

Via Hand Delivery

January 11, 2017

The Honorable Paul D. Ryan  
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 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 workers and their families. Our associate members include a range of asset managers with more than \$20 trillion in assets under management.<sup>1</sup>

The purpose of this letter is to express our opposition to H.R. 78,<sup>2</sup> which we understand is likely to be considered on the floor of the U.S. House of Representatives (House).<sup>3</sup>

As an association of long-term shareowners interested in maximizing long-term share value, CII believes it is “vital to avoid unnecessary regulatory costs.”<sup>4</sup> However, it is not clear to us how the provisions of H.R. 78 would improve the cost-effectiveness of the U.S. Securities and Exchange Commission’s (SEC or Commission) existing thorough rulemaking process or somehow benefit long-term investors, the capital markets or the overall economy.<sup>5</sup>

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

<sup>2</sup> SEC Regulatory Accountability Act, H.R. 78, 115th Cong. (introduced Jan. 3, 2017), <https://www.congress.gov/115/bills/hr78/BILLS-115hr78ih.pdf>.

<sup>3</sup> Rob Tricchinelli, *SEC Among Targets as House GOP Takes Aim at Executive Power*, BBNA, Jan. 6, 2017, at 1-2 (reporting that the “full House” is likely to consider H.R. 78 “soon after” it is considered by the “House Rules Committee” on “Jan. 10.”) (Subscription required), <https://www.bna.com/sec-among-targets-n73014449419/>.

<sup>4</sup> 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>.

<sup>5</sup> We note that H.R. 78 does not include any provisions that would explicitly require the U.S. Securities and Exchange Commission to consider the costs and benefits of a proposal or rule from the perspective of long-term investors.

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### SEC's Existing Economic Analysis is Extensive

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.<sup>6</sup> Moreover, under the federal securities laws, the SEC is generally required to consider whether its rulemakings are in the public interest and will protect investors and promote efficiency, competition and capital formation.<sup>7</sup>

Since the 1980s, the Commission has conducted, to the extent possible, an analysis of the costs and benefits of its proposed rules.<sup>8</sup> The SEC has further enhanced the economic analysis of its rulemaking process in recent years.<sup>9</sup> That process is far more extensive than that of any other federal financial regulator.<sup>10</sup>

### H.R. 78 Would Unnecessarily Impede the SEC from Protecting Investors

The provisions of H.R. 78 create a false and misleading expectation that the SEC can reasonably measure, combine and compare the balance of all costs and benefits of its proposals consistent with its mandate to protect investors. As explained by Professor Craig M. Lewis, former chief economist and director of the SEC's Division of Economic and Risk Analysis: "[W]ith regard to investor protection, the Commission is often unable to reasonably quantify the related benefits or costs."<sup>11</sup>

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<sup>6</sup> See, e.g., Financial Services and Bailouts of Public and Private Programs: Hearing before the H. Subcomm. on TARP of the Comm. on Oversight and Gov't Reform, 112th Cong. 2 (Apr. 17, 2012) (testimony of Chairman Mary L. Schapiro, U.S. SEC), <http://www.sec.gov/news/testimony/2012/ts041712mls.htm>.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> See David Zaring, DealB%k, *The State of Cost-Benefit Analysis at the S.E.C., Another View*, N.Y. Times, July 13, 2015, at 2 (Commenting that "a requirement that the S.E.C. do . . . [cost-benefit analysis] and do it carefully, appears to have been internalized by the agency."); see also U.S. Securities and Exchange Commission, Office of Inspector General, Office of Audits, Use of the Current Guidance on Economic Analysis in SEC Rulemakings ii (June 6, 2013) (Noting that the Office of General Counsel and the Division of Risk, Strategy, and Financial Innovation, concurred with six recommendations from the Office of Inspector General to further improve the SEC's already "effective" economic analysis for rule releases), <https://www.sec.gov/about/offices/oig/reports/audits/2013/518.pdf>.

<sup>10</sup> See, e.g., Testimony of Chairman Mary L. Schapiro at 1 ("I believe the SEC's substantive rule releases include more extensive economic analysis than those of any other financial regulator"). For example, we note that more than 50% of the Commission's recently issued 243 page proposed rule on "Universal Proxies" is devoted to an economic analysis of the proposal. SEC, Universal Proxy, Rel. No. 34-79164 (Oct. 26, 2016), 81 Fed. Reg. 79,122, 79,147-80 (Nov. 10, 2016), available at <https://www.gpo.gov/fdsys/pkg/FR-2016-11-10/pdf/2016-26349.pdf>. For a summary overview of the universal proxy proposal, including why its adoption would be important to long-term investors and the capital markets, see *FAQ: Why CII Supports the SEC's Universal Proxy Rule* at [http://www.cii.org/files/issues\\_and\\_advocacy/board\\_accountability/universal%20proxy/Universal%20Proxy%20FAQ%202011-2-16%20final.pdf](http://www.cii.org/files/issues_and_advocacy/board_accountability/universal%20proxy/Universal%20Proxy%20FAQ%202011-2-16%20final.pdf).

<sup>11</sup> Craig M. Lewis, Chief Economist and Director, Division of Risk, Strategy, Financial Innovation, U.S. Securities and Exchange Commission, Speech at the Pennsylvania Association of, Public Employee Retirement Systems Annual Spring Forum, Harrisburg, PA: Investor Protection Through Economic Analysis 3 (May 23, 2013), <https://www.sec.gov/News/Speech/Detail/Speech/1365171575422>; See generally U.S. Government Accountability Office, GAO-13-101, Dodd-Frank Act: Agencies' Efforts to Analyze and Coordinate Their Rules 18 (Dec. 2012) ("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."), <http://www.gao.gov/assets/660/650947.pdf>.

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H.R. 78, if adopted, would impose upon the SEC a costly, time consuming and incomplete analysis in which the Commission would be hard pressed to determine that the benefits of a proposal or rule “justify the costs of the regulation.”<sup>12</sup> As a result, we believe the provisions of H.R. 78 would unnecessarily impede the ability of the SEC to issue proposals in furtherance of its mission to protect investors<sup>13</sup>—the element of its mission that, in our view, is most critical to maintaining and enhancing a fair and efficient capital market system consistent with economic growth.

#### H.R. 78 Should Be Subject to a Public Hearing

Finally, as indicated, it is not clear to us how the provisions of H.R. 78 would improve the cost-effectiveness of SEC rulemaking or benefit long-term investors, the capital markets or the overall economy. Moreover, we believe it is unlikely that the House could demonstrate that the benefits to investors of H.R. 78 justify the costs of implementing the bill. In that regard, perhaps before the House votes on H.R. 78, the committee of jurisdiction; the House Committee on Financial Services (including its fourteen new members) should conduct a public hearing on the bill. The hearing might include testimony from the SEC, investors, and other knowledgeable market participants about, among other issues, the potential costs and benefits of the proposed legislation.

We would respectfully request that you **oppose** the passage of H.R. 78.

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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 202.822.0800 or [jeff@cii.org](mailto:jeff@cii.org).

Sincerely,



Jeff Mahoney  
General Counsel

cc: The Honorable Jeb Hensarling, Chairman, Committee on Financial Services  
The Honorable Maxine Waters, Ranking Member, Committee on Financial Services

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<sup>12</sup> H.R. 78, § 2(e)(1)(b).

<sup>13</sup> U.S. Securities and Exchange Commission, What We Do, <http://www.sec.gov/about/whatwedo.shtml> (last visited Jan. 9, 2017) (“The mission of the U.S. Securities and Exchange Commission is to protect investors, maintain fair, orderly, and efficient markets, and facilitate capital formation.”).