

**Testimony concerning Economic Analysis in SEC Rulemaking
before the
Subcommittee on TARP, Financial Services and Bailouts of Public and Private Programs
Oversight and Government Reform Committee
U.S. House of Representatives**

**by
Mary L. Schapiro
Chairman
U.S. Securities and Exchange Commission
April 17, 2012**

Chairman McHenry, Ranking Member Quigley, and Members of the Subcommittee:

Thank you for the opportunity to testify today about economic analysis in Commission rulemakings.¹ High-quality economic analysis is an essential part of SEC rulemaking, as it helps ensure that decisions to propose and adopt rules are informed by the best available information about a rule's likely economic consequences. I welcome this opportunity to discuss the steps the SEC has taken and is taking to strengthen our economic analyses.

The SEC has for years considered economic analysis to be a critical element of its rulewriting process. Indeed, I believe the SEC's substantive rule releases include more extensive economic analysis than those of any other federal financial regulator. In recent years, even in the face of an unprecedented rulemaking burden generated by the passage of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act" or "the Act"), the agency has continually enhanced its economic analysis efforts by, among other things, hiring additional Ph.D. economists and involving our economists earlier and more comprehensively in the

¹ The views expressed in this testimony are those of the Chairman of the Securities and Exchange Commission and do not necessarily represent the views of the Commission.

rulemaking process. At my direction, our staff also has recently received new guidance to inform their rulemaking work, which we will refine in the future as necessary.

Introduction

The Commission's mission is to protect investors, maintain fair, orderly, and efficient markets, and facilitate capital formation. When the Commission engages in rulemaking, it strives to adopt rules that further that mission without imposing unjustified costs. Understanding the potential economic consequences of rules the Commission is considering is an integral component of that process. Economic analysis is a challenging task. Predicting how people and entities will respond to regulatory changes involves difficult judgments. While supporting rulemaking with economic analysis is difficult under the best of circumstances, the unprecedented number, scope, significance, and complexity of rulemakings required by the Dodd-Frank Act have stretched the analytic and resource capabilities of the agency.

The SEC's cost-benefit analysis in rulemaking, particularly for rulemaking required by the Dodd-Frank Act, recently has been reviewed by the Government Accountability Office ("GAO")² and the SEC's Office of Inspector General ("OIG").³ While these reviews found that the Commission engages in a systematic approach to cost-benefit analysis in rulemaking,⁴ they also provided useful direction for improvement in our processes. Recent court decisions and

² GAO Report to Congressional Addressees, "DODD-FRANK ACT REGULATIONS Implementation Could Benefit from Additional Analyses and Coordination" (Nov. 2011) ("GAO Report No. 12-151").

³ SEC Office of Inspector General, *Follow-Up Review of Cost-Benefit Analyses in Selected SEC Dodd-Frank Act Rulemakings*, Report No. 499 (Jan. 27, 2012) ("OIG Report No. 499"), http://www.sec.gov/Reports/AuditsInspections/2012/Rpt%20499_FollowUpReviewofD-F_CostBenefitAnalyses_508.pdf.

⁴ See OIG Report No. 499 at 15; GAO Report No. 12-151 at 14.

communications from Members of Congress also have raised issues about certain aspects of the Commission's economic analysis in rulemaking.

Enhancing the Commission's economic analysis capabilities was a primary goal in the Commission's September 2009 creation of the Division of Risk, Strategy, and Financial Innovation ("RSFI"). Among the economists within RSFI that provide analysis in support of the Commission's mission, twenty-four economists assist in the provision of economic analysis for SEC rules, eighteen of whom are Ph.D. economists.⁵ The creation of RSFI as a Division has helped to provide more focus on the economic effects of our rules and to increase the involvement of economists in the rulewriting process. Since its inception, RSFI staff has been engaging with the Commission's relevant rulewriting divisions in, among other things, conducting meaningful economic analyses to inform rulemaking, formulating viable alternatives to a given regulatory approach, and determining when it might make economic sense to apply one regulatory approach versus another.

