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October 24, 2023

The Honorable Sherrod Brown
Chairman
The Honorable Tim Scott
Ranking Member
Committee on Banking, Housing, and Urban Affairs
United States Senate

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

Subject: *Securities and Exchange Commission: Investment Company Names*

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) titled "Investment Company Names" (RIN: 3235-AM72). We received the rule on September 21, 2023. It was published in the *Federal Register* as a final rule on October 11, 2023. 88 Fed. Reg. 70436. The effective date is December 11, 2023.

According to SEC, it is amending a rule under the Investment Company Act of 1940 that addresses certain broad categories of investment company names that are likely to mislead investors about an investment company's investments and risks. See Investment Company Act, ch. 686, title I, 54 Stat. 789 (1940). SEC stated that the amendments to this rule are designed to increase investor protection by improving, and broadening the scope of, the requirement for certain funds to adopt a policy to invest at least 80 percent of the value of their assets in accordance with the investment focus that the fund's name suggests, updating the rule's notice requirements, and establishing recordkeeping requirements. SEC also stated that it is also adopting enhanced prospectus disclosure requirements for terminology used in fund names, and additional requirements for funds to report information on Form N-PORT regarding compliance with the names-related regulatory requirements.

Enclosed is our assessment of 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. 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.

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
TITLED
“INVESTMENT COMPANY NAMES”
(RIN: 3235-AM72)

(i) Cost-benefit analysis

The Securities and Exchange Commission (SEC) prepared an economic analysis for this final rule. The analysis includes: an introduction and analysis of broad economic considerations; the establishment of a baseline to compare costs, benefits, and other economic affects; and alternatives SEC considered.

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

SEC prepared a Final Regulatory Flexibility Analysis. The analysis included a statement of the need for and objectives of the final rule; a description of significant issues raised by public comments; a description of the small entities subject to the final rule; projected reporting, recordkeeping, and other compliance requirements; and a description of 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, SEC is not subject to the Act. See 2 U.S.C. §§ 658(1), 1502(1).

(iv) Agency actions relevant to the Administrative Pay-As-You-Go-Act of 2023, Pub. L. No. 118-5, div. B, title III, 137 Stat 31 (June 3, 2023)

Section 270 of the Administrative Pay-As-You-Go-Act of 2023 amended 5 U.S.C. § 801(a)(2)(A) to require GAO to assess agency compliance with the Act, which establishes requirements for administrative actions that affect direct spending, in GAO’s major rule reports. In guidance to Executive Branch agencies, issued on September 1, 2023, the Office of Management and Budget (OMB) instructed that agencies should include a statement explaining that either: “the Act does not apply to this rule because it does not increase direct spending; the Act does not apply to this rule because it meets one of the Act’s exemptions (and specifying the relevant exemption); the OMB Director granted a waiver of the Act’s requirements pursuant to section 265(a)(1) or (2) of the Act; or the agency has submitted a notice or written opinion to the OMB Director as required by section 263(a) or (b) of the Act” in their submissions of rules to GAO under the Congressional Review Act. OMB, *Memorandum for the Heads of Executive Departments and Agencies*, Subject: Guidance for Implementation of the Administrative Pay-As-You-Go Act of 2023, M-23-21 (Sept. 1, 2023), at 11–12. OMB also states that directives in the memorandum that supplement the requirements in the Act do not apply to proposed rules that have already been submitted to the Office of Information and Regulatory

Affairs, however agencies must comply with any applicable requirements of the Act before finalizing such rules.

SEC does not discuss the Administrative Pay-As-You-Go Act of 2023 in this final rule.

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

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

On June 17, 2022, SEC published a proposed rule. 87 Fed. Reg. 36594 (*Proposal*). SEC stated that it received comment letters on the *Proposal* from a variety of commenters, including funds, law firms, investor advocacy groups, environmental advocacy groups, professional and trade associations, public policy research institutes, academics, and interested individuals. SEC also stated that it considered and discussed comments in the preamble of the final rule.

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

SEC determined that this final rule contains information collection requirements (ICRs) and submitted them for review by OMB. SEC estimated the burden of each ICR. SEC lists the ICRs as follows: (1) “Rule 35d-1 Under the Investment Company Act of 1940, Investment Company Names” (OMB Control Number 3235-0548); (2) “Form N-1A Under the Investment Company Act of 1940 and Securities Act of 1933, Registration Statement of Open-End Management Investment Companies” (OMB Control Number 3235-0307); (3) “Form N-2 Under the Investment Company Act of 1940 and Securities Act of 1933, Registration Statement of Closed-End Management Companies” (OMB Control Number 3235-0026); (4) “Form N-8B-2, Registration Statement of Unit Investment Trusts Which Are Currently Issuing Securities” (OMB Control Number 3235-0186); (5) “Form S-6, Registration Under the Securities Act of 1933 of Unit Investment Trusts Registered on Form N-8B-2” (OMB Control Number 3235-0184); (6) “Form N-PORT under the Investment Company Act of 1940” (OMB Control Number 3235-730); and (7) “Investment Company Interactive Data” (OMB Control Number 3235-0642).

Statutory authorization for the rule

SEC promulgated this final rule pursuant to sections 77e, 77f, 77g, 77h, 77j, 77s, 78j, 78m, 78o, 78w, and 78ll, 80a-8, 80a-18, 80a-29, 80a-30, 80a-33, 80a-34, 80a-37, 80a-58, and 80a-63 of title 15, United States Code.

Executive Order Number 12866 (Regulatory Planning and Review)

As an independent regulatory agency, SEC is not subject to the Order.

Executive Order Number 13132 (Federalism)

As an independent regulatory agency, SEC is not subject to the Order.