

Office of the Investor Advocate

OFFICE OF THE INVESTOR ADVOCATE

REPORT ON OBJECTIVES

FISCAL YEAR 2021

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 contains a summary of the Investor Advocate’s primary objectives for Fiscal Year 2021, beginning October 1, 2020.

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 Fiscal Year 2021, the activities and accomplishments of the Office will be reported not later than December 31, 2021.

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

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I PLEDGE YOU, I PLEDGE MYSELF, TO A NEW
FOR THE AMERICAN PEOPLE

MESSAGE FROM THE INVESTOR ADVOCATE

It remains a distinct privilege to lead the Office of the Investor Advocate into our seventh full fiscal year at the Securities and Exchange Commission. We are grateful for the support we have received from members of Congress and their staff, as well as the Chairman, Commissioners, and our colleagues at the Commission. We are deeply indebted to the investors and other stakeholders in our securities markets who have provided such thoughtful insights to us over the years as we have advocated for investors.

As described in more detail below in our *Policy Agenda for Fiscal Year 2021*, we expect to be actively engaged in advocacy efforts on a number of fronts in the coming year. For example, we are becoming increasingly concerned about efforts to expand the private markets, which may have the unintended consequence of further weakening the public markets that have served investors so well. We are deeply concerned about shareholder rights, and particularly the ability of investors to cast votes efficiently, to have their votes counted accurately, and to obtain voting advice without interference from company management. We will continue to support the Commission's efforts to improve equity market structure, and we will assist in finding improvements to disclosures by registered funds. Finally, we will remain vigilant in our review of policies related to novel exchange-traded funds and broker conduct.

We are also examining the impact on investors from COVID-19 and the resulting economic turmoil. In this report, we provide an initial glimpse into how investors are reacting to the global pandemic, particularly with respect to their retirement savings. So far, it appears that investors are largely reacting calmly in the face of recent market volatility. We will continue to focus on this issue and will make recommendations to policymakers as appropriate.



In addition to our policy work, we will continue to provide direct service to investors who have concerns about the SEC or the self-regulatory organizations (SROs) overseen by the SEC. Ombudsman Tracey McNeil and her team interact with investors on a daily basis, and their activities and objectives are described in the Ombudsman Report below. We also will continue our efforts to utilize surveys and other research methods to glean more insights about the investors we serve. For instance, we will continue to study how individual investors process information to make important financial decisions.

It is important to note that, while our work has increased in complexity and volume, the staffing allocated to some of our functions has remained largely unchanged since the inception of the office in 2014. For example, the Ombudsman has recently been granted approval to hire a second staff attorney, but even with this additional resource, we will struggle to carry out our statutory mandates and provide more than a cursory level of service to investors. Moreover, our enabling statute contemplates that the Office will be staffed not only with attorneys who serve as policy advisors, but also “research staff” to help us understand the investor population and the potential impacts to investors from changes in SEC or SRO rules. We have two economists on staff currently, but to perform our function as Congress intended,

we will need additional research staff to help us conduct data-driven analysis and get past the Commission’s traditional reliance upon intuition to determine what is in the best interests of investors. We acknowledge that Congress faces significant fiscal challenges, but we respectfully request consideration of our mission-critical needs as you review the SEC’s budget in the coming year.

On behalf of the talented women and men in the Office of the Investor Advocate who tirelessly work for the benefit of American investors, I proudly submit this report on our objectives for the coming year. As always, I would welcome the opportunity to provide additional information to Members of Congress.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Rick Fleming", written in a cursive style.

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 that 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 such problems.⁵ As required by statute, a semi-annual report from the Ombudsman is included within this Report on Objectives.⁶

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.⁷ 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. These and other concerns are discussed in greater detail below in the section entitled *Policy Agenda for Fiscal Year 2021*.

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.⁸ 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.⁹ As required, in Fiscal Year 2021 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.¹⁰ As we study the issues in our *Policy Agenda for Fiscal Year 2021*, as set forth below, we will likely make recommendations to the Commission and Congress for changes that will promote the interests of investors.

Supporting the Investor Advisory Committee

Exchange Act Section 39 establishes the Investor Advisory Committee (IAC or Committee).¹¹ As discussed in greater detail below in the section entitled *Summary of Investor Advisory Committee 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,¹² and the Office will continue to provide staff and operational support to the IAC during Fiscal Year 2021.

POLICY AGENDA FOR FISCAL YEAR 2021

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 upon the following issues during Fiscal Year 2021:

- Corporate Disclosure and Investor Protection in Registered and Exempt Offerings
- Proxy Voting
- Equity Market Structure
- Novel Exchange-Traded Funds
- Registered Fund Disclosure
- Broker Conduct

As in past years, numerous other issues are likely to arise that will require the attention of the Office.

CORPORATE DISCLOSURE AND INVESTOR PROTECTION IN REGISTERED AND EXEMPT OFFERINGS

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. The rulemaking proposals have been in the nature of streamlining, clarifying, and updating rules where feasible, all in a way intended to facilitate timely, material disclosure by companies and investors' access to that information. During Fiscal Year 2021, we anticipate that the Commission will continue to finalize rulemaking proposals that remain outstanding.

At this juncture, we can make some observations about what the Commission is and is not doing with respect to its Disclosure Effectiveness initiative. For example, the Commission has received calls from investor groups to improve disclosures related to human capital management

as companies have grown increasingly dependent on their workforces as a source of value creation.¹³ How to elicit material, decision-useful information on a company-specific basis has been a matter of considerable debate.¹⁴ On August 8, 2019, the Commission proposed replacing a requirement to disclose the number of employees with a requirement to disclose a description of the registrant’s “human capital resources,” including in the description “any human capital measures or objectives that management focuses on in managing the business.”¹⁵ There is a broad caveat that this disclosure would be required only to the extent material to an understanding of the registrant’s business as a whole.¹⁶ The Commission declined to propose more prescriptive disclosure requirements—such as metrics on workforce cost, turnover, and diversity, for instance—on the rationale that there is too much variability across industries, and even amongst companies within the same industry, for human capital considerations to be conducive to reporting standards.¹⁷ The prevailing view at the Commission appears to be that a single principles-based disclosure requirement would best serve investors by eliciting insight into how each company thinks about its human capital, and by sparing all concerned from the production of disclosure that may be irrelevant.¹⁸ However, this remains an area that continues to evolve.¹⁹ There are private-sector initiatives seeking to align and consolidate, to the extent possible, themes from existing private-sector, voluntary reporting frameworks in order to catalyze standardization in reporting.²⁰ In Fiscal Year 2021, we will follow these developments and consider the utility of more prescriptive disclosure requirements in addressing investors’ informational needs.

Information accessibility is another fluid topic. We have long advocated the mandatory use of structured and standardized disclosures and identifiers as central to modernization, simplification, and burden-reduction for both registrants and investors.²¹ Some disclosures are now provided in a format that is both machine-readable and human-readable, which means that they can be accessed, analyzed, and queried much more effectively.²² The OPEN Government Data Act, signed into law on January 14, 2019, provides a sweeping, government-wide mandate for all federal agencies to publish government information in a machine-readable format by default.²³ This has major implications for registrant disclosure, which the Commission has yet to address. In recent Disclosure Effectiveness rulemaking proposals, the Commission has sought to rework substantive disclosure requirements so as to discourage potentially redundant or otherwise immaterial disclosure.²⁴ It has also encouraged the use of hyperlinks and other text-based cross-references to make documents more easily navigable.²⁵ These improvements cater to investors accustomed to manually accessing and analyzing information via paper-based documents.²⁶ However, the Commission has often bypassed opportunities to incorporate the structuring of important data that is found outside of financial statements.²⁷ We expect that the Commission will in the future face increasing pressure to take into account machine-readability as a government mandate and, increasingly, an investor mandate, as we see continued leveraging of digital processes by investors, financial professionals, and other users of SEC-mandated disclosures.

A more fundamental concern is the growing obsolescence of the current registration and reporting regime as Congress and the Commission have continually expanded the exemptions from the registration requirements over the years. At their core, the Securities Act of 1933 and the Securities Exchange Act of 1934 contain a simple proposition: a company can raise money from the general public if it provides fulsome disclosure of all the information that investors would consider important in making investment and voting decisions. This policy was implemented, in part, to restore investor confidence and boost economic activity during the Great Depression,²⁸ and it led to a capital formation ecosystem that is often called the envy of the world.²⁹ But, over time, the expansion of exemptions has made it easier for companies to raise capital without triggering reporting obligations, allowing modern businesses to grow to much larger proportions while withholding information that otherwise would be required to be disclosed under the securities laws.³⁰ As a result, the amount of capital raised annually in exempt markets has eclipsed the amount raised in the public registered markets.³¹ We now have hundreds of so-called unicorns, which are unregistered companies with billion-dollar capitalizations and dispersed shareholder ownership patterns.³² Meanwhile, the number of domestic operating companies listed on major U.S. exchanges has declined,³³ and holders of these listed companies' shares may be surprised to find out how many such companies could voluntarily deregister and cease reporting.³⁴

These developments can be traced back to a series of legislative and regulatory actions over the last four decades, all of which has been well documented.³⁵ What is most noteworthy, however, is that Congress and the Commission continue to promote efforts to encourage more companies to become public, on the one hand, while pursuing other initiatives that conflict with that laudable goal. In our view, there should not be further expansion of registration exemptions without consideration of whether the exemptions undermine the public markets that have served investors of all types so well.³⁶ Recent rulemaking releases regarding the Securities Act registration exemptions would have been more informative if the Commission had provided a more searching analysis of the trends and articulated what it envisions as the purpose or value of registered offerings in the capital formation ecosystem.³⁷ We will continue to draw attention to this problem and advocate solutions that favor the level of investor protection that comes with registration and reporting.

PROXY VOTING

In the past year, the Commission has proposed two amendments that would impact the ability of investors to vote their shares on matters related to corporate governance. In one of the rulemakings, the Commission has proposed to require proxy advisors, who are third parties hired by shareholders for advice and assistance in voting their shares, to act as a conduit for companies to provide a rebuttal to the advice given by the

proxy advisors.³⁸ In the second rulemaking, the Commission proposed to amend Exchange Act Rule 14a-8 to raise the ownership thresholds that an investor must meet in order to submit a proposal for a vote by other shareholders.³⁹ Both of these rulemakings have been criticized extensively by the investor community as an attack on shareholder rights.

Much of the concern expressed by investors has centered on the economic analysis in the rulemakings. For example, the SEC's Investor Advisory Committee submitted a recommendation to the Commission that it revise and repropose the rules, citing a number of ways in which the proposing releases failed to meet the SEC's published guidance for conducting economic analyses.⁴⁰ The recommendation also noted that there are well-known problems with respect to so-called "proxy plumbing," or the processes by which shares are voted and counted, and suggested that the Commission should prioritize efforts to address those concerns. In other words, before addressing concerns of the business community about the advice investors seek, the Commission should ensure that investors' votes are actually counted.

The Investor Advocate, as a member of the Investor Advisory Committee, voted in favor of the recommendation to revise and repropose the rules. It is our hope that the Commission will follow this advice, and the advice of the vast majority of investors who submitted comments, before moving to final adoption. In Fiscal Year 2021, we also will continue to advocate for improvements to the proxy plumbing that investors and other market participants have sought for so long.

EQUITY MARKET STRUCTURE

As noted in our prior Reports on Objectives, the Commission has been engaged in a multi-year effort to improve the environment for modern trading.⁴¹ We have supported a number of regulatory proposals that were adopted, including amendments to Rule 606 to require broker-dealers to disclose the handling of institutional orders to customers⁴² and a rule to conduct a transaction fee pilot for NMS Stocks.⁴³ Although the transaction fee pilot was recently struck down in the U.S. Circuit Court of Appeals for the District of Columbia, we hope the Commission can take that ruling into account and continue to address the underlying concerns that motivated the proposed pilot.

During Fiscal Year 2021, we will continue to encourage the pursuit of initiatives to enhance the capital markets and benefit investors, including finalizing several Commission initiatives that are already in motion this year. For example, in September 2019, the Commission proposed amendments to Rule 15c2-11. This rule currently requires a broker-dealer to review certain issuer information and have a reasonable basis for believing such information is accurate before initiating quotations for "over-the-counter" securities, but then allows the quotes to continue indefinitely, even after current public information about the issuer becomes stale.⁴⁴ This indefinite exception may permit unscrupulous market participants to more easily engage in pump-and-dump retail fraud. We support the adoption of amendments to this rule that would deter such behavior.

In May 2020, the Commission adopted an order directing the exchanges and FINRA to modernize the governance of National Market System (NMS) plans that produce public consolidated equity market data and disseminate trade and quote data from trading venues.⁴⁵ During Fiscal Year 2021, we intend to review the amendments submitted by the SROs in response to this order to ensure that the proposed improvements to the governance of NMS plans allow for appropriate representation of retail and institutional investors.

Similarly, in February 2020, the Commission proposed to modernize the infrastructure for the collection, consolidation, and dissemination of market data for exchange-listed NMS stocks.⁴⁶ If adopted as proposed, this might provide key upgrades to the content and infrastructure for “core data” that is consolidated and widely distributed by central securities processors (the SIP). Improving the infrastructure around market data in these ways could ultimately benefit retail investors, either directly or as participants in mutual funds and pension funds. We intend to support the adoption of this rule in the near future and its implementation in Fiscal Year 2021.

There are numerous other relevant initiatives that we hope the Commission will be able to move forward with in the near future, including:

- Pilot programs for thinly-traded securities to explore the effects of restricting unlisted trading privileges (UTP) which otherwise permit all exchanges to act as separate trading venues for the listed security. Concentrating liquidity on the primary listing exchange could make it easier for buyers and sellers to find each other and

consummate trades in this smaller segment of the equity market. Such a pilot could also allow for other innovative market structure solutions, including periodic auctions.

- Enhancements to the rules governing transfer agents, as previously discussed in a December 2015 advanced notice of rulemaking and a concept release,⁴⁷ which could, in part, specify transfer agent obligations with respect to the tracking and removal of restrictive legends. If improved rules can prevent the improper or inappropriate removal of a legend, investors would be better protected from the harm that comes from the illegal public distribution of such securities.
- Implementation of the Commission’s Consolidated Audit Trail. This system, years in the making and years behind schedule, is intended to enhance, centralize, and generally update the regulatory data infrastructure available to market regulators.⁴⁸

During Fiscal Year 2021, we intend to continue our engagement on all of these issues.

In addition to evaluating rulemaking by the Commission during Fiscal Year 2021, 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. For example, in December 2019, the Investors Exchange LLC (IEX) proposed a new displayed order type that could potentially protect liquidity providers, including institutional investors, from adverse selection by latency arbitrage trading strategies.⁴⁹ Institutional investors are largely supportive of this proposal,⁵⁰ but the Commission has asked

for further analysis as to whether the proposal's discrimination is fair and whether its burden on competition is necessary. Where appropriate, we will make formal or informal recommendations to ensure that the needs of investors are given a high priority by the SROs and the Commission.

We are also monitoring recent legislation⁵¹ and SRO rulemakings⁵² that address the risks to American investors posed by foreign companies that are listed on U.S. exchanges or included in popular stock indexes while the PCAOB is restricted from inspecting the work of their auditors. Under the best of circumstances, investing in foreign companies involves a heightened degree of risk, including macroeconomic risk, political risk, and regulatory risk. There is a wealth of academic literature addressing a wide range of challenges related to international investing, such as information asymmetries, volatility, corporate structure, variations in the quality of corporate governance, variations in enforceability of shareholder rights, and variations in cultural norms and tolerance of corruption. These and other factors make it all the more important for U.S. investors to receive high quality, accurate, and reliable disclosures from foreign companies. Moreover, we believe there should be a level playing field for all companies listed on U.S. exchanges. Thus, we will support sensible legislation and regulatory interventions that help to achieve these goals.

