REPORT ON OBJECTIVES FISCAL YEAR 2018

Office of the Investor Advocate

U.S. SECURITIES AND EXCHANGE COMMISSION

OFFICE OF THE INVESTOR ADVOCATE

REPORT ON OBJECTIVES

FISCAL YEAR 2018

Section 4(g) of the Securities Exchange Act of 1934 (Exchange Act), 15 U.S.C. § 78d(g), 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 no 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] The instant report is the Investor Advocate's fourth annual Report on Objectives. It contains a summary of the Investor Advocate's primary objectives for Fiscal Year (FY) 2018, beginning October 1, 2017.

A Report on Activities is due no later than December 31 of each year, and it describes the activities of the Investor Advocate during the preceding fiscal year.[3] For FY 2018, the activities and accomplishments of the Office will be reported not later than December 31, 2018.

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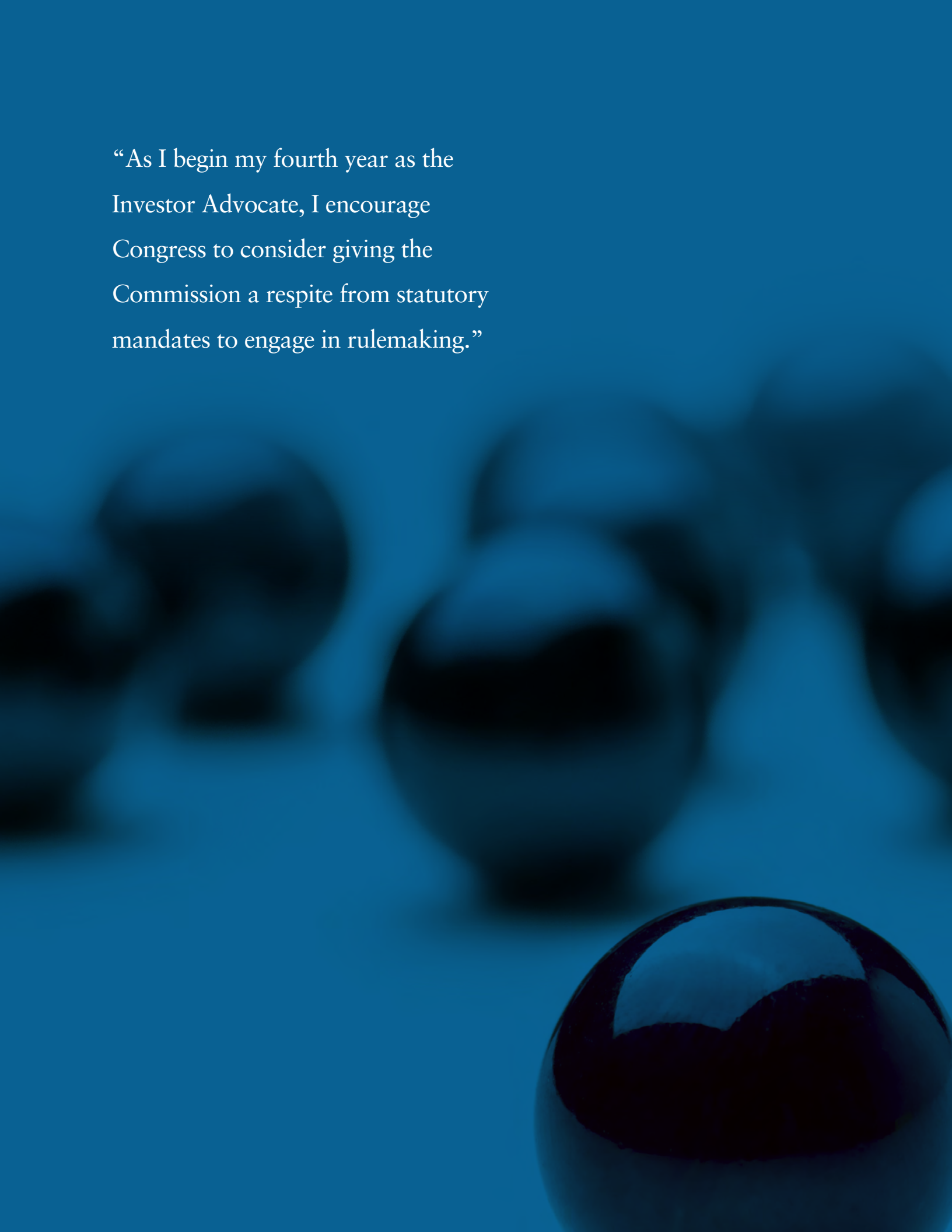


MESSAGE FROM THE INVESTOR ADVOCATE

As we look ahead to Fiscal Year 2018 and consider the objectives for the Office of the Investor Advocate, we can predict that the volume of our work will continue unabated. The Ombudsman and her staff will field hundreds of inquiries from individual investors who have concerns about the actions of the U.S. Securities and Exchange Commission (SEC) or self-regulatory organizations (SRO). We will support the work of the Investor Advisory Committee and devote staff resources to meeting their various needs, from arranging issue briefings to making travel arrangements. We will continue our efforts to bring data-driven investor research into the normal flow of the Commission's rulemaking process, which will provide greater insights into the needs of today's investors and help the Commission make the best possible choices among competing policy options. In addition, we will review hundreds of rule proposals from the Commission and SROs to examine the impact on investors and, where appropriate, recommend changes that will improve the rules.

It is more difficult, however, to predict how much time we will devote to specific policy areas during the upcoming fiscal year. We are at a transition point in SEC leadership, including the recent arrival of Chairman Jay Clayton and the anticipated appointment of two additional Commissioners. The policy priorities of these new leaders will impact our work as we address the issues of interest to them.

At this point, we anticipate that we will devote significant time and attention to five categories of issues: public company disclosure, equity market structure, municipal market reform, accounting and auditing, and fiduciary duty. We expect the work of the SEC and SROs to continue in these areas, and we will actively engage with policymakers to ensure that the interests of investors are appropriately considered as the work proceeds. These matters are included in our *Policy Agenda for Fiscal Year 2018*, which is described in greater detail in this Report.

This year, as I begin my fourth year as the Investor Advocate, I encourage Congress to consider giving the Commission a respite from statutory mandates to engage in rulemaking. During my tenure, the rulemaking agenda of the Commission has been consumed largely by mandates, first from the Dodd-Frank Act and later from the JOBS Act and FAST Act. From my point of view, the Commission could use some time to get back to basics and refresh some of the rules that have gone too long without updates. Other promising ideas, such as a summary prospectus for variable annuities, have been around for a long time and appear noncontroversial, but they languish behind other rulemaking priorities. In addition, the pace of important

reforms, including improvements to our equity market structure, could accelerate if the burden of statutory mandates was lifted.

I also urge Congress to resist the temptation to mandate or pressure the SEC to adopt reforms where the available evidence is inconclusive. For example, this Report describes the mixed evidence regarding the reasons for the decline in initial public offerings. Under our new leadership, with their unique expertise in these matters, the SEC should be given the freedom to pursue evidence-based approaches to solve this problem.

I am pleased to submit this Report on Objectives for FY 2018 on behalf of the Office of the Investor Advocate, and I would be happy to answer any questions from Members of Congress.

Sincerely,

Rick A. Fleming
Investor Advocate

OBJECTIVES OF THE INVESTOR ADVOCATE

As set forth in Exchange Act Section 4(g)(4), 15 U.S.C. § 78d(g)(4), the Investor Advocate is required to perform the following functions:

(A) assist retail investors in resolving significant problems such investors may have with the Commission or with self-regulatory organizations (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.

ASSISTING RETAIL INVESTORS

Exchange Act Section 4(g)(4)(A) directs the Investor Advocate to assist retail investors in resolving significant problems such investors may have with the Commission or with SROs.[4] To help accomplish that objective, the Investor Advocate has appointed an Ombudsman to, among other things, act as a liaison between the Commission and any retail investor in resolving problems that retail investors may have with the Commission or with SROs.[5] 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).[6] As required by statute, the Ombudsman's Report is included within this Report on Objectives.[7]

IDENTIFYING AREAS IN WHICH INVESTORS WOULD BENEFIT FROM REGULATORY CHANGES

Exchange Act Section 4(g)(4)(B) requires the Investor Advocate to identify areas in which investors would benefit from changes in the regulations of the Commission or the rules of SROs.[8] This is a broad mandate that authorizes the Investor Advocate to examine the entire regulatory scheme, including existing rules and regulations, to identify those areas that could be improved for the benefit of investors. For example, the Investor Advocate may look at the rules and regulations governing existing equity market structure to determine whether any regulatory changes would benefit investors. Similarly, the Investor Advocate may review current municipal market practices to evaluate whether any changes might benefit investors. These and similar other concerns are discussed in greater detail below in the section entitled *Policy Agenda for Fiscal Year 2018*.

IDENTIFYING PROBLEMS WITH FINANCIAL SERVICE PROVIDERS AND INVESTMENT PRODUCTS

Exchange Act Section 4(g)(4)(C) requires the Investor Advocate to identify problems that investors have with financial service providers and investment products.[9] The Investor Advocate continues to monitor investor inquiries and complaints, SEC and SRO staff reports, enforcement actions, and other data to determine which financial service providers and investment products may be problematic. As required by Exchange Act Section 4(g)(6), these problems will be described in the Reports on Activities to be filed in December of each year.

ANALYZING THE POTENTIAL IMPACT ON INVESTORS OF PROPOSED RULES AND REGULATIONS

Exchange Act Section 4(g)(4)(D) directs the Investor Advocate to analyze the potential impact on investors of proposed regulations of the Commission and proposed rules of SROs.[10] As required, in FY 2018, the Office will review all significant rulemakings of the Commission and SROs, and we will communicate with investors and their representatives to determine the potential impact of proposed rules. In addition, we will study investor behavior and utilize a variety of research methods to examine the efficacy of policy proposals.

PROPOSING APPROPRIATE CHANGES TO THE COMMISSION AND TO CONGRESS

Exchange Act Section 4(g)(4)(E) provides that, to the extent practicable, the Investor Advocate may 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.[11] As we study the issues in our *Policy Agenda for Fiscal Year 2018*, as set forth below, we will likely make recommendations to the Commission and Congress for changes that will mitigate problems encountered by investors.

SUPPORTING THE INVESTOR ADVISORY COMMITTEE

Exchange Act Section 39 establishes the Investor Advisory Committee (IAC or Committee).[12] As discussed in greater detail below in the section entitled *Summary of IAC Recommendations and SEC Responses*, the purpose of the Committee is to advise and consult with the Commission on regulatory priorities, issues impacting investors, initiatives to protect investors, and related matters. The Investor Advocate is a member of the IAC,[13] and the Office will continue to provide staff and operational support to the IAC during FY 2018.

