HEARING TO REVIEW THE 2015 AGENDA FOR THE COMMODITY FUTURES TRADING COMMISSION

HEARING

BEFORE THE

COMMITTEE ON AGRICULTURE
HOUSE OF REPRESENTATIVES

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HEARING TO REVIEW THE 2015 AGENDA FOR THE COMMODITY FUTURES TRADING COMMISSION

THURSDAY, FEBRUARY 12, 2015

HOUSE OF REPRESENTATIVES,
COMMITTEE ON AGRICULTURE,
Washington, D.C.

The Committee met, pursuant to call, at 10 a.m., in Room 1300 of the Longworth House Office Building, Hon. K. Michael Conaway [Chairman of the Committee] presiding.

Members present: Representatives Conaway, Neugebauer, Goodlatte, Lucas, Rogers, Thompson, Gibbs, Austin Scott of Georgia, Crawford, DesJarlais, Hartzler, Denham, LaMalfa, Davis, Yoho, Allen, Rouzer, Abraham, Emmer, Moolenaar, Newhouse, Peterson, David Scott of Georgia, Costa, McGovern, DelBene, Vela, Lujan Grisham, Kuster, Nolan, Bustos, Maloney, Kirkpatrick, Aguilar, Plaskett, Adams, Graham, and Ashford.

Staff present: Caleb Crosswhite, Haley Graves, Jackie Barber, Jessica Carter, Paul Balzano, Scott Graves, Andy Baker, Matthew MacKenzie, and Nicole Scott.

OPENING STATEMENT OF HON. K. MICHAEL CONAWAY, A REPRESENTATIVE IN CONGRESS FROM TEXAS

The CHAIRMAN. This meeting of the House Agriculture Committee will come to order.

Parson Scott, will you start us with a prayer?

Mr. AUSTIN SCOTT of Georgia. Yes, sir, Mr. Chairman. Bow with me.

Lord, we love you and we know you love us. You have given us such a great country and such a privilege to serve. And we would just pray that you would give us the courage to do the things that would be right for driving this country in the right direction that would be pleasing you, and we just ask that you bless every Member of this Committee and those who are here with us as we go forward and do our work. In Christ's name I pray. Amen.

The CHAIRMAN. Thank you. Again, the Committee will come to order, and we are here today to review the 2015 agenda for the Commodity Futures Trading Commission. And, Chairman Massad, thank you very much for coming and joining us today. We appreciate that.

Today's hearing is the first of what I hope will be many productive engagements between you, your staff, your fellow Commissioners, and Members of this Committee.

I would like to take a point of personal privilege. We spent part of Friday afternoon in Chicago with your team there, led by Rosemary Hollinger, and had a really terrific productive 2½ hours of exchange. And I want to also brag on Phyllis Dietz and Matt Hunter for helping out with that, and Cory Claussen, of course, and Ann Wright, and all the folks who helped us there in Chicago. It was a great 2½ hours, and thank you for dedicating that time to us. We really appreciate that.

In 2015, the CFTC's response to the financial crisis is entering a new phase, shifting from the breakneck race to draft rules to a more deliberative implementation of those rules. It is inevitable that Congress and the Commission made mistakes along the way, and now is the time for us to step back and recognize improvements that can be made.

Mr. Chairman, I am pleased that you have reexamined some of the prior rulemakings to ensure that end-users are not unduly burdened by these new rules. Your proposal on volumetric optionality exemptions, record-keeping requirements, and the residual interest deadlines are much appreciated. While we may not see eye-to-eye on all of these details, the proposals meaningfully move the needle in the right direction.

While continuing our longstanding focus on protecting end-users, this Committee will examine several broader issues this year. Specifically, we will look at the swaps market under the new regulations, the position limit rulemaking and the *bona fide* hedge exemption, with the resolution of many cross-border jurisdictional issues that have come up, and the collection and usage of the tremendous volume of new data that is flowing into the Commission.

Commissioner Giancarlo recently authored a comprehensive white paper on the swap space and the SEF rules—excuse me, I just asked you earlier not to use acronyms. The swap execution facility rules, in particular. As someone with significant experience in that area, I appreciate his insight into these markets. Building new swaps exchanges and mandating centralized clearing and margining when feasible is at the heart of the reforms of Title VII of Dodd-Frank. But it is important that changes to swaps markets recognize the gradual growth of these financial instruments.

In a similar vein, as the Commission contemplates its position limits rule, it is not enough to regulate simply because the Commission has the power. The law directs the Commission to set new position limits as appropriate, and as the Commission finds are necessary to curtail excessive speculation.

As the Commission moves forward, its proposed rule must first explain whether or not price movements in commodities are based on reasonable market forces and can be justified by facts, and then explain how position limits will diminish, eliminate, or prevent market disruptions. Big price swings, even those we have seen in the oil markets over the past decade, are not *prima facie* evidence for the appropriateness of, or need for, position limits.

The Commodity Exchange Act also includes an expansive definition of *bona fide hedging* which specifically includes anticipatory hedging needs. It is important that this exemption remain broad enough that legitimate commercial hedging activity can be shel-

tered from any limits the Commission may demonstrate are appropriate.

On cross-border issues, it appears that there has been some tentative progress in reducing the ongoing tension with foreign regulators over how we apply national rules across international borders. Trust and mutual respect is a first step towards solving these difficult issues, so this is very welcome news. However, it is important the CFTC and international regulators finish this important work and rebuild the fractured swaps markets.

Finally, over the past few years, numerous witnesses have testified to the Commission's difficulty in collecting and using the tremendous volume of new data required under Dodd-Frank. This issue is critical to the functioning of swaps markets. Data reporting rules impose a burden on market participants and those burdens cannot, and must not, be in vain. I know that the Commission is working to address this issue and I look forward to your comments on this progress.

In my view, these four issues present the biggest challenges in implementing Title VII with the least amount of additional disruption as possible. In the coming months, we will be taking up the reauthorization of the CFTC and the Committee will look for broad input about how we can tailor and refine the law to ensure that the marketplace works for all participants. As we do so, Mr. Chairman, your perspective will be invaluable to our legislative process. And while, again, we won't agree on everything, we will work with you and your team to find common ground on improving the Commodities Exchange Act.

Mr. Chairman, I look forward to working with you during the time we are privileged to serve together. Again, thank you for appearing here today at this Committee to share your views. We appreciate your time.

[The prepared statement of Mr. Conaway appears at the conclusion of the hearing:]

PREPARED STATEMENT OF HON. K. MICHAEL CONAWAY, A REPRESENTATIVE IN CONGRESS FROM TEXAS

Chairman Massad, thank you for joining us today. Today's hearing is the first of what I hope will be many productive engagements between you, your staff, your fellow Commissioners, and the Members of this Committee.

In 2015, the CFTC's response to the financial crisis is entering a new phase—shifting from the breakneck race to draft rules to the more deliberative implementation of the rules. It is inevitable that Congress and the Commission made mistakes along the way, and now it is time for us to step back and recognize improvements that can be made.

Mr. Chairman, I am pleased that you have reexamined some of the prior rulemakings to ensure that end-users are not unduly burdened by these new rules. Your proposal on volumetric optionality exemptions, record keeping requirements, and the residual interest deadline are appreciated. While we may not see eye-to-eye on all of the details, the proposals meaningfully move the needle in the right direction.

While continuing our longstanding focus on protecting end-users, this Committee will examine several broader issues this year. Specifically, we will look at the swaps market under the new regulations, the position limits rulemaking and the *bona fide* hedge exemption, the resolution of the many cross-border jurisdictional issues that have come up, and the collection and usage of the tremendous volume of new data flowing into the Commission.

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in that area, I appreciate his insight into these markets. Building new swaps exchanges and mandating centralized clearing and margining when feasible is at the heart of the reforms in Title VII of Dodd-Frank. But, it is important that changes to swaps markets recognize the gradual growth of these financial instruments.

In a similar vein, as the Commission contemplates its position limits rule, it is not enough to regulate simply because the Commission has the power. The law directs the Commission to set new position limits "as appropriate" and "as the Commission finds are necessary" to curtail "excessive speculation."

As the Commission moves forward, its proposed rule must first explain whether or not price movements in commodities are based on reasonable market forces and can be justified by facts, and then explain how position limits will diminish, eliminate, or prevent market disruptions. Big price swings—even those we've seen in the oil markets over the past decade—are not *prima facie* evidence for the appropriateness of and need for position limits.

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On cross-border issues, it appears that there has been some tentative progress in reducing the ongoing tension with foreign regulators over how we apply national rules across international borders. Trust and mutual respect is a first step towards solving these difficult issues, so this is welcome news. However, it is important the CFTC and international regulators finish this important work and rebuild the fractured swaps markets.

Finally, over the past few years, numerous witnesses have testified to the Commission's difficulty in collecting and using the tremendous volume of new data required by Dodd-Frank. This issue is critical to the functioning of swaps markets. Data reporting rules impose a burden on market participants and those burdens cannot be in vain. I know that the Commission is working to address this issue and I look forward to an update on this progress.

These four issues, while not exhaustive, are each necessary to get right in order to continue having the most dynamic risk-manage tools in the world. In the coming months, we'll be taking up the reauthorization of the CFTC where this Committee will look for input about how we can tailor and refine the law, to ensure the marketplace works for all market participants. As we do so, Mr. Chairman, your perspective will be invaluable to our legislative process. While we won't agree on everything, we will work with you and your team to find common ground on improvements to the CEA.

Mr. Chairman, I look forward to working with you during the time we are privileged to serve together. Again, thank you for appearing before this Committee to share your views with us. We appreciate your time today.

The CHAIRMAN. And I now recognize the Ranking Member for his opening statement.

OPENING STATEMENT OF HON. COLLIN C. PETERSON, A REPRESENTATIVE IN CONGRESS FROM MINNESOTA

Mr. PETERSON. Well, thank you, Mr. Chairman. And good morning everybody, and welcome Chairman Massad to the Agriculture Committee. This is the Chairman's first appearance before the Committee, but I have had an opportunity to meet with him, and have been impressed by his commitment to implementing the new regulations called for under Dodd-Frank and being inclusive of all points of view throughout that process. The rulemaking process has maybe taken longer than some would like, but given the limited resources they have had to get these rules in place, I think the CFTC has done a good job.

I look forward to an update on the Commission's continued rulemaking as they go forward, and I believe about 80 percent of the rules have been completed, but I would also be interested in hearing from the Chairman on some of the market issues that have recently made headlines.

It has been mentioned before, one of the Agriculture Committee's top priorities for this year is to again pass legislation to reauthorize the CFTC. Last year we passed a good bipartisan bill that would protect farmers and ranchers who use the futures market to hedge against their risk. I hope that we can build on that legislation and get something signed into law this year.

So with that, I thank the chair, and look forward to the Chairman's testimony. I yield back.

The CHAIRMAN. I thank the Ranking Member. The chair will request that other Members submit their opening statements for the record so the witness may begin his testimony, and to ensure there is ample time for questions.

[The prepared statement of Mr. Austin Scott follows:]

PREPARED STATEMENT OF HON. AUSTIN SCOTT, A REPRESENTATIVE IN CONGRESS FROM GEORGIA

Mr. Chairman, thank you for convening this hearing. Chairman Massad, thank you for being here today before the House Committee on Agriculture as we review the 2015 agenda for the Commodity Futures Trading Commission.

In the coming months, this Committee will look to build upon work done in the last Congress to reauthorize the Commodity Futures Trading Commission. As Chairman of the Subcommittee on Commodity Exchanges, Energy, and Credit, I look forward to working with Chairman Massad and the Commission to ensure that our regulatory framework protects the integrity of our markets, but also does not limit the ability of end-users to use these tools to conduct their business.

As we have heard many times in testimony before this Committee, end-users, who were not the cause of the financial crisis, are the collateral damage of Dodd-Frank's reforms. Farmers, ranchers, and other end-users depend on markets to manage risk and, thereby, keep consumer costs low. Unfortunately, despite Congressional attempts to shelter them from the Dodd-Frank regulatory regime, too often they have been wrongly swept up into it. Providing relief to the end-user community through much-needed clarifications of the law will continue to be my focus on this Committee.

In that vein, an issue to which I'll be paying particular interest is the CFTC's definition of a *bona fide hedge* transaction. The statutory definition states that the reduction of risk inherent to a commercial enterprise is a component in determining what qualifies as a *bona fide* hedging transaction. Despite clear Congressional intent, the CFTC's proposed position limits rule has limited the definition of a *bona fide hedge* to a limited set of transactions.

Unquestionably, this narrow approach to the *bona fide* hedge exemption will harm end-users and pre-empt business risk management decision-making in favor of bureaucratic edict. It is neither desirable nor practicable for the Federal Government to insert itself in the risk management decisions of American businesses and farmers. I look forward to continuing the conversation on this and other issues throughout the reauthorization process.

Chairman Massad, thank you again for your presence here today. I look forward to hearing more about your priorities for the upcoming CEA reauthorization and working with you on the process moving forward.

I would like to welcome to the witness table the Honorable Timothy Massad, Chairman of the Commodity Futures Trading Commission of Washington, D.C. Chairman Massad, the floor is yours.

STATEMENT OF HON. TIMOTHY G. MASSAD, CHAIRMAN, COMMODITY FUTURES TRADING COMMISSION, WASHINGTON, D.C.

Mr. MASSAD. Thank you, Chairman Conaway, Ranking Member Peterson, and Members of the Committee. It is a privilege to testify today regarding the work of the Commodity Futures Trading Commission, and I am pleased to be here on behalf of the Commission. I also want to say that we were happy to host many of you in Chi-

cago. I am glad it was a productive visit, and we would be just as happy to do that in any of our other offices, including here in Washington, where we would be delighted if you wished to come over and we can make some of the presentations or go into other areas.

Eight months ago, two of the other Commissioners and I took office, and today I would just like to briefly review what the Commission has accomplished in that time, and discuss some of our priorities, going forward.

I first just want to thank our staff for their hard work and dedication, I am pleased that some of you had a chance to meet some of them, and I also want to thank each of my fellow Commissioners for their efforts. We are all working together in good faith to do the best job we can.

The futures options and swaps markets are critical to our economy. They enable businesses of all types to manage commercial risk, whether it is a farmer locking in a price for his crops, a utility hedging the cost of fuel, or a manufacturer managing foreign currency risk. Our regulatory framework must make sure these markets work well for the businesses that need them. We must do all we can to prevent fraud and manipulation, and to promote integrity and transparency. And our regulation must promote competition and innovation so these markets continue to thrive. Our agenda is focused on these goals. Let me highlight a few areas.

The first is fine-tuning our rules so that commercial end-users can continue to use these markets effectively and efficiently. Since last summer, we have made it a priority to listen to the concerns of end-users, review our rules, and make adjustments where appropriate. We have taken a number of steps including actions regarding margin and the posting of collateral, reporting and recordkeeping, and forward contracts, among others. There is more that we wish to do in this area, and we will continue to engage with market participants to make sure our regulatory framework is working for end-users and protecting the public.

The second priority is to continue implementation of the reforms to bring the swaps market out of the shadows. We have made good progress. Today, for example, in the markets we oversee, approximately 75 percent of swap transactions are being centrally cleared. That helps to manage risk and mitigate the adverse impact should a default occur. But clearinghouses do not eliminate risk, so we must continue to ensure that clearinghouses have the resources and all the necessary safeguards to operate in a fair, transparent, and efficient manner. We are also looking at how our rules on swaps trading can be improved to enhance further trading on swap execution facilities, and to bring needed transparency to this market. And we will continue to work on a few of the Dodd-Frank rules that remain to be finalized, including the rule on margin for uncleared swaps where we have exempted end-users, and the position limits rule where we must make sure end-users can continue to engage in *bona fide* hedging.

The third priority has been enforcement. Nothing is more important to maintaining the integrity of our markets and public confidence. Our cases cover a wide variety of market abuses and bad behavior, ranging from traditional Ponzi schemes and precious

metal scams that target retirees, to complex manipulation schemes driven by sophisticated high frequency trading strategies, as well as price fixing or benchmark manipulation through collusion among some of the world's largest banks.

From 2009 through 2014, the fines and penalties collected from CFTC enforcement matters were approximately twice our cumulative budgets. And already in this fiscal year, the fines and penalties collected are over six times our budget. These fines and penalties go directly to the U.S. Treasury. They are not available to fund our budget.

A fourth priority is working with our international counterparts to harmonize rules as much as possible. I am personally committed to this effort. I have made many trips to Europe; I just came back from a trip to Asia, and we are making progress in many areas.

And finally, we are focused on new challenges and risks. Cyber attacks are an increasingly significant risk to financial stability, and we must do all we can to enhance readiness, particularly when it comes to clearinghouses and exchanges which are so critical to our financial system. We are also very focused on the increased use of automated trading strategies and their impacts on these market.

In all these areas, there is more we should be doing, but we are limited by our resources. Our budget simply has not kept up with the growth of the markets and our responsibilities. We cannot be as responsive as we wish to be. The United States has the best financial markets in the world; the most dynamic, innovative, competitive and transparent. They have been an engine of our economic growth and prosperity. I look forward to working with you to ensure that this continues.

Thank you again for inviting me today, and I look forward to your questions.

[The prepared statement of Mr. Massad follows:]

PREPARED STATEMENT OF HON. TIMOTHY G. MASSAD, CHAIRMAN, COMMODITY FUTURES TRADING COMMISSION, WASHINGTON, D.C.

Thank you, Chairman Conaway, Ranking Member Peterson, and Members of the Committee. It is a privilege to appear before you for the first time as Chairman of the Commodity Futures Trading Commission (CFTC). I am pleased to testify today on behalf of the Commission.

I appreciate the opportunities I have had to meet with many of you, and value your input on the issues facing the Commission. I look forward to working with the Committee, going forward.

The CFTC oversees the futures, options, and swaps markets. While most Americans do not participate directly in these markets, they are very important to the daily lives of all Americans, because they shape the prices we all pay for food, energy and many other goods and services. They enable farmers to lock in a price for their crops, utilities to manage their fuel cost, and manufacturers to hedge the price of industrial metals. They enable exporters to hedge foreign exchange risk and businesses of all types to lock in borrowing costs. In short, the derivatives markets enable businesses of all types to manage risk.

For these markets to work well, good regulation is essential. That is why the Commission's job is so important and we must do all we can to prevent fraud and manipulation in these markets. And we must create a regulatory framework that promotes efficiency, competition, and innovation so that these markets can thrive. I am committed to working with this Committee and Congress to make sure these markets continue to be strong, dynamic, and an engine for economic growth.

Today, I would like to review what we have accomplished since last summer when I, as well as two of the other three Commissioners, took office. I would also like to discuss some key priorities, going forward.

It has been a busy and productive time for us. We have worked to make sure that commercial end-users can continue to use the derivatives markets effectively and efficiently. We are continuing the work to bring the over-the-counter swaps market out of the shadows and implement the regulatory reforms mandated by Congress. We have also been busy carrying out our traditional responsibilities of surveillance, compliance, and enforcement. And we have been addressing new developments and challenges in our markets, particularly those created by technological development.

I know I speak for all the Commissioners in first thanking our staff for their hard work. The progress we have made is a credit to their commitment and their tireless efforts.

I also want to thank each of my fellow Commissioners for their dedication. Each brings good experience and judgment, and I appreciate our candid, robust dialogue on the wide range of issues we face. I commend my fellow Commissioners in particular for their efforts to reach out and make sure we are all well informed by a diversity of views, and for their willingness to collaborate and work constructively together. While we will not always agree, I believe we are working together in good faith to do the best job we can in implementing the law and carrying out the Commission's responsibilities.

