REPORT ON ACTIVITIES FISCAL YEAR 2017

Office of the Investor Advocate

U.S. SECURITIES AND EXCHANGE COMMISSION

OFFICE OF THE INVESTOR ADVOCATE

REPORT ON ACTIVITIES

FISCAL YEAR 2017

Section 4(g)(6) of the Securities Exchange Act of 1934 (Exchange Act), 15 U.S.C. § 78d(g)(6), requires the Investor Advocate to file two reports per year with the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives.[1] A Report on Objectives is due not later than June 30 of each year, and its purpose is to set forth the objectives of the Investor Advocate for the following fiscal year.[2] On June 30, 2016, the Office of the Investor Advocate (Office) filed a Report on Objectives for Fiscal Year 2017, which identified six policy areas that the Office would focus upon during the year.[3] Similarly, the Office filed a Report on Objectives for Fiscal Year 2018 on June 29, 2017.[4]

In addition to the Report on Objectives, a Report on Activities is due no later than December 31 of each year.[5] The Report on Activities shall describe the activities of the Investor Advocate during the immediately preceding fiscal year. Among other things, the report must include information on steps the Investor Advocate has taken to improve the responsiveness of the Securities and Exchange Commission (Commission or SEC) and self-regulatory organizations (SROs) to investor concerns, a summary of the most serious problems encountered by investors during the reporting period, identification of Commission or SRO action taken to address those problems, and recommendations for administrative and legislative actions to resolve problems encountered by investors.[6]

This Report on Activities for Fiscal Year 2017 is organized primarily around our six areas of policy focus that were announced in our Report on Objectives for Fiscal Year 2017. In each of those areas, we have strived to understand the needs of American investors and the implications of policy choices. In a variety of ways, as more fully described below, we have identified proposed policy decisions that are likely to harm investors, have made recommendations for regulatory changes that will ease or resolve the problems encountered by investors, and have taken steps to improve the responsiveness of the Commission and SROs to investor concerns. The reporting period for this Report on Activities runs from October 1, 2016 to September 30, 2017 (Reporting Period).

Functions of the Investor Advocate	Reporting Obligation
According to Exchange Act Section 4(g)(4), 15 U.S.C. § 78d(g)(4), the Investor Advocate shall: (A) assist retail investors in resolving significant problems such investors may have with the Commission or with SROs; (B) identify areas in which investors would benefit from changes in the regulations of the Commission or the rules of SROs; (C) identify problems that investors have with financial service providers and investment products; (D) analyze the potential impact on investors of proposed regulations of the Commission and rules of SROs; and (E) to the extent practicable, propose to the Commission changes in the regulations or orders of the Commission and to Congress any legislative, administrative, or personnel changes that may be appropriate to mitigate problems identified and to promote the interests of investors.	According to Exchange Act Section 4(g)(6)(B), 15 U.S.C. § 78d(g)(6)(B), the Investor Advocate shall submit to Congress, not later than December 31 of each year, a report on the activities of the Investor Advocate during the immediately preceding fiscal year. This "Report on Activities" must include the following: (I) appropriate statistical information and full and substantive analysis; (II) information on steps that the Investor Advocate has taken during the reporting period to improve investor services and the responsiveness of the Commission and SROs to investor concerns; (III) a summary of the most serious problems encountered by investors during the reporting period; (IV) an inventory of the items described in subclause (III) that includes— (aa) identification of any action taken by the Commission or the SRO and the result of such action; (bb) the length of time that each item has remained on such inventory; and (cc) for items on which no action has been taken, the reasons for inaction, and an identification of any official who is responsible for such action; (V) recommendations for such administrative and legislative actions as may be appropriate to resolve problems encountered by investors; and (VI) any other information, as determined appropriate by the Investor Advocate.

Disclaimer: Pursuant to Exchange Act Section 4(g)(6)(B)(iii), 15 U.S.C. § 78d(g)(6)(B)(iii), this Report on Activities is provided directly to Congress without any prior review or comment from the Commission, any Commissioner, any other officer or employee of the Commission outside of the Office of the Investor Advocate, or the Office of Management and Budget. This Report on Activities expresses solely the views of the Investor Advocate. It does not necessarily reflect the views of the Commission, the Commissioners, or staff of the Commission, and the Commission disclaims responsibility for this Report on Activities and all analyses, findings, and conclusions contained herein.

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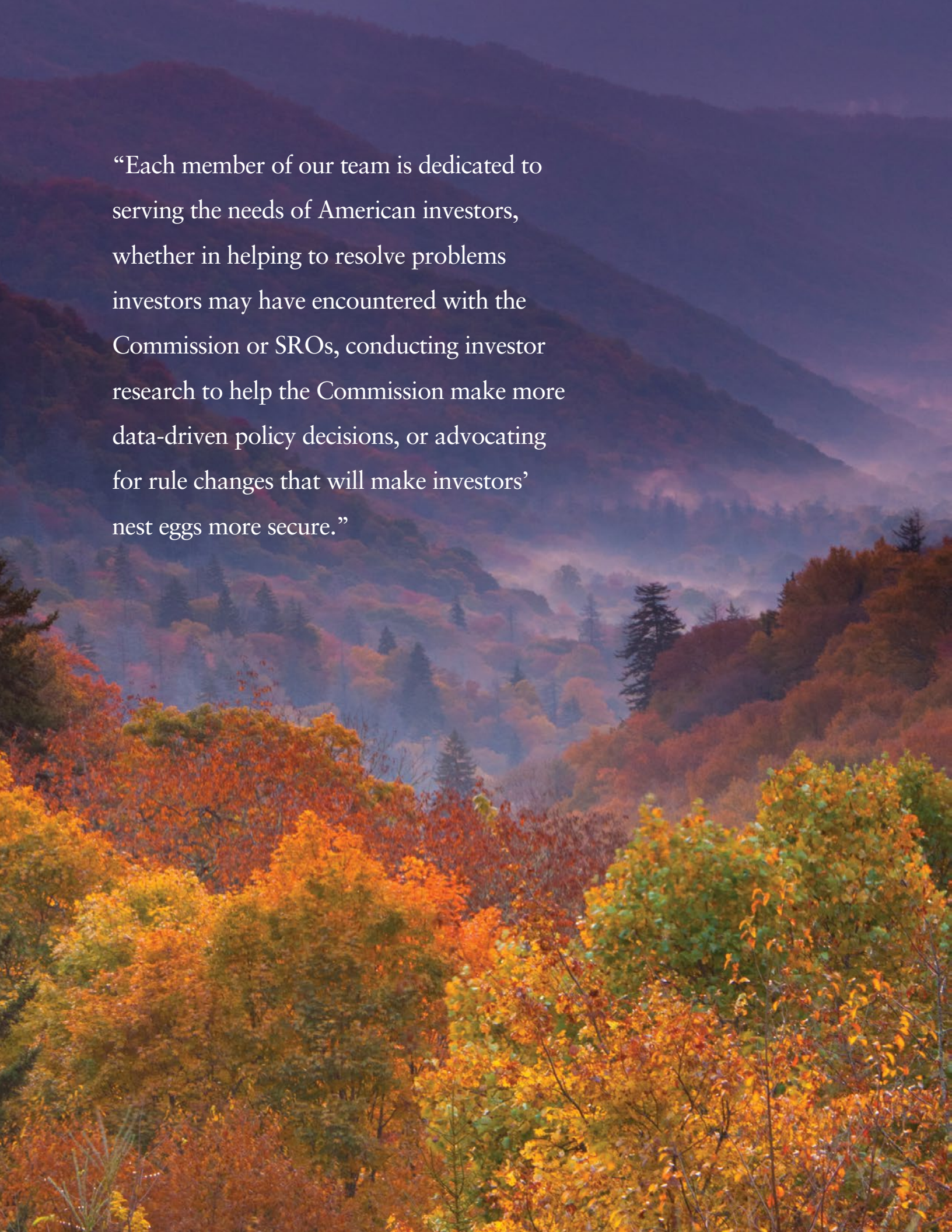


"Each member of our team is dedicated to serving the needs of American investors, whether in helping to resolve problems investors may have encountered with the Commission or SROs, conducting investor research to help the Commission make more data-driven policy decisions, or advocating for rule changes that will make investors' nest eggs more secure."

MESSAGE FROM THE INVESTOR ADVOCATE

During Fiscal Year (FY) 2017, the Office of the Investor Advocate experienced its first transition to a new administration. This led to the confirmation of a new SEC Chairman and the hiring of new leadership with key rulemaking responsibilities. At the end of the fiscal year, we were awaiting the arrival of two additional Commissioners. We look forward to continuing our work with these new leaders to pursue policies that meet the needs of investors.

This Report on Activities summarizes the policy work that our Office performed during FY 2017, and it reflects the priorities we announced in June 2016 within our Report on Objectives for FY 2017. However, this Report does not give an exhaustive account of our activities. In total, during the course of the year we reviewed 16 significant Commission rulemakings, 444 rule proposals and other notices from the self-regulatory organizations, and 33 exemptive applications that were filed with the Commission.

During a transition to new Commission leadership, rulemaking activity at the Commission typically slows. As a result, policy staff in our Office had an opportunity to look beyond the agenda we announced in our Report on Objectives and develop expertise on additional topics of emerging importance. For example, we have studied the role of proxy advisors, trends in shareholder engagement, and the underwriting and distribution process for corporate debt. While these issues are not the subject of current rulemakings, our deeper understanding of these and other issues may lead to future advocacy efforts.

Aside from our policy work, the other activities of the Office continue to gain momentum. With Commission approval, we have begun to conduct investor research—including surveys and focus groups—to determine the best methods to disclose information to investors. To kick off this initiative, we brought together many of the leading experts in economics, law, marketing, and behavioral science to help us examine the existing research. This "Evidence Summit," which was webcast live on March 10, 2017, attracted more than 12,000 viewers from 120 countries.

The SEC Ombudsman, Tracey McNeil, and her staff have continued to make great strides in helping to resolve matters in which investors are dissatisfied with the service or activities of the Commission or self-regulatory organizations. In particular, as described more fully in the Ombudsman's Report, the Ombudsman team has developed a new electronic platform for processing investor inquiries and tracking their resolution.

It is a distinct honor to work with such talented and caring staff in the Office of the Investor Advocate.

Each member of our team is dedicated to serving the needs of American investors, whether in helping to resolve problems investors may have encountered with the Commission or SROs, conducting investor research to help the Commission make more data-driven policy decisions, or advocating for rule changes that will make investors' nest eggs more secure. I am truly grateful for the work our staff does every day.

As always, I would be pleased to provide further information to Members of Congress.

Sincerely,

Rick A. Fleming
Investor Advocate

REPORT ON ACTIVITIES AND RECOMMENDATIONS RELATING TO THE FISCAL YEAR 2017 POLICY AGENDA

On June 30, 2016, the Office of the Investor Advocate filed a Report on Objectives for FY 2017.[7] The Report identified six key policy areas that would be the primary focus of the Office during FY 2017: public company disclosure, equity market structure, municipal market reform, accounting and auditing, corporate governance, and fund fees and expenses. This Report on Activities describes our activities and recommendations within each of those policy areas during FY 2017.[8]

PUBLIC COMPANY DISCLOSURE

As described in our prior reports, the Commission has undertaken a multi-year, comprehensive Disclosure Effectiveness Initiative to review and modernize public company reporting requirements in Regulation S-K and Regulation S-X. The initiative is, at least in part, responsive to Congressional mandates, including one in the Fixing America's Surface Transportation (FAST) Act of 2015.[9] For instance, pursuant to the FAST Act, on November 23, 2016 the Commission published a report containing recommendations from a staff study on how to modernize and simplify requirements in Regulation S-K.[10] The FAST Act report recommendations and related rulemakings are intended to update substantive disclosure requirements and improve the manner in which information is delivered.

Also during FY 2017, the Commission on its own initiative proposed amendments that would require the use of the Inline XBRL format for the submission of public company financial statement information[11] and adopted amendments to make it easier for investors and other market participants to find and access exhibit documents in registration statements and periodic reports.[12] Additionally, the Commission published a request for comment on decades-old guidance on disclosure concerning bank holding companies' lending and deposit activities and loan portfolios.[13]

In numerous meetings with Commissioners and staff over the course of FY 2017, our Office provided informal recommendations on each of these rulemakings. For example, we encouraged the Commission to advance the proposal regarding Inline XBRL because we believe it will lead to improvement in the quality and accessibility of data submitted by public companies. Since 2009, the SEC has been requiring public companies to file two versions of every financial statement—once as a plain-text document, and again as machine-readable data.[14] Many users of the machine-readable version have noted the prevalence of tagging errors that inhibit the reliability of the data. Inline XBRL enables the filing of a single version that is both human-readable and machine-readable, which should lead to a reduction in those errors. On October 24, 2016, the Investor Advocate gave a speech explaining the value of structured data for report preparers and investors, as well as the broader benefits of standardization in financial reporting.[15]

We supported several of the recommendations in the FAST Act report. Some of the recommendations, such as requiring the inclusion of hyperlinks to documents listed in exhibit indexes, were modest

and long overdue. We also encouraged bigger steps to modernize the disclosure framework. For instance, we encouraged the Commission to consider requiring the disclosure of legal entity identifiers for registrants and significant subsidiaries.[16] A legal entity identifier (LEI) is a 20-digit, alpha-numeric code that, similar to a bar code, connects to key reference information enabling precise and unique identification of the legal entity. The U.S. Department of the Treasury's Office of Financial Research has encouraged regulators to adopt this standard because the standard enables data interoperability and thereby enhances risk assessment capabilities. Initially, the target was counterparties trading derivatives in international markets; however, that more narrow application gave way to broader adoption at the market level for both public and private company identification. Ultimately, if the Commission and other regulatory agencies require companies to obtain and use LEIs, it will be easier for investors and other users to pull together information about a company from multiple sources and conduct a more thorough analysis of the company.[17]

Investor Outreach

We have observed that the Commission's formal rulemaking process generally has limited success in obtaining substantive feedback from investors. In two speeches during FY 2017, the Investor Advocate spoke of the need to try different strategies to ensure that the interests of investors are considered in policymaking. In a speech on November 19, 2016, he described the predicament, remarking that notwithstanding the thoughtful comments that the Commission had received on its Disclosure Effectiveness Initiative, the comment file seemed to be largely missing the insights of investors and buy-side analysts who pore over 10-Ks and other disclosures.[18] In another speech given on February 24, 2017, the Investor Advocate outlined three strategies to improve investor engagement in SEC rulemaking: direct outreach to investors, increased use of investor research, and greater engagement with the Investor Advisory Committee.[19]

During the Reporting Period, our Office engaged in direct outreach to investors in five cities. We met with individual investors and professional portfolio managers and analysts who consume information that public companies are required to disclose. We discussed how these market participants make decisions to buy and sell securities, what information sources they utilize, and what data is most valuable to them. Our goal was to find out what the Commission could do to help make the disclosures more useful.

These conversations provide valuable information for our advocacy efforts. We regularly share such insights with our SEC colleagues, and we also share lessons learned from investors in more formal ways. For example, in a speech given on May 9, 2017, the Investor Advocate related an insight on why institutional investors who engage in active management tend to have little interest in shares of micro- and small-cap public companies.[20] The speech was about enhancing investor demand for initial public offerings and reflected the perspective of asset managers with whom we had spoken.

EQUITY MARKET STRUCTURE

In FY 2017, the Office worked with Commission staff and relevant SROs to encourage equity market structure reforms designed to enhance market resilience, efficiency, transparency, and fairness. We continued to analyze proposed rules, including significant Commission proposals concerning alternative trading venue regulation and the disclosure of broker order handling activity, to examine their potential impact on investors. We spent considerable time and effort advocating in formal and informal ways for improvements that would benefit and protect investors.

As noted in last year's Report on Activities, in November 2015, the Commission proposed significant amendments to Regulation ATS to enhance the operational transparency of venues that trade listed equity securities.[21] In September 2016, our Office submitted a comment letter

to the Commission in support of the proposed amendments.[22] In our letter, we suggested a modest expansion of certain aspects of the proposal in order to enhance the operational transparency of venues that trade fixed income securities, including those that solely trade government securities.[23] Since that time, we have continued to advocate for greater transparency and encourage the Commission to adopt a final rule in the near future.

Several efforts continue to be underway to improve Regulation NMS.[24] In July 2016, the Commission proposed rules that, for the first time, would require broker-dealers to disclose the handling of institutional orders to customers under existing Rule 606 of Regulation NMS.[25] This would provide customers with better information to evaluate the quality of execution for the orders they place.[26] We have evaluated the proposal, including questions surrounding the proposed definition of institutional order and its impact on the ability of institutional customers to obtain information about all their orders, and we have encouraged the Commission to adopt a final rule in the near future.

In addition to reviewing Commission rulemakings, the Office of the Investor Advocate is responsible for analyzing the potential impact on investors of proposed rules of SROs.[27] In furtherance of this objective, the Office has analyzed the potential impact of various SRO proposals related to equity market structure. For example, in November 2016, the Financial Industry Regulatory Authority (FINRA) proposed a new rule to prevent layering and spoofing by broker-dealers by creating a process for expedited suspension proceedings.[28] This proposal was substantially similar to a rule adopted in the prior fiscal year by the Bats BZX Exchange, where, acting under our Office's statutory authority, we had recommended that the Commission approve the proposed rule amendment and encouraged other SROs to make similar efforts to expedite their regulatory processes when clear evidence of manipulative trading is identified.[29]

During the Reporting Period, there were numerous other SRO rule proposals that we monitored closely. Often, we chose not to formally comment upon them if we considered the proposals favorable for investors. As examples, the Bats EDGA Exchange, one of the smaller exchanges by volume, replaced its taker-maker inverted pricing model with a simple, low fee model,[30] and the NYSE MKT (now NYSE American) similarly lowered its transaction fees to just two cents per 100 shares for traders on both sides of an exchange transaction.[31] These lower exchange trading fees could reduce a broker-dealer's conflict of interest with respect to seeking best execution of a customer's order.

We continue to monitor progress on the implementation of the Commission's Consolidated Audit Trail, which is intended to enhance, centralize, and generally update the regulatory data infrastructure available to market regulators.[32] In our view, this is a development of monumental importance because, once implemented, regulators will have ready access to all trade and order data, facilitating more prompt and complete analysis of market events such as the May 6, 2010 "Flash Crash" that saw U.S. equity and futures markets experience a sudden breakdown of orderly trading. The data also will make it easier for the Commission and other regulators to detect practices such as front-running, churning, and insider trading, so the new system has the potential to eliminate or significantly curtail abuses that have plagued investors for decades. Of course, it is imperative that the trading data be guarded from cyber intrusions that would cause harm to investors and the markets, but we encourage policymakers to not lose sight of the enormous potential benefits of the Consolidated Audit Trail.

In addition, the Office continues to monitor SRO activity to address concerns about trading speeds. In May 2017, the Commission approved a proposal by NYSE American to adopt a 350-microsecond speedbump, largely borrowing the same mechanism

used by the Investors' Exchange LLC (IEX) since last year.[33] In July 2017, the Commission approved Nasdaq's Extended Life Priority Order Attribute, noting that it was intended to benefit retail investors by providing enhanced order book priority to retail order flow that would otherwise be farther down in the order book queue.[34] As we did with the IEX exchange application in the prior fiscal year, we monitored the comment process and evaluated these proposals to ensure that any such devices and order types will truly benefit investors and serve the public interest.