POLICY AGENDA FOR FISCAL YEAR 2018

As described above, the statutory mandate for the Office of the Investor Advocate is broad, and much of our time is consumed with the review of rulemakings that flow through the Commission and SROs. We monitor all rulemakings, but we prioritize certain issues so that we can develop expertise in those areas and maximize our impact for investors with the resources we have available. After discussions with numerous knowledgeable parties both inside and outside the Commission, and after due consideration, the Investor Advocate has determined that the Office will focus on the following issues during FY 2018:

- Public Company Disclosure
- Equity Market Structure
- Municipal Market Reform
- Accounting and Auditing
- Fiduciary Duty

Although other issues may arise that will require the attention of the Office, the foregoing issues will remain on our policy agenda.

PUBLIC COMPANY DISCLOSURE

As described in our prior reports, the Commission has undertaken a comprehensive Disclosure Effectiveness initiative to review and modernize public company reporting requirements. The disclosure rules govern the information that is communicated in registration statements, routine periodic reports, and proxy statements.

We anticipate that the Disclosure Effectiveness initiative will continue under the Commission's new leadership. We will seek opportunities to contribute to the updating of the disclosure rules while working to maintain the disclosure of information that is important for investment decision-making and shareholder voting.

The Phenomenon of Fewer Initial Public Offerings

Much has been written about the decline in initial public offerings (IPOs) in recent years. The number of IPOs in the U.S. has fallen from an annual average of 310 during 1980–2000 to an average of 108 during the 2001–2016 period.[14] The drop-off has been especially pronounced among smaller companies, receding from an average of 165 IPOs per year during the 1980–2000 period to an average of 28 IPOs per year during 2001–2012.[15] This downward trend has occurred despite growth in the nation's real gross domestic product, which has more than doubled from the 1980s to the present.[16]

The disclosure requirements for public companies are often singled out as a major cause of the decrease in IPOs, as commentators suggest that the disclosure obligations are overly burdensome and create a strong disincentive to go public.[17] Congressional directives in the Jumpstart Our Business Startups (JOBS) Act of 2012 and the Fixing Our Surface Transportation (FAST) Act of 2014 reflect this concern.[18] However, recent academic studies

demonstrate that it is difficult to establish any causal connection between disclosure mandates and IPO activity. In a 2016 paper, for example, Christian Leuz and Peter Wysocki surveyed the economic literature on the consequences of capital markets regulation, drawing on U.S. and international evidence.[19] They found that the reported evidence on the effects of Regulation FD and the Sarbanes-Oxley Act, for instance, was "often quite mixed and at times even conflicting," and also confounded by difficulties inherent in isolating and measuring regulatory effects.[20]

In contrast, mounting evidence suggests that there are other, more significant causes for the downturn in IPOs. For example, in their 2016 paper, Robert P. Bartlett III, Paul Rose, and Steven Davidoff Solomon point to a decreasing demand for shares of smaller public companies. They posit that the increase in assets under management among the largest mutual funds in the 1990s induced portfolio managers to take larger investment positions and cease pursuing companies with smaller market capitalizations, particularly when market events in 1998 focused attention on liquidity risk within fund portfolios.[21] They found that after 1998, the largest quartile of equity mutual funds (a group that collectively controls more than 90 percent of mutual fund assets) significantly reduced their investments in small IPOs and demonstrated a decisive shift toward purchasing larger, more liquid IPOs.[22]

Our ongoing outreach to investors (discussed below) supports the view that, in general, institutional investors who engage in active management seem to have limited interest in shares of micro- or small-cap public companies. We understand that this is largely due to liquidity concerns,[23] meaning that it may be difficult to conduct trades of institutional size because there may be a lack of buyers or sellers on the other side of such trades. In that environment, if a trade can be accomplished at all, it may significantly impact the price of the security in question. Furthermore, there are certain regulatory barriers that prevent funds from holding large positions in small companies,[24] and it may not be economical to track and analyze numerous small companies in which the asset manager would hold small positions. The scaled-back disclosure requirements for smaller public companies may also make them less attractive to sophisticated institutions that carefully scrutinize the data.[25]

The impact of this lack of institutional investor demand for smaller companies appears to have grown more acute as the market has become more dominated by institutional investors. Overall, the proportion of equities directly owned by individuals has decreased in recent years, as investors have chosen to allocate their savings into mutual funds and other institutional accounts instead. In 1976, individuals directly owned 50 percent of the equities in the U.S. stock markets, but this has fallen to 21.5 percent in 2016.[26] Conversely, institutions now hold the majority of U.S. stocks, up from less than 20 percent in 1976.[27]

Recent research by Elisabeth de Fontenay suggests that while the evidence is mixed regarding whether the cost of being a public company has contributed to a decline in IPOs, the evidence is more definitive that the benefits of being a public company have decreased, as capital has become more readily available through private markets.[28] According to Professor de Fontenay, companies were previously restricted from raising capital from the general public unless they agreed to disclose substantial amounts of information, but that paradigm has shifted as restrictions on capital raising and trading in private markets have been repeatedly loosened over the last three decades.[29] Between 2009 and 2014, while public capital-raising hovered around $250 billion per year, private capital-raising

increased from about $700 billion in 2008 to over $1.25 trillion in 2014.[30] Professor de Fontenay observes:

> [W]hile critics blame the increase in regulation for the decline of public equity, the ongoing deregulation of private capital-raising arguably played the greater role. That is, even if public company disclosure requirements had remained constant over the last three decades, there would likely still be a dearth of public companies today, due to the increasing ease of raising capital privately.

In a seminal paper published in 2013, Xiaohui Gao, Jay R. Ritter, and Zhongyan Zhu argue that young firms are more likely to merge with larger firms than go public, and that this trend may be the best explanation for the decline in small-company IPO activity.[31] The authors point out that over the last few decades, growing big fast—including through mergers and acquisitions—has emerged as a dominant business strategy compared to the alternative of remaining independent and focusing on organic growth.[32]

In our view, it is important to understand as accurately as possible the causes of the decline in IPOs so that effective solutions can be found. During FY 2018, we will continue to engage with a variety of market participants to better understand the dynamics of the public and private markets. In particular, we will study the demand of institutional investors for smaller public company shares. We will consider potential reforms that could bolster the public trading of those shares and, in turn, help to make the public markets more attractive for smaller companies that might not otherwise consider an IPO.

Continuing Investor Outreach

Over the last several months, we have been conducting outreach to investors in an effort to gather additional input for the Disclosure Effectiveness review project. We have met with individual investors and a variety of professionals who make investment and voting decisions on behalf of mutual funds, hedge funds, and pension funds. We have explored their various research methods and analytical processes to understand how these investors consume information that public companies are required to disclose. Our goal is to identify ways to make this information more accessible and useful for investors, and these efforts will continue into FY 2018.

In addition to exploring investor views regarding public company disclosure requirements, our outreach initiative provides a mechanism for us to receive valuable feedback from investors on other matters. For instance, one common theme that has arisen is investors' concern that antitrust policy may be impeding the ability of investors to work together to pursue market-based solutions. For example, it may be difficult to standardize the disclosure of fees that are borne by limited partners in private equity funds, or to develop standardized terms or best practices for the trading of fixed-income securities. During FY 2018, we will study these and other issues that arise as a result of our outreach to investors, and we will serve as a conduit to bring investor concerns to the attention of the Commission.

EQUITY MARKET STRUCTURE

As noted in our prior Reports on Objectives, the evolution of technologies for generating, routing, and executing orders has enhanced the speed, capacity, and sophistication of the trading functions that are available to market participants.[33] Trading centers are offering a wide range of services

designed to attract different types of market participants with varying trading needs.[34] In addition, regulatory actions have contributed to changes in equity market structure, *e.g.*, Regulation NMS (adopted in 2005),[35] Regulation ATS (adopted in 1998),[36] the Order Handling Rules (adopted in 1996),[37] and certain enforcement actions. These changes have resulted in a secondary trading market for U.S.-listed equities that is dispersed and complex, and the Commission has been engaged in a multi-year effort to improve the ecosystem for modern trading.[38]

For instance, in November 2015, the Commission proposed amending Regulation ATS to enhance the operational transparency of alternative trading system (ATS) venues that trade listed equity securities.[39] Greater information about the operation of these venues could allow sophisticated investors to better compare the trading venues and determine which venues and order routing products meet their trading needs. In addition, 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.[40] This could provide certain customers with better information to evaluate the quality of execution for the orders they place with their brokers.[41]

As required by our statutory mandate, our Office has evaluated the potential impact of these proposals on investors. In September 2016, we submitted a comment letter to the Commission in support of the proposed amendments to Regulation ATS.[42] 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.[43] We will continue to advocate for greater transparency in FY 2018 and encourage the Commission to adopt a final rule in the near future. We also will encourage the Commission to move forward with the enhancements to Rule 606.

In addition to these ongoing rulemakings, the Commission's Equity Market Structure Advisory Committee (EMSAC), formed in early 2015, met several times over the last two years to discuss and debate the structure and operations of the U.S. equities market.[44] Under its charter, the EMSAC provides advice and recommendations to the Commission specifically related to equity market structure issues.[45] Currently, the EMSAC is considering various matters concerning self-regulation, market quality, and customer issues.

The EMSAC also has examined the impact of the payment model known as "maker-taker" that originated with electronic trading venues in the late 1990s.[46] As detailed in a recent Commission staff white paper, those early alternatives to registered exchanges competed by, among other things, charging low fees while offering fast and fully automated trading.[47] Paying rebates for trading on a venue provided an additional incentive for traders to use the venue—it was additional income beyond the spread between the bid and offer prices.[48] In part enshrined by Rule 610 of Regulation NMS, which sets a maximum access fee cap for "takers" on equity exchanges, this maker-taker fee model has been the subject of debate over the effects it may have on market structure, broker routing practices, and investor interests.[49] Some believe the maker-taker model is a competitive tool for exchanges and may, directly or indirectly, provide better prices for investors. Others believe that it exacerbates conflicts of interest for brokers who have a legal duty to seek best execution of their customers' orders, contributes to market fragmentation and market complexity through the proliferation of new exchange order types, and undermines price transparency.[50]

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. This would give the Commission the ability to evaluate the impact of maker-taker access fees on equity exchanges.[51] In the coming

months, our Office will encourage the Commission to formally propose a pilot program of this nature, and we will carefully consider whether the proposed elements of the pilot program will provide the Commission with the most useful data for evaluating potential equity market structure reforms. Ultimately, we will consider whether lowering these fees and rebates on a permanent basis will improve market quality for investors.

In addition to monitoring and evaluating rulemaking by the Commission and recommendations of the EMSAC during FY 2018, we will continue to examine the hundreds of rule proposals that are filed with the Commission by the SROs. Typically, a number of these filings involve market structure issues that impact investors. Where appropriate, we will make formal recommendations or utilize the comment process to ensure that the needs of investors are properly considered by the SROs and the Commission.