NOVEL EXCHANGE-TRADED FUNDS

We will continue to focus on developments in the exchange-traded fund (ETF) marketplace in Fiscal Year 2021. As we discussed previously in

our Report on Activities for Fiscal Year 2019,⁵³ on September 25, 2019, the Commission adopted a new rule and form amendments designed to modernize the regulation of ETFs by establishing a clear and consistent framework for the vast majority of ETFs operating today (the ETF Rule).⁵⁴ We welcomed the adoption of the ETF Rule at the time, noting that it included important investor protection safeguards, such as requiring an ETF to provide full daily portfolio transparency on its website,⁵⁵ as well as a condition expressly excluding leveraged and inverse ETFs from the rule's scope.⁵⁶

The ETF marketplace continues to evolve, however, and certain developments warrant our continued attention and engagement. Specifically, we are attentive to the entry into the marketplace of certain ETFs that do not provide full daily portfolio transparency (non-transparent ETFs), the Commission's approval of exemptive relief for a newer generation of non-transparent ETFs, and the Commission's recent proposal to amend the ETF Rule to bring leveraged and inverse ETFs within the rule's scope. The novel ETFs at issue in these recent developments may present special investor protection concerns.

First, pursuant to exemptive relief that the Commission granted to Precidian ETFs Trust on May 20, 2019,⁵⁷ non-transparent ETFs began trading on an exchange for the first time on April 2, 2020.⁵⁸ This development represents a departure from the way that ETFs have typically functioned. For example, a traditional ETF with full daily portfolio transparency can rely on financial institutions to directly identify and act on arbitrage opportunities when the market value

of the ETF's shares are over- or under-valued relative to the ETF's portfolio holdings. In contrast, non-transparent ETFs instead provide confidential information concerning the securities that the ETF would exchange for its shares to agents working on behalf of such financial institutions. The agents then facilitate the transactions expected to keep the market value of the ETF's shares in line with the value of the ETF's holdings.⁵⁹ It is not yet clear whether this novel variation on the traditional ETF arbitrage mechanism will function as anticipated or whether investors in these funds will be kept fully informed of the risks associated with transacting in non-transparent ETFs.

Second, not long after granting exemptive relief to the first generation of these novel non-transparent ETFs described above, the Commission followed up by granting exemptive relief to several other types of non-transparent ETF models (sponsored by other institutions) on December 10, 2019.⁶⁰ The details of these models vary slightly amongst each other. Generally, however, each provides daily information regarding a "proxy portfolio" in lieu of providing full daily portfolio transparency. The proxy portfolios are intended to give financial institutions enough information to engage in transactions that mimic the traditional ETF arbitrage mechanism. As with the first generation of non-transparent ETFs, it is unclear whether these alternate variations on the traditional ETF arbitrage mechanism will function as anticipated or whether investors in these funds will be kept fully informed of the risks associated with transacting in non-transparent ETFs. In a November 19, 2019 joint statement, Commissioners Robert Jackson and Allison Lee observed that non-transparent

ETFs "come with real risk that, in moments of limited liquidity, ordinary investors will face wider spreads and hence get prices that do not accurately reflect the value of their shares."⁶¹ Commissioners Jackson and Lee also expressed concern over the appropriate disclosure regime for non-transparent ETFs, stating, "in particular, we wonder whether additional disclosure of the risks, as well as enhanced board oversight of the efficiency of these ETFs, is necessary . . . we are only in the early stages of determining the information investors need to evaluate the unique risks of nontransparent ETFs, including mechanisms to ensure accuracy and price efficiency."⁶² Now that these products are in the marketplace, we will monitor their usage and examine whether they are functioning as intended while maintaining investor protections.

Finally, on November 25, 2019, as part of a broader rulemaking effort relating to funds' use of derivatives, the Commission proposed to permit leveraged and inverse ETFs to form and operate without obtaining individualized exemptive relief at all (the Derivatives Proposal).⁶³ After expressly excluding leveraged and inverse ETFs from the ETF Rule adopted two months earlier, the Commission proposed amending the ETF Rule to include leveraged and inverse ETFs within its ambit, on par with the plain vanilla ETFs contemplated by the ETF Rule. Although the Commission has long recognized special investor protection concerns associated with leveraged and inverse ETFs,⁶⁴ the Derivatives Proposal contends that such concerns can be mitigated by subjecting the ETFs to new sales practice rules, obviating the need for any individualized leveraged and inverse ETF exemptive relief.⁶⁵

We look forward to continued engagement with Commission staff in Fiscal Year 2021 to help ensure that these and other innovations in the ETF marketplace are accompanied by appropriate investor safeguards and rigorous enforcement of the new standards.

REGISTERED FUND DISCLOSURE

In Fiscal Year 2021, we will renew our focus on the effectiveness of disclosure provided to investors in SEC-registered funds. Such disclosure is at the heart of the Commission's efforts to help ensure that investors are making thoughtful, well-informed decisions about their investments as they save for college expenses, look towards retirement, or plan for other goals.

The Commission has taken steps to provide registered fund investors with clear, concise disclosure regarding funds' investment strategies, risks, costs, and other attributes. On June 5, 2018, for example, the Commission issued a request for comment seeking input from individual investors and other interested parties on enhancing disclosures by mutual funds, ETFs, and other types of investment funds to improve the investor experience and to help investors make more informed investment decisions (the Investor Experience RFC).⁶⁶ Responses to the Investor Experience RFC have since aided rulemaking efforts within the Commission's Division of Investment Management, including the recent adoption of a new rule and related form and rule amendments to simplify and streamline disclosures for investors about variable annuities and variable life insurance contracts.⁶⁷

Additionally, on May 21, 2020, the SEC's Investor Advisory Committee approved a new Recommendation on Disclosure Effectiveness, acknowledging that the Commission faces a daunting challenge in developing disclosures that are effective in helping investors choose among "virtually limitless" investment options. According to the Committee, "the factors to consider in an effort to identify the best or most appropriate option can be numerous and difficult to analyze," and that "further complicating the SEC's task is the fact that many investors lack relevant knowledge needed to fully understand the disclosures designed to help them make investment decisions."⁶⁸ The Committee indicated that improving the quality of the Commission's disclosure is an achievable goal, however, and set forth a number of principles that the Committee believes should guide rulemaking efforts in this area.

Meanwhile, the Office of the Investor Advocate itself is pursuing such efforts by utilizing surveys, focus groups, and other methods to gain insight into investor behavior and provide data regarding disclosure-related policy choices. We expect these efforts to produce valuable information in the upcoming reporting period and beyond.

We anticipate, then, that the effectiveness of disclosure provided to investors in SEC-registered funds will remain as central as ever to Commission initiatives in Fiscal Year 2021, and we look forward to working with our colleagues to continuously improve and enhance the information provided to registered fund investors.

BROKER CONDUCT

In Fiscal Year 2020, we highlighted two items relevant to broker-dealer conduct as it relates to retail investors: (1) the Commission’s new “best interest” standard of conduct for recommendations (which replaced the prior suitability standard);⁶⁹ and (2) the persistent problem of broker migration and misconduct.⁷⁰

With Regulation Best Interest (Reg BI) to be implemented by June 30, 2020, we intend to monitor how the Commission and FINRA use the new tools to address unethical or abusive conduct in the brokerage business. As our Office said at the time of adoption, the elimination of sales contests, the enhanced disclosures of conflicts of interest, and many other adjustments in the rule should improve the outcome for retail investors compared to the old suitability standard. However, Reg BI must be enforced rigorously enough to ensure that broker behavior matches customers’ expectations when receiving investment advice from their brokers. As appropriate, our office will work to ensure retail investors benefit as much as possible from the implementation during Fiscal Year 2021.

As to broker migration and misconduct, studies show a strong correlation between the frequency with which a broker moves between firms and the risk posed by that broker to his or her customers.⁷¹ Research has also identified a propensity for roving bad brokers to congregate at high-risk firms with other brokers of similar character (sometimes referred to as “cockroaching”).⁷²

In May 2019, FINRA published a request for comment on proposed rules targeting firms with a disproportionate history of broker and other misconduct relative to their similarly-sized peers. The proposed new Rule 4111 (Restricted Firm Obligations)⁷³ would impose conditions or restrictions on member operations, including requirements for deposits of cash or qualified securities that could not be withdrawn without FINRA’s prior written consent, if a firm exceeds a certain threshold calculation of broker or other misconduct.⁷⁴

Generally, we expect to continue to encourage FINRA to crack down on broker migration and misconduct. Effective regulation of bad actors, both individuals and firms, is critical to the safety of retail investors. As such, we intend to monitor this specific rulemaking, as well as related initiatives, during the next fiscal year. Our review will likely consider, among other things: how to properly account for purged or non-public information relevant to broker risk,⁷⁵ specific weightings assigned to the proposed categories of risk events or conditions, relevant aggravating circumstances (*e.g.*, hiring of extreme recidivist brokers, brokers who have previously migrated excessively, and brokers who have preyed on seniors), proper calibration of the percentage thresholds and deposit amounts specified in the proposed rule, the procedures governing the remediation⁷⁶ and appeals process, and comments by other proponents for retail investors.

In April 2020, FINRA filed a separate proposed rule change to address another set of risks presented by individual brokers with a significant history of misconduct.⁷⁷ Currently, FINRA disciplinary actions can involve several hearings and appeals, effectively forestalling the imposition of disciplinary sanctions and their potential deterrent effect on bad actors. For those brokers appealing disciplinary matters, this new rule would, among other things, allow hearing officers to impose conditions or restrictions on the activities of a firm or the broker and to require the firm to adopt heightened supervisory procedures during the course of the appeal. These new rules could protect

investors by strengthening the tools available to FINRA and its hearing officers to address the risks posed by brokers with history of misconduct with a tailored approach. We intend to support the adoption of the rule and its implementation in Fiscal Year 2021.

Issues related to broker conduct are the frequent subject of complaints that investors bring to the attention of SEC Ombudsman Tracey McNeil. Thus, our advocacy in this area will be led by Ombudsman McNeil and her staff, who expect to continue dialogue with FINRA during Fiscal Year 2021.

SPECIAL REPORT

THE IMPACT ON INVESTORS FROM COVID-19

The severe acute respiratory syndrome coronavirus 2, or SARS-CoV 2, the virus that causes the disease officially referred to as “COVID-19,”⁷⁸ has had a major impact on investors. As the COVID-19 pandemic crisis unfolds, evidence of its deleterious effects on investors continues to accumulate. While we are acutely sensitive to the catastrophic toll that this disease has exacted on human life and the magnitude of suffering that the coronavirus has caused, the following discussion focuses specifically on the impact of COVID-19 on individual investors.⁷⁹ Although a full accounting of the overall impact of COVID-19 on investors will require years of study, we attempt to provide a glimpse into some of the effects of this pandemic thus far on individual investors.

On May 11, 2020, the Federal Reserve Bank of New York’s Center for Microeconomic Data released its April 2020 Survey of Consumer Expectations (the “April SCE”).⁸⁰ The April SCE reflected “considerable deteriorations in households’ expectations about most economic outcomes.”⁸¹ More specifically, the April SCE showed that “Americans’ outlook for the job market and their finances suffered substantial

deterioration in April as the coronavirus crisis left much of the U.S. economy on lockdown.”⁸² Among the April SCE’s findings were that perceptions about households’ current financial situations compared to a year ago “worsened” for the second consecutive month.⁸³ The April SCE found that 39.2 percent of survey respondents reported being worse off today than a year ago (compared to 30.2 percent in March 2020).⁸⁴ The April SCE also found survey respondents to be “increasingly pessimistic about their year-ago financial situations,” with 31.6 percent of them expecting their households to be “worse off financially a year from now,” compared to 27.8 percent in March 2020.⁸⁵ However, not all of the April SCE’s findings were so dour. The April SCE revealed that the “mean perceived probability that U.S. stock prices will be higher 12 months from now” increased from 47.7 percent in March 2020 to 51.8 percent in April 2020—“reaching a new series’ high.”⁸⁶

This is remarkable, considering that the COVID-19 pandemic has had a powerful impact on equity markets worldwide, more so than any other infectious disease outbreak, including the “Spanish Flu” of 1918.⁸⁷ The effects of COVID-19 continue to ripple throughout the global financial markets

as the disease progresses. The reasons for the market reaction to this viral phenomenon defy easy explanation. It may only be in hindsight that we fully comprehend the consequences of this pandemic on securities markets and investors. Meanwhile, as COVID-19 has bloomed from a regional medical crisis to a global pandemic, equity markets have yo-yoed and market volatility has spiked around the world.⁸⁸ These developments may help explain why an American Association of Individual Investors survey of investor sentiment for the week of May 21, 2020 registered a 45.02 percent “bearish” sentiment compared to 36.08 percent last year and higher than the long-term average of 30.47 percent bearish.⁸⁹ Yet this elevated bearish sentiment represents an improvement over the recent extreme of 52.66 percent bearish recorded during the week of May 7, 2020.⁹⁰

A recent working paper from the National Bureau of Economic Research has attempted to make sense of the “unprecedented stock market impact” of COVID-19 (the NBER Paper).⁹¹ The NBER Paper contends that news related to COVID-19 developments is “overwhelmingly the dominant driver” of large daily U.S. stock market moves since February 24, 2020.⁹² In arriving at this hypothesis, the NBER researchers used automated and human readings of newspaper articles about infectious disease outbreaks to analyze stock market reactions thereto going back 120 years to the year 1900.⁹³ The NBER Paper finds that, by February 2020, in contrast to earlier periods of infectious disease outbreaks, COVID-19 developments began to dominate newspaper coverage of stock market volatility.⁹⁴ Indeed, by March 2020, COVID-19 developments received attention in more than 90 percent of all newspaper discussions of market volatility and economic policy uncertainty.⁹⁵ The

NBER Paper recites various potential reasons for the outsized impact of COVID-19 on stock markets, including the severity of the pandemic itself, the rapid diffusion of information about the pandemic, the interconnectedness of the modern economy, the prevalence of long-distance travel, falling transportation costs, geographically expansive supply chains, and the face-to-face interactions characteristic of a service economy.⁹⁶ Yet the NBER Paper finds these explanations incomplete. Rather, the authors conclude that recent stock market behavior “is an early and visible reflection of the (expected) economic damage” resulting from, among other things, the behavioral and policy reactions to the COVID-19 pandemic.⁹⁷

These findings are consistent with those of the Commission’s Division of Economic and Risk Analysis (DERA). DERA’s Economic and Risk Outlook for the first quarter of calendar year 2020 indicates that the actions taken to combat COVID-19 and their knock-on effects have led to “increased interest rates for lower rated debt and widening credit spreads that have persisted through mid-April.”⁹⁸ In that report, DERA also observes that, as the “coronavirus-induced economic downturn unfolded, initial unemployment claims, often a leading economic indicator, spiked.”⁹⁹

These macro trends, among other things, have serious ramifications for individual investors. For instance, an April 2020 Gallup survey (the Gallup Survey) found that Americans have become less likely to perceive stocks (including mutual funds) as the best long-term investment since U.S. equity markets plunged by more than a third in March of this year.¹⁰⁰ According to Gallup, real estate has been Americans’ most popular investment choice since 2013,¹⁰¹ and stocks/mutual funds have

maintained their rank as the second most favored investment choice after real estate.¹⁰² However, according to the Gallup Survey, the 21 percent of Americans who consider stocks/mutual funds as the best investment choice represents a six percentage point decline from last year's level and is the lowest such percentage that Gallup has recorded since 2012.¹⁰³ While high-income Americans have consistently viewed stocks/mutual funds as the best long-term investment, that number has declined by nine percentage points since last year, from 40 percent to 31 percent.¹⁰⁴ In contrast, low-income American households are the least likely to perceive stocks/mutual funds as the most favorable investment choice.¹⁰⁵ Few Americans—about eight percent—consider bonds to be the best investment choice.¹⁰⁶

So far, COVID-19 appears to have had a limited impact on retirement planning and retirement security. A recent YouGov survey of 9,675 U.S. adults found, among other things, that most respondents have made very few changes to the amount of money they are investing for retirement or how they are investing their retirement savings.¹⁰⁷ According to that survey, nearly 72 percent of respondents reported they have not changed anything about their retirement planning due to COVID-19.¹⁰⁸ With respect to the older age cohort, 79 percent of those aged 55 years and above reported no changes whatsoever to their retirement planning.¹⁰⁹ These results appear to be consistent with a March 2020 Employee Benefit Research Institute Retirement Confidence supplemental survey that deemed COVID-19's impact on retirement security manageable.¹¹⁰

