B-332744

November 25, 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: Fund of Funds Arrangements*

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 "Fund of Funds Arrangements" (RIN: 3235-AM29). We received the rule on November 19, 2020. It was published in the *Federal Register* as a final rule on November 19, 2020. 85 Fed. Reg. 73924. The effective date of the rule is January 19, 2021.

According to the Commission, the final rule streamlines and enhances the regulatory framework applicable to funds that invest in other funds. The Commission stated it is adopting a new rule under the Investment Company Act, 15 U.S.C. § 80a-1 *et seq.* The Commission also stated it is rescinding rule 12d1-2 and certain exemptive relief, and is adopting related amendments to rule 12d1-1 and to Form N–CEN.

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 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
"FUND OF FUNDS ARRANGEMENTS"
(RIN: 3235-AM29)

(i) Cost-benefit analysis

The Securities and Exchange Commission (the Commission) estimated the final rule will expand funds' investment flexibility by expanding the scope of permissible acquiring and acquired funds relative to the current exemptive orders. The Commission further estimated the final rule will expand funds' investment flexibility and, more specifically, their ability to create multi-tier structures. The Commission also stated the rule will permit an acquired fund to invest up to 10 percent of its assets in other funds, regardless of the size of the investment in any one fund, the affiliation with the acquired fund, or the purpose of the investment. The Commission further stated the final rule will permit prospective acquiring funds to acquire the securities of other funds and will permit prospective acquired funds to sell their shares to acquiring funds without the expense and delay of obtaining an exemptive order, subject to certain conditions. The Commission also stated the final rule will remove the delay incurred by funds and their sponsors when applying for an exemptive order and will remove the uncertainty associated with the exemptive order process. The Commission stated the final rule is designed to limit the acquiring funds' undue influence over the acquired funds, limit duplicative fees for acquiring fund investors, limit the creation of complex fund structures, and ultimately encourage effective oversight of fund of funds structures.

The Commission also stated the final rule will decrease certain funds' investment flexibility by restricting their ability to create certain multi-tier structures, and thus may require certain acquiring funds to change their investments in acquired funds over time compared to the baseline.

(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 contained: (1) a statement of need for and objectives of the rule and form amendments; (2) a description of the significant issues raised by public comments; (3) a description of small entities subject to the rule; (4) the projected board reporting, recordkeeping, and other compliance requirements; and (5) a statement of agency action to minimize 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 agency, the Commission is not subject to the Act.

<u>(iv) Other relevant information or requirements under acts and executive orders</u>

Administrative Procedure Act, 5 U.S.C. §§ 551 *et seq.*

On February 1, 2019, the Commission published a proposed rule. 84 Fed. Reg. 1286. The Commission stated it received more than 100 comments to the proposed rule. The Commission addressed the comments in the final rule.

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

The Commission determined the final rule contained information collection requirements (ICRs) subject to the Act. The final rule creates a new ICR entitled "Rule 12d1–4 Under the Investment Company Act of 1940, Fund of Funds Arrangements." The Commission also determined the final rule impacts two existing ICRs entitled "Rule 0–2 under the Investment Company Act of 1940, General Requirements of Papers and Applications" (Office of Management and Budget (OMB) Control Number 3235–0636); and "Form N–CEN" (OMB Control Number 3235–0730). The Commission stated it is submitting the ICRs to OMB for review. The Commission estimated the changes to the burden and costs for the ICRs in the final rule.

Statutory authorization for the rule

The Commission promulgated the final rule pursuant to sections 77f, 77g, 77h, 77j, 77s, 78c, 78*l,* 78m, 78n, 78o, 80a–1 *et seq.* of title 15, United States Code and section 939A of Public Law 111–203.

Executive Order No. 12866 (Regulatory Planning and Review)

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

Executive Order No. 13132 (Federalism)

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