

Union Calendar No. 622

114TH CONGRESS
2^D SESSION

H. R. 5429

[Report No. 114-799]

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 9, 2016

Mr. GARRETT (for himself and Mr. HURT of Virginia) introduced the following
bill; which was referred to the Committee on Financial Services

SEPTEMBER 28, 2016

Additional sponsor: Mr. NEUGEBAUER

SEPTEMBER 28, 2016

Committed to the Committee of the Whole House on the State of the Union
and ordered to be printed

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 CER-**
9 **TAIN OTHER AGENCY ACTIONS.**

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 issuing a regulation
15 under the securities laws, as defined in section 3(a),
16 the Commission shall—

17 “(A) clearly identify the nature and source
18 of the problem that the proposed regulation is
19 designed to address, as well as assess the sig-
20 nificance of that problem, to enable assessment
21 of whether any new regulation is warranted;

22 “(B) utilize the Chief Economist to assess
23 the costs and benefits, both qualitative and
24 quantitative, of the intended regulation and
25 propose or adopt a regulation only on a rea-

1 soned determination that the benefits of the in-
2 tended regulation justify the costs of the regula-
3 tion;

4 “(C) identify and assess available alter-
5 natives to the regulation that were considered,
6 including modification of an existing regulation,
7 together with an explanation of why the regula-
8 tion meets the regulatory objectives more effec-
9 tively than the alternatives; and

10 “(D) ensure that any regulation is acces-
11 sible, consistent, written in plain language, and
12 easy to understand and shall measure, and seek
13 to improve, the actual results of regulatory re-
14 quirements.

15 “(2) CONSIDERATIONS AND ACTIONS.—

16 “(A) REQUIRED ACTIONS.—In deciding
17 whether and how to regulate, the Commission
18 shall assess the costs and benefits of available
19 regulatory alternatives, including the alternative
20 of not regulating, and choose the approach that
21 maximizes net benefits. Specifically, the Com-
22 mission shall—

23 “(i) consistent with the requirements
24 of section 3(f) (15 U.S.C. 78c(f)), section
25 2(b) of the Securities Act of 1933 (15

1 U.S.C. 77b(b)), section 202(c) of the In-
2 vestment Advisers Act of 1940 (15 U.S.C.
3 80b–2(c)), and section 2(c) of the Invest-
4 ment Company Act of 1940 (15 U.S.C.
5 80a–2(c)), consider whether the rule-
6 making will promote efficiency, competi-
7 tion, and capital formation;

8 “(ii) evaluate whether, consistent with
9 obtaining regulatory objectives, the regula-
10 tion is tailored to impose the least burden
11 on society, including market participants,
12 individuals, businesses of differing sizes,
13 and other entities (including State and
14 local governmental entities), taking into ac-
15 count, to the extent practicable, the cumu-
16 lative costs of regulations; and

17 “(iii) evaluate whether the regulation
18 is inconsistent, incompatible, or duplicative
19 of other Federal regulations.

20 “(B) ADDITIONAL CONSIDERATIONS.—In
21 addition, in making a reasoned determination of
22 the costs and benefits of a potential regulation,
23 the Commission shall, to the extent that each is
24 relevant to the particular proposed regulation,

1 take into consideration the impact of the regu-
2 lation on—

3 “(i) investor choice;

4 “(ii) market liquidity in the securities
5 markets; and

6 “(iii) small businesses.

7 “(3) EXPLANATION AND COMMENTS.—The
8 Commission shall explain in its final rule the nature
9 of comments that it received, including those from
10 the industry or consumer groups concerning the po-
11 tential costs or benefits of the proposed rule or pro-
12 posed rule change, and shall provide a response to
13 those comments in its final rule, including an expla-
14 nation of any changes that were made in response
15 to those comments and the reasons that the Com-
16 mission did not incorporate those industry group
17 concerns related to the potential costs or benefits in
18 the final rule.

19 “(4) REVIEW OF EXISTING REGULATIONS.—Not
20 later than 1 year after the date of enactment of the
21 SEC Regulatory Accountability Act, and every 5
22 years thereafter, the Commission shall review its
23 regulations to determine whether any such regula-
24 tions are outmoded, ineffective, insufficient, or ex-
25 cessively burdensome, and shall modify, streamline,

1 expand, or repeal them in accordance with such re-
2 view. In reviewing any regulation (including, not-
3 withstanding paragraph (6), a regulation issued in
4 accordance with formal rulemaking provisions) that
5 subjects issuers with a public float of \$250,000,000
6 or less to the attestation and reporting requirements
7 of section 404(b) of the Sarbanes-Oxley Act of 2002
8 (15 U.S.C. 7262(b)), the Commission shall specifi-
9 cally take into account the large burden of such regu-
10 lation when compared to the benefit of such regula-
11 tion.

12 “(5) POST-ADOPTION IMPACT ASSESSMENT.—

13 “(A) IN GENERAL.—Whenever the Com-
14 mission adopts or amends a regulation des-
15 ignated as a ‘major rule’ within the meaning of
16 section 804(2) of title 5, United States Code, it
17 shall state, in its adopting release, the fol-
18 lowing:

19 “(i) The purposes and intended con-
20 sequences of the regulation.

