

SPEECHES & TESTIMONY

Statement of CFTC Commissioner Dan M. Berkovitz on Interim Final Rule Regarding Margin Requirements for Certain Legacy Swaps in Case of a “No-Deal Brexit”

March 25, 2019

I am voting in favor of the Interim Final Rule (IFR), which provides relief from certain margin requirements for certain legacy swap transfers in case of a “No-deal Brexit.”

Although we do not yet know the date of the United Kingdom’s withdrawal from the European Union (EU), the form it will take, or whether it will even take place, market participants worldwide are preparing for Brexit. The Commission is committed to working with our domestic and international partners to facilitate regulatory continuity and provide stability to the derivatives markets if and when Brexit occurs. Today’s action is a continuation of that effort.

I commend the Chairman and Commission staff for their efforts to address these and other Brexit-related cross-border issues. I note in particular that these actions are all taken pursuant to, and are consistent with, the existing regulations and guidance in place at the CFTC governing cross-border activities.

The IFR will maintain the legacy status of swaps that were executed prior to the relevant compliance dates for the CFTC swap margin rule if those swaps are legally transferred solely as a result of a No-deal Brexit. The transfer of these swaps to affiliates outside the United Kingdom would be needed so that the swaps can continue to be properly serviced under EU law.

A No-deal Brexit would be the result of political events beyond the control or anticipation of the parties at the time they first entered into the legacy swaps in question. Under these circumstances, if the CFTC’s margin rules were applied, the transfer of these legacy swaps could entail significant expenses, which could impede such transfers. The failure to effectively and efficiently accomplish these transfers could introduce new systemic risks globally.

The IFR release makes clear that legacy swap transfers get relief solely if they are undertaken in connection with a No-deal Brexit. The release also makes clear that the IFR does not create an opportunity for the parties to renegotiate the economic terms of legacy swaps. Swaps that are amended or renegotiated, other than to the extent permitted by the IFR, would still be subject to the CFTC margin rules. These limitations are important as they prevent abuse of the flexibility provided by the IFR.