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September 16, 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: *U.S. Securities and Exchange Commission: Temporary Amendments to Regulation Crowdfunding; Extension*

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 “Temporary Amendments to Regulation Crowdfunding; Extension” (Release No. 33-10829). We received the rule on August 31, 2020. It was published in the *Federal Register* as a temporary final rule; extension on September 2, 2020. 85 Fed. Reg. 54483. The amendments in this rule are effective from August 31, 2020, through September 1, 2021. This rule extends the effective date of temporary final rules published under *Temporary Amendments to Regulation Crowdfunding*, 85 Fed. Reg. 27116 (May 7, 2020), from March 1, 2021, to September 1, 2021.

According to the Commission, this temporary final rule extends the effective date and applicability dates of the Commission’s temporary final rules under Regulation Crowdfunding to facilitate capital formation for small businesses impacted by coronavirus disease 2019 (COVID-19). The Commission states the temporary final rule is intended to expedite the offering process for smaller, previously established companies directly or indirectly affected by COVID-19 that are seeking to meet their funding needs through the offer and sale of securities pursuant to Regulation Crowdfunding. The temporary final rule is designed to facilitate this offering process by providing tailored, conditional relief from certain requirements of Regulation Crowdfunding relating to the timing of the offering and the availability of financial statements required to be included in issuers’ offering materials while retaining appropriate investor protections.

The Congressional Review Act (CRA) 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 60-day delay in effective date can be waived, however, if the agency finds for good cause that delay is impracticable, unnecessary, or contrary to the public interest, and the agency incorporates a statement of the findings and its reasons in the rule

issued. 5 U.S.C. §§ 553(b)(3)(B), 808(2). Here, the Commission asserts that it found good cause to waive the 60-day delay in effective date and notice and comment procedures and incorporated a brief statement of reasons. Specifically, the Commission stated that the temporary nature of both the relief contemplated by the temporary final rule and the extension of such relief, as well as the significant, unprecedented, and immediate impact of COVID-19 on affected issuers would make notice and comment procedures impracticable, unnecessary, or contrary to the public interest. The Commission states that, in the current circumstances, a delay in implementation would substantially undermine the relief provided by the temporary rule and could exacerbate the existing challenges faced by many small businesses in urgent need of capital to continue their operations. Accordingly, the Commission chose to act immediately to extend the applicability and expiration dates of the temporary amendments to Regulation Crowdfunding rules.

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 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  
“TEMPORARY AMENDMENTS TO  
REGULATION CROWDFUNDING; EXTENSION”  
(RELEASE NO. 33-10829)

(i) Cost-benefit analysis

The U.S. Securities and Exchange Commission (Commission) stated that the amendments it adopted on May 4, 2020, in its temporary final rule, *Temporary Amendments to Regulation Crowdfunding*, 85 Fed. Reg. 27116 (May 7, 2020) (Temporary Amendments Rule), were in response to the unprecedented adverse impact of the coronavirus disease 2019 (COVID-19) crisis on small businesses. The Commission stated in light of ongoing adverse financing conditions for small businesses as a result of the COVID-19 crisis, it believes that the relief remains necessary and appropriate.

The Commission asserts that the general economic considerations related to the benefits, costs, and effects on efficiency, competition, and capital formation of the individual provisions discussed in the Temporary Amendments Rule, continue to apply. As stated by the Commission in the Temporary Amendments Rule the temporary amendments allow eligible issuers greater flexibility to access capital under Regulation Crowdfunding on an expedited basis, which facilitates capital formation for eligible users. The Commission also stated that relief from certain timing and information requirements would reduce barriers and increase efficiency for eligible issuers. Lastly, the Commission also stated in the Temporary Amendments Rule that it expects the aggregate economic effects of the temporary final rules to be modest relative to the economic effects of the 2015 Regulation Crowdfunding rules.

The Commission continues to believe that extending the temporary relief will avoid a loss of targeted relief from certain requirements of Regulation Crowdfunding and enable eligible issuers affected by the COVID-19 crisis to continue to avail themselves of a more flexible and efficient offering process. The Commission stated that extending the temporary relief also will prevent competitive disadvantages for issuers that initiate their offerings after the expiration of the existing temporary relief. Lastly, the Commission notes that, preliminary evidence from the period of the Temporary Amendments Rule's effectiveness indicates that a significant proportion of eligible issuers conducting offerings in reliance on Regulation Crowdfunding have relied on one or more provisions of the relief in their capital raising.

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

According to the Commission the temporary final rule does not require analysis under the Regulatory Flexibility Act. The Commission did not provide a Final Regulatory Flexibility Analysis because it found, for good cause, that notice and public comment were impractical, unnecessary, or contrary to the public interest, and the Commission states a Final Regulatory Flexibility Analysis is required only for rules required by the Administrative Procedure Act or other law to undergo notice and comment.

(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 stated that it found good cause to waive the 30-day delay in effective date and notice and comment procedures and incorporated a brief statement of reasons. Specifically, the Commission stated that the temporary nature of both the relief contemplated by the temporary final rule and the extension of such relief, as well as the significant, unprecedented, and immediate impact of COVID-19 on affected issuers would make notice and comment procedures impracticable, unnecessary, or contrary to the public interest. The Commission asserts that, in the current circumstances, a delay in implementation would substantially undermine the relief provided by the temporary rule and could exacerbate the existing challenges faced by many small businesses in urgent need of capital to continue their operations. Accordingly, the Commission chose to act immediately to extend the applicability and expiration dates of the Temporary Amendments Rule.

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

The Commission stated that this temporary final rule does not change the analysis of the information collection requirements in its Temporary Amendments Rule. The Commission stated that it expects that the Temporary Amendments Rule would result in a net decrease in compliance burden per form for Form C (OMB Control No. 3235-0307); however, because of a possible increase in the number of issuers relying on Regulation Crowdfunding, the Commission believes that the net change in paperwork burden will be minimal. Therefore, the Commission is not adjusting the burden or cost estimates associated with existing collections of information under Regulation Crowdfunding for purposes of the PRA in connection with the temporary final rule.

Statutory authorization for the rule

The Commission promulgated this temporary final rule; extension pursuant to sections 77c, 77d, 77d-1, 77f, 77g, 77h, 77j, 77s, 77z-2, 77z-3, 77sss, 78c, 78l, 78m, 78n, 78o, 78o-7 note, 78q, 78u-5, 78w, 78ll, 78mm, 80a-2, 80a-3, 80a-8, 80a-9, 80a-10, 80a-13, 80a-24, 80a-26, 80a-29, 80a-30, and 80a-37 of title 15, United States Code, and sections 107 and 301–305 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.