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March 3, 2021

The Honorable Sherrod Brown  
Chairman  
The Honorable Patrick J. Toomey  
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: Custody of Digital Asset Securities by Special Purpose Broker-Dealers*

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 "Custody of Digital Asset Securities by Special Purpose Broker-Dealers" (File No. S7-25-20). We received the rule on December 23, 2020. It was published in the *Federal Register* as a "Commission statement; request for comment" on February 26, 2021. 86 Fed. Reg. 11627. The final rule has an effective date of April 27, 2021.

According to the Commission, the final rule sets forth the Commission's position, which will expire after a period of 5 years from the publication date of the final rule, that a broker-dealer operating under the circumstances in the final rule will not be subject to a Commission enforcement action on the basis that the broker-dealer deems itself to have obtained and maintained physical possession or control of customer fully paid and excess margin digital asset securities for the purposes of paragraph (b)(1) of the Commission's Rule 15c3-3, 17 C.F.R. § 240.15c3-3. The final rule outlines steps broker-dealers should take to come within the Commission's position.

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  
“CUSTODY OF DIGITAL ASSET SECURITIES BY  
SPECIAL PURPOSE BROKER-DEALERS”  
(FILE NO. S7-25-20)

(i) Cost-benefit analysis

In its submission to us, the Securities and Exchange Commission (Commission) indicated that it considered the preparation of an analysis of the costs and benefits of the final rule to be not applicable.

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

In its submission to us, the Commission determined the final rule was not subject to the requirements of RFA because the final rule was not subject to notice and comment procedures.

(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 requirements of the Act.

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

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

In its submission to us, the Commission determined the final rule was not subject to notice and comment procedures under the Act, because, according to the Commission, notice and comment is not required for interpretive rules, general statements of policy, or rules of agency organization, procedure, or practice.

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

In its submission to us, the Commission indicated that it considered the requirements of PRA to be not applicable.

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; as well as various sections of Public Laws 111-203 and 112-106.

Executive Order No. 12866 (Regulatory Planning and Review)

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

Executive Order No. 13132 (Federalism)

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