In the face of these cross-currents, the SEC has remained vigilant throughout the COVID-19 pandemic, and it has been proactive in its mission to protect investors, maintain fair, orderly, and efficient markets, and promote capital formation. For example, the Commission has actively pursued over two dozen COVID-19-related trading suspensions, several fraud and/or disclosure actions concerning coronavirus-related misrepresentations to investors, and established an internal enforcement steering committee to triage, manage, and monitor pandemic-related cases.¹¹¹ The Commission also continues to monitor the functioning, integrity, and resiliency of securities markets with a focus on operations, systems integrity, and continuity plans of U.S. securities clearinghouses, exchanges, other market utilities, and key market participants. Toward that end, the Commission has issued guidance for broker dealers concerning financial responsibility and continues to work on appropriate implementation of the consolidated audit trail in light of these developments. In addition, the Commission has provided temporary enhanced flexibility for registered funds affected by recent market events to borrow funds from certain affiliates and to enter into certain other lending arrangements. Moreover, Commission staff in the Division of Corporation Finance and the Office of the Chief Accountant, respectively, have issued a significant amount of highly specific guidance intended to focus companies on key disclosure challenges to be met during this crisis.¹¹²

The SEC has further assembled an internal, cross-divisional “COVID-19 Market Monitoring Group.”¹¹³ This temporary, senior-level group is responsible for assisting the Commission and its various divisions and offices in Commission and staff actions and analysis related to the effects of COVID-19 on markets, issuers, and investors, as well as responding to requests for information, analysis and assistance from fellow regulators and other public sector partners.¹¹⁴ The COVID-19 Market Monitoring Group works closely with personnel from across the agency, including staff in the Division of Economic and Risk Analysis, Division of Trading and Markets, Division of

Investment Management, Division of Corporation Finance, Office of Municipal Securities, Office of Credit Ratings, Office of Compliance Inspections and Examinations, Office of International Affairs, Office of the Chief Accountant, and the SEC’s Activities-Based Monitoring Committee, among others.¹¹⁵ The group also assists in the SEC’s efforts to coordinate with and support the COVID-19-related efforts of other federal financial agencies and other bodies, including the President’s Working Group on Financial Markets, the Financial Stability Oversight Council, and the Financial Stability Board, among others.¹¹⁶

OMBUDSMAN'S REPORT

As set forth in Exchange Act Section 4(g)(8), 15 U.S.C. § 78d(g)(8), the Ombudsman is required to: (i) act as a liaison between the Commission and any retail investor in resolving problems that retail investors may have with the Commission or with self-regulatory organizations; (ii) review and make recommendations regarding policies and procedures to encourage persons to present questions to the Investor Advocate regarding compliance with the securities laws; and (iii) establish safeguards to maintain the confidentiality of communications between investors and the Ombudsman.¹¹⁷

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).¹¹⁸ 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 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 on the Ombudsman’s activities for the six month period of October 1, 2019 through March 31, 2020 (Reporting Period) and discusses the Ombudsman’s objectives and outlook for Fiscal Year 2021, beginning October 1, 2020.

SERVICE BY THE NUMBERS

The Ombudsman¹¹⁹ assists retail investors—sometimes referred to as individual investors or Main Street investors—and other persons with concerns or complaints about the SEC or SROs the SEC oversees. The assistance the Ombudsman provides includes, but is 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. At times, individuals request the Ombudsman’s assistance with things the Ombudsman is not permitted to do. For example, individuals may ask the Ombudsman to provide personal financial, investment, or legal advice, participate in or

influence the outcome of an SEC investigation, make binding decisions or legal determinations for the SEC, or overturn decisions of existing dispute resolution or appellate bodies.

The graphic below (Figure 1) illustrates the standard lifecycle of what happens when investors or other interested persons contact the Ombudsman for assistance.

Figure 1: **What Happens When You Contact the Ombudsman**



To respond to inquiries effectively and efficiently, the Ombudsman tracks all inquiries received by, or referred to, the Ombudsman, any related correspondence and communications to and from Ombudsman staff, and the staff resources devoted to addressing the particular concerns. We maintain and monitor this information to identify and respond to inquiries, refer submitters to the appropriate resources to address their concerns, analyze inquiry volume and trends, and provide data-driven support for recommendations presented by the Ombudsman to the Investor Advocate for review and consideration.

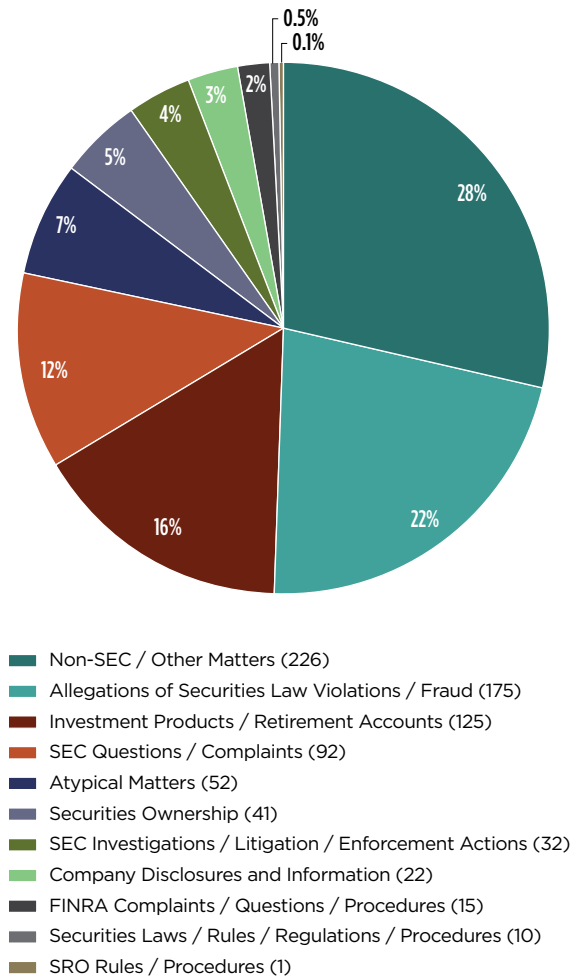
Inquiry volume is counted in terms of matters and contacts. The initial contact—a new, discrete inquiry received by or referred to the Ombudsman—is the contact that creates a matter. When a matter is created, the Ombudsman reviews the facts, circumstances, and concerns, and assesses the staff engagement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

Once a matter is created, it may generate subsequent contacts—these contacts are related inquiries and communications to or from the Ombudsman staff deriving from the matter. These contacts often require further attention to answer additional investor questions, explain or clarify proposed resolution options, discuss issues with appropriate SEC or SRO staff, or respond to challenging or persistent communications from an investor. This system of counting matters and contacts helps the Ombudsman quickly assess volume and resource issues related to each matter.

Data Across Primary Issue Categories

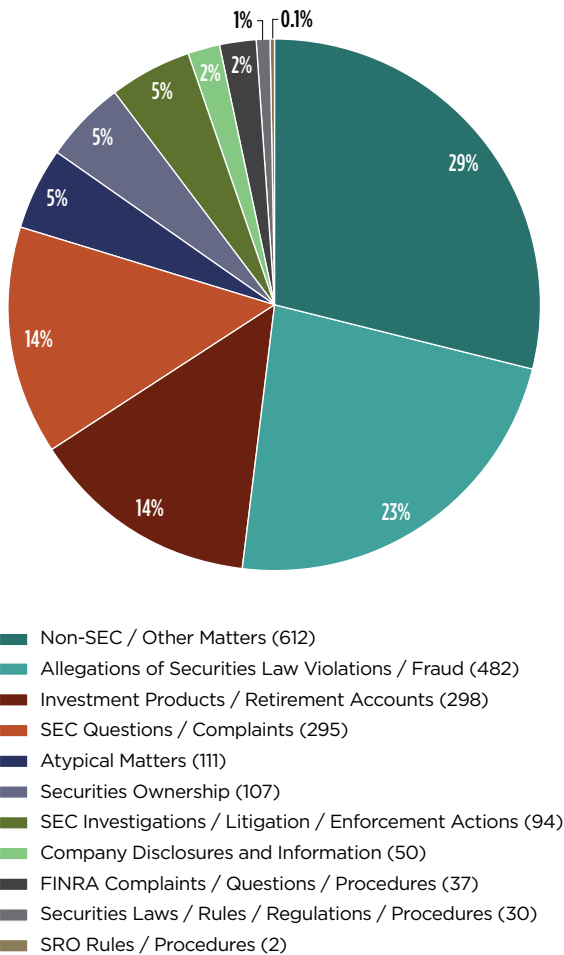
During the Reporting Period, retail investors, industry professionals, concerned citizens, and other interested persons contacted the Ombudsman for assistance on 791 matters covering 11 primary issue categories (Figure 2).

Figure 2: **Matters by Primary Issue Category**
October 1, 2019–March 31, 2020



In addition to the 791 matters received, we fielded 1,327 contacts covering 11 primary issue categories during the Reporting Period, for a total of 2,118 contacts. The chart that follows displays the distribution of the 2,118 total contacts by primary issue category (Figure 3).

Figure 3: **Contacts by Primary Issue Category**
October 1, 2019–March 31, 2020



How the Numbers Inform Our Efforts

The Ombudsman tracks matter and contact data to maintain a comprehensive view of the allocation of staff resources and to identify matters and contacts that significantly alter workflow volumes, call for the realignment of Ombudsman staff assignments, or require added staff support to manage effectively. The data also informs staff resource allocation considerations related to proposed program development, training, and outreach efforts. By tracking the distribution of matters and contacts across primary issue categories, the data helps the Ombudsman identify potential areas of concern or interest and enables the Ombudsman to act as an early warning system, as necessary, 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 quantify the volume and categories of inquiries the Ombudsman receives, the data does not capture the full value of the service the Ombudsman provides to the investing public. Among the most common problems and concerns investors bring to the Ombudsman are those where the investors are unfamiliar with the existing channels established to resolve the particular concerns they raise, unsure which resolution channel to use, or unable to get the specific outcome they want through the resolution channels available. In these situations, investors generally assume their preferred outcome is a viable option and expect that the Ombudsman is permitted to do whatever is necessary to reach that outcome.

Typically, investors who are unfamiliar with or unsure of the available resolution channels will thoughtfully consider the advantages and disadvantages of the resolution options the Ombudsman presents, and will adjust their expectations based upon the potential outcome each option offers. For these investors, the Ombudsman serves a valuable resource function; however, the investor retains responsibility for choosing how to proceed given the resources and options the Ombudsman presents. On the other hand, investors who demand a particular outcome or believe that the Ombudsman is permitted to do whatever they request can be challenging to assist. The Ombudsman routinely receives requests from investors who want the Ombudsman to, for example, automatically grant them SEC whistleblower status and provide monetary awards, reveal nonpublic information relating to SEC

investigations, stop a publicly traded company from taking certain corporate actions, prosecute a particular broker or investment adviser, overturn a FINRA arbitration or disciplinary decision, or fire specific SEC or FINRA personnel. These investors often resist the Ombudsman's efforts to engage in a productive dialogue, and they usually conclude that the only acceptable outcome is the particular outcome they want.

The vignettes that follow provide a better sense of the variety of issues the Ombudsman staff addresses. Together, they offer a closer look at the time, effort, and commitment devoted to providing meaningful service and useful information to investors and other interested persons, and they demonstrate the value of our day-to-day work more effectively than data alone.

A number of retail investors contacted the Ombudsman to ask the agency to address the volatility of the stock market due to the COVID-19 pandemic, either through rulemaking or through enforcement actions. Several investors urged the SEC to reinstate the SEC's original uptick rule which prohibited short selling a stock unless the price of the stock had ticked upward.¹²⁰ Other investors suggested stopping, or at least pausing, all algorithmic and computer trading for an indefinite period of time. The Ombudsman team answered their general questions, assured them that the SEC appreciated hearing their views and concerns, and encouraged them to follow the agency's rulemaking activity and COVID-19 updates on SEC.gov.

Other investors complained of account interruptions and delays relating to COVID-19. One retail investor raised concerns about his failed attempt to execute a trade through a large broker-dealer. He alleged that by the time his trade went through the following trading day, the market had dropped, and he lost a significant sum of money. Another retail investor complained that his broker failed to honor his request to withdraw funds from his account, and had, in fact, placed a 90-day hold on the account. The investor explained that he could not wait for 90 days because his full-time job was reduced to 10 hours per week due to COVID-19 staff reductions. Another investor complained that she received a letter from a hedge fund in which she invested a significant amount of money informing her that the fund had terminated all repurchase offers. Because these investors were raising concerns about their personal investments and financial matters, the Ombudsman referred them to OIEA for further assistance. All of these retail investors expressed their appreciation to the Ombudsman for understanding their frustrations, taking an interest in their concerns, and directing them to the appropriate SEC resources.

A retail investor who invested a considerable amount of money in a fraudulent digital currency offering reached out to the Ombudsman after learning that the SEC reached a settlement with the issuer and individuals accused of the fraud. The investor did not understand why she had not received a payment, given the sizeable monetary penalties imposed by the SEC. Upon contacting the Division of Enforcement's (ENF) Office of Distributions, the Ombudsman learned that the Division was still in the process of collecting funds from the defendants, and had not yet determined whether a Fair Fund would be established. The Ombudsman contacted the investor with an update and encouraged her to monitor the Fair Fund distributions information available on the SEC website.

A retail investor contacted the Ombudsman to verify the legitimacy of an SEC "Certificate of Authenticity" for a cryptocurrency issuer. The document contained several red flags, such as an incorrect address for the SEC headquarters, a seal for the "Secretary of State," and was signed by someone who does not work at the SEC. The Ombudsman informed the investor that the SEC does not issue these certificates of authenticity, and discussed the other red flags with the investor. The Ombudsman further advised the investor to not send money or personal information in response to the solicitation, and to contact the Office of Investor Education and Advocacy (OIEA) for additional information and assistance. The Ombudsman also directed the investor to information available on the SEC website on advance fee frauds and government impersonators. In addition, the Ombudsman provided information to other SEC offices, as appropriate.

A non-U.S. investor contacted the Ombudsman to report that she had received an email from a purported SEC employee informing her that the SEC had detected a suspicious transaction in one of her accounts. The SEC employee offered to help the investor recover her funds, but told her that the SEC charges non-U.S. investors a fee to do so. He then asked for a substantial amount of money before he could assist her. When the investor asked the individual for proof of his SEC employment, he provided copies of two different photo identification cards with his name, employee number, and title. The Ombudsman informed the investor that the identification cards were fake and that no such SEC employee existed. The Ombudsman also advised the investor that the communications with this individual had the hallmarks of an advance fee fraud, advised her not to send the purported SEC employee any funds, and to report the information to ENF and to OIEA. The investor was extremely grateful for the information and assistance. The Ombudsman also provided information to other SEC offices, as appropriate.

An investor called the Ombudsman about a letter informing him that he was the beneficiary of a settlement reached between the SEC, FDIC, and the Global Investment Corporation. The investor called the phone number provided in the letter and spoke to someone representing himself as an employee in the SEC's New York Regional Office. The investor was instructed to post an identity bond of over \$20,000 to receive his share of the settlement. The Ombudsman informed the investor that he appeared to be the victim of an advance fee fraud by someone impersonating an SEC employee, and recommended that he submit a complaint to ENF and contact OIEA for additional assistance. The Ombudsman also provided information to other SEC offices, as appropriate.

A retail investor contacted the Ombudsman to ask how she could obtain paper proxy statements and annual reports from companies in which she owned stock. The investor also raised questions about whether electronic-only disclosures by issuers were allowed, and she expressed frustration about not being able to find this information on the SEC's website. The Ombudsman directed the investor to guidance on the SEC's website about proxies and annual reports, including how to request paper copies of documents. Because the investor's questions and concerns also involved her personal investments, the Ombudsman advised her to contact OIEA for further information and assistance.

A state-appointed guardian for an elderly investor contacted the Ombudsman after finding several old stock certificates among her client's possessions. As she gathered her client's assets, she needed help determining the value of the stock certificates. Because the guardian's question involved a personal investment, the Ombudsman advised her to contact OIEA for additional assistance. The Ombudsman also directed the guardian to information about old stock certificates and proving stock ownership available on the SEC website.

Our interactions with investors provide insight into the information they rely upon and the assistance they want when making investment decisions. Although the information or response communicated to an investor by the Ombudsman staff may appear simple, the threshold questions and considerations required to understand the inquiry and to identify feasible next steps, appropriate SEC resources, and potential policy implications necessitate having staff with a level of securities law knowledge typically gained through several years of prior industry experience.