MUNICIPAL MARKET REFORM

According to Federal Reserve Board estimates, the value of outstanding municipal bonds at the end of the fourth quarter of 2016 was $3.83 trillion.[52] Approximately 43 percent of outstanding municipal bonds were held *directly* by individual investors as of December 31, 2016, and another 24 percent were owned *indirectly* by retail investors through mutual funds, money market funds, or closed end funds and exchange-traded funds.[53]

After a recent downward trend in the trading of municipal securities, the importance of this market to American households appears to be increasing again. In its 2016 Fact Book, the Municipal Securities Rulemaking Board (MSRB) observed that the par dollar amount of customer transactions[54] in municipal securities grew in 2016 following a period of steady decreases between 2011 and 2015.[55] In 2016, municipal securities trading volume increased approximately 30 percent over 2015, halting an average decline of 9 percent annually between 2012 and 2015.[56] Transactions of $100,000 or less accounted for approximately 80 percent of the total number of municipal securities trades in 2016.[57]

These statistics show that individual investors continue to utilize municipal securities as a part of their investment and retirement strategies. The municipal securities market is also a valuable source of funding for state and local projects that affect residents' quality of life in their communities. Given its importance to average Americans, the Office of the Investor Advocate has highlighted municipal market reform as part of our policy agenda in fiscal years 2015, 2016, and 2017,[58] and we will continue this focus in FY 2018.

Most recently, we reviewed two specific proposals by the MSRB and the Commission. In January 2017, the MSRB filed a proposal with the Commission to create a new exception to the existing prohibition against transactions that are below the minimum stated denomination for the particular bond. In short, the proposal would permit a dealer to sell a below-minimum denomination position to one or more customers who had a position in the issue and any remainder to a maximum of one customer who did not have a position in the issue.[59]

During the MSRB's April 2017 meeting, its Board of Directors agreed to withdraw this proposal in order to give the MSRB more time to engage in "meaningful outreach with stakeholders and obtain additional information."[60] To the extent appropriate, the MSRB hopes to reach greater consensus on any future amendments related to trading below the minimum denomination.[61]

In March 2017, the Commission proposed an amendment to Exchange Act Rule 15c2-12.[62] This proposal would amend the list of event notices for which a broker, dealer, or municipal securities dealer is expected to receive assurances of disclosure by an issuer or obligated person.[63] Among other things, it would encourage the disclosure of material financial

obligations or defaults of an issuer that may reflect financial difficulties.[64]

In FY 2018, the Office of the Investor Advocate will follow these developments and provide our recommendations as appropriate. In addition, we will continue to advocate for improved transparency and liquidity in the municipal securities market by encouraging timely, useful disclosures for investors and market participants, and we anticipate supporting appropriate enhancements to the MSRB's Electronic Municipal Market Access website.

As part of our ongoing duties, we will also carefully monitor and analyze all additional amendments and rulemakings related to municipal securities. We will continue to engage in discussions and work with Commission staff and relevant SROs to encourage municipal securities market reforms designed to benefit investors.

ACCOUNTING AND AUDITING

High-quality financial reporting is critically important to investors in their investment and voting decisions; therefore, it is important for the Office of the Investor Advocate to track accounting and auditing issues, represent investors in the policymaking process, and encourage investors to express their views.

In the upcoming fiscal year, we will continue to monitor a variety of issues related to accounting and auditing, including the Financial Accounting Standards Board's (FASB) approach to materiality, the overuse of non-GAAP financial measures, and internal control over financial reporting.

Materiality

In September 2015, FASB issued a pair of proposals that would, among other things, refer to "materiality" as a legal concept.[65] These proposals have been criticized by investors and other stakeholders for their lack of useful guidance.[66] To better understand these concerns, FASB held a roundtable discussion of the proposals on March 17, 2017, which generated a thoughtful and substantive discussion among informed investors and others with a diversity of viewpoints. In the coming months, we will communicate our views to FASB in an effort to suggest a constructive path forward, and we will continue to monitor the progress of these two proposals.

Overuse of Non-GAAP Measures

In our outreach to investors, several have indicated that they find value in certain non-GAAP financial measures (NGFM) and key operating metrics.[67] However, they have also expressed concern over measures that they find problematic, if not misleading. Among other things, investors pointed to NGFMs that are not uniform across companies or are used inconsistently over time by the same company.

For the past two years, top SEC officials have been calling attention to troubling practices involving NGFMs and, more recently, key operating metrics.[68] The heightened focus appears to be having a positive effect—even in the absence of formal rulemaking—with substantial progress seen in the way companies have addressed problematic practices.[69] Sustained progress will require effective company policies, controls, and procedures, as well as the diligence and understanding of audit committees.[70] Continued oversight by Commission staff will also play an important role, and we will continue to urge our colleagues to remain vigilant in this area.

Internal Control over Financial Reporting

Effective internal control over financial reporting (ICFR) is essential for providing high-quality information for investors. The management of a public company is required to assess the effectiveness of the company's ICFR. For companies over a certain size, the company's independent auditor is also required to attest to, and report on, management's assessment of its ICFR.[71]

For at least two reasons, ICFR is likely to be an important issue in the coming year. First, companies will need to ensure that their internal controls take account of any changes introduced with the implementation of significant new GAAP standards on revenue recognition and other topics. Second, there have been suggestions to expand the class of small issuers that are exempt from the requirements of auditor attestation.

In our view, the independent audit of internal controls provides important protections to investors and the companies in which they invest. It strengthens internal controls, prevents fraud, promotes confidence in U.S. capital markets, and helps lower the cost of capital. An erosion of auditor attestation requirements advanced in the name of capital formation could have the opposite effect, and we will work to guard against this outcome.

FIDUCIARY DUTY

In our Report on Objectives for FY 2016, we described the confusion that arises from the different standards of care for financial professionals who provide advice to investors.[72] The distinction is that broker-dealers are generally subject to a suitability standard while investment advisers are subject to a fiduciary standard.

Since that Report was issued, the U.S. Department of Labor has adopted a regulation that would, among other things, apply the fiduciary standard to any person who, for compensation, provides investment advice or recommendations to various kinds of retirement plans.[73] Many have called upon the SEC to engage in a similar rulemaking to implement a fiduciary duty for broker-dealers.[74] On June 1, 2017, SEC Chairman Jay Clayton issued a public statement calling for public comments from retail investors and other interested parties on standards of conduct for investment advisers and broker-dealers.[75]

We have previously described the challenges the Commission will face in promulgating a fiduciary standard for broker-dealers. Section 913 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act) contains what appear to be conflicting mandates: to develop a standard for broker-dealers no less stringent than the existing standard for investment advisers while accommodating sales-based compensation and the sale of proprietary products or limited product lines. Section 913 also prohibits the Commission from requiring a broker-dealer to have a continuing duty of care or loyalty to the customer after providing personalized investment advice.[76]

While we believe that a *bona fide* fiduciary duty for broker-dealers would benefit investors, we are concerned that the conflicting mandates could lead to harmful outcomes for investors in at least two ways. First, such a rule could dilute the existing standard for investment advisers in a misguided attempt to adopt a "harmonized" standard for broker-dealers. Second, even though this effort may be intended to reduce investor confusion surrounding the differing standards of care for investment advisers and broker-dealers, a poorly-designed rule could cause even greater confusion by purporting to give investors the protection of a "fiduciary duty" that would, in fact, be less stringent than the traditional fiduciary duty that applies in other relationships of trust. In our view, if the Commission proceeds with promulgating a fiduciary rule for broker-dealers, it must adopt a meaningful standard by drawing the Section 913 exceptions as narrowly as possible.

During FY 2018, we will continue to monitor the developments with the Department of Labor's fiduciary rule and consider its impact on investors. We also will encourage the Commission to pursue a thoughtful approach to this complex issue so that the SEC can create stronger protections for investors while avoiding unintended consequences.

OMBUDSMAN'S REPORT

Under Exchange Act Section 4(g)(8), 15 U.S.C. § 78d(g)(8), the Ombudsman shall: (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.[77]

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).[78] 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 June 30 Report on Objectives will describe the Ombudsman's activities during the first six months of the current fiscal year and provide the Ombudsman's objectives and outlook for the following full fiscal year. The Ombudsman's Report included in the Investor Advocate's December 31 Report on Activities will provide a look back on the Ombudsman's activities during the full preceding fiscal year.

Accordingly, this Ombudsman's Report provides a look back at the Ombudsman's activities for the six-month period of October 1, 2016 through March 31, 2017 (Reporting Period), and discusses the Ombudsman's objectives and outlook for FY 2018, beginning October 1, 2017.

SERVICE BY THE NUMBERS

The Ombudsman[79] 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. 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 status from receipt to referral, resolution, or closure.

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.

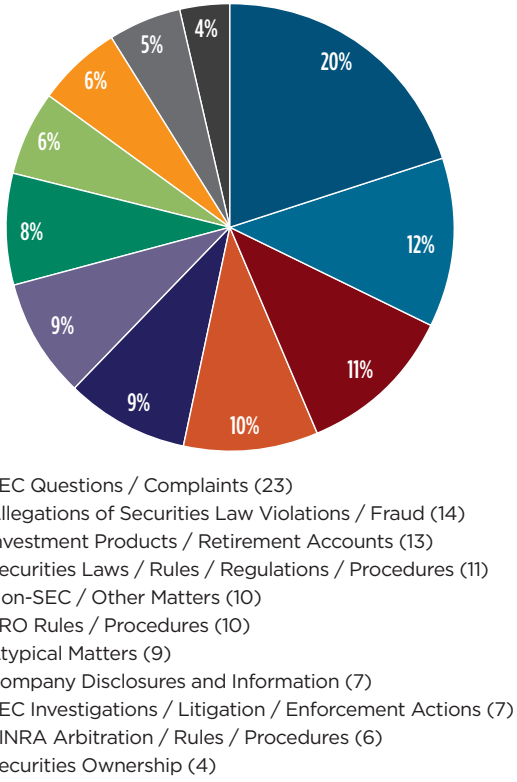
Inquiry volume is counted in terms of matters and contacts. The initial contact—a new, discrete inquiry received by, or referred to, the Ombudsman—is the contact that establishes the matter. When a matter is established, the Ombudsman reviews the facts, circumstances, and concerns raised, and assesses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

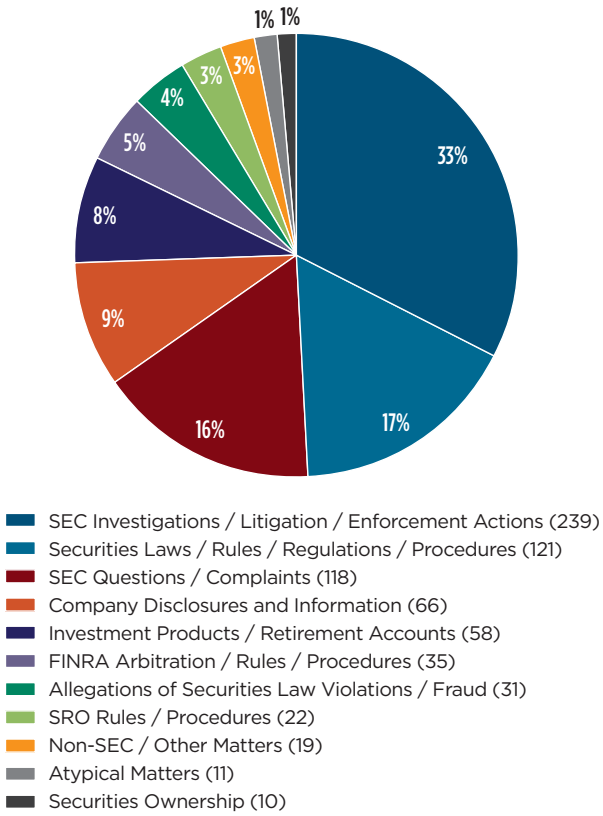
Data Across Primary Issue Categories

One of the most important ways the Ombudsman tracks and evaluates matter and contact data is by the primary issue identified. During the first full year in the role, the Ombudsman meticulously examined the substance of each matter and contact, and developed a set of primary issue categories to appropriately group and describe the range of concerns.

