Via Hand Delivery

June 13, 2016

The Honorable Jeb Hensarling
Chairman
House Committee on Financial Services
2129 Rayburn House Office Building
Washington, DC 20515

The Honorable Maxine Waters
Ranking Member
House Committee on Financial Services
4340 Thomas P. O'Neill, Jr. Federal Office Building
Washington, DC 20515

Re: SEC Regulatory Accountability Act (H.R. 5429)

Dear Mr. Chairman and Ranking Member Waters:

I am writing on behalf of the Council of Institutional Investors (CII), a nonprofit association of employee benefit plans, foundations and endowments with combined assets under management exceeding $3 trillion. Our member funds include major long-term shareowners with a duty to protect the retirement savings of millions of American workers. Our Associate Members include a range of asset managers with more than $20 trillion in assets under management.[1]

The SEC Regulatory Accountability Act (H.R. 5429) includes provisions that we believe would in practice paralyze the Securities and Exchange Commission's (SEC) regulatory activities. Effective SEC regulation is critical to ensuring appropriate investor protection and well-functioning capital markets. We believe the proposed bill is unnecessary and could undermine effective investor safeguards and regulation of capital markets.

The Proposal is Unnecessary

As an association of long-term shareholders interested in maximizing share values, CII believes it is vital to avoid unnecessary regulatory costs. However, it is not clear to us how the provisions of the SEC Regulatory Accountability Act would improve the cost-effectiveness of the SEC's existing rulemaking process or benefit long-term investors, the capital markets or the overall economy.

[1] For more information about the Council of Institutional Investors (Council) and our members, please visit the Council's website at http://www.cii.org/about_us.

The SEC'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.[2] Moreover, under the federal securities laws the SEC generally is required to consider whether its rulemakings are in the public interest and, in addition to the protection of investors, whether they promote efficiency, competition and capital formation.[3] Since the 1980s, the SEC has conducted, to the extent possible, analyses of the costs and benefits of its proposed rules.[4]

The SEC has further enhanced the SEC rulemaking process in recent years.[5] That process is, and has long been, far more extensive than that of any other federal financial regulator.

H.R. 5429 would pose substantial risk to the SEC's regulatory capacity and to U.S. capital markets.

We believe H.R. 5429 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 to protect investors. We note 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.[6]

In most instances, the benefits of a commission rule relating to the financial markets, particularly a rule designed to protect investors, cannot be reliably measured. Thus, H.R. 5429 would appear to impose on 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." As a result, H.R. 5429 could, 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.

[2] 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.
[3] *Id.*
[4] *Id* at 3.
[5] See for example guidance from the SEC Division of Risk, Strategy, and Financial Innovation (RSFI) and the Office of the General Counsel (OGC) issued in 2012.
[6] See, e.g., U.S. Government 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.").

Moreover, H.R. 5429’s requirement that the SEC review existing regulations within one year of passage, and at least every five years thereafter, in our view would consume the SEC’s existing regulatory resources and likely require substantial additional dedicated resources. We believe this likely would paralyze SEC regulatory capacity.

We urge the Committee on Financial Services to thoroughly study the potential unintended consequences and costs of H.R. 5429 to effective financial regulation and to capital markets.

Sincerely,

Kenneth A. Bertsch
Executive Director