

## **SPEECHES & TESTIMONY**

### **Statement of Commissioner Dawn D. Stump for CFTC Open Meeting on September 16, 2019**

#### **Open Meeting on: 1) Final Rule on Position Limits and Position Accountability for Security Futures Products; and 2) Proposed Rule on Public Rulemaking Procedures (Part 13 Amendments)**

**September 16, 2019**

#### **Overview**

In my Opening Statement at my first Open Meeting last November, I noted the directive in the Leaders' Statement from the 2009 G-20 Summit in Pittsburgh that member nations "assess regulatory implementation" of the new rules that would be adopted in response to the financial crisis of 2008.<sup>[1]</sup> I believe that as a matter of sound regulation, we should undertake this same type of look-back for all our rules. It is simply good government to re-visit our rules and assess whether certain rules need to be updated, evaluate whether rules are achieving their objectives, and identify rules that are falling short and should be withdrawn or improved.

I commend Chairman Tarbert for giving us the opportunity to do precisely that during the first Open Meeting of his Chairmanship with respect to the two rule sets before us today.

#### **Position Limits and Position Accountability for Security Futures Products**

With two decades having passed, it is hard to recall that one of the big issues of the day in the futures world around the turn of the century was removing the prohibition on single-stock futures and futures on narrow-based security indexes. In the Commodity Futures Modernization Act of 2000 ("CFMA"), Congress repealed this prohibition and permitted these products (which it called "security futures products," or "SFPs" for short) to be traded under a system of joint regulation by the CFTC and the Securities and Exchange Commission ("SEC").<sup>[2]</sup>

In a journal article published shortly thereafter, William Brodsky, then-Chairman and CEO of the Chicago Board Options Exchange, borrowed from the Beatles to describe the journey that had culminated in the trading of SFPs as "the long and winding road." He cautioned, though, that with a system of dual regulation of SFPs, "the road will still meander onwards."<sup>[3]</sup>

Unfortunately, the intervention of a global financial crisis and the ensuing decade of intense focus on swaps reforms delayed us in "taking stock" (apologies for the pun) of where we are on that road and whether a modest change in direction might be appropriate. I am pleased that we are now doing so with respect to position limits and position accountability for SFPs.

As always, of course, we are bound by the dictates of our governing statutes. In the CFMA, Congress intended that SFPs be regulated comparably to security options traded on national securities exchanges ("NSEs"). The final rulemaking we are voting on today is true to that intent, as it will harmonize the default Exchange-set position limit level for equity SFPs to that for equity options traded on an NSE.

It also will, among other things, make our position limit rules for SFPs more consistent with our rules for other futures contracts, adjust the time during which position limits must be in effect, and enhance Exchange discretion in administering position limits for SFPs in certain respects. We received no comments suggesting that these changes would adversely affect market integrity or an Exchange's ability to prevent excess speculation, market manipulation or congestion.

It is my hope that these amended rules, together with final action on the joint proposal that we issued with the SEC over the summer on minimum customer margin requirements for SFPs,<sup>[4]</sup> will promote increased trading activity and improved liquidity in SFP markets.

#### **Public Rulemaking Procedures (Part 13 Amendments)**

When rules adopted in 1976 shortly after the birth of the agency have not been touched in the 43 years since then, it is time to take a look. That is the case with our Part 13 rules governing the Commission's rulemaking process. Although the CFTC's rulemakings are subject to the Administrative Procedure Act ("APA"),<sup>[5]</sup> the APA has changed over the years while our Part 13 rules have not.

Streamlining the Commission's rulebook by withdrawing the Part 13 rules (other than the rule providing for petitions for rulemaking) would eliminate any confusion resulting from the existing disparities, while confirming that the CFTC adheres, and will continue to adhere, to APA requirements. This rulemaking would not repeal or limit in any way the rights that the public has today in CFTC rulemakings under the APA.

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I am pleased to support both of the rulemakings before us today. I want to thank the staff of the Division of Market Oversight and the General Counsel's Office for the time and effort they have put into preparing them, and for answering questions and addressing comments from my team.

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[1] Leaders' Statement from the 2009 G-20 Summit in Pittsburgh, Pa. at 9 (Sept. 24-25, 2009), [http://www.treasury.gov/resource-center/international/g7-g20/Documents/pittsburgh\\_summit\\_leaders\\_statement\\_250909.pdf](http://www.treasury.gov/resource-center/international/g7-g20/Documents/pittsburgh_summit_leaders_statement_250909.pdf).

[2] Commodity Futures Modernization Act of 2000, Pub. L. No. 106-554, 114 Stat. 2763 (2000).

[3] William J. Brodsky, New Legislation Permitting Stock Futures: The Long and Winding Road, 21 Nw. J. Int'l L. & Bus. 573, 587 (2000-2001).

[4] Customer Margin Rules Relating to Security Futures, 84 Fed. Reg. 36434 (proposed July 26, 2019).

[5] 5 U.S.C. ch. 5, §§ 500, *et seq.*