



NASAA

NORTH AMERICAN SECURITIES ADMINISTRATORS ASSOCIATION, INC.

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May 6, 2013

The Honorable Jeb Hensarling
Chairman
House Financial Services Committee
2170 Rayburn House Office Building
Washington, DC 20515

The Honorable Maxine Waters
Ranking Member
House Financial Services Committee
B 360 Rayburn House Office Building
Washington, DC 20515

Re: SEC Regulatory Accountability Act (H.R. 1062)

Dear Chairman Hensarling and Ranking Member Waters:

On behalf of the North American Securities Administrators Association (NASAA),¹ I am writing to express my opposition to H.R. 1062, the “SEC Regulatory Accountability Act.” 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. The burdensome new requirements enumerated in the bill will not only substantially impede the ability of the SEC to conduct rulemaking, but will also create standards that could conflict with the SEC’s investor protection mission.

Rulemaking processes to which the SEC and other federal regulators must adhere are set forth in the Administrative Procedure Act (APA) and other statutes.² 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.”³ 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,”⁴ and it has recently issued guidance to its rule writing staff on conducting proper economic analyses.⁵

¹ 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.

² 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.

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

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

⁵ 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.

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H.R. 1062 would require the SEC to conduct new and unreasonably extensive analyses prior to issuing a regulation. The SEC would be permitted to adopt a rule only upon a “reasoned determination” that the rule’s benefits justify its costs. The SEC must 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 also requires 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 handwritten signature in black ink, appearing to read "A. Heath Abshure". The signature is fluid and cursive, with a long horizontal stroke at the end.

A. Heath Abshure
NASAA President and Arkansas Securities Commissioner