During the Reporting Period, retail investors, industry professionals, concerned citizens, and other interested persons contacted the Ombudsman for assistance on 114 matters covering 11 primary issue categories. The chart that follows displays the distribution of matters handled during the Reporting Period by primary issue category.



During the Reporting Period, these 114 matters generated 616 subsequent contacts. The chart that follows displays the distribution of the 730 total contacts by primary issue category.



Data Analysis and Reporting: The Ombudsman Matter Management System

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 Ombudsman staff used the OMMS back office functionality to track, analyze, and report all matter and contact data during this Reporting Period. The staff also adapted the manual record-keeping systems to migrate matter and contact data from prior fiscal years into OMMS, and developed workarounds as necessary to record the manual matter and contact data in OMMS-compatible categories and formats. This allowed for a seamless migration of matter and contact data to the OMMS platform.

This period of internal OMMS use also allowed the Ombudsman to work side-by-side with OIT staff and the technology contractor to test data recording and retrieval scenarios, track issues and run reports, and troubleshoot anomalies with both the external facing OMMS matter submission form (the OMMS Form) and the internal OMMS platform. OIT and the technology contractor made significant progress adjusting design elements on the OMMS Form, including making the OMMS Form more instructive and user-friendly, ensuring the OMMS Form is compatible for use on mobile devices, and creating custom reporting and data management capabilities responsive to our needs. The Ombudsman anticipates making the OMMS Form available to the public during the last quarter of this fiscal year, which will complete the transition from a manual intake, tracking, and reporting process to a fully-functional, customized, electronic matter management platform.

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. Administratively, the data helps the

Ombudsman evaluate the work required to reach closure or resolution and make strategic decisions to ensure that people seeking the Ombudsman's assistance receive an appropriate level of personalized service and staff resources. The data also informs resource allocation considerations related to proposed program development, training, and outreach efforts.

Programmatically, tracking the distribution of matters and contacts across primary issue categories enables the Ombudsman to identify potential areas of concern or interest. For example, agency leadership changes; news reports about certain market participants or investment products; and press releases relating to enforcement actions, whistleblower awards, and Fair Funds often create noticeable spikes in matter and contact volume in particular categories. Tracking this data 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 value of the service the Ombudsman provides to the investing public. Investors bring their concerns, problems, and fears to the Ombudsman with the expectation that the Ombudsman can help them get to a solution. 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. Most investors, however, thoughtfully consider the advantages and disadvantages of the resolution options the Ombudsman presents, and modify their expectations based upon the potential outcome each option offers. The Ombudsman offers investors a tailored approach based on the investor's particular needs and the unique facts and circumstances involved, explaining and clarifying the different options to address their specific concerns and identifying the steps required to initiate each viable option.

The following examples offer a closer look at 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.

A well-informed, elderly investor contacted the Ombudsman and alleged that a broker took advantage of her age and trusting disposition to gain control of and plunder her brokerage account. The investor first contacted another SEC office well over a year before contacting the Ombudsman, and asked the staff in that office to intervene in the dispute and demand the return of her losses. The staff explained that the SEC was not permitted to represent individual investors in private disputes with their brokers and that, in this instance, the SEC could only forward the complaint to the firm and ask for a written response. The investor objected to the assistance and information provided by SEC staff and for almost a year, wrote letters to SEC senior officers and staff complaining about the inadequacy of the SEC's investor protection efforts.

An individual filed a complaint alleging an accounting fraud scheme involving a large, publicly traded company and a broadcasting service provider with whom the individual was locked in a protracted subscription billing dispute. The individual repeatedly insisted that the Division of Enforcement staff investigate his allegations and demanded to know the investigation's status. Citing the SEC's confidentiality policies and practices relating to investigations, the Enforcement staff routinely declined these demands. When the individual contacted the Ombudsman, he further alleged that the SEC was involved in a broad government conspiracy to cover up accounting fraud schemes involving publicly traded companies.

The SEC was contacted to assist a congressional representative's constituent, an investor complaining that a brokerage firm did not answer questions about a certain product to the investor's particular satisfaction. Because the SEC has no authority to force a firm to provide a response that satisfies the investor, SEC staff in the appropriate office replied in writing and explained that the investor may pursue other remedies by consulting with private counsel. The investor objected to this outcome and sent repetitive and harshly critical letters to the SEC Chair, the Ombudsman, and the senior staff in the SEC office that initially handled the investor's request.

A senior investor was not satisfied with the outcome of a FINRA investigation and asked the Ombudsman to review the FINRA investigation record, determine whether the FINRA staff came to the correct conclusion about the brokerage firm's actions, and compel the investor's preferred outcome. The investor argued that the SEC's investor protection mandate and oversight responsibility of FINRA obligated the Ombudsman to intervene informally and require FINRA to take action against the brokerage firm. The investor threatened to file formal complaints against specific FINRA management and staff if the Ombudsman's informal assistance did not achieve the investor's objectives. The investor also asked the Ombudsman to contact the brokerage firm informally and require the firm to pay the investor to settle the complaint.

The objections and criticisms raised by these and other investors reveal that they often rely upon incorrect assumptions about the SEC's authority, the staff's obligations to all investors, and the SEC staff's specific and personal duty to the individual investor. In these situations, and particularly when investors are unable to recover monetary losses, investors are often aggravated that the SEC did not respond in a manner consistent with their expectations. They then bring their complaints about their losses and any SEC staff who attempted to address their concerns to the Ombudsman.

When responding to an individual, the Ombudsman thoroughly researches the complaint and correspondence history to understand the nature of the underlying conflicts and issues involved. The Ombudsman often contacts the individual personally by telephone and takes considerable time to establish rapport, explain why the SEC could not act as the investor's personal advocate to recover losses, and discuss alternatives and resources to help resolve disputes. The Ombudsman may also provide the individual with detailed answers and explanations in writing to ensure he or she fully understands the staff's verbal communication, and to offer additional resources.

Even if these interactions never lead to results that satisfy the individuals involved, they provide valuable insight into investors' concerns that ultimately may affect our policy recommendations or SEC operations. In addition, they spark internal discussions about additional strategies the Ombudsman staff can apply to handle challenging communications with investors. By deconstructing the communication challenges certain investors present, the staff can identify and deploy new methods to move difficult communications in the direction of productive solutions.

INVESTOR PROTECTION AND THE RETAIL INVESTOR

The SEC's mission is to "protect investors, maintain fair, orderly, and efficient markets, and facilitate capital formation."[80] As illustrated by the examples on the previous page, retail investors who contact the Ombudsman after experiencing an unexpected investment loss often assume that "protect investors" means the SEC is responsible for returning the value the investor lost. Equally as often, the Ombudsman must introduce the investor to a different understanding of this term.

At the center of many complaints is a misunderstanding about the relationship between the SEC and retail investors, and the SEC's obligations to protect retail investors. Likewise, investors often have similar misunderstandings about the Ombudsman's role and obligation to resolve investor complaints in a particular manner. Investors approaching the Ombudsman from this posture generally expect the Ombudsman to act as a fact-finder and compel the SEC to do what the investor wants.

Investor Perceptions of Investor Protection

Each SEC division and office contributes to the agency's mission in different ways. Some of the many agency functions that promote investor protection include investigations of wrongdoing and enforcement actions; the review of rule filings from exchanges and SROs; the production of papers and publications;[81] the detailed review of disclosure items and documents "to ensure that investors are provided with material information in order to make informed investment decisions;"[82] and routine examinations to "protect investors . . . through risk-focused strategies" designed to improve compliance, prevent fraud, monitor risk, and inform policy.[83] What results from these efforts is a system of investor protection arising from the integrity of the capital markets,

the effective enforcement of rules, and the availability of "meaningful, accurate, and complete" information.[84]

The SEC establishes rules and regulations that require regulated entities to disclose all material information reasonably required for an informed investor to decide if an investment, a regulated entity, or a regulated individual poses risks that investor is unwilling to bear. The SEC's website explains the investor's assumption of risk as follows:

> The world of investing is fascinating and complex, and it can be very fruitful. But unlike the banking world, where deposits are guaranteed by the federal government, stocks, bonds and other securities can lose value. There are no guarantees. That's why investing is not a spectator sport. By far the best way for investors to protect the money they put into the securities markets is to do research and ask questions.[85]

While an investor may understand that an investment is not guaranteed by the federal government, the investor may not understand who bears responsibility for the losses that an investor suffers due to someone else's violation of the federal securities laws and the related consequences that illegal conduct may have on the investment's value. Investors who believe they are victims of securities fraud often contact the Ombudsman to request or demand some form of SEC legal representation or recompense because of the "protect investors" language in the SEC's mission statement. In these situations, investors frequently assume the purpose of SEC investigations and enforcement actions is to protect harmed investors by getting their money back.

Ultimately, the federal securities laws were designed to balance investor protection against investor autonomy, choice, and judgment by creating a disclosure-based regulatory regime. The concept of disclosure-based regulation assumes that the regulator and the investor are both responsible for different aspects of investor protection. While the SEC's enforcement goals may at times align with the interests of harmed investors, the SEC does not pursue investigations and enforcement actions 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 federal government in maintaining fair, orderly, and efficient capital markets.

The Ombudsman's Challenge

The related question we regularly address is: 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 investors and SEC divisions, or offices, or SROs. However, the Ombudsman is not authorized to do many things that investors request, for example:

- 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.

As demonstrated in the previous examples, 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. With this 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. If the investor wants to address these issues outside of FINRA's dispute resolution forum, the investor can hire private legal counsel to evaluate and protect the investor's rights. Investors who do not have the means to hire legal counsel may qualify for representation through no-cost legal clinics sponsored by various law schools. While the Ombudsman staff cannot represent the interest of investors in private disputes, we do serve these investors by providing information that will assist them in making choices for themselves.

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 SEC Ombudsman follows three core standards of practice, which are listed below.

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.

