May 16, 2024

The Honorable Patrick McHenry

Chair

U.S. House Committee on Financial Services

2129 Rayburn House Office Building

Washington, DC 20515

The Honorable Maxine Waters

Ranking Member

U.S. House Committee on Financial Services

4340 O’Neill House Office Building

Washington, DC 20024

Dear Chairman McHenry and Ranking Member Waters:

Americans for Financial Reform (AFR) writes to express strong opposition to legislation that the House Financial Services Committee (HFSC) is scheduled to consider this week that would amend the federal securities laws in ways that could be profoundly damaging to American workers and “mom and pop” investors.

AFR is particularly alarmed by proposals to intentionally overburden the Securities and Exchange Commission (SEC) with a set of administrative and analytical requirements that will make it difficult and at times impossible to protect the investing public and perform its mandate.[[1]](#footnote-1)

To that end, AFR urges members to vote against, and decisively reject, the following legislation.

1. H.R. 8339, The SEC Reform and Restructuring Act
2. H.J. Res 100, Providing for congressional disapproval of the rule submitted by the Securities and Exchange Commission relating to Cybersecurity Risk Management, Strategy, Governance, and Incident Disclosure
3. H.R. 4551 the Protecting Investors’ Personally Identifiable Information Act
4. **The SEC Reform and Restructuring Act (H.R. 8339)**

H.R. 8339, the "SEC Reform and Restructuring Act,” would amend the Securities Exchange Act of 1934 (the “Exchange Act”) to require the SEC to conduct a “consideration of costs and benefits” prior to proposing a regulation, as well as satisfy dozens of new regulatory-analytic requirements prior to “issuing a proposed or final regulation.” [[2]](#footnote-2) The legislation would also require the SEC to undertake a sweeping “Post Adoption Impact Assessment” of all major rules every five years following their adoption.

As a preliminary matter, there is scant evidence to support the value of cost-benefit analysis in the context of securities regulation.[[3]](#footnote-3) In fact, academic research and practical experience alike suggests CBA in this context tends to be subjective, hard to apply, hard to evaluate, and generally “make legally sufficient rulemaking exceedingly difficult.”[[4]](#footnote-4)

Regardless of Congress’s viewpoint on regulators’ use of cost-benefit analysis to improve the quality of regulation, by any reading, the regulatory-analytic and cost-benefit analysis requirements in H.R. 8339 *do not seriously aim to improve regulation*. Their purpose is to prevent effective regulation by increasing cost and uncertainty to unacceptable levels.[[5]](#footnote-5)

In other words, by requiring the SEC to review all regulations every five years, and requiring an additional cost-benefit analysis, the requirements of H.R. 8339 would create countless new legal and procedural barriers, with each serving as a chance for industry groups to advocate against rules they oppose in Congress and the courts, and thereby, as former SEC Chair Mary Jo White stated, “puts an agency’s rules under constantly challenge.”[[6]](#footnote-6)

Congress must recognize these provisions for what they are: an effort to tilt the playing field towards industry, and away from the public interest, rewarding industry’s ability to devote resources to fighting regulations that protect investors and markets – and vote accordingly.

AFR also strongly opposes provisions in H.R. 8339 that would significantly weaken the supervision and enforcement of audit firms, by folding the Public Company Accounting Oversight Board (PCAOB) into the Office of Public Accounting Oversight under the SEC.

Folding the PCAOB into the SEC would - by virtue of the SEC’s broader mandate - deemphasize issues around audit quality, lead to significant turnover of highly specialized accounting staff due to the differences in pay between agencies, and re-recreate many of the same problems and conditions that led to the PCAOB being created in the first place.[[7]](#footnote-7)

1. **The Protecting Investors’ Personally Identifiable Information Act (H.R. 4551)**

H.R. 4551 would prohibit the SEC from requiring a national securities exchange, association, or a member of either to provide a market participant's personally identifiable information to satisfy the reporting requirements of the Consolidated Audit Trail, or “CAT”.[[8]](#footnote-8)

The CAT was launched after the “flash crash” of 2010 to give regulators such as the SEC more visibility into increasingly fast-paced and complex trading across the public markets. It requires that exchanges and broker-dealers provide every quote, order, cancellation, and trade that occurs in any stock or option across U.S. public markets.[[9]](#footnote-9) Information collected from the CAT was critical to the SEC being able to better enforce rules against insider trading, provide better data to inform the SEC’s rulemaking, and to help the SEC collect critical information demanded by Congress in response to its hearings in 2021 on GameStop.[[10]](#footnote-10)

AFR opposes H.R. 4551 primarily due to its anticipated adverse impact on the SEC’s ability to perform market surveillance.

