



441 G St. N.W.
Washington, DC 20548

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November 15, 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: Modernization of Beneficial Ownership Reporting*

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 “Modernization of Beneficial Ownership Reporting” (RIN: 3235-AM93). We received the rule on October 10, 2023. It was published in the *Federal Register* as a final rule and guidance on November 7, 2023. 88 Fed. Reg. 76896. The effective date is February 5, 2024.

The final rule, according to SEC, adopts amendments to certain rules that govern beneficial ownership reporting. SEC stated that the amendments shorten the filing deadlines for initial and amended beneficial ownership reports filed on Schedules 13D and 13G. Also, SEC stated the amendments clarify the disclosure requirements of Schedule 13D with respect to derivative securities. Further, SEC stated it is expanding the timeframe within a given business day by which Schedules 13D and 13G filings may be made using a structured, machine-readable data language. In addition, SEC stated the rule discusses how, under the current rules, an investor’s use of a cash-settled derivative security may result in the person being treated as a beneficial owner of the class of the reference equity security. SEC also stated it is providing guidance on the application of the current legal standard found in section 13(d)(3) and 13(g)(3) of the Securities Exchange Act of 1934, Pub. L. No. 73-291, 48 Stat. 881 (June 6, 1934), to certain common types of shareholder engagement activities. Finally, according to SEC, the rule makes certain technical revisions.

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.

A handwritten signature in black ink that reads "Shirley A. Jones". The signature is written in a cursive style with a large, prominent "S" at the beginning and a long, sweeping tail on the "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
“MODERNIZATION OF BENEFICIAL OWNERSHIP REPORTING”
(RIN: 3235-AM93)

(i) Cost-benefit analysis

The Securities and Exchange Commission (SEC) conducted an economic analysis of this final rule. The economic analysis provides an overview of the rule; describes the baseline against which costs and benefits are measured, including existing regulatory requirements; discusses the economic effects of the rule, some of which SEC stated cannot be quantified; and describes the reasonable alternatives to the rule, including the costs and benefits of alternatives as compared to the final rule.

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

SEC certified that this final rule will not have a significant economic impact on a substantial number of small entities for purposes of RFA.

(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.

(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 March 10, 2022, SEC published a proposed rule. 87 Fed. Reg. 13846. SEC stated that it received comments on the proposed rule and responded to comments in this final rule.

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

SEC determined that this final rule contains information collection requirements under PRA. SEC stated that the title for the affected collections of information is “Regulation 13D and Regulation 13G; Schedule 13D and Schedule 13G,” OMB Control Number 3235-0145. SEC stated that the change in PRA burden from updating inventory numbers is an increase in burden hours of 12,917 and an increase in cost of \$39,697,000. SEC reported that the aggregate increase in burden hours resulting from the final rule is 119,223. Further SEC stated that the increase in outside professional hours is 89,417 and the increase in outside professional costs is \$53,650,200. Finally, SEC stated that the requested paperwork burden for Regulation 13D-G under the final rule is 70,135 hours and \$126,241,200.

Statutory authorization for the rule

SEC promulgated this final rule pursuant to section 2(c)(2)(E) of title 7, section 5221(e)(3) of title 12, various sections of title 15, and section 1350 of title 18, United States Code; Public Law 111-203; and Public Law 112-106.

Executive Order No. 12866 (Regulatory Planning and Review)

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

Executive Order No. 13132 (Federalism)

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