COMMITTEE PRINT

SHOWING THE TEXT OF H.R. 1838 AS FORWARDED BY THE SUBCOMMITTEE ON CAPITAL MARKETS AND GOVERNMENT SPONSORED ENTERPRISES, NOVEMBER 15, 2011

112TH CONGRESS
1ST SESSION

H. R. 2308

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

JUNE 23, 2011

Mr. GARRETT (for himself, Mr. BACHUS, Mr. HENSARLING, Mr. NEUGEBAUER, Mr. JONES, Mr. MCHENRY, Mr. CONAWAY, Mr. KING of New York, Mr. CAMPBELL, Mr. SCHWEIKERT, Mr. STIVERS, Mr. DOLD, Mr. MANZULLO, Mr. HURT, Mr. CANSECO, and Mr. YODER) 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".

SEC. 2. CONSIDERATION BY THE SECURITIES AND EXCHANGE COMMISSION OF THE COSTS AND BENEFITS OF ITS REGULATIONS AND CERTAIN 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 following:

"(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 of the problem that the proposed regulation is designed to address, as well as assess the significance of that problem, to enable assessment of whether any new regulation is warranted;

"(B) utilize the Office of 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 reasoned determination that the benefits of the intended regulation justify the costs of the regulation;

"(C) identify and assess available alternatives 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 rulemaking 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; and

"(ii) market liquidity in the securities markets.

"(3) 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.

"(4) POST-ADOPTION IMPACT ASSESSMENT.—

"(A) IN GENERAL.—Whenever the Commission adopts or amends a regulation designated 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 following:

"(i) The purposes and intended consequences of the regulation

"(ii) Appropriate post-implementation quantitative and qualitative metrics to measure the economic impact of the regulation 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 supervision of the Chief Economist of the Commission, to assess whether the regulation has achieved the stated purposes.

"(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 the date specified in 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 material modification of the plan, as necessary to assess unforeseen aspects or consequences of the regulation, shall be promptly published in the Federal Register for notice and comment.

"(iii) DATA COLLECTION NOT SUBJECT TO NOTICE AND COMMENT REQUIREMENTS.—If the Commission has published its assessment plan for notice and comment, 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 material modifications of the plan that require collection of data not previously published for notice and comment shall also be exempt from such requirements if the Commission 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.

"(5) 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. SUBMISSION OF PLAN FOR SUBJECTING OTHER REGULATORY ENTITIES TO COST AND BENEFIT REQUIREMENTS.

Not later than 1 year after the date of enactment of this Act, the Securities and Exchange Commission shall provide to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate a report setting forth a plan for subjecting 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–4(a)) to the requirements subsection (e) of section 23 of such Act, as added by this Act.