

Union Calendar No. 317

112TH CONGRESS
2^D SESSION

H. R. 2308

[Report No. 112-453]

To improve the consideration by the Securities and Exchange Commission
of the costs and benefits of its regulations and orders.

IN THE HOUSE OF REPRESENTATIVES

JUNE 23, 2011

Mr. GARRETT (for himself, Mr. BACHUS, Mr. HENSARLING, Mr. NEUGEBAUER, Mr. JONES, Mr. MCHENRY, Mr. CONAWAY, Mr. KING of New York, Mr. CAMPBELL, Mr. SCHWEIKERT, Mr. STIVERS, Mr. DOLD, Mr. MANZULLO, Mr. HURT, Mr. CANSECO, and Mr. YODER) introduced the following bill; which was referred to the Committee on Financial Services

APRIL 25, 2012

Additional sponsors: Mr. GRIMM, Mr. HUIZENGA of Michigan, Mr. GARY G. MILLER of California, and Mr. BISHOP of Utah

APRIL 25, 2012

Reported with an amendment, committed to the Committee of the Whole
House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in *italic*]

A BILL

To improve the consideration by the Securities and Exchange Commission of the costs and benefits of its regulations and orders.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “SEC Regulatory Ac-
5 countability Act”.

6 **SEC. 2. CONSIDERATION BY THE SECURITIES AND EX-**
7 **CHANGE COMMISSION OF THE COSTS AND**
8 **BENEFITS OF ITS REGULATIONS AND OR-**
9 **DERS.**

10 Section 23 of the Securities Exchange Act of 1934
11 (15 U.S.C. 78w) is amended by adding at the end the fol-
12 lowing:

13 “(e) CONSIDERATION OF COSTS AND BENEFITS.—

14 “(1) IN GENERAL.—Before promulgating a reg-
15 ulation under the securities laws, as defined in sec-
16 tion 3(a), or issuing any order pursuant to such
17 laws, the Commission shall—

18 “(A) clearly identify the nature of the
19 problem that the proposed regulation is de-
20 signed to address, as well as assess the signifi-
21 cance of that problem, to enable assessment of
22 whether any new regulation is warranted;

23 “(B) utilize the Office of the Chief Econo-
24 mist to assess the costs and benefits, both qual-
25 itative and quantitative, of the intended regula-

1 tion or order and propose or adopt a regulation
2 or order only on a reasoned determination that
3 the benefits of the intended regulation or order
4 justify the costs of the intended regulation or
5 order; and

6 “(C) ensure that any regulation or order is
7 accessible, consistent, written in plain language,
8 and easy to understand and shall measure, and
9 seek to improve, the actual results of regulatory
10 requirements.

11 “(2) CONSIDERATIONS.—In deciding whether
12 and how to regulate, the Commission shall assess
13 the costs and benefits of available regulatory alter-
14 natives, including the alternative of not regulating.
15 In addition, the Commission may also take the fol-
16 lowing actions in making a reasoned determination
17 of the costs and benefits of a potential regulation—

18 “(A) assess the best ways of protecting
19 market participants and the public;

20 “(B) take into consideration investor
21 choice;

22 “(C) consider the impact on capital forma-
23 tion;

1 “(D) evaluate the effect on the efficiency,
2 competitiveness, and financial integrity of secu-
3 rities markets;

4 “(E) consider the impact on market liquid-
5 ity in the securities markets;

6 “(F) take into consideration price dis-
7 covery;

8 “(G) evaluate sound risk management
9 practices;

10 “(H) evaluate the degree and nature of the
11 risks posed by various activities within the
12 scope of its jurisdiction;

13 “(I) determine whether, consistent with ob-
14 taining regulatory objectives, the regulation is
15 tailored to impose the least burden on society,
16 including market participants, individuals, busi-
17 nesses of differing sizes, and other entities (in-
18 cluding State and local governmental entities),
19 taking into account, to the extent practicable,
20 the cumulative costs of regulations;

21 “(J) determine whether the regulation is
22 inconsistent, incompatible, or duplicative of
23 other Federal regulations; and

1 ~~“(K) determine whether, in choosing~~
 2 ~~among alternative regulatory approaches, those~~
 3 ~~approaches maximize net benefits.~~

4 ~~“(3) REVIEW OF EXISTING REGULATIONS.—~~
 5 ~~The Commission shall periodically review its regula-~~
 6 ~~tions and orders in effect before the date of enact-~~
 7 ~~ment of this subsection to determine whether any~~
 8 ~~such regulations or orders are outmoded, ineffective,~~
 9 ~~insufficient, or excessively burdensome, and shall~~
 10 ~~modify, streamline, expand, or repeal them in ac-~~
 11 ~~cordance with such review.”.~~

12 **SECTION 1. SHORT TITLE.**

13 *This Act may be cited as the “SEC Regulatory Ac-*
 14 *countability Act”.*

15 **SEC. 2. CONSIDERATION BY THE SECURITIES AND EX-**
 16 **CHANGE COMMISSION OF THE COSTS AND**
 17 **BENEFITS OF ITS REGULATIONS AND CER-**
 18 **TAIN OTHER AGENCY ACTIONS.**

