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November 20, 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: Reporting of Securities Loans*

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 or the Commission) entitled "Reporting of Securities Loans" (RIN: 3235-AN01). We received the rule on October 17, 2023. It was published in the *Federal Register* as a final rule on November 3, 2023. 88 Fed. Reg. 75644. The effective date is January 2, 2024.

According to SEC, the Commission adopted this final rule under the Securities Exchange Act of 1934, 15 U.S.C. §§ 78a–78rr, to increase the transparency and efficiency of the securities lending market by requiring certain persons to report information about securities loans to a registered national securities association (RNSA). SEC stated that the rule requires certain confidential information to be reported to an RNSA to enhance an RNSA's oversight and enforcement functions. Further, SEC stated that the rule requires that an RNSA make certain information it receives, along with daily information pertaining to the aggregate transaction activity and distribution of loan rates for each reportable security, available to the public.

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: J. Matthew DeLesDernier
Deputy 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
“REPORTING OF SECURITIES LOANS”
(RIN: 3235-AN01)

(i) Cost-benefit analysis

The Securities and Exchange Commission (SEC or the Commission) conducted an economic analysis of this final rule. This analysis included the establishment of a baseline against which the costs, benefits, and the effects on efficiency, competition, and capital formation of the final rule are measured and consists of the current state of the securities lending market, current practice as it relates to securities lending and availability of data about securities lending, and the current regulatory framework. SEC stated that it believes the primary impact of the rule will be to increase transparency in the securities lending market through improvements to the comprehensiveness, breadth, accuracy, and accessibility of securities lending data. According to the Commission, these impacts will reduce information asymmetries in the securities lending market and improve informational efficiency leading to a more efficient securities lending market. In addition to a reduction in information asymmetry, SEC stated that it expects the rule to result in improved market quality due to lower short selling costs as well as positive economic effects from improved securities lending data quality. The Commission recognized potential limits to the potential benefits of the rule as well as sources of uncertainty, but ultimately reaffirmed its expectation that the rule will improve market participants' access to information and lower their information asymmetry. In addition to economic benefits, SEC also identified regulatory benefits of the rule, including potential surveillance and enforcement uses, market reconstructions uses, and market research uses. Additionally, SEC identified certain costs, noting that the rule will require various entities to enter into contracts and develop recording and reporting systems to comply with the rule. SEC estimated various direct compliance costs and included them in the rule. SEC also included a discussion of other costs of the rule, including an increase in borrowing costs, lower revenues from securities lending, and lower revenues for securities lending data vendors.

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

The Commission certified that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Act.

(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 did 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 December 8, 2021, the Commission proposed Rule 10c-1 under the Securities Exchange Act of 1934, 15 U.S.C. §§ 78a–78rr, which SEC stated was intended to supplement the publicly available information involving securities lending, close the data gaps in this market, and minimize information asymmetries between market participants. 86 Fed. Reg. 69802. In response to the proposed rule, the Commission received numerous comments expressing a diversity of perspectives. SEC discussed and responded to various comments in the final rule. According to the Commission, on balance, this final rule is designed to achieve the objectives of the proposed rule and is designed to increase the transparency of information available to brokers, dealers, and investors with respect to loans or borrowing securities.

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

SEC determined that this final rule contains information collection requirements under the Act. The Commission stated that in accordance with the Act, it is submitting the rule to OMB for review. SEC additionally noted that the Commission published a notice requesting comment on these collections of information requirements in its proposed rule and submitted these requirements to OMB for review. According to SEC, the title and control number for these collections of information are OMB Control Number 3235-0788. SEC discussed various burden estimates in the rule.

Statutory authorization for the rule

SEC promulgated this rule pursuant to various sections of the Securities Exchange Act of 1934, 15 U.S.C. §§ 78a–78rr, as well as section 984(b) of Public Law 111-203.

Executive Order No. 12866 (Regulatory Planning and Review)

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

Executive Order No. 13132 (Federalism)

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