UNITED STATES OF AMERICA

COMMODITY FUTURES TRADING COMMISSION

SECURITIES AND EXCHANGE COMMISSION

PUBLIC ROUNDTABLE TO DISCUSS INTERNATIONAL ISSUES RELATING TO THE IMPLEMENTATION OF TITLE VII OF THE DODD-FRANK ACT

Washington, D.C.

Monday, August 1, 2011

A G E N D A

Opening Statements:

JACQUELINE MESA, CFTC

DAN BERKOVITZ, CFTC

ETHIOPIS TAFARA, SEC

ROBERT COOK, SEC

Panel 1: Cross-Border Transactions

DAVID KELLY, UBS

DENNIS KLEJNA, MF Global

WILLIAM MANSFIELD, Rabobank

JOHN NICHOLAS, Newedge

ROBERT REILLY, Shell

THOMAS RIGGS III, Goldman Sachs

MARCUS STANLEY, Americans for Financial Reform

WALLY TURBEVILLE, Better Markets

SUPARNA VEDBRAT, Blackrock

LUKE ZUBROD, Chatham Financial

Panel 2: Global Entities

CHRIS ALLEN, Barclays

ANGIE KARNA, Nomura Securities

SARAH LEE, Bank of America

JOHN MCCARTHY, GETCO

A G E N D A

STEPHEN O'CONNOR, Morgan Stanley

ROBERT REILLY, Shell

MARCELO RIFFAUD, Deutsche Bank

MARCUS STANLEY, Americans for Financial Reform

WALLY TURBEVILLE, Better Markets

Panel 3: Market Infrastructure

PETE AXILROD, DTCC

JAMES CAWLEY, Javelin Capital Markets

MATTHIAS GRAULICH, Eurex

IONA LEVINE, LCH

VERETT MIMS, Boeing

STEPHEN O'CONNOR, Morgan Stanley

LEE OLESKY, Tradeweb

JONATHAN SHORT, ICE

KIM TAYLOR, CME

WALLY TURBEVILLE, Better Markets

Also Present:

BRIAN BUSSEY, SEC

ANANDA RADHAKRISHNAN, CFTC

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P R O C E E D I N G S

(9:00 a.m.)

MS. MESA: Good morning. I want to thank all of you for being here today on the Roundtable on International Issues relating to Title VII of the Dodd-Frank Act. I'm going to make a few opening remarks and allow my colleagues at the CFTC and SEC to do the same before we start Panel 1.

The CFTC has been hard at work proposing rules required to implement Title VII of the Dodd-Frank Act relating to swaps oversight reforms. We've heard from the industry in formal and informal comments about international issues and concerns relating to implementation of the Dodd-Frank Act. We look forward to your input on not just the issues, but also potential solutions.

Although each of our agencies has different statutory provisions regarding the international reach of Title VII, we have a similar need to address the scope of our reach. 722(d) of the Dodd-Frank Act states that

provisions of the Act relating to CFTC regulated swaps shall not apply to activities outside the U.S. unless those activities, one, have a direct and significant connection with activities on or affect on commerce of the U.S.; or, two, contravene the rules and regulations promulgated by the CFTC as necessary or appropriate to prevent evasion of the Dodd-Frank Act. I realize the swaps industry is waiting for guidance on this provision as the CFTC's application of it is important in light of the global nature of the swaps market.

The CFTC has a history of working out solutions to international issues. For example, for many years we have relied on foreign regulators to regulate foreign intermediaries and exchanges if they have comparable regulation. These programs are based in part on the fact that the participants, the products and the infrastructure are all foreign. The swaps market is more complex. Moreover, we have different and in some cases more limited authority to provide

exemptions or recognition abroad under Title VII.

Before I turn it over to Dan Berkovitz, I would like to give a short review of the day. We have three panels that will consider the international issues relating to the Dodd-Frank Act. Panel 1 addresses cross-border transactions. The first panel is intending to address issues relating to when transactions should be subject to U.S. regulation. In this regard, it will be helpful to hear from panel members on how our respective agencies should define the words direct and significant as used by 722(d) of the Dodd-Frank Act. We also want to see if it would be useful and necessary to define U.S. persons and if so how should we define U.S. persons. Finally, there are certain things that apply to all persons under the Dodd-Frank Act including clearing, trading and reporting and we would like to hear about those requirements under this panel.

The second panel although similar to the first panel is regarding global entities. We hope to ask panelists about issues of the level of

activity that would have a direct and significant effect on U.S. commerce thus triggering registration as a swap dealer or major swap participant. There are specific issues we'd like to hear about relating to subsidiaries, branches and affiliates of U.S. firms and the requirements that should apply.

Finally, Panel 3 addresses market infrastructure. It's our final panel and we want to cover clearinghouses, trading venues such as swap execution facilities, securities swaps execution facilities on foreign exchanges and trade repositories. With respect to all types of market infrastructure, we are interested in your views on the differences between regulatory requirements that would make it difficult or impractical for a global entity to comply with both U.S. and foreign requirements and whether there are competitive issues or concerns that we should take into account.

We have a lot of material to cover and I look forward to today's discussion. I appreciate

the thoughtful comments we've received so far, and now I'll turn it over to Dan Berkovitz for some comments.

MR. BERKOVITZ: Good morning, and thank you, Jackie. Good morning, panelists, my colleagues at the CFTC, the SEC and members of the public. Before I provide a few remarks, I'd like to thank the staffs of both commissions, both the CFTC and the SEC, for organizing today's roundtable. I'd also like to thank the panelists for agreeing to participate, sharing their perspective and taking the time to participate on the panel today as we discuss the extraterritorial application of the new regulatory landscape for swaps transactions under the Dodd-Frank Wall Street Reform and Consumer Protection Act.

Since the passage of the Act, CFTC staff has held many meetings with market participants and has received hundreds of comment letters, many of which have focused on the extraterritorial application of the Act and the CFTC's rules promulgated thereunder. Under our transparency

policy, comment letters and summaries of these meetings are all posted on the CFTC website.

During these meetings and in the comment letters, market participants have raised concerns regarding how the United States and other jurisdictions will apply supervisory or regulatory responsibilities for swap entities, trading platforms, trade repositories and swaps transactions that span multiple jurisdictions. I can assure you that both Commissions are working diligently to implement needed reforms in the swaps market and are actively consulting and coordinating with each other and international regulators to promote robust and consistent standards. In "Morrison v. National Australia Bank," the Supreme Court took note of the longstanding principle of American law that unless Congress clearly expresses an affirmative intention to give a statute extraterritorial effect, we must presume it is primarily concerned with domestic conditions. The Dodd-Frank Act expresses clear congressional intent that it apply

to certain extraterritorial activities. Section 722(d) of the agency Act states that the provisions of the Act relating to swaps shall not apply to activities outside the U.S. unless those activities have, "A direct and significant connection with activities in or effect on commerce of the United States or those activities are intended to contravene the Act or the CFTC's regulations promulgated thereunder."

A key inquiry therefore is to determine which activities outside the U.S. meet these tests. This is not our only inquiry, however. As the Commission noted in the proposed rule regarding registration of entities, considerations of international comity also play a role in determining the proper scope of extraterritorial application of federal statutes. We must also consider the circumstances in which international comity may affect the application of Dodd-Frank provisions extraterritorially and how much considerations will affect the application of the Act outside the U.S. I am hopeful that today's

roundtable will help inform the Commission not only on the panelists' views of the ultimate questions of how Dodd-Frank should apply extraterritorially, but also of the process that the Commission should use to make these determinations.

I personally am co-moderating today's second panel which will focus on global entities. In several comment letters filed in response to the CFTC proposals defining and registering swap dealers and major swap participants, commenters have emphasized the importance of establishing an appropriate regulatory framework for the cross-border swaps activities of U.S. and foreign banks. The CFTC recognizes that defining the scope of the Dodd-Frank Act with respect to the cross-border activities of U.S. and foreign banks is crucial to preserving the continuity of global business operations and the risk management tools that swaps provide. It is necessary that we accomplish the overall objectives of improving transparency, mitigating systemic risk and

protecting against market abuse in the swaps markets, and with these objectives in mind we are asking these questions regarding extraterritorial application.

Today's roundtable will play a significant part in achieving these objectives. That is why I look forward to our dialogue on these important issues and am confident that staff will be informed by the remarks of today's panelists. Thank you very much.

MS. MESA: Thanks, Dan. Now I'm going to allow Ethiopis Tafara, Director of the Office of International Affairs at the SEC to also provide some remarks.

MR. TAFARA: Good morning. I'm Ethiopis Tafara, Director of the Office of International Affairs at the SEC and on behalf of SEC staff I'd like to welcome you to this joint SEC/CFTC roundtable on international issues relating to the implementation to Title VII of the Dodd-Frank Act.

I'd like to start off by thanking my colleagues here at the CFTC for hosting today's

roundtable and staff at the CFTC and SEC who tirelessly worked together in organizing the program. I also would like to thank all of the panelists for their participation in today's discussion. We appreciate your willingness to be here and to share your thoughts and perspective on the cross-border issues arising from Title VII of the Dodd-Frank Act.

These roundtables are immensely helpful as they give us the opportunity to hear firsthand how our rulemaking activities may impact you, the market participants, investors and other members of the public. In turn, your comments will assist in developing approaches that will enhance the efficiency of the cross-border derivatives market while advancing our mission of protecting investors, ensuring the maintenance of safe, fair and honest markets and facilitating capital formation. Before I make a few remarks about today's roundtable, I'd like to remind everyone that the views we express today are our own and do not reflect the views of the Commission, the

Commissioners or our fellow staff members and I think that should apply throughout the day for all of us from the regulatory agencies.

The purpose of the roundtable is to explore the international issues raised by new CFTC and SEC rules to regulate the swaps and securities-based swap markets. The interconnection of markets around the world has opened a new frontier. It is true that our capital markets have always had an international component in that cross-border transactions have always been with us. But it's the exponential advances in computer and telecommunication technologies that have altered the dimension. The promises of this new frontier are many. These promises include lower transaction costs, greater choice and greater competition among financial service providers to the benefit of end users. But this new frontier also presents risks. We must keep in mind that as national markets become integrated, global risks become domestic risks. The cross-border consequences of the Asia crisis

of 1997 and the more recent subprime crisis are evidence of that fact.

Previous regulatory approaches to cross-border financial services were devised when the world was a different place and markets were more self-contained and isolated from the outside world. One approach for dealing with this new environment is isolation. We can try to seal our borders. Much like the sheriffs of old required all strangers to check in upon approval, we can insist that all entities whether foreign or domestic providing financial services for products come fully under our regulatory control in every detail. We might also be tempted to open up the town gates and let everyone in who wishes to do business with our citizens, declare caveat emptor and accept the resulting playing field. Neither of these approaches is economically efficient and both seriously test our ability to meet our regulatory charge.

International collaboration is a third and likely better alternative. We're well aware

that we will be regulating a market that is already global in nature. First, the main players in the market are global. Currently, large banks and other financial institutions dominate the derivatives markets. These firms have offices, branches, subsidiaries and affiliates in multiple jurisdictions and serve clients and customers around the world. At the same time, key market infrastructure entities such as exchanges, trading platforms and clearinghouses increasingly serve an international customer base and compete on a global level.

Second, a large portion of the derivatives transactions engaged by U.S. persons is cross-border. Federal Reserve economist Sally Davies estimated in her 2008 study that 55 to 75 percent of U.S. banks' total exposure to derivatives involved counterparties resident outside the United States. More recent data from the Bank for International Settlements supports the conclusions that cross-border exposure remains at the same levels today if not higher.

Third, we recognize that one of the great advantages of derivatives products is that derivatives can offer investors exposure to almost any type of asset and in almost any market without the need to take possession of such assets or be fixed in a certain location and often at a lower cost. It is this flexibility that makes derivatives such popular financial instruments. Thus we face a challenge in regulating derivatives. We believe and Congress has determined in the Dodd-Frank Act that the size and importance of the derivatives markets require robust regulation. Such regulation will improve transparency, market efficiency, investor protection and financial stability. However, the global nature of derivatives markets means that entities around the world have the ability to significantly impact U.S. financial markets.

Let me conclude my opening remarks by noting that while our roundtable consists only of members of the public and market participants, the SEC and CFTC are actively speaking with foreign

counterparts about many of the same issues being discussed today. As you know, pursuant to the G-20 commitment regarding the clearing, reporting and trading of standardized OTC derivatives contracts by the end of 2012, many foreign jurisdictions are also drafting legislation and implementing rules relating to derivatives. The Dodd-Frank Act notes the importance in working to ensure that the U.S. and other countries' regulatory regimes are based on the same robust international standards and to that end requires the SEC and the CFTC to consult and coordinate with foreign regulators on the establishment of those standards where possible. In the last year, the SEC and CFTC have engaged in regular discussions with foreign counterparts on a bilateral basis and through multilateral fora such as the IOSCO Task Force on OTC Derivatives Regulation which is currently drafting international standards or derivatives regulation in the area of clearing, reporting and intermediary oversight. Our goal is to develop a

comprehensive approach to international issues raised by Title VII that strikes balance between facilitating robust an active global derivatives market while remaining faithful to the spirit and letter of the Dodd-Frank Act and vigorously upholding our mandate to protect investors and preserve the integrity of our markets. Today's roundtable should help inform our work.

I again would like to thank our distinguished panelists for their participation. The insights that you provide today will be extremely valuable to us as we finalize our implementation of Title VII. Thank you.

MS. MESA: For final remarks I would like to introduce Robert Cook who is Director of Trading Markets at the SEC.

MR. COOK: Thank you, Jackie, and good morning. I'm joined today by Brian Bussey who heads up our Office of Derivatives Policy and Trading Practices at the SEC in the Division of Trading and Markets. I would like to briefly echo the thanks that have already been given to our

panelists for taking their time to join us today. We very much look forward to your insights and recommendations. Also to echo the thanks to the CFTC for hosting this event and to the staffs of the two agencies for organizing it. I'd like to make two very brief remarks before we begin.

One is that from our perspective, one of the key areas that we look forward to hearing discussion on is the detailed application of our rules under Title VII to, what I'll call, cross-border transactions. More specifically, how the registration, reporting, mandatory clearing and mandatory trading requirements should apply to securities-based swap transactions that involve a U.S. counterparty, a U.S. intermediary or that otherwise involves U.S. jurisdictional means. Second, we recognize the uncertainty that currently exists in this area and, frankly, the difficulties that places some of the international institutions in that have operations in various jurisdictions in and trying to plan for the future. The Chairman of the SEC has stated in

recent congressional testimony that the SEC intends to address the relevant international issues holistically in a single proposal which we're actively working on. This will allow market participants to comment on our proposed approach to cross-border transactions involving the U.S. as an integrated whole. The roundtable discussion today will help inform our thinking regarding this proposal as will the various comments that we very much appreciate having received to date through our SEC mailbox. I believe there's also a comment file that's been opened in connection with this roundtable that people should feel free to submit comments to to help inform the thinking of both agencies. Again, thank you for joining us today and we look forward to your participation.

MS. MESA: Thank you. Welcome Panel 1. I would like to take a moment for you to do self-introductions. If you could introduce who you are and who you're with and then we'll formally get started. Can we start right here at the end with you?

MR. REILLY: I'm Bob Reilly from Shell Trading, and as of last Friday, Shell had 1,144 subsidiaries operating in 105 countries so extraterritorial issues and issues involving inter-affiliate transactions is very important to us. Thank you for letting me be here today.

MS. MESA: Thank you. Also as a reminder, if you can speak into your microphone, that will help the whole room to hear.

MR. NICHOLAS: John Nicholas, Newedge. Thank you.

MR. MANSFIELD: Bill Mansfield with Rabobank, a global bank located in the Netherlands. I'm responsible for the capital market activities and the financial market activities in the Americas region.

MR. KLEJNA: Dennis Klejna, MF Global.

MR. KELLY: David Kelly from UBS.

MR. RIGGS: Tom Riggs from Goldman Sachs.

MR. STANLEY: Marcus Stanley, Americans for Financial Reform.

MR. TURBEVILLE: Wally Turbeville, Better Markets, a nonprofit, nonpartisan organization whose mission is to express the public interest in regard to reform.

MR. ZUBROD: Luke Zubrod, Chatham Financial. Chatham is an adviser to about a thousand end users in the U.S., Europe and Asia.

MS. MESA: One person who didn't give a formal introduction sitting on my left is Ananda Radhakrishnan who is Director of our Clearing and Intermediary Oversight Division.

For Panel 1, I made some introductory remarks earlier that I think what is important regarding cross-border transactions perhaps as a first step is whether or not the CFTC and SEC need to have a definition for "U.S. Persons." Many of the rules may relate to whether or not you are a U.S. person. I think there are differing definitions of U.S. person for the SEC and the CFTC. My first question is first do you panelists think that we need a definition for U.S. person and if we do what is your recommendation for that

definition?

MR. NICHOLAS: Thanks, Jackie. Yes, I think it would be useful to have a definition of U.S. person, but I think you hit the nail on the head when you noted that the SEC and CFTC already have different definitions. I believe the SEC under Reg S has one definition which I also think is used for 15(a)(6) purposes, and then the CFTC has another definition. Two comments in that respect. One is I think it would be useful to the extent possible to try to harmonize the definitions. I know that harmonization in securities and futures law is one of the dictates that we're supposed to follow.

The other one is I think that in general the definition should take into account the differences between funds and nonfunds, funds having potentially to the extent there's a look-through requirement that it be a relatively low threshold, and to the extent that there's not a look-through requirement that it be based on the headquarters of the entity.

MR. TURBEVILLE: The question of whether there should be a definition or not, going back to that, should be measured by what's convenient for folks in the business and also needs to be looked at in the context of the statute which is to me the guiding light as opposed to convenience, although, convenience is an important thing of course. I look at Section 722 and 772 of the statute and it seems to me that one might look to those provisions for guidance in definition. 722 relates to the SEC, describes activities that have a direct and significant connection with the activities and/or effect on commerce of the U.S. That would suggest to me that activities-based analysis is quite important. 772 is somewhat different. It talks about business being conducted in securities-based swaps beyond the jurisdiction of the U.S. so that it's a business-based orientation. I'm curious in that while it might be convenient to categorize jurisdiction by the way companies are organized, it would seem it's more likely to be productive

under the terms of the statute by looking at what their activities are and what their business is and whether a company is organized in a certain place may not be so relevant as what their activities are and what their businesses are. For instance, a parent who guarantees all the activities of a subsidiary that may be not U.S. based and combines all of the swaps in a common book, uses common systems and management and those kinds of things, all of those to me would be indicia of what the statute was intended to govern and show that the whole purpose may be very different from other statutes or other regulatory regimes, the Fed and others, the SEC and CFTC. So I would go back to those sections and look at what's substantively going on.

MR. RIGGS: Thank you. First of all, we do need a definition obviously. Since the SEC and the CFTC already have definitions, I assume that you would work with what you have and not start from scratch. I think it's important, and I know you guys are going to focus on this, the

definition for futures and securities have existed with differences because those markets are quite different. Now if you have a single name credit derivative and an index credit derivative with the same counterparty under the same agreement to be a U.S. person for one of the transactions and not a U.S. person for the other transaction is just not tenable so that it's a high priority more than ever on the SEC and the CFTC harmonizing that definition. And more importantly as well, whatever the definition is, it needs to be harmonized internationally so you don't fall into a situation where someone is a U.S. person for U.S. rules and also an European person for the European rules, and again we get back to the issue of having potentially conflicting multiple sets of rules applying to the same person.

MS. MESA: Luke?

MR. ZUBROD: End users are primarily concerned with being able to continue to efficiently and effectively manage their risks and I think contributing to that cause is being

subject to a single set of clear rules to the extent practicable in any given circumstance. So I think clearly defining U.S. person will contribute to this clarity though international coordination is also essential for the purposes of achieving harmony in the absence of duplicativity.

I think at a minimum we believe it would be helpful to clarify what does not constitute a U.S. person. A foreign subsidiary of a U.S. person should not be a U.S. person if it has no significant connection to the U.S. and we believe it's important that the mere ownership or guarantee by a U.S. parent should not form the sole basis for determining that a foreign subsidiary has a significant connection to U.S. law. It's important that U.S. law acknowledge that many U.S. companies set up foreign subsidiaries not for the purposes of evasion but, rather, because it makes good business sense in operating a regular business. These subsidiaries may be physically located abroad and have business operations abroad, et cetera, and will thus be

subject to regulatory requirements from foreign regulators. I think one important guiding principle should be that if you're subject to regulation elsewhere, you shouldn't be subject to the U.S.'s regulatory regime as well. Though I think an important consideration in establishing this principle is working through timing considerations. To the extent that the U.S.'s regulatory regime will become effective first, the fact that other countries or other jurisdictions have not yet completed their regulations and should not de facto then subject that entity to U.S. law. So I think coming up with a mechanism that accommodates timing differences relative to the implementation of regulations in multiple jurisdictions is important.

MR. RADHAKRISHNAN: That's a big issue for us, or for me anyway, and this argument has been made before, wait until country X finishes. What that means is that if we did that, we are going to peg ourselves the last person, the last jurisdiction that finalizes these rules so the

concern we have is you've got a statute out there, you've got an obligation to finish regulations in 1 year, which we didn't do, but still it doesn't mean that we're not going to finish it. So why should we wait? That's a critical question. Why should we wait until country X or country Y finishes it 5 years down the road, because then the momentum goes away. I realize some of you want that momentum to go away. I think that's fine. But from our perspective we can't let it go away.

MR. ZUBROD: I would certainly acknowledge that that's a complicated process to figure out how to implement this, but I think it's important to note that many of the activities that could be subject to regulation in foreign jurisdictions either have limited or no connection to U.S. law and to the mitigation of systemic risk. So I think balancing the desire to have a robust regulatory framework should also be in tension with the desire to ensure that end users are not subject to regulation that does not

contribute materially to the mitigation of systemic risk.

MS. MESA: Marcus?

MR. STANLEY: I wanted to respond to that by saying that it's a good thing to avoid duplicative or multiple regulatory regimes and where it's possible it should certainly be done, but it's not a statutory goal as I see it. The goals of the statute are pretty clear, and to me should take precedence over some of these issues, and that's protecting the U.S. economy from risk and from exposure. One thing, this issue of foreign subsidiaries has also come up of course in margin requirements and in comments on the prudential regulators' rules. One thing I don't see in these comments is any explanation of how the U.S. parent is protected from losses in the subsidiary. To me if the U.S. parent is going to be responsible for the subsidiary's losses, that's a connection to the U.S. economy right there. We have seen derivatives losses spread internationally before. To comment on the timing

to reinforce what the gentleman at the end said, it seems to me there's a certain first mover advantage here. If you can be the one to get out the details of our rules first then there may be a tendency for other countries to follow you and I'm an "America first" kind of guy so I think there are some advantages to that especially when we're looking at a situation where the whole G-20 committed in 2009 to a similar set of conceptual goals, so we're all following the same path here and there might be advantages to being the first to get the details of that path in.

MS. MESA: Bill?

MR. MANSFIELD: A comment back to not waiting for the rest of the world. I think that's a legitimate concern, but I also think that these rules are complex and I think the international markets are complex. I think we need to do it carefully. I think we need to take our time. I think the U.S. regulators can set the standard with regard to how they expect swaps to be regulated and derivatives to be regulated, and

they can watch the rest of the world follow suit or not and if they don't, it's within your purview to further broaden your scope. It's a legitimate concern, but I do think that we need to carefully implement these rules and regs over a period of time and we need to see how other international regulators are implementing similar types of rules.

Back to U.S. person, I think as to the definition, I think I'm somewhat opposed to Wally. I think the definition for U.S. person is more transactional. How I think about it is what transactions are in scope and I don't think of it as an entity-level type of definition. I hear Marcus and it's a correct concern, but how about the risk everywhere and what does that mean? I think to take that a step further, the risk of an institution isn't just derivatives. The risk of an institution is the lending business, it's the deposit taking business, it's all the other businesses in Robobank's example that an international bank will engage in. So you can't

just say, I need to regulate all of these derivatives because that's going to make them safe and sound. You need to take a very holistic approach with regard to regulating the risk of an institution and that's when we talk to the prudential regulator that will look at all of our risk including derivatives.

MS. MESA: Ethiopis?

MR. TAFARA: I think it would be particularly helpful if people could be specific as to the consequences of not waiting. I've heard general statements as to the need to wait in the interests I guess of a level playing field, but the question that comes to my mind is what would the specific consequences be of not waiting? One. Two, I wonder whether or not it doesn't make some sense to draw a distinction between conflicting requirements and duplicative requirements. Conflicting requirements put in the position of not being able to comply with different sets of rules at the same time. Duplicative requirements are of a different nature and they have a cost and

they have varying costs depending on the nature of the duplication. I think it would be useful and I'd like to hear whether or not it is your view that there is a difference between those two and whether or not duplicative requirements are actually of much lesser concern than conflicting requirements.

MS. MESA: I know I have a few questions out there and your names have been up for a while. Dennis?

MR. KLEJNA: I think it's inarguable the strictly legal point that Ananda makes, but I really do agree with the general sentiment as to what is going to be alternative. We've heard repeatedly and it's clearly true that the Commissions are working aggressively with foreign regulators to try to get these things to be as consistent as possible. The statute is explicit too about the ability to rely on comparable regulation which this agency has done for a generation. So inevitably, and this is the timing issue, there is going to be a time when there is

going to be in all likelihood some meaningful comparable regulation. I wish I had an exact answer for Ananda's question because I understand the point that he has the statute, but I do think that there's room within the statute, and we all know because we've had separate talks previously about particular problems for example when a non-U.S. entity has become designated as a clearing organization and the provision in the statute that if you're going to clear you've got to be a registered FCM that goes to the heart of the whole omnibus concept that's worked so efficiently in the Part 30 regime.

But the alternative to not waiting is having firms comply and do whatever structural or organizational alterations are necessary to meet the American requirements and then in a matter of time having to either change them or having to think about the opportunity of changing them and that's an expensive process. I guess I wonder if we can't think of a way in which -- it's like this definition of U.S. person. To me the most

important thing might be whatever the definition is, is there a way to pick out the elements of regulation that are really the goal of the statute and the goal of the G-20 undertaking and come up with a way, even in a developing way, that through information sharing, through reporting, that while this process is ongoing in these other jurisdictions, the American regulators could reach an appropriate level of satisfaction that they have an idea of what's going on, that the thrust of Dodd-Frank is not being evaded. This is all very, I know, amorphous sounding stuff, but the timing issue is really a critical one and maybe if we just thought in terms of the different pieces of the regime that Dodd-Frank contemplates and figure out a different way to reach a level of satisfaction we could maybe find a way to bridge this timing gap.

