

UNITED STATES OF AMERICA
COMMODITY FUTURES TRADING COMMISSION

OPEN MEETING ON THE ELEVENTH SERIES OF
PROPOSED RULEMAKINGS UNDER THE DODD-FRANK ACT

Washington, D.C.

Thursday, January 26, 2011

1 PARTICIPANTS:

2 Commission Members:

3 GARY GENSLER, Chairman

4 BART CHILTON, Commissioner

5 MICHAEL V. DUNN, Commissioner

6 SCOTT D. O'MALIA, Commissioner

7 Presenters:

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P R O C E E D I N G S

(9:37 a.m.)

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3 CHAIRMAN GENSLER: This is a public
4 meeting of the Commodity Futures Trading
5 Commission to consider issuance of proposed
6 rulemakings under the Dodd-Frank Reform and
7 Consumer Protection Act. I want to make sure
8 before I go on, is Commissioner Chilton on the
9 line?

10 COMMISSIONER CHILTON: I'm here, Mr.
11 Chairman, yes.

12 CHAIRMAN GENSLER: That's a yes.
13 Terrific. Today we're going to be hearing from
14 the team on two related rules. One is a joint
15 rule with the Securities and Exchange Commission
16 which I understand they voted out yesterday, and
17 that's reporting on investment advisers to private
18 funds and certain commodity pool operators. For
19 the public, sometimes you think of these as hedge
20 funds but it's private funds and what we here over
21 here at the CFTC call commodity pool operators and
22 commodity trading advisers, on a new form and

1 that form is PF. Also a related rule, one here
2 and not joint with the SEC is on commodity pool
3 operators and commodity trading advisers and this
4 is to be consistent with the joint rule and some
5 other important matters for us.

6 Before we hear from staff, I'd like to
7 thank Commissioners Mike Dunn, Jill Sommers, Bart
8 Chilton and Scott O'Malia for all their thoughtful
9 work in implementing this Act, and welcome members
10 from the public and market participants not only
11 for their listening but also for their comments on
12 these rules if we were to move forward. I want to
13 remind the public that we do have additional
14 meetings scheduled for February 11 and February 24
15 I believe as we normally do starting at 9:30.
16 We'll post one week before those meetings the
17 subjects of this meetings. I believe today is our
18 eleventh meeting on the Dodd-Frank Act.

19 With that, staff led by Kevin Walek will
20 comment on this after we get other Commissioners'
21 thoughts on this. I think I'm going to turn to
22 Commissioner Dunn.

1 COMMISSIONER DUNN: Thank you, Mr.
2 Chairman. I want to thank everyone for joining us
3 today in what looks to be inclement weather here
4 and I'm certainly hopeful that our colleague
5 Commissioner Chilton can get back from New York.
6 This is an important meeting regarding the
7 implementation of the Dodd-Frank Act and today's
8 meeting will address proposed rules regarding
9 reporting by investment advisers to private funds,
10 commodity pool operators and commodity trading
11 advisers in amendments to the compliance
12 obligations of commodity pool operators and
13 commodity trading advisers. The proposed rule
14 regarding reporting by investment advisers is a
15 result of collaborative efforts on the part of the
16 Commission Securities and Exchange Commission.
17 Today's proposed rule requires investment advisers
18 to provide certain information to the SEC and the
19 CFTC enabling better monitoring of emerging risk
20 to the financial stability of the United States on
21 a system-wide perspective. Information collected
22 would be shared with the Financial Stabilization

1 Oversight Council for use in monitoring such risk.
2 I look forward to public comments on this propose
3 rule.

4 The proposed rule regarding the
5 compliance obligations of commodity pool operators
6 and commodity trading advisers provides for new
7 data collection for CPOs and CTAs consistent with
8 that required under the Dodd-Frank Act. I also
9 look forward to the public's comments on the
10 proposed rule particularly in regard to whether
11 there are additional risk metrics or market
12 factors that the Commission should require CPOs to
13 employ.

14 As I've mentioned in previous open
15 meetings, the CFTC today faces a severe budget
16 crisis. At our current funding level, the
17 Commission is under serious strain. The lack of
18 staff and resources necessary to both implement
19 Dodd-Frank and continuing to fulfill our
20 pre-Dodd-Frank duties under the Commodity Exchange
21 Act, without additional funding the strain will
22 only become worse in July when much of Dodd-Frank

1 goes into effect. The lack of staff and resources
2 leaves the Commission with a very hard choice as
3 to how to use our limited resources to enforce
4 both Dodd- Frank and the Commodity Exchange Act.
5 From the offset of this rulemaking process I have
6 expressed my concern that our budget crisis would
7 move us from a principle-based regulatory regime
8 to a restrictive regime. Without additional
9 funding we cannot acquire the human and technical
10 resources for optimal regulatory oversight. I
11 fear the results will be a restrictive regulatory
12 regime that will have a negative impact on both
13 the futures and swap industries in the United
14 States.