Over the last several months, the Commission has been actively listening to market participants, getting important feedback on what is working well and what parts of our regulatory framework may need adjusting. We have held two open meetings, and we will hold more open meetings in the future. The CFTC's advisory committees have also provided a good venue for dialogue.

In December, we had a productive meeting of our Agricultural Advisory Committee, of which I am the sponsor. We were honored to have Secretary Vilsack as our special guest. It was an excellent opportunity to gather input directly from farmers, ranchers, and others who rely on these markets day in and day out.

Commissioner Wetjen held a very informative meeting of our Global Markets Advisory Committee (GMAC) in October of last year, a Committee which focuses on matters that affect the integrity and competitiveness of U.S. markets and U.S. firms engaged in global business. He will also be convening another GMAC meeting, as well as a meeting of our Technology Advisory Committee, in the coming months. Commissioner Bowen is sponsoring our new Market Risk Advisory Committee. She has been working to organize it and define its agenda. This committee will help the Commission identify and understand the impact of evolving market structures and movement of risk across clearinghouses, exchanges, intermediaries, market makers, and end-users. And Commissioner Giancarlo has been working to build up our Energy and Environmental Markets Advisory Committee, which advises the Commission on matters of concern to exchanges, firms, end-users, energy producers, and regulators regarding energy and environmental markets and their regulation by the Commission. He will be holding their first meeting shortly.

Let me turn now to the progress we have made in each of the general areas I noted.

Making Sure the Markets Work for Commercial End-Users

For the derivative markets to contribute to the broader economy, they must work well for commercial end-users—the many manufacturers, farmers, ranchers, and other businesses that rely on these markets to hedge commercial risks. Since last summer, we have made it a priority to address concerns of these participants. We have sought to make sure that our rules do not impose undue burdens or create unintended consequences for these participants, and that we are creating better, more transparent markets for them. Let me review some of the actions we have already taken.

- *Margin for Uncleared Swaps.* We have made sure that our proposed rule on margin for uncleared swaps exempts commercial end-users from this requirement. We have also worked with the domestic bank regulators, who are also responsible for issuing rules on this subject, to maintain a comparable approach for commercial end-users.
- *Local Utility Companies.* In September, the Commission amended its rules so that local, publicly-owned utility companies could continue to effectively hedge their risks in the energy swaps market. These companies, which keep the lights on in many homes across the country, must access these markets efficiently in order to provide reliable, cost-effective service to their customers. The Commission unanimously approved a change to the swap dealer registration threshold for transactions with special entities which will make that possible.
- *Customer Protection/Margin Collection.* In November, the Commission proposed to modify one of our customer-protection related rules to address a concern of

many in the agricultural community and many smaller customers regarding the posting of collateral. These rules had been unanimously adopted in the wake of MF Global's insolvency and were designed to prevent a similar failure from recurring and to protect customers in the event of such a failure. Market participants asked that we modify one aspect of the rules regarding the deadline for futures commission merchants to post "residual interest," which, in turn, can affect when customers must post collateral. The change was that the deadline would not move to earlier than 6 p.m. the day of settlement without an affirmative Commission action and an opportunity for public comment. I hope to finalize this rule change in the very near future.

- *Reporting Requirements.* We have proposed to exempt end-users and commodity trading advisors from certain recordkeeping requirements related to text messages and phone calls. This proposal is designed to make sure we do not impose undue reporting requirements on commercial end-users. The proposal also clarifies, in response to public feedback, that oral and written communications that lead to the execution of a transaction need not be linked to records identifying that transaction.
- *Volumetric Optionality.* We have proposed to clarify our interpretation of when an agreement, contract, or transaction that contains embedded volumetric optionality falls within the forward exclusion from being considered a swap. "Embedded volumetric optionality" refers to the contractual right of a counterparty to receive more or less of a commodity at the negotiated contract price. Contracts with this feature are important to, and widely used by, a variety of end-users, including electric and natural gas utilities. The proposed interpretation would clarify when forward contracts with embedded volumetric optionality may be excluded from being considered swaps. In this way, the proposed interpretation is intended to make sure commercial companies can continue to conduct their daily operations efficiently.
- *Treasury Affiliates of End-Users.* The Commission staff took action to make sure that end-users can use the Congressional exemption given to them regarding clearing and swap trading if they enter into swaps through a treasury affiliate. It is common for a large corporation with significant non-financial operations to have a separate affiliate enter into swaps and financing transactions on behalf of the larger corporation and its subsidiaries. CFTC staff have taken action to clarify how our rules will be applied to make sure that such companies can utilize the end-user exception.
- *Interaffiliate Transactions.* We have also worked to harmonize the phasing in of certain rules regarding clearing with the requirements in other jurisdictions. The Commission previously adopted a final rule providing an exemption from required clearing for swaps between certain affiliated entities, subject to specific requirements and conditions. One condition, designed to prevent evasion of the clearing requirement, is that any related swap executed with an unaffiliated counterparty must be cleared in accordance with Commission rules or comparable rules of a foreign jurisdiction. Because other jurisdictions had not yet adopted a mandatory clearing framework, the final rule provided a temporary alternative compliance mechanism. We took action because other jurisdictions need more time. While progress continues to be made with regard to the implementation of mandatory clearing regimes in foreign jurisdictions, many do not yet have a clearing mandate in place. For this reason, the Commission staff recently extended the rule's alternative compliance approach until December 31, 2015.
- *Reporting Requirements for Contracts in Illiquid Markets.* CFTC staff recently granted relief from the real-time reporting requirements for certain less liquid, long-dated swap contracts that are not subject to mandatory clearing and do not yet trade on a regulated platform. This relief was provided in part because while Dodd-Frank requires real-time reporting for swaps, it also requires that such reporting obligations should not lead to identifying market participants, as that could result in competitive harm. We therefore agreed to permit slightly delayed reporting for these swaps.
- *Aluminum Market.* Another issue of concern to end-users that we are focused on pertains to the long queues for delivery of aluminum at warehouses in this country licensed by the London Metal Exchange (LME), the relationship of those queues to the pricing and delivery of aluminum, and how those issues impact market integrity and market participants. We do not have direct regulatory authority over those warehouses, and the LME's principal regulator is the Financial Conduct Authority (FCA) in the UK. However, we are looking at

these issues closely and speaking with aluminum users, the LME, the HKEx Group, which owns the LME, and the FCA on a regular basis.

- *Harmonization with SEC Rules.* We continue to work closely with our colleagues at the SEC. For example, in connection with the SEC's efforts to implement the Jumpstart Our Business Startups Act ("JOBS Act"), we took action to harmonize our rules with the new requirements. Specifically, we revised requirements applicable to commodity pool operators that are also registered with the SEC.

In sum, we have been very focused on fine-tuning the rules to make sure they work for commercial end-users, and we will continue to do so.

Continuing Implementation of the New Regulatory Framework for Swaps

Let me turn now to our efforts to implement reforms to the swap market as part of the overall effort on financial regulatory reform. The financial crisis that began over 6 years ago stands as the worst since the Great Depression: millions of jobs lost and homes foreclosed, countless retirements and educations deferred, and businesses shuttered. It was during the financial crisis that most Americans first heard about derivatives. That was because over-the-counter (OTC) swaps accelerated and intensified the crisis. In the absence of regulatory oversight, a global market had developed that allowed participants to take on excessive risk—risk that they did not always understand, and that was opaque to regulators. The interconnectedness among large institutions meant that trouble at one firm could easily cascade through the system—often across national borders. We faced the possibility of systemic collapse.

The Dodd-Frank Act was a comprehensive response to the market excesses and regulatory gaps that contributed to the crisis. Title VII embodied the four basic commitments that were agreed to by leaders of the G20 nations to reform the OTC swaps market: require central clearing of standardized swaps through regulated clearinghouses; require regulatory oversight of the largest market participants; require regular reporting so that regulators and the public can have a view of what is happening in the market; and require transparent trading of swaps on regulated platforms.

We have made substantial progress in implementing these reforms. We are focused today on completing that work in a manner that ensures these markets continue to thrive and work well for all participants.

Clearing of Standardized Swap Transactions

A primary commitment of Dodd-Frank was to require clearing of standardized swaps transactions through clearinghouses. The use of clearinghouses in financial markets is commonplace and has been around for over one hundred years. The idea is simple: if many participants are trading standardized products on a regular basis, the tangled, hidden web created by thousands of private bilateral trades can be replaced with a more transparent and orderly structure, like the hub and spokes of a wheel, with the clearinghouse at the center. The clearinghouse can then monitor the overall risk and positions of each participant.

Clearing through central counterparties is now required in our markets for most interest rate and credit default swaps. Recent data show our progress. The percentage of transactions that are centrally cleared in the markets we oversee has gone from about 15% in December 2007 to about 75% today.

In accordance with Congressional direction, the CFTC acted expeditiously to implement clearing mandates. The United States was among the first of the G20 nations to do so. Also as directed by Congress, the CFTC specifically exempted from those mandates commercial end-users, including manufacturers or farmers who use the swaps markets to hedge. The CFTC also has exempted agricultural and electrical cooperatives, as well as banks with assets totaling less than $10 billion.

Of course, central clearing is not a panacea. Clearing does not eliminate the risk that a counterparty to a trade will default—instead it provides us with powerful tools to monitor that risk, manage it, and mitigate adverse effects should a default occur. For central clearing to work well, active, ongoing oversight is critical. And given the increasingly important role of clearinghouses in the global financial system, this is a top priority. We must do all we can to ensure that clearinghouses have the financial, operational and managerial resources, and all the necessary systems and safeguards, to operate in a fair, transparent, and efficient manner. We must make sure that contingency plans for clearinghouse recovery and resolution are sufficient. Therefore, we are very focused on all of these issues in our compliance activities and examinations of clearinghouses, as well as in thinking about our regulatory framework.

Increased Oversight of Major Market Participants

Since Congress passed Dodd-Frank, we have increased oversight of major market players through the registration and regulation of major swap participants and swap dealers. More than 100 are now provisionally registered. This list includes many of the largest banks in the world. We have adopted rules requiring these registrants to observe strong risk management practices, and they will be subject to regular examinations to assess risk and compliance with rules designed to mitigate excessive risk.

The new framework requires registered swap dealers and major swap participants to comply with standard business practices, such as documentation and confirmation of transactions, as well as dispute resolution processes. They are also required to make sure their counterparties are eligible to enter into swaps, and to make appropriate disclosures to those counterparties about risks and conflicts of interest.

Regular Reporting for Increased Market Transparency

Congress recognized that having rules that require oversight, clearing and transparent trading is not enough. We must have an accurate, ongoing picture of what is taking place in the market to achieve greater transparency and to address the potential risks. A key commitment in Dodd-Frank is ongoing reporting of swap activity. In 2008, regulators and Congress knew very little about the size and risks in this market. Today, under our rules, all swap transactions, whether cleared or uncleared, must be reported to registered swap data repositories (SDRs), a new type of entity responsible for collecting and maintaining this vital information.

This reporting will enable regulatory authorities to engage in meaningful oversight. Robust surveillance and enforcement, so critical to maintaining market integrity, depends on the availability of accurate market data. And increased transparency helps market participants by increasing competition, facilitating the price discovery process, and enhancing confidence in the integrity of the market. You can now go to public websites and see the price and volume for individual swap transactions. And the CFTC publishes the Weekly Swaps Report that gives the public a snapshot of the swaps market.

While we have made good progress, we have a considerable amount of work still to do to collect and use derivatives market data effectively. There are now four data repositories in the U.S., and more than 20 others internationally, plus thousands of participants who must report data.

We are engaged in three general areas of activity. First, we must have data reporting rules and standards that are specific and clear, and that are harmonized as much as possible across jurisdictions, and we are leading an international effort in this regard. Only in this way will it be possible to track the market and be in a position to address emerging issues. We must also make sure the SDRs collect, maintain, and publicly disseminate data in a manner that supports effective market oversight and transparency. This means a common set of guidelines and coordination among registered SDRs. Standardizing the collection and analysis of swaps market data requires intensely collaborative and technical work by industry and the agency's staff. We have been actively meeting with the SDRs on these issues, getting input from other industry participants and looking at areas where we may clarify our own rules.

Finally, market participants must live up to their reporting obligations. Ultimately, they bear the responsibility to make sure that the data is accurate and reported promptly. We have already brought cases to enforce these rules and will continue to do so as needed.

Transparent Trading of Swaps Transactions on Regulated Platforms

With regard to swaps trading, there is also progress as well as work to be done. Congress mandated that certain swaps must be traded on a swap execution facility (SEF) or other regulated exchange. Transparent trading of swaps on swap execution facilities (SEFs) can facilitate a more open, transparent, and competitive marketplace, which will benefit all participants.

Today, there are 22 SEFs temporarily registered, and two applications are pending. Each is required to operate in accordance with certain statutory core principles. These core principles provide a framework that includes obligations to establish and enforce rules, as well as policies and procedures that enable transparent and efficient trading. SEFs must make trading information publicly available, put into place system safeguards, and maintain financial, operational and managerial resources necessary to discharge their responsibilities.

Trading on SEFs is still relatively new. It began in October of 2013, and the trading mandate for certain interest rate swaps and credit default swaps took effect about 1 year ago. Through last year, notional value executed on SEFs was generally

in excess of $1.5 trillion weekly. Publicly available data show trading volumes are trending higher. In addition, the number of market participants using SEFs is increasing. One SEF recently confirmed that participation had exceeded 700 firms.

But, there is more to do. Our rules are new, and as we gain experience with their application in the marketplace, we will see what works well and what doesn't, and we will make changes as appropriate. The SEFs themselves are developing best practices and testing different approaches. The new technologies that are being used are likewise changing and being refined. In addition, as other jurisdictions develop their rules on trading, we will look to try to harmonize the rules as much as possible so as to minimize the risk of market fragmentation.

As I said to the SEF industry last fall, our goal should be to create a regulatory framework that not only achieves the Congressional mandate of bringing this market out of the shadows, but which also creates the foundation for the market to thrive. To do so, our rules must ensure transparency, integrity and oversight, while at the same time permit innovation, freedom and competition.

Finalizing the Remaining Rules

We have also been working on the few Dodd-Frank rules that remain to be finalized. In September, we reproposed our rule on margin for uncleared swaps. While we have made great progress in the proportion of swap transactions which are centrally cleared, we must recognize that uncleared transactions will continue to be an important part of the market. Sometimes, commercial risks cannot be hedged sufficiently through swap contracts that are available for clearing. For example, certain products may lack sufficient liquidity to be centrally risk managed and cleared. This may be true even for products that have been in existence for some time. And there will and always should be innovation in the market, which will lead to new products.

That is why the rule on margin for uncleared swaps is important. Margin will continue to be a significant tool to mitigate the risk of default and, therefore, the potential risk to the financial system as a whole.

Consistent with Congressional intent, our proposal exempts commercial end-users from the margin requirements applicable to swap dealers and major swap participants. Our approach seeks to provide a significant safeguard without imposing unnecessary costs on participants whose activities do not create the same level of systemic risk. We will also make the minor changes necessary in our final rule to ensure conformity with the amendment to the Commodity Exchange Act (CEA) adopted by Congress in December as part of the Terrorism Risk Insurance Act (TRIA).

In formulating our approach, we coordinated closely with the relevant bank regulators, because Congress mandated that margin requirements be set by different regulatory agencies for the respective entities under their jurisdiction. Under the Dodd-Frank Act, each swap dealer and major swap participant for which there is a prudential regulator must comply with margin rules established by that prudential regulator. All other swap dealers and major swap participants must comply with margin rules established by the CFTC. I am pleased to say that our rules and those of the bank regulators are substantially similar.

We have also been working with our international counterparts to harmonize our proposed margin rule for uncleared swaps with corresponding rules in other jurisdictions. Europe, Japan and the United States have each proposed rules which are largely consistent, and which reflect a set of standards agreed to by a broader international consensus.

While there were some differences in the proposals, we are working closely with our counterparts in Europe and Japan, as well as the U.S. banking regulators, to try to further harmonize these rules. I am encouraged by the progress we are making and I hope that we can finalize these rules in the near future.

We are also working on two other rules regarding capital and position limits. Congress mandated that we implement position limits to address the risk of excessive speculation. In doing so, we must make sure that the market works for commercial end-users seeking to hedge routine risk through *bona fide* hedging.

We have received substantial public input on the position limits rule which the staff is reviewing. Most recently, we received valuable input from participants at the December Agriculture Advisory Committee meeting. It is important that we consider these comments carefully as we develop a rule. Commission staff will also be considering next steps on the capital rule as we move forward on finalizing the proposed rule on margin for uncleared swaps.

Cross-Border Issues: The Challenge of Building a Global Regulatory Framework

Another key priority is working with our international counterparts to build a strong global regulatory framework. To achieve the goals set out in the 2009 G20 commitments and embodied in the Dodd-Frank Act, global regulators must work together to harmonize their rules and supervision to the greatest extent possible. Since I joined the CFTC, I have made it a priority to work with our international counterparts on these issues.

The challenge of harmonizing rules across borders is best understood by remembering the unique historical situation we are in. The swaps market grew to a global scale without any meaningful regulation. So today, we must regulate what is already a global market, and the new framework can only be implemented through the actions of individual jurisdictions, each of which has its own legal traditions, regulatory philosophy, political process, and market concerns. While the G20 nations agreed to basic reform principles, there will inevitably be differences in specific rules and requirements. The challenge is to achieve as consistent a framework as possible while recognizing that our responsibility as national regulators is first and foremost to faithfully implement and enforce our own nation's laws. We also must remember that in many areas of financial regulation, laws vary among nations. The fact is that, in the case of swaps, we have made great progress in harmonization, and will continue to do so, but it will take time.

Let me note a few of the things that are going on in our effort to work with our international counterparts. First, I have been personally committed to this effort. To that end, since I took office last June, I have made a few trips to Europe and met several times with European and other international officials here in the U.S. Last month, I visited Asia, where I met with government officials in Beijing, Hong Kong, Singapore, and Tokyo as well as with key market participants. These visits provide an opportunity to listen to others' views, identify issues of common concern, and work together to advance our shared goal of bringing the over-the-counter swaps market out of the shadows. I have also met with my counterparts from all over the world at board meetings of the International Organization of Securities Commissions in Europe and South America as well as the OTC Derivatives Regulators Group.

Clearinghouse Recognition and Regulation

One of the most important cross-border issues before the Commission over the last several months is clearinghouse recognition and regulation. The fact is that a small number of clearinghouses are becoming increasingly important single points of risk in the global financial system. This is an issue that transcends swaps. It is of equal concern to participants in the futures and options markets because the same clearinghouses handle clearing for many products.

We are continuing in dialogue with the Europeans to facilitate their recognition of our clearinghouses as equivalent. We have had productive discussions regarding the rules governing clearinghouses that are located in Europe, but are also registered with the CFTC. There are presently three such clearinghouses.

Our system of dual registration came about originally because we took a very non-territorial view as to where clearing must occur. The U.S. did not mandate that clearing of futures traded on U.S. exchanges must take place in the U.S.; we simply required that it take place through clearinghouses that are registered with us and that meet certain standards. These standards are designed to ensure customer protection and financial stability, and include provisions related to our bankruptcy laws.

Dual registration and cooperative supervision have worked. The model has worked to protect customers, it worked during the crisis, and it is a model on which the market has grown to be global. Fourteen clearinghouses are currently registered with the CFTC to clear either swaps, futures, or both. Five of those are organized outside of the United States, including three in Europe. One such clearinghouse now handles approximately 85% of swaps clearing and has been registered with us since 2001. In addition, the CFTC is now reviewing five registration applications from clearinghouses, including three located outside the United States.

The Europeans have agreed that the framework of dual registration and cooperative supervision should not be dismantled. We are working on the details of substituted compliance for European clearinghouses that are dually registered with the CFTC as well as cooperative supervision, and we are making good progress. We will also seek to coordinate with them on future swaps clearing mandates.

