's not as transparent, it is

confusing, at worst, and in some cases, I think, it undermines the Commission's rule, so I'm going to leave it there for now. I'm not letting this thing go. The Commission has a role, Congress appointed, the President appointed us, Congress approved us to make these decisions. I've voted on hundreds of things. I'm around. I'm happy to vote on things. Put them before us and let us vote. But to have things taken away from us, or not put in front of us and just provided indefinite relief or fixes is not a good policy, in my mind.

CHAIRMAN GENSLER: Mark?

COMMISSIONER WETJEN: I don't have any questions.

CHAIRMAN GENSLER: I thank you all, and now I turn to Melissa.

MS. JURGENS: This is a vote on the interpretive --

CHAIRMAN GENSLER: What's that?

MS. JURGENS: Mr. Chairman?

CHAIRMAN GENSLER: Hold on, Melissa. I'm supposed to turn to you because these are two separate votes --

COMMISSIONER O'MALIA: Wait, oh, I thought we were separating them. I have one question on the exemptive relief.

CHAIRMAN GENSLER: Oh, I'm not, I haven't --

COMMISSIONER O'MALIA: Okay, that's what I thought.

CHAIRMAN GENSLER: Yeah, this is a vote just on the guidance.

COMMISSIONER O'MALIA: Okay.

CHAIRMAN GENSLER: And then we will have a motion and a second on the second one.

COMMISSIONER O'MALIA: That's fine.

CHAIRMAN GENSLER: And then, after the motion and second, there will be questions. So, if there are no further

questions, I would like to thank the presenters, but now also ask if Melissa, Ms. Jurgens, will call the roll.

MS. JURGENS: This is a vote on the interpretive guidance and policy statement regarding compliance with certain swap regulations, also known as the cross-border final guidance.

Commissioner Wetjen?

COMMISSIONER WETJEN: Aye.

MS. JURGENS: Commissioner Wetjen, aye. Commissioner O'Malia?

COMMISSIONER O'MALIA: No.

MS. JURGENS: Commissioner O'Malia, no. Commissioner Chilton?

COMMISSIONER CHILTON: Aye.

MS. JURGENS: Commissioner Chilton, aye. Mr. Chairman?

CHAIRMAN GENSLER: Aye.

MS. JURGENS: Mr. Chairman, aye. Mr. Chairman, on this matter, the ayes have three, the noes have one.

CHAIRMAN GENSLER: Thank you. The majority, the ayes having it, the staff recommendation is accepted, along with the technical corrections, which everybody will see as these hours proceeded today, and maybe into the weekend, will be sent to the Federal Register. I can turn over now to the second presentation presenting the cross-border phase-in exemptive order. And after you present, I'll take a motion and a second, and we'll have questions.

MS. BADIAN: The staff is also recommending that the Commission issue an exemptive order, which would provide temporary conditional relief from certain swap provisions of the Dodd-Frank Act to non-U.S. swap dealers and MSPs, as well as foreign branches of U.S. swap dealers. Among other things, the exemptive order recognizes that market participants may need additional time to facilitate their transition to the interpretation of the

term "U.S. person" in the guidance. Under the exemptive order, the definition of the term "U.S. person" contained in the Commission's January order of last year will continue to apply from July 13, 2013, which is the date that the exemptive order is effective, until 75 days after the final guidance is published in the Federal Register.

In addition, market participants may continue to apply the swap dealer and major swap participant calculation provisions contained in the Commission's January exemptive order from July 13, 2013 until 75 days after the guidance is published in the Federal Register. The exemptive order also would provide non-U.S. swap dealers and non-U.S. MSPs in six jurisdictions that have submitted a request for a substituted compliance determination with conditional relief from certain entity-level and transaction-level

requirements until the earlier December 21, 2013, or 30 days following the issuance of a substituted compliance determination.

CHAIRMAN GENSLER: I will now entertain a motion to accept the staff recommendation on cross-border phase-in exemptive order.

COMMISSIONER O'MALIA: So moved.

COMMISSIONER WETJEN: Second.

CHAIRMAN GENSLER: I support the exemptive order, and with this important step that has been taken, I think, to provide market participants a time to phase-in to this new market reality. I will have a longer statement of support, but the reason I support this, I think that it provides an adequate period of time, this 75 days from when it's in the Federal Register, added to the last year of discussions and dialogue with the marketplaces for the market to adjust to this guidance, but provides further time,

approximately five months additional time to work with foreign regulators in these six key jurisdictions.

