



United States Government Accountability Office
Washington, DC 20548

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March 5, 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: Business Conduct Standards for Swap Dealers and Major Swap Participants With Counterparties*

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 “Business Conduct Standards for Swap Dealers and Major Swap Participants With Counterparties” (RIN: 3038-AD25). We received the rule on February 17, 2012. It was published in the *Federal Register* as a final rule on February 17, 2012, with an effective date of April 17, 2012. 77 Fed. Reg. 9734.

The final rule implements section 4s(h) of the Commodity Exchange Act pursuant to section 731 of Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010.¹ These rules prescribe external business conduct standards for swap dealers and major swap participants.

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.

¹ Pub. L. No. 111-203, 124 Stat. 1376 (2010).

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 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
"BUSINESS CONDUCT STANDARDS FOR SWAP DEALERS
AND MAJOR SWAP PARTICIPANTS WITH COUNTERPARTIES"
(RIN: 0938-AQ98)

(i) Cost-benefit analysis

The Commodity Futures Trading Commission (Commission) discussed cost-benefit considerations in the final rule. Specifically, the Commission evaluated the 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 identified benefits include: (1) enhanced transparency and reduced information asymmetries among market participants resulting from required disclosures and communications standards; (2) principles based duties that are sufficiently flexible to address emerging compliance issues; (3) Special Entity provisions to protect taxpayers, pensioners and charitable institutions from abusive practices; (4) a compliance framework and mechanisms, including safe harbors, that facilitate information flow and market access, mitigate costs and enhance legal certainty, while raising business conduct standards consistent with legislative intent; and (5) regulatory harmonization of existing business conduct standards and best practices in related market sectors and among dealers, including consideration of SRO guidance for comparable principles based rules.

The identified costs include assertions that: (1) required disclosures are costly both in resources and possible delays, and could create potential liability unless disclosure can be standardized with appropriate safe harbors; (2) requiring swap dealers and major swap participants to make suitability evaluations of counterparties for specific trades will increase transaction costs and may create execution delays (both when a counterparty with an established relationship with a given swap dealer elects to begin trading a product outside of that relationship and a counterparty with no such relationship looks to begin trading with a given dealer); (3) principles based rules may expose swap dealers and major swap participants to potential compliance risk in both enforcement and private rights of actions; as a result, swap dealers and major swap participants will pass the costs of added risk to their counterparties or there will be fewer possible swap dealer trading relationships, which could reduce liquidity; (4) execution delay and the chilling of trading activity may result as the rules will interfere with the flow of information between swap

dealers or major swap participants and counterparties and impose barriers to efficient execution of transactions and possibly create moral hazard; and (5) the cost and risks to Special Entities may increase if dealers avoid such counterparties, and sophisticated Special Entities may not need the protections provided by the rules.

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

The Commission determined that this 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.

On December 22, 2010, the Commission published a proposed rule with a 60-day comment period. 75 Fed. Reg. 80,638. On May 4, 2011, the Commission re-opened the public comment period for an additional 30 days. 76 Fed. Reg. 25,274. The Commission received more than 120 written submissions on the proposing release from a range of commenters. Commission staff also met with representatives from at least 33 of the commenters and other members of the public. Commenters included Members of Congress, dealers, advisors, large asset managers, consumer advocacy groups and pension beneficiaries, end-users, trade or professional organizations, and Special Entities such as state and municipal plan sponsors and administrators, government pension plan administrators, and endowments. These comments and meetings were in addition to seven written submissions received by the Commission and at least 33 meetings held by Commission staff with commenters and other members of the public prior to the publication of the proposing release. The Commission addressed the comments in the final rule.

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

The Commission determined that, while the final rule contains collections of information, these collections overlap with collections proposed by the Commission in the Business Conduct Standards—Internal rulemakings and with collections under the proposed rules adapting the recordkeeping, reporting and daily trading records requirements to account for swap transactions. Thus, the Commission did

not submit the proposing release to the Office of Management and Budget (OMB) for approval or for assignment of an OMB control number.

Statutory authorization for the rule

The Commission promulgated this final rule under the authority of sections 1a, 2, 4, 6(c), 6b, 6c, 6l, 6m, 6n, 6o, 12a, and 23 of title 7, 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.