The Office also has monitored the developments in the on-going Tick Size Pilot, now more than halfway through its two-year program, which requires the national securities exchanges and FINRA to widen the minimum quoting and trading increments—or "tick sizes"—for stocks of some smaller companies.[35] The pilot data coming over the next year should allow the Commission to assess whether wider tick sizes enhance the market quality of these smaller stocks for the benefit of issuers and investors.[36]

In addition to analyzing active SEC and SRO rulemakings, we also monitor the work of the Commission's Equity Market Structure Advisory Committee (EMSAC),[37] with an eye toward championing ideas and concepts that appear most likely to enhance equity market structure for the benefit of investors. For example, on July 8, 2016, the EMSAC recommended that the Commission propose a pilot program to adjust the existing access fee cap under Regulation NMS Rule 610. We support this recommendation and have urged the Commission to implement a pilot program that will give the Commission the ability to evaluate the impact of so-called "maker-taker" access fee structures on equity exchanges.[38]

MUNICIPAL MARKET REFORM

Throughout FY 2017, the Office of the Investor Advocate reviewed proposed rules, rule amendments, and requests for comment relating to the regulation of the fixed income markets and, in particular, municipal securities markets. The Office reviewed twenty-five such proposals, making it a priority to consider the impact on retail investors of each proposed rule and rule amendment.[39]

Of particular interest during the Reporting Period, the Office recommended that the Commission approve proposals from FINRA and the Municipal Securities Rulemaking Board (MSRB) to require mark-up disclosure.[40] As described in prior

Reports from our Office, FINRA and the MSRB have engaged in a multi-year effort to increase transparency of pricing for retail investors in transactions involving fixed income securities.[41] The Office of the Investor Advocate actively participated in multiple rounds of public comment[42] and, when FINRA and the MSRB proposed divergent methods for improving price disclosure, we called for a consistent approach that would minimize investor confusion.[43] We also indicated the elements from each proposal that we believed would serve the interests of investors. Specifically, we supported the use of "prevailing market price" for calculating the mark-up or mark-down (and "looking through" transactions with affiliates to determine that price), and we argued that disclosure should be mandated whenever the dealer bought and sold the bond on the same trading day.[44]

Late in FY 2016, FINRA and the MSRB sought Commission approval of two related rule proposals that would, for the first time, require the disclosure of mark-ups and mark-downs to retail investors when they buy or sell bonds.[45] These proposed rule changes incorporated many suggestions made by the Office of the Investor Advocate and generally followed the Office's recommended course of action. Accordingly, on November 7, 2016, the Office formally recommended that the Commission approve the proposed rule changes.

On November 17, 2016, the Commission issued an Order granting approval of FINRA's and the MSRB's proposed rule changes.[46] FINRA and the MSRB announced that the new disclosure requirements and prevailing market price guidance would become effective on May 14, 2018.[47] FINRA and the MSRB also issued guidance relating to the new mark-up disclosure requirements in July 2017.[48]

In addition to our advocacy regarding mark-up disclosure, the Office has reviewed other proposals and actively engaged with the MSRB, Commissioners, and Commission staff regarding those issues. For example, as further described below in the section entitled "Problematic Investment Products and Practices," we have reviewed the MSRB's proposals to modify their rules related to transactions below minimum denominations,[49] and we are working to address the root causes of this problem apart from their rulemaking process. We have also supported the efforts of the MSRB and the Commission to improve the disclosure of bank loans and other financial obligations that may impair the creditworthiness of an issuer of municipal securities.[50]

ACCOUNTING AND AUDITING

During the Reporting Period, our Office closely followed developments at the SEC, the Financial Accounting Standards Board (FASB), and the Public Company Accounting Oversight Board (PCAOB) that would have a significant impact on the financial information disclosed to investors. In particular, we engaged with FASB on a proposal related to the definition of materiality and with the PCAOB on a proposal to enhance the audit reporting model.

FASB issued a pair of proposals in 2015 to remove its own definition of materiality and instead rely on the courts to provide one.[51] One of the proposals asserted that FASB's current definition is "inconsistent with the legal concept of materiality in the United States," as defined by the U.S. Supreme Court.[52] Several investors and interested parties, including the SEC Investor Advisory Committee, have expressed concerns that the proposed changes would allow issuers to reduce their level of financial reporting and their transparency to investors.[53]

FASB held a public roundtable discussion on the topic on March 17, 2017. This gave FASB an opportunity to hear a range of views from investors, accounting professionals, and others. The Investor Advocate attended the event, along with his primary advisor on accounting and auditing issues, Stephen Deane. Following that discussion, the Office submitted a comment letter to FASB,[54] in which we proposed a fresh approach based on two

earlier documents: FASB's Concept Statement No. 2[55] and the SEC's Staff Accounting Bulletin No. 99.[56] Those documents align with the Supreme Court definition and offer illustrative examples and guidance on how to apply that definition in the context of financial statements. Our Office continues to monitor this issue, and we hope our proposal can serve as the basis for a path forward.

On May 11, 2016, the PCAOB re-proposed a rule that would require the auditor's report to identify all critical audit matters, or CAMs, that required especially challenging, subjective, or complex auditor judgment, and to disclose information on the auditor's response to each CAM. We submitted a comment letter to the PCAOB expressing our support for the new standard, which we believe will contribute to the ability of investors and others to analyze companies, form a multifaceted understanding of them, and make informed investment decisions.[57] On June 1, 2017, the PCAOB adopted the new standard as a final rule subject to SEC approval,[58] and the Commission approved the rule on October 23, 2017.[59] As noted in our comment letter, it will be important to monitor the implementation of the new rule to ensure that the communication of CAMs does not devolve into mere boilerplate language. In addition, it will be important to assess the impact on investor understanding and to see how investors actually use the enhanced audit report.[60]

On August 22, 2017, Mr. Deane represented our Office at an accounting conference in Tulsa, Oklahoma. In his remarks, he outlined our views on both the FASB materiality issue and the PCAOB's final rule on the auditor's reporting model.[61]

CORPORATE GOVERNANCE

On October 26, 2016, the Commission proposed amendments to the proxy rules that would require the use of universal ballots in contested director elections.[62] A universal ballot is a proxy card that includes both management's nominees and a dissident shareholder's nominees.

Our Office, along with the Investor Advisory Committee, has supported the transition to universal ballots because it would allow shareholders to vote for their preferred combination of management and shareholder nominees. Under the present regime, they can do so only if they attend the meeting and vote in person; otherwise, their choice is typically limited to one slate or the other. The rulemaking also included amendments to the form of proxy and proxy statement disclosure requirements to specify clearly the applicable voting options and voting standards in all director elections.

The comment period for the proposed rule closed on January 9, 2017, and a final rule has not yet been adopted.

FUND FEES AND EXPENSES

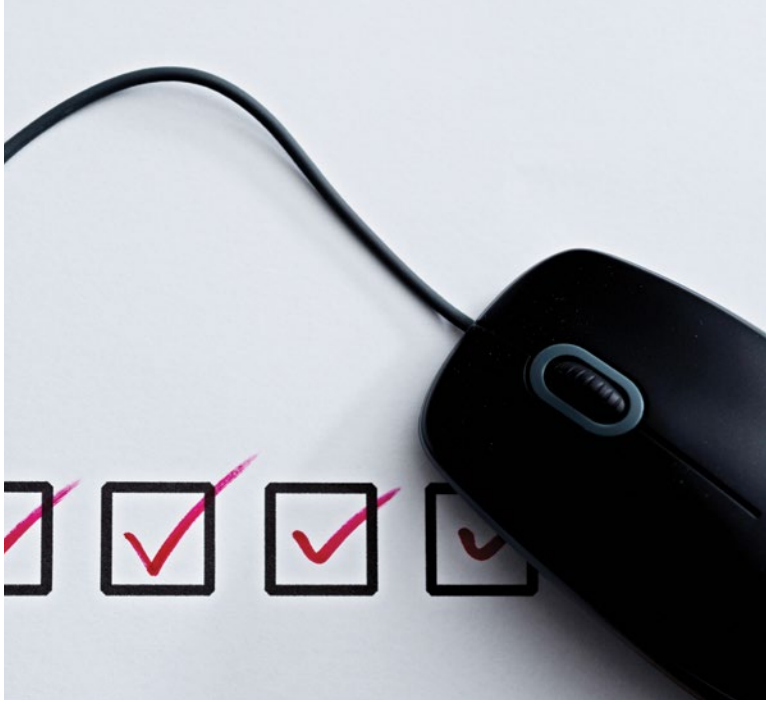
United States-registered investment companies (including open-end mutual funds, exchange-traded funds, closed-end funds, and unit investment trusts) managed approximately $19.2 trillion in assets at the end of calendar year 2016, an increase of approximately $1.1 trillion over the amount at year-end 2015.[63] Those assets under management include some of the investments of more than 95 million U.S. retail investors.[64] Mutual funds remain popular among households—retail investors held 89 percent[65] of the approximately $16.3 trillion of mutual fund assets at the end of 2016.[66] Exchange-traded funds accounted for approximately $2.5 trillion of assets under management by the end of 2016.[67]

While there are fees and expenses associated with all of these assets under management, some investors may not necessarily understand the amount they are paying, what exactly they are paying for, nor the impact of costs on the long-term value of their investments. Some of these costs relate directly to the management and operation of the funds themselves. In addition, there may also be layers of fees that investors pay to compensate investment advisers, broker-dealers, or other financial professionals for the services they provide.[68]

During FY 2017, we observed evidence of a shift toward lower fund fees and expenses among several of the largest fund complexes.[69] In its May 23, 2017 study of U.S. open-end mutual funds and exchange-traded funds, Morningstar reported that, "on average, investors paid lower fund expenses in 2016 than ever before."[70] Specifically, the Morningstar study found that the asset-weighted average expense ratio across funds (excluding money market funds and funds of funds) was 0.57 percent in 2016, compared with 0.61 percent in 2015 and 0.65 percent three years ago.[71] According to Morningstar, this "cost decline of 7 percent from the year prior was the largest ever, based on data going back to 1990."[72]

The Morningstar study noted that the decline in average fees that investors pay for their funds has coincided with (and is a result of) the increase in market share of passive funds from 23 percent in 2012 to 32 percent in 2016.[73] According to Morningstar, the asset-weighted average cost for passive funds is 0.17 percent, as compared to 0.75 percent for the average active fund.[74] The Morningstar study concluded, among other things, that "the decline in average mutual fund fees paid by investors" is based largely on "investors' migration to lower-cost funds" rather than on fee reductions by the most widely held funds.[75] Indeed, there is evidence beyond the Morningstar study that the expense ratios of some funds have actually increased as they have suffered substantial outflows.[76]

In light of these developments, we are particularly interested in investor behavior surrounding the disclosure of fund fees and expenses. To gain insight into investor perspectives on fund fees and expenses, in FY 2017 we launched an investor research and testing effort to measure, among other things, investor behavior with respect to fund fee and expense disclosure. This investor testing research project, which is part of a larger testing initiative known as Policy Oriented Stakeholder and Investor Testing for Innovative and Effective Regulation (POSITIER) that encompasses several



research streams, seeks to inform the rulemaking process with evidence obtained from surveys and specific testing projects. As part of that effort, on March 10, 2017, we hosted the Commission's first-ever "Evidence Summit" to discuss strategies for raising retail investors' understanding of key investment characteristics such as fees, risks, returns, and conflicts of interest. The Evidence Summit convened academics and practitioners from multiple disciplines (*e.g.*, economics, business, psychology) who presented their research on these various issues and on the subject of disclosure generally.

The initial focus of POSITIER is on understanding household behavior and responses with respect to retail investors. We are conducting POSITIER with the assistance of one or more outside contractors and are employing established methodologies of social science research, including, among other things, focus groups, structured interviews, and other surveys. The fund fee and expense disclosure research stream of POSITIER could include, for example, topics such as the effectiveness of dollar-denominated fee and expense disclosure as compared to disclosure expressed in percentage

terms, the utility of standardized cost disclosure generally, and ways to provide further context for the disclosure. We are especially interested in research that may yield behavioral insights that could be useful for future policy decisions.

The fund fee and expense disclosure research under POSITIER is responsive to the Investor Advisory Committee's April 2016 recommendation that the Commission "explore ways to improve mutual fund cost disclosures" with the goal of enhancing investors' understanding of the actual costs they bear when investing in mutual funds and the impact of those costs on total accumulations over the life of their investments.[77] In making that recommendation, the IAC suggested that, in the short-term, "the best way to make investors more conscious of costs" would be "through standardized disclosure of actual dollar amount costs on customer account statements."[78] The IAC encouraged the Commission, as part of a longer term effort to improve disclosures, to "explore ways to provide context for cost information in order to improve investor understanding of the impact of those costs."[79] They also encouraged the Commission "to test various approaches to determine which are the most effective in informing investors of the costs of their own funds, or funds they are considering purchasing, and the long-term impact of those costs."[80] In prepared remarks at that IAC meeting, SEC Commissioner Michael S. Piwowar voiced his support for a "robust investor testing program that examines the efficacy of various mutual fund cost disclosures."[81]

PROBLEMATIC INVESTMENT PRODUCTS AND PRACTICES

Among the statutory duties of the Investor Advocate, the Investor Advocate is required to identify problems that investors have with financial service providers and investment products. Exchange Act Section 4(g)(6)(B) mandates that the Investor Advocate, within the annual Report on Activities, shall provide a summary of the most serious problems encountered by investors during the preceding FY. The statute also requires the Investor Advocate to make recommendations for such administrative and legislative actions as may be appropriate to resolve those problems.[82]

To determine the most serious problems related to financial service providers and investment products, staff of the Office of the Investor Advocate reviewed information from the following sources:

- Investor Alerts, Tips, and Bulletins issued by the SEC, FINRA, and the North American Securities Administrators Association, Inc. (NASAA) during FY 2017;
- The SEC's Office of Compliance Inspections and Examinations' Examination Priorities for 2017;[83]
- SEC enforcement actions and FINRA disciplinary actions during the Reporting Period;
- NASAA's Annual Report,[84] 2017 Enforcement Report,[85] and Top Investor Threats;[86]
- SEC and SRO staff reports providing guidance and interpretations relating to investment products;
- Discussions and correspondence with SRO staff, including an October 17, 2017, letter from Lynnette Kelly, Executive Director, MSRB, highlighting municipal market practices that may have an adverse impact on retail investors;[87] and
- Discussions and correspondence with securities and investor advocacy focused law school clinics.[88]

The table below lists certain problematic products or practices during FY 2017 as reported by these sources. Although not exhaustive, the lists reflect some of the concerns of these organizations. Details regarding these products and practices are available on these organizations' websites.

SEC[89]	NASAA[90]
• Initial Coin Offerings • Investment Fees and Expenses • Advertising • Online Binary Option Schemes • Cybersecurity Including Ransomware Alerts • Stock Recommendations on Investment Research Websites • Online Security Relating to Investment Accounts • Wrap Fee Programs Suitability, Effectiveness of Disclosure, Conflicts of Interest, and Brokerage Practices • Microcap Stocks • Scams and Schemes Relating to Natural Disasters and Fake Forms 4 Sent to Investors • Excessive Trading in Customer Accounts • Simple Agreement for Future Equity in Crowdfunding for Investors	• Emerging Financial Technologies Such as Cryptocurrency Trading • Online Binary Option Schemes • Scams and Schemes Relating to Natural Disasters • Senior Fraud • Unregistered Products/Unlicensed Salesmen • Promissory Notes • Oil/Gas Investments • Real Estate-Related Investments • Ponzi Schemes

FINRA[91]	MSRB[92]	Law School Clinics[93]
• Initial Coin Offerings • Recovery Scams • Binary Options & Binary Option Follow-up Schemes • Public Non-Traded REITs • Inherited IRAs • Customer Advisory Centers • Risk Related to Bond Duration • Crowdfunding Risk • Scams & Schemes Including Recovery Scams, Online Job Interview Scams, and Stock Fraud in Wake of Natural Disasters	• Municipal Market Practices Such as Pennying[94] and Filtering[95] • Below Minimum Denomination Positions Created by Investment Adviser Allocations • Municipal Market Disclosure Practices (*e.g.*, Bank Loan Disclosures) • Price Fairness and Transparency	• Suitability • On-Line Mobile Investment Applications • Unregistered Securities Offerings • Variable and Whole Life Insurance Policies • Margin Accounts • Options • Overconcentration in Energy Stocks and Funds and Proprietary Products of a Broker-Dealer

Each of the products and practices listed above presented problems for investors during the Reporting Period. Based on our review of the resources described above and consultations with knowledgeable professionals, however, we will highlight two areas of concern: scams and schemes related to natural disasters, and municipal bond positions that are below the minimum denomination. Other issues, including Simple Agreements for Future Equity in crowdfunding investments,[96] binary options,[97] public non-traded REITS,[98] municipal market disclosure practices,[99] and sales practices involving variable annuities[100] have been highlighted in our previous reports.

SCAMS AND SCHEMES RELATED TO NATURAL DISASTERS

Hurricanes, floods, wildfires, and other disasters often give rise to investment scams. These scams can take many forms, including that of promoters touting companies purportedly involved in cleanup, repair, and recovery efforts, trading programs or real estate remediation programs that falsely guarantee high returns, and classic Ponzi schemes where new investors' money is used to pay earlier investors.

In classic pump-and-dump scams, a fraudster disseminates false news reports to pump up the stock price of small companies so they can sell shares they own at artificially high prices. These scams are circulated through spam email and other marketing tools, promising high returns for small, thinly-traded companies that supposedly will reap huge profits from recovery and cleanup efforts. For example, promoters may tout new water-purification technologies or electricity-generating devices.

Given the high number of hurricanes and natural disasters in recent months, we anticipate a resurgence of these types of scams. Fortunately, the SEC, FINRA, and NASAA have all issued alerts to warn investors of these potential scams.[101] These alerts provide tips for investors, including inexperienced investors who may have received compensation from insurance companies, to help them avoid falling victim to fraudulent schemes. The Office of the Investor Advocate will do our part to warn investors of these dangers.

BELOW MINIMUM DENOMINATION POSITIONS IN MUNICIPAL SECURITIES

Municipal bond offerings specify a "minimum denomination," which represents the smallest amount of municipal bonds that a municipal securities dealer may sell to an investor in a single transaction. Typically, the minimum denomination amount is $5,000; however, municipal issuers may set higher minimum denominations (typically $100,000) for municipal bonds that are considered unsuitable for non-institutional investors because they present a higher default risk.[102]

MSRB Rule G-15(f) generally prohibits brokers, dealers, and municipal securities dealers from effecting transactions with customers in municipal securities in an amount below the minimum denomination specified in bond offering documents, unless the transaction falls within certain exceptions.[103] The SEC enforces this rule, and the Commission has sanctioned several municipal securities dealers for improper sales below the minimum denomination.[104] However, not all positions below the minimum denomination are created by municipal securities dealers. In fact, there are several scenarios that may create a below minimum denomination position in a customer account, such as the exercise of a call provision in an amount below the minimum denomination or the division of an estate as the result of death or divorce.[105]

Once created, positions below minimum denomination are problematic, particularly for retail investors. Although MSRB Rule G-15 provides a mechanism for retail investors holding below minimum denomination positions to exit the position, these options are limited and may not be attractive to dealers and other investors. This impairs the ability of the bondholder to resell it, which negatively affects the price.[106]

In an effort to reduce the number of below minimum denomination positions and alleviate the resulting illiquidity, the MSRB initially proposed changes to Rule G-15 and subsequently proposed a new Rule G-49.[107] On January 24, 2017, after receiving comments on those proposals, the MSRB filed with the Commission its proposal to create MSRB Rule G-49 on Transactions Below the Minimum Denomination of an Issue.[108] However, during its quarterly meeting on April 26-27, 2017, the MSRB Board of Directors discussed the comments received by the Commission relating to the proposed amendments, and the Board of Directors determined that it was "desirable to obtain more information and, if possible, greater consensus, regarding any proposed amendments."[109] To provide time for meaningful outreach with stakeholders and to obtain additional information, the MSRB withdrew the proposed rule it had filed with the Commission.[110]

We are hopeful that the MSRB will continue to pursue this important initiative to protect the interests of investors in municipal securities. In the meantime, we believe the SEC can take steps to address some of the underlying causes of the problem. In particular, as described by MSRB Executive Director Lynnette Kelly in a recent letter to the Investor Advocate, it appears that investment advisers are a "common cause" of the problem because they may distribute municipal securities among multiple customer accounts and thereby break the minimum denomination, which renders the positions less liquid.[111] We have begun to discuss this issue with colleagues at the SEC who oversee investment advisers, and we are hopeful this problematic practice will be addressed even in the absence of an MSRB rulemaking.

