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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: Exemptions To Facilitate Intrastate and Regional Securities Offerings*

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 “Exemptions To Facilitate Intrastate and Regional Securities Offerings” (RIN: 3235-AL80). We received the rule on October 28, 2016. It was published in the *Federal Register* as a final rule on November 21, 2016, with effective dates ranging from January 17, 2017, to May 22, 2017. 81 Fed. Reg. 83,494.

The final rule amends the Commission’s Rule 147, which provides a safe harbor for compliance with the exemption from registration for intrastate securities offerings. The rule also establishes a new intrastate offering exemption, designated Rule 147A, which is similar to the amended Rule 147, but will have no restriction on offers and will allow issuers to be incorporated or organized outside of the state in which the intrastate offering is conducted provided certain conditions are met. The Commission designed this final rule to facilitate capital formation, including through offerings relying upon intrastate crowdfunding provisions under state securities laws, while maintaining appropriate investor protections and providing state securities regulators with the flexibility to add additional investor protections they deem appropriate for offerings within their state.

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
“EXEMPTIONS TO FACILITATE INTRASTATE
AND REGIONAL SECURITIES OFFERINGS”
(RIN: 3235-AL80)

(i) Cost-benefit analysis

The Securities and Exchange Commission (the Commission) analyzed the expected economic effects of the final rule relative to their current baseline, which is the regulatory framework and state of the market in existence today, including current provisions available to potential issuers to raise capital up to \$5 million. The Commission stated that it was mindful of the costs imposed by, and the benefits obtained from, the final rule. Relative to this baseline, its analysis considered the anticipated benefits and costs for market participants affected by the final rules as well as the impact of the final rules on efficiency, competition, and capital formation. The Commission also analyzed the potential benefits and costs stemming from alternatives to the final rule that it considered. The Commission observed that many of the benefits and costs are difficult to quantify, especially when analyzing the likely effects of the final rule on efficiency, competition, and capital formation.

The Commission stated that this final rule is intended to streamline and modernize the capital raising options available to startups and small businesses, including through the use of intrastate and regional securities offering provisions that have been enacted or could be enacted by various states, and thereby promote capital formation within the larger economy. The Commission explained that by establishing the new Rule 147A and modernizing the existing requirements under Rule 147, this final rule could facilitate capital formation through intrastate crowdfunded offerings as well as through other state registered or state exempt offerings. The Commission stated that raising the offering amount limit under amended Rule 504 from \$1 million to \$5 million may facilitate smaller offerings, including those registered or exempt from registration in a particular state, or regional offerings made pursuant to regional state coordinated review programs. The Commission believes that the potential use of Rules 147, 147A, and 504 will depend largely on how issuers perceive the trade-off between the costs of compliance under federal provisions as well as state regulation, if any, and the benefits of access to non-accredited investors.

(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. The analysis included a statement of the need for the rule; a discussion of significant issues raised by public comment; a discussion of the small entities subject to the rule; a projection of reporting, recordkeeping, and other compliance requirements; and a description of agency action to minimize effects on 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 the Act.

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

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

On November 10, 2015, the Commission published a proposed rule. 80 Fed. Reg. 69,786. The Commission responded to comments in the final rule.

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

The Commission determined that this final rule contains collection of information requirements under the Act. The provisions of the rule concerning Rules 147 and 147A impose two new collections entitled “Rule 147(f)(1)(iii) Written Representation as to Purchaser Residency” and “Rule 147A(f)(1)(iii) Written Representation as to Purchaser Residency.” The Commission estimates that the total annual paperwork burden for all affected issuers arising from these collections will be approximately 175 hours of issuer (company) personnel time and approximately \$70,000 for the services of outside professionals. The provisions of the rule amending Rule 504 of Regulation D also contain collection of information requirements under the Act entitled “Form D” (OMB Control No. 3235-0076), an existing collection of information, and “Regulation D Rule 504(b)(3) Felons and Other Bad Actors Disclosure Statement” (OMB Control No. 3235-0746), a new collection of information. The Commission estimates that the total annual compliance burden of the collection of information requirements for issuers making Form D filings after amending Rule 504 will be 26,000 hours of issuer personnel time and \$31,200,000 for the services of outside professionals. The Commission estimates the total annual increase in paperwork burden for the new Rule 504 collection of information requirement will be approximately 880 hours of company personnel time and approximately \$9,600 for the services of outside professionals.

Statutory authorization for the rule

The Commission promulgated this final rule under the authority of sections 3(b)(1), 19, and 28 of the Securities Act of 1933, as amended, sections 12, 13, 15, 23(a), and 36 of the Securities Exchange Act of 1934, section 38(a) of the Investment Company Act of 1940 and section 211(a) of the Investment Advisers Act.

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.