

May 16, 2013

The Honorable John Boehner
Speaker
U.S. House of Representatives
H-232, The Capitol
Washington, DC 20515

The Honorable Nancy Pelosi
Minority Leader
U.S. House of Representatives
H-204, The Capitol
Washington, DC 20515

Re: H.R. 1062, the SEC Regulatory Accountability Act

Dear Speaker Boehner and Minority Leader Pelosi:

I am writing on behalf of the Investment Company Institute¹ to express support for H.R. 1062, the SEC Regulatory Accountability Act, which is scheduled shortly for floor consideration. Mutual funds and other registered investment companies manage assets of almost \$15 trillion and serve more than 90 million shareholders. These funds are among the most comprehensively regulated financial products in the United States, subject to a detailed and ever-growing set of laws and regulations. Investors benefit from many of these regulations, particularly those that are prudent and tailored; conversely, investors indirectly bear the costs and burdens of unnecessary or poorly designed regulations.

ICI has a keen interest in fostering a rulemaking process that is informed by robust public input, meaningful cost-benefit analysis that reflects public comment, and thoughtful consideration by regulators of alternative approaches to achieve their objectives. H.R. 1062 is a bill designed to do exactly that—to improve the consideration by the Securities and Exchange Commission (SEC) of the costs and benefits of its regulations. The SEC already is subject to cost-benefit requirements that obligate it to consider—in addition to the protection of investors—whether a proposed regulation will promote efficiency, competition, and capital formation.² H.R. 1062 additionally would require the SEC, with every new regulation, to clearly identify the nature and source of the problem being

¹ The Investment Company Institute is the national association of U.S. investment companies, including mutual funds, closed-end funds, exchange-traded funds (ETFs), and unit investment trusts (UITs). ICI seeks to encourage adherence to high ethical standards, promote public understanding, and otherwise advance the interests of funds, their shareholders, directors, and advisers. Members of ICI manage total assets of \$14.96 trillion and serve more than 90 million shareholders.

² See Section 3(f) of the Securities Exchange Act of 1934 and Section 2(c) of the Investment Company Act.

addressed, assess the costs and benefits of the intended regulation and available alternatives, and adopt regulations only on a reasoned determination that the benefits justify the costs.

These are important new provisions. H.R. 1062 will promote a better understanding of the economic consequences of regulation, and will help avoid regulatory approaches that could have the effect of making financial products more costly to investors and reducing innovation in the financial marketplace. Ultimately, regulatory requirements that are crafted to achieve legitimate policy objectives while avoiding unnecessary or burdensome outcomes benefit everyone, including most importantly the tens of millions of Americans who invest in funds to pay for their children's education, save for retirement, and meet other important financial goals.

Other Federal agencies, such as the Commodity Futures Trading Commission (CFTC), similarly would benefit from being subject to clearly articulated, rigorous standards regarding the analysis they perform in developing and amending their regulations. The CFTC is required by Section 15(a) of the Commodity Exchange Act (CEA) to consider the costs and benefits of its actions before issuing rules, regulations or orders.³ The CFTC, however, has been subject to significant criticism, from Congress and even its own commissioners, regarding the inadequacies of its cost-benefit analysis.⁴ These concerns led Representative Conaway to introduce H.R. 1003, a bipartisan bill to improve

³ Specifically, the CFTC is required to evaluate the costs and benefits in light of the following five areas: (1) protection of market participants and the public; (2) efficiency, competitiveness and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. *See* Section 15(a)(2) of the CEA.

⁴ *See, e.g.*, Letter from Frank D. Lucas, Chairman, Committee on Agriculture, and K. Michael Conaway, Chairman, Subcommittee on General Farm Commodities and Risk Management, to A. Roy Lavik, Inspector General, CFTC dated Mar. 11, 2011 (“... the CFTC is failing to adequately conduct cost-benefit analysis – either as required by the [Commodity Exchange Act] or the principles of the Executive Order [on Improving Regulation and Regulatory Review, issued by President Obama in January 2011] ... [p]articularly during tough economic times, it is incumbent upon the CFTC to approach cost-benefit thoroughly and responsibly to understand the costs, and therefore the economic impact any proposed regulation will have on regulated entities and markets ...”); Letter from Scott O’Malia, Commissioner, CFTC to the Honorable Jeffrey Zients, Acting Director, Office of Management and Budget, the White House, dated Feb. 23, 2012 (expressing “concern that the CFTC’s cost-benefit analysis has failed to comply with the standards for regulatory review outlined in OMB Circular A-4, Executive Order 12866, and President Obama’s Executive Orders 13563 and 13579.”); Jill E. Sommers, Commissioner, CFTC, Opening Statement, Meeting on the Twelfth Series of Proposed Rulemakings under the Dodd-Frank Act (Feb. 24, 2011) (expressing similar concerns regarding the CFTC’s recent rulemakings).

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consideration by the CFTC of the costs and benefits of its regulations and orders.⁵ Given the significantly increased volume of rulemaking by the CFTC in recent years, we agree it is critical that the agency be required to conduct a thorough and thoughtful analysis of the costs and benefits of its proposed regulations.

ICI supports H.R. 1062 as a positive step toward ensuring that regulations maximize their net benefits, protecting investors while minimizing the attendant costs. We also support efforts to bring this balance to other Federal agencies' regulatory processes and develop the internal expertise necessary to conduct a robust cost-benefit analysis of their rulemakings. Of course, if such measures are enacted, we also recognize that the agencies must have resources sufficient to perform those tasks.

Thank you for your consideration of our views.

Sincerely,

A handwritten signature in black ink, appearing to read "Paul Schott Stevens". The signature is fluid and cursive, with a large initial "P" and "S".

Paul Schott Stevens

President & CEO

Investment Company Institute

cc: Members of the U.S. House of Representatives

⁵ H.R. 1003 was introduced on March 8, 2013 and was approved by the House Agriculture Committee on March 20, 2013. Representative Conaway also introduced this legislation in the 112th Congress, during which the bill was reported out of the House Agriculture Committee by voice vote.