INVENTORY OF INVESTOR ADVOCATE RECOMMENDATIONS AND SEC OR SRO RESPONSES

Pursuant to Exchange Act Section 4(g)(4), the Office of the Investor Advocate is required to identify areas in which investors would benefit from changes in the regulations of the Commission or the rules of self-regulatory organizations. To the extent practicable, we are also expected to propose to the Commission changes in the regulations or orders of the Commission and to Congress any legislative, administrative, or personnel changes that may be appropriate to mitigate problems identified and to promote the interests of investors.[112]

We engage in advocacy for investors in various ways. Most often, our written advocacy is in the form of a comment letter that is included in the public comment file. Our expectation is that our comments will be given due weight and that our recommendations will be addressed in a substantive way within the order or release in which a proposed amendment is approved or disapproved. However, we also have the authority to submit more formal recommendations directly to the Commission. Exchange Act Section 4(g)(7) requires the Commission to establish procedures requiring a formal response to all such recommendations not later than three months after the date of such submission.[113] Of course, while the Commission must respond to the Investor Advocate's recommendations, it is under no obligation to agree with or act upon the recommendations.

Exchange Act Section 4(g)(6) requires us to provide, within our Reports on Activities, an inventory of the most serious problems encountered by investors during the report period. The inventory must identify: any action taken by the Commission or SRO and the result of such action; the length of time that each item has remained on the inventory; and for items on which no action has been taken, the reasons for inaction, and an identification of any official who is responsible for such action.

To satisfy Section 4(g)(6), we provide the following inventory of comment letters and formal recommendations in which we call for action by the Commission or an SRO.[114] We are very selective in choosing the issues to address in comments or recommendations and, accordingly, we believe these issues are among the most serious potential problems for investors. These matters are discussed in greater detail in the preceding sections of this Report.

Nature and Date of Submission	Recommendation of Investor Advocate	Action Taken by Commission or SRO	Reason for Inaction, If Applicable, and Responsible Official
Comment Letter, dated December 11, 2015, to MSRB and FINRA[115]	Encouraged adoption of consistent markup disclosure rules that would utilize a full trading day timeframe and be calculated using the "prevailing market price."	On August 15, 2016, and September 7, 2016, respectively, FINRA and the MSRB submitted proposed amendments, which largely followed our recommendations, to the SEC. The proposals were approved by the SEC on November 17, 2016.	Action Complete
Comment Letter, dated March 31, 2016, to MSRB[116]	Supported proposed guidance for the determination of "prevailing market price," with suggestions to address transactions with affiliated parties.	On September 7, 2016, the MSRB submitted the proposed guidance, which largely followed our recommendations, to the SEC. The proposal was approved by the SEC on November 17, 2016.	Action Complete
Comment Letter, dated August 15, 2016, to PCAOB[117]	Supported proposal for the auditor's report to include discussion of critical audit matters, auditor tenure, and additional improvements.	On June 1, 2017, PCAOB adopted the new standard, subject to SEC approval. The SEC approved the rule on October 23, 2017.	Action Complete
Comment Letter, dated September 9, 2016, to Commission[118]	Supported proposal to require greater disclosure by ATSs that transact in NMS stocks, and encouraged Commission to make current Form ATS public for ATSs that transact in fixed income securities, including government securities.	Pending at end of Reporting Period.	

Nature and Date of Submission	Recommendation of Investor Advocate	Action Taken by Commission or SRO	Reason for Inaction, If Applicable, and Responsible Official
Formal Recommendation, dated November 7, 2016, to the Commission[119]	Recommended approval of FINRA and MSRB proposals to require disclosure of mark-ups and mark-downs from prevailing market price on retail customer confirmations relating to certain transactions in fixed income securities.	On November 17, 2016, the Commission approved the proposed rule changes.	Action Complete
Comment Letter, dated July 11, 2017, to FASB[120]	Recommended new guidance on materiality based upon SAB 99 and CON 2 in lieu of proposed standard.	Pending at end of Reporting Period.	

OMBUDSMAN'S REPORT

As set forth in Exchange Act Section 4(g)(8), 15 U.S.C. § 78d(g)(8), the Ombudsman is required to: (i) act as a liaison between the Commission and any retail investor in resolving problems that retail investors may have with the Commission or with self-regulatory organizations; (ii) review and make recommendations regarding policies and procedures to encourage persons to present questions to the Investor Advocate regarding compliance with the securities laws; and (iii) establish safeguards to maintain the confidentiality of communications between investors and the Ombudsman.[121]

The Ombudsman is also required to "submit a semi-annual report to the Investor Advocate that describes the activities and evaluates the effectiveness of the Ombudsman during the preceding year" (Ombudsman's Report).[122] The Ombudsman's Report must be included in the semi-annual reports submitted by the Investor Advocate to Congress. To maintain reporting continuity, the Ombudsman's Report included in the Investor Advocate's Report on Objectives will describe the Ombudsman's activities during the first six months of the current fiscal year and provide the Ombudsman objectives and outlook for the following full fiscal year. The Ombudsman's Report included in the Investor Advocate's Report on Activities will provide a look back on the Ombudsman's activities during the full preceding fiscal year. Accordingly, this report provides a look back on the Ombudsman's activities for the full fiscal year period from October 1, 2016 through September 30, 2017 (Reporting Period).

SERVICE BY THE NUMBERS

The Ombudsman[123] assists retail investors and other individuals with concerns or complaints about the SEC or an SRO the SEC oversees in a variety of ways, including, but not limited to:

- Listening to inquiries, concerns, complaints, and related issues;
- Helping persons explore available SEC options and resources;
- Clarifying certain SEC decisions, policies, and practices;
- Taking objective measures to informally resolve matters that fall outside of the established resolution channels and procedures at the SEC; and
- Acting as an alternate channel of communication between retail investors and the SEC.

In practice, individuals often seek the Ombudsman's assistance as an initial point of contact to resolve their inquiries or as a subsequent or ongoing point of contact when they are dissatisfied with the outcome, rate of progress, or resolution. To respond to inquiries effectively and efficiently, the Ombudsman monitors the volume of inquiries and the staff resources devoted to addressing the particular concerns raised. The Ombudsman tracks:

- all inquiries received by or referred to the Ombudsman;
- all related correspondence and communications to and from Ombudsman staff;
- staff engagement and resources utilized to respond to inquiries; and
- inquiry activity and status from receipt to referral or resolution.

The Ombudsman maintains inquiry data records to: (i) identify and respond to problems retail investors have with the Commission or with SROs, (ii) track and analyze inquiry volume, (iii) categorize and report data, trends, and concerns, and (iv) provide data-driven support for recommendations presented by the Ombudsman to the Investor Advocate for review and consideration.

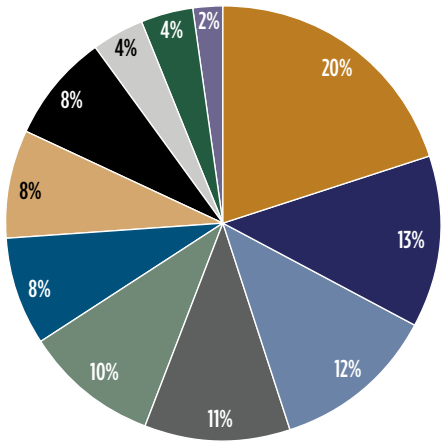
Inquiry volume is counted in terms of matters and contacts. The initial contact—a new, discrete inquiry received by or referred to the Ombudsman—is the contact that establishes the matter. When a matter is established, the Ombudsman reviews the facts, circumstances, and concerns raised, and assesses the staff engagement and resources that may be required to respond to, refer, or resolve the matter.

The matter established by the initial contact may generate subsequent contacts—related inquiries and communications to or from the Ombudsman staff deriving from the matter. Subsequent contacts often require further staff attention to answer additional questions, explain or clarify proposed resolution options, or respond to challenging or persistent communications from an investor. This system of counting matters and contacts helps the Ombudsman quickly assess volume and resource issues related to each matter.

Data Across Primary Issue Categories

During the Reporting Period, retail investors, industry professionals, concerned citizens, and other interested persons contacted the Ombudsman for assistance on 226 matters covering eleven primary issue categories.

Matters by Primary Issue Category
October 1, 2016–September 30, 2017

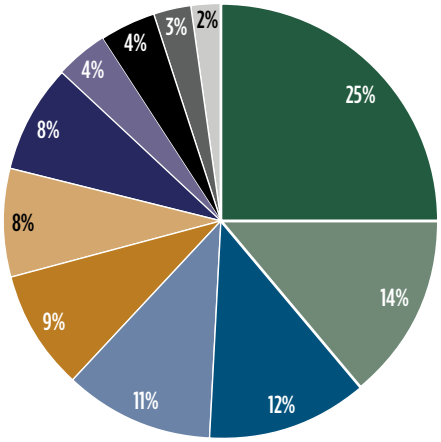


- Allegations of Securities Law Violations / Fraud (44)
- Atypical Matters (25)
- Company Disclosures and Information (19)
- FINRA Arbitration / Rules / Procedures (5)
- Investment Products / Retirement Accounts (29)
- Non-SEC / Other Matters (22)
- SEC Investigations / Litigation / Enforcement Actions (9)
- SEC Questions / Complaints (27)
- Securities Laws / Rules / Regulations / Procedures (19)
- Securities Ownership (17)
- SRO Rules / Procedures (10)

During the Reporting Period, these 226 matters generated 1,105 subsequent contacts, for a total of 1,331 contacts. A small number of matters relating to SEC investigations yielded a disproportionate number of contacts due to persistent investor communications about specific complaints, the submission of additional allegations and documents to support those complaints, and questions about

the status of SEC investigations and enforcement actions. The chart that follows displays the distribution of the 1,331 contacts by primary issue category:

Contacts by Primary Issue Category
October 1, 2016–September 30, 2017



- Allegations of Securities Law Violations / Fraud (119)
- Atypical Matters (44)
- Company Disclosures and Information (110)
- FINRA Arbitration / Rules / Procedures (56)
- Investment Products / Retirement Accounts (108)
- Non-SEC / Other Matters (187)
- SEC Investigations / Litigation / Enforcement Actions (338)
- SEC Questions / Complaints (140)
- Securities Laws / Rules / Regulations / Procedures (157)
- Securities Ownership (50)
- SRO Rules / Procedures (22)

How the Numbers Inform our Efforts

The Ombudsman tracks matter and contact data to maintain a comprehensive view of the allocation of staff resources and to identify matters and contacts that significantly alter workflow volumes, call for the realignment of Ombudsman staff assignments, or require added staff support to manage effectively. The data also informs resource allocation considerations related to proposed program development, training, and outreach efforts. By tracking the distribution of matters and contacts across primary issue categories, the data helps the Ombudsman identify potential areas of concern or interest and enables the Ombudsman to act as an early warning system to alert agency leaders about the number and potential impact of particular issues and concerns raised by retail investors and others.

SERVICE BEHIND THE NUMBERS

While the matter and contact data quantifies the volume and categories of inquiries the Ombudsman receives, the data does not capture the full value of the service the Ombudsman provides to the investing public. Among the most common situations in which investors bring particular concerns, problems, and fears to the Ombudsman are those in which the investors are unfamiliar with the existing channels established to resolve the particular concerns they raise, unsure which resolution channel to use or how to initiate the process, and unable to get the specific outcome they want through the resolution channels available based on their particular facts. In these situations, investors generally assume their preferred outcome is a viable option and expect that the Ombudsman is permitted to do whatever is necessary to reach that outcome.

Typically, investors who are unfamiliar with or unsure of the available resolution channels will thoughtfully consider the advantages and disadvantages of the resolution options the Ombudsman presents, and establish their expectations based upon the potential outcome each option offers. For these investors, the Ombudsman serves a valuable resource function, but the investor retains responsibility for choosing how to proceed based on the resources the Ombudsman presents. Investors who believe they are entitled to a particular result and want the Ombudsman to provide it can be challenging to assist. At times, they resist the Ombudsman's efforts to engage in a productive dialogue and conclude that any outcome other than the particular outcome they want is untenable and unacceptable.

The vignettes that follow are provided to give a sense of the variety of issues we address. Together, they offer a closer look at the how the Ombudsman staff's time, effort, and commitment provide meaningful, personalized service to investors, and illustrate the value of the day-to-day work more effectively than the data alone.

The Ombudsman was contacted to assist senior staff in the SEC's Office of International Affairs with an inquiry from an investor entitled to receive funds obtained in an SEC enforcement action against a fraudster who preyed on financially unsophisticated investors. The Ombudsman recognized the elderly investor needed to act quickly to remain eligible for participation in the court-ordered plan for disbursement of disgorged assets. The Ombudsman staff spoke with the investor directly, clarified and explained aspects of the distribution plan, and provided guidance for reaching the distribution agent and appropriate Division of Enforcement staff in the necessary time frame so that the investor would remain eligible to receive distributed funds.

A retired financial professional read an article discussing the Investor Advocate's focus on making financial disclosure more useful to the average investor. Inspired by the article, the investor suggested ordinary investors could understand and use financial information more effectively by showing corporate earnings and liabilities in relation to the price of a single share—in his opinion, a reference point easily understood by retail investors. Given this investor's goal—making corporate disclosures more useful to retail investors—the Ombudsman encouraged him to share his suggestions directly with the Division of Corporation Finance Office of Rulemaking staff through the comment process for the SEC's disclosure effectiveness initiative to ensure that his feedback was received and reviewed by staff in the appropriate rulemaking division.

An elderly investor who normally relied upon family members to assist him with electronic communications and web forms was frustrated that a hard copy SEC complaint form he requested had not arrived by mail. He also wanted information on other non-electronic means for filing complaints. The Ombudsman staff explained the various complaint and resolution options available. In passing, the investor mentioned his son was coming to his home that evening to print a document for him. Noting that, the Ombudsman staff also provided the web address for the complaint form so that his son could print a copy or assist the investor with completing the electronic form. The Ombudsman staff also ensured that the appropriate SEC office sent the investor the hard copy form and followed up with the investor directly.

An investor encountered difficulty retrieving public company information using the SEC's web-based EDGAR system. The investor subsequently requested the same information by letter addressed to an SEC regional office. He called the office to check on the status of his request, and felt that the tone and substance of the staff person's response were unhelpful. He then contacted the Ombudsman demanding an apology, the name of the regional office director, and a more user-friendly electronic search function for the EDGAR database. After respectfully acknowledging the investor's frustrations and effectively diffusing the situation, the Ombudsman resolved his substantive concerns on the spot by patiently providing a step-by-step phone tutorial of the EDGAR search process.

A senior investor complained that, for years, the SEC failed to respond adequately to his complaints alleging market manipulation by unidentified, publicly-held companies. In response to an Ombudsman staff request for clarification, the investor declared that the staff tried to stop the Ombudsman from helping him by intercepting his communications. Once the Ombudsman personally reassured the investor that she received his communications and that the request for clarification was genuine, he asked the Ombudsman to revisit all of his prior SEC complaints and compel the SEC to recover his investment losses. The staff explained that the Ombudsman cannot change the outcome of formal investigations. In reply, the investor alleged an SEC-wide conspiracy to prevent the Ombudsman from resolving his complaint satisfactorily.

Ultimately, our interactions with investors and their responses to us—both positive and negative—provide insight into the information investors rely upon and the assistance they want when making financial decisions. As indicated above, when this insight highlights a lack of information or gaps in understanding, we attempt to provide personalized, straightforward service to investors by liaising with the appropriate persons and entities, by providing the information necessary to help investors better understand the solutions the SEC can provide, and by empowering and equipping investors to make well-informed investment decisions.

Streamlined Communications with Investors

During the Reporting Period, the Ombudsman continued to work extensively with the SEC's Office of Information Technology (OIT) and a technology contractor to refine data and functionality requirements for the Ombudsman Matter Management System (OMMS), an electronic platform for tracking, analyzing and reporting matter and contact information while ensuring all necessary data management, confidentiality, and reporting requirements are met. Notably, the manual recordkeeping systems used in prior fiscal years were phased out during the Reporting Period and migrated over to OMMS.

The OMMS Form, a web-based form permitting the submission of electronic inquiries, complaints, and documents directly to the Ombudsman, was made available to the public in September 2017 via the www.sec.gov/ombudsman webpage. The OMMS Form guides the user through a series of questions specifically tailored to elicit information concerning matters within the scope of the Ombudsman's function. In addition, the OMMS Form allows users to electronically upload and submit related documents for staff review. The OMMS Form is instructive and user-friendly, and is also compatible for use on mobile devices.
The OMMS Form should encourage more retail investors and interested persons to contact the Ombudsman. Persons who choose to contact the Ombudsman via the OMMS Form will encounter user-friendly features such as radio buttons, drop-down menu responses, pop-up explanation bubbles, webpage links, and fillable narrative text fields. The OMMS Form also incorporates response recognition functionality that pre-populates specific fields and prompts the user to provide additional information as necessary. Any persons who do not wish, or are unable, to use the OMMS Form, may still contact the Ombudsman by email, telephone, fax, and mail.

Making the OMMS Form available to the public in September 2017 completed the transition from a manual intake, tracking, and reporting process to a fully functional, customized, electronic matter management platform. Over the next several months, as more persons use the OMMS Form, we will closely monitor questions and suggestions relating to the OMMS Form and will continue to work with OIT and the technology contractor to further refine the OMMS Form and improve the user experience.

STANDARDS OF PRACTICE

Any retail investor with an issue or concern related to the SEC or an SRO subject to SEC oversight may contact the Ombudsman. The Ombudsman is available to identify existing SEC options and resources to address issues or concerns, and to explore informal, objective steps to address issues or concerns that may fall outside of the agency's existing inquiry and complaint processes. Similar to ombudsmen at other federal agencies, the Ombudsman follows three core standards of practice:

Confidentiality	Impartiality	Independence
The Ombudsman has established safeguards to protect confidentiality, including the use of OMMS, a separate email address, dedicated telephone and fax lines, and secure file storage. The Ombudsman generally treats matters as confidential, and takes reasonable steps to maintain the confidentiality of communications. The Ombudsman also attempts to address matters without sharing information outside of the Ombudsman staff, unless given permission to do so. However, the Ombudsman may need to contact other SEC divisions or offices, SROs, entities, and/or individuals and share information without permission under certain circumstances including, but not limited to: a threat of imminent risk or serious harm; assertions, complaints, or information relating to violations of the securities laws; allegations of government fraud, waste, or abuse; or if otherwise required by law.	The Ombudsman does not represent or act as an advocate for any individual or entity, and does not take sides on any issues brought to her attention. The Ombudsman maintains a neutral position, considers the interests and concerns of all involved parties, and works to resolve questions and complaints by clarifying issues and procedures, facilitating discussions, and identifying options and resources.	By statute, the Ombudsman reports directly to the Investor Advocate, who reports directly to the Chairman of the SEC. However, the Office of the Investor Advocate and the Ombudsman are designed to remain somewhat independent from the rest of the SEC. Through the Congressional reports filed every six months by the Investor Advocate, the Ombudsman reports directly to Congress without any prior review or comment by the Commission or other Commission staff.

The Ombudsman's Challenge

The SEC's mission is to "protect investors, maintain fair, orderly, and efficient markets, and facilitate capital formation."[124] At the center of many complaints the Ombudsman receives is a misunderstanding about the SEC's relationship and obligations to individual investors because of the "protect investors" language in the mission statement. In these situations, investors frequently assume the purpose of SEC investigations and enforcement actions is to protect investors by getting their money back. While the SEC's enforcement actions may at times align with the personal interests of harmed investors, the SEC does not pursue investigations and enforcement actions solely to represent an investor's particular legal interest or to recover money a particular investor may have lost. Rather, the SEC is tasked with enforcing the federal securities laws to serve the broad interests of the investing public by maintaining fair, orderly, and efficient capital markets.

