EXAMINING THE UPCOMING AGENDA FOR THE COMMODITY FUTURES TRADING COMMISSION

HEARING

BEFORE THE

COMMITTEE ON AGRICULTURE
HOUSE OF REPRESENTATIVES

ONE HUNDRED FIFTEENTH CONGRESS

SECOND SESSION

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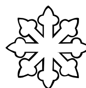

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EXAMINING THE UPCOMING AGENDA FOR THE COMMODITY FUTURES TRADING COMMISSION

WEDNESDAY, JULY 25, 2018

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

The Committee met, pursuant to call, at 10:02 a.m., in Room 1300 of the Longworth House Office Building, Hon. K. Michael Conaway [Chairman of the Committee] presiding.

Members present: Representatives Conaway, Lucas, Gibbs, Austin Scott of Georgia, Crawford, Hartzler, LaMalfa, Davis, Yoho, Allen, Bost, Rouzer, Abraham, Kelly, Comer, Marshall, Bacon, Faso, Dunn, Arrington, Peterson, David Scott of Georgia, Vela, Kuster, Nolan, Bustos, Plaskett, Evans, Lawson, O'Halleran, and Soto.

Staff present: Caleb Crosswhite, Darryl Blakey, Mindi Brookhart, Paul Balzano, Rachel Millard, Matthew MacKenzie, Mike Stranz, Patrick Delaney, Troy Phillips, Nicole Scott, and Carly Reedholm.

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

The CHAIRMAN. Good morning. This hearing of the Committee on Agriculture entitled, *Examining the Upcoming Agenda for the Commodity Futures Trading Commission,* will come to order. Trent Kelly, will you open us in a prayer?

Mr. KELLY. If you will bow your heads.

Precious Heavenly Father, we just thank You for this wonderful day. Dear Lord, we just ask that You bless this great nation. We ask that You bless our farmers and all those who feed and provide for this great nation. Dear Lord, we just ask that all we do honor You and that we honor the principles of giving and service, and service to You and service to this nation. In Jesus' name I pray, Amen.

The CHAIRMAN. Thank you. Chris, welcome.

Good morning, and I want to welcome all of you today to our hearing examining the upcoming agenda at the Commodity Futures Trading Commission.

I will start by welcoming back Chris Giancarlo. Chris, it is great to have you back. We will have to get an explanation of who hit you in the face, but we will get to that shortly. I hope the other guy looks a whole lot worse, right?

The Committee last met with you in October and at that time, you were working on a number of important initiatives at the Commission, notably, the LabCFTC and Project KISS. You also outlined a plan to begin refining the title VII swaps rules, focusing on the rules for trading and data reporting.

Since then, you have introduced a number of additional topics to the regulatory agenda through your recent Swaps 2.0 white paper. I appreciate the clear framing of your concerns and sensible suggestions you have made to solve real problems, while still supporting the overarching goals of title VII. I look forward to an update on these efforts to improve the swaps regulatory regime.

I am also looking forward to an update on an area of significant concern to this Committee, and that is the coordination and harmonization of our international regulatory peers.

Six years ago, when U.S. regulators were seeking to extend the reach of our rules into foreign jurisdictions, we invited Patrick Pearson to testify on behalf of the European Commission before my Subcommittee. In his testimony, he could not have been clearer: when two jurisdictions have comparable rules, regulators should be able to defer to one another.

And yet today, it appears Europe is reversing course and proposing policies that would require a foreign jurisdiction to comply with EU rules in order to service the EU market. I supported Mr. Pearson's position then, when I thought the CFTC was overreaching, and I still support that same position today, as the European Commission contemplates similar overreach. The European Commission needs to heed its own advice and preserve the hard-fought equivalency agreement with the United States.

Before I hand it off to the Ranking Member, I would like to talk just a moment about reauthorization of the CFTC and its budget.

When I became Chairman, I made a pledge to clean up our statutes and reauthorize all of the lapsed programs in our Committee's jurisdiction. At the time, the CFTC had been unauthorized for well over a year, and I was concerned that if we didn't get it done then, we never would.

To that end, the House passed legislation to reauthorize the Commission in 2013, again in 2015, and again in 2017, but our Senate colleagues have consistently failed to act. The Commission remains unauthorized and its budget remains flat for the third year in a row.

Even though Congress has not been able to act, the Commission and its responsibilities have not stood still. Sitting before us today is a Chairman who has worked harder than anyone I have met in government to fulfil Congress' expectations as a steward of taxpayer dollars. He has put together two budgets that are clear and sustainable, and he has established a long-term vision for the agency and its mission.

Mr. Chairman, this Committee expects you to continue to refine your rules, to oversee critical pieces of our financial markets, and to tackle all these new challenges that are coming. But to do that, I acknowledge that you are going to need resources to hire staff and fund technology improvements. While I have not given up on reauthorizing the agency, we cannot continue to hold the agency hostage another year based on Senate inaction.

I hope that we can reset this debate and find a new way forward on both reauthorization and the Commission's budget in the upcoming months.

With that, I want to thank you again, Chris, for being here.

[The prepared statement of Mr. Conaway follows:]

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

Good morning. I want to welcome you all to today's hearing examining the upcoming agenda at the Commodity Futures Trading Commission.

I'd like to start by welcoming back Chairman Giancarlo. Chris, it's great to have you back here.

The Committee last met with you in October and at that time, you were working on a number of important initiatives at the Commission, notably, LabCFTC and Project KISS. You also outlined a plan to begin refining the title VII swaps rules, focusing on the rules for trading and data reporting.

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Mr. Chairman, this Committee expects you to continue to refine your rules, to oversee critical pieces of our financial markets, and to tackle all the new challenges that are coming. But, to do that, I acknowledge that you are going to need resources to hire staff and fund technology improvements. So, while I have not given up on reauthorizing the CFTC, we cannot hold the agency hostage to another year of the Senate's inaction.

I hope that we can reset this debate and find a new way forward on both reauthorization and the Commission's budget in the coming months.

With that, thank you for joining us today. I look forward to your testimony.

The CHAIRMAN. I now turn to my colleague, Mr. Peterson, for his opening remarks.

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

Mr. PETERSON. Thank you, Mr. Chairman. Good morning, and thank you, Chairman Giancarlo, for joining us today.

As the country continues to recover from the financial crisis that began to take hold of our economy almost 10 years ago, we all know the need for sound oversight and regulation of our derivative markets. It is in our collective interest to see that these markets function as intended, and that end-users and consumers are protected against bad actors that we all know are out there.

I am looking forward to your update on the work of the Commission and your year in charge, specifically with regard to the final stages of implementation of the Dodd-Frank Act and your efforts to turn the Commission's focus to the future.

In that spirit, I hope that you will address some evolving issues of concern, including the transition away from the LIBOR (London Interbank Offered Rate) benchmark, and update us on any progress that the Commission has made on the regulation of automated trading.

Finally, as you all know, the Committee took a look last week at cryptocurrencies. Clearly, there are more questions than answers when it comes to this new technology, and I am curious to hear your thoughts on where our oversight of CFTC may need to go regarding Bitcoin and other digital assets.

Again, thank you for joining us, and I look forward to your testimony.

The CHAIRMAN. I thank my colleague. I remind our other Members to submit their opening statements for the record so that the witness may begin his testimony to ensure that there is ample time for questions.

With that, I would like to welcome to our table once again the Honorable Chris Giancarlo, Chairman of the Commodity Futures Trading Commission, Washington, D.C. Mr. Chairman, you are recognized for your comments. Thank you.

STATEMENT OF HON. J. CHRISTOPHER GIANCARLO, CHAIRMAN, COMMODITY FUTURES TRADING COMMISSION, WASHINGTON, D.C.

Mr. GIANCARLO. Thank you, Chairman Conaway, Ranking Member Peterson, and distinguished Members of the Committee.

Mr. Chairman, when I was last before you, you pointed out that I made a tactical error, and I didn't introduce my wife at that time. I make errors, I make my share of them, but I try not to make the same one twice, so you will allow me to introduce my daughter who is with me today, Emma Giancarlo. It is a pleasure to have her with me today. Thank you.

The last time I testified, I stated my priorities for the CFTC: to foster open, transparent, competitive, and financially sound markets free from fraud and manipulation, and in support of broad-based economic growth while respecting the American taxpayer with careful management of agency resources. Thank you for allowing me this opportunity this morning to report on progress on those goals.

The CFTC is on a strong and steady course. Our refocus on the core mission of supervising American agriculture commodity futures markets is once again front and center for this agency. Our enforcement activities have never been more determined, yet more cooperative, with other Federal, state, and self-regulatory enforcement partners. Our reenergized economic research and new market intelligence provide fresh insight into the changing nature of modern markets. Our consumer education efforts are increasingly effective through contemporary means of communication and outreach. Our work to streamline and simplify regulations is underway through our Project KISS initiative, and our engagement with financial innovation and market enhancing technology is highly active through LabCFTC.

Meanwhile, we are a team player with other U.S. financial and Prudential Regulators, working especially cooperatively with our fellow market regulators at the SEC. We readily coordinate with international regulators and standards setting bodies, and we are leaders in many international regulatory forums, including in the area of swaps data harmonization.

Looking internally, our union relations are sound and productive. Employee morale is increasingly positive, and with two fine new Commissioners, and hopefully two more on the way, the CFTC is functioning well and in a collegial fashion. I believe the American people can look upon the CFTC with satisfaction in terms of taxpayer value, effective oversight of U.S. markets, and thoughtful development of public policy for the digital financial markets of this early 21st century.

As Members of this Committee know, futures and swaps markets serve at least two critical roles in American agriculture, and the broader U.S. economy.

First, they allow America's farmers, energy producers, and manufacturers to quantify and transfer the risks of production to parties willing and able to take that risk, thereby stabilizing costs. This benefits all parties, including American consumers who may never get involved in derivatives in the first place.

And second, these markets resolve market imbalances efficiently by providing reliable and fair benchmarks for commodity prices and financial indices.

American markets for commodity futures and other derivatives are vital national interests. CFTC regulated futures exchanges and clearinghouses are amongst the world's most robust and resilient. Even in the face of extreme volatility, as we saw this past February, CFTC regulated clearinghouses have been able to successfully take on and manage risk, enabling valuable risk transfer to support and stabilize our broader American financial markets.

That is why to avoid market fragmentation, regulatory confusion, and market protectionism, American markets must continue to be regulated under U.S. law by Federal regulators overseen by this Committee of Congress.

In closing, with the proper balance of sound policy, American regulatory oversight, and supervisory deference by our overseas regulatory counterparts, U.S. commodity derivative markets will continue to evolve in responsible ways. And thanks to America's farmers, energy producers, manufacturers, and lenders, they will help

feed and power the world and drive global economic growth, not just today, but for generations to come.

Thank you for this opportunity to testify. I look forward to your questions this morning.

[The prepared statement of Mr. Giancarlo follows:]

PREPARED STATEMENT OF HON. J. CHRISTOPHER GIANCARLO, CHAIRMAN, COMMODITY FUTURES TRADING COMMISSION, WASHINGTON, D.C.

Introduction

Thank you, Chairman Conaway, Ranking Member Peterson, and Members of the Committee. I appreciate the opportunity to appear before you today to discuss my priorities and the work of the Agency.

It has been just under a year since my confirmation as Chair of the Commodity Futures Trading Commission (CFTC or Commission) last August. It is an appropriate time to update this Committee on the progress of the CFTC.

I am pleased to report that the agency is on sound footing in meeting its statutory mission. Some examples of what we are currently doing are highlighted below:

- Our refocus on the CFTC's core mission of supervising American agriculture commodity futures markets is once again front and center;
- Our consumer education efforts are increasingly effective through contemporary means of communication;
- Our economic research and market intelligence provide new insight into the changing nature of global markets;
- Our efforts to streamline and simplify rules and regulation are underway through our Project KISS initiative;
- The strength and determination of our enforcement activities have never been more robust, and more cooperative with other Federal, state and SRO enforcement partners;
- The agency actively coordinates with international regulators and plays a leadership role in a number of international regulatory forums.
- Union relations are sound and productive, and employee morale is increasingly positive; and
- The agency remains a careful steward of the resources it receives from the American taxpayer.

With two fine new Commissioners and, hopefully, two more on the way, the CFTC is functioning well and in a collegial fashion. I believe the CFTC is an agency upon which the American people can look with satisfaction in terms of taxpayer value, effective oversight of U.S. markets and mature development of public policy amidst the rapid pace of change of Twenty-first Century financial markets.

Let me review these points in greater detail.

Physical and Financial Markets

The American agricultural market is foundational to the economy. Agricultural, food, and related industries contributed $992 billion to the U.S. economy in 2015, 5½ percent (5.5%) of the gross domestic product.[1] And, in 2016, agriculture provided 21.4 million full- and-part time jobs, or eleven (11%) percent of total U.S. employment.[2] The figures in international trade are also sizable. In Fiscal Year 2018, the Department of Agriculture projects that agricultural exports will exceed $142 billion, with imports at $121.5 billion, for a net balance of trade over $20 billion.[3] That balance of trade is good for the nation and for American farmers. The United States is the breadbasket to the nation and the world. And it is our commodity futures markets that help create our abundance by providing risk mitigation and everyday pricing to farmers, ranchers, and producers.

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[1] Economic Research Services, *What is Agriculture's Share of the Overall U.S. Economy?* U.S. Department of Agriculture (last updated Oct. 14, 2016): *https://www.ers.usda.gov/data-products/chart-gallery/gallery/chartdetail/?chartId=58270*.

[2] Economic Research Services, *Ag and Food Sales and the Economy,* U.S. Department of Agriculture (last updated May 02, 2018): *https://www.ers.usda.gov/data-products/ag-and-food-statistics-charting-the-essentials/ag-and-food-sectors-and-the-economy/*.

[3] Economic Research Services, *Outlook for U.S. Agricultural Trade,* U.S. Department of Agriculture (last updated June 18, 2018): *https://www.ers.usda.gov/topics/international-markets-us-trade/us-agricultural-trade/outlook-for-us-agricultural-trade/*.

American derivatives markets are the world's largest, most developed, and most influential. Many of the world's most important agricultural, mineral, and energy commodities are priced in U.S. dollars in U.S. derivatives markets. Dollar pricing of the world's commodities provides a tremendous advantage to American producers in global commerce, an advantage well recognized by competing economies abroad.

American derivatives markets are also the world's best regulated. The United States is the only major country in the Organisation for Economic Co-operation and Development to have a regulatory agency specifically dedicated to derivatives market regulation: the CFTC. The CFTC has overseen the U.S. exchange-traded derivatives markets for over 40 years. The agency is recognized for its principles-based regulatory framework and econometrically-driven analysis. The CFTC is recognized around the world for its depth of expertise and breadth of capability.