ACUS Overview of the Core Standards of Practice and Common Characteristics of Federal Ombudsmen

In 1990, the Administrative Conference of the United States (ACUS) sponsored a report entitled *Ombudsmen in Federal Agencies: The Theory and the Practice*. In 2016, ACUS sponsored a follow-up study, *A Reappraisal – The Nature and Value of Ombudsmen in Federal Agencies*, to examine the current landscape of federal ombudsmen, including "who they are, what they do, why they do it, how they do it, and the value they bring."[86] The study included an insightful examination of the core standards of practice followed, and the common characteristics shared, by federal ombudsmen:[87]

- Most federal ombuds share three *core standards of practice* in some form—independence, confidentiality, and impartiality—which are considered essential to the ombuds profession.[88]
- The core standards are set forth in the standards adopted by the American Bar Association (ABA), the International Ombudsman Association (IOA), and the United States Ombudsman Association (USOA) . . . . These organizations' standards are generally followed, as applicable, and considered essential by the ombuds profession, both within and outside government.[89]
- Most federal ombuds also share the following common characteristics: (1) [o]mbuds do not make decisions binding on the agency or provide formal rights-based processes for redress; (2) they have a commitment to fairness; and (3) they provide credible processes for [reviewing] issues [meaning, the ombuds have a high degree of expertise, training, access, appropriate independence, authorization, and resources].[90] The three core standards and these common characteristics, taken together, are central to the ombuds profession.[91]
- The core standards and common characteristics encourage all parties to a dispute or problem to work with the ombuds office, especially those who are reluctant to approach the government with an issue . . . . They encourage constituents to explore effective options.[92]
- By creating a safe space, ombuds receive unvarnished feedback about an agency's programs and processes. This feedback informs the recommendations ombuds make to the agency as to how to better serve their . . . constituents—a benefit to all taxpayers.[93]
- As the value of the federal ombuds continues to be recognized, we expect the profession to grow. If the nation is to fully benefit from federal ombuds, the unique and complementary combination of professional standards and characteristics that define the ombuds role and differentiate it from other agency functions, should be recognized. The standards and characteristics . . . provide essential guidance for the structure and operation of federal ombuds offices necessary to serve the federal government and all constituents.[94]

FINRA'S DISPUTE RESOLUTION TASK FORCE REPORT

As noted above, the Ombudsman is entrusted to serve as a liaison between the Commission and any retail investor in resolving problems that retail investors may have with the Commission or with an SRO such as FINRA.[95] In line with this responsibility, the Ombudsman regularly monitors FINRA's activities, especially with respect to its dispute resolution forum.

As discussed in the Report on Objectives for FY 2017, one aspect of FINRA's arbitration activities the Ombudsman monitors is FINRA's Dispute Resolution Task Force (Task Force). FINRA formed the Task Force in July 2014 to consider the future of FINRA's dispute resolution

forum and to provide recommendations to FINRA's National Arbitration and Mediation Committee to improve it.[96] In December 2015, the Task Force issued its Final Report, which included 51 recommendations.[97]

In February 2017, FINRA released a status report on its efforts to implement the Task Force's recommendations.[98] At that time, FINRA had implemented 35 of the 51 Task Force recommendations.[99] Given the number of recommendations, the Ombudsman selected simplified arbitration for small claims and the expanded use of explained decisions for arbitration awards for further discussion in this report based on the types of complaints and concerns raised by investors. In addition, one Task Force recommendation pending consideration by FINRA—funding to law school arbitration clinics—aligns with an outreach program implemented by our Office and is discussed below.

Simplified Arbitrations for Small Claims

As noted in the Report on Activities for FY 2016,[100] simplified arbitrations in FINRA's dispute resolution forum are disputes involving small claims of $50,000 or less, with one arbitrator assigned (rather than a panel of three arbitrators) who is selected from the chairperson roster unless the parties agree otherwise.[101] No arbitration hearing is held unless the investor requests one, and if not requested, the arbitrator renders an award based entirely on the pleadings and discovery provided by the parties.[102] The goal of the simplified arbitration procedure is to make the arbitration process faster than full panel arbitrations and less expensive for the parties.[103]

The Task Force reviewed simplified arbitrations and noted that of the FINRA dispute resolution forum claimants, the claimants in these arbitrations are the least satisfied, with a 37 percent satisfaction rate for claimant "wins" in all-paper cases and a 34 percent rate in hearing cases—below the "win" rates for claimants in all-public three-arbitrator panels.[104] The Task Force hypothesized that simplified arbitration claimants are dissatisfied because: (i) many are *pro se* and may have an unrealistic view of the likely outcome of arbitration; (ii) claimants may see a significant portion of their recovery consumed by fees and costs; (iii) since 43 percent of claimants do not opt for a hearing, they "give up their ability to look the arbitrator in the eye and argue their case;" (iv) explained decisions are not available; or (v) of the combination of not having an explained decision and lack of personal contact with the arbitrator.[105]

The Task Force speculated that the opportunity to be heard may be an important element in a claimant's satisfaction with the forum.[106] Accordingly, the Task Force recommended that FINRA Dispute Resolution consider adopting an intermediate form of adjudication, meaning "more than papers, but less than a full hearing," with the goal of permitting the claimant "personal contact" with the arbitrator.[107] FINRA explained that this type of hearing will permit parties the opportunity to present their cases over the phone, establish time limits for the amount of time each party can speak, and be restricted to one day.[108] On December 15, 2016, FINRA announced that the FINRA Board of Governors authorized FINRA to file with the SEC an amendment to the rule governing simplified arbitrations to provide for a new form of simplified arbitration.[109]

Expanded Use of Explained Decisions for Arbitration Awards

The Task Force made three recommendations with respect to explained decisions: (i) an arbitrator should default to writing an explained decision unless a party opts-out prior to the Initial Pre-Hearing Conference (IPHC); (ii) the brief fact-based format should be retained, but with the addition of a summary explanation of the

reasons behind any damage calculation; and (iii) FINRA should train chairpersons on how to write explained decisions.[110]

FINRA chose not to offer a default explained decision for the following reasons:

> [F]orum users (including investor and industry counsel) expressed reservations about making explained decisions the default award type at the forum including, among other things, that: (1) they put the finality of arbitration awards at risk of motions to vacate based on the explanations; (2) an opt-out provision would be problematic because parties that inadvertently fail to opt-out would receive an explained decision they do not want; (3) arbitrators might agree that they want to award damages to a party but not agree on the basis for the damages; (4) the requirement to write an explained decision would put added strain on arbitrators and might be a deterrent to service; and (5) drafting explained decisions could delay the issuance of awards.[111]

Under FINRA's current requirement that both parties opt-in to request an explained decision, very few explained decisions are requested. The Task Force believed that this mutual opt-in requirement was responsible for this result.[112] Fortunately, FINRA has taken a positive step toward expanding explained decisions in its forum—since January 3, 2017, FINRA has waived its $400 fee for an explained decision.[113] This will enable parties to receive an explained decision without having to cover the honorarium paid to the chairperson, provided that the parties can agree to seek an explained decision at least 20 days prior to the IPHC.[114] In the year ahead, the Ombudsman will monitor the impact of the FINRA decision to not offer an explained decision as the default option available to arbitration parties.

Funding to Law School Arbitration Clinics

The mission of the FINRA Foundation (the Foundation) is to "provide underserved Americans with the knowledge, skills and tools necessary for financial success throughout life."[115] Consistent with this mission, the Foundation has provided three-year grants to several law schools for start-up funding to establish clinics to provide assistance to customers with small claims who are not otherwise able to obtain legal assistance.[116] The Task Force received reports that as a result of the Foundation's three-year funding policy, some clinics will be forced to close.[117] The Task Force noted that while it is not inclined to second-guess the Foundation's policy of limiting funding for post-grant sustainability, it advocated that continued funding of law school clinics would be an appropriate use of FINRA fines and penalties.[118]

Investor rights clinics present a unique opportunity to educate vulnerable retail investors, a service consistent with the Foundation's goal to promote a "society characterized by universal financial literacy."[119] The information and services provided by FINRA's BrokerCheck[120] and Securities Helpline for Seniors,[121] or through a discussion with a registered representative at a broker-dealer firm, are vastly different from the personalized services that investor rights clinics offer. At a clinic, investors can have the face-to-face interaction with the clinic students, thereby avoiding telephone miscommunications, the need for computer access, and sales pressure tactics. Since clinic students and faculty routinely interact with victimized retail investors, they also can provide valuable feedback to the Foundation on policy issues that the Foundation and FINRA should consider to provide more effective investor financial awareness and education and to help investors avoid fraud.

The Ombudsman agrees with the Task Force that using FINRA fines and penalties to fund law school arbitration clinics would be an appropriate use for FINRA to consider. The Ombudsman is concerned about the challenges faced by investors—especially *pro se* investors who face sophisticated opposing counsel representing broker-dealer firms in a forum that has become increasingly complex—when the life savings of the investor are at stake and there is little ground for appeal. Investor rights clinics fill a critical void by supplying information and advocacy services to vulnerable retail investors in need. Competent representation of retail investors in FINRA's dispute resolution forum is a critically important step in helping vulnerable retail investors protect their rights. These clinics and the investors they serve merit the Foundation's support.

LAW SCHOOL CLINIC OUTREACH PROGRAM

Several law schools across the country run securities law and investor advocacy clinics that provide legal representation to retail investors who are unable to hire legal counsel to handle their claims.[122] Many of these clinics also conduct local community outreach to inform vulnerable populations such as immigrants, veterans, and senior investors about financial products, saving and investing wisely, and avoiding fraud.

In recent semesters, the Office has benefitted from SEC law student externs who have participated in these types of clinics at their respective law schools. In 2016, the Ombudsman, working directly with the Investor Advocate and a senior counsel, developed a framework for an outreach program to: (i) inform law schools with investor protection, securities law, and investor-focused clinics of the work of the Office; (ii) align with our Office's statutory mandate and core functions; and (iii) benefit law student clinic participants and the investing public. The primary goal of the outreach program is to create a dynamic forum for clinic students to provide the Investor Advocate and Ombudsman with their perspectives, feedback, and formal comments on SEC rulemakings and policy and retail investor concerns.

We began our in-person visits during this Reporting Period at the Pace University School of Law Investor Rights Clinic and the University of Miami School of Law Investor Rights Clinic.[123] The Ombudsman and a senior counsel submitted discussion topics and questions to the clinic faculty in advance of the visits, and spent time with the clinic faculty and students in the classroom setting. During the classroom discussions, the clinic students raised extremely insightful questions and points aimed at ameliorating common problems experienced by the clinic clients. Because of academic calendar scheduling conflicts, in lieu of a visit to the SEC, the Office arranged a virtual conference with one clinic during the Reporting Period, during which our Office engaged in an interactive discussion with the clinic faculty and students who discussed their suggestions and recommendations with the Office in greater detail.

