

The background of the cover is a dark blue field filled with intricate, glowing patterns. These patterns consist of numerous thin, light blue lines that swirl and curve across the page, creating a sense of motion and depth. Interspersed among these lines are small, bright blue bokeh-like spots, which add to the overall ethereal and technological aesthetic of the design.

Office of the Investor Advocate

OFFICE OF THE INVESTOR ADVOCATE

REPORT ON OBJECTIVES

FISCAL YEAR 2020

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 2020, beginning October 1, 2019.

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 2020, the activities and accomplishments of the Office will be reported no later than December 31, 2020.

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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MESSAGE FROM THE INVESTOR ADVOCATE

It is my pleasure to present this report on the objectives of the Office of the Investor Advocate for Fiscal Year 2020. Our Office seeks to provide a voice for investors in the rulemaking and policymaking processes at the U.S. Securities and Exchange Commission (SEC) and the self-regulatory organizations (SRO) such as the Financial Industry Regulatory Authority (FINRA) and the Municipal Securities Rulemaking Board (MSRB). As I previewed in a speech in April 2019, there are many items on the SEC's rulemaking agenda that should please investors, but there are a few things that are more concerning. The same is true for the policymaking agendas of FINRA, the MSRB, and some of the other SROs.

As described in more detail below in our Policy Agenda for Fiscal Year 2020, we expect to support a number of initiatives in the upcoming year. At the SEC, we are especially optimistic about some of the ideas flowing from the Division of Trading and Markets, which we believe will benefit retail investors in particular. These ideas, if adopted, will lead to markets that are fundamentally more transparent and fair. Likewise, the MSRB is exploring ways to improve disclosures in the municipal

securities marketplace, and FINRA is making strides to address some longstanding concerns with its arbitration procedures, unpaid arbitration awards, the migration of unscrupulous brokers, and other issues. We will support these efforts as appropriate.

On the other hand, we remain wary about certain suggestions that would reduce the disclosure of information to investors or that could undermine the reliability of the information, such as removing a requirement for auditors to attest to management's assessment of the effectiveness of a company's internal control over financial reporting. And, while we believe improvements should be made to the proxy voting process, we are concerned that certain aspects of those reforms may suppress voting by shareholders or interfere with their ability to receive objective, independent advice regarding their voting decisions.



As the Investor Advocate, I am delighted to lend my support to initiatives that enhance investor protection or improve the investing ecosystem. Given the resistance by other market participants to some of the reforms, an important part of my job is to support the work of the SEC and SROs when they propose changes that would benefit investors. At the same time, I am obligated to point out when rule and policy changes threaten to harm investors or fall short of their intended goals. In Fiscal Year 2020, we will zealously advocate for investors in both ways.

In addition to our policy work, we will continue to provide direct service to investors who have concerns about the SEC or an SRO. Ombudsman Tracey McNeil and her team interact with investors

on a daily basis, and their activities and objectives are described in the Ombudsman's Report (see page 13). We also will continue our efforts to utilize surveys and other research methods to glean more insights about the investors we serve. For example, we will study how individual investors process information to make important financial decisions, and we will strive to fill gaps in the research concerning the impact of cognitive decline on financial capability.

It remains a distinct privilege to lead these efforts on behalf of American investors for a sixth year, and I am indebted to the talented women and men in our Office who support me in this mission. As always, I would welcome the opportunity to provide additional information to Members of Congress.

Sincerely,

A handwritten signature in black ink, appearing to read "Rick Fleming". The signature is fluid and cursive, with a prominent initial "R" and a long, sweeping tail.

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 (SRO);
- (B) identify areas in which investors would benefit from changes in the regulations of the Commission or the rules of SROs;
- (C) identify problems that investors have with financial service providers and investment products;
- (D) analyze the potential impact on investors of proposed regulations of the Commission and rules of SROs; and
- (E) to the extent practicable, propose to the Commission changes in the regulations or orders of the Commission and to Congress any legislative, administrative, or personnel changes that may be appropriate to mitigate problems identified and to promote the interests of investors.