This combination of regulatory expertise and competency is one of the reasons why U.S. derivatives markets continue to serve the needs of participants around the globe to hedge price and supply risk safely and efficiently. It is why well-regulated U.S. derivatives markets continue to serve a vital national interest—U.S. dollar pricing of important global commodities.

Foreign Competition

As you may know, in the first quarter of 2018, the Shanghai International Energy Exchange launched a yuan-denominated crude oil contract allowing non-Chinese market participants to trade directly for the first time in the Chinese commodity markets. Shortly following this new contract, China opened yuan-denominated iron ore and bunker fuel oil contracts to international traders. There is also talk of China allowing international market participants to trade Chinese futures contracts in rubber, copper and even soybeans.

China is the world's largest consumer of oil and fuel and a major global purchaser of iron ore for its world leading steel production. The opening up of China's domestic futures markets to international participation is part of a long-term, Chinese Government strategy to expand China's influence over the pricing of key industrial commodities.

The development of Chinese commodity futures markets as viable regional price benchmarks for key industrial commodities has competitive implications for the United States. We cannot be complacent about the historical primacy of our derivatives markets. Our best response for U.S. commodity market participants and, indeed, for global markets, is to ensure that derivatives markets in the United States are unrivaled in their openness, orderliness, liquidity.

In short, America's well-regulated derivatives markets are a national advantage in global economic competition. However, we must not take this advantage for granted. In order for U.S. derivatives markets to remain the world's best, U.S. markets must remain the world's best regulated. To be the best regulated, U.S. derivatives markets must have an adequately funded regulator. The CFTC must have adequate resources to continue to serve its mission to foster open, transparent, competitive, and financially sound U.S. derivatives markets that remain the envy of the world.

Kansas City Agriculture Conference

On April 5th and 6th, the CFTC hosted two important meetings in Kansas City. On April 5th the CFTC Agricultural Advisory Committee, led by Commissioner Rostin Behnam, discussed issues related to price discovery and risk management in agricultural markets. Panelists were able to address the importance of crop insurance as a critical risk management tool for growers and the role that futures markets play to crop insurance. We also heard from panelists regarding price discovery and the recent implementation of block trading in agricultural futures contracts.

CFTC, along with Kansas State University, also conducted a first-of-its-kind conference called, "Protecting America's Agricultural Markets: An Agricultural Commodity Futures Conference." Panelists discussed current macro-economic trends and issues affecting our markets, like market speculation, high frequency trading, trade data transparency, novel hedging practices and market manipulation. Participants looked at problems in convergence between cash and futures prices and volatile storage rates and heard about advances in distributed ledger technology, algorithmic trading and other emerging digital technologies, as well as current regulatory activities in protecting participants from manipulation, fraud and other unlawful activities.

Our common purpose was to hear from end-users who use our markets to hedge risk and to consider and address issues of emerging market structure and trading practices to ensure that these markets remain the world's most robust, dynamic and

liquid for decades to come. American commodity futures markets are vital national interests that we must protect and enhance.

The Conference also heard about ways in which emerging technology is pulling farmers and ranchers into a virtual future, often beyond comprehension, with a powerful, gravitational pull. They are entering this virtual world with worries about trade, commerce, costs, and competition. And, as regulators, we needed to listen, and to continue to listen. The future is now, for them, and for us. Our task, as market regulators, is to set and enforce rules that foster innovation while promoting market integrity and confidence.

Oversight of Virtual Currencies

The hearing last week before this Committee examined the opportunities and risks involved in the evolution of digital currencies. Emerging financial technologies are taking us into a new chapter of economic history. They are impacting trading, markets, and the entire financial landscape with far ranging implications for capital formation and risk transfer. They are transforming the world around us, and it is no surprise that these technologies are having an equally transformative impact on U.S. capital and derivatives markets.

Knowing the challenges ahead, my focus as Chairman has been guided by six broad elements concerning virtual currency: (1) staff competency; (2) consumer education; (3) U.S. interagency cooperation; (4) exercise of authority; (5) strong enforcement; and, (6) heightened review of virtual currency product self-certifications.

You heard last week from Daniel Gorfine, Chief Innovation Officer and Director of LabCFTC about the work we are doing to learn more about investments being made in technologies that may or may not impact our regulatory jurisdiction. LabCFTC is the focal point of the CFTC's efforts to engage with innovators, facilitate market-enhancing technology and fair competition, and manage the interface between technological innovation, regulatory modernization, and existing rules and regulations. I believe that this work is critical to the agency being a 21st century regulator.

The work of LabCFTC has highlighted an important issue that U.S. regulators face. We have certain limitations in the ability to test, demo, and generate proof of concepts around these complex emerging technologies and systems. Specifically, the CFTC lacks the legal authority to partner and collaborate with outside entities engaging directly with FinTech and innovation within a research and testing environment, including when the CFTC receives something of value absent a formal procurement. The general rule is that without such authority, the CFTC must forego the increasing number of opportunities to engage in research that may benefit the derivatives markets that the agency oversees, as well as the CFTC's own activities.

The Commission would like the ability to partner, collaborate, or engage in a cooperative agreement regarding emerging financial and compliance technologies with persons or entities; Federal, state, or local agencies or instrumentalities; or foreign governments or international organizations. Legislation recently introduced by Congressman Austin Scott provides such authority and would greatly enhance the Commission's ability to keep pace with emerging technology, explore its potential, and facilitate its adoption.

With respect to consumer education, the CFTC's Office of Customer Education and Outreach (OCEO), which was established in 2011 to administer the CFTC's consumer education initiatives, has played an integral role in both authoring educational materials for consumers and working with partners to spread the word about the CFTC's Bitcoin and virtual currency resources.

OCEO is conducting outreach to various audiences such as retail investors, industry professionals, seniors, and vulnerable populations who may be targeted by unscrupulous individuals with the intent to defraud them of their savings. Some examples of outreach include coordinating with national nonprofits, Federal regulators and state agencies to conduct webinars, educational campaigns and in-person events. OCEO also provides partners with content to use for their constituent outreach and communications, in order to amplify the CFTC's customer education efforts. OCEO is also reaching intermediaries through trainings that educate participants on the CFTC's fraud prevention resources to protect and assist their constituencies.

In fact, last week OCEO, in conjunction with LabCFTC, issued its fourth Customer Advisory about virtual currencies. This advisory warns customers to use caution and to do extensive research before purchasing virtual coins or tokens, including those that are self-described as "utility coins," or "consumption coins."

Specifically, the advisory, titled "Use Caution When Buying Digital Coins or Tokens," warns a customer to view any promises or guarantees of future value as a "red flag." Since this market is still very new, there is no commonly accepted stand-

ard to assigning a value on a particular virtual coin or token. This is an important reason to beware of coins or tokens sold today with the claim that they can buy goods, services, or platform access in the future. Also, businesses that are still in the proposal stage may use funds from coin sales to start or grow their ventures. The advisory provides important factors for customers to weigh that could impact the current or future value of a coin or token.

Our Customer Advisories aim to give customers a greater understanding of virtual currencies and help them make informed investment choices. These advisories are part of the CFTC's broader outreach program to the public regarding virtual currencies. In fact, over the past 5 months, the CFTC has produced an unprecedented amount of public educational materials on virtual currencies, all of which are located on the Commission's dedicated "Bitcoin" web page at *https://www.cftc.gov/Bitcoin*. Launched on December 15, 2017, the web page features both consumer and industry-facing materials and includes a backgrounder on the CFTC's oversight and approach to virtual currency markets, a "primer" on virtual currencies, several customer advisories on risks associated with speculating or investing in Bitcoin and other virtual currencies, a fact sheet outlining the self-certification process, and a CFTC-produced podcast on Bitcoin.

Additionally, other CFTC-produced podcasts on Blockchain and other virtual currency related topics are available on the Commission's website. For market participants, the weekly publication of the "Commitment of Traders" data includes open interest information on Bitcoin futures which provides insight into the market dynamics of these contracts.

As you all know, last December, two exchanges self-certified several new contracts for futures products for virtual currencies. These innovations impact the regulatory landscape and will require the Commission to invest more in new technologies and tools that support important surveillance and enforcement efforts.

Under the Commodity Exchange Act (CEA), Commission regulations, and related guidance, CFTC-registered exchanges have the responsibility to ensure that their Bitcoin futures products and their cash-settlement process are not readily susceptible to manipulation. Additionally, CFTC-registered clearing houses or derivatives clearing organizations (DCOs) are required to have robust and comprehensive risk management procedures in place to ensure that these contracts are sufficiently margined and do not undermine the integrity of the DCO. The CFTC has the authority to ensure our exchanges and DCOs comply with their respective responsibilities. In addition, the CFTC has legal authority over virtual currency derivatives in support of anti-fraud and manipulation including enforcement authority in the underlying markets.

In May, our Division of Market Oversight staff issued guidance on a new "heightened review" of virtual currency product self-certifications that gives registered exchanges and clearinghouses guidance for listing virtual currency derivative products.[4] This advisory will help ensure that market participants follow appropriate governance processes with respect to the launch of these products. It clarifies CFTC staff's priorities and expectations in its review of new virtual currency derivatives to be listed on a designated contract market or swap execution facility, or to be cleared by a DCO. The advisory should help exchanges and clearinghouses effectively and efficiently discharge their statutory and self-regulatory responsibilities, while keeping pace with the unique challenges of emerging virtual currency derivatives.

The CFTC Division of Enforcement is a premier Federal civil enforcement agency dedicated to deterring and preventing manipulation and other disruptions of market integrity, ensuring the financial integrity of all transactions subject to the CEA, and protecting market participants from fraudulent or other abusive sales practices and misuse of customer assets.

The CFTC has been particularly assertive of its enforcement jurisdiction over virtual currencies. It has formed an internal virtual currency enforcement task force to garner and deploy relevant expertise in this evolving asset class. The task force shares information and works cooperatively with counterparts at the SEC with similar virtual currency expertise.

Over the past several months, the CFTC filed a series of civil enforcement actions against perpetrators of fraud, market manipulation and disruptive trading involving virtual currency. These include:

(i) **Gelfman Blueprint, Inc.,** which charged defendants with operating a Bitcoin Ponzi scheme that fraudulently solicited approximately 80 persons

[4] *CFTC Staff Issues Advisory for Virtual Currency Products* (May 21, 2018), *https://www.cftc.gov/PressRoom/PressReleases/7731-18*.

supposedly for algorithmic trading in virtual currency that was fake, the purported performance reports of which were false, and—as in all Ponzi schemes—payouts of supposed profits to customers actuality consisted of other customers' misappropriated funds.

(ii) **My Big Coin Pay Inc.,** which charged the defendants with commodity fraud and misappropriation related to the ongoing solicitation of customers for a virtual currency known as My Big Coin;

(iii) **The Entrepreneurs Headquarters Limited,** which charged the defendants with a fraudulent scheme to solicit Bitcoin from members of the public, misrepresenting that customers' funds would be pooled and invested in products including binary options, and instead misappropriated the funds and failed to register as a Commodity Pool Operator; and

(iv) **Coin Drop Markets,** which charged the defendants with fraud and misappropriation in connection with purchases and trading of Bitcoin and Litecoin.

These recent enforcement actions confirm that the CFTC, working closely with the SEC and other fellow financial enforcement agencies, will aggressively prosecute bad actors that engage in fraud and manipulation regarding virtual currencies.

We have had and will continue strong inter-agency cooperation. The CFTC has been in close communication with the SEC with respect to crypto currency policy and jurisdictional considerations, and in connection with our recent enforcement cases. We also are working on a Memorandum of Understanding (MOU) with the SEC to streamline the flow of information and clarity our regulatory responsibilities. We have also been working with the U.S. Treasury and the Financial Stability Oversight Council (FSOC) through its crypto currency task force. In addition, we have been in communication with our foreign counterparts through bilateral discussions and through international bodies like the International Organization of Securities Commissions.

Financial Technology

In addition to LabCFTC's domestic activities, the Commission continues to proactively work with international regulators on FinTech applications to coordinate approaches and to share best practices. In February of this year the CFTC and the UK's Financial Conduct Authority (FCA) entered into an arrangement to collaborate and support innovative firms through each other's FinTech initiatives—LabCFTC and FCA Innovate. This is the first FinTech innovation arrangement for the CFTC with a non-U.S. counterpart. We believe that by collaborating with the best-in-class FCA FinTech team, the CFTC can contribute to the growing awareness of the critical role of regulators in 21st century digital markets.

The Technology Advisory Committee, under the sponsorship of Commissioner Brian Quintenz, has been particularly active, having already formed four subcommittees examining critical and timely topics in detail. One subcommittee, focused on the modern trading environment, is evaluating the true risks of algorithmic and automated trading, private sector incentives and responses to controlling operational risk, and any gaps therein where regulatory solutions are necessary. Other subcommittees are addressing questions surrounding virtual currency including suggesting self-regulatory policies for trading platforms, Distributed Ledger Technology (DLT) and any associated regulatory applications, and internal and external cybersecurity practices and protocols. I look forward to a robust set of actionable recommendations from the TAC in the months to come which the Commission may consider, and I thank Commissioner Quintenz for his leadership.

The CFTC and this Committee have an important role to play moving forward when it comes to helping the Commission better understand how these technological infrastructures work and impact our regulatory space, and how to best regulate them.

Cross Border Agreements

The Commission continues to remain focused on the potential impact of Brexit on the U.S. derivatives markets. We understand the unprecedented challenges facing the EU and the United Kingdom in coming to agreement on how their markets, services, and people will function post Brexit; however, from a financial markets perspective, we remain concerned that EU efforts to ensure control over euro-denominated contracts currently cleared by UK clearing houses or central counterparties (CCPs) will unfairly and inappropriately impact our U.S. CCPs.

This past year, I, along with my fellow Commissioners, have engaged with our European counterparts to discuss our concerns with the extraterritorial reach of their new legislation. I have spoken to this Committee on previous occasions about

how this new legislation proposed by the European Commission would create a new European framework to regulate and supervise CCPs.

We fully support, and believe the EU, as a sovereign political entity, has the right to amend and revise its laws and regulate the entities that operate within its jurisdiction. Moreover, we welcome any and all efforts in the EU to enhance the regulation and supervision of its domestic CCPs. However, with respect to the treatment of U.S. domiciled CCPs, we steadfastly oppose the renegotiation of the 2016 equivalence decision between the European Commission and the CFTC. We expect the EU to honor its obligations under the 2016 equivalence agreement regardless of how Brexit might impact the EU's ability to risk manage the clearing of euro-denominated contracts in the UK. I have stated very clearly that we will not renegotiate this agreement.

