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Washington, DC 20548

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May 5, 2015

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: Amendments for Small and Additional Issues Exemptions Under the Securities Act (Regulation A)*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on major rules promulgated by the Securities and Exchange Commission (Commission) entitled “Amendments for Small and Additional Issues Exemptions Under the Securities Act (Regulation A)” (RIN: 3235-AL39). We received the rules on March 30, 2015. They were published in the *Federal Register* as final rules on April 20, 2015. The final rules are effective on June 19, 2015. 80 Fed. Reg. 21,806.

The final rules adopt amendments to Regulation A and other rules and forms to implement section 401 of the Jumpstart Our Business Startups (JOBS) Act. Section 401 of the JOBS Act added section 3(b)(2) to the Securities Act of 1933, which directs the Commission to adopt rules exempting from the registration requirements of the Securities Act offerings of up to \$50 million of securities annually. The final rules build on current Regulation A and preserve, with some modifications, existing provisions regarding issuer eligibility, offering circular contents, testing the waters, and bad actor disqualifications. The final rules modernize the Regulation A filing process for all offerings, align practice in certain areas with prevailing practice for registered offerings, create additional flexibility for issuers in the offering process, and establish an ongoing reporting regime for certain Regulation A issuers. The rules contain certain additional requirements for Tier 2 offerings (such as a requirement to include audited financial statements in the offering documents and to file annual, semiannual, and current reports with the Commission). With the exception of securities that will be listed on a national securities exchange upon qualification, purchasers in Tier 2 offerings must either be accredited investors, as that term is defined in Rule 501(a) of Regulation D, or be subject to certain limitations on their investment. In consideration of the total package of investor protections in Tier 2 offerings, the final rules also provide for the preemption of state securities law registration and qualification requirements in Tier 2 offerings.

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 rules. 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 J. Fields  
Secretary  
Securities and Exchange Commission

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON MAJOR RULES  
ISSUED BY THE  
SECURITIES AND EXCHANGE COMMISSION  
ENTITLED  
“AMENDMENTS FOR SMALL AND ADDITIONAL ISSUES EXEMPTIONS  
UNDER THE SECURITIES ACT (REGULATION A)”  
(RIN: 3235-AL39)

(i) Cost-benefit analysis

The Securities and Exchange Commission (Commission) analyzed the costs and benefits of the final rule. Section 2(b) of the Securities Act of 1933 (Securities Act) and section 3(f) of the Exchange Act of 1934 (Exchange Act) require the Commission to consider whether an action will promote efficiency competition and capital formation. In addition, pursuant to section 23(a) of the Exchange Act, the Commission is directed to consider, among other things, the impact a new rule would have on competition. Section 23(a)(2) prohibits the Commission from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the Exchange Act. To assess the economic consequences, the Commission compared the final rules relative to the current baseline, which is the market situation in existence today, including current methods of raising up to \$50 million in capital available to potential issuers. The Commission stated that while many of the costs and benefits of the final rules stem from the statutory mandate of title IV of the JOBS Act, certain benefits and costs are affected by the discretion exercised in connection with implementing this mandate. For purposes of this economic analysis, the Commission addressed the benefits and costs resulting from the mandatory statutory provisions and the exercise of discretion together because the two types of benefits and costs are not readily separable. The Commission also analyzed the benefits and costs of significant alternatives to the final rules that were suggested by commenters and that were considered. According to the Commission, many of the benefits and costs discussed are difficult to quantify when analyzing the likely effects of the final rules on efficiency, competition, and capital formation.

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

The Commission performed the required Final Regulatory Flexibility Act and stated that it relates to Amendments to Rule 157(a), Rules 251 through 263 of Regulation A, Rule 505 of Regulation D, Form 1-A, Form 8-A, Rule 30-1 of the Commission's organizational rules, Rule 4a-1 under the Trust Indenture Act, Rule 12g5-1 and Rule 15c2-11 under the Exchange Act, and Item 101 of Regulation S-T; new Forms 1-K, 1-SA, 1-U, and 1-Z; and the rescission of Form 2-A.