As the Committee is aware, CAT is the SEC’s primary mechanism for surveillance for market manipulation and other trading activities.[[11]](#footnote-11) The restrictions contemplated by H.R. 4551 would significantly complicate the SEC’s ability undertake examinations or enforcement of market manipulation, which requires the agency to know who is engaging in trading, leaving the agency unable to perform basic policing of the markets in ways that have been done for decades. While H.R. 4551 would allow the SEC limited access to CAT PII, such access would be only upon the conclusion of a cumbersome and unnecessary process that limits its utility.

AFR is also concerned that H.R. 4551 addresses a problem that does not exist.

The CAT has several steps to ensure PII is not improperly accessed, but this amendment isn't really about PII. Rather, the amendment is attempting to assert an artificial and new "right to privacy" for trading in public markets, where none has ever existed, and even if that is abusive or illegal trading. We also note that, as CAT is already set up, regulators don't have access to PII information directly, but rather a masked identifier.[[12]](#footnote-12)

We urge the Committee to reject H.R. 4551.

1. **Providing for congressional disapproval under chapter 8 of title 5, U.S.C., of the rule submitted by the Securities and Exchange Commission relating to "Cybersecurity Risk Management, Strategy, Governance, and Incident Disclosure." (H.J. Res. 100)**

Finally, AFR opposes H.J. Res 100, which would overturn the SEC’s Cybersecurity Risk Management, Strategy, Governance and Incident Disclosure rule that was finalized on July 26, 2023. (“SEC Cyber Rule”).

The SEC’s Cyber Rule requires publicly held companies to disclose their policies and procedures around cybersecurity risks and requires cybersecurity incidents to be disclosed to investors over the SEC’s Form 8-K within four days. Such information is not only directly and obviously material to investors, but benefits U.S. public and national security policy.

Estimates from Cybersecurity Ventures predict that the costs of cybercrime will rise to $10.5 trillion in 2025, compared to $3 trillion in 2015.[[13]](#footnote-13) Cyber-attacks include activity material to companies and their investors such as the stealing of intellectual property, access to sensitive customer information, and attacks that take down critical systems as was recently seen in the cyberattack against UnitedHealthcare’s Change Healthcare that negatively impacted many patients and businesses across the industry.[[14]](#footnote-14)

As commentors pointed out during the rule’s comment process, cybersecurity attacks are also unique from a securities law context because successful cyberattacks provide the attackers with knowledge about the extent of the damage they are causing, which they can then also profit from, making quick disclosure of attacks to other investors particularly vital.[[15]](#footnote-15)

**Conclusion**

AFR strongly opposes H.R. 8339, H.J. Res 100, and H.R. 4551 as the bills would weaken the SEC’s ability to issue rules, carry out its investor protection and market integrity mandates, and bring necessary enforcement against bad actors.

For any additional questions please do not hesitate to reach out to Andrew Park at andrew@ourfinancialsecurity.org

