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B-330769

February 14, 2019

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: *Securities and Exchange Commission: Conditional Small Issues Exemption Under the Securities Act of 1933 (Regulation A)*

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 "Conditional Small Issues Exemption Under the Securities Act of 1933 (Regulation A)" (RIN 3235-AM42). We received the rule on December 21, 2018. It was published in the *Federal Register* as a final rule on January 31, 2019. 84 Fed. Reg. 520. The effective date of the final rule was January 31, 2019.

The final rule adopts amendments to 17 C.F.R. § 230.251 and 17 C.F.R. § 230.257 under the Securities Act of 1933, which are a part of Regulation A. Regulation A provides an exemption from registration under the Securities Act for offerings of securities up to \$50 million. As mandated by the Economic Growth, Regulatory Relief, and Consumer Protection Act, the amendments permit entities subject to the reporting requirements of section 13 or 15(d) of the Securities Exchange Act of 1934 to use Regulation A, and the amendments revise Regulation A to provide that entities meeting the reporting requirements of the Exchange Act will be deemed to have met the reporting requirements of Regulation A. The rule also makes conforming changes to Form 1-A.

The Congressional Review Act requires a 60-day delay in the effective date of a major rule from the date of publication in the *Federal Register* or receipt of the rule by Congress, whichever is later. 5 U.S.C. § 801(a)(3)(A). The Senate received the final rule on January 2, 2019. 165 Cong. Rec. S101 (daily ed. January 9, 2019). The *Congressional Record* does not reflect the date of receipt by the House of Representatives. It was published in the *Federal Register* on January 31, 2019, and has a stated effective date of January 31, 2019. 84 Fed. Reg. 520. Therefore, the final rule does not have the required 60-day delay in effective date.

The 60-day delay in effective date can be waived, however, if the agencies find for good cause that delay is impracticable, unnecessary, or contrary to the public interest, and the agencies incorporate a statement of the finding and their reasons in the rule issued. 5 U.S.C. § 808(2). The Commission found good cause to issue the rule effective upon January 31, 2019. The Commission stated the rule conforms Regulation A to the requirements of section 508 of the Economic Growth, Regulatory Relief, and Consumer Protection Act and involves limited exercise of agency discretion. For these reasons, the Commission found good cause to make the rule effective immediately upon publication in the *Federal Register*.

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. 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 me at (202) 512-8156.

signed

Shirley A. Jones
Managing Associate General Counsel

Enclosure

cc: Brent J. Fields
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
“CONDITIONAL SMALL ISSUES EXEMPTION UNDER THE
SECURITIES ACT OF 1933 (REGULATION A)”
(RIN 3235-AM42)

(i) Cost-benefit analysis

The Securities and Exchange Commission (Commission) stated the final rule may benefit issuers, investors, and intermediaries. The Commission stated issuers may benefit from the additional flexibility in raising capital permitted under Regulation A, the additional flexibility with respect to solicitation of investor interest, and legal and compliance cost savings from using Regulation A to raise capital instead of a registered offering. The Commission further stated the rule may benefit investors due to greater availability of information about Exchange Act reporting companies, increased shareholder value as a result of improved access to capital or a lower cost of capital, and reduced information asymmetries. Finally, the Commission stated intermediaries may benefit from the final rule due to increased competition due to greater interest in the Regulation A market and higher revenue from Regulation A deals.

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

The Commission stated that the amendments do not require analysis under RFA because it found for good cause that notice and comment were unnecessary as the amendments conform Regulation A to the requirements of the Economic Growth Act and involve limited exercise of agency discretion.

(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 Commission issued the final rule without notice and comment. The Commission stated it waived notice and comment rulemaking under 5 U.S.C. § 553(b)(B) because notice and comment are unnecessary. The Commission stated it reached this conclusion because the rule only conforms Regulation A to statutory changes made in the Economic Growth, Regulatory Relief, and Consumer Protection Act and involves limited exercise of agency discretion.

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

The Commission stated the final rule contained a collection of information subject to PRA and submitted the collection for approval to the Office of Management and Budget. The Commission estimated the total annual aggregated compliance burden of the collection of information will be 131,078.12 hours and aggregated costs of \$13,107,812.

Statutory authorization for the rule

The Commission stated it promulgated the final rule under sections 3(b), 19(a), and 28 of the Securities Act and section 508 of the Economic Growth, Regulatory Relief, and Consumer Protection Act.

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.