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REPORT
115–811

MODERNIZING DISCLOSURES FOR INVESTORS ACT

JULY 10, 2018.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. HENSARLING, from the Committee on Financial Services, submitted the following

R E P O R T

[To accompany H.R. 5970]

The Committee on Financial Services, to whom was referred the bill (H.R. 5970) to require the Securities and Exchange Commission to implement rules simplifying the quarterly financial reporting regime, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendments are as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Modernizing Disclosures for Investors Act".

SEC. 2. FORM 10-Q ANALYSIS.

(a) IN GENERAL.—The Securities and Exchange Commission shall conduct an analysis of the costs and benefits of requiring reporting companies to use Form 10-Q for submitting quarterly financial reports. Such analysis shall consider—

(1) the costs and benefits of Form 10-Q to emerging growth companies;

(2) the costs and benefits of Form 10-Q to the Commission in terms of its ability to protect investors, maintain fair, orderly, and efficient markets, and facilitate capital formation;

(3) the costs and benefits of Form 10-Q to other reporting companies, investors, market researchers, and other market participants, including the costs and benefits associated with—

(A) the public availability of the information required to be filed on Form 10-Q;

(B) the use of a standardized reporting format across all classes of reporting companies; and

(C) the quarterly disclosure by some companies of financial information in formats other than Form 10-Q, such as a quarterly earnings press release;

(4) the costs and benefits of alternative formats for quarterly reporting for emerging growth companies to emerging growth companies, the Commission, other reporting companies, investors, market researchers, and other market participants; and

(5) the expected impact of the use of alternative formats of quarterly reporting by emerging growth companies on overall market transparency and efficiency.

(b) REPORT REQUIRED.—Not later than 180 days after the date of enactment of this Act, the Commission shall issue a report to Congress that includes—

(1) the results of the analysis required by subsection (a); and

(2) recommendations for decreasing costs, increasing transparency, and increasing efficiency of quarterly financial reporting by emerging growth companies.

Amend the title so as to read:

A bill to require the Securities and Exchange Commission to carry out a cost benefit analysis of the use of Form 10-Q and for other purposes.

PURPOSE AND SUMMARY

Introduced on May 24, 2018, by Representative Ann Wagner, H.R. 5970, the "Modernizing Disclosures for Investors Act", as modified by an amendment in the nature of a substitute, requires the U.S. Securities and Exchange Commission (SEC) to report to Congress within 180 days of enactment with recommendations to decrease costs, increase transparency and increase efficiency of quarterly financial reporting by emerging growth companies (EGCs) for SEC Form 10–Q. Among other things, the SEC's report shall include analysis of the costs and benefits of Form 10–Q to EGCs; the costs and benefits of Form10–Q to the SEC, other reporting companies, investors, market researchers, and other market participants; the costs and benefits of alternative formats for quarterly reporting for EGCs; and the expected impact of the use of alternative formats of quarterly reporting by EGCs on overall market transparency and efficiency.

BACKGROUND AND NEED FOR LEGISLATION

The goal of H.R. 5970 is to reexamine the current SEC disclosure regime for EGCs and identify reforms that will allow EGCs to concentrate more resources on innovation, growth, and job creation while still providing information material to their investors. Further, the bill also will reexamine how issuers present the information and whether another form would reduce the costs on investors, regulators, and other market participants to access and absorb the information.

Federal securities laws require that most SEC registrants disclose certain information on an ongoing basis, including a quarterly report on what is known as Form 10–Q. Form 10–Q includes condensed financial information and other data prepared by a company and reviewed—though generally unaudited—by its independent auditor. The purpose is to provide a continuing view of the company's financial position during the company's fiscal year. The company must file the report must for each of the first three fiscal quarters of the company's fiscal year.

