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February 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: *Securities and Exchange Commission: Cross-Border Application of Certain Security-Based Swap Requirements*

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 "Cross-Border Application of Certain Security-Based Swap Requirements" (RIN: 3235-AM13). We received the rule on December 20, 2019. It was published in the *Federal Register* as final rules; guidance on February 4, 2020. 85 Fed. Reg. 6270. The effective date of the rule is April 6, 2020.

In this final rule the Commission is adopting rule amendments and providing guidance to address the cross-border application of certain security-based swap requirements (SBSR) under the Securities Exchange Act of 1934 ("Exchange Act") that were added by title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act"). The Commission also is issuing a statement regarding compliance with rules for security-based swap data repositories and Regulation SBSR. According to the Commission, the amendments finalize proposals that the Commission made to address issues regarding the cross-border application of title VII.

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 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
“CROSS-BORDER APPLICATION OF CERTAIN
SECURITY-BASED SWAP REQUIREMENTS”
(RIN: 3235-AM13)

(i) Cost-benefit analysis

The Securities and Exchange Commission (the Commission) conducted an economic analysis of this final rule. This analysis included the establishment of a baseline, the security-based swap market as it exists at the time of this final rule, against which the changes imposed by this final rule could be measured. The Commission discussed the available data from the security-based swap market, security-based swap market participants and dealing structures, market-facing and non-market-facing activities of dealing entities, security-based swap market activity, global regulatory efforts, other markets and existing regulatory frameworks, estimates of Rule 3a71-3, estimates of persons for which the Market Color Guidance may be relevant, statutory disqualification, certification, opinion of counsel, and employee questionnaires. The Commission estimated actual costs and benefits associated with the two amendments by examining registered entities, non-U.S. entities, and security-based swap participants. The Commission also discussed alternatives it considered.

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

The Commission certified that the 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 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 May 24, 2019, the Commission published a proposed rule. 84 Fed. Reg. 24206. The Commission received comments on a range of issues regarding the proposed rules and guidance. The Commission addressed the comments in this final rule.

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

The Commission determined that this final rule contains a new information collection requirements (ICRs) and a modified ICR under the Act and submitted both for the Office of Management and Budget (OMB) to review. The new ICR is entitled “Rule 3a71-3(d)—Conditional Exception from *De Minimis* Counting Requirement in Connection with Certain

Transactions Arranged, Negotiated, or Executed in the United States” (OMB Control Number 3235-0771). The ICR the Commission is proposing to modify is entitled “Rule 18a-5—Records to be made by certain security-based swap dealers and major security-based swap participants” (OMB Control Number 3235-0745). The Commission estimated the burden of each ICR.

Statutory authorization for the rule

The Commission promulgated this final rule pursuant to section 2(c)(2)(E) of title 7, various sections of title 15, and section 1350 of title 18, United States Code; in addition to section 939A of Public Law 111-203 and sections 503 and 602 of Public Law 112-106.

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.