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B-336086

March 12, 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: Further Definition of “As a Part of a Regular Business” in the Definition of Dealer and Government Securities Dealer in Connection with Certain Liquidity Providers*

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 “Further Definition of ‘As a Part of a Regular Business’ in the Definition of Dealer and Government Securities Dealer in Connection with Certain Liquidity Providers” (RIN: 3235-AN10). We received the rule on February 12, 2024. It was published in the *Federal Register* as a final rule on February 29, 2024. 89 Fed. Reg. 14938. The effective date is April 29, 2024.

The final rule, according to SEC, adopts new rules to further define the phrase “as a part of a regular business” as used in the statutory definitions of “dealer” and “government securities dealer” under sections 3(a)(5) and 3(a)(44), respectively, of the Securities Exchange Act of 1934. Pub. L. No. 73-291, 48 Stat. 881 (June 6, 1934).

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
“FURTHER DEFINITION OF ‘AS A PART OF REGULAR BUSINESS’
IN THE DEFINITION OF DEALER AND GOVERNMENT SECURITIES DEALER
IN CONNECTION WITH CERTAIN LIQUIDITY PROVIDERS”
(RIN: 3235-AN10)

(i) Cost-benefit analysis

The Securities and Exchange Commission (SEC) conducted an economic analysis of this final rule. SEC stated the rule will promote competition among entities that regularly provide significant liquidity by applying consistent regulation to these entities, thus leveling the playing field between liquidity provision conducted by entities that are currently registered as dealers and government securities dealers and by entities that are not. Further, SEC stated the rule will also promote the financial responsibility and operational integrity of significant liquidity providers that are acting as dealers in securities markets by subjecting them to the Net Capital Rule and to other SEC and self-regulatory organization rules and oversight. Additionally, SEC stated the financial responsibility and operational integrity of these significant liquidity providers, in turn, will support the resilience of securities markets. Further, according to SEC, the rule will improve SEC’s ability to analyze market events and detect manipulation and fraud.

SEC explained that the rule may have small negative effects on market liquidity and efficiency, due to increases in costs for affected parties. SEC further stated that the rule may promote liquidity and efficiency by limiting the probability that significant liquidity providers fail.

(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.*

SEC published a proposed rule on April 18, 2022. 87 Fed. Reg. 23054. SEC received comments from investment advisers, principal trading firms, private fund advisers, crypto asset related entities and industry groups, insurance industry groups, industry associations, advisory groups, retail investors, and other market participants. SEC addressed the comments in the final rule.

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

SEC determined the final rule contained information collection requirements (ICRs) subject to PRA. The ICRs and associated OMB Control Numbers are: "Application for Registration of Brokers or Dealers," OMB Control Number 3235-0012; "Notice of Government Securities Broker-Dealer Activities," "Application for Registration of Government Securities Brokers or Government Securities Dealers," "Amendments to Application," "Withdrawal from Registration," OMB Control Number 3235-0018; "Withdrawal from Registration of Government Securities Brokers or Government Securities Dealers," "Identification of Quotations," OMB Control Number 3235-0479; "Net Capital Requirements for Brokers and Dealers," OMB Control Number 3235-0200; "Risk Management Controls for Brokers or Dealers with Market Access," OMB Control Number 3235-0673; "Records to be Made by Certain Exchange Members, Brokers, and Dealers," OMB Control Number 3235-0033; "Records to be Preserved by Certain Members, Brokers, and Dealers," OMB Control Number 3235-0279; "Reports to be Made by Certain Exchange Members, Brokers and Dealers," OMB Control Number 3235-0123; "Notification Provisions for Brokers and Dealers," OMB Control Number 3235-0085; and "Consolidated Audit Trail," OMB Control Number 3235-0671. SEC estimated burdens of the ICRs in the final rule.

Statutory authorization for the rule

SEC promulgated the final rule pursuant to section 2 of title 7; section 5221 of title 12; 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, 78j-4, 78k, 78k-1, 78l, 78m, 78n, 78n-1, 78o, 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; and section 1350 of title 18, United States Code; and Public Laws 111-203 and 112-106.

Executive Order No. 12866 (Regulatory Planning and Review)

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

Executive Order No. 13132 (Federalism)

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