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118TH CONGRESS
2D SESSION

H. R. 8239

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

IN THE HOUSE OF REPRESENTATIVES

MAY 2, 2024

Mrs. WAGNER (for herself, Mr. GARBARINO, Mr. NUNN of Iowa, Mr. MEUSER, Mr. HUIZENGA, and Mr. EMMER) introduced the following bill; which was referred to the Committee on Financial Services

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A BILL

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

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "SEC Regulatory Accountability Act".

SEC. 2. CONSIDERATION BY THE SECURITIES AND EXCHANGE COMMISSION OF THE COSTS AND BENEFITS OF REGULATIONS AND CERTAIN OTHER AGENCY ACTIONS OF THE COMMISSION.

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

"(e) CONSIDERATION OF COSTS AND BENEFITS.—

"(1) CONSIDERATIONS BEFORE PROPOSING A REGULATION.—Before proposing a regulation, the Commission shall—

"(A) clearly identify the nature and source of the problem that the regulation is designed to address, as well as assess the significance of that problem, to enable assessment of whether any new regulation is warranted; and

"(B) ensure that the regulation would be within the Commission's jurisdiction and that the Commission has sufficient experience and expertise to regulate the subject matter covered by the regulation.

"(2) REQUIREMENTS FOR ISSUING A PROPOSED OR FINAL REGULATION.—

"(A) IN GENERAL.—In issuing a proposed or final regulation, the Commission shall—

"(i) clearly identify the market participants who will be impacted by the regulation;

"(ii) utilize the Chief Economist of the Commission to assess the costs and benefits, both qualitative and quantitative, of the regulation, both on the regulation's own and cumulatively with other existing and proposed regulations;

"(iii) only issue the regulation if the Commission makes a reasoned determination that the benefits of the regulation justify the costs of the regulation;

"(iv) identify and assess available alternatives to the regulation that were considered, including modification of an existing regulation;

"(v) ensure that the regulation is accessible, consistent, written in plain language, and easy to understand; and

"(vi) ensure that the length of the public comment period is commensurate with the complexity of the regulation and the expected public interest in the rulemaking.

"(B) Inclusion of information in a proposed or final regulation.—In issuing a proposed or final regulation, the Commission shall include in the regulation—

"(i) the results of the identifications and assessments required under clauses (i) and (ii) of subparagraph (A) with respect to the regulation;

"(ii) an explanation of why the regulation meets the regulatory objectives of the Commission more effectively than other available alternatives, including modification of an existing regulation;

"(iii) a description of how the Commission intends the regulation to interact with existing regulations and proposed regulations; and

"(iv) a justification of the length of the public comment period for the regulation.

"(3) Considerations and actions.—

"(A) Required actions.—In deciding whether and how to regulate, the Commission shall assess the costs and benefits of available regulatory alternatives, including the alternative of not regulating, and choose the approach that maximizes net benefits. Specifically, the Commission shall—

"(i) consistent with the requirements of section 3(f) (15 U.S.C. 78c(f)), section 2(b) of the Securities Act of 1933 (15 U.S.C. 77b(b)), section 202(c) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2(c)), and section 2(c) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(c)), consider whether a rulemaking (both on the regulation's own and cumulatively with other existing and proposed regulations), in addition to being in the interest of protecting investors, will promote efficiency, competition, and capital formation;

"(ii) evaluate whether, consistent with obtaining regulatory objectives, a regulation (both on the regulation's own and cumulatively with other existing and proposed regulations) is tailored to impose the least burden on society, including market participants, individuals, businesses of differing sizes, and other entities (including

State and local governmental entities), taking into account, to the extent practicable, the cumulative costs of regulations; and

"(iii) evaluate whether a regulation is inconsistent, incompatible, or duplicative of other Federal regulations.

"(B) ADDITIONAL CONSIDERATIONS.—In addition, in making a reasoned determination under paragraph (2)(A)(iii) of the costs and benefits of a regulation, the Commission shall, to the extent that each is relevant to the particular regulation, take into consideration the impact of the regulation on—

"(i) investor choice;

"(ii) market liquidity in the securities markets;

"(iii) small businesses;

"(iv) competition in the marketplace;

"(v) investor access; and

"(vi) the United States economic competitiveness.

"(4) POST-ADOPTION IMPACT ASSESSMENT.—

"(A) IN GENERAL.—Whenever the Commission issues a final regulation that is a 'major rule' (as defined under section 804 of title 5, United States Code), it shall state, in the regulation, the following:

"(i) The purposes and intended consequences of the regulation.

"(ii) Appropriate post-implementation quantitative and qualitative metrics to measure the economic impact of the regulation and to measure the extent to which the regulation has accomplished the stated purposes.

"(iii) The assessment plan that will be used, consistent with the requirements of subparagraph (B) and under the supervision of the Chief Economist, to assess whether the regulation has achieved the stated purposes.

"(iv) Any unintended or negative consequences that the Commission foresees may result from the regulation.

"(B) REQUIREMENTS OF ASSESSMENT PLAN AND REPORT.—

"(i) REQUIREMENTS OF PLAN.—For each regulation described under subparagraph (A), the Chief Economist shall establish an assessment plan, which shall—

"(I) consider the costs, benefits, and intended and unintended consequences of the regulation;

"(II) specify the data to be collected, the methods for collection and analysis of the data, and a date for completion of the assessment; and

"(III) include an analysis of any jobs added or lost as a result of the regulation, differentiating between public and private sector jobs.

"(ii) TIMING OF ASSESSMENT PLAN REPORT.—A report on each completed assessment plan described under clause (i) shall be submitted by the Chief Economist to the Commission not later than the end of the 4-year period beginning on the date the applicable regulation is issued, unless the Commission, at the request of the Chief Economist, publishes at least 90 days before the end of such period a notice in the Federal Register extending the date and providing specific reasons why an extension is necessary.

"(iii) PUBLIC COMMENT.—Not later than 7 days after the Commission receives an assessment plan report under clause (ii), the Commission shall publish the report in the Federal Register for public comment.

"(5) REGULATION DEFINED.—In this subsection, the term 'regulation'—

"(A) means an agency statement of general applicability and future effect that is designed to implement, interpret, or prescribe law or policy or to describe the procedure or practice requirements of an agency, including rules, orders of general applicability, interpretive releases, and other statements of general applicability that the agency intends to have the force and effect of law; and

"(B) does not include—

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

"(ii) a regulation that is limited to agency organization, management, or personnel matters;

"(iii) a regulation promulgated pursuant to statutory authority that expressly prohibits compliance with this provision; and

"(iv) a regulation that is certified by the agency to be an emergency action, if such certification is published in the Federal Register.".

SEC. 3. SENSE OF CONGRESS RELATING TO OTHER REGULATORY ENTITIES.

It is the sense of the Congress that the Public Company Accounting Oversight Board should also follow the requirements of section 23(e) of the Securities Exchange Act of 1934, as added by section 2.

SEC. 4. ACCOUNTABILITY PROVISION RELATING TO OTHER REGULATORY ENTITIES.

A rule adopted by the Municipal Securities Rulemaking Board or any national securities association registered under section 15A of the Securities Exchange Act of 1934 (15 U.S.C. 78o–3) shall not take effect unless the Securities and Exchange Commission determines that, in adopting such rule, the Board or association has complied with the requirements of section 23(e) of the Securities Exchange Act of 1934, as added by section 2, in the same manner as is required by the Commission under such section 23(e).

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