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November 25, 2015

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: Crowdfunding*

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 (the Commission) entitled “Crowdfunding” (RIN: 3235-AL37). We received the rule on November 2, 2015. It was published in the *Federal Register* as a final rule on November 16, 2015. 80 Fed. Reg. 71,388.

The final rule implements title III of the Jumpstart Our Business Startups Act (JOBS Act).¹ Specifically, this final rule governs the offer and sale of securities under section 4(a)(6) of the Securities Act of 1933.² This rule also provides a framework for the regulation of registered funding portals and broker-dealers that issuers are required to use as intermediaries in the offer and sale of securities in reliance on section 4(a)(6). In addition, this rule, according to the Commission, conditionally exempts securities sold pursuant to section 4(a)(6) from certain registration requirements.

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.

¹ Pub. L. No. 112-106, §§ 301–305, 306, 315–323 (2012).

² 15 U.S.C. § 77d(a)(6).

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: Jill M. Peterson
Assistant 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
“CROWDFUNDING”
(RIN: 3235-AL37)

(i) Cost-benefit analysis

The Securities and Exchange Commission (the Commission) included an economic analysis in this final rule. In this analysis, the Commission stated that offerings made under this final rule will likely represent a new source of capital for many small issuers that currently have difficulty raising capital. The Commission believes the rule may increase both capital formation and the efficiency of capital allocation among small issuers by expanding the range of methods of external financing available to small businesses and the pool of investors willing to finance such types of businesses.

The Commission estimates that the main adjusted costs for issuers will be (1) fees paid to an intermediary; (2) costs per issuer for preparation and filing of Form C for each offering and related compliance costs; (3) costs per issuer for preparation and filing of Form C-AR for each offering and related compliance costs; and (4) costs per issuer for review or audit of financial statements. The Commission estimates the fees paid to an intermediary will be between \$2,500 and \$7,500 for offerings of \$100,000 or less; between \$15,000 and \$30,000 for offerings more than \$100,000 but not more than \$500,000; and between \$37,500 and \$56,250 for offerings of more than \$500,000. The Commission estimates the preparation, filing, and related compliance costs for Form C will be \$2,500 for offerings of \$100,000 or less; between \$2,500 and \$5,000 for offerings more than \$100,000 but not more than \$500,000; and between \$5,000 and \$20,000 for offerings of more than \$500,000. The Commission estimates the preparation, filing, and related compliance costs for Form C-AR will be \$1,667 for offerings of \$100,000 or less; between \$1,667 and \$3,333 for offerings more than \$100,000 but not more than \$500,000; and between \$3,333 and \$13,333 for offerings of more than \$500,000. The Commission estimates the review or audit costs will be \$0 for offerings of \$100,000 or less; between \$1,500 and \$18,000 for offerings more than \$100,000 but not more than \$500,000; and between \$2,500 and \$30,000 for offerings of more than \$500,000 (\$1,500 to \$18,000 for first-time issuers raising more than \$500,000 but not more than \$1,000,000).

The Commission also estimated costs for intermediaries. The Commission estimates intermediaries that register as broker dealers will incur a total initial cost of \$945,000 and total ongoing costs of \$315,000 per year. The Commission estimates intermediaries that register as funding portals will incur a total initial cost of \$592,000 and total ongoing costs of \$315,000 per year. The Commission estimates intermediaries that are already registered as broker dealers will incur a total initial cost of \$470,000 and total ongoing costs of \$115,000 per year.

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

The Commission prepared a Final Regulatory Flexibility Analysis which included statements concerning (1) the need for the rule to implement the requirements of title III of the JOBS Act; (2) significant issues raised by public comments, including several suggested alternatives to

reduce cost; (3) small entities subject to the rule; (4) projected reporting, recordkeeping, and other compliance requirements; and (5) agency action to minimize effect on small entities that are issuers and small entities that are intermediaries.

(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 November 5, 2013, the Commission published a proposed rule. 78 Fed. Reg. 66,427. The Commission received over 485 comment letters on the proposed rule, including from professional and trade associations, investor organizations, law firms, investment companies and investment advisers, broker-dealers, potential funding portals, Members of Congress, the Commission's Investor Advisory Committee, 15 state securities regulators, government agencies, potential issuers, accountants, individuals, and other interested parties. The Commission stated that it had reviewed and considered all of the comments that it received.

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

The Commission determined that this final rule contains information collection requirements under the Act. The titles and Office of Management and Budget (OMB) Control Numbers of these five collections of information are:

- (1) "Form ID" (OMB Control Number 3235-0328),
- (2) "Form C" (OMB Control Number 3235-0716),
- (3) "Form BD" (OMB Control Number 3235-0012),
- (4) "Crowdfunding Rules 300-304—Intermediaries" (OMB Control Number 3235-0726), and
- (5) "Crowdfunding Rules 400-404—Funding Portals" (OMB Control Number 3235-0727).

The second, fourth, and fifth of these collections are new collections. The Commission described the time burden and costs for each of these collection requirements in the final rule.

Statutory authorization for the rule

The Commission stated that it promulgated this final rule under the authority of the Securities Act of 1933, particularly sections 4(a)(6), 4A, 19, and 28 thereof; the Securities Exchange Act of 1934, particularly sections 3(b), 3(h), 10(b), 15, 17, 23(a), and 36 thereof; and sections 301 to 305 of Public Law 112-106. 15 U.S.C. §§ 77d(a)(6), 77d-1, 77s, 77z-3, 78c(b), 78c(h), 78j(b), 78o, 78q, 78w(a), 78mm, 126 Stat. 306, 315-323 (2012).

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.