

AFR Americans for Financial Reform

January 12, 2017

Dear Representative,

On behalf of Americans for Financial Reform, we are writing to express our opposition to HR 78, the “SEC Regulatory Accountability Act”.¹ Despite the fact that the Securities and Exchange Commission (SEC) is already subject to more stringent economic analysis requirements than any other Federal financial regulator, and has greatly increased its investment in economic analysis in recent years, this legislation would impose a host of unworkable bureaucratic and administrative requirements on the agency. While they are justified using the rhetoric of “cost benefit analysis”, these requirements appear designed not to improve SEC economic analysis but instead to make create major new barriers to effective agency action.

The most prominent new requirement would mandate that the SEC identify every “available alternative” to a proposed regulation or agency action and quantitatively measure the costs and benefits of each such alternative prior to taking action. Since there are always numerous possible alternatives to any course of action, this requirement alone could force the agency to complete dozens of additional analyses before passing a rule or guidance. Placing this mandate in statute will also provide near-infinite opportunities for Wall Street lawsuits aimed at halting or reversing SEC actions, and would be a gift to litigators who work on such anti-government lawsuits. No matter how much effort the SEC devotes to justifying its actions, the question of whether the agency has identified all possible alternatives to a chosen action, and has properly measured the costs and benefits of each such alternative, will always remain open to debate.

Like other agencies, the SEC is already required to conduct economic analyses under the Paperwork Reduction Act, the Congressional Review Act, and the Regulatory Flexibility Act. Unlike all other financial regulators, the SEC also has additional statutory requirements to examine how each rules affect market efficiency, competition, and capital formation. The SEC has also issued binding internal guidance on economic analysis for rulemakings that closely follows Executive Order 12866 and OMB Circular A-4, and has more than tripled its spending on economic and risk analysis since 2012.

Despite these already existing commitments to economic analysis, this proposal would load the agency with a crushing burden of additional administrative burdens under the rubric of “cost-benefit analysis”. In addition to the enormous task of identifying and analyzing every available alternative to a course of action, the agency would be required to perform half a dozen new

¹ Americans for Financial Reform is an unprecedented coalition of more than 200 national, state and local groups who have come together to reform the financial industry. Members of our coalition include consumer, civil rights, investor, retiree, community, labor, faith based and business groups. A list of coalition members is available at <http://ourfinancialsecurity.org/about/our-coalition/>

analyses in addition to its current requirements concerning market efficiency, competition, and capital formation. These new requirements include analyses of effects on small business, market liquidity, state and local government, investor choice, and “market participants”. Notably, no new requirements concerning the protection of investors or preventing another financial crash are included.

This legislation also requires the SEC to review every single regulation in effect within one year after the passage of this Act, and again every five years thereafter, with an eye to weakening or eliminating such regulations. This will be an enormous drain on SEC resources and a distraction from addressing emerging issues in our ever more complex financial markets.

This legislation is transparently an effort to paralyze the SEC and to empower Wall Street lawyers to overturn its decisions, not to improve its analysis or decision making. We urge you to reject it.

Thank you for your consideration. For more information please contact AFR’s Policy Director, Marcus Stanley at marcus@ourfinancialsecurity.org or 202-466-3672.

Sincerely,

Americans for Financial Reform