More recently, I specifically directed RSFI and the Office of the General Counsel ("OGC") to develop specific guidance for staff engaged in rulewriting to further improve the economic analysis the SEC employs in rulemaking. As described in more detail below, RSFI and OGC provided the other Divisions and Offices detailed guidance on economic analysis in rulemaking. The newly operative guidance also has been provided to Commissioners to solicit their views and to incorporate their suggestions for any additional process improvements.

⁵ Beyond the economists assisting in the provision of economic analysis for SEC rules, there are additional economists within RSFI focused on other aspects of economic analysis in areas such as litigation support, quantitative modeling, and risk analysis.

I continue to be committed to ensuring that the Commission engages in sound, robust economic analysis in its rulemaking, in furtherance of the Commission’s statutory mission, and will continue to work to enhance both the process and substance of that analysis.

The Commission’s Rulemaking Process Generally

The Commission’s rulemaking process is governed by a number of legal requirements, including those under the federal securities laws, the Administrative Procedure Act (“APA”),⁶ the Paperwork Reduction Act of 1980 (“PRA”),⁷ the Small Business Regulatory Enforcement Fairness Act of 1996,⁸ and the Regulatory Flexibility Act.⁹ The securities laws require the Commission, when it engages in rulemaking and is required to consider or determine whether the rulemaking is in the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.¹⁰ In addition, Section 23(a) of the Exchange Act requires the Commission, in making rules and regulations pursuant to the Exchange Act, to consider, among other matters, the impact any such rule or regulation would have on competition. The agency may not adopt a rule under the Exchange Act that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Act. No statute expressly requires the Commission to conduct a formal cost-benefit analysis as part of its rulemaking activities, but – since at least the early 1980s – the

⁶ 5 U.S.C. § 551 et. seq.

⁷ 44 U.S.C. §§3501-3520.

⁸ Pub. L. No. 104-121, Title II, 110 Stat. 847, 857 (1996).

⁹ 5 U.S.C. §§ 601-612.

¹⁰ See Securities Act § 2(b); Exchange Act § 3(f); Investment Company Act § 2(c); and Advisers Act § 202(c).

Commission has considered potential costs and benefits in its rulemaking as a matter of good regulatory practice.

Although as an independent regulatory agency the SEC is not included under the guidelines for regulatory economic analysis by executive agencies set out in Executive Orders 12866 and 13563¹¹ and Office of Management and Budget (“OMB”) guidance,¹² Executive Order 13579 indicates that, to the extent permitted by law, independent regulatory agencies should follow EO 13563’s “general requirements directed to executive agencies concerning public participation, integration and innovation, flexible approaches, and science.”¹³ In practice, we strive to accomplish what the recent GAO Report identifies as the basic elements of a good regulatory analysis under OMB Circular A-4: explaining the need for the proposed action, carefully examining alternative approaches, and evaluating the costs and benefits of the proposed action and alternatives. Additionally, in response to recommendations by the GAO and OIG, our staff’s guidance draws upon principles set forth in OMB Circular A-4 and Executive Orders 12866 and 13563.

In general, when the Commission engages in rulemaking, it seeks comments from the public in advance of adopting substantive regulations or amendments to existing regulations.¹⁴

¹¹ See Executive Order 12866 (“Regulatory Planning and Review”) (“EO 12866”), 58 FR 51735 (Oct. 4, 1993); Executive Order 13563 (“Improving Regulation and Regulatory Review”) (“EO 13563”), 76 FR 3821 (Jan. 21, 2011).

¹² OMB Circular A-4 (2003) provides guidance for implementing Executive Order 12866.

¹³ See Executive Order 13579 (“Regulation and Independent Regulatory Agencies”) (“EO 13579”), 76 FR 41587 (Jul. 14, 2011). EO 13579 also indicates that independent regulatory agencies should develop a plan for retrospective reviews of their existing regulations.