MS. MESA: David, why don't you take the next comment and then we'll go to Brian?

MR. KELLY: You stole a fair amount of my thunder, actually. One, I think you have a

fair amount of flexibility, you are going to be first, you're going to regulate U.S. markets and that will happen well before Europe and some of the other countries are finished, but you can be cautious about how you define the extraterritorial scope because you do have to make a finding that what you're looking at has a direct and significant effect in the United States. And I think if you look at some of the other legal areas where that language has been used, particularly in antitrust, it is actually fairly narrowly construed. So I think you have the flexibility to do what you need to do for your core markets in the United States, to tread carefully extraterritorially. For a number of the firms around the table who are large global firms, we have a very complicated implementation job ahead of us knowing what we have to implement and to whom and to what transactions your rules apply is absolutely critical for us. And I think you have flexibility to define a reasonable scope and to work closely with the regulators in other

countries as they develop their rules as the statute contemplates. I agree with Ethiopis that, yes, there are conflicts and they're duplicative. At the simplest level, you can't clear the same trade in two different places. Duplicative trade reporting, as an example of a duplication, will be expensive. I think it will probably degrade the quality of information that's available to you as regulators if we have to report the same trade to two different transaction repositories.

MS. MESA: Let's take some more and try to clear through this issue. Suparna?

MS. VEDBRAT: To answer your question on what may be an impact if we don't wait for the harmonization, we have a concern that if we are unable to achieve a high degree of harmonization both in the rules themselves as well as in timing, then the deep and liquid derivative markets that we currently have will get fragmented and that's going to impact competitive pricing that clients receive today. It's important for us that the U.S. remains a competitive trading jurisdiction.

There are many investment dollars that must remain in the U.S. and we don't want them to be disadvantaged because we were the first to put forward the rules and they may overall impact the way we invest.

The other question related with U.S. -- and I think we all greatly benefit from clarity within that definition because if you were to take a case just as an example, if we were to trade a foreign domiciled account with a foreign branch or institution but it's managed by a U.S. manager or it's a subdelegation to a U.S. manager then what purview would that fall under? So that definition would really help us to define how our business model needs to change to accommodate all the rules with the various differences.

MS. MESA: Thank you. Tom?

MR. RIGGS: I guess one another example, Ethiopis, in particular is since we're focused on the competitiveness of U.S. firms, one concern is whether there's a first move disadvantage in fact which is that while we're completely supportive if

going live in your timeframe with U.S. clients however defined, one from a U.S. dealer perspective is since it's very easy for clients outside the U.S. to just go to somebody else that's not a U.S. person or a sub of a U.S. person, once you have this gap period between when the U.S. goes live and the rest of the world goes live creates a period in which business, client relationships, liquidity, whatever flows somewhere else, and then ultimately when the rest of the world harmonizes with the U.S. approach, the question is, can you get it back and then what's happened in that interim period? It's highly competitive and this isn't about dealers being able to tell clients what to do, this is about clients telling us what they're going to do so that I think is a real point.

And to your point about obviously duplicative is not as bad as inconsistent. The industry has got a big lift to get clearing and execution and trade reporting up and running and obviously that's of primary importance and any

costs that slow that down from a policy perspective, if you can avoid that, obviously that would be a good thing to be as harmonized and internationally consistent as possible and take advantage of one method or type of reporting that works for everybody.

MS. MESA: Wally and then Brian.

MR. TURBEVILLE: So much to talk about and so little time. First, the whole issue of standards and clarity. I suppose if I were sitting up there I would be thinking in terms of looking at the statutory things. By the way, you may disagree with what I said about the standards, I was reading from the statute. What I would do is look at using examples. In other words, I wouldn't try to tie down what is a U.S. entity or non-U.S. entity when you have standards that you can deal with in terms of what kind of business it is or what kinds of activities they are. Certainly examples would be helpful to give people, pick a number, 99 percent of the certainty that they need and the 1 percent that's on the

margin may or may not be coverable, but on the other hand that might be just the one you need to deal with.

The second issue that I think we should drop back and think about is all these firms, I did it myself, that's what I did for a living for a while, participate in the derivatives market. Derivatives are ephemeral, they defy the notion of territoriality, they defy a lot of things -- they defy understanding. And I think we have to recognize that we can't wallow around in the who-goes-first thing and end up in what is in effect a race to the bottom or what would move this whole thing toward the derivatives markets being in an extralegal environment at the end of the day as everybody waits for what's going to go on. The fact is, I think that the duplicative issue is important. I was in a briefing with Senate staff on Friday where we were talking more in terms of overlap rather than duplicative, but that's the same point. I think that has to be embraced because it's going to occur, and I think

one thing that industry needs to do is recognize that the regulators are not foolish, they're not here or in Europe or anywhere else, they're going to deal with overlapping regulation and overlapping regulation is inevitable in such an ephemeral market and I think that's an important thing to think through. Again, things that require contrary behaviors are problematic, but overlap and duplication is inevitable in a marketplace like this.

Last, the whole issue of entity versus transactional. I know the industry wants that. I can't figure out what the justification of it is. The statute gives a pathway to deal with these issues and in my way of thinking there are transactions that are jurisdictional that are covered and then your behavior with respect to those transactions might constitute you a swap dealer, whether your country or origin is Pakistan or the United States, you might become a major swap participant. The question is whether the transactions are jurisdictional and the activity

is jurisdictional and that's in the statute. So I don't see some giant divide which would say certain kinds of attributes of entities categorically eliminate them from jurisdiction under the statute. Maybe I'm missing something, but the argument is made that way. I've read every law firm paper I can find in terms of comment. I can't find the justification for it and maybe folks could enlighten us all.

MR. BUSSEY: Thank you. I wanted to drill back down on something that Luke, Wally and Marcus talked about a bit earlier which is about foreign subs, both where there's just ownership and then there's a guarantee. And I guess for Wally and Marcus, let's take the situation of a dealer in London that's owned by a U.S. entity, just ownership, no guarantee, what's the concern? I think I heard you suggest that that should be of concern to U.S. regulators. What's the concern there? Then on the guarantee side, why for example is not the MSP category if you have a U.S.-based parent guaranteeing a foreign sub you

would aggregate up I think under our proposal to the parent company for purposes of MSP but you wouldn't necessarily apply dealer regulation to the foreign entity? And I guess Luke asking the exact opposition question so I sound fair and balanced, if a U.S. parent decides to guarantee the activities of a foreign-based dealer, why shouldn't that be within the purview of U.S. regulators? Or asked a different way, why isn't that a pathway to avoid Dodd-Frank? And I open that up to the rest of you as well.

MR. STANLEY: I do think that in 2008 we saw a number of balance sheet entities that didn't have an explicit guarantee but had an implicit guarantee for reputational reasons of the parent company and that was an issue. Also I'm going to confess to not being a lawyer now, but as I understand it, it's also an issue in the laws of various countries whether you can pierce the corporate veil and get up to the parent even without an explicit guarantee and what I wasn't seeing in the industry comments is a specific

explanation of why that is not going to happen and I would think that would be important. I'll leave it there.

MR. TURBEVILLE: Everything I agree with there in terms of guarantee. My familiarity with doing swaps is if the swap is with an entity which is guaranteed, it's the parent that you're dealing with. Further, I think the key issues are what is the business and what are the activities so that there is more than just guarantee. There's is it a composite book? Is it a combined book that they're looking at? Are they sharing systems? Are they sharing management? Is the decision making and the strategy in common? I think those are very pertinent issues and I think again to me Dodd-Frank gives you the thrust of what you're getting to that it's not just financial guarantee, it's, is it all part of the same business, is the activity the same because the effect on the markets is important.

MR. BUSSEY: Are you suggesting that it's not a guarantee alone or ownership alone is

enough, it's both that needs to be something more like common systems?

MR. TURBEVILLE: No. What I'm saying is beyond guarantee there are other issues, either/or, it's a matrix of things.

MS. MESA: Bob, you've had your name up for a while. Did you have a comments on Brian's question or something previously?

MR. REILLY: Nothing on Brian's question.

MS. MESA: Let's try to keep with this one question and stay with the theme. David?

MR. KELLY: I'll put this in Ethiopis's conflicts category and I'll take Shell as an example. If Shell has a subsidiary in Germany and I want to trade derivatives with it today, I would do that through a German-organized entity or another E.U. passported entity because derivatives are a regulated activity in Europe. Neither of those entities would otherwise likely to be registered as swap dealers. So it's a reasonable possibility that Shell trading in Germany would

not find a U.S. firm that could be a counterparty. The way we are all organized today we are generally going to have an E.U.-facing entity. We're optimistic that in the MiFID revisions there will be a greater accommodation for cross-border activities into Europe, but I'm not sure that reaching out with this broad a scope is going to help that debate within Europe. So there's just a plain conflict that we may not be able to deal with Shell's non-U.S. subsidiaries.

MS. MESA: Luke?

MR. ZUBROD: Brian, with respect to your question, I'll answer it from a policy perspective, putting the end user hat on and maybe we'll use margin as the sort of window through which to examine this question. End users would be concerned with the potential for a diminishment of essentially good pricing or a degradation in transparency that might occur from the scenario which you describe. To put forth an example, if we're a foreign subsidiary of a U.S. company operating in Europe and if we have the ability to

trade with say Barclays and BNP Paribas and other foreign banks and the ability to trade with the foreign branch of a U.S. bank, if the requirements on the foreign branch of the U.S. bank are more severe than the requirements on the foreign bank, it will certainly influence with whom we'll transact. If those more severe requirements cause us to avoid interacting with the foreign branch of the U.S. bank, it could have the unfortunate consequences of increasing the pricing or at least the competitive dynamics that are available in that particular situation. So I think that's a policy concern that would be there for end users.

MS. MESA: On Brian's question, I'm looking at Bill.

MR. MANSFIELD: I don't know if it's specific to Brian's question, but it's related to the general themes and that is starting with the harmonization. Harmonization is happening and that regulates not just derivatives but it regulates the whole entity of a banking organization. It includes new regulations with

regard to liquidity rules and regulations. So the global rules are taking place. They're going into effect. In Europe you have EMIR and, as was mentioned, MiFID too that are going to regulate the derivatives. So this harmonization of these global markets is happening. It's not going to happen at the same time and it's probably likely going to be staged by different legal jurisdictions.

The solution to that not happening at the same time and having them all be the same from my perspective isn't to take a global approach and say then I'm going to regulate everything around the world because that isn't up to my standards and what I want to do. I think that's the wrong approach to take with regard to concerns around rules and regs within other legal jurisdictions. The reason I think that is, it gets to the point of if you do have conflicting rules. By nature if there's a conflicting rule, then what do I do? Do I not trade? Do I not offer that product? Because if I do, I'm wrong here but I'm right here

-- but which one do I care about more? The whole nature of conflicting rules with regard to derivatives is a big one and I think that we need to mindful that there will be conflicts, but will these conflicts that exist in other regulatory regimes be acceptable to U.S. regulators and my guess is that they will because the conflicting rules will be specific to those local markets.

MS. MESA: I want to finish Brian's question on foreign subsidiaries ownership and guarantees. Does anyone have one last comment?

MR. RIGGS: I would note that obviously we're moving into a world in which we no longer have unregulated activities or unregulated entities. Everybody is going to be registered as a swap dealer or regulated in the world in those activities. All the holding companies are now regulated and subject to prudential regulation. And in particular, all of the swap-dealing entities are now going to have their own capital requirements. It strikes me that the guarantees have ceased to be as relevant from a risk

perspective. Counterparties like them because typically the guaranteeing entities are the ones that have the rated debt which is a proxy for understanding the credit rating of your counterparty rather than having each entity around the world have a stand-alone rating. But given the capital requirements and other regulation of all the swap dealers now it strikes me that the guarantee issue from your perspective is less of an issue than it was before.

MS. MESA: Dan, would you like to ask a question?

MR. BERKOVITZ: Thank you, Jackie. Much of the discussion is we've talked about various results, what the result of the extraterritorial application should be, how should it apply in this circumstance or how should it apply in that circumstance, transaction-based, entity-based or whatever. Sitting here from the agency's perspective, equally important for the result is how do we get to the result. How are we going to make those determinations and in what context? Is

this something that would be done through a rulemaking? Should the agency say, here are the various circumstances and here we are going to apply our rules in these various circumstances. The one issue with that approach is obviously there are a variety of circumstances and a variety of circumstances I've been through personally in a number of meetings and there's a variety of different structures and countries, and we're also talking about global harmonization and waiting on jurisdictions, but there are multiple jurisdictions that we end up maybe waiting on, so that there is not necessarily a one-size-fits-all answer for the various jurisdictions. Or an alternative approach is in a registration-specific or a transaction-specific determination, the agency has the flexibility to either make determinations by rulemakings or by individual adjudications and applicants could come to the CFTC and say here is my bank and I'm on this country with this type of regulation applicable. I think these regulations should apply or

Dodd-Frank should apply to these transaction requirements but my home regulation should apply to these other types of requirements. That would be a more individual determination based on individual registration proceedings. For the agencies that's a much more resource-intensive determination. There is also much less certainty for market participants as to the ultimate result, but it could be more tailored. On the other hand, a rulemaking approach could either by overinclusive or underinclusive. I think in a general approach it could be that some entities could feel my specific situation doesn't particularly apply to how the rule is being developed. So we'd be interested in participants' views on the method by which we should be resolving some of these questions in addition to the result to be achieved.

MS. MESA: John?

MR. NICHOLAS: Thanks, Jackie. Dan, in answer to your question, it's a good question, I think setting it out in a rulemaking is important

to give market participants a roadmap and some clarity in terms of how to set up their business and so forth. I think the agencies clearly have the discretion to do that. I think the agencies have the expertise and the expectation to do that. What I would say in terms of general thoughts on the matter is look to what is already in place. Look to what has worked in the past. I think the CFTC's Part 30 framework has worked. I think that it held up very well during the financial crisis and should be looked to as a guide. I understand the differences between the swaps markets and the futures markets, but I also think that the swaps markets are clearly moving toward the futures markets in terms of centralization of execution and clearing which would probably make a little more sense in terms of a Part 30 framework, and not to discount the SEC's 15(a)(6) framework either that also I think takes into account to a certain extent comparability of foreign regulation.

The other point I wanted to throw in

there is in terms of the language relating to a significant and direct impact, I have to confess that I haven't read the legislative intent on that, but I wonder whether that may be more related to a catch-all type provision for enforcement purposes as opposed to language which is set out to establish things like registration and reporting requirements. Obviously the agencies have to have broad enforcement authority, but I'm not sure that that language is necessarily put in the statute in terms of setting up the initial regulatory structure. Thanks.

MS. MESA: Bill?

MR. MANSFIELD: Dan, I would certainly with you and I think most participants in the swap market would agree that having a clear guideline as to how the market is going to work is preferable to having bilateral discussions of this is how I am and this is how I think I should do it. I think the discussion we're having right now is very direct toward that, and that's defining what's in scope and if we define what's in scope,

clearly define what's in scope, then the organizational aspects and the differences between entities can be resolved. Again, defining what's in scope is U.S. person. I think the Reg S definition is one that has been cited as a good reference to point with regard to the definition of a U.S. person. I'm not a lawyer, but it seems reasonable and logical to base the definition on the scope of the transactions or what would be a Reg S determination, and similar to John in that direct and significant is something that's in addition to this. I would think that it does give the regulators and also the market participants that we should determine when we see something direct and significant and I think that would more like a manipulative or fraudulent type of activity. So we have a very high hurdle to overcome with regard to direct and significant. I think that having the definitions of a U.S. person clearly defined is going to resolve a lot of the issues with regard to the differences among entities.

MS. MESA: Suparna?

MS. VEDBRAT: I second that more harmonization and clarity in the rules themselves perhaps maybe phased in on the effectiveness of these rules is a better approach. If you were consider the second alternative that was presented which is highly customized, for an end user that has many counterparties that they deal with, not only would we have to understand their customized structure, then we would have to overlay our own account structure on top of that which could become a very complex exercise.

MS. MESA: Wally?

MR. TURBEVILLE: I think that given the nature of the swaps market and the derivatives market and its breadth and the ephemeral stuff that I was talking about earlier, it seems to me that the right approach is to again embrace overlap and duplicative so long as conflict is taken into consideration which means that I think the right approach is not to make some sort of cosmic high-level definitional construct but,

rather, deal with the standards and say these activities aren't included. The reason I'm saying that is, while overlap if properly done and internationally is inevitable and something to be dealt with, gaps would be problematic because the other part of the swaps market is it's very portable and it's very easy to exploit gaps. So what I would do is go with a broader sort of approach but with some concrete examples to provide people guidance.

One more thing real quick, the whole issue of the materials I was reading and I'm sure a lot of folks are familiar with it, it's not an issue of manipulation of the market, it's really the standards for extraterritorial application. I get most of my learning from Sullivan & Cromwell writing for the industry and that's what they were thinking. I don't know. I got it from those folks. I think those issues really do apply by the way they were intended to apply to the extraterritorial issue.

MS. MESA: I'm going to take one more on

this issue and then we're going move on. I know you haven't had a chance to speak, Bob. Go ahead.

MR. REILLY: First, to Dan's point, you can't do it transaction by transaction or entity by entity. I think you have to set up categories of different types of transactions. I think one of the things you need to look at when you set up those categories is the location of the underlying product. Commodities are a little bit different than financial products that we've heard a lot about this morning. Commodities are tangible, they're used by real people and they're used in real places. So I think that you have to take that into account when you think about what is something that has a direct and significant impact on U.S. commerce.

Going to David's example for just a second, if we have a German subsidiary of UBS dealing with a German subsidiary of Shell and they're trading German fuel oil, I think it's pretty clear that Title VII would not apply. On the other hand, if trade is involving a U.S. bank,

say a German branch of a U.S. bank, then perhaps a little bit closer call, but I would argue that if we're talking about the underlying commodity being German fuel oil, that should not a jurisdictional transaction.

MS. MESA: I want to move on. I know a lot of people want to keep going on this one. Ananda?

MR. RADHAKRISHNAN: One of the considerations is the desire to treat people in the same circumstance the same. What do I mean by that? I'm going to pick two banks here, Goldman Sachs and UBS. You're headquartered in Switzerland and you're headquartered in New York. Let's say the Commission were to say, Goldman Sachs, you need to register the swap dealer and let's say both of you do activities that bring you within the definition of a swap dealer and the two Commissions were to say, Goldman Sachs, you have to register with us and with the SEC. UBS, you don't have to because you're subject to regulation in Europe. A question, is that fair? Because I

think that's one of the things that we have to grapple with which is how do you treat people -- you choose to do business in a particular way. Now I guess UBS could set up shop in the United States and do it that way. That's up to you. But I think from my perspective, that's a critical element of what do the Commissions have to do which is treat people the same.

MS. MESA: Tom and then Dennis.

MR. RIGGS: First of all, it's not fair. But I think what we're saying is that with respect to U.S. people, everybody is going to have to comply with the rules whether they're based in Switzerland, based in New York or wherever they're based, so that's not in question. The issue is with respect to activities outside the United States. We have global entities with U.S. and non-U.S. clients so how do you treat the non-U.S. activities of these global entities?

From our perspective, the prudential regulators' margin rule is very unfair. It's asymmetric. It applies one set of rules to

U.S.-based organizations and a different set of rules to non-U.S.-based organizations. We're not sure why the activities of a non-U.S. bank who has significant U.S. activities don't need to be regulated but our offshore activities do. We think that the rules should be fair. We think everyone is going to have to comply with U.S. rules. And with respect to the non-U.S. rules we think there should be an even playing field between U.S.-based firms and non-U.S. based firms with respect to their non-U.S. activity.

MS. MESA: Dennis and then David.

MR. KELLY: I think that that's pretty clear and I think it's important to have brought that point out because if you're dealing with an American resident counterparty then it's pretty difficult to get yourself out of American regulation. There may be some de minimis exceptions to that, and by de minimis I don't mean de minimis, minimis, minimis that's been proposed, but that's really it. The rest of it really it seems to me ought to be dealt with through some

information sharing and an aggressive use of enforcement authority on this like, for example market manipulation. And I do agree with Wally and a little less with John about what this language is intended in the statute. I think it is a regulatory provision. I think the Enforcement Division would consider that to be a pretty constrained reach on its ability to go -- and certainly historically it's been much more aggressive than that in terms of manipulating a market. Personally, I don't know the difference between German oil and American oil. I appreciate the attempt to distinguish them, but I understand from a manipulation on a market price standpoint and from the enforcement ability, that's a separate category. But my point is that that is there and that is available and has been and will continue to be. So if you're going to regulate anybody who's dealing with an American resident counterparty which is the what the bulk of this really ought to be all about, then I think the rest of it as difficult as it is, to me that's why

I keep coming back to the timing issue. The talk about duplicative and conflicting to me would almost be the good news at this point because that would mean that there's something out there that you can compare it to and we can make some intelligent decisions about how to apply it. We're not even there yet which is Ananda's point. But I think that as I said before, if there are ways to parcel out the elements of what you care about, I think when you consider that this is a great success for what the G-20 wanted. Everybody in the universe agrees with this fundamentally or at least generally that all regulators want to force everything to clear, all regulators want more transparency and that's where everybody is going. So trying to accommodate a harmonized way, and harmony is impossible really, but in a mutual-reliance way of dealing with that when everybody is sort of generally moving in the same direction I think ought to be an achievable goal.

MS. MESA: David?

MR. KELLY: Responding more to Tom's

point, I think for internationally active financial institutions, we think there should be a level playing field so that if Goldman Sachs is acting through its U.K. branch or a U.K. subsidiary, the same rules ought to apply. We care about it. Some foreign banks active in the United States may well end up registering their main bank as a swaps dealer in which case we would expect if our London branch is dealing with a French counterparty or a German counterparty that it would generally not have to follow U.S. rules, but if it's dealing with a U.S. counterparty, absolutely. Every requirement applicable to a swap dealer must be complied with. Without that I think a number of institutions will run into serious difficulties in how they structure their operations certainly in the near-term and with constraints on their operations in the longer-term.

MS. MESA: Let's take one more. Wally?

MR. TURBEVILLE: Some great comments. Dennis, especially that was a very wise discussion

of things. Tom was talking about the fairness and fell into activities, and then Bob was talking about physical commodities and how they're different and I sort of put those things together. It's kind of an interesting thing that really goes to the issue that makes this so hard, that makes it so that broad rules perhaps are best with carve-outs. Petroleum products may be different in Europe, but on the other hand, community index funds shifts famously between West Texas Intermediate and Brent in favor of Brent in February which after that for whatever reason, possibly for that reason itself, there was this huge disparity between Brent and West Texas Intermediate and prices changed on West Texas Intermediate oil in the United States. My point being, activities in physical and not in our country have a huge effect back into this market. So I think that really speaks to the question of how extraterritoriality has to be flexible enough to deal with the kinds of effects that come back into the market and because of the way swaps are

structured and the marketplace has grown up, I think flexibility is really called for and we would really endorse that as a concept and then carve-outs for activities that do seem to be nonjurisdictional.

MR. COOK: We've spent a lot of time talking about who should be and who should not be a U.S. person and it feels a little bit like it's an all-or-nothing thing, that we haven't been very nuanced I think about whether are you in for all requirements. So I wanted to ask whether that's intentional? Do you believe that if you're in, you're in for everything? We have a number of requirements that are in play here. One is the entity registration and the entity conduct rules. Another is the trade reporting rules. We have mandatory trading requirements. We have mandatory clearing requirements. Should the way we think about who is subject to those rules differ based on -- between those rules or are you thinking that once you're in the regime, you're in for all purposes?

MS. MESA: Marcus?

MR. STANLEY: I think this goes back to something that I think John was saying earlier when he was talking about the direct-and-significant test possibly not applying to certain kinds of registration or structure and reporting, that it was more limited. I disagree with what he was saying in that case. I think the direct-and-significant test goes to the overall goals of the statute and I think what you want to do is you want to trace back the various requirements to the key underlying goals of the statute which involve transparency and systemic stability. So I don't think anybody really cares if a company is reporting some information about its swap on page 4 on the German form when it would be page 2 on the U.S. form, but you care a lot about whether it's reporting all the necessary information on that form because that goes to the transparency issue and this to me is why it's so potentially worrisome that people are talking about exempting from margin requirements that goes

directly -- margining uncleared derivatives goes very directly to the stability requirement.

I also want to mention a few things that people have been saying on this direct-and-significant connection, that there seems to be sort of an attempt to inflate how important that connection has to be. We heard the word "dramatic" used before. I think that was David and that's not in the statute. And the statute itself says a direct-and-significant connection with activities in or affect on, so that affect on is also important to think about.

One last point, something Suparna said before and I think often gets said in connection with this discussion is that the argument is made that we need to limit our extraterritorial reach in order to preserve investment dollars that we want to remain in the U.S. in order to help the U.S. economy by making U.S. companies more competitive. If that's the case, then that's a connection back to the U.S. economy. It almost seems to be the case that people argue that we

have to restrict the extraterritoriality on the one hand because you want to help U.S. competitiveness which will help the U.S. economy because those profits will flow back to the U.S. But on the other hand, if we limit it, those risks will not affect the U.S. economy because the losses will not flow back to the U.S., that we're going to sort of have our cake and eat it too and that seems to me to be a contradiction. If you want to make the argument that the profits are going to come back to the U.S. economy, you should have to be very specific about how those risks won't come back to the U.S. economy as well.

MS. MESA: Thank you. Bill?

MR. MANSFIELD: It's a good question. I think the answer has to be you're in, and what does that mean? I think with regard to that particular transaction, all the transactional requirements with that which is reporting, clearing, et cetera. Then it gets a little bit more difficult when you think of other elements within the rules and regs which are margin. I

think it's possible to be in on margin. It gets even more complex when we think about capital so with that particular transaction I need to hold this amount of capital because this is where this jurisdictional rule applies for this particular transaction. That I think gets more problematic because the whole concept of netting and the global transactions that I'd have with the counterparty. So largely you have to be in. I do think that it does get back to a question that I think we'll discuss hopefully sometime this morning, on the affiliate transactions because then I think about you're in but then I think about how I've managed my book and market risk and being able to transact with affiliates is important to have those out in order to be in with regard to transactions with U.S. clients.

