



441 G St. N.W.
Washington, DC 20548

B-331535

November 7, 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: Exchange-Traded Funds*

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 "Exchange-Traded Funds" (RIN: 3235-AJ60). We received the rule on September 30, 2019. It was published in the *Federal Register* as a final rule on October 24, 2019. 84 Fed. Reg. 57162. The effective date of the rule is December 23, 2019.

According to the Commission, the final rule will permit exchange-traded funds (ETFs) that satisfy certain conditions to operate without the expense and delay of obtaining an exemptive order. In connection with the final rule, the Commission states that it will rescind certain exemptive relief that has been granted to ETFs and their sponsors. The rule also adopts certain disclosure amendments to Form N-1A and Form N-8B-2 to provide investors who purchase and sell ETF shares on the secondary market with additional information regarding ETF trading and associated costs, regardless of whether such ETFs are structured as registered open-end management investment companies (open-end funds) or unit investment trusts. Finally, the rule amends Form N-CEN. The final rule and form amendments are, according to the Commission, designed to create a consistent, transparent, and efficient regulatory framework for ETFs that are organized as open-end funds and to facilitate greater competition and innovation among ETFs. The Commission rule also makes technical amendments to Form N-CSR, Form N-1A, Form N-8B-2, Form N-PORT, and Regulation S-X.

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 Janet Temko-Blinder, Assistant General Counsel, at (202) 512-7104.

signed

Shirley A. Jones
Managing Associate General Counsel

Enclosure

cc: Vanessa Countryman
Secretary of the 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
“EXCHANGE-TRADED FUNDS”
(RIN: 3235-AJ60)

(i) Cost-benefit analysis

The Securities and Exchange Commission (the Commission) conducted an economic analysis of the final rule. This analysis discussed broad economic considerations the Commission considered relevant to this final rule. For example, the Commission discussed qualitative benefits of the rule, such as reducing the expense and delay of operating certain new exchange-traded funds (ETFs) by granting this exemptive relief as part of a rule rather than through the individual exemptive order process. The Commission also discussed quantitative benefits, such as eliminating the estimated annual cost (\$100,000) of filing for exemptive relief under the exemptive order process. The Commission also discussed the economic effects it expects the rule to have on conditions that may facilitate an effective arbitrage mechanism, other cost savings from the rule, intraday indicative value, and website disclosure provisions, among other things. The commission evaluated the impact of the rule on efficiency, competition, and capital formation. The Commission further discussed alternatives it considered to various aspects of the rule.

(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. The analysis included (1) a statement of the need for and objectives of the rule, (2) a description of the 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, 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 July 31, 2018, the Commission published a proposed rule. 83 Fed. Reg. 37332. The commission received more than 85 comments on the proposed rule. The Commission responded to comments in the final rule.

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

The Commission determined that this final rule contains information collection requirements under the Act, including revisions to existing information collection requirements and new information collection requirements. The Commission submitted these information collection requirements to the Office of Management and Budget (OMB) for review. The titles for the revised collections of information are: (1) "Form N-1A under the Securities Act of 1933 and under the Investment Company Act of 1940, Registration Statement for Open-End Management Companies" (OMB Control Number 3235-0307); (2) "Form N-8B-2 under the Investment Company Act of 1940, Registration Statement of Unit Investment Trusts Which are Currently Issuing Securities" (OMB Control Number 3235-0186); (3) "Form S-6 for registration under the Securities Act of 1933 of Unit Investment Trusts registered on Form N-8B-2" (OMB Control Number 3235-0184); (4) "Form N-CEN" (OMB Control Number 3235-0730); and (5) "Rule 0-2 under the Investment Company Act of 1940, General Requirements of Papers and Applications" (OMB Control Number 3235-0636). The title for the new information collection requirements is "Rule 6c-11 under the Investment Company Act of 1940, 'Exchange-traded funds.'" The Commission described its burden estimates for each of the information collection requirements in the final rule.

Statutory authorization for the rule

The Commission promulgated this final rule pursuant to sections 77c, 77f, 77g, 77h, 77j, 77s, 77z-2, 77z-3, 77aa(25), 77aa(26), 77nn(25), 77nn(26), 77sss, 78c, 78j-1, 78l, 78m, 78n, 70o-7 note, 78o(d), 78q, 78u-5, 78w, 78ll, 78mm, 80a-1 to 80a-64, 80b-3, 80b-11, 7202, 7262, of title 15, United States Code, and sections 102(c), 107 of Public Law 112-106, and section 939A of Public Law 111-203.

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.