

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

## 2 Opening Statements:

4 DAN BERKOVITZ, CFTC

6 ROBERT COOK, SEC

## 8 DAVID KELLY, UBS

10 WILLIAM MANSFIELD, Rabobank

11 JOHN NICHOLAS, Newedge

12 ROBERT REILLY, Shell

13 THOMAS RIGGS III, Goldman Sachs

14 MARCUS STANLEY, Americans for Financial Reform

15 WALLY TURBEVILLE, Better Markets

16 SUPARNA VEDBRAT, Blackrock

17 LUKE ZUBROD, Chatham Financial

19 CHRIS ALLEN, Barclays

20 ANGIE KARNA, Nomura Securities

21 SARAH LEE, Bank of America

22 JOHN MCCARTHY, GETCO

## 1 A G E N D A

2 STEPHEN O'CONNOR, Morgan Stanley

3 ROBERT REILLY, Shell

4 MARCELO RIFFAUD, Deutsche Bank

5 MARCUS STANLEY, Americans for Financial Reform

6 WALLY TURBEVILLE, Better Markets

## 7 Panel 3: Market Infrastructure

8 PETE AXILROD, DTCC

9 JAMES CAWLEY, Javelin Capital Markets

10 MATTHIAS GRAULICH, Eurex

11 IONA LEVINE, LCH

12 VERETT MIMS, Boeing

13 STEPHEN O'CONNOR, Morgan Stanley

14 LEE OLESKY, Tradeweb

15 JONATHAN SHORT, ICE

16 KIM TAYLOR, CME

17 WALLY TURBEVILLE, Better Markets

## 18 Also Present:

19 BRIAN BUSSEY, SEC

20 ANANDA RADHAKRISHNAN, CFTC

21

22 \* \* \* \* \*

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

2 (9:00 a.m.)

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

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

18 Although each of our agencies has  
19 different statutory provisions regarding the  
20 international reach of Title VII, we have a  
21 similar need to address the scope of our reach.  
22 722(d) of the Dodd-Frank Act states that

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

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

1 exemptions or recognition abroad under Title VII.

2 Before I turn it over to Dan Berkovitz,

3 I would like to give a short review of the day.

4 We have three panels that will consider the

5 international issues relating to the Dodd-Frank

6 Act. Panel 1 addresses cross-border transactions.

7 The first panel is intending to address issues

8 relating to when transactions should be subject to

9 U.S. regulation. In this regard, it will be

10 helpful to hear from panel members on how our

11 respective agencies should define the words direct

12 and significant as used by 722(d) of the

13 Dodd-Frank Act. We also want to see if it would

14 be useful and necessary to define U.S. persons and

15 if so how should we define U.S. persons. Finally,

16 there are certain things that apply to all persons

17 under the Dodd-Frank Act including clearing,

18 trading and reporting and we would like to hear

19 about those requirements under this panel.

20 The second panel although similar to the

21 first panel is regarding global entities. We hope

22 to ask panelists about issues of the level of

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

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

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

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

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

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



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

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

1 to certain extraterritorial activities. Section  
2 722(d) of the agency Act states that the  
3 provisions of the Act relating to swaps shall not  
4 apply to activities outside the U.S. unless those  
5 activities have, "A direct and significant  
6 connection with activities in or effect on  
7 commerce of the United States or those activities  
8 are intended to contravene the Act or the CFTC's  
9 regulations promulgated thereunder."

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17                  MR. KLEJNA: Dennis Klejna, MF Global.

18                  MR. KELLY: David Kelly from UBS.

19                  MR. RIGGS: Tom Riggs from Goldman  
20       Sachs.

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

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

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

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

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

1 definition?

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

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



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

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

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

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

18 MS. MESA: Luke?

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

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

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

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

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

1 concern we have is you've got a statute out there,  
2 you've got an obligation to finish regulations in  
3 1 year, which we didn't do, but still it doesn't  
4 mean that we're not going to finish it. So why  
5 should we wait? That's a critical question. Why  
6 should we wait until country X or country Y  
7 finishes it 5 years down the road, because then  
8 the momentum goes away. I realize some of you  
9 want that momentum to go away. I think that's  
10 fine. But from our perspective we can't let it go  
11 away.

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

1       contribute materially to the mitigation of  
2       systemic risk.

3                   MS. MESA:    Marcus?

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

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

13 MS. MESA: Bill?

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



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

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

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

8                   MS. MESA:   Ethiopia?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17             MS. MESA: Thank you. Tom?