¹⁴ The Commission typically engages in “informal” rulemaking, which is distinct from “formal” rulemakings. Sections 556 and 557 of the APA provide procedures that apply to rules known generally as “formal” rulemakings,

The APA requires that agencies provide interested parties with adequate notice of proposed rulemaking and the opportunity to participate in the rulemaking “through submission of written data, views, or arguments.”¹⁵

The Commission’s rulemaking process is open and transparent, seeking input from interested parties, in many cases even before issuing formal rule proposals.¹⁶ In its proposing releases, the Commission includes discussion of and invites public comment on the potential economic effects of the proposed rules, including their costs and benefits, routinely requesting that commenters provide empirical data and economic analyses relating to our rulemakings. In making a recommendation to the Commission, the staff carefully considers the comments provided in determining whether to adopt the rule as proposed, modify the rule to respond to issues raised in the comments, or substantially reconsider or revise the approach contained in the proposed rule. If the Commission determines to proceed with an approach that departs significantly from the proposing release, it may need to re-propose the rules in order to give the public adequate notice and the opportunity to comment on the new approach. Occasionally, the Commission may extend or re-open the comment period to provide additional time for the public to respond or to seek public input on specific studies or data. In adopting releases, the

or those that “are required by statute to be made on the record after opportunity for an agency hearing.” 5 U.S.C. § 553. These rulemakings require oral evidentiary hearings that employ special procedures analogous to those used in judicial trials. *See* 5 U.S.C. §§ 556, 557.

¹⁵ 5 U.S.C. § 553(c). An agency may adopt substantive rules without prior notice and comment in limited circumstances. *See* 5 U.S.C. § 553(b). The Commission does not frequently use this procedure.

¹⁶ For example, to facilitate public input on rulemaking required by the Dodd-Frank Act, the Commission provided a series of e-mail links, organized by topic, on its website at <http://www.sec.gov/spotlight/regreformcomments.shtml>. Comments received on particular topics were then considered as part of the rulemakings to implement the various provisions of the Dodd-Frank Act, in addition to the comments received on specific proposing releases. The Commission has taken a similar approach with the recently passed Jumpstart Our Business Startups Act, <http://sec.gov/spotlight/jobstartcomments.shtml>. Additionally, the Commission occasionally publishes “concept” releases to solicit the public’s views on securities issues so that we can better evaluate the need for future rulemaking.

Commission responds to the information and comments provided and revises its analysis as appropriate.

Economic Analysis Generally

The Commission performs economic analysis as a regular part of its rulemaking process. Our economic analysis considers the direct and indirect costs and benefits of a proposed regulation – including expected investor protections and the likely effects on competition, efficiency and capital formation – as compared with alternative approaches for meeting the need the proposed rule seeks to address. RSFI is directly involved in the rulemaking process by helping to develop the conceptual framing for, and assisting in the subsequent writing of, the economic analysis contained in the Commission’s rulemaking releases.

Analyzing the predicted economic effects of proposed rules, while critical to the rulemaking process, can be challenging. As the GAO noted in its recent review of Dodd-Frank cost-benefit analyses, “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.”¹⁷

Certain potential economic effects may be difficult to quantify or value with precision, particularly benefits that are indirect or intangible and benefits that reflect adverse outcomes avoided. In the words of GAO: “[m]easuring regulatory benefits remains [a] challenge largely because of the difficulty in quantifying benefits such as improved consumer protection or

¹⁷ GAO Report No. 12-151 at 19 (citing GAO Report No. 08-32). *See also* OIG Report No. 499 at 14 n. 37 (same).

financial stability” in the context of financial services regulation; “[w]hile regulation provides a broad assurance of the strength of financial markets, it is difficult to measure those benefits, in part because regulations seeking to ensure financial stability aim to prevent low-probability, high-cost events.”¹⁸ These analytical challenges often can be traced to the absence of suitable data. This situation is most common in Commission rulemakings designed to respond to perceived problems by modifying the behavior of market participants. When there are no direct precedents that can be used as a basis for analysis, it may not be possible to predict with a high degree of confidence how market participants will respond to a proposed regulation.

