

## SEC REGULATORY ACCOUNTABILITY ACT

SEPTEMBER 28, 2016.—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

together with

### MINORITY VIEWS

[To accompany H.R. 5429]

[Including cost estimate of the Congressional Budget Office]

The Committee on Financial Services, to whom was referred the bill (H.R. 5429) to improve the consideration by the Securities and Exchange Commission of the costs and benefits of its regulations and orders, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

#### PURPOSE AND SUMMARY

Introduced by Representative Scott Garrett on June 9, 2016, H.R. 5429, the SEC Regulatory Accountability Act, subjects the Securities and Exchange Commission (SEC) to the President's Executive Order 13579, which outlines enhanced cost-benefit analysis requirements and requires a review of existing regulations.

#### BACKGROUND AND NEED FOR LEGISLATION

Following the adoption of the Dodd-Frank Wall Street Reform and Consumer Protection Act in July 2010, the SEC received both new authority and enhancements to existing authorities to issue rules that govern the operation of the capital markets. Many of the rules issued to date by the SEC are significant rules. Significant regulations are those that: (1) have an annual economic impact of \$100 million or more as defined by the Office of Management & Budget, (2) result in a major increase in costs or prices for con-

sumers, individual industries, federal, state, or local governments, or geographic regions, or (3) cause significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S. enterprises to compete against their foreign counterparts.

On July 11, 2011, President Obama issued Executive Order 13579, "Regulation and Independent Regulatory Agencies" ("Order"), which, among other things, states that independent regulatory agencies, no less than executive agencies, should promote the goal, set forth in Executive Order 13563 of January 18, 2011, of a regulatory system that protects "public health, welfare, safety, and our environment while promoting economic growth, innovation, competitiveness, and job creation."

The U.S. capital markets change rapidly and it is incumbent upon those agencies that are charged with their oversight, including the SEC, to regularly review, revise, replace or eliminate regulations in order to facilitate economic growth and job creation, and ensure smart, cost-effective regulations. Pursuant to the Order, independent agencies are required to produce plans to reassess and streamline their existing regulations, and to disclose those plans for public comment. Additionally, the Order provides that agencies should follow the cost-saving, burden-reducing principles provided in Executive Order 13563. Executive Order 13565 provides that each agency must:

- (1) propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs (recognizing that some benefits and costs are difficult to quantify);
- (2) tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations;
- (3) select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);
- (4) to the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt; and
- (5) identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior, such as user fees or marketable permits, or providing information upon which choices can be made by the public.

The Order requires agencies to conduct retrospective analyses of existing rules that may be outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned.

The SEC's staff in the Division of Economic and Risk Analysis (DERA) appreciates the importance of cost-benefit analysis, as they note in the SEC's Current Guidance on Economic Analysis in SEC Rulemakings:

high-quality economic analysis is an essential part of SEC rulemaking. It ensures that decisions to propose and adopt rules are informed by the best available information about a rule's likely economic consequences, and allows the Com-

mission to meaningfully compare the proposed action with reasonable alternatives, including the alternative of not adopting a rule. The Commission has long recognized that a rule's potential benefits and costs should be considered in making a reasoned determination that adopting a rule is in the public interest.

The SEC adopted guidance for economic analysis in SEC rulemaking in March 2012. As noted in the Current Guidance on Economic Analysis in SEC Rulemaking (Guidance), court cases, Government Accountability Office reports, the SEC's Office of Inspector General, and congressional inquiries all have raised "questions about and/or recommended improvements to various components of the Commission's economic analysis in its rulemaking, including: (1) identifying the need for the rulemaking and explaining how the proposed rule will meet that need; (2) articulating the appropriate economic baseline against which to measure the proposed rule's likely economic impact (in terms of potential benefits and costs, including effects on efficiency, competition, and capital formation in the market(s) the rule would affect); (3) identifying and evaluating reasonable alternatives to the proposed regulatory approach; and (4) assessing the potential economic impact of the proposed rule and reasonable alternatives by seeking and considering the best available evidence of the likely quantitative and qualitative costs and benefits of each."

