SPEECHES & TESTIMONY

Statement of Commissioner Dan M. Berkovitz on Amendments to Certain Swap Execution Facility Requirements and Real-Time Reporting Requirements

January 30, 2020

I am voting in favor of today's proposed rule that would amend certain Commission rules in parts 36, 37, and 43 relating to package transactions, block trades, and error transactions on swap execution facilities ("SEFs") ("Proposal"). Today's amendments largely codify longstanding no-action letters for limited categories of swaps transactions regarding the required methods of execution. Generally, I support the codification of no-action letters where, based on experience, doing so is consistent with our statutory mandate, protects customers, provides market participants with a greater level of certainty, and promotes market integrity.

Package Transactions

This Proposal would amend part 37 to allow the swap components of certain package transactions—including those that are illiquid and bespoke and therefore not suitable for trading on-SEF—to be executed on-SEF but through flexible methods of execution. In addition, the Proposal amends part 36 to exempt from the trade execution requirement a swap in a package transaction involving a bond sold in the primary market ("new issuance bond transaction"), which also is not conducive to trading on-SEF.

Beginning in 2014, the Commission issued a series of no-action letters specifying permissible methods of execution for certain package transactions, which have enabled market participants and the agency to apply the trading mandate to these transactions in a phased manner. As the market infrastructure for the trading and clearing of swaps has improved, the trading mandate has been applied to the packages involving more liquid and standardized swap components.[1] The remaining package transactions that would be covered by today's Proposal represent a small percentage of swaps trading on the most active SEFs.

I encourage the industry to continue to develop systems that allow for increased execution of package trade swap components on-SEF. I also appreciate the Staff's commitment, if this rule is finalized, to continue to evaluate the categories of package transactions subject to the rule and revise the rule as necessary in the future to reflect developments in trading methodologies.

Error Trades

The Proposal also would amend part 37 to enable SEFs to permit market participants to use flexible methods of execution to correct error trades, and would require a SEF to establish error trade policies that largely track the conditions set forth in prior no-action letters. Notably, the Proposal would require market participants to provide prompt notice of an error trade to the SEF, enabling the SEF to fulfill its self-regulatory obligations. It would not alter the requirement that SEFs must adopt rules declaring that trades rejected from clearing are deemed void *ab initio*. The Proposal also includes the requirement under CFTC No-Action Letter No. 17-27 that after submitting one error trade, market participants will not be able to submit a second new trade with the original terms. These conditions facilitate a SEF's direct supervision of its markets, protect against abuse, and promote fair competition.

Block Trades

The Proposal would revise the definition of “block trade” in Commission Regulation 43.2 to permit SEFs to offer non-Order Book methods of execution for market participants to execute swap block trades on-SEF. Like package transactions, block trades encompassed within the Proposal are a small percentage of the number of swaps traded. A significant benefit of this Proposal is that it would facilitate pre-trade credit checks by SEFs for block trades, in accordance with the SEF core principles.

It is my preliminary view that this Proposal would provide certainty to market participants and increase trading efficiencies, while not compromising the Congressional goal of moving standardized OTC derivative contracts to exchanges or electronic trading platforms. I look forward to public comments on the anticipated effects of these amendments, and I thank the staff of the Division of Market Oversight for their work on this Proposal.

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[1] For example, U.S. Dollar Spreadover package transactions account for nearly seventy percent of interest rate swaps trading in the inter-dealer swap market. No-action letters for these package transactions have expired and market participants now actively trade the swap component of these packages through required methods of trading. *See* Proposed Rule, Sect. II.A.1 and n.33.