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December 5, 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: Investment Company Swing Pricing*

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 “Investment Company Swing Pricing” (RIN: 3235-AL61). We received the rule on October 19, 2016. It was published in the *Federal Register* as a final rule on November 18, 2016. 81 Fed. Reg. 82,084. The effective date of the rule is November 19, 2018.

The final rule adopts amendments to rule 22c-1 under the Investment Company Act to permit a registered open-end management investment company (open-end fund or fund) (except a money market fund or exchange-traded fund), under certain circumstances, to use swing pricing, the process of adjusting the fund's net asset value per share to effectively pass on the costs stemming from shareholder purchase or redemption activity to the shareholders associated with that activity, and amendments to rule 31a-2 to require funds to preserve certain records related to swing pricing. The Commission is also adopting amendments to Form N-1A and Regulation S-X and a new item in Form N-CEN, all of which address a fund's use of swing pricing.

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 Fields
Secretary of the 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
“INVESTMENT COMPANY SWING PRICING”
(RIN: 3235-AL61)

(i) Cost-benefit analysis

The Securities and Exchange Commission (the Commission) presented an analysis of the economic effects of this rule, including costs and benefits. According to the Commission, the swing pricing rule is likely to result in an annual effect on the economy of \$100 million or more. The Commission estimates that the total quantifiable costs associated with the final rule will be approximately \$286 million in aggregate one-time costs and \$14.3 million to \$92.4 million in aggregate annual ongoing costs. The \$286 million of aggregate quantifiable costs associated with the swing pricing rule is based on an estimate that 84 fund complexes will adopt swing pricing at an average cost of \$3.4 million per fund complex. The \$14.3 million to \$92.4 million estimate of aggregate annual ongoing costs is based on an estimate that the total quantifiable ongoing costs associated with the swing pricing rule will range from \$170,000 to \$1.1 million for each of the 84 fund complexes. The Commission considered whether the final rule would promote efficiency, competition, and capital formation, and included this analysis in the final rule.

With regard to benefits, the Commission believes the rule will promote investor protection by providing funds with a tool to reduce the potentially dilutive effect of shareholder purchase or redemption activity. The Commission believes swing pricing may allow funds to more fairly distribute transaction costs.

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

The Commission prepared a Final Regulatory Flexibility Analysis for this final rule. It relates to amendments to rule 22c-1, rule 31a-2, Form N-1A, and Form N-CEN. The Commission prepared an Initial Regulatory Flexibility Analysis (IRFA) in conjunction with the Proposing Release. The Proposing Release included, and solicited comment, on the IRFA. The Final Regulatory Flexibility Analysis included statements on (1) the need for the rule; (2) significant issues raised by public comments; (3) small entities subject to the rule; (4) projected reporting, recordkeeping, and other compliance requirements; and (4) agency action to minimize effects on small entities. The Commission stated that an investment company is a small entity if, together with other investment companies in the same group of related investment companies, it has net assets of \$50 million or less as of the end of its most recent fiscal year. The Commission estimates that, as of December 31, 2015, there were 78 small open-end investment companies (within 76 fund complexes) that would be considered small entities, and this number includes open-end exchange-traded funds.

(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 October 15, 2015, the Commission published a proposed rule. 80 Fed. Reg. 62,273. The Commission states that it received more than 70 comment letters on the proposed rule, many of which addressed the swing pricing amendments.

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

According to the Commission, the amendments to rule 22c-1 contain collections of information within the meaning of PRA. In addition, the Commission states that the amendments to rule 31a-2, Regulation S-X and Form N-1A will impact the collections of information burden under those rules and form. The Commission further states that new reporting requirements on Form N-CEN will impact the collections of information burden associated with the form described in the Investment Company Reporting Modernization Adopting Release. The Commission provided summaries of the information collections and estimates of the cost burden and hours. The titles for the existing collections of information are: “Rule 31a-2 Records to be preserved by registered investment companies, certain majority-owned subsidiaries thereof, and other persons having transactions with registered investment companies” (OMB Control No. 3235-0179); and “Form N-1A under the Securities Act of 1933 and under the Investment Company Act of 1940, Registration Statement of Open-End Management Investment Companies” (OMB Control No. 3235-0307). In the Investment Company Reporting Modernization Adopting Release, the Commission submitted new collections of information for Form N-CEN. The title for the new collections of information is: “Form N-CEN Under the Investment Company Act, Annual Report for Registered Investment Companies.” The Commission states that it is submitting new collections of information for the amendments to rule 22c-1 under the Investment Company Act of 1940. The title for the new collections of information will be: “Rule 22c-1 Under the Investment Company Act of 1940, Pricing of redeemable securities for distribution, redemption and repurchase.” The Commission is submitting these collections of information to the Office of Management and Budget for review.

The Commission estimated that the total burden hour associated with the preparation and approval of swing pricing policies and procedures by a fund complex would be 4,843 hours. The Commission estimated that it would cost a fund complex \$21,710 to document, review, and initially approve these policies and procedures.

Statutory authorization for the rule

The Commission promulgated the final rule for amendments to rule 22c-1 under the authority set forth in sections 22(c) and 38(a) of the Investment Company Act, 15 U.S.C. §§ 80a-22(c) and 80a-37(a); for amendments to rule 31a-2 under the authority of section 31(a) of the Investment Company Act, 15 U.S.C. § 80a-31(a); and for amendments to Form N-1A, Regulation S-X, and proposed Form N-CEN under the authority the Securities Act, particularly section 19, 15 U.S.C. §§ 77a et seq., the Trust Indenture Act, particularly, section 19, 15 U.S.C. §§ 77aaa et seq., the Exchange Act, particularly sections 10, 13, 15, and 23, and 35A,

15 U.S.C. §§ 78a et seq., and the Investment Company Act, particularly, sections 8, 30, and 38,
15 U.S.C. §§ 80a et seq.

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.