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B-326057

July 24, 2014

The Honorable Tim Johnson
Chairman
The Honorable Mike Crapo
Ranking Member
Committee on Banking, Housing, and Urban Affairs
United States Senate

The Honorable Jeb Hensarling
Chairman
The Honorable Maxine Waters
Ranking Member
Committee on Financial Services
House of Representatives

Subject: *Securities and Exchange Commission: Application of “Security-Based Swap Dealer” and “Major Security-Based Swap Participant” Definitions to Cross-Border Security-Based Swap Activities*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Securities and Exchange Commission (Commission) entitled “Application of “Security-Based Swap Dealer” and “Major Security-Based Swap Participant” Definitions to Cross-Border Security-Based Swap Activities” (RIN: 3235-AL25). We received the rule on June 7, 2014. It was published in the *Federal Register* as final rules; interpretation on July 9, 2014. 79 Fed. Reg. 39,068.

The final rule addresses the application of the definition of “security-based swap dealer” and “major security-based swap participant” in the cross-border context. The final rule also adopts a procedural rule related to the submission of applications for substituted compliance and addresses the scope of the Commission’s authority with respect to enforcement proceedings under section 929P of the Dodd-Frank Act.

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: Kevin M. O'Neill
Deputy Secretary
Securities and Exchange Commission

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
SECURITIES AND EXCHANGE COMMISSION
ENTITLED
"APPLICATION OF "SECURITY-BASED SWAP DEALER" AND
"MAJOR SECURITY-BASED SWAP PARTICIPANT" DEFINITIONS TO
CROSS-BORDER SECURITY-BASED SWAP ACTIVITIES"
(RIN: 3235-AL25)

(i) Cost-benefit analysis

The Commission performed an economic analysis with respect to the final rule. In its analysis of the cross-border *de minimis* rule, the Commission stated that a narrow application of dealer regulation under Title VII would not be sufficient to achieve the purposes of Title VII in light of the global nature of the market, the concentration of dealing activity, and the key role played by dealers and the risks posed by dealers via their legal and financial relationships, while the cross-border application of the regulations has the potential to reduce the liquidity in the U.S. market to the extent it increases the costs of entering into security-based swaps or providing incentives for participants to avoid the U.S. market. For the legal assessment costs across all entities, the Commission estimated that the costs associated with assessing market participants' potential status as security-based swap dealers may approach \$4.2 million, costs associated with determining which security-based swap activities constitute dealing may approach \$6.1 million, and costs related to the development of systems and analysis will be approximately \$2.2 million. Regarding costs related to systems, analysis, and representations, the Commission estimated that the total one-time industry-wide costs associated with developing such systems would be approximately \$54 million, with total annual ongoing costs of approximately \$1.2 million.

The Commission stated that certain current and future participants in the security-based swap market will incur assessment costs, including legal costs and costs related to new systems, analysis, and representations, in connection with determining whether they fall within the "major security-based swap participant" definition and thus would have to register with the Commission. In addition, the registration and regulation of some entities as major security-based swap participants will result in programmatic costs and benefits.

The Commission stated that the availability of substituted compliance has the potential to impact the interplay between programmatic costs and benefits associated with the regulation of security-based swap dealers and major security-based swap participants. The Commission noted that the decision to request substituted compliance is purely voluntary, and therefore, to the extent such requests are made by market participants, such requests would be based on a private assessment that substituted compliance would be less costly for the participant.

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

The Commission 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 an independent regulatory agency, the Commission is not subject to 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 a notice of proposed rulemaking in the *Federal Register* on May 23, 2013. 78 Fed. Reg. 30,968. The Commission received 36 comments in connection with the notice of proposed rulemaking. The Commission considered the comments and responded to the comments in the final rule. 79 Fed. Reg. 39,068.

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

The final rule contains two information collection requirements under the Paperwork Reduction Act. The Commission estimates that up to 15 entities that are registered as security-based swap dealers may include a representation that a security-based swap is a “transaction conducted through a foreign branch” in their trading relationship documentation. The Commission estimated that the maximum total initial paperwork burden for each U.S. bank that would make such representation is no more than 5 hours and up to \$2,000 for the services of outside professionals, for an estimate of approximately 75 hours and \$30,000 for all security-based swap counterparties that may make such representations. After the first year, the Commission estimated that the annual paperwork burden associated with this requirement would be no more than approximately 10 hours per counterparty, for a maximum of approximately 150 hours across all applicable security-based swap counterparties.

The Commission estimates that up to 2,400 entities may provide representations that they do not meet the criteria necessary to be U.S. persons. The Commission estimated that the maximum total initial paperwork burden for each counterparty that would make such representation is no more than 5 hours and up to \$2,000 for the services of outside professionals, for an estimate of approximately 12,000 hours and \$4.8 million across all security-based swap counterparties that may make such representations. After the first year, the Commission estimated that the annual paperwork burden associated with this requirement would be no more than approximately 10 hours per counterparty, for a maximum of approximately 240,000 hours across all applicable security-based swap counterparties.

Statutory authorization for the rule

The final rule is authorized pursuant to the Exchange Act, 15 U.S.C. 78a et seq., and particularly, sections 3(b), 23(a)(1), and 30(c) thereof, and sections 761(b) and 929P(B) of the Dodd-Frank Act.

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

As an independent regulatory agency, the Commission is not subject to the review requirements of this Order.

Executive Order No. 13,132 (Federalism)

As an independent regulatory agency, the Commission is not subject to the review requirements of this Order.