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June 7, 2012

The Honorable Tim Johnson
Chairman
The Honorable Richard C. Shelby
Ranking Member
Committee on Banking, Housing, and Urban Affairs
United States Senate

The Honorable Debbie Stabenow
Chairman
The Honorable Pat Roberts
Ranking Member
Committee on Agriculture, Nutrition, and Forestry
United States Senate

The Honorable Spencer Bachus
Chairman
The Honorable Barney Frank
Ranking Member
Committee on Financial Services
House of Representatives

The Honorable Frank D. Lucas
Chairman
The Honorable Collin C. Peterson
Ranking Member
Committee on Agriculture
House of Representatives

Subject: *Commodity Futures Trading Commission and Securities Exchange Commission: Further Definition of "Swap Dealer," "Security-Based Swap Dealer," "Major Swap Participant," "Major Security-Based Swap Participant" and "Eligible Contract Participant"*

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 (CFTC) and Securities Exchange Commission (SEC) (collectively, the Commissions), entitled "Further Definition of "Swap Dealer," "Security-Based Swap Dealer," "Major Swap

Participant," "Major Security-Based Swap Participant" and "Eligible Contract Participant"" (RINs: 3038-AD06; 3235-AK65). We received the rule from the SEC on April 27, 2012, and from the CFTC on May 23, 2012. It was published in the *Federal Register* as a "joint final rule; joint interim final rule; interpretations" on May 23, 2012. 77 Fed. Reg. 30,596.

The final rule adopts new rules and interpretive guidance under the Commodity Exchange Act, and the Securities Exchange Act of 1934, to further define the terms ''swap dealer,'' ''security-based swap dealer,'' ''major swap participant,'' ''major security-based swap participant,'' and ''eligible contract participant'' in accordance with the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (''Dodd-Frank Act'').

Enclosed is our assessment of the Commissions' 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 Commissions 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: Elizabeth M. Murphy
Secretary, Securities and
Exchange Commission

David A. Stawick
Secretary of the Commission
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 AND
SECURITIES EXCHANGE COMMISSION
ENTITLED
FURTHER DEFINITION OF "SWAP DEALER," "SECURITY-BASED SWAP DEALER," "MAJOR SWAP PARTICIPANT," "MAJOR SECURITY-BASED SWAP PARTICIPANT" AND "ELIGIBLE CONTRACT PARTICIPANT"
(RINs: 3038-AD06; 3235-AK65)

(i) Cost-benefit analysis

CFTC performed a cost-benefit analysis in conjunction with the final rule. CFTC determined the costs and benefits will fall in two categories: those an entity will experience in determining whether it is a ''swap dealer'' or ''major swap participant'' as defined in the final rule; and those attributable to the fact that a greater or fewer number of entities at the boundaries of the statutory definitions may be deemed within them. CFTC determined that the total direct cost for all entities to determine the coverage of the definition of the term ''swap dealer'' would be approximately $20 million. CFTC determined that approximately 20 persons that are not swap dealers will initially be engaged in swap activity to such an extent that they would be required to apply the calculations in the final rule in determining whether they are covered by the definition, resulting in an initial aggregate direct cost of approximately $5.2 million, and total recurring costs of $1.7 million per year. CFTC assumed that approximately 1,200 entities would apply the safe harbor provisions of the final rule, resulting in an aggregate direct initial cost of approximately $3.5 million and aggregate annual costs of approximately $1.2 million. CFTC determined that it was not possible to quantify the impact of the final rule on the direct and indirect costs and benefits that result from changing the status of an entity that is on the boundaries of the Dodd-Frank Act's definitions of the terms ''swap dealer'' or ''major swap participant,'' because CFTC does not have adequate information about market participants' swap activities to determine which entities will change their activities in response to the definitions, which would be necessary in order to determine the significance of the impact on costs and benefits of including or excluding those entities from the regulations pertaining to swap dealers and major swap participants.

SEC also performed an analysis, in which it looked at the costs and benefits associated with the regulations of security-based swap dealers and major security-based swap participants, which SEC refers to as ''programmatic'' costs and benefits. The programmatic costs include costs of complying with requirements related to: registration; reporting, recordkeeping, confirmation, and documentation;

sales practices; margin, capital, and segregation of customer collateral; and maintaining a chief compliance officer. SEC determined that the programmatic benefits will be significant, though they will not be entirely measurable, as it is not possible to quantify the benefits of mitigating or avoiding a future financial crisis, or the benefits of avoiding an unsuitable security-based swap transaction. The benefits are expected to manifest themselves over the long-term and be distributed over the market as a whole.

SEC also considered the direct costs that persons would incur to assess whether they fall within the dealer or major participant definitions or to assess the potential availability of limited registration as a dealer or major participant, which SEC refers to as ‘‘assessment’’ costs. SEC estimates the total industry-wide assessment costs associated with the major participant definition, assuming that 12 entities will need to engage in this analysis, is $183,216 for annual costs and $164,304 for annual one-time costs. SEC estimates that no more than 12 entities have security-based swap positions that they would face enough of a possibility of being a major participant that they would need to engage in legal analysis, and SEC estimates that the total legal costs associated with evaluating the various elements of the major participant definition may approach $360,000.

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

SEC certified that the final rule will not have a significant economic impact on a substantial number of small entities. The Chairman of the CFTC 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 independent regulatory agencies, the Commissions are 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 21, 2010, the Commissions published a notice of proposed rulemaking in the *Federal Register*. 75 Fed. Reg. 80,174. The Commissions received approximately 968 written comments in response to the final rule, and the Commissions responded to the comments in the final rule. 77 Fed. Reg. 30,596.

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

CFTC determined that the final rule will not impose any new information collection requirements that require approval of the Office of Management and Budget under the Paperwork Reduction Act. SEC determined that because the final rule does not contain documentation and assessment conditions, the Paperwork Reduction Act does not apply to the final rule.

Statutory authorization for the rule

The final rule is authorized by section 712(d)(1) of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, Pub. L. No. 111-203, 124 Stat. 1376.

Executive Order No. 12,866 (Regulatory Planning and Review)

As independent regulatory agencies, the Commissions are not subject to the review requirements of the Order.

Executive Order No. 13,132 (Federalism)

As independent regulatory agencies, the Commissions are not subject to the review requirements of the Order.