Further, it remains my position that our U.S. CCPs, which are among the most robust and resilient in the world, should not be required to comply with EU law on top of having to comply with U.S. law in order to provide clearing services to EU market participants. This would create unnecessary regulatory and supervisory burdens and increase costs on U.S. businesses. The fact is that EU law is different than U.S. law. CFTC statutes and regulations have evolved over the course of more than forty years and are uniquely formulated to address our domestic derivatives markets—predominantly our futures markets. Our domestic markets are not identical to those of the EU—and the nature of our markets is reflected in our laws. This experience and practice is not recognized in EU law, creating situations where regulatory measures, which are critical to U.S. futures markets, would be viewed as impermissible under EU law. We cannot, and will not, allow EU authorities and EU law to dictate what is appropriate in our domestic financial markets. American derivatives markets must continue to be regulated under American law by U.S. regulators overseen by this Committee of the U.S. Congress.

I believe if the situation were reversed, my European colleagues would hold the same position. I know that this Committee has supported me on this position, and I thank you for that.

The best way forward as I have consistently stated, is through deference. Regulatory and supervisory deference is a key principle to a cross-border approach that fosters economic growth and resilience without jeopardizing the bespoke laws or practices that underpin the domestic derivative markets around the world. It gives us the best of both worlds—it builds harmonization between markets and preserves the ability of primary regulators to act and regulate their markets as appropriate. I believe that the 2016 equivalence agreement achieved this balance.

When it comes to U.S. CCPs, we insist that the parties stay true to the terms of the 2016 equivalence agreement, give proper assurances that U.S. CCPs will not be treated differently than they are now, and pledge support for deference as the governing principle for how we regulate and supervise each other's CCPs today and in the future. In fact, deference is the cornerstone for how the CFTC approaches the cross-border supervision of European CCPs. It is deference that supports strong cross-border markets, recognizes our commonalities, and builds upon the strengths of our respective jurisdictions.

With respect to the CFTC's participation in international standard setting *fora,* we continue to play a very active role in international bodies like the International Organization of Securities Organization (IOSCO) in order to build consensus and cooperate in the regulation of the global financial markets. These global markets are over hundreds of trillions of dollars in market size. For example, the approximate size of just the global exchange-traded derivatives market is U.S.$100 trillion. The exchange-traded derivatives market, thus, compares favorably to the global equity markets, which are also estimated to be about U.S.$100 trillion in size. When one considers in addition the over-the-counter derivatives markets, which has an estimated gross notional value of over U.S.$500 trillion, the global derivatives market represents a substantial share of the markets overseen by IOSCO members.

I believe the CFTC needs to be a leading participant in IOSCO and other international bodies. The CFTC currently chairs the following international committees and groups and serves as a member of many other ones:

Chair, IOSCO Cyber Task Force
Chair, IOSCO Committee on Derivatives
Co-Chair, CPMI–IOSCO Data Harmonization Group
Co-Chair, FSB Working Group on UTI and UPI Governance
Chair, OTC Derivatives Regulators Group
Co-Chair, Derivatives Assessment Team
Co-Chair, CPMI–IOSCO Policy Standing Group

I also recently served as co-chair of the 2018 Salzburg Global Seminar's Finance Forum and spoke about issues related to Artificial Intelligence, FinTech, Cybercrime and Big Data.

As overseers of the world's oldest and largest derivatives markets, the CFTC must play a leadership role in the development of common standards for global derivatives markets. Under my chairmanship, the CFTC will continue to play that role.

Enforcement

Through robust enforcement of our laws and regulation, the Commission is sending a clear signal to the marketplace about our seriousness in punishing bad behavior and compensating victims.

As of June 5th, the Commission has filed 13 manipulative conduct cases in 2018—the most manipulation cases the CFTC has ever filed in a single year, which was last year (12 cases), including an Order settling charges against French bank Société Générale S.A. for manipulation and attempted manipulation of and false reporting in connection with both the London Interbank Offered Rate (LIBOR) and Euro Interbank [Offered] Rate (Euribor). The civil monetary penalty of $475 million was the third largest in the history of the Commission. It addresses misconduct that spans more than 6 years, from 2006 through mid-2012. The Commission worked in collaboration with the Department of Justice, the Federal Bureau of Investigation, the Autorité des Marchés Financiers in France, and the UK Financial Conduct Authority. This is the type of enforcement cooperation that I undertook to pursue upon becoming Chairman.

But it is not just about the numbers. And it is not cooperation for the sake of cooperation. It is about removing bad actors from the marketplace, making the markets safer and more durable for responsible traders and the participants that use our markets. We also believe that, to maximize deterrence, we must work with our criminal law enforcement partners to ensure that wrongdoers face not just civil liability, but also the prospect of criminal prosecution and time in jail.

In January 2018, the CFTC filed manipulation and spoofing cases against six individuals in coordination with the Department of Justice (DOJ) and the Federal Bureau of Investigation, which brought criminal charges against the same individuals. This constitutes the largest coordinated prosecution of on-exchange trading abuses with the criminal authorities in the history of the CFTC. These prosecutions were equally significant for DOJ: in a press statement, the Assistant Attorney General characterized it as "the largest futures market criminal enforcement action in Department history." [5]

I also pledged last year that the agency would look to benefit from cooperation with civil and criminal capabilities of other Federal and state regulators and enforcement agencies. We have been making good on that pledge. Two weeks ago, I signed an important agreement, marking a milestone in the area of U.S. Federal and state financial fraud detection and prosecution. That was an MOU between the CFTC and individual state securities commissions which will focus our collective resources to better uphold the law.[6]

This MOU establishes protocols and procedures, for the access, use, and confidentiality of information and treatment of non-public information in the course of law enforcement. It creates a framework for cooperation that will result in:

- Leveraging state and Federal resources to support enforcement actions;
- Enhancing the impact of enforcement efforts and their deterrent effect;
- Encouraging the development of consistent and clear governmental responses to violations of the Commodity Exchange Act;
- Preventing the duplication of efforts by multiple authorities; and
- Facilitating vital exchanges of information and communications between the Commission and State Securities Administrators.

Complementing its enforcement efforts, the CFTC has also strengthened its Whistleblower Program, and provided whistleblowers additional incentives to report wrongdoing to the CFTC. In May 2017, to further protect whistleblowers, the CFTC added protections prohibiting employers from retaliating against whistleblowers and

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[5] *Acting Assistant Attorney General John P. Cronan Announces Futures Markets Spoofing Takedown,* United States Department of Justice, (Jan. 29, 2018), available at *https://www.justice.gov/opa/speech/acting-assistant-attorney-general-john-p-cronan-announces-futures-markets-spoofing*.

[6] *CFTC, NASAA Sign Agreement for Greater Information Sharing Between Federal Commodities Regulator and State Securities Regulators,* North American Securities Administrators Association (May 21, 2018) *http://www.nasaa.org/45123/cftc-nasaa-sign-agreement-for-greater-information-sharing-between-federal-commodities-and-state-securities-regulators/*.

from taking steps that would impede would-be whistleblowers from communicating with the CFTC about possible misconduct.

We believe those incentives are working. On July 12, 2018, the CFTC announced an award of approximately $30 million to a whistleblower who voluntarily provided key original information that led to a successful enforcement action. The award is the largest award made by the CFTC's Whistleblower Program to date. In FY 2017, the Commission received a record number of whistleblower reports—nearly twice as many as in any other year, and FY 2018 is on track to receive nearly twice as many as in FY 2017.

The Commission takes its enforcement efforts very seriously. We pride ourselves on being a premier Federal civil enforcement agency dedicated to deterring and preventing manipulation and other disruptions of market integrity. We will not stop.

Open Meeting on Indemnification, Volcker Rule, and Swap Dealer *De Minimis*

On June 4, 2018, the CFTC held an open meeting for input on several important matters. This was the first open meeting I conducted as Chairman of the agency. We considered a final rule for swaps data access and two proposed rules concerning the Volcker rule and the *de minimis* swaps dealing exception.

First, let's turn to the swap data access provisions of Part 49 of the CFTC's rules, also formerly known as the swap data repository (SDR) indemnification rule.

Eight years ago, Congress included in the Dodd-Frank Act a requirement that foreign regulators had to indemnify both the U.S. SDR and the Commission for any expenses arising from litigation relating to information provided by the SDR. This requirement was driven by U.S. concern to protect data privacy, an issue that is very much in the news today. Unfortunately, foreign regulators were unable or unwilling to provide the required indemnification, hindering the ability to share swaps data. It also hampered access by foreign derivatives regulators to data in U.S. SDRs necessary to understand the risks their regulated entities are assuming and the impact of such risks on the broader markets.

With the implementation of our new rule, I believe we have made significant progress towards cross-border data sharing and enhancing transparency in the global swaps market. Such data sharing may facilitate greater cooperation among market and Prudential Regulators, as well as among foreign and domestic regulators, and will provide more effective financial market oversight, expand data driven policymaking, and improve early warning systems that might ultimately reduce the probability or severity of a crisis.

Then there is the Volcker rule. Section 619 of the Dodd-Frank Act added a new section 13 to the Bank Holding Company Act of 1956 (BHC Act) that is commonly known as the Volcker rule. The new section generally prohibits "banking entities" from engaging in "proprietary trading" for the purpose of selling financial instruments to profit from short-term price movements. Section 13 of the BHC Act also generally prohibits banking entities from acquiring or retaining an ownership interest in, or sponsoring, a hedge fund or a private equity fund ("covered funds").

Recognizing that the "devil is in the details," Congress left the finer points of developing the Volcker rule regulations to five agencies: the Board of Governors of the Federal Reserve System (Board), the Federal Deposit Insurance Corporation (FDIC), the Office of the Comptroller of the Currency (OCC), the Securities and Exchange Commission (SEC), and the CFTC (together, the "Agencies"). The Agencies issued the final rule in December 2013.

Since then, there has been a growing concern that the regulators first pass at the Volcker rule was not ideal in several respects. Specifically, the current rule causes confusion as to what is acceptable activity, presumes unacceptable activity in various cases, and imposes highly intensive compliance burdens in all cases, unfairly benefitting large Wall Street banks over smaller regional ones.

The amendments to the Volcker rule seek to simplify and tailor the Volcker rule to increase efficiency, right-size firms' compliance obligations, and allow banking entities—especially smaller ones—to more efficiently provide services to clients. It adopts a risk-based approach that would rely on a set of clearly articulated standards for both prohibited and permitted activities and investments. It is the product of a collaborative effort with the Federal Reserve, FDIC, OCC, and SEC. It is based on our collective implementation experiences over the past several years.

This proposal will provide banking entities and their affiliates, including a number of swap dealers, FCMs, and commodity pools subject to CFTC oversight, with greater clarity and certainty about what activities are permitted under the Volcker rule. For the CFTC, "banking entities" subject to the Volcker rule include primarily swap dealers and FCMs that are either insured depository institutions, certain foreign banking entities operating in the United States, and affiliates of either of those

two categories. In addition, certain commodity pools that are owned or controlled by any such entity may also be banking entities or covered funds under the Volcker rule.

Finally, I want to turn to the proposal for the swap dealer *de minimis* definition. As you know, last year I requested that the Commission postpone a decision on the *de minimis* threshold for a year, delaying implementation until the end of this year. That decision was disappointing to some, including my fellow Commissioners, who said they were then ready to move forward with a proposed rule. Yet, as I told Congress at the time, I did not just want to address the *de minimis* threshold; I wanted to get it right.

I believe the staff has had adequate time to analyze the most current and comprehensive trading data and arrive at a recommendation for the best path forward in terms of managing risk to the financial system. The staff has provided Commissioners with full access to the data they have used in their analysis. They have also conducted additional and specific data analyses requested by Commissioners. The data shows quite clearly that a drop in the *de minimis* definition from $8 billion to $3 billion would not have an appreciable impact on coverage of the marketplace. In fact, any impact would be less than one percent—an amount that is truly *de minimis*.

On the other hand, the drop in the threshold would pose unnecessary burdens for non-financial companies that engage in relatively small levels of swap dealing to manage business risk for themselves and their customers. That would likely cause non-financial companies to curtail or terminate risk-hedging activities with their customers, limiting risk-management options for end-users and ultimately consolidating marketplace risk in only a few large Wall Street swap dealers.

That is why I think the proposed rule rightly balances the mandate to register swap dealers whose activity is large enough in size and scope to warrant oversight without detrimentally affecting community banks and agricultural co-ops that engage in limited swap dealing activity and do not pose systemic risk.

Leaving the threshold at the $8 billion level allows firms to avoid incurring new costs for overhauling their existing procedures for monitoring and maintaining compliance with the threshold. It fosters increased certainty and efficiency in determining swap dealer registration by utilizing a simple objective test with a limited degree of complexity. And it ensures that smaller market makers and the counterparties with which they trade can engage in limited swap dealing without the high costs of registration and compliance as intended by Congress when it established the *de minimis* dealing exception to begin with.

Both the Volcker and the *de minimis* rule are proposed rules that are now open for public comment. We look forward to getting feedback on both and will work towards completing final rules by the end of 2018.

Agency Reform and the KISS Project

Since becoming Chairman, I have made efforts to normalize operations and practices, and found opportunities to reinvest and maximize current resources. That means a return to greater care and precision in rule drafting; more thorough econometric analysis; and a reduced docket of complex new rules and regulations to be absorbed by market participants.

The KISS initiative launched last March included a review of rules and processes, and the invitation for public comment to collect ideas on how the CFTC can be a more effective regulator. The effort has produced a tiered list of significant actions that will lessen regulatory burdens.[7] Recently, for example, the agency unanimously approved an amendment replacing the complex and confusing lettering for defined terms with a simple alphabetical list.[8] The replacement will remove unnecessary complexity from our rules and should help make regulatory compliance less burdensome.

Internally, we have embraced the Administration's Reform Plan concept and have implemented in-depth organizational reviews to ensure that the agency is staffed to provide the most effective services to the American taxpayer. This ongoing effort has already produced results. Part of this effort included leveraging existing resources and knowledge gained from enforcement actions and surveillance efforts to provide timely consumer education materials to the public regarding virtual currencies.

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[7] Michael Gill, Chief of Staff, U.S. Comm. Fut. Trading Comm'n, *Remarks at the National Press Club, CFTC KISS Policy Forum,* Washington, D.C. (Feb. 12, 2018), available at *https://www.cftc.gov/PressRoom/SpeechesTestimony/opagill2*.

[8] J. Christopher Giancarlo, Chairman, U.S. Comm. Fut. Trading Comm'n, *We're Making Government Function More Efficiently for Taxpayers and Market Participants* (Feb. 15, 2018), available at *https://www.cftc.gov/PressRoom/PressReleases/pr7696-18*.

Swaps Reform

At the end of April, I released a White Paper on swaps reform called "Swaps Regulation Version 2.0." The White Paper was co-authored with Bruce Tuckman, the CFTC's Chief Economist. This White Paper analyzes the range of academic research, market activity, and regulatory experience within the CFTC's current implementation of swaps reform. It explores and considers a range of improvements to the current reform implementation that is pro-reform, aligned to legislative intent, and better balances systemic risk mitigation with healthy swaps market activity in support of broad-based economic growth.