The Guidance was prepared by DERA to provide guidance to Commission staff involved in agency rulemaking. The SEC Chairman has directed the staff to follow the Guidance in SEC rulemakings. Unfortunately, many still believe that a robust cost-benefit analysis is not a necessary component to SEC rulemaking—despite the Order issued by the President. Furthermore, some argue that if Congress requires the SEC to promulgate a rule, then no cost-benefit analysis is required. Given the significant number of rules that the SEC has proposed and adopted, it is critical that the SEC undertake a robust economic analysis and be able to demonstrate that the benefits truly outweigh the costs. H.R. 5429 eliminates any confusion and makes clear that economic analysis is always required.

Specifically, H.R. 5429 requires the SEC, prior to issuing a regulation, to (1) clearly identify the nature and source 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; (2) 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 reasoned determination that the benefits of the intended regulation justify the costs of the regulation; (3) 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 (4) 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.

It is often very rare for a regulatory agency to ever review their current rulebook to determine what is outdated, or redundant, even

though the Order actually necessitates this. H.R. 5429 addresses this issue by requiring the SEC to evaluate whether the new regulation is inconsistent, incompatible, or duplicative of other Federal regulations and to review its existing 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 testimony before the Capital Markets and Government Sponsored Enterprises Subcommittee on May 17, 2016, former SEC Commissioner Dan Gallagher noted:

Chairman Garrett's SEC Regulatory Accountability Act would promote and improve economic analysis at the SEC and make the agency even more accountable to the investing public. While the SEC has dramatically improved the economic analysis supporting its rules, there remains room for improvement. In particular, I believe that in certain mandated rulemakings, the SEC's lawyers have played an outsized role in interpreting congressional intent thereby setting the ground rules by which the economists are expected to operate.

The CEO pay ratio rulemaking is the best example of this. Finding benefits when Congress described none may help get a rule done. But it ensures that the economic analysis is not done right. This trend needs to stop before it becomes the loophole that devours the SEC's 2012 commitment to proper economic analysis. Ultimately, Chairman Garrett's bill will help ensure that economic analysis conducted by economists is firmly entrenched in every rulemaking the SEC conducts under the federal securities laws.

#### HEARING

The Committee on Financial Services' Subcommittee on Capital Markets and Government Enterprises held a hearing examining matters relating to H.R. 5429 on May 17, 2016.

#### COMMITTEE CONSIDERATION

The Committee on Financial Services met in open session on June 15 and 16, 2016, and ordered H.R. 5429 to be reported favorably to the House without amendment by a recorded vote of 34 ayes to 25 nays (recorded vote no. FC-120), a quorum being present.

#### 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 record vote in committee was a motion by Chairman Hensarling to report the bill favorably to the House without amendment. That motion was agreed to by a recorded vote of 34 ayes to 25 nays (Record vote no. FC-120), a quorum being present.

## Record vote no. FC-120

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Hensarling .....	X			Ms. Waters (CA) .....		X	
Mr. King (NY) .....	X			Mrs. Maloney (NY) .....		X	
Mr. Royce .....	X			Ms. Velázquez .....		X	
Mr. Lucas .....	X			Mr. Sherman .....		X	
Mr. Garrett .....	X			Mr. Meeks .....		X	
Mr. Neugebauer .....	X			Mr. Capuano .....		X	
Mr. McHenry .....	X			Mr. Hinojosa .....		X	
Mr. Pearce .....	X			Mr. Clay .....		X	
Mr. Posey .....	X			Mr. Lynch .....		X	
Mr. Fitzpatrick .....	X			Mr. David Scott (GA) .....		X	
Mr. Westmoreland .....	X			Mr. Al Green (TX) .....		X	
Mr. Luetkemeyer .....	X			Mr. Cleaver .....		X	
Mr. Huizenga (MI) .....	X			Ms. Moore .....		X	
Mr. Duffy .....	X			Mr. Ellison .....		X	
Mr. Hurt (VA) .....	X			Mr. Perlmutter .....		X	
Mr. Stivers .....	X			Mr. Himes .....		X	
Mr. Fincher .....				Mr. Carney .....		X	
Mr. Stutzman .....	X			Ms. Sewell (AL) .....		X	
Mr. Mulvaney .....	X			Mr. Foster .....		X	
Mr. Hultgren .....	X			Mr. Kildee .....		X	
Mr. Ross .....	X			Mr. Murphy (FL) .....		X	
Mr. Pittenger .....	X			Mr. Delaney .....		X	
Mrs. Wagner .....	X			Ms. Sinema .....	X		
Mr. Barr .....	X			Mrs. Beatty .....		X	
Mr. Rothfus .....	X			Mr. Heck (WA) .....		X	
Mr. Messer .....	X			Mr. Vargas .....		X	
Mr. Schweikert .....	X						
Mr. Guinta .....	X						
Mr. Tipton .....	X						
Mr. Williams .....	X						
Mr. Poliquin .....	X						
Mrs. Love .....	X						
Mr. Hill .....	X						
Mr. Emmer .....	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. 5429 promotes market efficiency, competition, and capital formation and reduces unnecessary burden on regulated entities by requiring the SEC to conduct a more robust economic analysis process prior to issuing a rule.

## NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee adopts as its own the estimate of new budget authority, entitlement authority, or tax expenditures or revenues contained in the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

## COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

## CONGRESSIONAL BUDGET OFFICE ESTIMATES

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, September 13, 2016.*

Hon. JEB HENSARLING,  
*Chairman, Committee on Financial Services,  
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 5429, the SEC Regulatory Accountability Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Stephen Rabent.

Sincerely,

MARK P. HADLEY  
(For Keith Hall).

Enclosure.

*H.R. 5429—SEC Regulatory Accountability Act*

H.R. 5429 would specify several new requirements for the Securities and Exchange Commission (SEC) to meet when developing or amending regulations. The bill would direct the SEC to expand the scope of its analysis of the effects of regulations to include an assessment of the problem the proposed regulation is designed to address, its costs and benefits, and available alternatives, and would require the SEC to review and consider modifying its regulations every five years. Under the bill, when adopting or amending rules expected to have an economic impact greater than \$100 million annually, the SEC would need to develop and publish a plan to assess whether the regulation has achieved its stated purpose. Within two years of publishing such a rule, the bill would require the SEC to publish a report on the rules' costs, benefits, and other consequences using the performance measures identified in the plan issued when the rule was adopted.

H.R. 5429 also would prohibit rules adopted by the Municipal Securities Rulemaking Board or any national securities association from taking effect unless the SEC determines that the board or association completed the same level of analysis for the rule that the SEC would complete, under the bill, in its own rulemaking process. Under current law, the SEC reviews and approves the rules of the affected organizations.

Based on an analysis of information from the SEC about the number of staff required to undertake similar analyses of agency rules, CBO estimates that implementing H.R. 5429 would require 24 additional staff (less than a 1 percent increase in the agency's 2015 staffing level) to handle the new rulemaking, reporting, and analytical activities required under the bill. At an average cost of about \$250,000 per employee, CBO estimates those additional employees would cost \$27 million over the 2017–2021 period. Such spending would be subject to appropriation. Under current law, the SEC is authorized to collect fees sufficient to offset its annual appropriation; therefore, CBO estimates that the net effect on discretionary spending would be negligible, assuming appropriations actions consistent with that authority.

Enacting H.R. 5429 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply. CBO estimates that enacting H.R. 5429 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2027.

H.R. 5429 contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would not affect the budgets of state, local, or tribal governments.

If the SEC increases fees to offset the costs of implementing the additional regulatory activities required by the bill, H.R. 5429 would increase the cost of an existing mandate on private entities required to pay those fees. In addition, the bill would impose a private-sector mandate on private regulatory organizations associated with the SEC by requiring them to incorporate the same new analysis and reporting requirements into their rulemaking processes as would be required of the SEC. Based on an analysis of information from the SEC, CBO estimates that the increase in fees to offset the costs of the SEC would amount to no more than \$27 million over the 2017–2021 period. Because private regulatory agencies issue

fewer rules than the SEC each year on average, the costs incurred by those organizations to comply with the mandate would probably amount to less than the additional costs that would be incurred by the SEC to implement the same requirements. Therefore, CBO estimates that the aggregate cost of both mandates would fall well below the annual threshold for private-sector mandates established in UMRA (\$154 million in 2016, adjusted annually for inflation).

