H. R. 78

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

JANUARY 3, 2017

Mrs. WAGNER 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 Act may be cited as the “SEC Regulatory Accountability Act”.

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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-
atives 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 potential costs or benefits of the proposed rule or proposed rule change, and shall provide a response to those comments in its final rule, including an explanation of any changes that were made in response to those comments and the reasons that the Commission 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 regulations are outmoded, ineffective, insufficient, or excessively burdensome, and shall modify, streamline, expand, or repeal them in accordance with such review. In reviewing any regulation (including, notwithstanding 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 regula-
tion.

“(5) POST-ADOPTION IMPACT ASSESSMENT.—

“(A) IN GENERAL.—Whenever the Com-
misson 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. The assessment plan shall include an analysis of any jobs added or lost as a result of the regulation, differentiating between public and private sector jobs.

“(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 Fed-
eral Register extending the date and pro-
viding 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(e) 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 assess-
ment report in the Federal Register, the
Commission shall issue for notice and com-
ment 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 no-
tice 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 gen-
eral applicability and future effect that is de-
signed to implement, interpret, or prescribe law
or policy or to describe the procedure or prac-
tice 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 such Act, as added by this title.

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

A rule adopted by the Municipal Securities Rule-making 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 such Act, as added by section 2, in the same manner as is required by the Commission under such section 23(e).