

115TH CONGRESS  
1ST SESSION

# H. R. 78

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

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IN THE HOUSE OF REPRESENTATIVES

JANUARY 3, 2017

Mrs. WAGNER 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 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”.

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

5 Section 23 of the Securities Exchange Act of 1934  
6 (15 U.S.C. 78w) is amended by adding at the end the fol-  
7 lowing:

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

9 “(1) IN GENERAL.—Before issuing a regulation  
10 under the securities laws, as defined in section 3(a),  
11 the Commission shall—

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

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

24 “(C) identify and assess available alter-  
25 natives to the regulation that were considered,  
26 including modification of an existing regulation,

1 together with an explanation of why the regula-  
2 tion meets the regulatory objectives more effec-  
3 tively than the alternatives; and

4 “(D) ensure that any regulation is acces-  
5 sible, consistent, written in plain language, and  
6 easy to understand and shall measure, and seek  
7 to improve, the actual results of regulatory re-  
8 quirements.

9 “(2) CONSIDERATIONS AND ACTIONS.—

10 “(A) REQUIRED ACTIONS.—In deciding  
11 whether and how to regulate, the Commission  
12 shall assess the costs and benefits of available  
13 regulatory alternatives, including the alternative  
14 of not regulating, and choose the approach that  
15 maximizes net benefits. Specifically, the Com-  
16 mission shall—

17 “(i) consistent with the requirements  
18 of section 3(f) (15 U.S.C. 78c(f)), section  
19 2(b) of the Securities Act of 1933 (15  
20 U.S.C. 77b(b)), section 202(c) of the In-  
21 vestment Advisers Act of 1940 (15 U.S.C.  
22 80b-2(c)), and section 2(c) of the Invest-  
23 ment Company Act of 1940 (15 U.S.C.  
24 80a-2(c)), consider whether the rule-

1 making will promote efficiency, competi-  
2 tion, and capital formation;

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

12 “(iii) evaluate whether the regulation  
13 is inconsistent, incompatible, or duplicative  
14 of other Federal regulations.

15 “(B) ADDITIONAL CONSIDERATIONS.—In  
16 addition, in making a reasoned determination of  
17 the costs and benefits of a potential regulation,  
18 the Commission shall, to the extent that each is  
19 relevant to the particular proposed regulation,  
20 take into consideration the impact of the regu-  
21 lation on—

22 “(i) investor choice;

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

25 “(iii) small businesses.

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

13           “(4) REVIEW OF EXISTING REGULATIONS.—Not  
14 later than 1 year after the date of enactment of the  
15 SEC Regulatory Accountability Act, and every 5  
16 years thereafter, the Commission shall review its  
17 regulations to determine whether any such regula-  
18 tions are outmoded, ineffective, insufficient, or ex-  
19 cessively burdensome, and shall modify, streamline,  
20 expand, or repeal them in accordance with such re-  
21 view. In reviewing any regulation (including, not-  
22 withstanding paragraph (6), a regulation issued in  
23 accordance with formal rulemaking provisions) that  
24 subjects issuers with a public float of \$250,000,000  
25 or less to the attestation and reporting requirements

1 of section 404(b) of the Sarbanes-Oxley Act of 2002  
2 (15 U.S.C. 7262(b)), the Commission shall specifi-  
3 cally take into account the large burden of such regu-  
4 lation when compared to the benefit of such regula-  
5 tion.

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

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

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

15 “(ii) Appropriate post-implementation  
16 quantitative and qualitative metrics to  
17 measure the economic impact of the regu-  
18 lation and to measure the extent to which  
19 the regulation has accomplished the stated  
20 purposes.

21 “(iii) The assessment plan that will be  
22 used, consistent with the requirements of  
23 subparagraph (B) and under the super-  
24 vision of the Chief Economist of the Com-

1 mission, to assess whether the regulation  
2 has achieved the stated purposes.

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

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

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

20 “(ii) SUBMISSION AND PUBLICATION  
21 OF REPORT.—The Chief Economist shall  
22 submit the completed assessment report to  
23 the Commission no later than 2 years after  
24 the publication of the adopting release, un-  
25 less the Commission, at the request of the

1 Chief Economist, has published at least 90  
2 days before such date a notice in the Fed-  
3 eral Register extending the date and pro-  
4 viding specific reasons why an extension is  
5 necessary. Within 7 days after submission  
6 to the Commission of the final assessment  
7 report, it shall be published in the Federal  
8 Register for notice and comment. Any ma-  
9 terial modification of the plan, as nec-  
10 essary to assess unforeseen aspects or con-  
11 sequences of the regulation, shall be  
12 promptly published in the Federal Register  
13 for notice and comment.

14 “(iii) DATA COLLECTION NOT SUB-  
15 JECT TO NOTICE AND COMMENT REQUIRE-  
16 MENTS.—If the Commission has published  
17 its assessment plan for notice and com-  
18 ment, specifying the data to be collected  
19 and method of collection, at least 30 days  
20 prior to adoption of a final regulation or  
21 amendment, such collection of data shall  
22 not be subject to the notice and comment  
23 requirements in section 3506(c) of title 44,  
24 United States Code (commonly referred to  
25 as the Paperwork Reduction Act). Any ma-



1           terial modifications of the plan that require  
2           collection of data not previously published  
3           for notice and comment shall also be ex-  
4           empt from such requirements if the Com-  
5           mission has published notice for comment  
6           in the Federal Register of the additional  
7           data to be collected, at least 30 days prior  
8           to initiation of data collection.

9           “(iv) FINAL ACTION.—Not later than  
10          180 days after publication of the assess-  
11          ment report in the Federal Register, the  
12          Commission shall issue for notice and com-  
13          ment a proposal to amend or rescind the  
14          regulation, or publish a notice that the  
15          Commission has determined that no action  
16          will be taken on the regulation. Such a no-  
17          tice will be deemed a final agency action.

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

21                 “(A) means an agency statement of gen-  
22                 eral applicability and future effect that is de-  
23                 signed to implement, interpret, or prescribe law  
24                 or policy or to describe the procedure or prac-  
25                 tice requirements of an agency, including rules,

1 orders of general applicability, interpretive re-  
2 leases, and other statements of general applica-  
3 bility that the agency intends to have the force  
4 and effect of law; and

5 “(B) does not include—

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

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

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

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

21 **SEC. 3. SENSE OF CONGRESS RELATING TO OTHER REGU-**  
22 **LATORY ENTITIES.**

23 It is the sense of the Congress that the Public Com-  
24 pany Accounting Oversight Board should also follow the

1 requirements of section 23(e) of such Act, as added by  
2 this title.

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

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

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