

[DISCUSSION DRAFT]

118TH CONGRESS
2^D SESSION

H. R. _____

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

IN THE HOUSE OF REPRESENTATIVES

Mrs. WAGNER introduced the following bill; which was referred to the Committee on _____

A BILL

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

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 REGULATIONS AND CERTAIN**
4 **OTHER AGENCY ACTIONS OF THE COMMIS-**
5 **SION.**

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

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

10 “(1) CONSIDERATIONS BEFORE PROPOSING A
11 REGULATION.—Before proposing a regulation, the
12 Commission shall—

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

18 “(B) ensure that the regulation would be
19 within the Commission’s jurisdiction and that
20 the Commission has sufficient experience and
21 expertise to regulate the subject matter covered
22 by the regulation.

23 “(2) REQUIREMENTS FOR ISSUING A PROPOSED
24 OR FINAL REGULATION.—

25 “(A) IN GENERAL.—In issuing a proposed
26 or final regulation, the Commission shall—

1 “(i) clearly identify the market par-
2 ticipants who will be impacted by the regu-
3 lation;

4 “(ii) utilize the Chief Economist of
5 the Commission to assess the costs and
6 benefits, both qualitative and quantitative,
7 of the regulation;

8 “(iii) only issue the regulation if the
9 Commission makes a reasoned determina-
10 tion that the benefits of the regulation jus-
11 tify the costs of the regulation;

12 “(iv) identify and assess available al-
13 ternatives to the regulation that were con-
14 sidered, including modification of an exist-
15 ing regulation;

16 “(v) ensure that the regulation is ac-
17 cessible, consistent, written in plain lan-
18 guage, and easy to understand; and

19 “(vi) ensure that the length of the
20 public comment period is commensurate
21 with the complexity of the regulation and
22 the expected public interest in the rule-
23 making.

24 “(B) INCLUSION OF INFORMATION IN A
25 PROPOSED OR FINAL REGULATION.—In issuing

1 a proposed or final regulation, the Commission
2 shall include in the regulation—

3 “(i) the results of the identifications
4 and assessments required under clauses (i)
5 and (ii) of subparagraph (A) with respect
6 to the regulation;

7 “(ii) an explanation of why the regula-
8 tion meets the regulatory objectives of the
9 Commission more effectively than other
10 available alternatives, including modifica-
11 tion of an existing regulation;

12 “(iii) a description of how the Com-
13 mission intends the regulation to interact
14 with existing regulations and proposed reg-
15 ulations; and

16 “(iv) a justification of the length of
17 the public comment period for the regula-
18 tion.

19 “(3) CONSIDERATIONS AND ACTIONS.—

20 “(A) REQUIRED ACTIONS.—In deciding
21 whether and how to regulate, the Commission
22 shall assess the costs and benefits of available
23 regulatory alternatives, including the alternative
24 of not regulating, and choose the approach that

1 maximizes net benefits. Specifically, the Com-
2 mission shall—

3 “(i) consistent with the requirements
4 of section 3(f) (15 U.S.C. 78c(f)), section
5 2(b) of the Securities Act of 1933 (15
6 U.S.C. 77b(b)), section 202(c) of the In-
7 vestment Advisers Act of 1940 (15 U.S.C.
8 80b–2(c)), and section 2(c) of the Invest-
9 ment Company Act of 1940 (15 U.S.C.
10 80a–2(c)), consider whether a rulemaking,
11 in addition to being in the interest of pro-
12 tecting investors, will promote efficiency,
13 competition, and capital formation;

14 “(ii) evaluate whether, consistent with
15 obtaining regulatory objectives, a regula-
16 tion is tailored to impose the least burden
17 on society, including market participants,
18 individuals, businesses of differing sizes,
19 and other entities (including State and
20 local governmental entities), taking into ac-
21 count, to the extent practicable, the cumu-
22 lative costs of regulations; and

23 “(iii) evaluate whether a regulation is
24 inconsistent, incompatible, or duplicative of
25 other Federal regulations.