The CBO staff contact for this estimate is Stephen Rabent. The estimate was approved by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

#### FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

#### 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 the section 102(b)(3) of the Congressional Accountability Act.

#### EARMARK IDENTIFICATION

H.R. 5429 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI.

#### DUPLICATION OF FEDERAL PROGRAMS

Pursuant to section 3(g) of H. Res. 5, 114th Cong. (2015), the Committee states that no provision of H.R. 5429 establishes or reauthorizes a program of the Federal Government known to be duplicative of another Federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111-139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

#### DISCLOSURE OF DIRECTED RULEMAKING

Pursuant to section 3(i) of H. Res. 5, 114th Cong. (2015), the Committee states that H.R. 5429 contains no directed rulemaking.

#### SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

##### *Section 1: Short title*

This section cites H.R. 5429 as the “SEC Regulatory Accountability Act.”



*Section 2: Consideration by the Securities and Exchange Commission of the costs and benefits of its regulations and certain other agency actions*

This section amends Section 23 of the Securities Exchange Act of 1934 by requiring the SEC to conduct a qualitative and quantitative cost-benefit analysis of any intended regulation and propose or adopt such regulation only if the benefits of the intended regulation justify the costs. This section also requires the SEC to explore other available alternatives. Additionally, this section requires the SEC to conduct regular reviews of existing regulations.

*Section 3: Sense of Congress relating to other*

This section expresses a sense of Congress that the Public Company Accounting Oversight Board should also follow the same cost-benefit analysis requirements.

*Section 4: Accountability provisions relating to other regulatory entities*

This section requires the SEC to conduct a cost-benefit analysis on rules adopted by the Municipal Securities Rule-making Board or any national securities association before such rules can take effect.

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 (new matter is printed in italics and existing law in which no change is proposed is shown in roman):

**SECURITIES EXCHANGE ACT OF 1934**

**TITLE I—REGULATION OF SECURITIES EXCHANGES**

\* \* \* \* \*

**RULES, REGULATIONS, AND ORDERS; ANNUAL REPORTS**

SEC. 23. (a)(1) The Commission, the Board of Governors of the Federal Reserve System, and the other agencies enumerated in section 3(a)(34) of this title shall each have power to make such rules and regulations as may be necessary or appropriate to implement the provisions of this title for which they are responsible or for the execution of the functions vested in them by this title, and may for such purposes classify persons, securities, transactions, statements, applications, reports, and other matters within their respective jurisdictions, and prescribe greater, lesser, or different requirements for different classes thereof. No provision of this title imposing any liability shall apply to any act done or omitted in good faith in conformity with a rule, regulation, or order of the Commission, the Board of Governors of the Federal Reserve System, other agency enumerated in section 3(a)(34) of this title, or any self-regulatory organization, notwithstanding that such rule, regulation, or order may thereafter be amended or rescinded or determined by judicial or other authority to be invalid for any reason.

(2) The Commission and the Secretary of the Treasury, in making rules and regulations pursuant to any provisions of this title,

shall consider among other matters the impact any such rule or regulation would have on competition. The Commission and the Secretary of the Treasury shall not adopt any such rule or regulation which would impose a burden on competition not necessary or appropriate in furtherance of the purposes of this title. The Commission and the Secretary of the Treasury shall include in the statement of basis and purpose incorporated in any rule or regulation adopted under this title, the reasons for the Commission's or the Secretary's determination that any burden on competition imposed by such rule or regulation is necessary or appropriate in furtherance of the purposes of this title.

(3) The Commission and the Secretary, in making rules and regulations pursuant to any provision of this title, considering any application for registration in accordance with section 19(a) of this title, or reviewing any proposed rule change of a self-regulatory organization in accordance with section 19(b) of this title, shall keep in a public file and make available for copying all written statements filed with the Commission and the Secretary and all written communications between the Commission or the Secretary and any person relating to the proposed rule, regulation, application, or proposed rule change: *Provided, however,* That the Commission and the Secretary shall not be required to keep in a public file or make available for copying any such statement or communication which it may withhold from the public in accordance with the provisions of section 552 of title 5, United States Code.

