



United States
General Accounting Office
Washington, D.C. 20548

Office of the General Counsel

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August 20, 1997

The Honorable Alfonse M. D'Amato
Chairman
The Honorable Paul S. Sarbanes
Ranking Minority Member
Committee on Banking, Housing, and Urban Affairs
United States Senate

The Honorable Thomas J. Bliley, Jr.
Chairman
The Honorable John D. Dingell
Ranking Minority Member
Committee on Commerce
House of Representatives

Subject: Securities and Exchange Commission: Exemption for the Acquisition of Securities During the Existence of An Underwriting or Selling Syndicate

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 (SEC), entitled "Exemption for the Acquisition of Securities During the Existence of An Underwriting or Selling Syndicate" (RIN: 3235-AG61). We received the rule on August 1, 1997. It was published in the Federal Register as a final rule on August 7, 1997. 62 Fed. Reg. 42401.

The final rule amends rule 10f-3 and permits registered investment companies that have certain affiliated relationships with an underwriter to purchase a greater percentage of an offering of securities during the existence of an underwriting or selling syndicate. The amendments also permit these investment companies to purchase securities in certain foreign offerings and offerings of unregistered securities.

Enclosed is our assessment of the SEC'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 indicates that the SEC complied with the applicable requirements.

If you have any questions about this report, please contact James Vickers, Assistant General Counsel, at (202) 512-8210. The official responsible for GAO evaluation work relating to the Securities and Exchange Commission is Thomas McCool, Director, Financial Institutions and Markets Issues. Mr. McCool can be reached at (202) 512-8678.

Robert P. Murphy
General Counsel

Enclosure

cc: The Honorable Jonathan G. Katz
Secretary
Securities and Exchange Commission

ANALYSIS UNDER 5 U.S.C. § 801(a)(1)(B)(i)-(iv) OF A MAJOR RULE
ISSUED BY
THE SECURITIES AND EXCHANGE COMMISSION
ENTITLED
"EXEMPTION FOR THE ACQUISITION OF SECURITIES DURING THE
EXISTENCE OF AN UNDERWRITING OR SELLING SYNDICATE"
(RIN: 3235-AG61)

(i) Cost-benefit analysis

The SEC performed a cost-benefit analysis of the final rule; however, due to the lack of empirical data, the costs and benefits have not been quantified by the SEC.

The SEC expects the costs of the rule to be minimal to funds and investors because, while it is required that determinations be made whether purchase of securities in foreign offerings and rule 144A offerings comply with the final rule, rule 10f-3 currently has standards that must be met for purchases permitted under the rule. Therefore, the additional cost of complying with the standards relating to foreign and rule 144A offerings will be minimal. Also, in view of the probability of an increased number of purchased securities, the average cost of reporting transactions under rule 10f-3 will probably diminish.

The benefits of the rule include the ability to purchase foreign and rule 144A offerings without having to seek an exemptive order from the SEC and to purchase more desirable quantities of securities at advantageous prices.

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

The SEC prepared an Initial Regulatory Flexibility Analysis in connection with the proposed rule, which was summarized in the notice of proposed rulemaking (61 Fed. Reg. 13637), and was available to the public in its entirety. No comments were received in response to the analysis.

The preamble to the final rule contains a summary of the Final Regulatory Flexibility Analysis, a complete copy of which was submitted to our Office and was available to the public. The analysis describes the reason for the rule and the legal basis for it; descriptions and estimates of the number of small entities affected by the rule; a discussion of the recordkeeping, reporting, and other compliance requirements; and the steps taken to minimize the burdens on small entities.

The SEC estimates that of the approximately 3,850 active investment companies registered with the SEC, a total of approximately 800 would be considered small entities. Of these 800, the amendments to rule 10f-3 would apply to approximately 40 small entities.

Regarding the steps taken to minimize the burden, the SEC states it concluded that different requirements for small entities were not necessary and would be inconsistent with investor protection and that the final rule uses performance standards to the extent practicable rather than design standards.

(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 SEC is not subject to title II of the Unfunded Mandates Reform Act of 1995.

(iv) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 et seq.

The final rule was promulgated using the notice and comment procedures of 5 U.S.C. § 553. A notice of proposed rulemaking was published on March 27, 1996, 61 Fed. Reg. 13640, and requested comments on the proposed rule. The SEC received 18 comments in response to the notice of proposed rulemaking. The SEC responds to the comments in the preamble to the final rule and discusses the changes it has made in the proposed rule as a result of the comments. These changes include raising the percentage of an offering that may be purchased by affiliated funds from 10 percent to 25 percent of the principal amount of the offering.

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

The final rule requires the collection of information which is subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act. OMB has approved the information collection and assigned OMB No. 3235-0226 with an expiration date of May 31, 1999. The SEC estimates that the rule will impose an additional burden of .50 hours on 140 firms for a total burden addition of 70 hours.

Statutory authorization for the rule

The SEC states that it is adopting the amendments pursuant to sections 10(f), 31(a), and 38(a) of the Investment Company Act (15 U.S.C. §§ 80a-10(f), 80a-30(a), and 80a-37(a)).

Executive Order No. 12866

The rule, promulgated by an independent regulatory agency, is not subject to the review requirements of Executive Order No. 12866.