

**AMENDMENT IN THE NATURE OF A SUBSTITUTE**  
**TO H.R. 2308**  
**OFFERED BY MRS. MALONEY**

Strike all after the enacting clause and insert the following:

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

3 (a) FINDINGS.—Congress finds the following:

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

9 (2) In addition to the analyses required of all  
10 regulatory agencies, the Securities and Exchange  
11 Commission is also required to perform additional  
12 economic analyses pursuant to section 3(f) of the  
13 Securities Exchange Act of 1934 (15 U.S.C. 78c(f)),  
14 section 2(b) of the Securities Act of 1933 (15 U.S.C.  
15 77b(b)), section 202(c) of the Investment Advisers  
16 Act of 1940 (15 U.S.C.80b-2(c)), and section 2(e)  
17 of the Investment Company Act of 1940 (15  
18 U.S.C.80a-2(c)), which provide that, where the

1 Commission is engaged in rulemaking and is re-  
2 quired to consider whether the rule is necessary or  
3 appropriate in the public interest, the Commission  
4 must also consider whether the rule will promote ef-  
5 ficiency, competition, and capital formation.

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

19 (b) SENSE OF CONGRESS.—It is the sense of Con-  
20 gress that the Securities and Exchange Commission is re-  
21 quired pursuant to law to conduct economic analyses as  
22 part of its rulemakings. Further, the D.C. Circuit Court's  
23 recent decision in the *Business Roundtable* case makes  
24 clear that the economic analyses the Commission under-

- 1 takes in connection with its rules are subject to meaning-
- 2 ful judicial scrutiny.