Oversight of Swap Dealers and Margin for Uncleared Swaps

Another important topic is oversight of swap dealers. A key aspect of this is margin for uncleared swaps, which I noted earlier. We have been active in the development of international standards in this area. The CFTC, along with the U.S. bank regulators, has proposed rules which reflect those standards. Europe and Japan have proposed rules as well. This is an important example of working internationally so that the rules are as similar as possible from the beginning. While there are still some differences in the various proposals, we are working hard to try to minimize those differences. I am hopeful that we can issue final rules in the near future that are largely consistent with the rules of other jurisdictions. As for general harmonization of rules that pertain to oversight of swap dealers much has already been accomplished. We issued substituted compliance determinations in late 2013 with respect to the rules of six other jurisdictions—the European Union, Japan, Australia, Hong Kong, Switzerland, and Canada. We will continue to look at other jurisdictions' rules as those are finalized.

Reporting

As I noted earlier, there is a lot of cross-border work going on in the area of reporting. The number of data repositories across various jurisdictions—four in the U.S. plus more than 20 others internationally—as well as all of the participants around the world who must report make moving forward in this area more important than ever. We and the European Central Bank currently co-chair a global task force that is seeking to standardize data standards internationally. We are working to achieve consistent technical standards and identifiers for data in trade repositories. While much of this work is highly technical, it is vitally important to international cooperation and transparency.

Trading Rules and Foreign Boards of Trade

While we have issued our swap trading rules, other jurisdictions generally have not done so. As I indicated earlier, as other jurisdictions develop their rules, we are open to trying to harmonize rules as much as possible consistent with our statutory responsibilities.

Although it pertains to the futures and options markets more than swaps, another key element of our cross-border effort is to recognize foreign exchanges in order to enhance opportunities for the trading of futures globally. We have recently taken some important actions in this area.

The CFTC does not generally regulate the trading of futures by U.S. persons on offshore exchanges. If a foreign futures exchange wishes to provide direct electronic access to people located in the U.S., we have in the past required the exchange to apply for relief from our registration requirements. We have formalized that process and now foreign exchanges, which we refer to as foreign boards of trade or FBOTs, can be officially registered with us.

I am pleased to report that, under this new process, last month the CFTC approved FBOT registration applications for the Tokyo Commodities Exchange (TOCOM), Bursa Malaysia, and Singapore Exchange (SGX). These approvals recognize the increasing interconnectedness of the global derivatives markets and the importance of Asia in that development. More generally, the FBOT registration approval also demonstrates our commitment to a coordinated regulatory approach that relies on foreign supervisory authorities and ongoing cooperation. We look forward to granting additional approvals in the coming months.

Benchmarks

Another cross-border issue that we have been focused on is the potential regulation of financial benchmarks and indices by the European Union (EU). In our markets, thousands of contracts reference these benchmarks and indices, such as LIBOR, S&P 500 and Brent Crude. The integrity of benchmarks and indices is vital to our financial system. That is why we have focused on this issue in our enforcement efforts, as evidenced by our orders against banks that have tried to manipulate interest rate benchmarks like LIBOR and foreign exchange benchmarks. We have also worked cooperatively with foreign regulators in these enforcement actions, which I will return to in a moment.

We believe there should be standards for benchmarks designed to ensure good administration and transparency and minimize the risk of manipulation. That being said, the EU has proposed legislation that would have adverse market consequences. In particular, benchmarks created by administrators located in countries outside the EU could not be used by European supervised entities, such as banks and asset managers, unless the European Commission determines that any non-EU administrator is authorized and equivalently supervised in the non-EU country. As

you know, the United States does not have such a government-sponsored supervisory regime for benchmarks. Accordingly, in light of the EU's equivalence standards, the new proposed benchmark regulation could prohibit EU institutions from hedging using thousands of products traded on U.S. futures exchanges and swap execution facilities.

I have expressed these concerns to European officials. I have encouraged them to consider the work of the International Organization of Securities Commissions (IOSCO) in this area, which the CFTC helped lead. IOSCO's Principles for Oil Price Reporting Agencies (PRA Principles) and Principles for Financial Benchmarks provide a framework for price reporting agencies and financial benchmark administrators to address methodology, governance, conflicts of interest, and disclosure. Many price reporting agencies and financial benchmark administrators have already begun voluntarily complying with these standards.

I hope that we can continue to work with our international counterparts to ensure benchmark integrity in a way that recognizes that most benchmarks are not administered by, or regulated by, a government agency.

Continuing to Fulfill our Traditional Responsibilities

In addition to our new responsibilities to oversee the swaps market, we are equally focused on the markets that have been traditionally our responsibility, the futures and options markets. And on a day to day basis, a lot of what we do is to focus on surveillance and enforcement to prevent fraud and manipulation or other market abuses. Our compliance, examinations and registration work also makes sure that customers are protected, participants comply with their obligations and the markets operate with integrity and transparency. Let me highlight some key elements of these efforts.

Enforcement and Compliance

A robust compliance and enforcement program is crucial to maintaining the integrity of our markets, as well as public confidence. As a nominee, I committed to maintaining our focus in this area. And we have.

In particular, our priority has been to make sure that the markets we oversee operate fairly for all market participants regardless of size or sophistication. Fraud, manipulation, and abuse should have no place in our financial markets.

We took action against some of the largest banks in the world for attempted manipulation of foreign exchange rate benchmarks. Our investigation revealed that they attempted to manipulate one of the largest markets in the world. We ordered the banks to pay almost $1.5 billion in penalties and to agree to implement reforms designed to prevent the recurrence of this behavior.

This is an important case that was the product of close cooperation with foreign regulators. Benchmarks such as these are extremely important to our futures and swaps markets and to the financial system generally. And the system only works if market participants have confidence that benchmarks are not being manipulated. Our action in these cases exemplifies the CFTC's commitment to the robust enforcement necessary to safeguard the integrity of our markets.

So does our successful litigation against Parnon Energy and Arcadia, two energy companies that systematically manipulated crude oil markets to realize illicit profits. Through the outstanding work of CFTC enforcement staff, the CFTC sends the message that the protection of customers and the integrity of the markets are paramount.

We are also actively pursuing actions against those who try to perpetrate frauds against seniors and other retail investors. The use of our anti-manipulation enforcement authority to address fraud in the precious metals space is one example. These schemes, which often target seniors concerned that they may outlive their retirement assets, purport to offer consumers the ability to buy precious metals like gold using pre-arranged financing. These transactions are typically not conducted on an exchange. They are typically structured so that, taking account of fees and interest, the precious metals would have to double in value year after year in order for the investor to make any money. Even worse, in many cases, the transactions are entirely fraudulent: no precious metals are ever bought. In 2014, the Commission tried and won a case against Hunter-Wise, a Florida company that was a trailblazer in the use of this scheme. In addition to Hunter Wise, we have also taken action to shut down a host of boiler room operations used to identify and recruit potential victims. Our work is ongoing. Just last month, we announced a settlement resulting in restitution and civil monetary penalty of more than $9.6 million against Gold Coast Bullion, Inc. and its principal.

Dodd-Frank provided the Commission with a number of new statutory tools to combat manipulation and practices that can distort the markets, and we are using

them. We have new authority, for example, to attack "spoofing," where a party enters a bid or offer without the intent to consummate a transaction; unscrupulous speculators do this to create the false impression of liquidity in a particular product or to move the market price. We brought a civil action using this new authority against a firm and its principal for spoofing in 2013, one of the first such cases, and last October, the U.S. Attorney for Illinois indicted the principal for spoofing, based on a referral from us.

We have also directed self-regulatory organizations to strengthen their efforts to combat spoofing. The CFTC recently recommended, for example, that CME develop strategies to identify instances of spoofing and, as appropriate, pursue actions against perpetrators. The CFTC also recommended that CME maintain sufficient enforcement staff to promptly prosecute possible rule violations. The company should take measures to ensure internal deliberations do not delay disciplinary action.

In all of our efforts, we will also seek to hold not just firms, but also individuals, accountable. We are mindful that there is no stronger deterrent against future misconduct than the possibility of criminal sanctions, including prison. We do not have the authority to bring criminal actions, so in cases involving willful violations of the CEA, we work closely with the Department of Justice and other criminal authorities. The perpetrators who threaten the financial well-being of innocent participants in our markets need to understand that the loss of their own liberty is at stake.

We are equally focused on using our authority to ensure compliance with our rules, such as our reporting rules. Earlier this year, for example, we imposed penalties against a major bank for failing to abide by our reporting requirements.

Although our effectiveness is best measured by the quality, breadth and effect of the actions pursued, quantitative metrics give a picture of the activity. Overall, the CFTC filed 67 new enforcement actions during Fiscal Year 2014. We opened more than 240 new investigations. The agency obtained $3.27 billion in sanctions, including $1.8 billion in civil monetary penalties and more than $1.4 billion in restitution and disgorgement. This amount of civil monetary penalties is more than eight times our current annual budget.

As a complement to these efforts, we have also taken steps to encourage individuals to help us detect fraud and other misconduct. The agency's whistleblower program, created by the Dodd-Frank Act is one example. The program provides payments—up to 30 percent of any sanction obtained—to eligible whistleblowers. This is a relatively new program so we are still growing it. Already though, we are receiving relevant tips, complaints, and referrals. We believe the program will be an important tool going forward in identifying, investigating, and prosecuting violations of the law.

We are also working to help consumers be smarter investors and detect fraudulent schemes on their own. At the end of last year, we launched the CFTC *SmartCheck* campaign. This campaign is designed to help investors identify and recognize the most common schemes and the top signs of a fraudulent investment. The campaign includes tools, such as an interactive website, to help investors stay ahead of the fraud perpetrators. For example, investors can use the website to check the background of financial professionals and confirm whether any potential advisors have had past violations.

Going forward, market participants should understand that we will use all the tools at our disposal to ensure compliance with the law.

Responding to Market Developments

Another example of the importance of the CFTC's role is what happened last month when the Swiss government removed the cap on the exchange rate between the Swiss franc and the Euro. The resulting 23% increase in the value of the Swiss franc roiled the foreign exchange markets. The CFTC closely monitored the markets and several firms in particular that were facing significant losses.

For cleared products affected by this development, CFTC staff immediately started conducting stress tests of open positions, and staff contacted registered clearinghouses as well as clearing members with large exposures. Despite the extreme price moves, all clearing members met their obligations to clearinghouses.

For uncleared products, after the CFTC learned that one firm, FXCM, had a significant capital deficiency, CFTC staff were on site at the firm and also worked closely with staff from the National Futures Association (NFA). Although it is not the agency's responsibility to help a troubled firm secure capital, the CFTC was in touch with FXCM continuously through the night and the next day concerning what actions the firm might take to stabilize its situation and meet CFTC capital requirements. The CFTC monitored the firm's efforts to obtain capital to insure that any capital proposed would meet CFTC requirements and cover customer obligations.

The CFTC and the NFA also made sure the firm did not make any disbursements to the detriment of customers during this time. The CFTC also prepared for the necessary legal actions to protect customers to the fullest extent possible in the event the firm was unable to secure additional capital. The firm was able to obtain a capital infusion that satisfied CFTC requirements and thereby stay in business.

Addressing New Challenges and Risks

Finally, I wish to discuss our work in addressing some new challenges and risks in our markets.

Cybersecurity, Information Security, and Business Continuity

Cybersecurity is perhaps the single most important new risk to market integrity and financial stability. The need to protect our financial markets against cyberattacks is clear. These attacks threaten privacy, information security, and business continuity, all vital elements of a well-working market. We are focusing on this issue in our examinations of clearinghouses and exchanges in particular to make sure they are doing all they can to address this risk. We are also focusing on business continuity and disaster recovery plans, as a well-executed disaster recovery plan will aid in the recovery from a cybersecurity event.

The risk is apparent. The examples from within and outside the financial sector are all too frequent and familiar: the latest include JP Morgan, Sony, Home Depot, and Target. Some of our nation's exchanges have also been targeted or suffered technological problems that caused outages or serious concerns. And again, because of the interconnectedness of financial institutions and market participants, an attack at one institution can have significant repercussions throughout the system. In the Target attack, the intruder gained access to the Target systems by stealing credentials from a vendor used by Target. The perpetrator was able to locate information about Target's customers and steal their credit card information. A similar type of attack—known as phishing—is reported to have been used in the recent breach at Sony. This type of attack launched at an exchange or clearinghouse has the potential to have a significant impact on the operation of the venue and those entities that use its services.

We at the CFTC have responded in a number of ways:

- First, our Core Principles have been modernized in recent years to address cyber and information security concerns. We have adopted regulations to implement the system safeguards core principles for exchanges, clearinghouses, and SEFs, and we are looking at ways to further strengthen and enhance the requirements for information security.
- We require exchanges, clearinghouses, and SEFs to maintain system safeguards and a risk management program, to notify the Commission promptly of incidents, and to have recovery procedures in place. Systemically important clearinghouses, for example, must have plans that enable them to recover and resume daily processing, clearing and settlement activities no later than 2 hours following a disruption. They must also maintain geographic dispersal of personnel resources to aid in recovery efforts following a disruption.
- We conduct system safeguards examinations, using industry best practices, to determine compliance with these requirements, and we monitor remediation efforts if any issues are identified during the examination process.

There is much more we would like to do in this area. However, our capacity to carry out more frequent examinations and to address cybersecurity more broadly is significantly constrained by our current budget. Some of our major financial institutions are reportedly spending more on cybersecurity each year than our agency's entire budget.

High Frequency and Automated Trading

Markets are dynamic, and the agency must keep pace to oversee the markets effectively. Technology in particular is an important driver, and we have witnessed over the last several years a dramatic increase in automated trading. Keeping up with these developments has meant investing in the appropriate resources, a challenge given the agency's budget constraints. It has also meant reviewing our rules based on changes in market technology. For example, in April 2012, the Commission adopted rules that require certain registrants to automatically screen orders for compliance with risk limits if they are automatically executed. The Commission also adopted rules to ensure that trading programs, such as algorithms, are regularly tested.

In addition to its current rules, the Commission is currently considering comments received in response to its *Concept Release on Risk Controls and System Safe-*

guards for Automated Trading Environments. The Concept Release addresses the evolution from human-centered to automated trading environments. It seeks input on a range of protections, including additional pre-trade risk controls; post-trade reports; design, testing, and supervision standards for automated trading systems that generate orders for entry into automated markets; market structure initiatives; and other measures designed to reduce risk or improve the functioning of automated markets. We are still working through comments and will make a determination on what additional measures, if any, might be necessary to address automated trading.

Virtual Currencies

We also continue to respond to market developments such as new products. Virtual currencies, such as bitcoin, are an example. Virtual currencies may raise issues for a number of governmental agencies. The CFTC's jurisdiction with respect to virtual currencies will depend on the facts and circumstances pertaining to any particular activity in question. While the CFTC does not have policies and procedures specific to virtual currencies like bitcoin, the agency's authority extends to futures and swaps contracts in any commodity. The CEA defines the term commodity very broadly so that in addition to traditional agricultural commodities, metals, and energy, the CFTC has oversight of derivatives contracts related to Treasury securities, interest rate indices, stock market indices, currencies, electricity, and heating degree days, to name just a few underlying products.

Innovation is a vital part of our markets, and it is something that our regulatory framework is designed to encourage. At the same time, our regulatory framework is intended to prevent manipulation and fraud, and to make sure our markets operate with transparency and integrity. Derivative contracts based on a virtual currency represent one area within our responsibility. Recently, for example, a SEF and a designated contract market listed contracts based on bitcoins. It is important to emphasize that the existence of a contract does not mean the CFTC endorses use of the commodity on which the contract is based and, as with all new developments, we must remain vigilant to ensure market integrity by closely evaluating new contracts and related market practices, over time. We will also continue to coordinate with other regulatory authorities regarding the issues raised by virtual currencies as appropriate.

Retrospective Regulatory Review

Concurrent with our other work, we are engaged in a retrospective regulatory review. In response to Executive Order 13563, the CFTC developed a two-step program of retrospective review, which was announced in the *Federal Register* on June 30, 2011. First, as part of its implementation of financial reform under Dodd-Frank, the Commission reviewed many of its regulations to determine the extent to which these regulations needed to be modified to conform to the Dodd-Frank Act. This review resulted in modifications to a number of existing rules, both to implement regulatory changes mandated by the Dodd-Frank Act and more generally to update and modernize those rules. For example, the CFTC made a number of changes to reflect market developments and to codify standard or commonly-accepted industry practices.

We have now begun step two of our review during which we will consider the remainder of CFTC regulations. As part of this process, the Commission will solicit public comment to determine which rules may need to be modified or rescinded. Following this review, we will follow up with rulemaking proposals as necessary.

Resources and Budget

Advancing the goals I have outlined and fully implementing the new regulatory framework depends on having resources that are proportionate to our responsibilities. The CFTC did receive a budget increase for FY 2015 for which we are very grateful. It will be put to good use. But in my view, the CFTC's current budget still falls short. The CFTC does not have the resources to fulfill our new responsibilities as well as all the responsibilities it had—and still has—prior to the passage of Dodd-Frank in a way that most Americans would expect. Our staff, for example, is no larger than it was when Dodd-Frank was enacted in 2010.

We are fortunate to have a talented and dedicated professional staff, and we keep Teddy Roosevelt's adage in mind—to do all we can, with what we have, where we are. But the limits of our current budget are evident.

Specifically, in the absence of additional resources, the CFTC will be limited in its ability to:

- Review and approve in a timely manner the many new registration applications we face from over 100 swap dealers and over 20 swap execution facilities, as

well as from derivatives clearing organizations, designated contract markets, foreign boards of trade, and other market participants.

- Perform thorough examinations of critical infrastructure such as clearinghouses and exchanges, which are so important to our financial system and to financial stability.
- Engage proactively on emerging risks like cybersecurity. The CFTC needs resources to conduct compliance examinations of cybersecurity programs of regulated entities, help develop best practices, and respond when attacks occur.
- Respond in a timely and thorough manner to requests from registered entities and other market participants for clarification or interpretation of the CEA and CFTC regulations or requests for exemption or no-action relief; rule and product submissions filed by exchanges, clearinghouses, and other registered entities; and submissions for clearing and trading mandates. Delays can have an adverse effect on efficiency, customer protection, and financial stability, as well as liquidity and innovation.
- Maintain and improve information technology systems and resources that are vital to its mission, including in particular our ability to receive, store and analyze vast new quantities of data related to the swaps market. Handling massive amounts of swaps data and effective market oversight both depend on the agency having up-to-date technology resources, and the staff—including analysts and economists, as well as IT and data management professionals. Today's financial markets are driven by sophisticated use of technology, and the CFTC cannot effectively oversee these markets unless we can keep up.
- Engage in the necessary level of market surveillance and oversight to detect excessive risk, fraud, manipulation or other abusive practices, which requires increasingly sophisticated tools and the ability to analyze massive amounts of data given the technological advances in the markets.
- Engage in the necessary level of risk surveillance and oversight to ensure the financial integrity of the clearing and settlement process and to protect customers in the event of a clearinghouse or clearing member default.
- Engage in robust enforcement efforts with respect to fraud, manipulation, abusive or disruptive practices, or other threats to market integrity and customer protection.

Simply stated, without additional resources, our markets cannot be as well supervised; participants and their customers cannot be as well protected; market transparency and efficiency cannot be as fully achieved.

Conclusion

We have made substantial progress in recovering from the worst financial crisis since the Great Depression, but there is much work yet to accomplish.

The United States has the best financial markets in the world. They are the strongest, most dynamic, most innovative, and most competitive—in large part because they have the integrity and transparency that attracts participants. They have been a significant engine of our economic growth and prosperity. The CFTC is committed to doing all we can to strengthen our markets and enhance those qualities.