We now have more than 4 years of U.S. experience with the current CFTC regulatory framework for swaps and have learned from its varied strengths and shortcomings. Four years provides a significant sample size to evaluate the effects of these reforms and their implementation. Based on a careful analysis of that data and experience, we are in position to address flaws, recalibrate imprecision and optimize measures in the CFTC's initial implementation of swaps market reform.

Rule Harmonization and Inter-Agency Coordination

I believe that Congress and the American people expect regulators to communicate and coordinate closely on issues where our regulatory interests are complementary or overlapping.

Soon after Chairman Clayton was sworn in as Securities and Exchange Commission (SEC) Chairman, we began discussing ways to ensure that our respective agencies are working together in areas where our regulatory interests are complimentary or overlapping. Now, almost 8 years after the Dodd-Frank Act officially required the CFTC and SEC to "consult and coordinate . . . for the purposes of assuring regulatory consistency,"[9] I am pleased to say that both agencies are undertaking an active and cooperative review of our Dodd-Frank regulations. With the helpful assistance of Commissioner Quintenz, CFTC staff has been actively engaged with our SEC counterparts—and soon jointly with outside stakeholders—to identify areas ripe for further alignment.

I am optimistic this review process will lead to regulatory changes that will enhance our oversight efforts while reducing unnecessary complexities and lessening costs for both regulators and our shared market participants.

In addition, since December of last year, I have been meeting with my counterparts at the Federal Deposit Insurance Corporation (FDIC), Bank of England, and the Federal Reserve to discuss resolution of Systemically Important Designated Clearing Organizations (SIDCO). As you know, Title II of the Dodd-Frank Act provides for the orderly resolution of a SIDCO should authorities decide to intervene. Title II also provides for the appointment of the FDIC as receiver, given its historical experience in resolving banks. The CFTC, however, has indispensable expertise as the primary regulator of swap CCPs. As such, it is critically important that our agencies understand each other's roles and expertise—before a crisis happens. Since our initial meetings, we are now coordinating and meeting regularly with the Federal Reserve and the Bank of England, recognizing the global nature of derivatives clearing. These meetings have been extraordinarily cooperative and productive. We've taken the opportunity, supported by our respective staffs, to exchange information, share analysis, and collaborate to develop and hone our respective strategies to address these extremely low probability—but extremely high consequence—contingencies.

Obviously, our expertise with clearing comes from our constant monitoring and oversight of CCPs. A key part of this oversight is through direct examinations of CCPs. In the case of SIDCOs, title VIII of Dodd Frank provides that the CFTC is the primary regulator. Early in my tenure, then Governor Jay Powell and his staff from the Federal Reserve visited the CFTC to meet with me and our CCP examinations staff in an effort to identify policy areas of agreement and improve collaboration on cyber security, default, liquidity and performance of margin models of SIDCOs. The teams are sharing analysis, information, and supervisory experiences in an attempt to minimize the number of policy concerns and to agree upon examination programs for these CCPs.

Finally, another area of crucial agency coordination is interest rate benchmark reform. For over 5 years now, CFTC has been working very closely with the Board of Governors of the Federal Reserve System on efforts to develop risk-free interest rate benchmarks. The Market Risk Advisory Committee (MRAC,) under the leadership of Commissioner Behnam, recently hosted an important public meeting during which CFTC staff, the Federal Reserve, Federal Reserve Bank of New York and

[9] Section 712(a) of the *Dodd-Frank Wall Street Reform and Consumer Protection Act,* Pub. Law No. 111–203, (July 21, 2010).

market participants discussed ongoing efforts to transition U.S. dollar derivatives markets away from London Interbank Offer Rate (LIBOR) to the Secured Overnight Funding Rate (SOFR). The MRAC meeting was the first piece of a larger multi-year effort to ensure a smooth transition of trillions of dollars of CFTC-regulated derivatives, which are pegged to LIBOR. This is a critically important task considering the role benchmarks, like LIBOR, play in the real economy, including home mortgages, student loans, and auto loans. The MRAC is in the process of forming a subcommittee in an effort to consider providing recommendations to the CFTC on regulatory issues raised by the Federal Reserve's Alternative Reference Rates Committee involving the amendment of existing derivatives contracts and Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act among other issues.

Protecting Our Financial Markets

Clearinghouses

One of the Commission's primary oversight responsibilities is to oversee derivatives clearing organizations (DCOs). The Commission expects the number of (DCOs) to continue to increase in FY 2019. As the number of DCOs increase, the complexity of the oversight program will increase. I believe that it is imperative that the Commission strengthen its examination capability to enable it to keep pace with the growth in the amount of swaps cleared by DCOs pursuant to global regulatory reform implementation. As the size and scope of DCOs have increased, so too has the complexity of DCO's risk management programs and liquidity risk management procedures. The Commission under my leadership will continue to work to enhance its financial analysis tools used to aggregate data and evaluate risk across all DCOs.

Economic Modeling and Econometric Capabilities

One of the most important jobs facing this agency now and in the coming years is to boost the CFTC's ability to monitor systemic risk in the derivatives markets by increasing both its analytical expertise and its capacity to process and study the voluminous data provided by market participants since the passage of the Dodd-Frank Act. Investments in these capabilities will allow for the expansion of sophisticated quantitative and econometric analyses that are necessary for risk modeling, stress tests, and other stability-related evaluations, especially with respect to central counterparty clearinghouses. These analyses will, in addition, enhance the quality of CFTC policy development, rulemaking and cost-benefit considerations.

Let me highlight one example. It has been widely recognized for the longest time that notional amounts are a poor measure of the size of swaps markets. But early this year, using our regulatory data, the Office of the Chief Economist introduced a new measure of the size of interest rate swaps markets called "Entity-Netted Notionals," or ENNs. Making some very basic risk adjustments, like offsetting the long and short positions of two counterparties, analysis reveals that $228 trillion notional amount of interest rate swaps corresponds to about $17 trillion ENNs, which is comparable to other fixed income markets, like $17 trillion of U.S. Treasury securities outstanding. In this way, the ENNs metric—which we plan to extend to other products—raises the level of discussion about derivatives markets and may ultimately lead to better calibrated regulatory thresholds.

Cyber Security

As I have mentioned in the past, cyber security is critically important to protecting infrastructure and financial markets around the world. As market leaders and regulators, we must take every step possible to thwart cyber-attacks that have become a continuous threat to U.S. financial markets. Our understanding of the cyber threat must develop in pace with the constant evolution of the threat itself.

As we learn, we must engage in discussions with the DCOs about their cyber defenses and threat resiliency and recovery. It is through the oversight and examination of systems safeguards that the Commission helps to ensure that DCOs are prioritizing cyber security activities. The same vulnerabilities hold true in the case of futures commission merchants where customer accounts hold records and information that requires protection. We as an agency must work hard to ensure that regulated entities live up to their responsibility to ensure their IT systems are adequately protected from attacks and customers are protected.

As an agency, the Commission is faced with growing pressure to protect terabytes of data and maintain compliance with the Federal Information Security Modernization Act and Office of Management and Budget mandates. Looking forward, I am hopeful that next fiscal year with additional funding we will be able to enhance our internal cyber security including implementing additional cyber-attack sensors and defenses to further protect the market data we collect.

Conclusion

Thank you for this opportunity to update you on progress of the CFTC. I am pleased to report that the agency is on sound footing in the conduct of its statutory mission. I believe the CFTC is an agency upon which the American people can look with satisfaction in terms of taxpayer value, effective oversight of U.S. markets and mature development of public policy amidst the rapid pace of change of Twenty-first Century financial markets.

With the proper balance of sound policy, regulatory oversight, and hard work, America's deep, liquid, and sensibly regulated derivatives markets will allow us to meet the challenges of the future and ensure a healthy U.S. economy where our citizens can flourish. This is how we can best serve the nation and the world. This is how we can walk into a virtual future with resources, insight, leadership, and effectiveness. The American people would expect nothing less.

Thank you.

The CHAIRMAN. Thank you, Chris.

The chair will remind Members that they will be recognized for questioning in order of seniority for Members who were here at the start of the hearing. After that, Members will be recognized in order of arrival. I appreciate Members' understanding.

With that, I recognize myself for 5 minutes.

Chris, in my opening statement I mentioned the European Commission wanting to reset the overall regulatory scheme. Can you flush out the current state of affairs or where we are with respect to that? Clearly the difference we had before was, certainly Mr. Pearson's statement made a lot of sense 8 years ago. Would you bring us up to speed on where we are today?

Mr. GIANCARLO. Conversations are ongoing. Relationships are cordial. The conversations are honest and the dialogue is direct and candid.

Having said that, we are not much further than we were the last time I reported to you on this matter. I am sorry to say that the European Parliament, while they have made small concessions in the current proposal that is before the Parliament, it still, in substance, would require the imposition of European substantive law on American clearinghouses.

That means that our clearinghouses in Chicago and New York would have to, in addition to following U.S. law set by the American Congress, follow European substantive law set by the EU Parliament. I mean, it almost seems ludicrous, but that is what is being proposed and I am not aware of any other area of law where such would be the case. And if our laws were identical in substance, maybe as a practical matter this could find a way to work.

But the fact of the matter is our laws are quite different. Our commodity futures markets and clearinghouses have been around for, in some cases, 150 years, and have developed practices that are unique to the American agricultural and other financial communities.

One use, for example, is American clearinghouses allow use of letters of credit, which are widely used by American agriculture producers as collateral in the markets. European law does not permit that.

But at heart, one of the things that I find most troubling is that when you speak to our European counterparts, they will tell you that what drives a lot of this is their frustration that a few years ago, the London clearinghouse produced a haircut, or discounted the value of certain collateral that was posted, and the Europeans

felt that a political decision should have been made not to discount that collateral because it concerned European bonds. Well American practice is to never impose political decisions on the use of collateral by clearinghouses. We don't bring political decisions to bear. They do, and these are fundamentally different approaches to the supervision of clearinghouses. And if their law applies and our law applies, I don't know how we are going to reconcile these two very different approaches to the use of collateral by clearinghouses.

We have fundamentally different laws, different approaches, and their desire is to see their law apply to our clearinghouses, coincident with our own law applying. I just don't know how this can be reconciled.

The CHAIRMAN. Can they point to a failure of our regulatory regime to not properly protect, I understand the actions taken by the London clearinghouse, but can they point to something that didn't happen that should have happened, or something that did and shouldn't have in our scheme that they say, "Well, the Americans just don't get it right." Are they making any kind of comment about that at all?

Mr. GIANCARLO. They are not. The answer is a simple no, and the facts are that our regulatory scheme predates the CFTC. It goes back to the 1930s when the Commodities Exchange Act was first passed. In that time, our clearinghouses have never had a major failure, including through the 2008 financial crisis when our clearinghouses for futures commodities stood tall and strong.

I am not aware of any deficiency in our approach. We have different approaches, but that is to be expected.

Let's be candid here: American futures markets are the world's largest. They remain one of the fastest growing markets, and I would understand if European markets were the second largest, but they are not the second. The Chinese are. They are not the third and they are not the fourth. They are maybe the fifth largest in the world, and the notion that the world's fifth largest market would dictate the laws for the world's largest market seems a little outside their lane, shall we put it that way.

The CHAIRMAN. Well thank you, and I will have another question on a second round perhaps, so with that, I yield back.

Mr. Peterson, 5 minutes.

Mr. PETERSON. Thank you, Mr. Chairman.

As I mentioned in my opening statement, we are in the midst of a sea change in finance with the transition away from the LIBOR. The interest rate that was so easily manipulated during the financial crisis. I applaud you for your participation in the Alternative Reference Rate Committee's work to produce a very sound replacement rate, but I do have concerns.

Replacing LIBOR will be a massive undertaking. In the United States alone, the rate underpins almost $200 trillion in derivatives, not to mention millions in student loans, credit card payments, retail bank deposits, auto financing agreements, and home mortgages. And yet, there is a growing concern that Wall Street has yet to really engage in this difficult task of making this transition.

Could a delay in the transition disrupt orderly markets, and if so, what would it look like for end-users? And if the market participants are reluctant to do so, what measures should regulators or

Congress consider to encourage them to overcome the inertia they face right now?

Mr. GIANCARLO. Thank you, Ranking Member. It is a very important question, but I also want to express my condolences. I know you lost your dad recently, and I haven't had a chance to express that. I lost my dad 3 years ago, and he is never far from my mind, and I am sure that is the case for you as well.

This LIBOR transition is a very important matter. As I am sure you know, what has happened is when LIBOR first grew, it was based upon a marketplace where the major global banks funded their overnight funding requirements. It was an active market that was a primary market for that overnight funding.

In the 30 or 40 years since, that market has really diminished to not even a secondary or third source of funding. Banks now fund their operations through repo markets, to the point where the LIBOR market is not a real market anymore. LIBOR rates are really not based upon trading activities. They are based upon educated suggestions, I don't want to say guesses, but professional judgment, shall we say, of a few banks. It is only down to a handful of banks. Many of the banks that were supplying LIBOR rates for years have dropped out, and the remaining banks wish to get out but the Bank of England and the Financial Conduct Authority in the UK has required them to stay in for a limited period of time.

This is not driven by a desire to move away from LIBOR, it is based upon a recognition that LIBOR is no longer a true market. And yet, LIBOR, as a rate, as an institution, as you rightly point out, runs through so many of our financial contracts, everything from home mortgages to student loans. It is vitally important that that huge infrastructure be based upon a real sound marketplace.

Global regulators and the UK and the U.S., which are the major users of the LIBOR rate, over the last few years it has been a nonpartisan thing. It was actually my predecessor, Tim Massad, who originally worked on this committee which is called the ARRC Committee, the Alternative Reference Rate Committee, representing the CFTC and supports the shift away, as does Governor Powell, the Fed, as does the Governor of the Bank of England, as well as the Chief Executive of the Financial Conduct Authority.

We all recognize that something as important as LIBOR cannot be based upon professional judgment. It has to be based on a real marketplace.

Now all the concerns you raise, I share. Knowing we need to do something doesn't make the task any easier than it is. It is a tremendously difficult task, and I do want to commend my fellow Commissioner, new Commissioner, Commissioner Behnam, who is using our Market Risk Advisory Committee at the CFTC as a way of fleshing out some of those very issues you mention.

I also think it is vitally important that also, as you mentioned, that we take this discussion beyond this sort of Washington, New York corridor here in the United States and get out into the country, into banking districts from here to the other coast, north and south, and make people aware that this change is coming and what it entails, and work through the various issues.

It would be foolish to minimize the complications and the difficulties that this task entails, but it would be far more foolish to do

nothing about it and allow this large institution of LIBOR to rest on such a thin and diminishing foundation.

