

Public Statement

Statement at Open Meeting on Commission Actions Relating to Implementation of Title VII of the Dodd- Frank Act



Commissioner Elad L. Roisman

Dec. 18, 2019

I would like to begin by thanking Director Brett Redfearn [of the Division Trading and Markets], as well as our Chief Economist S.P. Kothari, as well as [Office of International Affairs] Director Raquel Fox. or their leadership in bringing these recommendations to us today. I am also grateful for the efforts of our tremendous staff who worked for months and years on these recommendations and the earlier proposals under Title VII of the Dodd-Frank Act. Other Commissioners have already identified you by name, so I will refrain from doing so. But please know that I appreciate each of your contributions to getting us to this point.

I commend Chairman Clayton for prioritizing the completion of security-based swap rulemaking in his regulatory game plan. The clock ran and ran on prior Commissions' attempts to meet the regulatory challenges of Title VII. Chairman Clayton assembled an A-Team in Commissioner Peirce, her counsel Richard Gabbert, and SEC staff. To use a soccer analogy—together, they have led the agency to cover an impressive amount of ground in a short time and, in my view, deliver the ball squarely into the back of the net.

I support each of the staff's recommendations today, as they present a thoughtful way for us to fulfill our Dodd-Frank mandates, in a complex regulatory field. The swaps market that the CFTC oversees dwarfs the market for security-based swaps over which Congress granted the SEC jurisdiction. The players in this space conduct business that spans both agencies' area of regulatory remit, but the CFTC's rules were established several years ago and ours can only be described as nascent. Similarly, the security-based swaps market is global. Like the CFTC, many overseas regulators have established regulatory structures governing this market, including the activities of its U.S. participants.

I have said before, we need to be cognizant of the challenges we would introduce by deviating from the CFTC's established set of rules and avoid such a diversion unless we consider it essential. Today's recommendations reflect our staff's consideration of such an approach. One positive outcome of the SEC's prior inaction in this area is that we have had the benefit of observing how the CFTC's rules operate in the real world. This also has given us an opportunity to consider how the security-based swaps market that we oversee is different than the swaps market regulated by the CFTC, and consider

the extent to which we should reflect that in our rules. The recommendations today exhibit the SEC staff's deliberate care to minimize the differences between the rules we are considering today and existing rules promulgated by the CFTC.

This is not to say that the recommendations today passively defer to the CFTC's framework. Anyone reviewing them will see this is not the case. Where our staff believed that differences are necessary and appropriate, they incorporated them into their recommendations and clearly described a rationale for doing so. In this, they fulfilled another regulatory mandate—that we consult and coordinate with the CFTC in our rulemaking efforts.

I also believe we must do more to recognize the global nature of this area of the market and the extensive regulation that already exists. Specifically, we must continue to consider where it may be appropriate—and a better use of our SEC resources—to allow our foreign counterparts to address certain concerns that arise from security-based swap activity between two foreign counterparties, even if some degree of that activity occurs in the U.S. Of course, we need to fulfill our mission of maintaining fair, orderly, and efficient markets, as well as protecting investors. But, considering the global context of this market, we must do so in a thoughtful and tailored manner.

I am especially mindful of market participants' concerns over complications that may result from differing requirements, amongst regulators here in the U.S. and abroad. This is especially true for firms who have already developed compliance and supervisory systems for existing rules of the CFTC or foreign regulators.

For those who take the time to read the two rules and the related order, you will sense a degree of humility, where we have adjusted our final framework away from some aspects of the prior proposals. Instances like this highlight the importance of not only soliciting feedback from the public, but listening to the concerns of those whom the rules will affect. I hope that market participants will let us know where we got things right and continue to point out where these final actions could use additional fine tuning.

In closing, I again would like to commend all of the SEC staff who contributed to these tremendous rulemakings. I would also like to thank those outside the SEC who devoted their time and attention to this process, whether by writing a comment letter or coming in to meet with SEC staff, the other Commissioners, or my staff and me. These recommendations are better because of your input. I encourage you to continue your engagement, both with respect to these rulemakings before us today and for future matters as the Commission works to complete its important Title VII mandate.