Thank you again for inviting me today. I look forward to your questions.

The CHAIRMAN. Thank you, Mr. Chairman. Thank you for being here.

I would like to start with a topic that has been in the news. The—one of the top regulators at the Bank of England yesterday confirmed that global swaps markets are fragmented. In your view, is fragmentation a problem and a liquidity problem in the swaps market?

Mr. MASSAD. Thank you for the question, Congressman.

I think it is important to remember what a unique situation we have here. We have a swaps market which grew to be a global market before anyone regulated it. That is really unlike just about any other product I can think of.

The G20 nations then came along and said, "Well, we need to bring this market out of the shadows." We agreed on how to do it, but of course, the laws get implemented by individual nations.

There are going to be differences, and those differences are going to lead to some fragmentation, at least in the short run. For example, the G20 nations all agreed to regulate trading, to require that trading move to regulated platforms. We were the first ones to do that. Nobody else has done it. To the extent that people can then trade outside of that, they are going to do so, but the point is that we are making very good progress in harmonizing these rules. Right now, we are very focused on issues such as clearinghouse regulation, where it is very important that we have cooperative supervision. I think we are making progress there. We are working on harmonizing the rules on margin for uncleared swaps. That is a very important rule. We have mandated clearing of standardized products, but a lot of swaps won't be cleared. They will continue to be bilateral transactions. So margin, meaning taking collateral from the counterparty, is very important to mitigating risk. Therefore, it is very important that we try to get the rules in the U.S., Europe, Asia, as similar as we can, and we are making good progress there.

So my answer is, we want to try to harmonize as much as possible, but people have to recognize this is a very unusual situation, it is going to take some time, and there are going to be some differences.

The CHAIRMAN. You either misquoted or quoted saying that with respect to this, that you needed some tweaking or fine-tuning. Is the issue broader than that, or is that to minimize how much harmonization needs to get done?

Mr. MASSAD. I am not sure—in which—are you referring to——

The CHAIRMAN. I am talking about fragmentation. You were quoted as saying——

Mr. MASSAD. Yes.

The CHAIRMAN.—fragmentation, that the rules related are—need tweaking and fine-tuning.

Mr. MASSAD. Well——

The CHAIRMAN. That is a bit of a——

Mr. MASSAD. Yes. There is certainly some fine-tuning and tweaking that we want to do. Again, it sort of depends—I think you have to look at it in different areas. In the case of clearinghouse regulation, for example, what we are really focused on is working out arrangements so that we have cooperative supervision. Meaning that, I didn't think the answer there was to say if the clearinghouse is in some other country, but they do a lot of U.S. business, let the other country regulate it and we will just wait to hear from them. We felt that, no, we have had a standard in this country where clearinghouses that do that kind of U.S. business have to register with us, have to meet our standards as well. We then try to work out arrangements so that our standards are harmonized with the foreign country's standards. That has worked very successfully.

The swaps market actually has grown to be a global market on that framework of dual registration, so I want to keep that in place and I want to work out cooperative supervision.

On something like trading, the solution may be a little bit different. So it really depends on what area we are talking about. In margin for uncleared swaps, for example, we are trying to get the

rules the same from the get-go. And again, we are going to make a lot of headway on that.

The CHAIRMAN. In the time left, talk to us about this, what appears to me to be a significant data fire hose coming at you with respect to the swaps and everything, and the comments made that the London Whale issue at JP Morgan that you—looking backwards at it, you couldn't find that whale within the data. I mean how will the Commission use all of that significant data coming at you to get a fact——

Mr. MASSAD. Yes.

The CHAIRMAN.—in order to, excuse me, warrant the cost of collecting?

Mr. MASSAD. Right. Very good question, Mr. Chairman.

First of all, we are in a much better position than we were in 2008 already. Right? In 2008, we had no visibility into this market. When AIG was teetering and the U.S. Government ended up having to commit $182 billion to prevent its collapse, we knew very little about its swap activities that were taking place out from its London office, and regulators had to rush over the weekend to even understand what they were. We are a long way from that, okay? We now have good information to the extent we are clearing swaps, we get daily reports on the positions of the intermediaries. We are building this—really it is like an infrastructure project, is the way to think about it. This is a massive effort to collect data on a market for which we previously had no data. It is a worldwide market. When you measure it by notional amount worldwide, it is $600 trillion, $700 trillion, I mean these are huge numbers. So there is a lot of input there, and we need to have the technological resources to do that. That is why we are asking for them in our budget.

There are a couple of things that have to happen. We have to harmonize standards. We are working very hard on that, both domestically and internationally. We are working to improve our rules where we can to make sure we are giving clear guidance and making clear what we want. If we don't get good data to begin with, we can't analyze it. And we are working to make sure market participants give us good data. But the key thing is really to have the resources to take this data in and then analyze it.

The CHAIRMAN. Okay, thank you, Mr. Chairman.

I now recognize the Ranking Member for 5 minutes.

Mr. PETERSON. Thank you, Mr. Chairman.

When we did Dodd-Frank, our part of the bill, one of the main things we did was set up the clearing situation. And I read now, in different places, *Financial Times* and so forth, people worrying about that we are concentrating the risk in these clearinghouses. And is that true and how are we—what are we doing to keep an eye on that so we don't just shift where the problem is——

Mr. MASSAD. Right.

Mr. PETERSON.—to another place?

Mr. MASSAD. It is an excellent question, Congressman. The way I think about it is this. It was a good decision to mandate clearing of standardized products because that does give us a much better way to monitor this risk, to mitigate the consequences of the default, to understand where that risk is. But it is not a panacea. It

doesn't eliminate the risk, so we have to be very vigilant in our oversight of clearinghouses.

Now, we have had a framework in place for years that I think is an excellent framework. Today, there is a lot of talk about, well, how exactly are we making sure clearinghouses are healthy and stable, and that is a very good public discussion to have. It is important to remember that these aren't banks. They are not the same model as banks. They are sort of institutions that neutralize the risk, and one of the keys is looking at the margin models to begin with as to what risk you take on.

Another key is the surveillance we do. We do daily surveillance of what is going on in these clearinghouses, looking at what the clearing members, what their exposures are, looking at the clearinghouse health. We receive a lot of financial information on a constant basis. And then there are issues pertaining to what we call the waterfall, making sure they have the resources necessary in the event there is a problem.

Another big concern today is cyber, and this is an area where I really want to step up our efforts. I mean the risk of a cyberattack to one of our clearinghouses, that is a very serious problem and we want to make sure they are ready.

So you are right, we need to be very focused on this. I think we have a good framework in place, but we need to continue to be very proactive.

Mr. PETERSON. I agree. Thank you.

The other question I have is, we have talked about this, you and I, one of the things that my constituents are upset about is that, in all the stuff that has gone on, nobody has gone to jail. And now, it has become almost like we fine—it isn't you—but somebody fines one of these big banks $9 billion, and it is just the cost of doing business. And I know that you don't have the, I will call it criminal authority, I guess the SEC doesn't either, so you guys have to send this stuff to the Justice Department, and either it is too complicated, they don't understand it, or they have other things to do, I am not sure what. But, people say, there is probably some case for giving you more money, but frankly, my view is if we don't start sending some of these people to jail—this commodity outfit in Iowa, whatever their name was, that went belly-up—my constituents, they are just looking at the big picture. They think we haven't done anything about this, they are making so much money that they can just take these fines, these big, huge fines, billions of dollars, and just keep on going. I don't know what we do about this, but——

Mr. MASSAD. Congressman, I couldn't agree with you more, and we take criminal enforcement of the law very, very seriously. I appointed a former prosecutor as head of our enforcement division for precisely that reason, a guy who was involved with the—participated in—with Justice in the Oklahoma City bombing trials and other trials.

We don't have the criminal authority ourselves. We have to work with our partners at the Justice Department as well as state law authorities. We are on the phone with them constantly on this issue.

Mr. PETERSON. Do you guys want the criminal authority?

Mr. MASSAD. Well, I am happy to talk about that. That would be quite a change in our regulatory model in the U.S., and I have a lot of respect for our law enforcement authorities, and they are trying to do the best job they can, but our folks know that in each and every case they should consider whether there are potential criminal violations because holding individuals accountable, putting people in jail, is one of the most important ways we can send a deterrent message.

We have had—in the last fiscal year alone, we have had 12 cases that have resulted in Federal criminal proceedings that grew out of our actions. There was a guy sentenced to 20 years for a commodity pool fraud. We had another guy sentenced to 16 years for a Ponzi scheme. We just had someone indicted for spoofing. So we are——

Mr. PETERSON. That stuff never seems to get into the media though, and what gets in is a $9 billion fine on JP Morgan and whatever else that they do, and——

Mr. MASSAD. Right.

Mr. PETERSON.—it frustrates people. Thank you. My time has expired. Thank you very much.

The CHAIRMAN. The gentleman's time has expired.

Mr. Neugebauer for 5 minutes.

Mr. NEUGEBAUER. Thanks, Mr. Chairman. And, Chairman Massad, thank you for being here today.

I was happy to hear yesterday that the Commission announced it will make changes to the margin rule after my TRIA bill was reauthorized and provision was put in there to help clarify the end-user. So thank you for that.

I think one of the things that you probably have been hearing from this Committee, and from Members of Congress, is that we want to make sure we protect these end-users and *bona fide* hedgers. These are people that are helping create jobs in the country.

Along those same lines, one of the other issues is the position limits, and recently the Commission closed comments on a proposed rule on the position limits, further limiting the number of contracts that traders can hold.

I have heard from some of my agricultural folks that the—particularly from the cotton industry that—and which is vitally important to my district, by the way—that the Commission's proposed rules do not adequately define what is *bona fide hedging* and what does it consider commercial market practices. And as a result of that, they think there is going to be some confusion about, and some of these commercial entities that are working with producers that they could be limiting the ability of them to help manage those risks. Can you kind of discuss what the Commission is doing to make sure that we make that world big enough where our producers can use these marketing entities to help market their products?

Mr. MASSAD. Certainly, Congressman. It is an excellent question. As you know, we have had position limits in place for agricultural commodities for many years. They work very well to limit excessive speculation, so they are an important tool in our toolkit, and Congress has mandated that we extend those to other commodities, but we must do that in a way that still allows commercial participants

to engage in *bona fide* hedging. Now, that does get complicated as to exactly how you define that. We have taken a lot of input on this issue, had a lot of comments. I want to make sure we listen to market participants on this. Trading strategies are often very complex. At the same time, we need to write a rule that works here.

So we are taking our time to try to get this right, and the staff is spending a lot of time sort of thinking about how we can craft these rules so that they work to meet the goal of Congress, which is to limit excessive speculation, at the same time as allow for *bona fide* hedging.

Mr. NEUGEBAUER. In general, just on the position limits, certainly, we want to have a situation where the *bona fide* hedgers have the ability to do that, but the other thing about position limits is we want to make sure that we provide enough liquidity in the market so that there is space on both sides of that trade.

Mr. MASSAD. Certainly. We are not trying to eliminate speculators. Speculators are part of the market. What we are trying to do is limit excessive speculation, so it is important that we get the levels right.

Mr. NEUGEBAUER. I was glad to hear you talk about cyber, and as the Chair of Financial Institutions and Consumer Credit Subcommittee of the Financial Services Committee, that is kind of one of our priorities, beginning to look into that, for two reasons. One, as you mentioned, to protect the overall infrastructure and the damage that can happen if we have an attack on some of these major entities that help clear all of our financial transactions on a daily basis, but also another piece of that is data security of the individuals, the amount of data that—personal information and so forth, and proprietary information that many of these entities hold.

Can you elaborate on things that your agency thinks that maybe needs to be happening, both from a government standpoint, but more importantly, it needs to also have a major private market participation in that as well.

Mr. MASSAD. Absolutely, Congressman. And you are absolutely right, it requires the private sector really to do a lot of the heavy lifting here.

As an agency, we have taken a lot of steps. We have written in these kinds of issues into our core principles that Congress brought enough authority into the core principles to focus on cyber. We are focusing on this issue in our examinations, trying to make sure that the Board of Directors of these institutions is taking this issue seriously, that they have policies in place, that they are following those policies, that they are responding adequately when there is an issue on identification of a weakness, but we don't do independent testing. We don't have the budget for that. I mean there are firms—I had a group of banks that I met with the other day and I asked them how much they were spending on cyber relative to our budget, told them what our budget was, and all of them said we are spending more than that just on cyber alone. One of them said, "We have a cyber operations budget and we have a cyber change budget, and both of them are multiples of your budget."

That is the scale of the challenge here. One of the things we would like to do with more resources is have the ability to increase our exams to make sure they are doing enough. One of the things

I want to look at is simply standards that make sure the private sector is engaging in adequate testing on their own. We are not going to do the testing, but show me that you have done the testing. Whether it is through a third party or your own folks, and show me that you then responded to the test. That is the proper role for an agency like ours in this kind of situation.

Mr. NEUGEBAUER. Thank you.

The CHAIRMAN. Mr. Scott for 5 minutes.

Mr. DAVID SCOTT of Georgia. Yes, thank you very much, Mr. Chairman.

Before I get to my questions, there are two points I really want to emphasize. The first one is that I agree wholeheartedly with Ranking Member Peterson, and I would hope that the CFTC, we are your Committee of jurisdiction, that you could report back to us with suggestions and recommendations of how we can strengthen your hand the best way so that we can put some of these crooks in jail. That is the most foremost way we can restore the confidence of the American people if they see them paying, otherwise they look at this as the cost of doing business. It is almost like the Mob. They go murder somebody, they look at that as the cost of doing business. I am not equating you with the Mob, I am just simply saying that this is where we are. But we have to gain the confidence of the people back.

Now, the other point I want to mention outside of that is your budget, and I just want to make an appeal to the Agriculture Committee. We are your Committee of jurisdiction, and I would hope that we would be your champions. You need that full $322 million that is in that budget. This Committee, I have served on this Committee for 13 years. I have been on this Subcommittee for 13 years under this jurisdiction. I also serve on Financial Services. I helped write the Dodd-Frank bill, and especially that Title VII in which you are coming under. Your workload is tremendous. The technology is changing. You have had burnout from your staff. Not giving you that $322 million is like putting you on the battlefield with your hands tied behind your back, or cutting your legs out from under you and then criticizing you for being crippled. And this we do not need to do, so I hope that this Committee will be a champion in this budget to give you that $322 million.

Now, let me ask you this question first of all, if I may. You are right now engaged in the very important negotiations between the United States and Europe on the regulatory harmonization. I wonder if you could give us an update real quick on that, because I have a couple of other questions, and how these agreements on these rules may be enforced once you do get the agreement.

Mr. MASSAD. Happy to do that, Congressman.

I think it helpful maybe just to take it area by area. With clearinghouse regulation, I talked a little bit about that earlier, what we are working on is just really formalizing arrangements that we have kind of followed on a practical basis for many years, meaning that with European clearinghouses, the bigger ones that do a lot of U.S. business, they have been registered with us, and we have worked with regulators in Europe on cooperative supervision arrangements, and we are working that out as part of the arrange-

ments whereby Europe, under their new rules, have a new standard whereby they have to recognize our clearinghouses.

Mr. DAVID SCOTT of Georgia. Yes.

Mr. MASSAD. So we are looking at just formalizing some of the harmonization of our requirements. That is kind of what is going on in clearing regulation.

In trading, as I mentioned, we implemented our rules. Most other jurisdictions haven't implemented rules yet. Europe's won't come on until 2017——

Mr. DAVID SCOTT of Georgia. Yes.

Mr. MASSAD.—so that piece is maybe on a slightly longer track, but in the meantime, we are going to be looking at our rules to see what we can do to enhance trading on SEFs.

Mr. DAVID SCOTT of Georgia. Okay, Mr. Chairman——

Mr. MASSAD. Yes.

Mr. DAVID SCOTT of Georgia.—I appreciate that. The Chairman told me I have to be quick here, so——

Mr. MASSAD. Okay.

Mr. DAVID SCOTT of Georgia.—this other question is on cross-border.

Mr. MASSAD. Yes.

Mr. DAVID SCOTT of Georgia. Now, the CFTC has extended its no action relief until September 30 for non-U.S. swap dealers for certain transaction level requirements, and specifically, where a non-U.S. swap dealer that is located in the United States arranges or negotiates or executes a transaction. As a result of that, many questions have been raised on where the CFTC should draw the line, and determining which of its market participation will be subject to the cross-border oversight of the CFTC. Now, this no action relief, to me, is a good thing. It gives you time, you get information, you get informed to do the job, but my point is does the Commission anticipate formally revisiting this cross-border regime. And, here is the kicker, does the CFTC's extraterritorial approach create incentives for our United States businesses to move these jobs outside the United States in order to avoid this regulatory burden?

Mr. MASSAD. Congressman, we obviously don't want to cause businesses to go outside of our country, but ultimately what is needed here is the construction of this global framework for regulation and harmonization of that global framework, and it is going to take some time. As I noted, a lot of the European rules, and particularly in Asia, those rules aren't even online yet.

In the meantime though, we are trying to look at these issues and trying to think about the best way to address them. To give you an example, in the area of the margin for uncleared swaps rule, we said—we didn't take a position yet on how that rule will apply cross-border. Instead, we laid out a couple of alternatives and we invited comments on that from the public, and we are evaluating those comments now because we could do something similar to what the bank regulators are proposing, we could do something similar to our past guidance, or even a third variation. So we are giving it a lot of thought. These are complex issues.

I will say just one thing that I have said previously, I do think that when people are active in our country, when they are doing

things in our country, that has been a traditional basis of jurisdiction.

Mr. DAVID SCOTT of Georgia. Yes.

Mr. MASSAD. Then you have to think about, well, what does that jurisdiction then—what should it lead to? That is one issue. Second issue is Congress has told us that we need to think about the risk if that off-shore activity is imported into the U.S. and causes a problem. We saw that with AIG. All that activity was in London and came back to really harm this country.

Mr. DAVID SCOTT of Georgia. Well, I think——

Mr. MASSAD. So——

Mr. DAVID SCOTT of Georgia. Okay. And my time is well over. Thank you, Mr. Chairman. I appreciate that.

Mr. MASSAD. Thank you.

Mr. DAVID SCOTT of Georgia. And I will ask about confidentiality and indemnification——

Mr. MASSAD. Okay.

Mr. DAVID SCOTT of Georgia.—on the side. Thank you, Mr. Chairman, for your generosity.

The CHAIRMAN. The gentleman's time has expired.

The former Chairman of the Agriculture Committee, Mr. Lucas, for 5 minutes.

Mr. LUCAS. Thank you, Mr. Chairman.

And, Chairman Massad, to follow up on Chairman Conaway's points and Mr. Scott's points, the issues dealing with harmonizing rules across borders, the letters dealing with the lack of action, all those things are really challenges to the industry, trying to make sure that we have an effective process, and it is causing issues, as I understand it, in how business is conducted, in fragmentation, loss of equity. But you mentioned to both of my colleagues that the Commission was looking at these issues as they unfold in Europe, and as you address those. Tell me about the process when we go from simply the letters over to real regulatory framework. Are we going to use a formalized process, will there be public notice, will there be input opportunities?

Mr. MASSAD. Congressman, I am very committed to the rulemaking process. I believe that the public comment is very helpful to us. As I said, we have that process going on right now with the margin for uncleared swaps were, again, we laid out options on how that rule could apply cross-border, and we invited comments.

Mr. LUCAS. Can you give us more of a timeline as to where, based on your observations of the Europeans, the action within the Commission, a timeline, a feel for what we can expect in the way of this being resolved?

