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United States Government Accountability Office  
Washington, DC 20548

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B-321201

November 23, 2010

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

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

Subject: *Securities and Exchange Commission: Risk Management Controls for Brokers or Dealers With Market Access*

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 “Risk Management Controls for Brokers or Dealers With Market Access” (RIN: 3235-AK53). We received the rule on November 5, 2010. It was published in the *Federal Register* as a final rule on November 15, 2010, with a stated effective date of January 14, 2011. 75 Fed. Reg. 69,792.

The final rule will require brokers or dealers trading securities directly on an exchange or on an alternative trading system (ATS) to establish, document, and maintain a system of risk management controls and supervisory procedures. These procedures are, among other things, to be reasonably designed to systematically limit the financial exposure of the broker or dealer that could arise as a result of market access, and ensure compliance with all regulatory requirements that are applicable in connection with market access. The required financial risk management controls and supervisory procedures must be reasonably designed to prevent the entry of orders that exceed appropriate pre-set credit or capital thresholds, or that appear to be erroneous. The regulatory risk management controls and supervisory procedures must also be reasonably designed to prevent the entry of orders unless there has been compliance with all regulatory requirements that must be satisfied on a pre-order entry basis, prevent the entry of

orders that the broker or dealer or customer is restricted from trading, restrict market access technology and systems to authorized persons, and assure appropriate surveillance personnel receive immediate post-trade execution reports.

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  
"RISK MANAGEMENT CONTROLS FOR  
BROKERS OR DEALERS WITH MARKET ACCESS"  
(RIN: 3235-AK53)

(i) Cost-benefit analysis

The Securities and Exchange Commission (Commission) analyzed the costs and benefits of this final rule. The Commission expects that this final rule will benefit investors, broker-dealers, their counterparties, and the national market system as a whole by reducing the risks faced by broker-dealers and other market participants as a result of various market access arrangements by requiring financial and regulatory risk management controls to be implemented on a uniform, market-wide basis. A specific benefit identified by the Commission is a reduction of systemic risk associated with market access through the elimination of “unfiltered” or “naked” access. The Commission estimates that the total annual initial cost for all broker-dealers will be approximately \$114.4 million and that the total annual ongoing cost for all 1,375 broker-dealers will be approximately \$112.9 million.

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

The Commission prepared a Final Regulatory Flexibility Analysis in which it discussed the need for the rule; significant issues raised by public comment; small entities subject to the rule; reporting, recordkeeping, and other compliance requirements; and agency actions 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 January 26, 2010, the Commission published a proposed rule, to which it received 47 comment letters from broker-dealers, markets, institutional and individual investors, technology providers, and other market participants. 75 Fed. Reg. 4007. The Commission responded to the comments in the final rule.

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

The Commission determined that this final rule contains an information collection requirement under the Act entitled “Rule 15c3-5, Market Access,” which it submitted to the Office of Management and Budget for review. The Commission estimates that the total initial burden under this rule will be approximately 275,000 hours and the total ongoing annual burden will be approximately 240,625 hours. For hardware and software expenses, the Commission estimates that the total initial cost will be \$22 million and the total ongoing annual cost will be \$28,187,500.

Statutory authorization for the rule

The Commission promulgated this final rule under the Exchange Act and particularly sections 2, 3(b), 11A, 15, 17(a) and (b), and 23(a) thereof. 15 U.S.C. §§ 78b, 78c(b), 78k-1, 78o, 78q(a) and (b), and 78w(a).

Securities Exchange Act of 1934, 15 U.S.C. §§ 78c(f), 78w(a)

The Commission analyzed the final rule to determine if it will promote efficiency, competition, and capital formation, and that any burden imposed by this rule on competition is necessary or appropriate. The Commission determined that any burden on competition imposed by this rule is necessary and appropriate and that this rule should promote capital formation and enhance efficiency.

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.