Securities Regulation Daily Wrap Up, TOP STORY—Nominee Berkovitz vows to protect end users, finish Dodd-Frank reforms, (Jul. 24, 2018)

Securities Regulation Daily Wrap Up

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In his nomination hearing before the Senate Agriculture Committee, prospective CFTC commissioner Dan Berkovitz emphasized his commitment to ensuring that the agency's regulatory program continues to work for the producers, distributors, and consumers that rely on the futures and swaps markets to manage their price risks and discover prices for agricultural and other commodities. He also noted that the CFTC must adapt its regulatory program to respond to new markets and conditions and must examine existing regulations to determine whether they continue to serve their intended function in the most efficient and effective manner.

Nominated by President Trump in April, Berkovitz served as the CFTC's general counsel from 2009 to 2013. Following his CFTC service, he became a partner at WilmerHale, where he co-chairs the futures and derivatives practice. Before joining the CFTC, he was a senior staff lawyer for the Senate Permanent Subcommittee on Investigations and Deputy Assistant Secretary in the Department of Energy's Office of Environmental Management. Berkovitz also is an adjunct professor at Georgetown University Law School and vice-chair of the American Bar Association Committee on Futures and Derivatives.

Both in his prepared remarks and in his responses to questions, Berkovitz stressed that, as commissioner, he will work to ensure that the CFTC's regulatory program continues to protect the farmers, ranchers, consumers, and other end users that rely upon the commodity markets. He said that a robust regulatory program is one of the foundations for the nation's commodities markets, which are the strongest and most liquid in the world.

Berkovitz also pledged to work closely with members of the Agriculture Committee to ensure that the CFTC's regulatory program serves the public. He described working with members of the Committee on the 2008 Farm Bill as being one of the highlights of his service on the staff of the Senate Permanent Subcommittee on Investigations. Berkovitz noted that the 2008 Farm Bill was the first legislation to regulate the swaps market, and said that the bill substantially improved the integrity and price discovery process in the market for energy commodities.

Berkovitz also expressed pride in his work in leading the CFTC's legislative drafting and assistance team, which provided technical assistance to Congress during its consideration of the Dodd-Frank Act. In his view, Dodd-Frank and the CFTC's implementing regulations have substantially reduced systemic risk, strengthened market integrity, enhanced transparency, and improved public confidence. If confirmed, Berkovitz said that he will work with the other members of the Commission to complete the remaining Dodd-Frank rulemakings, including the adoption of new rules to limit speculative positions, establish capital requirements for swap dealers, and finalize the de minimis threshold for swap dealer registration.

Looking forward, Berkovitz emphasized that the CFTC's regulatory program should not remain fixed. Rather, the CFTC must monitor the commodity markets to respond to new information and market conditions, and to adjust its regulatory approach accordingly. He cited the emerging markets for cryptocurrencies are being just one example of the new market conditions that the CFTC has begun to address through its regulatory and enforcement programs.

Berkovitz also observed that the various existing commodity markets under the CFTC's jurisdiction often present distinct market dynamics and regulatory issues. Accordingly, a "one size fits all" approach may not be appropriate, and it is important for the CFTC to tailor its regulatory approach to specific markets as appropriate. On a global basis, he said that the CFTC should continue to promote international harmonization because harmonization helps to reduce systemic risk globally, avoid market fragmentation, prevent regulatory arbitrage, and promote liquidity.

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