MS. MESA: Dennis?

MR. KLEJNA: I want to make one point about the statutory language, have a direct-and-significant connection with activities in or affect on commerce of the United States. It

says the commerce of the United States. It doesn't say commerce in the United States. Commerce of the United States is a pretty profound thing, it seems to me. You can affect commerce by picking up the phone from some place and having a baseball mitt delivered to where you are, but to affect the commerce of the United States, in a direct-and-significant way, is a pretty high bar, I would think.

MS. MESA: Suparna?

MS. VEDBRAT: I think it's also important to understand what touch points in the transaction are the entities involved would bring you into the purview of Dodd-Frank. There are some less obvious than just the counterparty themselves or the client such as if you have some operational efficiencies in your process where you may handle all your confirms within the U.S. or your collateral management may be U.S. based or U.S. dollar denominated. Things like that. Would that include you if you are dealing with a foreign entity from a trading perspective and the client

is also domiciled outside the U.S.?

MS. MESA: Thank you. Ethiopis and then I'm going to jump in.

MR. TAFARA: Thanks, Jackie. I wanted to get back to something Dennis said earlier and I think he's right in that I would say it's a pretty significant achievement to get the G-20 jurisdictions to agree on trading, trade reporting and dealing and dealer regulation. Of course they agreed at a relatively high level and the devil will be in the details, and until we've seen how various jurisdictions give effect to those principles, it's hard to say what the level of comparability really will be and depending on the level of comparability we may be able to get to reliance or not. But as a complement to that, I wanted to probe something David Kelly said earlier or I think you said in that you were saying the timing issue which is of concern here as I hear it is of lesser consequence if the scoping is right or the scoping of our rules, or are you saying that even if we scope them correctly that timing

remains of consequence and of concern in light of competitive concerns you may have or competitive issues that arise?

MR. KELLY: It remains a concern but I think that with a narrower extraterritorial scope at least initially for your rules, it makes our implementation jobs and our compliance programs easier to develop if we know what we're doing. There is clearly still potential for conflicts of regulation between the United States and other jurisdictions. We have some of that today. This will surely give us 100 new problems to solve and I'm sure we'll be working with you to try to do that. But I think as a practical matter our implementation time schedule is probably not going to be the same as certainly the slower people in the rest of the world.

MS. MESA: John?

MR. NICHOLAS: In answer to Ethiopis's question, I think timing is less of a concern if you do get the scope right, in particular thinking about the potential issue of retaliation. I think

if we are overreaching or over inclusive we invite that from European and Asian regulators. Just to throw out an example, requiring a non-U.S. clearinghouse to register with the agency as a DCO for example or to require every clearing member of a non-U.S. clearinghouse to register as an FCM, we need to think very hard about that I think and I understand there are issues with that on the regulatory side absolutely that need to be worked out. But again I think if we get the scope right, I think timing is less of an issue.

MS. MESA: Tom?

MR. RIGGS: On your point, Ethiopis, I generally agree with your statement. I think with respect to, let's assume the rules are just applying to U.S. people for example, I think within that scope we still have to be focused on what you guys obviously have been doing a lot of, phase-in and sequencing. So how we sequence the implementation of the rules and how they're phased-in will have a big impact on how much we can get one and how quickly. Because some things

arguably go before others in the implementation timeline thing, but as a general matter I agree with your scoping point.

MS. MESA: The last comment here. Wally?

MR. TURBEVILLE: Quickly, again U.S. persons, that is the task ahead of us. But in terms of scope, keeping in mind that the U.S. regulatory scheme is an articulation of what the legal and business communities -- how the border has been drawn between unacceptably risky behavior and less risky behavior so that the competition issue is by definition talking about engaging in riskier behavior that the culture has sort of suggested is the proper behavior to engage in. I know it's not as simple as that, but we should keep in mind that -- and I understand folks just want to do business and make money, I got it -- but we should keep in mind in saying that's problematic to me because I can't compete in that kind of activity, that that is specifically the kind of activity that the culture has said is too

risky to do.

MS. MESA: When I opened this panel I talked about that we would address clearing, reporting and trading, those issues that apply to all persons and we've danced around whether there are true conflicts or whether it's mainly overlap that we see developing, and understanding that the rest of the world doesn't have a solidified position on anything yet really, but we have seen Europe emerge with proposals and Japan. I want to ask the panelists if they see any true conflicts emerging regarding clearing, trading and reporting. Are there real conflicts or might we see emerging overlap and duplication? Luke?

MR. ZUBROD: One significant conflict would result if the scope of the end user exemption in one regulatory jurisdiction is different from that in another. And whereas the scope is firmly set here in the U.S., it remains fluid abroad. One area where there is current disharmony or is trending to be current disharmony is with respect to the real estate sector in terms

of how Dodd-Frank treats that sector and how EMIR treats that sector in European proposals. Real estate is fundamentally nonfinancial in nature and real estate companies use derivatives to hedge commercial risk, but it can often be owned by entities that are financial in nature. Dodd-Frank took a nuanced approach in assessing whether or not real estate entities were financial or nonfinancial using a two-pronged test considering both the legal structure and the underlying business activity. EMIR is currently drafted such that it focuses exclusively on legal structure and consequently many real estate companies in Europe and American companies operating in Europe could be subject to a different availability with respect to the end user exemption. So we would encourage, to the extent possible, that U.S. authorities work with their foreign counterparts to ensure that for the benefit of competitiveness any disharmonies between the U.S. and foreign approaches are resolved with respect to the end user exemption.

MS. MESA: Sticking to true conflicts, Suparna and then Tom.

MS. VEDBRAT: On the clearing front there is a difference emerging currently on the collateral protection for clients in the U.S. We have the omnibus structure and the CFTC has put forward an alternative approach. In Europe you see more of its aggregated model so that's one of the areas where there is a difference. Related with reporting, I'm not sure if this would be a conflict or duplicative, but a U.S. entity account that's a non-MSP were to trade with a foreign swap dealer, then the reporting requirements falling on the U.S.-domiciled entity which could be a little bit problematic because it's just a small set of transactions so we would like to see maybe the reporting to reside with the swap dealer even if it is a foreign registered swap dealer.

MR. RIGGS: I would note that there is a lot of uncertainty still with European rules for example, so people are projecting out what they perceive what will be real conflicts. For

example, if there a European margin rule that has a similar European-centric approach to the U.S. approach on collecting dollar margin or treasuries and the Europeans say you have to collect collateral-denominated euros, that would be a clear conflict if you're a U.S.-registered swap dealer. Also for a European client trading with a European entity that's a registered swap dealer, if they trade a 5-year interest rate swap that's mandatorily cleared here and then Europe also requires clearing of that same transaction, I think people are wondering how that's going to work.

MS. MESA: Bill?

MR. MANSFIELD: I agree with the concept that Luke mentioned in that it's important to identify scope and then once we can identify scope then we can understand what the conflicts are. I think that the conflicts that were mentioned are going to be the conflicts within the regulations that will develop. I also want us to put ourselves in the shoes of the European regulators

and their thinking of this as well. If they take a broad interpretation of scope that is beyond their borders let's call it, we're going to run into similar conflicting rules and regs with regard to transactions here with U.S. customers. Scope is an important one and I think if we can clearly define the scope I think we can eliminate a lot of the conflicts that may exist.

MS. MESA: Bob?

MR. REILLY: In terms of conflicts, I also think requirements for exchange trading is an area where we could have some discontinuities, the role of brokers bringing counterparties together and I might point out that the definition of hedge and differences in how hedging might be defined would have major implications both in the area of position limits and also the application of the end user exemption.

MS. MESA: Thank you. Dennis?

MR. KLEJNA: I wanted to make the observation that in the call for clarity which is hard to argue with, the concern would be that

that's great as long as you get the clarity you want because you may get a lot of clarity and I don't know where that takes me. Going through the list of differences that have already been identified that people have pointed to, you get into the weeds on this stuff. This is pretty serious stuff and pretty serious differences as to how you're going to reach harmony on these kinds of things. No one envies the job that you have. I certainly don't. But I think that that really drives toward a more conceptual approach and a communicative way of dealing with this with other regulators. Maybe that gets you nowhere because people are definitely going to have to make a decision on where they're going to clear that 5-year interest rate swap. Something like that somebody is going to have to decide what you do because you can't violate one law by complying with the other. I don't know what you're going to do about that other than have more meetings with your colleagues. I guess I'll stop there.

MS. MESA: Thank you.

MR. BUSSEY: I wanted to come back to U.S. person to focus on it from the perspective of the intermediary being the U.S. person. For example, UBS's New York desk of Goldman's New York operations intermediating a transaction between its affiliates or its home bank and a Canadian counterparty where the two counterparties to the transaction are not U.S. but the intermediary is a U.S. person. First, does that actually happen in the real world right now? Second, if it does, how should these three requirements, the reporting, the trading requirements and the clearing requirement apply when the only U.S. person is the intermediary and not a counterparty to the transaction?

MS. MESA: Suparna, did you have a comment?

MS. VEDBRAT: Brian, I wanted to add to that that the intermediary could also be the asset manager.

MR. BUSSEY: You mean where the manager is U.S. based but the account is actually a

foreign owned account?

MS. VEDBRAT: Yes, exactly, and also the counterparty that you trade with is a foreign counterparty.

MR. BUSSEY: Right.

MR. KLEJNA: The answer is, yes, it's real. It probably happens every day at least at Tom's firms and mine so that Blackrock in New York calls my trading desk in Stamford and trades a 10-year interest rate swap for a Brazilian counterparty for a Brazilian client whose money is managed by Blackrock.

MR. BUSSEY: And you're setting it up with somebody overseas as well with your home bank, for example.

MR. KLEJNA: UBS AG's London branch trades with a Brazil company.

MR. BUSSEY: So how should the rules apply? You answered the easy question and not the hard one.

MR. KLEJNA: I'll start fairly simply, and I don't know the answers to all of these

questions, I just know that I don't want there to be a different answer to the question or I don't want to be required to clear in the trade in two places. I suspect given the involvement of a European entity and a U.S. entity in the short-run we will probably have duplicative transaction reporting because both of you will want transaction reports. I'd like hopefully between you and Europe and the rest of the world you'd get over that at some point and we can report it once. At the very least it would be nice to be able to report one set of information and not have to report three or four different sets. In terms of clearing, if it's a clearable product I suspect Blackrock will want to clear it, and if it can clear in the U.S. and Europe, I think actually we'd prefer that the choice be directed by the client. I think it will ultimately be the end user at least on the institutional side who will be driving where trades get cleared.

MS. MESA: Ananda?

MR. RADHAKRISHNAN: So if we took the

approach that the requirements apply to the people responsible as opposed to people who may have -- I'll pick Suparna's company for example. I suspect right now that Blackrock is not a counterparty to the swaps. It's your client because the client is financially responsible. So in the example we just gave let's say we said the large Brazilian company is the counterparty and UBS AG is the counterparty and let's assume UBS AG registers because the branch is not a legal person so it's you go back. Nobody has been able to convince me that a branch is a legal person.

MS. MESA: Next panel.

MR. RADHAKRISHNAN: Next panel. Then the question is, is the Brazilian company subject to Dodd-Frank, that's the question, as opposed to -- maybe I'm wrong. Maybe people are saying it should be Blackrock that's -- because Blackrock is exercising a certain amount of discretion or whatever it is that they have to register. I don't know. I know what your answer is but I want to know other people's answers.

MS. MESA: Luke?

MR. ZUBROD: I'll add to the complexity of this question by noting that the issue also arises with end users who have centralized treasury groups that execute for the ultimate benefit of affiliates and we would certainly welcome clarity on how interaffiliate transactions might be handled. In this case end users typically view the intercompany, the interaffiliate transactions that they execute as mechanisms that simply transfer risk within a corporate group so would hope for or look for any requirements that not apply to those interaffiliate transactions except perhaps for reporting because those don't have a material bearing on systemic risk concerns.

MS. MESA: Tom?

MR. RIGGS: Obviously it's a hard question. One obvious answer may be that the Brazilian client is not a U.S. person and the rules shouldn't apply to them. But obviously one of the concerns we have, or one of the concerns I

have, is a lot of the focus on international issues is focused on Europe and there's a big world of clients out there in Asia, South and Latin America and Canada where clearly the regulatory regimes are even further behind where Europe is. How do we make sure that the regulatory issues are dealt with but don't wholesale those markets to other people away from U.S. firms? Because, the Brazilian client will say I'm not going to follow the U.S. margin rules when I can trade with an Asian bank and not have to. I think this issue of where the globe is, is it different places, is actually a big issue because we're so focused on Europe versus the United States.

But I also think another issue we see quite frequently, is that the risk is moved into the United States because a client outside the United States wants to trade an S&P 500 swap, so a non-U.S. entity may book the trade but the risk may get moved internally to a U.S. swap dealer which gets to the whole question of whether

intercompany trading subjects you to registration, margin, SEF, clearing and all those kinds of things which is a big issue because if you can't move the risk to the place where you have the expertise, that makes everything more expensive and makes you less competitive as well.

MS. MESA: Wally?

MR. TURBEVILLE: I think we've just seen the discussion that suggests that all of these things should be within the jurisdiction of Dodd-Frank but might be treated differently rather than making some giant decision in scope saying that categorically the scope of Dodd-Frank is limited more narrowly than what's completely suggested by the statute itself. So a transaction that's really between the Brazilian and Swiss entities might have a different result and even though it comes through the United States it's clearly activity inside the United States, part of that activity is, and that might have a different result than an activity where an end user or anyone else actually through affiliate swaps put

the risk in a combined comprehensive book as part of one business notwithstanding the fact that maybe it originated with a swap by a subsidiary, but it's really part of the whole business. Say it's in the same book, it's guaranteed by the parent and all that, that's a duck. I think the gist of it all is that probably all of these are within the scope of Dodd-Frank but might have different outcomes from a regulatory standpoint because of policy considerations.

MR. BUSSEY: Can you drill down, Tom or Wally? If the rules do apply to the New York desk, why isn't the result Goldman and UBS move to Toronto, the desk that does that activity, so that they can intermediate the UBS AG London branch and the Brazilian account, or Blackrock moves from Connecticut or wherever you're located up to Toronto so that you don't have this type of transaction subject to Dodd-Frank?

MR. TURBEVILLE: Let me say, yes, I understand what you're saying, and if the scoping is done so that you allow people to use

subsidiaries, to move a subsidiary up to Toronto, yes, you make it really easy for them to do so. However, I don't know how you get around the fact that you've got a concept of territoriality where there's the United States, Canada, Europe or Japan, and you're trying to regulate a business which by definition defines the concept of territoriality? If we give in to that we end up with mathematically, and I'm not mathematician, I'm a lawyer for crying out loud, but I think mathematically you end up with virtual lawlessness. I think you eventually get to the lowest, lowest denominator so soon you're worried about people going off to, I don't want to offend anybody, some country in the Pacific, a tiny island in the Pacific. I think, yes, you're right, but that calls for a broader scoping definition with pragmatic rules so that you don't make it easy for people to move across the border to Toronto or to Pago Pago.

MR. TAFARA: Tom raises an interesting point with regard to this coordination in terms of

timing as between us and some other regions other than Europe. But I think the example you raise leads to a question for Suparna which is, is that the choice that you would make or is that the choice that your client would make? In other words, if the choice is between working with Goldman Sachs in New York or dealing with some intermediary in Hong Kong that's unregulated, are there pressures that actually push you toward Goldman Sachs as opposed to, and this is probably a policy question, but what is the choice you would make in that situation?

MS. VEDBRAT: I think that you would need to consider where you get competitive pricing and also overall strong counterparties for your clients so I think it would depend who's on the other. If you have an equally strong counterparty that's in Hong Kong and you're able to get good liquidity and pricing available there, you're going to see a gravitation of choice moving overseas.

MS. MESA: John?

MR. NICHOLAS: Quickly, I think to take Brian's example, it seems to me that if you have a U.S.-based intermediary and two non-U.S. customers on either side, that the U.S.-based intermediary is going to have some registration requirement, be it FCM or a BD, in which case it itself should be subject to all of the relevant Dodd-Frank rules. The transactions on either side I would think would be also subject to the Dodd-Frank rules as well. I'm not sure how you can get around that or would want to get around that, frankly.

To Ethiopis's point, I think it's a good point which is, we tend to be thinking about regulation in a negative connotation for business, but having worked with many of our customers, I know that being able to conduct business in a robust regulatory framework is generally considered a pretty good thing.

MS. MESA: That sounds like a great note to end on, people choose robust regulation. Why don't we conclude Panel 1. We have a 15-minute break before Panel 2. We're going to get to do a

deeper dive into the same issues regarding entities. Thank you, and thanks to all of our Panel 1 participants.

(Recess)

MS. MESA: Let's prepare to get started. So if you could grab a seat. So, I want to welcome our second panel for the day. I'm going to do what we did with the first panel, which is could we just go around and do a self-introduction of your name and who you're with, and this time let's start with -- actually, we know Bob but we'll start with Bob again.

Bob?

MR. REILLY: Bob Reilly from Shell Trading.

MR. McCARTHY: John McCarthy from GETCO.

MS. LEE: Sarah Lee from Bank of America.

MS. KARNA: Angie Karna from Nomura.

MR. ALLEN: Chris Allen from Barclays.

MR. O'CONNOR: Hi, Steve O'Connor from Morgan Stanley.

MR. STANLEY: Marcus Stanley from Americans for Financial Reform.

MR. TURBEVILLE: Wally Turbeville, Better Markets.

MR. RIFFAUD: Marcelo Riffaud from Deutsche Bank.

MS. MESA: Okay, I'm going to ask Dan Berkovitz, our General Counsel, to ask the first question and get started.

MR. BERKOVITZ: Thank you, Jackie, and welcome to our second panelists.

I'd like to start off with a question that's somewhat a follow-up from much of what was discussed on the first panel, but perhaps we can get into it with a little more specificity on this panel.

The question would be specifically which activities should trigger -- which activities outside the United States should trigger a registration requirement for a swap dealer? Would it be only the activities dealing with U.S. persons within the United States, or would it also

potentially be activities with U.S. persons outside the United States?

And then the second question would be once registered, which Dodd-Frank provisions should apply? Should it be transactional requirements that would apply to specific transactions or, as you're aware, Dodd-Frank for swap dealers, major swap participants, not only has transactional requirements but has a number of entity-wide requirements. Those would be capital requirements; those could be business conduct standards, internal business conduct standards, as well as external business conduct standards. And, for example, the external business conduct standards would be how you deal with certain counterparties; internal business conduct standards would be things like chief compliance officer, risk management procedures, documentation procedures. If you're a U.S. swap dealer solely dealing within the U.S. or MSP and you become designated, all those requirements apply to all your transactions. But if you are a swap dealer

outside the United States, who becomes a swap dealer by virtue of your dealings with U.S. persons, which of these transaction requirements should apply? Which of the entity-wide requirements apply?

So, the first question would be the threshold question -- which activities count towards the determination of whether an entity outside the United States is a swap dealer? And then the second question would be once the threshold is triggered and you become a swap dealer or MSP, which of the Dodd-Frank requirements would apply?

MR. TAFARA: Right. Why don't we start with Marcelo, and then we'll turn to Angie.

MR. RIFFAUD: Thank you very much. I think the answer to the first question -- which activities would make you a swap dealer -- it's in the statute, and the prior panel, the entire discussion about whether you're facing a U.S. person, however defined or involved in the U.S. transaction, however defined, that would be what

should give rise to whether you're a swap dealer subject to registration.

On the question of what rules would apply at that point, I think the trivial answer is all of them, and -- but then when would you apply those? You would apply the entity-wide rules by definition, apply to the entire entity at all times. So, to the extent your concern about capital, it's entity-wide and you're measuring it at all times.

When you're talking about the transaction-based rules, that is where a swap dealer should need to be compliant only when facing U.S. persons on U.S. transactions. So, a bank that has activity both with U.S. and non-U.S. persons, the transaction-based rules should attach only to the former category. That would be another proposal. But that non-U.S. activity does impact the entity-wide activity, and so that's why you're measuring that at the entity, all the other activity.

MR. TAFARA: Angie.

MS. KARNA: Further, I agree with what Marcelo said about activities with U.S. persons. I would also take us back to the first panel. We think the definition of "U.S. persons" really should stem from existing law, and so, for example, one of the points that had been made earlier related to offshore affiliates or offshore branches of U.S. institutions. Under existing law, under securities laws, if Nomura's foreign dealer provides a risk management solution to a Japanese subsidiary of a U.S. company or provides a risk management solution to a U.S. investment manager, who is managing Japanese risk for a foreign client, then we don't believe that the foreign dealer needs to register in the United States of America. We believe that that's offshore activity.

MR. TAFARA: Chris?

MR. ALLEN: Thank you. I agree with that. I think it does stem from the definition of U.S. person, and I agree with Angie's comments in terms of how one might look at that question by

reference to existing law, particularly, for example, Reg S.

I think what -- going to the second question, though -- as to what it might be that then kicks in under Dodd-Frank when one is on the face of it when the scope of the regime. It strikes me that quite usefully the distinction is much (inaudible) between entity-style regulation and transactions specific to that basis of regulation is an important one. On the face of it, you might obviously have the notion if you're looking at capital and prudential regulation, clearly that only makes real sense when contemplated at an entity level.

At the same time, I think, on that score, it's important to recognize the importance of potentially deferring to home state regulators. In circumstances where those home state regulators have a comprehensive and globally recognized standard of regulation of, for example, capital or other aspects of prudential regulation. And that, obviously, would be a test that would have to be

satisfied on a jurisdiction-by-jurisdiction basis.

When it comes to the transaction level regulation, and obviously aspects of conduct of business that would fall within that, it strikes me as most useful to apply or to require the embassy's entity which is a registered swap dealer -- apply those conducts of business standards in circumstances where it is dealing with a U.S. person. So, for example, it strikes me as entirely sensible that the U.K. -- and see which is a registered as a swap dealer but which has entered into transactions with a U.S investor. It should be required to apply U.S. conducts of business standards relationship. However, the London entity of the U.K. firm entering into transactions with an Italian client, for example -- it strikes me that the most appropriate conducts of business standards to apply there would be those that apply innocently or potentially in the United Kingdom but certainly easily.

MS. LEE: I don't think I've actually

got much to add, because you've thought of everything that I was going to say. So, I mean, I agree completely with Chris and Angie and Marcelo, particularly as well in terms of the registration requirement really applying when you're dealing with entities domiciled in the U.S., U.S. persons. And in terms of when the entity registers and how those requirements apply, I agree whole heartedly with Chris, that I think the distinction needs to be made between entity-level requirements, and transaction-level requirements, and in relation to the entity-level requirements I do think some thought should certainly be given to comparable regulation of those entities in those foreign jurisdictions that they could be relied on, and at the transactional level, I think certainly transactional-level requirements should be applied around business contacts, clearing, reporting to that entity's trading activities with U.S. persons domiciled in the U.S., but not to the transaction requirements of that entity with foreign persons outside the U.S.

MR. TAFARA: Wally.

MR. TURBEVILLE: We slipped into domiciled. Sorry. So, I think that it's clear that if you defer to U.S. persons, that's an issue that's not very Dodd-Frankish and has standards, and from our perspective domiciled wouldn't be the issue. But I'm also sort of struck by what appears to be a thought that at any level kinds of regulation, capital and others, that the sense is that you would be a Dodd-Frank jurisdictional entity but there would be some deference to other entities, which I think is -- you know, the standards are another issue, but that being an approach recognizing there could be duplicative regimes that might apply sounds like a sensible one, too -- is to understand which particular requirements are ones that are absolutely required by the U.S. regulatory regime and others for which some sort of deference might be provided.

MR. TAFARA: Brian, did you want to probe with regard to that a little bit?

MR. BUSSEY: Yeah, so to sum up the

answers, if it's -- regardless of whether the dealer is domiciled in the U.S. or overseas, it turns on whether the counterparty is a U.S. person. Is that what I'm hearing from the panelists? And if that's the case what side of the line -- so that you're taught making a distinction between entity level and transaction level, which side of the line does margin fall on in that divide?

MR. TAFARA: Robert, I don't know whether that was something you planned on addressing. Why I don't let you pick up and then maybe turn to Stephen, who I think is trying to be responsive to Brian, so go ahead, Robert Reilly.

MR. REILLY: Well, first -- just going back to the original question, I just want to emphasize the transactions between affiliates should not be covered by Dodd-Frank whether in the U.S. or if they're between affiliates in the U.S. and another country. Other than that, I think that only entities that have a direct and significant connection with U.S. commerce ought to

be covered and I think "significant" means something. It doesn't mean a hypothetical connection. It means something that's very direct and very tangible. So, I think some of the things you would look at in that regard are well, gee, does the company have a U.S. presence; is it trading in U.S. markets with non-affiliates; and what is its volume of bilateral trading in commodities with U.S. underliers?

MR. TAFARA: Stephen, did you want to tell Brian on which side of the line you would place margin?

MR. O'CONNOR: Yes. But before that, I think it's worth stating that we would all like all the rules globally to change on the same day and to be the same rules in each jurisdiction with mutual recognition of authority between regulators of a certain standing and mutual recognition of infrastructure such as CCPs and dates of repositories. And when you -- and clearly we're not in that world, so that's where extraterritoriality comes in, and I think the U.S.

going first is fine, but the extraterritorial components of that are very important. And then the most important thing is to reserve a level playing field within a market. So, U.S. clients, when trading with U.S. or European banks, should be the same rules applying to both banks, and within Europe I think U.S. banks and European banks have to be treated the same as well.

So, specifically answering Brian's question, I agree with the comments made earlier that the transactional-level rules should, with regard to European entities, apply only to transactions with U.S. counterparties. And to the extent that European operations, for instance, of U.S. banks, trade with European clients, they should not be subject to the Dodd-Frank transactional rules, including the margin rules, because if they did then you would not have a level playing field in Europe. European clients would be incented to not trade with those European operations of U.S. banks, which leads to reduced liquidity in those markets, reduced competition.

