



G A O

Accountability * Integrity * Reliability

United States Government Accountability Office
Washington, DC 20548

B-316730

July 16, 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: Internal Control Over Financial Reporting in Exchange Act Periodic Reports of Non-Accelerated Filers*

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 (the Commission), entitled “Internal Control Over Financial Reporting in Exchange Act Periodic Reports of Non-Accelerated Filers” (RIN: 3235-AJ64). We received the rule on June 27, 2008. It was published in the *Federal Register* as a final rule on July 2, 2008. 73 Fed. Reg. 38,094. The stated beginning effective date of this final rule is September 2, 2008.

The final rule further postpones the application of certain requirements under the Sarbanes-Oxley Act of 2002 to companies that are non-accelerated filers. The requirement for companies whose application is being delayed is that these companies include in their annual reports an attestation report by their independent auditors on internal control over financial reporting. Under this final rule, a non-accelerated filer will be required to file the auditor’s attestation report with its first annual report for a fiscal year ending on or after December 15, 2009.

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

ENCLOSURE

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
SECURITIES AND EXCHANGE COMMISSION
ENTITLED
"INTERNAL CONTROL OVER FINANCIAL REPORTING IN
EXCHANGE ACT PERIODIC REPORTS OF
NON-ACCELERATED FILERS"
(RIN: 3235-AJ64)

(i) Cost-benefit analysis

The Commission examined the costs and benefits of this final rule. The benefit is that the rule will postpone for 1 year the date by which a non-accelerated filer must begin to include in its annual report an auditor attestation report on management's assessment of internal control over financial reporting. The Commission believes this delay will benefit investors by helping smaller companies avoid incurring unnecessary compliance costs as the Commission determines whether further action to improve the effectiveness and efficiency of the requirement is warranted.

According to the Commission, the costs of this final rule include the fact that investors in non-accelerated filers will have to wait longer than they would in the absence of the deferral for the assurances provided by the attestation report by the companies' auditor on management's report. The Commission concluded that the risk that some investors may lose confidence in non-accelerated filers is small.

(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 in compliance with the Act. The Commission concluded that this final rule will impact some small entities. The Commission detailed in the final rule alternatives considered and actions taken to minimize significant adverse impacts on small entities.

(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, the Commission is not subject to the Act.

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

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

The Commission promulgated this final rule using the notice and comment procedures found in the Administrative Procedure Act. 5 U.S.C. § 553. On February 7, 2008, the Commission published a proposed rule. 73 Fed. Reg. 7450. The Commission received 67 comments on the proposed rule, which they considered in the final rule.

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

The Commission determined that this final rule does not result in any change in the collection of information requirements under the Act and therefore is not revising the burden estimates submitted to the Office of Management and Budget (OMB) under prior rulemakings.

Statutory authorization for the rule

The Commission promulgated this rule under the authority of section 19 of the Securities Act of 1933; sections 3, 12, 13, 15, 23, and 36 of the Securities Exchange Act of 1934; and sections 3(a) and 404 of the Sarbanes-Oxley Act of 2002. 15 U.S.C. §§ 77s, 78c, 78l, 78m, 78o, 78w, 7202(a), 7262.

Securities Exchange Act of 1934, 15 U.S.C. §§ 78c(f), 78w(a)(2)

Section 3(f) of the Act requires the Commission to determine whether a rulemaking will promote efficiency, competition, and capital formation. 15 U.S.C. § 78c(f). Section 23(a)(2) of the Act also prohibits any rulemaking that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Act. 15 U.S.C. § 78w(a)(2). The Commission concludes that this rule will promote efficiency and capital formation and will not impact competition.

Executive Order No. 12,866

The Commission is not subject to Executive Order 12,866 because it is an independent regulatory agency.