

## SPEECHES & TESTIMONY

### Statement of Commissioner Dan M. Berkovitz Regarding the Commission's Final Rule on Position Limit Requirements for Security Futures Products

September 16, 2019

I support today's final rule to amend the Commission's position limit requirements for security futures products ("SFPs").

The final rule updates SFP position limit requirements that the Commission originally adopted more than 18 years ago, and that have remained largely unchanged since then. It helps align equity-based SFP position limits with the limits that national securities exchanges apply to equity options. These measures, together with recent SFP margin proposals issued jointly with the SEC,<sup>[1]</sup> will help to level the regulatory playing field between SFPs and equity options. It is important to ensure that regulatory differences do not disadvantage SFPs as a product class, while maintaining effective position limits to protect markets and market participants.

The Commodity Futures Modernization Act of 2000 ("CFMA") permitted trading on SFPs, subject to certain conditions.<sup>[2]</sup> The CFMA established similar regulatory standards for SFPs as for security options, including in the areas of coordinated surveillance across SFP, option, and security markets; coordinated trading pauses and halts; and margin levels. The CFMA also amended both the Commodity Exchange Act and the Securities Exchange Act to require that trading in SFPs not be readily susceptible to manipulation, and that it not facilitate manipulation of an SFP's underlying security.<sup>[3]</sup> The final rule is consistent with the CFMA's intent that SFPs and security options be subject comparable regulation, including in any position limits applicable to SFPs and equity options.<sup>[4]</sup>

In 2001, the Commission adopted spot month position limit requirements for equity-based SFPs that were broadly analogous to the equity option limits in place at the time. Higher limits or position accountability were permitted based on the average daily trading volume and the number of shares outstanding of the security underlying an SFP. Today's final rule increases the default SFP position limits in line with current minimum position limits in equity options.

Position limits are important to fair, well-functioning markets. The Commission has noted that national securities exchanges have raised position limits on equity options, with no apparent adverse impact. The preamble to the final rule also reiterates boards of trades' obligation under the Core Principles to adopt position limits or accountability to "reduce the threat of market manipulation or congestion."<sup>[5]</sup> These obligations would include establishing SFP position limits that are lower than the levels specified in this final rule if necessary and appropriate.

The final rule also amends the calculation method for equity-based SFP limits above the default level to incorporate a percentage of deliverable supply. In this regard, the final rule more closely aligns the SFP limits with the Commission's historical practice of considering deliverable supply in setting spot month limits for physical delivery contracts. The final rule also allows for position accountability for SFPs based on the most liquid of underlying securities.

I commend Commission staff for their work on this final rule.

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<sup>[1]</sup> 84 FR 36434 (Jul. 26, 2019).

<sup>[2]</sup> Commodity Futures Modernization Act of 2000, Public Law 106-554, 114 Stat. 2763 (Dec. 21, 2000).

<sup>[3]</sup> 7 U.S.C. 2(a)(1)(D)(i)(VII) and 15 U.S.C. 78f(h)(2).

<sup>[4]</sup> See 15 U.S.C. 78f(h)(3)(C), requiring in the Securities Exchange Act that the listing standards for trading in SFPs be "no less restrictive than comparable listing standards for options traded on a national securities exchange . . . ."

[5] 7 U.S.C. 7(d)(5).