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B-327296

August 28, 2015

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: *Securities and Exchange Commission: Registration Process for Security-Based Swap Dealers and Major Security-Based 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 Securities and Exchange Commission (Commission) entitled "Registration Process for Security-Based Swap Dealers and Major Security-Based Swap Participants" (RIN: 3235-AL05). We received the rule on August 7, 2015. It was published in the *Federal Register* as a final rule on August 14, 2015. 80 Fed. Reg. 48,964. The final rule is effective on October 13, 2015.

The final rule adopts new Rules 15Fb1-1 through 15Fb6-2 and Forms SBSE, SBSE-A, SBSE-BD, SBSE-C, and SBSE-W in accordance with section 15F of the Securities Exchange Act of 1934 (the Exchange Act). Section 15F, which was added to the Exchange Act by section 764(a) of title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), requires the Commission to issue rules to provide for the registration of security-based swap dealers (SBS Dealers) and major security-based swap participants (Major SBS Participants) (collectively, SBS Entities). According to the Commission, these new rules and forms establish a process by which SBS Entities can register (and withdraw from registration) with the Commission.

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: Brent J. Fields
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
“REGISTRATION PROCESS FOR SECURITY-BASED SWAP DEALERS
AND MAJOR SECURITY-BASED SWAP PARTICIPANTS”
(RIN: 3235-AL05)

(i) Cost-benefit analysis

The Securities and Exchange Commission (Commission) analyzed the costs and benefits of the final rule. Section 2(b) of the Securities Act of 1933 (Securities Act) and section 3(f) of the Exchange Act of 1934 (Exchange Act) require the Commission to consider whether an action will promote efficiency competition and capital formation. In addition, pursuant to section 23(a) of the Exchange Act, the Commission is directed to consider, among other things, the impact a new rule would have on competition. Section 23(a)(2) prohibits the Commission from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the Exchange Act. To assess the economic consequences, the Commission compared the final rule relative to the existing baseline of the security based swap market, including applicable rules the Commission has already adopted, but excluding rules that are proposed but not yet finalized. According to the Commission, the market is informed by available data on security-based swap transactions, though the Commission acknowledged that the data limit the extent to which it can quantitatively characterize the market. The Commission states that, because these data do not cover the entire market, the Commission has developed an understanding of market activity using a sample that includes only certain portions of the market.

According to the Commission, the economic benefits of entity registration stem from two sources: (1) the direct benefits of registration, such as requirements to provide information regarding disciplinary history and senior officer certifications; and (2) the benefits that flow from having a population of registered participants complying with the title VII regulatory framework for SBS Entities. The Commission indicates the certifications and other requirements contained in the final registration rules may enable the Commission to more effectively oversee security-based swap markets. According to the Commission, the senior officer certification requirement helps ensure that a chief compliance officer considers whether an SBS Entity has developed and implemented written policies and procedures that would be reasonably designed to prevent violations of federal securities laws and rules thereunder. Information about SBS Entities and their control affiliates, including disciplinary history, may facilitate ongoing Commission risk assessments and oversight of SBS markets, as well as help market participants make more informed counterparty choices. Associated person certifications help ensure associated persons subject to a statutory disqualification, who may pose a risk to participants, are precluded from effecting or being involved in effecting security-based swap transactions on behalf of SBS Entities absent a Commission rule, regulation, or order. As stated in the final rule, the books and records certification helps to ensure the Commission will have access to records and data of nonresident SBS Entities to facilitate ongoing risk assessments and market surveillance, and that, like resident SBS Entities, all nonresident SBS Entities are able to be subject to Commission inspections and examinations as part of its regulatory oversight of SBS Entities. The Commission states that the increased dissemination of information regarding disciplinary history may lead to improved quality based competition among SBS Entities to the extent that market participants rely on this information in the selection process. Additionally, as discussed by the Commission, disciplinary history information on SBS Entities and their control affiliates may inform ongoing Commission oversight, risk assessments, and examination

priorities. Collecting the data in a structured format will allow the Commission to make the data public in a manner that will enable users of that data to retrieve, search, and analyze the data through automated means. This format may lower costs of analyzing possible counterparty risks arising from prior misconduct and other registration information of a large group of potential counterparties. This may enable counterparties and the marketplace to expend less time and money to independently obtain and compile information on individual SBS Entities. The Commission stated that it cannot currently evaluate the combined economic effects of facilitating the title VII regime through registration. The Commission noted that registration requirements may ultimately impact the number of entities acting as dealers and major participants and providing liquidity to the SBS market, which may affect the programmatic benefits and costs of the substantive title VII requirements.

