



441 G St. N.W.
Washington, DC 20548

B-325088

September 5, 2013

The Honorable Tim Johnson
Chairman
The Honorable Michael D. Crapo
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: Broker-Dealer Reports*

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 “Broker-Dealer Reports” (RIN: 3235-AK56). We received the rule on July 31, 2013. It was published in the *Federal Register* as a final rule on August 21, 2013. 78 Fed. Reg. 51,910.

The final rule amended certain broker-dealer annual reporting, audit, and notification requirements. The amendments include a requirement that broker-dealer audits be conducted in accordance with standards of the Public Company Accounting Oversight Board (PCAOB) in light of explicit oversight authority provided to the PCAOB by the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act)¹ to oversee these audits. The amendments further require a broker-dealer that clears transactions or carries customer accounts to agree to allow representatives of the Commission or the broker-dealer’s designated examining authority (DEA) to review the documentation associated with certain reports of the broker-dealer’s independent public accountant and to allow the accountant to discuss the findings relating to the reports of the accountant with those representatives when requested in connection with a regulatory examination of the broker-dealer. Finally, the amendments require a broker-dealer to file a new form with its DEA that elicits information about the broker-dealer’s practices with respect to the custody of securities and funds of customers and non-customers. The stated effective date for this final rule is June 1, 2014, except that the amendment to § 240.17a-5(e)(5) is effective October 21, 2013, and the amendments to § 240.17a-5(a) and (d)(6) and § 249.639 are effective December 31, 2013.

¹ Pub. L. No. 111-203, 124 Stat. 1376 (July 21, 2010).

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
"BROKER-DEALER REPORTS"
(RIN: 3235-AK56)

(i) Cost-benefit analysis

The Securities and Exchange Commission (Commission) states that it is sensitive to the costs and benefits of its rules. When engaging in rulemaking that requires the Commission to consider or determine whether an action is necessary or appropriate in the public interest, section 3(f) of the Securities Exchange Act of 1934 (Exchange Act) requires that the Commission consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation. In addition, section 23(a)(2) of the Exchange Act requires that the Commission consider the effects on competition of any rules the Commission adopts under the Exchange Act, and prohibits the Commission from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

The Commission explained that many of the benefits and costs discussed are difficult to quantify, in particular when discussing increases in investor confidence and improvements in investor protection. For example, the extent to which the increased ability of the Commission and DEAs to oversee compliance with the financial responsibility rules will help limit future violations of the rules is unknown. Similarly, the Commission explained that it is unknown how much increasing the focus of broker-dealers on the financial responsibility rules will result in enhanced compliance with those rules. Moreover, limited public data exists to study the costs of broker-dealer audits. Therefore, much of the discussion in the final rule is qualitative in nature but, where possible, the Commission did attempt to quantify the 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 Act analysis for this final rule. The analysis included a discussion of (1) the reasons for, and objectives of, the final rule; (2) significant issues raised by public comments; (3) small entities subject to the final rule; (4) reporting, recordkeeping, and other compliance requirements; (5) duplicative, overlapping or conflicting federal rules; and (6) significant alternatives to minimize effect on small entities. The Commission stated that while section 601(b) of the RFA defines the term small entity, the statute permits agencies to formulate their own definitions. The Commission has adopted definitions for the term "small entity" for purposes of Commission rulemaking in accordance with the RFA. Those definitions, as relevant to this rulemaking, are set forth in Rule 0-10. See 17 C.F.R. § 240.0-10. The Commission estimated that based on December 31, 2011, Financial and Operational Combined Uniform Single Reports data, there are approximately 812 broker-dealers that are classified as "small" entities for purposes of the RFA. Of these, the Commission estimated that there are approximately eight broker-dealers that are carrying broker-dealers.

(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 June 15, 2011, the Commission proposed rule amendments and a new form designed, among other things, to provide additional safeguards with respect to broker-dealer custody of customer securities and funds. 76 Fed. Reg. 37,572. The Commission received 27 comment letters on the proposal. The Commission stated that it considered the comments and determined that it would adopt the amendments and the new form with modifications, in part in response to the comments it received.

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

The Commission determined that this rule does contain information collection requirements subject to approval by the Office of Management and Budget (OMB) under the PRA. The information collection requirements associated with this final rule have been submitted for approval to OMB. The Commission estimates that the PRA burden resulting from amendments to Rules 17a-5 and 17a-11 and new Form Custody include an initial, one-time burden of approximately 13,522 hours that relates to the requirement to draft and file a revised statement regarding the independent public accountant under Rule 17a-5(f)(2), and an annual burden of approximately 276,717 hours. The total annual hour burden relates to the compliance report (17,520 hours), the exemption report (30,919 hours), the filing of annual reports with the Securities Investor Protection Corporation (2,246 hours), and Form Custody (226,032 hours).

Statutory authorization for the rule

The Commission is amending Rule 17a-5 and Rule 17a-11 under the Exchange Act (17 C.F.R. 240.17a-5 and 17 C.F.R. 240.17a-11) and adopting new Form Custody (17 C.F.R. 249.639) pursuant to the authority conferred by the Exchange Act, including sections 15, 17, 23(a), and 36. Securities Exchange Act of 1934, 15 U.S.C. §§ 78o, 78q, 78w(a), and 78mm.

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.