15 Mr. Chairman, I would like to once again
16 thank staff of the CFTC for all of their hard work
17 in regard to these very important rules. Their
18 dedication to their important work during this
19 difficult time is what government service is all
20 about and I salute them.

21 CHAIRMAN GENSLER: Thank you,
22 Commissioner Dunn. I appreciate the salute to

1 staff because they are really putting in long
2 hours in their thoughtful and excellent work.
3 Usually I turn to Commissioner Sommers who is
4 representing this Commission ably at international
5 meetings I think in Brazil, so that I'm going to
6 turn to Commissioner Chilton.

7 COMMISSIONER CHILTON: Thanks, Mr.
8 Chairman. Given the weather both in D.C. and here
9 in New York, it makes me think that these Part 4
10 rules have been so helpful in disclosure over the
11 years that they protected people from being
12 victims of a blinding snow job. Today's rule is
13 more about transparency, both the rules are about
14 transparency, and that's critical. When I talk
15 with people and I say what the Dodd-Frank law is
16 all about, the thing I put paramount among all of
17 that is transparency. Kevin has done a great job,
18 the SEC has done a great job on this and I commend
19 them all.

20 The last little point I wanted to make
21 is this discussion that all of us continue to have
22 amongst ourselves my colleagues and the public

1 about the funding. A lot of the things that we're
2 hearing now are really symptoms of a larger
3 problem. I think that the Chairman has done a
4 great job with this challenging budget situation
5 that we're involved in. If you think that
6 Congress would give us the authority to regulate a
7 large portion of the \$600 trillion OTC market,
8 nobody would imagine that they wouldn't give us
9 the resources to actually do that. So given where
10 we are, we're I think we're doing exactly the
11 right things. There are little idiosyncratic
12 things that will pop up here and there, but they
13 are all symptoms of a larger concern which is we
14 can put these rules in place, we can have them on
15 the books, but without the additional resources we
16 won't be able to enforce them or oversee the
17 markets like Congress instructed us. So I think
18 we need to be creative and think out of the box
19 about how we deal with this dilemma. I'll be
20 talking a little bit later about that today, but I
21 think all of us know that there are things that
22 need to be done. Otherwise, without the

1 enforcement and the oversight we could be back
2 where we were 2 years ago when we saw this
3 economic calamity take hold. Thank you, Mr.
4 Chairman, and I appreciate all the work of
5 everybody. Thanks.

6 CHAIRMAN GENSLER: Thanks. Good to see
7 you on the video. Commissioner O'Malia?

8 COMMISSIONER O'MALIA: Thank you very
9 much. We have before us today two related
10 proposed rulemakings that address reporting
11 requirements for commodity pool operators and
12 commodity trading advisers. I want to thank the
13 team, Kevin, Amanda, Daniel and Eileen, for their
14 very hard work and thoughtful efforts on this
15 proposal.

16 It is my understanding that the
17 substance of these two proposals reflects a great
18 deal of coordination with both domestic and
19 international regulators, consultation with the
20 Financial Stability Oversight Council and
21 discussions with the NFA, so that I'm grateful for
22 the efforts to coordinate those efforts.

1 I'm pleased to be able to support the
2 proposed rulemaking that in part rescinds certain
3 exemptions from the registration and reporting
4 requirements for CPOs and CTAs. In September of
5 last I wrote in support of similar changes
6 proposed by the NFA to Commission Rules 4.5. At
7 that time I noted certain registered investment
8 companies were offering a series of de facto
9 commodity pool interests yet claiming exclusion
10 under the regulations of 4.5. This resulted in
11 some registered investment companies offering
12 futures-only investment products like futures
13 mutual funds without become subject to CFTC
14 oversight. I continue to support the repeal of
15 certain exclusions to the registration
16 requirements for CPOs and CTAs so that we can
17 close the regulatory gap that allows some
18 registered companies to offer futures-only
19 products outside of the Commission's jurisdiction
20 especially its antifraud authorities.

21 I noted that the team has taken the
22 opportunity with this proposal to ask several

1 questions of the industry. I counted no fewer
2 than 45 specific requests for comment in this
3 proposal and I appreciate the team's efforts to
4 listen to industry as they craft this rulemaking.

5 I'm also pleased to support the proposed
6 join rulemaking with the SEC. The rulemaking will
7 adopt certain reporting requirements required of
8 Title IV of the Dodd- Frank Act and I think the
9 team has done a great job to make commonsense
10 proposals especially related to the treatment of
11 entities registered by both Commissions. I'm
12 eager for the industry to provide feedback on the
13 proposal and I look forward to the discussion
14 today. Thank you very much.