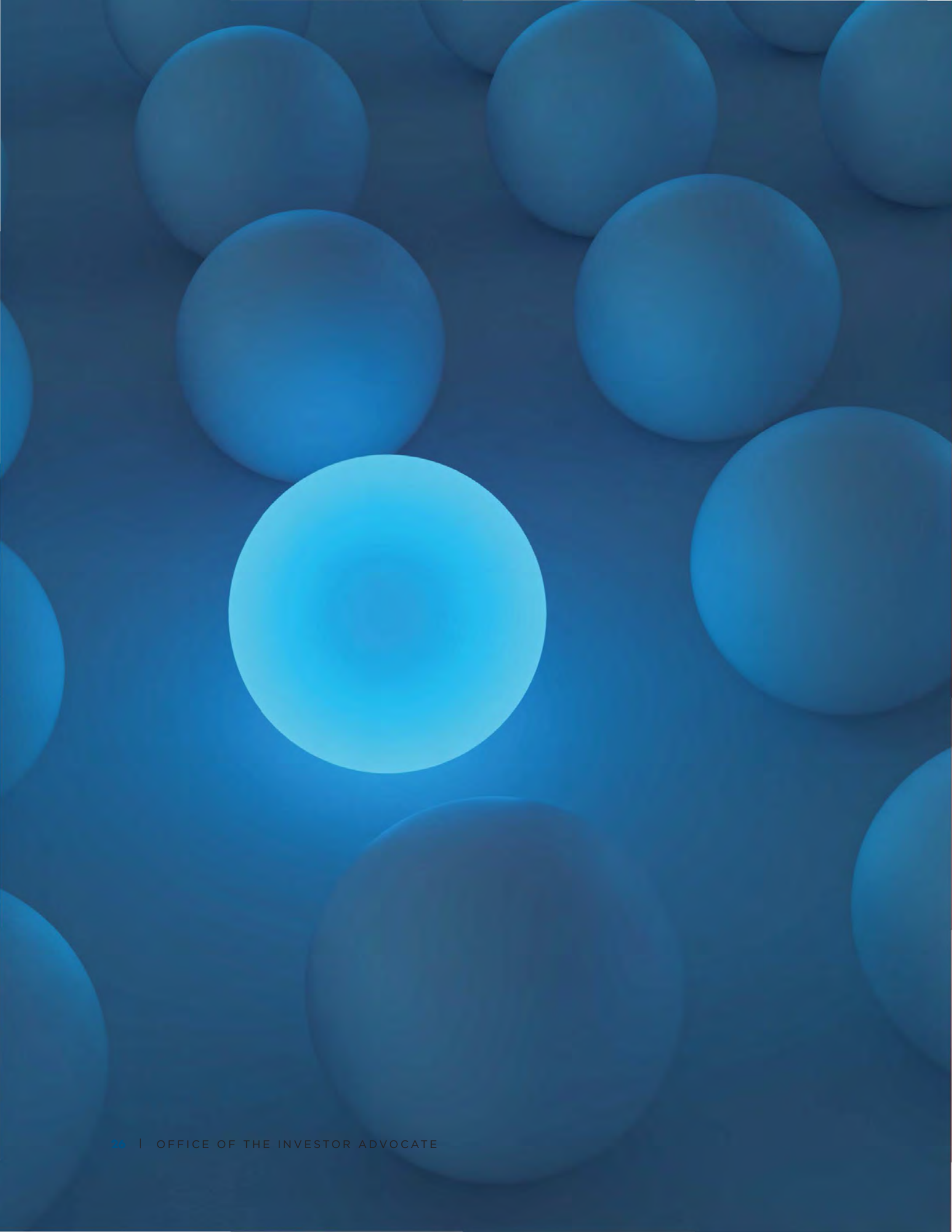
The clinic students are eager to identify areas in which retail investors could potentially benefit from rulemaking and policy changes, and to offer feedback and practical solutions. We are following up with the clinic faculty over the summer to arrange longer-term policy projects for the students as well as in-person visits to the SEC, during which the clinic faculty and students will have the opportunity to discuss the potential impact of SEC policy considerations on their clients with SEC Commissioners and other senior leaders. We look forward to sharing the progress of the outreach program in future reports.

OBJECTIVES AND OUTLOOK

During the Reporting Period, retail investors continued to express their disenchantment with the SEC regulatory process, mainly focusing on the seeming distance between the concept and reality of investor protection provided by the SEC. To address this systemic issue, in FY 2018, the Ombudsman will closely examine the various ways the SEC communicates with the investing public to identify areas for improvement in both practice and perception. The Ombudsman plans to work closely with SEC divisions and offices to identify places where our messaging to retail investors—particularly as that messaging relates to the SEC's mission, authority, and efforts to protect investors—should be refined and improved.

To focus our efforts and staff resources properly, the Ombudsman will continue to track matter and contact data, identify trends, and conduct detailed research and analysis. With the pending launch of the OMMS Form to the public in the last quarter of FY 2017, the Ombudsman anticipates OMMS will help identify additional areas of concern to investors and permit more targeted research and analysis. Finally, the Ombudsman looks to FY 2018 as an opportunity to establish more extensive channels of communication with retail investors, including through working with more law school clinics and other organizations focused on retail investor concerns, and to continue to foster an environment for the voices of retail investors to be heard and considered as a vital part of the work of the Office.

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.[124] 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.[125]

Exchange Act Section 39 authorizes the Committee to submit findings and recommendations for review and consideration by the Commission.[126] The statute also requires the SEC to "promptly" issue a public statement assessing each finding or recommendation of the Committee and disclosing what action, if any, the Commission intends to take with respect to the finding or recommendation.[127] While the Commission must respond to the IAC's recommendations, it is under no obligation to agree with or act upon the recommendations.[128]

In each of our reports to Congress, the Office of the Investor Advocate summarizes the IAC recommendations and the SEC's responses to them.[129] The following table covers all recommendations the IAC has made since its inception.[130] 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;[131] therefore, any such initiatives are not reflected in this Report.

Topic	Date	IAC Recommendation	SEC Response
Enhance Information for Bond Market Investors[132]	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.[133] FINRA and MSRB have announced that the new disclosure requirements will become effective on May 14, 2018.[134]
Mutual Fund Cost Disclosure[135]	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.	Pending
Empowering Elders and Other Investors: Background Checks[136]	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.	Pending
Shortening the Trade Settlement Cycle[137]	February 12, 2015	Shorten the trade settlement cycle from 3 days after trade date (T+3) to 1 day (T+1).	On March 22, 2017, the SEC adopted a rule to shorten the settlement cycle from T+3 to T+2 by September 5, 2017, and kept open the possibility of eventually moving to T+1. The adopting release specifically addressed the recommendation of the IAC.[138]
Accredited Investor Definition[139]	October 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.

Topic	Date	IAC Recommendation	SEC Response
Impartiality in the Disclosure of Preliminary Voting Results[140]	October 9, 2014	Ensure impartiality in the disclosure of preliminary results of proxy voting.	Pending
Crowdfunding[141]	April 10, 2014	Ensure that investors understand the risks of crowdfunding and avoid unaffordable financial losses by, *inter alia*, tightening restrictions on the amounts that investors can invest in crowdfunding.	The SEC adopted final crowdfunding rules on October 30, 2015.[142]
Decimalization and Tick Sizes[143]	January 31, 2014	Oppose any test or pilot programs to increase the minimum quoting and trading increments ("tick sizes") in the securities markets.	On May 6, 2015, the SEC approved a 2-year pilot program, which began on October 3, 2016.[144]
Legislation to Fund Investment Adviser Examinations[145]	November 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 never made a statement requesting user fees, the SEC has made funding for increased coverage of investment adviser exams a top priority every year at least since FY 2015.
Broker-Dealer Fiduciary Duty[146]	November 22, 2013	Establish a fiduciary duty for broker-dealers when they provide personalized investment advice to retail investors.	On June 1, 2017, Chairman Jay Clayton requested public comments regarding this issue.
Universal Proxy Ballots[147]	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.[148]

Topic	Date	IAC Recommendation	SEC Response
Data Tagging[149]	July 25, 2013	Promote the use of machine-readable data tagging formats for data filed with the SEC.	The SEC has addressed data tagging in a number of final and proposed rules.[150] On March 1, 2017, the SEC proposed amendments to require the filing of financial statement data using Inline XBRL.[151]
Target Date Mutual Funds[152]	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.[153] The comment period closed on June 9, 2014.
General Solicitation and Advertising[154]	October 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. That proposal, which relates to most of the IAC recommendations, is pending.[155]

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

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

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

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

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

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

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

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

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

12 Exchange Act §39, 15 U.S.C. § 78pp.

13 Exchange Act §39(b)(1)(A), 15 U.S.C. § 78pp(b)(1)(A).

14 Jay R. Ritter, *Executive Summary: Where Have All the IPOs Gone?*, Univ. of Fla. (Mar. 17, 2017), https://site.warrington.ufl.edu/ritter/files/2017/03/Where-Have-All-the-IPOs-Gone_exec-sum.pdf.

15 Companies with annual sales of less than $50 million (in constant 2009 dollars) had an average of 165 IPOs per year between 1980 and 2000, but that number has fallen more than 80 percent to only 28 IPOs per year between 2001 and 2012. Small company IPOs went from 53 percent of all IPOs in the earlier period to only 28 percent in the latter period. *See* Xiaohui Gao, Jay R. Ritter & Zhongyan Zhu, *Where Have All the IPOs Gone?*, 48 J. Fin. & Quantitative Analysis 1663, 1667 (Table 1 and Figure 1) (2013).

16 *Id.*

17 *See, e.g.*, Editorial, *Where Are the IPOs?*, Wall St. J., Dec. 31, 2016, at A10.

18 *See* SEC, Office of the Investor Advocate, *Report on Activities, Fiscal Year 2016,* at 8-9 (Dec. 31, 2016) [hereinafter *Report on Activities, Fiscal Year 2016*], https://www.sec.gov/advocate/reportspubs/annual-reports/sec-investor-advocate-report-on-activities-2016.pdf.

19 *See* Christian Leuz & Peter D. Wysocki, *The Economics of Disclosure and Financial Reporting Regulation: Evidence and Suggestions for Future Research*, 54(2) J. Acct. Res. 525 (2016).

20 *See id.* at 560-571. The downward trend in small-company IPOs started before the regulatory changes that began with the Sarbanes-Oxley Act of 2002 (SOX) and persisted even after 2007, when small firms were exempted from many of SOX's requirements. Gao, Ritter & Zhu, *supra* note 15, at 1665. It persisted even after further deregulatory measures were passed in the JOBS Act of 2012 and the FAST Act of 2014. In 2016, only 74 operating companies went public, the lowest total since 2009. Jay R. Ritter, Initial Public Offerings: Updated Statistics at 2 (Mar. 29, 2017), https://site.warrington.ufl.edu/ritter/files/2017/03/IPOs2016Statistics_Mar29_2017.pdf.

21 Robert P. Bartlett III, Paul Rose & Steven Davidoff Solomon, *What Happened in 1998? The Demise of the Small IPO and the Investing Preferences of Mutual Funds* at 27, 43-44 (Ohio State Pub. Law, Working Paper No. 328, 2016), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2718862.

22 *Id.*

23 *See id.* at 10 ("[A] growing fund's aversion for illiquid stocks can translate into an associated aversion for smaller firms.").

24 For example, under Section 5(b)(1) of the Investment Company Act of 1940, a mutual fund cannot qualify as diversified if it holds more than ten percent of the voting shares in any one company. Under Section 22(e), a mutual fund must redeem shares within seven days of a redemption request, which could elevate the price impact of a large redemption in a thinly traded security. In addition, mutual funds are often restricted from investing in securities that are not listed on an exchange, so mutual funds may be unable to participate in the nearly 70 percent of small IPOs that are traded on non-exchange venues. *Id.* at 18.