Mr. MASSAD. It is going to take some time, is what I would say. This is a very complicated area. There are a lot of aspects to it. A lot of the other jurisdictions haven't even developed their rules yet. So this is not going to all get settled overnight, but we are making progress and the markets are continuing to operate. We are doing the best we can with the resources we have and with the situation, but——

Mr. LUCAS. But you would agree——

Mr. MASSAD. Yes.

Mr. LUCAS.—the fragmentation issues, the loss of liquidity, those are real issues out there.

Mr. MASSAD. Well, we certainly want to try to minimize fragmentation and loss of liquidity. At the same time, we have to implement our laws, they have to implement their laws. As I said before, nations are going to have differences in their laws. This is not unusual. Look at any other area of financial regulation. There are big differences in the laws. There are big differences as to how you sell securities in this country *versus* how you do it in other countries.

Now, people have learned how to operate with that, part of this is we are starting from this very unusual situation in which there is a global market that was never regulated. So people have a presumption that, well, all the rules should automatically be the same. Well, unless you want to invest—give the G20 the power to write its own laws, that is not going to happen overnight. I mean, again, we are trying to harmonize, but it will take time.

Mr. LUCAS. One last question, Mr. Chairman. I understand Chairman Conaway and Ranking Member Peterson sent you a letter recently noting that the Prudential Regulators are requiring supplemental leverage ratio and an inclusion of margin held by an FCM in the ratio on leverable funds. In the letter, they caution regulators requiring financial institutions to hold additional capital to cover these nonexistent leverage might drive up the cost of providing services through such an affiliate. Do you share what I believe to be legitimate concerns of the senior Members of the Committee?

Mr. MASSAD. I do share those concerns, Congressman. Thank you for the question. I am very concerned that this could have a significant negative effect on clearing, and we have mandated clearing as a way to reduce and monitor and mitigate risk, and that was a good decision. I have spoken recently with Comptroller Curry and Chairman Gruenberg at the FDIC, as well as the Fed, about this issue. We have agreed that our staffs would get together and discuss it further.

I appreciate what they are trying to do with this rule. They are trying to create a leverage ratio—they are creating a leverage ratio that isn't risk-based, if you will, that doesn't turn on making risk measurements of particular activities, but when it comes to margin that is legally segregated, that is not available to a bank for any other purpose that should be treated differently in my view. So we will talk with him about it.

Mr. LUCAS. Thank you, Mr. Chairman. Thank you, Mr. Chairman.

The CHAIRMAN. The gentleman yields back.

The gentleman from Massachusetts, 5 minutes. That gentleman from Massachusetts.

Mr. MCGOVERN. Okay, yes. I am the only one.

The CHAIRMAN. I know.

Mr. MCGOVERN. Yes.

The CHAIRMAN. Five minutes.

Mr. MCGOVERN. Thank you, Mr. Chairman. And thank you, Chairman Massad, for being here.

And let me begin by saying I agree with Mr. Scott and with Mr. Peterson when I repeat what they said, that someone ought to go to jail. I think people are puzzled why that hasn't been the case. And I also agree with Mr. Scott in supporting the Administration's budget request. Your agency is charged with policing the nation's financial sector, and trying to prevent another economic crisis, and it is a big job, and the challenges of oversight get more and more complicated with every passing year, and the responsibilities that your agency has are enormous. We have to give you the funds so that you can do your job and your agency can do your job.

Having said that, Mr. Chairman, I would like to ask you about CFTC reauthorization efforts. I think we should be careful as we work on this legislation, taking into account the work CFTC has been doing since we last considered a reauthorization bill in this Committee last spring. For example, as was mentioned before, I know the Commission has been working diligently on the cross-border issue, and we wouldn't want to hamstring its efforts and potentially delay critical progress. I also appreciate that CFTC has taken into account and acted on many of the end-user-related provisions that were included in the Committee's reauthorization bill.

So as this Committee looks toward CFTC reauthorization, we would appreciate any advice that you might want to provide us.

Mr. MASSAD. Thank you, Congressman, for the question, and thank you for your support of our budget and also your comments on enforcement. I obviously agree with those.

I think you made the point well that, as I understand it, there have been a lot of changes since the legislation was adopted by the House last year. I think in that legislation there were a number of provisions related to commercial end-users. We have acted on a lot of those things, and I was sympathetic to the goals of some of those provisions in the legislation, but we felt it was better to address those things through regulation, so we have done so.

I have some concerns on some of the other things that were raised in terms of process changes and process of the Commission. I think some of those things could, frankly, make it a lot harder for us to do our job. So I am certainly happy to work with the Committee on this and consider any approaches people have, but generally, I guess, to me, the real issue is for us to do our job, we need the resources. It always comes back to the resources, not so much changes in the law.

Mr. MCGOVERN. No, I appreciate that, and I don't want to take up any more time here but I would, again, urge all my colleagues to understand that, given the enormity of what you are being asked to do and your agency is being asked to do, that we need to make sure that the funding is there. And sometimes it is easier to criticize what you haven't done, but there needs to be an understanding that in order to do all the stuff, you need the resources and the staff in order to do the kind of job we all expect.

So I thank you very much, and I yield back my time.

The CHAIRMAN. The gentleman yields back his time.

Mr. Thompson for 5 minutes.

Mr. THOMPSON. Chairman, thank you so much for being here, and thanks for the wealth of information and the wealth of hospitality that your staff——

Mr. MASSAD. Right.

Mr. THOMPSON.—showed Members of this Committee in our visit last week in Chicago.

I want to follow up on what Mr. McGovern was speaking about in terms of resources. One of the things that Congress can do to help free up resources and agencies is reduce the mandates or responsibilities that, quite frankly, are maybe no longer necessary or productive. And can you think of any obligations, reports, responsibilities, or others, that Congress has mandated over the years at your agency that have outlived their usefulness in terms of helping you fulfill your mission that we should consider eliminating during our reauthorization process?

Mr. MASSAD. Thank you for the question, Congressman. I certainly share the concern.

Let me come back to you on that. Let me take a look. You know, we are conducting a regulatory review to see if there are regulations on our books that have outlived their usefulness. It will take us some time to do that, but I certainly support, if we identify those things, moving to amend them or eliminate them. So if you would allow me to do so, let me kind of give that a little bit more thought and——

Mr. THOMPSON. Absolutely.

Mr. MASSAD.—come back to you.

Mr. THOMPSON. I am sure that everyone on this Committee would welcome, as you complete your process and as we prepare, if we can have that information, obviously, to do the best possible job in reauthorization——

Mr. MASSAD. Yes.

Mr. THOMPSON.—to equip you, going forward.

The reporting rules were the first set of rules to be finalized, and much has been made of the Commission's difficulty consolidating and analyzing trade data. Now last summer, the Commission solicited comment on potential improvements to the reporting rules, and I assume that many of the comments identified problems and suggested solutions. What does the Commission plan to do with the information received through this process, and when will a plan be implemented?

Mr. MASSAD. Thank you for the question. We are thinking about that, and I am hopeful that we will be taking some steps, going forward. We are already taking some steps as a practical matter in terms of focusing on harmonizing the standards. We are working very hard, both domestically and internationally, to do that. We realize that is really a key—and we are taking a leadership role in that effort internationally, but we are looking at whether there are changes to our own rules that might be needed here. We are still completing that work.

One of the things I have also asked our folks to do is simply look at all the data we are taking in, and making sure that we have our arms around that and understand all the data we are taking in, how is it coming into us, how are we using it, are different divisions getting data that may be requested in one area but might be useful in another?

Once again, this comes back to resources. We get 300 million records of data each day. The types of data we are getting have

dramatically increased about six-fold. Our data storage needs are growing by about 35 percent a year. A lot of this is records of trading now that there is more and more electronic trading, it is very sophisticated stuff. That is why we are asking in our budget for a huge IT investment because we need to grow our capabilities.

Mr. THOMPSON. And I recognize, based on some questions from my colleagues, grow those IT technologies with higher cyber concerns as well.

Mr. MASSAD. Yes.

Mr. THOMPSON. We had an economist in here last year and there was a question posed, and I wanted to kind of pose the question to you. In your opinion, is an insurance product for futures customers a viable option? Why or why not?

Mr. MASSAD. Sorry, I am not quite—an insurance product?

Mr. THOMPSON. Product for futures customers.

Mr. MASSAD. I guess I would need to know a little bit more. Are you talking about an insurance fund?

Mr. THOMPSON. Some of a risk——

Mr. MASSAD. Are you talking about like a SIPC-type arrangement?

Mr. THOMPSON. Commissioner Chilton had previously weighed in on this.

Mr. MASSAD. Yes, I think——

Mr. THOMPSON. Kind of a risk management tool, yes.

Mr. MASSAD. I think the reference is to something similar to what we have in the securities world. SIPC, the Securities Investment Protection Corporation. And actually, one of our Commissioners is former chair of that. It is something I would be happy to look at. I don't have a view at this time, but I would be happy to get back to you on that.

Mr. THOMPSON. Okay, thank you, Chairman.

The CHAIRMAN. The gentleman's time has expired.

Ms. Plaskett for 5 minutes.

Ms. PLASKETT. Yes, thank you, Mr. Chairman, and Ranking Member.

Thank you so much for coming and speaking before us. And surprisingly, in the Virgin Islands we have quite a number of hedge funds that are there, as well as asset managers, so we are really, as a territory, we are very happy for Dodd-Frank as well as the work that you do that regulates a lot of these because we don't want bad actors in our jurisdiction. I echo the refrain of so many of my colleagues here that we do believe that sufficient appropriation is necessary for you to be able to continue doing the work that you are doing. But because we have so many of these hedge funds, I wanted to ask you about consolidation, and the consolidation and the growth of the hedge fund and asset managers in this area, and what are you doing, or have you thought about ways to incentivize others to come into this market as well? These are really dominant players in a lot of ways, and are you concerned about them as opposed to more regulated entities being involved in this area, and how are you trying to bring greater participation in the markets for these—for other groups?

Mr. MASSAD. Congresswoman, thank you for the question. I think there are a number of aspects to that.

Let me mention one, though, that we have been thinking about. There are a lot of funds today, hedge funds and otherwise, that are engaged in a lot of trading in our markets. It is electronic trading. It is often high frequency trading. They are doing it for themselves, not for customers, so they are actually not—they don't really fall into a category in terms of someone that we would normally say, well, you have to register——

Ms. PLASKETT. Yes.

Mr. MASSAD.—with us. And yet, these firms, they are very active in the treasuries market, in the equities market. Again, this is high frequency trading, a lot of messages all the time.

I think one of the things we need to think about is, well, what about those firms, what about these proprietary trading firms. I have even had one or two tell me you guys really probably should be regulating us more because they kind of want a framework too. So, to your question, that is an example of something that we are thinking——

Ms. PLASKETT. And does that come along with your potential rulemaking that you think you may be coming out with?

Mr. MASSAD. Well, again, this is kind of on the list of priorities, I have to tell you, frankly, this isn't, we have so many things on our plate——

Ms. PLASKETT. Yes.

Mr. MASSAD.—that you have reminded me of some conversations I have had but we are not really—this is probably—well, it is not something we are going to be acting on any time soon.

Ms. PLASKETT. Yes.

Mr. MASSAD. I think it is—though it is a question. It really goes to how our markets have changed.

Ms. PLASKETT. Yes.

Mr. MASSAD. CME closed the trading pits the other day but, the trading pits are no longer really relevant. But more and more of the activity is electronic. There is more high frequency trading. Again, that is why we have to have very sophisticated technologies to keep up with it. But it really goes to the fact that as regulators, we have to work hard to keep up with how these markets are changing.

Ms. PLASKETT. So my colleague reminded me, and I wanted to know if this was at all a priority or concern of yours. It had also been a discussion in oversight regarding cyber threats.

Mr. MASSAD. Yes.

Ms. PLASKETT. Is that something that is——

Mr. MASSAD. That is——

Ms. PLASKETT.—has a priority or is it——

Mr. MASSAD. Yes.

Ms. PLASKETT.—high, low?

Mr. MASSAD. That is certainly a priority for us. We are very focused on that issue. We are highlighting it in our examinations, particularly of critical infrastructure like clearinghouses. We want to make sure that these institutions are taking this as seriously as they need to be, all the way up to the top.

Ms. PLASKETT. And should that be a concern of ours and appropriations——

Mr. MASSAD. Absolutely.

Ms. PLASKETT.—for how much——

Mr. MASSAD. Absolutely, it should be.

Ms. PLASKETT.—money you are receiving to be able to——

Mr. MASSAD. This is——

Ms. PLASKETT.—do with that?

Mr. MASSAD. This is one of the biggest threats to financial stability today, so it very much should be.

Ms. PLASKETT. Okay, thank you.

Mr. MASSAD. Thank you.

Ms. PLASKETT. I yield the balance of my time.

The CHAIRMAN. The gentlelady yields back.

Austin Scott, who is the Subcommittee Chairman on the relevant Subcommittee for today's hearing, Mr. Scott, 5 minutes.

Mr. AUSTIN SCOTT of Georgia. Thank you, Mr. Chairman. Thank you, Mr. Chairman. And, Mr. Chairman, I have an opening statement for the record that I would like to submit.

[The prepared statement of Mr. Austin Scott of Georgia is located on p. 5.]

Mr. AUSTIN SCOTT of Georgia. And thank the Commissioner for being here, and I would like to follow up a little bit on what my colleague, Mr. Neugebauer, discussed with you on the *bona fide* exemptions and the various rules with regard to position limits. And it seems to me that the *bona fide* exemptions rule that was in place was working, and the CFTC has put forward different proposals to change that. Where does the desire to change that come from if the prior rule was working?

Mr. MASSAD. Congressman, we are just trying to implement the Congressional mandate here that we now have Commission-adopted position limits in a number of categories, which also provide for *bona fide* hedging, and again, we are trying to write a rule that does reflect what Congress has directed us to do in that language. This is a—it is a complex area——

Mr. AUSTIN SCOTT of Georgia. Yes.

Mr. MASSAD.—that is why we are taking our time to try to get it right.

Mr. AUSTIN SCOTT of Georgia. Certainly our goal is to balance access with integrity, and what we don't want to do is to create restrictions to those who truly are hedging their risk in the markets. And so as you revisit this, certainly, we will be happy to work with you further on that, and if you feel that there is something that is Congressionally mandated that maybe we could phrase better, we could certainly do that as we go through the reauthorization, and look forward to working with you on that.

One other—just kind of a quick question because of uncertainty in the date. The *de minimis* level for swap dealers, the drop from $8 billion to $3 billion, there is some confusion with regard to the date that that would actually happen. Do you know the date that would happen and whether there would——

Mr. MASSAD. Yes, sir. Yes, it is—under the rule, it would change in 2017.

Mr. AUSTIN SCOTT of Georgia. Calendar year 2017?

Mr. MASSAD. Yes.

Mr. AUSTIN SCOTT of Georgia. Okay, and do you expect public comment before that happens? Is it something that you think needs to be addressed in the reauthorization as we go forward?

Mr. MASSAD. I don't know that it needs to be addressed in the reauthorization. What I would say is this. I think, as with any issue under our jurisdiction, it is important that our rules and any decisions we make about the rules be based on good data, and be based on good analysis. And we are required to do a study of this issue. We are going to do that study. I know all the Commissioners will want to look at that and think about that as they think about this issue. So I can assure you that any action we take will be based on good analysis and data.

Mr. AUSTIN SCOTT of Georgia. Mr. Commissioner, let me just say this. I look forward to working with you and your staff and the other Members of the Committee on the reauthorization over the next few weeks. It probably will be moved sooner rather than later, the way the House calendar seems to shake out. And as I said, our goal is to find that balance with access and integrity in the markets, and I certainly look forward to having you as a partner as we push forward with that.

Mr. MASSAD. Well, thank you, Congressman. I look forward to working with you also.

Mr. AUSTIN SCOTT of Georgia. Thank you.

Mr. Chairman, I yield back the remainder of my time.

The CHAIRMAN. The gentleman yields back.

Ms. DelBene for 5 minutes.

Ms. DELBENE. Thank you, Mr. Chairman. And thank you for being here today and for your testimony.

I offered an amendment which passed unanimously in the—in last year's House-passed CFTC reauthorization bill, and it said that a court should uphold the CFTC's assessment of a cost-benefit analysis for a rule, barring some sort of abuse of discretion. And I wanted to know if you could speak about the usefulness of this language in conjunction with including a cost-benefit analysis in a reauthorization bill as we look at that, going forward.

Mr. MASSAD. Thank you, Congresswoman. That is the general standard that applies to our actions, so it is entirely appropriate that that be the standard in the cost-benefit area also. We have a requirement today that we do cost-benefit analyses in connection with any rulemaking. I think we do very robust analyses. We look at a variety of factors, and it is important to not try to get too specific or be careful about how you craft the language in this area because you can easily create unintended consequences that, frankly, make it harder—much harder for us to do our job even in terms of fine-tuning a rule.

Ms. DELBENE. Yes.

Mr. MASSAD. So——

Ms. DELBENE. Okay, thank you. We talked a lot about funding and the importance of funding, and you have talked about some of your priorities like cyber, *et cetera.* How helpful would it be to the agency's mission, to the rulemaking process, if we had authorization levels that were also included in a reauthorization bill? Does that help you out or not?

Mr. MASSAD. I am sorry. Authorization levels in——

Ms. DELBENE. Right, for a particular——

Mr. MASSAD.—terms of our funding?

Ms. DELBENE.—for particular areas.

Mr. MASSAD. You mean sort of subcategories within our budget?

Ms. DELBENE. Yes.

Mr. MASSAD. I guess I would rather that—I mean if I understand it—maybe I need to talk with you further about it to make sure I understand. I would like to see our budget grow. And, we have tried to lay out how we would spend that. We have laid it out very carefully, in terms of our commitment to things like surveillance and enforcement, and improving our data and technology capabilities. So I guess I would want to understand how the authorization levels would play into that and how they would help us meet those objectives——

Ms. DELBENE. Yes.

Mr. MASSAD.—but my main concern is to try to get that budget up.

Ms. DELBENE. Yes. Right. Thank you very much for your time today again.

And, Mr. Chairman, I yield back.

The CHAIRMAN. The gentlelady yields back.

The gentleman from California, Mr. LaMalfa, for 5 minutes.

Mr. LAMALFA. Thank you, Mr. Chairman.

Chairman Massad, welcome. Good to see you, and I appreciate your good work in your tenure so far.

As you know, with Dodd-Frank's passage, publicly-owned utilities had a negative impact from that as an unintended consequence, which put onerous and expensive reporting requirements on these utilities and the counterparties which they were engaged in their purchase of futures and swaps. So these requirements were so costly that many swap and futures sellers simply stopped working with publicly-owned utilities, putting them at a disadvantage to privately-owned and people that have no choice in their utilities were seeing that their access to energy futures were likely to have a lot of choices taken away from them, ultimately with less choices, higher cost to the ratepayers. So beginning of the 113th, I sponsored a bill, H.R. 1038, to place public utilities under the same rules as private utilities, which did pass in the House unanimously. CFTC initially released a no-action letter to address the issue. The no-action letter failed to reassure the market and, therefore, the CFTC then followed up with a revised rule similar to the bill H.R. 1038. So in the months since that rule was issued, I wonder how have you viewed—have you seen that the swap and futures sellers have returned to the public utility market?

Mr. MASSAD. Thank you for the question, Congressman. Yes, we did amend our rules to address this problem. I would have to check with our staff in terms of what we are hearing these days. I am not hearing any loud complaints so I am thinking that the rule—the rule change is helping and addressing the need, but I would be happy to get back to you.

Mr. LAMALFA. Yes, from your perspective. The information that we are receiving from our source is that it has helped tremendously——

Mr. MASSAD. Right.