The tailored information and responses the Ombudsman staff provides to investors are unique and require a combination of securities law analysis and expertise, conflict resolution skills, diplomacy, and judgment. When our interactions with investors highlight a lack of information or gaps in understanding, we endeavor to help investors better understand the solutions the SEC can provide, including by liaising with other staff and entities as appropriate, so that investors are empowered and equipped to fully consider their options and make well-informed decisions.

STREAMLINED COMMUNICATIONS WITH RETAIL INVESTORS

The Ombudsman Matter Management System (OMMS) is an electronic platform for receiving inquiries, as well as tracking and analyzing matter and contact information, while ensuring all necessary data management, confidentiality, and reporting requirements are met. The OMMS Form, a web-based, mobile friendly form permitting the submission of inquiries, complaints, and documents directly to the Ombudsman, guides the submitter through a series of questions specifically tailored to elicit information concerning matters within the scope of the Ombudsman's function. In addition, the OMMS Form allows submitters to easily upload and submit related documents for staff review. For any persons who do not wish, or are unable, to use the OMMS Form, they may still contact the Ombudsman by email, telephone, fax, and mail.

When an OMMS Form is submitted, OMMS automatically creates a matter record. For each inquiry received by telephone, email, or other means outside of the OMMS Form, the

Ombudsman manually creates an OMMS matter record. Once an OMMS matter record is created, the Ombudsman and staff can review the matter details, track all related contacts and correspondence, update matter comments, and communicate with the investor via the OMMS platform. OMMS also allows the Ombudsman and staff to search and analyze matters and contacts by submitter name, primary issue, fiscal year, and a number of other categories, and review data and customize specific reports when a more detail review is needed.

As a result of our continuing efforts to use the OMMS platform to enhance and streamline our communications with retail investors, 353 new matters were submitted via the OMMS Form during this six month Reporting Period, representing 44.6 percent of the 791 new matters received. During FY 2019, 791 new matters were submitted via the OMMS Form, representing 53.4 percent of the 1,480 new matters received. During FY 2018, the first full fiscal year the OMMS Form was available to the public, 164 new matters were submitted via the OMMS Form, representing 36.5 percent of the 449 new matters received.

During this Reporting Period, the Ombudsman worked closely with Office of Information Technology (OIT) and the technology contractor to improve the back-office functionality of OMMS. Several enhancements—including help text and quick reference language, email response template formatting, active matter viewing and saving, and secondary issue category options—were discussed and preliminarily tested during the Reporting Period. Once finalized, these enhancements will

assist the Ombudsman team with responding to investors, tracking additional reporting data, and generating specialized dashboards and reports.

For the remainder of Fiscal Year 2020, the Ombudsman will continue to participate in standing weekly meetings and special working group sessions with OIT and the technology contractor to identify additional enhancements to refine the back-office experience for the Ombudsman team. In addition, to the extent it aids the understanding of the data presented, we anticipate reporting some secondary issue category data in future Ombudsman Reports. For the public-facing OMMS Form, the Ombudsman will continue to encourage persons to submit their inquiries via the OMMS Form, closely monitor any questions and suggestions relating to the user experience, and work with OIT, the technology contractor, and Office of Public Affairs as necessary to enhance the OMMS user experience and the Ombudsman-related information and resources available to the public.

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 financial regulatory agencies, the Ombudsman follows three core standards of practice:

CONFIDENTIALITY	IMPARTIALITY	INDEPENDENCE
<p>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.</p>	<p>The Ombudsman does not represent or act as an advocate for any individual or entity, and does not take sides on any issues. 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.</p>	<p>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.</p>

The Ombudsman's Challenge

The mission statement of the SEC is to “protect investors, maintain fair, orderly, and efficient markets, and facilitate capital formation.”¹²¹ At the center of many complaints the Ombudsman receives is a misunderstanding about the SEC’s relationship and obligations to individual investors because of the “protect investors” language in the mission statement. Investors frequently assume the purpose for SEC investigations and enforcement actions is to address their specific allegations or protect their specific, individual interests. Investors regularly express confusion and disappointment

when they are informed that the SEC does not advocate for a particular investor or for a particular investor’s specific interests or needs. While the SEC’s enforcement actions may at times align with the personal interests of harmed investors, the SEC does not pursue investigations and enforcement actions solely to represent a specific investor’s particular legal interests or to recover money a particular investor may have lost. Rather, the SEC advocates for—or supports—the collective interests of all investors and the public by maintaining fair, orderly, and efficient capital markets through the enforcement of the federal securities laws.

A primary question we encounter is, then, what can the Ombudsman do for investors who have been harmed by violations of the federal securities laws? In appropriate circumstances, the Ombudsman may be able to present options to investors or foster communications between the investor and SEC or SRO staff. However, the Ombudsman is not authorized to do many things that investors request, including:

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

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

Assisting Investors through Advocacy

Even when we cannot help investors achieve the specific results they desire, the concerns we hear from investors help to shape the policy agenda of the Office of the Investor Advocate. We also engage with those who represent investors, including law school investor advocacy clinics, to gain a deeper understanding of potential legal and structural barriers encountered by investors.

To retail investors, FINRA is perhaps the most well-known SRO under SEC oversight. FINRA operates BrokerCheck¹²² and a dispute resolution forum,¹²³ both of which are commonly used by retail investors. As discussed in prior reports, the Ombudsman closely follows FINRA's rulemaking and dispute resolution forum activities that may have a direct and significant impact on retail investors. We also look for ways to improve SEC or SRO processes and regulations for the collective benefit of investors, and we advocate for those types of reforms. Selected areas of interest and importance to retail investors are discussed below.

AREAS OF INTEREST AND IMPORTANCE TO RETAIL INVESTORS

Proposed Rule Change to Amend Broker Arbitration Filing Fees

During the Reporting Period, FINRA submitted to the SEC a proposed rule change¹²⁴ to the FINRA rules governing fees paid by brokers who request expungement of customer dispute and disciplinary information from the Central Registration Depository (CRD),¹²⁵ which is the source for information available in BrokerCheck. The proposed amendment seeks to close a loophole in the existing rules that allows brokers seeking expungement to pay minimal fees for their expungement requests.

The BrokerCheck research tool that gathers broker information from CRD provides “a snapshot of a broker’s employment history, regulatory actions, and investment-related licensing information, arbitrations, and complaints.”¹²⁶ The SEC and FINRA encourage retail investors to rely on this publicly available information when choosing the professionals on whom they rely for investment advice. Under certain conditions, however, a broker may petition an arbitration panel to remove or “expunge” negative information from CRD, including customer disputes and disciplinary records. If such information is removed from CRD, then that information will not appear in BrokerCheck.¹²⁷ On the whole, the expungement process seeks to balance the benefits of publicly disclosing complaints made against a broker while also protecting the broker from the publication of false allegations.¹²⁸ However, retail investors conducting research on BrokerCheck are not made aware of negative information once it is expunged and, as a result, may select a broker with a history of complaints and disputes that has an ostensibly good record on BrokerCheck.

After an arbitration is complete, a broker may request the expungement of certain information from his CRD record. This petition for the removal of negative information is known as a straight-in request.¹²⁹ When a broker takes this route, he or she pays the required filing fees and the member firm or person must pay process fees and possibly a surcharge.¹³⁰ The current rules require straight-in requests for expungement to be decided by a panel of three arbitrators, unless the parties agree, in writing, to a single arbitrator.¹³¹

However, under the existing rules a broker can obtain reduced fees and have his or her request heard by a single arbitrator simply by adding a

small monetary claim (typically one dollar) against the member firm. This is because non-monetary claims must be considered by a three arbitrator panel, whereas monetary claims for less than \$50,000 are considered by a single arbitrator.¹³² Not only does this make it less expensive for associated persons to seek expungement, but it also leaves the decision to remove negative information from the associated person’s record to a single arbitrator. FINRA’s proposed rule seeks to close the loophole by removing the provision that allows the associated person to add a nominal claim to achieve reduced fees.

Some commenters¹³³ pointed out that the proposed process would still deprive the investing public of the insights that two additional arbitrators may have brought to the expungement process and urged FINRA to go farther in amending the rule to require a three arbitrator panel. Others urged FINRA to revise the amended rule to require unanimity in a three arbitrator panel deciding on expungement.¹³⁴ In response to the public comments, FINRA noted that while it “believes that most expungement requests, particularly straight-in requests, should be decided by a three-person panel,” it had decided not to revise this proposed rule.¹³⁵ FINRA further noted that it is in the process of developing separate changes to the expungement framework, including expanded guidance and establishing a roster of arbitrators with additional training to hear straight-in requests for expungement.¹³⁶

After reviewing the proposal, the public comments received, and FINRA’s response to those comments, the SEC approved the proposed rule on May 26, 2020.¹³⁷

Proposed Rule to Address Arbitrations against Inactive Member Firms or Associated Persons

On November 5, 2019, FINRA submitted for SEC review a proposed rule¹³⁸ to amend portions of the Code of Arbitration Procedure for Customer Disputes to give retail investors expanded options to withdraw an arbitration claim if a member firm or associated person becomes inactive before the claim is filed or during the pendency of an arbitration. The proposal also seeks to address the ongoing problem of arbitration awards to retail investors that go unpaid by inactive members.¹³⁹

Under the provisions of the proposed rule, a retail investor would have the option to file an arbitration claim in federal court instead of with FINRA. This may be an attractive option to a retail investor because FINRA loses its power to enforce the arbitration award if the associated person becomes inactive and leaves the industry, thereby forcing the retail investor, at an additional expense, to seek a federal court order to enforce the arbitration award. The proposed rule puts the choice of initial forum in the hands of the retail investor. Under the proposed rule, FINRA will now advise the retail investor of the inactive party's "status change" and the retail investor will have 60 days to decide whether or not to withdraw the arbitration claim and file an action in federal court.¹⁴⁰

Four of the five comment letters submitted to the SEC¹⁴¹ were supportive of the proposed rule; however, three of the commenters felt that the rule did not go far enough to address the problem of unpaid arbitration awards.¹⁴² The Public Investors

Advocate Bar Association (PIABA) noted that "the proposed rule changes . . . are insufficient to remedy the longstanding problem of unpaid arbitration awards, which disproportionately involve customer claims against inactive FINRA members and associated persons."¹⁴³ PIABA further urged FINRA to establish a national recovery pool for unpaid arbitration awards or to require insurance coverage for customer claims. In response to the comments submitted to the SEC, FINRA submitted its own comment letter addressing the concerns raised by the five commenters. In response to PIABA's criticism, FINRA explained that the proposed rule "is intended to expand the options available to a customer when dealing with those members or associated persons that are inactive at the time a claim is filed or become inactive during a pending arbitration. The proposed rule change is one of the ways FINRA is proceeding to implement additional steps to strengthen its rules relating to the important but complex topic of customer recovery."¹⁴⁴

After reviewing the proposed rule and comments received, the SEC acknowledged the concerns raised by the commenters that the proposed rule does not go far enough to address unpaid arbitration awards and, like FINRA, commented that "the proposal represents only one step in the ongoing process of addressing these issues and that FINRA continues to evaluate further action."¹⁴⁵ The proposed rule was approved by the SEC on February 25, 2020, thus expanding the options available to retail investors in FINRA arbitration proceedings.¹⁴⁶

Proposed Amendments to FINRA Membership Application Program Rules

On December 20, 2019, FINRA submitted for SEC review proposed amendments to FINRA's Membership Application Program (MAP) rules to address the issues of pending arbitration claims and unpaid arbitration awards or settlements.¹⁴⁷ The proposed rule would require firms applying for FINRA membership with pending arbitration claims against them, or any of their brokers, to demonstrate how the firms would pay any claims that result in awards or settlements, as well as how they would supervise these brokers. The proposed rule also requires existing member firms seeking to change their ownership or business operations to address pending arbitration claims or unpaid arbitration awards or settlements before FINRA will approve their proposed changes. These amendments will benefit retail investors because they address the longstanding problem of unpaid arbitration awards by putting the burden on applicant firms to demonstrate that they are capable of paying any arbitration claims that result in awards, as well as any unpaid awards or settlements of their brokers.¹⁴⁸ The proposed rule will also prevent member firms with substantial pending arbitration claims from avoiding payment by shifting assets to another firm and closing down.

Under current FINRA rules, if an applicant for new membership or any of its brokers is subject to certain regulatory events, there is a rebuttable presumption that the application should be denied.¹⁴⁹ The proposed rule adds "pending arbitration claims" to this list of regulatory events, which requires applicants to show that they can satisfy any unpaid arbitration awards and to address supervision of brokers with pending arbitration claims, in order to overcome the presumption that their application should be

denied.¹⁵⁰ Perhaps these firms will be reluctant to hire brokers with pending arbitration claims in light of these added financial and supervisory requirements.

The proposed rule also requires a member firm to submit a request for a materiality consultation¹⁵¹ before entering into any agreement to transfer or acquire any line of business when there is a firm or broker on either side of the proposed transaction with a pending arbitration claim or unpaid arbitration award.¹⁵² This change is intended to prevent firms with pending arbitration claims that result in awards or settlements to avoid paying the awards or settlements by transferring their assets to another firm and closing down.

The proposed rule was published for comment in the Federal Register on December 30, 2019, and the Commission received two public comment letters in January 2020.¹⁵³ Although both commenters generally supported the proposed rule changes, they each commented that the proposed rule did not go far enough to address the ongoing problem of unpaid arbitration awards.¹⁵⁴ FINRA responded to the comment letters on January 31, 2020,¹⁵⁵ acknowledging the comments but stating that "this particular rule filing is only one of the ways it is proceeding to implement additional steps to strengthen its rules on this topic."¹⁵⁶

The proposed rule was approved by the SEC on March 26, 2020.¹⁵⁷ In its approval, however, the SEC acknowledged the concerns raised by the commenters about the potential for action to address unpaid claims arising from outside the FINRA arbitration process, and agreed with FINRA's assessment that this rule is just one step in the overall process of addressing these issues.¹⁵⁸

Advance Fee Fraud

As discussed previously by the Ombudsman,¹⁵⁹ advance fee fraud continues to be a very real threat to retail investors. Advance fee fraud generally involves a request to a retail investor for personal information and a fee to be paid up front prior to receiving any of the promised reward (for example, proceeds from a class action lawsuit, payment for the purchase of securities, or financing for a project). The advance payment may be described as a fee, tax, commission, or incidental expense that will be repaid or refunded to the investor later. After the investor pays the advance fee, the fraudster typically cuts off contact, and the investor never recovers the fees paid in advance.

These types of frauds tend to be successful because the perpetrators may pose as legitimate broker-dealers or regulators to gain the trust of the investor or to lend the appearance of legitimacy. At times, advance fee frauds are perpetrated by individuals posing as SEC staff or other government officials. Non-U.S. investors are often targeted, as they may be unfamiliar with the names of legitimate U.S. regulators, such as the SEC or state securities regulators.

As described above, during the Reporting Period, the Ombudsman was contacted by numerous retail investors with concerns and suspicions about communications they received from persons purporting to be legitimate broker-dealers and, in some instances, SEC employees. Some of the perpetrators went to great lengths to gain the trust of investors—one went so far as to provide copies of fraudulent SEC photo identification cards. It is a testament to the SEC's investor alerts that the majority of these individuals had enough doubt about the communications to contact the Ombudsman for assistance in determining the legitimacy of the offers and individuals involved.

In each instance, the Ombudsman advised the investor that the communication was likely a scam, recommended that the investor not respond to the communications, and provided additional SEC information and resources to help them recognize and avoid these types of scams in the future. In addition, the Ombudsman directed the investors to report the alleged fraud to ENF, and to contact OIEA with any further questions about their personal investments. Depending on the facts and circumstances of each case, the Ombudsman also reported advance fee fraud matters and complaints involving persons purporting to be SEC staff to other SEC divisions and offices as appropriate for further handling.

Retail Investor Concerns Relating to the COVID-19 Pandemic

The COVID-19 pandemic has had an unprecedented impact on financial markets, and the SEC has taken numerous steps to provide ongoing information to retail investors. The banner on the SEC.gov homepage—"SEC Response to COVID-19"—connects to summary information, up-to-date guidance, and investor alerts relating to the work of the agency during the pandemic.¹⁶⁰

Both during and after the Reporting Period, the Ombudsman received numerous submissions from investors relating to COVID-19. Many of these investors expressed their frustration with the extreme volatility of the market, and urged the SEC to take action to reduce or eliminate short-selling. Others reported specific problems with getting trades executed primarily due to breakdowns in technology, or the inability to get anyone at their brokers to respond to their requests for assistance, which they felt exacerbated their financial losses. Some investors just wanted to vent their frustrations, and several expressed their appreciation to the Ombudsman for taking the time to listen and for directing them to the appropriate resources.