Mr. PETERSON. Thank you. Thank you, Mr. Chairman.

The CHAIRMAN. The gentleman yields back.

Mr. Lucas, 5 minutes.

Mr. LUCAS. Thank you, Mr. Chairman.

Chairman Giancarlo, one of the issues I have been supportive of, and even cosponsored legislation about, is making sure that bank capital requirements do not unduly interfere with client clearing. And I want to recognize that you have also supported that goal, and that your agency's economists recently published a paper showing how capital requirements, specifically the leverage ratio, is impacting market liquidity, the distribution of risks in financial market and access to key market infrastructure, such as central clearing. I am concerned about the lack of an offset for client clearing margin under the leverage ratio. Have you had conversations with your Prudential Regulator colleagues about how the leverage ratio is negatively impacting the markets?

Mr. GIANCARLO. Yes, I have, active conversations.

Mr. LUCAS. Do you think the banking regulators are finally understanding this problem and potentially we might get some action?

Mr. GIANCARLO. Yes, I do. I have had some very good conversation with Vice Chairman Quarles at the Federal Reserve on this point, and I believe he appreciates it. In fact, we spoke just as recently as 2 weeks ago, and although he has a large docket of tasks there, it is something that will be on their to-do list. I am hopeful.

Mr. LUCAS. You recently signed an MOU with the SEC stating that it will lead into greater harmonization of the title VII rules. I very much appreciate your affirmative actions on this. Can you give us your priorities for harmonization, and what the likely timeframe for these efforts might be with the SEC?

Mr. GIANCARLO. Yes. As you know, harmonization with the SEC was an affirmative commitment under Dodd-Frank. I don't think it reached the right level of prioritization and Chairman Clayton and I both upon taking office decided to make it a priority of our work. We have a very active harmonization committee that meets regularly and has developed a laundry list of issues. And I would put them into two categories. Some are simple, practical ones such as where registrants have to file two separate forms with each agency for a lot of the same information. Can we get that onto one form and one filing? Other areas are can we harmonize margin requirements for similar or same products? Those are things that we are actively engaged on, and I hope to have some good news on that in the weeks and months to come.

Others are more long-term, as you know, Dodd-Frank assigned about 90 percent of the over-the-counter swaps markets to the CFTC and about ten percent to the SEC, and can we get some greater harmonization with some of the core requirements of swaps execution, swaps reporting, and swaps clearing? Some of that will take longer range work. It might take some rule changes. And then there is another range of issues that might involve some of the other Prudential Regulators.

But all of these are on our to-do list, and I am really optimistic that we are going to make some progress in this area.

Mr. LUCAS. Thank you, Chairman Giancarlo, and speaking of rulemaking complexities, some rules in particular, and you mentioned Dodd-Frank, mandate a large number of agencies to weigh in. This sounds like a recipe for needless complexity. The Volcker Rule is one such rule, and I will note that the House has passed a bill this year designating the Fed as the primary regulator on that.

But in your space, the margin rules require, by my count, no fewer than seven regulators. I realize it might curtail the CFTC's participation in some instances, but does it make sense to your view to have one regulator per rule?

Mr. GIANCARLO. I have two minds of this: seven is certainly unwieldy and it makes the challenge difficult. My concern with one is that there is often a different perspective of market regulators, such as the CFTC and the SEC, and prudential bank regulators such as the Fed or the OCC. And if the driving force might be on the banking prudential regulated point, then some of the concerns of market activity might not be fully appreciated.

The supplementary leverage ratio is a good example of where something that was really designed for bank capital really under-appreciates the role of initial margin, variation margin used in markets, or under-appreciates the role of market making, the Volker rule and other area where it has a bias against market making.

I think that market regulators have an important role to play in bringing the market perspective to bear. If we could find a way maybe to streamline the process, but make sure that both market perspectives and bank capital perspectives were harmonized, then I think that probably would be the right outcome.

Mr. LUCAS. Absolutely. I yield back, Mr. Chairman.

The CHAIRMAN. The gentleman yields back.

Mr. David Scott, 5 minutes.

Mr. DAVID SCOTT of Georgia. Thank you, Mr. Chairman.

Welcome, Chairman Giancarlo. It is good to see you again. Last time we visited, you and I talked about cross-border, and I want to get an update to that.

It appears to me that the United States and the EU have come to an agreement, an agreement that appears to be good for the United States and the EU and being able for American and European businesses to do good business together.

But let me ask you, is it true that with all of what is happening over there now, the EU wants to throw this agreement out the window, which would really undermine new authority? Give us an update on that, will you?

Mr. GIANCARLO. Chairman Massad, and I must give him all the credit in the world for his painstaking negotiation, close to 3 years with the EU to reach the agreement that was reached 2 years ago now in June of 2016 with the EU on clearinghouse equivalency. And the foundation of that agreement was simple. It was that we recognize the Europeans approach to clearinghouse regulation and supervision is *comparable,* that is our terminology, to U.S. law and our regulations had gone into effect several years before the Euro-

peans recognized our clearinghouse supervision as e*quivalent,* which is their terminology. It is quite symmetrical. We fully disclosed to them how we operate our 40 years of clearinghouse supervision as a regulator, how we do things. They asked for a lot of additional information. They actually asked us to make certain changes in our rules. We made concessions to reach that agreement. And we did. And that seemed to be working well. At the time that agreement was reached, the European Commission put out a statement that said this was a remarkable achievement, and they were very, very pleased with what had been done.

But then Brexit happened.

Mr. DAVID SCOTT of Georgia. Yes.

Mr. GIANCARLO. And Brexit seems to have changed everything. And the European Commission now, as you say, appears to be throwing out that agreement and starting over again with a different approach. And the different approach is to look at what they call third country clearinghouses and rank them. If they are globally important, and not just limited to their swaps volume—and some of our clearinghouses, which are some of the world's largest, are largely in listed futures not in clearing swaps. In the European approach now, even though the clearinghouse equivalents was all about swaps, they are saying if a clearinghouse is big enough, including their futures book, then European law will apply to the entirety of their operations.

Mr. DAVID SCOTT of Georgia. Well let me ask you, is this a major, number one priority for the CFTC to correct this? Because if we don't, I can imagine it is going to put operations like CME and others, ICE, all of them, in a very precarious position.

What are your steps, going forward, now to correct this imbalance?

Mr. GIANCARLO. Yes. We have gotten to know each other over the last few years. I think you know me. My style is not to huff and puff and make threats. I just try to be as candid as I can. Perhaps Chairman Massad, but I don't think any Chairman of the CFTC has made as many trips to Brussels as I have, has entertained more delegations from the European Commission as I have, have tried to be as clear as possible as I have.

But to answer your question, if all of that doesn't convince them otherwise, the way this would play out would be Europe would come to us when they have passed their legislation at some point, probably after Brexit, and say look, our law has to apply to your clearinghouses. And I would say look, under our Constitution, that is just not going to happen. Their next step would then have to be to tell European firms that could no longer use the services—now here is the problem with that idea. For them, some of the world's most important products, like dollar interest rate futures, only trade on the CME and European pension funds and hedge funds need to use those products.

Mr. DAVID SCOTT of Georgia. My time is up, but I do want to ask you, is there anything that we here in Congress can do to strengthen your position, send a message to the European Union?

May I have an additional minute?

The CHAIRMAN. Without objection.

Mr. DAVID SCOTT of Georgia. Thank you, Mr. Chairman.

Mr. GIANCARLO. Chairman Conaway, you pointed out that the European Union has been contradictory just by their own words before this Committee. The sense of this Committee has been very clear. Certainly this issue has no partisanship. Both Republicans and Democrats have been uniformly strong on the issue.

Mr. DAVID SCOTT of Georgia. Yes, that is correct.

Mr. GIANCARLO. The Administration has been as well. The President of the United States is concerned about this issue as well. As well as Treasury, as well as the Fed, so the United States Government across the board is unified on this issue, and I have made that very clear to Europeans.

What I was starting to say is if they continue to press this issue, it is their firms that are going to be hurting the most because they will be cut off from access to products that there are no substitutes for in European markets.

Mr. DAVID SCOTT of Georgia. Thank you for that extra time, Mr. Chairman.

The CHAIRMAN. The gentleman's time has expired.

Mr. Gibbs, 5 minutes.

Mr. GIBBS. Thank you, Mr. Chairman, and thank you, Chairman Giancarlo, for being here, and thank you for holding steadfast in this EU issue. Some of this has been answered already, but I just want to highlight it a little bit.

You said it kind of came to the surface with Brexit, right, correct? My first question is this. Where is the United Kingdom? What do you think is going to happen with them on this? Are they going to hold steadfast in the United Kingdom on this issue, because they are part of that.

Mr. GIANCARLO. One of the things that is vitally important in my conversations with officials in Brussels is to make clear to them that we take no sides in their dispute over Brexit with the United Kingdom. And that is vitally important.

Yet, I will tell you that aside from this issue, I am increasingly concerned about an unresolved Brexit which is looming, it is next March, with no clear outcome in sight. There are billions of dollars, bilateral swaps contracts, between British and EU counterparties, that my understanding is if there is not a resolution, those contracts will be thrown into legal doubt and jeopardy. And I am concerned that Brexit could have a systemic risk impact on the global economy if there is not a clear resolution of it. And so the CCP issue is part of a broader concern of the failure of both sides to the Brexit debate to reach a measured and a mutually satisfactory relationship here. And it seems like a lot of brinkmanship. Again, I don't want to be critical of either side. It is important for American officials to stay out, but we do have our own markets to be concerned about and we do have concerns about the global economy if there are not steps taken to resolve this in a more——

Mr. GIBBS. Well, I agree that what the EU is doing is outrageous. Just quickly on all the trade talks going on, how does that intertwine with this? Are there connections, or what do you see on that?

Mr. GIANCARLO. Undoubtedly the issue of trade, it adds to the conversation, sometimes creates heated exchanges, and it is very important for public officials like myself in our dealings with the Europeans to take away from some of the heat.

I just came from a 2½ day conference in Salzburg, a global conference with my European counterparts in which we had a very good dialogue on some of these issues and took some of the heat away. But there is undoubtedly that, and I know that Members are going to want to talk about the impact of trade discussions on our ag markets, and that is something we are also watching very carefully as well.

Mr. GIBBS. I have a question on another area. Dealing with the allegations by the U.S. aluminum end-users about serious irregularities existing on the reporting to determine the price of the Midwest premium in aluminum trading. Since January it is up 140 percent. That seems a little disjointed from free market principles. What is your take on that, what is CFTC doing to make sure that the free market is functioning, or is not being manipulated?

Mr. GIANCARLO. Yes. We take this very seriously. Any allegation of manipulation or fraud in the market, we take very seriously.

I have met with the aluminum end-users and their group, heard their concerns. I have also met with our team that watches these markets to understand what they are seeing in the markets, and although we don't comment on market surveillance in specific matters, I can assure you that we take this seriously. We watch this very seriously.

Now some of the aluminum consumers' concerns have to do with not directly market manipulation, but just the construct of the index, how it is used by Platts. We don't regulate the construction of indexes. We monitor, though, underlying markets, including indexes for fraud and manipulation. What is important to know is if it is a matter of fraud and manipulation, we monitor that very carefully, daily. We take it very seriously. We meet with groups like the aluminum consumers to make sure we understand their concerns and then follow up.

Mr. GIBBS. Yes, I just think we need to work with Members of Congress on this and make sure that the CFTC is responding in a timely fashion because the impact, as you know, has ramifications that would not be good.

Mr. GIANCARLO. In every district in the country, and if you would like, I would be happy to sit down with your team and go through a briefing on this.

Mr. GIBBS. Thank you, and I yield back, Mr. Chairman.

The CHAIRMAN. The gentleman yields back.

Ms. Kuster, 5 minutes.

Ms. KUSTER. Thank you, Mr. Chairman and to Ranking Member Peterson, for holding this hearing and thank you, Chairman Giancarlo, for being with us again.

Mr. GIANCARLO. Nice to see you again.

Ms. KUSTER. We really appreciate it.

The American economy has come a long way since the financial crisis of 2008, thanks in large part to the work of the past Administration for pulling us out of the Great Recession.

But I want to take a moment, if you would, Chairman Giancarlo, could you compare the swaps market that existed before 2008 with where we are now, and in particular, could you comment on whether the current swaps market is safer at a systemic level now than it was in 2008? I think that the concern of our constituents is are

we protecting consumers and our economy from the type of fall that transpired in 2008?

Mr. GIANCARLO. Thank you for that. The market is dramatically different than it was then. At the time of the crisis, there were a range of shortcomings in the over-the-counter swaps market that were recognized in title VII of Dodd-Frank, a series of reforms, all of which I supported and publicly said so at the time, that would be to require a greater amount of bilateral swaps to be sent through central counterparty clearing, that swaps transactions would be reported to swap data repositories, and that swaps would be traded on licensed exchanges. In addition, swaps dealers would be registered and licensed.

The CFTC took a global leadership role in implementing those reforms following the passage of Dodd-Frank, and by 2014, had adopted most of them. Again, I support those, and continue to support those in my role as Chairman of the Commission.

To give you an idea of what has transpired, before the crisis less than ⅓ of interest rate swaps were cleared, and I would say probably less than ten percent of credit default swaps were cleared. Now the percentage is over 85 percent of interest rate swaps and about 85 percent of credit default swaps are now cleared through clearinghouses. A tremendous accomplishment.

In the area of swaps data repositories, while we are still working out harmonization issues with overseas regulators, an enormous amount of swaps trade data is now reporting to swaps data repositories, and just last month, we removed one of the last hurdles to cooperation and harmonization with our European partners for sharing swaps data, and that was something called the Indemnification Rule, which we have now resolved.

And in the area of swaps execution, that is an area where I support the reform, but I have been critical of the CFTC's implementation of it because I thought our approach was modeled on the futures market, which is inappropriate for the global swaps market. They are different markets and need different approaches, but more importantly because the approach the CFTC took didn't conform with Congress' requirement that there be flexibility in the modes of execution. However, I support the reform, and continue to do so today.

In the area of dealer registration, that is largely complete. The only issue is what is the *de minimis* cut off, and that is something we recently proposed a final rule on. On all of the core four reforms, I remain a supporter of them. They are largely in place, and I think that the swaps market at least is a safer place today than it was at the time of the crisis because of those reforms.

Ms. KUSTER. Thank you for the very articulate, succinct, and almost plain English answer for our constituents to follow, so I appreciate it. It is a complex area.

Thank you for leading to the *de minimis* reform, and I wanted to just focus in on that. What do you believe would be the impact if the proposed rule to tailor the compliance requirements, my understanding is that $10 billion in trading assets and liabilities would be known as significant activity, $1 billion to $10 billion, moderate activity, and below $1 billion, limited activity. Is this designed to allow the CFTC to focus your oversight on the larger ac-

tors, and how can I reassure constituents that we are not going to take our eye off the ball of oversight of actors that are quite active in the markets, if you could?