The Commission states that it believes that the final rules provide smaller issuers with an appropriately tailored regulatory regime that takes into account the needs of small entities to have a viable capital formation option in Regulation A, while maintaining appropriate investor protections. For purposes of RFA, under Commission rules, an issuer (other than an investment company) is a “small business” or “small organization” if it has total assets of \$5 million or less as of the end of its most recent fiscal year and is engaged or proposing to engage in an offering of securities which does not exceed \$5 million. While Regulation A is available for

offerings of up to \$50 million in securities in a 12-month period, only offerings up to \$5 million in securities in a 12-month period will constitute offerings by small entities under the definition set forth. The Commission concluded that it is difficult to predict the number of small entities that will use Regulation A due to the many variables included in the amendments. Nevertheless, it believes that the final rules for Regulation A will increase the overall number of Regulation A offerings of \$5 million or less due to the ability to non-publicly submit draft offering statements for review by the Commission's staff, the expanded use of solicitation of interest materials, the ability to electronically file and transmit offering statements and offering circulars, the potential for preemption of state regulatory review if the issuer elects to conduct a Tier 2 offering, and other significant changes. Regulation A is currently limited to offerings with an aggregate offering price and aggregate sales of \$5 million or less. From 2009 through 2014, 158 issuers filed offering statements and 36 offering statements were qualified by the Commission, or an average of approximately six qualified offering statements per year. Of the 36 offering statements that were qualified, 28 included financial statements indicating that the issuer had total assets of \$5 million or less (as of the most recent balance sheet included in such issuer's offering statement at the time of qualification), or an average of approximately five qualified offering statements per year in which the issuer indicated it had total assets of \$5 million or less.

The Commission determined that at least five small businesses will conduct offerings under Regulation A per year. In connection with the final amendments and rules, the Commission considered the following alternatives: (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rules, or any parts of the rules, for small entities. It concluded that small entities should be covered by the final rules to the extent specified in the final rule.

(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 December 18, 2013, the Commission published a proposed rule and form amendments to implement section 401 of the JOBS Act. 79 Fed. Reg. 3925 (Dec. 18, 2013). In adopting the final rules, the Commission states that it considered the statutory language of the JOBS Act's section 401, the JOBS Act's legislative history, recent recommendations of the Commission's Government-Business Forum on Small Business Capital Formation, the Advisory Committee on Small and Emerging Companies, the Equity Capital Formation Task Force, comment letters received on title IV of the JOBS Act before the Commission's proposed rules were issued in December of 2013, and comment letters received to date on the Commission's proposed rules to implement section 401 of the JOBS Act. The Commission responded to the comments in the final rule.

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

The Commission determined that certain provisions of the final rules contain "collection of information" requirements within the meaning of PRA, and published a notice requesting

comment on the collection of information requirements in the Proposing Release. The Commission submitted these requirements to the Office of Management and Budget (OMB) for review in accordance with PRA and its implementing regulations. The Commission identified eight forms for the new collections of information:

- (1) "Regulation A (Form 1-A and Form 2-A)" (OMB Control Number 3235-0286);
- (2) "Form 1-K" (OMB Control Number 3235-0720);
- (3) "Form 1-SA" (OMB Control Number 3235-0721);
- (4) "Form 1-U" (OMB Control Number 3235-0722);
- (5) "Form 1-Z" (OMB Control Number 3235-0723);
- (6) "Form 8-A" (OMB Control Number 3235-0056);
- (7) "Form ID" (OMB Control Number 3235-0328); and
- (8) "Form F-X" (OMB Control Number 3235-0379).

OMB assigned a control number to each new collection, as specified. Responses to these new collections of information would be mandatory for issuers raising capital under Regulation A.

The hours and costs associated with preparing disclosure, filing forms, and retaining records constitute reporting and cost burdens imposed by the collections of information. In deriving estimates of these hours and costs, the Commission recognized that the burdens likely will vary among individual issuers based on a number of factors, including the stage of development of the business, the amount of capital an issuer seeks to raise, and the number of years since inception of the business. The Commission stated that it believes that some issuers will experience costs in excess of the average and some issuers may experience less than the average costs. The Commission included compliance estimates and breakdowns for hours and costs for each of the eight categories of collections.

Statutory authorization for the rule

The Commission stated that it promulgated the final rules under the authority of sections 3(b), 19 and 28 of the Securities Act of 1933, as amended; sections 12, 15, 23(a), and 36 of the Securities Exchange Act of 1934, as amended; and section 304 of the Trust Indenture Act of 1939, as amended.

Executive Order No. 12,866 (Regulatory Planning and Review)

As an independent regulatory agency, the Commission is not subject to the review requirements of this Order.

Executive Order No. 13,132 (Federalism)

As an independent regulatory agency, the Commission is not subject to the review requirements of this Order.