Assisting Retail Investors

Exchange Act Section 4(g)(4)(A) directs the Investor Advocate to assist retail investors in resolving significant problems such investors may have with the Commission or with SROs.⁴ To help

accomplish that objective, the Investor Advocate has appointed an Ombudsman to, among other things, act as a liaison between the Commission and any retail investor in resolving problems that retail investors may have with the Commission or with SROs.⁵ 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 2020*.

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 2020 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. As we study the issues in our *Policy Agenda for Fiscal Year 2020*, 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 2020.

POLICY AGENDA FOR FISCAL YEAR 2020

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 2020:

- Corporate Disclosure and Investor Protection in Registered and Exempt Offerings
- The Proxy Process and Other Proxy Issues
- Equity Market Structure
- Fixed Income Market Reform
- Accounting and Auditing
- Non-Transparent Exchange-Traded Funds
- Protecting Senior Investors
- Broker Migration and Misconduct

Although other issues may arise that will require the attention of the Office, the foregoing issues will remain on our policy agenda for FY 2020.

CORPORATE DISCLOSURE AND INVESTOR PROTECTION IN REGISTERED AND EXEMPT OFFERINGS

The Commission is in the midst of a years-long effort to review and modernize corporate disclosure requirements. Generally speaking, these requirements have been in place for decades and have not been reviewed recently in the comprehensive, conceptual way that they are being reviewed now.

Although the Commission’s statutory authority over disclosure is broad, the Commission must address certain Congressional directives when promulgating disclosure rules. These directives have evolved over time. For instance, Congress originally authorized the Commission to do what was “necessary or appropriate in the public interest or for the protection of investors.”¹³ The New Deal implementation of the system of compulsory corporate disclosure that we have today was designed to address widespread evidence of issuer and underwriter omission or distortion of material investment information.¹⁴ It was not until later, after decades of experience with the system, that Congress directed the Commission further to “consider, in addition to the protection of investors, whether the [rulemaking] action will promote efficiency, competition, and capital formation.”¹⁵

These Congressional directives are not necessarily at odds with each other. In our view, it is possible to modernize disclosure in a way that achieves these latter goals without undermining the original goal of investor protection. Indeed, efforts to streamline disclosure can be beneficial to investors, who ultimately bear the costs of the disclosure and are not well-served when information is repetitive, boilerplate, or difficult to find. Main Street investors also benefit when businesses go through the transformation from a private company to a public reporting company because it is a process that produces stronger companies that tend to better serve the interests of investors.¹⁶ Thus, after careful review, we have not objected to some of the Commission's efforts to update the disclosure requirements for public companies, such as the recent adoption of a package of amendments to reduce redundant information.¹⁷

There are areas, however, in which the policy goals of investor protection and capital formation are in tension, and the Commission must attempt to find an appropriate balance. In striking this balance, the Commission should focus not just on the burden of providing the disclosure, but also the materiality of the information. In our view, this approach should underpin Commission choices about disclosure, and it should lead to consideration of new disclosure requirements as well as the elimination of existing requirements.

It is well established that information is deemed "material" if there is a substantial likelihood that a reasonable investor would consider it important in deciding how to vote or make an investment decision.¹⁸ This is a commonsense approach, but it is not a static standard. Information that was not very important to an investor in the 1930s and 1940s may be extremely important to a "reasonable" investor today. As the Investor Advisory Committee has observed,¹⁹ modern companies rely much more heavily on human capital and less on hard assets such as plants and equipment, which means that information about

a company's most important assets may not be found in financial statements or existing corporate disclosures. Other issues—often panned as politically motivated—seem to be growing in importance to investors. For example, in the face of shareholder demands for greater disclosure of political spending, which exposes a company to potentially significant reputational risk, 59 percent of S&P 500 companies now provide this type of disclosure even in the absence of an SEC mandate.²⁰ Similarly, assets in socially responsible or sustainable mutual funds and ETFs reached a record \$89 billion at the end of 2018, reflecting investors' growing concern with things like climate change.²¹

