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March 11, 2021

The Honorable Sherrod Brown
Chairman
The Honorable Patrick J. Toomey
Ranking Member
Committee on Banking, Housing, and Urban Affairs
United States Senate

The Honorable Maxine Waters
Chairwoman
The Honorable Patrick McHenry
Ranking Member
Committee on Financial Services
House of Representatives

Subject: *Securities and Exchange Commission: Facilitating Capital Formation and Expanding Investment Opportunities by Improving Access to Capital in Private Markets*

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 “Facilitating Capital Formation and Expanding Investment Opportunities by Improving Access to Capital in Private Markets” (RIN: 3235-AM27).¹ We received the rule on November 4, 2020. It was published in the *Federal Register* as a final rule on January 14, 2021. 86 Fed. Reg. 3496. The effective date is March 15, 2021.

According to the Commission, the final rule adopts changes to facilitate capital formation and increase opportunities for investors by expanding access to capital for small- and medium-sized businesses and entrepreneurs across the United States. Specifically, the Commission stated the final rule will simplify, harmonize, and improve certain aspects of the exempt offering framework to promote capital formation while preserving or enhancing important investor protections. The Commission further stated the final rule also seeks to close gaps and reduce complexities in the exempt offering framework that may impede access to investment opportunities for investors and access to capital for businesses and entrepreneurs.

¹ The due date for this major rule report was January 29, 2021. Due to a processing error on our part, we are delayed in our issuance of this report.

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. 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 Shari Brewster, Assistant General Counsel, at (202) 512-6398.

A handwritten signature in black ink that reads "Shirley A. Jones". The signature is written in a cursive style with a large initial 'S' and 'J'.

Shirley A. Jones
Managing Associate General Counsel

Enclosure

cc: Vanessa A. Countryman
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
“FACILITATING CAPITAL FORMATION AND
EXPANDING INVESTMENT OPPORTUNITIES
BY IMPROVING ACCESS TO CAPITAL IN PRIVATE MARKETS”
(RIN: 3235-AM27)

(i) Cost-benefit analysis

The Securities and Exchange Commission (Commission) estimated the final rule will simplify, harmonize, and improve certain aspects of the Commission’s exempt offering framework, including Regulation D, Regulation A, Regulation Crowdfunding, and other related rules. By providing a more streamlined and consistent exempt offering framework, the Commission stated the final rule is expected to incrementally facilitate capital formation through exempt offerings, expanding issuers’ ability to pursue positive net present value investment and growth opportunities. The Commission further estimated the final rule may also provide incrementally greater choice of investment opportunities for investors. The Commission stated that, importantly, the investor protections applicable to these exemptions will continue to provide significant safeguards against the risk of losses for non-accredited investors.

The Commission also stated the final rule’s greater flexibility may enable non-accredited investors to optimize their capital allocation through incrementally greater access to exempt offering investment opportunities. The Commission also stated some of the provisions affect the same offerings and issuers or have mutually reinforcing or partly offsetting effects, which makes it more difficult to draw conclusions about the net effects of the final rule as a whole.

(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. The Analysis included: (1) a statement of the needs for, and objectives of, the final rule; (2) a description of significant issues raised by public comments; (3) a description of small entities subject to the final rule; (4) a summary of projected recording, recordkeeping, and other compliance requirements; and (5) a summary of agency action to minimize the effect 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 requirements of the Act.

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

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

On March 31, 2020, the Commission published a proposed rule. 85 Fed. Reg. 17956. The Commission received comments on the proposed rule, including from the Commission's Business Capital Formation Advisory Committee and the 2020 Small Business Forum, and addressed them in the final rule.

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

The Commission determined the final rule contains information collection requirements (ICRs) subject to the Act. The ICRs are associated with

- "Regulation A (Form 1-A)" (Office of Management and Budget (OMB) Control Number 3235-0286)
- "Regulation D" (a new collection of information)
- "Regulation D Rule 504(b)(3)—Felons and Other Bad Actors Disclosure Statement" (OMB Control Number 3235-0746)
- "Regulation D Rule 506(e) Felons and Other Bad Actors Disclosure Statement" (OMB Control Number 3235-0704)
- "Form D" (OMB Control Number 3235-0076)
- "Form C" (OMB Control Number 3235-0716).

The Commission estimated the aggregate burden for each ICR in the final rule.

Statutory authorization for the rule

The Commission promulgated the final rule pursuant to section 2 of title 7; sections 5221 and 5461 *et seq.* of title 12; sections 77b, 77b note, 77c, 77d, 77d-1, 77e, 77f, 77g, 77h, 77j, 77k, 77r, 77s, 77z-2, 77z-3, 77aa, 77ddd, 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77nnn, 77sss, 77ttt, 78a, 78c, 78c-3, 78c-5, 78d, 78e, 78f, 78g, 78i, 78j, 78j-3, 78k, 78k-1, 78l, 78m, 78n, 78n-1, 78o, 78o-4, 78o-7 note, 78o-10, 78p, 78q, 78q-1, 78s, 78t, 78u-5, 78w, 78x, 78ll, 78mm, 80a-2, 80a-3, 80a-8, 80a-9, 80a-10, 80a-13, 80a-20, 80a-23, 80a-24, 80a-26, 80a-28, 80a-29, 80a-30, 80a-31, 80a-37, 80a-38, 80a-39, 80b-3, 80b-4, 80b-11, 7201 *et seq.*, and 8302 of title 15; section 1350 of title 18, United States Code, as well as various sections of Public Laws 111-203, 112-106, and 114-94.

Executive Order No. 12866 (Regulatory Planning and Review)

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

Executive Order No. 13132 (Federalism)

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