

SPEECHES & TESTIMONY

Statement of Commissioner Dan M. Berkovitz in Support of the Staff No Action Letter Regarding Floor Traders

June 27, 2019

I support today's issuance by the Division of Swap Dealer and Intermediary Oversight of the letter entitled "No-Action Relief for Certain Conditions of the Floor Trader Provision." Since my first public statement as a CFTC Commissioner in November 2018, I have urged us to fix the floor trader provision in the swap dealer definition so that it can serve its intended purpose.^[1]

Swap trading is highly concentrated. The five largest swap dealing banking institutions were party to 70% of all swaps and 80% of the total notional amount traded.^[2] Expanding and diversifying the sources of liquidity should improve price discovery and the safety and resiliency of the swap markets.

Many proprietary traders have indicated that they would like to act as market makers for swaps on electronic swap execution facilities ("SEFs") or designated contract markets ("DCMs").^[3] These traders generally do not directly solicit customers in the manner of traditional swap dealers. To facilitate this type of market making on SEFs and DCMs, the Commission included a floor trader registration provision in the swap dealer registration rule as an alternative to full swap dealer registration.^[4] I believe the floor trader registration category is appropriate for proprietary traders who provide liquidity on electronic trading platforms, but in so doing, do not act as traditional dealers by soliciting customers or negotiating swap terms other than price or quantity.

The current floor trader rule has not worked as intended. Potential sources of liquidity have not entered into these markets due to concerns about the potential breadth of the restrictions in the current provision. Addressing the issues with the existing rule will diversify the available sources of liquidity beyond the few large bank dealers that dominate swap trading today.

In the long run, a rulemaking to amend the swap dealer definition is the best way to fix the issues with the current rule. Chairman Giancarlo has agreed to direct the CFTC staff to draft a proposed amendment to the floor trader provision that is consistent with the scope of today's no action relief. However, rule amendments take time, so in the interim, I support the issuance of this no action letter.

Notably, today's no action relief is limited to cleared swap activities conducted on a SEF or DCM. Other off-facility or uncleared swaps that meet the definition of dealing swaps will still count towards the swap dealing registration threshold for these traders.

I thank the staff of the Division of Swap Dealer and Intermediary Oversight for their excellent work and collaboration with my office on this matter.

^[1] See Dissenting Statement of Commissioner Berkovitz, Proposed Rulemaking on Swap Execution Facilities and Trade Execution Requirement, Appendix 5, 83 FR 61946, 62145 (Nov. 30, 2018).

^[2] There are about 60 distinct corporate families that have registered swap dealers.

- [3] Recent data show that about 55% of interest rate swaps and 97% of the main index credit default swaps were traded on swap execution facilities. ISDA, SwapsInfo Full Year 2018 and Fourth Quarter of 2018 Review, at 2-4 (Jan. 2019), <http://isda.informz.net/z/cjUucD9taT03MjYwNzA2JnA9MSZ1PTg0MzU0Nzk3MyZsaT01NTMwNDMyMQ/index.html>.
- [4] See Further Definition of “Swap Dealer,” “Security-Based Swap Dealer,” “Major Swap Participant,” “Major Security-Based Swap Participant” and “Eligible Contract Participant,” 77 FR 30596, 30614 (May 23, 2012).