Other consequences would be jobs and tax impacts in the U.S. U.S. banks would be hampered in their ability to nudge a capital formation, including in the U.S., because the global reach is important to provide those services even to U.S. clients. It's either geographical shift of liquidity, mentioned earlier, from the U.S. into Europe, including for U.S. products; and U.S. regulators would have less visibility into global markets as product move offshore, including into U.S. product, which itself might move more offshore. So, I think the consequences of having an unlevel playing field in Europe -- was the example I gave -- or in the U.S. would have profound impacts on markets.

MR. TAFARA: Okay, Marcus, Wally, then Ananda, and then Marcelo.

MR. STANLEY: Yeah, I'm not sure we want to get completely hung up on this transaction entity level distinction. I mean, it's, to a degree, a real distinction, but our focus ought to be on the statutory goals of the Act, and to me it seems like margin, whichever side of the line it

falls on -- it falls on the side of the line where you want to do it -- because fundamentally the Act is meant to avoid a situation where the U.S. market is exposed to the risk created by the failure of a major derivatives dealer, and we know, because this entity has registered as a swaps dealer under Dodd-Frank that it's doing activities that have a direct and significant connection to the U.S. economy, and presumably its failure would expose the U.S. economy to some negative fallout as well. And margin -- here, you know, the line between margin and capital -- they're very interrelated to me, because they're both a means of sort of making sure that you have the funds available to protect yourself in case you end up very far out of the money on a derivatives transaction. And presumably, actually, if you weren't taking margin, your capital requirements should actually be higher. So, I think it makes a lot of sense for the margin requirements to be, in effect, for anybody who registers as a swaps dealer under Dodd-Frank.

And in response to Stephen's point that this would -- that a loss of business in Europe for U.S. subsidiaries would result in a hampered ability to provide capital to firms in the U.S., this goes back to something I said in the first panel, that to me this just demonstrates what global entities these are, that profits and losses in subsidiaries can affect the flow of capital into the U.S. And I'd really want to see if the profits are affecting the flow of capital into the U.S.; I'd really want to see some very hard-core proof that the losses won't flow into the U.S. as well.

MR. TURBEVILLE: Margin -- the philosophy behind the proposed regulations that are out there is that margin is taken by swap dealers to protect them from harm along the lines of systemic risk issues and, like Marcus was saying, it's a aligned with capital, so that would be an entity purpose. However, if you read our comment letters, we think there are other reasons for margin to be there. They just don't happen to

appear in the proposed regulations yet. So, we're hopeful that in the final they do. But at least there's an entity-level purpose behind the regulations; ergo, margin is at least entity based.

MR. TAFARA: Ananda?

MR. RADHAKRISHNAN: I want to pick up at the point that Stephen made, which is -- and I see the attraction of treating people the same, right, irrespective of where you're located. In other words, Morgan Stanley, you should be treated the same as Barclays; you're both swap dealers. And I think the point you made was we should only regulate you for your activities with other U.S. persons on a transactional basis. I think that was the point that was being made.

Now, the question is this, if we accepted their proposition, basically what we're saying is whatever Morgan Stanley does outside the United States does not have a direct and significant connection with activities in the United States, because that would have to be it,

because -- and so I'm trying to reconcile the approach you're suggesting with our duty to enforce the statute.

MR. O'CONNOR: Right. And I understand the struggle you face. But also the G-20 talks are having a level playing field and not creating situations of regulatory arbitrage, so I think to some degree there is a balance needed here.

And the point made about financial institutions being global entities is quite true, so the point I made at the outset was that ideally we'd want to have the same rules in all jurisdictions, and I think energy should be spent on trying to reconcile the rule set and the timing between Europe and the U.S. primarily but other jurisdictions as well, and that's the solution to regulating global entities rather than going first -- and as I said earlier, going first is a good thing, and it shows that the U.S. is taking a lead, but going first and then hampering the businesses of the U.S. banks seems to be -- will be harmful and is the opposite protectionism

basically.

MR. TAFARA: To follow up on what Ananda has just said and to pick up on a couple of points that Wally made earlier, we haven't responded to the approach whereby you don't defer or there is no deference with respect to the conduct rules, one, because there is a timing issue -- in other words, what are we deferring to? Two, why not have complementary requirements whereby the requirements are more or less the same at least in terms of outcomes without necessarily having to defer to a home regulator or have the entity level -- I think that's what was being suggested. I think it's probably worthwhile to try and respond to that point and as was raised by Wally.

So, I see a number of flags up. Chris. Sarah I think was next, Angie, Wally, and then Marcelo.

MR. ALLEN: I was just going to comment that it strikes me that when we talk about potential deference to home state regulation, that's not in some way a suggestion that the

standard that should be applicable to that institution should be in any way less, because I think it is quite important that that approach be underpinned by an acceptance by U.S. regulations. But the overseas standard of regulation is appropriate, comprehensive, and conforms to requisite global standards in terms of the integrity of that regulatory approach. And if that is not the case in terms of the overseas regulatory cultural approach, then that regulation would not be in place on the capacity to defer. It just wouldn't apply. So, I think there was a safety mechanism, if you like, embedded within that.

I'd also just to -- I agree with the comment -- I can't remember who it was made it, but there is obviously a very close nexus between capital regulation and margining, in that of course the less collateral and institution-sought dealer holds on its booking relations to its counterparty trading lines, so the amounts of risk-rated asset and (inaudible) capital that it

has put behind that business increases significantly. So, of course there is an important connection between those two concepts. It doesn't necessarily strike me, though, that that takes us to the conclusion that one should look at margin from an entity perspective, because it strikes me fundamentally that it does fall within a kind of conduct of business conceptual type of rule and because not least of the difficulty that derives from the fact that different regulations around the world are also looking at that same question in terms very much of the conducts of business standards that should apply to dealers and market participants in their respective markets. If you take the European example, which is the one I am closest to, and the EMIR regulation, which provides for, among other things, principle trade reporting and managed claim rate (inaudible) derivatives. Of course, one of the provisions in that regulation, which I appreciate, is behind the U.S. In terms of timing but has still relatively progressed. That

specifically contemplates margin requirements for uncleared transactions. I think trying to apply in Europe between transactions entered into why a swap dealer registered UKMC and its Italian client, for example. A margin requirement, which was in any way different from the one which was required to be applied by the U.K. and Italian regulators to govern that relationship, I think, could be highly problematic.

MR. TAFARA: Sarah.

MS. LEE: Yeah, I wanted to touch upon margin requirements as well, in particular, I mean, a lot of people have been talking a lot about Europe, but lesser about Asia and where that market is at the moment in terms of its margin requirements. I mean, Asia is still what I call, many Asian jurisdictions are still, in the very early stages of derivatives development. So, there you have the fully bank market practices that we might see in the West. So, jurisdictions like China, India, Taiwan currently don't have market practice to call for margin in those

jurisdictions. So, I think one of the challenges that we face is if we require a margin at the entity level, it becomes difficult, then, for entities that have registered in the U.S. to operate in those jurisdictions, because local banks will not be asking for margin. And so to manage the risk of trading activity in those jurisdictions where isn't margining, capital -- as Chris was referring to -- can be used as a tool to help manage the risk of those jurisdictions not yet having the same sort of margining practices that we see in the rest but then allowing global institutions like ourselves to be able to operate in those jurisdictions.

MR. TAFARA: Chris, was a two-handed intervention? Did you want to follow up very quickly on what Sarah just said?

MR. ALLEN: I agreed with what Sarah was saying, but the point I wanted to make was the potential consequence or conclusion if one pursued the notion of margin -- as an example, applying at the entity level -- which is touching on a point

which was raised in the first panel, which is the potential fragmentation at the legal entity level of the different participants in the markets in a manner which could be unhelpful when it comes to a host of issues, but not least for failure margining taxation on capital. Because if it were the case, that's the requirements complying with Dodd-Frank margin rules for a European entity, brought that entity into conflict with obligations it might have under the European regulation regime touching on the same issue. There may be an inevitable consequence of that, which is that in order to be able to continue with both European and the U.S. businesses, the interesting question has to subsidiarize its operations. And that strikes me from a capital vetting in various perspectives, essentially unhelpful. And also query, why does it really take the systemic risk debate further forward.

MR. TAFARA: Angie.

MS. KARNA: Yeah, I think Chris mentioned one of the things I was quite focused on

as well. You had asked the question earlier, Ethiopis, about what's the consequence of no deference. For us at an entity level, the consequence of no deference is the line of the spectrum that was mentioned at the beginning of today, which is isolation, and specifically subsidiarization and having regionalized pools of capital and a lack of liquidity for global end users and global end clients who want to access markets in different jurisdictions. So, we think it's critical that there be deference at entity levels, and for us capital is a primary example, and we agree that margin and capital are linked and raise challenging questions. But we also agree that a level playing field is critical for functioning markets globally and for U.S. investors and end users of derivatives to be able to access those markets globally.

MR. TAFARA: Angie, can I press just a bit on that point --

MS. KARNA: Sure.

MR. TAFARA: -- to ask why deference if

the requirements are complementary and indeed may be highly comparable? In other words, as long as the standards are comparable, need there be deference in terms of saying we're going to simply leave it to you to oversee the entity, whereas you could, if they were complementary requirements, have a relationship whereby it is a coordinated, collaborative effort on the part of the regulators?

MS. KARNA: Capital, to me, is the fundamental issue, and there are global capital standards that all of the major global institutions are applying based on their local regulatory interpretations of those standards. So, capital is assessed for an entity looking at all of its risks, not just a piece of its risk. And when I speak to risk managers at Nomura or anywhere else, they tell me that they speak Greeks not grids and that they look at capital and they look at risk across all of their entities. So, it's very critical for us to manage our risk and manage along one set of rules, not slight

differences in rules between different jurisdictions.

MR. TAFARA: I see a number of the regulators have raised their flags, so maybe I'll turn to them quickly and then turn to the other side of the table.

So, I think, Jackie, you had your flag up first, and then Dan.

MS. MESA: Just wanted to follow up on something actually Sarah said, that I'm hearing sort of two different lines here. One is that, you know, in Europe we want you to defer on the entity level regulations, and Sarah pointed out the Asian situation where maybe they won't have margin applied in the same way or margin at all as it's developing OTC market. And so my question really is, in that situation, are you saying that we shouldn't defer, because there isn't something to defer to? I mean, you were saying there's a competition concern you have, but if we completely leave that unregulated then we haven't done our jobs, have we, in the systemic risk oversight?

MS. LEE: Yeah, I wasn't saying that you should just stick in all that situation, but I think there are other tools that you can use instead of margin to manage the risk of that trading activity, which is unmargined, which is capital and that you can hold more capital in those jurisdictions where you don't feel the regime is the same as the U.S. or the margining requirements are the same, which still allows participants to operate in those regimes by following the local requirements for that trading activity but also balances back with the capital that's held against a perceived increased risk.

MR. TAFARA: Dan?

MR. BERKOVITZ: I'm intrigued by the notion that it's simply a question of the capital requirements entity and entity-wide capital requirements. In Dodd-Frank, at least for the U.S. swap dealers, the bank swap dealers are the capital requirements, and that will be determined by the prudential regulators. But then there's also the other entity-wide business conduct

standards in terms of risk management documentation, the other entity level. We call them prudential regulations. I guess to take that approach would be almost for us to say that those are not of any significance in terms of any level regulation or systemic risk reduction.

How do we -- how would we get beyond that hurdle of basically saying these are not necessary for prudential regulation of these or entity-wide regulation?

MS. KARNA: And just because you're looking at me, I think you think I said something earlier that I didn't say. I think capital is the quintessential entity-level requirement but not the only entity-level requirement. For example, our internal conduct standards, our chief compliance officer standards, our walls, and our barriers can only be assessed at an entity level as opposed to at a transactional level, and so I think that there's a host of issues and those are other examples of what I would consider to be appropriate prudential standards that, as Chris

mentioned earlier, I wouldn't expect you to defer to all of those prudential standards without an assessment that the particular regime has appropriate and comparable standards to what you would expect in the United States.

MR. TAFARA: Marcelo, you've been waiting patiently.

MR. RIFFAUD: That's okay. Most of what I was going to say has been said. Thank you, Ethiopis.

Let me take your question, Dan, consistent with what Angie just said. We think of the entity-wide rules as we don't -- when we say "deference," we're just -- we're not saying that it's a complete delegation, right? We're saying that you've made an assessment consistent with what historically has been done in the banking sector for cross-border banking supervision. There's an assessment that there's comfort. There's comparability with the home country regime, right? And then so there should be some comfort there to defer to the home country

regulator. The rules, though, that are entity-wide -- some are more prudential than others. Some go to capital, centralized risk management, etc., but then there are some in Dodd-Frank that are less prudential in nature but are still entity-wide. So, CCO rules. Conflicts of interest. Diligent supervision, right? Monitoring of trade. Those are rules that the deference there -- if you choose not to defer, those are rules that when you promulgate them, you should think seriously about adopting a flexible approach that accommodates preexisting organizational structures and approaches that we have in our home countries that have been required or that we have put in place to comply with our own local regulation.

MR. TAFARA: Thank you. Wally.

MR. TURBEVILLE: Margin and capital are related, but they're different. They're not transferable. Margin is micro. It's about transactions and correlations and offsetting, and all that good stuff. Capital -- proper capital

should assume -- it should be set at the level required, assuming that you actually margin like a sane person. So, those are two different things. However, they both, under the philosophy that's being adopted by our hosts here, have to do with entity level. For instance, the Asian transaction, what the problem with it is -- you allow a company to have a subsidiary in Asia who could run up all kinds of exposure -- unmargined exposure -- on transactions, which then blows back on the U.S. entity, and the whole point of margining as it was set up was to protect that entity. So, in other words, that's -- so, what you -- that's what the real issue is, is that margin requirements were set up to protect entities and allowing extraterritoriality issues that aren't necessary, given the -- even reasonable given the actual statute to come into play, you allow that whole policy to be undermined, right? So, margin and capital are two different things, and we shouldn't ignore the fact that a dealer in the U.S. is supposed to get

margin for its positions in order to protect it, in order to protect the whole economy.

MR. TAFARA: We'll turn to Marcus, then John, and then I think we've exhausted this series of questions and we'll move onto the next and Jackie will get us started.

So, Marcus?

MR. STANLEY: Well, Wally really said a lot of what I wanted to say there on margin and capital. They're related, but they're not the same thing, and they have complementary strength.

And just seconding what Wally said, I'd also point to the experience with risk-weighted capital before the crisis when capital requirements were arbitraged very significantly, and it's much easier to arbitrage a set of capital requirements for the entire entity where you can have claims about hedges that are being made across many, many different subsidiaries, where there's a lot of complex processing, where you're trying to put all of the entity's exposures into one number, whereas with margin -- margin is

something that happens at the transaction level but contributes to the health of the whole entity, because you're forced to take some margin for each and every transaction. So, they are different. It's a belt-and-suspenders approach. It was clearly contemplated in Dodd-Frank.

And the only other point I wanted to make was that there was some discussion of regionalized pools of capital and fragmentation around the world. Well, a goal of Dodd-Frank is to shield or protect the U.S. economy from practices that create excessive risk, and, frankly, if we get some fragmentation where you have one market over there which is not taking margin, which is engaging in risky practices, and then connections from that market into the U.S. economy are perhaps reduced or cut, that's to me perfectly in line with what Dodd-Frank intends.

MR. TAFARA: I said John. I meant Robert. Apologies. And then Jackie.

MR. REILLY: That's fine just as long as you smile when you say it.

First of all, I think margin requirements should be transactional, but I think we should take a step back -- and, remember, we're talking about margin requirements on uncleared swaps. So, really, to me the first question is we're looking at different countries -- are the clearing requirements comparable? Will other countries have something that looks like our end-user exemption? How about hedging? How does that fit into the end-user exemption? So, all those things have to be lined up if we're going to take something other than a non-transactional approach to it.

The other point I would make, is that for non-banks, swap dealers that are not affiliated with banks, the capital requirements are very much tied to the level of uncleared swaps, so to the extent you don't have a cleared swap the capital requirement does go up. And so there is a bit more of a relationship between margin and capital.

MR. TAFARA: Okay, thank you. Jackie,

if you may, get us started on the next series of questions.

MS. MESA: This morning we spoke a little bit about branches and affiliates and subsidiaries of U.S. parents, and I want to dive into that a little deeper regarding registration. We also talked about direct and significant effect on the U.S. And so my question is when should a branch -- and you can treat these differently -- affiliate or a subsidiary of a U.S. parent located abroad be subject to registration? Should it depend on just the fact that there is risk transfer to the U.S. parent unless there is direct and significant effect on the U.S.? Or should it be subject to the level of trades it has with the U.S.?

MR. TAFARA: Thank you, Wally.

MR. TURBEVILLE: I was waiting. I wanted to counterpunch.

The answer is affiliate branch. The issue is not about that. The issue, to me, is a two-prong issue. One is, is the risk of that

entity effectively transferred to the U.S. bank? And the second is are they, in effect, the same businesses, right? So, guarantees, those sorts of issues are very important. But also are they same business? Do they run a consolidated book?

One of the things that is talked about here is the agony of having to use subsidiaries. The other thing that gets argued about in this whole area is well, we want to consolidate our books with our subsidiaries. So, you know, I think the fact is that it's a -- probably most books are consolidated above the banks that we're talking about here. That infers strongly that it's all the same business, and it's not that hard to consolidate books with disparate branches and affiliates involved. So, I think in most cases it's actually going to be the same entity. That's just based on what I've heard people say, but that is the test as far as I'm concerned. It's not a question of where is it organized? Is it a branch? Is it an affiliate? Is it the same business? Is the risk transferred?

MR. TAFARA: This time, John.

MR. McCARTHY: I mean, GETCO is a firm that trades only on centrally cleared exchange traded markets, and -- I'm sorry -- so if we're required to register our affiliates in Singapore and London simply because we're a U.S.-based market maker, it will put us in a unique position -- vis-à-vis does the (inaudible) providers that are obviously located only in those other jurisdictions, and we would -- you know, I don't want to say we would have -- you know, we would obviously have additional requirements, but we would basically have to comply with two regimes, and I think it's fair to say that could put us at a competitive disadvantage in terms of just burdening us with costs that our, you know, competitors would not have. And it's a very, very competitive environment in both the U.K. and Asian markets. So, again, a lot of the regulations would be duplicative and probably could leverage off each other. But, again, I think it would put us likely at a disadvantage, in my judgment.

MR. BUSSEY: John, wouldn't you just put a U.K. holding company over GETCO and have the foreign affiliates subs of the U.K. holding company, thus getting out of this?

MR. McCARTHY: Could do that, and obviously there's costs associated with that. But, again it seems to be -- it's not really the preference that the regulators want for us to kind of create, you know, a much more -- to create an infrastructure that is only designed to basically avoid registration. It just doesn't make sense to me.

MR. BUSSEY: I'm not suggesting that's the preference; it just -- I'm trying to get it for making a distinction it is really turning on who the parent is and where they're located.

MR. McCARTHY: And that's, you know, with our outside counsel that's kind of the suggestion they've made. But, again, it seems to be -- you know, it seems to be hopefully unnecessary is what --

MR. TAFARA: Thanks for stirring things

up a bit, Brian.

Marcelo?

MR. RIFFAUD: Yeah, I have a problem with the whole idea that if I'm a -- and I don't have dog perhaps in this particular fight. Let me start with that. But if I'm a U.S. company and I set up a subsidiary overseas for reasons of employment rules, local tax rules, etc., and I'm engaged in the swap business, absent my guarantee in that subsidiary's performance, I don't see why that should subject it to registry, and it's doing offshore business, so it's not dealing with U.S. persons. I do not understand why that should subject that subsidiary or the parent to registration under Dodd-Frank. I don't see that. You could get there perhaps in some other odd way of Dodd-Frank. I don't know if you think that somehow it is such a material subsidiary and the U.S. entity is somehow a SIFI. I don't know. But from the perspective of Title VII, I just do not see that. I do not see that happening.

And I would go a little bit further.

I'm not entirely sure the guarantee carries you into a conclusion.

MR. TAFARA: Well, nobody's spoken to Ananda's point from earlier where he raised the directness and the significance and the impact on the U.S. marketplace. So, it is very possible that you would have an entity that is not U.S. based that has enough of an impact such that your answer or your conclusion is different.

And maybe Ananda has raised his flag to say it again and probe a little bit more, so I'll turn it to Ananda.

MR. RADHAKRISHNAN: The other concern is let's say that there is a concern that if our reach did not go into a subsidiary or an affiliate but that's the way you structure business. I'm not saying any of these fine companies here would do that, but let's say you have another company -- that's how you'd structure your business to evade -- avoid -- whatever -- this Dodd-Frank, that you would not do any business out of the U.S. bank but you'd rather do it out of your subsidiary. Now,

is that realistic, No. 1? And if you guys are saying no, never going to happen, maybe we should think -- I don't know that it will affect the way we think.

MR. TAFARA: Given that challenge, why don't we start with Stephen and then Marcus.

MR. O'CONNOR: So, I think that to start booking business offshore to escape the reach of Dodd-Frank wouldn't help with regard to U.S. clients, right, because those -- by the fact the clients were in the U.S., that would capture -- they would be captured by the transactional-level rules of Dodd-Frank. And I think, though, where we're going to end up, which is a trend we've seen already, is that when trading in a particular jurisdiction that banks globally will tend toward booking transactions in a legal entity in that jurisdiction. So -- but I don't see that as being arbitrage or rule avoidance. I think if European subsidiaries of U.S. banks trading with Europeans clients -- I think that's a fact (inaudible) that's fine as is booking U.S. client business

onshore in the U.S. and a branch for all subsidiary for overseas banks. So, I think that you will see that pattern developing, but I'm not sure it's avoidance. It's more just censoring businesses in the right jurisdiction and local -- as mentioned earlier by Marcelo -- local tax rules or business conduct rules or regulation might force that even more than it has been in the past. But I don't think -- by virtue of the fact that the clients in the U.S. will be captured whatever, I don't think there's a good tool for institutions not in the room to employ with that regard.

MR. TAFARA: Marcus.

MR. STANLEY: Just in response to what Marcelo said earlier about the guarantee. It only seemed to apply that even if there was a guarantee it wouldn't be appropriate for the subsidiary to be regulated. We really have to make sure -- I think we have the tools here to avoid kind of a Cayman Islands situation, and I think the burden of proof needs to be very, very much on the bank itself to show that the U.S. entity is not going

to end up being responsible for those losses. As I said during the first panel, before the crisis the argument was made -- this was the whole justification for off balance sheet entities was that the parent company would not be responsible for their debts. And of course no one would have loaned to them unless it was known that implicitly the parent company, through a wink and a nod, actually would be responsible for their debts, and indeed the parent companies did have to take those entities back on their balance sheet when they got in trouble. So, you really want to cease an iron clad wall, it seems to me, and you want the burden of proof to be on the bank that's claiming that subsidiary is fully walled off in order to really demonstrate that.

MR. TAFARA: This affords me an opportunity to ask a question I had wanted to ask during the first panel of Thomas from Goldman Sachs, and I think he suggested that --

SPEAKER: Go ahead.

MR. TAFARA: Yeah, well, I'm asking you

now, though. (Laughter) He had suggested that guarantees in essence were a surrogate for regulation, and now that you have regulation of all these entities in the derivatives base, that it may be less necessary, but the question I had was had we seen them disappear? Are there guarantees still being provided and asked for? And I think that's a question probably I'd like to hear an answer from a number of people around the table. So, Sarah, since you have your flag up, why don't you go first.

MS. LEE: Sure. But I just first want to answer Ananda's question. I mean, we are Bank of America, so I think it's going to be difficult for us just to suddenly (inaudible) overnight and become banks of Singapore or something like that. I mean, we have a massive customer base in the U.S., and it would require all those U.S. customers just to move offshore as well. And I think the key points that I want to make are in terms of how we set up our business, and I'm sure many other large financial institutions are the

same. You know, we set ourselves up with subsidiaries and branches around the world. In Europe we have subsidiaries that we operate out just to comply with the European passporting requirements. In Asia, many of the jurisdictions require either a local banking entity or a foreign branch of a bank to operate onshore in those jurisdictions. And those subsidiaries and branches have been set up for decades, operating under legitimate business reasons. They were not set up to evade Dodd-Frank.

And I think I do want to re-emphasize the point that if we -- yeah, I know we've got this challenge that the U.S. is first at the moment and the rules and regulation around the world is a different pace. But I think the challenge for us as a U.S. financial institution is, if we are required to comply with the U.S. rules in those foreign jurisdictions with our foreign clients, we will struggle to continue to do business in those jurisdictions, and we will struggle not only to compete but also to manage

risk of those transactions to be able to book and manage the risk in those jurisdictions. So, I recognize there is a challenge in terms of how do we deal with ensuring that we as an institution are safe and sound, particularly as we own companies all around the world.

And again, I go back to my point. I think it's important that we use tools, other entity-level tools like capital, to manage that in this interim period while the rest of the world is sort of catching up with our regulation.

MR. TAFARA: Angie, and then I think I'll turn to the regulators who raise their flags, and then Chris and then Stephen, too. So, Angie, why don't you go first.

MS. KARNA: Sure. Just addressing your question and Tom's earlier point and something else that was said. It's important to re-emphasize that one of the changes in Dodd-Frank that is not going to go away is we are not going to be able to do swap-dealing activities with U.S. clients out of unregulated entities -- period. We

could pre-Dodd-Frank. We can't now. And that's a fundamental change that we can't lose sight of. I don't see any discussion about comparable standards abroad. We'll also be referencing for all of the institutions in this room well-regulated entities, and we wouldn't expect you to ever sign off on an unregulated entity. And in fact, we have three primary trading entities around the world, all of which are regulated -- all of which will be regulated post-Dodd-Frank. Our U.S. entity actually is the only one that hasn't been regulated, but the majority of our business is done out of our European entity, which is regulated and our Japanese entity, which is regulated. So, I wanted to just highlight that that is a distinction with pre- and post-Dodd-Frank in the United States. We're not going to have an unregulated entity facing U.S. clients.