Mr. LAMALFA.—to get them back in the market. Do you think the rule change has increased the systemic risk or allowed the large swap dealers intended to be regulated by the act to avoid oversight? Do you think—have you seen any negative effect of that?

Mr. MASSAD. Well, we crafted a rule change that appropriately balances our obligation to try to minimize systemic risk and bring the swaps market out of the shadows, but at the same time making sure that the companies that need to have access to these markets, to hedge risk, can do so and can do so efficiently. I think our rule change properly balances those issues.

Mr. LAMALFA. I believe so too because we haven't seen that anybody has been abusing the process or avoiding the oversight that we all believe is necessary and right. So do you believe that going ahead and codifying this legislatively would be a useful step to ensure into the distant future that the rules cannot be changed again in a later regime perhaps? Do you think that would be a useful step?

Mr. MASSAD. Well, Congressman, markets change frequently, all the time, in fact, and as a general matter, that is why we have regulatory agencies and a legal framework given to those regulatory agencies, and then the regulatory agencies implement rules and revise those rules as needed. We may find a need that we need to go back and fine tune that rule or another rule, and I wouldn't want to see us try to codify what really should be done in regulations into law because then it might make it that much harder for us to be responsive to the market.

Mr. LAMALFA. I certainly understand that. Sometimes people on this side of the dais get a little spooked by the rulemaking that goes on in some areas of Federal Government, so we have to rein that in sometimes, but so far, we are pretty happy with the direction you have been taking things, so——

Mr. MASSAD. Thank you.

Mr. LAMALFA.—thank you for that, and I look forward to working with you.

Mr. Chairman, I yield back.

The CHAIRMAN. The gentleman yields back.

Mr. Ashford for 5 minutes.

Mr. ASHFORD. Well, thank you. I don't really have any questions. I just want to, if I could, just make a brief comment. I am new, you probably didn't know that, but I am new, I am from Nebraska and we are all, most of us, farmers or came from farms. And I grew up in a place where you would trade these commodities in a very different way than they are being traded now.

I just want to comment that this is a—an amazing volume of work that has been done, and I—and the work by the Committee and the Congress and your Commission is absolutely incredible. And the fact that——

Mr. MASSAD. Thank you.

Mr. ASHFORD.—we are talking about tweaking or making things better on a baseline is really very productive. And obviously, cybersecurity is very important. The trade could be—and I guess that is my question. If we had an attack of some kind on an exchange or on one of these sort of places that make these trades,

how do you see—I mean in a general sense—what sort of risks to a farmer in Nebraska would that potentially have?

Mr. MASSAD. Well, Congressman, thank you for the question. I think we are trying to minimize those risks and, obviously, the industry participants are trying to minimize those risks. You know, we all simply need to open a newspaper to see what kinds of consequences these attacks can have. We have seen it with the loss of protection for confidential information, for personal information, but, when it comes to critical infrastructure, what you want to avoid is any kind of outage or stoppage. There have been technological glitches that weren't cyberattacks that have sometimes caused an interruption in trading. We want to avoid those too.

Mr. ASHFORD. Which could, in fact, have an impact on the individual——

Mr. MASSAD. Absolutely.

Mr. ASHFORD.—farmer.

Mr. MASSAD. If someone can't trade when they want to trade, that could hurt their ability to manage their own commercial risk.

Mr. ASHFORD. Right.

Mr. MASSAD. So again, that is why these issues are so important.

Mr. ASHFORD. And I look forward to talking more with you and learning more about it, but I just—I will go back and tell my friends in Nebraska that we are well served from——

Mr. MASSAD. Well, thank you.

Mr. ASHFORD.—what I can tell in these matters.

Mr. MASSAD. Thank you very much.

Mr. ASHFORD. I think you pretty much have it right.

The CHAIRMAN. The gentleman——

Mr. ASHFORD. I yield back.

The CHAIRMAN. The gentleman yields back.

Mr. Crawford for 5 minutes.

Mr. CRAWFORD. Thank you, Mr. Chairman. And, Mr. Chairman, thank you for being here.

I understand the confidentiality and indemnification requirements in Section 728 and 763 of Dodd-Frank were incorporated into the bill during the conference committee without any formal hearings on the topic, and little time to fully get the language or consider the unintended consequences. Can you walk us through how those provisions have impacted the CFTC's working relationships with foreign regulators, and how those provisions might be negatively impacting regulators' ability to work together to identify and mitigate systemic risk on a global basis?

Mr. MASSAD. Thank you, Congressman. It is an excellent question.

The provision you are referring to do provide that, as a general matter, certain types of data can't be shared with foreign regulators unless there is an indemnity that runs to us, as well as in some cases the swap data repository that is collecting the information. And the limitation that causes is we are, again, trying to build a global regulatory structure here where regulators can work together to monitor the risks in this market. It is something that people have suggested we should change, and that would be beneficial.

Having said that, we are still very busy in—there is still plenty for us to do in terms of building this regulatory framework. Some other jurisdictions have their own issues in terms of privacy and their ability to share, which need to be addressed because sometimes they face restraints also on their ability to share data. So we are working through this. I am happy to talk to you further about it though.

Mr. CRAWFORD. Great. And I have one more question. The Swap Data Repository and Clearinghouse Indemnification Correction Act passed the House last Congress and had 420 votes. If this legislation becomes law, how would regulators' ability to monitor, detect and mitigate global system risk be improved?

Mr. MASSAD. Congressman, if you would, I want to maybe just make sure I am thinking of the right legislation, but let me just answer it more generally. If the legislation did remove this provision, this indemnification requirement, then it would facilitate the sharing of information——

Mr. CRAWFORD. Right. Right.

Mr. MASSAD.—across borders. Again, that would just make it easier for regulators to work together.

Swap activity is, as we all know, global. Risks abroad can come back and hurt our country, and that is why working with our fellow regulators is very important, that is why we are putting a premium on doing that.

Mr. CRAWFORD. Excellent. Thank you.

I yield back.

The CHAIRMAN. The gentleman yields back.

Ms. Lujan Grisham for 5 minutes.

Ms. LUJAN GRISHAM. Thank you, Mr. Chairman. And thank you, Chairman Massad, for being here today.

The State of New Mexico receives about $2 billion in direct revenue each year from energy taxes and royalties, and the oil and gas revenue accounts for approximately 30 percent of New Mexico's general fund. And this allows us to invest, of course, in infrastructure, public schools, and in other—particularly important to the state, but in my district as well, public welfare programs. And I am concerned with the oil prices which have dropped more than 50 percent since last June, and they are jeopardizing our ability to invest in education and any of our economic development programs.

A dollar reduction in the price of oil reduces New Mexico's state revenue from this direct source by $7.5 million, and in fact, as I understand it, our new revenue projections for this year have been cut by over 70 percent since the summer, from $286 million to $83 million. So it is clear that the price drop has been influenced, to me at least, by much more than supply and demand, given that drastic a range. And just this Monday, the Bank for International Settlements, an international financial organization, published an initial report that found that the falling price of oil could have been caused by the energy sector's high debt levels, and swap dealers' reluctance to offer hedges to oil producers during periods of high volatility.

Now, I am aware that the CFTC is currently looking at issuing new rules to limit speculation for certain markets such as energy, grain and metals. Can you talk to me a little bit about the exam-

ination of this, and what you have conducted regarding the recent—what kind of investigation during the recent oil drop?

Mr. MASSAD. Certainly, Congresswoman. It is an excellent question.

The fall in oil prices has been dramatic, as you have noted, and so in the ordinary course of our surveillance, we are looking at this very closely, we have done a lot of work on it, and I would be happy to maybe have our staff come up and talk to you more about kind of what we have seen in the market. We are very focused on looking at whether we see manipulative behavior.

I would just say that the factors affecting supply and demand, of course, have been very dramatic. The shale revolution, as you know, the fact that we in this country now produce 9.2 million barrels of oil a day, more than our net imports—the fact that oil stocks are higher than they have ever been. I was in Asia a couple of weeks ago and people were pointing out to the harbor all the tankers that were just sitting there filled with oil because that is how people are storing it. And the OPEC decisions, all these things I know you are very well aware of. But we will continue to look at this, and again, I am happy to have our surveillance folks come up and explain what we do and what we are seeing in the market.

Ms. LUJAN GRISHAM. I would really appreciate that, and while I agree with you that, given the current climate and given our production, there are tangible—there is tangible evidence that we could point to that gives us the fluctuation and certainly the drop in the prices per barrel of oil, but I am also aware that there are other factors and don't want to have—don't want to be in a situation where there they are completely mitigated by not evaluating them——

Mr. MASSAD. Yes.

Ms. LUJAN GRISHAM.—because we have tangible evidence on the other side.

Mr. MASSAD. Yes.

Ms. LUJAN GRISHAM. And I am also wondering whether or not that is affecting your analysis on commodity markets just in general in the context of your examination of that rulemaking.

Mr. MASSAD. I am sorry, if what is affecting our—if—I didn't quite follow.

Ms. LUJAN GRISHAM. Your examination of not only just the tangible evidence of our oil production——

Mr. MASSAD. Yes.

Ms. LUJAN GRISHAM.—so supply and demand——

Mr. MASSAD. Yes.

Ms. LUJAN GRISHAM.—but also that we have—I mean I am hearing—there is some evidence that would suggest that the hedges and speculation have some effect to what—and I want to understand exactly——

Mr. MASSAD. Yes.

Ms. LUJAN GRISHAM.—to what degree——

Mr. MASSAD. Right.

Ms. LUJAN GRISHAM.—when you look at that, are you looking at those supply and demand issues as well as the investment issues related to commodities in general?

Mr. MASSAD. We have some pretty sophisticated surveillance techniques and data. We get a huge amount of data in every day, and we have computerized a lot of this analysis so we can look at what participants are in the market, what their positions are, whether they are changing, whether they are long or short, the character of their trading, so we will continue to do that. We will continue to be very active in this area. We recognize the importance of the oil market and the fact that this has been a very dramatic change. And it certainly will influence our thinking about policies and rules generally.

Ms. LUJAN GRISHAM. The Chairman is always very patient with me. I am always over time, and I am going to take you up on your offer to come meet with me.

The CHAIRMAN. All right. The gentlelady's——

Ms. LUJAN GRISHAM. And thank you once again for——

The CHAIRMAN.—time has expired.

Mr. Davis for 5 minutes.

Mr. DAVIS. Thank you, Mr. Chairman. And thank you, Mr. Chairman. I am over here behind Mr. Rouzer. Thank you to my colleague from North Carolina for giving me vision. I really appreciate that. Chairman, thank you for being here.

You may recall last Congress, I sent you a letter requesting that CFTC address the real-time reporting rule on illiquid markets and those who rely upon them to mitigate commercial risk. And recently, the Commission offered no action relief to Southwest Airlines for its hedges in these illiquid markets. So I wanted to actually start out by thanking you and the Commission for recognizing that a commercial end-user was being impacted unintentionally by Dodd-Frank and the CFTC's rules. So thank you for that.

Do you know of any other market participants who face these same challenges that Southwest faced?

Mr. MASSAD. Thank you for the question, Congressman. At the time that we issued that letter, Southwest was the only one to come to us. I would have to check with the staff as to whether anyone else has, but, the letter that we issued simply reflected the fact that the goal of transparency here is not to make it harder for companies to engage in the legitimate hedging that they need to do. We are trying to balance the goal of transparency with, in some cases, in an illiquid market, real-time reporting.

Mr. DAVIS. Right.

Mr. MASSAD. And we will continue to be mindful of that as we go forward, if there are problems in other areas.

Mr. DAVIS. Well, I appreciate your willingness, and I appreciate the Commission's willingness to do so, and I look forward to working with you if we are contacted by others impacted similarly to Southwest.

I have concerns about the position limits rule, and particularly about the so-called conditional limit proposal. This could really have a substantial negative impact on the physically-delivered market by means of lost liquidity and even higher volatility. I am concerned about giving preference to some within the markets that could then hedge up to five times more, have more than five times the opportunity in the spot month limit, having that position that could impact seriously my farmers in the Midwest and those who

rely upon the marketplace to get their products, or physically delivered products out into the global marketplace. And can you explain the rationale that the CFTC is proposing, this—why the CFTC is proposing this policy, and why it could have such negative consequences for our markets, and specifically the district I represent, how it could impact our agricultural and agribusiness end-users who rely upon hedging?

Mr. MASSAD. Well, Congressman, the conditional limits aspect of the rule is one of many, many aspects of the rule on which we have invited comment. There are conditional limits today, as you know, in certain energy futures, they have existed for some time, but this is a very complicated area. What you do affects different market participants differently. So again, we are inviting public comment on this, and taking in that comment, and we haven't made a decision.

Mr. DAVIS. Okay. I appreciate your willingness to do so, and I look forward to working with you on that issue and making sure that my constituents' voices are heard.

And one last question. I would like to ask you about the CFTC *SmartCheck* program. For those of——

Mr. MASSAD. Yes.

Mr. DAVIS.—my colleagues who aren't aware of it, it is a new national campaign intended to help investors identify and protect themselves against financial fraud. What is the estimated cost of *SmartCheck?*

Mr. MASSAD. I would have to get back to you on that. It is a few million dollars, I believe, but that campaign grew out of, in particular, the fact that we were seeing a lot of precious metal scams——

Mr. DAVIS. Right.

Mr. MASSAD.—against retirees where——

Mr. DAVIS. It is a minimal investment and protecting those who are most vulnerable to these schemes.

Mr. MASSAD. Yes, absolutely. And, these are schemes where people are kind of enticed into investing in what they think is going to be this metal that is going to appreciate in value, but the fees and the arrangements end up in them losing their entire investment.

Mr. DAVIS. Well, you are right, and I am sorry to reclaim my time, I am almost out——

Mr. MASSAD. Yes.

Mr. DAVIS.—but I just want to let you know I am willing to work with you on ensuring that our seniors and those who may be victims of these schemes actually have access other than just the website. Let me work with you——

Mr. MASSAD. Great.

Mr. DAVIS.—to try to find other ways——

Mr. MASSAD. Excellent.

Mr. DAVIS.—to put the message out that the CFTC is taking this on with us. So thank you and I——

Mr. MASSAD. We would love to do that, Congressman. Thank you.

Mr. DAVIS. Thank you. My time has expired.

The CHAIRMAN. The gentleman's time has expired.

Mr. Costa for 5 minutes.

Mr. COSTA. Thank you very much, Mr. Chairman.

Per the last question, I don't know if those are actually legitimate schemes or if they are scams, but that is an editorial commentary.

Mr. Chairman, I too, with our Members, want to get to your digs and get a chance to spend greater time and length. And I apologize, I have been in and out, if some of the questions I pose to you maybe have already been asked. I was checking, I believe your term goes until April 2017.

Mr. MASSAD. Correct.

Mr. COSTA. Let me ask you a threshold question. You have said time and time again, when I have been here this morning, that this is complex. We get it is complex, that the changes are difficult, we get that. We understand the burden you are under with regards to resources. Let me ask, what do you want to try to get done between now and April 2017?

Mr. MASSAD. Thank you for the question, Congressman. It is on several fronts. One is simply improving the resources of this agency so it can carry out its mission. That, to me, is one of the——

Mr. COSTA. I mean do you have a short list in terms of the rule, in terms of the clearinghouse?

Mr. MASSAD. I guess I would have some general areas, but——

Mr. COSTA. Could you——

Mr. MASSAD.—one is——

Mr. COSTA. Could you——

Mr. MASSAD.—one is improving the resources of this agency. A second is making sure we continue to have very robust surveillance and enforcement because that is one of our most important jobs.

Mr. COSTA. I think the public——

Mr. MASSAD. Third——

Mr. COSTA.—assumes that that is——

Mr. MASSAD. Yes.

Mr. COSTA.—I mean——

Mr. MASSAD. But——

Mr. COSTA.—you are the cop on the street.

Mr. MASSAD. Absolutely, but you have to go in every day and do it, and look at how you are doing it and see what you need to enhance it. You can't just—it is not just——

Mr. COSTA. And——

Mr. MASSAD.—on autopilot.

Mr. COSTA. And it is ever-changing.

Mr. MASSAD. It is ever-changing, and again, the electronic nature of the markets changes it dramatically, and the need for high-speed computing and greater resources on technology is critical to that surveillance and enforcement.

Mr. COSTA. Do you believe you are going to have the resources——

Mr. MASSAD. Today, we do not.

Mr. COSTA.—if we approve the budget?

Mr. MASSAD. Yes, if we had the resources, that would bring us a lot closer. Now, the market is going to continue to evolve, we will have to see where it goes, but if we got this budget approved, we would be in a much better position.

Mr. COSTA. How concerned are you that the data that you spoke of, and that we are all concerned about, is being protected?

Mr. MASSAD. The data within the Commission? Is that what you are referring to?

Mr. COSTA. I am talking about the privacy in terms of potential attacks that are taking place——

Mr. MASSAD. Right.

Mr. COSTA.—daily.

Mr. MASSAD. Right. Well, I guess what I would say is we have a very good set of systems and policies to protect information at the Commission. I am very concerned though about general cyberattack readiness. We have to make sure our own systems stay up-to-date.

Mr. COSTA. And does that cause you to lose sleep at night?

Mr. MASSAD. Well, I try not to lose sleep over anything, but it is certainly at the top of one of my concerns, is the cyberattack risk generally.

Mr. COSTA. I talked about your timeline between now and 2017 in April, and you are talking about the Europeans who I have some interaction with, and their timelines on the implementation of theirs, which is 2017. Are we going to be ahead of them or be behind them as——

Mr. MASSAD. Well——

Mr. COSTA.—it goes forward?

Mr. MASSAD. Yes. It is a good question. We generally get our rule framework done before just about any other jurisdiction, but there are a lot of things that even in the next 2 years I can work out hopefully with the Europeans on trying to harmonize some of these things. As I said before, we are very focused on clearinghouse regulation, we are very focused on the margin for uncleared swaps. You work with the hand that you are dealt. I mean, the fact that other jurisdictions haven't gotten their rules done does pose some challenges, but we can still make a lot of progress.

Mr. COSTA. Well, as it relates to our efforts with the Europeans, and you talked a great deal this morning about your efforts on harmonization, I am wondering, when we look at the efforts in Frankfurt and other places, do you think there is going to be the level of harmonization between our European trading partners and ourselves as it relates to the operations of the clearinghouses?

Mr. MASSAD. Yes, we can get there. As I said, on clearinghouses, we have had a framework in place that has worked very well, and what I am trying to do is enhance that and work out arrangements with the Europeans on that. We have had very good—we have made very good progress in this regard.

Mr. COSTA. All right, my time is just about out, but I would like to continue the conversation and I——

Mr. MASSAD. Be happy to.

Mr. COSTA.—come over to your digs and we will get a chance to get a better understanding.

Thank you, Mr. Chairman.

The CHAIRMAN. The gentleman's time has expired.

Mr. Allen, 5 minutes.

Mr. ALLEN. Well, thank you, Mr. Chairman, for joining us today.

And going back to the cost-benefit analysis with regard to the Inspector General's report, balancing the legal and economic issue, I would like your thoughts on the findings of the Inspector General and how your staff is conducting a thorough cost-benefit analysis with regard to balancing the legal and economic regulatory environment.

Mr. MASSAD. Thank you, Congressman. We take cost-benefit analysis very seriously. We are required to do it for any rulemaking. We are required to consider a number of factors. I think we engage in very robust analysis, and you have a Commission today that wants to see that analysis done thoroughly, and wants to consider that in connection with any actions we take. I think we are doing an excellent job there, and we will continue to make it a top priority.

