



Consumer Federation of America

November 14, 2011

The Honorable Spencer Bachus
Chairman
Committee on Financial Services
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Barney Frank
Ranking Member
Committee on Financial Services
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Scott Garrett
Chairman
Subcommittee on Capital Markets
and Govt. Sponsored Enterprises
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Maxine Waters
Ranking Member
Subcommittee on Capital Markets
and Govt. Sponsored Enterprises
U.S. House of Representatives
Washington, D.C. 20516

Chairmen Bachus and Garrett and Ranking Members Frank and Waters:

I am writing on behalf of the Consumer Federation of America (CFA) to express our strong opposition to H.R. 2308, the “SEC Regulatory Accountability Act,” which is scheduled for mark up tomorrow in the Capital Markets Subcommittee. Far from making the SEC more efficient or cost-effective, this legislation would place insurmountable procedural barriers in the way of the agency as it seeks to adopt needed rules and to administer and enforce the securities laws. As such, it would be harmful to investors, to market participants, and to the health and stability of our nation’s capital markets.

The bill imposes what might appear to the uninformed to be a benign set of requirements on agency rulemakings and orders. These include: requiring a cost-benefit analysis of any proposed regulation or order, including all alternative approaches, and permitting adoption of that regulation or order only where the benefits justify the costs; requiring that each regulation or order include measurement of the actual results; and requiring a constant, time-consuming reevaluation of existing regulations and orders for possible repeal or modification.

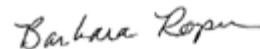
While everyone can support rules whose benefits justify their costs, cost-benefit analysis is not the science the bill’s backers seem to suggest. Long experience has shown that it is particularly difficult to put a dollar value on the benefits of a proposed regulation or to measure the potential costs of a failure to regulate. Who, for example, would have predicted a decade ago that failure to rein in abusive and unsound subprime mortgage lending could have such catastrophic consequences for the global economy? And how could anyone hope to measure the

combined effect of a series of deregulatory decisions across financial markets? Because these benefits never get measured, this approach inevitably favors less regulatory approaches than are justified or needed to protect investors and the health of the financial system. Moreover, by applying the requirements to orders as well as regulations, the bill would hamstring not just the agency's rulemaking ability, but also its ability to carry out its most basic regulatory functions.

The legislation fails its own test. It does not identify a problem it is needed to solve, assess the various possible approaches to solving that problem, and propose the least burdensome approach. Quite the opposite. The SEC is already required to conduct a cost-benefit analysis of each and every proposed rule. In doing so, it is required to consider the effects on efficiency, competition, and capital formation. And, as the recent proxy access decision made clear, the courts are far from reluctant to overturn agency rulemakings if they feel the agency has not adequately assessed their economic impact. Indeed, the pressing question for the SEC today is whether it is capable of adopting effective rules where industry is willing to mount a legal challenge. Far from solving that problem, this bill would put regulation-resistant industry groups even more firmly in the driver's seat.

With the nation still feeling the ill effects of a financial crisis brought about by weak and ineffective financial regulation, Congress should be looking to strengthen our financial regulators not tie them in red tape, as this bill would do. We urge you to reject this ill-advised and unnecessary bill and to look instead for ways strengthen the hand of the SEC as it seeks to fulfill its regulatory mandate to protect investors, preserve market integrity, and promote capital formation.

Respectfully submitted,



Barbara Roper
Director of Investor Protection