



Via Hand Delivery

May 15, 2013

The Honorable John A. Boehner
United States House of Representatives
Washington, DC 20515

The Honorable Nancy Pelosi
United States House of Representatives
Washington, DC 20515

Dear Mr. Speaker and Minority Leader Pelosi:

I am writing on behalf of the Council of Institutional Investors (“CII”). CII is a nonprofit, nonpartisan association of public, corporate, and union employee benefit funds, and other employee benefit plans, foundations and endowments. Our members are long-term shareowners with combined assets that exceed \$ 3 trillion.¹

The purpose of this letter is to express our opposition to H.R. 1062.² As you are aware, H.R. 1062 was reported out of the Committee on Financial Services on May 7, 2013 despite twenty-eight “Nays” among Committee members in opposition to its passage. It is our understanding that H.R. 1062 has now been scheduled to be considered by the full House of Representatives on Friday of this week.

As long-term shareowners interested in maximizing share values, we believe it is vital to avoid unnecessary regulatory costs that could hinder the capital markets and the economy.³ We, however, also believe that, at best, it is unclear how the provisions of H.R. 1062 would improve the cost-effectiveness of the Securities and Exchange Commission’s (“SEC” or “Commission”) existing rulemaking process or somehow benefit long-term investors, the capital markets, or the overall economy.⁴

¹ For more information about the Council of Institutional Investors (“CII”), including its members, please visit the Council’s website at <http://www.cii.org/members>.

² SEC Regulatory Accountability Act, H.R. 1062, 113th Cong. (Mar. 12, 2013), <http://www.govtrack.us/congress/bills/113/hr1062>.

³ Brief of Council of Institutional Investors et al. as Amici Curie Supporting Respondent at 6, BRT v. SEC (2011) (No. 10-1305), <http://www.law.du.edu/documents/corporate-governance/sec-and-governance/business-roundtable/Amicus-BRIEF-OF-COUNCIL-OF-INSTITUTIONAL-INVESTORS-TIAA-CREF-and-35-Other-Institutional-Investors-Business-Roundtable-v-SEC-No-10-1305-DC-Cir-Jan-27-2011.pdf>.

⁴ We note that H.R. 1062 does not include any provisions that would explicitly require the Securities and Exchange Commission to consider the costs and benefits of a proposal or rule from the perspective of long-term investors.

May 15, 2013

Page 2 of 3

The Commission's rulemaking process is already governed by a number of legal requirements, including those under the federal securities laws, the Administrative Procedure Act, the Paperwork Reduction Act of 1980, the Small Business Regulatory Enforcement Fairness Act of 1996, and the Regulatory Flexibility Act.⁵ Moreover, under the federal securities laws the SEC is generally required to consider whether its rulemakings are in the public interest and, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.⁶

Since the 1980's, the Commission has conducted, to the extent possible, an analysis of the costs and benefits of its proposed rules.⁷ That analysis was recently positively reviewed by the U.S. Government Accountability Office and the SEC's Office of Inspector General.⁸ In response to comments received from those reviews, recent court decisions, and communications with Members of Congress, the Commission under former Chairman Schapiro and now current Chairman White remains committed to continuing to seek further enhancements to the SEC's rulemaking process—a process that in our view is, and has long been, far more extensive than that of any other federal financial regulator.⁹

We also oppose H.R. 1062 because we believe it is based on a faulty premise that a generally accepted methodology currently exists that allows the SEC in a cost-effective manner to reliably measure and then balance the costs and benefits of its proposals or rules consistent with its mandate of investor protection.¹⁰ We note that it is well established that while some of the costs of some SEC proposals or rules can be reliably estimated, the same is generally not true for the benefits.¹¹

⁵ Financial Services and Bailouts of Public and Private Programs: Hearing Before the H. Comm. on Oversight and Gov't Reform, 112th Cong. 2 (2012) (testimony of Chairman Mary L. Schapiro, U.S. SEC), <http://www.sec.gov/news/testimony/2012/ts041712mls.htm>.

⁶ *Id.*

⁷ *Id.* at 3.

⁸ *Id.* at 2.

⁹ *Id.* at 1.

¹⁰ The Investor's Advocate: How the SEC Protects Investors, Maintains Market Integrity, and Facilitates Capital Formation, U.S. Securities and Exchange Commission, <http://www.sec.gov/about/whatwedo.shtml> (last visited May 14, 2013) ("The mission of the U.S. Securities and Exchange Commission is to protect investors, maintain fair, orderly, and efficient markets, and facilitate capital formation.").

¹¹ *See, e.g.*, U.S. Gov't Accountability Office, GAO-13-101, Dodd-Frank Act: Agencies' Efforts to Analyze and Coordinate Their Rules 18 (Dec. 2012), <http://www.gao.gov/assets/660/650947.pdf> ("As we have reported, the difficulty of reliably estimating the costs of regulations to the financial services industry and the nation has long been recognized, and the benefits of regulation generally are regarded as even more difficult to measure.").

May 15, 2013

Page 3 of 3

In most instances, the benefits of a Commission proposal or rule relating to the financial markets, particularly a proposal or rule designed to protect investors, presently cannot be reliably measured.¹² Thus, H.R. 1062, if adopted, would appear to impose upon the SEC a costly, one-sided, incomplete analysis in which the Commission would be hard pressed to satisfy the required determination that the benefits of a proposal or rule “justify the costs of the regulation.”¹³ As a result, at present, H.R. 1062 would, for all practical purposes, prohibit the SEC from issuing any substantive proposals or rules in furtherance of its mission to protect investors—the element of its mission that, in our view, is most critical to maintaining and enhancing a fair and efficient capital market system.

We would respectfully request that you oppose the passage of H.R. 1062.

Thank you for consideration of our views. If we can answer any questions or provide additional information on this important matter, please do not hesitate to contact me at 202.261.7081 or jeff@cii.org.

Sincerely,

A handwritten signature in black ink that reads "Jeff Mahoney". The signature is written in a cursive, flowing style.

Jeff Mahoney
General Counsel

¹² *Id.*

¹³ SEC Regulatory Accountability Act § 2(e)(1)(b).