H. R. 1062

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

MARCH 12, 2013

Mr. Garrett (for himself, Mr. Hurt, Mr. Grimm, Mr. Neugebauer, Mrs. Bachmann, Mr. Huizenga of Michigan, Mr. McHenry, Mr. Fincher, Mr. Ross, Mr. Campbell, Mrs. Wagner, Mr. Mulvaney, Mr. Hultgren, Mr. Pittenger, Mr. Gary G. Miller of California, and Mr. Conaway) introduced the following bill; which was referred to the Committee on Financial Services

A BILL

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

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

SECTION 1. SHORT TITLE.

This title may be cited as the “SEC Regulatory Accountability Act”.

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

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

“(e) CONSIDERATION OF COSTS AND BENEFITS.—
“(1) IN GENERAL.—Before issuing a regulation
under the securities laws, as defined in section 3(a),
the Commission shall—

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

“(B) utilize the Chief Economist to assess
the costs and benefits, both qualitative and
quantitative, of the intended regulation and
propose or adopt a regulation only on a rea-
soned determination that the benefits of the in-
tended regulation justify the costs of the regula-
tion;

“(C) identify and assess available alter-
natives to the regulation that were considered,
including modification of an existing regulation,
together with an explanation of why the regulation meets the regulatory objectives more effectively than the alternatives; and

“(D) ensure that any regulation is accessible, consistent, written in plain language, and easy to understand and shall measure, and seek to improve, the actual results of regulatory requirements.

“(2) 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 the rule-
making will promote efficiency, competition, and capital formation;

“(ii) evaluate whether, consistent with obtaining regulatory objectives, the regulation 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 the regulation is inconsistent, incompatible, or duplicative of other Federal regulations.

“(B) ADDITIONAL CONSIDERATIONS.—In addition, in making a reasoned determination of the costs and benefits of a potential regulation, the Commission shall, to the extent that each is relevant to the particular proposed regulation, take into consideration the impact of the regulation on—

“(i) investor choice;

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

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

“(4) **REVIEW OF EXISTING REGULATIONS.**—Not
later than 1 year after the date of enactment of the
SEC Regulatory Accountability Act, and every 5
years thereafter, the Commission shall review its
regulations to determine whether any such regulat-
ions are outmoded, ineffective, insufficient, or ex-
cessively burdensome, and shall modify, streamline,
expand, or repeal them in accordance with such re-
view. In reviewing any regulation (including, not-
withstanding paragraph (6), a regulation issued in
accordance with formal rulemaking provisions) that
subjects issuers with a public float of $250,000,000
or less to the attestation and reporting requirements
of section 404(b) of the Sarbanes-Oxley Act of 2002
(15 U.S.C. 7262(b)), the Commission shall specifi-
cally take into account the large burden of such reg-
ulation when compared to the benefit of such regulation.

“(5) POST-ADOPTION IMPACT ASSESSMENT.—

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

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

“(ii) Appropriate post-implementation
quantitative and qualitative metrics to
measure the economic impact of the regu-
lation 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 super-
vision of the Chief Economist of the Com-
mission, 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.—The assessment plan required under this paragraph shall consider the costs, benefits, and intended and unintended consequences of the regulation. The plan shall specify the data to be collected, the methods for collection and analysis of the data and a date for completion of the assessment.

“(ii) Submission and publication of report.—The Chief Economist shall submit the completed assessment report to the Commission no later than 2 years after the publication of the adopting release, unless the Commission, at the request of the Chief Economist, has published at least 90 days before such date a notice in the Federal Register extending the date and providing specific reasons why an extension is
necessary. Within 7 days after submission

to the Commission of the final assessment

report, it shall be published in the Federal

Register for notice and comment. Any ma-
terial modification of the plan, as nec-

essary to assess unforeseen aspects or con-

sequences of the regulation, shall be

promptly published in the Federal Register

for notice and comment.

“(iii) Data collection not sub-

ject to notice and comment require-

ments.—If the Commission has published

its assessment plan for notice and com-

ment, specifying the data to be collected

and method of collection, at least 30 days

prior to adoption of a final regulation or

amendment, such collection of data shall

not be subject to the notice and comment

requirements in section 3506(c) of title 44,

United States Code (commonly referred to

as the Paperwork Reduction Act). Any ma-
terial modifications of the plan that require

collection of data not previously published

for notice and comment shall also be ex-

empt from such requirements if the Com-
mission has published notice for comment in the Federal Register of the additional data to be collected, at least 30 days prior to initiation of data collection.

“(iv) Final action.—Not later than 180 days after publication of the assessment report in the Federal Register, the Commission shall issue for notice and comment a proposal to amend or rescind the regulation, or publish a notice that the Commission has determined that no action will be taken on the regulation. Such a notice will be deemed a final agency action.

“(6) Covered regulations and other agency actions.—Solely as used 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 other regulatory entities, including the Public Company Accounting Oversight Board, the Municipal Securities Rulemaking Board, and any national securities association registered under section 15A of the Securities Exchange Act of 1934 (15
U.S.C. 78o–3) should also follow the requirements of section 23(e) of such Act, as added by this title.