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April 25, 2012

The Honorable Debbie Stabenow
Chairman
The Honorable Pat Roberts
Ranking Member
Committee on Agriculture, Nutrition, and Forestry
United States Senate

The Honorable Frank D. Lucas
Chairman
The Honorable Collin C. Peterson
Ranking Member
Committee on Agriculture
House of Representatives

Subject: *Commodity Futures Trading Commission: Customer Clearing Documentation, Timing of Acceptance for Clearing, and Clearing Member Risk Management*

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 “Customer Clearing Documentation, Timing of Acceptance for Clearing, and Clearing Member Risk Management” (RIN: 3038-0092, -0094). We received the rule on April 10, 2012. It was published in the *Federal Register* as a final rule on April 9, 2012, with an effective date of October 1, 2012. 77 Fed. Reg. 21,278.

The final rule implements new statutory provisions enacted by title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, which amended the Commodity Exchange Act (CEA). These rules address: the documentation between a customer and a futures commission merchant that clears on behalf of the customer; the timing of acceptance or rejection of trades for clearing by derivatives clearing organizations and clearing members; and the risk management procedures of futures commission merchants, swap dealers, and major swap participants that are clearing members. The rules are designed to increase customer access to clearing, to facilitate the timely processing of trades, and to strengthen risk management at the clearing member level.

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: David A. Stawick
Secretary, 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
"CUSTOMER CLEARING DOCUMENTATION, TIMING OF
ACCEPTANCE FOR CLEARING, AND CLEARING MEMBER
RISK MANAGEMENT"
(RIN: 0938-0092, -0094)

(i) Cost-benefit analysis

CEA section 15(a) requires the Commission to consider the costs and benefits of its action before promulgating a regulation under the CEA, specifying 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 weighed these considerations for Customer Clearing Documentation, Timing of Acceptance of Trades for Clearing, and Clearing Member Risk Management. The Commission states that to the extent that these final regulations repeat the statutory requirements of the Dodd-Frank Act, they will not create costs and benefits beyond those resulting from Congress's statutory mandates in the Dodd-Frank Act. However, to the extent that the regulations reflect the Commission's own determinations regarding implementation of the Dodd-Frank Act's provisions, such Commission determinations may result in other costs and benefits. It is these other costs and benefits resulting from the Commission's determinations pursuant to and in accordance with the Dodd-Frank Act that the Commission considers with respect to the section 15(a) factors. The Commission states further that it endeavored in its analysis to quantify the costs and benefits, where possible. The Commission notes, however, that the costs and benefits are either indirect, highly variable, or both and therefore are not subject to reliable quantification at this time.

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

The Commission certifies that this 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 title II of the Act.

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

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

The final regulations were proposed in four separate notices of proposed rulemaking. See 76 Fed. Reg. 45,730 (Aug. 1, 2011); 76 Fed. Reg. 13,101 (Mar. 10, 2011); 76 Fed. Reg. 45,724 (Aug. 1, 2011); 76 Fed. Reg. 33,066 (Jun. 6, 2011). The Commission received a total of 38 comment letters directed specifically at the proposed documentation rules. Thirty of the thirty-eight commenters supported the proposed rules, including asset managers, market makers, trading platforms, clearing organizations, bank/dealers, a non-profit organization, and a private citizen. The eight commenters opposing the rule, included bank/dealers, an association of electric utilities, and an asset manager. Within each group, the Commission explains that some commenters addressed only certain aspects of the rules and were silent on other sections and some requested clarification of certain provisions.

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

The Commission states that the final rules relating to Customer Clearing Documentation and Clearing Member Risk Management will result in new collection of information requirements within the meaning of the PRA. Accordingly, the Commission requested control numbers for the required collection of information. The Commission notes that it has submitted this notice of final rulemaking along with supporting documentation for the Office of Management and Budget's (OMB) review in accordance with 44 U.S.C. § 3507(d) and 5 CFR § 1320.11. According to the Commission, the final rules relating to the Time Frames for Acceptance into Clearing will not impose any new information collection requirements that require approval of OMB under the PRA.

Statutory authorization for the rule

The Commission states that the authority for the final rule is based on: 7 U.S.C. §§ 1a, 2, 2a, 5, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6k, 6l, 6m, 6n, 6o, 6p, 6r, 6s, 7, 7a-1, 7a-2, 7b, 7b-3, 8, 9, 10a, 12, 12a, 12c, 13a, 13a-1, 16, 16a, 19, 21, 23, and 24, as amended by title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111-203, 124 Stat. 1376 (2010).

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

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

Executive Order No. 13,132 (Federalism)

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