

November 14, 2011

Subcommittee on Capital Markets and Government Sponsored Enterprises
House Committee on Financial Services
Washington, DC 20515

Dear Chairman Garrett, Ranking Member Waters, and Members of the Subcommittee on Capital Markets and Government Sponsored Enterprises:

On behalf of the undersigned organizations, we are writing to oppose the passage of the “SEC Regulatory Accountability Act” (H.R. 2308), which is scheduled for markup tomorrow, November 15, in the Subcommittee on Capital Markets and Government Sponsored Enterprises. This legislation would severely undermine the Securities and Exchange Commission’s (SEC) mission to protect investors by requiring it to prioritize cost-benefit analyses in rulemaking and enforcement actions.

H.R. 2308 “requires the SEC to clearly identify the nature of the problem that a proposed regulation is designed to address, as well as assess the significance of that problem, before issuing a new rule.” In addition, the bill “requires the SEC to utilize the Office of the Chief Economist to conduct the cost-benefit analysis of potential rules to ensure that the regulatory consequences on economic growth and job-creation are properly accounted for.”¹

It is always important for the SEC to analyze the potential economic impact of its regulations. However, H.R. 2308 would force the SEC to prioritize this economic analysis above other considerations critical to protecting investors.

First, it is worth pointing out that after issuing his Executive Order for executive agencies, President Obama issued an additional Executive Order in July calling on independent regulatory agencies to comply with the same provisions.² In September, the SEC issued a release seeking public comment on the process it should use to conduct retrospective reviews.³

In fact, the SEC’s release describes several formal and informal processes that are already in place to review existing rules:

- The Commission and staff review existing regulations retrospectively as part of studies of broad substantive program areas....
- Consistent with section 610(a) of the Regulatory Flexibility Act, the Commission annually reviews each of its rules that has become final within the past ten years....

¹ Representative Scott Garrett, “Garrett Introduces Bill to Ensure SEC Regulation are More Effective and Less Burdensome,” June 23, 2011. <http://garrett.house.gov/News/DocumentSingle.aspx?DocumentID=248496> (Downloaded November 10, 2011)

² White House, “Executive Order—Regulation and Independent Regulatory Agencies,” July 11, 2011. <http://www.whitehouse.gov/the-press-office/2011/07/11/executive-order-regulation-and-independent-regulatory-agencies> (Downloaded November 10, 2011)

³ Securities and Exchange Commission, “SEC to Seek Comment on Review of Existing Regulations,” September 6, 2011. <http://sec.gov/news/press/2011/2011-178.htm> (Downloaded November 10, 2011)

- The Commission and staff frequently receive and consider suggestions to review existing rules through various types of communications, ranging from formal petitions for rulemaking to informal correspondence from investors, investor and industry groups, Congress, fellow regulators, the bar and the public.
- The Commission and staff frequently discuss the need to revisit existing rules through formal and informal public engagement, including advisory committees, roundtables, town hall meetings, speeches, conferences and other meetings.
- The Commission staff may identify existing regulations that may merit review through its compliance inspection and examination functions, enforcement investigations, and the receipt of requests for exemptive relief or Commission or staff guidance.
- A significant portion of the Commission’s rulemaking activity already involves the consideration of changes to existing rules. During rulemaking, Commission staff routinely consider related existing rules and assess whether to recommend changes to, or the elimination of, those existing rules.⁴

We would also point out that an existing statute already requires the SEC to weigh several factors when issuing new rules, including their impact on efficiency and capital formation:

Whenever pursuant to this chapter the Commission is engaged in rulemaking, or in the review of a rule of a self-regulatory organization, and is required to consider or determine whether an action is necessary or appropriate in the public interest, the Commission shall also consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.⁵

Furthermore, as it is currently written, H.R. 2308 would apply not only to SEC rules, but also to enforcement orders and similar actions. In recent testimony before the Financial Services Committee, SEC Chairman Mary Schapiro pointed out that “[r]equiring cost-benefit analyses for orders could undermine our ability to issue enforcement orders against wrongdoers, delay exemptive orders needed to facilitate the introduction of new investment products to the market, and impede the capital formation process by delaying orders to registrants that accelerate the registration of their securities.”⁶ Especially in cases where the SEC must issue an enforcement order against a law-breaking firm or individual, the agency should be primarily concerned with protecting investors and ensuring fair markets, rather than worrying about the potential cost to the wrongdoers.

Therefore, we are concerned that H.R. 2308 will impose unnecessary burdens on the SEC at a time when the agency is already struggling to keep up with its regulatory responsibilities. As Chairman Schapiro told the Committee, “my fear about this legislation is that it layers so much

⁴ Securities and Exchange Commission, “Retrospective Review of Existing Regulations,” September 6, 2011. <http://sec.gov/rules/other/2011/33-9257.pdf> (Downloaded November 10, 2011)

⁵ 15 U.S.C. § 78c(f). <http://www.gpo.gov/fdsys/pkg/USCODE-2009-title15/pdf/USCODE-2009-title15-chap2B-sec78c.pdf> (Downloaded November 10, 2011)

⁶ Testimony of Mary Schapiro, Chairman, Securities and Exchange Commission, before the House Committee on Financial Services, “Fixing the Watchdog: Legislative Proposals to Improve and Enhance the Securities and Exchange Commission,” September 15, 2011. <http://financialservices.house.gov/UploadedFiles/091511schapiro.pdf> (Downloaded November 10, 2011)

analysis on top of what we already do that we're set up to fail.”⁷ We agree with the letter sent by other public interest groups to the Committee on August 14 that urged Congress to improve the SEC’s rulemaking process by providing the agency with adequate funding and resources:

If Congress is serious about wanting to improve cost-benefit analysis at the SEC, the best way to do that is to provide the necessary funding for the SEC to increase its staffing, and the expertise and experience of its staff in this area, not add new procedural hurdles designed to prevent it from fulfilling its mission to protect investors.⁸

We urge you to vote against H.R. 2308 so that the SEC can make investor protection its first priority in rulemaking and enforcement. Instead of placing additional burdens on the SEC, we urge you to provide the agency with adequate funding to fulfill its mission and better protect investors. We would be pleased to discuss these issues in more detail with you or your staff.

Sincerely,

Government Accountability Project (GAP)
International Brotherhood of Teamsters
Neighborhood Economic Development Advocacy Project (NEDAP)
OMB Watch
Project On Government Oversight
Public Citizen
U.S. Public Interest Research Group (U.S. PIRG)
Will Will Win, Inc

cc: Members of the House Financial Services Committee

⁷ Sarah Johnson, “Is the SEC Being ‘Set Up to Fail’?” *CFO Magazine*, October 1, 2011. http://www3.cfo.com/article/2011/10/regulation_sec-cost-benefit-analysis-mary-schapiro (Downloaded November 10, 2011)

⁸ Letter to Congress regarding the SEC Regulatory Accountability Act, August 17, 2011. <http://pogoarchives.org/m/fo/letter-sec-regulatory-accountability-act-20110817.pdf>