MR. TAFARA: Dan --

MR. BERKOVITZ: Thank you. I'd just like to follow up on a point that was made about a

European affiliate or subsidiary that is -- in any foreign jurisdiction that is set up for tax reasons -- whatever reasons -- and that if it's really a separate entity, then the Dodd-Frank requirements shouldn't apply. But then we get into the question, on the other hand, of inter-affiliate transactions where entities are also asking, at the same time, although, for certain purposes, that these entities are considered separate entities and now you don't apply Dodd-Frank requirements to the other entities. And yet for the inter-affiliate transaction exception, for lack of a better term, we're also being asked to provide an exception, because, really, they're the same entity and this is just distributing risk internally, and we just want one single entity to face the market. And yet not all of those single entities are being regulated under Dodd-Frank when they face the market. So, I'm just wondering if there's a disconnect or an incongruity between, on the one hand, not applying Dodd-Frank to an affiliate or a subsidiary because

it's established in a different jurisdiction and also at the same time requesting an inter-affiliate exemption from clearing requirements and other requirements to Dodd-Frank, because they're really the same entity.

MR. TAFARA: Let's take some answers to Dan's question and then turn to Jackie and to Robert.

MR. RIFFAUD: You're asking me, Dan. We're just asking for a lot more than we should. No, when I think of the inter-affiliate transactions -- and I may be coming at this from my own paradigm -- for us it's inter-branch, right? So, we don't have this situation where we have a subsidiary that is doing swaps. We book all of the soon-to-be-regulated businesses in branches of our New York branch, London branch, branches of our home bank. So, when we think about inter-affiliate transactions regardless of the initial trigger to the market, whether it's a U.S. person or non-U.S. person, we think of it as moving the risk within the same legal entity from

a corporate structure and from a credit exposure perspective but across branches, which really are regulatory concepts that come out of the banking world. And then therefore at some level it's tantamount to a journal, but you need to have good books and records to manage it. And it all serves centralized management. You have human resources that have the right expertise in particular jurisdictions, etc., and you want to have the same risk management, risk compliance function over it, so you move it to the logical central location. But you do make a good point, and I do not know the answer. If I was subsidiaries doing business outside and it's on a U.S. asset and you end up doing inter-affiliate -- truly inter-affiliate trades, different legal entities back to some central book -- it's a good question.

Now, I would say that if you are -- if one of the entities that's receiving that, the central -- if it is already a regulated entity, it has its own -- that's an exposure that has its own capital that attaches to that activity, there may

not be inter-affiliate margin. But it needs to manage that risk, so our prudential rules are already attached to that. So, I'm sure I see an end run unless it starts at an unregulated entity and ends up at an unregulated entity.

MR. TAFARA: Wally.

MR. TURBEVILLE: To me, that's all part of the same issue of is it a common business? Is the -- how inter-affiliate transactions work, because I think in fact it will track back to what is the real business involved. So, if the real business is a U.S. bank and there are subsidiaries through inter-affiliate arrangements, it becomes obvious that the whole thing is run -- risk management, personnel, everything is run from one entity, and the risk is in one entity and the profit eventually gets to one entity. It seems like that should be the same entity. And the result shouldn't be any different if a U.S. domiciled company does an activity as opposed to a subsidiary who then has that kind of relationship with a parent. The result should be the same as

far as Dodd-Frank goes.

And I think in actuality whether there are branches or not, it just makes -- it actually should be expected that in a lot of these organizations there are centrally managed books. Risk is centrally managed. The risk professionals are in common. And ultimately the profit-and-loss is a result that's important to the parent. So, in fact, why it's really important -- that's sort of how it all works, and it just strikes us as not being sensible, that in fact, yes, all the subsidiaries are out there. The branches are out there for regulatory and tax and other motivations. But if the business is really in one place, that's where it should be regulated.

MR. TAFARA: Chris, I realize you had your flag up before Dan's question. I don't know whether there was something else you wanted to get to before we moved on or whether you want to get to that as well as Dan's question. We're going to turn to you.

MR. ALLEN: I think I'm about three

questions behind, actually, in terms of the list of notes I've made here, but just very quickly on the most recent question, I mean, I think there is that tension. I think there is the difficulty embedded within that (inaudible). But I want to just comment though as a bit of a qualification, too, that even in today's environment entities don't just liberally take exposure on that kind of inter-group basis without proper consideration of a number of the factors that can really drive whether that makes economic sense to do, such as capital, because, for example, there are many circumstances. It depends where the entities are allocated as to how this exactly plays out. But there are circumstances in which if U.S. and the European entities take derivative exposure to each other which is not collateralized, then you can attract one for one capital deduction in respect of every dollar of exposure that sits behind that relationship. So, there are other incentives which go beyond what we might describe as conducts of business over the forms of application of the

rules, which will incentivize behaviors which are already there, and so I'd simply encourage that those be borne in mind and factored into the consideration for this point.

The other point I just wanted to mention was -- it was two very brief (inaudible) things, if I may. One was the motivation behind European incorporation, for example. Somebody touched upon the passports. It's hugely important for firms, both those that are outside the European economic area and also those that are within it. Quite frankly, to (inaudible) avail themselves of the passporting rights which you can obtain under the banking consolidation directive or MiFID depending on the type of MC in question. This is very solid reasons for wishing to incorporate and establish in European countries if you are intending to have a client investor base which has a European focus to it.

And the final point was -- I think Stephen may have mentioned this -- but it's just to reiterate perhaps the obvious point, which is

in circumstances where you have that non-U.S. incorporated MNC. Of course as soon as it touches the U.S. in terms of whatever formulation of the U.S. person test reapply it is, of course, straight back into the realms of developing conducts of business rules that would be required to govern that activity. We've already talked about prudential regulation and how that might be subject to home state deference. But we mentioned before about it would only be in circumstances where the U.S. authorities were satisfied that the standards batch prudential regulation was comparable and robust. Thanks.

MR. TAFARA: Angie, is your flag up from last time, or is up again -- before I turn to Jackie?

MS. KARNA: I think it's still relevant.

MR. TAFARA: It's not your question.

MS. KARNA: It actually relates to Dan's question and also what Chris just said, and just following up what Marcelo had said earlier.

We are an institution that does not have

branches, so I just wanted to clarify the facts around inter-affiliate trades for us since we don't have branches and Marcelo was talking about branches.

As Chris said, whichever regulated entity directly deals with a U.S. client will be registered under Dodd-Frank. That U.S. client, however, may like -- the typical reason why we would have inter-affiliate transactions is because that client wants to get exposure to an asset class that is risk managed more appropriately in another region. So, from the first panel, an institutional investor who wants to risk manage a risk in Tokyo may enter into a swap with the entity that directly transacts with U.S. clients, but that entity will do a back-to-back swap of that Tokyo best managed risk with our Japanese broker-dealer. So, it's not just that it's the same legal entity. The entity that is facing the U.S. client will be well regulated, and we see no reason why because that client wants to get exposure to something that is best risk managed in

another reason why that inter-affiliate swap should be subject to additional regulation.

MR. TAFARA: I'm going to take questions from the regulators. We'll take a series of questions here and then turn to the panel. So, Jackie first, then Robert, then Brian.

MS. MESA: Before we completely shift from this topic, I just had one more follow-up, and it has something to do with what Steve O'Connor said earlier, which is that businesses set up affiliates and subsidiaries and have them today in foreign locations for legitimate business purposes. But the SEC and CFTC both have an anti-evasion provision in the statute that allows us to apply Dodd-Frank regulation to anticipate evasion or to prevent evasion. And my question is this, how do we determine what is a legitimate business shift, so doing business out of your affiliates with other U.S. parent affiliates, and what is an evasion? So, I look to our panel of experts on this question.

MR. TAFARA: Why don't we answer that

one first before we move to Robert and Brian. So, how do we judge anti-evasion? Starting with Marcus.

MR. STANLEY: I think it shouldn't revolve around the subjective motivation of the entity for moving the -- for perhaps creating a subsidiary or taking an action outside of the U.S., because there's always a set of reasons that one can cite for that. It really has to go back to the basic goals of the statute in terms of protecting the U.S. economy against risk. And if there's an action that would end up that has the capacity to rebound on the U.S. economy in a significant way, then it really doesn't matter why the entity started to take that action in the first place. It's evading the goals of the statute.

MR. TAFARA: Marcelo?

MR. RIFFAUD: Thank you. I disagree a little bit with that answer. Maybe a lot. But it's disagreement at whatever percent. I do in fact think that scienter matters when you're

talking about evasive activity or not. I think it's one thing for someone to create a shingled entity incorporated in a foreign jurisdiction and not do everything that one would normally do when you create an entity to actually go into business in a foreign jurisdiction, which includes registrations, human resources of a physical plant. There's a lot that is present when you're not in an evasive mode.

The fact that someone chooses to create an entity and conduct non-U.S. business outside of that entity as a subsidiary of the parent of the U.S. parent in a foreign jurisdiction is not, per se, evasive. The minute you touch a U.S. person, as we've said repeatedly, you now have U.S. rules that will attach. So, your concern -- and I don't think it's invalid, but your concern is going to some of more systemic, right? Is there something systemic about that? And at that point you go back to significant and direct effects. I see that as a very high hurdle to pass before you get there. We had a little research done on

significant and direct effects, and it is not a merely adverse, competitive effect in the U.S, market. It is more, it would be manipulating a market that has effect in the U.S., something of that significance.

MR. TAFARA: Your approach makes it not a matter of policy but a matter of law enforcement. I mean, scienter in essence requires that we investigate and make a determination that there was the intent to not comply with knowledge and forethought. Is that the right line to draw? Is the right line to draw as between policy and law enforcement into fall on the side of law enforcement? Or is the anti-evasion consideration something that goes beyond simple law enforcement?

I'll let you go, and then Wally wants to jump in on the subject.

MR. RIFFAUD: Okay, just one answer. I find -- because I come at it from the position of scienter and evasion -- I don't think you can conclude ex ante that you are -- that there is evasive activity occurring.

MR. TAFARA: Wally.

MR. TURBEVILLE: About three decades ago I went to law school. Scienter is a term of art as I recall, is a term of art that has a fairly high level of proof required to it, so that's a loaded term, and I see nothing in here that would suggest that you have to have scienter to meet the standard. It's a -- there are levels of intent and mental approach to things, and scienter just isn't -- sorry, I understand what's being said, and I understand that the level is being set high for a reason.

Another thing that I wanted to say is just everybody remember, there's -- for both the SEC and for the CFTC, there are two completely separate things going on. One is the evasion issue, and the other is do the activities have the requisite effect or is there a business going on from the SEC side? So, there's two different things. So, the evasion is a different kind of activity, which assumes that the first test, which is -- there's the activity that has the effect on

the economy going on, or is there a business being conducted that's a U.S.-based business in reality? If it's not caught by one of the first test, then, well, it might be because there was an evasionary purpose to it. So, basically two things: two levels of tests and scienter is not necessary in my view.

MR. TAFARA: I see nobody else volunteering to answer this question. Maybe we should then turn to Robert to ask his question and then to Brian.

MR. COOK: Thanks. I wanted to ask a follow-up question of Stephen about something Tom said (laughter), something I think he said of Stephen, and it has echoes of something that Angie was touching on, too, I believe. I think you said -- correct me if I got this wrong -- that you think we may be heading towards an approach where global firms have a local entity that faces a counterparty, and I presume that part of that general model would be that essentially client risk is being managed local to the client and

market risk is being managed local to the market. So, U.S. counterparties would face a U.S. entity, and if the risk was dealing with a European underlier, that would be moved over to Europe where the European experts could manage it and vice versa and that that might be a way that the market will evolve in light of the direction you perceive the regulatory environment moving. So, first, did I get that right? Is that -- do you think that's where we're heading? And I welcome other people to come in on this as well, on these questions.

No. 2, is that a good thing or a bad thing? Are you saying we're heading that direction and it's unfortunate, or that that's a logical place for us to end up in a way that resolves some of these questions? And I guess how does this compare to the concept of one global booking entity in terms of the policy prospective -- the advantages and disadvantages?

MR. TAFARA: I'm conscious of time, Stephen, so I want Brian to get his question in as

well and we can answer all the questions --

MR. BUSSEY: This was -- the key question.

MR. TAFARA: I've been overruled. Stephen.

(Laughter)

MR. O'CONNOR: I think yes, you correctly interpreted what I said. And this has been the situation for, you know, a long time, but for varying reasons, typically that local clients are more comfortable with a local entity, local regulations, or tax rules or other might require that, or capital treatments also. So -- but I think the trend will accelerate to the extent that -- for instance, financial institutions had previously booked European client business in U.S. institutes that might now get booked more in Europe.

And I think those drivers that I mentioned, that you mentioned, another one might be that clients typically would have one master agreement with a local entity. So, to the extent

that they traded in multiple markets, that's a case where there would be a local entity with the relationship and the principle counterparty risk, but then the market risk would be better managed elsewhere around. So, that's where you get the inter-affiliate transactions.

So, I think it's a trend. It's a model that has always existed and I think that will continue to be the trend. As to whether that's good or bad, I think I'd go back to my opening point, which was to the extent we can have harmonization of rules and proper recognition of the jurisdiction of, you know, co-regulators around the world, then I think that's an okay outcome.

MR. TAFARA: So -- but the second part of this question -- I'm not sure I understood the answer to it. In other words, you have local entities manage local risk. What does that mean for global risk management at the end of the day? Is that something that will be complementary? Can it be done in a complementary fashion despite

moving toward local entities for management --

MR. O'CONNOR: No, I think it can be, but it does involve inter-affiliate transactions that we mentioned earlier. So, if you take the case of a bank that has -- or a client in Europe that has its main relationship with a bank entity in Europe, be that a subsidiary of a U.S. bank or a European bank, then that bank will probably have trading desks in the U.S., certain U.S. product, and I think it's most efficient and provides most liquidity to markets if all the risk in the U.S. product is managed in the U.S. And so that's how you see these patents of booking entities evolving. Is that -- that can be done?

It is done today and, you know, will be done in the future, and just picking up, actually, on something that was said earlier, I think that the capital is the key here. I think it's Angie who said that. And I would agree with that. I would also disagree with the point made that capital and collateral are both needed. I think it is, you know, someone who's been fairly close

to development of BIS. So, I think that the capital regimes as they've evolved over the years have one goal, and that's to ensure that the financial institution at the end of the day is robust and, to the extent that our counterparty relationships that are not margined, then capital goes up, and it goes up punitively with regard to inter-affiliate transactions, as mentioned before.

So, if you took a look at global institutions now, you would see in many cases that banks voluntarily decided to post margin on affiliate transactions to keep risk down from a capital perspective. So, I think the models exist today and they will continue, and it is possible to manage risk on the one hand from a global perspective and to have the client relationship booked at the local level.

MR. TAFARA: So, Wally, then Chris, then Angie, and then Marcelo.

So, Wally?

MR. TURBEVILLE: Banks have crude oil desks, natural gas desks, interest rate desks,

Japanese desks. To me, it's -- of course there are different ways to compartmentalize risk and to address them, and the people who have a good handle on those kinds of risks should be responsible for doing that. But then there's also the global risk issue, and certainly the fact is that the business -- if you define the business -- if the business defines itself globally, then that is the entity; that's the one doing business; that's the one that should be the focal point. And, unfortunately, you know, in a perfect world all the regulation would be completely harmonized and uniform and then all of these -- there wouldn't be any difference between the crude oil desk and the interest rate desk versus U.S. business and Japanese business. Then having said all that, it isn't true. It isn't -- we do organize ourselves territorially. So -- but the fact is that's fine, the argument for the greatest flexibility possible, and not shutting yourself off with, like, universal rules that create definitions that are very restrictive I think is

so very important in this area, because one would want to replicate as much as possible a harmonious regulatory environment that recognizes the international quality of the business.

MR. ALLEN: Right. I just wanted to reiterate the point which Stephen made there about that relationship between capital and margin, because it does strike me it is important, even in the context, as I mentioned before, of inter-group transactions, because the capital consequence of not collateralizing those transactions on occasions depending on the fact that you have can be very substantial indeed. And so there is that embedded and sensitive to consider collateralization on an inter-affiliate basis over and above the conducts of business requirements to do so.

The other point I just wanted to make, though, and it's slightly a variance of Stephen's comments about the use of local entities. Obviously, there are institutions that are organized that way, but I just wanted to make the

point that there are a number of -- a lot of organizations that are organized completely differently according to a universal banking model with universal booking sensors that tend to use a single legal entity structure pretty much throughout the world. My observation around that, among many other things, is that that doesn't in any way find the face of the capacity to risk manage at the local basis, so an institution such as Barclays will transact swaps in the United States currently through its main London legal entity. But that doesn't detract from the fact that the specialists in the swaps market are those based in New York for the institution trading in that local market.

The other thing that it doesn't frustrate in any way is the capacity to comply with local conducts of business rules as they are applied throughout the world. Operating on a universal bank model through the same legal entity doesn't in any way diminish the obligation on Barclays to comply with the MAS' conducts of

business rules in Singapore or those that might apply in Hong Kong or, quite frankly, any of the markets. So, I just wanted to put that counterpoint in there because we'll all have to see a lot of institutions that operate on that global model, but clearly as a consequence of what we were describing before, the risk of subsidiarization, which derives from standards of conducts of business applying to, for example, U.K. entities in respect of its global businesses, not just those that have the U.S. connection could cause that to change. But I wouldn't say that that's the case as it stands today.

MR. TAFARA: Okay, I have Angie, then Marcelo, then Marcus, followed by Robert, and then we'll wrap up with Sarah and then turn to Brian's question.

So, Angie, please.

MS. KARNA: Sure, just following up on something that Chris and Stephen just said. We are -- we do see the direction of the market that Stephen highlighted with a potential for localized

client facing and market risk-containing entities, but we don't like it very much. In particular, we don't like it because many of our clients don't like it. Some clients absolutely would like to face a U.S. entity for U.S. regulatory reasons -- and when I say "face," I mean have the U.S. entity being a booking entity. But, for the most part, the very large, internationally focused institutions would like to have all of their risk in as few entities as possible. So, one thing that we have thought about a lot when we think about how we conduct our business today is we fully recognize that under Dodd-Frank you need a swap dealer or a securities-based swap dealer to interact with U.S. clients. But we think that if you look at something like the securities world today, we will have a fully regulated U.S. entity face U.S. clients, be responsible for all transactional requirements under Dodd-Frank, but then allow those transactions to be booked in the entity that they wanted to be booked in, which is outside of the United States of America, and have

the entity requirements for that booking entity be something that the CFTC and the SEC decide are of a comparable standard. So, we think that model of having a fully regulated swap dealer or securities-based swap dealer in the United States that the SEC and CFTC can look to, to meet and be responsible for all Dodd-Frank transaction requirements, works. And it also allows our clients to have as much market risk as possible in, let's say, a foreign entity where they have a lot of other transactions.

MR. RADHAKRISHNAN: So, I hate to interrupt. So, you're saying -- the example -- that entity A is the registrant.

MS. KARNA: Yes.

MR. RADHAKRISHNAN: Entity B is the party that's actually the legal counterparty to a U.S. person.

MS. KARNA: Correct.

MR. RADHAKRISHNAN: And that don't regulate entity B?

MS. KARNA: You don't regulate entity B

if you're satisfied that entity A is an affiliated entity, and entity B's entity-level requirements are of a comparable standard.

MR. RADHAKRISHNAN: There is a mismatch, right? There's a mismatch, because entity A is not the counterparty, so the same plan I'm going to make goes to branches of U.S. -- of foreign banks. (A) We cannot register a branch. A branch is not a legal person. Nobody's been able to convince me that a branch is a legal person, so we have to register a legal person. That's my thinking. I'm not finding permission. But the example you gave, Angie, why are we doing it? Because we're not regulating the entity that is contracting with the U.S. counterparty.

MS. KARNA: You're regulating the entity that's on the hook for making sure that the transaction is clear --

MR. RADHAKRISHNAN: Right.

MS. KARNA: -- that the transaction is trade reported; that the transaction is traded on a U.S.-regulated SEF --

MR. RADHAKRISHNAN: Which is not accountable. Would you admit that the entity -- what you're proposing is we do not regulate the entity that is the counterparty to the U.S. person.

MS. KARNA: Assuming that you're comfortable that that entity is regulated in a regulatory environment that you're comfortable with and that you have some kind of information sharing and a way to get it through the U.S. registrant.

MR. RADHAKRISHNAN: Okay.

MR. BUSSEY: Angie, you're suggesting that in a situation where it's just a booking entity; it's not having any other type of interaction with this person.

MS. KARNA: Correct. Correct. I think there's two potential -- for the client who wants to face the global non-U.S. entity, there's two options. All the client contacts are the responsibility can be, one, by that foreign entity or, alternatively, all of the client contacts, all

of the responsibility for compliance with Dodd-Frank can come from a U.S.-registered affiliate that's a swap dealer. In either model, both of them we think should be feasible under the rules, and both of them give you the right to regulate a swap dealer or securities-based swap deal.

MR. TAFARA: Marcelo.

MR. RIFFAUD: I just wanted to add to Chris' point that in lieu with Angie's, we are not seeing this move that Stephen is seeing maybe that we are at Universal Bank. We're seeing -- there was a little of that immediately post-Lehman. People were concerned about the workout and all these types of issues, right? But what we are continuing to see is that people want to face the highest credit quality entity in the organization, and they want the benefits -- very few of our clients are not international. They're trading everywhere. They want the netting benefits, the offset of exposure benefits that you get by facing the single entity through a master agreement.

MR. TAFARA: Marcus.

MR. STANLEY: Just to repeat a couple of things -- one, this issue of deference versus delegation that came up before, you could certainly maintain your authority under Dodd-Frank over these entities and examine the regulations that these other regulated entities fell under and find that they satisfied Dodd-Frank requirements. It's a little different than completely -- than saying that you're going to permit a company that is not regulated under Dodd-Frank to transact with a U.S. person. But it could get to the same goals in terms of reducing duplication or extra bureaucracy.

And I just also wanted to say something about this margin versus capital issue. The two are related, and the costs of margin drop when you take into account a good capital regime. But, once again, they are not the same. One is a bottom-up approach to risk management; the other is a top-down. And I think that one of the goals of margining is to sort of build in from the

bottom up in the system of better habits of looking ahead to possible risks and managing possible risks from the moment that you start sign up that transaction to get people to think about the potential costs if the transaction goes south on them.

And there are some other issues of potential capital arbitrage. Those are affected by Basel III, but I'm completely sure that Basel III will seal all of those avenues, so -- but that's another topic.

MR. TAFARA: Okay. Robert, then Sarah, and then we'll see if Brian still has a question left.

MR. REILLY: When Dan asked his question about affiliates, he was looking at me, so I wanted to be sure that I answered it.

Let me give you a hypothetical. It certainly can simplify -- but consider a FSA-regulated U.K. trading company that does not do fiscal or financial business with any U.S. counterparty other than its U.S. affiliate. Now,

you have the U.S. affiliate, and it does no business outside the United States other than with its affiliates, all right? They're Conway owned. There's no systemic risk. So, what justifies all additional cost related to clearing and margining and all of the other administrative requirements? Further, if the CFTC takes jurisdiction over the U.K. entity, don't you expect that FSA will then take jurisdiction over the U.S. entity? So, I just question what benefits, sir.

MR. TAFARA: Sarah?

MS. LEE: Yeah, I was going back to Robert's question on the global entity concept and just talk from our perspective. I mean, ideally we would like a global booking entity construct. I mean, it's easier from a risk management perspective. That's complicated for clients and ultimately I think easier for regulators if the risk is consolidated in one entity.

I think, you know, one of the things that will -- there's a difference between where we are today and where we would like to be. I think

one of the challenges here is that we need more mutual recognition amongst countries, because if you take, for example, Europe, in order to benefit from passporting in Europe we have to book trades when we trade with the European counterparties and any E.U. affiliate. We can't have our U.S. bank go into Europe. We'd have to go and get licenses. Now, I know that Europe was working on a sort of mutual recognition construct, and I think, to the extent that regulators work towards harmonized approaches and have mutual recognition, that will basically incentivize people to have harmonized regulation as well as allow entities like ourselves to potentially have a global booking entity that is based in the U.S. where our parent is and be able to trade around the world in those jurisdictions where there's mutual recognition. At the moment, we as an institution have to book our trades around lots of different companies around the world due to the local licensing requirements in those other regions. So, it will help us a lot if the regulators work together to

work toward some sort of mutual recognition.

MR. BUSSEY: Sarah, to put a fine point on that, that's not the case with your competitors in Europe who are able to book transactions with U.S. customers in Europe, is that right?

MS. LEE: You mean, that they have -- if they're set up in Europe, then they've already got an E.U. affiliate. But they don't -- when they come and source the U.S., they don't have to use a U.S. subsidiary.

MR. BUSSEY: That's right. In other words, you're not able, because you're based in the U.S., to run a single global booking entity, but a European-based entity would be able to because it's really the passporting in Europe that's driving --

MS. LEE: Yes.

MR. BUSSEY: -- your need to be based in Europe as well as in the United States.

MS. LEE: That is correct.

MR. TAFARA: Brian, do you have a question?

MR. BUSSEY: I actually want to see if I can bait somebody into a vociferous discussion with Ananda on the branch issue. If -- five minutes.

I guess does anyone want to take a different view on whether we should be looking at registering branches? And I know there's authority under the definition to look at activities' lines of business and call those entities dealers, and if we do, how do we deal with the capital and margin or capital, margin, and other entity-level requirements when it's a branch as opposed to the whole entity? And this goes not only for, for example, your entity, Marcelo, having a New York branch but also U.S.-based entities having branches in other countries.

MR. TAFARA: Marcelo raised his flag before you even finished your question. And we'll take some other answers and then I think Dan will get the last question. We'll try to do this quickly. Again, we only five minutes left, so,

Marcelo, why don't you go first.

MR. RIFFAUD: Okay, lamb to the slaughter I guess.

So, the statute speaks to limited designated and so contemplates actually something much less juridical than even a branch. It contemplates divisions. So, it contemplates an activity-based approach where God knows how you delineate the activity. On the other hand, when you have a branch, while it is from a credit perspective the same legal entity and all those entity-wide rules will attach, it is also a well-understood -- there's a well-understood perimeter around that branch such that if the statute already allows someone to come to you and to register a division or something else, for them to come and say hi, this is my New York branch, I want to register as a swap dealer because I've got a huge book already of swaps and I'm a dealer, I don't see why that would not be sufficient for your purposes when needing to ensure compliance. All the rules that attach to Deutsche Bank, New

York Branch, that are about capital, about prudential management -- all of those rules are entity-level rules, and we're hoping that you find the German regime to be comparable, right? It's not that you're delegating and then losing or assigning; you're just deferring. So, I view it that way.

And then for the transaction-based rules, you already have that, because when the New York branch is speaking to a U.S. person or trading with a U.S. person you have jurisdictional role of that activity.

