

Public Statements & Remarks

Opening Statement of Commissioner Brian Quintenz Before the SEC and CFTC Joint Open Meeting on October 22, 2020

October 22, 2020

CFTC Chairman Heath Tarbert and SEC Chairman Jay Clayton, thank you both for calling this meeting. I am honored to join my fellow CFTC and SEC Commissioners to participate in the first-ever joint SEC and CFTC open meeting to consider and vote on rulemaking initiatives. Both items on today's agenda showcase the hard work and cooperation between CFTC and SEC staff and remind us of how critical these staff and Commission-level relationships are to ensuring a rationalized regulatory framework for firms and products spanning both the derivatives and securities markets.

While the U.S. dual regulatory framework between the derivatives and securities markets naturally poses challenges, I would suggest that it has also created significant opportunities. Securities and derivatives markets serve very different purposes but both work, in their own way, to promote a vibrant economy and long-lived individual financial security. One is predominantly for capital raising, debt issuance, and wealth creation, whereas the other serves as a way to mitigate risk by facilitating efficient hedging. They shouldn't be regulated the same way, and in the United States, they certainly are not. But, given economies of scale, many financial firms are engaged in both markets and products can cross jurisdictional lines or be highly correlated with instruments in the other marketplace: a futures contract on a security is an example of that, while the dividing line between swaps and security-based swaps is another. This logical convergence is why it is so critical our two agencies have a cooperative, consistent, and comprehensive dialogue on each of our markets and the areas of overlapping interest. Today's meeting is the preeminent expression of that dialogue, one which I have personally witnessed behind the scenes in countless settings. That is why I am so happy and proud to partake today.

I would like to take a special moment to thank SEC Commissioner Hester Peirce, who has been my invaluable partner in advancing SEC-CFTC harmonization efforts and coordination. Commissioner Peirce has brought intellectual heft and ideological conviction, coupled with open mindedness, to our efforts, and she has done so with a rare combination of tenacity and grace. It has been an absolute pleasure to work with you to not only attempt, but to actually achieve, greater regulatory consistency for swaps and security-based swaps across a panoply of areas. I believe we have made significant progress in harmonizing the capital, margin, and segregation regimes for dually registered broker-dealers and futures commission merchants, as well as security-based swap dealers and swap dealers.

You have also worked with me and the talented staff of both our agencies to encourage further alignment of the regulatory and real-time reporting requirements of swaps and security-based swaps, to facilitate coordinated examinations of dual registrants, and to explore portfolio margining possibilities for both cleared and uncleared products. We've been able to keep our commitment to talk both regularly or suddenly. We've been able to champion each other's positions within our own agencies. We've never declared any policy area out of bounds. And we've established trusted lines of communication between our staffs and with each other's Chairmen. Speaking of, I am incredibly grateful to SEC Chairman Jay Clayton and former CFTC Chairman Chris Giancarlo for developing this role and thinking of me for it. Additionally, I am specifically grateful to SEC Chairman Jay Clayton for not only his openness to my thinking in our harmonization discussions but also for the relationship we have developed. Lastly, I am incredibly grateful to CFTC Chairman Heath Tarbert for allowing me to continue to serve in this capacity, for taking the personal initiative when needed to move tough issues across the finish line, and for his personal friendship.

Joint Final Rule: Customer Margin Rules Relating to Security Futures

I am pleased to support today's final rule lowering the minimum margin requirement to hold security futures, from 20% to 15% of a position's market value.^[1] The lower margin requirement would apply to security futures held in a futures account and to positions held in a securities account not subject to portfolio margin rules. The new margin requirement would be consistent with the current margin requirements both for security futures positions held in a securities account subject to portfolio margin rules and for exchange-traded equity options.

I note that today's final rule indicates that OneChicago, the only exchange that has listed security futures in the United States, has recently discontinued trading operations. This underscores the determinative impact statutory provisions can have on the viability of both products and whole business lines. The Securities Exchange Act requires security futures to be margined comparably to options traded on an exchange registered with the SEC.^[2] While the intent of that provision is understandable, the economics underlying it appear to be severely sub-optimal. Today's lowering of the required minimum margin, consistent with the Securities Exchange Act, should make trading this product more cost effective than it has been, but it still may not be sufficiently cost effective to make the product economically viable. From that perspective, I hope policy makers revisit this provision, to ensure its ultimate effect is consistent with its intent. I believe financial markets policy should appropriately balance concerns of safety and soundness with promoting a range of innovative products, and more can certainly be done in that regard on this issue.

Finally, as I noted above, this rule serves as a positive example of productive cooperation between the CFTC and the SEC, and I hope that additional joint actions arise in the future.

Request for Comment: Portfolio Margining of Uncleared Swaps and Non-Cleared Security-Based Swaps

I am proud to support today's request for comment, which marks the beginning of the agencies' consideration of ways to implement a portfolio margining regime for uncleared swaps and non-cleared security-based swaps. Portfolio margining can lead to efficiencies in margin calculation by appropriately accounting for the impact offsetting positions have on a portfolio's actual risk profile. This, in turn, gives firms and customers additional capital that can be deployed elsewhere. However, given the differences between the regulatory regimes for swaps and security-based swaps, it also implicates incredibly important legal and policy considerations. This request for comment solicits critical feedback from market participants on how portfolio margining could impact the safety and soundness of firms, result in competitive advantages for certain types of registrants, and raise questions about how collateral would be treated in the event of bankruptcy. In order to make an informed decision about if, and how, portfolio margining should be implemented for uncleared swaps and non-cleared security-based swaps, we need thoughtful feedback on these complex questions. I encourage all interested parties to provide written comments, including data wherever possible, in order to further the agencies' understanding of the various options presented in the request for comment.

^[1] Amended CFTC regulation 41.45(b) and SEC rule 242.403(b).

^[2] Section 7(c)(2)(B) of the Securities Exchange Act.

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