

115TH CONGRESS
1ST SESSION

H. R. 78

IN THE SENATE OF THE UNITED STATES

JANUARY 17, 2017

Received; read twice and referred to the Committee on Banking, Housing, and
Urban Affairs

AN ACT

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

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “SEC Regulatory Ac-
3 countability Act”.

4 **SEC. 2. CONSIDERATION BY THE SECURITIES AND EX-**
5 **CHANGE COMMISSION OF THE COSTS AND**
6 **BENEFITS OF ITS REGULATIONS AND CER-**
7 **TAIN OTHER AGENCY ACTIONS.**

8 Section 23 of the Securities Exchange Act of 1934
9 (15 U.S.C. 78w) is amended by adding at the end the fol-
10 lowing:

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

12 “(1) IN GENERAL.—Before issuing a regulation
13 under the securities laws, as defined in section 3(a),
14 the Commission shall—

15 “(A) clearly identify the nature and source
16 of the problem that the proposed regulation is
17 designed to address, as well as assess the sig-
18 nificance of that problem, to enable assessment
19 of whether any new regulation is warranted;

20 “(B) utilize the Chief Economist to assess
21 the costs and benefits, both qualitative and
22 quantitative, of the intended regulation and
23 propose or adopt a regulation only on a rea-
24 soned determination that the benefits of the in-
25 tended regulation justify the costs of the regula-
26 tion;

“(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 Invest-

1 ment Company Act of 1940 (15 U.S.C.
2 80a-2(c)), consider whether the rule-
3 making, in addition to being in the interest
4 of protecting investors, will promote effi-
5 ciency, competition, and capital formation;

6 “(ii) evaluate whether, consistent with
7 obtaining regulatory objectives, the regula-
8 tion is tailored to impose the least burden
9 on society, including market participants,
10 individuals, businesses of differing sizes,
11 and other entities (including State and
12 local governmental entities), taking into ac-
13 count, to the extent practicable, the cumu-
14 lative costs of regulations; and

15 “(iii) evaluate whether the regulation
16 is inconsistent, incompatible, or duplicative
17 of other Federal regulations.

18 “(B) ADDITIONAL CONSIDERATIONS.—In
19 addition, in making a reasoned determination of
20 the costs and benefits of a potential regulation,
21 the Commission shall, to the extent that each is
22 relevant to the particular proposed regulation,
23 take into consideration the impact of the regu-
24 lation on—

25 “(i) investor choice;

1 “(ii) market liquidity in the securities
2 markets; and

3 “(iii) small businesses.

4 “(3) EXPLANATION AND COMMENTS.—The
5 Commission shall explain in its final rule the nature
6 of comments that it received, including those from
7 the industry or consumer groups concerning the po-
8 tential costs or benefits of the proposed rule or pro-
9 posed rule change, and shall provide a response to
10 those comments in its final rule, including an expla-
11 nation of any changes that were made in response
12 to those comments and the reasons that the Com-
13 mission did not incorporate those industry group
14 concerns related to the potential costs or benefits in
15 the final rule.

16 “(4) REVIEW OF EXISTING REGULATIONS.—Not
17 later than 1 year after the date of enactment of the
18 SEC Regulatory Accountability Act, and every 5
19 years thereafter, the Commission shall review its
20 regulations to determine whether any such regula-
21 tions are outmoded, ineffective, insufficient, or ex-
22 cessively burdensome, and shall modify, streamline,
23 expand, or repeal them in accordance with such re-
24 view. Whenever pursuant to this paragraph the
25 Commission is engaged in a review, it shall consider

1 whether an action is necessary or appropriate in the
2 public interest, the protection of investors, and
3 whether the action will promote efficiency, competi-
4 tion, and capital formation. In reviewing any regula-
5 tion (including, notwithstanding paragraph (6), a
6 regulation issued in accordance with formal rule-
7 making provisions) that subjects issuers with a pub-
8 lic float of \$250,000,000 or less to the attestation
9 and reporting requirements of section 404(b) of the
10 Sarbanes-Oxley Act of 2002 (15 U.S.C. 7262(b)),
11 the Commission shall specifically take into account
12 the large burden of such regulation when compared
13 to the benefit of such regulation.