The SEC's current corporate disclosure system imposes a number of outdated, duplicative, burdensome, and unnecessary requirements on U.S. companies, which diverts corporate resources to regulatory and legal compliance and away from innovation, growth, and job creation. Moreover, this outdated disclosure regime leads to unnecessarily long, complicated, and often immaterial public company disclosures, which results in widespread investor confu-

sion and potentially suboptimal investment decisions because many investors choose not to read a lengthy and over-legalistic document. While the SEC has often recognized the need to study and streamline the corporate disclosure regime, it has recently been Congress that has spurred action in this regard—such as through provisions in both the JOBS Act and the FAST Act that required the SEC to study its disclosure regulations and eliminate outdated, duplicative, and unnecessary disclosure obligations.

Form 10–Qs can impose significant administrative costs. A 2011 report of the IPO Task Force found that 92% of public company CEOs said that the "administrative burden of public reporting" was a significant challenge to completing an IPO and becoming a public company.

In addition to filing Forms 10–K annually and 10–Q quarterly, companies must file "current" reports on Form 8–K often within four (4) business days after occurrence of specified events. This means that by the time a company files its quarterly report, the company has already reported many material events already, and according to widespread economic views regarding the efficiency of markets, those current reports are used to price the cost of an equity security.

Further, as both annual quarterly reports have grown in size and complexity over the years, the ability for investors to comb through so much information to determine relevant information to guide their investment decisions has become increasingly difficult. The potential for so much information to overwhelm investors is illustrated in part by the sense that investors increasingly are relying on information in press releases to inform decisions rather than the forms filed with the SEC and made available on its Electronic Data, Gathering, Analysis and Retrieval (EDGAR) database.

University of Notre Dame Professors Tim Loughran and Bill McDonald recently studied the use of EDGAR filings by investors, and their findings support the need for the SEC to reexamine the efficiency of the current disclosure regime. In particular, the magnitude of non-robot investor requests of EDGAR filings is "surprisingly low." The average 10–K filing of a publicly-traded firm is requested only 28.4 total times on the day of and day after the initial filing. "And the low requests totals for the median firm in the smallest three quintiles (only five requests per day around the 10–K filing date), challenges the notion that annual report readability affects the trading behavior of retail investors." Notably, these observations are for Forms 10–K, and as the authors observe, Forms 10–Q attract must less interest from investors than Forms 10–K.

Granting EGCs the option of issuing a press release or other short form that includes earnings results, as opposed to a full 10–Q, will provide investors with important quarterly financial information but reduce unnecessary burdens and complexities associated with the current quarterly reporting system. By studying and reporting on these issues, the SEC can consider the substantial costs of these financial disclosures and examine ways to modernize the disclosure regime in a manner that recognizes how investors use technology to obtain information about a potential investment, acknowledges that companies may want to communicate with investors more directly than the SEC's website and encourages investors to make more efficient use of the information filed on EDGAR.

HEARINGS

The subcommittee on Capital Markets, Securities, and Investment held a hearing examining matters relating to H.R. 5970 on May 23, 2018.

COMMITTEE CONSIDERATION

The Committee on Financial Services met in open session on June 21, 2018, and ordered H.R. 5970 to be reported favorably to the House as amended by a recorded vote of 56 yeas to 0 nays (recorded vote no. FC–191), a quorum being present. Before the motion to report was offered, the Committee adopted an amendment in the nature of a substitute offered by Ms. Wagner by voice vote.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report legislation and amendments thereto. The sole recorded vote was on a motion by Chairman Hensarling to report the bill favorably to the House as amended. The motion was agreed to by a recorded vote of 56 yeas to 0 nays (Record vote no. FC–191), a quorum being present.

