

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

B-332977

February 18, 2021

The Honorable Debbie Stabenow
Chairwoman
The Honorable John Boozman
Ranking Member
Committee on Agriculture, Nutrition, and Forestry
United States Senate

The Honorable David Scott
Chairman
The Honorable Glenn Thompson
Republican Leader
Committee on Agriculture
House of Representatives

Subject: *Commodity Futures Trading Commission: Capital Requirements of 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 “Capital Requirements of Swap Dealers and Major Swap Participants” (RIN: 3038-AD54). We received the rule on August 5, 2020. It was published in the *Federal Register* as a final rule on September 15, 2020.¹ 85 Fed. Reg. 57462. The stated effective date of the rule is November 16, 2020.

According to the Commission, the final rule adopts new regulations imposing minimum capital requirements and financial reporting requirements on swap dealers and major swap participants that are not subject to a prudential regulator. Also, the Commission stated that the rule amends existing capital requirements for futures commission merchants (FMCs) to provide specific capital deductions for market risk and credit risk for swaps and security-based swaps entered into by an FMC. Further, the Commission stated that the rule adopts amendments to its regulations to permit certain entities dually-registered with the Securities and Exchange Commission (SEC) to file an SEC Financial and Operational Combined Uniform Single Report in lieu of Commission financial reports, to require certain Commission registrants to file notices of certain defined events, and to require notices of bulk transfers to be filed with the Commission electronically and within a defined period of time.

The Congressional Review Act (CRA) requires a 60-day delay in the effective date of a major rule from the date of publication in the *Federal Register* or receipt of the rule by Congress,

¹ The due date for this major rule report was September 30, 2020. Due to a processing error on our part, we are delayed in our issuance of this report.

whichever is later. 5 U.S.C. § 801(a)(3)(A). This final rule was published on September 15, 2020. 85 Fed. Reg. 57462. The rule was received by the Senate on October 13, 2020. 166 Cong. Rec. S6375 (daily ed. Oct. 21, 2020). The rule was received by the House of Representatives on November 16, 2020. 166 Cong. Rec. H5866 (daily ed. Nov. 17, 2020). The rule has a stated effective date of November 16, 2020. Therefore the final rule does not have the required 60-day delay in its effective date.

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 Shari Brewster, Assistant General Counsel, at (202) 512-6398.

A handwritten signature in cursive script that reads "Shirley A. Jones".

Shirley A. Jones
Managing Associate General Counsel

Enclosure

cc: Christopher 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
“CAPITAL REQUIREMENTS OF SWAP DEALERS AND
MAJOR SWAP PARTICIPANTS”
(RIN: 3038-AD54)

(i) Cost-benefit analysis

The Commodity Futures Trading Commission (Commission) stated that it evaluated the costs and benefits of this final rule. The Commission’s cost-benefit considerations: (1) discussed the general benefits and costs of regulatory capital; (2) summarized the rulemaking; (3) described the baseline for which the cost and benefits of this rulemaking were considered; (4) provided an overview of the different capital approaches set out in this rulemaking and the rationale for each approach; (5) described the costs and benefits to each type of swap dealer and major swap participants under their corresponding capital approaches; (6) discussed the reporting requirements; and (7) analyzed the rulemaking as it relates to each of the factors under section 15(a) of the Commodity Exchange Act, 7 U.S.C. § 19. The Commission stated that where reasonably feasible, it endeavored to estimate quantifiable costs and benefits, and where quantification was not feasible, it identified and described costs and benefits qualitatively. The Commission stated that it acknowledged limitations in estimating the actual cost of its final capital rule.

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

The Chairman of 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.*

On December 19, 2019, the Commission published a proposed rule. 84 Fed. Reg. 69664. The Commission received several comments and responded to comments in this final rule.

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

The Commission determined that this final rule results in an amendment to an existing collection of information entitled “Regulations and Forms Pertaining to Financial Integrity of the Market Place; Margin Requirements for SDs/MSPs” (Office of Management and Budget Control

Number 3038-0024). The Commission estimated the burden of each information collection requirement.

Statutory authorization for the rule

The Commission promulgated this final rule pursuant to various sections of title 7 of the United States Code.

Executive Order No. 12866 (Regulatory Planning and Review)

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

Executive Order No. 13132 (Federalism)

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