And I'm glad to hear, Erik, that as of this morning or last night, we did get the last submissions. But we've been working actively with Australia, Canada, Japan, and the European Union for some time now, and as Erik reported, we got the, there's one swap dealer registered from Switzerland and one from Hong Kong, and I gather we just received those; is that right? And it aligns with what, at least Europe and Japan had asked for, to proceed afoot, to proceed promptly, but to give an additional five months for dialogue, collaboration, to look at outcomes as is appropriate.

But it does mean that, and after three years of Dodd-Frank having been passed, and a year of discussion on cross-border, that I'm just going to use

one example, but a hedge fund that has its principal place of business in the U.S., a nerve center in the U.S., but just happens to have a PO Box in the Cayman Islands should probably be getting ready to do their central clearing as a U.S. person, come about 75 days after this is in the Federal Register, and I think that's appropriate. I also look forward to the comments that the public would send us on this exemptive relief.

Commissioner Chilton?

COMMISSIONER CHILTON: I don't have any questions other than to continue to thank you guys, but I want to make one comment about the phase-in. I mean, it is the key component of getting this done in, I think, a more streamlined, efficient, and effective fashion. Without the phase-in, we'd be going not just first, and I don't mind going first, but we might be going first by a significant length of time on

some things, and we don't have a real good visual on anything that might come out sideways; would there be market migration, would we be poking a stick in another regulator's eye.

So I think that the phase-in is really the core concept that allows us to go forward, even though we're going first, in an appropriate way that, as I said in my opening remarks, will lead to a better networking of global regulatory regimes. So, again, thanks to staff, and thank you, Mr. Chairman, for including this concept, which I think is really key to moving forward. Thank you.

CHAIRMAN GENSLER: I thank you, Commissioner Chilton. I know that you called for this, in fact, all the Commissioners called for this, but you happened to call for it in a speech about a month ago, then Commissioner Wetjen called for it in another speech. But I thank you

for all your input, because I do think, I mean, this gets consistent with, really, we've been consistently phasing in compliance. And it may well be even as we make substituted compliance determinations, and I think we will be making those, this Commission might phase even some of those in further beyond this December date. This is really a date to keep us moving afoot to make the substituted compliance determinations, but there may be phasing, phasing that I would certainly support beyond that, as we phase-in the substituted compliance itself.

Commissioner O'Malia?

COMMISSIONER O'MALIA: Jonathan, section 553(c) of the APA, 5 USC 553(c), states in part that, after notice required by this section, the agency shall give interested parties an opportunity to participate in the rulemaking through submission of written data, views, or

arguments with or without the opportunity for oral presentation. This is regarding the Administrative Procedures Act in a memo you sent me saying why my request over a month ago to provide a 15-day comment period was too narrow.

Now we've gone to a, execute the order, and have a simultaneous comment period, which does not seem to meet -- because it says, "after notice required by this section." It seems, though, in your memo, here, you said case law does not set a minimum floor for comment period, although the Supreme Court in dicta has suggested it may view a 30-day as the minimum period for allowing meaningful opportunity to comment. Why did we go with zero comment before the Commission decision?

MR. MARCUS: Commissioner O'Malia, this is an interim final exemptive order that provides for an opportunity for

comment, a 30-day period for comment.
Agencies do have the authority to issue interim rules, interim orders under the APA for good cause, and, here, I believe there is a basis to do so, in light of the --

COMMISSIONER O'MALIA: Where did you put that, for good, that discussion, I don't think it's in the, I didn't read it in the exemptive order. Why we --

MR. MARCUS: It's on the, on pages 6 --

CHAIRMAN GENSLER: You might pull the mic closer to you.

MR. MARCUS: Sorry. Pages 6 through 8 of the exemptive order, go through some of the reasons the Commission is issuing the order in this context, including the rapidly evolving nature of the legal regimes, and we've had, of course, the ongoing discussions with foreign regulators that, where the picture really has been changing virtually every

day up until today. So there is, this really was a rapidly evolving situation, so we believe it is a basis, in this case, in light of the, perhaps, the substituted compliance program is not, perhaps, as far as long as anticipated before this day, to alleviate uncertainty in the markets and possible disruption in the markets.

COMMISSIONER O'MALIA: I'm reading the first page in this, and it says in this final exemptive order, the Commission provides temporary conditional relief, effective upon the expiration of the January order. It doesn't say interim final anywhere.

MR. MARCUS: Well, my understanding is it is an interim final order.

COMMISSIONER O'MALIA: It doesn't say that.

MS. KIM: No, I believe, we'll have to verify that, the Federal Register

doesn't recognize interim final orders, so it has the effect of an interim final order, that it is --

COMMISSIONER O'MALIA: The Federal Register does not recognize interim final orders? Because my next question was, where in the APA are interim final orders discussed?