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



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

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

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

7 MS. MESA: Wally and then Brian.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9               MR. REILLY: Nothing on Brian's  
10      question.

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

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



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

11 MS. MESA: Luke?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19 MS. MESA: John?

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

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

22 The other point I wanted to throw in



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

13                   MS. MESA: Bill?

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

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

1 MS. MESA: Suparna?

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

13 MS. MESA: Wally?

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

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

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

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

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

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

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

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

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

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

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

9 MS. MESA: Tom and then Dennis.

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

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

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

12 MS. MESA: Dennis and then David.

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



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

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

21 MS. MESA: David?

22 MR. KELLY: Responding more to Tom's

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

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

21 MR. TURBEVILLE: Some great comments.

22 Dennis, especially that was a very wise discussion

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

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

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

1 MS. MESA: Marcus?

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

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

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

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

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

14                   MS. MESA: Thank you. Bill?

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



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

18 MS. MESA: Dennis?

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

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

10                MS. MESA: Suparna?

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

1 is also domiciled outside the U.S.?

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

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

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

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

18 MS. MESA: John?

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

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

12 MS. MESA: Tom?

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

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

4                   MS. MESA:   The last comment here.  
5       Wally?

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

1 risky to do.

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

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

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



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

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

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

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

14                   MS. MESA: Bill?

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

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

9                   MS. MESA: Bob?

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

19                  MS. MESA: Thank you. Dennis?

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

1       that's great as long as you get the clarity you  
2       want because you may get a lot of clarity and I  
3       don't know where that takes me. Going through the  
4       list of differences that have already been  
5       identified that people have pointed to, you get  
6       into the weeds on this stuff. This is pretty  
7       serious stuff and pretty serious differences as to  
8       how you're going to reach harmony on these kinds  
9       of things. No one envies the job that you have.  
10      I certainly don't. But I think that that really  
11      drives toward a more conceptual approach and a  
12      communicative way of dealing with this with other  
13      regulators. Maybe that gets you nowhere because  
14      people are definitely going to have to make a  
15      decision on where they're going to clear that  
16      5-year interest rate swap. Something like that  
17      somebody is going to have to decide what you do  
18      because you can't violate one law by complying  
19      with the other. I don't know what you're going to  
20      do about that other than have more meetings with  
21      your colleagues. I guess I'll stop there.

22                   MS. MESA: Thank you.

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

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

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

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

1 foreign owned account?

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

5 MR. BUSSEY: Right.

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

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

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

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

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

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

21 MS. MESA: Ananda?

22 MR. RADHAKRISHNAN: So if we took the

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

13 MS. MESA: Next panel.

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



1 MS. MESA: Luke?

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

17 MS. MESA: Tom?

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

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

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

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

7 MS. MESA: Wally?

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

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

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

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

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

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

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

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

22                MS. MESA: John?

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

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

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

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

4 (Recess)

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

13 Bob?

14 MR. REILLY: Bob Reilly from Shell  
15 Trading.

16 MR. MCCARTHY: John McCarthy from GETCO.

17 MS. LEE: Sarah Lee from Bank of  
18 America.

19 MS. KARNA: Angie Karna from Nomura.

20 MR. ALLEN: Chris Allen from Barclays.

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



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

3                   MR. TURBEVILLE:   Wally Turbeville,  
4   Better Markets.

5                   MR. RIFFAUD:   Marcelo Riffaud from  
6   Deutsche Bank.

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

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

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

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

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

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

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

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

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

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

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

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

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

22             MR. TAFARA: Angie.

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

18 MR. TAFARA: Chris?

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

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

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

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

1       satisfied on a jurisdiction-by-jurisdiction basis.

2               When it comes to the transaction level  
3       regulation, and obviously aspects of conduct of  
4       business that would fall within that, it strikes  
5       me as most useful to apply or to require the  
6       entity which is a registered swap dealer  
7       -- apply those conducts of business standards in  
8       circumstances where it is dealing with a U.S.  
9       person. So, for example, it strikes me as  
10      entirely sensible that the U.K. -- and see which  
11      is a registered as a swap dealer but which has  
12      entered into transactions with a U.S investor. It  
13      should be required to apply U.S. conducts of  
14      business standards relationship. However, the  
15      London entity of the U.K. firm entering into  
16      transactions with an Italian client, for example  
17      -- it strikes me that the most appropriate  
18      conducts of business standards to apply there  
19      would be those that apply innocently or  
20      potentially in the United Kingdom but certainly  
21      easily.

