

441 G St. N.W.
Washington, DC 20548

B-333058

March 12, 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: Investment Adviser Marketing*

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 "Investment Adviser Marketing" (RIN: 3235-AM08). We received the rule on December 22, 2020. It was published in the *Federal Register* as a final rule on March 5, 2021. 86 Fed. Reg. 13024. The effective date is May 4, 2021.

According to the Commission, this final rule updates rules that govern investment adviser marketing. Specifically, the Commission stated that the rule will create a merged rule that will replace both the current advertising and cash solicitation rules, reflecting market developments and regulatory changes. In addition, the Commission stated that it is adopting amendments to Form ADV to provide the Commission with additional information about advisers' marketing practices, and to the books and records rule under the Investment Advisers Act of 1940, 15 U.S.C. §§ 80b-1 *et seq.*

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

ENCLOSURE

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
SECURITIES AND EXCHANGE COMMISSION
ENTITLED
“INVESTMENT ADVISER MARKETING”
(RIN: 3235-AM08)

(i) Cost-benefit analysis

The Securities and Exchange Commission (Commission) conducted an economic analysis of this final rule. In the analysis, the Commission discussed the rule's costs and benefits; implications for efficiency, competition, and capital formation; and reasonable alternatives.

(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 discussion of the (1) reasons for and objectives of the final amendments; (2) significant issues raised by public comments; (3) legal basis; (4) small entities subject to the rule and rule amendments; (5) projected reporting, recordkeeping and other compliance requirements; (6) duplicative, overlapping, or conflicting federal rules; and (7) significant alternatives.

(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.*

On December 10, 2019, the Commission published a proposed rule. 84 Fed. Reg. 67518. The Commission received more than 90 comment letters on the proposal, and also received feedback flyers from individual investors on investment adviser marketing and from smaller advisers on the proposal's effects on small entities. The Commission responded to comments in this final rule.

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

The Commission determined that this final rule will result in new collection of information requirements under PRA. The Commission stated that the rule will impact the current collection of information burdens of rule 204-2 under the Investment Advisers Act of 1940, 15 U.S.C. §§ 80b-1 *et seq.*, and Form ADV. The Commission stated that the title of the new collection of information is “Rule 206(4)-1 under the Investment Advisers Act” and that the Office of Management and Budget (OMB) has not yet assigned a control number. The Commission further stated that the titles for the existing collections of information that are being amended are: “Rule 206(4)-3 under the Investment Advisers Act of 1940 (17 C.F.R. § 275.206(4)-3)” (OMB Control Number 3235-0242); “Rule 204-2 under the Investment Advisers Act of 1940”

(OMB Control Number 3235-0278); and “Form ADV” (OMB Control Number 3235-0049). The Commission noted that it is submitting these collections of information to OMB for review.

With respect to rule 206(4)-1, the Commission estimated the total annual hour burden for investment advisers registered or required to be registered with the Commission to prepare testimonials and endorsements, third-party ratings, and performance results disclosures to be 1,414,291 hours, at a time cost of \$468,287,816, with the total external burden costs being \$4,460,200. With respect to rule 206(4)-3 (OMB Control Number 3235-0242), the Commission stated that there will no longer be a collection of information burden because it is rescinding this rule. With respect to rule 204-2 (OMB Control Number 3235-0278), the Commission estimated an aggregate increase in the collection of information burden estimate by 18.44 hours for each of the estimated 13,724 registered advisers, resulting in a total of 201.44 hours per adviser, which would yield an annual estimated aggregate burden of 2,764,563 hours for all registered advisers, for a monetized cost of \$175,980,426. According to the Commission, this represents an increase of 329,199 annual aggregate hours in the hour burden and an annual increase of \$21,675,762 from the currently approved total aggregate monetized cost. With respect to Form ADV (OMB Control Number 3235-0049), the Commission estimated the final aggregate burden hours for all advisers to be 544,053.4 hours, at a final aggregate monetized cost of \$148,526,578.

Statutory authorization for the rule

The Commission promulgated this final rule pursuant to various sections of title 15 of the United States Code.

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.