The Commission estimated that the total initial quantifiable cost of registration is \$14,249,642, and the ongoing costs are \$79,736.50 for all SBS Entities. The final registration rules would also entail a number of indirect costs for SBS Entities, according to the Commission. The Commission states that while these costs are difficult to quantify with any degree of certainty, they are still discussed qualitatively in the final rule, and it recognized that they may be as, if not more, significant than the direct costs quantified.

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

The Commission certified that the rules 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.

On October 12, 2011, the Commission published a proposed rule entitled, "Registration of Security-Based Swap Dealers and Major Security-Based Swap Participants, Exchange Act Release No. 65543 (Oct. 12, 2011), 76 Fed. Reg. 65,784 (Oct. 24, 2011) (the Registration Proposing Release). On May 1, 2013, the Commission re-proposed Forms SBSE, SBSE–A, and SBSE–BD in a proposed rule entitled, "Cross-Border Security-Based Swap Activities; Re-Proposal of Regulation SBSR and Certain Rules and Forms Relating to the Registration of Security-Based Swap Dealers and Major Security-Based Swap Participants, Exchange Act Release No. 69490" (May 1, 2013), 78 Fed. Reg. 30,968 (May 23, 2013) (Cross-Border Proposing Release). In the Registration Proposing Release, the Commission requested comment on all aspects of the proposal, including specific questions and a number of more general requests. The Commission originally received four comment letters in response to the proposed rules and forms. The Commission later received 31 additional comment letters in response to the reopening of comment periods for certain proposals applicable to security-based swaps. The Commission also received 38 comment letters in response to the Cross-Border Proposing Release. The Commission responded to and summarized the comments in the final rule.

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

The Commission determined that certain provisions of the final rule contain collection of information requirements within the meaning of PRA, and published a notice requesting comment on the collection of information requirements in the Proposing Release. The Commission submitted these requirements to the Office of Management and Budget (OMB) for review in accordance with PRA and its implementing regulations. The collection of information was assigned OMB Control No. 3235-0696. The Commission identified five forms for the new collection of information: Form SBSE; Form SBSE-A; Form SBSE-BD; Form SBSE-C; and Form SBSE-W.

Rule 15Fb2-1 requires that each SBS Entity register with the Commission by filing either Form SBSE, SBSE-A or SBSE-BD. The Commission designed the application process to provide alternative forms for SBS Entities that are, or are registering as swap dealers, major swap participants, or broker-dealers to use to register (Forms SBSE-A and SBSE-BD). Each SBS Entity is required to complete and file one of these forms. The Commission recognized that the burdens would vary depending on the nature and complexity of the entity's business, and it estimated that the average time necessary for an SBS Entity to research the questions and complete and file a Form SBSE (including the schedules and disclosure reporting pages) would be approximately 168 hours for the estimated four firms that would need to register using Form SBSE. The Commission estimated that approximately 35 firms would also be registered with the U.S. Commodity Futures Trading Commission, and therefore would need to register using Form SBSE-A. The total burden associated with filing Forms SBSE-A would be approximately 1,190 hours. The Commission estimated that approximately 16 SBS Entities would need to register using Form SBSE-BD. The total burden associated with filing Forms SBSE-BD would be approximately 168 hours. The Commission estimated that because of two new required certifications, the total burden associated with filing Form SBSE-C, would be approximately 4,180 hours. The Commission estimated that the total burden associated with amending Forms SBSE, SBSE-A, and SBSE-BD, as applicable, would be approximately 165 hours. The burdens on nonresident SBS Entities, according to the Commission, to appoint and maintain a relationship with U.S. agents for service of process is approximately \$3,938 per year, and an estimated \$550,000 to obtain the opinion of outside legal counsel. A recertification on an amended Schedule F for nonresident SBS entities would be approximately 1.5 hours and \$25,000 annually, as well as 9 hours for all SBS entities to retain a manually signed copy. The Commission states that the total burden associated with Form SBSE-W, the withdrawal from registration form, would be approximately 1 hour each year because entities would not enter and exit this business due to the cost and effort of registration.

Statutory authorization for the rule

The final rule was promulgated for Rule 15Fb1-1 through 15Fb6-2 and Forms SBSE, SBSE-A, SBSE-BD, SBSE-C, and SBSE-W, pursuant to sections 15F(a) through (d), 17(a), 23(a), and 30 of the Securities Exchange Act of 1934, as amended.

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

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

Executive Order No. 13,132 (Federalism)

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