A primary question we encounter is, then, what can the Ombudsman do for investors who have been harmed by violations of the federal securities laws? In appropriate circumstances, the Ombudsman may be able to present options to investors or foster communications between the investor and

SEC divisions or offices or SROs. However, the Ombudsman is not authorized to do many things that investors request, including:

- deciding the facts in a dispute that the investor has with the Commission or an SRO, or in a dispute before an SRO, such as an arbitration or mediation;
- intervening on behalf of, or representing the interest of, an investor in a formal dispute or investigation process;
- providing advice on how the federal securities laws may impact their particular investments or legal options; or
- changing formal outcomes, including decisions about whether to investigate an allegation of wrongdoing, settle an enforcement action, or create a Fair Fund.

With these limitations in mind, the Ombudsman routinely explains to investors that they have the ability to protect their interests and preserve their legal rights in ways that the Ombudsman cannot. For example, an investor can file an arbitration or mediation complaint with FINRA to address a broker dispute, or hire private legal counsel to advise the investor on the best ways to protect the investor's rights or reach a particular outcome. Investors who do not have the means to hire legal counsel may want to request representation through no-cost legal clinics sponsored by various law schools.

While the Ombudsman staff cannot represent the interests of investors in private disputes, we do serve these investors by providing information that will assist them in making choices for themselves. The policy topics and updates that follow include information and context that retail investors may find instructive and helpful when making investment decisions, or when considering alternatives if they wish to file formal complaints or seek legal representation.

PROBLEM AREAS FOR RETAIL INVESTORS

Fiduciary Standard

As the Investor Advocate discussed in the Report on Objectives for FY 2016 and the Report on Objectives for FY 2018, there are different standards of care for financial professionals who give advice to investors.[125] Specifically, brokers are subject to a suitability standard while investment advisers are held to a fiduciary standard. Under the suitability standard, when a broker recommends that a client buy or sell a security, the broker must have a reasonable basis to believe that the recommendation is suitable for the client.[126] In comparison, the fiduciary standard imposes a duty to serve the best interests of the client, as well as a duty of loyalty and a duty of care. This means that if the adviser has a material conflict of interest with a client, the adviser must either eliminate that conflict or fully disclose all material facts to the client relating to the conflict.[127]

Although these standards sound similar to each other, they are very different. Imagine two investment products that are similar to each other with similar performance exclusive of fees, but the sale of one product compensates a broker more than the sale of the other product. If both products are suitable to the client's investment plan, under the suitability standard, the broker does not have to disclose to the client that the broker has an incentive to sell the higher fee product or alert the client to the higher costs associated with that investment. In comparison, under the fiduciary standard, an investment adviser faced with the same choice of investments must always act in the best interest of the client. This means that if the adviser believed the investment that provided the greatest remuneration to the adviser was the better option for a client, the adviser must fully disclose the adviser's conflict of interest to the client when making the recommendation.

As noted in the Report on Objectives for FY 2018, the U.S. Department of Labor adopted a regulation that would apply the fiduciary standard to any person who, for compensation, provides investment advice or recommendations to retirement plans (DOL Fiduciary Rule).[128] In response to calls for the SEC to engage in a similar rulemaking, SEC Chairman Jay Clayton requested public comments from retail investors and other interested parties on standards of conduct for investment advisers and broker-dealers.[129] As of the end of FY 2017, the SEC received more than 140 comments on this issue from retail investors, financial institutions, trade associations, and other interested parties.[130]

Why is this important to retail investors? From January to August 2017, breach of fiduciary duty was the number one area of controversy in investor arbitrations.[131] In addition, the DOL Fiduciary Rule and the SEC's application of a fiduciary standard to broker-dealers may have a significant impact on retail investors, entities regulated by the SEC, and our capital markets.[132]

The Ombudsman encourages retail investors to learn more about fiduciary duties and why this is a strongly debated topic. If you desire, you also may express your thoughts about the issue by going to www.sec.gov/cgi-bin/ruling-comments.

SEC Oversight of FINRA

In the Report on Objectives for FY 2018, we discussed the issue of what the Ombudsman may do for investors who have been harmed by violations of the federal securities laws. We noted that investor communications to the Ombudsman often reflect a confusion about the roles played by, and the authority provided to, the SEC, the staff of the SEC, and the Ombudsman in promoting the mission of investor protection. In line with this discussion, we will address another area of SEC regulatory authority that may confuse some investors: the SEC's authority over FINRA.

To retail investors, FINRA is perhaps the most well-known SRO[133] supervised by the SEC because FINRA operates BrokerCheck[134] and its dispute resolution forum,[135] both of which are commonly used by retail investors. For retail investors seeking to understand the scope of the SEC's authority over FINRA, a good place to start is the Securities Exchange Act of 1934 (Exchange Act). With the Exchange Act, Congress created the SEC and provided the agency with broad authority over all aspects of the securities industry. This includes the power to register, regulate, and oversee brokerage firms, transfer agents, clearing agencies, and SROs like FINRA.[136]

There are several sections of the Exchange Act that govern SROs generally and FINRA in particular. Good places to learn about FINRA's requirements are Sections 15A and 19 of the Exchange Act. Section 15A(b)(6) contains the bedrock principle that FINRA must issue rules that are "designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade . . . and, in general, to protect investors and the public interest."[137] This requirement is used by the SEC to assess whether a proposed FINRA rule conforms with the Exchange Act. In comparison, Section 19 specifies the procedures that FINRA and the SEC must follow when FINRA seeks to propose a new rule or modify an existing rule. For example, FINRA must file the rule and a concise statement of the purpose of the rule, which are followed by several actions the SEC must take: it must alert the public of FINRA's proposed rule; it must allow the public to comment on the proposed rule; and it must approve the rule before the rule can take effect. To approve the rule, the SEC conducts its review for consistency with Section 15A(b)(6), as discussed above.

The SEC's supervision and authority over FINRA includes:

- FINRA must keep its registration statement up-to-date pursuant to SEC reporting requirements;[138]

- The SEC's Office of the Compliance Inspections and Examinations conducts routine and for-cause inspections of FINRA;[139]
- The SEC approves or disapproves proposed FINRA rule changes;[140]
- The SEC can abrogate, add to, or delete FINRA rules through rulemaking;[141]
- The SEC can affirm, remand, or revise a FINRA sanction against a broker or brokerage firm;[142]
- The SEC can sanction FINRA for failing, without reasonable justification, to enforce the Exchange Act or FINRA rules, and sanction FINRA officers or directors for willful violations of the Exchange Act;[143]
- The SEC can force structural and governance changes through enforcement proceedings;[144] and
- The SEC can revoke FINRA's registration as a securities association under the Exchange Act.[145]

However, the SEC conducts little or no oversight over FINRA in several key ways:

- FINRA can set its own rulemaking and disciplinary agendas without SEC input, including deciding which rulemaking comments influence its rules;[146]
- The SEC does not review FINRA's governance, executive compensation, or cooperation with state securities regulators;[147] and
- The SEC cannot attend arbitration hearings, advocate on behalf of a party to an arbitration hearing, or dispute an award granted by arbitrators in a hearing.

The Ombudsman encourages investors to familiarize themselves with the SEC and FINRA's responsibilities pursuant to these provisions. Investors should feel free to contact the Ombudsman if they have questions or require additional information.

Gaps in BrokerCheck

As discussed in the Report on Activities for FY 2016, the Ombudsman has a strong interest in the information contained in the Central Registration Depository (CRD), especially because the information is valuable to regulators, firms, and investors.[148] Similarly, FINRA has stated that it has an interest in "protecting the integrity of the CRD system and the information contained in it."[149]

FINRA's BrokerCheck is a publicly available tool that investors can use to assess the credibility and trustworthiness of brokers, investment advisers, and financial services firms.[150] As explained by FINRA, BrokerCheck provides three benefits to retail investors:[151]

- BrokerCheck helps you make informed choices about brokers and brokerage firms and provides easy access to investment adviser information.
- BrokerCheck tells you instantly whether a person or firm is registered, as required by law, to sell securities (stocks, bonds, mutual funds and more), offer investment advice or both.
- BrokerCheck gives you a snapshot of a broker's employment history, licensing information and regulatory actions, arbitrations, and complaints.

On March 21, 2017, an article in *The Wall Street Journal* (WSJ) noted that BrokerCheck reports arbitration decisions that go against a firm, but not legal settlements that the firm negotiated with its customers; in contrast, BrokerCheck reports for individual brokers show both.[152] The reason for this gap in BrokerCheck reporting is due to the drafting of FINRA Rule 8312, which specifies what information is reported (and omitted) in BrokerCheck reports. Specifically, the data reported by BrokerCheck comes from five forms provided to FINRA by financial services firms: Form U4, Form U5, Form U6, Form BD, and Form BDW.[153] Whenever a broker is subject to a settlement with a customer exceeding $15,000, the firm reports this to FINRA on a Form U4.[154] This information, in turn, is reported on BrokerCheck. However, when a firm is subject to a settlement with a customer exceeding $25,000, this information is reported to FINRA,[155] but it is not reported on a Form BD or any other form identified in Rule 8312. As a result,

investors seeking to conduct due diligence on a firm through BrokerCheck will not get a full picture of the firm's disputes with its customers. The only way that an investor can piece this information together is to search for all current and former brokers at a firm during the relevant time period, identify all of the settlements involving those brokers while those brokers were at that firm, and add those settlements up. This may be an unrealistic demand to place upon on investors. One investor rights advocate interviewed by the WSJ opined that this gap needs to be filled, and an academic that specializes in securities arbitration commented that she was "pretty shocked" at finding out that this gap exists.[156] The Ombudsman agrees with both of these sentiments.

On September 29, 2017, FINRA announced that it will propose an amendment to Rule 8312.[157] The amendment would: (1) provide investment adviser information in BrokerCheck for brokers who are also registered investment advisers; (2) permit "limited data sets" of BrokerCheck information to be publicly available; (3) exclude information from BrokerCheck regarding deceased brokers who have been unregistered with FINRA since 1999; and (4) allow firms to include in BrokerCheck a comment about arbitration awards pertaining to the firm.[158]

The Ombudsman applauds FINRA's efforts to amend BrokerCheck disclosures. Including information from the Investment Adviser Public Disclosure (IAPD) in BrokerCheck will enable retail investors to better assess a firm or broker's trustworthiness from a single source. Permitting expanded availability of BrokerCheck information is a step that is long overdue, and FINRA is commended for expanding the dissemination of BrokerCheck data.

However, the proposed amendment to Rule 8312 falls far short of its potential. FINRA should consider taking this opportunity to close the informational gap that currently exists and prevents customers from discovering information about settlements with brokerage firms. FINRA Rule 8312(b)(2)(C) states that information to be released via BrokerCheck includes "summary information about certain arbitration awards against a BrokerCheck Firm involving securities or commodities dispute with a public customer." This language could be amended slightly to "summary information about certain arbitration awards *and settlements* against a BrokerCheck Firm involving a securities or commodities dispute with a public customer." In the proposed rule and accompanying Regulatory Notice, FINRA could explain that information that must be reported to FINRA pursuant to Rule 4530(a)(1)(G)—settlements with customers for amounts exceeding $25,000 against a member firm—will now be reported on BrokerCheck.

What does this mean for retail investors? As the Ombudsman discussed in the Report on Activities for FY 2016, retail investors should be wary of brokers and advisers with misconduct on their records, or who work for firms with significant numbers of employees with misconduct on their records.[159] Suggested steps that investors can take to learn more about brokers or firms include the following:

- Reviewing both BrokerCheck and IAPD for disclosure events, employment history, and other potential red flags before deciding whether to invest; and
- Contacting their state securities regulator for information related to a specific broker, adviser, firm, or branch office of a firm.[160]

Since there is a known gap in CRD/BrokerCheck reporting of settlements against broker-dealer firms of $25,000 or less, retail investors should take caution before investing with a firm if the investor is aware of brokers at the firm who have settlement disclosure events on their BrokerCheck reports, but the firm's BrokerCheck report is missing this detail.[161] This is especially true given that FINRA arbitrators award expungement in roughly nine

out of every ten cases,[162] meaning that when a broker seeks expungement of a disclosure event, it is removed from BrokerCheck forever.

FINRA Dispute Resolution

As discussed in prior reports, the Ombudsman regularly monitors FINRA's activities, especially FINRA's dispute resolution forum, because of its direct impact on retail investors. In the period since the Report on Objectives for FY 2018, the FINRA Board has authorized FINRA to propose amendments to FINRA's Membership Application Program relating to broker misconduct, a topic that the Ombudsman discussed in the Report on Objectives for FY 2016. In addition, updates on expungement and explained decisions, which are topics that we have also discussed in past reports, are included below.[163]

Broker Misconduct

FINRA has provided an outline of some of the steps the Board has authorized to address broker misconduct and the impacts on the firms that hire these brokers,[164] but the full scope of FINRA's response to this issue is still unfolding. On June 12, 2017, Robert Cook, President and CEO of FINRA, gave a speech entitled "Protecting Investors from Bad Actors," and in that speech stated that the Board authorized the following actions:

> [A] proposed rule amendment to require brokerage firms to adopt heightened supervisory procedures for individuals while a disciplinary case is pending appeal. We also intend to reinforce and clarify firms' existing supervisory obligations concerning brokers they employ that have disciplinary histories. Among other measures, the proposals would also expand sanction guidelines to enable adjudicators to consider more severe sanctions when an individual's disciplinary history includes additional types of past misconduct. They also would allow hearing panels, in appropriate circumstances, to restrict the activities of firms and individuals while a disciplinary matter is on appeal.[165]

In addition, the FINRA Board authorized FINRA to amend its rules to require a firm to seek a materiality consultation with FINRA if a broker with "certain specified risk events" seeks to become an owner, control person or principal of the firm, or if the firm seeks to hire a broker with "certain specified risk events" on the broker's record.[166] If these conditions are met, the firm would not be eligible for the safe harbor for business expansions.

As amendments to FINRA's membership program, these proposed changes potentially place greater scrutiny and restrictions on firms that hire brokers with misconduct on their records, and on the brokers themselves. These are positive steps, but we encourage FINRA to examine and answer calls for reform to FINRA's expungement process, which permanently removes data from CRD/BrokerCheck, and take other steps that may provide more meaningful investor protection.

Expungement

As an issue that we discussed in the Reports on Objectives for FY 2017 and FY 2016, expungement of arbitration claims from CRD/BrokerCheck is a topic that the Ombudsman monitors because it presents a risk to investor protection. In July 2017, a trade publication for the brokerage industry reported that the year-to-date decisions of stand-alone expungement cases were up 226 percent from the same time period in 2016.[167] As opposed to expungements sought at the same time a case is arbitrated or settled, stand-alone expungements are filed separately from the original complaints, often long after the incident has been reported in CRD/BrokerCheck.[168] The author interviewed several attorneys involved in arbitration matters who hypothesized reasons why this trend may be occurring, including:

- FINRA is marketing BrokerCheck more which, in turn, is making investors more savvy;
- FINRA's relatively new requirement that firms provide a link to BrokerCheck with any online broker profile;

- Fee-based accounts must have a BrokerCheck report included with the account paperwork;
- Before 2010, complaints would be displayed for only two years, but now they stay on BrokerCheck forever;
- The "accumulation of meritless complaints" experienced by brokers; and
- Word "has gotten out that expungements are not hard to get," with a win rate of 90 percent, despite an allegedly narrow standard that should preclude such a high win rate.[169]

In addition, the article notes that in most cases, neither firms nor investors object to expungement requests.[170] This is not surprising, as investors and firms have little incentive to devote time and resources to oppose an expungement in a matter that was resolved in the past. FINRA also does not challenge expungement requests in its dispute resolution forum—even those that it may object to—and states are precluded from doing so. As a result, there are no voices arguing against expungement, including in cases in which expungement is not appropriate. In our view, this undermines the very purpose of BrokerCheck, which is to give information to investors about past complaints and disciplinary matters so they can make fully informed decisions about who to entrust with their retirement savings and other assets.

On September 25, 2017, FINRA responded to the stand-alone expungement statistics by updating its Expanded Expungement Guidance web page for arbitrators and arbitration parties.[171] On this web page, FINRA informs arbitrators about the importance of alerting investors regarding the expungement request.[172] This is good information; however, FINRA should consider taking a closer look as to why expungement-only cases have blossomed in the last year. FINRA also may wish to inform its arbitrators that stand-alone expungements are on the rise and that the Rule 2080 factors must be present for expungement to be granted. Finally, if FINRA finds that arbitrators are inappropriately granting expungement, it may wish to consider providing more effective arbitrator education on expungement or taking appropriate actions against arbitrators who do not follow FINRA's standards and rules.

Explained Decisions

As we discussed in the Report on Objectives for FY 2018, FINRA disregarded the FINRA Dispute Resolution Task Force's recommendations and did not offer a default explained decision.[173] Instead, FINRA requires an arbitration panel to include an explanation with its award only after the disputing parties opt-in and make a joint request for an explained decision. According to law professor Jill Gross, getting the parties to agree to an explained decision has been nearly impossible, with perhaps fewer than ten joint requests since FINRA implemented its current rule in 2009.[174] Ironically, in its response to comments on its current rule, which has proven effective at quashing explained decisions, FINRA asserted that the rule would "increase investor confidence in the fairness of the arbitration process."[175] Retail investor comments to the Ombudsman suggest otherwise.

Although some observers are concerned that explained decisions would result in increased motions to vacate, FINRA has clarified a maxim of its arbitrations: they are final, binding, and awards are rarely vacated.[176] In June 2017, one arbitrator in a three-person arbitration panel wrote an explained decision in *Tullis v. Ameriprise Fin. Serv.* with the intent to challenge this maxim.[177] Specifically, the explained decision was not requested by the parties, the arbitrator was not compensated for writing the explanation, the other two arbitrators did not join the decision, and most notably, the arbitrator wrote

the explanation because he hoped the case would establish precedent.[178] He states:

> While the parties did not request a reasoned decision, this Arbitrator considers that most decisions deserve to be explained in order to create a body of precedent unavailable now that most courts no longer have jurisdiction over most securities litigation. Hopefully, this decision may help contribute to that body of law.

The issue he sought to clarify was the duty of care that the broker owed to his clients. Specifically, the broker, who had a misleading "financial advisor" title, was subject to a fiduciary standard under state law, rather than the suitability standard generally applied to brokers, because the broker exercised discretion when he invested in specific securities without getting advance approval from his clients.[179] Moreover, the clients "never understood the consequences of this strategy [in particular, the potential adverse impact of financial leverage on their investment returns] and why it didn't serve their best interests."[180]

Professor Jill Gross opined that she has "no doubt that the law regarding broker-dealers' obligations to customers is widely misunderstood because of the dearth of precedent in an industry where pre-dispute arbitration clauses are omnipresent."[181] In response to Professor Gross' blog post, Phil Cottone, a member of the FINRA Dispute Resolution Task Force, stated that in his view and that of the Mediation Subcommittee of the Task Force that he chaired, "the increased use of explained awards would do much to increase transparency in the FINRA dispute resolution process."[182] The Ombudsman agrees with both of these views. So long as FINRA refuses to permit investors to unilaterally seek an explained decision[183] or at least require a party to opt-out of a default explained decision, there will continue to be virtually no decisions rendered and, consequently, less transparency in FINRA's dispute resolution process. There will also be less guidance to investors and their advocates in understanding the issues that arbitrators consider salient in cases.