14 “(5) POST-ADOPTION IMPACT ASSESSMENT.—

15 “(A) IN GENERAL.—Whenever the Com-
16 mission adopts or amends a regulation des-
17 ignated as a ‘major rule’ within the meaning of
18 section 804(2) of title 5, United States Code, it
19 shall state, in its adopting release, the fol-
20 lowing:

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

23 “(ii) Appropriate post-implementation
24 quantitative and qualitative metrics to
25 measure the economic impact of the regu-

1 lation and to measure the extent to which
2 the regulation has accomplished the stated
3 purposes.

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

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

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

15 “(i) REQUIREMENTS OF PLAN.—The
16 assessment plan required under this para-
17 graph shall consider the costs, benefits,
18 and intended and unintended consequences
19 of the regulation. The plan shall specify
20 the data to be collected, the methods for
21 collection and analysis of the data and a
22 date for completion of the assessment. The
23 assessment plan shall include an analysis
24 of any jobs added or lost as a result of the

1 regulation, differentiating between public
2 and private sector jobs.

3 “(ii) SUBMISSION AND PUBLICATION
4 OF REPORT.—The Chief Economist shall
5 submit the completed assessment report to
6 the Commission no later than 2 years after
7 the publication of the adopting release, un-
8 less the Commission, at the request of the
9 Chief Economist, has published at least 90
10 days before such date a notice in the Fed-
11 eral Register extending the date and pro-
12 viding specific reasons why an extension is
13 necessary. Within 7 days after submission
14 to the Commission of the final assessment
15 report, it shall be published in the Federal
16 Register for notice and comment. Any ma-
17 terial modification of the plan, as nec-
18 essary to assess unforeseen aspects or con-
19 sequences of the regulation, shall be
20 promptly published in the Federal Register
21 for notice and comment.

22 “(iii) DATA COLLECTION NOT SUB-
23 JECT TO NOTICE AND COMMENT REQUIRE-
24 MENTS.—If the Commission has published
25 its assessment plan for notice and com-

1 ment, specifying the data to be collected
2 and method of collection, at least 30 days
3 prior to adoption of a final regulation or
4 amendment, such collection of data shall
5 not be subject to the notice and comment
6 requirements in section 3506(c) of title 44,
7 United States Code (commonly referred to
8 as the Paperwork Reduction Act). Any ma-
9 terial modifications of the plan that require
10 collection of data not previously published
11 for notice and comment shall also be ex-
12 empt from such requirements if the Com-
13 mission has published notice for comment
14 in the Federal Register of the additional
15 data to be collected, at least 30 days prior
16 to initiation of data collection.

17 “(iv) FINAL ACTION.—Not later than
18 180 days after publication of the assess-
19 ment report in the Federal Register, the
20 Commission shall issue for notice and com-
21 ment a proposal to amend or rescind the
22 regulation, or publish a notice that the
23 Commission has determined that no action
24 will be taken on the regulation. Such a no-
25 tice will be deemed a final agency action.

1 “(6) COVERED REGULATIONS AND OTHER
2 AGENCY ACTIONS.—Solely as used in this subsection,
3 the term ‘regulation’—

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

13 “(B) does not include—

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

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

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

1 “(iv) a regulation that is certified by
2 the agency to be an emergency action, if
3 such certification is published in the Fed-
4 eral Register.”.

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

7 It is the sense of the Congress that the Public Com-
8 pany Accounting Oversight Board should also follow the
9 requirements of section 23(e) of such Act, as added by
10 this title.

11 **SEC. 4. ACCOUNTABILITY PROVISION RELATING TO OTHER**
12 **REGULATORY ENTITIES.**

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

- 1 as added by section 2, in the same manner as is required
- 2 by the Commission under such section 23(e).

Passed the House of Representatives January 12,
2017.

Attest:

KAREN L. HAAS,
Clerk.