In addition, relevant data often may be available only from certain market participants.¹⁹ Our rule proposals frequently ask commenters to quantify the estimated costs and benefits, especially when the dollar costs of proposed rulemaking are known only to or best determined by market participants. Although this can be an effective method for obtaining data, data developed in this manner is often highly specific to the firm or individual providing it, and accordingly may make broad generalizations difficult. Often commenters report aggregated estimates without providing either supporting analyses or the underlying data necessary for Commission staff to have a basis for replicating their results. Moreover, since firms and individuals providing comments must bear the cost and effort of developing or obtaining such data, it may be difficult to obtain a representative sample. Such data also may be biased in favor of the commenter’s preferred outcome. The Commission’s ability to gather data for use in its economic analysis also

¹⁸ See GAO Report to Congressional Committees, “FINANCIAL REGULATION Industry Trends Continue to Challenge the Federal Regulatory Structure” (Oct. 2007) (“GAO Report No. 08-32”), at 3, 13.

¹⁹ See GAO Report No. 12-151 at 20.

is constrained in some respects by administrative laws, such as the PRA, although the Dodd-Frank Act provides some relief from PRA data-gathering constraints in the rulemaking context.²⁰

In addition to the difficulties of quantification and measurement, assessing the impact of qualitative costs or benefits can be quite complex. Persons may legitimately disagree as to the proper weight or value to attach to a particular benefit or cost, not infrequently disagreeing as to whether the alleged benefit or cost at issue is even appropriate for consideration.

It is important that our rules clearly explain the analysis that we are conducting, the reasoning that we use, and the basis for our conclusions. We seek and welcome public input on our analysis and conclusions at the proposing stage so that we can make better-informed choices at the adopting stage. Considering public comments is not simply a legal requirement – it is an essential part of understanding the reasonable alternatives available before determining which of the alternatives best achieve the Commission’s objectives.

Defining a Baseline

One important component of a good regulatory economic analysis is to define a baseline against which to measure the likely economic consequences of the proposed regulation. The baseline is the best assessment of how the world would look in the absence of the proposed

²⁰ Securities Act Section 19(e), as added by Section 912 of the Dodd-Frank Act, provides that, for the purpose of evaluating any rule or program of the Commission issued or carried out under any provision of the securities laws and the purposes of considering, proposing, adopting, or engaging in any such rule or program or developing new rules or programs, the Commission may: (1) gather information from and communicate with investors or other members of the public; (2) engage in such temporary investor testing programs as the Commission determines are in the public interest or would protect investors; and (3) consult with academics and consultants. Securities Act Section 19(f) provides that any action taken under Section 19(e) will not be construed to be a collection of information for purposes of the Paperwork Reduction Act.

action and serves as a primary point of comparison for an analysis of the proposed regulation.²¹

An economic analysis of a proposed regulatory action compares the current state of the world, including the problem that the rule is designed to address, to the expected state of the world with the proposed regulation (or regulatory alternatives) in effect.²² Economic impacts of proposed regulations are measured as the differences between these two scenarios. The baseline includes both the economic attributes of the relevant market and the existing regulatory structure.

In its economic analyses for discretionary rulemaking, the Commission's general practice has been to follow this approach and to consider fully the effects of its proposed rules against a baseline of the regulatory status quo, taking into account all the costs and benefits of the proposed rule. In the Dodd-Frank Act, however, the Commission was faced with many new statutory provisions that required Commission rulemaking, and some of these new requirements presented challenges in determining the appropriate baseline to use in the economic analysis.