ONGOING OUTREACH TO INVESTOR ADVOCACY CLINICS

The OIAD Law School Clinic Outreach Program

The Ombudsman, working directly with the Investor Advocate and an OIAD counsel, launched the OIAD Law School Clinic Outreach Program in October 2016.¹⁶¹ The OIAD Law School Clinic Outreach Program was designed to support OIAD's statutory requirements and help identify areas in which retail investors may benefit from regulatory and policy changes. Through their legal representation of retail investors and their community-based advocacy work, law school investor advocacy clinics¹⁶² examine issues confronting retail investors from a vantage point not available to SEC staff. Given the small size of our office, establishing an outreach program with the investor advocacy clinics was a resourceful and impactful method to complement our statutory mandate and core functions, hear from retail investors across the country through the clinics that represent them, and focus our attention on policy issues that may significantly impact their investing experience.

As background, since 1997, when then SEC Chairman Levitt announced the creation of two pilot law school investor advocacy clinics to help retail investors with small claims obtain quality legal representation, investor advocacy clinics have formally represented over 500 retail investors, recovered more than \$5 million on behalf of retail investors, and submitted more than one hundred comment letters to the Commission, FINRA, and

other regulators and industry groups on policy issues of importance to retail investors. The clinics have also provided interviewing and counseling services to more than 1,000 investors, and engaged many more investors through their community-based presentations, informational materials, and web-based content.¹⁶³

The Law School Clinic Outreach Program allows OIAD to interact directly with the clinics, engage in meaningful policy discussions, and gain a better understanding of their views on suggested regulatory changes and policy initiatives. Our engagement with the law school clinics also provides an excellent opportunity to inform law students interested in securities law and investor protection issues about internships, externships, and career opportunities at the SEC. Moreover, our outreach program aligns with the SEC's diversity and inclusion efforts, creates an additional path to attract a diverse pool of potential applicants, and demonstrates the SEC's commitment to a diverse and inclusive workplace at all levels of the agency.

From the launch of the OIAD Law School Clinic Outreach Program in October 2016 through January 2018, the Ombudsman and an OIAD counsel completed initial in-person meetings with the 14 of the 17 clinics that were in active operation and representing clients.¹⁶⁴ A timeline highlighting our formal outreach and engagement efforts from the start of the OIAD Law School Clinic Outreach Program in October 2016 through June 2019, and a discussion of our postponed 2020 Investor Advocacy Clinic Summit, are below.

OIAD LAW SCHOOL CLINIC OUTREACH PROGRAM AND ENGAGEMENT TIMELINE

2016

OCTOBER

Ombudsman and OIAD Counsel met with clinic directors and law students during in-person visits to the Pace University School of Law Investor Rights Clinic and the University of Miami School of Law Investor Rights Clinic.

- Georgia State University College of Law Investor Advocacy Clinic
- Howard University School of Law Investor Justice and Education Clinic
- Syracuse University College of Law Securities Arbitration and Consumer Law Clinic
- Cornell University School of Law Securities Law Clinic
- Benjamin N. Cardozo School of Law Securities Arbitration Clinic

2017

JUNE

Ombudsman and OIAD Counsel attended the Securities Arbitration Clinic Directors Annual Roundtable hosted by the Fordham University School of Law and its Securities Litigation and Arbitration Clinic. The roundtable provides an annual opportunity for the clinic directors to meet in person to discuss problematic products and practices affecting retail investors, arbitration updates, and client representation trends. The OIAD Law School Clinic Outreach Program was formally rolled out to all of the clinics at the roundtable.

AUGUST

Ombudsman met with the director of the Seton Hall University School of Law Investor Advocacy Project at SEC headquarters.

AUGUST AND SEPTEMBER

Ombudsman and OIAD Counsel met with clinic directors, law students, and law school administrators during in-person visits to the following clinics:

- New York Law School Securities Arbitration Clinic
- St. John's University School of Law Securities Arbitration Clinic
- University of Pittsburgh School of Law Securities Arbitration Clinic
- Northwestern University School of Law Investor Protection Clinic

OCTOBER

Ombudsman and OIAD hosted a group of 17 clinic directors and law students from the Seton Hall University, Georgia State University, Howard University, St. John's University, and the University of Pittsburgh investor advocacy clinics at the public meeting of the Investor Advisory Committee at SEC headquarters.

- During the IAC meeting, the Seton Hall University clinic director, the Georgia State University clinic director, and a Georgia State University law student presented formal remarks to the IAC and provided an overview of their advocacy efforts behalf of retail investors and the ongoing funding challenges that force investor advocacy clinics to turn away clients and cease operations.¹⁶⁵
- The Ombudsman also arranged for the clinic directors and law students to meet and have informal discussions with Chairman Clayton, Commissioner Stein, Commissioner Piwowar, and senior officers from the Division of Investment Management and the Division of Enforcement during this visit.

Ombudsman and OIAD Counsel attended an Investor Education Roadshow community outreach seminar in Bergen County, New Jersey hosted by the Seton Hall University School of Law Investor Advocacy Project.

Ombudsman and OIAD Counsel met with the clinic director and law students during an in-person visit to the University of Miami School of Law Investor Rights Clinic.

2018

JANUARY

Ombudsman and OIAD Counsel met with the clinic director and law students during an in-person visit to the newly established University of Nevada Las Vegas School of Law Investor Protection Clinic.

FEBRUARY

Ombudsman participated as a Career Paths Program panelist for the St. John's University School of Law Clinical Legal Education Program.

MARCH

Ombudsman and OIAD hosted 35 clinic directors and law students from the Cardozo Law, Northwestern University, Pace University, University of Miami, St. John's University, University of Pittsburgh, and University of Nevada Las Vegas investor advocacy clinics at the public meeting of the Investor Advisory Committee at SEC headquarters.

- During the meeting, the IAC voted to approve a formal recommendation to the Commission, "Financial Support for Law School Clinics that Support Investors," highlighting the important investor protection services the clinics provide to retail investors with small claim amounts, the declining number of clinics, and their ongoing funding challenges.¹⁶⁶
- The Ombudsman also arranged for the clinic directors and law students to meet and have informal discussions with Chairman Clayton, Commissioner Stein, Commissioner Piwowar, and Commissioner Peirce during this visit.

JUNE

Georgia State University College of Law, with significant involvement from its Investor Advocacy Clinic, hosted the first SEC Town Hall attended by the full five-member Commission outside of the Washington, DC area in the SEC's history.¹⁶⁷ Among the many locations, colleges, and venues considered

for this historic town hall, Georgia State University College of Law was suggested by the Ombudsman as an option for consideration.

Ombudsman attended the Securities Arbitration Clinic Directors Annual Roundtable hosted by the Fordham University School of Law and its Securities Litigation and Arbitration Clinic.

NOVEMBER

Ombudsman visited the Georgia State University College of Law Investor Advocacy Clinic and attended its Legal Analytics and Innovation Initiative presentation on FINRA arbitration research.

2019

APRIL

Ombudsman and OIAD hosted the first SEC Investor Advocacy Clinic Summit at SEC headquarters.¹⁶⁸

- 59 clinic directors and law students from 10 law school investor advocacy clinics—Cardozo School of Law, Cornell University, Fordham University, Georgia State University, Howard University, New York Law School, Pace University, St. John's University, University of Miami, and the University of Pittsburgh—participated in the Summit.
- In addition to the Investor Advocate and Ombudsman, Summit speakers included SEC Commissioners Jackson and Roisman; Gerri Walsh, Senior Vice President of Investor Education, FINRA; Rick Berry, Executive Vice President and Director of Dispute Resolution, FINRA; Joseph Brady, Executive Director, NASAA; and Charu Chandrasekhar, SEC Assistant Regional Director and Chief of the SEC Retail Strategy Task Force.

JUNE

Ombudsman attended the Securities Arbitration Clinic Directors Annual Roundtable hosted by the Fordham University School of Law and its Securities Litigation and Arbitration Clinic.

The 2020 SEC Investor Advocacy Clinic Summit

During the Reporting Period, the Ombudsman team prepared to host the second SEC Investor Advocacy Clinic Summit (Summit), a follow up to the successful inaugural Summit held at SEC headquarters on April 4, 2019.¹⁶⁹ While the investor advocacy clinic directors periodically convene, and some clinic directors and students visit the SEC from time to time, the Ombudsman developed the Summit to provide an opportunity for the clinic students and directors to gather in person to discuss issues of importance to main street investors with each other and with senior leaders from the SEC, SROs, and industry groups.

The Ombudsman's staff first contacted the investor advocacy clinic directors in November 2019 to request feedback on their interest and availability to attend another in-person Summit, the anticipated numbers of students attending, and discussions and presentation topics. After consulting with the clinic directors and considering the academic calendars for the various law schools, March 26, 2020 was determined to be the best date for the Summit that allowed most clinics to attend. The Summit grew to include nearly 100 expected participants, including 9 investor advocacy clinic directors and more than 60 law students representing 9 of the 12 active investor advocacy clinics—Cardozo School of Law, Cornell University, Fordham University, Howard University, New York Law School, Pace University, St. John's University, University of Nevada Las Vegas, and the University of Pittsburgh.¹⁷⁰ Confirmed participants and speakers included Chairman Clayton, Commissioner Peirce, the Investor Advocate, the Ombudsman, and senior

staff from across the agency. Senior leaders from industry and advocacy groups such as FINRA, NASAA, and PIABA, were also scheduled to participate. To round out the program, former clinic clients also agreed to participate and share their experiences as investor fraud victims and offer their perspectives on the benefits of working with investor advocacy clinics to recover their losses. Preparation for the Summit was in the final stages during the first week of March 2020 when unfortunately, due to information relating to the spread of the COVID-19 virus and out of an abundance of caution, the Summit was postponed.¹⁷¹

The Ombudsman will reach out to the clinic directors, speakers, and participants over the next several months to gauge the feasibility of rescheduling the Summit as a live or virtual event later in 2020 or in 2021. We will provide further Summit related updates in the upcoming Ombudsman's Report included in the Report on Activities for Fiscal Year 2020.

OBJECTIVES AND OUTLOOK

As Ombudsman, I bridge a unique gap. Among my statutory duties, I am required to both field complaints directly from retail investors about the SEC or the SROs we oversee, and serve as a liaison to help resolve those complaints. Analyzing those complaints and relaying pertinent, actionable information to SEC staff tasked with addressing regulatory concerns on a regular basis is an added value to both the SEC and the investing public, the importance of which grows more apparent with the increasing number and complexity of complaints I receive.

To appropriately focus my existing staff resources, I will continue to track detailed matter and contact information relating to investor complaints. As I begin to explore the feasibility and usefulness of tracking secondary category data to identify additional areas of concern within certain primary issue categories, I will closely review the data to determine what secondary category information may be useful to share with certain SEC divisions and offices, and what information may be useful to present in future Ombudsman's Reports. Furthermore, the approval to hire one additional attorney-adviser during Fiscal Year 2020 is appreciated, and will help me address the growing complexity and volume of investor complaints and collaborate with my colleagues across the agency to ensure that the concerns of Main Street investors are considered throughout the regulatory process.

I will continue to lead our investor advocacy clinic outreach efforts, including strengthening our ties with the existing clinics and serving as a resource to those exploring ways to establish and fund clinics. As discussed in this Report, bringing the investor advocacy clinics together for an in-person Summit in April 2019 was an extraordinary opportunity for SEC staff to hear directly from the clinics, and for the clinics to establish and strengthen their relationships with each other as they work to address retail investor concerns. It was unfortunate, but necessary, to postpone the second Summit scheduled for March 2020; however, I look forward to meeting with all of the law school investor advocacy clinic directors later this summer, where we may discuss options for convening the next investor advocacy clinic summit so that clinic

directors and law students can once again share their perspectives on retail investor protection with each other and with SEC staff.

Moreover, I look forward to hearing the clinic directors' perspectives on the critical need to increase funding for new and existing clinics. Despite ongoing funding and operational challenges, investor advocacy clinics continue to provide critical services to Main Street investors with small dollar amount claims who otherwise would have no practical options for legal representation. I remain supportive of any efforts to increase funding to existing clinics and to provide funding to establish new clinics. As noted in my prior reports, and as covered in the March 2018 IAC formal recommendation to the Commission, the small number of clinics in operation is not enough to represent the retail investors who need clinic services the most.

Finally, the remainder of Fiscal Year 2020 should provide several opportunities to share my work and the work of the SEC with industry participants and the broader ombudsman and dispute resolution communities in ways that may directly benefit retail investors. I will also continue to explore ways to best use outreach opportunities, industry and investor events, and technology to better connect with investors and industry participants.

It is a privilege to serve as Ombudsman, and I look forward to providing additional updates on our activities and progress in these areas in my next Ombudsman's Report.



Tracey L. McNeil
Ombudsman

SUMMARY OF INVESTOR ADVISORY COMMITTEE RECOMMENDATIONS AND SEC RESPONSES

Congress established the Investor Advisory Committee (IAC) 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.¹⁷² 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.¹⁷³

Exchange Act Section 39 authorizes the Committee to submit findings and recommendations for review and consideration by the Commission.¹⁷⁴ The statute also requires the SEC “promptly” to issue a public statement assessing each finding or recommendation of the Committee and disclosing the action, if any, the Commission intends to take

with respect to the finding or recommendation.¹⁷⁵ While the Commission must respond to the IAC’s recommendations, it is under no obligation to agree with or act upon the recommendations.¹⁷⁶

In each of our reports to Congress, the Office of the Investor Advocate summarizes the IAC recommendations and the SEC’s responses to them.¹⁷⁷ We continue to report on recommendations until we believe the Commission’s response is final. For summaries of Commission activities related to previous IAC recommendations, 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.¹⁷⁸ Therefore, any such initiatives are not reflected in this Report.

Topic	Date	IAC Recommendation	SEC Response
Accounting and Financial Disclosure ¹⁷⁹	May 21, 2020	Reconsider a 2020 rulemaking proposal that would permit issuers to omit fourth quarter results in annual reports and that would eliminate the tabular presentation of contractual obligation information. Closely monitor issuers' use of non-GAAP metrics and accounting developments relating to reverse factoring.	Pending.
ESG Disclosure ¹⁸⁰	May 21, 2020	Commence an effort to update issuer reporting requirements to include material, decision-useful disclosure concerning environmental, social, and governance matters. Consider the utility of both principles-based and prescriptive reporting requirements.	Pending.
Disclosure Effectiveness ¹⁸¹	May 21, 2020	Enhance the effectiveness of new and existing disclosure relied on primarily by retail investors by, among other things, adopting an iterative process that includes disclosure research, design, and testing.	Pending.
SEC Guidance and Rule Proposals on Proxy Advisors and Shareholder Proposals ¹⁸²	Jan. 24, 2020	Revisit priorities in improving the proxy system, revise and republish the 2019 proxy voting rulemaking proposals, and reconsider the 2019 proxy voting guidance.	Pending.
Exchange Rebate Tier Disclosure ¹⁸³	Jan. 24, 2020	Require the national securities exchanges to provide the Commission with regular disclosures regarding rebate tiers offered to their members, and take steps to require monthly public disclosure of these rebate practices.	Pending.