OUTREACH ACTIVITIES

During the Reporting Period, the Ombudsman continued to seek out opportunities to increase awareness and elevate the visibility of the service we provide to retail investors. These activities included participation in the following ombudsman and securities industry events, professional conferences, and outreach efforts:

- Coalition of Federal Ombudsmen Annual Conference;
- American Bar Association Section of Dispute Resolution—Ombuds Subcommittee;
- International Ombudsman Association Annual Conference;
- Securities Arbitration Clinics' 2017 Roundtable;
- Panelist, "Maintaining a Commitment to Public Service throughout Your Career," Fordham University School of Law;
- Panelist, "Changing the View from the Top," Bloomberg L.P. and the Women's Community at Bloomberg;
- Northeast Ombudsmen Quarterly Meeting;
- Luncheon keynote speaker, 40th Annual Southwest Securities Conference;
- Featured speaker, Yale Law School Chirelstein Colloquium on Contemporary Issues in Law and Business;
- Corporate Counsel Women of Color Annual Conference; and
- In-person visits with twelve of the existing sixteen U.S. law school securities arbitration and investor advocacy clinics.

Law School Clinic Outreach Program

As of the end of FY 2017, sixteen law schools across the country run securities arbitration and investor advocacy clinics that provide legal representation to retail investors who are unable to hire legal counsel to handle their claims.[184] Many of these clinics also conduct outreach to inform their local communities about financial products, saving and investing wisely, and avoiding scams—particularly those aimed at specific communities such as immigrants, veterans, and senior investors.

During the Reporting Period, the Ombudsman, working directly with the Investor Advocate and other staff, continued to develop an outreach program to law schools with investor protection, securities law, and investor-focused clinics (collectively, the Clinics). As discussed in the Ombudsman's Report in the Report on Objectives for FY 2018, the Law School Clinic Outreach Program (LSCOP or the Program) is designed to align with our Office's statutory mandate and core functions, and to benefit law student clinic participants and the investing public.[185] The Program offers clinic professors and students the opportunity to hear directly from and work with Office staff through on-site visits and collaborative policy assignments and discussions, and creates an additional path for retail investors and law students to provide the Ombudsman and the Investor Advocate with direct feedback and formal comments on SEC rulemakings and policy. Currently, eight clinics are located in New York State, two are in California, and the District of Columbia, Georgia, Illinois, Florida, New Jersey and Pennsylvania each have one clinic.[186]

During the first quarter of FY 2017, the Ombudsman introduced the pilot phase of the Program, where the Ombudsman and a senior counsel made in-person visits to two participating law school clinics and spent time with the clinic faculty and students in the classroom setting.[187] The purpose of these visits was to exchange ideas, engage in meaningful policy discussions, and receive feedback and recommendations on policies and issues directly impacting retail investors. Following the classroom discussions, one clinic submitted a detailed letter outlining potential ways the Office and the clinic could work together on policy matters moving forward, identifying problematic products and practices facing their client base, and providing suggestions for how the Office and the Commission may better advocate for retail investors. Thereafter, in lieu of a visit to the SEC, the Office arranged a virtual conference with one clinic, during which our Office engaged in an in-depth, interactive discussion with the clinic faculty and students.

By the second half of FY 2017, the Ombudsman concluded the pilot phase of the outreach program and began a broad roll-out of LSCOP to all existing clinics.[188] The Ombudsman and a senior counsel had the privilege of attending the Securities Arbitration Clinics' 2017 Roundtable held at Fordham University School of Law in New York (Roundtable).[189] At the Roundtable, we had the opportunity to meet and engage with clinic directors from at least six different law schools. The Ombudsman and senior counsel used this unique opportunity to introduce the Program and engage with clinic faculty generally about problematic products and practices affecting retail investors.

Shortly after the Roundtable, the Ombudsman and Office staff conducted on-site visits to each law school clinic. To date, we have visited twelve of the existing sixteen Clinics.[190] These in-person meetings provided the Ombudsman and a senior counsel the opportunity to inform clinic directors, and in some instances clinic students, of the work of our Office, hear more about each clinic's work, and to solicit perspectives and policy feedback on retail investor concerns. During many of the in-person meetings, clinic directors were excited to share with us the value of services rendered and notable settlements reached on behalf of their clients.[191] The in-person meetings also provided an opportunity for our Office and the clinic directors to discuss LSCOP and how the clinic and the Office may work together moving forward.

Throughout the fourth quarter of FY 2017, the Office further built upon the success of the pilot phase by working directly with clinic faculty at each law school to develop an individualized framework focused on fostering a collaborative and mutually beneficial relationship. For example, one law school expressed an interest in engaging in a long-term policy focused project. To facilitate this, the Office identified three policy issues from its FY 2018 policy agenda[192] for the clinic to consider as an area of focus. The clinic was also free to consider and select an area not identified by the Office but deemed important to their clients. Other clinics analyzed their cases and identified for the Office potentially problematic products and practices that affected their clients throughout the Reporting Period.[193]

Through the in-person meetings, the Office also gained a better understanding of the retail investor populations the Clinics serve, the obstacles the Clinics face, and the impressive work the Clinics do advocating for retail investors despite these obstacles. Clinic clients typically have "small" claims—losses at or below $100,000.[194] However, each clinic's criteria for who they will represent is typically published on a clinic's website.[195] The clinic's eligibility guidelines are designed "to offer free legal services to clients who have suffered losses from disputed transactions that have had a significant impact on their financial condition and cannot afford or do not have access to private representation," or who are unable to obtain representation due to the size of their claim.[196]

Client eligibility is also driven, in part, by local court rules, student practice rules, and ethical rules.[197] As a result of these rules, clients may need to be residents of the state in which the clinic operates, which limits a clinic's ability to assist clients outside of its jurisdiction.[198] These rules effectively create representational gaps, particularly in middle America where no clinics are located.[199]

As another aspect of client eligibility, clinics may also give preference to senior citizens.[200] For example, the Pittsburgh region is considered to have one of the highest aging populations in the country and, as a result, has many senior citizen clients.[201] Senior citizens and retirees, however, are not a clinic's only clients. Clinic clients also include regular, middle-class Americans such as hairdressers, mail carriers, welders, schoolteachers, librarians, first-time investors, and millennials.[202]

Because of the populations clinics serve, clinics may be among the first to identify trends impacting retail investors with small claims.[203] Clinic directors were eager to share some of the trends they have identified in their cases, which include: unregistered investment advisers, suitability, churning, REITs, option straddles, variable annuities, private placements, junk bonds and online mobile trading applications.[204] Clinic directors also welcomed the opportunity to share some of the difficulties they encounter in running a securities arbitration clinic. In addition to the challenges posed by state practice

rules, the most common challenge identified is maintaining ongoing funding.[205] Historically, many securities arbitration clinics began with, or at some time received, financial support from the FINRA Investor Education Foundation or state securities regulators.[206] However, in recent years, external funding has dwindled, and clinics are forced to rely on endowments or funding from their respective law schools.[207] A clinic closing due to lack of funding creates new challenges for the remaining clinics and leaves investors with fewer places to turn for assistance.[208] For example, one clinic's waitlist is so long they are unable to add any new clients or take any new cases.[209]

The conversations with clinic directors and students during the Reporting Period also highlighted the varied and impressive work of each clinic. Specifically, the Ombudsman and a senior counsel learned more about the unique way in which each clinic approaches investor advocacy and outreach. For example, clinics may choose to write formal comment letters on pending policy and regulatory issues,[210] or write and publish scholarly articles related to securities arbitration.[211] Other clinics may focus their efforts on investor outreach by hosting in-person information sessions at local libraries, senior centers, or high schools.[212] Some clinics utilize technology and maintain investor education blogs or create educational videos describing key investor concepts.[213] Clinic outreach efforts are also developed to engage a wide range of vulnerable groups including members of the military, seniors, young professionals, and faith communities.[214] In short, clinics provide unique and innovative ways to reach and educate retail investors and fill a gap by representing underserved populations.

As previously noted, one of the goals of LSCOP is to create the opportunity for clinic students and faculty to provide the Investor Advocate and Ombudsman with their perspectives, including ideas and suggestions on how our Office and the SEC may better advocate for and assist retail investors. During the meetings, clinics consistently identified the SEC website, www.sec.gov, as an area ripe for improvement. Specifically, clinics highlighted navigation, searchability, and the order in which the SEC web page populates in web search engines such as Bing and Google as problematic for some retail investors.[215] Improving these aspects of the SEC website would make it more user-friendly and better able to disseminate important information available on the website, particularly to retail investors who may be at an informational disadvantage.[216] In the spring of 2017, the Commission introduced a new, revamped www.sec.gov. The Ombudsman will continue to monitor Commission improvements to the SEC website and welcome feedback from clinics on how to better improve the website. Additional clinic suggestions for improved advocacy included collaborative working sessions, conversations on policy initiatives, and Office observation of clinic outreach efforts.

OUTLOOK FOR FISCAL YEAR 2018

During FY 2018, the availability of the OMMS Form will offer retail investors a streamlined process to submit their questions and complaints to the Ombudsman. The OMMS Form should assist and encourage retail investors to not only submit their questions and complaints, but also their ideas and suggestions on ways the agency may better meet their needs. The OMMS Form and related OMMS functionality should prove to be a highly effective method for fielding investor questions and complaints, reviewing related documents, and maintaining important information. In addition, the transition from manual recordkeeping systems to the OMMS platform will create significant efficiencies, which will allow the Ombudsman to better track and

analyze matter and contact data while continuing to offer personalized, thoughtful service to retail investors.

During FY 2018, we also look forward to hosting law school clinic faculty and students at SEC Headquarters in meetings with SEC Commissioners, senior officers, and a wider agency audience to discuss their efforts on behalf of retail investors and the potential impact of SEC policy considerations on their clients. The Ombudsman will also continue to make in-person visits to the law school clinics and engage with clinic faculty and students in the classroom setting and at select outreach events. As discussed above, many law school clinics conduct investor outreach programs, and the Ombudsman will seek opportunities to observe and support these programs throughout the upcoming fiscal year. The Ombudsman will also continue to facilitate conversations and working sessions with the clinics to further ground our Office to the voices and needs of retail investors.

As in prior fiscal years, the Ombudsman will continue to reallocate staff resources and responsibilities as necessary to accommodate additional work volume and outreach efforts. These efforts include investor-focused speaking engagements, expanded use of social and traditional media to share information with the investing public and interested persons, and more involvement in ombudsmen and securities industry conferences and events. In addition, the Ombudsman will continue to examine the various ways the SEC communicates with retail investors and to identify areas for improvement. Through ongoing work with the law school clinics, and regular discussions with ombudsmen and colleagues across the federal government, the Ombudsman hopes to generate innovative and impactful ways to communicate the work of the agency to retail investors. This is an ongoing issue of importance to the Ombudsman because it directly affects the agency's ability to understand and respond to the needs and concerns of retail investors. Improved communications will enable us to give retail investors information about how the SEC protects investors in a meaningful and understandable way, and will encourage retail investors to provide us with feedback on how we can fulfill our mission to protect investors even better. I look forward to providing updates on our progress in these areas in our next report.

Tracey L. McNeil
Ombudsman

SUMMARY OF IAC RECOMMENDATIONS AND SEC RESPONSES

Congress established the Investor Advisory Committee to advise and consult with the Commission on regulatory priorities, initiatives to protect investor interests, initiatives to promote investor confidence and the integrity of the securities marketplace, and other issues.[217] The Committee is composed of the Investor Advocate, a representative of state securities commissions, a representative of the interests of senior citizens, and not fewer than 10 or more than 20 members appointed by the Commission to represent the interests of various types of individual and institutional investors.[218]

Exchange Act Section 39 authorizes the Committee to submit findings and recommendations for review and consideration by the Commission.[219] The statute also requires the SEC "promptly" to issue a public statement assessing each finding or recommendation of the Committee and disclosing the action, if any, the Commission intends to take with respect to the finding or recommendation.[220] While the Commission must respond to the IAC's recommendations, it is under no obligation to agree with or act upon the recommendations.[221] In each of its reports to Congress, including this one, the Office of the Investor Advocate summarizes the IAC recommendations and the SEC's responses to them.[222]

In the past, the Commission has taken action that was responsive to the IAC's recommendations related to crowdfunding,[223] a shortened trade settlement cycle,[224] and a tick size pilot program.[225] This report covers all other recommendations the IAC has made since its inception. For more detailed summaries, please see our earlier reports to Congress.

The Commission may be pursuing initiatives that are responsive to IAC recommendations but have not yet been made public. Commission staff—including the staff of this Office—are prohibited from disclosing nonpublic information.[226] Therefore, any such initiatives are not reflected in this Report.

Topic	Date	IAC Recommendation	SEC Response
Enhance Information for Bond Market Investors[227]	June 7, 2016	Provide post-trade price transparency, including markups or markdowns, in municipal, corporate and agency bonds and, over the longer term, provide pre-trade price transparency as well.	On November 17, 2016, the SEC approved rules requiring disclosure of mark-ups and markdowns on most municipal and corporate bond transactions, calculated from the bond's prevailing market price.[228] FINRA and MSRB have announced that the new disclosure requirements will become effective on May 14, 2018.[229] On November 9, 2017, the SEC announced the formation and first members of its Fixed Income Market Structure Advisory Committee.[230]
Mutual Fund Cost Disclosure[231]	April 14, 2016	Enhance investors' understanding of mutual fund costs and the impact of those costs on total accumulations over time. Provide standardized disclosure of actual dollar costs on customer account statements.	Commission staff has begun investor testing to explore ways to improve mutual fund cost disclosures.
Empowering Elders and Other Investors: Background Checks[232]	July 16, 2015	Develop a disciplinary database to allow easy searches to determine whether a person or firm has been sanctioned for securities law violations. Reduce the complexity of background searches.	In June 2017, in his first public appearance before the IAC, Chairman Clayton announced efforts were underway to simplify and enhance the tools that the SEC makes available to help investors conduct background searches on their investment professionals.[233]
Accredited Investor Definition[234]	Oct. 9, 2014	Consider enabling individuals to qualify as accredited investors based on their financial sophistication.	On December 18, 2015, the SEC issued a staff report that discussed, among other alternatives, using sophistication as an element of the accredited investor definition.[235]
Impartiality in the Disclosure of Preliminary Voting Results[236]	Oct. 9, 2014	Ensure impartiality in the disclosure of preliminary voting results.	No response.

Topic	Date	IAC Recommendation	SEC Response
Legislation to Fund Investment Adviser Examinations[237]	Nov. 22, 2013	Ask Congress to authorize user fees on SEC-registered investment advisers to provide a scalable source of funding for more frequent compliance examinations of advisers.	Though it has not requested authorization for user fees, the SEC for several years has made a priority of expanding coverage of investment adviser exams. In 2016, the SEC reassigned approximately 100 OCIE staff to the investment adviser examination unit.[238] The SEC's FY 2018 Budget Request projects an increase of an estimated 100 additional Investment Adviser Examinations compared to the previous FY.[239]
Broker-Dealer Fiduciary Duty[240]	Nov. 22, 2013	Establish a fiduciary duty for broker-dealers when they provide personalized investment advice to retail investors.	On June 1, 2017, Chairman Clayton issued a statement seeking public input on standards of conduct for investment advisers and broker-dealers.[241] In October 2017, he testified to Congress that the Commission had been reviewing the topic, and he stated his goal to "properly tailor an approach or package of approaches that we believe will best address the issues identified."[242]
Universal Proxy Ballots[243]	July 25, 2013	Allow universal ballots in connection with short slate director nominations.	On October 26, 2016, the SEC proposed amendments to the proxy rules to require parties in a contested election to use universal proxy cards that would include the names of all board of director nominees. The comment period closed on January 9, 2017.[244]
Data Tagging[245]	July 25, 2013	Promote the use of machine-readable data tagging formats for data filed with the SEC.	The SEC addresses data tagging, as appropriate, in its rulemaking. The latest example appears in the FAST Act Modernization and Simplification of Regulation S-K, proposed on Oct. 11, 2017.[246] Another rule proposed earlier in the year would require the filing of financial statement data using Inline XBRL.[247]

Topic	Date	IAC Recommendation	SEC Response
Target Date Mutual Funds[248]	April 11, 2013	Revise an SEC proposed rule on target date retirement fund names and marketing, and develop a glide path illustration based on a measure of fund risk.	On April 3, 2014, the Commission reopened the comment period on the proposed rule in order to seek public comment on the IAC's recommendations to adopt a risk-based glide path illustration and the methodology to be used for measuring risk.[249] The comment period closed on June 9, 2014.
General Solicitation and Advertising[250]	Oct. 12, 2012	Strengthen investor protections and enhance regulators' ability to police the private placement market.	The SEC adopted final general solicitation and advertising rules on July 10, 2013, and also proposed a related rule to enhance its ability to monitor the market following lifting of the ban.[251] That proposal, which is still pending, relates to most of the IAC recommendations.

END NOTES

1 Exchange Act § 4(g)(6), 15 U.S.C. § 78d(g)(6).

2 Exchange Act § 4(g)(6)(A)(i), 15 U.S.C. § 78d(g)(6)(A)(i).

3 *See* SEC, Office of the Investor Advocate, *Report on Objectives, Fiscal Year 2017* (June 30, 2016) [hereinafter *Report on Objectives, Fiscal Year 2017*], https://www.sec.gov/advocate/reportspubs/annual-reports/sec-office-investor-advocate-report-on-objectives-fy2017.pdf.

4 *See* SEC, Office of the Investor Advocate, *Report on Objectives, Fiscal Year 2018* (June 29, 2017) [hereinafter *Report on Objectives, Fiscal Year 2018*], https://www.sec.gov/advocate/reportspubs/annual-reports/sec-office-investor-advocate-report-on-objectives-fy2018.pdf.

5 Exchange Act § 4(g)(6)(B)(i), 15 U.S.C. § 78d(g)(6)(B)(i).

6 *Id.*

7 *Report on Objectives, Fiscal Year 2017*, *supra* note 3.

8 The Office of the Investor Advocate was established pursuant to Section 915 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act). On February 24, 2014, SEC Chair Mary Jo White appointed Rick A. Fleming as the Commission's first Investor Advocate.

9 Fixing America's Surface Transportation Act, Pub. L. No. 114-94, § 72003, 129 Stat. 1312 (2015).

10 *Report on Modernization and Simplification of Regulation S-K* (Nov. 23, 2016) [hereinafter FAST Act Report], available at https://www.sec.gov/reportspubs/sec-fast-act-report-2016.pdf. On October 11, 2017, after the Reporting Period, the Commission proposed rule and form amendments implementing the Fast Act Report's recommendations. *See* FAST Act Modernization and Simplification of Regulation S-K, Securities Act Release No. 10425, 82 Fed. Reg. 50,988 (Nov. 2, 2017).

11 *See* Inline XBRL Filing of Tagged Data, Securities Act Release No. 10323, 82 Fed. Reg. 14,282 (Mar. 17, 2017).

12 *See* Exhibit Hyperlinks and HTML Format, Securities Act Release No. 10322, 82 Fed. Reg. 14,130 (Mar. 17, 2017).

13 *See* Request for Comment on Possible Changes to Industry Guide 3 (Statistical Disclosure by Bank Holding Companies), Securities Act Release No. 10321, 82 Fed. Reg. 12,757 (Mar. 7, 2017).

14 *See* Interactive Data to Improve Financial Reporting, Securities Act Release No. 9002, 74 Fed. Reg. 6,776 (Feb. 10, 2009).

15 *See* Rick A. Fleming, Investor Advocate, SEC, Remarks Before XBRL US Investor Forum 2016: Finding Value with Smart Data: *Improving Disclosure with Smart Data* (Oct. 24, 2016), https://www.sec.gov/news/speech/improving-disclosure-with-smart-data.html.

16 *See* FAST Act Report, *supra* note 10, at 21.

17 *See* Scott M. Straub & Matt Rumsey, Data Foundation, *Who Is Who and What Is What: The Need for Universal Entity Identification in the United States* (published Sept. 2017), available at http://www.datafoundation.org/lei-report-2017/.

18 *See* Rick A. Fleming, Investor Advocate, SEC, Remarks Before the NASAA Corporation Finance Training: *Moving Forward with the Commission's Disclosure Effectiveness Initiative* (Nov. 19, 2016), https://www.sec.gov/news/speech/moving-forward-with-the-disclosure-effectiveness-initiative.html.