21 “(ii) Appropriate post-implementation
22 quantitative and qualitative metrics to
23 measure the economic impact of the regu-
24 lation and to measure the extent to which

1 the regulation has accomplished the stated
2 purposes.

3 “(iii) The assessment plan that will be
4 used, consistent with the requirements of
5 subparagraph (B) and under the super-
6 vision of the Chief Economist of the Com-
7 mission, to assess whether the regulation
8 has achieved the stated purposes.

9 “(iv) Any unintended or negative con-
10 sequences that the Commission foresees
11 may result from the regulation.

12 “(B) REQUIREMENTS OF ASSESSMENT
13 PLAN AND REPORT.—

14 “(i) REQUIREMENTS OF PLAN.—The
15 assessment plan required under this para-
16 graph shall consider the costs, benefits,
17 and intended and unintended consequences
18 of the regulation. The plan shall specify
19 the data to be collected, the methods for
20 collection and analysis of the data and a
21 date for completion of the assessment. The
22 assessment plan shall include an analysis
23 of any jobs added or lost as a result of the
24 regulation, differentiating between public
25 and private sector jobs.

1 “(ii) SUBMISSION AND PUBLICATION
2 OF REPORT.—The Chief Economist shall
3 submit the completed assessment report to
4 the Commission no later than 2 years after
5 the publication of the adopting release, un-
6 less the Commission, at the request of the
7 Chief Economist, has published at least 90
8 days before such date a notice in the Fed-
9 eral Register extending the date and pro-
10 viding specific reasons why an extension is
11 necessary. Within 7 days after submission
12 to the Commission of the final assessment
13 report, it shall be published in the Federal
14 Register for notice and comment. Any ma-
15 terial modification of the plan, as nec-
16 essary to assess unforeseen aspects or con-
17 sequences of the regulation, shall be
18 promptly published in the Federal Register
19 for notice and comment.

20 “(iii) DATA COLLECTION NOT SUB-
21 JECT TO NOTICE AND COMMENT REQUIRE-
22 MENTS.—If the Commission has published
23 its assessment plan for notice and com-
24 ment, specifying the data to be collected
25 and method of collection, at least 30 days

1 prior to adoption of a final regulation or
2 amendment, such collection of data shall
3 not be subject to the notice and comment
4 requirements in section 3506(c) of title 44,
5 United States Code (commonly referred to
6 as the Paperwork Reduction Act). Any ma-
7 terial modifications of the plan that require
8 collection of data not previously published
9 for notice and comment shall also be ex-
10 empt from such requirements if the Com-
11 mission has published notice for comment
12 in the Federal Register of the additional
13 data to be collected, at least 30 days prior
14 to initiation of data collection.

15 “(iv) FINAL ACTION.—Not later than
16 180 days after publication of the assess-
17 ment report in the Federal Register, the
18 Commission shall issue for notice and com-
19 ment a proposal to amend or rescind the
20 regulation, or publish a notice that the
21 Commission has determined that no action
22 will be taken on the regulation. Such a no-
23 tice will be deemed a final agency action.

1 “(6) COVERED REGULATIONS AND OTHER
2 AGENCY ACTIONS.—Solely as used in this subsection,
3 the term ‘regulation’—

4 “(A) means an agency statement of gen-
5 eral applicability and future effect that is de-
6 signed to implement, interpret, or prescribe law
7 or policy or to describe the procedure or prac-
8 tice requirements of an agency, including rules,
9 orders of general applicability, interpretive re-
10 leases, and other statements of general applica-
11 bility that the agency intends to have the force
12 and effect of law; and

13 “(B) does not include—

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

18 “(ii) a regulation that is limited to
19 agency organization, management, or per-
20 sonnel matters;

21 “(iii) a regulation promulgated pursu-
22 ant to statutory authority that expressly
23 prohibits compliance with this provision;
24 and

1 “(iv) a regulation that is certified by
2 the agency to be an emergency action, if
3 such certification is published in the Fed-
4 eral Register.”.

5 **SEC. 3. SENSE OF CONGRESS RELATING TO OTHER REGU-**
6 **LATORY ENTITIES.**

7 It is the sense of the Congress that the Public Com-
8 pany Accounting Oversight Board should also follow the
9 requirements of section 23(e) of such Act, as added by
10 this title.

11 **SEC. 4. ACCOUNTABILITY PROVISION RELATING TO OTHER**
12 **REGULATORY ENTITIES.**

13 A rule adopted by the Municipal Securities Rule-
14 making Board or any national securities association reg-
15 istered under section 15A of the Securities Exchange Act
16 of 1934 (15 U.S.C. 78o-3) shall not take effect unless
17 the Securities and Exchange Commission determines that,
18 in adopting such rule, the Board or association has com-
19 plied with the requirements of section 23(e) of such Act,
20 as added by section 2, in the same manner as is required
21 by the Commission under such section 23(e).

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