(b)(1) The Commission, the Board of Governors of the Federal Reserve System, and the other agencies enumerated in section 3(a)(34) of this title shall each make an annual report to the Congress on its work for the preceding year, and shall include in each such report whatever information, data, and recommendations for further legislation it considers advisable with regard to matters within its respective jurisdiction under this title.

(2) The appropriate regulatory agency for a self-regulatory organization shall include in its annual report to the Congress for each fiscal year, a summary of its oversight activities under this title with respect to such self-regulatory organization, including a description of any examination conducted as part of such activities of any organization, any material recommendation presented as part of such activities to such organization for changes in its organization or rules, and any such action by such organization in response to any such recommendation.

(3) The appropriate regulatory agency for any class of municipal securities dealers shall include in its annual report to the Congress for each fiscal year a summary of its regulatory activities pursuant to this title with respect to such municipal securities dealers, including the nature of and reason for any sanction imposed pursuant to this title against any such municipal securities dealer.

(4) The Commission shall also include in its annual report to the Congress for each fiscal year—

(A) a summary of the Commission's oversight activities with respect to self-regulatory organizations for which it is not the appropriate regulatory agency, including a description of any examination of any such organization, any material recommendation presented to any such organization for changes

in its organization or rules, and any action by any such organization in response to any such recommendations;

(B) a statement and analysis of the expenses and operations of each self-regulatory organization in connection with the performance of its responsibilities under this title, for which purpose data pertaining to such expenses and operations shall be made available by such organization to the Commission at its request;

(C) the steps the Commission has taken and the progress it has made toward ending the physical movement of the securities certificate in connection with the settlement of securities transactions, and its recommendations, if any, for legislation to eliminate the securities certificate;

(D) the number of requests for exemptions from provisions of this title received, the number granted, and the basis upon which any such exemption was granted;

(E) a summary of the Commission's regulatory activities with respect to municipal securities dealers for which it is not the appropriate regulatory agency, including the nature of, and reason for, any sanction imposed in proceedings against such municipal securities dealers;

(F) a statement of the time elapsed between the filing of reports pursuant to section 13(f) of this title and the public availability of the information contained therein, the costs involved in the Commission's processing of such reports and tabulating such information, the manner in which the Commission uses such information, and the steps the Commission has taken and the progress it has made toward requiring such reports to be filed and such information to be made available to the public in machine language;

(G) information concerning (i) the effects its rules and regulations are having on the viability of small brokers and dealers; (ii) its attempts to reduce any unnecessary reporting burden on such brokers and dealers; and (iii) its efforts to help to assure the continued participation of small brokers and dealers in the United States securities markets;

(H) a statement detailing its administration of the Freedom of Information Act, section 552 of title 5, United States Code, including a copy of the report filed pursuant to subsection (d) of such section; and

(I) the steps that have been taken and the progress that has been made in promoting the timely public dissemination and availability for analytical purposes (on a fair, reasonable, and nondiscriminatory basis) of information concerning government securities transactions and quotations, and its recommendations, if any, for legislation to assure timely dissemination of (i) information on transactions in regularly traded government securities sufficient to permit the determination of the prevailing market price for such securities, and (ii) reports of the highest published bids and lowest published offers for government securities (including the size at which persons are willing to trade with respect to such bids and offers).

(c) The Commission, by rule, shall prescribe the procedure applicable to every case pursuant to this title of adjudication (as defined in section 551 of title 5, United States Code) not required to be de-

terminated on the record after notice and opportunity for hearing. Such rules shall, as a minimum, provide that prompt notice shall be given of any adverse action or final disposition and that such notice and the entry of any order shall be accompanied by a statement of written reasons.

(d) CEASE-AND-DESIST PROCEDURES.—Within 1 year after the date of enactment of this subsection, the Commission shall establish regulations providing for the expeditious conduct of hearings and rendering of decisions under section 21C of this title, section 8A of the Securities Act of 1933, section 9(f) of the Investment Company Act of 1940, and section 203(k) of the Investment Advisers Act of 1940.

