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United States Government Accountability Office  
Washington, DC 20548

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B-321067

October 28, 2010

The Honorable Christopher J. Dodd  
Chairman  
The Honorable Richard C. Shelby  
Ranking Member  
Committee on Banking, Housing, and Urban Affairs  
United States Senate

The Honorable Barney Frank  
Chairman  
The Honorable Spencer Bachus  
Ranking Member  
Committee on Financial Services  
House of Representatives

Subject: *Securities and Exchange Commission: Reporting of Security-Based Swap Transaction Data*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Securities and Exchange Commission (Commission), entitled “Reporting of Security-Based Swap Transaction Data” (RIN: 3235-AK73). We received the rule on October 14, 2010. It was published in the *Federal Register* as an “interim final temporary rule; request for comments” on October 20, 2010. 75 Fed. Reg. 64,643.

The interim final temporary rule requires specified counterparties to pre-enactment security-based swap transactions to report certain information relating to pre-enactment security-based swaps to a registered security-based swap data repository or to the Commission by the compliance date established in the security-based swap reporting rules required under sections 3C(e) and 13A(a) of the Securities Exchange Act of 1934 (“Exchange Act”), or within 60 days after a registered security-based swap data repository commences operations to receive and maintain data concerning such security-based swaps, whichever occurs first and report information relating to pre-enactment security-based swaps to the Commission upon request. The Commission also issued an Interpretive Note to the rule that states that counterparties that may be required to report to the Commission will need to preserve information pertaining to the terms of these pre-enactment security-based swaps.

The Congressional Review Act requires major rules to have a 60-day delay in their effective date following their publication in the *Federal Register* or receipt by Congress, whichever is later. 5 U.S.C. § 801(a)(3)(A). However, notwithstanding the 60-day delay requirement, any rule that an agency for good cause finds that notice and public procedures are impractical, unnecessary, or contrary to the public interest is to take effect when the promulgating agency so determines. 5 U.S.C. § 808(2). The Commission found good cause to forego the usual 60-day delay in effective date of a major rule and make the rule effective upon the date of publication in the *Federal Register*, October 20, 2010.

Enclosed is our assessment of the Commission's compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. Our review of the procedural steps taken indicates that the Commission complied with the applicable requirements.

If you have any questions about this report or wish to contact GAO officials responsible for the evaluation work relating to the subject matter of the rule, please contact Shirley A. Jones, Assistant General Counsel, at (202) 512-8156.

signed

Robert J. Cramer  
Managing Associate General Counsel

Enclosure

cc: Elizabeth M. Murphy  
Secretary  
Securities and Exchange Commission

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE  
ISSUED BY THE  
SECURITIES AND EXCHANGE COMMISSION  
ENTITLED  
"REPORTING OF SECURITY-BASED SWAP TRANSACTION DATA"  
(RIN: 3235-AK73)

(i) Cost-benefit analysis

The Commission performed a preliminary cost-benefit analysis in conjunction with the interim final temporary rule and requested comments on the costs and benefits. The Commission determined that the interim final temporary rule will provide a means for the Commission to gain a better understanding of the security-based swap markets and help the Commission analyze the security-based swap market as a whole and identify risks. The interim final temporary rule will also facilitate the reports the Commission is required to provide to Congress on security-based swaps and the security-based swaps marketplace, along with having possible benefits in encouraging management review of internal procedures and controls by market participants.

The Commission preliminarily estimates that the interim final temporary rule could affect more than 1,000 market participants and cover approximately 2.4 million security-based swap transactions. The Commission preliminarily estimates that amending internal procedures, reprogramming systems, and implementing compliance processes to ensure that pre-enactment security-based swap transaction data is preserved could result in a cost to each respondent of approximately \$6,236 and an aggregate cost of approximately \$6,236,000. The Commission preliminarily estimates that the requirement to report the transaction confirmation and time, if available, of execution could result in a cost to each reporting entity of approximately \$43,900 and an aggregate cost of approximately \$43,900,000. Finally, the Commission preliminarily estimates that responding to Commission requests for information and documents could result in a cost to each reporting entity of approximately \$6,352 and an aggregate cost of approximately \$6,352,000.

(ii) Agency actions relevant to the Regulatory Flexibility Act, 5 U.S.C. §§ 603-605, 607, and 609

The Commission certified that the interim final temporary rule will not have a significant economic impact on a substantial number of small entities.

(iii) Agency actions relevant to sections 202-205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532-1535

As an independent regulatory agency, the Commission is not subject to the Act.

(iv) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 et seq.

The Administrative Procedure Act generally requires an agency to issue a notice of proposed rulemaking and an opportunity for public comment. However, an agency may find good cause to issue a final rule without rulemaking procedures where withholding action would be impracticable, unnecessary, or contrary to the public interest. 5 U.S.C. § 553. The Commission, for good cause, found that notice and solicitation of comment before the effective date of the interim final temporary rule would be impracticable, unnecessary, or contrary to the public interest. The Commission is required to adopt, within 90 days of enactment of the Dodd-Frank Act, an interim final rule providing for the reporting of each security-based swap entered into before the date of enactment of the Dodd-Frank Act the terms of which were not expired as of that date. The Commission is adopting the interim final temporary rule to fulfill this requirement.

Additionally, the Administrative Procedure Act generally requires an agency to have a 30-day delay in effectiveness for a final action. An agency may waive the 30-day delay if it finds good cause. 5 U.S.C. § 553(d). The Commission found good cause to waive the 30-day delay for the same reasons discussed above.

Paperwork Reduction Act, 44 U.S.C. §§ 3501-3520

The final rule contains new information collection requirements under the Paperwork Reduction Act, which were submitted to the Office of Management and Budget (OMB) for review. The Commission has applied for a new OMB Control Number for the collection entitled “Rule 13Aa-2T–Reporting of Pre-Enactment Security-Based Swap Transactions.” The Commission is soliciting comments on the information collection requirements in the interim final temporary rule.

The Commission estimates there were approximately 2 million credit default swap (CDS) contracts outstanding on the date of enactment, and that CDS transactions represent approximately 85 percent of all security-based swap transaction open on the date of enactment. Accordingly, the Commission estimates the total number of security-based swap transactions subject to Rule 13Aa-2T to be approximately 2,400,000. The Commission estimates that the requirement to retain information and documents pursuant to the Note to paragraphs b(1) and (2) of Rule 13Aa-2T would impose a burden on each respondent of approximately 38 burden hours for an aggregate burden of approximately 38,000. The Commission preliminarily estimates that the cost to establish connectivity to a security-based swap data repository to

facilitate the reporting required by Rule 13Aa-2T(b)(1) would impose a burden on each respondent of approximately \$25,000, for an aggregate burden of approximately \$25,000,000. Additionally, the Commission preliminarily estimates that complying with Rule 13Aa-2T(b)(1) by reporting all pre-enactment security-based swap transactions would impose a burden on each respondent of approximately 480 hours, for an aggregate burden of approximately 480,000 burden hours. Finally, the interim temporary final rule requires that reporting entities report to the Commission upon request any information relating to pre-enactment security-based swap transactions, which the Commission preliminarily estimates would impose a burden on each respondent of approximately 34 hours, for an aggregate burden of approximately 34,000 burden hours.

#### Statutory authorization for the rule

The interim temporary final rule is authorized by section 13A of the Securities Exchange Act of 1934, as amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111-203 (2010).

#### Executive Order No. 12,866 (Regulatory Planning and Review)

As an independent regulatory agency, the Commission is not subject to the Act.

#### Executive Order No. 13,132 (Federalism)

As an independent regulatory agency, the Commission is not subject to the Act.