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United States Government Accountability Office
Washington, DC 20548

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March 24, 2010

The Honorable Christopher J. Dodd
Chairman
The Honorable Richard C. Shelby
Ranking Minority Member
Committee on Banking, Housing, and Urban Affairs
United States Senate

The Honorable Barney Frank
Chairman
The Honorable Spencer Bachus
Ranking Minority Member
Committee on Financial Services
House of Representatives

Subject: *Securities and Exchange Commission: Amendments to Regulation SHO*

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 “Amendments to Regulation SHO” (RIN: 3235-AK35). We received the rule on March 1, 2010. It was published in the *Federal Register* as a final rule on March 10, 2010. 75 Fed. Reg. 11,232. The rule has a stated effective date of May 10, 2010, and a compliance date of November 10, 2010.

The final rule establishes a short sale-related circuit breaker that, if triggered, would impose a restriction on the prices at which securities may be sold short (“short sale price test” or “short sale price test restriction”). Specifically, this rule requires that a trading center establish, maintain, and enforce written policies and procedures reasonably designed to prevent the execution or display of a short sale order of a covered security at a price that is less than or equal to the current national best bid if the price of that covered security decreases by 10 percent or more from the covered security’s closing price as determined by the listing market for the covered security as of the end of regular trading hours on the prior day. In addition, this rule requires that the trading center establish, maintain, and enforce written policies and procedures reasonably designed to impose this short sale price test restriction for the remainder of the day and the following day when a national best bid for the covered security is calculated and disseminated on a current and continuing basis by

a plan processor pursuant to an effective national market system plan. This rule also provides that a broker-dealer may mark certain qualifying sell orders “short exempt.”

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. Our review of the procedural steps taken indicates that the Commission complied with the applicable requirements.

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 Shirley A. Jones, Assistant General Counsel, at (202) 512-8156.

signed

Robert C. Cramer
Managing Associate General Counsel

Enclosure

cc: Elizabeth M. Murphy
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
“AMENDMENTS TO REGULATION SHO”
(RIN: 3235-AK35)

(i) Cost-benefit analysis

The Securities and Exchange Commission (the Commission) evaluated the costs and benefits of this final rule. The Commission identified various benefits of this rule, including promoting capital formation and restoring investor confidence in the securities market. The Commission believes that this rule’s approach strikes the appropriate balance between preventing short selling—including potentially manipulative or abusive short selling—from being used as a tool to exacerbate a declining market in a security and the continued smooth functioning of the markets, including the provision of liquidity and price efficiency. The Commission believes that the rule will have minimal, if any, impact on market liquidity, price efficiency, and quote depths.

The Commission estimates that this rule will have an average one-time initial cost of \$86,880 per self regulating organization (SRO) trading center and \$68,381 per non-SRO trading center required to establish the written policies and procedures under this rule. The Commission also estimates an average annual on-going cost of \$18,588 per trading center to ensure that the written policies and procedures are up-to-date and remain in compliance. In addition, the Commission estimates an average annual cost of \$102,768 per trading center for on-going monitoring for and enforcement of trading in compliance with the rule. The Commission also estimates that this rule will have an average one-time initial cost of \$68,381 per broker-dealer establishing the written policies and procedures under the rule. The Commission estimates an average annual on-going cost of \$18,588 per broker-dealer to ensure that written policies and procedures are up-to-date and remain in compliance. In addition, the Commission estimates an average annual cost of \$102,768 per broker-dealer for on-going monitoring for and enforcement of trading.

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

The Commission prepared a Final Regulatory Flexibility Analysis under the Act. The analysis included discussions of the need for and objectives of the rule; significant issues raised by public comment; small entities affected by the rule; projected reporting, recordkeeping, and other compliance requirements; and 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 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 April 8, 2009, the Commission published a proposed rule. 74 Fed. Reg. 18,042. In response to the proposal, the Commission received 4,300 unique comment letters, to which the Commission responded in the final rule.

Paperwork Reduction Act, 44 U.S.C. §§ 3501–3520

The Commission determined that this final rule contains information collection requirements under the Act, which it submitted to the Office of Management and Budget (OMB) for review. The title for this information collection requirement is “Rules 201 and 200(g)” and its OMB Control Number is 3235-0651.

Statutory authorization for the rule

The Commission promulgated this final rule under the authority of sections 78b, 78c, 78f, 78i, 78j, 78k-1, 78o, 78o-3, 78q, 78s, 78w, and 78mm of title 15, United States Code.

Securities Exchange Act of 1934, 15 U.S.C. §§ 78c(f), 78w(a)

The Securities Exchange Act of 1934 requires the Commission to determine whether a rulemaking will promote efficiency, competition, and capital formation. The Commission determined that any burden imposed by this rule on competition is necessary or appropriate. The Commission determined that this rule will add depth and liquidity to the markets and promote capital formation. The Commission also expects this rule to have a minimal impact on price efficiency.