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United States Government Accountability Office  
Washington, DC 20548

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B-317283

October 20, 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: Foreign Issuer Reporting  
Enhancements*

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 “Foreign Issuer Reporting Enhancements” (RIN: 3235-AK03). We received the rule on September 24, 2008. It was published in the *Federal Register* as a final rule on October 6, 2008. 73 Fed. Reg. 58,300.

The final rule amends Commission rules relating to foreign private issuers—these rules are intended to enhance the information that is available to investors. These amendments are part of a series of initiatives that seek to effect changes in disclosure and other requirements applicable to foreign private issuers in light of market developments, new technologies, and other matters in a manner that promotes investor protection and cross-border capital flows. The final rule has an effective date of December 5, 2008.

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  
"FOREIGN ISSUER REPORTING ENHANCEMENTS"  
(RIN: 3235-AK03)

(i) Cost-benefit analysis

The final rule adopts a number of amendments to foreign private investor rules. The Commission performed a cost-benefit analysis of all the amendments. For example, the final rule enables foreign issuers to test their eligibility to use the special forms and rules available to foreign private issuers once a year, rather than continuously. The Commission cited simplification of the compliance requirements as a benefit of this amendment, "which could make the U.S. markets more attractive to [foreign investors] as a source of capital and thereby enhance the competitiveness of the U.S. markets compared to other markets." The Commission noted that investors could incur costs from the amendments if foreign issuers that have been reporting under the domestic reporting regime immediately switch over to the foreign private issuer forms once they qualify as foreign private issuers.

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

The Commission certified that the final rule will not have a significant economic impact on a substantial number of small entities. For this reason, the Commission did not prepare a Final Regulatory Flexibility Analysis.

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

The final rule, promulgated by an independent regulatory agency, 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 issued using the notice and comment procedures contained in the Administrative Procedure Act, 5 U.S.C. § 553. On March 12, 2008, the Commission published a Notice of Proposed Rulemaking in the *Federal Register*. 73 Fed. Reg. 13,404. The Commission received 52 comments in response to the proposed rule and responds to those comments in the final rule.

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

The final rule contains “collection of information” requirements within the meaning of the Paperwork Reduction Act. The Commission submitted these requirements to the Office of Management and Budget for review.

Statutory authorization for the rule

The final rule was promulgated under the authority of sections 6, 7, 10, and 19 of the Securities Act, as amended, and sections 3, 12, 13, 15, 23, and 36 of the Exchange Act, as amended.

Executive Order No. 12,866

The final rule, promulgated by an independent regulatory agency, is not subject to the review requirements of the Order.