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October 24, 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: Commission Guidance and Revisions to the Cross-Border Tender Offer, Exchange Offer, Rights Offerings, and Business Combination Rules and Beneficial Ownership Reporting Rules for Certain Foreign Institutions*

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 “Commission Guidance and Revisions to the Cross-Border Tender Offer, Exchange Offer, Rights Offerings, and Business Combination Rules and Beneficial Ownership Reporting Rules for Certain Foreign Institutions” (RIN: 3235-AK10). We received the rule on September 22, 2008. It was published in the *Federal Register* as a final rule and interpretation on October 9, 2008. 73 Fed. Reg. 60,050. This final rule has a stated effective date of December 8, 2008, with the exception of the listing of the new interpretive guidance document in parts 231 and 241. Those additions are effective October 9, 2008. 73 Fed. Reg. 60,050.

This final rule expands certain exemptions for cross-border tender offers, exchange offers, rights offerings, and business combinations. Certain cross-border transactions are exempt from certain rules and reporting requirements. These exemptions are meant to address conflicts between U.S. and foreign regulation. This final rule retains the basic two-tiered structure and the percentage thresholds of U.S. ownership, but expands the scope of some of the exemptions. It also revises the manner in which eligibility to rely on the revised exemptions is determined. The

Commission is promulgating this final rule to address practical problems that have limited the ability of bidders to rely on the exemptions and to alleviate some of the burdens bidders face when complying with multiple regulatory systems. According to the Commission, many of the changes made by this final rule codify existing interpretive positions and exemptive orders for cross-border transactions.

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: J. Lynn Taylor
Assistant 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
"COMMISSION GUIDANCE AND REVISIONS TO THE
CROSS-BORDER TENDER OFFER, EXCHANGE OFFER,
RIGHTS OFFERINGS, AND BUSINESS COMBINATION RULES
AND BENEFICIAL OWNERSHIP REPORTING RULES
FOR CERTAIN FOREIGN INSTITUTIONS"
(RIN: 3235-AK10)

(i) Cost-benefit analysis

The Securities and Exchange Commission (Commission) analyzed the costs and benefits of this final rule. The Commission found that the benefits of this final rule include (1) reducing the costs of certain cross-border transactions through fewer filings and other changes, (2) enhanced flexibility for bidders, (3) promoting the use of the exemptions, (4) reducing the burden on the Commission of providing no-action or exemptive orders, and (4) harmonizing the treatment of exchange offers and cash tender offers. The Commission identified some costs of this final rule, including reduced procedural and informational safeguards of U.S. investors.

(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 may 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 May 9, 2008, the Commission published a proposed rule. 73 Fed. Reg. 26,876. The

Commission received comments on the proposed rule, which they considered in the final rule. 73 Fed. Reg. 60,052–60,078.

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

This final rule contains amendments to information collection requirements subject to the Act, and the Commission has submitted those requirements to the Office of Management and Budget for review. The Commission has concluded, for the three information collection requirements analyzed, this final rule will not change the paperwork burden.

Statutory authorization for the rule

The Commission promulgated this rule under the authority of sections 3(b), 7, 8, 9, 10, 19, and 28 of the Securities Act of 1933 and sections 12, 13, 14, 23, 35A, and 36 of the Securities Exchange Act of 1934. 15 U.S.C. §§ 77c(b), 77g, 77h, 77i, 77j, 77s, 77z-3, 78l, 78m, 78n, 78w, 78ll, 78mm.

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.