

## Opening Statement of Commissioner Brian Quintenz before the Open Commission Meeting on November 5, 2018

Open Meeting on Final Rule: Amending the De Minimis Exception to the Swap Dealer Definition; Proposed Rule: Amendments to Regulations on Swap Execution Facilities and the Trade Execution Requirement; and Request for Comment regarding the Practice of “Post-Trade Name Give-Up” on Swap Execution Facilities

**November 5, 2018**

Mr. Chairman, thank you for calling this meeting. It is a great pleasure to participate today with you and my fellow Commissioners in the first open meeting since 2013 with a full complement of Commissioners. The matters before us today are of critical importance to the derivatives markets, impacting two fundamental Dodd-Frank reforms: swap dealer registration and trading on swap execution facilities. I appreciate all the hard work of staff to put these two rulemakings before us and support their ongoing efforts to continue improving and refining our regulatory framework. I look forward to hearing their presentations as well as my fellow Commissioners’ questions and comments.

### **Final Rule: De Minimis Exception to the Swap Dealer Definition**

I support today’s final rule to rescind the *de minimis* threshold’s scheduled reduction to \$3 billion of gross notional swap dealing activity. Every iteration of data analysis completed by CFTC staff on this issue, from the 2015 Preliminary Report,<sup>[1]</sup> to the 2016 Final Report,<sup>[2]</sup> to the updated data and analysis in the 2018 June proposed rule, and to the data presented in this final rule, clearly and unequivocally supported eliminating this ill-conceived reduction. I am pleased that today’s action will remove a large source of negative regulatory uncertainty for market participants in managing their swaps business and serving their customers.

However, this is just the first of many necessary steps toward correcting what I believe is a flawed swap dealer registration policy. Therefore, it is my hope that today’s final rule should be viewed with finality only in this one regard.

The Dodd-Frank Act advanced three main and substantial policy objectives for swap dealer registration: systemic risk reduction, counterparty protection, and enhanced swap market transparency and efficiency. As I have emphasized on many prior occasions, given the significant costs of swap dealer regulation, it is critical that the *de minimis* exception be appropriately calibrated to ensure that the correct market group – those best situated to realize the corresponding policy goals of registration – shoulders the burdens of swap dealer regulations. As I have also said repeatedly in the past, notional value is a poor measure of activity, and it is a meaningless measure of risk. Therefore, by itself, notional value is an incredibly deficient metric by which to impose large costs and achieve substantial policy objectives. A one-size-fits-all notional value test for swap dealer registration captures entities that engage in low volume, low risk activity with high notional amounts, and places those firms under the same regulatory regime as the world’s largest, most complex financial institutions that deal in *trillions of dollars*’ worth of swaps.<sup>[3]</sup> The end result is that smaller firms are disincentivized from engaging in lower risk activity when faced with justifying the cost of swap dealer registration.

I have heard anecdotally from certain small to mid-sized players in the swap markets that the breakeven point of the costs of swap dealer registration as measured by a level of notional swap dealing activity is much higher than the \$8 billion level in this rule. If that is the case, the current

\$8 billion notional threshold effectively forces these smaller players to curtail their swap dealing business, thereby limiting competition and further concentrating swaps activity with their larger competitors.[4]

In my view, an appropriately calibrated *de minimis* exception would better align the criteria of the *de minimis* threshold with the costs of swap dealer regulation, particularly the largest costs tied to mitigating systemic risk, like capital and margin. A *de minimis* threshold based on metrics more closely correlated with the risk of the products traded, as opposed to the current risk-insensitive notional value metric, would better measure dealing activity and more appropriately capture the entities warranting Commission oversight.

I am pleased the Chairman continues to recognize this and has directed staff to study many of the alternative risk-based registration metrics that were suggested in the proposed rule. The staff report will provide the Commission with additional data and insights into the impact that alternative approaches may have on swap dealer registration. For example, staff's analysis should show how removing or haircutting cleared swaps from the *de minimis* calculation would impact the number and composition of firms required to register as swap dealers. The report will also provide staff with an opportunity to consider, for the first time, how a registration threshold tied to initial margin for cleared swaps could better represent a *de minimis* quantity of swap dealing activity. For uncleared products, staff can examine the impact of using entity-netted notional amounts, a more accurate measure of a firm's risk and market size, as a metric of swap dealing activity. The results of the staff report will be critical to any future Commission consideration of a more risk-sensitive swap dealer registration threshold.

In addition, many of the policy recommendations discussed in the proposed rule, such as better allowing insured depository institutions to assist their customers in hedging loan-related risks and excluding non-deliverable forwards from an entity's *de minimis* count – would advance the policy goals of the *de minimis* exception by encouraging greater participation and competition in the swap markets. I would eagerly anticipate the Commission's action on these important reforms. As the Commission's recent no-action letter to a Main Street bank this past August shows, the deficiencies of the current *de minimis* exception are beginning to squeeze firms' activity and constrain their ability to serve clients.[5]

Any *de minimis* threshold must always be put into context of the broader swaps market regulatory regime. The Commission is not establishing the *de minimis* exception in a vacuum. Since the swap dealer definition was adopted in 2012, a broad range of rigorous regulatory requirements have gone into effect which also advance the goals of swap dealer registration, such as mandatory clearing, SEF trading, swap data reporting, and margin requirements for uncleared swaps.

The Commission's regulatory framework for the swap market has greatly evolved from its state six years ago; it is only common sense that the swap dealer registration threshold should evolve as well. It will be a great day when financial regulators, including the CFTC, finally move away from gross notional value as any sort of metric or test of derivatives exposure, activity, or risk. I look forward to that day, and I am committed to working with the Chairman, my fellow Commissioners, and our staff to make sure we get the swap dealer *de minimis* exception policy right.

**Proposed Rule: Amendments to Regulations on Swap Execution Facilities and the Trade Execution Requirement; and Request for Comment regarding the Practice of "Post-Trade Name Give-Up" on Swap Execution Facilities**

I will vote in favor of issuing today's proposed rule and the request for comment reforming the regulatory regime of swap execution facilities (SEFs). The Chairman has shown great thought leadership and transparency in consistently and fully articulating his vision for swaps trading rules that would create a more cohesive, liquid swap marketplace. Today's proposal represents a significant step toward executing that vision. I look forward to hearing from market participants about how these broad reforms will work collectively to impact SEF trading dynamics and liquidity formation. Mr. Chairman, I know this day has been a long time coming, and I congratulate you and the Division of Market Oversight for all of your and their tireless work on this proposed rule.