



United States Government Accountability Office  
Washington, DC 20548

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B-323350

April 18, 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 Dealer and Major Swap Participant Recordkeeping, Reporting, and Duties Rules; Futures Commission Merchant and Introducing Broker Conflicts of Interest Rules; and Chief Compliance Officer Rules for Swap Dealers, Major Swap Participants, and Futures Commission Merchants*

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 Dealer and Major Swap Participant Recordkeeping, Reporting, and Duties Rules; Futures Commission Merchant and Introducing Broker Conflicts of Interest Rules; and Chief Compliance Officer Rules for Swap Dealers, Major Swap Participants, and Futures Commission Merchants” (RIN: 3038-AC96). We received the rule on April 3, 2012. It was published in the *Federal Register* as a final rule on April 3, 2012, with a stated effective date of June 4, 2012. 77 Fed. Reg. 20,128.

The final rule implements provisions of Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act).<sup>1</sup> Specifically, this rule sets forth reporting and recordkeeping requirements and daily trading records

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<sup>1</sup> Pub. L. 111–203, 124 Stat. 1376 (2010).

requirements for swap dealers (SDs) and major swap participants (MSPs). These regulations also set forth certain duties imposed upon SDs and MSPs registered with the Commission with regard to: risk management procedures, monitoring of trading to prevent violations of applicable position limits, diligent supervision, business continuity and disaster recovery, disclosure and the ability of regulators to obtain general information, and antitrust considerations. In addition, this rule establishes conflicts-of-interest requirements for SDs, MSPs, futures commission merchants (FCMs), and introducing brokers (IBs) with regard to firewalls between research and trading and between clearing and trading. Finally, these regulations also require each FCM, SD, and MSP to designate a chief compliance officer, prescribe qualifications and duties of the chief compliance officer, and require that the chief compliance officer prepare, certify, and furnish to the Commission an annual report containing an assessment of the registrant's compliance activities.

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  
"SWAP DEALER AND MAJOR SWAP PARTICIPANT RECORDKEEPING,  
REPORTING, AND DUTIES RULES; FUTURES COMMISSION MERCHANT AND  
INTRODUCING BROKER CONFLICTS OF INTEREST RULES; AND CHIEF  
COMPLIANCE OFFICER RULES FOR SWAP DEALERS, MAJOR SWAP  
PARTICIPANTS, AND FUTURES COMMISSION MERCHANTS"  
(RIN: 3038-AC96)

(i) Cost-benefit analysis

The Commodity Futures Trading Commission (Commission) considered the costs and benefits of this final rule. Specifically, the Commission is required to evaluate costs and benefits 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.<sup>1</sup> The Commission noted that to the extent this rule reflects statutory requirements of the Dodd-Frank Act, it will not create costs or benefits beyond those resulting from Congress's statutory mandates in the Act. However, to the extent that the rule reflects the Commission's own determinations regarding implementation of the Dodd-Frank Act's provisions, such Commission determinations may result in other costs and benefits.

Notwithstanding finding a paucity of available quantitative information, the Commission endeavored to estimate quantifiable costs and benefits of the final rule when possible. Where the Commission was not able to estimate or quantify costs and benefits, the Commission provided a qualitative assessment of the relevant costs and benefits. The Commission addressed comments regarding the effects of these final rules in terms of their material costs and benefits, considered the material cost and benefit implications of the final rule in comparison to baseline costs imposed by the statutory requirements, discussed cost mitigation undertaken in modifying the rules as proposed, and considered the material costs and benefits of the final rules in light of the five broad areas of market and public concern. The Commission specifically discussed the cost-benefit considerations for recordkeeping, duties and risk management, conflicts-of-interest policies and procedures, and designation of a chief compliance officer.

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<sup>1</sup> 7 U.S.C. § 19(a).

(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.

The Commission published five separate proposed rules related to this final rule. 75 Fed. Reg. 76,666 (Dec. 9, 2010); 75 Fed. Reg. 71,397 (Nov. 23, 2010); 75 Fed. Reg. 70,152 (Nov. 17, 2010); 75 Fed. Reg. 71,391 (Nov. 23, 2010); 75 Fed. Reg. 70,881 (Nov. 19, 2010). The initial 60-day comment period for each proposed rule was reopened for an additional 30 days. 76 Fed. Reg. 25,274 (May 4, 2011). The Commission received approximately 114 comment letters directed at the proposed rules. In addition, the Chairman, Commissioners, and staff participated in meetings with representatives of potential swap dealers and major swap participants, existing futures commission merchants, trade associations, public interest groups, traders, and other interested parties.

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

The Commission determined that this final rule imposes new information collection requirements under the Act and submitted them to the Office of Management and Budget (OMB) for review. The titles of the information collection requirements are: "Reporting, Recordkeeping, and Daily Trading Records Requirements for Swap Dealers and Major Swap Participants" (OMB Control Number 3038-0087); "Regulations Establishing and Governing the Duties of Swap Dealers and Major Swap Participants" (OMB Control Number 3038-0084); "Conflicts of Interest Policies and Procedures by Swap Dealers and Major Swap Participants" (OMB Control Number 3038-0079); "Annual Report for Chief Compliance Officer of Registrants" (OMB Control Number 3038-0080); and "Conflicts of Interest Policies and Procedures by Futures Commission Merchants and Introducing Brokers" (OMB Control Number 3038-0078).

## Statutory authorization for the rule

The Commission promulgated this rule under the authority of sections 552 and 552b of title 5, sections 1a, 2, 6, 6a, 6b, 6b–1, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6k, 6m, 6n, 6o, 6p, 6r, 6s, 6t, 8, 9, 9a, 12, 12a, 13b, 13c, 16a, 18, 19, 21, 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.