15 CHAIRMAN GENSLER: Thank you,
16 Commissioner O'Malia. Before we get going I want
17 do two administrative things. One is out of an
18 abundance of caution we noticed this meeting 7
19 days in advance and I'm told that's in compliance
20 with the government's Sunshine Act, but apparently
21 the Federal Register didn't put it in the Federal
22 Register. We did comply with the Sunshine Act,

1 but just in an abundance of caution, I'd entertain
2 a motion that we determine the Commission business
3 and importance of the issues we're addressing
4 necessitates holding this meeting today just in
5 case because it wasn't in the Federal Register.

6 COMMISSIONER DUNN: So moved.

7 COMMISSIONER O'MALIA: Second.

8 CHAIRMAN GENSLER: All in favor?

9 GROUP: Aye.

10 CHAIRMAN GENSLER: Are there any
11 opposed?

12 COMMISSIONER CHILTON: That's fine with
13 me on the motion. I did want to make a quick
14 comment on this because this issue has come up and
15 I don't know if you want to expand on it too. I
16 don't want to slow us down too much. But there
17 has been an issue in that we've been getting
18 emails lately about a delay in our proposal on
19 position limits saying that the 60-day comment
20 period is being delayed by the agency and I know
21 that's not the case, that we did some technical
22 corrections as we do on all of these rules. The

1 Federal Register is actually a separate agency
2 that doesn't have anything to do with the CFTC
3 other than we are one of their clients and when we
4 give these rules to the Federal Register there is
5 a backlog and sometimes they don't get printed on
6 time. Lots of people have been emailing lately,
7 and just like this example where it wasn't noticed
8 perhaps when we would like it, we don't make that
9 call all the time and I want to alert people that
10 there is nothing nefarious going on, that the CFTC
11 isn't delaying the comment period, we are merely
12 in queue to get published.

13 CHAIRMAN GENSLER: That's absolutely
14 correct. In fact, in this circumstance we did
15 notice this meeting, it's just that the Federal
16 Register then published it a day or two later. On
17 our rules, I think on average, and people can
18 correct me, the Federal Register has been
19 publishing them somewhere 7 to 10 days after our
20 meetings. We would like them earlier, but the
21 Federal Register is doing a professional job and
22 I'm sure they're dealing with not only our

1 publishing, but things that are to be published
2 throughout the government. I think that on the
3 position limit one we put it on our website
4 because of the interest just as we do with
5 everything even though it might be in the Federal
6 Register several days later. David Stawick, our
7 secretary, is shaking his head yes.

8 MR. STAWICK: Our standard procedure,
9 Mr. Chairman, is that when a rule is sent to the
10 Federal Register, my office forwards that to the
11 Office of Public Affairs and it's put on the
12 website.

13 CHAIRMAN GENSLER: Great. One other
14 administrative matter is that Commissioner Sommers
15 who is representing us down in Brazil as I said is
16 unable to join us today. She has requested that
17 she be permitted to vote by limited proxy for all
18 votes taken at this meeting, a procedure that we
19 have utilized in previous meetings, and to that
20 end I request unanimous consent to permit limited
21 proxy voting for the votes subsequently taken in
22 this meeting. Without objection so ordered.

1 With that, Kevin, Amanda, Daniel, Ananda
2 or anybody else who gets pulled to the mike, the
3 floor is yours.

4 MR. RADHAKRISHNAN: Thank you, Mr.
5 Chairman. I'm going to hand it over to the
6 excellent team that did the work on this proposal.
7 Kevin?

8 MR. WALEK: Thank you, Ananda. Thank
9 you, Mr. Chairman and Commissioners.

10 I would be remiss if I didn't add a few
11 people's names to the list. The team was a little
12 bit larger than the four that Commissioner O'Malia
13 mentioned. We also had on the team Adrienne Joves
14 before she went to Commissioner O'Malia's staff on
15 our team. We also had Carl Kennedy from the
16 General Counsel's Office. And last but not least
17 of the people who weren't mentioned, I'm sorry, I
18 have two more, we had Barry McCarty from the
19 Division of Enforcement and we had Jake
20 Preiserowicz from the Division of Clearing and
21 Intermediary Oversight so that we had a very good
22 team in this operation. I would also be remiss if

1 I were not to thank our colleagues over at the
2 SEC. In my 34 years of government experience,
3 this has been the most collegial interagency
4 effort that I have ever been involved with. In
5 fact, we even have one of the members of the SEC
6 team in the audience today who worked with Dan on
7 preparing the data-collection instruments go give
8 us moral support or to cheer us on and I think
9 that's indicative of the type of work effort we
10 had as a joint SEC-CFTC team.

