

PUBLIC STATEMENTS & REMARKS

Statement of Commissioner Dan M. Berkovitz on Proposed Amendments to Swap Clearing Requirement Exemptions

April 14, 2020

I support issuing the notice of proposed rulemaking (“Proposal”) to codify certain exemptions from the swap clearing requirement that currently exist through Commission guidance or staff no action relief. Each of the proposed exemptions is consistent with longstanding Commission policy and the Commission’s experience in implementing the swap clearing requirement over the past eight years. Codifying these exemptions will provide certainty and transparency for market participants.

First, the Proposal would codify in rule text a list of foreign central banks, sovereign entities at the national level, and international institutions that are currently excepted from the clearing requirement through no action relief or guidance. This codification would provide regulatory certainty that executing the swaps on an uncleared basis will not run afoul of our rules. This certainty benefits not only to the named entities, but also to their counterparties, most of which are swap dealers registered with the Commission. As described in the preamble to the Proposal, it has been the Commission’s policy since the adoption of the clearing requirement to exempt these institutions due to considerations of international comity, the reduced risks arising from swaps entered into by these institutions, and the public purposes for which these institutions enter into such swaps.

Second, the Proposal includes a supplemental proposal making technical changes to a 2018 Commission proposal. This proposal would provide clearing exemptions for (i) certain interest rate swaps entered into by community development financial institutions to hedge or mitigate commercial risks, and (ii) for swaps entered into by bank or savings and loan holding companies that each have no more than \$10 billion in consolidated assets if they enter into the swaps to hedge or mitigate commercial risks. This supplemental proposal also would codify relief from the clearing requirement currently provided by two no-action letters. Commodity Exchange Act section 2(h)(7)(A) in essence excludes from the clearing requirement banks and savings associations with less than \$10 billion in assets to the extent determined by the Commission. Since the Commission has already provided the exemption to individual banks and savings associations,^[1] it makes sense to codify this exemption for holding companies for those entities that also have no more than \$10 billion in consolidated assets. As described in the preamble, swap data repository data indicates that over the past several years the number and scope of such swaps entered into by these institutions that would be included within these exemptions has been relatively limited.

I commend the staff of the Division of Clearing and Risk for this well developed and drafted Proposal. Providing certainty to market participants is important and the Proposal would do so for the entities involved in the exempted swaps.

-CFTC-

^[1] See Regulation 50.50(d).