Mr. GIANCARLO. It is the right question, so thank you for asking it.

With regard to dealers, swap dealers, what we are talking is what is the cutoff below which they don't need to register? Above $8 billion we have captured all of the Wall Street banks. They are in the tens, if not the hundreds of billions, so they are captured. The question right now is whether we lower the threshold from $8 billion to $3 billion.

We have done an analysis that if it drops from $8 billion to $3 billion, we are going to capture less than one percent of the activity in the market, but the ones we would capture are local utility companies, small ag trading firms, and small and local banks that trade at a *de minimis* amount. But we won't really capture them, because I have met with many of them and what they say is if you drop the level, we will just drop our activity level.

Ms. KUSTER. Right.

Mr. GIANCARLO. And so what does that mean for producers? It means they are more dependent on Wall Street banks, not less, and that is why I have come to conclusion that it should stay at $8 billion, because we are not capturing any more Wall Street banks. We are just going to capture small lenders who they, themselves, won't register as swaps dealers. They will then drop their activity level and really reduce their presence in the market.

Ms. KUSTER. Thank you, and I apologize to the Chairman. I yield back.

The CHAIRMAN. The gentlelady's time has expired.

Mr. Austin Scott, 5 minutes.

Mr. AUSTIN SCOTT of Georgia. Thank you, Mr. Chairman.

Mr. Chairman, as you know, Dan Gorfine testified last week at a hearing here, and I want to follow up with you on what started last October when you outlined your plans for LabCFTC for us. At the time it was in its infancy, just a few months old, but it held almost 100 meetings, as I understand it, at that stage with individuals.

Can you share more with us about who LabCFTC has been meeting with, and what the goals are, what they are talking about?

Mr. GIANCARLO. Thank you so much. And so the numbers now are well over 200 engagements with innovators, and the innovators run the gamut from your classic small startup all the way to large financial service providers that may be 20 or 30 years old and are now looking how these innovations will help them modernize their operations.

LabCFTC really is our front door into this new regulatory FinTech developments in the marketplace, and it is so important to us to be able to understand these innovations that are coming down the pike so fast.

Mr. AUSTIN SCOTT of Georgia. In your written testimony you mentioned the importance of the CFTC Research and Development Modernization Act. It has been introduced by several of us on the Committee. Can you give us a couple examples of how that would actually help you do a better job at the Commission?

Mr. GIANCARLO. Absolutely, and I want to thank you for that legislation.

I remember when you and I first talked about this problem, and I want to thank you for listening.

In my work on the Commission, I have been approached and our staff has been approached even more by some of the most interesting innovations taking place. They call these proofs of concept or beta tests of some of the new technology, especially in the area of Blockchain where there are six of the world's major banks, some service providers and some technology shops, coming together to build a prototype of a Blockchain system for trading credit default swaps right in our jurisdiction or for bank payments or other areas. And they have approached us and said, "Hey, CFTC, why don't you participate in this proof of concept? Why don't you put a team on the ground in New York or San Francisco or wherever it is to observe? Why don't we actually create a node in the Blockchain that will be the CFTC regulatory node where you can see everything that is going on in Blockchain?" And I say, "I love it. We are going to do this. Let's make this happen." And I go back and I sit down with our General Counsel and he says, "No, you can't do that." "Why?" "Because that would be a gift to the agency and we are prohibited from taking gifts." Well then I said, "What is the dollar amount? Can we use it from our budget? No, because it will need to go through an appropriations process, so they will need to compete with other firms," and by the time we go through all that, this thing is already launched.

What your bill would allow us to do is to participate in those programs and to accept that position without payment so that we can learn, so that we can be understanding. And let me tell you why it is so important, because we are falling behind. Just 2 days ago, the Bank of England announced that they are putting in a new bank to bank payment system in the UK, and it is going to be Blockchain compliant. And they have had the last 4 years into what they call their Project Innovate to participate in all these Blockchain beta tests that we have not been able to participate in, and they have been able to get comfortable with the technology and they are now incorporating it. I feel like we are 4 years behind, because we do need to test it. We do need to understand it. We need to see how it can help us do a better job as regulators before I then come to Congress and say, "Okay, we do need money to build something or buy it." First I want to be able to understand how it works and get our team and our people really conversant with it.

Your bill would be very, very helpful to what we are trying to do.

Mr. AUSTIN SCOTT of Georgia. Well thank you for that, and the sharing of data is technically considered a gift, and the sharing of information is technically considered a gift today, and that is where the challenge comes in when you have this new technology that is in the development stages, and you have a regulator that needs to be able to understand it if they share it with you. I mean, technically that would be a violation.

Mr. GIANCARLO. Yes, absolutely.

Mr. AUSTIN SCOTT of Georgia. I look forward to working with you on that, and thank you for your service to our country.

Mr. GIANCARLO. Well thank you, and I thank you for really listening, because this is a big concern of ours. You have been very responsive. Thank you.

Mr. AUSTIN SCOTT of Georgia. Thank you.

The CHAIRMAN. In that vein, if that Blockchain process was already in place and running full speed, could your agency demand that you have that node as a part of the access to it to regulate it, and that would not be a gift at that point, right?

Mr. GIANCARLO. Yes, I have to think of what authorizing legislation we might need.

The CHAIRMAN. It would be in the same category as demanding that folks share other data with you on trading.

Mr. GIANCARLO. We do have subpoena authority. That is probably the wrong way to get involved with these things by going with a subpoena.

The CHAIRMAN. That is just the weird, ironic thing is that after the horse is out of the barn, you can probably go in with existing authorities, but trying to be on the front-end, we have a problem.

With that, Ms. Plaskett, 5 minutes.

Ms. PLASKETT. Thank you, Mr. Chairman, and thank you, sir, for being here this morning.

My colleagues, of course, have touched on a number of issues that I wanted to address with you.

Just quickly, when you talk about Brexit, you talked about its impact on our economy and the global economy and how that works, but can you also tell me what may be the impact of that, and do you have concerns that the rules themselves may suffer or may have an impact based upon Brexit and the move from London to, perhaps, Frankfurt or Brussels or some other places?

Mr. GIANCARLO. Yes, it is hard to know what the full impact of what a disorderly Brexit would look like. It is even hard to know how disorderly or what that may mean.

But recently, the Bank of England put forward a range of concerns that I read very carefully that unless there are certain assurances given by Brussels, billions of dollars, tens of billions of dollars in derivatives that have been written by British firms on European exposure, European firms—and some of it concerns exposure to U.S. dollar, U.S. interest rates, other issues, could be void or voidable the day after Brexit.

There is also concern as to whether the clearinghouse could continue to service those contracts the day after Brexit.

I would have to do the math. What are we, 8 months away, and these things tend to get resolved. I don't want to be alarmist here, but every month that goes by that they are not resolved, it is my job as a market regulator to be concerned about what impact that might have on our financial markets, and each month that goes by, my temperature level goes up a little bit more, hoping to see resolution and clarity around these issues. And here we are in July, but if it were January, my temperature would be very high and I would be very concerned as to what the impact would be on the global market. I am trying to, in a very calm and measured voice, let my European colleagues know on both sides of the Channel that they really do need to address——

Ms. PLASKETT. But you keep talking about the markets, but does that affect the rules is my question?

Mr. GIANCARLO. Well, it doesn't affect our U.S. rules.

Ms. PLASKETT. Okay.

Mr. GIANCARLO. But as we talked about with the clearinghouse supervision issue, there is this question as to whether European rules would apply directly to our clearinghouses, and that is still unresolved as well.

Ms. PLASKETT. Okay, great.

We had discussion just a few moments ago with one of my colleagues about Blockchain.

Mr. GIANCARLO. Yes.

Ms. PLASKETT. Last week we held a full Committee hearing on cryptocurrency, at which there was something of a consensus view that emerged that Congress should consider providing the Commission with the authority over cash cryptocurrency exchanges. Now in your testimony, you are asserting that CFTC doesn't have jurisdiction, but given that consumer protection concerns are at issue with these markets and the vulnerability of these markets, these exchanges to cyberattacks or fraud or abuse, do you believe that Congress should expand your jurisdiction to require those markets to register?

Mr. GIANCARLO. First of all, I am going to clarify our jurisdiction, and then if I may respond to your question.

Ms. PLASKETT. Great.

Mr. GIANCARLO. We have jurisdiction for fraud and manipulation in those underlying markets, and we have been very assertive in using that jurisdiction for fraud and manipulation. We have enforcement jurisdiction.

What we don't have is jurisdiction that we have over our futures exchanges to set standards by how they handle customer accounts, cybersecurity, all the things that you just expressed rightful concern with. If Congress were to consider jurisdiction, it would be in that area.

I am not in a position yet to advocate a grant of jurisdiction to the CFTC and I have a range of concerns around that.

For one thing, it historically has not been the role of the CFTC to set these type of requirements for cash markets, for swap markets. We have historically been focused on the derivative market with enforcement action against the underlying, but not to set the standards. And so there would be a change in precedent and change of the Commission's orientation that I'm not ready to advocate for.

Second, there is a broad public policy conversation around these markets and what should be the role of regulation. In our great commodity futures markets, they were around for 100 years before the CFTC came along, and they set their own requirements and they policed themselves for a long time before regulators came in.

Ms. PLASKETT. Did they do it well though?

Mr. GIANCARLO. For the most part, but at some point the maturity level reached where it was appropriate, and I just wonder what is the right—the point I am making is there may come a time for the Federal Government to step in. The question is what is the time?

The amount of ink that is devoted to cybersecurity far outweighs the real role in the economy. It is a tiny marketplace. The total capitalization of all cryptocurrency in the world is probably less than one publicly-traded major big board company. It is not a big marketplace. The best model that I like to point to is the 1990s when a Democratic White House and Republican Congress worked together around this new thing called the Internet, and it took a: "First, do no harm," approach. Regulation came slowly, but the technology evolved. We need to stay close to it and we need to be careful, but we can allow it to develop a little bit before necessarily we run in with regulation. But we need to stay close to it, and we are at the CFTC.

Ms. PLASKETT. Okay, thank you very much. I yield back.

The CHAIRMAN. The gentlelady's time has expired.

Mr. Crawford, 5 minutes.

Mr. CRAWFORD. Thank you, Mr. Chairman, and thank you for being here today.

Mr. Chairman, can you explain why the European Commission is considering altering the terms of the equivalence agreement with the United States?

Mr. GIANCARLO. Yes, as I remarked to Congressman Scott, it is largely driven by Brexit. At the time we negotiated in 2016 our equivalency agreement, the world's largest swaps clearinghouse, which is the London clearinghouse known as LCH, it was prior to Brexit, and therefore it was in the EU. The prospect of Britain leaving and the London clearinghouse leaving the EU has caused the EU to really focus on how do they oversee what they call third country clearinghouses, because following Brexit, LCH will have gone from being in the EU to being out of the EU, and therefore, how do they regulate that? And I get that. I have told my European regulatory counterparties let's have a conversation about what the right role is for supervising LCH, because it is systemically important when it comes to just rate swaps to the EU and to the United States.

Just for an example, about 35 percent of what LCH clears is Euro denominated, but about 45 percent is U.S. dollar denominated. I understand they have a concern. We have a concern. Let's talk about LCH. But I don't know how they then go from there to saying that, "Oh, and by the way, we are going to move beyond our 2016 agreement and also apply the same direct oversight to your U.S. domestic clearinghouses," which in the case of the Chicago Mercantile Exchange, don't do a lot of swaps clearing.

Mr. CRAWFORD. Let's shift gears just a little bit and move into the ag space.

In your testimony, you mentioned at the Kansas City Agriculture Conference that panelists addressed the importance of crop insurance as a critical risk management tools for growers and the role that futures markets play to crop insurance. I wonder if you can elaborate on the relationship between crop insurance and using the futures market as a risk management tool. Are there two ways we can make sure that the two work more cohesively?

Mr. GIANCARLO. That is a great question. I have thought a lot about it. They are not direct substantives. Crop insurance covers things that you can't get a derivative for or use a future on, and

there are futures for things that you can't get crop insurance. But they do have a complimentary relationship, and sometimes they can be substance for each other. And sometimes I am concerned that the success of the crop insurance program has perhaps taken some of the retail component producers that might otherwise use futures markets out of the futures market. And I am a big believer that healthy markets are markets with a lot of diversity, everything from small retail users all the way to big institutional traders, and when I talk to American farmers, I will often ask a young farmer. I say, "Do you use the futures market?", and they often say to me, "No, my dad did or my granddaddy used those markets. I don't use them." And that is not good. If we have lost a generation of users of our futures markets, that is not a healthy environment.

And so I do think——

Mr. CRAWFORD. Let me interject something there. Do you then think that the fact that we don't see *bona fide* hedgers in the market, essentially, particularly in the ag space, that we in effect are creating greater volatility, reducing liquidity, and relying more on spec traders for price discovery?

Mr. GIANCARLO. That is a great question. One of my concerns with the current position limits proposal of the CFTC that I voted for to put out for comment was that the approach to *bona fide* hedging was way too narrow and didn't allow farmers to use hedges that they have used for generations, going back to their granddad's, restricted their ability to do that. And it is very important that our position limits allow for *bona fide* hedging in its full extent.

Mr. CRAWFORD. Let me ask you this then while I have 30 seconds left. Would you support an initiative if we were to work with the NFA, for example, to authorize a series 3A brokerage, a limited brokerage, limited to strictly ag hedging to incentivize greater uptake from those end-users in the ag space?

Mr. GIANCARLO. I haven't thought about it or seen it, but it is a very promising idea. Why not have something tailored for ag hedgers? Why not?

Mr. CRAWFORD. Okay, great. Thank you so much. I appreciate your time. I yield back.

The CHAIRMAN. The gentleman yields back.

Mr. Evans, 5 minutes.

Mr. EVANS. Thank you, Mr. Chairman.

Last year, you announced an expanded self-reporting and compliance approach to enforcement. Can you please provide us with an update on that policy? Has it led to a resolution of greater number of enforcement cases, and has it been effective thus far, and what needs to improve?

Mr. GIANCARLO. Thank you for the question.

I pledged the day the White House announced my nomination that there would be no let up on enforcement at the agency, and there has been none.

This year alone we have brought 13 manipulation cases, and the year is not over yet, and that is a record number of manipulation cases. The previous record was set last year with 12. We just brought a $475 million settlement against one of the world's global banks for market manipulation, so we have been very aggressive.

And I view the self-reporting case, which by the way, came out of the Obama Administration Justice Department, as another vehicle for being able to bring bad actors to justice. Traditionally our enforcement actions came from three sources. Those cases we uncovered through our own research, those that were referred to by other law enforcement agencies, and those that came from our whistleblower program.

