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January 27, 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: Swap Data Recordkeeping and Reporting Requirements*

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 Recordkeeping and Reporting Requirements” (RIN: 3038-AD19). We received the rule on January 13, 2012. It was published in the *Federal Register* as a final rule on January 13, 2012, with an effective date of March 13, 2012. 77 Fed. Reg. 2136.

The final rule implements the Commodity Exchange Act (“CEA” or “Act”) relating to swap data recordkeeping and reporting requirements. These sections of the CEA were added by the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). The rules being adopted apply to swap data recordkeeping and reporting requirements for swap data repositories, derivatives clearing organizations, designated contract markets, swap execution facilities, swap dealers, major swap participants, and swap counterparties who are neither swap dealers nor major swap participants. The recordkeeping and reporting requirements of this rule further the goals of the Dodd-Frank Act to reduce systemic risk, increase transparency, and promote market integrity within the financial system.

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 RECORDKEEPING AND REPORTING REQUIREMENTS"
(RIN: 3038-AD19)

(i) Cost-benefit analysis

Pursuant to CEA section 15(a), before promulgating a regulation under the CEA the Commission states that it generally must consider the costs and benefits of its actions in the context of five broad areas of market and public concern: (1) protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. Moreover, the Commission states that as this rulemaking contains numerous reporting and recordkeeping requirements, many of the costs of the rulemaking are associated with collections of information. In the notice of proposed rulemaking (NOPR), the Commission stated that the proposed reporting and recordkeeping requirements could impose significant compliance costs on some swap data repositories (SDRs), swap execution facilities (SEFs), designated contract markets (DCMs), derivatives clearing organizations (DCOs), swap dealers (SDs), major swap participants (MSPs), and non-SD/MSP counterparties. In particular, the Commission noted that the proposed recordkeeping and reporting requirements could require capital expenditures for some such entities that could affect their ability to compete in the global marketplace because of reductions in available resources.

The Commission anticipates that the requirements of part 45 will generate several overarching, if presently unquantifiable, benefits to swap market participants and the general public. These include (a) increased transparency; (b) improved regulatory understanding of concentrations of risk within the market; (c) more effective monitoring of risk profiles by regulators and by regulated entities themselves through the use of unique identifiers; (d) improved regulatory oversight; and (e) more robust data management systems. The Commission believes these benefits, made possible by the timely reporting of comprehensive swap transaction data, consistent data standards for recordkeeping, and identification of products, entities and transactions through unique identifiers, will accrue to market participants in a number of ways.

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

The Commission states that this part will have a direct effect on SDRs, DCOs, SEFs, DCMs, SDs, MSPs, and non-SD/ MSP counterparties who are counterparties to one or more swaps and subject to the Commission's jurisdiction. Therefore, the Chairman, on behalf of the Commission, certifies, pursuant to 5 U.S.C. § 605(b), that this part as finally adopted 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 rule was issued using the notice and comment procedures found at 5 U.S.C. § 553. The fundamental goal of the part 45 NOPR was to ensure that complete data concerning all swaps subject to the Commission's jurisdiction is maintained in SDRs, where it would be available to the Commission and other financial regulators for fulfillment of their various regulatory mandates, including systemic risk mitigation, market monitoring, and market abuse prevention. The NOPR addressed: (1) Swap Recordkeeping; (2) Swap Data Reporting; (3) Creation Data and Continuation Data; (4) Unique Identifiers; (5) Reporting; (6) Third-Party Facilitation of Reporting; (7) Reporting a Swap to a Single SDR Reporting Swaps in an Asset Class Not Accepted by Any SDR; (8) Data Standards; and (9) Reporting Errors and Omissions in Previously Reported Data.

The comment period for the NOPR closed on February 7, 2011, but was reopened pursuant to the Commission's Order *Reopening and Extension of Comment Periods for Rulemakings Implementing the Dodd-Frank Wall Street Reform and Consumer Protection Act*, dated May 4, 2011. The Commission states that the reopened comment period closed on June 3, 2011. According to the Commission, 75 comment letters submitted to the Commission addressed the proposed part 45 swap data recordkeeping and reporting rule comments were provided by a broad range of interested persons, including: existing trade repositories, DCMs, and DCOs; providers of various third-party services related to swaps; financial data and data management services and providers of various types of identifiers; both buy side and sell side swap counterparties of various types and sizes; trade associations involving securities, futures, and foreign exchange markets and firms;

banks and mortgage lenders; managed funds and investment advisors; swap dealers; swap “end users”; energy producers; and non-profit associations.

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). The Commission notes that provisions of Commission Regulations 45.2, 45.3, 45.4, 45.5, 45.6, 45.7, and 45.14 will result in information collection requirements within the meaning of the Paperwork Reduction Act (PRA). The Commission explains that it submitted the NOPR and supporting documentation to OMB for review in accordance with 44 U.S.C. § 3507(d) and 5 CFR § 1320.11. The Commission requested that OMB approve, and assign a new control number for, the collections of information covered by the NOPR. The Commission states that the title for the proposed collection of information under part 45 is “Swap Data Recordkeeping and Reporting Requirements.” To the extent that the recordkeeping and reporting requirements in this rulemaking overlap with the requirements of other rulemakings for which the Commission prepared and submitted an information collection request to OMB, the Commission explains that the burdens associated with the requirements are not being accounted for in the information collection request for this rulemaking, to avoid unnecessary duplication of information collection burdens.

Statutory authorization for the rule

The Commission states that the final rule is authorized by 7 U.S.C. §§ 6r, 7, 7a–1, 7b–3, 12a and 24, as amended by Title VII of the Wall Street Reform and Consumer Protection Act of 2010, Pub. L. No. 111–203, 124 Stat. 1376 (2010), unless otherwise noted.

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.