25 The SEC's Division of Economic and Risk Analysis, in its economic analysis of proposed amendments to the definition of a "smaller reporting company," observed data suggesting that scaled disclosures have a negative effect on institutional ownership. *See* Securities Act Release No. 10107, 81 Fed. Reg. 43,130, 43,144 (July 1, 2016). Moreover, the over-the-counter (OTC) markets, which feature tiers with varying levels of disclosure, offer unique insights into the trade-offs between disclosure and market integrity, particularly for small companies. OTC tiers with the stricter disclosure requirements are healthier and have higher liquidity and lower crash risk than the tiers with less disclosure. *See* Joshua T. White, *Outcomes of Investing in OTC Stocks*, SEC, Division of Economic and Risk Analysis White Paper, Dec. 16, 2016, https://www.sec.gov/files/White_OutcomesOTCinvesting.pdf.

26 Michael J. Mauboussin, Dan Callahan & Darius Majd, *The Incredible Shrinking Universe of Stocks: The Causes and Consequences of Fewer U.S. Equities,* Credit Suisse at 8 (Mar. 22, 2017).

27 *Id.* at 10.

28 *See* Elisabeth de Fontenay, *The Deregulation of Private Capital and the Decline of the Public Company*, 68 Hastings L.J. 445, 463-472 (Apr. 2017).

29 *Id.* at 448.

30 Scott Bauguess, Rachita Gullapalli & Vladimir Ivanov, Capital Raising in the U.S.: An Analysis of the Market for Unregistered Securities Offerings, 2009-2014, at 7 fig.1 (Oct. 2015), https://www.sec.gov/files/unregistered-offering10-2015.pdf.

31 Gao et. al., *supra* note 15, at 1663-1692.

32 *Id*. at 1671.

33 *See generally* Concept Release on Equity Market Structure, Exchange Act Release No. 61358, 75 Fed. Reg. 3594 (Jan. 21, 2010) [hereinafter Equity Market Concept Release].

34 *Id*.

35 Regulation NMS: Final Rules and Amendments to Joint Industry Plans, Exchange Act Release No. 51808, 70 Fed. Reg. 37,496 (June 29, 2005) [hereinafter Regulation NMS] (Among other things, Regulation NMS eliminated trade-through protection for manual quotations).

36 Regulation of Exchanges and Alternative Trading System: Final Rule, Exchange Act Release No. 40760, 63 Fed. Reg. 70,844 (Dec. 22, 1998) [hereinafter Regulation ATS].

37 Order Execution Obligations, Exchange Act Release No. 37619A, 61 Fed. Reg. 48,290 (Sept. 12, 1996).

38 *See generally* Equity Market Concept Release, *supra* note 33.

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

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

41 *See id*.

42 *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.

43 *See id*.

44 *See* SEC, Press Release, SEC Announces Members of New Equity Market Structure Advisory Committee (Jan. 13, 2015), http://www.sec.gov/news/pressrelease/2015-5.html; *see also* Equity Market Structure Advisory Committee, SEC, https://www.sec.gov/spotlight/equity-market-structure-advisory-committee.shtml (last updated Feb. 9, 2017).

45 SEC, Equity Market Structure Advisory Committee, Renewal Charter (Feb. 9, 2015), https://www.sec.gov/spotlight/emsac/equity-market-structure-advisory-committee-charter.pdf.

46 *See*, *e.g.*, Larry Harris, *Maker-Taker Pricing Effects on Market Quotations*, at 5 (Nov. 14, 2013), http://bschool.huji.ac.il/.upload/hujibusiness/Maker-taker.pdf.

47 Memorandum on Maker Taker Fees on Equity Exchanges, SEC Division of Trading and Markets, (Oct. 20, 2015), https://www.sec.gov/spotlight/emsac/memo-maker-taker-fees-on-equities-exchanges.pdf.

48 *Id*.

49 *See id*.

50 *Id*. As noted in the white paper, former Senator Carl Levin and Senator Charles Schumer had written to the SEC Chair to urge the SEC to take action to eliminate such conflicts of interest, noting in support of their recommendation certain academic and market research into order routing decisions that suggests that the conflict may be resulting in harm to certain types of investors. *See*, *e.g.*, Letter from former Sen. Carl Levin (D-MI), to Mary Jo White, Chair, SEC (July 9, 2014), https://www.hsgac.senate.gov/download/levin-letter-to-sec-chairman-mary-jo-white-re-equity-market-structure-july-15_2014. A recent academic paper analyzed selected market data and suggests that a significant number of retail firms route nonmarketable orders to the venue offering the highest rebate, and do so in a manner that the authors believe might not be consistent with the brokers' duty of best execution. *See* Robert Battalio, Shane A. Corwin & Robert Jennings, *Can Brokers Have it All? On the Relation Between Make-Take Fees and Limit Order Execution Quality*, at 5 (Mar. 31, 2015), http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2367462.

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

52 Federal Reserve Board, *Financial Accounts of the United States: Flow of Funds, Balance Sheets, and Integrated Macroeconomic Accounts, Fourth Quarter 2016*, Table L.212 (Mar. 9, 2017, 12:00 PM), http://www.federalreserve.gov/releases/z1/current/z1.pdf.

53 *Id*.

54 Customer transactions include purchases and sales between customers. It excludes inter-dealer transactions. *See* MSRB, *2015 Fact Book*, at 7-8 (March 2016), http://www.msrb.org/msrb1/pdfs/MSRB-Fact-Book-2015.pdf [hereinafter *2015 MSRB Fact Book*]; MSRB, *2016 Fact Book*, at 7-8 (March 2017), http://www.msrb.org/msrb1/pdfs/MSRB-Fact-Book-2016.pdf [hereinafter *2016 MSRB Fact Book*].

55 Specifically, the MSRB Fact Book data suggests the par dollar amount of customer transactions in municipal securities, as a percentage of the total par dollar amount of municipal trades, increased from approximately 77 percent in 2015 to approximately 80 percent in 2016. This increase follows a decrease from approximately 84 percent in 2011 to 77 percent in 2015. *2015 MSRB Fact Book*, *supra* note 54, at 7-8; *2016 MSRB Fact Book*, *supra* note 54, at 7-8.

56 *2015 MSRB Fact Book*, *supra* note 54, at 7-8; *2016 MSRB Fact Book*, *supra* note 54, at 7-8.

57 *2015 MSRB Fact Book, supra* note 54, at 7-8; *2016 MSRB Fact Book, supra* note 54, at 8.

58 *See* SEC, Office of the Investor Advocate, *Report on Objectives, Fiscal Year 2015* (June 30, 2014), http://www.sec.gov/reportspubs/annual-reports/sec-office-investor-advocate-report-on-objectives-fy2015.pdf; *see also* SEC, Office of the Investor Advocate, *Report on Objectives, Fiscal Year 2016* (June 30, 2015) [hereinafter *Report on Objectives, Fiscal Year 2016*], http://wcm.sec.gov/advocate/reportspubs/annual-reports/sec-office-investor-advocate-report-on-objectives-fy2016.pdf; *see also* 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.

59 *See Report on Objectives, Fiscal Year 2016*, *supra* note 58; *Report on Objectives, Fiscal Year 2017*, *supra* note 58.

60 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.

61 *Id.*

62 *See* Proposed Amendments to Municipal Securities Disclosure, Exchange Act Release No. 80130, 82 Fed. Reg. 13,928 (proposed Mar. 15, 2017), https://www.gpo.gov/fdsys/pkg/FR-2017-03-15pdf/2017-04323.pdf.

63 *Id.*

64 SEC, Press Release, SEC Proposes Rule Amendments to Improve Municipal Securities Disclosures (Mar. 1, 2017), https://www.sec.gov/news/pressrelease/2017-57.html.

65 The first proposal would apply to the conceptual framework that FASB uses as a guide in its own decision-making process. The second proposal would be an Accounting Standards Update. *Proposed Amendments to Statement of Financial Accounting Concepts No. 8, Conceptual Framework for Financial Reporting: Chapter 3*, Fin. Accounting Standards Bd. (Sept. 24, 2015), 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.

66 *See*, *e.g.*, *Online Comment Letters*, Fin. Accounting Standards Bd., http://www.fasb.org/jsp/FASB/CommentLetter_C/CommentLetterPage&cid=1218220137090&project_id=2015-310 (last visited May 17, 2017) (noting comment letters submitted to FASB by the California Public Employees' Retirement System (CalPERS) on Dec. 8, 2015; the CFA Institute on Jan. 21, 2016; the Council of Institutional Investors (CII) on Dec. 3, 2015; and Jack Ciesielski, R.G. Associates, Inc. on Dec. 7, 2015). See Fin. Accounting Standards Bd., Board Meeting Handout: Disclosure Framework (Mar. 2, 2016), http://www.fasb.org/jsp/FASB/Document_C/DocumentPage&cid=1176167952679, for a summary of comment letters submitted to FASB.

67 See also PCAOB Investor Advisory Group report, which states: "(i) NGFM are a critical means of communication for management, (ii) NGFM are very useful signals of management behavior, (iii) industry leadership often discusses and may prescribe useful NGFM, and (iv) investors use NGFM extensively as inputs or adjustments to valuation models." *See also* Pub. Co. Accounting Oversight Bd., Report from the Working Group on Non-GAAP Financial Measures 15 (Oct. 27, 2016), https://pcaobus.org/News/Events/Documents/102716-IAG-meeting/non-GAAP-WG-slides.pdf.

68 *See, e.g.*, James V. Schnurr, Chief Accountant, SEC, Remarks before the 12th Annual Life Sciences Accounting and Reporting Congress (Mar. 22, 2016), http://www.sec.gov/news/speech/schnurr-remarks-12th-life-sciences-accounting-congress.html; Mary Jo White, Chair, SEC, Keynote Address at the 2015 AICPA National Conference: "Maintaining High-Quality, Reliable Financial Reporting: A Shared and Weighty Responsibility" (Dec. 9, 2015), http://www.sec.gov/news/speech/keynote-2015-aicpa-white.html.

69 Wesley Bricker, Chief Accountant, SEC, Working Together to Advance High Quality Information in the Capital Markets (Dec. 5, 2016), https://www.sec.gov/news/speech/keynote-address-2016-aicpa-conference-working-together.html.

70 On the role of audit committees, see *id.*

71 For a brief review of internal control requirements, see Wesley R. Bricker, Chief Accountant, SEC, Remarks before the Annual Life Sciences Accounting and Reporting Congress: "Advancing Effective Internal Control and Credible Financial Reporting" (Mar. 21, 2017), https://www.sec.gov/news/speech/bricker-remarks-annual-life-sciences-accounting-and-reporting-congress-032117.

72 *Report on Objectives, Fiscal Year 2016*, *supra* note 58, at 9. The fiduciary duty discussion in the *Report on Objectives, Fiscal Year 2016* is incorporated by reference herein.

