September 5, 2019

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

The Honorable Maxine Waters
Chairwoman
The Honorable Patrick McHenry
Ranking Member
Committee on Financial Services
House of Representatives

Subject: Securities and Exchange Commission: Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital and Segregation Requirements for Broker-Dealers

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 “Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital and Segregation Requirements for Broker-Dealers” (RIN: 3235-AL12). We received the rule on June 24, 2019. It was published in the Federal Register as a final rule on August 22, 2019. 84 Fed. Reg. 43872. The effective date of the rule is October 21, 2019.

The final rule adopts capital and margin requirements for security-based swap dealers (SBSDs) and major security-based swap participants (MSBSPs), segregation requirements for SBSDs, and notification requirements with respect to segregation for SBSDs and MSBSPs. The Commission stated that it is increasing the minimum net capital requirements for broker-dealers authorized to use internal models to compute net capital and prescribing certain capital and segregation requirements for broker-dealers that are not SBSDs to the extent they engage in security-based swap and swap activity. The Commission stated that it is also making substituted compliance available with respect to capital and margin requirements under section 15F of the Exchange Act and the rules thereunder and adopting a rule that specifies when a foreign SBSD or foreign MSBSP need not comply with the segregation requirements of section 3E of the Exchange Act and the rules thereunder.
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. 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 Janet Temko-Blinder, Assistant General Counsel, at (202) 512-7104.

signed

Shirley A. Jones
Managing Associate General Counsel

Enclosure

cc: Jill M. Peterson
   Assistant Secretary
   Securities and Exchange Commission
(i) Cost-benefit analysis

The Securities and Exchange Commission (Commission), estimates that the highest economic cost impact as a result of the final rule will result from the additional capital that nonbank security-based swap dealers (SBSDs) and major security-based swap participants (MSBSPs) may need to hold as a result of the capital rules, and the additional margin that nonbank SBSDs and MSBSPs, and other market participants may need to post and/or collect as a result of the Commission’s margin requirements. The Commission stated that other costs may include start-up costs, including personnel and other costs, such as technology costs to comply with the final rule. The Commission summarized the monetary costs for each new requirement of the rule in the final rule.

The Commission stated that the benefits of this final rule include improving the stability of the security-based swap market, mitigating the inefficiencies in security-based swap markets arising from the existence of default risk of derivative counterparties. Additionally, the Commission stated that this final rule reduces incentives for excessive risk-taking and reduces the probability of sequential counterparty failure. Finally, the Commission stated that this final rule should reduce the likelihood of a MSBSP’s failure and the potential losses to nonbank SBSD counterparties in the event of a MSBSP’s failure.

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

The Commission certified 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 the Act.

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

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

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

The Commission stated that certain provisions of the final rule contain “collection of information” requirements within the meaning of the Act. The Commission also stated that it published notice requesting comment on the collection of information requirements and submitted the amendments and the proposed new rules to the Office of Management and Budget for review in accordance with the Act.

Statutory authorization for the rule

The Commission stated that this final rule was promulgated pursuant to sections 78c(b), 78c-5, 78o, 78o-10, and 78w(a) of title 15, United States Code.

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.