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B-322413

September 16, 2011

The Honorable Debbie Stabenow  
Chairwoman  
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: Swap Data Repositories:  
Registration Standards, Duties and Core Principles*

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 "Swap Data Repositories: Registration Standards, Duties and Core Principles" (RIN: 3038-AD20). We received the rule on August 24, 2011. It was published in the *Federal Register* as a final rule on September 1, 2011. 76 Fed. Reg. 54,538.

The final rule implements section 21 of the Commodity Exchange Act ("CEA"), which establishes registration requirements, statutory duties, core principles, and certain compliance obligations for registered swap data repositories ("SDRs"). Section 21 of the CEA was added by section 728 of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act").

The final rule is effective on October 31, 2011. Applicants at that time may apply for registration as SDRs but are not required to do so. Mandatory registration and compliance with the registration rules will occur upon the effective date of the swap definition rulemaking, which the Commission will publish at a later 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. 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 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  
"SWAP DATA REPOSITORIES:  
REGISTRATION STANDARDS, DUTIES  
AND CORE PRINCIPLES"  
(RIN: 3038-AD20)

(i) Cost-benefit analysis

Section 15(a) of the CEA explicitly requires the Commission to consider the costs and benefits of its actions before promulgating a regulation under the CEA. According to the rule, the Commission has considered the costs and benefits of the final regulations pursuant to section 15(a) of the Act, as well as the public comments received regarding costs and benefits in response to the SDR NPRM.

The Commission has estimated that the initial start up cost for the estimated 15 SDR registrants to become registered under part 49 is between \$105.5 and \$135.5 million, including between \$60 and \$90 million for initial technological capital costs. Ongoing operations are estimated to be between \$47.07 and \$77.072 million annually for all SDRs, which includes between \$30 and \$60 million dedicated to ongoing annual technological costs. The Commission is unable to estimate accurately the cost of recordkeeping given existing technologies, the current state of the swaps market and the potential growth in the future. The difficulty in estimating future and ongoing costs for SDRs is significantly related to the range of duties that can vary by asset class as well as the probability that SDR responsibilities will increase and change over time.

The Commission believes that the adoption of the SDR regulation together with the swap data recordkeeping and reporting requirements will provide a robust source of information on activities in the swaps market that is expected to promote increased efficiency and competition. In addition, the Commission states that greater transparency for the Commission and other regulators will provide better oversight of the swaps market and its various market participants. The Commission also believes that the introduction of SDRs will further automate the execution and reporting of swap transactions. According to the Commission, this is likely to benefit market participants and reduce transactional risks through SDRs and related service providers offering important ancillary services such as confirmation and matching services, valuations, pricing, reconciliation functions, position limits management, dispute resolution, and counterparty identification.

The Commission received two comments with respect to the cost benefit analysis in the SDR NPRM. In addition, the Commission notes that several market participants commented more generally that the registration procedures as proposed by the Commission in part 49 are burdensome and could be revised to reduce the burden on applicants for registration. After careful consideration, the Commission has concluded, first, that the burden of filing duplicative materials is limited to the costs of providing these materials electronically. Second, with respect to core principle compliance, where a particular DCO core principle is identical in its requirements to an SDR core principle, the Commission believes that compliance with the latter could be demonstrated by compliance with the former. Consistent with section 15(a) of the CEA, the Commission believes that part 49 as adopted is in the public interest and will further protect participants and the public, promote efficiency, competition and the financial integrity of financial markets, promote accurate and efficient price discovery, enhance sound risk management practices and address other public interest considerations such as access to SDR data by other domestic and foreign regulators.

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

The Commission noted in the proposing release that although it has established certain definitions of “small entity” to be used in evaluating the impact of its rules under the RFA, it had not previously addressed the question of whether SDRs are small entities for purposes of the RFA. For the reasons set forth in the proposing release, the Commission determined that, similar to derivatives clearing organizations (DCOs) and designated contract market (DCMs), SDRs are not “small entities” for purposes of the RFA. Accordingly, the Chairman, on behalf of the Commission, certified in the NPRM pursuant to 5 U.S.C. § 605(b) that the actions to be taken herein 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 issued using the notice and comment procedures found at 5 U.S.C. § 553. On December 23, 2010, the Commission published a proposed rule entitled Swap Data Repositories. 75 Fed. Reg. 80,898. The Commission received a total of 29 comments from a broad range of interested persons, including

existing trade repositories and potential SDRs, foreign regulatory authorities, trade organizations, banks, commercial end-users, and DCMs.

#### Paperwork Reduction Act, 44 U.S.C. §§ 3501-3520

The Commission states that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number issued by the Office of Management and Budget (“OMB”). According to the Commission, the final regulations result in information collection requirements within the meaning of the Paperwork Reduction Act of 1995 (“PRA”). The Commission submitted its proposing release and supporting documentation to OMB for review in accordance with 44 U.S.C. § 3507(d) and 5 CFR part 1320.11. The Commission requested that OMB approve, and assign a new control number for, the collections of information covered by the proposing release. The Commission explains that the information collection burdens created by the Commission’s proposed rules, which were discussed in detail in the proposing release, are identical to the collective information.

#### Statutory authorization for the rule

According to the Commission, the final rule is authorized under section 21 of the CEA. 7 U.S.C. § 1 et seq.

#### 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.