



441 G St. N.W.  
Washington, DC 20548

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November 27, 2013

The Honorable Debbie Stabenow  
Chairwoman  
The Honorable Thad Cochran  
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: Enhancing Protections Afforded Customers and Customer Funds Held by Futures Commission Merchants and Derivatives Clearing Organizations*

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 “Enhancing Protections Afforded Customers and Customer Funds Held by Futures Commission Merchants and Derivatives Clearing Organizations” (RIN: 3038-AD88). We received the rule on November 1, 2013. It was published in the *Federal Register* as a final rule on November 14, 2013. 78 Fed. Reg. 68,506.

The final rule adopts new regulations and amends existing regulations to require enhanced customer protections, risk management programs, internal monitoring and controls, capital and liquidity standards, customer disclosures, and auditing and examination programs for futures commission merchants (“FCMs”). The regulations also address certain related issues concerning derivatives clearing organizations (“DCOs”) and chief compliance officers (“CCOs”). The final rule will afford greater assurances to market participants that: (1) customer segregated funds, secured amount funds, and cleared swaps funds are protected; (2) customers are provided with appropriate notice of the risks of futures trading and of the FCMs with which they may choose to do business; (3) FCMs are monitoring and managing risks in a robust manner; (4) the capital and liquidity of FCMs are strengthened to safeguard their continued operations; and (5) the auditing and examination programs of the Commission and the self-regulatory organizations (“SROs”) are monitoring the activities of FCMs in a prudent and thorough manner.

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: Melissa D. Jurgens  
Secretary of the 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  
"ENHANCING PROTECTIONS AFFORDED CUSTOMERS AND  
CUSTOMER FUNDS HELD BY FUTURES COMMISSION MERCHANTS  
AND DERIVATIVES CLEARING ORGANIZATIONS"  
(RIN: 3038-AD88)

(i) Cost-benefit analysis

Section 15(a) of the Commodity Exchange Act (CEA) requires the Commission to consider the costs and benefits of its actions before promulgating a regulation under the Act or issuing certain orders. Section 15(a) further specifies that the costs and benefits shall be evaluated in light of the following five broad areas of market and public concern: (1) protection of market participants and the public; (2) efficiency, competitiveness, and the financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations.

In the Notice of Proposed Rulemaking (NPRM), the Commission estimated that the initial operational cost of implementing the rules would be between \$193,000 and \$1,850,000 per FCM. The initial cost to the self-regulatory organizations SROs and DSROs would be between \$41,100 and \$63,500 per SRO or DSRO. The Commission estimated that the ongoing operational cost to FCMs would be between \$287,000 and \$2,300,000 per FCM per year. The Commission states that it did not have adequate information to determine the ongoing cost of the proposed requirements for SROs and DSROs.

With respect to benefits, in this final rule, the Commission adopted new rules and amended existing rules to improve the protection of customer funds. The content of the Commission's adopted new rules and amended rules can be categorized in seven parts: (1) requiring FCMs to implement extensive risk management programs including written policies and procedures related to various aspects of their handling of customer funds; (2) increasing reporting requirements for FCMs related to segregated customer funds, including daily reports to the Commission and designated self-regulatory organizations (DSRO); (3) requiring FCMs to establish target amounts of residual interest to be maintained in segregated accounts as well as creating restrictions and increased oversight for FCM withdrawals out of such residual interest in customer segregated accounts, specifically including clear sign off and accountability from senior management for such withdrawals; (4) strengthening requirements for the acknowledgment letters that FCMs and DCOs must obtain from their depositories; (5) eliminating the Alternative Method for calculating 30.7 customer funds segregation requirements and requiring FCMs to include foreign investors' funds in segregated accounts; (6) strengthening the regulatory requirements applicable to SRO and DSRO oversight of FCMs, including regulating oversight provided under the function of a Joint Audit Committee that would establish standards for, and oversee the execution of, FCM audits; and (7) requiring FCMs to provide additional disclosures to investors.

