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United States Government Accountability Office  
Washington, DC 20548

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B-310916

December 28, 2007

The Honorable Christopher J. Dodd  
Chairman  
The Honorable Richard C. Shelby  
Ranking Minority Member  
Committee on Banking, Housing, and Urban Affairs  
United States Senate

The Honorable Barney Frank  
Chairman  
The Honorable Spencer Bachus  
Ranking Minority Member  
Committee on Financial Services  
House of Representatives

Subject: *Securities and Exchange Commission: Revisions to Rules 144 and 145*

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 (SEC), entitled “Revisions to Rules 144 and 145” (RIN: 3235-AH13). We received the rule on December 6, 2007. It was published in the *Federal Register* as a final rule on December 17, 2007. 72 Fed. Reg. 71,546.

The final rule makes amendments to Securities Act Rule 144 by simplifying the rule text, shortening the required initial holding period for restricted securities of Exchange Act reporting companies from 1 year to 6 months, relaxing requirements for affiliate sales of equity and debt securities, and codifying several staff interpretations relating to Rule 144. The final rule also simplifies Rule 144 compliance for “non-affiliates” by allowing non-affiliates of reporting companies to resell restricted securities without restriction other than the public information requirement of 144(c), after satisfying the six-month holding period, and by allowing non-affiliates of non-reporting companies to resell restricted securities without restriction after satisfying the one-year holding period. In addition, the final rule makes amendments to Securities Act Rule 145 to eliminate the presumptive underwriter provision except when the transaction involves a shell company and to revise the resale provisions in 145(d).

Enclosed is our assessment of the SEC'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 indicates that SEC complied with the applicable requirements.

If you have any questions about this report, please contact Michael R. Volpe, Assistant General Counsel, at (202) 512-8236. The official responsible for GAO evaluation work relating to the subject matter of the rule is Richard Hillman, Managing Director, Financial Markets and Community Investment. Mr. Hillman can be reached at (202) 512-8678.

signed

Robert J. Cramer  
Associate General Counsel

Enclosure

cc: Nancy M. Morris  
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  
"REVISIONS TO RULES 144 AND 145"  
(RIN: 3235-AH13)

(i) Cost-benefit analysis

The Securities and Exchange Commission (SEC) prepared a cost-benefit analysis and determined that the amendments will reduce the cost of complying with Rules 144 and 145. SEC states that the changes to Form 144 will reduce the costs associated with filing Form 144 and increase the value of affected securities by increasing liquidity. SEC states that codification of existing staff interpretive positions will reduce transactional costs by eliminating uncertainty and reducing the need for legal analysis.

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

SEC prepared a Final Regulatory Flexibility Analysis as required by the Act. SEC is aware of approximately 1,100 Exchange Act reporting companies that are small businesses under the Act and believes there may be companies affected that are small businesses but not subject to the reporting requirements, and that 910 broker-dealers registered with the SEC are small entities under the Act. SEC believes that the changes made by the rule will have a favorable impact on small entities for the most part and that the remaining restrictions relating to shell companies are necessary to avoid the potential for abuse.

(iii) Agency actions relevant to sections 202-205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532-1535

The Unfunded Mandates Reform Act of 1995 is inapplicable to the SEC, because SEC is not an agency for purpose of the Act. Public Law 104-4, §101(a)(2), 109 Stat. 50, codified at 2 U.S.C. § 658(1).

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

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

SEC issued a notice of proposed rulemaking to amend several aspects of Rule 144 and Rule 145 on July 5, 2007. 72 Fed. Reg. 36,822. SEC received 32 comment letters

from 30 commenters on the proposal. SEC responded to these comments in this final rule. 72 Fed. Reg. 71,546.

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

This final rule contains a collection of information as defined by the Paperwork Reduction Act. The amendments made to Form 144 by the final rule were reviewed and approved by the Office of Management and Budget (OMB) and given OMB Control No. 3235-0101.

Statutory authorization for the rule

The final rule is authorized by sections 2(a)(11), 4(1), 4(3), 4(4), 7, 10, 19(a), and 28 of the Securities Act, as amended.

Executive Order No. 12,866

SEC is not subject to Executive Order 12,866, because it is an independent regulatory agency, as defined by 44 U.S.C. § 3502(5).

Executive Order No. 13,132 (Federalism)

SEC is not subject to Executive Order 13,132, because it is an independent regulatory agency, as defined by 44 U.S.C. § 3502(5).