All of those vehicles for covering wrongdoing and bringing enforcement remain fully functional and the source of many successful actions, but the fourth vehicle is now self-reporting, and that is that if companies uncover misbehavior, they bring it to us promptly. They take effective actions to end the practice they uncover, and they be full open communal disclosure to us of what they found and allow us to do our own examination to see what we find. And the chips will fall where they may, but if there has been full cooperation, we will recognize that if there is a final settlement, and we will recognize that. It provides us another vehicle, and I must say that a number of the cases that we brought in the past year have been a result of that self-referral case, and it is the practice of the Southern District of New York from which our new enforcement director comes. As I say, it was the practice of the Obama Administration. And it was adopted at the CFTC on a bipartisan basis. My fellow Democratic Commissioner at the time when we adopted that policy fully supported it.

Mr. EVANS. What needs to improve?

Mr. GIANCARLO. Well, we need more resources, and it is in our budget, we need additional resources. And I will tell you where we really need it on the enforcement side. It is in quantitative analytical skills.

I was just in Chicago. I met with our enforcement team there and met with the guys that do the quantitative analysis of trading data. It is very sophisticated information that they are looking at, and we need people that have quantitative skills to analyze trading data to find misbehavior in the markets so then we can take enforcement action and go after it.

Mr. EVANS. Thank you, Mr. Chairman. I yield back.

The CHAIRMAN. I thank the gentleman for yielding back.

Mr. Faso, 5 minutes.

Mr. FASO. Thank you, Mr. Chairman.

Mr. Giancarlo, thank you for your service and I appreciate your leadership of the agency.

Recently, the Vatican issued a bulletin on the question of credit default swaps and derivatives and their supposed manipulation of the marketplace, and the bulletin raised a number of questions about the efficacy of these financial instruments.

You issued a response recently, it was just last week, to the Vatican bulletin and I am wondering if you could take some time to explain to us what the Vatican's position was in that bulletin and how you responded.

Mr. GIANCARLO. Thank you so much for the question, and nice to see you again. I have to be up in your part of the world for our summer vacation in a couple of weeks, the most beautiful part of the State of New York. Thank you.

When the Vatican put out their *bollettino*, it was a wide-ranging discussion of all manner of finance, everything from executive compensation to different marketplaces. But what got the press's attention was a few comments, basically one page, about credit default swaps and the press loudly trumpeting even the Vatican is saying that credit default swaps are evil.

And the first thing I did was get a copy of the letter myself and read it carefully, and I was struck by the really serious and sober tone of it, and the concern for the world's poor that was expressed in that letter. And I thought those headlines are going to be misleading as to really what is being addressed here, and as the head of the world's only derivatives exclusive regulatory agency, when a moral authority like the Vatican is said to be censuring, and in some cases of the letter, they actually do with certain aspects of the credit default swaps market, I thought it was appropriate to put forward a similar sober and thoughtful response that addressed their current concerns directly in the same respectful way and the same way that was concerned for those on what Pope Francis calls the periphery of the world's society.

And so together with our Chief Economist, Bruce Tuckman, we have issued a letter response to the Vatican's *bollettino* and we talked about how these markets far from being actually dangerous to the world's poor are actually vitally important, and we point out a study that appeared in the *Financial Times* about the vanilla trade in Madagascar and because the prices fluctuate so widely, becomes a source of gang activity, of extreme poverty, and the article makes a point that because there is no futures market to level out those highs and lows, derivatives play a vital role very much for the world's poor by evening out fluctuations, whether it is price, or the cost of electric power, or the price of food, and so they are vitally important. But we also addressed the Vatican's specific concerns about credit default swaps in three areas. I don't want to take too much time on this, but what we wanted to do was answer a serious analysis with a serious analysis from people that are actually deeply in the markets. At the end of the day, these markets are vitally important to our U.S. economy and I wouldn't want it to be said that somehow they are morally inappropriate, and so we addressed that directly.

Mr. FASO. Well I thank you for that, Monsignor, I mean, Chairman, and I do think you made very good points in the response. And because what happens is that these markets are often misunderstood or they are viewed as overly complex and difficult for the average person to understand, and I was very happy to see that you laid it out in terms of how these markets do stabilize prices, they provide price certainty for producers as well as consumers, and that is a vital role and I applaud you for taking that opportunity to clarify this issue.

Mr. GIANCARLO. Thank you.

Mr. FASO. With that, Mr. Chairman, I yield back.

The CHAIRMAN. Thank you, sir. The gentleman yields back.

Mr. Soto, 5 minutes.

Mr. SOTO. Thank you, Mr. Chairman, and Chairman Giancarlo, it was great to rock out with you at the Rock and Roll Hall of Fame event a while ago. You are very talented.

Mr. GIANCARLO. Thank you. So are you.

Mr. SOTO. But on a more serious note, I want to talk a little about President Trump's tariff strategy. It was devised outside of Congress and there is no coherent strategy that I could discern right now, and I am worried that there is no end in sight. I want an update on what is the effect of Trump's tariffs on the futures market right now?

Mr. GIANCARLO. Thank you for that, and while tariff policy is outside of our jurisdiction, I will tell you that we take any form of disruption, any type of event that drives volatility in our ag commodity futures markets very, very seriously.

Traditionally, the CFTC has relied on its surveillance unit to look for bad actors in markets. One of the things that I have done as Chairman is in addition to surveillance, created a new market intelligence unit. Not all market activity is driven by fraud and manipulation. It may be driven by tariff policy. It may be driven by global events.

Mr. SOTO. I am more asking for a general description of how the markets are doing? Are we seeing losses in the futures markets right now?

Mr. GIANCARLO. We are seeing volatility in the markets, but pinpointing it to specific global events is very difficult.

For example, just this morning, we get a daily report, I receive a daily report saying that wheat prices are up. Wheat prices are up because of apparently it appears that Europe is having a very dry summer, maybe drought-like conditions, and so the market is anticipating a price rise. We have seen price falls in other areas.

Mr. SOTO. Which commodities have we seen losses in right now?

Mr. GIANCARLO. Well so for example, in Mr. Faso's district and in dairy markets, and I am sure Ranking Member Peterson is also concerned with this, issues with regard to Canada and Canada's activities in terms of buying or not buying American milk. But some of that predated the current tariff, but it is also tariff-related.

Mr. SOTO. I understand. What are some of the other commodities that are affected right now?

Mr. GIANCARLO. Well, I couldn't tell you. I could get back to you, if I can, to tell you which ones are——

Mr. SOTO. I don't mean directly by tariffs or not, but which commodities are experiencing losses right now in general, regardless of what the cause is?

Mr. GIANCARLO. Well, we are in a long-term downward trend of ag prices generally. We are seeing over the last few months a pick up in volatility in a number of ag products. Some of that is driven by microevent, some of it is driven by more long-term events. Certainly soybeans are one product that is in the crosshairs of tariff policy right now, and it is a market we are watching very, very carefully.

Mr. SOTO. And what could the long-term effects be on futures should we see a decline in foreign trade on a lot of these commodities?

Mr. GIANCARLO. Well, as you know, when it comes to ag commodities, the United States is one of the world's major exporters, and so the impact of tariffs will be reflected in price. But sometimes it is hard to measure where that goes.

Mr. SOTO. And then with regard to the plan to take about $12 billion to utilize out of the Commodity Credit Corporation, that program is usually for nature and crop cycles. What effect could taking that to prop up potential losses from tariffs have on the long-term futures market?

Mr. GIANCARLO. I am only reading about that in the headlines. I don't have any agency analysis to respond to that. We could take a look at that and if we find something, get back to you.

Mr. SOTO. That would be helpful, because I am concerned. I have been told that it may be deemed an improper subsidy in the World Trade Organization, and could affect us in other ways.

With my remaining time, we talked a little bit last week about how cryptocurrency could actually be a currency, a future, a commodity, or a security, but I am worried if we gave jurisdiction to all four traditional organizations that regulate those that we could have burdensome regulations. If we gave the CFTC primary jurisdiction over all these various facets and the funding to do it, do you think that you all would be able to be up for the job?

Mr. GIANCARLO. CFTC is a great agency. I can't imagine many jobs we are not up for. I will tell you, though, that we are not traditionally a retail market regulator. The SEC, CHOPS, on the retail side are probably more well-honed over the decades than ours in that regard.

As I said to Representative Adams, this is something that we should take a cautious and step-by-step approach to. As much ink has been shed on cryptocurrencies, it is still a relatively small market. I don't want to diminish the harm that can come to retail participants, and we have been working with self-regulatory organizations like the NFA to make sure that they are putting out warnings to market participants, and we ourselves are doing our own consumer advisory. Just last week, Mr. Gorfine who was here talked about a recent advisory that we have put out in this area, LabCFTC has.

I don't want to minimize the concern over retail, but I also want to say, again, these are relatively small markets. My belief is that we should proceed smartly, but deliberately, and things will develop over the next few years. And then it will be clearer where jurisdiction should go.

Mr. YOHO [presiding.] Thank you. I will now recognize myself. I am Ted Yoho from Florida. I was over there. I appreciate you being here, and your patience.

I just want to briefly touch on the Midwest premium. I know we have talked about that. We have had beer can distributor companies like Anheuser Busch and Boeing Company and they were talking about this. What I am hearing from you is do you feel like it is being monitored enough through the CFTC and watching the prices of that in the Midwest?

Mr. GIANCARLO. I can assure you that within our jurisdiction over fraud manipulation we are monitoring that very, very carefully.

Mr. YOHO. Okay.

I admire the job you do. I was just reading here the amount of volume of equities, global equities, the exchange and the derivatives, hundreds of trillions of dollars and the whole global market

is $500 trillion. I just don't understand how you can monitor all that, and then we are going to get into the area of artificial intelligence and quantum computing. I can only imagine it is going to go that much faster.

And so one of my questions I have is, again, dealing with Bitcoins, and I know you were talking about it is a small player now, but we should prepare for the future. One of those is, in your capacity in the CFTC, do you have adequate personnel, technology funding, or is there legislation that we might could look at for the future that we need to be prepared for? What are your comments on that?

Mr. GIANCARLO. Thank you so much.

As important and as interesting as cryptocurrencies are, in the scheme of things far more important from an agency agenda point of view I believe is those other markets that are measured in the tens of the trillions, not on a notional value——

Mr. YOHO. Right, and I want that to translate to that market, too.

Mr. GIANCARLO. And I would like to share with this Committee where I believe this agency needs to go long after I am gone in the next 10 to 20 years.

Mr. YOHO. That is really what we need to prepare for is 10 to 20 years from now, and we need to do it today to be prepared for that.

Mr. GIANCARLO. Well the CFTC needs to become a data analytical agency on par with Google and eBay and Facebook.

Mr. YOHO. I agree.

Mr. GIANCARLO. Their ability to analyze terabytes of data and see patterns in it and understand what is going in the market, we need to have that same capability. We need to go from an analog-based analysis of data, humans analyzing data, to automated big data analytical engine, and that is going to take money. But these markets are big and they are vitally important to the United States.

Mr. YOHO. It really is. I mean, that is an investment in our future, and when I heard you say we are 4 years behind, that just shows more urgency that we need to do that.

I would love to get more information on that and will reach out to you.

Mr. GIANCARLO. Yes.

Mr. YOHO. Let me ask you a question about the end-user reforms. One particular type of end-user discussed at length in your white paper is a financial end-user. I have a few questions about that *versus* the regular end-user. Where did the concept of financial end-user come from, and I don't see that anywhere in the statute?

Mr. GIANCARLO. Yes, it really came from our own regulatory approach following the statute.

Mr. YOHO. Can you describe why they are distinct from other end-users under the law, but why they might be similar to other end-users in practice?

Mr. GIANCARLO. Yes, the CFTC, with respect, was concerned about the end-user exception and how far it should go in the area of non-cleared swaps. But at the end of the day, it gave a greater allowance for commercial end-users than it did for financial end-

users. Financial end-users don't have the same degree of excepting out of the uncleared margin rules as do commercial end-users, and that is really where the distinction was. And in our white paper with Professor Tuckman, what we talked about was whether small financial end-users shouldn't enjoy that, don't they have the same characteristics of small commercial end-users? That is, that they are not systemic risks. They may be local risks but they are not broad-based national economy risks, which was the same basis on which commercial end-users were excepted. Shouldn't small community banks enjoy that same exception from non-cleared margin as do commercial end-users?

Mr. YOHO. Okay, and then just to follow up on that, what are the unique challenges that financial end-users face under the clearing and non-cleared margin regimen?

Mr. GIANCARLO. Take a small insurance company or a small pension fund, they invest for the long-term and they might have short-term payouts. But what they don't have is a lot of cash laying around to put in the form of margin. They need to use their cash to invest in long-term so they can maximize their payout to their pension holders or their insurance holders. And so by causing them to use cash to pay a margin, that is less long-term investments they can make. And if they are not a systemic risk, then shouldn't the same logic that applies to commercial end-users apply to small financial end-users?

Mr. YOHO. Thank you for your answers.

Next the chair will recognize Mr. Al Lawson from Florida.

Mr. LAWSON. Thank you, Mr. Chairman, and welcome to the Committee.

My questions center around the gas prices rising again, can we guarantee that the market is operating without manipulation? Where is the CFTC on creating a rule on position limits?

Mr. GIANCARLO. We are making good progress on that. As you know, a proposal was put out in the final months of Chairman Massad's term, a proposal that I voted for, and yet in my travels around the country meeting with ag producers, manufacturers, and folks in the energy industry, it was felt that, whether it be the *bona fide* hedge exception, or the list of enumerated exemptions, were too narrowly crafted. Hedging practices that were done for generations on a family farm were precluded under the definition of *bona fide* hedge or were not listed in enumerated hedge exemptions. And so what we are looking to do is put forward a position limits proposal, and I hope to do it by the end of this year, if not very early in the New Year, that will be a solid proposal and will be one that reflects the concerns of America's agricultural interests.

I am committed to it. I have made a commitment to both this Committee and my Senate oversight committee that we will move forward. We are moving forward with drafting a position limits proposal, and I will put that forward while I am Chairman of the Commission.

Mr. LAWSON. Okay, thank you, and when I leave this Committee I will be going to another Committee that is always concerned about technology and cyberattacks. And how can we protect the automated trading market from cyberattacks and technological fail-

ures, and is there a role for the CFTC to provide technical assistance to automated trading companies?

Mr. GIANCARLO. Thank you for that. If I could just take a moment on cyber because it is so important.

When I think about cyber, I think about it both within the agency and then within the marketplace that we regulate, including those automated trading firms. Within the agency, we have really honed in on this in two ways.

First, we have to minimize the amount of self-penetration that is caused by phishing attacks that our employees unwittingly will open up emails that are often the biggest cause of vulnerability. And so we have taken proactive steps. We now do our own self assessments of that routinely, and I can't tell you how proud I am of our agency personnel. The percentage of employees that open up those things is dropping dramatically and we have more work to do, but we are getting there.

