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September 14, 2020

The Honorable Mike Crapo
Chairman
The Honorable Sherrod Brown
Ranking Member
Committee on Banking, Housing, and Urban Affairs
United States Senate

The Honorable Maxine Waters
Chairwoman
The Honorable Patrick McHenry
Ranking Member
Committee on Financial Services
House of Representatives

Subject: *Federal Deposit Insurance Corporation, Securities Exchange Commission:
Covered Broker-Dealer Provisions Under Title II of the Dodd-Frank Wall Street
Reform and Consumer Protection Act*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Federal Deposit Insurance Corporation (FDIC), Securities Exchange Commission (SEC) (collectively, the agencies) entitled "Covered Broker-Dealer Provisions Under Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act" (RINs: 3064-AE39, 3235-AL-51). We received the rule on July 29, 2020. It was published in the *Federal Register* as a final rule on August 31, 2020. 85 Fed. Reg. 53645. The effective date of the final rule is October 30, 2020.

The final rule implements provisions applicable to the orderly liquidation of covered brokers and dealers under title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act. Pub. L. No. 111-203, 124 Stat. 1376 (July 21, 2010) (Dodd-Frank Act). According to the agencies, title II of the Dodd-Frank Act provides an alternative insolvency regime for the orderly liquidation of large financial companies that meet specified criteria, including certain provisions specific to the orderly liquidation of certain large broker-dealers.

Enclosed is our assessment of the agencies' compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. 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 Shari Brewster, Assistant General Counsel, at (202) 512-6398.

A handwritten signature in black ink, reading "Shirley A. Jones". The signature is written in a cursive, flowing style with a large initial 'S' and 'J'.

Shirley A. Jones
Managing Associate General Counsel

Enclosure

cc: Vanessa A. Countryman
Secretary
Securities and Exchange Commission

M. Andy Jiminez
Director, Office of Legislative Affairs
Federal Deposit Insurance Corporation

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
FEDERAL DEPOSIT INSURANCE CORPORATION,
SECURITIES AND EXCHANGE COMMISSION
ENTITLED
“COVERED BROKER-DEALER PROVISIONS UNDER
TITLE II OF THE DODD-FRANK WALL STREET
REFORM AND CONSUMER PROTECTION ACT”
(RINS: 3064-AE39, 3235-AL-51)

(i) Cost-benefit analysis

The Federal Deposit Insurance Corporation (FDIC) and Securities Exchange Commission (SEC) (collectively, the agencies) stated that the expected benefits of this final rule are that it will provide interested parties with details on the implementation of the orderly liquidation process. The agencies explained that by providing for a uniform process, the rule could improve the efficiency and predictability of the orderly liquidation process. With regard to expected costs, the agencies stated that while the rule ensures that in an orderly liquidation, all customer claims are satisfied in a manner and in an amount at least as beneficial to them as would have been the case in a Securities Investor Protection Act of 1970, Pub. L. No. 91-598, 84 Stat. 1636 (Dec. 30, 1970) (SIPA) liquidation, orderly liquidation does entail a different treatment of qualified financial contract (QFC) counterparties. According to the agencies, under SIPA certain QFC counterparties may exercise specified contractual rights regardless of an automatic stay. The agencies stated that title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376 (July 21, 2010), implemented by the rule, imposes an automatic 1-day stay on certain activities by QFC counterparties, which may limit the ability of these counterparties to terminate contracts or exercise any rights against collateral. Further, the agencies stated that the stay will remain in effect if the QFC contracts are transferred to a bridge broker-dealer. The agencies asserted that these provisions may impose costs.

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

The agencies certified that this final rule 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 independent regulatory agencies, FDIC and SEC are 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 March 2, 2016, the agencies published a proposed rule. 81 Fed. Reg. 10798. The agencies stated that they received six comment letters on the proposed rule as follows: three comment

letters from individuals; one comment letter from students in a law school financial markets and corporate law clinic; one from a group that states it is a group of concerned citizens, activists, and financial professionals that work to ensure that financial regulators protect the interests of the public; and one from three trade groups representing various segments of the financial services industry. The agencies responded to comments in this final rule.

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

The agencies determined that this final rule contains no information collection requirements under the Act.

Statutory authorization for the rule

The agencies promulgated this final rule pursuant to sections 5381(b), 5385(h), 5389, 5390(a)(7)(D), 5390(a)(16)(D), 5390(b)(1)(C), 5390(r), and 5390(s)(3) of title 12, United States Code.

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

As independent regulatory agencies, FDIC and SEC are not subject to the Order.

Executive Order No. 13,132 (Federalism)

As independent regulatory agencies, FDIC and SEC are not subject to the Order.