11 With respect to the specific
12 presentation today, we are presenting to you for
13 your consideration two Notices of Proposed
14 Rulemaking. As you all have noted, the first
15 Notice of Proposed Rulemaking is the joint
16 rulemaking and this is the joint SEC-CFTC
17 rulemaking to collect data for dual registrants of
18 greater than \$150 million. Some day they probably
19 they will be greater than \$150 billion too, but in
20 this case \$150 million. There is a tiered
21 approach and we'll talk about that more later, but
22 there is a tiered approach between those entities

1 that are smaller pools at the \$150 million level
2 and those that are greater than \$1 billion.

3 Then the second Notice of Proposed
4 Rulemaking as was noted in several of other
5 presentations earlier by the Commissioners is to
6 deal with certain CFTC compliance issues to make a
7 more level playing field, to put light on to what
8 were previously dark markets and to in fact ask
9 parallel questions and provide parallel
10 information between similarly situated types of
11 investment vehicles. Specifically, the Notice of
12 Proposed Rulemaking is probably of most concern to
13 those here at the CFTC, we have a provision to
14 reinstate trading criteria for registered
15 investment companies claiming exclusion from CPO
16 definition under Regulation 4.5. This was what
17 Commissioner O'Malia mentioned was NFA's proposal
18 earlier that we are carrying forward. In the
19 proposal we have a recession of the exemption from
20 CPO registration under Regulations 413(a)(3) and
21 (a)(4). These two sections are commonly referred
22 to as the de minimis and the sophisticated

1 investor equivalents on our side.

2 The third item that we have contained
3 here is a revision to Regulation 4.7 so that CPOs
4 may no longer claim the exemption from the
5 requirement that an exempt pool's annual report
6 contain certified financial signatures.

7 Interestingly enough, in this context with the 4.7
8 entities it's been our information from looking at
9 the actual filings that over 80 percent of the
10 4.7s were getting certified annual reports anyway
11 which was due to their investors wanting the
12 certified annual report so that we're really only
13 providing that portion to a very small group of
14 even the 4.7 entities.

15 We also have included in that second
16 notice a provision to modify the participant
17 qualification criteria of Regulation 4.7 to
18 incorporate the SEC's Accredited Investment
19 Standard by reference rather than by direct
20 inclusion of its terms. What was happening was
21 that if the SEC were to change the terms, we would
22 have to change our regulation and would have to

1 reregulate, but by doing a cross-reference, if
2 they change theirs, the cross-reference applies
3 and carries through that change that the SEC may
4 have made so that it doesn't require us to
5 constantly modify our regulation.

6 We also have included a requirement that
7 all persons claiming exemptive or exclusionary
8 relief under Regulations 4.5, those remaining
9 sections of 413 and 414 to confirm their notice of
10 claim of exemption or exclusion on an annual
11 basis. One of the issues that may come up if you
12 ask questions about specific numbers, I may have
13 to give you an answer that my best guess is
14 because of the way our notice process has worked
15 in the past. Our notice processes indicated when
16 someone is eligible for the exemption but it never
17 tells us when they leave so that as a consequence
18 we're not sure of all the entities that have left
19 or what the total size of that population is.

20 Last but not least in the second notice,
21 we have a provision to amend the risk disclosure
22 statement that must be included in the CPO and CTA

1 disclosure documents to describe certain risks
2 related to swaps transactions. This is to bring
3 that risk disclosure statement for CPOs and CTAs
4 in line with the rest of the Title VII actions
5 that have been happening as we've been proceeding
6 through this series of Dodd-Frank rulemakings.
7 With that, the team and I will be happy to
8 entertain any questions you may have.

9 CHAIRMAN GENSLER: Thank you, Kevin and
10 team. I support both of the rules and I'll have a
11 statement for the record, but I think what this
12 importantly does is bring more transparency to the
13 regulators, to the Securities and Exchange
14 Commission primarily on their responsibilities but
15 also the CFTC and the members of the Financial
16 Stability Oversight Council. I think the intent
17 of Congress as I understand it was to get this
18 information for systemic risk monitoring and
19 systemic risk reporting. I believe the SEC even
20 calls it systemic risk reporting. Somebody from
21 the SEC was here but I don't want to put them on
22 the spot. So I think that that's very good and

1 there will be important information.

2 I think it's also good that we bring
3 ours in line because I under the joint rule,
4 Kevin, a question, the joint rule is for those
5 investment funds or private funds that are either
6 solely regulated by the SEC and in addition that
7 are jointly regulated with us. Is that correct?

8 MR. WALEK: That and greater than \$150
9 million.

10 CHAIRMAN GENSLER: Thank you for that.
11 So that anybody over \$150 million that's either
12 solely regulated by them or jointly with us?