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

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



1 MR. TAFARA: Wally.

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

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

22 MR. BUSSEY: Yeah, so to sum up the

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6                   MR. TAFARA: Ananda?

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

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



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

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

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

1        basically.

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

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

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

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

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

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

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

10 MR. TAFARA: Sarah.

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

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

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

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

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

20                   MR. TAFARA: Angie.

21                   MS. KARNA: Yeah, I think Chris

22      mentioned one of the things I was quite focused on

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

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

21 MS. KARNA: Sure.

22 MR. TAFARA: -- to ask why deference if



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

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

1 differences in rules between different  
2 jurisdictions.

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

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

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

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

14                  MR. TAFARA: Dan?

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

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

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

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

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

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

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

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

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

17 MR. TAFARA: Thank you. Wally.

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

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

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

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

7 So, Marcus?

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

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



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

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

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

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

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

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

22                  MR. TAFARA: Okay, thank you. Jackie,

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

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

17                   MR. TAFARA: Thank you, Wally.

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

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

1       entity effectively transferred to the U.S. bank?

2       And the second is are they, in effect, the same  
3       businesses, right? So, guarantees, those sorts of  
4       issues are very important. But also are they same  
5       business? Do they run a consolidated book?

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

1                   MR. TAFARA: This time, John.

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

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

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

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

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

22                  MR. TAFARA: Thanks for stirring things

1 up a bit, Brian.

2 Marcelo?

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

22 And I would go a little bit further.

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

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

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

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



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

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

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

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

13                MR. TAFARA: Marcus.

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

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

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

21               SPEAKER: Go ahead.

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

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

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

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

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

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

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

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

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

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

20                   MR. TAFARA: Dan --

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

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



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

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

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

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

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

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

6 MR. TAFARA: Wally.

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

1 far as Dodd-Frank goes.

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

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

22 MR. ALLEN: I think I'm about three

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

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

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

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

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

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

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

18 MR. TAFARA: It's not your question.

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

22 We are an institution that does not have

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

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



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

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

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

22              MR. TAFARA: Why don't we answer that

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

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

18             MR. TAFARA: Marcelo?

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

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

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

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

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

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

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

1 MR. TAFARA: Wally.

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

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

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

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

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

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

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

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

1 well and we can answer all the questions --

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

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

6 (Laughter)

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

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



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

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

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

1 moving toward local entities for management --

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

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

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

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

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

20 So, Wally?

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

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

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

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

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

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

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

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

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

18 So, Angie, please.

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

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



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

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

15 MS. KARNA: Yes.

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

19 MS. KARNA: Correct.

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

22 MS. KARNA: You don't regulate entity B

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

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

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

19 MR. RADHAKRISHNAN: Right.

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

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

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

12                  MR. RADHAKRISHNAN: Okay.

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

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

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

8 MR. TAFARA: Marcelo.

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

1 MR. TAFARA: Marcus.

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

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

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

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

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

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

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

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

11                   MR. TAFARA: Sarah?

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

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

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



1 work toward some sort of mutual recognition.

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

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

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

17 MS. LEE: Yes.

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

20 MS. LEE: That is correct.

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

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

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

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

1       Marcelo, why don't you go first.

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

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

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

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

13             And this isn't a jurisdictional  
14      question.

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

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

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

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

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

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

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

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

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

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

1       around this --

2                   MR. BUSSEY:   Wally, can't you read that?

3       It says, "suggest you register the person but it's  
4       only with respect to the activities in the  
5       branch"?  I'm not a lawyer, but --

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

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

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



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

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

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

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

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

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

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

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

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

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

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

22               Angie, I think to your question, we

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

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

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

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

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

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

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

5 But I just want to thank you again.

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

9 (Recess)

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

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

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

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

1                   MR. SHORT: Jonathan Short,  
2           Intercontinental Exchange.

3                   MR. OLESKY: Lee Olesky, Tradeweb.

4                   MR. TURBEVILLE: Wally Turbeville,  
5           Better Markets.

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

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

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

11                  MR. GRAULICH: Matthias Graulich, Eurex  
12          Clearing.

13                  MS. LEVINE: Iona Levine, LCH.

14                  MS. MIMS: Verett Mims, Boeing.

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

22                  So the first question I'm just going to



1 turn it over to Ananda Radhakrishnan to lead off.

