



**United States Government Accountability Office
Washington, DC 20548**

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January 3, 2012

The Honorable Debbie Stabenow
Chairman
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: Investment of Customer Funds and Funds Held in an Account for Foreign Futures and Foreign Options Transactions*

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 “Investment of Customer Funds and Funds Held in an Account for Foreign Futures and Foreign Options Transactions” (RIN: 3038-AC79). We received the rule on December 19, 2011. It was published in the *Federal Register* as a final rule on December 19, 2011. 76 Fed. Reg. 78,776.

The final rule amends the Commission’s regulations regarding the investment of customer segregated funds subject to Commission Regulation 1.25 and funds held in an account subject to Commission Regulation 30.7 and funds subject thereto. The amendments address: certain changes to the list of permitted investments (including the elimination of in-house transactions), a clarification of the liquidity requirement, the removal of rating requirements, and an expansion of concentration limits including asset-based, issuer-based, and counterparty concentration restrictions.

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
Commodity Futures Trading Commission

ENCLOSURE

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
COMMODITY FUTURES TRADING COMMISSION
ENTITLED
"INVESTMENT OF CUSTOMER FUNDS AND FUNDS
HELD IN AN ACCOUNT FOR FOREIGN FUTURES
AND FOREIGN OPTIONS TRANSACTIONS"
(RIN: 3038-AC79)

(i) Cost-benefit analysis

The Commission prepared an analysis of the costs and benefits of the final rule. Generally, the Commission believes that the restrictions on segregated customer funds and Regulation 30.7 fund investments promote important benefits. These include greater security for customer funds and enhanced stability for the financial system as a whole.

Section 4d of the Commodity Exchange Act (the Act) limits the investment of customer segregated funds to obligations of the United States and obligations fully guaranteed as to principal and interest by the United States (U.S. government securities), and general obligations of any state or of any political subdivision thereof (municipal securities). The Commission has authority to grant exempt relief under Section 4(c) to permit additional investments beyond those prescribed in Section 4d, and the list of permissible investments is set out in Regulation 1.25. The final rule narrows the scope of investment choices in order to reduce risk and to increase the safety of Regulation 1.25 investments.

Futures commission merchants (FCMs) currently hold over \$170 billion in segregated customer funds and \$40 billion in funds held subject to Regulation 30.7. In the final rule, the Commission determined that certain investments are no longer permitted as they may not adequately meet the statute's paramount goal of protecting customer funds. The Commission recognized that restricting the type and form of permitted investments could result in certain FCMs and derivatives clearing organizations (DCOs) earning less income from their investments of customer funds. However, the Commission was unable to determine the magnitude of such income reduction, if any, because information was not provided to allow the Commission to estimate any such income reduction. No commenter provided information about the composition of the portfolio in which customer segregated funds are invested. The Commission stated that the list of permitted investments under the rules still represents a significantly wider selection of investment options than those permitted by the Act. Further, in most cases, the amended rules allow

for investment in many of the same instruments as previously permitted, subject to asset-based and issuer-based concentration limits.

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

The Commission certified that the 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 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 a notice of proposed rulemaking in the *Federal Register* on November 3, 2010. 75 Fed. Reg. 67,642. The Commission received 32 comment letters on the proposed rulemaking, and responded to those comments in the final rule. 76 Fed. Reg. 78,776.

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

The Commission certified that the final rule does not impose any new reporting or recordkeeping requirements.

Statutory authorization for the rule

The final rule is authorized by section 939A(a) of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376 (2010).

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.