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B-323126

February 22, 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: Protection of Cleared Swaps  
Customer Contracts and Collateral; Conforming Amendments to the  
Commodity Broker Bankruptcy Provisions*

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 "Protection of Cleared Swaps Customer Contracts and Collateral; Conforming Amendments to the Commodity Broker Bankruptcy Provisions" (RIN: 3038-AC99). We received the rule on February 7, 2012. It was published in the *Federal Register* as a final rule on February 7, 2012. 77 Fed. Reg. 6336.

The final rule imposes requirements on futures commission merchants ("FCMs") and derivatives clearing organizations ("DCOs") regarding the treatment of cleared swaps customer contracts (and related collateral), and makes conforming amendments to bankruptcy provisions applicable to commodity brokers under the Commodity Exchange Act (the "CEA").

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

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE  
ISSUED BY THE  
COMMODITY FUTURES TRADING COMMISSION  
ENTITLED  
"PROTECTION OF CLEARED SWAPS CUSTOMER CONTRACTS  
AND COLLATERAL; CONFORMING AMENDMENTS TO THE  
COMMODITY BROKER BANKRUPTCY PROVISIONS"  
(RIN: 3038-AC99)

(i) Cost-benefit analysis

The Commodities Exchange Act (CEA) section 15(a) requires the Commission to consider the costs and benefits of its actions in light of five broad areas of market and public concern: (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. Additionally, the Commission states to the extent that these new rules reflect the statutory requirements of the Dodd-Frank Act, they will not create costs and benefits beyond those mandated by Congress in passing the legislation. However, the Commission notes that the rules may generate costs and benefits attributable to the Commission's determinations regarding implementation of the Dodd-Frank Act's statutory requirements. The Commission states that the costs and benefits of the Commission's determinations are considered in light of the five factors set forth in CEA section 15(a).

The Commission stated that it carefully considered the available evidence regarding the costs and benefits of the Complete Legal Segregation Model, which is the model adopted in the final rule, and has concluded that the Complete Legal Segregation Model best accomplishes the statutory objective of protecting customer deposits. In terms of benefits, customers have much greater assurance of the safety of their margin deposits against Fellow-Customer Risk under the Complete Legal Segregation Model than under the alternative model considered by the Commission, the Futures Model. In addition, Complete Legal Segregation will facilitate porting rather than liquidation of customer positions in double default situations with associated benefits to customers and, for defaults of large futures commission merchants (FCMs), reduced risk of disruption of markets as a result of large volumes of customer positions. The model adopted in the final rule will impose some operational costs but such costs are small enough to be a minor consideration relative to the other aspects of cost; e.g., the potential increases in margins and guaranty funds.

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

The Chairman certified on behalf of the Commission that the 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 final rule was issued using the notice and comment procedures found at 5 U.S.C. § 553. On June 9, 2011, the Commission published a notice of proposed rulemaking. 76 Fed. Reg. 33,818. The Commission received 28 comment letters on the proposed rule. 77 Fed. Reg. 6,336. The Commission addressed the comments in its discussion of the final rule.

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

The final rule contains new information disclosure and recordkeeping requirements that constitute the collection of information under the Paperwork Reduction Act. The Office of Management and Budget (OMB) assigned OMB Control Number 3038-0091 and has not yet approved this collection of information.

Statutory authorization for the rule

The Commission states that the final rules are authorized by the Commodity Exchange Act, as amended by Title VII of the 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.