19 *See* Rick A. Fleming, Investor Advocate, SEC, Remarks Before PLI's SEC Speaks in 2017: *Improving Investor Engagement* (Feb. 24, 2017), https://www.sec.gov/news/speech/fleming-improving-investor-engagement.html.

20 *See* Rick A. Fleming, Investor Advocate, SEC, Remarks Before the NASAA 2017 Public Policy Conference: *Enhancing the Demand for IPOs* (May 9, 2017), https://www.sec.gov/news/speech/fleming-enhancing-demand-ipos-050917.

21 *See* Regulation of NMS Stock Alternative Trading Systems, Exchange Act Release No. 76474, 80 Fed. Reg. 80,997, 81,001 (proposed Dec. 28, 2015).

22 *See* Comment Letter, Rick A. Fleming, Investor Advocate, SEC, RE: File No. S7-23-15, Regulation of NMS Stock Alternative Trading Systems (Sept. 9, 2016), https://www.sec.gov/about/offices/investorad/investor-advocate-comment-letter-regulation-ats.pdf [hereinafter Fleming, Letter on Regulation of NMS Stock ATS].

23 *See id.*

24 Regulation NMS, Exchange Act Release No. 51808, 70 Fed. Reg. 37,495 (adopted June 29, 2005).

25 *See* Disclosure of Order Handling Information, Exchange Act Release No. 78309, 81 Fed. Reg. 49,431 (proposed July 27, 2016).

26 *See id.*

27 *See* Exchange Act § 4(g)(4), 15 U.S.C. § 78d(g)(4).

28 *See* Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Provide a Process for an Expedited Proceeding and Adopt a Rule To Prohibit Disruptive Quoting and Trading Activity, Exchange Act Release No. 76361, 81 Fed. Reg. 85,650 (published Nov. 24, 2015).

29 *See* Comment Letter, Rick A. Fleming, Investor Advocate, SEC, RE: File No. SR-BATS-2015-101, (Dec. 15, 2015), https://www.sec.gov/about/offices/investorad/comment-letter-bats-investor-advocate-121515.pdf.

30 *See* Bats EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Related To Amend Its Fee Schedule To Replace Current Inverted Pricing Model With Low Fee Model, Exchange Act Release No. 80976, 82 Fed. Reg. 28,920 (published June 26, 2017).

31 *See* NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Change To Adopt Transaction Fees in Connection With the Exchange's Transition to a Fully-Automated Cash Equities Market, Exchange Act Release No. 81228, 82 Fed. Reg. 36,012 (published Aug. 2, 2017).

32 *See* Joint Industry Plan; Order Approving the National Market System Plan Governing the Consolidated Audit Trail, Exchange Act Release No. 79318 (Nov. 15, 2016), https://www.sec.gov/rules/sro/nms/2016/34-79318.pdf.

33 *See* Self-Regulatory Organizations; NYSE MKT LLC; Order Approving Proposed Rule Change Amending Rules 7.29E and 1.1E To Provide for a Delay Mechanism, Exchange Act Release No. 80700, 82 Fed. Reg. 23,381 (published May 22, 2017).

34 *See* Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Order Approving a Proposed Rule Change, as Modified by Amendment No. 1, To Adopt a New Extended Life Priority Order Attribute Under Rule 4703, and To Make Related Changes to Rules 4702, 4752, 4753, 4754, and 4757, Exchange Act Release No. 81097, 82 Fed. Reg. 32,386 (published July 13, 2017).

35 *See* Joint Industry Plans; Order Approving the National Market System Plan to Implement a Tick Size Pilot Program by BATS Exchange, Inc., BATS Y-Exchange, Inc., Chicago Stock Exchange, Inc., EDGA Exchange, Inc., EDGX Exchange, Inc., Financial Industry Regulatory Authority, Inc., NASDAQ OMX BX, Inc., NASDAQ OMX PHLX LLC, The Nasdaq Stock Market LLC, New York Stock Exchange LLC, NYSE MKT LLC, and NYSE Arca, Inc., as Modified by the Commission, for a Two-Year Period, Exchange Act Release No. 74892, 80 Fed. Reg. 27,513 (published May 13, 2015).

36 *See* Exemption Under Rule 608(e) of Regulation NMS from a Certain Provision of the Plan to Implement a Tick Size Pilot Program (Sep. 13, 2016), https://www.sec.gov/divisions/marketreg/mr-noaction/2016/exemption-608e-tick-size-pilot-091316.pdf.

37 *See* SEC, Press Release, SEC Announces Members of New Equity Market Structure Advisory Committee, 2015-5 (Jan. 13, 2015), http://www.sec.gov/news/pressrelease/2015-5.html; *see also* Equity Market Structure Advisory Committee website, available at https://www.sec.gov/spotlight/equity-market-structure-advisory-committee.shtml (last visited Oct. 1, 2016).

38 *See* SEC, EMSAC, Recommendation for an Access Fee Pilot (July 8, 2016), https://www.sec.gov/spotlight/emsac/recommendation-access-fee-pilot.pdf.

39 The Office of the Investor Advocate considers a proposed rule or rule amendment with comment periods expiring between October 1, 2016 and September 30, 2017, to be included in its FY 2017 rulemaking review. In FY 2017, twenty-four proposed rule or rule amendments have been closed and one proposal remains open, action pending.

40 *See* FINRA, Regulatory Notice 17-24, Pricing Disclosure in the Fixed Income Markets (July 2017), http://www.finra.org/sites/default/files/notice_doc_file_ref/Regulatory-Notice-17-24.pdf; MSRB, Regulatory Notice 2017-12, MSRB Provides Implementation Guidance on Confirmation Disclosure and Prevailing Market Price (July 12, 2017), http://www.msrb.org/~/media/Files/Regulatory-Notices/Announcements/2017-12.ashx?n=1; FINRA, Regulatory Notice 17-24, Pricing Disclosure in the Fixed Income Markets (July 2017), http://www.finra.org/sites/default/files/notice_doc_file_ref/Regulatory-Notice-17-24.pdf.

41 On November 14, 2014, FINRA and the MSRB released for comment two related proposals in FINRA Regulatory Notice 14-52 and MSRB Regulatory Notice 2014-20. The MSRB proposed requiring dealers to disclose the "price to the dealer in a 'reference transaction' and the differential between the price to the customer and the price to the dealer for same-day, retail-size principal transactions" in customer confirmations. Similarly, FINRA proposed requiring disclosure "where a firm executes a sell (buy) transaction of 'qualifying size' with a customer and executes a buy (sell) transaction as principal with one or multiple parties in the same security within the same trading day, where the size of the customer transactions would otherwise be satisfied by the size of one or more same-day principal transaction(s)." MSRB, Regulatory Notice 2014-20, Request for Comment on Draft Rule Amendments to Require Dealers to Provide Pricing Reference Information on Retail Customer Confirmations, at 1 (Nov. 17, 2014), http://www.msrb.org/~/media/Files/Regulatory-Notices/RFCs/2014-20.ashx?n=1; FINRA, Regulatory Notice 14-52, Pricing Disclosure in the Fixed Income Markets, at 3 (Nov. 17, 2014), http://www.finra.org/sites/default/files/notice_doc_file_ref/Notice_Regulatory_14-52.pdf.

42 For a summary of our comment letters, see SEC, Office of the Investor Advocate, *Report on Activities, Fiscal Year 2016* (Dec. 21, 2016), https://www.sec.gov/advocate/reportspubs/annual-reports/sec-investor-advocate-report-on-activities-2016.pdf.

43 *See* Comment Letter, Rick A. Fleming, Investor Advocate, SEC, *RE: MSRB Notice 2015-16, RE: FINRA Notice 15-36* (Dec. 11, 2015), https://www.sec.gov/about/offices/investorad/comment-letter-msrb-finra-investor-advocate-121115.pdf [hereinafter Comment Letter, *MSRB Notice 2015-16*].

44 Comment Letter, Rick A. Fleming, Investor Advocate, SEC, RE: Recommendation of the Investor Advocate, File Nos. SR-FINRA-2016-032; SR-MSRB-2016-12 at Appendix A, p. 9-10 (Nov. 7, 2016), https://www.sec.gov/comments/sr-finra-2016-032/finra2016032-10.pdf [hereinafter Recommendation of the Investor Advocate]. The proposed rule by FINRA also requires members to apply a look through where a member's transaction with its affiliate is not at arm's length. *Id.*

45 *See* Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of a Proposed Rule Change Relating to FINRA Rule 2232 (Customer Confirmations) to Require Members to Disclose Additional Pricing Information on Retail Customer Confirmations Relating to Transactions in Fixed Income Securities,

Exchange Act Release No. 78573, 81 Fed. Reg. 55,500 (Aug. 19, 2016), https://www.gpo.gov/fdsys/pkg/FR-2016-08-19/pdf/2016-19773.pdf; Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing of a Proposed Rule Change to MSRB Rules G-15 and G-30 to Require Disclosure of Mark-Ups and Mark-Downs to Retail Customers on Certain Principal Transactions and to Provide Guidance on Prevailing Market Price, Exchange Act Release No. 78777, 81 Fed. Reg. 62,947 (Sept. 13, 2016), https://www.gpo.gov/fdsys/pkg/FR-2016-09-13/pdf/2016-21909.pdf.

46 *See* Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, Relating to FINRA Rule 2232 (Customer Confirmations) to Require Members to Disclose Additional Pricing Information on Retail Customer Confirmations Relating to Transactions in Certain Fixed Income Securities, Exchange Act Release No 79346, 81 Fed. Reg. 84,637 (Nov. 23, 2016) [hereinafter SRO: Notice of Filing of Amendment No. 1]; Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1, to MSRB Rules G-15 and G-30 to Require Disclosure of Mark-ups and Mark-Downs to Retail Customers on Certain Principal Transactions and to Provide Guidance on Prevailing Market Price, Exchange Act Release No. 79347, 81 Fed. Reg. 84,637 (Nov. 23, 2016).

47 FINRA, Regulatory Notice 17-08, Pricing Disclosure in Fixed Income Markets (Feb. 2017), http://www.finra.org/sites/default/files/notice_doc_file_ref/Regulatory-Notice-17-08.pdf; MSRB, Regulatory Notice 2016-28, New Disclosure Requirements Under MSRB Rule G-15 and Prevailing Market Price Guidance Pursuant to Rule G-30 Effective May 14, 2018 (Nov. 29, 2016), http://msrb.org/~/media/Files/Regulatory-Notices/Announcements/2016-28.ashx?n=1.

48 *See* FINRA, Regulatory Notice 17-24, Pricing Disclosure in the Fixed Income Markets (July 2017), http://www.finra.org/sites/default/files/notice_doc_file_ref/Regulatory-Notice-17-24.pdf; MSRB, Regulatory Notice 2017-12, MSRB Provides Implementation Guidance on Confirmation Disclosure and Prevailing Market Price (July 12, 2017), http://www.msrb.org/~/media/Files/Regulatory-Notices/Announcements/2017-12.ashx?n=1; *see also* FINRA, Fixed Income Confirmation Disclosure: Frequently Asked Questions (FAQ), http://www.finra.org/industry/faq-fixed-income-confirmation-disclosure-frequently-asked-questions-faq.

49 On April 7, 2016, the MSRB issued Regulatory Notice 2016-13 proposing changes to MSRB Rule G-15(f) on minimum denominations. MSRB, Regulatory Notice 2016-13, Request for Comment on Draft Amendments to MSRB Rule G-15(f) on Minimum Denominations (Apr. 7, 2016), http://www.msrb.org/~/media/Files/Regulatory-Notices/RFCs/2016-13.ashx?n=1. On September 27, 2016, the MSRB published Regulatory Notice 2016-23, Second Request for Comment on Draft Provisions on Minimum Denominations. MSRB, Regulatory Notice 2016-23, Second Request for Comment on Draft Provisions on Minimum Denomination (Sept. 27, 2016), http://msrb.org/~/media/Files/Regulatory-Notices/RFCs/2016-23.ashx?la=en. On January 24, 2017, the MSRB filed with the Commission a proposed rule change to create MSRB Rule G-49, on Transactions Below the Minimum Denomination of an Issue. Proposed Rule Change to Add New MSRB Rule G-49 on Transactions Below the Minimum Denomination of an issue, to the Rules of the MSRB, and to Rescind Paragraph (f), on Minimum Denominations from MSRB Rule G-15, Exchange Act Release No. 79978, 82 Fed. Reg. 10,143 (Feb. 9, 2017), https://www.gpo.gov/fdsys/pkg/FR-2017-02-09/pdf/2017-02737.pdf. However, after considering the comments filed with the Commission, the MSRB Board of Directors determined that it is "desirable to obtain more information and, if possible, greater consensus, regarding any proposed amendments," and the MSRB withdrew its Commission filing. MSRB, Press Release, Jennifer A Galloway, Chief Communications Officer, MSRB Holds Quarterly Board Meeting (May 1, 2017), http://msrb.org/News-and-Events/Press-Releases/2017/MSRB-Holds-Quarterly-Board-Meeting-April-2017.aspx; Notice of Withdrawal of a Proposed Rule Change to Add New MSRB Rule G-49, on Transactions Below Minimum Denomination of an Issue, to the Rules of the MSRB, and to Rescind Paragraph (f), on Minimum Denomination from MSRB Rule G-15, Exchange Act No. 80610, 82 Fed. Reg. 22,044 (May 11, 2017), https://www.gpo.gov/fdsys/pkg/FR-2017-05-11/pdf/2017-09526.pdf.

50 In March 2016, the MSRB sought comment on requiring municipal advisors to disclose the direct purchases and bank loans of their municipal entity clients or suggestions on other ways to make this information available. *See* MSRB, Regulatory Notice 2016-11, Request for Comment on a Concept Proposal to Improve Disclosure of Direct Purchases and Bank Loans (Mar. 28, 2016), http://www.msrb.org/~/media/Files/Regulatory-Notices/RFCs/2016-11.ashx?n=1. However, in light of the comments received by the MSRB, the Board decided not to pursue rulemaking. MSRB, Press Release, Jennifer A. Galloway, Chief Communications Officer, MSRB holds Quarterly Board Meeting (Aug. 1, 2016), http://www.msrb.org/News-and-Events/Press-Releases/2016/MSRB-Holds-Quarterly-Board-Meeting-July-2016.aspx. On March 1, 2017, the Commission published for comment proposed amendments to Exchange Act Rule 15c2-12. The Commission's proposed amendments would require a Participating Underwriter in an Offering to reasonably determine that an issuer or obligated person has undertaken a written agreement or contract to provide the MSRB notice of material financial obligations or events which reflect financial difficulties. SEC, Proposed Amendments to Exchange Act Rule 15c2-12, Exchange Act Release No. 80130, 82 Fed. Reg. 13,928, 13,937 (Mar. 15, 2017), https://www.gpo.gov/fdsys/pkg/FR-2017-03-15/pdf/2017-04323.pdf.

51 *Proposed Amendments to Statement of Financial Accounting Concepts No. 8, Conceptual Framework for Financial Reporting, Chapter 3: Qualitative Characteristics of Useful Financial Information*, FIN. ACCOUNTING STANDARDS BD., (Sept. 24, 2015), [hereinafter FASB, *Proposed Amendments to Statement of Financial Accounting Concepts No. 8, Chapter 3*] http://www.fasb.org/jsp/FASB/Document_C/DocumentPage?cid=1176166402450&acceptedDisclaimer=true; *Proposed Accounting Standards Update, Notes to Financial Statements (Topic 235): Assessing Whether Disclosures Are Material*, FIN. ACCOUNTING STANDARDS BD. (Sept. 24, 2015), http://www.fasb.org/jsp/FASB/Document_C/DocumentPage?cid=1176166402325&acceptedDisclaimer=true [hereinafter FASB, *Proposed Accounting Standards Update, Notes to Financial Statements (Topic 235)*]

52 FASB, *Proposed Amendments to Statement of Financial Accounting Concepts No. 8, Chapter 3*, *supra* note 51, at BC3.18B, 4.

53 SEC, Investor Advisory Committee, Comment Letter on Proposed Amendments to Statement of Financial Accounting Concepts & Notes to Financial Statements (Jan. 21, 2016), http://www.fasb.org/cs/BlobServer?blobkey=id&blobnocache=true&blobwhere=1175832725818&blobheader=application%2Fpdf&blobheadernam2=Content-Length&blobheadernam1=Content-Disposition&blobheadervalue2=661871&blobheadervalue1=filename%3DDISFR-C.ED.0051.SEC_INVESTOR_ADVISORY_COMMITTEE.pdf&blobcol=urldata&blobtable=MungoBlobs. The Investor Advocate is a member of the Investor Advisory Committee, but abstained on this vote.

54 Comment Letter, Rick A. Fleming, Investor Advocate, SEC, RE: File Reference No. 2015-300, Proposed Amendments by the Financial Accounting Standards Board (FASB) to Concepts Statement No. 8, Conceptual Framework for Financial Reporting, (July 11, 2017), http://www.fasb.org/cs/BlobServer?blobkey=id&blobnocache=true&blobwhere=1175835179218&blobheader=application%2Fpdf&blobheadernam2=Content-Length&blobheadernam1=Content-Disposition&blobheadervalue2=565918&blobheadervalue1=filename%3DDISFR-C.ED.0056.SEC_OFFICE_INVESTOR_ADVOCATE_RICK_A._FLEMING.pdf&blobcol=urldata&blobtable=MungoBlobs.

55 *Statement of Financial Accounting Concepts No. 2, Qualitative Characteristics of Accounting Information* (As Issued), FIN. ACCOUNTING STANDARDS BD. 29 (May 1980), http://www.fasb.org/jsp/FASB/Document_C/DocumentPage?cid=1218220132599&acceptedDisclaimer=true.

56 SEC Staff Accounting Bulletin No. 99, 64 Fed. Reg. 45,150 (Aug. 12, 1999).

57 Comment Letter, Rick A. Fleming, Investor Advocate, SEC, RE: PCAOB Rulemaking Docket Matter No. 034, The Auditor's Report on an Audit of Financial Statements When the Auditor Expresses an Unqualified Opinion, (Aug. 15, 2016), https://www.sec.gov/about/offices/investorad/comment-investor-advocate-pcaob-auditor-reports-8-15-2016.pdf [hereinafter Comment Letter, PCAOB Rulemaking Docket Matter No. 034].

58 The Auditor's Report on an Audit of Financial Statements When the Auditor Expresses an Unqualified Opinion and Related Amendments to PCAOB Standards, PCAOB Release No. 2017-001 (June 1, 2017), https://pcaobus.org/Rulemaking/Docket034/2017-001-auditors-report-final-rule.pdf.

59 Public Company Accounting Oversight Board; Order Granting Approval of Proposed Rules on the Auditor's Report on an Audit of Financial Statements When the Auditor Expresses and Unqualified Opinion, and Departures from Unqualified Opinions and Other Reporting Circumstances, and Related Amendments to Auditing Standards, Exchange Act Release No. 34-81916, 82 Fed. Reg. 49,886 (Oct. 27, 2017).

60 Comment Letter, PCAOB Rulemaking Docket Matter No. 034, *supra* note 57.

61 Stephen Deane, Investor Engagement Advisor, Office of the Investor Advocate, SEC, *The Rulemaking Process: Two Accounting and Auditing Mini-case Studies* (Aug. 22, 2017), https://www.sec.gov/news/speech/deane-speech-rulemaking-process.

62 *See* Universal Proxy, Exchange Act Release No. 79164, 81 Fed. Reg. 79,122 (published Nov. 10, 2016).

63 *See* Investment Company Institute, 2017 Investment Company Fact Book 8 (57th ed., 2017), available at http://www.icifactbook.org/deployedfiles/FactBook/Site%20Properties/pdf/2017/2017_factbook.pdf.

64 *See id.* at 6.

65 *See id.* at 30.

66 *See id.* at 26.

67 *See id.* at 58.

68 *See id.* at 100-106.