(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 significance 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 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;
- (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 specifically take into account the large burden of such regulation when compared to the benefit of such regulation.

(5) *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.

(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 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.*

**(6) 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.*

\* \* \* \* \*

## MINORITY VIEWS

H.R. 5429 ignores the Securities and Exchange Commission's (SEC or Commission) history of effectively using economic analysis to inform its rulemaking. Instead, the bill cripples the Commission by requiring it to address a long list of analytical requirements prior to issuing any rule or general order and to fend off a wave of industry lawsuits. The bill also requires the SEC to review and possibly modify all existing regulations dating back to the 1930s within one year of enactment and every five years thereafter. Imposing such statutory analytical requirements on the SEC without providing additional funding would also divert significant resources away from other divisions, including enforcement.

Under current law, the SEC is already required to conduct economic analyses, as dictated by the Paperwork Reduction Act, the Congressional Review Act, and the Regulatory Flexibility Act. Additionally, in 2012, the SEC issued internal guidance on economic analyses for rulemaking in accordance with Executive Orders 12866 and 13563. The Government Accountability Office (GAO) and the Office of the Inspector General (IG) of the SEC have praised the agency for its high standards in its economic analysis. For example, the SEC's IG wrote the following regarding the SEC's use of economic analysis:

All of the rules that we [the IG] evaluated specified the justification for the rule, considered alternatives, and integrated the economic analysis into the rulemaking process. We determined that the SEC's use of the Current Guidance has been effective in incorporating economic analysis into the rulemaking process. Further, we found no notable differences in economic methodologies in support of rulemakings across rulemaking divisions. (SEC Office of Inspector General, Implementation of the Current Guidance on Economic Analysis in SEC Rulemakings, June 2013)

H.R. 5429 ignores the SEC's efforts over the last four years to improve its economic analysis, as well as the fact that the SEC is already subject to more statutory analytical requirements than any other financial regulator.

Although Republicans have suggested that the bill is simply an effort to codify the Presidential executive orders directing the use of economic analysis in rulemaking, the sponsors forgot to include one key provision of E.O. 13563—no private right of action. Given that the SEC has already implemented guidance that the GAO says is consistent with the President's executive orders and that H.R. 5429 does not include a prohibition on private rights of action, Democrats are concerned that the true intent of the bill is to pro-



vide a roadmap for industry to file a lawsuit when the Commission does not promulgate a rule industry wants.

H.R. 5429 is the third attempt spanning five years to bring such legislation forward to impose divisive requirements on the Commission, and open it up to attacks from industry lawyers. The bill dictates that the SEC must report on any “any unintended . . . consequences that [it] foresees”, a seemingly impossible task and one that could paralyze the Commission. The bill would also likely impede or even negate the SEC’s ability to provide rapid relief to businesses as the SEC would have to determine that such relief maximizes the net benefits, and simultaneously is the least burdensome. For example, if it were enacted, the bill would have likely significantly delayed or prevented the SEC from issuing its exemptive relief in the wake of Hurricane Sandy to affected market participants. Ironically, this bill is also being proposed at a time when the sponsor of the bill has publicly criticized the SEC for its failure to meet rulemaking deadlines imposed by the FAST Act (P.L. 114–94)—this bill only further delays this and all future SEC rulemakings.

The costs of imposing such stringent burdens on the SEC’s rulemaking process are at least \$23 million according to the Congressional Budget Office (CBO). However, the CBO does not attempt to quantify the resources the Commission would have to dedicate to defending its rulemakings in court, which could be enormous. Because H.R. 5429 does not authorize additional funding, the SEC would be forced to redirect funds from other functions of the agency, including enforcement, severely hindering its ability to protect investors.

Finally, and most troublingly, H.R. 5429 fundamentally changes the SEC by requiring the Commission to consider the impact of its rules on industry, but is silent on how the SEC would consider the rules in relation to its number one mission: protecting investors, which include the savings of hardworking Americans and retirees.

For all of these reasons, Democrats strongly oppose H.R. 5429.

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