Minority Views on H.R. 5429
The "SEC Regulatory Accountability Act"

H.R.5429 ignores the Securities and Exchange Commission's (SEC or Commission) history of effectively using economic analysis to inform its rulemaking. Instead, the bill cripples the Commission by requiring it to address a long list of analytical requirements prior to issuing any rule or general order and to fend off a wave of industry lawsuits. The bill also requires the SEC to review and possibly modify all existing regulations dating back to the 1930s within one year of enactment and every five years thereafter. Imposing such statutory analytical requirements on the SEC without providing additional funding would also divert significant resources away from other divisions, including enforcement.

Under current law, the SEC is already required to conduct economic analyses, as dictated by the Paperwork Reduction Act, the Congressional Review Act, and the Regulatory Flexibility Act. Additionally, in 2012, the SEC issued internal guidance on economic analyses for rulemaking in accordance with Executive Orders 12866 and 13563. The Government Accountability Office (GAO) and the Office of the Inspector General (IG) of the SEC have praised the agency for its high standards in its economic analysis. For example, the SEC's IG wrote the following regarding the SEC's use of economic analysis:

> All of the rules that we [the IG] evaluated specified the justification for the rule, considered alternatives, and integrated the economic analysis into the rulemaking process. We determined that the SEC's use of the Current Guidance has been effective in incorporating economic analysis into the rulemaking process. Further, we found no notable differences in economic methodologies in support of rulemakings across rulemaking divisions. (SEC Office of Inspector General, *Implementation of the Current Guidance on Economic Analysis in SEC Rulemakings*, June 2013)

H.R. 5429 ignores the SEC's efforts over the last four years to improve its economic analysis, as well as the fact that the SEC is already subject to more statutory analytical requirements than any other financial regulator.

Although Republicans have suggested that the bill is simply an effort to codify the Presidential executive orders directing the use of economic analysis in rulemaking, the sponsors forgot to include one key provision of E.O. 13563—no private right of action. Given that the SEC has already implemented guidance that the GAO says is consistent with the President's executive orders and that H.R. 5429 does not include a prohibition on private rights of action, Democrats are concerned that the true intent of the bill is to provide a roadmap for industry to file a lawsuit when the Commission does not promulgate a rule industry wants.

H.R. 5429 is the third attempt spanning five years to bring such legislation forward to impose divisive requirements on the Commission, and open it up to attacks from industry lawyers. The bill dictates that the SEC must report on any "any unintended...consequences that [it] foresees", a seemingly impossible task and one that could paralyze the Commission. The bill would also likely impede or even negate the SEC's ability to provide rapid relief to businesses as the SEC would have to determine that such relief maximizes the net benefits, and simultaneously is the least burdensome. For example, if it were enacted, the bill would have likely significantly delayed or prevented the SEC from issuing its exemptive relief in the wake of Hurricane Sandy to affected market participants. Ironically, this bill is also being proposed at a time when the sponsor of the bill has publicly criticized the SEC for its failure to meet rulemaking deadlines imposed by the FAST Act (P.L. 114-94)—this bill only further delays this and all future SEC rulemakings.

The costs of imposing such stringent burdens on the SEC's rulemaking process are at least \$23 million according to the Congressional Budget Office (CBO). However, the CBO does not attempt to quantify the resources the Commission would have to dedicate to defending its rulemakings in court, which could be enormous. Because H.R. 5429 does not authorize additional funding, the SEC would be forced to redirect funds from other functions of the agency, including enforcement, severely hindering its ability to protect investors.

Finally, and most troublingly, H.R. 5429 fundamentally changes the SEC by requiring the Commission to consider the impact of its rules on industry, but is silent on how the SEC would consider the rules in relation to its number one mission: protecting investors, which include the savings of hardworking Americans and retirees.

For all of these reasons, Democrats strongly oppose HR 5429.

Maxine Waters

Denny Heck WA-10

Emanuel Cleaver

Keith Ellison

Gwen Moore

Ed Perlmutter

Juan Vargas

Joyce Beatty

Wm Lacy Clay

Rubén Hinojosa