



United States Government Accountability Office
Washington, DC 20548

B-323770

August 10, 2012

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: Consolidated Audit Trail*

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 “Consolidated Audit Trail” (RIN: 3235-AK51). We received the rule on July 19, 2012. It was published in the *Federal Register* as a final rule on August 1, 2012. 77 Fed. Reg. 45,722.

The final rule requires national securities exchanges and national securities associations (“self-regulatory organizations” or “SROs”) to submit a national market system (“NMS”) plan to create, implement, and maintain a consolidated order tracking system, or consolidated audit trail, with respect to the trading of NMS securities, that would capture customer and order event information for orders in NMS securities, across all markets, from the time of order inception through routing, cancellation, modification, or execution.

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

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
SECURITIES AND EXCHANGE COMMISSION
ENTITLED
"CONSOLIDATED AUDIT TRAIL"
(RIN: 3235-AK51)

(i) Cost-benefit analysis

The Commission included in the final rule estimates of the costs to prepare and file the national market system (NMS) plans. The Commission estimates that the aggregate one-time cost for creating and filing an NMS plan would be approximately \$718,000 per self-regulatory organization (SRO), or approximately \$12.2 million in the aggregate. The Commission described the benefits of the final rule as the following: improved market surveillance and investigations, improved analysis and reconstruction of broad-based market events and improved market analysis. The Commission stated that the final rule also has the potential to result in a reduction in disparate reporting requirements and data requests.

The Commission also considered the action will promote efficiency, competition, and capital formation as required by section 3(f) of the Securities Exchange Act of 1934, as amended. The Commission determined that the final rule will have minimal, if any, impact on efficiency, competition, and capital formation.

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

The Commission certified that the final rule will 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 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 Commission published a notice of proposed rulemaking in the *Federal Register* on June 8, 2010. 75 Fed. Reg. 32,556. The Commission received 64 comment

letters from 56 commenters, and the Commission responded to the comments in the final rule. 76 Fed. Reg. 45,722.

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

The final rule contains information collection requirements under the Paperwork Reduction Act. The Commission submitted the requirements to the Office of Management and Budget (OMB) for review, and received OMB Control Number 3235-0671 for the collection of information entitled "Creation of a Consolidated Audit Trail Pursuant to Section 11A of the Securities Exchange Act of 1934 and Rules thereunder." The Commission estimates that the aggregate one-time burden hour amount for preparing and filing an NMS plan would be approximately 2,760 burden hours, with \$20,000 in external costs per SRO, or approximately 46,920 burden hours and \$340,000 in external costs in the aggregate.

Statutory authorization for the rule

The final rule is authorized by sections 2, 3(b), 5, 6, 11A, 15, 15A, 17(a) and (b), 19, and 23(a) of the Securities Exchange Act of 1934, as codified at 15 U.S.C. §§ 78b, 78c(b), 78e, 78f, 78k-1, 78o, 78o-3, 78q(a) and (b), 78s, and 78w(a).

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.