During Fiscal Year 2020, the Office will continue to explore the informational needs of modern investors and advocate for policy adjustments to accommodate those needs. In addition, we will continue to review the projects that are on Chairman Jay Clayton's regulatory and policy agenda, including the following projects relating to corporate disclosure:

- Exploring a framework for harmonizing and streamlining the Commission's rules for exempt offerings;²²
- considering amendments to Regulation S-K to modernize certain disclosure requirements;²³
- considering updates to certain industry-specific disclosure requirements, such as those pertaining to financial services companies' lending activities and loan portfolios;²⁴
- considering a proposal to amend the definition of "accelerated filer" that triggers Section 404(b) of the Sarbanes-Oxley Act of 2002, which requires registrants to provide an auditor attestation report on internal control over financial reporting, and that if adopted will have the effect of reducing the number of companies that need to provide the auditor attestation report;²⁵
- considering changes to rules in Regulation S-X related to requirements for financial statements for acquired businesses²⁶ and also for registered debt offerings;²⁷ and

- considering amendments to extend the “test the waters” provision of the Jumpstart Our Business Startups Act to companies that are not emerging growth companies.²⁸

Importantly, we will continue to engage in investor outreach and share feedback internally with our Commission colleagues. Interaction with market participants is extremely valuable as we try to provide actionable insights for Commission colleagues who otherwise might not hear directly from portfolio managers, analysts, and other everyday investors. As always, we will continue to keep the interests of long-term Main Street investors front-of-mind, consistent with Chairman Clayton’s stated priority.²⁹

THE PROXY PROCESS AND OTHER PROXY ISSUES

The Commission is expected to continue to focus on proxy issues in the coming fiscal year. In November 2018, the Commission held a proxy roundtable, where speakers representing a range of institutions and viewpoints discussed such topics as the proxy voting process, the shareholder proposal process, and the role of proxy advisory firms.³⁰

In December 2018, the Chairman commented on the roundtable discussion and next steps. Among other things, he encouraged market participants to consider how technology, including distributed ledger technology, could improve proxy plumbing. He added that, since a major overhaul could take time, the Commission should focus on what it can do in the interim to improve the current system.³¹ In May 2019 testimony to Congress, Chairman Clayton reiterated the importance of the proxy process, calling it a significant initiative for two SEC divisions (those of Corporation Finance and Investment Management). The Commission, he believed, should act with an initial focus on the matters where there was broad consensus.³² We concur.

In the coming year, we will be very focused on any rule proposals to emerge on the proxy voting process, including efforts to foster accurate vote counts, vote reconciliations, and vote confirmations for investors. We believe there is much room for improvement, as well as considerable agreement about potential reforms in these areas, and we look forward to supporting enhancements to the proxy voting system. We will also be monitoring any rulemaking developments regarding proxy advisory firms and the other issues discussed at the 2018 roundtable. Some of these matters are subject to far less consensus because investors are concerned about potential reforms that may, for example, give companies more opportunities to influence the advice that is provided to investors from proxy advisory firms and thereby weaken the objectivity or credibility of that advice. These concerns were highlighted in a speech by the Investor Advocate on April 8, 2019.³³

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.³⁴ We have supported a number of regulatory proposals that were recently adopted, including amendments to Regulation ATS to enhance the operational transparency of venues that trade listed equity securities³⁵ and amendments to Rule 606 to require broker-dealers to disclose the handling of institutional orders.³⁶ During Fiscal Year 2020, we will continue to encourage the pursuit of initiatives to enhance the capital markets and benefit investors.

