

## Public Statements & Remarks

### Statement of Commissioner Rostin Behnam Before Joint Open Meeting of the CFTC and SEC

**October 22, 2020**

Good morning. I would like to start by thanking Chairman Tarbert, Chairman Clayton, my fellow CFTC commissioners, the commissioners from the Securities and Exchange Commission (SEC), and all of the staff from both agencies.

It is good to be together to finalize a joint final rule and issue a joint request for comment. Cooperatively working on issues when we are mandated to do so is the floor. When our agencies choose to go beyond that, engaging one another to explore, collaborate, and harmonize our policies and regulations to bring consistency to our agencies' oversight with respect to similar products, practices, market participants, and intermediaries, we provide the highest service to our markets and the American public. And I am proud to be a part of that effort.

While today's meeting is historical for the voting that will take place, a little more than 11 years ago, the CFTC and SEC held the first joint public meeting in the history of the two agencies.<sup>[1]</sup> President Obama had called upon the agencies to make recommendations via a report to Congress to further harmonize regulation of futures and securities.<sup>[2]</sup> Following two days of public meetings, the CFTC and SEC issued a joint report on regulatory harmonization<sup>[3]</sup> making 20 recommendations to enhance enforcement powers, strengthen market and intermediary oversight, and improve operational coordination. Among other things, the joint report reviewed and analyzed risk-based portfolio margining and bankruptcy/insolvency regimes, which are relevant to both matters before us today.<sup>[4]</sup>

Upon issuance of the joint report, then CFTC Chairman Gensler remarked that the agencies had risen above the usual challenges, coming together "...to offer meaningful recommendations to improve our oversight of the financial markets."<sup>[5]</sup> I think we are following a similar agenda today, even though we are perhaps dealing with some new additions to the "usual challenges" of differences between our regulations and the marketplaces we oversee, varying regulatory priorities and legislative agendas, and of course, varying points of view. As we find ourselves meeting virtually due the ongoing COVID-19 pandemic, our senses are heightened as we recover from economic turmoil and pockets of historic market volatility. Now, perhaps more than ever, we must prioritize and promote regulatory activities and policies that will benefit the American public.

I am pleased to be supporting both items on today's agenda. First, we will vote on a joint final rule that reduces the minimum margin requirements for security futures that are held in a futures account or in a securities account that is not subject to portfolio margin rules. This rule is intended to align such margin requirements with those of comparable exchange-traded equity options. At this time, there are no security futures contracts listed for trading on U.S. exchanges since the only U.S. exchange that had offered trading in such products discontinued operations last month. Nevertheless, the agencies are moving forward towards harmonization that is intended to prevent competitive distortions, and is unlikely to result in under-margining for security futures positions should trading resume.

I believe the joint final rule goes to great lengths in its parsing of statutory language and addressing questions, concerns, and alternatives raised by commenters. In supporting this final rule, I believe it is important to highlight a point emphasized throughout the preamble: the 15% margin requirements being established represent the floor. If security futures trading resumes, futures commission merchants (FCMs), derivatives clearing organizations (DCOs), and other security futures intermediaries, may charge additional margin above the 15% minimum level required, as well as take other appropriate actions if it would be prudent to manage and protect against increased risk, to preserve their financial integrity, and to protect customers.<sup>[6]</sup> I believe that the CFTC's regulatory regime for FCMs and DCOs provides appropriate incentives and flexibility to manage and mitigate risk, and am pleased to support today's final rule. As well, for the vast majority of futures contracts (energy, softs, precious and base metals, livestock, etc.), the margin level generally sits between 3% and 12%.<sup>[7]</sup> Although this data point should not be determinative of what any contract's margin requirement should be as it relates to the individual product's risk profile, I believe the range clearly indicates that the 15% level, in the case of today's rule, remains conservative. I look forward to monitoring any developments in this space to ensure results are as predicted and based on the best available data. If outcomes, through economic analysis, surveillance, or market monitoring, prove otherwise, I'll be ready to take action immediately.

Second, we will vote on the issuance of a request for comment on potential ways to implement portfolio margining of uncleared swaps and non-cleared security-based swaps. As a commissioner who often comments on the importance of process, I am pleased that the commissions are beginning here. At the highest level, portfolio margining is where our two sets of margin rules intersect. It sounds simple, but there is much to reconcile in terms of calculation, collection, protection in the event of a default, and much more. The questions focus on drawing out the various considerations and notable differences in our respective margin rules identified by staff at our agencies with a goal of advancing a program, even though we are in the very nascent stages of policy development.

I believe beginning with a request for comment is an important first step because it builds accountability by promoting greater transparency and engagement with the commissions throughout the decision-making process, and supports the highest levels of collaboration. I look forward to the comments and will be especially interested in hearing about new approaches, tools, practices and processes that may contribute to our deliberations, with an emphasis on financial stability, market resiliency and integrity, and customer protections as we move forward in our own process.

Again, I would like to thank Chairmen Tarbert and Clayton for bringing us together today. And I would like to thank the staff of both agencies for their incredible efforts these past few months in particular as they keep us moving forward as thoughtful, cooperative, and collaborative regulators.

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[1] Press Release Number 5696-09, CFTC, CFTC/SEC to Hold Joint Meetings on Regulation Harmonization (Aug. 20, 2009), <https://www.cftc.gov/PressRoom/PressReleases/5696-09-0>.

[2] See Press Release Number 5735-09, CFTC, CFTC and SEC Issue Joint Report on Harmonization (Oct. 16, 2009), <https://www.cftc.gov/PressRoom/PressReleases/5735-09>. More specifically, the two agencies were asked to identify "all existing conflicts in statutes and regulations with respect to similar types of financial instruments and either explain why those differences are essential to achieve underlying policy objectives with respect to investor protection, market integrity, and price transparency or make recommendations for changes to statutes and regulations that would eliminate the differences." Financial Regulatory Reform – A New Foundation: Rebuilding Financial Supervision and Regulation at 50-51 (June 17, 2009), available at <https://www.treasury.gov/press-center/press-releases/Pages/20096171052487309.aspx>.

[3] A Joint Report of the SEC and CFTC on Harmonization of Regulation (Oct. 16, 2009), available at <https://www.cftc.gov/PressRoom/PressReleases/5735-09-0>.

[4] *Id.* at 36-43.

[5] Press Release Number 5735-09, *supra* note 2.

[6] See Joint Final Rule at II.A.2; IV.A.6.iii.

[7] See CME GROUP, *Introduction to Futures: Margin Know What's Needed*, <https://www.cmegroup.com/education/courses/introduction-to-futures/margin-know-what-is-needed.html> (Last visited Oct. 21, 2020).

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