The Commission detailed how it expects each of the seven categories identified above to significantly increase the levels of protection for customer funds. Included in these detailed

sections, for example, is the requirement for FCMs to implement risk management programs like documented policies and procedures regarding various aspects of handling customer funds to help protect customer funds by promoting robust internal risk controls and reducing the likelihood of errors or fraud that could jeopardize customer funds. Another example is the requirement for quarterly audits by independent or external people designed to identify any breach of the policies and procedures. The Commission states that this would help to ensure regular, independent validation that the procedures are followed diligently, and by promoting such compliance, the requirements reduce the risk of operational errors, lax risk management, and fraud, and thus the risk of consequent loss of customer funds.

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

The Commission stated that although the proposed regulations would affect FCMs and DCOs, the Commission previously determined that FCMs are not small entities for the purpose of the RFA, and thus, the requirements of the RFA do not apply to FCMs. The Commission stated that this determination was based, in part, upon the obligation of FCMs to meet the minimum financial requirements established by the Commission to enhance the protection of customers' segregated funds and protect the financial condition of FCMs generally. The Commission also previously determined that DCOs are not small entities for the purpose of the RFA. Accordingly, the Chairman, on behalf of the Commission, certified pursuant to 5 U.S.C. 605(b), that the regulations will not have a significant economic impact on a substantial number of small entities. The Commission invited public comment on this determination but received no comments.

(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 the Unfunded Mandates Reform Act.

(iv) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 et seq.

The Commission issued a NPRM on November 14, 2012, containing a series of amendments to enhance customer protections. 77 Fed. Reg. 67,866. The Commission extended the initial 60-day comment period for approximately 30 additional days at the request of various commenters and in order to provide interested parties with an additional opportunity to comment on the proposal. 78 Fed. Reg. 4,093 (Jan. 18, 2013). The comment period closed on February 15, 2013.

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 eight of the commenters and other members of the public. Commenters represented a broad spectrum of industry participants, trade organizations, law firms, accounting firms and self-regulatory organizations. The Commission also held a meeting of the Agricultural Advisory Committee on July 25, 2013, and the Commission had considered those comments in finalizing the regulations. The Commission noted that it had considered the comments received and was adopting the proposal subject to various amendments that addressed certain concerns raised or suggestions made by commenters.

## Paperwork Reduction Act (PRA), 44 U.S.C. §§ 3501-3520

The Commission stated that this final rulemaking contains several collections of information that were submitted to the Office of Management and Budget (OMB) in the form of proposed amendments to existing collection 3038—0024 and proposed revisions thereto, as well as pre-existing collections 3038—0052 and 3038—0091, and there have been no substantive changes from the proposed rulemaking to this final rulemaking that would require any adjustment to the information collection burdens as they were originally proposed. The Commission stated that it will submit to OMB this final rulemaking, together with Information Collection Requests (ICRs) that have been updated to include comment summary from the final rule. The collections contained in this rulemaking are mandatory collections. The Commission sought comment on the collections of information contained in the proposed rulemaking only to the extent that the collections in the proposed rulemaking would increase the burden hours contained with respect to each of the related currently valid or proposed collections. The Commission received over 120 written submissions on the proposed rulemaking. Many of these comments discussed in general the need for, effectiveness of, and practicality of various proposed rules. However, none of the commenters questioned the burden estimates provided in the proposed rulemaking or the ICR that was submitted.

As required by the PRA, the Commission stated that it submitted the proposed amendments, in the form of information collection requests related to collections 3038—0024, 3038—0052, and 3038—0091 on November 14, 2012, the same date that the proposed rulemaking was published in the *Federal Register*. The Commission did not receive public comments on any of the proposed collections from OMB on or before January 13, 2013, within the 60 days established for such comments in the PRA after the notice of proposed rulemaking and the submission of the certified ICR to OMB. Accordingly, the proposed amendments to collections 3038—0024, 3038—0052, and 3038—0091 are deemed to be approved by operation of the PRA. The Commission therefore, pursuant to OMB regulations, requested the assignment of OMB control numbers to the proposed amendments to collections 3038—0024, 3038—0052, and 3038—0091, which were submitted to OMB for approval on November 14, 2012.

### Statutory authorization for the rule

The final rule is authorized by the disclosure and financial responsibility framework of section 4(d)(a)(2) (7 U.S.C. 6d(a)(2)), of the Commodity Exchange Act, and section 4d(f), as amended by the Dodd-Frank 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.