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B-332681

November 18, 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: Procedural Requirements and Resubmission Thresholds Under Exchange Act Rule 14a-8*

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 "Procedural Requirements and Resubmission Thresholds Under Exchange Act Rule 14a-8" (RIN: 3235-AM49). We received the rule on October 7, 2020. It was published in the *Federal Register* as a final rule on November 4, 2020. 85 Fed. Reg. 70240.

According to the Commission, the final rule amends certain requirements under its shareholder-proposal rule. In particular, the Commission states this final rule amends the current ownership requirements to incorporate a tiered approach that provides three options for demonstrating a sufficient ownership stake in a company—through a combination of amount of securities owned and length of time held—to be eligible to submit a proposal; requires certain documentation to be provided when a proposal is submitted on behalf of a shareholder-proponent; requires shareholder-proponents to identify specific dates and times they can meet with the company in person or via teleconference to engage with the company with respect to the proposal; and provides that a person may submit no more than one proposal, directly or indirectly, for the same shareholders' meeting. The Commission further stated the final rule also revises the levels of shareholder support a proposal must receive to be eligible for resubmission at the same company's future shareholders' meetings from 3, 6, and 10 percent to 5, 15, and 25 percent, respectively.

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.

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
“PROCEDURAL REQUIREMENTS AND RESUBMISSION THRESHOLDS
UNDER EXCHANGE ACT RULE 14A-8”
(RIN: 3235-AM49)

(i) Cost-benefit analysis

The Securities and Exchange Commission (Commission) summarized the costs and benefits of the final rule. The Commission stated companies will likely experience cost savings because they will be able to exclude more proposals. The Commission further stated the final rule may encourage more direct communication between the proponent and the company. Also according to the Commission, the final rule may improve U.S. firms’ competitive position relative to foreign firms, because foreign firms are not subject to the federal proxy rules. The Commission also stated, non-proponent shareholders may benefit from the decrease in the number of proposals because they may commit fewer resources to reviewing and voting on shareholder proposals.

The Commission acknowledged that companies may incur one-time costs to amend their policies and procedures in light of the final rule. According to the Commission, the final rule may impose costs on proponents of shareholder proposals because a currently eligible proponent may either have to invest additional funds to immediately submit a proposal or may have to wait to submit a shareholder proposal and thus forgo the potential benefits associated with the immediate inclusion of the proposal in a company’s proxy statement at the expense of other shareholders and the company.

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

The Commission included a Final Regulatory Flexibility Analysis in the final rule. The analysis included: (1) a statement of the need for, and objectives of, the final rule; (2) a description of significant issues raised by the public comments; (3) a description of small entities subject to the final rule; (4) projected reporting, recordkeeping, and other compliance requirements; and (5) a statement of agency action to minimize the effect 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 Commission, 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 published a proposed rule on November 5, 2019. 84 Fed. Reg. 66458. The Commission received comments on the proposed rule and addressed the comments in the final rule.

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

The Commission determined the final rule contains information collection requirements (ICRs) subject to the PRA. The ICR is entitled “Regulation 14A (Commission Rules 14a–1 through 14a–21 and Schedule 14A)” (Office of Management and Budget Control Number 3235–0059). The Commission estimated the ICRs would have an aggregate burden of 524,749 hours at a cost of \$69,966,412.

Statutory authorization for the rule

The Commission promulgated the final rule pursuant to section 2 of title 7; section 5221 of title 12; sections 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78c–3, 78c–5, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78l, 78m, 78n, 78n–1, 78o, 78o–4, 78o–10, 78p, 78q, 78q–1, 78s, 78u–5, 78w, 78x, 78dd, 78ll, 78mm, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, and 7201 *et seq.*, and 8302 of title 15; and section 1350 of title 18, United States Code; section 939A of Public Law 111–203; and sections 503 and 602 of Public Law 112–106.

Executive Order No. 12866 (Regulatory Planning and Review)

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

Executive Order No. 13132 (Federalism)

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