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Office of the General Counsel

B-276175

February 25, 1997

The Honorable Alfonse M. D'Amato  
Chairman  
The Honorable Paul S. Sarbanes  
Ranking Minority Member  
Committee on Banking, Housing, and Urban Affairs  
United States Senate

The Honorable Thomas J. Bliley, Jr.  
Chairman  
The Honorable John D. Dingell  
Ranking Minority Member  
Committee on Commerce  
House of Representatives

Subject: Securities and Exchange Commission: Reporting Requirements for  
Brokers or Dealers Under the Securities Exchange Act of 1934

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 "Reporting Requirements for Brokers or Dealers Under the Securities Exchange Act of 1934" (RIN: 3235-AF91). We received the rule on February 7, 1997. It was published in the Federal Register as a final rule on February 12, 1997. 62 Fed. Reg. 6469.

The final rule amends the Commission's broker-dealer record preservation rule to allow broker-dealers to employ, under certain conditions, electronic storage media to maintain records required to be retained. The amendments reflect a recognition of technical developments that will provide economic as well as time-saving advantages for broker-dealers by expanding the scope of recordkeeping options while at the same time continuing to require broker-dealers to maintain records in a manner that preserves their integrity. The preamble to the final rule also contains an interpretation of the Commission's record preservation rule relating to the treatment of electronically generated communications.

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, please contact James Vickers, Assistant General Counsel, at (202) 512-8210. The official responsible for GAO evaluation work relating to the Securities and Exchange Commission is Jean Gleason Stromberg, Director, Financial Institutions and Markets Issues. Ms. Stromberg can be reached at (202) 512-8678.

Robert P. Murphy  
General Counsel

Enclosure

cc: The Honorable Jonathan G. Katz  
Secretary  
Securities and Exchange Commission

ANALYSIS UNDER 5 U.S.C. § 801(a)(1)(B)(i)-(iv) OF A MAJOR RULE  
ISSUED BY  
THE SECURITIES AND EXCHANGE COMMISSION  
ENTITLED  
"REPORTING REQUIREMENTS FOR BROKERS OR DEALERS UNDER THE  
SECURITIES EXCHANGE ACT OF 1934"  
(RIN: 3235-AF91)

(i) Cost-benefit analysis

The Commission stated in its submission to us that it was not required to prepare and did not prepare a cost-benefit analysis of the rule.

However, in its submission to our Office, the Commission discusses estimates made by the Securities Industry Association which estimate the average cost savings to the securities industry to be as much as \$158.75 million, assuming 500 firms use one of the permissible optical storage technologies. This is broken down to an annual savings of \$1.6 million for the 25 largest broker-dealers and \$250,000 for 475 smaller firms. The Commission states that this is the type of information which would have been provided by a cost-benefit analysis.

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

The Chairman of the Commission has certified that the final rule will not have a significant economic impact on a substantial number of small entities because the rule does not alter the regulatory requirements for broker-dealers using currently accepted media for record retention purposes.

(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 title II of the Unfunded Mandates Reform Act of 1995.

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

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

The final rule was promulgated using the notice and comment procedures of 5 U.S.C § 553. A notice of proposed rulemaking was published in the Federal

Register on July 15, 1993. 58 Fed. Reg. 38092. The Commission received 13 comments in response to the proposed rulemaking which are summarized and responded to in the preamble to the final rule and the Commission explains the changes to the proposed rule which were made based on the comments.

These changes involve adopting a standard that the electronic media must satisfy rather than specifying the type of media that must be used, the preserving of handwritten records, the storage of a duplicate record and the instances when an audit system is required.

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

The information collections required under the final rule were previously approved by the Office of Management and Budget (OMB) following a notice in the Federal Register on August 12, 1993, that the Commission had submitted the matter to OMB for approval. 58 Fed. Reg. 42992. No comments were received and OMB issued control number 3235-0279 approving the information collections. The control number was reauthorized by OMB on June 30, 1996, after no comments were received in response to an April 2, 1996, Federal Register notice. 61 Fed. Reg. 14586.

The final rule makes no substantive modifications to the previously approved collections.

Statutory authorization for the rule

The rule was promulgated pursuant to the Securities Exchange Act of 1934, particularly section 17(a)(1). 15 U.S.C. § 78q(a)(1). That section provides the Commission authority to issue such rules regarding the keeping of records as necessary to protect investors.

Executive Order No. 12866

The rule, promulgated by an independent regulatory agency, is not subject to the review requirements of Executive Order No. 12866.

The Commission did not identify any other statutes or executive orders imposing requirements relevant to the rule.