



441 G St. N.W.  
Washington, DC 20548

B-327678

January 14, 2016

The Honorable Richard Shelby  
Chairman  
The Honorable Sherrod Brown  
Ranking Member  
Committee on Banking, Housing, and Urban Affairs  
United States Senate

The Honorable Jeb Hensarling  
Chairman  
The Honorable Maxine Waters  
Ranking Member  
Committee on Financial Services  
House of Representatives

*Subject: Commodity Futures Trading Commission: Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Commodity Futures Trading Commission (Commission) entitled “Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants” (RIN: 3038-AC97). We received the rule on December 18, 2015. It was published in the *Federal Register* as a final rule and interim final rule on January 6, 2016. 81 Fed. Reg. 636.

The final rule and interim final rule implement a particular provision of the Commodity Exchange Act (CEA), as added by the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). This provision requires the Commission to adopt initial and variation margin requirements for certain swap dealers (SDs) and major swap participants (MSPs). The final rules would establish initial and variation margin requirements for SDs and MSPs but would not require SDs and MSPs to collect margin from non-financial end users. The Commission is also adopting and inviting comment on an interim final rule that will exempt certain uncleared swaps with certain counterparties from these margin requirements. This interim final rule implements title III of the Terrorism Risk Insurance Program Reauthorization Act of 2015, which exempts from the margin rules for uncleared swaps certain swaps for which a counterparty qualifies for an exemption or exception from clearing under the Dodd-Frank Act.

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: Christopher J. Kirkpatrick  
Secretary of the Commission  
Commodity Futures Trading Commission

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE  
ISSUED BY THE  
COMMODITY FUTURES TRADING COMMISSION  
ENTITLED  
“MARGIN REQUIREMENTS FOR UNCLEARED SWAPS  
FOR SWAP DEALERS AND MAJOR SWAP PARTICIPANTS”  
(RIN: 3038-AC97)

(i) Cost-benefit analysis

The Commission stated that section 15(a) of the Commodity Exchange Act (CEA) requires the Commission to consider the costs and benefits of its discretionary actions before promulgating a regulation under CEA or issuing certain orders. 7 U.S.C. § 19(a). Section 15(a) further specifies that the costs and benefits shall be evaluated in light of five broad areas of market and public concern: (1) protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. The Commission discussed the costs and benefits resulting from its discretionary determinations with respect to the section 15(a) factors. The Commission states that it considered: (1) the costs and benefits associated with its choices regarding the scope and extent to which it would apply its margin rule to uncleared swaps of covered swap entities (CSEs) and certain financial end users; (2) the alternatives considered by the Commission and the costs and benefits relative to the approach adopted; and (3) the impact of the margin rule on the market and the public, in light of the 15(a) factors, as applicable. In the proposed rule, the Commission addressed the costs and benefits of the proposed rules, taking into account the considerations described above. The discussion of the costs and benefits in the final rule and interim final rule was described by the Commission as largely qualitative in nature, although where possible the Commission stated that it attempted to quantify the benefits and costs.

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

The Commission certified that the final 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 Commission explained that it initially proposed margin requirements for swap dealers (SDs) and major swap participants (MSPs) in 2011. In October 2011, the Basel Committee on Banking Supervision and the International Organization of Securities Commissions, in consultation with the Committee on Payment and Settlement Systems and the Committee on

Global Financial Systems, formed a working group to develop international standards for margin requirements for uncleared swaps. According to the Commission, representatives of more than 20 regulatory authorities participated. From the United States, the Commodity Futures Trading Commission, the Federal Deposit Insurance Commission, the Federal Reserve Board, the Office of the Comptroller of the Currency, the Federal Reserve Bank of New York, and the Securities and Exchange Commission (SEC) were represented. In July 2012, the working group published a proposal for public comment. In addition, the group conducted a Quantitative Impact Study (QIS) to assess the potential liquidity and other quantitative impacts associated with margin requirements. After consideration of the comments on the proposal and the results of the QIS, the group published a near-final proposal in February 2013 and requested comment on several specific issues. The group considered the additional comments in finalizing the recommendations set out in the report. The final report was issued in September 2013.

In response to the 2013 international framework, the Commission re-proposed margin requirements in September 2014. *Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants*, 79 Fed. Reg. 59,898 (Oct. 3, 2014). In developing the proposed rules, the Commission stated that its staff worked closely with the staff of the Prudential Regulators, and as required by section 4s of CEA, the Commission staff also has consulted with SEC staff. In most respects, according to the Commission, the proposed rules would establish a framework for margin requirements similar to the Prudential Regulators' proposal. As discussed in the rule, the proposed rules were consistent with the 2013 international framework, and in some instances, as contemplated in the framework, the proposed rules provided more detail than the framework. In a few other instances, according to rule, the proposed rules were stricter than the framework. The Commission also received a total of 59 comment letters, and the Commission stated that the relevant comments have informed the Commission's decisions regarding the final rule and were addressed in the final rule. The Commission stated it is accepting comments on the interim final rule, which must be received on or before February 5, 2016.

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

The Commission concluded that the final rule will result in a mandatory collection of information within the meaning of PRA. The collection is necessary to implement section 4s(e) of CEA, which directs the Commission to adopt rules governing margin requirements for SDs and MSPs. In accordance with the requirements of PRA, the Commission may not conduct or sponsor, and a person is not required to respond to, this collections of information unless it displays a currently valid Office of Management and Budget (OMB) control number. All of the collections of information required by the final rule are covered by existing OMB Control Number 3038-0024 (entitled "Regulations and Forms Pertaining to Financial Integrity of the Market Place") and OMB Control Number 3038-0088 (entitled "Swap Trading Relationship Documentation Requirements for Swap Dealers and Major Swap Participants"), with OMB Control Number 3038-0024 requiring a revision of the burden hours.

The final rule contains reporting and recordkeeping requirements that are part of the existing Commission regulations pertaining to swap trading relationship documentation requirements. The collection of information related to that existing Commission regulation is covered by OMB Control Number 3038-0088, and the final rule provided a clarification, but noted that the reporting and recordkeeping requirements would not materially impact the burden estimates that had been provided under that control number. As noted, revisions to OMB Control Number 3038-0024 will require a new information collection. According to the Commission, the final rule revised the burden hours associated with the collection as follows: number of registrants: 54;

frequency of collection: initial submission and periodic updates; estimated annual responses per registrant: 1; estimated aggregate number of annual responses: 54; estimated annual hour burden per registrant: 240 hours; and estimated aggregate annual hour burden: 12,960 hours (54 registrants × 240 hours per registrant).

#### Statutory authorization for the rule

The Commission states that the final rule is authorized by new section 4s of the Commodity Exchange Act, as amended by section 731 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376 (2010), codified at 7 U.S.C. 1, and title III of the Terrorism Risk Insurance Program Reauthorization Act of 2015, which amended sections 731 and 764 of the Dodd-Frank Act. Pub. L. 114-1, 129 Stat. 3 (2015).

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

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

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

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