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June 17, 2013

The Honorable Debbie Stabenow
Chairman
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: Core Principles and Other Requirements for Swap Execution Facilities*

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 “Core Principles and Other Requirements for Swap Execution Facilities” (RIN: 3038-AD18). We received the rule on May 21, 2013. It was published in the *Federal Register* as a final rule on June 4, 2013. 78 Fed. Reg. 33,476.

The final rule implements certain statutory provisions enacted by Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). The final rules, guidance, and acceptable practices, which apply to the registration and operation of a new type of regulated entity named a swap execution facility (SEF), implement the Dodd-Frank Act’s new statutory framework that, among other requirements, adds a new section 5h to the Commodity Exchange Act (CEA or Act) concerning the registration and operation of SEFs, and adds a new section 2(h)(8) to the CEA concerning the execution of swaps on SEFs.

The rules will become effective August 5, 2013, with the exception of regulation 37.3(b)(5) (17 C.F.R. § 37.3(b)(5)), which shall become effective August 5, 2015. The compliance date is October 2, 2013, except that: (a) from August 5, 2013, until October 2, 2014, market participants may comply with the minimum market participant requirement in regulation 37.9(a)(3) (17 C.F.R. § 37.9(a)(3)) by transmitting a request for a quote to no less than two market participants; and (b) each affected entity shall comply with the warning letter requirement in regulation 37.206(f) (17 C.F.R. § 37.206(f)) no later than August 5, 2014.

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 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
"CORE PRINCIPLES AND OTHER REQUIREMENTS
FOR SWAP EXECUTION FACILITIES"
(RIN: 3038-AD18)

(i) Cost-benefit analysis

Section 15(a) of the CEA mandates that the Commission consider the costs and benefits of the regulations that it is adopting in this rulemaking to implement the statutory requirements for the registration and operation of SEFs. In considering the costs and benefits of the final SEF regulations, the Commission has grouped the same into the following seven categories— (1) SEF Market Structure, (2) Registration, (3) Recordkeeping and Reporting, (4) Compliance, (5) Monitoring and Surveillance, (6) Financial Resources and Integrity, and (7) Emergency Operations and System Safeguards.

The Commission's discussion of costs and benefits begins with an informational discussion of the aggregate estimated costs of forming and operating a SEF. The Commission states that although these costs are mostly attributable to Congress' mandate that there be SEFs, they provide useful context for the costs and benefits attributable to the Commission's action of implementing that mandate in this rulemaking. Relatedly, the Commission believes that many of the costs that arise from the application of the final rules are a consequence of the congressional trade execution mandate of section 2(h)(8) of the CEA, as well as the congressional goals to promote the trading of swaps on SEFs and to promote pre-trade price transparency in the swaps market in section 5h(e) of the CEA.

After the discussion of the aggregate costs of forming and operating a SEF, the Commission's consideration of costs and benefits is organized into seven the categories mentioned above. For each category, the Commission summarizes the final regulations; describes and responds to comments discussing the costs and benefits; assesses alternatives, including those raised by commenters; and considers the costs and benefits in light of the five factors set out in CEA section 15(a), which expressly requires the Commission to consider the costs and benefits of "the action of the Commission." In this regard, as with the aggregate costs of forming and operating a SEF attributable to Congress, where the Commission merely codifies a statutory requirement, the Commission believes that there is no act of discretion for consideration under CEA section 15(a). The Commission expects that the costs and benefits will vary based on the specific circumstances of the individual entity seeking registration as a SEF. Accordingly, where appropriate and possible to account for these differences, the Commission has attempted to express costs and benefits as a range, sometimes one that is wide.

Finally, the Commission notes that in some instances, quantification of costs to certain market participants is not reasonably feasible because costs will depend on the size, structure, and product offering of a SEF, which are likely to have considerable variation, or because required information or data will not exist until after a SEF commences operation as a registrant. In other instances—for example with respect to protection of market participants and the public—the Commission believes suitable metrics to quantify costs and benefits simply do not exist.

Notwithstanding the above-mentioned limitations, the Commission identified and considered the costs and benefits of the final rules in qualitative terms.

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

The Commission states that while SEFs are new entities to be regulated pursuant to the Dodd-Frank Act, in the proposed rule the Commission proposed that SEFs should not be considered as small entities for the purpose of the RFA for essentially the same reasons that designated contract markets (DCMs) and derivatives clearing organizations have previously been determined not to be small entities. The Commission received no comments on the impact of the rules on small entities. Therefore, 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.

(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 Dodd-Frank Act amended the CEA to provide that, under new section 5h, the Commission may in its discretion determine by rule or regulation the manner in which SEFs comply with the core principles. In consideration of both the novel nature of SEFs and its experience in overseeing DCMs' compliance with core principles, the Commission carefully assessed which SEF core principles would benefit from regulations, providing legal certainty and clarity to the marketplace, and which core principles would benefit from guidance or acceptable practices, where flexibility is more appropriate. Based on that evaluation, on January 7, 2011, the Commission proposed a combination of regulations, guidance, and acceptable practices for the registration, oversight, and regulation of SEFs. 76 Fed. Reg. 1214.

The initial comment period for the proposed rule ended on March 8, 2011. Subsequently, the Commission reopened the comment period until June 3, 2011, as part of its global extension of comment periods for various rulemakings implementing the Dodd-Frank Act. After the second comment period ended, the Commission continued to accept and consider late comments, which it did until April 30, 2013, including holding two roundtables touching on issues related to the proposed rule. The Commission received approximately 107 comment letters on the proposed rule from members of the public. The Chairman and Commissioners, as well as the Commission staff, participated in numerous meetings with representatives of single dealer platforms, interdealer brokers, DCMs, trade associations, over-the-counter market participants, potential SEF applicants, and other interested parties. In addition, the Commission consulted with the Securities and Exchange Commission and international regulators on numerous occasions.

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

The Commission states that this final rulemaking contains new collection of information requirements within the meaning of the PRA. Accordingly, in connection with the proposed rule, the Commission submitted an information collection request to the Office of Management and Budget (OMB) for its review and approval. Additionally, pursuant to 44 U.S.C. § 3506(c)(2)(B), the Commission, in the proposed rule requested comments from the public on the proposed information collection requirements in order to, among other items, evaluate the necessity of the proposed collections of information and minimize the burden of the information collection requirements on respondents. On April 28, 2011, OMB assigned control number 3038–0074 to this collection of information, but withheld final approval pending the Commission’s resubmission of the information collection, which includes a description of the comments received on the collection and the Commission’s responses thereto. The Commission has revised some of its proposed estimates of the number of mandatory responses in order to clarify the Commission’s original intent; otherwise, the proposed burden hour estimates are being adopted as discussed in the final rule. The Commission has submitted the revised information collection request to OMB for its review, which will be made available by OMB.

As noted in the proposed rule, the Commission will protect proprietary information according to the Freedom of Information Act and 17 C.F.R. part 145, Commission Records and Information. In addition, section 8(a)(1) of the CEA strictly prohibits the Commission, unless specifically authorized by the CEA, from making public “data and information that would separately disclose the business transactions or market positions of any person and trade secrets or names of customers.” The Commission is also required to protect certain information contained in a government system of records according to the Privacy Act of 1974.

Statutory authorization for the rule

The Commission states that the final rule is authorized by 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 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.