19 *Section 23 of the Securities Exchange Act of 1934 (15*
 20 *U.S.C. 78w) is amended by adding at the end the following:*

21 ~~“(e) CONSIDERATION OF COSTS AND BENEFITS.—~~

22 ~~“(1) IN GENERAL.—Before issuing a regulation~~
 23 ~~under the securities laws, as defined in section 3(a),~~
 24 ~~the Commission shall—~~

1 “(A) clearly identify the nature and source
2 of the problem that the proposed regulation is de-
3 signed to address, as well as assess the signifi-
4 cance of that problem, to enable assessment of
5 whether any new regulation is warranted;

6 “(B) utilize the Chief Economist to assess
7 the costs and benefits, both qualitative and quan-
8 titative, of the intended regulation and propose
9 or adopt a regulation only on a reasoned deter-
10 mination that the benefits of the intended regula-
11 tion justify the costs of the regulation;

12 “(C) identify and assess available alter-
13 natives to the regulation that were considered,
14 including modification of an existing regulation,
15 together with an explanation of why the regula-
16 tion meets the regulatory objectives more effec-
17 tively than the alternatives; and

18 “(D) ensure that any regulation is acces-
19 sible, consistent, written in plain language, and
20 easy to understand and shall measure, and seek
21 to improve, the actual results of regulatory re-
22 quirements.

23 “(2) CONSIDERATIONS AND ACTIONS.—

24 “(A) REQUIRED ACTIONS.—In deciding
25 whether and how to regulate, the Commission

1 *shall assess the costs and benefits of available*
2 *regulatory alternatives, including the alternative*
3 *of not regulating, and choose the approach that*
4 *maximizes net benefits. Specifically, the Commis-*
5 *sion shall—*

6 *“(i) consistent with the requirements of*
7 *section 3(f) (15 U.S.C. 78c(f)), section 2(b)*
8 *of the Securities Act of 1933 (15 U.S.C.*
9 *77b(b)), section 202(c) of the Investment*
10 *Advisers Act of 1940 (15 U.S.C. 80b–2(c)),*
11 *and section 2(c) of the Investment Company*
12 *Act of 1940 (15 U.S.C. 80a–2(c)), consider*
13 *whether the rulemaking will promote effi-*
14 *ciency, competition, and capital formation;*

15 *“(ii) evaluate whether, consistent with*
16 *obtaining regulatory objectives, the regula-*
17 *tion is tailored to impose the least burden*
18 *on society, including market participants,*
19 *individuals, businesses of differing sizes,*
20 *and other entities (including State and*
21 *local governmental entities), taking into ac-*
22 *count, to the extent practicable, the cumu-*
23 *lative costs of regulations; and*

1 “(iii) evaluate whether the regulation
2 is inconsistent, incompatible, or duplicative
3 of other Federal regulations.

4 “(B) *ADDITIONAL CONSIDERATIONS.*—In
5 addition, in making a reasoned determination of
6 the costs and benefits of a potential regulation,
7 the Commission shall, to the extent that each is
8 relevant to the particular proposed regulation,
9 take into consideration the impact of the regula-
10 tion on—

11 “(i) investor choice;

12 “(ii) market liquidity in the securities
13 markets; and

14 “(iii) small businesses

15 “(3) *EXPLANATION AND COMMENTS.*—The Com-
16 mission shall explain in its final rule the nature of
17 comments that it received, including those from the
18 industry or consumer groups concerning the potential
19 costs or benefits of the proposed rule or proposed rule
20 change, and shall provide a response to those com-
21 ments in its final rule, including an explanation of
22 any changes that were made in response to those com-
23 ments and the reasons that the Commission did not
24 incorporate those industry group concerns related to
25 the potential costs or benefits in the final rule.

1 “(4) *REVIEW OF EXISTING REGULATIONS.*—Not
2 *later than 1 year after the date of enactment of the*
3 *SEC Regulatory Accountability Act, and every 5*
4 *years thereafter, the Commission shall review its regu-*
5 *lations to determine whether any such regulations are*
6 *outmoded, ineffective, insufficient, or excessively bur-*
7 *densome, and shall modify, streamline, expand, or re-*
8 *peal them in accordance with such review.*

9 “(5) *POST-ADOPTION IMPACT ASSESSMENT.*—

10 “(A) *IN GENERAL.*—Whenever the Commis-
11 *sion adopts or amends a regulation designated*
12 *as a ‘major rule’ within the meaning of section*
13 *804(2) of title 5, United States Code, it shall*
14 *state, in its adopting release, the following:*

15 “(i) *The purposes and intended con-*
16 *sequences of the regulation.*

17 “(ii) *Appropriate post-implementation*
18 *quantitative and qualitative metrics to*
19 *measure the economic impact of the regula-*
20 *tion and to measure the extent to which the*
21 *regulation has accomplished the stated pur-*
22 *poses.*