Record vote no. FC-191

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Hensarling	X			Ms. Maxine Waters (CA)	X		
Mr. McHenry	X			Mrs. Carolyn B. Maloney (NY)	X		
Mr. King	X			Ms. Velázquez	X		
Mr. Royce (CA)	X			Mr. Sherman	X		
Mr. Lucas	X			Mr. Meeks			
Mr. Pearce	X			Mr. Capuano	X		
Mr. Posey	X			Mr. Clay	X		
Mr. Luetkemeyer	X			Mr. Lynch	X		
Mr. Huizenga	X			Mr. David Scott (GA)	X		
Mr. Duffy				Mr. Al Green (TX)	X		
Mr. Stivers	X			Mr. Cleaver	X		
Mr. Hultgren	X			Ms. Moore	X		
Mr. Ross	X			Mr. Ellison	X		
Mr. Pittenger	X			Mr. Perlmutter	X		
Mrs. Wagner	X			Mr. Himes			
Mr. Barr	X			Mr. Foster	X		
Mr. Rothfus	X			Mr. Kildee	X		
Mr. Messer	X			Mr. Delaney	X		
Mr. Tipton	X			Ms. Sinema	X		
Mr. Williams	X			Mrs. Beatty	X		
Mr. Poliquin	X			Mr. Heck	X		
Mrs. Love	X			Mr. Vargas	X		
Mr. Hill	X			Mr. Gottheimer	X		
Mr. Emmer	X			Mr. Gonzalez (TX)	X		
Mr. Zeldin				Mr. Crist	X		
Mr. Trott	X			Mr. Kihuen	X		
Mr. Loudermilk	X						
Mr. Mooney (WV)	X						
Mr. MacArthur	X						
Mr. Davidson	X						
Mr. Budd	X						
Mr. Kustoff (TN)	X						
Ms. Tenney	X						
Mr. Hollingsworth	X						

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the findings and recommendations of the Committee based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee states that H.R. 5970 will help to modernize the SEC's corporate disclosure system which is outdated, duplicative and burdensome to emerging growth companies, by requiring the SEC to report to Congress on SEC Form 10–Q and explore making the form optional for emerging growth companies.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

The Committee has not received an estimate of new budget authority contained in the cost estimate prepared by the Director of the Congressional Budget Office pursuant to Sec. 402 of the Congressional Budget Act of 1974. In compliance with clause 3(c)(2) of rule XIII of the Rules of the House, the Committee opines that H.R. 5970 will not establish any new budget or entitlement authority or create any tax expenditures.

CONGRESSIONAL BUDGET OFFICE ESTIMATES

The cost estimate prepared by the Director of the Congressional Budget Office pursuant to Sec. 402 of the Congressional Budget Act of 1974 was not submitted timely to the Committee.

FEDERAL MANDATES STATEMENT

This information is provided in accordance with section 423 of the Unfunded Mandates Reform Act of 1995.

The Committee has determined that the bill does not contain Federal mandates on the private sector. The Committee has determined that the bill does not impose a Federal intergovernmental mandate on State, local, or tribal governments.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

EARMARK IDENTIFICATION

With respect to clause 9 of rule XXI of the Rules of the House of Representatives, the Committee has carefully reviewed the provisions of the bill and states that the provisions of the bill do not

contain any congressional earmarks, limited tax benefits, or limited tariff benefits within the meaning of the rule.

DUPLICATION OF FEDERAL PROGRAMS

In compliance with clause 3(c)(5) of rule XIII of the Rules of the House of Representatives, the Committee states that no provision of the bill establishes or reauthorizes: (1) a program of the Federal Government known to be duplicative of another Federal program; (2) a program included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139; or (3) a program related to a program identified in the most recent Catalog of Federal Domestic Assistance, published pursuant to the Federal Program Information Act (Pub. L. No. 95–220, as amended by Pub. L. No. 98–169).

DISCLOSURE OF DIRECTED RULEMAKING

Pursuant to section 3(i) of H. Res. 5, (115th Congress), the following statement is made concerning directed rule makings: The Committee estimates that the bill requires no directed rule makings within the meaning of such section.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

This Section, as modified by an amendment in the nature of a substitute, cites H.R. 5970 as the "Modernizing Disclosures for Investors Act".

Section 2. Form 10–Q analysis

This section directs the SEC to conduct an analysis of the costs and benefits of requiring reporting companies to use Form 10–Q for submitting quarterly financial reports and to consider certain issues as part of its analysis. The SEC is required to submit a report to Congress not later than 180 days after enactment with the results of its analysis and ways to decrease costs, increase transparency, and increase efficiencies of quarterly financial reporting for EGCs.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman): H.R. 5970 does not repeal or amend any section of a stature. Therefore, the Office of Legislative Counsel did not prepare the report contemplated by clause 3(e)(1)(B) of rule XIII of the House of Representatives.

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