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February 3, 2016

The Honorable Richard Shelby
Chairman
The Honorable Sherrod Brown
Ranking Member
Committee on Banking, Housing, and Urban Affairs
United States Senate

The Honorable Jeb Hensarling
Chairman
The Honorable Maxine Waters
Ranking Member
Committee on Financial Services
House of Representatives

Subject: *Securities and Exchange Commission: Simplification of Disclosure Requirements for Emerging Growth Companies and Forward Incorporation by Reference on Form S-1 for Smaller Reporting Companies*

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 "Simplification of Disclosure Requirements for Emerging Growth Companies and Forward Incorporation by Reference on Form S-1 for Smaller Reporting Companies" (RIN: 3235-AL88). We received the rule on January 14, 2016. It was published in the *Federal Register* as an interim final rule; request for comment on January 19, 2016. 81 Fed. Reg. 2743.

The interim final rule implements the amendments to the Commission's rules and forms required by sections 71003 and 84001 of the Fixing America's Surface Transportation Act.¹ According to the Commission, these provisions require it to revise Forms S-1 and F-1 to permit emerging growth companies to omit financial information for certain historical periods and revise Form S-1 to permit forward incorporation by reference for smaller reporting companies.

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). This interim final rule has a stated effective date of January 19, 2016. It was received on January 15, 2016, and was published in the *Federal Register* on January 19, 2016. 162 Cong. Rec. S158 (Jan. 21, 2016); 81 Fed. Reg. 2743. Therefore, the interim final rule does not have the required 60-day delay in its effective date. The 60-day delay in effective date can be waived, however, if the agency finds for good cause that delay is impracticable, unnecessary, or contrary to the public interest, and the agency

¹ Pub. L. No. 114-94, §§ 71003, 84001, 129 Stat 1312 (2014).

incorporates a statement of the findings and its reasons in the rule issued. 5 U.S.C. §§ 553(d)(3), 808(2). The Commission found that there is good cause for this interim final rule to take effect January 19, 2016, because the rule merely conforms the specified forms to recent statutory enactments. Therefore the 60-day delay requirement does not apply.

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: Brent J. Fields
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
“SIMPLIFICATION OF DISCLOSURE REQUIREMENTS FOR
EMERGING GROWTH COMPANIES AND FORWARD INCORPORATION
BY REFERENCE ON FORM S-1 FOR SMALLER REPORTING COMPANIES”
(RIN: 3235-AL88)

(i) Cost-benefit analysis

The Securities and Exchange Commission (the Commission) analyzed the costs and benefits of this interim final rule while noting that the costs and benefits stem entirely from the statutory mandates implemented by this rule.

The Commission expects that allowing the omission of certain historical financial statements will ease the filing requirements for emerging growth companies (EGCs), which could promote small business capital formation through initial public offerings. According to the Commission, this will lower the regulatory burden and thereby reduce the registration costs for EGCs. Allowing these omissions may also shorten the time necessary to complete the initial registration statement of an initial public offering, which could improve an issuer's ability to raise capital in a timely manner. To the extent issuers have sensitive material in their historical financial information, allowing the omissions may also enable EGCs to protect their competitive position by not publicly disseminating information beyond what is required when the securities offering is conducted. The Commission expects such benefits will more likely accrue to EGCs that have higher proprietary costs of disclosure. At the same time, the Commission found that omitting this information may reduce the amount and quality of public information, thereby potentially increasing the level of information asymmetry and adversely impacting the informational efficiency of the securities market. As a result, according to the Commission, investors could become more risk averse and require a higher rate of return to compensate for such loss in disclosure. The Commission expects this would lower the amount of potential issuer proceeds, which would offset the lower disclosure costs stemming from the simplified disclosure requirements. The Commission believes that the rule's potential adverse impact on investors would be marginal because such omitted financial information is not expected to be used by issuers in marketing their offering and also because investors will have access to more recent and updated information.

The Commission also expects the provisions of this rule permitting forward incorporation by reference will further integrate required disclosures and increase regulatory simplification as forward incorporation by reference will eliminate the need to update information in a filing that has become stale or is incomplete. The Commission expects permitting forward incorporation by reference will decrease the existing filing burdens by reducing multiple disclosure filings, thereby allowing filers to satisfy disclosure requirements and access capital markets at a lower cost. In addition to the reduced audit and legal costs of not having to file post-effective amendments, the Commission also found cost savings could result from lower printing and delivery costs for a smaller sized prospectus. Such reduction in costs could be offset, to some extent, by ongoing costs related to the issuer's new obligations to make the incorporated reports and other materials readily available and accessible to investors on a Web site maintained by or

for the issuer, or provided upon request. To the extent that investors previously benefitted from the Commission staff's selective review of post-effective amendment filings, allowing forward incorporation by reference may eliminate such reviews and, as a result, possibly increase the costs to investors.

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

The Commission did not provide a Final Regulatory Flexibility Analysis because such an analysis is only required for rules required to undergo notice and comment, and it found, for good cause, that notice and public comment on this interim rule were unnecessary.

(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.

The Commission found that notice and public comment was unnecessary for this interim final rule because it merely conforms the specified forms to the requirements of a newly enacted statute and therefore does not involve the exercise of Commission discretion. The Commission also found good cause for the rule to have an effective date of January 19, 2016, the date of publication, because without the rule the Commission's forms would not conform to statutory requirements.

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

The Commission has submitted the relevant burden estimates for the collection of information requirements affected by this interim final rule to the Office of Management and Budget (OMB). The Commission is seeking emergency approval from OMB. The Commission is also seeking public comment on the revised burden estimates and a 3-year extension of the collections of information.

Statutory authorization for the rule

The Commission promulgated this final rule under the authority of sections 6, 7, 8, 10, and 19 of the Securities Act of 1933, section 102 of the Jumpstart Our Business Startups Act, and sections 71003 and 84001 of the Fixing America's Surface Transportation Act. 15 U.S.C. §§ 77f, 77g, 77h, 77j, 77s, 78n-1.

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

As an independent regulatory agency, the Commission is not subject to the Order.

Executive Order No. 13,132 (Federalism)

As an independent regulatory agency, the Commission is not subject to the Order.