The recent OIG Report raised an issue concerning the Commission's choice of baseline for cost-benefit analyses in Dodd-Frank rulemakings. Focusing on a memorandum prepared by the Commission's then-General Counsel in September 2010, the OIG Report appeared to conclude that the Commission had adopted a bright-line policy not to consider the economic effects of statutorily-mandated portions of Dodd-Frank rules. The OIG Report recommended that the staff consider using, whenever possible, a pre-statute baseline – that is, to consider as

²¹ See Circular A-4 at 15.

²² See Circular A-4 at 2 (“To evaluate properly the benefits and costs of regulations . . . you will need to . . . [i]dentify a baseline. Benefits and costs are defined in comparison with a clearly stated alternative. This normally will be a ‘no-action’ baseline: what the world will be like if the proposed rule is not adopted.”).

part of the cost-benefit analysis the costs and benefits of the statute itself, not just those portions of the rule over which the Commission exercised discretion.

Although I understand that the principles underlying the memorandum were considered by the staff as they began the process of drafting rules required by the Dodd-Frank Act, the Commission and staff developed an economic analysis for each rule that was considered most appropriate in each case, taking into account the different type of rulemaking mandate specified by Congress, and making clear in its public releases the approach that it was following.

For example, in many Dodd-Frank Act provisions, Congress provided open-ended directives for rulemaking, leaving the Commission with at least some discretion – and in some cases, broad discretion – for possible action. In cases where it exercised discretion, the Commission sought to explain the approach it applied in its analysis. Where the Commission’s analysis focused on its discretionary choices, the public release included language clearly stating the bases of the analysis.²³ In instances where such a separation between discretionary and mandatory elements was not possible, the staff was aware that it needed to understand and acknowledge the potential economic impacts of the mandatory components of rules to provide

²³ See, e.g., Release No. 34-65148, *Suspension of the Duty to File Reports for Classes of Asset-Backed Securities Under Section 15(d) of the Securities Exchange Act of 1934* (August 17, 2011). In this release adopting rules to provide thresholds for the suspension of the reporting obligations of asset-backed securities issuers, the Commission stated:

The discussion below focuses on the benefits and costs of the decisions made by the Commission in the exercise of its new exemptive authority provided by the Act, rather than the costs and benefits of the Act itself.

The cost-benefit analysis proceeded to discuss the effects of the statutory provision and to analyze the range of discretion given to the Commission. The Commission explained that it “sought to balance the value of the information to investors and the market with the burden on the issuers of preparing the reports,” and the analysis demonstrated that the final rule was based on an assessment of the circumstances in which the benefits of disclosure required by the statute justified the costs of preparing the reports.

the proper context for the areas in which the Commission was exercising discretion. Here, the Commission was again clear in stating the bases for its analysis and invited public comment on the potential economic consequences of both the underlying statute and the Commission's discretionary choices.²⁴ By contrast, in the situation where the statute was quite specific and prescriptive in directing what rule changes to make and gave the Commission no discretion in writing implementing rules, the Commission took a different approach and explained it as well.²⁵

The Commission's overall approach in these Dodd-Frank rulemakings has therefore been transparent, and – as the OIG Report recognized – followed a systematic process and was consistent with applicable legal requirements.²⁶

Nonetheless, I understand the policy views articulated in OIG Report No. 499 and by other commenters in support of the recommendation to consider or use a pre-statute baseline in the economic analysis of mandated rulemaking. Accordingly, as part of the response to the report, I directed RSFI and OGC to consider in particular the use of appropriate baselines as it

²⁴ See Release No. 34-63346, *Regulation SBSR – Reporting and Dissemination of Security-Based Swap Information* (Nov. 19, 2010). In proposed Regulation SBSR, the Commission tailored its cost-benefit assessment to reflect the new regulatory regime that the Dodd-Frank legislation created, considering the baseline to be the absence of any SBS reporting, *i.e.*, the regulatory status quo directly before the adoption of Dodd-Frank. In so doing, the Commission discussed the full range of costs and benefits associated with the proposed rules without seeking to exclude costs and benefits resulting from the statutory mandate.