13 MR. WALEK: That is correct.

14 CHAIRMAN GENSLER: But our companion one
15 is on what we call pool operators or commodity
16 pool operators and advisers who might only be
17 regulated by us who are 150.

18 MR. WALEK: That is correct.

19 CHAIRMAN GENSLER: And that is why we
20 have these companions.

21 MR. WALEK: That is correct.

22 CHAIRMAN GENSLER: I think that's very

1 good that it's consistent. My question is
2 somewhat on the numbers. I don't expect you to
3 have the exact number at your fingertips or maybe
4 you do, but how many private funds would call
5 under the category where they would have to comply
6 with this? I know there are two levels, over a
7 billion dollars and over \$15 million, if you have
8 that type of information.

9 MR. WALEK: Our rough estimates in that
10 area where somewhere slightly around 200 of our
11 entities were likely to be filing the Form PF, the
12 joint form. That does not however include what
13 our guesstimate might be of those 413(a)(3)s which
14 is the de minimis exemption that might come back
15 into both registration with the SEC and us and as
16 a consequence be captured. That number again
17 going back to the fact that we don't have the
18 filing of who still is or isn't exempt under
19 413(a)(3), I've made rough guesses anywhere from
20 1,000 to 5,000.

21 CHAIRMAN GENSLER: The 200, is that the
22 over a billion or is that over the \$150 million?

1 MR. WALEK: That's the over a billion.

2 CHAIRMAN GENSLER: Amanda?

3 MS. OLEAR: I think it was 150.

4 MR. WALEK: I'm sorry, it is above 15.

5 Amanda is correct.

6 CHAIRMAN GENSLER: Commissioner Dunn?

7 COMMISSIONER DUNN: Thank you, Mr.

8 Chairman. I want to commend our staff on working
9 very closely with the SEC and with IOSCO. I know
10 that Commissioner Kathleen Casey at the SEC has
11 worked very hard on harmonizing this type of
12 information through the IOSCO survey and getting
13 that information and to me gives a great deal of
14 hope that we can have harmonization of our
15 regulations internationally.

16 I'd like to pursue a little bit, Kevin,
17 on what you just talked about, that the proposed
18 rule requests comments on whether any entities
19 that have previously claimed exclusion under
20 Section 413(a)(3) and (a)(4) should be exempt from
21 compliance with the proposed revision. Should the
22 Commission consider other de minimis exemptions?

1 If so, what should that criteria be for such de
2 minimis exemptions?

3 MR. WALEK: That is something that the
4 team has not talked at length about. It has come
5 up in a couple of conversations with other
6 Commissioners as well. I think that it may be
7 appropriate to consider another de minimis level,
8 but clearly the way things are structured right
9 now we felt it was better rescind 413(a)(3) and
10 then through the collection of answers to the
11 question get a better sense of what would be. In
12 fact, I think at one point this morning I was
13 talking with someone about the possibility of
14 making another additional change to that question
15 in the document to ask specifically would be that,
16 to take your language and insert it into what we
17 already have asked and make it part of the
18 release. I think you'd have to have unanimous
19 consent to do so, but we would be happy to
20 entertain such an amendment to the document.

21 COMMISSIONER DUNN: I'll let me
22 colleagues think about that a little bit. I don't

1 want to force anything on them.

2 CHAIRMAN GENSLER: Thank you for
3 Robert's Rules of Order. I'd like to ask for
4 unanimous consent. I think that we already have a
5 question on this de minimis, but that we add some
6 language that staff works with legal assistance
7 that asks the public if we were still to have some
8 de minimis, what criteria would be most
9 appropriate. I think that's the spirit of
10 Commissioner Dunn's question.

11 MR. WALEK: Consider it done.

12 COMMISSIONER DUNN: Thank you. Now as
13 is my want to do, I turn to the Division Director
14 and ask do we have staff to consider these
15 requests?

16 MR. RADHAKRISHNAN: Staff that will be
17 looking at the information flow are these
18 excellent people right here so that if you're
19 asking do we need more, the answer is yes.

20 COMMISSIONER DUNN: If there are going
21 to be 200 to 250 or so requests, I'd like to know
22 what's it going to cost us and what is it we're

1 not going to be doing when we're doing this?

2 MR. RADHAKRISHNAN: I'm not sure how
3 people. I think I may have asked for an
4 additional 10 people, I need to check on that, to
5 do this and other information. This is the
6 Managed Funds Unit and I think that what I'd asked
7 for is an augmenting so that the Managed Funds
8 Unit gets to 10 people so that we could discharge
9 the responsibilities that the Commission may
10 decide that we need to do. If they're going to be
11 concentrating on the new responsibilities, then
12 unfortunately something will have to give and it
13 may be with current responsibilities that we may
14 not be able to discharge with alacrity. We take
15 pride on discharging all of our responsibilities
16 and sometimes the issue is which do we get to
17 first.

