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December 8, 2020

The Honorable Michael 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: Securities Offering Reform for Closed-End Investment Companies*

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 “Securities Offering Reform for Closed-End Investment Companies” (RIN: 3235-AM31). We received the rule on April 15, 2020. It was published in the *Federal Register* as a final rule on June 1, 2020.¹ 85 Fed. Reg. 33290. The rule has a stated effective date of August 1, 2020, with certain amendatory instructions (21, 22, 30, 31, 33, 34, 41, 42, and 45) to be effective on August 1, 2021.

According to the Commission, this final rule implements section 803(b) of the Small Business Credit Availability Act and section 509(a) of the Economic Growth, Regulatory Relief, and Consumer Protection Act. 15 U.S.C. §§ 80a-51 note, 1601 note. The Commission states the rule modifies the registration, communications, and offering processes for business development companies (BDCs) and other registered closed-end investment companies (CEF) under the Securities Act of 1933. 15 U.S.C. §§ 77a-77mm. According to the Commission, the rule will extend to closed-end investment companies offering reforms currently available to operating company issuers by expanding the definition of “well-known seasoned issuer” to allow these investment companies to qualify; streamlining the registration process for these investment companies, including the process for shelf registration; permitting these investment companies to satisfy their final prospectus delivery requirements by filing the prospectus with the Commission; and permitting additional communications by and about these investment

¹ The due date for this major rule report was June 16, 2020. Due to a processing error on our part, we did not determine that the rule had been published in the *Federal Register* until after this date, which delayed our issuance of this report.

companies during a registered public offering. In addition, the Commission states the rule amends certain rules and forms to tailor the disclosure and regulatory framework to these investment companies. According to the Commission, these amendments also will modernize its approach to securities registration fee payment by requiring closed-end investment companies that operate as “interval funds” to pay securities registration fees using the same method as mutual funds and exchange-traded funds and extend the ability to use this payment method to issuers of certain continuously offered, exchange-traded products. Additionally, the Commission states it is expanding the ability of certain registered closed-end funds or BDCs that conduct continuous offerings to make changes to their registration statements on an immediately effective basis or on an automatically effective basis a set period of time after filing. Lastly, the Commission states it is adopting certain structured data reporting requirements, including for filings on the form providing annual notice of securities sold pursuant to the rule under the Investment Company Act of 1940 that prescribes the method by which certain investment companies (including mutual funds) calculate and pay registration fees. 15 U.S.C. §§ 80a-1–80a-64.

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 cursive script that reads "Shirley A. Jones".

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
“SECURITIES OFFERING REFORM FOR
CLOSED-END INVESTMENT COMPANIES”
(RIN: 3235-AM31)

(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 of the current set of legal requirements and market practices against which potential economic effects of the changes imposed by this final rule could be measured for the affected business development companies (BDC) and registered closed-end investment companies (CEF). The analysis included potential benefits resulting from the proposed implementation of the statutory mandates, which include improved access to capital and lower cost of capital and facilitated communication with investors. The analysis also included a discussion of potential costs resulting from the proposed implementation of the statutory mandates that include compliance costs, such as the cost of complying with the notice requirement of rule 173, as well as other costs, including increased analytical burden and search costs, and potential legal costs. The Commission also discussed alternatives to the adopted approach to implementing the statutory mandates in terms of potential inefficiencies and unnecessary competitive disparities that could result from alternative approaches. The economic analysis also included a discussion of each of the discretionary amendments the Commission is adopting in light of the changes made to implement the statutory mandates and associated benefits and costs of those choices. The Commission states it tried to quantify the impact of each of the amendments, but in many cases, reliable, empirical evidence about the effects was not readily available to the Commission.

(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 significant issues raised by public comments; (3) a description of the small entities subject to the rule; (4) a discussion of projected reporting, recordkeeping, and other compliance requirements; and (5) a description of agency actions 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.

(iv) Other relevant information or requirements under acts and executive orders

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

On March 20, 2019, the Commission published a proposed rule. 84 Fed. Reg. 14448. The Commission received comments on the proposed rule and responded to the comments in the final rule.

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

The Commission determined that the final rule contains information collection requirements (ICRs) under the Act. The Commission stated it is submitting the ICRs to the Office of Management and Budget (OMB) for review. The ICRs are associated with Form N-2 (OMB Control No. 3235-0026), Investment Company Interactive Data (OMB Control No. 3235-0642), Rule 30e-1 (OMB Control No. 3235-0025), Form 10-K (OMB Control No. 3235-0063), family of rules under section 8(b) of the Investment Company Act of 1940 (OMB Control No. 3235-0176), Rule 163 (OMB Control No. 3235-0619), Rule 433 (OMB Control No. 3235-0617), Rule 173 (OMB Control No. 3235-0618), Form 24F-2 (OMB Control No. 3235-0456), Form S-1 (OMB Control No. 3235-0065), Form S-3 (OMB Control No. 3235-0073), Form N-14 (OMB Control No. 3235-0336), Form F-1 (OMB Control No. 3235-0258), and Form F-3 (OMB Control No. 3235-0256). The Commission estimated the burden of each ICR.

Statutory authorization for the rule

The Commission promulgated this final rule pursuant to sections 6, 7, 8, 10, 19, and 28 of the Securities Act of 1933; sections 3, 4, 10, 12, 13, 14, 15, 17, 23, 35A, and 36 of the Securities Exchange Act of 1934; sections 6, 8, 20, 23, 24, 30, 31, and 38 of the Investment Company Act of 1940; section 803(b) of the Small Business Credit Availability Act of 2018; and section 509(a) of the Economic Growth, Regulatory Relief, and Consumer Protection Act of 2018. 15 U.S.C. §§ 77a *et seq.*; 78a *et seq.*; 80a-1 *et seq.*; Pub. L. 115-141, 132 Stat. 348 (Mar. 23, 2018); Pub. L. 115-174, 132 Stat. 1296 (May 24, 2018).

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.