

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

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May 4, 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: Market Data Infrastructure*

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 “Market Data Infrastructure” (RIN: 3235-AM61).¹ We received the rule on December 10, 2020. It was published in the *Federal Register* as a final rule on April 9, 2021. 86 Fed. Reg. 18596. The effective date is June 8, 2021.

According to the Commission, the final rule modernizes the national market system for the collection, consolidation, and dissemination of information with respect to quotations for and transactions in national market system (NMS) stocks (NMS information). Specifically, the Commission is expanding the content of NMS information that is required to be collected, consolidated, and disseminated as part of the NMS under Regulation NMS and is amending the method by which such NMS information is collected, calculated, and disseminated by fostering a competitive environment for the dissemination of NMS information via a decentralized consolidation model with competing consolidators.

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

¹ The due date for this major rule report was April 26, 2021. Due to a processing error on our part, we are delayed in our issuance of this report.

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 black ink that reads "Shirley A. Jones". The signature is written in a cursive style with a large initial 'S' and 'J'.

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
“MARKET DATA INFRASTRUCTURE”
(RIN: 3235-AM61)

(i) Cost-benefit analysis

The Securities and Exchange Commission (Commission) stated the final rule will have the benefit of mitigating the influence of existing conflicts of interest inherent in the existing exclusive securities information processor model. The change reduces the divergence between exchanges' proprietary depth-of-book products and current SIP data because it establishes data elements that competing consolidators can include in their consolidated market data products. The Commission further stated the final rule would have impacts on barriers to entry and fees consolidated competitors charge.

The Commission also stated that the information contained in Form CC and the resulting transparency will help market participants make better-informed decisions about which competing consolidator to subscribe to in order to achieve their trading or investment objectives. Additionally, the Commission stated that the process for the Commission to declare an initial Form CC ineffective will improve the quality of information the Commission receives from competing consolidators, which will allow the Commission to better protect investors from potentially incomprehensible or incomplete disclosures that would misinform market participants about the operations and services of a competing consolidator.

The Commission also stated the final rule would have a number of economic effects that are only possible as a result of a combination of the expanded content of core data and latency reductions due to the introduction of the decentralized consolidation model. Specifically, the Commission stated that the combination of these factors would affect proprietary data feed business; market participants who choose to engage in market making, smart order routing, and other latency sensitive trading businesses; the Consolidated Audit Trail; and data vendor business.

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

The Commission certified the final rule would not have a significant economic impact on a substantial number of 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 24, 2020, the Commission published a proposed rule. 85 Fed. Reg. 16726. The Commission received several comments on the proposed rule and addressed them 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 Commission stated the ICR will be titled “Market Data Infrastructure and Form CC” and that it applied to the Office of Management and Budget for a control number. The Commission estimated the burdens of the final rule in the ICR.

Statutory authorization for the rule

The Commission promulgated the final rule pursuant to section 2 of title 7; section 5221 and 5461 *et seq.* of title 12; sections 77c, 77d, 77g, 77j, 77q, 77s, 77z-2, 77z-3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78a *et seq.*, 78b, 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-1, 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; section 1350 of title 18, United States Code, as well as Public Laws 111-203, 112-106, and 114-94.

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.