And this isn't a jurisdictional question.

MR. TAFARA: Chris, why don't we let you go, then since we're trying to engage Ananda, see if he's got anything he wants to add to the point he made earlier. And as I said we'll finish up with Dan. So, Chris?

MR. ALLEN: Thank you. My point is going to be very similar to Marcelo's, just to articulate it, which I think you have to ask the

question -- one has to ask the question in conjunction with, going back to the first question of the panel, what is the consequence of that registration? So, on one level logically the notion of the registration of something which doesn't have distinct legal form is clearly quite conceptually challenging. But I think the question naturally segues quickly into what does that mean? Where does that take you in terms of the conducts of business and/or prudential regulations that might then apply?

And to go back to the point which I made in answer to that first question of the panel, which is I don't think it's incompatible with that approach to say you would still -- of course as soon as you have the U.S. nexus in terms of U.S. person investor involvement -- have all of the conducts of business rules applying to -- at the transaction level to what the firm based in London, for example, or elsewhere does. But that doesn't necessarily require you, notwithstanding that that entity is a registered swap dealer, to

then extend conducts of business obligations to the business conducted between that entity in London and a counterpart or client that it has in France, Italy, or Spain and so on. So, I think it's -- my point is I think you have to look at potentially the consequences of registration in conjunction with the notion of what it is that is the registrant.

MR. TAFARA: Ananda, did you want to react?

MR. RADHAKRISHNAN: Yeah. I still can't get that, because -- and maybe I'm being too much of a lawyer. Who is the legal person? That's my first question. Who is the legal person? The legal -- the branch -- is there a legal person in the United States, right? Which means that it's the mother ship, which is the legal person, so that's where I go -- or father ship, whatever it is. I go there and say you must register.

It's different if you -- and then the second question is where do I go -- where does the CFTC send its staff to look for compliance? Now

then maybe, you know, we can go to the branch office and say okay, you know, it's like how do we regulate BD/FCMs, right? We know who to talk to, to look for compliance with the CFTC world, right? So, that's what I'm thinking about. I just cannot get in -- this concept of registering a division -- a division -- to me it's meaningless. It's not a legal person.

MR. TURBEVILLE: Would it be helpful if I read the phrase? Because I think you're right completely and a thousand percent. It says, "A person may be designated a swap dealer for a single type or single class or category of swap activities and considered not to be a swap dealer for other types." So, it's a person that gets registered. And what you're saying is that for a class of activity, they fulfill the swap dealer criteria, and for another class they may not, so you may not require them to be a swap dealer for that other class or you may. So, it's a person, not a branch, and it's crystal clear, and I can't understand what's in a lot of the comment letters

around this --

MR. BUSSEY: Wally, can't you read that? It says, "suggest you register the person but it's only with respect to the activities in the branch"? I'm not a lawyer, but --

MR. TURBEVILLE: Yeah, but it is a person -- you're not registering a branch, you're registering a person and you may limit the applicability of the registration requirements to a silo of activities.

MR. TAFARA: So, now I'm going to turn to general counsel with the CFTC for a legal answer. (Laughter)

MR. BERKOVITZ: That was going to be my question. But it was basically the same. There's just two aspects to the question. One is can you have a branch or can you have part -- partial registration, and Wally's correctly read the statute on it. But then my question was, was the intent by doing that to not have the parent, not have the main company -- which would be the booking agent -- that they wouldn't register at

all? We would just defer? Or would it be they would also register, but then in our application of the requirements we say well, you're a registrant but through comity or deference or whatever we would not apply. I don't -- it wasn't clear to me that the other side of that was that the main booking entity would not be a registrant. Or is that the goal, you just -- you want the branch to be the registrant and the main booking entity not to be the registrant at all, or it would be okay to have the booking agent to be the registrant, too, but the application not apply on the reasons of deference or whatever?

MR. TAFARA: Angie, let me let Chris go first and then I'll have you speak, okay?

MR. ALLEN: No, I was going to say I think you captured exactly what I think would have to be the approach, which is the notion that you can register something which doesn't have legal personality. Of course it's very difficult to comprehend what does that really mean, but then the better question which naturally flows is what

is the consequence of that registration and is it a particular activity or series of activities which might, for example, be defined by reference to a more tightly defined U.S. nexus, which then defines the consequences of that registration? And I think that's -- the two questions have to sit side by side. So, the point I was trying to make just before -- I think it's clear, from the point of view of who signs what piece of paper, it has to be a legal entity level.

MR. TAFARA: Angie, it's your model that started all of this, so it may be appropriate for you to end.

MS. KARNA: It's my model, but I want to reiterate that my model doesn't involve branches, so this very interesting legal question is actually not something that I spent a lot of time on. However, if I think about dealing activity, if I'm not -- if my foreign entity isn't interacting with U.S. clients at all, if there is always a registered U.S. swap dealer who is on the hook for every single requirement of Dodd-Frank,

I'm not sure what the regulatory problem is with that. I see the counter side. I see that one could also require my foreign entity, because the booking entity to register and then defer to all of the entity-level requirements defer to the foreign regulator and at the U.S. level have all the transactional requirements. But backstage challenging to have -- even though we say "deferral," it's challenging in practice to talk about an entity being regulated by two different parts of the world. You know, and honestly I haven't looked through it all, because it's hard enough to talk to the JFSA or the FSA about whether they would contemplate us registering that entity in the United States of America. But I think -- I see those two approaches, but I do think that the regulators get what they need with a fully -- with a substantial intermediary in the United States of America who's registered, who's completely on the hook.

MR. TAFARA: One thing I think needs to be added to the statement you made, Angie, is that

for a number of us, we live in a world where you do have dually regulated and dually registered entities. And we make it work. It can be made to work. That's not to say that the model you've put forward is not something that's worth considering. But I think it's not right to also come to the conclusion that it would be impossible to live in a world where you have an entity that is regulated by two regulators. And granted they would have to work collaboratively and you'd try to make things work as smoothly as possible, but it's not in the realm of the impossible. In fact, it's reality for us with respect to a number of entities.

But I see that, Sarah, you've got your flag up, and we are five minutes over, so you get the last word.

MS. LEE: Well, I was just looking at it from a different perspective, because we have our bank, but then we have foreign branches outside the U.S. that we use to transact business, particularly in Asia.

Angie, I think to your question, we

would be registering the bank as a swaps dealer, and so then that bank would be subject to the entity-level requirements of capital prudential, other prudential requirements, and credit risk management. I think that the point that we'd like to make is in relation to that foreign branch's activities and the transactional-level requirements only applying to transactions it does with U.S. persons, not with its foreign clients. That's really the perspective that we're looking at it from.

MR. TAFARA: Sarah, I was wrong, you don't get the last word. Chairman Gensler does, so let me get out of the way.

MR. GENSLER: Mine's an easy one. I just wanted to thank all of you. I think this is the 14th roundtable we've had. No doubt we'll have more roundtables. We've had hundreds of meetings. I think we're approaching a thousand. I don't know which one of you has the lead on it, but somebody in the press will probably survey and say who's got more meetings.

It's been enormously beneficial for -- I can speak for the CFTC and all of my Commissioners; I think it's probably true for the SEC -- to have these roundtables. I know at the heart of many of your dealings is this international issue -- which transactions are in, which entities are in, to the branch issues, and so forth -- and I'm not here to address any of them. I'm just here listening, and it's very helpful, and I thank you.

We're going to seek further public comment at the CFTC around these international issues. I think you kind of know the team here. Carl back here is our new team lead. I think the SEC can speak on how they're seeking further public comment. So, you'll be able to look at a document and actually, you know, get your lawyers and run up the, you know, send us your legal briefs on it. But, you know, this is enormously helpful.

The core of Dodd-Frank is about protecting the American public and promoting

transparency in these markets and lowering risk. Hopefully, that aligns with your interests. Sometimes it won't, and, you know, that's what the comment period's about.

But I just want to thank you again.

MR. TAFARA: Thank you, Chairman. We'll break until 2:15 and resume at 2:15 in this room. Thank you.

(Recess)

MS. MESA: Okay. Is everybody ready to start with our final panel today?

I want to thank our third panel participants for participating today and I'm going to do what we've done with all the other panels. If you could just go around the room and introduce yourselves and your organizations, that would be great.

Kim, I caught you -- do you want to start and just introduce yourself and who you are with?

MS. TAYLOR: Kim Taylor, CME Clearing and also CME Group.

MR. SHORT: Jonathan Short, Intercontinental Exchange.

MR. OLESKY: Lee Olesky, Tradeweb.

MR. TURBEVILLE: Wally Turbeville, Better Markets.

MR. O'CONNOR: Steve O'Connor, Morgan Stanley.

MR. AXILROD: I'm Pete Axilrod, DTCC.

MR. CAWLEY: James Cawley, Javelin Capital Markets, also here for the SDMA.

MR. GRAULICH: Matthias Graulich, Eurex Clearing.

MS. LEVINE: Iona Levine, LCH.

MS. MIMS: Verett Mims, Boeing.

MS. MESA: Thank you. Our first panels this morning really addressed transactions and swap dealers and major swap participants, and this is our chance to learn more about global infrastructures. And by that we mean clearinghouses, repositories, exchanges, and potential SEFs.

So the first question I'm just going to

turn it over to Ananda Radhakrishnan to lead off.

MR. RADHAKRISHNAN: Thank you, Jackie. As people know, Dodd-Frank has a clearing requirement and I admit it took me quite a while to figure out what the requirement was. But basically the requirement is that if the Commission determines that a particular type or class of swaps has to be cleared, in other words, mandated to be cleared, then certain types of people have to clear it. Specifically, swap dealers, major swap participants, and those people who come within the definition of a financial entity. And the requirement is that you clear it through a DCO that's registered with the Commission or a clearinghouse that is exempted by the Commission from registration if there is a comparable regime.

So the question is -- as several of you may know I personally am not in favor of giving anybody a break so people have asked me, you know, should we do this? And I said -- my answer is, you know, well, no because we don't even know how

this whole clearing thing is going to work out. Right? Number one. Number two, we have right now two foreign located clearinghouses who are DCS. Right? LCH and ICE Clear U.K., and we have an application from CME Clearing Europe to be a DCO. So in other words, if you are a clearinghouse located outside, it's not difficult to become a DCO. It's not easy but it's not difficult.

But having said that let's say that the Commission is determined to recognize foreign clearinghouses. How should we do that? What should we be looking to determine that a regime is comparable? And how should we tackle the specific issue of letting people know, letting U.S. people know that if they do clear through a non-DCO they do not get the segregation protections of the United States nor do they get bankruptcy protection.

So the first question is what -- how do we go about determining comparability? And two, it's not a simple matter of giving somebody an exemption. Other things flow from it. Right?

Because clearing is not done in isolation. People have to clear through intermediaries so other things flow from it. And you cannot represent that you are segregating funds pursuant to the CEA unless you are an FCM. Right? And at the clearinghouse level you cannot represent that unless you are a registered DCO. So if we give somebody an exemption, how do we tell the whole world if something goes wrong don't come looking at me. That's basically what my question is.

MS. MESA: I notice that Ananda is drinking Bob Marley's "Mellow Mood." I don't know if one of you gave that to him but it hasn't affected him yet. So we're going to let him keep going until that sets in.

So I'm looking at the clearinghouses specifically because this seems to be a clearinghouse question. So I'm looking at Iona or Kim or Jonathan. Do any of you want to take the first -- the first hit at tackling Ananda's question?

MR. SHORT: I'll jump in and just start

us off, Jackie.

Jonathan Short with Intercontinental Exchange. We are one of the clearinghouses that Ananda mentioned. We do have a foreign clearinghouse, a recognized clearinghouse in London, ICE Clear Europe that is also a DCO. So I acknowledge what Ananda said. It is possible to become a DCO and still have your primary regulatory status in your home jurisdiction.

That said, I think where the challenge comes in that would probably tip me in favor of some sort of exemptive and mutual recognition regime is that if you play that out across all of the jurisdictions that might have an interest here when you take into account where Europe may be going in its regulation, things can get a lot more complicated. You may be talking about more than being a recognized clearinghouse in a DCO. You may have other iterations that you have to comply with and I think that some sort of mutual recognition or exemptive relief is appropriate.

I do also think that Ananda is right in

that I think there are some assumptions that people make about the protections that you get from being a DCO. I personally think that that should be addressed through disclosure. I mean, if you have consenting parties that understand the insolvency and bankruptcy regimes of the, you know, of the country in question and the rules, they should be permitted to have their positions in clearinghouses that may not provide the last level of protection that a DCO might provide.

MS. TAYLOR: I would agree with what Jonathan is talking about about a mutual recognition regime having some significant benefits because there could be a multijurisdictional impact and every time an entity is required to directly adhere to even slightly different sets of regulatory requirements it becomes a complication. Certainly it can be done but it becomes a complication. And one aspect that I would hold out as a potential model would be what the U.K. has done for a number of years with its recognized overseas clearinghouse

and recognized overseas investment exchange programs. CME has both of those statuses for our U.S. entities and they were both highly reliant on the FSA satisfying themselves that our home country regime was comparable enough with the regime in the U.K. that they allowed us to operate in their jurisdiction with the same kind of bankruptcy protection as a local clearinghouse but without having to explicitly meet all of their express requirements. And it seems like something like that would be a model for the regulators to work collectively toward in the future. It would have been preferable from our point of view if that would have extended beyond the U.K. into other, you know, other parts of the European Union. So something that would be broader I think would be more preferable.

MS. LEVINE: I think the answer might be slightly more complicated than that. We're a DCO and obviously we're sort of in the U.K. as well and we haven't to date found any problems at all whatsoever with the current system. Now, we feel

incredibly comfortable with the current system and I think perhaps this will come out of the questions slightly later on. Where could it go wrong? And once we're completely comfortable with the current system, what we're worried about going forward -- and I don't want to go into details now because I'm sure it's another question -- is any sort of inconsistencies between the sort of number of regimes that you have to actually comply with. And I can see very good reasons why one would want to continue to be a DCO here if in fact one was offering client clearing.

And perhaps the trick is to look at this slightly differently. The trick is to say, what is it that's being cleared? Is it just interbank clearing? And if you're doing a minute amount of interbank clearing, do you need to be really regulated? Or is it in fact customer clearing that you're looking at? And so we took a decision that basically we want to be able to give U.S. customers U.S. protections. We didn't want there to be any confusion about this so we've completely

embraced the whole sort of U.S. client segregation and we think that that's very good. What we don't want to be banned from doing though, is to be able to offer different kinds of segregation in different jurisdictions.

And this probably comes onto something slightly later. Say for example if one kind of client protection was available in Europe, we'd want to be able to offer that to European clients. If the Japanese decided to do something different for their clients, we want to be able to offer that. And we want to also be able to offer U.S.-client segregation in a way in which the U.S. finally determines that they want to do it.

MR. GRAULICH: Well, from my perspective recognition (inaudible) clearinghouses is a very important aspect. And I'm not looking only at the relationship between the U.S. and Europe as Eurex is Europe-domiciled. I mean, if you look at the G-20 -- so we're talking about 20 countries, all are setting up their rules. If you now look at the U.S. approach, if you say a U.S. transaction

involving a U.S. client needs to be cleared by a DCO. If the Japanese say, well, if a Japanese client is to be cleared by a clearinghouse registered in Japan, and if you go around the world we as a clearinghouse are regulated by 15, 20 regulators globally. I don't say that it's not possible but it is very inefficient.

And if you look, there are already rules existing like the CPSS-IOSCO recommendations for CCPs which are of global nature. So I think we need to have an international recognition framework based on, for example, CPSS-IOSCO recommendations to allow clearinghouses a simplified process to be recognized in foreign countries and also from an auditing perspective that while the practices of the local regulator are to some degree acknowledge by the foreign regulatory authorities.

MS. MIMS: Well, as a non-clearinghouse user I think the one thing you have to keep in mind is netting agreements. In the sense that we don't have mutual agreements out there, what will

happen is I only have to increase the amount of collateral I'm going to put up because I'm not -- if a foreign clearinghouse isn't recognizing a U.S.-based, you know, subsidiary outside the country then I have to put up even more money. And so right now as I agree with them it's relatively efficient if people are having to clear in Japan and Australia. But I think part of the problem is you can't say to yourselves or U.S. corporate, most of them are used to netting out those transactions. And if they have multiple exchange now with multiple regulations then it's going to be really difficult. To their point not impossible but more difficult and more costly.

MS. MESA: I'm going to allow Ananda just to follow up on his question if he has it and then I have a follow-up as well.

MR. RADHAKRISHNAN: Yeah. So I think Matthias is suggesting that what we could do if we went down this route was to look at compliance with the CPSS-IOSCO standards because that, you know, as all of you know, the Dodd-Frank Act

basically codified the current version of the CPSS-IOSCO standards. And in our rulemakings we're trying to be as consistent with the latest draft which (inaudible) for public consultation.

But the other question I want to ask is should the Commission condition it on reciprocity, number one? And number two, can we do it legally given the number of trade agreements that the United States has signed? So I guess it would be rather unfortunate if the CFTC and/or the SEC were the only two regulators who had such a program and nobody else did.

MS. MESA: By the way, if you want to speak, please put up your placard and then I can call you in order. But I see Kim wants to say something so go ahead.

MS. TAYLOR: Personally I think from our point of view the reciprocity, the mutuality of the arrangement would be important because I think we would want to be able to be assured that if competitors were able to easily enter our jurisdiction that we would be equally easily able

to enter other jurisdictions. So I think that that would be an important feature.

I think though it's perhaps a little bit off the topic of your original question but I think one of the points that Matthias was making was I think very important. There's actually an aspect of the whole thing that I think produces an extra layer of complexity and that is the tendency that is being shown right now in the rulemaking at various stages an various places of requiring that certain types of parties have to clear in certain places. And I think that particularly in the over-the-counter swaps arena the customers have a certain level of sophistication just by being able to be participants in that market. And I think that it is creating an artificial set of requirements to require certain types of transactions by certain types of parties to clear in certain jurisdictions. So that would be something that I would also encourage us to think long and hard about doing.

MS. MESA: Wally.

MR. TURBEVILLE: A couple of things to keep in mind is it will be a new world and clearing as a concept has become really central to the Dodd-Frank structure. And along with that I think people's faith in clearing is heightened as well. And clearing can be thought of as a panacea for many kinds of risks. And so the concern is that while certainly operationally to make things as efficient as possible, the notion of substantive inquiry into not only the rules but the performance under the rules and the level of enforcement by regulators in another jurisdiction is quite important.

One of the things that we get concerned about is the potential for the interconnectedness of clearing and how you could imagine a situation where a clearinghouse might run into trouble and that could infect other clearinghouses and the faith in other clearinghouses which would be problematic. So the point being in substance there really does have to be a certain level of meaning to what clearing is and certain basic

standards have to be fulfilled. And certainly disclosures have to be complete. So that's -- I think we do look at the situation now as being with clearing so much more pervasive, the whole question of interconnectedness is very important in making sure certain standards are maintained.

MS. MESA: One last comment on this. James.

MR. CAWLEY: If -- Javelin is an electronic swaps execution venue that expects to file as a SEF once the rules have been finalized. For us, one of the key things you've got to look at when it comes to foreign entities trading here or clearing here is that they comply with all the provisions of the act. And where we sit, specifically we focus a lot in our interaction with clearinghouses, especially when it comes to access. And that they allow SEFs to connect in and to launch all on the same day. And we haven't seen that. We've seen it from the CME. We're negotiating with ICE right now. And frankly, you know, not to put anyone on the spot but LCH told

us that they're going to launch with Bloomberg and Tradeweb before they launch with us.

So, you know, these are the issues that we focus on. If you're going to open for business on one day, let's all open on the same day and let's not show favoritism to one execution venue or the other. I thought I might kick off with that.

MS. LEVINE: Guys --

MS. MESA: Before this just shifts into access, why don't you Iona, have the chance to go back to James about this comment and then we'll continue on some of the clearing questions. Go ahead, Iona.

MS. LEVINE: Okay. I'm not sure this is quite the right form for who said what to who and whose e-mail was whatever. Anyway, look, what I would say is that a clearinghouse would be crazy not to want to have every SEF that was operationally -- and I won't use the word competent as sort of a slur on anybody. I would just say the word competent is a sort of base

level assuming, you know, that it is and not making any sort of aspersions to anybody. We would want everybody to connect to us. We think that everybody should be mandated to connect to us because that's where we get our business from.

I cannot speak to why people are having some sort of sideways spat on who is the first one that could test. We're not talking about connecting; we're talking about running a pilot program within API. And I cannot believe that a clearinghouse can be mandated to run a pilot program with absolutely everybody on the planet to see if they can connect first off. I think that Dodd-Frank is not trying to micromanage everybody to say that in fact, you know, LCH has to allow, I don't know, 20 SEFs, 30 SEFs, some of whom are not ready, some of whom are ready, to test something. LCH simply doesn't have the resources, nor does anybody. You should be able to test with one or two that seem readier, provided that when the day comes you've tested with them and your API is open to everybody. I think you'll go back and find

that that's the subject of the e-mails. But look, I think this is enough of a spat.

MR. CAWLEY: If I may respond.

MS. MESA: Wait, wait, wait. One last response.

MR. CAWLEY: Okay.

MS. MESA: And then we might come back as we address some SEF and open access issues.

MR. CAWLEY: So we don't see these issues with domestic clearinghouse. We've connected into the CME for months and we've been operationally ready there for months. We do have issue with foreign entities that come in and expect to do business in this country and look for reasons to circumvent some of the issues.

So not to put LCH, you know, on the spot. But the practical reality is that we've been waiting to connect in for months now and it shouldn't take us two months to negotiate an NDA.

MS. LEVINE: It's very interesting. Before I came here I said -- I never sat on one of these panels. I said what's it like? Is it like,

you know, in the Roman amphitheater where they throw you to the lions if you get the answers wrong? And I was assured no, no. It's far more charming than that and people are just interested in the answers.

MS. MESA: We just let the lions eat each other.

MS. LEVINE: Somebody wrongly briefed me. Listen, one, I take real exception to being called a foreign entity, okay, because I'm not a foreign entity. I'm a DCO. Okay? I don't like being called a foreign entity. But apart from that, why don't we go and have a coffee and sort this out?

MR. CAWLEY: Fair enough.

MS. MESA: Okay, good. Well, if we keep having more of those you've kind of let the moderators off the hook with conversations. But Wally, did you want to say something on this issue or something new?

MR. TURBEVILLE: Sort of new.

MS. MESA: Go ahead.

MR. TURBEVILLE: In terms of making this a teaching moment, the -- I guess what we've discovered here -- I didn't get any of the e-mails. But what we've discovered here is that there are other issues. Right? Which not only is Dodd-Frank about creditworthiness and making sure there are standards, there are also access issues. So I think the significant issue, significant point here is that the whole notion of looking to exemption and looking to other ways to broaden different forms of the infrastructure and how they all work, those sorts of issues are unfortunately, I think, it sounds like they're sort of in your court as well. It's not just pure credit but other kinds of issues that are reflective of what Dodd-Frank wants to achieve in terms of a market structure.

MS. MESA: I want to pick up on this thought of recognition because it's something that none of the panelists have mentioned yet. It came back earlier. But regarding clearinghouses and SEFs where we do have the ability to recognize,

right now there is nothing to recognize to. There is no law in place in other parts of the world. So what do the panelists suggest regarding this timing issue?

MR. GRAULICH: Well, I think we have to distinguish. I mean, if we look at, for example, SEFs or trade repositories, this is pretty new to the marketplace. And rules are drafted all around the world now. If we talk about clearinghouses, clearinghouses have been around for many years. There is regulatory oversight for almost -- well, many clearinghouses around the globe since many years, there are standard rules and I think these standard rules are all around proper margin regimes, risk models, stress testing, back testing, access requirements. So all these rules are there since many years. So I think even the fact that the swaps regulation or the clearing obligations in different stages around the world shouldn't be an argument to say we have to wait until everything in this particular area is ready because clearinghouses are there and

clearinghouses have their regime and everything. So I think that should be taken into consideration as it is little different to other elements of this new world.

MS. MESA: Pete and then Lee.

MR. AXILROD: I was just going to make a general comment that -- I've now lost my train of thought. Why don't we go to Lee and then Pete.

MS. MESA: Lee, are you ready?

MR. OLESKY: Yes, thanks. I think the question is what do we do in this interim period before the rules are exactly clear? I can't speak for clearing corps. I can speak for electronic trading venues and hopefully those that intend to become SEFs.

We've been in the business of trading electronically for 12 years. We've traded derivative instruments for five years. We trade 250 to 300 billion per day among institutions around the world with 50 banks and 2,000 institutions and all the World Central Banks. Given that, I guess the message I would like to

send is I think we should be encouraging more activity to happen on electronic venues that afford all the policy objectives that Dodd-Frank was about in terms of enhanced transparency, easier access, more efficient markets, and a safer environment.

So in this interim period, while you have businesses that have taken advantage of technology over the last 12 to 15 years and started to connect people up electronically -- and it's not just Tradeweb, there's plenty of others, Bloomberg, etcetera -- I think we should be encouraging that kind of activity because it's ultimately serving the same policy objectives that the law was set out to do.

And not to discourage that kind of activity. I think the good news is -- I can speak for Tradeweb and I'm sure it's the same with many other market participants -- our derivative activity has more than doubled in the last year. Very simply put, they're doing it. The customers are doing it -- the institutions and dealers --

with an expectation of rules that will come into play. And they're preparing themselves for it and they're preparing for this new environment, which by the way they would have been doing anyhow and they have been doing for the last 12 to 15 years. It's just going to happen at a faster pace now. So I would say anything that kind of encourages more of that activity is a good thing from a policy standpoint.

Obviously, we're very interested in seeing what the final rules are and developing the technology and the response to the rules so that we meet all of the criteria. And the sooner that happens, the better from our perspective. But in this interim period I think we should be encouraging all market participants to be following this path that's been laid out within the law which is transparency. It's not per se electronic trading but transparency, greater efficiency, capturing data, which allows for, you know, a better review of the marketplace in times of stress.

MS. MESA: On the question on recognition and timing, Pete, you're up with that.

