



United States Government Accountability Office
Washington, DC 20548

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May 6, 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: Clearing Exemption for Swaps
Between Certain Affiliated Entities*

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 "Clearing Exemption for Swaps Between Certain Affiliated Entities" (RIN: 3038-AD47). We received the rule on April 19, 2013. It was published in the *Federal Register* as a final rule on April 11, 2013. 78 Fed. Reg. 21,750.

The final rule exempts swaps between certain affiliated entities within a corporate group from the clearing requirement under the Commodity Exchange Act, enacted by Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). The regulations include specific conditions, as well as reporting requirements, that affiliated entities must satisfy in order to elect the inter-affiliate exemption from required clearing.

The final rule is effective June 10, 2013. The Congressional Review Act (CRA) requires a 60-day delay in the effective date of a major rule from the date of publication in the *Federal Register* or receipt of the rule by Congress, whichever is later. 5 U.S.C. § 801(a)(3)(A). While the rule was published in the *Federal Register* on April 11, 2013, we did not receive the rule until April 19, 2013. Therefore, the rule does not have the required 60-day delay in its effective date.

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, with the exception of the 60-day delay in effective date requirement.

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 Jurgens
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
"CLEARING EXEMPTION FOR SWAPS
BETWEEN CERTAIN AFFILIATED ENTITIES"
(RIN: 3038-AD47)

(i) Cost-benefit analysis

The Commission performed a cost-benefit analysis as required by section 15(a) of the Commodity Exchange Act, which requires the Commission to "consider the costs and benefits" of its actions in light of five broad areas of market and public concern: (1) protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations.

The Commission also considered the costs and benefits of the inter-affiliate exemption to the public and market participants generally. In the rule the Commission considered: (1) costs and benefits of the exemption for eligible affiliate counterparties; (2) costs and benefits of the exemption for market participants and the public; (3) alternatives contemplated by the Commission and the costs and benefits relative to the approach adopted herein; and (4) the impact of exemption in light of the 15(a) factors.

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

The Chairman, on behalf of the Commission, certified pursuant to 5 U.S.C. 605(b) that the rules would 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 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 published a notice of proposed rulemaking in the *Federal Register* on August 21, 2012. 77 Fed. Reg. 50,425. The proposed rule included a 30-day comment period. The Commission received 13 comments during the 30-day public comment period, and one additional comment after the comment period ended. The Commission considered each of the comments received and responded to comments in the final rule. 78 Fed. Reg. 21,750. The Commission noted that during the process of proposing and finalizing this rule, the Chairman and Commissioners, as well as Commission staff, participated in informational meetings with market participants, trade associations, public interest groups, and other interested parties. In addition, the Commission consulted with other U.S. financial regulators including: (i) The Securities and Exchange Commission; (ii) the Board of Governors of the Federal Reserve System; (iii) the Office of the Comptroller of the Currency; and (iv) the Federal Deposit Insurance Corporation (FDIC). Staff from each of these agencies had the opportunity to provide oral and/or written comments, and the final rule incorporates elements of the comments provided.

The Commission stated that it is mindful of the benefits of harmonizing its regulatory framework with that of its counterparts in foreign countries. The Commission therefore monitored global advisory, legislative, and regulatory proposals, and has consulted with foreign authorities in developing the final regulations.

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

The final rule contains information collection requirements that have been submitted to the Office of Management and Budget (OMB) for approval. The Commission stated that it estimated the time burden associated with complying with the reporting requirements of the rules, and calculated that the inter-affiliate exemption could result in an average total annual burden of 1,758,369 hours and average total annual costs of \$685,309,281, or approximately 1.8 minutes and \$10.48 per inter-affiliate swap.

Statutory authorization for the rule

The final rule is authorized by the clearing requirement in section 2 of the Commodity Exchange Act, 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.