

SECURITIES AND EXCHANGE COMMISSION

17 CFR Chapter II

[Release Nos. 33-9257; 34-65262; 39-2479; IA-3271; IC-29781; File No. S7-36-11]

RETROSPECTIVE REVIEW OF EXISTING REGULATIONS

AGENCY: Securities and Exchange Commission

ACTION: Request for information.

SUMMARY: On July 11, 2011, the President issued Executive Order 13579, "Regulation and Independent Regulatory Agencies," which, among other things, states that independent regulatory agencies, no less than executive agencies, should promote the goal, set forth in Executive Order 13563 of January 18, 2011, of a regulatory system that protects "public health, welfare, safety, and our environment while promoting economic growth, innovation, competitiveness, and job creation." In furtherance of its ongoing efforts to update regulations to reflect market developments and changes in the regulatory landscape, and in light of Executive Order 13579, the Securities and Exchange Commission ("Commission") invites interested members of the public to submit comments to assist the Commission in considering the development of a plan for the retrospective review of its regulations.

DATES: Comments must be submitted on or by: October 6, 2011.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/other.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number S7-36-11 on the subject line; or
- Use the Federal eRulemaking Portal (<http://www.regulations.gov>). Follow the instructions for submitting comments.

Paper comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number S7-36-11. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/other.shtml>). Comments are also available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Robert G. Bagnall, Attorney-Fellow, Office of the General Counsel, 202-551-7939.

SUPPLEMENTARY INFORMATION:

Background - Current Commission Processes for Retrospective Analysis of Existing Regulations

Because today's financial markets are dynamic and fast-moving, the regulations affecting those markets and participants in these markets must be reviewed over time and revised as necessary so that the regulations continue to fulfill the Commission's mission. The Commission has long had in place formal and informal processes for the review of existing rules to assess the rules' continued utility and effectiveness in light of continuing evolution of the securities markets and changes in the securities laws and regulatory priorities. Key examples of the ongoing processes of the Commission and staff for review of existing rules include the following:

- The Commission and staff review existing regulations retrospectively as part of studies of broad substantive program areas. For example, in March 2011, the Commission initiated a broad review of offering and reporting requirements affecting issuers. The Commission posted a regulatory review webpage seeking suggestions from the public on “modifying, streamlining, expanding, or repealing existing rules to better promote economic growth, innovation, competitiveness and job creation” consistent with our mandates to protect investors, maintain fair, orderly, and efficient markets, and facilitate capital formation.¹
- Consistent with section 610(a) of the Regulatory Flexibility Act, the Commission annually reviews each of its rules that has become final within the past ten years. In connection with that review, the Commission publishes a list of the rules scheduled to be

¹ See <http://www.sec.gov/spotlight/regulatoryreviewcomments.shtml>.

reviewed by the Commission staff during the next twelve months.² The Commission's stated policy is to review all such final rules to assess their continued utility with a view to identifying those rules in need of modification or even rescission.³

- The Commission and staff frequently receive and consider suggestions to review existing rules through various types of communications, ranging from formal petitions for rulemaking to informal correspondence from investors, investor and industry groups, Congress, fellow regulators, the bar and the public.
- The Commission and staff frequently discuss the need to revisit existing rules through formal and informal public engagement, including advisory committees, roundtables, town hall meetings, speeches, conferences and other meetings.
- The Commission staff may identify existing regulations that may merit review through its compliance inspection and examination functions, enforcement investigations, and the receipt of requests for exemptive relief or Commission or staff guidance.
- A significant portion of the Commission's rulemaking activity already involves the consideration of changes to existing rules. Commission staff, in preparing rulemaking proposals, routinely consider related existing rules and assess whether to recommend changes to, or the elimination of, those existing rules.

Executive Order 13579

On July 11, 2011, the President signed Executive Order 13579, "Regulation and Independent Regulatory Agencies." The Executive Order states that independent regulatory agencies, to facilitate the periodic review of existing significant regulations, "should consider how best to promote retrospective analysis of rules that may be outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned. The review of existing rules "should also consider

² See, e.g., Regulatory Flexibility Agenda, Securities Act Release No. 9194 (March 3, 2011), 76 FR 40208 (July 7, 2011).

³ When the Commission implemented the Regulatory Flexibility Act in 1980, it stated that it "intend[ed] to conduct a broader review [than that required by that Act], with a view to identifying those rules in need of modification or even rescission." Securities Act Release No. 6302 (Mar. 20, 1981), 46 FR 19251 (Mar. 30, 1981).

strengthening, complementing, or modernizing rules where necessary or appropriate – including, if relevant, undertaking new rulemaking.”⁴

Executive Order 13579 also states that, within 120 days, each independent agency “should develop and release to the public a plan, consistent with law and reflecting its resources and regulatory priorities and processes, under which the agency will periodically review its existing significant regulations to determine whether any such regulations should be modified, streamlined, expanded, or repealed so as to make the agency’s regulatory program more effective or less burdensome in achieving the regulatory objectives.”

Request for Comments

In furtherance of its ongoing efforts to update regulations to reflect market developments and changes in the regulatory landscape, and in light of Executive Order 13579, the Commission invites public comments on the development of a plan for retrospective review of existing significant regulations. The Commission welcomes general comments on what the scope and elements of such a plan should be. In addition, the Commission encourages commenters to respond to the questions below:

1. What factors should the Commission consider in selecting and prioritizing rules for review?
2. How often should the Commission review existing rules?
3. Should different rules be reviewed at different intervals? If so, which categories of rules should be reviewed more or less frequently, and on what basis?
4. To what extent does relevant data exist that the Commission should consider in selecting and prioritizing rules for review and in reviewing rules, and how should the Commission assess such data in these processes? To what extent should these processes include reviewing financial economic literature or conducting empirical studies? How can our review processes obtain and consider data and analyses that address the benefits of our rules in preventing fraud or other harms to our financial markets and in otherwise protecting investors?
5. What can the Commission do to modify, streamline, or expand its regulatory review processes?
6. How should the Commission improve public outreach and increase public participation in the rulemaking process?
7. Is there any other information that the Commission should consider in developing and implementing a preliminary plan for retrospective review of regulations?

⁴ Memorandum for the Heads of Independent Regulatory Agencies, M-11-28, “Executive Order 13579, “Regulation and Independent Regulatory Agencies” (July 22, 2011), <http://www.whitehouse.gov/sites/default/files/omb/memoranda/2011/m11-28.pdf>

Please note that the Commission is not soliciting comment in this notice on specific existing Commission rules to be considered for review. Any comments regarding a currently pending Commission rule proposal, including proposed amendments to existing rules, should be directed to the comment file for the relevant rule proposal.⁵

We anticipate that any processes set forth in a Commission plan will reflect constraints imposed by limits on resources and competing priorities.⁶ Accordingly, the Commission encourages commenters to consider what additional steps, if any, beyond the Commission's current review processes could be implemented effectively and efficiently in light of the Commission's overall resource constraints and responsibilities.

The Commission is issuing this request for information solely for information and program-planning purposes. The Commission will consider the comments submitted and may use them as appropriate in the preparation of a retrospective review plan but does not anticipate responding to each comment submitted. While responses to this request do not bind the Commission to any further actions, all submissions will be made publicly available on [*sec.gov* or *regulations.gov*].

By the Commission.

Elizabeth M. Murphy
Secretary

Date: September 6, 2011

⁵ See <http://www.sec.gov/rules/submitcomments.htm>.

⁶ Executive Order 13579 states that an agency's plan should reflect "its resources and regulatory priorities and processes."