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United States Government Accountability Office  
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October 31, 2008

The Honorable Christopher J. Dodd  
Chairman  
The Honorable Richard C. Shelby  
Ranking Minority Member  
Committee on Banking, Housing, and Urban Affairs  
United States Senate

The Honorable Barney Frank  
Chairman  
The Honorable Spencer Bachus  
Ranking Minority Member  
Committee on Financial Services  
House of Representatives

Subject: *Securities and Exchange Commission: Amendments to Regulation SHO*

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 (Commission), entitled "Amendments to Regulation SHO" (RIN: 3235-AJ57). We received the rule on October 16, 2008. It was published in the *Federal Register* as a final rule on October 17, 2008. 73 Fed. Reg. 61,690.

The final rule makes amendments to Regulation SHO under the Securities Exchange Act of 1934. The final rule eliminates the options market maker exception to the close-out requirement of Regulation SHO. The final rule became effective on October 17, 2008. The Commission found good cause for the rule to become immediately effective notwithstanding the requirement of the Congressional Review Act that major rules not become effective until 60 days after publication or receipt by Congress. 5 U.S.C. § 808(2).

Enclosed is our assessment of the Commission's compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. Our review indicates that the Commission complied with the applicable requirements.

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 Michael R. Volpe, Assistant General Counsel, at (202) 512-8236.

signed

Robert J. Cramer  
Associate General Counsel

Enclosure

cc: Florence E. Harmon  
Acting 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  
"AMENDMENTS TO REGULATION SHO"  
(RIN: 3235-AJ57)

(i) Cost-benefit analysis

The Securities and Exchange Commission (Commission) prepared a cost-benefit analysis in conjunction with the final rule. The Commission believes the final rule will benefit investors by facilitating the receipt of shares so that more investors receive the benefits associated with ownership, and enhance investor confidence by providing greater assurance that securities will be delivered as expected. The Commission believes the final rule will benefit issuers by decreasing the possibility of artificial market influences and contributing to price efficiency. The Commission notes that on a security-by-security basis the impact on options market maker costs, liquidity, quote depths, and spread widths may vary considerably and may in some cases be large. However, the Commission believes that overall market impact of the amendments will be minimal and that the benefits outweigh the costs.

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

The Commission prepared a regulatory flexibility analysis as required under the Act. The Commission estimates that as of 2007 there were approximately 896 registered broker-dealers that qualified as small entities that might be affected by the final rule, and that no bank, U.S. registered exchange or clearing agency that is subject to the requirements of Regulation SHO would be considered small entities. The Commission considered alternatives that would accomplish the objective of further reducing the number of persistent fails to deliver in threshold securities while minimizing any significant adverse impact on small entities. However, the Commission believes that imposing different requirements for small entities would undermine the goal of reducing fails to deliver.

(iii) Agency actions relevant to sections 202-205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532-1535

The Unfunded Mandates Reform Act of 1995 is inapplicable to the Commission, because it is not an agency for purposes of the Act. 2 U.S.C. § 658(1).

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

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

The Commission published a proposed rule on August 14, 2007. 72 Fed. Reg. 45,558. The Commission received over 1,000 comment letters in response to the proposed rule. The Commission responded to the comments in the final rule. 73 Fed. Reg. 61,690.

Paperwork Reduction Act, 44 U.S.C. §§ 3501-3520

The final rule does not contain a collection of information requirement within the meaning of the Paperwork Reduction Act.

Statutory authorization for the rule

The final rule is authorized by various sections of the Securities Exchange Act of 1934.

Executive Order No. 12,866

The Commission is not subject to Executive Order 12,866, because it is an independent regulatory agency, as defined by 44 U.S.C. § 3502(5).

Executive Order No. 13,132 (Federalism)

The Commission is not subject to Executive Order 13,132, because it is an independent regulatory agency, as defined by 44 U.S.C. § 3502(5).