



441 G St. N.W.
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B-334824

December 12, 2022

The Honorable Sherrod Brown
Chairman
The Honorable Patrick J. Toomey
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: *Securities and Exchange Commission: Listing Standards for Recovery of Erroneously Awarded Compensation*

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 “Listing Standards for Recovery of Erroneously Awarded Compensation” (RIN: 3235-AK99). We received the rule on October 26, 2022. It was published in the *Federal Register* as a final rule on November 28, 2022. 87 Fed. Reg. 73076. The effective date is January 27, 2023.

The final rule implements section 954 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, Pub. L. No. 111-203, 124 Stat. 1376 (July 21, 2010). Specifically, SEC states that the final rule directs national securities exchanges and associations that list securities to establish listing standards that require each issuer to develop and implement a policy providing for the recovery, in the event of a required accounting restatement, of incentive-based compensation received by current or former executive officers where that compensation is based on erroneously reported financial information. SEC further states that listing standards must require disclosure of the policy. Additionally, SEC states that listed issuers must file their policies as exhibits to their annual reports, and must include other disclosures in the event a recovery analysis is triggered under such policies.

Enclosed is our assessment of 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. 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 that reads "Shirley A. Jones". The signature is written in a cursive, flowing style.

Shirley A. Jones
Managing Associate General Counsel

Enclosure

cc: Vanessa A. Countryman
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
“LISTING STANDARDS FOR RECOVERY OF
ERRONEOUSLY AWARDED COMPENSATION”
(RIN: 3235-AK99)

(i) Cost-benefit analysis

The Securities and Exchange Commission (SEC) conducted an economic analysis of this final rule. This analysis included the establishment of a baseline against which the changes imposed by the rule could be measured with respect to (1) issuers and shareholders, (2) U.S. exchanges and listings, (3) costs of recovery, (4) financial reporting, (5) executive compensation, (6) disclosure and tagging requirements, and (7) indemnification and insurance. SEC also discussed how the effects of the rule may vary for different types of listed issuers. Finally, SEC discussed alternatives it considered to the final rule, as well as their likely economic effects.

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

SEC prepared a Final Regulatory Flexibility Analysis. The analysis included (1) a statement of the need for and objectives of the rule, (2) a description of significant issues raised by public comments, (3) a description of the small entities subject to the rule, (4) projected reporting, recordkeeping, and other compliance requirements, and (5) a description of agency actions to minimize effects on 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, SEC 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 July 14, 2015, SEC published a proposed rule. 80 Fed. Reg. 41144. SEC re-opened the period for comments on October 14, 2021, and again on June 8, 2022. SEC responded to comments in the final rule.

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

SEC determined that the final rule contains information collection requirements under the PRA, and it stated that it has submitted these requirements to the Office of Management and Budget (OMB) for review. SEC further stated that the titles of the affected collections of information, along with the associated estimates of increased burden, are as follows:

Form 10-K (OMB Control No. 3235-0063) (5,592 hours and \$1,117,800);

Form 20-F (OMB Control No. 3235-0288) (297 hours and \$535,200);
Form 40-F (OMB Control No. 3235-0381) (57 hours and \$102,600); and
Form N-CSR (OMB Control No. 3235-0570) (21 hours and \$4,200).

Statutory authorization for the rule

SEC promulgated this final rule pursuant to section 2(c)(2)(E) of title 7; sections 5221(e)(3) and 5461 *et seq.* of title 12; sections 77c, 77d, 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77s(a), 77z-2, 77z-3, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77nnn, 77sss, 77sss(a), 77ttt, 78a, 78c, 78c(b), 78c-3, 78c-5, 78d, 78dd, 78e, 78f, 78g, 78i, 78j, 78j-1, 78j-3, 78j-4, 78k, 78k-1, 78l, 78m, 78n, 78n-1, 78o, 78o(d), 78o-4, 78o-10, 78p, 78q, 78q-1, 78s, 78u-5, 78w, 78w(a), 78x, 78dd, 78ll, 78mm, 80 a-1, 80a-6(c), 80a-8, 80a-9, 80a-20, 80a-23, 80a-24, 80a-26, 80a-29, 80a-30, 80a-31(c), 80a-34(d), 80a-37, 80a-38(a), 80a-39, 80b-3, 80b-4, 80b-6a, 80b-10, 80b-11, 7201 *et seq.*, and 8302 *et seq.* of title 15; and section 1350 of title 18, United States Code, as well as Public Laws 111-203, 107-204, 112-106, 114-94, and 116-222.

Executive Order No. 12866 (Regulatory Planning and Review)

As an independent regulatory agency, SEC is not subject to the Order.

Executive Order No. 13132 (Federalism)

As an independent regulatory agency, SEC is not subject to the Order.