Mr. ALLEN. The Commission's proposed rule on position limits contains an attempt to redefine the meaning of *bona fide hedging.* Now, the puzzle appears to exclude many routine hedging transactions that have been used for decades by agriculture and agribusiness hedgers to manage their business risks, and have not been recognized by the CFTC as *bona fide.* If adopted, this proposal will increase hedging costs, resulting in lower bids to our farmers and ranchers, and higher consumer costs. Will you commit to ensuring that our agriculture and agribusiness hedgers can keep the risk management tools that they have used for years?

Mr. MASSAD. Well, thank you for the question, Congressman. We are very committed to getting to a place with the rule that implements the Congressional direction we have been given, which is to implement position limits to curb excessive speculation, but at the same time to allow for *bona fide* hedging. There are complex issues in this area. That is why we are listening very carefully to market participants. Reasonable people can disagree sometimes on these issues, but we will do the best job we can to end up with a rule that balances those considerations.

Mr. ALLEN. Well, thank you. Several commodity companies have expressed concern they will be forced out of business at offering swaps to their consumers if the *de minimis* level lowers to $3 billion. If these companies stop offering swaps, wouldn't that just further consolidate the swap business in a handful of Wall Street banks? Do you think that was intended by Dodd-Frank?

Mr. MASSAD. Well, Dodd-Frank gave us the direction to create a rule framework that regulates swap dealers. And we have done that. We have set a level. It is, under the rule, scheduled to drop in 2017. But we are also committed to looking at that issue, doing a study of that issue, looking at what the effects would be. And all the Commissioners will be very focused on taking in that data, and any decision we make will be informed by that analysis.

Mr. ALLEN. Well, obviously, we appreciate your work, and hopefully continue to work to make sure that our farmers and our ranchers get the pricing they need, along with the folks to get a chance to compete in this——

Mr. MASSAD. Absolutely.

Mr. ALLEN.—business that you are regulating. And I agree with my colleague, Mr. Scott, on the—we are really concerned about ac-

cess and integrity, and thank you for your work in that area. I appreciate your time. It is a pleasure to meet you.

Mr. MASSAD. Thank you. It is a pleasure to meet you.

Mr. ALLEN. Thank you for coming by and saying hello to me——

Mr. MASSAD. Thank you.

Mr. ALLEN.—this morning.

Mr. Chairman, I yield back the rest of my time.

The CHAIRMAN. The gentleman yields back.

Ms. Adams for 5 minutes.

Ms. ADAMS. Thank you, Mr. Chairman. Chairman Massad, thank you for being here.

The CFTC has a very important role in regulating derivatives as part of Dodd-Frank. I represent the 12th District in North Carolina; Charlotte being one of my major cities. I wanted to bring up just a few issues related to derivatives held by banks in my district.

One of the biggest challenges with regulating derivatives is requiring that trading companies hold more cash on hand should the derivative lose value. My question is, how do we bring down the operational cost of trading derivatives through a clearinghouse in order to ensure that traders and financial firms comply with Dodd-Frank?

Mr. MASSAD. If I understood the question in terms of how do we bring down the operating cost of being a swap dealer or a clearing? I wasn't quite sure.

Ms. ADAMS. Clearing.

Mr. MASSAD. Of clearing. We have mandated clearing of standardized products, which I think is a very good way to address risk. It helps us monitor the risk. We are trying to do all we can to make sure those clearinghouses then function in a manner that creates efficiency. We also do a lot of surveillance to look at how that is all operating. The cost of that to the members is driven by a number of factors. Today, for example, for the clearing members, if you talk to them, what you will hear a lot is their costs are very affected by the low interest rate environment because they hold customer funds and low interest rates affect what they earn from that. But we are certainly conscious of looking at our rule-set to make sure that we balance the regulatory goals of creating oversight for this market, creating transparency for this market, with the costs that that is creating.

Ms. ADAMS. Okay. What kind of market data is CFTC analyzing when considering its options in moving forward with its position limits rulemaking?

Mr. MASSAD. Thank you for the question. We first of all invite any industry—anyone who is commenting to give us data. We welcome data from market participants and other members of the public. So anything we get in a comment letter we are looking at. We have a staff of economists that also looks at this in our different markets, and we try to get further input from industry participants. So again, we try to make it as data-driven as possible.

Ms. ADAMS. Can you tell us when you expect the Commission will act on a rule for position limits?

Mr. MASSAD. Well, we are working very hard on it. We don't have a specific timetable. It is something that I will work out in

consultation with my fellow Commissioners, but we certainly recognize the importance of it. And again, we have a lot of things on our plate, but we are working very hard on this one.

Ms. ADAMS. Thank you. And finally, and you have alluded to some of this, what concerns do you have with position limit rulemaking? How do you anticipate addressing these issues as we move forward?

Mr. MASSAD. Well, it is a very important area. It is also a complex area. We have to balance the need to—and the Congressional mandate—to set position limits so as to curb excessive speculation, with the fact that we also want to make sure commercial companies can engage in *bona fide* hedging. There are a lot of issues within that that we are looking at, and we have gotten a lot of good public comments on that. So that is why we are taking our time to make sure we do the best job we can to try to get this right.

Ms. ADAMS. Thank you, Chairman Massad.

Mr. MASSAD. Thank you.

Ms. ADAMS. Mr. Chairman, I yield back.

The CHAIRMAN. The gentlelady yields back.

Mr. David Rouzer for 5 minutes.

Mr. ROUZER. Thank you, Mr. Chairman. And, Mr. Chairman, great to have you here before the Committee.

Mr. MASSAD. Thank you.

Mr. ROUZER. I too have concern about the proposed position limits rule, but you have answered that probably *ad nauseam* at this point, so I am going to skip that one and go to another concern.

I want to get your comments regarding the impact of the regulatory requirements on market participants in markets for securitizations and certain exchange traded products under the Volcker Rule, and how these firms will determine the covered fund status of products for which their firms are market makers. I understand there is concern that they may be forced to stop making markets and wide swaths of products due to technical issues and trying to comply with the documentation requirements. And I understand that the financial industry has submitted a reasonable and limited proposal to the Prudential Regulators related to how they could comply with the Volcker Rule, but the Prudential Regulators have not responded to date.

Now, in light of the upcoming July deadline, market makers will need answers in the very near future so they can prepare to comply. Do you have a view on how the Prudential Regulators will respond or when this response will come?

Mr. MASSAD. Thank you for the question. With respect to Volcker matters, we are working with our fellow regulators because, as you know, this is a rule that is administered by five different regulatory agencies. And it is obviously critical that we all try to work together. And, the rules themselves are essentially the same, and it is important that with any kind of issue that arises under the rules, we work together.

So I would have to get back to you on exactly where we are on that request, but I can certainly say that we will continue to work with the other regulators on it.

Mr. ROUZER. Well, I can certainly understand why many in the financial community would be a little nervous about this. You

know, certainty is important, and timeliness is important in this endeavor as well, so I appreciate your attention to it.

Mr. MASSAD. Sure.

Mr. ROUZER. Thank you, Mr. Chairman.

The CHAIRMAN. The gentleman yields back.

Mr. Emmer for 5 minutes.

Mr. EMMER. Thank you, Mr. Chairman. Thank you, Mr. Chairman, for being here.

I just have a couple of basic questions about the budget, but beforehand, I want to go back to the cross-border issue. I hope I ask it right. By the way, thanks to your staff for their hospitality last week, and I am still processing a lot of information. But there was something that came up about the cross-border mutual recognition issue that you inherited involving our U.S. clearinghouses, exchanges and reporting facilities *versus* the European Union. You have been talking about 2017 is when the EU will have their rules done, but I heard a date last week of June of this year is crucial, and I am just wondering if you can first—maybe I misunderstood.

Mr. MASSAD. Yes. No. Two different things, okay, and I appreciate the question because it is an important clarification. The 2017 date refers to their rules on trading of swaps on regulated platforms. We have already done a set of rules in that regard. They haven't. They are developing theirs, but theirs are due to be implemented in 2017. The June date refers to the clearinghouse regulation issues. And they had previously said that they would impose a higher capital charge on European firms who did business on clearinghouses abroad that they hadn't yet recognized. The first date was June of last year. They extended it to December. Then they extended December to June of this year. And that is where we are working out arrangements that we hope will lead to their recognition of our clearinghouses as equivalent. Our clearinghouses meet international standards and we believe they should recognize us. But as part of that discussion, that is where we have been discussing these issues of how to harmonize our rules a little bit more.

If we were not to get that done by June, then they would—under the current law, they would impose a higher capital charge on their own firms doing business in the U.S.

Now, there have been statements by some people on their staff that said, "Well, we could always extend again." I am hopeful that we can resolve this. I think we are making good progress, and we will continue to work at it.

Mr. EMMER. Well, thank you. That was the clarification that I was looking for. Maybe it was an assumption based on certain things that were said, but all we heard was very high praise from people in the industry about your leadership and your efforts in not only this area but others.

Mr. MASSAD. Well, thank you.

Mr. EMMER. And it is interesting that you have been here for 7 months or 8 months, whatever it is, the number you gave us. I——

Mr. MASSAD. About 8 months I guess, yes.

Mr. EMMER. And the extensions have taken place during that time. So——

Mr. MASSAD. Well, let me——

Mr. EMMER.—you are hopeful that——

Mr. MASSAD. I am hopeful, and the European side of this is led by a fellow named Lord Hill who was just recently appointed to that job, and I have a lot of respect for him. We have had good conversations. Our staffs have had good conversations. I think everybody is working in good faith to try to resolve this. There is a lot of technical nitty-gritty to it, but we are working hard at it.

Mr. EMMER. Good. I just have a few seconds left. And you have been here for a long time, but there is a term that I was reading preparing for this related to the money that you have requested in your budget for data and technology. You had $45 million would be allocated towards *particular functional activities,* and then $63 million would go to data and technology support.

Can you just expand——

Mr. MASSAD. Sure.

Mr. EMMER.—briefly——

Mr. MASSAD. Yes.

Mr. EMMER.—on what particular functional activities——

Mr. MASSAD. Yes, absolutely. All that means is that that amount is allocated to activities like surveillance and enforcement and examinations, whereas the $63 million represents more sort of general tech infrastructure and——

Mr. EMMER. Right.

Mr. MASSAD.—and support and employees that we just don't specifically allocate to another function.

Mr. EMMER. And I am out of time, but in other words, you do your internal categorization.

Mr. MASSAD. Yes, that is all it is.

Mr. EMMER. Thank you very much, Mr. Chairman.

Mr. MASSAD. Thank you.

The CHAIRMAN. The gentleman yields back.

Mr. Aguilar for 5 minutes.

Mr. AGUILAR. Thank you, Mr. Chairman. Chairman Massad, nice to see you.

Another budget question related to my colleague. You received in the CR-omnibus $250 million, which was a bump from the prior year but still below what the President had asked. The President, in his new budget, has asked for $322 million for your agency.

What are some of the key areas to fulfill your mission that that increased funding will go to? What is your prioritization level when it comes to that funding level?

Mr. MASSAD. Thank you for the question, Congressman.

A couple of things; surveillance, enforcement, general data and technology expenditures, and examinations. Let me talk about each one just a little bit, if I can.

Surveillance: It is just so critical today, and it is just so much different than it was several years ago when you might be able to watch the physical trading pits and see if someone pulls their earlobe or something to know whether there is some kind of collusion going on. But today, we are taking in reams of data. In E-mini, the S&P 500 E-mini contract, which is one of the most traded contracts on CME, there are probably 700,000 trades a day. But on top of those trades, there are lots of order messages; messages that are bids, orders, a lot of those are canceled.

Now, multiply that by the fact that we have 40 physical commodities, we have interest rate futures, we have equity futures, we have currency futures, each of those markets is different, and you can start to appreciate the volume of data we have to take in and analyze in order to understand what is going on in these markets. So a lot of our budget is focused on enhancing those surveillance operations, enhancing our overall data and technology.

The enforcement area is another key priority. There is nothing more important than robust enforcement in terms of maintaining the integrity of these markets, and we are looking at activity that ranges from the types of Ponzi schemes that people are traditionally familiar with that, unfortunately, there are a lot of them that still go on. We had a case that led to someone being put away for about 16 years recently for a Ponzi scheme. Also, from collusion among some of the world's largest banks to fix foreign exchange rates; to spoofing, which can use high speed trading. We really need to up our enforcement activity.

We need to increase our examinations of—simply with respect to cyber risk alone. We need to be able to make sure we can examine this critical infrastructure of clearinghouses and exchanges. And a lot of that is just making sure that they are doing what they need to do to be ready for a possible cyber incident.

So those are some of the main areas.

Mr. AGUILAR. I appreciate it. You have three offices; Kansas City, New York, Chicago.

Mr. MASSAD. That is correct.

Mr. AGUILAR. Do you think you need to—in order to meet that—those priorities, do you need to expand your geographic footprint?

Mr. MASSAD. No. No, I wouldn't do that. I would just stick with what we have and it works very well. Our Chicago office, obviously, is very useful in terms of some of the big clearinghouses and exchanges being there. But our setup works well from that standpoint.

Mr. AGUILAR. Okay. I appreciate it.

With respect—shifting gears a little bit to trade, given your extensive knowledge and experience in the Asian markets, have you been involved in the negotiations related to TPP?

Mr. MASSAD. No, I have not. That is really outside of my area, sir.

Mr. AGUILAR. Okay. Do you anticipate that TPP could assist in your efforts on cross-border issues?

Mr. MASSAD. Well, the regulation of derivatives has really been outside of TPP, so I don't know that it would have any direct impact.

I was over in Asia recently though, very focused on our set of issues, and I had a lot of good meetings with our Asian counterparts over there. I think we are making good progress. The Asian jurisdictions, in many ways, in some cases, are kind of waiting to see what we do and what Europe does on some of these issues. On other issues, they are moving forward. But we are building good relationships, and we will be able to work together well.

Mr. AGUILAR. I appreciate the answer.

Mr. Chairman, I will yield back.

The CHAIRMAN. The gentleman yields back.

Chairman Massad, I had one follow-up question. Your colleague, Commissioner Giancarlo, recently issued a white paper. He pointed out something that, when the rules were being put in place with respect to swap execution facilities that we had no shortage of conversations with your predecessor—Dodd-Frank law specifically says that with respect to swap execution facilities, they can trade—or trades are permitted through any means of interstate commerce. It appeared to be a pretty broad definition, and yet the rule really only allows two methods of execution in trading, and we have buy-side folks and sell-side folks that are all complaining about the prescriptive nature of that. Any plans to revisit that rule?

Mr. MASSAD. Well, thank you, Mr. Chairman, for the question.

I welcomed Commissioner Giancarlo's white paper. I think it was very thoughtful. I appreciate the time he spent on it, and he and I have had good conversations about a lot of these issues, as I have started to have with some of my other fellow Commissioners also.

I would say I am not in favor of throwing out the rules and starting all over, but I am open to looking at how we can fine-tune and improve the rules to enhance trading. I think it is important to remember what our goals are in this. We are trying to bring this trading out of the shadows. We are trying in particular to create pre-trade price transparency, and that should inform our judgment when we think about what is an appropriate method of execution.

I think the other thing to remember is this is all new, we are all learning, but swap volumes are growing on these platforms, and people are building the technology to improve that. We are working with industry participants as we all learn. I mean we have done some adjustments, for example, on package transactions, to make it easier to do package transactions where you have something that is maybe traded on the SEF, something that is not, but they are linked. And we will continue to do that.

The CHAIRMAN. All right. But I guess this is a dynamic arena. Is it——

Mr. MASSAD. I am sorry?

The CHAIRMAN. A dynamic arena in general. Dynamic. And that a rule that was put in place that looked like the right—and this would apply to any of the rules out there—but as we gain experience with any of them, what I have been encouraged by is the fact that you have already started the process of, if a rule doesn't work, that you are open to suggestions of how to either decrease the prescriptiveness necessarily of the existing rule in this particular area or the others. Anything else in the white paper that jumped out at you that would trigger something that you want—

Mr. MASSAD. I think there are a few things that we are looking at and thinking about. I think there are some pretty complex workflows that you look at in terms of what happens once something is executed, how does it then get affirmed, how does it then get cleared, what happens if there is an error, should we be more flexible on errors? He made a very interesting suggestion about licensing people who trade swaps. I think there are a number of issues, and I look forward to continuing to talk about those with him.

The CHAIRMAN. All right. Does the Ranking Member had a closing statement?

Well, Mr. Chairman, congratulations on your first time here. You wore everybody out, apparently. I——

Mr. MASSAD. Thank you.

The CHAIRMAN. I would like to acknowledge that you set the bar pretty high for concise answers which, unlike others who like to filibuster their answers, it exposes you to a lot more questions from the individual Members by not taking up the five minutes with your answer. So I hope that more folks take your example, and that you don't go the other way and filibuster your answers because——

Mr. MASSAD. Well, thank you, Mr. Chairman. I appreciate that.

The CHAIRMAN.—with the conciseness of your answers.

Under the rules, the Committee of today's hearing—that is my closing statement. Thank you again for being here. I thank your team for last Friday afternoon, and several of the Members will be taking you up on your offer to——

Mr. MASSAD. Great.

The CHAIRMAN.—come—because the more we know about each other——

Mr. MASSAD. Absolutely.

The CHAIRMAN.—the better we are. So whatever those differences are, we don't let them grow out of proportion of what they really should be, if we are trusting each other because we have a basis of a relationship.

Mr. MASSAD. Yes.

The CHAIRMAN. Again, thanks.

Under the rules, the record of today's hearing will remain open for 10 calendar days to receive additional material, supplemental written responses from the witness to any question posed by a Member.

This hearing of the Committee on Agriculture is now adjourned.

Mr. MASSAD. Thank you.

[Whereupon, at 11:55 a.m., the Committee was adjourned.]

[Material submitted for inclusion in the record follows:]

SUBMITTED QUESTIONS

Response from Hon. Timothy G. Massad, Chairman, Commodity Futures Trading Commission

Questions Submitted by Hon. K. Michael Conaway, a Representative in Congress from Texas

Question 1. Chairman Massad, the *de minimis* threshold to register as a "swap dealer" is based on a fixed notional value, which means as commodity prices rise, entities which hedge commodities may be pushed over the threshold without any material change in trading activities. These entities may be forced to limit their trading at the exact time they most need the ability to manage risks. Does the Commission view this as a problem? If so, does it have a plan for how it will be addressed?

Answer. A swap entered into to hedge a commercial risk does not count toward an entity's *de minimis* threshold. Only swaps entered into in a "dealing" capacity count toward an entity's *de minimis* threshold.

Question 2. The *Swap Dealer* definition *de minimis* limit is set to automatically decline from $8 billion to $3 billion in October of 2017, and possibly sooner. How was this reduced level calculated? In your opinion, was this a reasonable approach?

Answer. The Swap Dealer Definition Rulemaking (77 FR 30596 at 30632–33) adopted in May, 2012, laid out the rationale for setting the *de minimis* level. The rule was adopted jointly by the CFTC and the SEC. The Commissions stated that the *de minimis* level should be set so as to balance the benefits to the marketplace of regulation *versus* the burdens and potential impacts in terms of competition, capital formation and efficiency, among others. The Commissions originally proposed a three part test in which notional amount of dealing activity was one factor, with a level of $100 million. In the final rule, the Commissions, after considering commenters' views and the limited swap dealer information available at the time, set the *de minimis* level for an entity's dealing activity involving swaps at $3 billion over 12 months with an initial phase-in period of five years during which time the *de minimis* would be $8 billion. The Commissions noted that while notional amount does not directly measure exposure or risk associated with swap activity, it does reflect relative amounts of activity. The Commissions noted that commenters who suggested a fixed notional standard proposed that the standard be set at a level between $200 million and $3.5 billion in notional amount over a period of twelve months. The Commissions stated that:

> "In considering these comments, we are mindful of the variety of uses of swaps in various markets and therefore it is understandable that various commenters would reach different conclusions regarding the appropriate standard. At the same time, we see value in setting a single standard for all swaps so that there is a 'level playing field' for all market participants and so that the standard can be implemented easily without the need to categorize swaps." Considering the written input of the commenters as well as the discussions of the *de minimis* standard at the Commissions' joint roundtable and numerous meetings with market participants, and the benefits of the regulation of swap dealers (*i.e.,* protection of customers and counterparties, and promotion of the effective operation and transparency of the swap markets), we believe a notional standard at a level of $3 billion appropriately balances the relevant regulatory goals."

