AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO THE RULES COMMITTEE PRINT OF H.R. 1062
OFFERED BY MRS. CAROLYN B. MALONEY OF
NEW YORK

Strike all after the enacting clause and insert the following:

1 SECTION 1. SENSE OF CONGRESS RELATING TO EXISTING
REQUIREMENTS FOR ECONOMIC ANALYSES.

(a) FINDINGS.—Congress finds the following:

(1) As with other agencies, current law requires
the Securities and Exchange Commission to conduct
economic analyses pursuant to the Paperwork Re-
duction Act, the Congressional Review Act and the
Regulatory Flexibility Act.

(2) In addition to the analyses required of all
regulatory agencies, the Securities and Exchange
Commission is also required to perform additional
economic analyses pursuant to section 3(f) of the
section 2(b) of the Securities Act of 1933 (15 U.S.C.
77b(b)), section 202(c) of the Investment Advisers
Act of 1940 (15 U.S.C.80b–2(c)), and section 2(c)
of the Investment Company Act of 1940 (15
U.S.C.80a–2(c)), which provide that, where the
Commission is engaged in rulemaking and is re-
quired to consider whether the rule is necessary or
appropriate in the public interest, the Commission
must also consider whether the rule will promote ef-
iciency, competition, and capital formation.

(3) In the July 22, 2011 decision in Business
Roundtable v. SEC (647 F.3d 1144), the United
States Court of Appeals for the D.C. Circuit vacated
the Commission’s recently adopted proxy access rule,
which would have provided a company shareholder
or group of shareholders meeting certain minimum
ownership thresholds and other requirements the
ability to include in the company’s proxy materials
the shareholder(s)’ nominee(s) for the company’s
board of directors. The court found that, because
the Commission had not adequately addressed the
likely economic consequences of the rule, its adop-
tion of the rule was arbitrary and capricious.

(4) In March of 2012, the Securities and Ex-
change Commission revised and clarified its guid-
ance on cost benefit analysis. In December of 2012
the Government Accountability Office issued a re-
view of agencies’ analysis and coordination of rules.
The GAO found, “SEC’s guidance defines the basic
elements of good regulatory economic analysis in a manner that closely parallels the elements listed in Circular A-4: (1) a statement of the need for the proposed action; (2) the definition of a baseline against which to measure the likely economic consequences of the proposed regulation; (3) the identification of alternative regulatory approaches; and (4) an evaluation of the benefits and costs - both quantitative and qualitative - of the proposed action and the main alternatives.”

(b) Sense of Congress.—It is the sense of Congress that the Securities and Exchange Commission is required pursuant to law to conduct economic analyses as part of its rulemakings. Further, the D.C. Circuit Court’s recent decision in the Business Roundtable case makes clear that the economic analyses the Commission undertakes in connection with its rules are subject to meaningful judicial scrutiny.