

Statement of Dan M. Berkovitz

Hearing on the Nomination of Dan M. Berkovitz to be a Member of the U.S. Commodity Futures Trading Commission

U.S. Senate Committee on Agriculture, Nutrition, and Forestry

July 24, 2018

Chairman Roberts, Ranking Member Stabenow, and Members of the Committee, thank you for the opportunity to appear before you today. It is an honor to be here as a nominee to be a Commissioner of the U.S. Commodity Futures Trading Commission (CFTC). I would like to thank President Trump for nominating me to this position, Minority Leader Schumer for recommending me, and others who have supported me throughout this process. I also appreciate the consideration the Committee staff has afforded me. My wife Michelle, daughter Zoe and son Eli are with me here, and I thank them for their steadfast support. My mother is closely following this hearing back home in Indiana, and I appreciate her in very many ways.

Today, the U.S. commodity markets are the strongest and most liquid commodity markets in the world. The strength and integrity of our commodity markets is essential to our nation's overall economic health and growth. A robust regulatory program is one of the foundations for this strength.

The basic purpose of our commodity markets is to enable American businesses—including farmers, ranchers, distributors, manufacturers, and commodity producers—to manage the price risks associated with their business. The regulatory system must prevent and prosecute fraud and manipulation, ensure the safeguarding of customer funds, provide a fair and transparent manner for price discovery, protect customers, and enable innovation. If confirmed, I will work diligently to ensure that the CFTC's regulatory program continues to work for and protect the farmers, ranchers, producers, consumers, and other end users that rely upon these markets.

On several previous occasions I have had the privilege of working with this Committee to improve the CFTC's regulation of the commodity markets. One of the highlights of my service on the staff of the Senate Permanent Subcommittee on Investigations, under the leadership of Senator Carl Levin, was working with the members and staff of this Committee, on both sides of the aisle, on the legislation that was included in the 2008 Farm Bill to regulate swaps that perform a "significant price discovery" function. This was the first legislation to regulate the then-unregulated swaps market, and it substantially improved the integrity, fairness, and price discovery process in the market for natural gas and other energy commodities.

While at the CFTC, I led the agency's legislative drafting and assistance team, which provided non-partisan technical assistance to the Congress – including this Committee – during its consideration of the Dodd-Frank Act. I am particularly proud of the fact that our team, which was composed of legislative and program experts, was relied upon extensively by both sides of the aisle in both the House and the Senate as the Congress developed the Act. I look forward, if confirmed, to continuing to work with the members of this Committee in this same spirit.

It has been eight years since the President signed the Dodd-Frank Act into law, and ten years since the height of the financial crisis. In my view, based on my experience at the CFTC and in private practice advising persons in the commodity markets, the Dodd-Frank Act, the CFTC's regulatory and enforcement program to implement the Act, and the industry's implementation of those regulations have substantially reduced systemic risks, strengthened market integrity, enhanced transparency, and improved public confidence in these markets.

The CFTC's work to implement the Act is not yet complete, however. The Commission has not yet enacted new rules to limit speculative positions or to establish capital requirements for swap dealers. The Commission recently proposed a rule regarding the de minimis threshold for swap dealer registration. If confirmed, I will work with my fellow Commissioners to complete these rulemakings in a timely manner.

My experience as an attorney in private practice has provided me with an appreciation of how the CFTC's regulatory program affects end users and other market participants. I have worked with many commercial end users, CFTC registrants, and other market participants on a variety of regulatory matters, including interpreting the CFTC's regulations, preparing registration applications, developing training materials, responding to CFTC requests, reporting data and other information, and establishing compliance programs. I am aware of the importance to market participants that the CFTC's regulations be clear and that the agency be consistent in their application. I understand the potential impacts of new regulations and requirements on persons and businesses subject to those regulations. In enacting or implementing regulations, it is critical for the CFTC to consider those impacts, consistent with the governing statutes.

Ever since the Grain Futures Act was enacted in 1922 to first regulate the agricultural futures markets, Congress and the agency that is now the CFTC have continually revised our commodity laws to respond to evolving markets. Looking forward, the CFTC's regulatory program should not be fixed as of any particular point in time; rather, the CFTC must monitor the commodity markets to evaluate and respond to new information and market conditions, and to adjust its regulatory approach accordingly. The emerging markets for cryptocurrencies are just the latest example of new market conditions that the CFTC has begun to address through its regulatory and enforcement programs. Similarly, as new information develops about existing markets, the

CFTC must examine its existing regulations to determine whether they continue to serve their intended function and Congressional directives in the most efficient and effective manner.

I strongly believe in transparency and openness to public comment and consultation in agency decisions. Although the agency may be required to seek and respond to public comments in rulemakings, as a more general matter it is basic fairness. People should have an opportunity to be heard before the government makes decisions that affect them. Public participation also leads to better decisions. If confirmed, I am committed to close consultation with stakeholders, members of Congress, and other interested persons.

The various commodity markets under the CFTC jurisdiction often present distinct market dynamics and regulatory issues. A “one size fits all” approach may not be appropriate. The agricultural commodity markets, for example, may present regulatory issues that differ from the issues arising in the markets for financial commodities. It is important for the CFTC to tailor its regulatory approach to specific markets as appropriate.

The CFTC should continue to consult and coordinate with other federal regulators in developing and implementing its regulations. This consultation and coordination can lead to better informed regulatory decisions and reduce conflicting and duplicative regulations among the various federal agencies that have jurisdiction over our financial and commodity markets, thereby reducing unnecessary costs and burdens on market participants.

International coordination and harmonization is important to reduce systemic risk globally, avoid market fragmentation, prevent regulatory arbitrage, and promote liquidity, all of which reduces risk and benefits the participants in our own markets. Following the G-20 Summit in Pittsburgh in the wake of the financial crisis, the United States has been a leader globally in implementing strong reforms in the financial markets. The CFTC should continue to be active in promoting international harmonization.

I am enthusiastic about returning to public service at the CFTC. Public service is both a privilege and a responsibility. If confirmed, I pledge to work with each of the members of this Committee to ensure that the CFTC’s regulatory program serves the public and protects the farmers, ranchers, producers, distributors, and consumers that rely on the futures and swaps markets to manage their price risks and discover prices for agricultural and other commodities.

Thank you for your time and consideration. I look forward to answering any questions you may have.