2 MR. RADHAKRISHNAN: Thank you, Jackie.

3 As people know, Dodd-Frank has a clearing  
4 requirement and I admit it took me quite a while  
5 to figure out what the requirement was. But  
6 basically the requirement is that if the  
7 Commission determines that a particular type or  
8 class of swaps has to be cleared, in other words,  
9 mandated to be cleared, then certain types of  
10 people have to clear it. Specifically, swap  
11 dealers, major swap participants, and those people  
12 who come within the definition of a financial  
13 entity. And the requirement is that you clear it  
14 through a DCO that's registered with the  
15 Commission or a clearinghouse that is exempted by  
16 the Commission from registration if there is a  
17 comparable regime.

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

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

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

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

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

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

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

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

1       us off, Jackie.

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

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

22                  I do also think that Ananda is right in

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

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

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

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

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

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

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

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

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



1       involving a U.S. client needs to be cleared by a  
2       DCO. If the Japanese say, well, if a Japanese  
3       client is to be cleared by a clearinghouse  
4       registered in Japan, and if you go around the  
5       world we as a clearinghouse are regulated by 15,  
6       20 regulators globally. I don't say that it's not  
7       possible but it is very inefficient.

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

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

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

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

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

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

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

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

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

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

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

22 MS. MESA: Wally.

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

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

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

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

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

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

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

9               MS. LEVINE: Guys --

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

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

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

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



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

3               MR. CAWLEY: If I may respond.

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

6               MR. CAWLEY: Okay.

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

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

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

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

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

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

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

15              MR. CAWLEY: Fair enough.

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

21              MR. TURBEVILLE: Sort of new.

22              MS. MESA: Go ahead.

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

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

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

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

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

5               MS. MESA:   Pete and then Lee.

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

9               MS. MESA:   Lee, are you ready?

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

16              We've been in the business of trading  
17       electronically for 12 years.   We've traded  
18       derivative instruments for five years.   We trade  
19       250 to 300 billion per day among institutions  
20       around the world with 50 banks and 2,000  
21       institutions and all the World Central Banks.  
22       Given that, I guess the message I would like to

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

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

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

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

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

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

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



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

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

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

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

1 people as it is and you're still around.

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

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

19 MS. MESA: Kim.

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

1 MS. MESA: Please, yes.

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

1 MS. MESA: Lee.

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

22 MS. MESA: Jonathan and then Ethiopis.

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

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

22                  That said, I think there are a couple of

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

11               Pete, did you want to say something on  
12      that?

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

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

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

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

14               MS. MESA: And you, Kim.

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

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

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

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

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



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

11               MS. MESA: Pete.

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

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

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

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

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

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

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

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

6 MR. SHORT: For ICE, yes.

7 MS. LEVINE: Yes, we would as well.

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

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

20 MR. RADHAKRISHNAN: Sorry, in terms of  
21 what?

22 MR. CAWLEY: In terms of the information

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

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

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

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

1 was saying.

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

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

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

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

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

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

8               MR. CAWLEY: If I could --

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

14 MS. MESA: Okay. Go ahead.

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

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

14                   MS. MESA:    Pete?

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

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

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

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

9 MS. MESA: Verett.

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



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

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

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

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

16 MS. MESA: Dan?

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

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

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

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

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

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

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

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

7 MS. MESA: Brian.

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

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

6                   MS. MESA: Pete.

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

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

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

22 MS. MESA: Jonathan.



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

21                  MS. MESA: Steve.

22                  MR. O'CONNOR: Just touching on the public

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7 MR. AXILROD: With regard to the first  
8 question, they want a repository, not just access  
9 to the information. With regard -- oh, you want  
10 --

11 MR. TAFARA: And my question obviously  
12 is why.

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

1       most part a pretty good definition.

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

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



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

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

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

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

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

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

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

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

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

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

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

22              MS. TAYLOR:   I was speaking in a

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

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

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

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

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

1       here.

2                   MS. MESA:   Iona.

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

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



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

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

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

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

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

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

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

14             MS. MESA: Steve.

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

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

22 MR. BUSSEY: Will you, for example, in

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

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

10 MR. BUSSEY: Who does that?

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

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

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

1 Kim, and then Jonathan.

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

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

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

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

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

12 MS. MESA: Wally.

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

10               MS. MESA: Kim.

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

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

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

1       located outside the United States.

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

14                  Okay, Pete.

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



1 MS. MESA: Kim.

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

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

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

13 MS. MESA: Wally.

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

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

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

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

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

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

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

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

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

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

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

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

7 MS. MESA: Matthias and then James.

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

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

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

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

1 transparent playing fields that are consistent.

2 And I think you can look back to the '30s for that  
3 for your further guidance there.

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

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

15 (Applause)

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

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