Sincerely,

Americans for Financial Reform

 CC: Members of the U.S. House Financial Services Committee

1. <https://docs.house.gov/meetings/BA/BA00/20240516/117322/BILLS-118-HR8339-A000370-Amdt-5.pdf> [↑](#footnote-ref-1)
2. For purposes of this letter, H.R. 8339 refers to the Amendment in the Nature of a Substitute or “ANS” that will be voted on by the HFSC. The ANS is a compilation of seven bills introduced in the 118th Congress. The bills are (1) H.R. 8239, the SEC Regulatory Accountability Act; (2) H.R. 8241, the SEC Transparency Act; (3) H.R. 8240, the SEC Cybersecurity Act; (4) H.R. 7030, the REG Act of 2024; (5) H.R. 8228, the Streamlining Public Company Accounting Oversight Act; (6) H.R. 8226, To require the Comptroller General of the United States to carry out a study regarding major rules issued by the Securities and Exchange Commission; and (7) H.R. 8255, To establish a minimum public comment period with respect to proposed rules issued by the Securities and Exchange Commission. [↑](#footnote-ref-2)
3. “Quantified CBA of such rules can be no more than ‘guesstimated,’ as it entails (a) causal inferences that are unreliable under standard regulatory conditions; (b) the use of problematic data; and/or (c) the same contestable, assumption-sensitive macroeconomic and/or political modeling used to make monetary policy, which even CBA advocates would exempt from CBA laws. Expert judgment remains an inevitable part of what advocates label “gold-standard” quantified CBA, because finance is central to the economy, is social and political, and is non-stationary. Judicial review of quantified CBA can be expected to do more to camouflage discretionary choices than to discipline agencies or promote democracy. (“Cost-Benefit Analysis of Financial Regulation: Case Studies and Implications.” John C. Coates IV. The Yale Law Journal. Jan. 2015. Accessible at <https://www.yalelawjournal.org/issue/issue/volume-124-issue-4-january-2015> ) [↑](#footnote-ref-3)
4. Nagy, Donna M. Indiana University Maurer School of Law. The Costs of Mandatory Cost-Benefit Analysis in SEC Rulemaking. 2015. <https://www.repository.law.indiana.edu/facpub/2162> [↑](#footnote-ref-4)
5. “Chair Gensler’s frenetic, partisan rulemaking agenda at the SEC has threatened the health of U.S. capital markets and highlights the need for targeted institutional reform. [Since] since taking office in 2021, Chair Gensler has flooded the marketplace with roughly 60 new proposals and more than 30 final rules. Chair Gensler’s frenetic, partisan rulemaking agenda at the SEC has threatened the health of U.S. capital markets and highlights the need for targeted institutional reform.” Opening statement of Rep. Ann Wagner (R-MO) at a hearing entitled, “SEC Overreach: Examining the Need for Reform.” March 20, 2024. Accessible at
 [↑](#footnote-ref-5)
6. Id. (Nagy) [↑](#footnote-ref-6)
7. We also note that former PCAOB board members and others have warned that consolidating the two agencies would only save a marginal amount of money while leaving the SEC ill equipped to examine audit firms since the SEC and PCAOB pursue very different cases and the staff of the PCAOB are specifically hired to supervise the audits of accounting firms. Id. [↑](#footnote-ref-7)
8. (i.e., data used to track market activity). [↑](#footnote-ref-8)
9. Financial Industry Regulatory Authority. Consolidated Audit Trail. <https://catnmsplan.com/> [↑](#footnote-ref-9)
10. Chair Gary Gensler. Securities and Exchange Commission. Statement on CAT Funding. Sep 6, 2023. <https://www.sec.gov/news/statement/gensler-statement-cat-funding-090623>. (Another recent example of CAT’s importance to all investors was recently highlighted when Trump Media & Technology Group CEO Devin Nunes asked Congress to use the SEC’s Consolidated Audit Trail to investigate whether other market participants were improperly trading in the share of Trump Media (which combined with Special Purpose Acquisition Company Digital World Acquisition Company). [↑](#footnote-ref-10)
11. CAT replaced the Order Audit Trail System, which itself was used to identify and subsequently pull trader identities by regulators. [↑](#footnote-ref-11)
12. The actual human PII is available upon further investigation, as is contemplated in the legislation. [↑](#footnote-ref-12)
13. Morgan, Steve. Cybersecurity Ventures. Cybercrime To Cost the World $10.5 Trillion Annually By 2025. Nov 13, 2020. <https://cybersecurityventures.com/cybercrime-damages-6-trillion-by-2021/> [↑](#footnote-ref-13)
14. House Committee on Energy and Commerce. What We Learned: Change Healthcare Cyber Attack. May 3, 2024. <https://energycommerce.house.gov/posts/what-we-learned-change-healthcare-cyber-attack> [↑](#footnote-ref-14)
15. Mitts, Joshua. Columbia Law School. Re: File No. S7-09-22: Cybersecurity Risk Management, Strategy, Governance, and Incident Disclosure. May 9, 2022. <https://www.sec.gov/comments/s7-09-22/s70922-20128280-290826.pdf> [↑](#footnote-ref-15)