The Commission further explained how several commenters suggested that the standard be set at an amount equal to 0.001 percent of the overall domestic market for swaps. The Commissions noted that although "comprehensive information regarding the total size of the domestic swap market is incomplete," the available (imperfect) data suggests that a $3 billion notional standard is generally consistent with the commenters' suggestion of basing the standard on a percentage of the overall domestic market for swaps."

Given the consideration of the comments received on the proposed rule and limited data available at the time the *de minimis* rule was adopted, I believe the approach used by the CFTC and the SEC in setting the *de minimis* level was reasonable. Staff also advises me that the date the level would fall, absent other action, is December 2017.

Question 3. In assessing the SEF marketplace a year after its implementation, what aspects of the CFTC's swap trading rules is the Commission considering fine-tuning and what is the Commission's timing for that process?

Answer. The Commission is focused on ongoing evaluation of the effectiveness and evolution of transparent trading of swaps transactions on regulated platforms. Rec-

ognizing that swap trading on registered designated contract markets and swap execution facilities, and that the clearing and reporting of these transactions are still relatively new, the Commission is considering where regulatory revisions are needed. While the Commission cannot provide a definitive timeline at present, it can commit that it will move forward with the implementation of regulatory changes as soon as policy determinations are made and resources permit.

Question 4. Mr. Chairman, is the Commission undertaking any efforts to modernize the regulation of CTAs and CPOs, such as the registration and record-keeping requirements? If there are such efforts, what's your sense of timing for this effort?

Answer. The Commission continues to undertake significant efforts to review and update its regulation of CTAs and CPOs. For example, on August 22, 2013, the Commission published a final rule harmonizing the compliance obligations of CPOs with registered investment companies and Commission staff continues to explore with the SEC additional harmonization measures. As another example, on October 15, 2014, the Division of Swap Dealer and Intermediary Oversight issued a no-action letter providing registration relief to CPOs (many of them modern business forms not previously registered as CPOs) that have delegated certain CPO obligations to registered CPOs. Commission staff will continue to review and assess further areas for modernization and, as appropriate, will issue staff no-action letters or rule proposals.

Regarding record-keeping specifically, on November 4, 2014, the Commission proposed amendments to regulation 1.35 that would simplify and modernize certain recordkeeping requirements for CTAs, CPOs and other registrants in connection with commodity interest and related cash or forward transactions. Commission staff is currently reviewing the public comments received on the proposal and preparing a final rule for consideration by the Commission likely within the next few months.

Question 5. Last Congress, the Committee heard from a witness who expressed concerns that under the CFTC's proposed rules, a bank-affiliated swap dealer would be required to hold $10 million in regulatory capital whereas a non-bank dealer would have to set aside up to $1 billion. Why are the capital requirements so vastly different for bank *versus* non-bank swap dealers?

Answer. The Dodd-Frank Act requires each swap dealer for which there is a prudential regulator, such as the Federal Reserve, the Office of the Comptroller and the Federal Deposit Insurance Corporation to meet the capital requirements established by the applicable prudential regulator and each swap dealer for which there is no prudential regulator, including non-bank subsidiaries of bank holding companies, to meet capital requirements adopted by the Commission. The Commission's proposed capital requirements for swap dealers, to a great extent, draw upon existing Commission and bank capital requirements. The proposed capital regulations are risk-sensitive, meaning that a swap dealer's minimum capital requirement would increase or decrease corresponding with the level of market and credit risk associated with its swaps transactions.

Since the impact of the Commission's capital requirements on a swap dealer would depend on the circumstances particular to the swap dealer, such as the specifics of its trading book, it would be difficult to address the witness' concerns without knowing the specific fact pattern applicable to a swap dealer. However, to the extent that the witness' comment concerns the inability of certain swap dealers to use internal models to compute the market and credit risk charges under the Commission's proposal, the Commission is aware of the issue, as the issue has been raised by commenters during the comment period. The Commission is currently considering this issue.

Question 6. Mr. Chairman, what role does the Commission foresee risk reduction services playing in the market, going forward? Does the CFTC anticipate any challenges—statutory or otherwise—to integrating new or novel risk reduction services into the market?

Answer. Current CFTC rules contain several provisions that facilitate risk reduction services such as portfolio compression. For example, see CFTC Regulation 23.503 for swap dealers and Regulation 39.13(h)(4) for derivatives clearing organizations. The CFTC, however, would have to carefully consider any novel proposal that would necessitate the CFTC exempting new swaps from the clearing and trading requirements.

As mentioned above, Regulation 23.503 currently requires registered swap dealers to engage in certain portfolio compression exercises defined in Regulation 23.500. The CFTC currently has authority under Section 8a(5) of the CEA to issue regulations to address this issue, and it would be appropriate to approach this issue

through the rulemaking process because it is in the public interest to obtain public comment on standards for a novel risk reduction service.

Question 7. How soon does the CFTC expect to reach agreement with EU authorities around recognition of U.S. derivatives clearinghouses? What other steps is the CFTC taking to ensure that cross-border trading of cleared swaps can continue to occur between U.S. and EU market participants?

Answer. The CFTC staff has been actively engaged with European counterparts to obtain an equivalence decision for the CFTC's regulatory regime and to facilitate recognition of our registered derivatives clearing organizations (DCOs). It is our understanding that European law (EMIR) requires a finding that (i) CFTC-registered DCOs must comply with legally binding requirements that are equivalent to EMIR; (ii) the legal and supervisory arrangements of the United States provide for effective supervision and enforcement of DCOs on an ongoing basis; and (iii) the legal and supervisory arrangements of the U.S. include an effective equivalent system for recognition of European clearinghouses. While we believe that the U.S. legal regime and our practices have always met those tests, the European Commission advised the Commission last summer that it did not take that view. In particular, it said the United States did not meet the third element. It believed that in order to meet that standard, the U.S. should exempt European clearinghouses that wished to clear swaps for U.S. customers from having to register with the CFTC.

U.S. law and CFTC regulations do not generally apply to European clearinghouses and exchanges. However, if a European clearinghouse wishes to clear a futures contract traded on a U.S. exchange, or clear a swap for a U.S. customer other than a clearing member or their affiliate, then the clearinghouse is required to register with the CFTC. A European clearinghouse seeking to clear swaps only for a U.S. clearing member and its affiliates is eligible for an exemption from registration. The Commodity Exchange Act already authorizes the CFTC to grant exemptions in such circumstances.

Three European clearinghouses are registered pursuant to these requirements, including two that clear the vast majority of cleared swaps globally. We advised the European Commission that we saw no reason to change this longstanding framework of "dually registered" clearinghouses, which has worked well. In particular, we noted that the swaps market has grown to be a global market on the basis of this framework. We also noted that given the increasingly important role that large multi-jurisdictional clearinghouses now play in the global financial system and the potential implications for global financial stability, it made sense for regulators to continue to engage in cooperative oversight. However, we agreed to work with the European Commission (i) to make clear that our requirements apply only with respect to the clearing activities for which the dual registrants maintain CFTC registration, rather than to all the clearinghouse's activities and (ii) to harmonize CFTC requirements with those under EMIR where possible. Following several months of discussion, we have reached substantial agreement on a substituted compliance regime for clearinghouses that are dually registered in the United Stated and Europe.

The European Commission has advised us that they have not yet reached a conclusion concerning the first element of the test. Although we believe our legal and supervisory framework meets the equivalence requirement. This decision must be made by the European authorities and therefore we cannot say when an equivalence decision will be issued.

In the meantime, the CFTC continues to process two DCO registration applications for European-based clearinghouses, one of which is currently authorized to clear swaps pursuant to no-action relief granted by the CFTC Division of Clearing and Risk.

We have taken a number of actions in other areas to facilitate cross-border trading of swaps, including substituted compliance determinations with respect to many aspects of our requirements for swap dealers, and with respect to a procedure for recognition of European swap trading facilities. We have also permitted several European exchanges (referred to as foreign boards of trade) to offer direct electronic access to persons located in the United States, under no-action relief, and we continue to review applications by exchanges seeking to be registered with the CFTC as foreign boards of trade.

The European Commission has not made any substituted compliance determinations nor recognized any U.S. trading platform.

Question 8. Please explain the Commission's standards for issuing no-action letters including, who determines what entity or activity will receive relief, and whether or not the Commission must vote to approve the issuance. Are there written rules

or policy guidelines on how the CFTC us to use the no-action process? If not, does the Administrative Procedures Act govern the use or issuance of "no action" letters?

Answer. The standards and guidelines with respect to requests for and issuance of no-action relief are prescribed by Commission regulation 140.99. That rule defines three types of relief-exemptive, no-action and interpretative-that may be granted by the staff of a division of the Commission and also, in the case of no action and interpretative letters, by the Office of the General Counsel. No-action and interpretative letters ("Letters") bind only the issuing Division or the Office of the General Counsel, not the Commission or other Commission staff. Exemptive letters are predicated on a delegation of the Commission's exemptive authority to a Division.

Regulation 140.99 specifies the standards for submitting requests for relief: in addition to imposing informational, factual and filing requirements, the rule requires that submissions identify and discuss all legal, factual and public policy issues supporting issuance of a Letter. A decision to grant relief pursuant to a Letter is premised on staff's analysis of all legal, policy and factual issues. Commission staff generally will not issue a Letter based on activities that have been completed prior to the date on which the request for relief is filed with the Commission.

The Commission does not vote to approve the issuance of Letters. In recent years, Commission staff have circulated Letters to the Commission on an informational basis prior to issuance. Because they are staff documents and do not represent agency action, the issuance of Letters is not governed by the Administrative Procedure Act.

Question 9. The increasing use of no-action letters—nine in 2011, 79 in 2012, 88 in 2013, and 158 in 2014—is troubling. It appears as though the Commission has been issuing rushed rulemakings that are not well developed and then relying on no action letters to provide relief from requirements that are impossible to comply with. Mr. Chairman, do you think that poorly developed rules are forcing the Commission staff to provide relief from unworkable mandates? Do you see roughly a hundred no action letters a year as the "new normal" for how the agency does business?

Answer. The number and types of no-action letters issued by the Commission over the last few years is a reflection of the extraordinary responsibility placed on the Commission by Congress under the Dodd-Frank Act. The law required the Commission to enact a significant number of new rules to bring comprehensive reform to the over-the counter swaps market. The Act further specified time frames for implementation of these rules, which were in [almost all cases] one year from passage of the law. The Commission worked extraordinarily hard to meet this responsibility. With any rulemaking involving complex or novel issues, Commission staff typically receives requests from industry for specific relief or additional time to come into compliance. The number of no-action letters issued in the last few years is primarily a reflection of the unusually large number and complexity of the new rule-makings the Commission was required to implement. Many of the letters simply extend time for compliance Some letters address the fact that although all G20 nations committed to implement similar reforms of the swap market, most lag behind the U.S. in most areas, which created a need to make adjustments through no action letters. Some letters relate to specific fact patterns or new market developments that were not addressed or otherwise anticipated in the subject rulemaking. In this way, consistent with its past practices, Commission staff has been able to use the no-action letter process to be responsive to industry requests and concerns and thereby to minimize potential disruptions to the marketplace. Needless to say, given the sheer scale of the Dodd-Frank undertaking, there has been a correspondingly greater need for staff no-action letters.

The Commission is committed to making every effort to fine tune and refine Commission regulations to address unintended consequences and, where feasible, to do so through rulemakings. Moreover, the Commission has taken steps to codify no action relief through rule-makings. Examples of this include a final rule excluding certain swaps entered into with "utility special entities" in determining whether the swap dealer registration threshold is met and a proposed rulemaking that would exclude end-users from certain recordkeeping requirements.

Question 10. Dodd-Frank expanded the CFTC's jurisdiction into the multi-trillion dollar swaps markets, meaning that important cases of first impression—cases that may influence precedent for decades to come—will be decided by temporary Administrative Law Judges with no particular experience or expertise in the relevant law. From what agencies has CFTC been borrowing ALJs and what drawbacks do you see in using ALJs without commodities markets expertise? Can you explain why the ALJ was eliminated in the first place?

Answer. The Commission decided over three years ago, in 2011, to eliminate its two ALJ positions. It is my understanding that this was done because the ALJs' workload had substantially declined. The number of cases brought to an ALJ by the Division of Enforcement (other than in routine actions to disqualify certain registered persons) had declined nearly to zero annually years before the decision to eliminate the program through a reduction in force ("RIF"') was made), and elimination of the positions could achieve cost savings of approximately $800,000 per year. (The cost savings reflect the salaries of the ALJs as well as their staffs.) The utilization of scarce agency resources was and remains an important consideration in light of the Commission's greatly expanded duties under the Dodd-Frank Act and concomitant budget constraints.

Since the RIF, the Commission has brought a total of two matters before an ALJ borrowed from another agency, neither of which involved novel or complex questions of law under the Commodity Exchange Act ("CEA") nor any provisions enacted by Congress in Dodd-Frank. Both pertained to the same party, and each resulted in an order of default-one for failure to produce required records, and the other for failure to respond to a filing by the Commission. The ALJ was the Chief Administrative Law Judge for the United States Coast Guard, obtained through an inter-agency agreement under the Office of Personnel Management's ("OPM") Administrative Law Judge Program.

Recently, the new Director of the CFTC's Division of Enforcement announced the intent to bring a limited number of enforcement cases in front of ALJs. Insofar as these matters involve more complex or novel provisions of the CEA, including those added in Dodd-Frank, if available, the CFTC will use ALJs who have familiarity with related markets and laws.

Question 11. Your agency issued a proposed rule on September 23, 2014 regarding margin requirements for uncleared swaps which identified nonprofit entities, including entities which already qualify for the cooperative exemption from the clearing requirements, as a financial end-user who would thus be subject to margin requirements of Dodd-Frank. When Congress passed the Terrorism Risk Insurance Act reauthorization it included the Business Risk Mitigation and Price Stabilization Act which makes clear that such an entity will not be subject to the margin requirements. When can we expect you to make this change in the proposed rule to clarify this?

Answer. The CFTC staff is working with the staff of the Prudential Regulators (the Federal Reserve, the OCC, the FDIC, the FHFA, and the FCA) to implement these provisions in our respective rules. Staff expects to present recommendations to the Commission by early summer.

Questions Submitted by Hon. Collin C. Peterson, a Representative in Congress from Minnesota

Question 1. We appreciate the Commission's stated desire to encourage trading of swaps on Swap Execution Facilities (SEFs). How would providing anonymity for cleared swaps executed via a SEF's Central Limit Order Book (CLOB) encourage greater trading participation? How would the Commission require anonymity? How would a requirement of anonymity affect existing market structure and participants?

Answer. Commission staff has been told by some market participants that the practice of disclosing the identities of counterparties to swaps executed anonymously on SEF CLOBs can constrain access to markets by market participants, promote informational asymmetries, and dissuade potential customers from participating in anonymous order book trading. We have been informed by some parties, for example, that many buy-side traders will avoid SEFs which adhere to such trader identification practices for fear that if they trade on such SEFs, their names will be given up to dealers and such dealers will retaliate by withholding liquidity from such traders when they seek to be customers of those dealers. Some participants contend, however, that the practice is an important aspect of how dealers allocate credit, and that prohibiting name give up could have adverse consequences on liquidity. Commission staff is currently evaluating these issues and determining whether to take action in this area.

Question 2. In November of 2012, the Treasury Department determined that Foreign Exchange Swaps and Foreign Exchange Forwards would not be subject to the clearing and trading mandates in Title VII of the Dodd-Frank Act. However, to date, the CFTC has not made a similar determination with regard to Foreign Exchange Non-Deliverable Forwards. What is the current status of CFTC's decision making process on whether to subject Foreign Exchange Non-Deliverable Forwards to trading and clearing?

Answer. In November 2012, when the Treasury Department determined that foreign exchange swaps (FX Swaps) and foreign exchange forwards (FX Forwards) would not be subject to CFTC clearing and trading requirements, the Department acknowledged a provision of CFTC's swap definition rule (Regulation 1.3(xxx) distinguishing FX NDFs from FX Forwards. Consequently, the Department's 2012 determination does not prohibit the CFTC from applying the swap clearing and trading requirements to FX NDFs.

The Commission held an advisory committee meeting last fall at which time the issue of whether to propose a swap clearing requirement for foreign exchange nondeliverable forwards (FX NDFs) was discussed. There were many diverse views on whether such a requirement was desirable at this time. Many participants felt the market was not ready for such a mandate. The Commission has also been in contact with European regulators regarding possible coordination of any such requirement. The European Union decided to delay such a swap clearing requirement for the time being. A trading requirement for NDFs could not take effect until a related swap clearing requirement first took effect (Section 2(h) of the Commodity Exchange Act).

Questions Submitted by Hon. Austin Scott, a Representative in Congress from Georgia

Question 1. For a few years, there has been an issue of long waits for aluminum in U.S. warehouses that are part of the London Metals Exchange (LME) aluminum contract. Mr. Chairman, what can the CFTC do to help to remedy these delays? Do you need additional authority in the Commodity Exchange Act in order to help in resolving this issue?

Answer. I share your concerns on this issue and assure you that the CFTC has been examining the matter of long queues for delivery of aluminum at LME warehouses. CFTC staff has been in contact with LME and its regulator, the UK Financial Conduct Authority (FCA), on a regular and ongoing basis to discuss LME's plans to reduce the lengthy queues, particularly those at Metro warehouses in Detroit. I have been an active participant in these dialogues. As part of this effort, we have discussed with LME, among other topics, how LME-licensed warehouses operate, the relationship between LME and the warehouse operators, how storage policies and prices are determined, how effective the load-out rate is, and the basis for incentives charged by warehouse operators. CFTC staff has also discussed with LME and the FCA the market consultations, discussion papers, additional information barrier policies, and other reforms that LME has advanced or proposed to address the warehouse issues, including the linked load-in load-out rule that LME announced on October 8, 2014 and implemented on February 1, 2015, and the package of reforms that LME announced on March 2, 2015. I have conveyed our concerns directly to LME leadership in both London and Hong Kong, and on March 24, the agency's Division of Market Oversight sent a letter to the LME sharing its concerns about the aluminum warehouse issues, and notifying the LME that it would be deferring review of the LME's status as a Foreign Board of Trade (FBOT) until more progress is made to address warehouse concerns. As such, we will continue to monitor the LME warehouse conditions and maintain a dialogue with LME and the FCA. While I do not believe any legislative changes are needed at this time, we will continue to consider this issue and advise you if we see such a need.

Question 2. Chairman Massad, at our hearing I asked you to clarify when the swap dealer *de minimis* level will drop from the current $8 billion down to $3 billion. You replied "2017," but would you mind clarifying on which day in 2017 the level will drop?

Answer. The *de minimis* level would fall as of December 31, 2017 unless the Commission takes other action.

Question 3. Chairman Massad, at our hearing, I asked whether you expected public comment before the *de minimis* level drops, and you replied "any decision we make will be based on good data. We are required to do a study." Will you provide a way for the public to provide input and comment on that study?

Answer. Yes, we will afford the public an opportunity to comment on the Commission's report regarding the swap dealer *de minimis* level. The regulation requires the study be published for public comment.

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