



NASAA

---

**NORTH AMERICAN SECURITIES ADMINISTRATORS ASSOCIATION, INC.**

750 First Street N.E., Suite 1140

Washington, D.C. 20002

202/737-0900

Fax: 202/783-3571

www.nasaa.org

May 14, 2013

The Honorable John Boehner  
Speaker  
U.S. House of Representatives  
H-232, U.S. Capitol  
Washington, D.C. 20515

The Honorable Nancy Pelosi  
Minority Leader  
U.S. House of Representatives  
H-204, U.S. Capitol  
Washington, D.C. 20515

**Re: The S.E.C. Regulatory Accountability Act of 2013 (H.R. 1062)**

Dear Speaker Boehner and Leader Pelosi:

On behalf of the North American Securities Administrators Association (NASAA),<sup>1</sup> I am writing to express my opposition to H.R. 1062, the “SEC Regulatory Accountability Act,” which the House is scheduled to consider on Friday, May 14<sup>th</sup>. This legislation would establish a significant number of additional cost-benefit analyses that the U.S. Securities and Exchange Commission (SEC) would be required to complete when issuing a new regulation. State securities regulators support efficient regulation, and appreciate the role that objective analyses of proposed rules can play in promoting this aim, however, the burdensome new requirements enumerated in H.R. 1062 threaten not only impede the ability of the SEC to conduct rulemaking, but prescribe standards that could conflict with the SEC’s investor protection mission.

Rulemaking processes to which the SEC and other independent federal regulators must adhere are set forth in the Administrative Procedure Act (APA) and other statutes.<sup>2</sup> These processes require regulators engaged in rulemaking to perform economic and cost-benefit analyses of their proposed rules to “determine as best [as they] can the economic implications of the rule,” and “examine the relevant data and articulate a satisfactory explanation for [their] action, including a rational connection between the facts found and the choices made.”<sup>3</sup> In addition to such mandates arising under the APA, the SEC has a unique obligation to consider the effect of a proposed rule upon “efficiency, competition, and capital formation.”<sup>4</sup> Moreover; the SEC has recently issued new guidance to its rule writing staff that escalates the emphasis on conducting proper economic analyses.<sup>5</sup> Among other things, this new guidance requires SEC staff to “define the baseline” against which the effects of a rule will be measured; identify and evaluate “reasonable alternatives” to the

---

<sup>1</sup> The oldest international organization devoted to investor protection, the North American Securities Administrators, Inc. was organized in 1919. Its membership consists of the securities administrators in the 50 states, the District of Columbia, Canada, Mexico, Puerto Rico and the U.S. Virgin Islands. NASAA is the voice of securities agencies responsible for grass roots investor protection and efficient capital formation.

<sup>2</sup> The National Environmental Protection Act (NEPA), the Regulatory Flexibility Act (RFA), the Congressional Review Act (CRA), and the Paperwork Reduction Act (PRA) set forth additional procedures that federal agencies must follow prior to finalizing a rule.

<sup>3</sup> Motor Vehicle Mfrs. Ass’n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co., 463 U.S. 29, 43 (1983).

<sup>4</sup> 15 U.S.C. §§78c(f), 78w(a)(2), 80a-2(c).

<sup>5</sup> Current Guidance on Economic Analysis in SEC Rulemakings, Memorandum from Division of Risk, Strategy, and Financial Innovation (RFSI) and Office of General Counsel (OGC) to the Staff of the Rulewriting Divisions and Offices (Mar. 16, 2012), available at [http://www.sec.gov/divisions/riskfin/rsfi\\_guidance\\_econ\\_analy\\_secrulemaking.pdf](http://www.sec.gov/divisions/riskfin/rsfi_guidance_econ_analy_secrulemaking.pdf).

---

President: A. Heath Abshire (Arkansas)  
President-Elect: Steven D. Irwin (Pennsylvania)  
Past-President: Jack E. Herstein (Nebraska)  
Executive Director: Russel Luculano

Secretary: Chris Naylor (Indiana)  
Treasurer: Fred Joseph (Colorado)  
Ombudsman: Matthew Neubert (Arizona)

Directors: Douglas R. Brown (Manitoba)  
Melanie Senter Lubin (Maryland)  
John Morgan (Texas)  
Patricia D. Struck (Wisconsin)

proposed rule that might have similar results with fewer economic costs; and clearly identify and measure “relevant benefits and costs” so that market participants and the public can clearly understand why the SEC is moving forward with the proposed rule.

H.R. 1062 would require the SEC to conduct new and unreasonably extensive analyses prior to issuing a regulation. The bill would require the SEC to determine, and measure, the effectiveness of a rule even prior to its adoption, and without assessing its ultimate impact on investor protection (which may not be easily quantifiable). The bill would also require the SEC to consider an unduly broad range of considerations before issuing a rule that are much more expansive, and in certain cases, vague than is currently required.

Upon issuing a final rule, H.R.1062 requires the SEC to provide an explanation of the comments it received, and notably, requires the SEC to explain why “industry group concerns” were not incorporated in the final rule. Although the bill explicitly mandates that the SEC address industry concerns, however, it does not contain a similar mandate for consumer or investor protection group concerns. This omission is arguably in direct conflict with the investor protection mandate of the SEC. Finally, the bill subjects the SEC to an ongoing assessment of any rules that are “outmoded, ineffective, insufficient, or excessively burdensome”—a list that could require the SEC to reexamine all of its existing rules.

State securities regulators appreciate the importance of the rigorous regulatory cost-benefit and cost-effectiveness analyses to which independent agency rules are subjected. The SEC is already subject to extensive and exacting cost-benefit analysis standards, and the new analytical hurdles imposed by H.R. 1062 could have a detrimental effect on the SEC’s ability to meet its regulatory mandate. Moreover, the costs of such additional hurdles (i.e., rulemaking delays, increased staffing demands, and additional taxpayer dollars) will likely outweigh the intended benefit that the expanded analyses are intended to provide.

NASAA is also concerned that misuse of these analyses could severely impair the ability of the SEC to conduct efficient, effective and timely rulemaking including rules required under the recently enacted JOBS Act, long overdue rulemakings mandated by the Dodd-Frank Act, and any future rules designed to protect investors and the public. The unintended consequence of H.R. 1062, if enacted, would be the derailment of important investor protections that are essential to a robust and stable capital marketplace.

In view of the bill’s burdensome cost-benefit analysis requirements, and harm that it may cause on the investing public, I respectfully urge you not to support H.R. 1062. Thank you for your consideration of my concerns. If you have any questions, please feel free to contact Michael Canning, Director of Policy, or Anya Coverman, Deputy Director of Policy, at the NASAA Corporate Office at (202) 737-0900.

Sincerely,



A. Heath Abshire  
NASAA President and Arkansas Securities Commissioner

cc: Members of the United States House of Representatives