MS. KIM: When I say, well, I think we're sort of stuck on labeling, here. The reason, if the question is why are we not calling this document --

COMMISSIONER O'MALIA: I'm stuck on the comment period in what the APA provides.

MS. KIM: Okay.

COMMISSIONER O'MALIA: If you want to label it something different, I'd just like to understand --

MS. KIM: No, I thought the question was why are we not calling --

COMMISSIONER O'MALIA: What the

context was.

MR. MARCUS: Yeah. Well, it's in, whatever you title the document, it's in the nature of a rule, regulation, order that, where, generally under the APA, there are circumstances in which this type of agency action can be issued on an interim final basis.

COMMISSIONER O'MALIA: Is there, you've listed for me in this memo why a 15-day was perilously dangerous in terms of APA, citing *Hollingsworth v. Perry*, legislative history on Administrative Procedures Act, *Forrester v. Consumer Protection Safety Commission*, you know, a variety of things here, *Florida Power & Light*, all these other kind of things, on why a minimum comment period is necessary. So I'm concerned --

MR. MARCUS: Well, that's, right, I mean, that generally wasn't addressing the interim final authority that an agency

has.

COMMISSIONER O'MALIA: And so, I suspect there's some core case around interim final which we are on solid ground?

MR. MARCUS: There are a lot of cases that have interpreted the authority of agencies to issue interim final orders, and we believe, in the circumstances here, it was justified, again, in light of the rapidly evolving nature of the legal regime, the novelty of that regime, the global reach of the swaps market in that regime that there was a justification, here, to do that. And then to give 30 -- again, to give 30 days for comment and --

COMMISSIONER O'MALIA: But it's 30 days simultaneous with implementation, right? It's not a 30-day comment period and then implementation. It's implemented effective upon publication of the Federal Register and simultaneously accepting comment. There's no commitment that we

will go back and answer the comment letters, is there, or change our rule? It's just a comment period, right?

MR. MARCUS: That's right, it's a comment period --

COMMISSIONER O'MALIA: With no commitment to do any of the, you know, digest it, put it before the Commission again.

MR. MARCUS: I think we can assume that the Commission will act in good faith and will take the comments seriously. And the comment period does close before the other dates set out, the other deadlines set out, for example, substituted compliance in December, so we'll have the comments well before that time that the Commission can consider.

COMMISSIONER O'MALIA: Can you provide me the case law when you get a chance on this to support the interim final guidance strategy?

MR. MARCUS: Yes.

COMMISSIONER O'MALIA: And you might want to relabel this thing because it doesn't say that today.

MR. MARCUS: Okay.

MS. NATHAN: Commissioner O'Malia

--

CHAIRMAN GENSLER: I'd just note -- I'm sorry -- we, at Commission request, I remember, even, discussions with probably at least two of you in December. We did this similarly around business conduct application of external and internal business conduct rules that we did, what I would colloquially call an interim final exemptive order there, providing four months and six months time for phasing in the compliance, to do it as a Commission action, to have the Commission speak as a Commission, rather than no-action letter, back to the discussions earlier, and this is very similar to provide the markets with

clarity and confidence that they have this relief as a full Commission action, not dissimilar from what we did in December on that one.

COMMISSIONER O'MALIA: I'm for clarity and certainty and transparency, but we've got to abide by the laws, and APA is not something you get to ignore. We are an administrative agency, we have to follow that law.

CHAIRMAN GENSLER: And we are following that. Susan?

MS. NATHAN: Yeah, I just wanted to point out, to the extent it's helpful, Commissioner O'Malia, that interim final rules are also not specifically mentioned in the APA. They are a creature of agency action that developed in response to a particular need. This interim final order appears, to me, and to all of us, I think, to be an analog to the interim final rule, it follows the same process where the

action becomes final when published or when voted on, however that works, with a comment period to follow so that if there are egregious errors that need to be addressed, they can be addressed after the fact. That's all, thank you.

CHAIRMAN GENSLER: Commissioner Wetjen?

COMMISSIONER WETJEN: I don't have any questions.

CHAIRMAN GENSLER: Then I think -- let me just make sure I read the script properly. If the Commissioners are now prepared to vote, Ms. Jurgens, will you please call the roll?

MS. JURGENS: This vote is on the exemptive order regarding compliance with certain swap regulations, also called the cross-border phase-in exemptive order. Commissioner Wetjen?

COMMISSIONER WETJEN: Aye.

MS. JURGENS: Commissioner Wetjen,

aye. Commissioner O'Malia?

COMMISSIONER O'MALIA: No.

MS. JURGENS: Commissioner
O'Malia, no. Commissioner Chilton?

COMMISSIONER CHILTON: Aye.