73 Definition of the Term "Fiduciary"; Conflict of Interest Rule – Retirement Investment Advice, 81 Fed. Reg. 20,946 (Apr. 8, 2016) (to be codified at 29 C.F.R. pts. 2509, 2510, and 2550); Amendment to and Partial Revocation of Prohibited Transaction Exemption (PTE)

84-24 for Certain Transactions Involving Insurance Agents and Brokers, Pension Consultants, Insurance Companies, and Investment Company Principal Underwriters, 81 Fed. Reg. 21,147 (Apr. 8, 2016) (to be codified at 20 C.F.R. pt. 2550); Best Interest Contract Exemption, 81 Fed. Reg. 21,002 (Apr. 8, 2016) (to be codified at 20 C.F.R. pt. 2550).

74 *See, e.g.*, SEC, *Recommendation of the Investor Advisory Committee Regarding Broker-Dealer Fiduciary Duty* (Nov. 22, 2013), https://www.sec.gov/spotlight/investor-advisory-committee-2012/fiduciary-duty-recommendation-2013.pdf.

75 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), https://www.sec.gov/news/public-statement/statement-chairman-clayton-2017-05-31. In addition, while recently serving as Acting Chairman of the SEC, Commissioner Michael Piwowar stated that the Commission should take the lead in adopting a fiduciary standard that would apply to all retail brokerage accounts. *See* Dave Michaels, *SEC Should Write Fiduciary Rule, Acting Chairman Says*, Wall St. J. (Apr. 21, 2017, 5:21 PM), https://www.wsj.com/articles/secs-acting-chairman-supports-new-standard-for-brokers-advising-retail-clients-1492789509.

76 Dodd-Frank Act, Pub. L. No. 111-203, § 913, 124 Stat. 1376 (2010).

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

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

79 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.

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

81 Mary Jo White, Chair, SEC, Chairman's Address at SEC Speaks: Beyond Disclosure at the SEC in 2016 (Feb. 19, 2016), https://www.sec.gov/news/speech/white-speech-beyond-disclosure-at-the-sec-in-2016-021916.html.

82 *About the Division of Corporate Finance*, SEC (Oct. 5, 2015), https://www.sec.gov/divisions/corpfin/cfabout.shtml.

83 *About Office of Compliance Inspections and Examinations*, SEC (Apr. 19, 2017), https://www.sec.gov/ocie/Article/ocie-about.html.

84 Luis Aguilar, Comm'r, SEC, Capital Formation from the Investor's Perspective (Dec. 3, 2012), https://www.sec.gov/news/speech/2012-spch120312laahtm.

85 *What We Do*, *supra* note 80.

86 Administrative Conference of the United States, A Reappraisal – The Nature and Value of Ombudsmen in Federal Agencies, Part 1: Executive Summary (2016) [hereinafter ACUS Report], https://www.acus.gov/sites/default/files/documents/PART%201_Executive%20Summary%20%28ACUS%29%2011.16.16_0.pdf.

87 The bullet points that follow are quotes from the ACUS Report. ACUS Report, *supra* note 86.

88 *Id.* at 7.

89 *Id.* at 56.

90 *Id.* at 57; *see generally id.* at 15.

91 *Id.* at 57.

92 *Id.* at 29.

93 *Id.*

94 *Id.*

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

96 *See* FINRA, *FINRA Arbitration Task Force Issues Final Report* (Dec. 16, 2015), https://www.finra.org/newsroom/2015/finra-arbitration-task-force-issues-final-report. The NAMC is FINRA's Standing Board Advisory Committee on dispute resolution who meet to discuss the Final Report and recommend items to implement immediately, items to discussion further, and identify items that may not be feasible. *Id.*

97 *See* FINRA, Final Rep. and Recommendations of the FINRA Disp. Resol. Task Force (Dec. 16, 2015) [hereinafter Final Report], at 5, https://www.finra.org/sites/default/files/Final-DR-task-force-report.pdf.

98 FINRA, *Status Report on FINRA Dispute Resolution Task Force Recommendations* (Feb. 8, 2017) [hereinafter *Status Report*], https://www.finra.org/sites/default/files/DR_task_report_status_020817.pdf.

99 *Id.*

100 *Report on Activities, Fiscal Year 2016*, *supra* note 18, at 37.

101 *See* FINRA Rule 12800.

102 FINRA Rule 12800(c).

103 *See* Final Report, *supra* note 97, at 28.

104 *Id.*

105 *Id.* at 29.

106 *Id.*

107 *Id.*

108 FINRA, *December 2016 Board Update* (Dec. 15, 2016), http://www.finra.org/industry/december-2016-board-update.

109 FINRA, *Update: FINRA Board of Governors Meeting* (Dec. 15, 2016), http://www.finra.org/industry/update-finra-board-governors-meeting-121516.

110 Final Report, *supra* note 97, at 23.

111 *Status Report*, *supra* note 98, at 9.

112 Final Report, *supra* note 97, at 21.

113 *Status Report*, *supra* note 98, at 9; *see also* FINRA Rule 12214(e).

114 FINRA Rule 12514(d).

115 FINRA Foundation, *About Us*, http://www.finrafoundation.org/about/ (last visited June 5, 2017) [hereinafter *About Us*].

116 Final Report, *supra* note 97, at 52.

117 *Id.*

118 *Id.*

119 *About Us*, *supra* note 115.

120 BrokerCheck, FINRA, https://brokercheck.finra.org/ (last visited May 4, 2017).

121 *Securities Helpline for Seniors (HELPS)*, FINRA, http://www.finra.org/investors/finra-securities-helpline-seniors (last visited May 4, 2017).

122 A list of these law school clinics is available at https://www.sec.gov/answers/arbclin.htm.

123 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.

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

125 *Id.*

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

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

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

129 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."

130 For the full versions of the recommendations, see SEC, http://www.sec.gov/spotlight/investor-advisory-committee-2012.shtml (last visited May 12, 2016).

131 17 C.F.R. §§ 200.735-3(b)(2)(i), 230.122 (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).

132 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].

133 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. 84,659 (Nov. 23, 2016); 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).

134 FINRA Notice 17-08, *supra* note 132; MSRB Notice 2016-28, *supra* note 132.

135 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.

136 SEC, *Recommendation of the Investor Advisory Committee: Empowering Elders and Other Investors Re: Background Checks in the Financial Markets* (July 16, 2015), https://www.sec.gov/spotlight/investor-advisory-committee-2012/final_iac_backgroundcheck_recommendation_071615.pdf.

137 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* SEC, Press Release, SEC Adopts T+2 Settlement Cycle for Securities Transactions, 2017-68 (Mar. 22, 2017), https://www.sec.gov/news/press-release/2017-68-0.

138 Securities Transaction Settlement Cycle, Exchange Act Release No. 80295, 82 Fed. Reg. 15,564 (Mar. 29, 2017).

139 *See also* SEC, *Recommendation of the Investor Advisory Committee: Accredited Investor Definition* (Oct. 9, 2014), https://www.sec.gov/spotlight/investor-advisory-committee-2012/investment-advisor-accredited-definition.pdf.

140 *See also* SEC, *Recommendation of the Investor Advisory Committee: Impartiality in the Disclosure of Preliminary Voting Results* (Oct. 9, 2014), https://www.sec.gov/spotlight/investor-advisory-committee-2012/impartiality-disclosure-prelim-voting-results.pdf.

141 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.

142 See the Office of the Investor Advocate's Report on Objectives for Fiscal Year 2017 for an analysis of how the final rules correspond with the IAC recommendations. *See Report on Objectives, Fiscal Year 2017, supr*a note 58.

143 *See* 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.

144 SEC, Press Release, 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).

145 *See* SEC, *Recommendation of the Investor Advisory Committee: Legislation to Fund Investment Adviser Examinations* (Nov. 22, 2013), https://www.sec.gov/spotlight/investor-advisory-committee-2012/investment-adviser-examinations-recommendation-2013.pdf.

146 *See* SEC, *Recommendation of the Investor Advisory Committee: Broker-Dealer Fiduciary Duty* (Nov. 22, 2013), https://www.sec.gov/spotlight/investor-advisory-committee-2012/fiduciary-duty-recommendation-2013.pdf.

147 *See* SEC, *Recommendations of the Investor Advisory Committee: Regarding SEC Rulemaking to Explore Universal Proxy Ballots* (July 25, 2013), https://www.sec.gov/spotlight/investor-advisory-committee-2012/universal-proxy-recommendation-072613.pdf.

148 *See* Universal Proxy, Exchange Act Release No. 79164, Investment Company Act Release No. 32339, 81 Fed. Reg. 79,122 (proposed Nov. 10, 2016).

149 SEC, *Recommendations of the Investor Advisory Committee Regarding the SEC and the Need for the Cost Effective Retrieval of Information by Investors* (July 25, 2013), https://www.sec.gov/spotlight/investor-advisory-committee-2012/data-tagging-resolution-72513.pdf.

150 See the Office of the Investor Advocate's Report on Activities for Fiscal Year 2016 for a list of rulemakings that require data tagging. *See Report on Activities, Fiscal Year 2016, supra* note 18, at 53-54.

151 Order Granting Limited and Conditional Exemption Under Section 36(a) of the Securities Exchange Act of 1934 from Compliance with Interactive Data File Exhibit Requirement in Forms 6-K, 8-K, 10-Q, 10-K, 20-F and 40-F to Facilitate Inline Filing of Tagged Financial Data, Exchange Act Release No. 78041, 81 Fed. Reg. 39,741 (June 17, 2016). SEC, Press Release, SEC Proposes Inline XBRL Filing of Tagged Data, 2017-56, (Mar. 1, 2017), https://www.sec.gov/news/pressrelease/2017-56.html.

152 SEC, *Recommendation of the Investor Advisory Committee: Target Date Mutual Funds* (Apr. 11, 2013), https://www.sec.gov/spotlight/investor-advisory-committee-2012/iac-recommendation-target-date-fund.pdf.

153 Investment Company Advertising: Target Date Retirement Fund Names and Marketing, Securities Act Release No. 9570, Exchange Act Release No. 71861, Investment Company Act Release No. 31004, 79 Fed. Reg. 19,564 (proposed Apr. 9, 2014).

154 SEC, *Recommendations of the Investor Advisory Committee Regarding SEC Rulemaking to Lift the Ban on General Solicitation and Advertising in Rule 506 Offerings: Efficiently Balancing Investor Protection, Capital Formation and Market Integrity* (2012), https://www.sec.gov/spotlight/investor-advisory-committee-2012/iac-general-solicitation-advertising-recommendations.pdf.

155 Eliminating the Prohibition Against General Solicitation and General Advertising in Rule 506 and Rule 144A Offerings, Securities Act Release No. 9415, Exchange Act Release No. 69959, Investment Advisers Act Release No. 3624, 78 Fed. Reg. 44,771 (July 24, 2013). Disqualification of Felons and Other "Bad Actors" from Rule 506 Offerings, Securities Act Release No. 9414, 78 Fed. Reg. 44,729 (July 24, 2013). Amendments to Regulation D, Form D and Rule 156, Securities Act Release No. 9416, Exchange Act Release No. 69960, Investment Company Act Release No. 30595, 78 Fed. Reg. 44,806 (proposed July 24, 2013).

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