

## MINORITY VIEWS ON HR 2354

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HR 2354 would require the Securities and Exchange Commission to, within five years of enactment, and then once every ten years thereafter, review all significant SEC rules and determine by Commission vote whether they are “outmoded, ineffective, insufficient, or excessively burdensome,” or are no longer in the public interest or consistent with the SEC’s mission. The SEC would then be required to provide public notice and comment, amend or repeal any rule, and report to Congress its vote, as well as, any suggestions for legislative changes. The Manager’s Amendment, accepted by voice vote, modestly improved the bill by limiting judicial challenges to the SEC’s initial vote in the process.

While regular review of regulations by our regulators is necessary to ensure that those rules are still relevant to our ever-changing economy, this bill places an additional administrative burden on the SEC, an already overburdened and underfunded regulator. Today, the SEC has a number of formal and informal processes for identifying existing rules for review. For example, the Regulatory Flexibility Act requires the SEC to conduct a 10-year retrospective rule review, and the Paperwork Reduction Act requires periodic reviews of information collection burdens. The agency is also currently conducting several broad-based reviews of rules of issuer disclosures, equity market structure, and the definition of accredited investor.

The bill is designed to replicate the retrospective rule review applicable to our banking regulators. However, there are important distinctions between their review and the review that this bill would impose on the SEC. For example, the SEC would be required to first vote, then provide notice and comment, and then “amend or repeal any regulation,” possibly supplanting the normal notice and comment process under the Administrative Procedures Act. In addition, unlike the bank regulators review, the SEC may be able to amend or replace a congressionally-mandated rulemaking, simply if it determines that it is “ineffective.” Perversely then, even if it is in the public interest to retain such a rule, the SEC could override the will of Congress and repeal the provision.

The bill also appears to require the SEC to review and amend all of its significant regulations dating from 1934 within the first 5 years of the bill’s enactment, which would be exceptionally resource intensive and unworkable. This initial review and the ongoing burden on the SEC is particularly concerning without providing the agency with additional funds to carry out those burdens. Democrats offered an amendment to address this by authorizing appropriations of such sums as necessary to comply with the bill. By rejecting this amendment on a party-line vote (24-33), Republicans threaten to compromise the work of the SEC, an already a cash-strapped agency, as it attempts to implement the remaining provisions in Dodd-Frank and the JOBS Act and to fulfill its mandate to oversee our rapidly expanding securities markets. For these reasons, we oppose HR 2354.

*Maxine Waters*