Topic	Date	IAC Recommendation	SEC Response
Proxy Plumbing	Sept. 5, 2019	Require end-to-end vote confirmations to end users of the proxy system, require all involved to cooperate in reconciling vote-related information, conduct studies on investor views on anonymity and share lending, and finalize the 2016 universal proxy rulemaking proposal.	Pending.
Structural Changes to the US Capital Markets Regarding Investment Research in a Post-MiFID II World ¹⁸⁴	July 25, 2019	Prioritize certain concepts and guiding principles, including the following: (1) consumers of research, regardless of location, should be allowed to choose whether to purchase research “bundled” or “unbundled” from trading costs; and (2) there should be greater transparency regarding research costs and how those costs are borne.	On Nov. 12, 2019, the Commission extended temporary no-action relief from compliance with registration under the Advisers Act for brokers that receive payments for research in hard dollars or through research payment accounts from managers subject to MiFID II through July 3, 2023. ¹⁸⁵
Human Capital Management Disclosure ¹⁸⁶	Mar. 28, 2019	Revise issuer disclosure requirements to elicit more insightful disclosure concerning how human capital within a firm is managed and incentivized.	On August 8, 2019, the Commission voted to propose rule amendments to modernize the description of business, legal proceedings, and risk factor disclosures that issuers are required to make pursuant to Regulation S-K. The amendments include the addition of human capital resources as a disclosure topic. ¹⁸⁷
Proposed Regulation Best Interest, Form CRS, and IA Fiduciary Guidance. ¹⁸⁸ Follows a recommendation of Nov. 22, 2013, on Broker-Dealer Fiduciary Duty. ¹⁸⁹	Nov. 7, 2018	Clarify the standards of conduct for broker-dealers and investment advisers with regard to the obligation to act in customers’ best interests; expand the best interest obligation to cover rollovers and recommendations regarding account types; explicitly characterize the best interest standard as a fiduciary duty; conduct usability testing of the proposed Form CRS and, if necessary, revise the proposed disclosures.	On June 5, 2019, the Commission adopted a package of rules and interpretations that would, among other things, establish a new standard of conduct for broker-dealers (which would extend to recommendations involving rollovers and account types), clarify the existing standard of conduct of investment advisers, interpret the broker-dealer exclusion from the definition of investment adviser, and require broker-dealers and investment advisers to provide a brief relationship summary to retail investors. Broker-dealers and investment advisers are required to comply with this package of rules and interpretations as of June 30, 2020.

Topic	Date	IAC Recommendation	SEC Response
Transaction Fee Pilot for NMS Stocks ¹⁹⁰	Sept. 13, 2018	Adopt a proposed Transaction Fee Pilot with the following conditions: (1) include a “no rebate” bucket; (2) permit companies to opt out of the pilot; and (3) consider consolidating Test Groups 1 and 2.	On Dec. 19, 2018, the Commission adopted new Rule 610T of Regulation NMS to conduct a Transaction Fee Pilot in NMS stocks. ¹⁹¹ On March 28, 2019, following a lawsuit filed by several exchanges, the Commission issued an order staying the rule and pilot program pending final resolution of the petitions. ¹⁹²
Financial Support for Law School Clinics that Support Investors ¹⁹³	Mar. 8, 2018	Explore ways to improve external funding sources to the law school investor advocacy clinics. Work with FINRA, NASAA, and other potential partners, and request legislation from Congress to consider permanent funding.	Pending.
Dual Class and Other Entrenching Governance Structures in Public Companies ¹⁹⁴	Mar. 8, 2018	Direct Division of Corporate Finance staff to scrutinize disclosure documents filed by issuers with dual class and other entrenching governance structures, comment on such documents so as to enhance the salience and detail of risk disclosure, and develop guidance to address a range of issues that such structures raise.	Pending.
Mutual Fund Cost Disclosure ¹⁹⁵	Apr. 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.	On June 5, 2018, the Commission issued a request for comment seeking input from individual investors and other interested parties on how to enhance the delivery, design, and content of fund disclosures, including shareholder reports and prospectuses. ¹⁹⁶ The request for comment solicits investor feedback on, among other things, fund fees and expenses, and includes questions related to the IAC recommendation (e.g., dollar vs. percentage disclosure, disclosure within account statements, etc.). ¹⁹⁷ On Oct. 30, 2018, the Commission proposed amendments to help investors make informed investment decisions regarding variable annuity and variable life insurance contracts. ¹⁹⁸ On March 11, 2020, the Commission adopted the amendments largely as proposed. ¹⁹⁹

Topic	Date	IAC Recommendation	SEC Response
Accredited Investor Definition ²⁰⁰	Oct. 9, 2014	Evaluate whether the current definition achieves the goal of identifying a class of individuals who are able to make an informed investment decision and protect their interests without the protections of registration and disclosure. Consider other definitional approaches.	<p>On December 18, 2015, SEC staff published a report that discussed, among other alternatives, using sophistication as a component of the accredited investor definition.</p> <p>On June 18, 2019, the Commission issued a Concept Release on Harmonization of Securities Offering Exemptions.²⁰¹ The release sought comment regarding the accredited investor definition and whether it should include investors with demonstrable financial sophistication.</p> <p>On December 18, 2019, the Commission proposed broadening the accredited investor definition, including by adding new categories of natural persons that may qualify as accredited investors based on their professional knowledge, experience, or certifications.²⁰²</p>
Impartiality in the Disclosure of Preliminary Voting Results ²⁰³	Oct. 9, 2014	Ensure impartiality in the disclosure of preliminary proxy voting results.	Pending.
Universal Proxy Ballots ²⁰⁴	July 25, 2013	Allow universal ballots in connection with short-slate director nominations.	On October 26, 2016, the Commission 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. ²⁰⁵

ENDNOTES

- 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)(4)(B), 15 U.S.C. § 78d(g)(4)(B).
- 8 Exchange Act § 4(g)(4)(C), 15 U.S.C. § 78d(g)(4)(C).
- 9 Exchange Act § 4(g)(4)(D), 15 U.S.C. § 78d(g)(4)(D).
- 10 Exchange Act § 4(g)(4)(E), 15 U.S.C. § 78d(g)(4)(E).
- 11 Exchange Act § 39, 15 U.S.C. § 78pp.
- 12 Exchange Act § 39(b)(1)(A), 15 U.S.C. § 78pp(b)(1)(A).
- 13 *See, e.g.*, Human Capital Management Coalition, *Rulemaking Petition to Require Issuers to Disclose Information About Their Human Capital Management Policies, Practices and Performance* (Jul. 6, 2017), SEC File No. 4-711, available at <https://www.sec.gov/rules/petitions/2017/petn4-711.pdf>. *See also* SEC, *Recommendation of the Investor Advisory Committee Regarding Human Capital Management Disclosure* (Mar. 28, 2019), <https://www.sec.gov/spotlight/investor-advisory-committee-2012/human-capital-disclosure-recommendation.pdf>.
- 14 *See, e.g.*, Letter from the Human Capital Management Coalition to Vanessa A. Countryman, Secretary, SEC (Oct. 22, 2019), SEC File No. S7-11-19, <https://www.sec.gov/comments/s7-11-19/s71119-6322887-194462.pdf>.
- 15 *See* Modernization of Regulation S-K Items 101, 103, and 105, Securities Exchange Act Rel. No. 86614, 84 Fed. Reg. 44358, 44360 (Aug. 23, 2019).
- 16 *Id.* at 44380.
- 17 *See id.* at 44370.
- 18 *See id.* (“Instead, we believe that investors would be better served by understanding how each company looks at its human capital and, in particular, where management focuses its attention in this space. The intent of the proposed requirement is to elicit, to the extent material to an understanding of the registrant’s business, disclosures regarding human capital that allow investors to better understand and evaluate this company resource and to see through the eyes of management how this resource is managed.”). *See also id.* at 44381 (“Overall, investors and registrants may benefit from the proposed amendments to Item 101(c) if the existing requirements result in disclosure that is not material to an investment decision and/or is costly to provide.”).
- 19 *See* William Hinman, Director, Division of Corporation Finance, SEC, *Applying a Principles-Based Approach to Disclosure Complex, Uncertain and Evolving Risks, Remarks at the 18th Annual Institute on Securities Regulation in Europe* (Mar. 15, 2019), <https://www.sec.gov/news/speech/hinman-applying-principles-based-approach-disclosure-031519> (expressing the view that “the market is still evaluating what, if any, additional disclosure on these topics would provide consistently material and useful information” and that the staff was “watching carefully as market-led approaches develop in this area”).
- 20 *See, e.g.*, World Economic Forum, *Toward Common Metrics and Consistent Reporting of Sustainable Value Creation*, Consultation Draft 5, 11 (Jan. 2020), <https://www.weforum.org/whitepapers/toward-common-metrics-and-consistent-reporting-of-sustainable-value-creation>.
- 21 For an example of our public advocacy on this topic, see Rick A. Fleming, Investor Advocate, SEC, *Improving Disclosure with Smart Data* (Oct. 24, 2016), <https://www.sec.gov/news/speech/improving-disclosure-with-smart-data.html>.
- 22 *See* Inline XBRL Filing of Tagged Data, Securities Exchange Act Rel. No. 83551, 83 Fed. Reg. 40846 (Aug. 16, 2018) (specifying a structured format for the submission of operating company financial statement information).
- 23 *See* Foundations for Evidence-Based Policymaking Act of 2018, Pub. L. No. 115-435, § 201, 132 Stat. 5529, 5534-5544 (2019) (with the OPEN Government Data Act beginning at Section 202).

- 24 See Financial Disclosures About Guarantors and Issuers of Guaranteed Securities and Affiliates Whose Securities Collateralize a Registrant’s Securities, Securities Exchange Act Rel. No. 88307, 85 Fed. Reg. 21940, 21988 (Apr. 20, 2020) (paring back a disclosure requirement on the rationale that it “may help focus investor attention on decision-relevant information”). See also Management’s Discussion and Analysis, Selected Financial Data, and Supplementary Financial Information, Securities Exchange Act Rel. No. 88093, 85 Fed. Reg. 12068 (Feb. 28, 2020) (proposing to eliminate Item 301 of Regulation S-K, Selected Financial Data and Item 302 of Regulation S-K, Supplementary Financial Information “because they are largely duplicative of other requirements”).
- 25 See FAST Act Modernization and Simplification of Regulation S-K, Securities Exchange Act Rel. No. 85381, 84 Fed. Reg. 12674, 12695 (Apr. 2, 2019) (concerning incorporation of information by reference and hyperlinking in order to “improve the readability and navigability of disclosure documents and discourage repetition”). See also Modernization of Regulation S-K Items 101, 103, and 105, Securities Exchange Act Rel. No. 86614, 84 Fed. Reg. 44358, 44382 (Aug. 23, 2019) (“We propose to revise Item 103 to encourage the use of hyperlinks or cross-references to avoid repetitive disclosure. If duplicative disclosure distracts investors from other important information, the proposal may benefit investors by reducing repetition and facilitating more efficient information processing.”). Hyperlinks and other text-based cross-references are not machine-readable; they do not enable the efficient searching that structuring, or tagging, enables.
- 26 See also Request for Comment on Earnings Releases and Quarterly Reports, Securities Exchange Act Rel. No. 84842, 83 Fed. Reg. 65601 (Dec. 21, 2018) (on moving from quarterly to potentially biannual reporting: “We seek to understand how we might simplify the process by which investors access, process, and evaluate information, for example, by relieving any burdens associated with investors’ efforts to compare an earnings release and Form 10-Q to identify information that is new or different.”).
- 27 See SEC, Office of the Investor Advocate, *Report on Activities for Fiscal Year 2019* (Dec. 19, 2019) [hereinafter *Report on Activities, Fiscal Year 2019*] at 4 (describing rulemaking initiatives to update the disclosures provided by registrants that have material mining operations and the statistical disclosures provided by bank and savings and loan registrants, both instances in which the Commission could have incorporated structuring but determined not to), [https://www. https://www.sec.gov/advocate/reportspubs/annual-reports/sec-investor-advocate-report-on-activities-2019.pdf](https://www.sec.gov/advocate/reportspubs/annual-reports/sec-investor-advocate-report-on-activities-2019.pdf).
- 28 In a message to Congress accompanying a bill that became the Securities Act of 1933, President Franklin Delano Roosevelt wrote that the proposal “puts the burden of telling the whole truth on the seller. It should give impetus to honest dealing in securities and thereby bring back public confidence.” H.R. Rep. No. 73-85, at 1 (Mar. 29, 1933).
- 29 See Jay Clayton, Chairman, SEC, *The Evolving Market for Retail Investment Services and Forward-Looking Regulation—Adding Clarity and Investor Protection while Ensuring Access and Choice* (May 2, 2018), <https://www.sec.gov/news/speech/speech-clayton-2018-05-02> (“Our capital markets—including the broad participation of the public in our capital markets—are the envy of the world. No other country has anything comparable.”).
- 30 See Letter from Erik F. Gerding et al. to Vanessa Countryman, Secretary, SEC (Sept. 24, 2019), SEC File No. S7-08-19, <https://www.sec.gov/comments/s7-08-19/s70819-6193340-192501.pdf> [hereinafter Law Professors’ Letter].
- 31 See Concept Release on Harmonization of Securities Offering Exemptions, Securities Act Rel. No. 10649, 84 Fed. Reg. 30460, 30465 (June 26, 2019) (presenting statistical data from the 2008-2019 time period).
- 32 See Written Testimony of Renee M. Jones, Associate Dean for Academic Affairs and Professor of Law, Boston College Law School, Before the U.S. House of Representatives, Committee on Financial Services, Subcommittee on Capital Markets, Securities, and Investments (Sept. 9, 2019), <https://financialservices.house.gov/uploadedfiles/hhrg-116-ba16-wstate-jonesr-20190911.pdf>.
- 33 See “The number of listed firms in the U.S. 1980-2019, by quarter,” available at IPO Data, Jay R. Ritter, Joseph B. Cordell Eminent Scholar Chair, University of Florida Warrington College of Business, https://site.warrington.ufl.edu/ritter/files/Listed_19802019.pdf.
- 34 See Jason Zweig, *As Shareholders Disappear, Darkness Falls on Performance*, WALL ST. J. (June 14, 2016).
- 35 See, e.g., Letter from Barbara Roper and Micah Hauptman, Consumer Federation of America, to Vanessa Countryman, Secretary, SEC (Oct. 1, 2019), SEC File No. S7-08-19, <https://www.sec.gov/comments/s7-08-19/s70819-6235037-192692.pdf>.
- 36 See Law Professors’ Letter, *supra* note 30, at 1-2.

