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January 31, 2024

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: Standards for Covered Clearing Agencies for U.S. Treasury Securities and Application of the Broker-Dealer Customer Protection Rule With Respect to U.S. Treasury Securities*

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 “Standards for Covered Clearing Agencies for U.S. Treasury Securities and Application of the Broker-Dealer Customer Protection Rule With Respect to U.S. Treasury Securities” (RIN: 3235-AN09). We received the rule on December 13, 2023. It was published in the *Federal Register* as a final rule on January 16, 2024. 89 Fed. Reg. 2714. The effective date is March 18, 2024.

The final rule, according to SEC, adopts rules under the Securities Exchange Act of 1934, Pub. L. No. 73-291, 48 Stat. 881 (June 6, 1934), to amend the standards applicable to covered clearing agencies for U.S. Treasury securities to require that such covered clearing agencies have written policies and procedures reasonably designed to require that every direct participant of the covered clearing agency submit for clearance and settlement all eligible secondary market transactions in U.S. Treasury securities to which it is a counterparty. In addition, SEC stated it is adopting additional amendments to the Covered Clearing Agency Standards with respect to risk management. These requirements, according to SEC, are designed to protect investors, reduce risk, and increase operational efficiency. Finally, SEC stated it is amending the broker-dealer customer protection rule to permit margin required and on deposit with covered clearing agencies for U.S. Treasury securities to be included as a debit in the reserve formulas for accounts of customers and proprietary accounts of broker-dealers, subject to certain conditions.

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, flowing style.

Shirley A. Jones  
Managing Associate General Counsel

Enclosure

cc: James 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  
“STANDARDS FOR COVERED CLEARING AGENCIES  
FOR U.S. TREASURY SECURITIES AND APPLICATION OF THE BROKER-DEALER  
CUSTOMER PROTECTION RULE WITH RESPECT TO U.S. TREASURY SECURITIES”  
(RIN: 3235-AN09)

(i) Cost-benefit analysis

The Securities and Exchange Commission (SEC) conducted an economic analysis of this final rule where it discussed the benefits and costs. According to SEC, the amendments being adopted will likely yield benefits associated with increased levels of central clearing in the secondary market for U.S. Treasury securities. Further, SEC noted these benefits could be particularly significant in times of market stress, as central counterparties (CCPs) will mitigate the potential for a single market participant’s failure to destabilize other market participants, destabilize the financial system more broadly, and/or reduce the effects of misinformation and rumors. SEC also stated a CCP also will address concerns about counterparty risk by substituting the creditworthiness and liquidity of the CCP for the creditworthiness and liquidity of counterparties.

According to SEC, significant costs of central clearing for market participants may include: (i) initial margin requirements; (ii) clearing fees; (iii) obligations with respect to the Fixed Income Clearing Corporation capped contingency liquidity facility; (iv) the operational build necessary to access central clearing (either as a direct participant or as an indirect participant); and (v) legal costs and time associated with onboarding customers for indirect central clearing, including, e.g., the need for Sponsoring Members to file Uniform Commercial Code financing statements with respect to Sponsored Members under the Sponsored Member program. SEC also noted that not all costs are expected to be borne by all participants and may depend on rules of the clearing agency.

(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 would 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.

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

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

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

On October 25, 2022, SEC published a proposed rule. 87 Fed. Reg. 64610. SEC stated that it received many comments on the proposal and addressed comments in this final rule.

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

SEC determined that this final rule contains collections of information requirements within the meaning of PRA. SEC stated that the first collection of information, titled "17ad-22(e)(6) (Treasury Clearing)," OMB Control Number 3235-0695, has an aggregate ongoing burden of 170 hours per year. SEC stated that the second collection of information, titled "17ad-22(e)(18) (Treasury Clearing)," OMB Control Number 3235-0695, has an aggregate ongoing burden of 170 hours per year.

Statutory authorization for the rule

SEC promulgated this final rule pursuant to section 2(c)(2)(E) of title 7, United States Code; section 5221(e)(3) of title 12, United States Code; sections 77c, 77d, 77g, 77j, 77s, 77z-2, 77z-3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78c-3, 78c-5, 78d, 78e, 78f, 78g, 78i, 78j, 78j-1, 78k, 78k-1, 78l, 78m, 78n, 78n-1, 778o, 78o-4, 78o-10, 78p, 78q, 78q-1, 78s, 78u-5, 78w, 78x, 78dd, 78ll, 78mm, 80a-20, 80a-23, 80a-29, 80a-37, 80b-3, 80b-4, 80b-11, 7201 *et seq.*, and 8302 of title 15, United States Code; 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 Act.

Executive Order No. 13132 (Federalism)

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