



United States Government Accountability Office
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July 28, 2011

The Honorable Tim Johnson
Chairman
The Honorable Richard C. Shelby
Ranking Member
Committee on Banking, Housing, and Urban Affairs
United States Senate

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

Subject: *Securities and Exchange Commission: Rules Implementing Amendments to the Investment Advisers Act of 1940*

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 “Rules Implementing Amendments to the Investment Advisers Act of 1940” (RIN: 3235-AK82). We received the rule on June 24, 2011. It was published in the *Federal Register* as a final rule on July 19, 2011. 76 Fed. Reg. 42,950.

The final rule and rule amendments are adopted under the Investment Advisers Act of 1940 (Advisers Act) to implement provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). These rules and rule amendments are designed to give effect to provisions of Title IV of the Dodd-Frank Act that, among other things, increase the statutory threshold for registration by investment advisers with the Commission, require advisers to hedge funds and other private funds to register with the Commission, and require reporting by certain investment advisers that are exempt from registration. In addition, the rule amendments, including amendments to the Commission’s pay to play rule, address a number of other changes made by the Dodd-Frank Act.

The effective date of 17 C.F.R. § 275.203A–5(a) and the amendment to 17 C.F.R. § 275.203–1 is July 21, 2011. The effective date of 17 C.F.R. § 275.204–4 and

275.203A–5(b) and (c), amendments to 17 C.F.R. §§ 275.0–7, 275.203A–1, 275.203A–2, 275.203A–3, 275.204–1, 275.204–2, 275.206(4)–5, 275.222–1, and 275.222–2, and amendments to Forms ADV, ADV–E, ADV–H, and ADV–NR (referenced in 17 C.F.R. § 279) is September 19, 2011. The provisions in 17 C.F.R. §§ 275.202(a)(11)–1, 275.203(b)(3)–1, 275.203(b)(3)–2, and 275.203A–4 are removed effective September 19, 2011.

The Congressional Review Act (CRA) requires a 60-day delay in the effective date of a major rule from the date of publication in the *Federal Register* or receipt of the rule by Congress, whichever is later. 5 U.S.C. § 801(a)(3)(A). We received the rule on June 24, 2011, but it was not published in the *Federal Register* until July 19, 2011. Therefore, with respect to those provisions that are effective July 21, 2011, the rule does not have the required 60-day delay in effective date under the CRA. However, notwithstanding the 60-day delay requirement, any rule that an agency for good cause finds notice and public comment procedures are impractical, unnecessary, or contrary to the public interest is to take effect when the promulgating agency so determines. 5 U.S.C. § 808(2). Although the Commission had a notice and comment period, it found good cause to make rules 203A–5(a) and 203–1(e) effective on July 21, 2011.

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 J. Cramer
Managing Associate General Counsel

Enclosure

cc: Elizabeth M. Murphy
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
"RULES IMPLEMENTING AMENDMENTS
TO THE INVESTMENT ADVISERS ACT OF 1940"
(RIN: 3235-AK82)

(i) Cost-benefit analysis

The Commission states that it is sensitive to the costs and benefits imposed by its rules and understands that there will be costs associated with compliance with the new rules and rule amendments. According to the Commission, because many of the new rules and rule amendments will implement or clarify provisions of the Dodd-Frank Act, they will not create benefits and costs separate from the benefits and costs considered by Congress in passing the Dodd-Frank Act. However, the Commission notes that certain of the rules and rule amendments will generate costs and benefits independent of those generated by the Dodd-Frank Act itself and those costs and benefits were fully discussed in the rule.

(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, in accordance with section 4(a) of the Regulatory Flexibility Act. In developing these new rules and rule amendments, the Commission considered their potential impact on small entities to which they will apply. According to the Commission, the rules and rule amendments will affect all advisers registered with the Commission and exempt reporting advisers, including small entities, but will not affect most advisers that are small entities because they are generally registered with one or more state securities authorities and not with the commission.

(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 title II of the Unfunded Mandates Reform Act of 1995.

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

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

The final regulations were issued using the notice and comment procedures found at 5 U.S.C. § 553. On December 10, 2010, the Commission published an Implementing Proposing Release entitled, “Rules Implementing Amendments to the Investment Advisers Act of 1940.” 75 Fed. Reg. 77,052. The Commission received more than 70 comment letters on its proposals, most of which were from advisers, trade or professional organizations, and law firms.

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

Certain provisions of the rules and rule amendments that the Commission is adopting contain “collection of information” requirements within the meaning of the PRA. In the Implementing Proposing Release, the Commission solicited comment on the proposed collection of information requirements. The Commission also submitted the proposed collections of information to the Office of Management and Budget (OMB) for review in accordance with 44 U.S.C. § 3507 and 5 C.F.R. § 1320.11.

Statutory authorization for the rule

The Commission is removing rules pursuant to the authority set forth in the Advisers Act. 15 U.S.C. § 80b-1, et seq.

The Commission is adopting new rules pursuant to the authority set forth in the Advisers Act; the Advisers Act, as amended by the Dodd-Frank Act (12 U.S.C. § 5301, et seq.); the Securities Act of 1933 (15 U.S.C. § 77a, et seq.); the Securities Exchange Act of 1934 (15 U.S.C. § 78a, et seq.); the Trust Indenture Act of 1939 (15 U.S.C. § 77aaa, et seq.); and the Investment Company Act of 1940 (15 U.S.C. § 80a-1, et seq.).

Executive Order No. 12,866 (Regulatory Planning and Review)

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

Executive Order No. 13,132 (Federalism)

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