MS. JURGENS: Commissioner
Chilton, aye. Mr. Chairman?

CHAIRMAN GENSLER: Aye.

MS. JURGENS: Mr. Chairman, aye.
Mr. Chairman, on this matter, the ayes have
three, the noes have one.

CHAIRMAN GENSLER: The ayes have
it, and the staff recommendation is
accepted, along with technical edits will
be sent to the Federal Register. Before we
adjourn, I just wanted to mention, as often
Commissioner O'Malia asks me, so I was
anticipating "What's next?" And it's
always a terrific question. I thought I
would just mention some of the things that
we currently have in front of the
Commission that, hopefully, we will finish

up this summer.

Commodity pool operator
harmonization final rule, this was a matter
that we proposed, I see Amanda Olear here,
but we proposed about a year-and-a-half
ago, and the final, pens down version, I
think, has really benefitted from each of
the Commissioners' offices. I don't know
if there is further input, but if there is,
it would be terrific to get that in and
whether we can move that by seriatim
promptly, or if you all think it's
appropriate, we can have a public
Commission meeting to do that.

There's the final, it's called
exemptive relief for cooperatives, which I
think we'll move on promptly. There's also
something that is very important to the
Europeans, and though it was not put in the
joint statement for various reasons, but we
move on systemically important
clearinghouses, these provisions of

covering the two largest of their members if they were to default in something called two-hour recovery time. I think those are the three, I might be mistaken, that are in final shape before us. Right now, we do have some proposed for finals, as well. We have a proposed on position limit aggregation that is in front of us. We're still working, I think all the Commissioners have that, but we're still working, and I'm looking forward to the Division of Market Oversight, the Office of Chief Economist and Office of General Counsel to sort of hopefully, promptly, in the next few weeks, to get something to the Commissioners to consider on proposing on position limits.

And I look forward to, I'm going to look at Gary Barnett in the Division of Swap and Intermediary Oversight, and obviously working with the Chief Economist and General Counsel and Clearing and Risk

on customer protection rules, to move that up in front of us. And I think there's also in front of Commissioners the concept release on, I sometimes call it testing and supervision, but I can't recall what we labeled that. And I know that we made very good progress between your office, Commissioner O'Malia, and the Division of Market Oversight, I don't know if it's all looped --

COMMISSIONER CHILTON: Almost.

CHAIRMAN GENSLER: Almost?

Almost. So, hopefully, when Commissioner O'Malia and Commissioner Chilton tell me that it's there, we can do that, that would be terrific. And there's something on ownership and control, and the ownership and control, to finalize that rule, I'm just making a plug for it, but it really is important for surveillance, and I think it really works together with all that you've done, and the Technology Advisory

Committee, to go from paper to data, I think that's an important one.

I may have missed one or two. In the near term, we continue to work with our fellow agencies on the Volcker Rule, and that one has so many other agencies, the Federal Reserve, the FDIC, Office of the Comptroller of the Currency, the SEC, Treasury's involvement, but to the extent Commissioners have input, I don't have a full document or staff, I don't think, has a full document, unless anybody in the room knows from the other agencies, but if there's input or thoughts and considerations, I think it would be helpful, and maybe we should feed input from all of us back to the other agencies on the Volcker Rule.

So those are some of the things. I don't know if Commissioner Chilton, O'Malia, or Wetjen have anything you want to add on that?

COMMISSIONER CHILTON: Thank you for mentioning limits, and I agree and appreciate you pushing to get that done. I want to get limits done, and then for, we've talked about the Volcker Rule, but I think, on Volcker, this agency has a really key role. Because I continue to be concerned that the exemption for proprietary trading that's allowed under the law could be, it could be a huge loophole if we don't define what, actually what hedging is. And so I hope that we do, either individually, put something forward or even perhaps, as a Commission, if we can agree on -- we know something about hedging, Hedging R Us, so it seems to me that we should reengage.

I know we've been involved in it and we've been focusing on some other things, but I look forward to doing that and working with my colleagues on it.

CHAIRMAN GENSLER: And I thank

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you, Commissioner O'Malia, for always spurring me to do this. With that, I think I will take a motion to adjourn the meeting.

COMMISSIONER CHILTON: So moved.

COMMISSIONER O'MALIA: Second.

CHAIRMAN GENSLER: I want to say the meeting is adjourned, but first I want to give a big thank you to this incredible staff that pulled this together. So I thank you, and this meeting is adjourned.

(Whereupon, the PROCEEDINGS
were adjourned.)

* * * * *

CERTIFICATE OF NOTARY PUBLIC

DISTRICT OF COLUMBIA

I, Irene Gray, 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: April 30, 2016

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