Second, we are now doing, we have just done our third, our own cyber exercise where we do a full agency-wide drill on an attack and we just did one in conjunction with one of our largest registrants, the CME, but also with representatives from the Federal Reserve and the Treasury present at that exercise. That is our internal focus.

Our external focus is our marketplace, the companies we oversee, and here is an area where in our budget we are seeking additional cyber examiners. We have places for four cyber examiners. We are down to one right now. It is very hard to keep these people at a government salary. They are in such demand in the marketplace. We have to fill those slots. We have to be doing effective cyber examinations of market participants, just as you identify, to make sure they are up to snuff when it comes to cyber resiliency.

Mr. LAWSON. Okay, thank you. I have a little bit of time, and I want to go back to something you said for a few minutes, if I may, and it dealt with the Midwest premium.

Mr. GIANCARLO. Yes.

Mr. LAWSON. I have manufacturers that employ people with Anheuser Busch, and the tariff really affects them, this penny per can, and in the area of Jacksonville and metal containers. Could you comment on that a little bit more?

Mr. GIANCARLO. Yes, we are very sensitive to that subject. I know that the cost of aluminum affects consumers in your district and every district in America, which is why I personally met with the aluminum consumers group, representatives from Miller, Coors, and others to hear their concerns. I have met with our surveillance team to ask them what they are seeing in the market and to make sure they are on the lookout for any fraud manipulation, which is what our jurisdictional duties are in the markets. And I can assure you we will keep a close watch on these markets as we go forward to make sure they are free of fraud manipulation.

Mr. LAWSON. Thank you. Mr. Chairman, I yield back.

The CHAIRMAN [presiding.] The gentleman yields back. Thank you, sir.

Mr. Arrington, 5 minutes.

Mr. ARRINGTON. Thank you, Mr. Chairman. It was already on.

Chairman Giancarlo, thanks for your service. As a guy that spent 4 years at the FDIC as Chief of Staff, I can appreciate the job you have, the challenges you face, the importance of your job and getting it right and addressing the risks, managing the risks for a safe and sound commodity futures market.

I apologize for not being here earlier, I hate to make you repeat yourself, but I have one specific question and then sort of a broad set of questions, so let me jump into the specific. And I know there has been lots of discussion around aluminum and downstream users of aluminum. As you said, we all have those in our districts.

But somebody presented a question I thought was a good question, so I am just going to propose it to you. But those downstream users, or some of them continue to see situations where the Midwest premium for aluminum seems to reflect price spikes that are based on offers to sell rather than actual closed trades in the market. Are there other commodity markets that operate in that way on offers to sell, and could you explain that?

Mr. GIANCARLO. Yes, sure. What they are referring to is the way that Platts formulates their index. In fact, I had this very conversation with the users group. Their objection is the way that index is formed. Now the U.S. approach to benchmarks is to not dictate how index providers do their calculation, provided it is free of fraud and manipulation, and provided they are clear as to what their methodology is. Other jurisdictions, the Europeans for example, their approach is to dictate every element of what goes into a benchmark.

I was thinking about this just the other night. Years ago I took the British driving test. I had my U.S. license for 20 years and I considered myself a good driver, and after two lessons, the instructor said to me, "You are going to fail the test." I said, "What have I done wrong? I haven't hit a cone," he said, "No, but you are not driving in the prescribed manner. There is a British manner of driving and you are not doing it." And it is a different mindset. We in America don't tell benchmark providers how they must do it. We just say, "You have to tell your consumers how you are doing it and if they want to use your service, they will. If they don't, they don't." Europe purports to tell benchmark providers how to construct their benchmark, and even if it is a perfectly accurate benchmark, if it is not constructed the right way, I am sorry for this long detour, but what I am concerned here is what we are hearing is not that this benchmark might be manipulated, but it is not being built in a way that satisfies those who consume it. And that is not within our jurisdiction.

Now if Congress wants to dictate how benchmarks are constructed, that is for Congress. But that is not something we have the legal authority to dictate how the benchmark is put together, provided that it is free from fraud and manipulation.

Mr. ARRINGTON. Yes, what was expressed to me, at least, is if you have just offers to sell as one of those metrics, or the main metric that it could artificially inflate the price.

But let me go to a broader high level question, because this is important for me. If you have already said it, again I apologize.

We used to get this question. What keeps you up at night? What are the two or three big risks that you are focused on that we

should be focused on, and then what do you need that you don't have to manage those risks from Congress?

Mr. GIANCARLO. We just did a full blown cyber exercise in Chicago, as I said, working with the Treasury, the Federal Reserve, and one of our biggest operators, and it was very successful. I was very proud of the team.

I must say, though, that night I laid in bed and I literally did stay awake worrying about a major cyberattack on our markets. Because we worked with one of our most responsible operators in Chicago Mercantile Exchange, they had their act together. And I sat there and thought about all the lesser market participants that don't have nearly the same resources, don't have their act together, and if a bad actor tried to take advantage of it, the harm it would cause. Cyber is absolutely my biggest immediate fear.

I have expressed some concern with a hard Brexit. We are still 8 months away, but as we get closer and closer with no resolution, I do worry about the impact that that can have on the global economy.

And then finally more broadly, as I said earlier, we do need to transform the CFTC, and many regulatory agencies, from analog-based regulators to really digital-based automated. We are dealing with massive amounts of market data, and the challenge is are we seeing the telltale signs of what that data is telling us in time to be able to do something with it?

The CHAIRMAN. The gentleman's time has expired.

Mr. LaMalfa, 5 minutes.

Mr. LAMALFA. Thank you, Mr. Chairman. I am by myself in a similar situation as Mr. Arrington, having just arrived here recently so I apologize if any of this is duplicative. I hope it goes in another direction, so thank you, Mr. Giancarlo.

A couple things I will touch on here. A week ago we had a hearing about cryptocurrencies and digital assets, and we are all perfect experts on that now with Bitcoin and everything, but the possibility of regulating them as securities or commodities came up on that, so I just wonder what your thoughts are on that with doing that and with the SEC, are there any duplicative efforts with other agencies that would be harmful to that? What are your thoughts on having that be as regulated as a security or commodity?

Mr. GIANCARLO. I want to actually give you some assurance on one account, and that is that the coordination between ourselves, the SEC, and the Treasury on crypto-assets and cryptocurrencies is remarkably good, and remarkably active. I would say at the CFTC, and we have a working group between ourselves and the SEC, and they speak weekly on everything from enforcement actions in cryptocurrency space all the way through to jurisdictional issues. Then the Treasury under Treasury Secretary Mnuchin has set up a working group that now has six different work streams and a group of agency regulators involved in that. There is a lot of coordination going on, there is a lot of thoughtfulness going on.

At the same time, we are working with a statute, in the case of the CFTC, that was written in 1935 and in the case of the SEC was written in 1933 and 1934. There was no such thing as cryptocurrencies or even digital assets back then, and so we have to look at these statutes and find the core meanings in them and

apply them to something that is implied. But that is what we should be doing.

Mr. LAMALFA. Similar to the Second Amendment that we were using muskets back when that was written, so those are arguments you hear.

Mr. GIANCARLO. Exactly, but you can discern within it what was the core purpose, and that is what we seek to do. And I think responsible regulators should need to do that.

There are some people out in the Twitter space that would make it look like there is some great deal of confusion, but there is not. We are working with what we have. We are facing up to it. We are quite proactive about it. We have strong working groups. We have been very strong on the consumer education side. We have been effective on the enforcement side. The SEC put out a very, I thought, forward looking statement by Mr. Himan out in San Francisco a few weeks ago about an asset class called Ether. We have been outspoken, we are moving at a pace that is reasonable for what is still a very small asset class, one that is developing rapidly, but still a very small asset class.

Mr. LAMALFA. Do you think you are keeping pace with its use and people's comfort with it?

Mr. GIANCARLO. I think we are. We are facing up to this challenge. It is complicated, and these asset classes are themselves morphing and changing rapidly, and we need to keep pace. But, we are where we should be at this point in time, and we are on it.

Mr. LAMALFA. Okay. Let me jump to another thing. Thank you, Chairman Giancarlo.

We have done a lot of work and listened to a lot of testimony on swaps while I have been on this Committee the last few years here, and so referring to your white paper on Swaps 2.0. We have a difference between non-cleared swaps and those that are cleared transactions, and that much more margin needs to be put in place for those non-cleared swaps. And so with the need for financial regulation on taking care of the risk, changing the framework for doing so would require a great level of concurrence with many other financial regulators. In order to change the emphasis from the non-cleared margins.

Mr. GIANCARLO. Yes.

Mr. LAMALFA. Okay, and so that will be pretty difficult. What would you see as the better framework for having the non-cleared requirements be simplified or streamlined and still not upset the balance with all the other regulatory interests involved?

Mr. GIANCARLO. Yes, it is very challenging. If you look about the whole swaps reform effort, as I do, like the first version of a piece of software, in the first version of any software there is what they call hard plugs. They are simply things they put in to hold the place and they would get to it later. In the area of uncleared swaps, there is a very rigid hard plug that says on all margin uncleared swaps, you use a 10 day margin requirement. You assume that the swap would take 10 days to liquidate. Well that is a very broad assumption that actually is kind out of thin air, because some swaps——

Mr. LAMALFA. Let me jump in. We have a 4 year experience with current CFTC framework, regulatory framework on that, so are we still at that infant stage on non-cleared, or are we——

Mr. GIANCARLO. Well, we are at a stage right now we can replace some of those hard plugs with real live calculations, but exactly as you say, the challenge now is you have regulators here and regulators abroad that we need to harmonize with. It is a difficult one, and which is why I find white papers so important to be able to get the point across, win the battle of ideas that make it then easier to then do the legislative and the regulatory processes necessary to——

Mr. LAMALFA. Do you feel comfortable that we have that framework in order to move that direction already vetted or out there on the table?

Mr. GIANCARLO. Well at the global bodies there are bodies like the Financial Stability Board and IOSCO which provide a forum for this. Here in the states, we have our own FSOC, and then bilateral dialogue that I engage in regularly with my fellow regulators.

Mr. LAMALFA. Okay. I am over time. I thank you for your indulgence, Mr. Chairman. I yield back.

The CHAIRMAN. The gentleman's time has expired. Thank you.

Chris, let me ask you one more question while we still have you.

In your white paper, you talk about a number of clearinghouse-related issues and last year in the wake of our hearing on clearinghouses, we talked to you at length about systemic risk and liquidity facing clearinghouses.

One of those issues that received a little bit less attention is the role of a regulator in either facilitating the recovery or the resolution of a troubled clearinghouse. What should be the role of government when a clearinghouse has failed or is on the verge of failing to be able to make good on settlement obligations? Two related questions are *why* should a regulator step in, and probably the more difficult is *when?*

Mr. GIANCARLO. Yes.

The CHAIRMAN. If you could walk us through some of that?

Mr. GIANCARLO. Yes. Clearinghouses are unique animals. They are not banks, and at the time of Dodd-Frank the notion of resolving a too-big-to-fail bank was thought that maybe some of the same approach might apply to a clearinghouse. But unfortunately, it is really the wrong approach.

Clearinghouses, as I say, are not banks. They don't have a bank-like balance sheet. They don't have long-term investments and short-term funding needs. They are matchbooks. Their balance sheet is relatively minimal, their own balance sheet. But what they do have is collateral that in a short-term liquidity crisis they might need to convert to cash. They might have a short-term overnight or daylight need for collateral conversion assistance that can be provided by the government.

But the big difference is the goal of a clearinghouse is to keep it going, not to wind it down. Prior to Dodd-Frank, the approach for a failing clearinghouse was to put it into Chapter 7 and wind it down. That is the wrong approach because you have tens of billions, maybe trillions in some cases, of bilateral exposures in that

clearinghouse. You need to resolve that over the course of those contracts. And so the goal has to be to keep it alive.

I have taken a long route to ultimately get comfortable with the approach that is in Dodd-Frank of working with the FDIC in the event that a clearinghouse does need to be resolved, but I spent a lot of time with the FDIC with former Chairman Gruenberg and with Chair McWilliams to help them understand the unique nature of what clearinghouses are and how they need to be kept going, not wound down, to support orderly market activity, which would be vital for the recovery of an economy after a financial crisis.

The CHAIRMAN. Is that, *probably* I assume, but is that tailored as to why the clearinghouse got in trouble in terms of the reasons for the need to step in or have the regulators step in?

Mr. GIANCARLO. If you look historically over hundreds of years, you rarely see clearinghouses fail. If they are properly managed, the likelihood, again, it is not like a bank. A bank may invest in real estate long-term and have a short-term liquidity crisis and then can't convert that long-term investment into short-term cash. Clearinghouses don't work that way. They are operating a matchbook for every obligation. They have a collateralized counter obligation, and so provided they are managing their matchbook, they shouldn't have a failure that brings them down. If one of the counterparties fails, they have not only the collateral on hand to satisfy the other side, but they have all kinds of mechanisms they do, including they can wipe out those obligations. Their survival capability, under law and regulation, is pretty extraordinary. They are like one of these characters in a movie. It is hard to kill them, and the risk usually is short-term, that ability to just convert treasuries into dollars is not that hard, but that is the area and I think that we need to take a different approach to their resolution than we do as with a bank. We need to plan for it, absolutely, but if we do our job and if they do their job as well managed, the likelihood of a clearinghouse going under is a very remote possibility. One we need to prepare for, absolutely, but it is not like a bank failure.

The CHAIRMAN. Right.

Mr. LaMalfa, anything else? Did you want another round?

Mr. LAMALFA. No, thank you.

The CHAIRMAN. All right. Well, Chris, thank you very much. Once again you demonstrated breadth of command of all the issues facing your agency, forward looking as well as just the day in and day out that gives me additional great comfort that we have the right guy at the agency.

As I said in my opening statement, I have changed my position with respect to reauthorization. I am still keenly interested and driven to get your agency reauthorized, because it is the right thing to do, but also recognize that punishing you and your hardworking colleagues with a shortage of assets while I try to leverage that against inaction in the Senate it hasn't worked, and when something doesn't work, you move in a different position. And so I will be working with you and Mr. Aderholt on trying to address issues facing your agency from a physical standpoint.

Mr. GIANCARLO. I am most grateful for that, Mr. Chairman. I can assure you that every dollar that Congress decides to appropriate to us we will put to the best use.

The CHAIRMAN. And I have confidence in your management skills.

So with that, under the Rules of the Committee, today's hearing will remain open for 10 calendar days to receive additional materials, supplementary written responses from the witness to any question posed by a Member.

With that, this hearing of the Committee on Agriculture is adjourned. Thanks, Chris.

[Whereupon, at 11:45 a.m., the Committee was adjourned.]