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November 21, 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: Derivatives Clearing
Organization General Provisions 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 “Derivatives Clearing Organization General Provisions and Core Principles” (RIN: 3038-AC98). We received the rule on November 1, 2011. It was published in the *Federal Register* as a final rule on November 8, 2011. 76 Fed. Reg. 69,334.

The final rule implements certain provisions of title VII and title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) governing derivatives clearing organization (DCO) activities. More specifically, the rule establishes the regulatory standards for 15 DCO Core Principles: compliance, financial resources, participant and product eligibility, risk management, settlement procedures, treatment of funds, default rules and procedures, rule enforcement, system safeguards, reporting, recordkeeping, public information, information sharing, antitrust considerations, and legal risk. The rule also updates and adds related definitions; adopts implementing rules for DCO chief compliance officers; revises procedures for DCO applications, including the required use of a new Form DCO; adopts procedural rules applicable to the transfer of a DCO registration; and

adds requirements for approval of DCO rules establishing a portfolio margining program for customer accounts carried by a futures commission merchant that is also registered as a securities broker-dealer. In addition, the rule makes certain technical amendments and adopts certain delegation provisions.

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
"DERIVATIVES CLEARING ORGANIZATION
GENERAL PROVISIONS AND CORE PRINCIPLES"
(RIN: 3038-AC98)

(i) Cost-benefit analysis

The Commodity Futures Trading Commission (Commission) discussed the costs and benefits of this final rule. The Commission evaluated eight portions of this rule in light of (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 discussed the costs and benefits associated with each of these five areas for all eight portions of the rule. In several instances the Commission found that quantification or estimation of costs and benefits was not readily feasible. In other instances the Commission did not identify any new costs associated with the specific portion of the rule in question.

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

The Commission certified that this final rule will not have a significant effect 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 Commission published five separate notices of proposed rulemaking. 76 Fed. Reg. 13,101 (Mar. 10, 2011); 76 Fed. Reg. 3698 (Jan. 20, 2011); 75 Fed. Reg. 78,185 (Dec. 15, 2010); 75 Fed. Reg. 77,576 (Dec. 13, 2010); 75 Fed. Reg. 63,113 (Oct. 14, 2010). For each of these proposed rules the Commission provided an initial 60-day public comment period and a re-opened comment period of 30 days,

after which the Commission informed the public that it would continue to consider comments received until August 25, 2011. 76 Fed. Reg. 25,274 (May 4, 2011); 76 Fed. Reg. 16,587 (Mar. 24, 2011). The Commission received approximately 119 comment letters specifically on the proposed rules and many other comment letters on rulemaking related to the Dodd-Frank Act generally. In addition the Commission participated in numerous meetings with representatives of DCOs, future commission merchants, trade associations, public interest groups, traders, and other interested parties and consulted with other U.S. financial regulators including the Board of Governors of the Federal Reserve System and Securities and Exchange Commission.

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

This final rule contains information collection requirements under the Act which the Commission submitted to the Office of Management and Budget (OMB) for review. These information collection requirements are entitled “Financial Resources Requirements for Derivatives Clearing Organizations” (OMB control number 3038–0066), “Information Management Requirements for Derivatives Clearing Organizations” (OMB control number 3038–0069), “General Regulations and Derivatives Clearing Organizations” (OMB control number 3038–0081), and “Risk Management Requirements for Derivatives Clearing Organizations” (OMB control number 3038–0076).

Statutory authorization for the rule

The Commission promulgated this final rule under the authority sections 1a, 2, 2a, 4, 5 to 6b, 6c to 6o, 6p, 7, 7a, 7a-1, 7b, 8, 9, 12, 12a, 12c, 13a, 13a-1, 16, 16a, 19, 21, 23, and 24 of title 7 of the United States Code, as amended by Public Law 111-203 and sections 552 and 552(b) of title 5, United States Code.

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.