- 37 See, e.g., Concept Release on Harmonization of Securities Offering Exemptions, Securities Act Rel. No. 10649, 84 Fed. Reg. 30460 (June 26, 2019). See also Facilitating Capital Formation and Expanding Investment Opportunities by Improving Access to Capital in Private Markets, Securities Act Rel. No. 10763, 85 Fed. Reg. 17956 (Mar. 31, 2020).
- 38 See Amendments to Exemptions from the Proxy Rules for Proxy Voting Advice, Exchange Act Rel. No. 87457, 84 Fed. Reg. 66518 (Dec. 4, 2019).
- 39 See Procedural Requirements and Resubmission Thresholds under Exchange Act Rule 14a-8, Exchange Act Rel. No. 87458, 84 Fed. Reg. 66458 (Dec. 4, 2019).
- 40 See SEC, *Recommendation of the Investor Advisory Committee Regarding SEC Guidance and Rule Proposals on Proxy Advisors and Shareholder Proposals* (Jan. 24, 2020), <https://www.sec.gov/spotlight/investor-advisory-committee-2012/sec-guidance-and-rule-proposals-on-proxy-advisors-and-shareholder-proposals.pdf>.
- 41 See generally Concept Release on Equity Market Structure, Exchange Act Rel. No. 61358, 75 Fed. Reg. 3,594 (Jan. 21, 2010).
- 42 See Disclosure of Order Handling Information, Exchange Act Rel. No. 84528, 83 Fed. Reg. 58,338 (Nov. 19, 2018), <https://www.federalregister.gov/d/2018-24423>.
- 43 See Transaction Fee Pilot for NMS Stocks, Exchange Act Rel. No. 84875, 84 Fed. Reg. 5,202 (adopted Dec. 19, 2018), <https://www.federalregister.gov/d/2018-27982>.
- 44 See Publication or Submission of Quotations Without Specified Information, Exchange Act Rel. No. 87115, 84 Fed. Reg. 58,206 (proposed Sept. 26, 2019), <https://www.federalregister.gov/d/2019-21260>.
- 45 See Order Directing the Exchanges and the Financial Industry Regulatory Authority To Submit a New National Market System Plan Regarding Consolidated Equity Market Data, Exchange Act Rel. No. 88827 (adopted May 8, 2020), <https://www.sec.gov/rules/sro/nms/2020/34-88827.pdf>.
- 46 See Market Data Infrastructure, Exchange Act Rel. No. 88216, 85 Fed. Reg. 16,726 (proposed Feb. 14, 2020), <https://www.federalregister.gov/d/2020-03760>.
- 47 See SEC, Press Release, *SEC Seeks Public Comment on Transfer Agent Rules*, 2015-288 (Dec. 22, 2015), <https://www.sec.gov/news/pressrelease/2015-288.html>.
- 48 See Joint Industry Plan, Order Approving the National Market System Plan Governing the Consolidated Audit Trail, Exchange Act Rel. No. 79318 (Nov. 15, 2016), <https://www.sec.gov/rules/sro/nms/2016/34-79318.pdf>.
- 49 See Self-Regulatory Organizations; Investors Exchange LLC; Order Instituting Proceedings to Determine Whether to Approve or Disapprove a Proposed Rule Change to Add a New Discretionary Limit Order Type Called D-Limit, Exchange Act Rel. No. 88501, 85 Fed. Reg. 18,612 (Apr. 2, 2020) <https://www.federalregister.gov/d/2020-06856>.
- 50 See Comments on File No. SR-IEX-2019-15, available at <https://www.sec.gov/comments/sr-iex-2019-15/sriex201915.htm>.
- 51 See S.945 - Holding Foreign Companies Accountable Act, 116th Congress (2019-2020), <https://www.congress.gov/bill/116th-congress/senate-bill/945>.
- 52 See, e.g., Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing of Proposed Rule Change to Amend IM-5101-1 (Use of Discretionary Authority) to Deny Listing or Continued Listing or to Apply Additional and More Stringent Criteria to an Applicant or Listed Company Based on Considerations Related to the Company's Auditor or When a Company's Business is Principally Administered in a Jurisdiction That is a Restrictive Market, Exchange Act Rel. No. 88987 (June 2, 2020) <https://www.sec.gov/rules/sro/nasdaq/2020/34-88987.pdf>.
- 53 See *Report on Activities, Fiscal Year 2019*, *supra* note 27, at 12-13, <https://www.sec.gov/advocate/reportspubs/annual-reports/sec-investor-advocate-report-on-activities-2019.pdf>.
- 54 See Exchange-Traded Funds, Securities Act Rel. No. 10695, Investment Company Act Release No. 33646, 84 Fed. Reg. 57162 (adopted Sept. 25, 2019).
- 55 *Id.* at section II.C.
- 56 *Id.* at section II.A.3; see also *Report on Activities, Fiscal Year 2019*, *supra* note 27, at 13-14.
- 57 See Investment Company Act Rel. No. 33477 (May 20, 2019) [hereinafter *Precidian Order*].
- 58 See Heather Bell, *New Era of Active ETFs Set to Begin*, ETF.com (Mar. 31, 2020), <https://www.etf.com/sections/features-and-news/new-era-active-set-begin?nopaging=1>.
- 59 See *Precidian Order*, *supra* note 57.

- 60 See Investment Company Act Rel. No. 33710 (Dec. 10, 2019); Investment Company Act Rel. No. 33711 (Dec. 10, 2019); Investment Company Act Rel. No. 33712 (Dec. 10, 2019); Investment Company Act Rel. No. 33713 (Dec. 10, 2019). The first of these second-generation non-transparent ETFs launched in June 2020. See James Lord, Fidelity Debuts Semi-Transparent ETFs with Triple Launch, ETF Strategy (June 8, 2020), <https://www.etfstrategy.com/fidelity-debuts-semi-transparent-etfs-with-triple-launch-95487>.
- 61 See Robert J. Jackson, Commissioner, SEC, and Allison Herren Lee, Commissioner, SEC, *Public Statement: Statement of Commissioners Jackson and Lee on Non-Transparent Exchange Traded Funds* (Nov. 15, 2019), <https://www.sec.gov/news/public-statement/statement-jackson-lee-2019-11-15>.
- 62 See *id.* Despite these reservations, Commissioners Jackson and Lee supported the approval of exemptive relief for these non-transparent ETFs because “the Staff’s work produced important guardrails that will help protect investors from the risks of non-transparent funds” and, given that the exemptive relief for Precidian had previously been approved over Commissioner Jackson’s dissent, “the benefits of facilitating competition among the various models, rather than single fund control over the nontransparent ETF market, weighs in favor of our support.”.
- 63 See Use of Derivatives by Registered Investment Companies and Business Development Companies; Required Due Diligence by Broker-Dealers and Registered Investment Advisers Regarding Retail Customers’ Transactions in Certain Leveraged/Inverse Investment Vehicles, Exchange Act Rel. No. 87607, Investment Company Act Rel. No. 33704, 85 Fed. Reg. 4446 (proposed Nov. 25, 2019).
- 64 See, e.g., Jay Clayton, Chairman, SEC, Public Statement: Taking Significant Steps to Modernize Our Regulatory Framework (Sept. 26, 2019), <https://www.sec.gov/news/public-statement/clayton-2019-09-26-three-rulemakings> (“I believe it would be premature to include leveraged and inverse ETFs within the scope of [the ETF Rule] before the Commission has addressed the investor protection concerns that have been raised regarding these products.”).
- 65 See Derivatives Proposal, *supra* note 63 at section II.G.4.
- 66 Request for Comment on Fund Retail Investor Experience and Disclosure, Securities Act Rel. No. 10503, Exchange Act Rel. No. 83376, Investment Company Act Rel. No. 33113 (June 5, 2018).
- 67 See Updated Disclosure Requirements and Summary Prospectus for Variable Annuity and Variable Life Insurance Contracts, Securities Act Rel. No. 10765, Exchange Act Rel. No. 88358, Investment Company Act Rel. No. 33814, 85 Fed. Reg. 25964 (Mar. 11, 2020) at <https://www.federalregister.gov/documents/2020/05/01/2020-05526/updated-disclosure-requirements-and-summary-prospectus-for-variable-annuity-and-variable-life> [hereinafter Variable Annuity Summary Prospectus Adopting Release].
- 68 See SEC, *Recommendation of the Investor Advisory Committee on Disclosure Effectiveness* (May 21, 2020), <https://www.sec.gov/spotlight/investor-advisory-committee-2012/disclosure-effectiveness-recommendation.pdf>.
- 69 See Rick A. Fleming, Investor Advocate, SEC, *Statement Regarding the SEC’s Rulemaking Package for Investment Advisers and Broker-Dealers* (June 5, 2019), <https://www.sec.gov/news/public-statement/statement-regarding-sec-rulemaking-package-investment-advisers-broker-dealers>.
- 70 See SEC, Office of the Investor Advocate, *Report on Objectives for Fiscal Year 2020* (June 27, 2019), at 12, <https://www.sec.gov/files/sec-office-investor-advocate-report-on-objectives-fy2020.pdf>.
- 71 Jean Eaglesham and Rob Barry, *More Than 5,000 Stockbrokers From Expelled Firms Still Selling Securities*, WALL ST. J. (Oct. 4, 2013).
- 72 See Mark Egan, Gregor Matvos, and Amit Seru, “The Market for Financial Adviser Misconduct,” J. POL. ECON. 127, no. 1 (Feb. 2019), 233, 217-272, <https://www.journals.uchicago.edu/doi/pdfplus/10.1086/700735> (noting that “relative to other advisors who left the same firm at the same time, advisors who engaged in misconduct are hired by firms that employ a greater percentage of other advisors with past misconduct records”).
- 73 See FINRA, Regulatory Notice 19-17; Protecting Investors from Misconduct (May 2, 2019), <https://www.finra.org/sites/default/files/2019-05/Regulatory-Notice-19-17.pdf>.
- 74 *Id.* The new rule would “create a multi-step process to guide FINRA’s determination of whether a member raises investor protection concerns substantial enough to require it to be subject to additional obligations,” such as deposits of cash or qualified securities, or other conditions or restrictions deemed to be in the public interest.

- 75 We continue to encourage FINRA, as part of this proposed rulemaking or other related rulemakings, to expand public access to the underlying data sets, models, and rankings it uses to assess broker risk. Public availability of this information will allow stakeholders to independently appraise, based on their individual tolerance levels, the risk posed by specific brokers and firms. As stated in our Report on Activities for Fiscal Year 2018, public accessibility to risk data for brokers is inadequate and overdue given the prevalence and sophistication of investor-friendly resources capable of processing such information. SEC, Office of the Investor Advocate, *Report on Activities for Fiscal Year 2018* (Dec. 20, 2018) at 20. <https://www.sec.gov/advocate/reportspubs/annual-reports/sec-investor-advocate-report-on-activities-2018.pdf>.
- 76 For example, in certain circumstances, if FINRA determines that a member firm triggers the new proposed rule, it will grant that member a one-time opportunity to reduce its staffing levels such that it no longer exceeds the applicable thresholds.
- 77 See Financial Industry Regulatory Authority, Inc.; Notice of Filing of a Proposed Rule Change to Address Brokers with a Significant History of Misconduct, Exchange Act Rel. No. 88600, 85 Fed. Reg. 20745 (Apr. 14, 2020).
- 78 See Paul G. Auwaeter, M.D., *Coronavirus COVID-19 (SARS-CoV-2)*, Johns Hopkins ABX Guide (May 13, 2020).
- 79 See, e.g., Mark Hulbert, *Despite the Stock Market's Breathtaking Rally, Investors are Closer to Despair*, MARKETWATCH (May 12, 2020); Cynthia Koons *et al.*, *The Next Covid Crisis Could be a Wave of Suicides*, BLOOMBERG (May 8, 2020).
- 80 See Press Release, *Consumer Expectations Deteriorate Sharply for the Second Consecutive Month* (Fed. Reserve Bank of NY, May 11, 2020) at <https://www.newyorkfed.org/newsevents/news/research/2020/20200511>.
- 81 *Id.*
- 82 Michael S. Derby, *New York Fed Finds Big Deterioration in Consumer Views in April*, WALL ST. J. (May 11, 2020).
- 83 See *supra* note 80, Press Release, *Consumer Expectations Deteriorate Sharply for the Second Consecutive Month* (Fed. Reserve Bank of NY, May 11, 2020).
- 84 *Id.*
- 85 *Id.*
- 86 *Id.*
- 87 See Scott R. Baker *et al.*, *The Unprecedented Stock Market Impact of COVID-19* (National Bureau of Economic Research Working Paper 26945, Apr. 30, 2020).
- 88 *Id.*
- 89 See YCharts: *US Investor Sentiment, % Bearish: 45.02% for Wk of May 21 2020* at https://ycharts.com/indicators/us_investor_sentiment_bearish.
- 90 *Id.*
- 91 See *supra* note 87 (NBER Paper).
- 92 *Id.* at 1.
- 93 *Id.*
- 94 *Id.*
- 95 *Id.*
- 96 *Id.* at 4-5.
- 97 *Id.* at 5.
- 98 See SEC Division of Economic and Risk Analysis, *Economic and Risk Outlook* (April 23, 2020), https://www.sec.gov/files/DERA_Economic-and-Risk-Outlook-Report_Apr2020.pdf.
- 99 *Id.* (DERA quarterly report).
- 100 Justin McCarthy, *Stock Investments Lose Some Luster After COVID-19 Sell-Off* (Gallup, Apr. 24, 2020) (summarizing findings from Gallup's annual Economic and Personal Finance Survey conducted Apr. 1-14, 2020).
- 101 *Id.*
- 102 *Id.*
- 103 *Id.*
- 104 *Id.*
- 105 *Id.*
- 106 *Id.*
- 107 See Rob Berger, *How COVID-19 Has Changed Retirement Planning* (Forbes Advisor, May 11, 2020) (reporting results of a Forbes Advisor-commissioned YouGov survey of 9,765 U.S. adults to get a deeper read on how the coronavirus has impacted retirement planning).

- 108 *Id.*
- 109 *Id.*
- 110 See Lee Barney and Rebecca Moore, *EBRI Calls COVID-19's Impact on Retirement Security 'Manageable'* (Plan Sponsor, May 6, 2020) (reporting on a March 20 EBRI Supplemental Retirement Confidence Survey).
- 111 See Steven Peikin, Co-Director, SEC Division of Enforcement, *Keynote Address: Securities Enforcement Forum West 2020* at <https://www.sec.gov/news/speech/keynote-securities-enforcement-forum-west-2020>.
- 112 See SEC, Coronavirus (COVID-19), *Division of Corporation Finance Securities and Exchange Commission CF Disclosure Guidance: Topic No. 9* (March 25, 2020), <https://www.sec.gov/corpfin/coronavirus-covid-19>; <https://www.sec.gov/news/public-statement/statement-teotia-financial-reporting-covid-19-2020-04-03>. See also <https://www.sec.gov/news/public-statement/statement-clayton-hinman>.
- 113 See SEC Press Release 2020-95, *SEC Forms Cross-Divisional COVID-19 Market Monitoring Group* (Apr. 24, 2020) at <https://www.sec.gov/news/press-release/2020-95>.
- 114 *Id.*
- 115 *Id.*
- 116 *Id.*
- 117 Exchange Act § 4(g)(8) (B), 15 U.S.C. § 78d(g)(8)(B).
- 118 Exchange Act § 4(g)(8)(D), 15 U.S.C. § 78d(g)(8)(D).
- 119 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.
- 120 Rule 10a-1 provided that, subject to certain exceptions, a listed security could be sold short (i) at a price above the price at which the immediately preceding sale was effected (plus tick), or (ii) at the last sale price if it was higher than the last different price (zero plus tick). See 17 CFR § 240.10a-1.
- 121 See *What We Do*, SEC (June 10, 2013), <https://www.sec.gov/Article/whatwedo.html>.
- 122 BrokerCheck is a free tool that enables investors to research the professional backgrounds of brokers and brokerage firms. *About BrokerCheck*, <https://www.finra.org/investors/about-brokercheck> (last visited May 20, 2020).
- 123 When an investor opens an account at a brokerage firm, the agreement almost always includes a mandatory pre-dispute arbitration clause that specifies that any legal dispute between the investor and the broker will be resolved using FINRA's arbitration and mediation dispute resolution forum.
- 124 SR-FINRA-2020-005, Notice of Filing of a Proposed Rule Change to Amend the FINRA Code of Arbitration Procedure for Customer Disputes and the FINRA Code of Arbitration Procedure for Industry Disputes to Apply Minimum Fees to Requests for Expungement of Customer Dispute Information, Rel. No. 34-88251; File No. SR-FINRA-2020-005 (Feb. 20, 2020), <https://www.sec.gov/rules/sro/finra/2020/34-88251.pdf>.
- 125 The Central Registration Depository (CRD) is the securities industry online registration and licensing database. Information in CRD is obtained through forms that brokers, brokerage firms, and regulators complete as part of the securities industry registration and licensing process.
- 126 See *BrokerCheck* by FINRA, <https://brokercheck.finra.org>. For more information on what is included in BrokerCheck, go to <https://www.finra.org/investors/learn-to-invest/choosing-investment-professional/about-brokercheck>.
- 127 See FINRA, *Frequently Asked Questions about FINRA Rule 2080 (Expungement)*, <https://www.finra.org/registration-exams-ce/classic-crd/faq/finra-rule-2080-frequently-asked-questions>.
- 128 See *supra* note 124 at 4.
- 129 See *supra* note 124 at 8.
- 130 See FINRA Rules 12901(a)(1)(B) and 12901(a)(1)(C) and FINRA Rules 13901(a)(2) and 13901(a)(3).
- 131 See *supra* note 124 at 8.
- 132 See *supra* note 124 at 9, n. 23.