1 “(B) ADDITIONAL CONSIDERATIONS.—In
2 addition, in making a reasoned determination
3 under paragraph (2)(A)(iii) of the costs and
4 benefits of a regulation, the Commission shall,
5 to the extent that each is relevant to the par-
6 ticular regulation, take into consideration the
7 impact of the regulation on—

8 “(i) investor choice;

9 “(ii) market liquidity in the securities
10 markets;

11 “(iii) small businesses;

12 “(iv) competition in the marketplace;

13 “(v) investor access; and

14 “(vi) the United States’ economic
15 competitiveness.

16 “(4) POST-ADOPTION IMPACT ASSESSMENT.—

17 “(A) IN GENERAL.—Whenever the Com-
18 mission issues a final regulation that is a
19 ‘major rule’ (as defined under section 804 of
20 title 5, United States Code), it shall state, in
21 the regulation, the following:

22 “(i) The purposes and intended con-
23 sequences of the regulation.

24 “(ii) Appropriate post-implementation
25 quantitative and qualitative metrics to

1 measure the economic impact of the regu-
2 lation and to measure the extent to which
3 the regulation has accomplished the stated
4 purposes.

5 “(iii) The assessment plan that will be
6 used, consistent with the requirements of
7 subparagraph (B) and under the super-
8 vision of the Chief Economist, to assess
9 whether the regulation has achieved the
10 stated purposes.

11 “(iv) Any unintended or negative con-
12 sequences that the Commission foresees
13 may result from the regulation.

14 “(B) REQUIREMENTS OF ASSESSMENT
15 PLAN AND REPORT.—

16 “(i) REQUIREMENTS OF PLAN.—For
17 each regulation described under subpara-
18 graph (A), the Chief Economist shall es-
19 tablish an assessment plan, which shall—

20 “(I) consider the costs, benefits,
21 and intended and unintended con-
22 sequences of the regulation;

23 “(II) specify the data to be col-
24 lected, the methods for collection and

1 analysis of the data, and a date for
2 completion of the assessment; and

3 “(III) include an analysis of any
4 jobs added or lost as a result of the
5 regulation, differentiating between
6 public and private sector jobs.

7 “(ii) TIMING OF ASSESSMENT PLAN
8 REPORT.—A report on each completed as-
9 sessment plan described under clause (i)
10 shall be submitted by the Chief Economist
11 to the Commission not later than the end
12 of the 2-year period beginning on the date
13 the applicable regulation is issued, unless
14 the Commission, at the request of the
15 Chief Economist, publishes at least 90
16 days before the end of such period a notice
17 in the Federal Register extending the date
18 and providing specific reasons why an ex-
19 tension is necessary.

20 “(iii) PUBLIC COMMENT.—Not later
21 than 7 days after the Commission receives
22 an assessment plan report under clause
23 (ii), the Commission shall publish the re-
24 port in the Federal Register for public
25 comment.

1 “(5) REGULATION DEFINED.—In this sub-
2 section, the term ‘regulation’—

3 “(A) means an agency statement of gen-
4 eral applicability and future effect that is de-
5 signed to implement, interpret, or prescribe law
6 or policy or to describe the procedure or prac-
7 tice requirements of an agency, including rules,
8 orders of general applicability, interpretive re-
9 leases, and other statements of general applica-
10 bility that the agency intends to have the force
11 and effect of law; and

12 “(B) does not include—

13 “(i) a regulation issued in accordance
14 with the formal rulemaking provisions of
15 section 556 or 557 of title 5, United States
16 Code;

17 “(ii) a regulation that is limited to
18 agency organization, management, or per-
19 sonnel matters;

20 “(iii) a regulation promulgated pursu-
21 ant to statutory authority that expressly
22 prohibits compliance with this provision;
23 and

24 “(iv) a regulation that is certified by
25 the agency to be an emergency action, if

1 such certification is published in the Fed-
2 eral Register.”.

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

5 It is the sense of the Congress that the Public Com-
6 pany Accounting Oversight Board should also follow the
7 requirements of section 23(e) of the Securities Exchange
8 Act of 1934, as added by section 2.

9 **SEC. 4. ACCOUNTABILITY PROVISION RELATING TO OTHER**
10 **REGULATORY ENTITIES.**

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