MR. AXILROD: Okay. I remembered now. I mean, essentially everybody is sort of addressing the recognition issue as, you know, there are a lot of jurisdictions who are interested in what I do. So who is going to be the regulator? We've operated for many years with multiple regulators, some of our entities. And I can guarantee you that most of the trade repositories that are going to apply for registration as an SDR are going to carry another regulator with them for one reason or another. We've got a regulated repository, a supervised repository today that's based in New York. It's primarily supervised by the Federal Reserve Bank of New York and the New York State Banking Department. We've got another one in London that is primarily supervised by the FSA. I guess I've got a question for the panel. It's quite likely that these are the entities we are going to come in and try to register as SDRs. So are you going

to make us shed our current regulation? Are you happy to regulate with these people? How is this going to work?

MS. MESA: I don't think we can tell another regulator to just leave because we have an interest. So I don't think that's our right. We can express an interest and regulate you but we can't force somebody else to get out of your business if they require you to also be registered. So I don't know if that was your question but that's --

MR. AXILROD: I guess it sounds like you're happy to live in a world where there are multiple supervisors of the same infrastructure.

MS. MESA: I think what we said earlier is we recognize that there are issues and that's why we're trying to coordinate to the maximum extent possible so that, you know, we don't create sort of multiple conflicts for you but in the situation where we are going to regulate I think we can work with the other regulators as well. And you already said you're regulated by multiple

people as it is and you're still around.

MR. AXILROD: Yeah, as opposed to the other, I guess repositories are a little different. We don't mind having many regulators because in effect the world works like that today. We're responsible to many regulators.

MR. BUSSEY: Jackie, I'm one of the regulators of DTC affiliates and we actually find that it helps to have multiple perspectives brought to bear on important infrastructures like clearinghouses. So we regulate with the Fed and with the New York State Banking Authority and we find that to be actually helpful. Market regulators bring different perspectives to the table as opposed to prudential regulators. We think it's a good combination. So we have experience with it and we're going to have a lot more in the new Dodd-Frank world.

MS. MESA: Kim.

MS. TAYLOR: You know, I was going to speak to the recognition issues. Do you still want to talk about that?

MS. MESA: Please, yes.

MS. TAYLOR: I guess I would suggest -- I would agree with -- I think it was Matthias that said you don't really need to have the regulations fully in place in other places in order to have recognition. I would suggest that probably you already have a number of things where you have agreements with other regulators -- you already have a sense of where you've got comparability of regimes and I would suggest that maybe you use that as a baseline. Certainly with over-the-counter swaps you need to make sure that there is kind of a legal enforceability of a cleared transaction in that product set in the jurisdiction. And beyond that a lot of the things would be just the same basic things that you would look at in evaluating any clearinghouse -- risk management, bankruptcy, clarity, customer protection. Is their disclosure -- I don't think it would be necessary that the regs would be fully implemented in other jurisdictions before you would be able to do it.

MS. MESA: Lee.

MR. OLESKY: Yeah, I agree with that. I mean, I can only sort of speak for the SEF side of the world but I think it's a situation where if you think they're heading in the same -- with the same policy objectives and the same sort of critical things as it relates to the execution side, are these going to be regulated entities? You know, as you said, is this going to be required to be cleared centrally? Is there going to be the same transparency elements that we expect to see out of Dodd-Frank? Is there going to be a central repository? I think if you check on those four or five key points and you see that's the direction, that's the right answer. And then ultimately in terms of once the rules are out on all sides of the Atlantic, then you can make determinations in terms of reciprocity or exemptive decisions or customers to do business as you've done with futures exchanges and other types of entities.

MS. MESA: Jonathan and then Ethiopis.

MR. SHORT: I just wanted to go back to swap data repositories for a moment and talk about what we found to be one interesting part of that statute. And that is the obligation of an SDR to obtain an indemnity from a foreign regulator if you're going to share information. I never understood why that was in the statute and I scratch my head as to how I'm going to approach the foreign regulator and ask for an indemnity which I can pretty much guarantee you what the response is going to be. But does that suggest that we're going to be SDRs that are regulated everywhere and that's the way we get around this indemnity issue? We share the information with them directly and it's everybody's information?

MS. MESA: The CFTC and the SEC have been working on this issue. We know it's problematic. We know it is not the goal to keep information from regulators that need it. So we recognize the issue that the indemnity clause brings.

That said, I think there are a couple of

ways for regulators to get the information. Foreign regulators. One is through the normal channels, which is through the regulator. And so if the CFTC or SEC directly regulates the repository and the foreign regulator needs the information they can come to us -- for an express regulatory purpose and get the information. And then second, if separately regulated by that foreign regulator in their own right, they can access the information without the indemnity.

Pete, did you want to say something on that?

MR. AXILROD: Well, we all know that the indemnity provision is an issue. I very much like the idea that if there are multiple regulators, each regulator gets to see it without an indemnity. So I guess I would urge the Commissions -- I know you've got your own lawyers but if you can see your way clear to a solution like that I think it would make everybody happy.

The other thing is, of course, that we've had a lot of discussions with regulators

that wanted access to the data we currently have. And it was fairly clear as it would be to the U.S. regulators that nobody wants to have to ask another regulator for the data. Right now there are 30 regulators around the world that have automatic sort of online access to our data. They like that. That means they don't have to ask. People don't have to know what they're investigating. All that sort of thing.

So I'm hoping that we can get towards a conclusion that doesn't require one regulator asking permission of anybody to get data that today they can get without asking permission.

MS. MESA: And you, Kim.

MS. TAYLOR: We seem to have moved onto the SDR topic.

MS. MESA: It's running away from us.

MS. TAYLOR: One of the aspects of the SDR topic that I wanted to be sure that we talked about was the sense that I have that clearinghouses are going to function as natural SDRs for the transactions that they clear. And I

think that it will be fairly quickly if clearing adoption goes, you know, according to the mandate certainly or if there are mandates that emerge in other jurisdictions as well. I think very soon there will be an abundance of transactions that are cleared and I think that I would caution us from developing a market structure that requires that an additional third party be a part of every transaction because I think at some point once clearing is adopted it will become almost an unnecessary additional cost and operational burden for all cleared transactions to be reported also to another third party.

And what I'm wondering is if there's an opportunity to use as somewhat of a model the CFTC's large trader reporting system which allows a regulator to take a standard format, input format from a variety of different sources. Think of it as a variety of SDRs in this case as opposed to a variety of markets. And accumulate that information and be able to use it either on a routine basis for its own purposes or use it on an

ad hock basis for its own purposes. I'm somewhat concerned about creating a market structure that requires kind of duplicative reporting of all transactions. Certainly, the uncleared transactions -- not all clearinghouses may decide to become a SDR for those transactions if that's allowed. I think there's a little bit of a gray area there but I would encourage us not to create an infrastructure that requires duplicative processing of all the cleared transactions.

MS. MESA: Pete.

MR. AXILROD: Yeah, I guess I would take very strong issue with Kim's characterization of duplicative reporting. In fact, that is -- the structure Kim is suggesting is likely to end up with inaccurate reporting to the regulators and difficulty for the market participants who have the ultimate reporting obligation under Dodd-Frank. As you heard this morning, the market participants, the ones with the ultimate reporting obligation, really want one point of control. Not that there has to be one repository but they want

to pick one place as a point of control for their reporting obligations. And to relate this back to international provisions, most of these firms will have reporting obligations in multiple jurisdictions that they have to manage. The only way the firms that I've talked with have seemed to be able to manage these reporting obligations is to have a single point of control. And if they so choose to have a single repository for reporting of all of their transactions, it doesn't seem to me that the regulators should mandate otherwise because that's the way they think they can best control the information falling in. Furthermore, I guess I would say that it doesn't have to be duplicative reporting if the DCOs would report to the repositories at the request of our mutual clients.

MR. RADHAKRISHNAN: So what if it transpired that in order for a DCO to be an SDR it must also accept reports on uncleared transactions? Were you suggesting, Kim, that you would only be the SDR for cleared transactions or

would you be willing to do uncleared? If the Commission said you've got to do both would you be willing to do both?

MS. TAYLOR: If it turned out that we had to do both my expectation is that we probably would if we found that our clients valued that service. I think my point really was that clearinghouse is a natural automatic SDR for the transactions that it clears. And for those transactions I would hate for there to be a mandate, a regulatory mandate that they also be reported somewhere else if the clients choose to. I'm not suggesting that there be a mandate that the clients aren't allowed to report their transactions someplace else; I'm just suggesting that there should not be a mandate that requires clients to use an additional service that I think over time will end up being more duplicative than that.

MR. RADHAKRISHNAN: But then if you all or ICE or LCH say, look, you know, we want to be an SDR and if people choose to report uncleared

transactions to us we'll be happy to accept them, that's fine with you guys?

MS. TAYLOR: I mean, I can't speak for ICE or LCH but certainly that would be something that we would consider doing.

MR. SHORT: For ICE, yes.

MS. LEVINE: Yes, we would as well.

MR. RADHAKRISHNAN: So what are the SDRs -- sorry, what do the SEFs think about this? Those of you who may want to be SEFs?

MR. CAWLEY: From the SEF standpoint I think, you know, Kim is certainly correct. I think it's a good idea that you have -- you don't want to have unnecessary duplication throughout the system. And today while there's not a lot of transparency in prices we crave this reporting function. I think over time you're going to -- the importance of it is going to decay over time as the market becomes more and more transparent.

MR. RADHAKRISHNAN: Sorry, in terms of what?

MR. CAWLEY: In terms of the information

in terms of the hunger for the information because right now we don't have that information. But it should be come fairly ubiquitous if this thing works. Right?

So from the SEF standpoint, you know, SEFs under the rules that you've written are also required to report trades. And from where we sit from Javelin, we're certainly willing to work with clearinghouses and also in terms of reporting that information because we're the point of execution. Likewise, we're also happy to pick up information on trades that haven't been executed on our platform. So it's a catchall because if we have that plumbing to -- be it CCPs or indeed regulators, we should be able to use it and profit from it to collect other data and to make that data more valuable both to regulators and to the market as a whole.

MS. MESA: Ethiopis, did you want to interject something here?

MR. TAFARA: Stir things up a little bit maybe and play devil's advocate vis-à-vis what Kim

was saying.

Don't we run the risk without mandating a central third party location for the data that we'll get data fragmentation? Data fragmentation that's not in the interest of systemic risk management or risk management generally?

MS. TAYLOR: I mean, what I would suggest is that if a party decided that they were going to SDR their cleared trades wherever they cleared them, and SDR their uncleared trades wherever they chose -- could be one of the clearinghouses they participate in; it could be a separate third party -- that there would not be -- the parties would need to make sure that they are not duplicate reporting. I agree with that. But then all you need is a standard kind of mechanism for regulators or interested parties to be able to pull data out or for the entities acting as SDRs to be able to deliver data to that central repository. And I know that a mechanism like this -- that this can work because I really think it is very similar to the type of mechanism that the

CFTC has long had in place with reporting of the large trader positions. They're reported by the individual market participants and actually their dealers tend to report them for them. Reported to different markets who then pass through the information in the standard format to the CFTC. So the markets get to use the same information for market surveillance. It's passed through to the CFTC for its own market surveillance and its own risk management across the broad industry. And it's done very effectively on a daily basis with a single reported -- a single reporting act and a single reporting format by market participants. So it's very efficient.

MR. TAFARA: But if my recognition serves, there is no public dissemination of that. Right? I mean, this is not consolidated information.

MS. MESA: But it is aggregated by the CFTC at the end of the week. I mean, I think one thing I was just going to follow on what Ethiopis was saying is that I think the burden shifts. The

burden then is on the regulator to sort of aggregate and assess rather than what the goal was from the repositories I think was somebody who would just shovel this aggregated information to -- in whatever form to the regulator. I mean, I think it just shifts the burden perhaps is what you're talking about.

MR. CAWLEY: If I could --

MS. MESA: Let's go in order. Let's see. I think you all -- all ahead, Lee.

MR. OLESKY: I just wanted to respond to Ananda's question about what the SEFs would think about it and then get to your two points. I think there are two different policy goals out of what we're talking about. One is to give the regulators a place to go to where they can look at a view of the market in a consolidated way and assess what's happening. And that is a unique goal that's not necessarily a transparency goal per se but an observing the market goal. And I think that that is best served by things being in one place. Given the complexity of these markets,

you know, aggregating it from a bunch of different places I'm sure can be accomplished but I think there are some questions about how that would all come together. And technically anything can be done. That can be done. The question is what does it look like? And I think it does shift the burden to the regulators to really then have that element under control which is this aggregation.

The second objective I think out of these types of entities is transparency, which is price transparency to the public. And that's one where I think competition is a good thing. I think it's a good thing to allow anyone to do this, to allow anyone to commercialize this data, and more importantly, to have a requirement to get the data out which is part of the whole rule set to get it out within a specific period of time. And I think once it's out in the public environment there's going to be all sorts of commercial interests that are going to come in and try and aggregate that information, capture that information, disseminate that information, and

make it commercially viable and acceptable and usable by the marketplace.

So I think there are two different objectives in my mind between these two things and the one that would concern me is given the complexity of the derivative markets and the number of different instruments, you know, to put that on the shoulders of the regulators to reaggregate so that it works I think would be a challenge across all asset classes. I mean, it gets complicated.

MS. MESA: I don't know who was first but Steve and then Wally.

MR. O'CONNOR: Yes. I think I would agree with Lee there. It's important to make the distinction between public reporting and regulatory reporting. And I think the SDRs are the regulatory reporting. And I imagine that SDRs are a giant spreadsheet that allows you guys to sort by any column that you want to to pick up the next AIG or long-term capital or whatever. And to have a system where you have multiple versions of

that spreadsheet that need to be aggregated presents an enormous challenge I think.

MR. TURBEVILLE: I believe that fragmentation is the issue, not difficulty reporting. And I think fragmentation is potentially a behemoth issue. And a concern is that there is sort of -- there will be an electronic swap data Tower of Babel running around and anyone sort of silo of the information is potentially volatile and damaging in itself. In other words, the only way to truly understand the market is to understand the market and the relationships between all of these things. There is -- there would be a great burden on the regulators at this point. We had hoped months ago that the regulators would have the capacity in terms of budget and all the rest to actually do the proper aggregation of the data and make sense of it. That may or may not be the case now but one thing that we have stressed in our comment letters relating to SDRs is that as SDRs are registered that a part of that is -- one way to

make the data more usable and more aggregatable is if all of the information as it comes from the SDR is in a format and style that allows you to do that more easily. Right. Instead of having multiple spreadsheets that somehow have to get pushed together, to have some kind of a standardized language as it comes from the SDR. In other words, they're writing to your API as opposed to you having to take down all of the different forms of language and make it a common language.

MR. O'CONNOR: Yeah. So then you're into the SDR of SDRs, which itself is a new behemoth that I don't think you guys should be running.

MS. MESA: Understood. Who was next? Mathias.

MR. GRAULICH: Well, perhaps I am mistaken but there is no requirement for one global TR. Right? So there will be multiple TRs globally and also under your jurisdiction. So the effort for the regulators to aggregate information

will be there in any way. So the key question is or, well, what I think would simplify this whole process is that there is a standardized plummet making it much easier for the regulator to collect the data and aggregate the data from the different trade repositories. Therefore, and I agree with what Kim said, I wouldn't see a big additional effort if clearinghouses would act also as a trade repository for clear transactions because it is the natural home. All information is there. It's just unnecessary and duplicative work if it is additional transmitted to a trade repository where the same data is then made available.

MS. MESA: Okay. Go ahead.

MR. CAWLEY: Yeah. I would say that, you know, one of the things you have to remember is the Acts didn't contemplate one SDR. They contemplated many SDRs. And in that is the tension of fragmentation or the risk of fragmentation. So unfortunately, that's something we all have to live with, especially you. The reality though is that there are already

repositories for trades naturally at clearinghouses and also as they occur on execution venues that they be captured there. It's not necessarily as Wally would suggest a Tower of Babel situation if managed correctly. It's very easy to take, and I would hope that any SDR doesn't use necessarily a spreadsheet or a fax machine these days but indeed use a commonly accepted protocol and API infrastructure through which this data could be collected. So whether it come from SEFs or come from CCPs, it's not that difficult to aggregate it such that the data doesn't fall through the cracks.

MS. MESA: Pete?

MR. AXILROD: I guess I just wanted to double-check something because it sounded like Kim and I ended up being in violent agreement about something. And I also wanted to respond to James. I do think, I mean, we spent over $100 million on inventory control among other things. I think it is more difficult than people might first imagine if they haven't tried to do it to aggregate

correctly. But I'm quite happy and I think it's DTCC's position that the market should and probably will work itself out on this. At this point we've had a lot of discussions. It seems to be relatively clear that the consensus view of the regulators both here and abroad is that they're not going to mandate a single repository. I do think though that, you know, it sounds -- if it's up to the users, the people with the reporting obligations to choose, I'm, you know, so be it. I just want to make sure that the playing field is level and that there's no sort of vertical bundling of services that amounts to some sort of, you know, unfair trade practices. But as long as the playing is level, I think, you know, I think the users themselves or the market participants themselves will work it out and you'll end up with what you end up with.

MR. TAFARA: I think I need to say I was playing devil's advocate and I think it's clear that the statute doesn't call for us placing our finger on the scale in favor of a single point of

reporting. But by the same token I don't think it also calls for us to put our finger on the scale in favor of reporting through a clearing agency. And as I think Pete is saying, if that ends up being the choice of the participants, so be it. But I don't think we should be in the business of putting our finger on the scale one way or the other.

MS. MESA: Verett.

MS. MIMS: So as a corporation I think the one thing to keep in mind when we're talking about these SDRs is the notion that we have an end-user exemption. But in the sense like our capital corporation may not and now they're a reporting entity. And so we're saying we'll have a single standard, I mean, for some corporations we use SWIFT. We're not a member of SWIFT at Boeing. And a lot of other big corporations aren't. So in terms of having the standard language now, you know, we still have a budgeting process as well that says, okay, how do I budget for being in compliance with these regs since I

don't know what SEFs are going to be accepted? Of course, as a corporate we want more than, you know, than less. And still I'd have to budget for which SEF because we've used Tradeweb in the past and it's, you know, it costs money. And so at the end of the day it's like, you know, if we have more than 20 or however many we're going to have I think for a corporation there's this notion that more is better.

But back to this notion of cleared versus uncleared because we know that the regs are going to set margin requirements much higher for uncleared swaps. I'll give you an example. So at BCC, if they wanted to as Capital Corp, they wanted to do one single swap to swap out their fixed rate debt to floating, they could do one swap and do like a half a billion dollars in one swap. And so now that I have to now do a cleared trade I may have to do 500 different transactions and do them more frequently. So now I have that additional transaction cost. Now I have the additional transaction cost of now reporting that

trade if I am the reporting entity which they would be. So I think the one thing to keep in mind, for us it just becomes more and more additive in terms of cost versus the way OTC is so customized now where we pick up the phone, call a bank, shop the trade, hang up the phone, and confirm it.

So I just think we have to keep all these things in mind when we're setting up these structures for the end user because you guys, being, you know, you already have as you say the natural thing is for clearinghouses do have all these systems set up. Corporations do not. So I just want everybody to keep that in mind when setting up the market infrastructure.

MS. MESA: Dan?

MR. BERKOWITZ: I was just going to add my recollections from the debate on the legislation when this issue was debated in the legislation. Should we have one SDR or multiple SDRs? What Ethiopis was saying, as I recall it, the sentiment in the Congress and certain in this

agency was participating in the legislative process. The feeling was it wasn't -- people were reluctant to decide. We determined there shall be one SDR or we shall determine how many SDRs there shall be. It's, let's let the market decide how many SDRs there shall be. Clearly it contemplates that there might not be an SDR for a particular type of swaps in which case the Commission is directed to essentially perform that function.

I would also note that there's also a difference when we're talking about whether there are multiple SDRs for the same class of swaps or there's multiple SDRs for different classes of swaps. And I think then again we'll see what the market brings in terms of consolidation of multiple classes of swaps and a single SDR. Or we're going to have multiple SDRs based upon different classes of swaps. But I think the legislation clearly contemplated the marketplace would decide and then the Commission would have some type of rule for what the market is not covering.

MS. MESA: Lee, did you have another point? Sure.

MR. OLESKY: Just a quick follow-up. I wanted to follow up on both those points. I think, a, very important to have flexibility here and a competitive environment among different participants because I think that's how, you know, clients will be best served. Whether they're institutional clients or frankly we in some respects will think of us as a SEF but we're in a sense a client of the clearing corps and other entities that are participating in this space. So we want to see flexibility. We want to see a number of different competitors because we think that's the way you get the best product and the best service and the best pricing. But I guess the last thing I wanted to add is we need certainty of timing, too, because I think that the cost associated with the uncertainty that continues to go on for month to month and year to year is going to start to have an impact on the willingness of entities to invest capital in

different spaces. So I can speak for my company, Tradeweb, where we invest a lot in R&D. We're spending a lot on technology and the longer it goes not knowing precisely what the rules are, the harder and harder it gets.

And I've got a board meeting this week to go in and explain to my shareholders why we're going to spend on, you know, a technology that supports a certain type of trading model, you know, when the impact is actually going to occur, when we have an opportunity to make profits on those investments. And I think the longer the process goes on the more uncertainty there is over the months. I think it's likely to push out certain people who would invest in the space and it's not going to be us because we're in it for the long haul. But I think it's a cost. It's a cost to our clients in terms of figuring how to get set up to deal in this new environment. And I think that it's not just a question of, you know, the fear that things will leave the U.S. jurisdiction and go to other jurisdictions. I

think there's also a fear that it will just slow down innovation and investment and that's obviously not a good thing to be doing right now. I think we want to get through these rules as quickly as possible so people can start to invest and develop and deploy.

MS. MESA: Brian.

MR. BUSSEY: I wanted to kind of shift the topic a little bit. Stay on SDR but address another aspect of an international situation where you have a cross border transaction. A dealer here, a dealer in Europe and subject to potentially different reporting requirements. And I think there's two variations on this. One is where the two entities are not members of the same SDR. That's the first thing. And then the second thing in going to Kim's suggestion from a different area, what if the regulators have different reporting requirements for transactions that they're not completely mapped with each other. So I guess I have questions both for the infrastructures, the potential SDRs and the panel,

how you are going to deal with this type of situation from a business perspective. And then, for example, the intermediaries, how you view this situation as working out. How the regulators should best address these issues.

MS. MESA: Pete.

MR. AXILROD: I guess the nice thing about the SDR situation is that there's going to be a race to the top. You know, the opposite of whatever the lowest common denominator means. Most firms that trade in multiple jurisdictions know they're going to have reporting obligations in multiple jurisdictions. Not only that, for any trade, multiple, you know, both parties may have reporting obligations depending on the jurisdiction.

So the only way for this to work without it being a big mess is to have a reporting infrastructure that will satisfy as many of the, sort of what I'll call, high volume jurisdictions as you can where most of the trading takes places and where it's important for reporting to be as

automated and controlled as possible. And the only way to do it is to have a reporting infrastructure that as best you can will satisfy all of the requirements of all of the major jurisdictions. So we've built to satisfy what we think are going to be the EMIR requirements. We've built essentially to satisfy the proposed rules. They might change but we think that's a good indication of where things are going to end up. We've been in discussion with Asian regulators. It would be a lot easier if everybody got together and had the same requirements but we know that while they will be similar, they won't be exactly the same in all respects. And you're just going to end up with a race to the top. Anyone who purports to bill just for one jurisdiction is unlikely to be able to attract customers. And so I think it's actually a good thing rather than a bad thing as long as the requirements are similar enough that it's possible to satisfy all of them with one structure.

MS. MESA: Jonathan.

MR. SHORT: Yeah, I'll just amplify on one thing that Kim said previously. When you think about that situation where you've got a U.S. entity and a foreign entity and the potential for different reporting obligations, what I keep coming back to is that if you're going to posit a market structure where a lot of that business will be cleared, the clearinghouse is a natural place for that trade to reside. So if you have a situation where a clearinghouse can be a SDR which Dodd-Frank clearly contemplates, you could have that in a foreign jurisdiction. And you know, the problem seems to be addressed right there because in all likelihood unless Ananda gets, you know, quite liberal in what he's going to permit amongst clearinghouses, that trade is going to reside in one clearinghouse. It's going to be in one place. And if that place is also a SDR, that situation seems to be addressed at least for a cleared trade.

MS. MESA: Steve.

MR. O'CONNOR: Just touching on the public

reporting. I think I'm going to agree with Pete here. I think to the extent one trade gets reported in two places, then that's a recipe for disaster. So I think the industry has to move. And maybe it's covering the high volume jurisdictions. But infrastructure where -- and there may be multiple versions or reporting infrastructure but where there is commonality of rules and people understand that it's okay to add metrics coming from real-time reporting system A to those in system B because A and B only have one instance of each trade, then that's fine. But if you have the same trade going through A and B at the same time, catastrophic I think in terms of the meaningfulness of the numbers.

MS. MESA: Brian, did you have another thought on this?

MR. BUSSEY: I'm just -- so does industry just work this out then? Is that what you're suggesting, Steve?

MR. O'CONNOR: I think that certainly in the, you know, yes. But working with regulators would be the easy answer. But I think that

clearly people have -- this has got people's attention and smarter people than me are thinking about these kind of issues. So I think, yes, working with regulators, the industry will get to the right place.

MS. MESA: I've just got a question on predictions. So for a while there was a fear that certain jurisdictions would require reporting within that jurisdiction that's fragmenting or causing double reporting. So if you were doing a trade with -- and I don't think the fear is with Europe anymore but perhaps with an Asian jurisdiction. Let's just say that someone in the U.S. does a trade with someone in Japan and the Japanese regulators say, well, that trade is of utmost concern to us and must be reported here. And let's say at a repository that the U.S. doesn't register or recognize and must be reported to a different repository. This is the situation I assume that everybody is trying to avoid, having this potential double reporting. Is there a fear that that exists today or is this just, you know,

warning, we don't want this to exist. Is there something tangible that the industry is aware of or -- anything?

MR. AXILROD: Were you going to answer that question, Steve?

MR. O'CONNOR: No, I was hoping you would.

