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B-327828

March 4, 2016

The Honorable Richard Shelby
Chairman
The Honorable Sherrod Brown
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: Security-Based Swap Transactions Connected With a Non-U.S. Person's Dealing Activity That Are Arranged, Negotiated, or Executed by Personnel Located in a U.S. Branch or Office or in a U.S. Branch or Office of an Agent; Security-Based Swap Dealer De Minimis Exception*

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 "Security-Based Swap Transactions Connected With a Non-U.S. Person's Dealing Activity That Are Arranged, Negotiated, or Executed by Personnel Located in a U.S. Branch or Office or in a U.S. Branch or Office of an Agent; Security-Based Swap Dealer *De Minimis* Exception" (RIN: 3235-AL73). We received the rule on February 12, 2016. It was published in the *Federal Register* as a final rule on February 19, 2016. 81 Fed. Reg. 8598.

The final rule amends rules governing the *de minimis* exception to security-based swap transactions connected with a non-U.S. person's security-based swap dealing activity that are arranged, negotiated, or executed by personnel of such person located in a U.S. branch or office, or by personnel of such person's agent, located in a U.S. branch or office.

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: Brent J. Fields
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
“SECURITY-BASED SWAP TRANSACTIONS CONNECTED WITH A
NON-U.S. PERSON’S DEALING ACTIVITY THAT ARE ARRANGED,
NEGOTIATED, OR EXECUTED BY PERSONNEL LOCATED IN A
U.S. BRANCH OR OFFICE OR IN A U.S. BRANCH OR OFFICE OF AN
AGENT; SECURITY-BASED SWAP DEALER *DE MINIMIS* EXCEPTION”
(RIN: 3235-AL73)

(i) Cost-benefit analysis

The Securities and Exchange Commission (the Commission) considered assessment costs and programmatic costs and benefits of this final rule. The Commission considered three approaches that market participants may use to determine which transactions must be counted towards deal *de minimis* thresholds. First, non-U.S. persons may perform assessments on a per-transaction basis. Based on analogous situations dealing with the development and modification of information technology (IT) systems that track the location of firm inputs, the Commission estimated the start-up costs associated with developing and modifying these systems to track the location of persons with dealing activity will be \$410,000 for the average non-U.S. entity. The Commission noted that to the extent that non-U.S. persons already employ such systems, the costs of modifying such IT systems may be lower than its estimate. In addition to the development or modification of IT systems, the Commission believes that entities would incur the cost of \$6,500 per location per year on an ongoing basis for training, compliance, and verification costs. The Commission believes a reasonable estimate of these assessment costs in aggregate is \$8,710,000.

Second, non-U.S. firms might instead restrict personnel located in a U.S. branch or office from arranging, negotiating, or executing security-based swaps in connection with the non-U.S. firm’s dealing activity with non-U.S.-person counterparties. The Commission estimated that establishing policies would take a non-U.S. person approximately 100 hours and would cost approximately \$28,300 for each entity that chooses this approach. The Commission believes that the total costs incurred by entities that choose to restrict communication between personnel would be determined by the number of entities that choose such an approach as well as the number of additional personnel that these entities must hire as a result of restricted communication.

Third, a dealer may choose to count all transactions with other non-U.S. persons towards its *de minimis* threshold, regardless of whether counting them is required, to avoid the cost of assessing the locations of personnel involved with each transaction. For these non-U.S. persons, the expected benefits of identifying a few transactions that do not involve dealing activity by personnel from a location in the United States, which would not be required to be counted toward the person’s *de minimis* threshold, might be lower than the costs of implementing a system to track the locations of personnel on a trade-by-trade basis.

The Commission believes that all three methods are likely to involve an initial one-time review of security-based swap business lines to help each entity determine which of the business

structures outlined above is optimal. This initial review may be followed with reassessment at regular intervals or subsequent to major changes in the market participant's security-based swap business, such as acquisition or divestiture of business units. The Commission estimated that the per-entity initial costs of a review of business lines would be approximately \$104,000. Further, the Commission believes that periodic reassessment of business lines would cost, on average, \$52,000 per year, per entity.

The Commission also believes this final rule represents an important step towards treating substantially all dealing activity occurring in the United States similarly for purposes of determining whether a market participant is subject to the security-based swap dealer regime. The Commission expects the final rule to yield benefits by reducing differences in the treatment of similar activity by U.S. persons and non-U.S. persons in the United States and reducing potential gaps in the regulatory regime for security-based swap entities. Additionally, the Commission believes the rule may mitigate the competitive disparities that would result from application of the dealer requirements under existing rules and that would permit non-U.S. persons to carry out significant volumes of dealing activity using personnel located in the United States without being required to register as a security-based swap dealer. Further, the Commission stated that this final rule may mitigate the risks that might flow into U.S. financial markets by requiring the inclusion in dealer *de minimis* calculations of transactions that, while less likely to directly expose U.S. persons to counterparty risk, may allow financial risk to spill over into U.S. markets.

(ii) Agency actions relevant to the Regulatory Flexibility Act (RFA), 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 the Act.

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

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

On May 13, 2015, the Commission published a proposed rule. 80 Fed. Reg. 27,444. The Commission received 15 comment letters to which it responded in the final rule.

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

The Commission determined that this final rule does not make substantive or material modifications to any collection of information requirements under the Act.

Statutory authorization for the rule

The Commission promulgated this final rule under the authority of sections 3(a)(71), 3(b), 23(a)(1), and 30(c) of the Securities Exchange Act of 1934, and section 761(b) of the Dodd-Frank Wall Street Reform and Consumer Protection Act. 15 U.S.C. §§ 78c(a)(71), 78c(b), 78w(a)(1), 78dd(c), 8341.

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

As an independent regulatory agency, the Commission is not subject to the Order.

Executive Order No. 13,132 (Federalism)

As an independent regulatory agency, the Commission is not subject to the Order.