69 *See, e.g.*, John Waggoner, *Fidelity Investments Fires Another Salvo in the Fee Wars,* Investment News (July 31, 2017, 2:44 PM), http://www.investmentnews.com/article/20170731/FREE/170739990/fidelity-investments-fires-another-salvo-in-the-fee-wars (announcing Fidelity Investments' fee cuts to fourteen of its stock and bond index funds); Emily Laermer, *The Breakdown: Vanguard, BlackRock, Fido Lead Pack in Fund Fee Cuts,* Ignites (May 31, 2017) (noting that mutual fund fees have "dipped at the largest fund complexes since 2012"); Jackie Noblett, *Low-Fee Rivals Schwab, Vanguard Trim Fund Fees,* Ignites (May 30, 2017). *But cf.* Whitney Curry Wimbish, *In Era of Falling Expense Ratios, Some Continue to Rise,* Board iQ (July 12, 2016) (observing an increase in the expense ratios of several dozen equity funds that have suffered significant outflows).

70 *See* Morningstar Manager Research, Average Fund Feed Paid by Investors Continued to Decline in 2016 (May 23, 2017), at 3.

71 *Id.*

72 *Id.* at 13.

73 *Id.* at 5.

74 *Id.* at 5.

75 *Id.* at 3.

76 *See* Wimbish, supra *note* 69 (observing an increase in the expense ratios of several dozen equity funds that have suffered significant outflows).

77 *See* SEC, *Recommendation of the Investor Advisory Committee Regarding Mutual Fund Cost Disclosure* (Apr. 14, 2016), https://www.sec.gov/spotlight/investor-advisory-committee-2012/recommendation-mf-fee-disclosure-041916.pdf.

78 *See id.*

79 *See id.*

80 *See id.*

81 *See* Transcript of Michael S. Piwowar, Comm'r, SEC, Remarks at the Investor Advisory Committee Meeting (Apr. 14, 2016), at 17; *see also* Beagan Wilcox Volz, *SEC Investor Group Calls for Big-Fee Disclosure Changes*, Ignites (April 18, 2016), http://ignites.com/pc/1336673/152483.

82 Exchange Act § 4(g)(6)(B)(ii)(V), 15 U.S.C. § 78d(g)(6)(B)(ii)(V).

83 SEC, Office of Compliance Inspections and Examinations, *Examination Priorities for 2017* (Jan. 12, 2017), https://www.sec.gov/about/offices/ocie/national-examination-program-priorities-2017.pdf.

84 NASAA, *NASAA 2016-2017 Year In Review, Serving & Protecting Investors* (Sept. 2017), http://www.nasaa.org/newsroom/nasaa-annual-report/ [hereinafter NASAA, *Annual Report*].

85 NASAA, *NASAA Enforcement Report: 2017 Report Based on 2016 Data* (Sept. 2017), http://nasaa.cdn.s3.amazonaws.com/wp-content/uploads/2017/09/2017-Enforcement-Report-Based-on-2016-Data.pdf [hereinafter *NASAA Enforcement Report*].

86 NASAA, *Top Investor Threats*, http://www.nasaa.org/3752/top-investor-threats/ (last visited Oct. 3, 2017) [hereinafter NASAA, *Top Investor Threats*].

87 Letter from Lynnette Kelly, Exec. Dir., MSRB, to Rick A. Fleming, Investor Advocate, SEC, *RE: Response to SEC Request Highlighting Municipal Market Practices* (Oct. 17, 2017) (on file with the Office of the Investor Advocate, SEC).

88 On September 7, 2017, our Office sent email correspondence to securities and investor advocacy law school clinics inviting their input on potentially problematic products and practices facing their clients during FY 2017.

89 This list of problematic products identified by the SEC is based on staff analysis of the alerts and bulletins issued by the SEC's Office of Investor Education and Advocacy and the SEC's Office of Compliance Inspections and Examinations during FY 2017. *See* SEC, Office of Investor Education and Advocacy, Investor Alerts and Bulletins, https://www.sec.gov/investor/alerts (last visited Sept. 30, 2017); *see also* SEC, Office of Compliance Inspections and Examinations, Risk Alerts, https://www.sec.gov/ocie (last visited Sept. 30, 2017).

90 *See* NASAA, Investor Alerts & Tips, http://www.nasaa.org/category/investor-education/investor-alerts-tips/ (last visited Sept. 18, 2017); *see also* NASAA, *Annual Report, supra* note 84; *see also* NASAA, *Top Investor Threats*, *supra* note 86; *see also NASAA Enforcement Report*, *supra* note 85.

91 This list of problematic products is based on the alerts and bulletins issued by FINRA for investors during FY 2017.

92 Kelly, *supra* note 87.

93 This list of potentially problematic products and practices is based on discussions with law school clinic directors that we met with during FY 2017 as well as responses to OIAD's September 7, 2017, email correspondence that was sent to securities and investor advocacy law school clinics inviting their input on potentially problematic products and practices facing their clients during FY 2017. *See, e.g.*, Letter from Elizabeth Goldman, Clinical Professor of Law, Director, Securities Arbitration Clinic, Benjamin N. Cardozo School of Law, to Tracey McNeil, Ombudsman, SEC, *Cardozo School of Law Securities Arbitration Clinic Report on Potentially Problematic Products or Practices Concerning Involving Registered Broker-Dealers and Unregistered Securities in the United States Securities Markets* (Oct. 6, 2017) (on file with the Office of the Investor Advocate).

94 Typically, a municipal bond dealer places a retail client's bid-wanted out to the market and compiles the bids received to determine the winning bid. In "pennying" or as it may also be called, "last-look," the dealer, rather than execute a trade with the highest bidder, will nominally exceed the high bid to the client and buy the bond for the dealer's own trading account. The MSRB has expressed concern that it can be harmful to investors over the long-term if the practice discourages broad market participation in the bidding process and renders the market less efficient. *See* Kelly, *supra* note 87.

95 Filtering (or screening) is the practice where a dealer may use automated tools available on an alternate trading system to screen out bids and offers received from certain dealers or where a selling dealer may direct a broker's broker to limit the audience for a bid-wanted. According to the MSRB, policies and procedures should be in place to govern when and how to: reasonably use filters; periodically review any established filters; and consider lifting them upon request. *See* Kelly, *supra* note 87.

96 *Report on Activities, Fiscal Year 2016*, *supra* note 42, at 20.

97 SEC, Office of the Investor Advocate, *Report on Activities, Fiscal Year 2014* (Dec. 23, 2014), at 10, https://www.sec.gov/advocate/reportspubs/sec-investor-advocate-report-on-activities-2014.pdf [hereinafter *Report on Activities, Fiscal Year 2014*].

98 *Id.* at 8.

99 SEC, Office of the Investor Advocate, *Report on Activities, Fiscal Year 2015* (Dec. 23, 2015), at 16, https://www.sec.gov/advocate/reportspubs/annual-reports/sec-investor-advocate-report-on-activities-2015.pdf.

100 *Report on Activities, Fiscal Year 2014*, *supra* note 97, at 7.

101 SEC, "Investor Alert: Be Vigilant for Investment Scams Related to Hurricanes Harvey and Irma," Sept. 6, 2017, https://www.sec.gov/oiea/investor-alerts-and-bulletins/ia_harvey; FINRA, "FINRA Issues Alert Warning Investors of Stock Fraud Following Hurricane Harvey," Aug. 31, 2017, http://www.finra.org/newsroom/2017/finra-issues-alert-warning-investors-stock-fraud-following-hurricane-harvey; NASAA, "NASAA Cautions Investors to Watch for Scams in Wake of Hurricane Harvey," Aug. 30, 2017, http://www.nasaa.org/43156/nasaa-cautions-investors-watch-scams-wake-hurricane-harvey/.

102 *See infra* note 106.

103 MSRB, Rule G-15, Confirmation, Clearance, Settlement and Other Uniform Practice Requirements with Respect to Transactions with Customers, http://msrb.org/Rules-and-Interpretations/MSRB-Rules/General/Rule-G-15.aspx. MSRB Rules regarding best execution, suitability, and trade disclosure are still applicable and supplement the protections afforded by MSRB Rule G-15 with respect to minimum denominations. MSRB, Regulatory Notice 2016-13, Request for Comment on Draft Amendments to MSRB Rule G-15(f) on Minimum Denominations (Apr. 7, 2016), at 5, http://www.msrb.org/~/media/Files/Regulatory-Notices/RFCs/2016-13.ashx?n=1.

104 *See, e.g.*, SEC, Press Release, SEC Sanctions 13 Firms for Improper Sales of Puerto Rico Junk Bonds, 2014-246 (Nov. 3, 2014), https://www.sec.gov/news/press-release/2014-246.

105 *See* MSRB, Regulatory Notice 2016-13, Request for Comment on Draft Amendments to MSRB Rule G-15(f) on Minimum Denominations (Apr. 7, 2016), at n.6, https://www.sec.gov/rules/sro/msrb/2017/34-79978-ex2.pdf.

106 *See* MSRB, Regulatory Notice 2016-13, Request for Comment on Draft Amendments to MSRB Rule G-15(f) on Minimum Denominations (Apr. 7, 2016), at 6, http://www.msrb.org/~/media/Files/Regulatory-Notices/RFCs/2016-13.ashx?n=1.

107 *See* MSRB, Regulatory Notice 2016-13, Request for Comment on Draft Amendments to MSRB Rule G-15(f) on Minimum Denominations (Apr. 7, 2016), http://www.msrb.org/~/media/Files/Regulatory-Notices/RFCs/2016-13.ashx?n=1; MSRB, Regulatory Notice 2016-23, Second Request for Comment on Draft Provisions on Minimum Denomination (Sept. 27, 2016), http://msrb.org/~/media/Files/Regulatory-Notices/RFCs/2016-23.ashx?la=en.

108 Proposed Rule Change to Add New MSRB Rule G-49, on Transactions Below Minimum Denomination of an Issue, to the Rules of the MSRB, and to Rescind Paragraph (f), on Minimum Denominations, from MSRB Rule G-15, Exchange Act Release No. 79801, 82 Fed. Reg. 10,123 (Feb. 9, 2017), https://www.gpo.gov/fdsys/pkg/FR-2017-02-09/pdf/2017-02737.pdf.

109 MSRB, Press Release, Jennifer A Galloway, Chief Communications Officer, MSRB Holds Quarterly Board Meeting (May 1, 2017), http://msrb.org/News-and-Events/Press-Releases/2017/MSRB-Holds-Quarterly-Board-Meeting-April-2017.aspx [hereinafter MSRB Press Release, May 2017 Quarterly Board Meeting].

110 *Id.*; Notice of Withdrawal of a Proposed Rule Change to Add New MSRB Rule G-49, on Transactions Below Minimum Denomination of an Issue, to the Rules of the MSRB, and to Rescind Paragraph (f), on Minimum Denomination from MSRB Rule G-15, Exchange Act No. 80610, 82 Fed. Reg. 22,044 (May 11, 2017), https://www.gpo.gov/fdsys/pkg/FR-2017-05-11/pdf/2017-09526.pdf.

111 *See generally* Kelly, *supra* note 87; *see also* MSRB Press Release, May 2017 Quarterly Board Meeting, *supra* note 109; Notice of Withdrawal of a Proposed Rule Change to Add New MSRB Rule G-49, on Transactions Below Minimum Denomination of an Issue, to the Rules of the MSRB, and to Rescind Paragraph (f), on Minimum Denomination from MSRB Rule G-15, Exchange Act No. 80610, 82 Fed. Reg. 22,044 (May 11, 2017), https://www.gpo.gov/fdsys/pkg/FR-2017-05-11/pdf/2017-09526.pdf.

112 Exchange Act § 4(g)(4), 15 U.S.C. § 78d(g)(4).

113 Exchange Act § 4(g)(7), 15 U.S.C. § 78d(g)(7).

114 Some of our comment letters respond to Concept Releases and set forth our views on certain matters, but a specific call for action may be premature. Comment letters of this nature are not included in this inventory. *See, e.g.*, Rick A. Fleming, Investor Advocate, SEC, Comment Letter RE: Solicitation of Comments by the NASDAQ Listing and Hearing Review Council about Shareholder Approval Rules, (Feb. 12, 2016). Moreover, we are required to provide an inventory outlining actions of the SEC or SROs. Letters to Congress or other organizations such as NASAA are not included in this inventory, but are available at https://www.sec.gov/advocate/investor-advocate-comment-letters.html.

115 *See* Comment Letter, *MSRB Notice 2015-16*, *supra* note 43 and accompanying text.

116 *See* Comment Letter, Rick A. Fleming, Investor Advocate, SEC, RE: Regulatory Notice 2016-07, Request for Comment on Draft Amendments to MSRB Rule G-30 to Provide Guidance on Prevailing Market Price (Mar. 31, 2016), https://www.sec.gov/about/offices/investorad/comment-letter-investor-advocate-msrb-033116.pdf.

117 *See* Comment Letter, PCAOB Rulemaking Docket Matter No. 034 *supra* note 57 and accompanying text.

118 *See* Fleming, Letter on Regulation of NMS Stock ATS, *supra* note 22 and accompanying text.

119 *See* Recommendation of the Investor Advocate, *supra* note 44.

120 Comment Letter, Rick A. Fleming, Investor Advocate, SEC, RE: File Reference No. 2015-300, Proposed Amendments by the Financial Accounting Standards Board (FASB) to Concepts Statement No. 8, Conceptual Framework for Financial Reporting, (July 11, 2017), http://www.fasb.org/cs/BlobServer?blobkey=id&blobnocache=true&blobwhere=1175835179218&blobheader=application%2Fpdf&blobheadername2=Content-Length&blobheadername1=Content-Disposition&blobheadervalue2=565918&blobheadervalue1=filename%3DDISFR-C.ED.0056.SEC_OFFICE_INVESTOR_ADVOCATE_RICK_A._FLEMING.pdf&blobcol=urldata&blobtable=MungoBlobs.

121 Exchange Act § 4(g)(8)(B), 15 U.S.C. § 78d(g)(8)(B).

122 Exchange Act § 4(g)(8)(D), 15 U.S.C. § 78d(g)(8)(D).

123 As used in this report, the term "Ombudsman" may refer to the Ombudsman, or to the Ombudsman and Office of the Investor Advocate staff and contractors directly supporting the ombudsman function.

124 *What We Do*, SEC (June 10, 2013), https://www.sec.gov/Article/whatwedo.html.

125 SEC, Office of the Investor Advocate, *Report on Objectives, Fiscal Year 2016* (June 30, 2015), https://www.sec.gov/advocate/reportspubs/annual-reports/sec-office-investor-advocate-report-on-objectives-fy2016.pdf; *Report on Objectives, Fiscal Year 2018*, *supra* note 4.

126 *Suitability*, https://www.sec.gov/fast-answers/answerssuitabilityhtm.html (last visited Oct. 16, 2017).

127 SEC, *Study on Investment Advisers and Broker-Dealers*, at iii (Jan. 2011), https://www.sec.gov/news/studies/2011/913studyfinal.pdf.

128 *Report on Objectives, Fiscal Year 2018*, *supra* note 4.

129 *Id.*; *see also* Jay Clayton, Chairman, SEC, Public Comments from Retail Investors and Other Interested Parties on Standards of Conduct for Investment Advisers and Broker-Dealers (June 1, 2017) [hereinafter Request for Information], https://www.sec.gov/news/public-statement/statement-chairman-clayton-2017-05-31.

130 *See Public Comments from Retail Investors and Other Interested Parties on Standards of Conduct for Investment Advisers and Broker-Dealers*, https://www.sec.gov/comments/ia-bd-conduct-standards/iabdconductstandards.htm (last visited Oct. 16, 2017).

131 *Dispute Resolution Statistics*, https://www.finra.org/arbitration-and-mediation/dispute-resolution-statistics (last visited Oct. 16, 2017). As of October 16, 2017, there were 1,268 breach of fiduciary duty cases in FINRA's dispute resolution forum. The next highest controversy type is negligence, with 1,122 cases. *Id.*

132 Request for Information, *supra* note 129.

133 There is debate whether FINRA constitutes a self-regulatory organization. In 1996, the SEC censured the NASD due to the undue influence by NASDAQ market makers over NASD's operations and regulatory affairs. As a consequence, the SEC required NASD to increase the role of public members on the NASD board among other remedies, which in turn changed the organization to one independent of its membership which, in the view of one critic, shifted the organization from an SRO to a regulator with industry representation. *See, e.g.*, Hester Peirce, *The Financial Industry Regulatory Authority: Not Self-Regulation after All* 8-9, 18 (Mercatus Working Paper, Jan. 2015) [hereinafter Peirce Paper] https://www.mercatus.org/system/files/Peirce-FINRA.pdf; *see* David R. Burton, *Reforming FINRA*, The Heritage Found. Backgrounder No. 3181, 2 (Feb. 1, 2017), http://www.heritage.org/sites/default/files/2017-02/BG3181.pdf.

134 BrokerCheck is a free tool that enables investors to research the professional backgrounds of brokers and brokerage firms. *About BrokerCheck*, http://www.finra.org/investors/about-brokercheck (last visited Sept. 15, 2017).

135 When an investor opens an account at a brokerage firm, the agreement almost always includes a mandatory pre-dispute arbitration clause that specifies that any legal dispute between the investor and the broker will be resolved via FINRA dispute resolution. As a result, investors have become aware of FINRA's arbitration and mediation forum.

136 *The Laws That Govern the Securities Industry* (Oct. 1, 2013), https://www.sec.gov/answers/about-lawsshtml.html#secexact1934.

137 Exchange Act § 15A(b)(6), 15 U.S.C. § 78o-3(b)(6).

138 Peirce Paper, *supra* note 133.

139 *Id.* at 18.

140 *Id.* This is not a difficult standard for FINRA to meet. The proposed rule change must be consistent with Section 15A(b)(6) of the Securities Exchange Act, which requires that FINRA rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. Unless a rule promotes fraud, manipulative acts or practices, inequitable principles of trade, or put investors at risk in a meaningful manner, it meets this standard. Hence, even objectionable rules or rule amendments may meet this standard if a justification could be made that it benefits investors. *See, e.g.*, Comment Letter, Tracey L. McNeil, Ombudsman, and Rick A. Fleming, Investor Advocate, SEC, *RE: File Nos. SR-NYSEMKT-2016-52 and SR-NYSEArca-2016-103* (Oct. 3, 2016), https://www.sec.gov/about/offices/investorad/investor-advocate-comment-letter-sr-nysemkt-2016-52-sr-aysearca-2016-103.pdf.

141 Peirce Paper, *supra* note 133.

142 *Id.* at 19.

143 Exchange Act § 19(h)(1), (h)(4), 15 U.S.C. § 78s(1), s(4).

144 Peirce Paper, *supra* note 133.

145 *Id.* at 19.

146 *See id.*

147 U.S. Gov't Accountability Office, GAO-12-625, Opportunities Exist to Improve SEC's Oversight of the Financial Industry Regulatory Authority (2012).

148 *Report on Activities, Fiscal Year 2016*, *supra* note 42.

149 *Royal Alliance Associates v. Liebhaber*, 206 Cal. Rptr. 3d 805 (Cal. Ct. App. 2016).

150 FINRA, BrokerCheck, *supra* note 134.

151 *Id.*

152 Heather Gillers, *What You Won't Learn From One Wall Street Watchdog Report*, Wall St. J. (Mar. 21, 2017, 8:00 AM) [hereinafter *Gillers, What You Won't Learn*], https://www.wsj.com/articles/what-you-wont-learn-from-one-wall-street-watchdog-report-1490097600.

153 FINRA, Rule 8312(b)(2)(A) (2015). Forms U4 and BD report information about representatives and firms, respectively. Forms U5 and BDW report terminated registrations for representatives and firms, respectively. Form U6 is used by regulators.