²⁵ See Section 939B of the Dodd-Frank Act, which directed that, within 90 days of the date of enactment, the Commission “shall revise Regulation FD to remove from such regulation the exemption for entities whose primary business is the issuance of credit ratings.” The Commission followed Congress's explicit direction by issuing a very short and simple final rule barely two months after enactment. The Commission did not provide public notice or an opportunity for the public to comment on the rule, stating that good cause existed to dispense with those APA requirements “[b]ecause this revision is required by Congress, [and] it does not involve the exercise of Commission discretion or policy judgments.” Similarly, the Commission did not include a cost-benefit analysis of this rule, explaining that “any costs and benefits to the economy resulting from the amendments are mandated by the Act.” See Release No. 33-9146, *Removal from Regulation FD of the Exemption for Credit Rating Agencies* (Sept. 29, 2010).

²⁶ See *supra* note 4 and the accompanying text.

developed the updated guidance on economic analysis in rulemaking. The new guidance to the staff of the SEC's rulewriting divisions and offices states that as a policy matter, where a statute directs rulemaking, rulewriting staff should consider the overall economic impacts, including *both* those attributable to Congressional mandates *and* those that result from an exercise of the Commission's discretion.²⁷ This approach should allow for a more comprehensive evaluation of alternative means of meeting a statutory mandate and give the most complete picture of a rule's economic effects, particularly in those situations in which it is difficult to distinguish between the mandatory and discretionary components of a rule.

Improvements to Commission Economic Analysis

The Dodd-Frank Act required an unprecedented number of statutorily mandated rules for implementation by the SEC. The Commission and its staff – including our RSFI economists – have spent considerable time grappling with difficult judgment calls in the scores of rules the Act requires the Commission to promulgate. Moreover, we have learned valuable lessons from our experiences in implementing the Act to date. As a result, our rulemaking processes have continued to improve and evolve, including the analyses we conduct both to meet our legal requirements and to inform our policy judgments.

As noted above, the SEC's Chief Economist and General Counsel have jointly developed new guidance for conducting economic analysis, taking into account the recommendations made in the reports from the GAO and OIG as well as comments from others, including Members of Congress and the courts. RSFI and OGC have distributed the new guidance both to the other

²⁷ Cf. Circular A-4 at 15-16 ("In some cases, substantial portions of a rule may simply restate statutory requirements that would be self-implementing, even in the absence of the regulatory action. In these cases, you should use a pre-statute baseline. If you are able to separate out those areas where the agency has discretion, you may *also* use a post-statute baseline to evaluate the discretionary elements of the action.") (emphasis supplied).

Divisions and Offices and to the Commissioners, and are seeking any additional input from the Commissioners to incorporate suggestions for improvements.

Among the specific steps that we have been taking, and that are included in the current staff guidance, are:

- earlier and more comprehensive involvement of RSFI staff in the rulemaking process, so that RSFI economists can provide economic analysis of different policy options before a proposed course is chosen and throughout the course of the development of the rule;
- assuring that rule releases clearly identify the justification for the proposed rule, such as a market failure or a statutory mandate;
- where a statute directs rulemaking, staff should consider the overall economic impacts of the rule, including those attributable to Congressional mandates and those resulting from the Commission's exercise of discretion;
- where feasible, quantifying the costs and benefits and, where not reasonable to do so, transparently explaining why not, and then qualitatively explaining the remaining costs and benefits;
- more integrated analysis of economic issues (including efficiency, competition, and capital formation) in the Commission's rule releases;
- more explicit encouragement to commenters to provide quantitative, verifiable estimates of costs and benefits, and fuller analysis and discussion in Commission rule releases of the cost-benefit information received from commenters; and
- greater discussion of reasonable alternatives not chosen.