18 COMMISSIONER DUNN: I would forewarn you
19 that when it comes time to a final rule, I'll want
20 some concrete information.

21 MR. RADHAKRISHNAN: Sure.

22 COMMISSIONER DUNN: Mr. Chairman, were

1 you going to interject something?

2 CHAIRMAN GENSLER: Go ahead.

3 COMMISSIONER DUNN: We are asking for
4 additional information and it's pertinent to know
5 what are we doing with that information. A good
6 part of this is going to be FSOC and I would ask
7 you what's the intention of the FSOC with this
8 additional information?

9 CHAIRMAN GENSLER: As a member of the
10 FSOC, I don't think I could speak on behalf of all
11 of the members, but as I understand it, the
12 information that comes to us is to assist in
13 monitoring for systemic-risk issue and making
14 recommendations on that and that the investment
15 adviser and private fund area is one that Congress
16 gave the SEC and CFTC this joint authority to
17 address that systemic-risk reporting. So I think
18 that's why in this case even though Congress said
19 the over \$150 million size to have reporting,
20 they've tiered it to a greater than a billion
21 dollars because it's about systemic risk largely.

22 COMMISSIONER DUNN: Just for public

1 knowledge, where do we see the breakdown of these
2 hedge fund advisers coming from? How much are in
3 the U.S., how much under the FSA and then other
4 entities that are regulated like Hong Kong?

5 MR. WALEK: At our last meeting that we
6 had in Rome with the TFUE, Task Force on
7 Unregulated Entities, the estimate that the group
8 was working with by throwing numbers around is
9 probably 95 percent of these private funds that
10 some people like to call hedge funds lie within
11 the jurisdiction of the United States.

12 COMMISSIONER DUNN: Thank you.

13 CHAIRMAN GENSLER: Thank you,
14 Commissioner Dunn. Commissioner Chilton?

15 COMMISSIONER CHILTON: Thanks, Mr.
16 Chairman. Kevin, I think the Chairman was asking
17 this question about the numbers of folks, but I
18 know that we're talking about NFA being the
19 custodian here of some of these records but that
20 still is going to have an impact on our budget
21 too. Correct? Do you have any comments on that?

22 MR. WALEK: As Ananda was alluding to,

1 and I don't know what the out years were, but we
2 already had budgeted for this year three
3 additional staff which we are unable to get at
4 least at this time because of the budget
5 situation. Those persons we were hoping would be
6 the persons working in concert with the NFA once
7 this rule became final to make sure that the data
8 was being collected in the manner most conducive
9 to our needs as well as integrated with the
10 information being collected by the Securities and
11 Exchange Commission so that they could be packaged
12 in a logical fashion.

13 The good news in that picture is that,
14 yes, the NFA is part of it and we have worked with
15 NFA staff over the years with the data collection
16 already of most of the information for CPOs and
17 CTAs and they have done an excellent job in that
18 area, and this is an expansion in fact of a data
19 collection which was already called PQR that NFA
20 instituted and collected for the first time this
21 last March so that we're expanding upon that
22 collection. I think at the very least the data

1 can be used for purposes of honing in on and
2 improving their selection of candidates for
3 examination, but also by their experience they can
4 work with us in coming up with quick and easier
5 ways to package the information.

6 Is it a perfect answer? No. I think
7 Ananda's answer of the needing of staff is the
8 perfect answer. But after 34 years in government
9 and watching the budgets go up and down, this is
10 my third instance where I've seen something like
11 this happen in my career and amazingly staff gets
12 us through it.

13 COMMISSIONER CHILTON: Good folks. The
14 other thing I had was a comment and it follows-up
15 on what Commissioner Dunn was saying about the
16 exemptions or asking about the exemption. I think
17 the comments are going to be real important here.
18 As we know, we saw a FOIA exemption repealed by
19 Congress, the SEC's FOIA exemption repealed by
20 Congress, so we need to make sure we get it right
21 and I think you've done a great job here but we'll
22 look forward to the comments. Thank you, Mr.

1 Chairman.

2 CHAIRMAN GENSLER: Thank you,
3 Commissioner Chilton. Before I go to Commissioner
4 O'Malia, as to the numbers of my earlier question,
5 if you can turn to page 77, and the pagination of
6 the one I printed out might be different, of the
7 Joint Rule. It's in the middle of the Paperwork
8 Reduction Act stuff. Again because of the
9 pagination when you print, it's the Joint Rule
10 with the SEC. It has burden hours and how many
11 hours it takes to fill out the forms and 10 hours
12 to fill out this and 3 hours to fill out that.
13 Then at the end, again I may have a different page
14 pagination, it says, "Assuming that there are
15 2,180 smaller private fund advisers, 200 large
16 hedge fund advisers, 80 large liquidity fund
17 advisers and 300 large private equity fund
18 advisers," and then it goes on, my question again
19 with this in front of me, is large private fund
20 adviser meaning large over a billion or large over
21 150? Amanda?