MR. AXILROD: Okay. Okay. Yeah, the answer is, you know, we have heard ourselves from many jurisdictions outside the U.S. and Europe. Essentially the refrain has been it's very nice that you've developed a way to assure both European and U.S. regulators that neither can cut the other off from the data essentially by having, you know, fully redundant data centers in both places. But that doesn't do it for us. That's just good for the E.U. and the U.S. And they are -- everyone is taking the G-20 commitment seriously and so they all think they need trade repositories. They all think that they need access to trades that are relevant to their jurisdictions. I think they all realize that the

jurisdictional -- that what they have available today, however imperfect, goes way beyond the jurisdictional reach of any jurisdiction just because per the guidelines that the OTC derivatives regulators form provided, which were by some miracle fully and formally endorsed by over 40 regulators around the world, if there are essentially offshore trades on onshore underliers yet to be seen by the onshore regulator, in general, you know, there may not be another sort of legal way of getting at that information. So this is sort of something that the industry has voluntarily done. The infrastructure today allows that sort of viewing of offshore trades that are relevant to the onshore jurisdiction.

One of the things that I think is going to happen if people can't stay coordinated on this, is all the regulators are going to lose easy access to that sort of information. Just the recent sovereign debt trading is a good example of why that's not good. I know that the U.S. authorities wanted to understand credit default

swap trading on U.S. sovereign debt even if it took place offshore. The Greek regulators and the E.U. authorities certainly wanted to understand the offshore trading on Greek sovereign debt. It's easily available today. It's on a voluntary basis. It's going to be very hard to make that mandatory and enforce it. So there is some motivation for regulators to get together because there is a carrot to go along with the stick. But right now the non-E.U., non-U.S. jurisdictions are feeling kind of left out and are going down their own path and we're trying to -- I think we have come up ourselves with a way to try to manage the inventory control so there's not double counting but it's a little bit premature to talk about it in this forum. I'm happy to talk about it with your staff offline.

MR. TAFARA: I just wanted to probe on that a little bit. The non-E.U. regulators with whom you've been speaking, are they saying they need a repository or that they need access to information at repositories would be my first

question. And two, I know you've put in place a program whereby access is afforded to regulators around the world based on relevance. And my question as how did you define relevance? How did you determine what it is you would provide access to and what it is you would not?

MR. AXILROD: With regard to the first question, they want a repository, not just access to the information. With regard -- oh, you want --

MR. TAFARA: And my question obviously is why.

MR. AXILROD: You'd have to ask them. With regard to your second question, we didn't come up with the definition of relevance. That's -- the OTC Derivatives Regulators Forum came up with a three- or four-page guidance on what that was. And we, although it was voluntary, anything signed by 40 regulators doesn't feel voluntary to us. So we implemented that and are using the ODRF definition of material interest. It's not entirely clear around the edges but it's for the

most part a pretty good definition.

MR. BUSSEY: Pete, just a clarification. Do they want their own SDR or a mirror-type of situation that you've put in place with E.U. and U.S.?

MR. AXILROD: It varies. Some want their own SDR. Some want a mirror-type situation. I think the mirror situation was put in place really before we had the technology in place to sort of say which regulator got to see what in accordance with the ODRF guidelines. So we're hoping that we can -- we don't have to mirror the entire global data set in 27 jurisdictions but it did seem to us as if you're likely going to end up in a place where you have sort of three hot sites, one in Europe, one in the U.S., one in Asia. You can switch between any of the three at will. You don't know which one is live at any one time. It's the same technology we put in place here in the U.S. It can work globally. And you have the ability if one regulator sort of cuts off access, which is what the other regulators are worried

about, that you can operate out of the other two. It's not perfect. All three regulators could cut off access to everybody else but that's unlikely. That still makes certain jurisdictions feel left out but when you look at -- the great bulk of the derivatives trading takes place jurisdictionally in the E.U. and in the U.S. I think actually by booking location, Switzerland probably follows and then Japan after that and that covers, you know, well over 95 percent of the activity. I think Singapore is starting to step up but that's -- I think that's pretty much where we are. Those aren't exact numbers.

MS. MESA: Does somebody have something on this? Steve.

MR. O'CONNOR: Yeah, I would echo Pete's comment. I think they do want their own SDR. So the trick is selling them or building something that's accessible. It's not exactly a local SDR only. It's just a view of their local market from the global system. And the trick is going to be permissioning. And we've been talking about

different instances in the U.S., you know, (inaudible) versus the clearinghouses. These guys would have 20 versions of that confusion. So that's got to be avoided at all costs. And permissioning is key and in the same way U.S. regulators would not want to have foreign regulators particularly to see transactions in U.S. product between U.S. bank and U.S. clients. They would not want you to see transactions between German Central Bank and German Bank in euro for the same reasons. And that's the trick of Pete job for the next few years I think.

MS. MESA: Do you have anything else? Ananda, did you have another?

MR. RADHAKRISHNAN: Yes. I wanted to ask a question about registration of SDRs. Our statute does not allow us to garner an exemption for registration similar to the power we have with DCS and SEF, which might mean that if you want to operate overseas -- well, what we cannot do is recognize you if you're registered overseas. So is that a good thing or is that a bad thing?

Well, we're stuck with it. You know, there is this requirement that we coordinate with foreign regulators. And so the question is should we be looking at a mammoth information sharing arrangement among regulators to get information providing we assure ourselves that we can get the information that we want? Because if you think about it, an SDR is basically an information gathering mechanism. Right? So the question is if you are satisfied with what you get and there's no cutoff of the information, why do you care whether you regulate them? So. What do people think about that?

MR. AXILROD: Amen. If you could achieve that, that would be great. We're happy to have multiple regulators. We're not wedded to the model where everybody recognizes one regulator and so forth. And if you could use -- I understand that there's this indemnity provision in the statute but if -- I think the ODRF is a pretty good model in terms of process where you did get a lot of regulators worldwide to unofficially but

formally agree as to who got to see what and how information was going to be shared, that would be wonderful.

MS. MESA: Brian, did you want to -- I think you were going to switch a little bit. Nobody had anything else on that?

MR. BUSSEY: I wanted to go back to something that I think Kim said earlier in the session. Did I hear you speaking against the so-called geographic mandates that may be popping up in some jurisdictions? And if you were, I guess a two-part question. One for you: how would you suggest that we deal with those issues as regulators here in the states? And then I guess to the intermediaries, how are you thinking about dealing -- to the extent that we're not able to deal with the geographic mandates and there are going to be those in the world we're operating in three years how. How are you planning on dealing with those -- dealing with those types of mandates?

MS. TAYLOR: I was speaking in a

cautionary way about the geographic mandates. And I think -- I think I would expand what I said earlier to actually apply on two levels now. I think -- my concern originally was related to concerns about either the execution or the clearing of a transaction in a certain product with a certain relevant underlying or by a certain entity or the combination of product and entity. There seemed to be early on quite a push by regulators that I don't think is gone to have those types of -- certain types of transactions be required to be cleared in certain jurisdictions. I think that is going to end up being problematic because it's a global market and different parties need to meet. And if you have a situation where the same product with different entities requires that it be cleared in two places, we've got a problem that is going to actually show itself by fragmenting the liquidity in the market and having people have less access to better pricing which I think was kind of one of the reasons for the legislation in the first place -- was to improve

market transparency and perhaps to improve market access. So I'm concerned about that.

And then I would add to it, I think, this concern about the regulators mandating that there be duplicative reporting in different jurisdictions from the SDR point of view. I really do think that -- I really do think we can end up in a place where at least a cleared transaction ought to be able to be reported in one place, the place that it's cleared, and then there needs to be a mechanism for that data to be amalgamated in with data from either other places where trades are cleared or other places where trades are SDR'd if they are SDR'd and not cleared or if they're SDR'd in different places from where they're cleared. So I think there needs to be -- unfortunately I'm not sure I see a way for the regulators to end up in a place where there's not more than one location for the information. And I do think as Ananda mentioned they're probably -- I think it was Ananda -- that there probably is going to be need to be a large regulatory

information sharing agreement that is kind of like beyond the scope of what has been in place before. I know there have been arrangements in place before but they seem conceptual more so than practical in a lot of cases. I don't know if they're really used a lot. It probably is hard for me to tell if they're really used a lot.

But I would think that the access to information that regulators would need goes beyond caring about transactions in a certain underlying that would be relevant to them or I think as a risk management matter you would want to know what transactions, a party that you have a regulator nexus with clears or doesn't clear -- the transactions that AIG has regardless of what entity did them or where they are cleared or SDR'd or in what product they are, if it is related to taking down an entity you regulate I would think you'd want to have access to that. So I think it's a complex problem that you need to solve. But I don't think the right way to solve it is to have everybody mandate, clear it here, SDR it

here.

MS. MESA: Iona.

MS. LEVINE: I want to move it away from SDRs because we're not an SDR. And the more I listen to this the more I actually think the DTCC are welcomed to the market frankly. But that's not our official line. However, I want to sort of move us back to what you were talking about which was the sort of different geographical areas and what we sort of call the "balkanization" of clearing. So sort of the idea that either Japan or Australia or Canada would want its own clearinghouse.

Leaving aside Japan, I think it's very interesting to note that they're sort of -- 95 percent of all swaps are done in say four different jurisdictions. And I think there's a huge amount of machismo going around from the sort of smaller jurisdictions. They all sort of seem to be saying, well, we now want our own clearinghouse in which our domestic members have to be sort of clearing members. And I think

that's very interesting if Australia wants to set itself up or somebody else wants to set itself up with its own clearing members. The question is who else is going to play in the sandpit with them?

And what this actually leads to is something that I'm less concerned about but which, you know, my clearing members should be more concerned about because if they're then required to go over to various other jurisdictions and also become members of those very much smaller CCPs, they then have to have another completely distinct booking office. They then have to become members. And I don't want to see -- and this is not an anti-competitive statement. I better kind of get that on the table first off. I don't want to sort of see a huge proliferation of clearinghouses. I really don't think that's the right way to go and I really think what you're talking about about links and examining links and how all of that works is important to throw into the pot. So I want to get away from SDRs and back to

clearinghouses, back to should we "balkanize" it? Should we allow the markets to become fragmented? Or, shouldn't we just say they're global markets. Let's regulate them properly. Let's not overregulate them. Let's regulate them to the right standard. Let's have memorandums of understanding in place and let's do it properly because we don't get another chance to do this again.

MR. RADHAKRISHNAN: Thank you, Iona. This leads to an interesting question because one of the tasks that the regulatory community has been challenged to look at is this concept of interoperability which I believe was warded before in Europe and then it died because nobody quite understood what it was.

MS. LEVINE: It's very popular in the equity space which we would say was a completely different asset class. And a lot of, you know, people looking at this from the risk perspective don't believe it's easy. It's not easy on default management. And so I think that the sort of

considered advice on the risk side is that there shouldn't be interoperability for these more complex projects -- products, rather and that it should be allowed with equities. And even with equities, it's slightly challenging.

MR. RADHAKRISHNAN: The recent news we've heard in Europe about I think interoperability goes towards equity products, cash equities. So here's a question. What do people think about interoperability? Should it be mandated by regulators or should it be left up to CCPs to decide if they want to interoperate and ask for approval?

MS. MESA: Steve.

MR. O'CONNOR: Thank you. To quickly jump back to Brian's point on the interoperability, I think I agree with Kim and Iona that in a world that was free from the politics we would, you know, the markets would choose. There will be winners and losers. I think we're not in that world. I think certain jurisdictions have seen a little bit already. Dictate, you know, what they require in their own

jurisdiction. The market will just have to live with that. So if there are countries that require onshore clearing for certain products in their jurisdiction, clearly, you know, the participants will be there, which either leads to fragmented markets, which is not good for systemic risk and it's highly inefficient. Or you have to solve the interoperability riddle. And I think that's an enormous challenge. I mean, I've looked at that quite a lot and I think that the challenges in the OTC markets and particularly in terms of the risk management, the default management, margin policy, how losses become a monumental task that is sort of on the agenda at the same time as, you know, launching clearing itself. So getting more product into dealer clearing, launching client clearing, building FCMs where you didn't have them before, etcetera, etcetera. There's so much on the plates of the CCPs now to have any meaningful interoperability discussion is almost impossible I think. As a user, we would love that further; I just don't think it's feasible in the short-term.

MR. BUSSEY: Will you, for example, in

Japan will you just -- if you want to do Japanese CDS, will you just have your Japanese affiliate member of the clearinghouse clear the trade for you as a client of the Japanese member so your U.S. affiliate would?

MR. O'CONNOR: Well, that's starting off in the interdealer space so we are there, you know, we clear already through that onshore clearinghouse.

MR. BUSSEY: Who does that?

MR. O'CONNOR: Morgan Stanley's local subsidiary.

And you know, it's worth noting that if I do trades with other U.S. banks or European banks in yen, that's already cleared offshore from Japan. So this is just for the local onshore. But, you know, if intermediaries want to be in those markets then they have to play by the rules and that's the cost of doing business there. Which may not be the right, you know, solution for global systemic risk but that's where we are.

MS. MESA: Let's go Matthias, and then

Kim, and then Jonathan.

MR. GRAULICH: Well, to the interoperability point, I think that, well, the mandate of the G-20 was to reduce systemic risk and I think there are a lot of studies and papers out which say, well, in particular for derivatives and I wouldn't limit it to OTC derivatives but all derivatives, interoperability is something which would introduce additional systemic risk. There are so many elements which, well, are really difficult to handle in particular in a crisis situation. We have now this discussion in Europe on cash equities. I mean, the risk is there today so it's, well, manageable. But still, as Iona said, it's still a challenge to get it done for cash equities and it should be a market, well, market-driven approach and not a regulatory-driven approach. So clearly interoperability shouldn't be mandated.

MS. TAYLOR: I don't have really anything more to add to what Matthias said. Just, I would just I think reemphasize the point that

we're a big proponent of links between clearinghouses where they make commercial sense and risk management sense. And I think that warehousing the risk that happens with a derivatives transaction is a very different activity than managing the kind of t-plus x-days settlement risk that comes with cash equities. So I would echo the comments that have been made about the -- there are a lot of downsides in terms of the systemic risk protection I think that come from mandating interoperability in derivatives.

MR. SHORT: I would echo those comments and emphasize that I don't think cash equities is a particularly good analogy to managing risks in the broader derivatives space where you can be talking about exposures that stretch out years. The other thing I would just note is when you look at the fundamental problem that I think Dodd-Frank was intended to address, we had the financial crisis with many institutions that were linked together and things started to get wobbly and people were afraid of one domino causing another

domino to fall, the idea that you're going to pass a law and funnel all of this supposedly dispersed OTC risk into a limited number of clearinghouses and then you're going to connect all of them together, that just doesn't seem like a particularly good idea to me if it's mandated by a regulator. If there's a point down the road where it makes sense and the people that are managing that risk believe that they can do it, that's another issue. But to have it mandated, I think is a terrible idea.

MS. MESA: Wally.

MR. TURBEVILLE: You might expect somebody from an organization like mine to say this is just a way for the big clearinghouses to keep the little guys out. However, interoperability is simply a transmittal device for risk and consequence. And one foul up at one clearinghouse could easily go to another clearinghouse. Ba-boom. So, in fact, I think it is in the public's interest for there not to be interoperability. However, I think it's very much

in the public's interest for the regulators to urge the major clearinghouses to have a form of hotline, people being able to talk to each other and be able to manage through events and make sure that those lines of communication are out there so that they can work together. But interoperability itself is maybe the worst of all the possibilities. I mean, a single clearinghouse for the world would be better than interoperability.

MS. MESA: That's a statement. Ananda.

MR. RADHAKRISHNAN: I wanted to ask a question which is sort of related to what I asked in the beginning of this panel session which is hinted at in the morning's panel, which is as follows, for those DCOs that are located outside the United States. Notice, Iona, I didn't say foreign DCOs. Those DCOs located outside the United States. The firms have come to us and have asked us to initiate a part 30-like regime, which -- and I don't think, with all due respect, I don't think they understand what it is they're asking for because if I understand what they're

asking for it is let the current clearing regime or clearing mechanism continue. The current clearing mechanism is, for example, in ICE Clear U.K., a U.S. customer has an account on the books of an FCM. That FCM has an anonymous account on the books of a U.K. firm. Right now that's fine. That complies with the law. Once Dodd-Frank becomes effective, you know, after the Commission's temporary exemptive order expires, that's not okay because that intermediary has to be a registered FCM.

Now, I believe the DCOs have proceeded on that assumption but nevertheless this call, this cry almost for relief will not stop. I can bet you it will not stop. It's already out there. What do you guys -- what do you guys think about it, number one? And number two, if the Commission were inclined to do this, should we not also do it for all DCOs? Because otherwise we may be giving an advantage to some DCOs which we don't give to others. Question number two. Question number three, if we do this we will also have to give an

exemption to the segregation requirement and we'll have to make clear that the bankruptcy court doesn't apply because as I said in the beginning, everything flows from the fact that you're an FCM. So what do you think of the idea? Should we entertain it or should we say part 30 applies to foreign futures. These are not foreign futures. These are “Dodd-Frank swaps." No exceptions.

MS. MESA: I'm going to let Jonathan answer that. He did mention ICE Clear Europe in the example. So Jonathan, do you want to --

MR. SHORT: Thanks, Iona. I always believe in siding with the customer, Ananda, so I think it's a fabulous idea what they're suggesting.

No, I mean, I think you do kind of hit the nail on the head though, when you say that a lot of the protections under the act flow from being an FCM. So it's not -- it's not as easy as saying, okay, let's grant relief and everything's fantastic. You know, I think what you described at the beginning about how accounts are set up to

clear at ICE Clear Europe is accurate. That is what happens today. That said, I think we've had good uptake from our clearing participants moving down the road towards getting their business set up through FCMs. You know, in all candor, you know, our customers are being asked to do a lot of things right now and they, like everybody else, have limited resources and they're being pulled in a lot of different directions. So I guess I'll kick it back to Iona on that.

MS. LEVINE: Gee, thanks, Jonathan. I think that there's a difference between temporary relief and sort of permanent relief. And I don't think we've got any problems with the FCM model at all. In fact, we've completely embraced it. It's been running for some time. It's completely successful. Everybody understands what they're getting. They understand the segregation. You know, they've all sort of stepped up to the plate. I think that there's a difference where what you were running with an exempt commercial market and if you were running an exempt commercial market,

say you weren't regulated, okay, and you know, you were doing it through people who run FCMs, I think there is a sort of short order to switch over and make sure customers get the protection through FCMs. So I can see, you know, temporary relief being good but I think it should be a level playing field and I think it should be all FCMs.

MR. GRAULICH: Well, I think emphasize it at the beginning. I think it's a good idea to entertain that. I think reciprocity is a very important aspect. I think that it's been up for discussion between the regulators at the end to make sure that, well, this reciprocity is established. The other element on client asset protection, I think what should be entertained is there are different solutions to make sure that client assets are protected. And this pretty much depends on the bankruptcy regime in the country where the CCP is domiciled. And I think there is not one solution fits all. And what I believe, and this is also part of the CPSS. I asked for recommendations where it says, well, CCP needs to

make certain that it is legally enforceable or has legally enforceable powers and a framework. And, I mean, what you can demand, for example, is to say, well, you need to show me a legal opinion that this segregation regime is under your service offering enforceable and I think with that element you can give, well, different solutions a chance or different solutions can be there for different frameworks.

MS. MESA: Kim.

MS. TAYLOR: Yeah, I would -- I can't help but point out that's actually where we started with the customer protection mechanism for the OTC derivatives. I do think it is inconsistent with some of the other concerns that customers are voicing at this point in time so I think that would need to be certainly resolved so that it's clear that we're solving the right problem or that you're solving the right problem. But I think the main thing I would want to say is that if this were an exemption that were available to DCOs that are not located here, I think you

would probably want to consider making it available for DCOs who are located here or you could find yourself, if it's an attractive option for the customers, with no DCOs located here. So I would encourage the level playing field aspect.

MR. RADHAKRISHNAN: That's a good point. I think, if the Commission were minded to go this way, we would have to offer it to DCOs located in the United States -- physically located in the United States -- DCOs not located in the United States, and do it in conjunction with a comparability regime just so the playing field is level for everybody. Otherwise, if we were to go down the you don't have to register with us if you're comparably regulated, that's not fair on those of you who register as DCOs. Right? So I think that -- this is what I think. I think you can't have one without the other. And I agree with you, Kim. I think if we were to allow intermediation at a DCO not to take place through a FCM, it shouldn't make a difference whether it's a DCO located in the United States or a DCO

located outside the United States.

MS. MESA: Well, I know the time is coming to an end but I just have one more question. In case you feel like your one point didn't get addressed today during the panel, is there one issue that is troubling you? When you think about the global swaps market and rules that we're applying in the U.S. and the potential legislation around the world, what is your number one concern? Not everyone has to answer and no one has to answer. But if you have something that you really want to talk about, let's hear it now before we conclude.

Okay, Pete.

MR. AXILROD: Yeah. Simply put, if the market participants around the world have their interests actually line up with the regulators' interests around the world -- it doesn't happen that often but I think it will happen in the area of repositories just to keep market -- publication of macro facts about the market accurate -- take yes for an answer.

MS. MESA: Kim.

MS. TAYLOR: I think that the point that I would like to make, and I probably should have raised it when we were talking about comparability regimes and cross recognition, is actually that -- I would encourage regulators to take a very hard look at what I'll call the capital reserve situation at clearinghouses. And for a clearinghouse, the capital reserve is actually the financial safeguards package, primarily the guaranteed funds. Sometimes assessment power. Sometimes contributions by the clearinghouse or the entity that owns the clearinghouse itself. But if I think back at what actually was kind of the strong contributor to the crisis situation, I think if I had to boil it down to one thing I would boil it down to lack of appropriate capital reserves at certain types of financial entities to cover the tail risk on the exposures that they had.

And the clearinghouse covers tail risk in two ways. One is by margin and one is by the

guaranty fund. But no matter what you do with the margin, you want to make sure that you have enough capital reserve at the clearinghouse to withstand a failure of your assumptions or a failure of your model, or a set of different conditions. You can always have a worst case scenario that's worse in the future than anything that you would have estimated in the past. And since everything is being encouraged to funnel through the clearinghouses as intermediaries, I think it's important that they have appropriate capital reserves.

MS. MESA: Wally.

MR. TURBEVILLE: I got -- this is not my real point -- Kim is completely right. And I also encourage folks to look at capital reserves and not be bound by historic events. And I think events applied to historic events are good enough because there are black swans.

The most important thing I think is from -- is the information and not the collection of the information but what is done with the

information for both -- the trade data -- for both dissemination, which was not discussed really today but is actually a mission of Dodd-Frank to cause dissemination to occur. And for the regulators so that the information is usable, uniform, and understandable on a very rapid basis. And if -- otherwise, I really do fear that the gathering of the information will be much less useful than it could be.

MS. MESA: So Steve, Jonathan, and then Iona and Matthias.

MR. O'CONNOR: If I may jump back to the morning, I would say that the most important thing is to have a level playing field between market participants, both in the U.S. and in Europe. Those playing fields don't themselves have to be at the same level but when trading with clients in either location the rules have to be the same for all banks, all dealers in those markets. Because otherwise, particularly from the U.S. bank perspective it would be ironic if the reach of Dodd-Frank with the U.S. going first and setting

an example to the world, had an adverse impact on U.S. institutions and was most harmful to them.

MR. SHORT: I think this point has been touched on in different ways but just going back up to 50,000 feet I would just say that in promulgating the rules that are about to be promulgated, I think it's important just to maintain flexibility to take into account what is going to be happening in other countries. I mean, I think it's a source of pride that we got Dodd-Frank out and everybody has, you know, worked for the last year to promulgate these rules. But, you know, there will be differences in the regulatory regimes and I think it's important for us to maintain enough flexibility to take into account what other countries may be doing because ultimately all of this needs to bolt together and it's a global market and what we went through is a global problem.

I think it's good that Dodd-Frank came out first but it means that you're in this sort of unenviable position of being thought leaders. So

everybody is really looking to you guys to get it right.

From my perspective there are a couple of things. I think the thing that bothers me the most and makes me sleep at night the least is not the fact that the rules won't be identical because I doubt if they will be identical. But it's the consequences of them not being identical that matters to me. Say, for example, if I'm quite able to ring fence one rule and do it one way and ring fence another rule and do it the other way and it's still acceptable to everybody, then that's fine. But if differences are not allowed to persist through rules that have been promulgated by the regulators, then I think that's going to be a problem for the markets and a problem for everybody. So let's say if we can't get consistency, at least let's go to the highest standard of all rules which we can live with and make sure that nobody has a problem with that.

The second thing that bothers me is actually -- and here I'll jump to this, LCH being

(inaudible) focus now -- it's sort of what happens to my clients, my clearing members. How many different kinds of entity need to join the clearinghouses in how many different guises? You know, I think that's the sort of thing that the previous panel dealt with.

MS. MESA: Matthias and then James.

MR. GRAULICH: Yeah, I think, well, reduction of systemic risk is well on our agendas and there are many initiatives going on to make that work. I think what shouldn't be forgotten is the efficiency aspect. So we're doing a lot to reduce systemic risk. Sometimes it appears that it is at the cost of efficiency, so that element shouldn't be forgotten. And I think one remark towards the regulator, I think international cooperation between regulators is really a key topic which would help a lot to avoid double regulation and a loss in efficiency.

MR. CAWLEY: Just one thing that, you know, we look at is there's naturally going to be a tension between, you know, rules that come from

Dodd-Frank here in the United States relative to rules overseas. And I think that the expectation that you're going to have perfect lining up of rules across the world is just not going to happen and one has to live with in reality. What Iona said is correct, the United States has gone first here and we should remember, you know, what we're here to do and that is where on one hand not lose the competitiveness of the U.S. capital markets but also protect the American public and the taxpayer. And one of the things to that end is to ensure that you do have an open and level playing field that's transparent.

And I think if you look within historical context and you look back to the creation of let's say the SEC back in the 30s, you'll see that there were the same arguments that were used. Should we delay things relative to what our foreign counterparts do? Or should we go ahead? And I think it's proven the test. It's stood the test of time and that is that rational investors gravitate towards fair, level, and

transparent playing fields that are consistent. And I think you can look back to the '30s for that for your further guidance there.

MS. MESA: Well, I want to thank the panelists today. Your input was really important and we will take back what we've learned and think a little bit more.

I want to thank the SEC for traveling our way for this roundtable and for the staff of the CFTC and SEC for all their work. I just have to point out Anuradha Banerjee and Warren Gorlick who worked really hard from my staff on every logistical detail and the substance. So thanks to everyone.

(Applause)

(Whereupon, at 4:09 p.m., the PROCEEDINGS were adjourned.)

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