23 “(iii) *The assessment plan that will be*
24 *used, consistent with the requirements of*
25 *subparagraph (B) and under the super-*

1 *vision of the Chief Economist of the Com-*
2 *mission, to assess whether the regulation has*
3 *achieved the stated purposes.*

4 *“(iv) Any unintended or negative con-*
5 *sequences that the Commission foresees may*
6 *result from the regulation.*

7 *“(B) REQUIREMENTS OF ASSESSMENT PLAN*
8 *AND REPORT.—*

9 *“(i) REQUIREMENTS OF PLAN.—The*
10 *assessment plan required under this para-*
11 *graph shall consider the costs, benefits, and*
12 *intended and unintended consequences of*
13 *the regulation. The plan shall specify the*
14 *data to be collected, the methods for collec-*
15 *tion and analysis of the data and a date for*
16 *completion of the assessment.*

17 *“(ii) SUBMISSION AND PUBLICATION*
18 *OF REPORT.—The Chief Economist shall*
19 *submit the completed assessment report to*
20 *the Commission no later than 2 years after*
21 *the publication of the adopting release, un-*
22 *less the Commission, at the request of the*
23 *Chief Economist, has published at least 90*
24 *days before such date a notice in the Fed-*
25 *eral Register extending the date and pro-*

1 *viding specific reasons why an extension is*
2 *necessary. Within 7 days after submission*
3 *to the Commission of the final assessment*
4 *report, it shall be published in the Federal*
5 *Register for notice and comment. Any mate-*
6 *rial modification of the plan, as necessary*
7 *to assess unforeseen aspects or consequences*
8 *of the regulation, shall be promptly pub-*
9 *lished in the Federal Register for notice and*
10 *comment.*

11 *“(iii) DATA COLLECTION NOT SUBJECT*
12 *TO NOTICE AND COMMENT REQUIRE-*
13 *MENTS.—If the Commission has published*
14 *its assessment plan for notice and comment,*
15 *specifying the data to be collected and meth-*
16 *od of collection, at least 30 days prior to*
17 *adoption of a final regulation or amend-*
18 *ment, such collection of data shall not be*
19 *subject to the notice and comment require-*
20 *ments in section 3506(c) of title 44, United*
21 *States Code (commonly referred to as the*
22 *Paperwork Reduction Act). Any material*
23 *modifications of the plan that require collec-*
24 *tion of data not previously published for no-*
25 *tice and comment shall also be exempt from*

1 *such requirements if the Commission has*
2 *published notice for comment in the Federal*
3 *Register of the additional data to be col-*
4 *lected, at least 30 days prior to initiation*
5 *of data collection.*

6 “(iv) *FINAL ACTION.*—*Not later than*
7 *180 days after publication of the assessment*
8 *report in the Federal Register, the Commis-*
9 *sion shall issue for notice and comment a*
10 *proposal to amend or rescind the regulation,*
11 *or publish a notice that the Commission has*
12 *determined that no action will be taken on*
13 *the regulation. Such a notice will be deemed*
14 *a final agency action.*

15 “(6) *COVERED REGULATIONS AND OTHER AGEN-*
16 *CY ACTIONS.*—*Solely as used in this subsection, the*
17 *term ‘regulation’—*

18 “(A) *means an agency statement of general*
19 *applicability and future effect that is designed to*
20 *implement, interpret, or prescribe law or policy*
21 *or to describe the procedure or practice require-*
22 *ments of an agency, including rules, orders of*
23 *general applicability, interpretive releases, and*
24 *other statements of general applicability that the*

1 *agency intends to have the force and effect of*
2 *law; and*

3 “(B) does not include—

4 “(i) a regulation issued in accordance
5 with the formal rulemaking provisions of
6 section 556 or 557 of title 5, United States
7 Code;

8 “(ii) a regulation that is limited to
9 agency organization, management, or per-
10 sonnel matters;

11 “(iii) a regulation promulgated pursu-
12 ant to statutory authority that expressly
13 prohibits compliance with this provision;
14 and

15 “(iv) a regulation that is certified by
16 the agency to be an emergency action, if
17 such certification is published in the Fed-
18 eral Register.”.

19 **SEC. 3. SUBMISSION OF PLAN FOR SUBJECTING OTHER**
20 **REGULATORY ENTITIES TO COST AND BEN-**
21 **EFIT REQUIREMENTS.**

22 *Not later than 1 year after the date of enactment of*
23 *this Act, the Securities and Exchange Commission shall*
24 *provide to the Committee on Financial Services of the*
25 *House of Representatives and the Committee on Banking,*

1 *Housing, and Urban Affairs of the Senate a report setting*
2 *forth a plan for subjecting the Public Company Accounting*
3 *Oversight Board, the Municipal Securities Rulemaking*
4 *Board, and any national securities association registered*
5 *under section 15A of the Securities Exchange Act of 1934*
6 *(15 U.S.C. 78o-4(a)) to the requirements subsection (e) of*
7 *section 23 of such Act, as added by this Act.*

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