22 MS. OLEAR: Over a billion.

1 CHAIRMAN GENSLER: Over a billion,
2 because there was a little back and forth. It's
3 the 200 to maybe 300 that are over a billion, and
4 it's a greater number that's over the 150 maybe?

5 MS. OLEAR: I think the numbers that
6 Kevin mentioned earlier, the 200 that he was
7 referring to were the joint registrants and those
8 were \$150 million. The 200 large hedge funds that
9 are mentioned in the sentence that you just read
10 would include SEC-only funds.

11 CHAIRMAN GENSLER: I see. There's the
12 joint and the SEC only.

13 MS. OLEAR: Right.

14 CHAIRMAN GENSLER: There's a coincidence
15 in the numbers.

16 MS. OLEAR: Exactly.

17 MR. WALEK: Because the numbers are
18 coincidental, that was my reason for my making the
19 error and thank goodness Amanda had that already
20 parsed out.

21 CHAIRMAN GENSLER: But in essence when
22 you combine the SEC and us together, this page,

1 the numbers I just read, is a good estimate
2 together, this 200 to 300 that are over a billion?

3 MS. OLEAR: Right. Those are good
4 numbers that you just read that would cover the
5 joint registrants and the SEC-only registrants.

6 CHAIRMAN GENSLER: That's right. Again
7 it's an estimate.

8 MS. OLEAR: Right.

9 CHAIRMAN GENSLER: Sorry. Commissioner
10 O'Malia?

11 COMMISSIONER O'MALIA: No trouble. Will
12 these forms be filed electronically?

13 MR. WALEK: Yes.

14 COMMISSIONER O'MALIA: Perfect.

15 MR. WALEK: In fact, with Mr. Bartel
16 here from the SEC and Dan, they can both tell you
17 that when they tried to take the electronic form
18 and turn that into hard copy, that's when it grew
19 to so many pages, because when it's in electronic
20 form online a lot of that is pull-down menus, but
21 you can't show a pull-down menu on a hard copy.

22 COMMISSIONER O'MALIA: That's off of the

1 NFA. Right? That's all FNA generated?

2 MR. WALEK: The PQR will be collected
3 through the NFA's electronic system that already
4 exists, but for certain large entities there will
5 be additional information from what they're
6 currently doing. With the form that they go to,
7 they are already familiar with how to get onto the
8 system and how to fill out that first portion of
9 it. One full schedule out of the three schedules
10 is already in existence.

11 COMMISSIONER O'MALIA: Bless the NFA.
12 Let me ask you a couple questions on Rule 4.5.
13 What type of risks do you believe are present when
14 we don't fill the regulatory vacuum that's left
15 without the modification in this proposal?

16 MR. WALEK: I think that there is some
17 argument, and Dan has worked very closely on the
18 4.5 issue with the NFA as well and he may want to
19 add to this, but I think to my in my mind the
20 largest vacuum that is filled is that the SEC
21 themselves up through the Chairman's level has
22 indicated to us that we have a better knowledge of

1 the commodities done by the 4.5 entities, the
2 mechanisms involved, the nature of the leverage
3 involved, and as a consequence we have more of the
4 knowledge to regulate them correctly. With it
5 just being an SEC registrant only, that would be
6 the vacuum.

7 COMMISSIONER O'MALIA: My next question
8 is what is the SEC's opinion of this, but you've
9 solved that for me so that I'm fine. Thank you
10 very much for the hard work.

11 MR. WALEK: I probably have divulged
12 something I shouldn't have.

13 COMMISSIONER O'MALIA: I was going to
14 ask you the question anyway.

15 CHAIRMAN GENSLER: I also want to ask
16 for unanimous consent to adopt a question proposed
17 by Commissioner Sommers regarding 4.5 I think. I
18 don't know if this has been pre-walked around, so
19 I'm going to read the question, "Currently in our
20 role, not the joint role, we have this issue of
21 4.5 and there's a question that already exists
22 that says, additionally, the Commission is

1 soliciting comment regarding implementation of the
2 changes to 4.5. Then it would have an additional
3 question that asked, what issues should the
4 Commission consider with the respect to the
5 ability of registered investment companies to
6 comply with the disclosure document and reporting
7 delivery requirements, recordkeeping and related
8 fund performance disclosure requirements under
9 Part 4?" I'm asking for unanimous consent, and
10 not hearing objections we'll add this question
11 from Commissioner Sommers from Brazil or here.
12 Did I properly entertain a motion before we asked
13 our questions? I've messed that up. I'll
14 entertain a motion to accept the staff
15 recommendations issued proposed rules and I'll do
16 the joint one first on the joint rule.