154 The reporting requirement is found in FINRA, Rule 4530(a)(1)(G) (2015), but the means to do so is the Form U4.

155 As was the case with representatives, the reporting requirement is provided in FINRA, Rule 4530(a)(1)(G).

156 *Gillers, What You Won't Learn*, *supra* note 152 (referencing Joe Borg, director of the Alabama Securities Commission and president-elect of NASAA, and Jill Gross, law professor at the Elisabeth Haub School of Law at Pace University).

157 *Update: FINRA Board of Governors Meeting* (Sept. 29, 2017), http://www.finra.org/industry/update-finra-board-governors-meeting-092917.

158 *Id.*

159 *Report on Activities, Fiscal Year 2016*, *supra* note 42, at 41.

160 NASAA maintains a web page that lists the contact information for the securities regulators for each state in the United States. *See Contact Your Regulator*, http://www.nasaa.org/about-us/contact-us/contact-your-regulator (last visited Oct. 16, 2017).

161 *See* Craig McCann et al., *Puerto Rico Securities Arbitration Report: 2,079 Arbitration Filings, $304 million in Settlements and Awards so far*, Sec. Litig. & Consulting Group 6 (Aug. 11, 2017), http://www.slcg.com/pdf/workingpapers/PRSecuritiesArbitrationReport.pdf (this report is periodically updated; the cited report is on file with the Ombudsman).

162 *PIABA Report: Data Show That FINRA Efforts to Slow Expungement of Broker Misconduct has Failed*, PIABA (Oct. 20, 2015), https://piaba.org/system/files/pdfs/PIABA%20Press%20Release,%20Expungement%20Study%20Update.pdf.

163 We discussed expungement in the *Report on Objectives, Fiscal Year 2017*, *supra* note 3, and the *Report on Activities, Fiscal Year 2016*, *supra* note 42 and explained decisions in the *Report on Activities, Fiscal Year 2016*, *supra* note 42, and the *Report on Objectives, Fiscal Year 2018, supra* note 4.

164 *Rulemaking Items Discussed at the July 2017 Board Meeting* (July 18, 2017) [hereinafter *July Report*], http://www.finra.org/industry/update-finra-board-governors-meeting-071817.

165 Robert W. Cook, President and CEO, FINRA, Protecting Investors From Bad Actors (June 12, 2017), http://www.finra.org/newsroom/speeches/061217-protecting-investors-bad-actors.

166 *July Report*, *supra* note 164.

167 Dan Jamieson, *Brokers Get Aggressive In Erasing Old Complaints*, Financial Advisor (July 28, 2017), https://www.fa-mag.com/news/brokers-get-aggressive-in-erasing-old-complaints-33919.html.

168 *Id.*

169 The broker must demonstrate to the arbitrators that the complaint was false, factually impossible, or that the broker was not involved with the investor. *See* FINRA, Rule 2080(b) (2009); *see also FINRA Rule 2080 Frequently Asked Questions*, http://www.finra.org/industry/crd/rule-2080-frequently-asked-questions.

170 If a retail investor knows that an opposing party is seeking expungement and the investor believes the expungement is unwarranted, the investor should consider participating in the expungement hearing to the challenge the expungement request. In addition, the investor may request from FINRA, or from the appropriate state securities regulator, to be informed when the broker files a petition for expungement. *See Report on Activities, Fiscal Year 2016*, *supra* note 42, at 38.

171 *See* Dan Jamieson, *Finra Warns Arbitrators On Expungements*, Financial Advisor (Sept. 25, 2017), https://www.fa-mag.com/news/finra-warns-arbitrators-on-expungements-34858.html.

172 *Notice to Arbitrators and Parties on Expanded Expungement Guidance* (updated Sept. 2017), https://www.finra.org/arbitration-and-mediation/notice-arbitrators-and-parties-expanded-expungement-guidance.

173 *Report on Objectives, Fiscal Year 2018*, *supra* note 4, at 22-23.

174 Jill Gross, *Finra Arbitrator Writes Explained Award to Create Precedent*, Indisputably (June 30, 2017) [hereinafter *Finra Arbitrator Writes*], http://www.indisputably.org/?p=11070.

175 Letter from Margo Hassan, Couns., FINRA, to Florence Harmon, Acting Sec'y, SEC (Dec. 15, 2008), https://www.finra.org/sites/default/files/RuleFiling/p117545.pdf.

176 *Id.* at 2.

177 *Tullis v. Ameriprise Fin. Services and Andrew Joseph Hall*, FINRA Arb. No. 16-01261, http://www.finra.org/sites/default/files/aao_documents/16-01261.pdf.

178 *Id.*

179 *Id.* at 5.

180 *Id.* at 8.

181 *Finra Arbitrator Writes*, *supra* note 174.

182 Phil Cottone, Comment to *id.*

183 In March 2005, FINRA proposed a rule that would have permitted investors to unilaterally request an explained decision, but later withdrew the rulemaking due to the "one-sided nature" of the rule. *See* Order Approving Proposed Rule To Require Arbitrators To Provide An Explained Decision Upon The Joint Request Of The Parties, Exchange Act Release No. 59358, 74 Fed. Reg. 6,928 (published Feb. 11, 2009). It is difficult to believe that investors would complain about the "one-sided nature" of a unilateral rule permitting them to seek an explained decision. FINRA's explanation of why it withdrew the rule can be translated as: FINRA withdrew the rule because it received pressure from the broker-dealer industry. In our prior discussion about the SEC's supervisory powers over FINRA, if a rule proposal is consistent with Section 15A of the Exchange Act, the SEC cannot reject the rule. Hence, so long as an argument can be made that a rule benefits investors, there is little ground for the SEC to decline a rule proposal. In the case of the current rule permitting explained decisions upon the opt-in of both parties, FINRA may argue that it benefits the parties, even though the low number of explained decisions strongly suggests that the rule largely precludes investors from obtaining explained decisions.

184 On June 19, 2017, thirteen law professors who teach in the remaining securities arbitration clinics submitted a letter to FINRA regarding FINRA's March 21, 2017 Special Notice: Engagement Initiative. Letter from Nicole G. Iannarone Director, Investor Advocacy Clinic, Georgia State University College of Law, et al. to FINRA (June 19, 2017), at 1 n.1, http://www.finra.org/sites/default/files/notice_comment_file_ref/SN-32117_GSU_comment.pdf [hereinafter Clinic Comment Letter] ("There are currently eight law school clinics in New York state (Brooklyn, Cardozo, Cornell, Fordham, New York Law School, Pace, St. John's, and Syracuse). California investors have access to two clinics (Pepperdine and University of San Francisco). Other clinics are in the District of Columbia (Howard), Georgia (Georgia State), Illinois (Northwestern), Florida (University of Miami), New Jersey (Seton Hall), and Pennsylvania (University of Pittsburgh).").

185 *Report on Objectives, Fiscal Year 2017*, *supra* note 3.

186 Clinic Comment Letter, *supra* note 184.

187 The Investor Advocate, the Ombudsman, and the Office are extremely appreciative of the time and effort extended, and the comprehensive recommendations made, by the clinic faculty and students in helping us make meaningful changes to policies affecting retail investors, particularly those investors in vulnerable populations.

188 Clinic Comment Letter, *supra* note 184.

189 The Roundtable also devoted significant time to providing feedback to regulators on processes and rulemaking priorities. At the Roundtable, Clinic Directors also answered regulators' questions and described trends, problematic products and other issues that affect small investors. Clinic Comment Letter, *supra* note 184, at 5.

190 Meeting with Elissa Germaine, Dir., and Jill Gross, Dir., Pace Univ. Sch. of Law, Investor Rights Clinic, in White Plains, N.Y. (Oct. 19, 2016); Meeting with Teresa J. Verges, Dir., and Scott A. Eichhorn, Supervising Attorney, Univ. of Miami Sch. of Law, Investor Rights Clinic, in Coral Gables, Fla. (Oct. 20, 2016); Meeting with David White, Founding Dir., Seton Hall Univ. Sch. of Law, Investor Advocacy Project, in Washington, D.C. (Aug. 2, 2017); Meeting with Howard S. Meyers, Instructor, New York Law School, New York Law School Legal Serv.'s, Inc., Sec. Arbitration Clinic, in New York, N.Y. (Aug. 7, 2017); Meeting with Christine Lazaro, Director, Francis "Jay" Facciolo, Assistant Dir., Ann Goldweber, Dir. of Clinical Legal Education, and Michael A. Simons, Dean, St. John's Univ. School of Law, St. Vincent De Paul Legal Program, Inc., Sec. Arbitration Clinic, in Queens, N.Y. (Aug. 7, 2017); Meeting with Alice L. Stewart, Univ. of Pittsburgh School of Law, The Sec. Arbitration Clinic, in Pittsburgh, Pa. (Aug. 8, 2017); Meeting with J. Samuel Tenenbaum, Dir., and Colleen J. Balek, Atty., Northwestern Pritzker School of Law, Bluhm Legal Clinic, Investor Protection Clinic, in Chicago, Ill. (Aug, 9, 2017); Meeting with Nicole Iannarone, Dir. and Assistant Clinical Professor, Georgia State Univ. College of Law, Investor Advocacy Clinic, in Atlanta, Ga. (Aug. 10, 2017); Meeting with Bruce Sanders, Supervising Attorney, and Cheryl Nichols, Associate Professor of Law, Howard University School of Law, Investor Justice and Education Clinic, in Washington, D.C. (Aug. 24, 2017); Meeting with Gary Pieples, Dir., Syracuse Univ. College of Law, Sec. Arbitration and Consumer Law Clinic, in Syracuse, N.Y. (Aug. 28, 2017); Meeting with William A. Jacobson, Dir., Cornell Univ. School of Law, Sec. Law Clinic, in Ithaca, N.Y. (Aug. 29, 2017); Meeting with Elizabeth Goldman, Dir., Yeshiva Univ., Benjamin N. Cardozo School of Law, Cardozo Sec. Arbitration Clinic, in New York, N.Y. (Sept. 14, 2017) [hereinafter collectively LSCOP Meetings].

191 *See generally* LSCOP Meetings, *id.* For example, one clinic shared that they have recovered money for each of their clients. Meeting with Bruce Sanders, Supervising Attorney, Cheryl Nichols, Associate Professor of Law, Howard University School of Law, Investor Justice and Education Clinic, in Washington, D.C. (Aug. 24, 2017).

192 *Report on Objectives, Fiscal Year 2018*, *supra* note 4, at 5-11.

193 During the Reporting Period, the Office contacted the Clinics and afforded each clinic the opportunity to identify potentially problematic products and practices. The full list of problematic products and practices is available on page 12 of the Report. *See, e.g.*, Letter from Elizabeth Goldman et al., Director, Cardozo School of Law Securities Arbitration Clinic, to Tracey L. McNeil, Ombudsman, SEC (Oct. 6, 2017) (on file with the Office of the Investor Advocate); E-mail from Christine Lazaro, Dir., Securities Arbitration Clinic, to Ashlee Steinnerd, Senior Counsel, Office of the Investor Advocate, SEC (Sept. 14, 2017, 02:41 EST) (on file with the Office of the Investor Advocate).

194 During FY 2017, the Ombudsman and senior counsel visited twelve of the existing sixteen securities arbitration and investor advocacy clinics. The Ombudsman and senior counsel met with clinic directors, and in some instances clinic students. During the meetings, the work of the clinics was discussed in greater detail, including, but not limited to, the typical clinic client, the types of cases, and difficulties clinics face. *See* Clinic Comment Letter, *supra* note 184, at 2.

195 *See* Northwestern, *Guidelines for Establishing a Law School Investor Advocacy Clinic*, at 16, https://www.finrafoundation.org/web/groups/foundation/%40foundation/documents/foundation/p118734.pdf [hereinafter *Guidelines*] ("Eligibility standards are partly a matter of choice for the sponsoring law school (depending on its concept of the kind of persons whom the clinic should assist), partly a matter of complying with state student practice rules, and partly determined by the terms set by those who provide financial support to the clinic. For instance, some clinics (*e.g.*, Northwestern and St. John's) will not handle claims in excess of $100,000. Others may (*e.g.*, University of San Francisco) set the claim limit at $35,000.").

196 Jill I. Gross, *The Improbable Birth and Conceivable Death of the Securities Arbitration Clinic*, 15 Cardozo J. Conflict Resol. 597, 604 (2014) [hereinafter Gross, *The Improbable Birth*].

197 *Id.*

198 *Id. See Guidelines, supra* note 195.

199 Clinic Comment Letter, *supra* note 184, at 7 (map marking locations of securities arbitration clinics in United States).

200 *See generally* LSCOP Meetings, *supra* note 190; Clinic Comment Letter, *supra* note 184, at 2.

201 *See* U.S. Census Bureau, Press Release, From Living Arrangements to Labor Force Participation, New Analysis Looks at State of the Nation's 65-and-Older Population, Release Number CB14-124 (June 30, 2014), https://www.census.gov/newsroom/press-releases/2014/cb14-124.html ("Florida was among the states with the highest proportions of older people in their populations in 2010, along with West Virginia, Maine and Pennsylvania (all above 15 percent)"); Meeting with Alice L. Stewart, Univ. of Pittsburgh School of Law, The Sec. Arbitration Clinic, in Pittsburgh, Pa. (Aug. 8, 2017).

202 LSCOP Meetings; Clinic Comment Letter, *supra* note 184, at 2.

203 Clinic Comment Letter, *supra* note 184, at 5; s*ee generally* LSCOP Meetings, *supra* note 190.

204 During the Reporting Period, the Office also contacted Law School Clinics and afforded each clinic the opportunity to identify potentially problematic products and practices. The full list of problematic products and practices is available on page 12 of the Report. *See, e.g.*, Letter from Elizabeth Goldman *et al.*, Director, Cardozo School of Law Securities Arbitration Clinic, to Tracey L. McNeil, Ombudsman, SEC (Oct. 6, 2017) (on file with the Office of the Investor Advocate).

205 Clinic Comment Letter, *supra* note 184, at 6; Gross, *The Improbable Birth*, *supra* note 196, at 617 ("Finally, perhaps the biggest challenge to [securities arbitration clinics] is the maintenance of ongoing funding.").

206 LSCOP Meetings, *supra* note 190; Clinic Comment Letter, *supra* note 184, at 6; Gross, *The Improbable Birth*, *supra* note 196, at 618.

207 LSCOP Meetings; Clinic Comment Letter, *supra* note 184, at 6; Gross, *The Improbable Birth*, *supra* note 196, at 619-20.

208 Most recently, Florida International University and Michigan State University closed their securities arbitration clinics. *See generally* LSCOP Meetings, *supra* note 190.

209 Meeting with Teresa J. Verges, Dir., Scott A. Eichhorn, Supervising Attorney, Univ. of Miami Sch. of Law, Investor Rights Clinic, in Coral Gables, Fla. (Oct. 20, 2016); Clinic Comment Letter, *supra* note 184, at 7.

210 LSCOP Meetings, *supra* note 190.

211 Clinic Comment Letter, *supra* note 184, at 4.

212 LSCOP Meetings, *supra* note 190. *See also* Clinic Comment Letter, *supra* note 184, at 4 ("Clinics regularly provide in-person educational presentations at high schools, libraries, community centers, and to vulnerable groups including members of the military, seniors, young professionals, and faith communities." (citation omitted)).

213 Clinic Comment Letter, *supra* note 184, at 4.

214 *Id.*

215 *See* LSCOP Meetings, *supra* note 190.

216 Letter from Britny Auletti and Robyn Downing, Student Interns on behalf of the Investor Rights Clinic, John Jay Legal Services, Inc., Elisabeth Haub School of Law at Pace University, to Tracey L. McNeil, Ombudsman, SEC (Dec. 12, 2016) (on file with the Office of the Investor Advocate).

217 Exchange Act § 39(a), 15 U.S.C. § 78pp(a).

218 *Id.*

219 Exchange Act § 39(a)(2)(B), 15 U.S.C. § 78pp(a)(2)(B).

220 Exchange Act § 39(g), 15 U.S.C. § 78pp(g).

221 Exchange Act § 39(h), 15 U.S.C. § 78pp(h).

222 According to Exchange Act Section 4(g)(6)(B)(ii), 15 U.S.C. § 78d(g)(6)(B)(ii), a Report on Activities must include several enumerated items, and it may include "any other information, as determined appropriate by the Investor Advocate."

223 SEC, *Recommendation of the Investor Advisory Committee: Crowdfunding Regulations* (Apr. 10, 2014), https://www.sec.gov/spotlight/investor-advisory-committee-2012/investment-adviser-crowdfunding-recommendation.pdf; SEC, Final Rule, Crowdfunding, Securities Act Release No. 9974, 80 FR 71,387 (Nov. 16, 2015). *See Report on Objections, Fiscal Year 2017*, *supra* note 3 for an analysis of how the final rules correspond with the IAC recommendations.

224 SEC, *Recommendation of the Investor Advisory Committee: Shortening the Trade Settlement Cycle in U.S. Financial Markets* (Feb. 12, 2015), https://www.sec.gov/spotlight/investor-advisory-committee-2012/settlement-cycle-recommendation-final.pdf. *See also* Press Release, SEC, SEC Adopts T+2 Settlement Cycle for Securities Transactions, 2017-68 (Mar. 22, 2017), https://www.sec.gov/news/press-release/2017-68-0; Securities Transaction Settlement Cycle, Exchange Act Release No. 80295, 82 Fed. Reg. 15,564 (Mar. 29, 2017).

225 SEC, *Recommendation of the Investor Advisory Committee Decimalization and Tick Sizes*, https://www.sec.gov/spotlight/investor-advisory-committee-2012/investment-adviser-decimilization-recommendation.pdf; Press Release, SEC, SEC Approves Pilot to Assess Tick Size Impact for Smaller Companies, 2015-82, (May 6, 2015), https://www.sec.gov/news/pressrelease/2015-82.html; *see* Order Granting Exemption From Compliance With the National Market System Plan to Implement a Tick Size Pilot Program, Exchange Act Release No. 76382, 80 Fed. Reg. 70,284 (Nov. 13, 2015) (stating that Participants are exempt from implementing the Tick Size Pilot until October 3, 2016).

226 17 C.F.R. §§ 200.735-3(b)(2)(i), 230122 (2014); Exchange Act § 24(b), 15 U.S.C. § 78x; 5 U.S.C. § 552a(i)(1); SECR18-2, Section 8.5 (Nonpublic Information) (July 31, 2005).

227 SEC, *Recommendation of the Investor Advisory Committee to Enhance Information for Bond Market Investors* (June 7, 2016), https://www.sec.gov/spotlight/investor-advisory-committee-2012/recommendation-enhance-information-bond-market-investors-060716.pdf; *see also* MSRB, Regulatory Notice 2016-28, New Disclosure Requirements Under MSRB Rule G-15 and Prevailing Market Price Guidance Pursuant to Rule G-30 Effective May 14, 2018 (Nov. 29, 2016), http://www.msrb.org/~/media/Files/Regulatory-Notices/Announcements/2016-28.ashx [hereinafter MSRB Notice 2016-28]; FINRA, Regulatory Notice 17-08, Pricing Disclosure in the Fixed Income Markets (Feb. 2017), https://www.finra.org/sites/default/files/notice_doc_file_ref/Regulatory-Notice-17-08.pdf [hereinafter FINRA Notice 17-08].

228 SRO; Notice of Filing of Amendment No. 1, *supra* note 46; Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, to MSRB Rules G-15 and G-30 To Require Disclosure of Mark-Ups and Mark-Downs to Retail Customers on Certain Principal Transactions and To Provide Guidance on Prevailing Market Price, Exchange Act Release No. 79347, 81 Fed. Reg. 84,637 (Nov. 23, 2016).

229 FINRA Notice 17-08, *supra* note 229; MSRB Notice 2016-28, *supra* note 229.

230 SEC, Press Release, SEC Announces the Formation and First Members of Fixed Income Market Structure Advisory Committee, 2017-209 (Nov. 9, 2017), https://www.sec.gov/news/press-release/2017-209.

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OFFICE OF THE
INVESTOR ADVOCATE
U.S. Securities and
Exchange Commission
100 F Street NE
Washington, DC 20549
202.551.3302