- 133 See Letter from FINRA to SEC (May 18, 2020), <https://www.sec.gov/comments/sr-finra-2020-005/srfinra2020005-7214393-216896.pdf>. Seven commenters submitted comment letters to the SEC: Steven B. Caruso, Maddox Hargett & Caruso, P.C., Feb. 21, 2020; Robin M. Traxler, Senior Vice President, Policy & Deputy General Counsel, Financial Services Institute, Mar. 18, 2020; Samuel Edwards, President, Public Investors Advocate Bar Association, Mar. 18, 2020; Christopher Gerold, President, North American Securities Administrators Association, Inc., Mar. 18, 2020; Dochter D. Kennedy, President & Founder, AdvisorLaw, LLC, Mar. 18, 2020; Lauren K. Petersen, Christina Buru, Gia Fernicola, Legal Interns and Christine Lazaro, Director of the Securities Arbitration Clinic and Professor of Clinical Legal Education, Securities Arbitration Clinic at St. John's University School of Law, Mar. 18, 2020; Richard P. Ryder, President, Securities Arbitration Commentators, Inc., Mar. 26, 2020. The comment letters are available at <https://www.sec.gov/comments/sr-finra-2020-005/srfinra2020005.htm>.
- 134 *Id.* at 2.
- 135 *Id.* at 3.
- 136 *Id.*
- 137 Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving a Proposed Rule Change to Amend the FINRA Code of Arbitration Procedure for Customer Disputes and the FINRA Code of Arbitration Procedure for Industry Disputes to Apply Minimum Fees to Requests for Expungement of Customer Dispute Information. Release No. 34-88945; File No. SR-FINRA-2020-005 (May 26, 2020), <https://www.sec.gov/rules/sro/finra/2020/34-88945.pdf>.
- 138 Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of a Proposed Rule Change to Amend FINRA Rule 12000 Series to Expand Options Available to Customers if a Firm or Associated Person is or Becomes Inactive Release No. 34-87557; File No. SR-FINRA-2019-027 (Nov. 18, 2019), Fed. Reg. 64581 (Nov. 22, 2019), <https://www.sec.gov/rules/sro/finra/2019/34-87557.pdf>.
- 139 See Statistics on Unpaid Customer Awards in FINRA Arbitration, <https://www.finra.org/arbitration-mediation/statistics-unpaid-customer-awards-finra-arbitration>. “Most unpaid customer arbitration awards are rendered against firms or individuals whose FINRA registration has been terminated, suspended, cancelled, or revoked, or who have been expelled from FINRA. These firms and individuals are generally referred to as ‘inactive,’ and are no longer FINRA members or associated with a FINRA member, although they may continue to operate in another area of the financial services industry where FINRA registration is not required. Firms and individuals can become inactive prior to an arbitration claim being filed, during an arbitration proceeding, or subsequent to an arbitration award, and this status can be caused by FINRA’s action, such as when a firm or individual is suspended for failing to pay an award, or by the firm’s or individual’s own voluntary action.” See also, *Report on Activities, Fiscal Year 2019*, *supra* note 27, at 32.
- 140 See *Report on Activities, Fiscal Year 2019*, *supra* note 27, at 27.
- 141 See Letter from FINRA to SEC (Feb. 11, 2020) <https://www.sec.gov/comments/sr-finra-2019-027/srfinra2019027-6796335-208356.pdf>. Five commenters submitted comment letters to the SEC: Steven B. Caruso, Maddox, Hargett & Caruso, P.C. November 2019, Benjamin P. Edwards, Associate Professor of Law, University of Nevada, Las Vegas, Dec. 11, 2019; Kevin Carroll, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association, Dec. 12, 2019; Samuel B. Edwards, President, Public Investors Arbitration Bar Association, Dec. 13, 2019; and Robin M. Traxler, Senior Vice President, Policy & Deputy General Counsel, Financial Services Institute, SEC, Dec. 13, 2019. The comment letters are available at <https://www.sec.gov/comments/sr-finra-2019-027/srfinra2019027.htm>.
- 142 Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving a Proposed Rule Change to Amend FINRA Rule 12000 Series to Expand Options Available to Customers if a Firm or Associated Person Is or Becomes Inactive, Release No. 34-88254; File No. SR-FINRA-2019-027 (Feb. 20, 2019), 85 Fed Reg. 1157 (Feb. 26, 2020), <https://www.sec.gov/rules/sro/finra/2020/34-88254.pdf>.

- 143 PIABA Comment Letter, Notice of Filing of a Proposed Rule Change to Amend FINRA Rule 12000 Series to Expand Options Available to Customers if a Firm or Associated Person is or Becomes Inactive (Dec. 13, 2019), <https://piaba.org/piaba-newsroom/piaba-comment-letter-notice-filing-proposed-rule-change-amend-finra-rule-12000>.
- 144 *See supra* note 141, Letter from FINRA to SEC, at 5.
- 145 *See supra* note 142 at 19.
- 146 *Id.*
- 147 *See* Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of a Proposed Rule Change to Amend the Membership Application Program (“MAP”) Rules to Address the Issue of Pending Arbitration Claims Release No. 34-87810; File No. SR-FINRA-2019-030 (Dec. 20, 2019), 84 FR 72088 (Dec. 30, 2019), <https://www.sec.gov/rules/sro/finra/2019/34-87810.pdf>.
- 148 *Id.* at 27.
- 149 *See* FINRA Rule 1014(a) and (b).
- 150 *See supra* note 147 at 2.
- 151 A request for a materiality consultation, for which there is no fee, is a written request from a member firm for FINRA’s determination on whether a contemplated change in business operations or activities is material and would therefore require a CMA or whether the contemplated change can fit within the framework of the firm’s current activities and structure without the need to file a CMA for FINRA’s approval. *See supra* note 149 at 9.
- 152 *See supra* note 147 at 15-17.
- 153 *See* Letter from Steven B. Caruso, Maddox Hargett Caruso, P.C., dated January 7, 2020 (“Caruso Letter”); and letter from Christine Lazaro, Director of the Securities Arbitration Clinic and Professor of Clinical Legal Education, St. John’s University School of Law, dated January 21, 2020 (“SJU Letter”). Comment letters are available on the Commission’s website at <https://www.sec.gov/comments/sr-finra-2019-030/srfinra2019030.htm>.
- 154 *Id.*
- 155 *See* Letter from FINRA to SEC (Jan. 31, 2020), <https://www.sec.gov/comments/sr-finra-2019-030/srfinra2019030-6730822-207419.pdf>.
- 156 *Id.* at 2.
- 157 *See* Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving a Proposed Rule Change, as Modified by Amendment No. 1, to Amend the Membership Application Program (“MAP”) Rules to Address the Issue of Pending Arbitration Claims Release No. 34-88482; File No. SR-FINRA-2019-030 (Mar. 26, 2020), 85 FR 18299 (Apr. 1, 2020), <https://www.sec.gov/rules/sro/finra/2020/34-88482.pdf> at 18.
- 158 *Id.* at 17.
- 159 *See Report on Activities, Fiscal Year 2019, supra* note 27, at 27.
- 160 *See SEC Coronavirus (COVID-19) Response*, <https://www.sec.gov/sec-coronavirus-covid-19-response>.
- 161 *See Report on Activities, Fiscal Year 2019, supra* note 27, at 37 for more information about the OIAD Law School Clinic Outreach Program and a more detailed discussion of the history and status of investor advocacy clinics.
- 162 As formal clinic names vary, for purposes of this Report, all the law school securities law, securities arbitration, and investor protection focused clinics referenced herein are referred to as investor advocacy clinics or clinics.
- 163 *See Report on Activities, Fiscal Year 2019, supra* note 27, at 33-34 for more information about the work of investor advocacy clinics.
- 164 We conducted in-person meetings with 14 of the 17 investor advocacy clinics in operation at the time: seven in New York (Benjamin N. Cardozo School of Law, Cornell Law School, Fordham University School of Law, New York Law School, Pace University School of Law, St. John’s University School of Law, and Syracuse University School of Law); and one each in the District of Columbia (Howard University School of Law), Georgia (Georgia State University College of Law), Florida (University of Miami School of Law), Illinois (Northwestern University School of Law), Nevada (University of Nevada Las Vegas School of Law), New Jersey (Seton Hall University School of Law), and Pennsylvania (University of Pittsburgh School of Law). We reached out to the clinics at Brooklyn Law School, Pepperdine University School of Law, and University of San Francisco School of Law on several occasions; however, we were unable to schedule in-person visits. As of the close of the Reporting Period, there appear to be 12 investor advocacy clinics in active operation. The investor advocacy clinics at Brooklyn Law School, Seton Hall University School of Law, and the University of San Francisco School of Law are no longer listed on their law school websites, and the Georgia State University College of Law Investor Advocacy Clinic and the Syracuse University School of Law Securities Arbitration Clinic are closed.

- 165 See *Prepared Remarks of Nicole G. Iannarone, Assistant Clinical Professor and Director, Investor Advocacy Clinic, Georgia State University College of Law* (Oct. 12, 2017), <https://www.sec.gov/spotlight/investor-advisory-committee-2012/nicole-iannarone-remarks-iac-101217.pdf>; *Prepared Remarks of Qudsia Shafiq, Student Attorney, Investor Advocacy Clinic, Georgia State University College of Law* (Oct. 12, 2017), <https://www.sec.gov/spotlight/investor-advisory-committee-2012/qudsia-shafiq-remarks-iac-101217.pdf>; and *Prepared Remarks of David Michael White, Director, Investor Advocacy Project, Seton Hall University School of Law* (Oct. 12, 2017), <https://www.sec.gov/spotlight/investor-advisory-committee-2012/david-white-remarks-iac-101217.pdf>.
- 166 See SEC, *Recommendation of the Investor Advisory Committee Subcommittee of the Whole: Financial Support for Law School Clinics that Support Investors*, (Mar. 8, 2018), <https://www.sec.gov/spotlight/investor-advisory-committee-2012/iac030818-law-clinics-recommendation.pdf>. To date, the Commission's response to this Recommendation is pending.
- 167 See SEC, *Investing in America: Commissioners Hear from Investors and Share Insights in Atlanta*, (July 12, 2018), <https://www.sec.gov/page/atlanta-town-hall>.
- 168 See *Report on Activities, Fiscal Year 2019*, *supra* note 27, at 27.
- 169 *Id.*
- 170 Clinic directors and law student clinicians from the following law schools were confirmed to attend the Summit: Benjamin N. Cardozo School of Law, Cornell Law School, Howard University School of Law, New York Law School, Pace University School of Law, St. John's University School of Law, University of Miami School of Law, University of Nevada Las Vegas School of Law, and University of Pittsburgh School of Law.
- 171 The Ombudsman notified the Summit attendees and participants of the postponement on Friday, March 6, 2020. Coincidentally, SEC headquarters employees were directed to work from home the following week. See Renae Merle, *Securities and Exchange Commission asks D.C. employees to work from home after coronavirus scare*, *Washington Post* (Mar. 9, 2020), <https://www.washingtonpost.com/business/2020/03/09/securities-exchange-commission-asks-dc-employees-work-home-due-coronavirus-scare/>.
- 172 Exchange Act § 39(a), 15 U.S.C. § 78pp(a).
- 173 *Id.*
- 174 Exchange Act § 39(a)(2)(B), 15 U.S.C. § 78pp(a)(2)(B).
- 175 Exchange Act § 39(g), 15 U.S.C. § 78pp(g).
- 176 Exchange Act § 39(h), 15 U.S.C. § 78pp(h).
- 177 According to Exchange Act § 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." Exchange Act § 4(g)(6)(B)(ii), 15 U.S.C. § 78d(g)(6)(B)(ii).
- 178 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).
- 179 See SEC, *Recommendation of the Investor Advisory Committee Regarding Recommendation of the Investor as Owner Subcommittee on Accounting and Financial Reporting Disclosure* (May 5, 2020), <https://www.sec.gov/spotlight/investor-advisory-committee-2012/recommendation-of-the-investor-as-owner-subcommittee-on-accounting-and-financial-reporting-disclosure.pdf>.
- 180 See SEC, *Recommendation of the Investor Advisory Committee Regarding Recommendation of the Investor as Owner Subcommittee on ESG Disclosure* (May 14, 2020), <https://www.sec.gov/spotlight/investor-advisory-committee-2012/recommendation-of-the-investor-as-owner-subcommittee-on-esg-disclosure.pdf>.
- 181 See SEC, *Recommendation of the Investor Advisory Committee Regarding Recommendation on Disclosure Effectiveness* (May 21, 2020), <https://www.sec.gov/spotlight/investor-advisory-committee-2012/disclosure-effectiveness.pdf>.
- 182 See SEC, *Recommendation of the Investor Advisory Committee Regarding SEC Guidance and Rule Proposals on Proxy Advisors and Shareholder Proposals* (Jan. 24, 2020), <https://www.sec.gov/spotlight/investor-advisory-committee-2012/sec-guidance-and-rule-proposals-on-proxy-advisors-and-shareholder-proposals.pdf>.
- 183 See SEC, *Recommendation of the Investor Advisory Committee Regarding Exchange Rebate Tier Disclosure* (Jan. 24, 2020), <https://www.sec.gov/spotlight/investor-advisory-committee-2012/exchange-rebate-tier-disclosure.pdf>.
- 184 See SEC, *Recommendation of the Investor Advisory Committee Structural Changes to the US Capital Markets Re Investment Research in a Post-MiFID II World* (July 25, 2019), <https://www.sec.gov/spotlight/investor-advisory-committee-2012/investment-research-post-mfid-ii-world.pdf>.

- 185 See SEC, Press Release, *SEC Announces Extension of Temporary Measure to Facilitate Cross-Border Implementation of the European Union’s MiFID II’s Research Provisions*, 2019-229 (Nov. 4, 2019), <https://www.sec.gov/news/press-release/2019-229>.
- 186 See SEC, *Recommendation of the Investor Advisory Committee Regarding Human Capital Management Disclosure* (March 28, 2019), <https://www.sec.gov/spotlight/investor-advisory-committee-2012/human-capital-disclosure-recommendation.pdf>.
- 187 Modernization of Regulation S-K Items 101, 103, and 105, Securities Act Rel. No. 10668, 84 Fed. Reg. 44358 (Aug. 23, 2019).
- 188 See SEC, *Recommendation of the Investor Advisory Committee Regarding Proposed Regulation Best Interest, Form CRS, and Investment Advisers Act Fiduciary Guidance* (Nov. 7, 2018), <https://www.sec.gov/spotlight/investor-advisory-committee-2012/recommendation-on-proposed-reg-bi.pdf>.
- 189 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>.
- 190 See SEC, *Recommendation of the Investor Advisory Committee in Support of the Transaction Fee Pilot for NMS Stocks* (Sept. 13, 2018), <https://www.sec.gov/spotlight/investor-advisory-committee-2012/recommendation-transaction-fee-pilot-for-nms-stocks.pdf>.
- 191 See SEC, Transaction Fee Pilot for NMS Stock, Release No. 34-84875 (Dec. 19, 2018), <https://www.sec.gov/rules/final/2018/34-84875.pdf>.
- 192 SEC, Order Issuing Stay (March 28, 2019), <https://www.sec.gov/rules/other/2019/34-85447.pdf>.
- 193 See *supra* note 116.
- 194 See SEC, *Recommendation of the Investor Advisory Committee: Dual Class and Other Entrenching Governance Structures in Public Companies* (Mar. 8, 2018), <https://www.sec.gov/spotlight/investor-advisory-committee-2012/recommendation-on-dual-class-shares.pdf>.
- 195 See SEC, *Recommendation of the Investor Advisory Committee Regarding Mutual Fund Cost Disclosure* (Apr. 14, 2016), <https://www.sec.gov/spotlight/investor-advisory-committee-2012/recommendation-mf-fee-disclosure-041916.pdf>.
- 196 See Investor Experience RFC, *supra* note 66.
- 197 *Id.*
- 198 See Updated Disclosure Requirements and Summary Prospectus for Variable Annuity and Variable Life Insurance Contracts, Securities Act Rel. No. 10569, Exchange Act Rel. No. 84508, Investment Company Act Rel. No. 33286, 83 Fed. Reg. 61730 (Nov. 30, 2018) at <https://www.federalregister.gov/documents/2018/11/30/2018-24376/updateddisclosure-requirements-and-summary-prospectus-for-variable-annuity-and-variable-life>.
- 199 See Variable Annuity Summary Prospectus Adopting Release, *supra* note 67.
- 200 See 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>.
- 201 SEC, Concept Release on Harmonization of Securities Offering Exemptions, Securities Act Rel. No. 10649, Exchange Act Rel. No. 86129, Investment Advisers Act Rel. No. 5256, Investment Company Act Rel. No. 33512, 84 Fed. Reg. 30460 (June 26, 2019), <https://www.sec.gov/rules/concept/2019/33-10649.pdf>.
- 202 Amending the “Accredited Investor” Definition, Securities Act Rel. No. 10734, Exchange Act Rel. No. 87784, 85 Fed. Reg. 2574 (Dec. 18, 2019), <https://www.federalregister.gov/documents/2020/01/15/2019-28304/amending-the-accredited-investor-definition>.
- 203 See 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>.
- 204 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>.
- 205 See Universal Proxy, Exchange Act Rel. No. 79164, Investment Company Act Rel. No. 32339, 81 Fed. Reg. 79 122 (Nov. 10, 2016).



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