A fundamental improvement we have made that will enable us to implement more effectively the new guidance is the strengthened role of economists in rulemakings. Economists must play a central role in rulemaking – whether in identifying concerns or issues that may justify regulatory action or analyzing the likely economic consequences of competing approaches – and the staff's current guidance emphasizes that significant role. The guidance notes that to make the best use of RSFI's expertise, RSFI economists should be involved at the

earliest stages of the rulemaking process (*e.g.*, before the specific preferred regulatory course is determined) and throughout the course of writing proposed and final rules. Close collaboration with RSFI will help to integrate economic analysis as key policy choices are being made, thereby:

- assisting in the evaluation of different or competing policy options by identifying the major economic effects of those options;
- influencing the choice, design, and development of policy options;
- assisting in the evaluation of whether and to what extent any proposed policy would promote efficiency, competition, and capital formation;
- improving the quality of regulation;
- better supporting policy choices made by the Commission; and
- increasing confidence in the regulatory process.

Additionally, we are engaged in an ongoing effort to provide additional resources to RSFI. For example, we expect to have at least 20 additional economists join the Division over the coming months, and we will continue to pursue additional hiring opportunities, including requesting additional funding from Congress for 20 additional economists in fiscal year 2013.

The new guidance also provides more specific ways to strengthen what we recognize as the essential components of sound regulatory economic analysis: clearly identifying the justification for the proposed rule; defining the baseline against which to measure the proposed rule's economic impact; identifying and discussing reasonable alternatives to the proposed rule; and analyzing the economic consequences of the proposed rule and the principal regulatory alternatives.

In discussing best practices for analyzing the economic consequences of a rule and alternative regulatory approaches, the guidance emphasizes the importance of developing an integrated analysis that focuses on all the costs and benefits of the rule, to the extent feasible quantifies the expected costs and benefits, and identifies and discusses uncertainties underlying the estimates of benefits and costs. It notes that court decisions addressing the economic analysis in Commission rules have stressed the need to attempt to quantify anticipated costs and benefits, even where the available data is imperfect and where doing so may require using estimates (including ranges of potential impact) and extrapolating from analogous situations. To the extent that costs and benefits cannot reasonably be quantified, the guidance indicates that the release should:

- include an explanation of the reason(s) why quantification is not practicable;
- include a qualitative analysis of the likely economic consequences of the proposed rule and reasonable regulatory alternatives; and
- discuss the strengths and limitations of the information supporting the qualitative cost-benefit analysis.

The guidance indicates that rulewriters should work with RSFI economists to clearly identify important uncertainties underlying the analysis and explain the implications of these uncertainties for the analysis. The guidance also states that rule releases should support predictive judgments and clearly address contrary data or predictions, and frame the costs and benefits neutrally and consistently.

As recommended in the OIG Report, we have begun to phase in through some of our recent releases the use of an integrated economic analysis of the rule rather than including separate sections captioned “Cost Benefit Analysis” and “Efficiency, Competition, and Capital

Formation.” The approach being phased out sometimes results in redundancy and unnecessary parsing of economic effects. The newer integrated approach allows for a more comprehensive economic analysis of the rule as a whole while still fulfilling our specific statutory obligations.

Overall, the guidance should result in the public, Commission, and staff being better informed about rules’ likely economic consequences and in more clear and comprehensive economic analyses. With the review and input of my colleagues, we will continue to make further improvements to the guidance in the weeks and months ahead.

Conclusion

In conclusion, economic analysis is a critical element of the SEC’s rulemaking obligation. Although the SEC has incorporated economic analysis into its rulemaking processes for many years, the unprecedented rulemaking burden generated by passage of the Dodd-Frank Act has tested the resources and analytical capabilities of the agency. As we have worked through these responsibilities, we have learned a great deal and our rulemaking processes have continued to evolve. Our new guidance reflects many of the current best practices, which the agency will refine in the future as necessary to ensure high quality economic analysis in its rulemaking.

Thank you for the opportunity to be here today. I am happy to answer any questions.