



James J. Angel, Ph.D., CFA  
Associate Professor of Finance  
Georgetown University<sup>1</sup>  
McDonough School of Business  
Washington DC 20057  
[angelj@georgetown.edu](mailto:angelj@georgetown.edu)  
1 (202) 687-3765

October 7, 2011

Securities and Exchange Commission  
100 F St. NW  
Washington, DC 20549-9303  
[Rule-comments@sec.gov](http://www.sec.gov)

Release No. 33-3297, 34-65262, 39-2479, IA-3271, IC-27981; File No. S7-36-11  
Retrospective Review of Existing Regulations

Dear Securities and Exchange Commission:

The Commission has asked for input on the process it should use to implement Executive Order 13579, which calls on independent regulatory agencies to consider “how best to promote retrospective analysis of rules that may be outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned.”<sup>2</sup>

This is extremely important and should not be treated as just a political window dressing exercise. Our economy is suffering from extremely high unemployment and it is vital to take steps to enhance job creation, which means stimulating economic development. Anything that can be done to streamline regulatory compliance will make it easier for entrepreneurs to create jobs.

---

<sup>1</sup> I am also on the boards of directors of the EDGA and EDGX stock exchanges. My comments are strictly my own and don't necessarily represent those of Georgetown University, EDGX, EDGA, or anyone else for that matter.

<sup>2</sup> [http://www.reginfo.gov/public/jsp/Utilities/EO\\_13579.pdf](http://www.reginfo.gov/public/jsp/Utilities/EO_13579.pdf)

**People are as important as process.**

SEC rules are well intentioned attempts to implement the Congressional mandates expressed in our securities laws. However, often the rule writers have little direct experience working in a regulated environment and cannot foresee all of the implementation implications of the rules. Furthermore, rules that were once appropriate may become obsolete as our economy has evolved. For this reason, the SEC should put only people with solid industry experience onto this project, including people who have worked as compliance officers, brokers, traders, and advisers. The task of reviewing old rules should not be assigned to inexperienced rookies fresh out of school who have never taken a FINRA exam.

**Pay attention to unwritten rules: enforcement practices and no-action letters.**

While formal rules get most of the attention, a large body of unwritten rules has arisen as a result of staff enforcement activities and no-action letters. The SEC should consider these as well. For example, the unwritten rules creating a “quiet period” around securities offerings often stifle the flow of useful information to markets. Indeed, it would be useful to attempt to identify all of the unwritten rules that have arisen. This should be done through both discussions with SEC staff as well as by asking for public comment.

The staff has issued a number of no-action letters over the years that have become another corpus of *de facto* regulation. An attempt should be made to classify, codify, and re-examine these no-action letters with an eye toward streamlining the regulatory process.

**Pay attention to SRO rules as well.**

The review process should also explicitly examine SRO rules on a periodic basis as well to see if they are still necessary and appropriate in the public interest.

**Remember the statutory mandate: investor protection, efficiency, competition, and capital formation.**

Section 3(f) of the Securities and Exchange Act of 1934 explicitly requires:

Whenever pursuant to this title the Commission is engaged in rulemaking, or in the review of a rule of a self-regulatory organization, and is required to consider or determine whether an action is necessary or appropriate in the public interest, the Commission shall also consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.

The Commission should do more than pay lip service to this mandate but truly think about the impacts of proposed rules on investor protection, efficiency, competition, and capital formation. Considerations of these factors often involve tradeoffs, and it is the job of the Commission to weigh these tradeoffs. All too often rule proposals appear to be hyper-focused on one particular perceived problem with scant attention being paid to the tradeoffs inherent in the proposed solutions.

### **Review the most important rules first.**

It almost goes without saying, but it should be said that the process should review the most economically significant rules first. Such rules may also be the most difficult and controversial ones as well. The Commission should not shy away from examining these important rules just because they are controversial. Given the current economic slump, the most important rules are the ones that makes it difficult for firms to raise capital or that impose high compliance costs with little economic benefit. Finding ways of implementing the internal control reports required under Sarbanes-Oxley §404 in a more cost-effective manner is one obvious candidate.

### **Examine what other jurisdictions are doing.**

The SEC is not alone in the regulatory challenges it faces. Other jurisdictions inside and outside the United States face similar challenges. It is foolish not to learn from their experience. **In every rulemaking, the SEC should explicitly examine how other jurisdictions deal with the same problem so that we can leapfrog them and do better.**

### **Solicit specific input on the rules and leverage outside resources**

As far as the rule review process goes, the SEC does not have to, and should not, do all the work by itself. Those affected by obsolete or unnecessarily burdensome regulations have strong incentives to alert the SEC to obsolete regulations and suggest improvements. **The SEC should leverage these resources outside the agency and make them do as much of the work as possible.** In particular, the SEC should solicit comment on explicit rules and ask commenters to provide precise comments as follows:

- Particular rule citation
- Reason why it should be repealed or modified.
- Approaches used by other jurisdictions to deal with the same issue.
- Proposed wording of any replacement rules
- Explicit cost estimates of compliance costs under the existing rule
- Explicit cost estimates of compliance costs under the proposed amendments
- Explicit benefit estimates of the proposed amendments.
- Regulatory flexibility analysis

In short, those proposing rule changes should be encouraged to submit documents as complete as typical SEC rule proposals, preferably with a cost-benefit analysis that will pass muster with the DC Circuit. This will reduce the staff time needed to analyze and implement important changes.

Upon receiving such specific inputs, the staff should then prioritize the nominated rules work on them in order of the ones with the highest economic impact.

**Think about an entire rule when examining portions of one.**

When a good auto mechanic does one thing on a car, he or she is also on the lookout for other things that need attention. This should be the standard practice whenever the SEC opens up a particular rule or set of rules for modification. For example, the recent proposal on Broker-Dealer Reports brought up Rule 17a-5 with the intent of updating the audit requirements for broker dealers. It would make sense at the same time to update the information required in the rule that is provided to consumers.<sup>3</sup>

**Learn from private sector new product launches.**

New rules are effectively new regulatory products. The regulatory new product process can benefit by observing how private industry launches new products. In particular, industry engages in basic R&D, prototype development, market testing, beta testing, and then new product launch. R&D is comparable to concept releases. Prototypes are comparable to pilot experiments. Alas, the SEC has done very few effective prototype tests, although some rules are implemented in a staggered manner with large firms implementing them earlier. Two noticeable and laudable exceptions are the Reg SHO pilot experiment, which was a great example of how to generate useful data for rulemaking, and the XBRL pilots.

For major rule changes, the SEC should do more explicit pilot projects by first testing the rules on a small sample of registrants, and then rolling out the rules in phases that permit rigorous scientific examination of the results.

If you have any questions, feel free to email me at [angelj@georgetown.edu](mailto:angelj@georgetown.edu) or call me at (202) 687-3765.

Respectfully submitted,

James J. Angel, Ph.D., CFA  
Georgetown University  
McDonough School of Business  
Washington DC 20057  
(202) 687-3765

---

<sup>3</sup> <http://www.sec.gov/rules/proposed/2011/34-64676.pdf>. In my comment letter, <http://www.sec.gov/comments/s7-23-11/s72311-17.pdf>, I propose that consumers be given more complete financial statements than just the balance sheet.