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B-328137

June 15, 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: *Commodity Futures Trading Commission: Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants—Cross-Border Application of the Margin Requirements*

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 (the Commission) entitled “Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants—Cross-Border Application of the Margin Requirements” (RIN: 3038-AC97). We received the rule on May 24, 2016. It was published in the *Federal Register* as a final rule on May 31, 2016. 81 Fed. Reg. 34,818.

The final rule addresses the cross-border application of the Commission’s margin requirements for uncleared swaps of swap dealers and major swap participants that do not have a Prudential Regulator (Covered Swap Entities or CSEs). According to the Commission, the final cross-border framework is designed to address the risks to a CSE, as an entity, associated with its uncleared swaps. The Commission states that the source of risk to a CSE is not confined to its uncleared swaps with U.S. counterparties or to swaps transacted within the United States. The Commission determined that risk arising from uncleared swaps involving non-U.S. counterparties can potentially have a substantial adverse effect on a CSE and therefore the stability of the U.S. financial system. The Commission also determined that certain categories of uncleared swaps will be eligible for substituted compliance or the exclusion based on the Commission’s consideration of comity principles and the impact of the final rule on market efficiency and competition.

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: Christopher J. Kirkpatrick  
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  
“MARGIN REQUIREMENTS FOR UNCLEARED SWAPS FOR  
SWAP DEALERS AND MAJOR SWAP PARTICIPANTS—  
CROSS-BORDER APPLICATION OF THE MARGIN REQUIREMENTS”  
(RIN: 3038-AC97)

(i) Cost-benefit analysis

The Commodity Futures Trading Commission (the Commission) discussed the costs and benefits associated with the final rule. The Commission stated that it considered the costs and benefits of the rule in qualitative terms, given a general lack of useful data regarding the costs and benefits of the rule and the considerable uncertainty introduced by foreign jurisdictions which are at different stages in implementing their own regimes. The Commission believes that the clear, objective nature of terms defined in this final rule, along with the ability to rely on related written counterparty representations will promote legal certainty and help minimize the costs associated with this rule. The Commission believes that the final rule enhances market efficiency and fosters global coordination of margin requirements without compromising the safety and soundness of swap dealers and major swap participants that do not have a Prudential Regulator (Covered Swap Entities or CSEs) and the U.S. financial system. Overall, the Commission believes that the final rule takes proper account of significant, and sometimes competing, factors in order to effectively address the risk posed to the safety and soundness of CSEs while creating a workable cross-border framework that reduces the potential for undue market disruptions and promoting global harmonization, thereby benefiting market participants and the public.

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

The Commission found that there will not be a substantial number of small entities impacted by the final rule.

(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 July 14, 2015, the Commission published a proposed rule. 80 Fed. Reg. 41,376. The Commission received 18 comment letters and responded to comments in the final rule.

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

The Commission determined that this final rule includes a collection of information requirement under the Act entitled “Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants; Comparability Determinations with Margin Requirements.” The Commission has submitted this requirement to the Office of Management and Budget (OMB) for review under OMB Control Number 3038-0111. The Commission estimates the aggregate annual burden to be 170 hours.

Statutory authorization for the rule

The Commission promulgated this final rule under the authority of sections 1a, 2, 6, 6a, 6b, 6b–1, 6c, 6p, 6r, 6s, 6t, 9, 9a, 12, 12a, 13b, 13c, 16a, 18, 19, and 21 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 Order.

Executive Order No. 13,132 (Federalism)

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