17 COMMISSIONER DUNN: So moved.

18 COMMISSIONER O'MALIA: Second. That's
19 the motion. These unanimous consents, do I have
20 to do them again? No. Good. Mr. Stawick, call
21 the roll.

22 MR. STAWICK: Commissioner O'Malia?

1 COMMISSIONER O'MALIA: Aye.

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

4 COMMISSIONER CHILTON: Aye.

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

7 CHAIRMAN GENSLER: For Commissioner
8 Sommers, I have a proxy, is aye.

9 MR. STAWICK: Commissioner Sommers, aye
10 by proxy. Commissioner Dunn?

11 COMMISSIONER DUNN: Aye.

12 MR. STAWICK: Commissioner Dunn, aye.
13 Mr. Chairman?

14 CHAIRMAN GENSLER: Aye.

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

18 CHAIRMAN GENSLER: Thank you. We'll be
19 sending that to the Federal Register. Do I hear a
20 motion on the second staff presentation?

21 COMMISSIONER DUNN: Motion to approve.

22 COMMISSIONER O'MALIA: Second.

1 CHAIRMAN GENSLER: Do I need to do about
2 the unanimous consents that I did early? No.

3 MR. STAWICK: Commissioner O'Malia?

4 COMMISSIONER O'MALIA: Aye.

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

7 COMMISSIONER CHILTON: Aye.

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

10 CHAIRMAN GENSLER: Commissioner Sommers,
11 aye by proxy.

12 MR. STAWICK: Commissioner Sommers, aye
13 by proxy. Commissioner Dunn?

14 COMMISSIONER DUNN: Aye.

15 MR. STAWICK: Commissioner Dunn, aye.
16 Mr. Chairman?

17 CHAIRMAN GENSLER: Aye.

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

21 CHAIRMAN GENSLER: Thank you. With
22 that, too, we'll send it to the Federal Register.

1 I might need to do what I normally do which is
2 something about technical amendments. I'd ask for
3 unanimous consent that whatever that technical
4 amendments particularly to get these questions
5 that were raised by Commissioner Dunn and
6 Commissioner Sommers be accepted. Without
7 objection, that will be so moved.

8 Before we seek to adjourn, I think
9 Commissioner O'Malia wanted to say something about
10 the TAC Advisory Committee.

11 COMMISSIONER O'MALIA: Thank you, Mr.
12 Chairman. Obviously due to the weather forecast
13 here in Washington, it would probably be a bad
14 idea if we bring everybody here and let them be
15 stuck here for the rest of the week so we're going
16 to postpone the TAC Advisory Committee tomorrow
17 from 1 to 5 o'clock for a date in early February.
18 We're still working on coordinating everyone's
19 schedules, but we've let the participants and the
20 members know so that they can accommodate their
21 flight and train changes and hopefully not get
22 stuck here if the weather is as bad as they're

1 predicting. So we'll reload this for as soon as
2 possible. We'll be talking about the issues
3 related to implementing Dodd-Frank, what do we
4 need to think about, how are we going to
5 physically hook this up, under what timeframes and
6 at what cost.

7 There will be a lot of interesting
8 discussions in New York earlier this week and we
9 have some really great people presenting on that
10 to talk about giving us things to think about in
11 implementing this thing. We're also going to have
12 a report by Dr. Gorham on the Subcommittee on Pre-
13 Trade Functionality and doing a survey of the best
14 of the best to figure out what we're going to do
15 going forward. We obviously want to reload that
16 as soon as possible and tackle those issues in
17 early February.

18 CHAIRMAN GENSLER: I think I can speak
19 for all of the Commissioners that we look forward
20 to hearing from Dr. Gorham's report. I know that
21 we'll probably have to put his report in our
22 comment file because we have live proposed rules

1 for dedicated contract markets and for swap
2 execution facilities that those comments might be
3 very informative for and maybe for other areas as
4 well. With that I'll entertain a motion to
5 adjourn the meeting.

6 COMMISSIONER DUNN: So moved.

7 COMMISSIONER O'MALIA: Second.

8 CHAIRMAN GENSLER: All in favor?

9 GROUP: Aye.

10 CHAIRMAN GENSLER: Are there any
11 opposed? The meeting will be adjourned. I think
12 our next public meeting will be February 11.

13 (Whereupon, at 10:21 a.m., the
14 PROCEEDINGS were adjourned.)

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CERTIFICATE OF NOTARY PUBLIC

DISTRICT OF COLUMBIA

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

Notary Public, in and for the District of Columbia
My Commission Expires: May 31, 2014

