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United States Government Accountability Office  
Washington, DC 20548

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B-321165

November 23, 2010

The Honorable Christopher J. Dodd  
Chairman  
The Honorable Richard C. Shelby  
Ranking Member  
Committee on Banking, Housing, and Urban Affairs  
United States Senate

The Honorable Barney Frank  
Chairman  
The Honorable Spencer Bachus  
Ranking Member  
Committee on Financial Services  
House of Representatives

Subject: *Securities and Exchange Commission: Regulation SHO*

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 “Regulation SHO” (RIN: 3235-AK35). We received the rule on November 8, 2010. It was published in the *Federal Register* as a final rule; extension of compliance date on November 9, 2010. 75 Fed. Reg. 68,702.

The final rule extends for a limited period of time the compliance date for the amendments to Rule 201 and Rule 200(g) of Regulation SHO from November 10, 2010, to February 28, 2011. The Commission states that it is extending the compliance date to give certain exchanges additional time to modify their current procedures for conducting single-priced opening, reopening, and closing transactions for covered securities that have triggered Rule 201’s circuit breaker in a manner that is consistent with the goals and requirements of Rule 201. Further, the extended compliance period will give industry participants additional time for programming and testing for compliance within the requirements of the rule.

The Congressional Review Act requires major rules to have a 60-day delay in their effective date following their publication in the *Federal Register* or receipt by Congress, whichever is later. 5 U.S.C. § 801(a)(3)(A). However, notwithstanding the 60-day delay requirement, any rule that an agency for good cause finds that notice and public procedures are impractical, unnecessary, or contrary to the public

interest is to take effect when the promulgating agency so determines. 5 U.S.C. § 808(2). The Commission found good cause to forego the usual 60-day delay in effective date of a major rule and make the rule retroactively effective to the date of the publication in the *Federal Register* of the amendments to Regulation SHO, March 10, 2010.

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: Elizabeth M. Murphy  
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  
"REGULATION SHO"  
(RIN: 3235-AK35)

(i) Cost-benefit analysis

The Commission generally considers the costs and benefits of its rules. According to the Commission, the delay of the compliance date for the amendments to Rule 201 and Rule 200(g) of Regulation SHO will delay the benefits of the rules, but will also delay the ongoing costs of complying with the amendments. The Commission determined that the limited extension is necessary and appropriate because it will provide certain exchanges additional time to modify their current procedures for conducting single-priced transactions for covered securities that have triggered Rule 201's circuit breakers in a manner that is consistent with the goals and requirements of Rule 201, and industry participants additional time for programming and testing for compliance with the requirements of Rule 201 and Rule 200(g).

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

The Regulatory Flexibility Act requires agencies to prepare a final regulatory flexibility analysis for final rules when the agency is required to publish a general notice of proposed rulemaking under 5 U.S.C. § 553. The Commission found good cause to waive notice and comment rulemaking under 5 U.S.C. § 553, and therefore the Commission was not required to prepare a regulatory flexibility analysis.

(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 Administrative Procedure Act generally requires an agency to issue a notice of proposed rulemaking and an opportunity for public comment. However, an agency may find good cause to issue a final rule without rulemaking procedures where withholding action would be impracticable, unnecessary, or contrary to the public interest. 5 U.S.C. § 553. The Commission, for good cause, found that notice and

solicitation of comment before the effective date of the final rule would be impracticable, unnecessary, or contrary to the public interest. The Commission is enacting a limited extension of the compliance date to facilitate the orderly implementation of the amendments to Regulation SHO. The original compliance date was November 10, 2010, and there was not sufficient time between the original compliance date and the adoption of the final rule to allow for notice and comment.

Additionally, the Administrative Procedure Act generally requires an agency to have a 30-day delay in effectiveness for a final action. An agency may waive the 30-day delay for a “substantive rule which grants or recognizes an exemption or relieves a restriction.” 5 U.S.C. § 553(d)(1).

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

The Commission does not address the Paperwork Reduction Act in the final rule. However, the final rule, as an extension of compliance date, does not include any new information collection requirements under the Act.

Statutory authorization for the rule

The Commission promulgated this final rule under the authority of sections 6(c), 8(b), 22(c), 22(e), 30(b), 31(a), and 38(a) of the Investment Company Act of 1940. 15 U.S.C. §§ 80a-6(c), 80a-8(b), 80a-22(c), 80a-22(e), 80a-29(b), 80a-30(a), and 80a-37(a).

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

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

Executive Order No. 13,132 (Federalism)

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