In March 2019, Chairman Clayton and Brett Redfearn, Director for the Division of Trading and Markets, gave a joint speech about their objectives for the coming year with respect to equity market structure.³⁷ The speech focused on three broad topics: (1) exploring ways to address liquidity issues experienced by thinly-traded securities in our markets; (2) better protecting retail investors

from fraudulent conduct in the market; and (3) considering improvements to the national system of market data and market access. More specifically, they outlined plans to consider the following issues:

- 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.
- Amendments to Rule 15c2-11, which 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. This indefinite exception may permit unscrupulous market participants to more easily engage in pump-and-dump retail fraud.
- Enhancements to the rules governing transfer agents, as previously discussed in a December 2015 advanced notice of rulemaking and a concept release,³⁸ 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.
- As to equity market trade and quote data, enhancements to the transparency around the national securities exchanges’ proprietary

data products and fees, improvements to the governance of National Market System (NMS) plans to allow for appropriate representation, and upgrades to the content and infrastructure for the “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 share the Chairman’s interest in all of these topics and we expressed our support for this ambitious policy agenda in a speech on April 8, 2019. During Fiscal Year 2020, we intend to continue our engagement on all of these issues.

In December 2018, the Commission adopted a rule to conduct a transaction fee pilot for NMS stocks.³⁹ The rule will subject the stock exchanges to new temporary pricing restrictions across two test groups and thereby reduce or eliminate the use of so-called “maker-taker” fee-and-rebate pricing for transactions in those securities. We evaluated the proposed pilot and believe that it can potentially answer questions concerning broker-dealer conflicts of interest in order routing behavior. Accordingly, the Investor Advocate, as a voting member of the Investor Advisory Committee, supported a recommendation to the Commission to move forward with the pilot.⁴⁰ Since its adoption, we have continued to support the implementation of the pilot as quickly as possible during our informal interactions with Commissioners and staff. In Fiscal Year 2020, we hope to carefully consider data collected by the pilot to evaluate potential equity market structure reforms. Ultimately, we will consider whether lowering or eliminating these fees and rebates on a permanent basis will improve market quality for investors.

We continue to monitor progress on the 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.⁴¹

In addition to evaluating rulemaking by the Commission during Fiscal Year 2020, 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, the NASDAQ Stock Market has recently proposed heightened initial quantitative listing standards for liquidity, which may improve the secondary market experience for some new listings.⁴² Where appropriate, we will make formal recommendations or utilize the comment process to ensure that the needs of investors are properly considered by the SROs and the Commission.

FIXED INCOME MARKET REFORM

Municipal securities and certain segments of the fixed income market continue to have high rates of participation by individual investors.⁴³ Municipal securities and other fixed income securities play an important part in individual investors' investment and retirement strategies because they may provide an income-producing investment.⁴⁴ In Fiscal Year 2020, the Office will continue to monitor these sectors for issues that directly and indirectly impact retail investors.

In the past year, the Commission's Fixed Income Market Structure Advisory Committee (FIMSAC) made a recommendation for a pilot program to study market implications of changing the reporting regime for block-size trades in corporate bonds by introducing a delay for larger trades,⁴⁵ and FINRA issued a request for comment regarding a pilot of this nature.⁴⁶ The FIMSAC has also discussed liquidity considerations for bond ETFs, retail investor disclosure and education, electronic trading in the retail market, and block trade



dissemination in municipal securities and corporate bonds.⁴⁷ More recently, the FIMSAC has begun to consider additional recommendations related to the use of last-look in both the corporate and municipal bond markets;⁴⁸ principal transactions with advisory clients seeking to liquidate bond positions; and principal transactions with advisory clients in negotiated municipal underwritings.⁴⁹

In January and April 2019, the Municipal Securities Rulemaking Board held quarterly meetings to discuss MSRB activities and initiatives.⁵⁰ During its January meeting, the Board discussed retrospective rule review, market transparency, and financial oversight.⁵¹ During its April meeting, the Board discussed, among other things, municipal securities financial disclosure timeliness, pennyng, and upcoming enhancements to EMMA.⁵²

Throughout Fiscal Year 2020, the Office of the Investor Advocate will monitor, analyze, and review relevant Commission, FIMSAC, and SRO activities relating to fixed income markets—with particular attention to committee recommendations, rule amendments, and rule proposals impacting individual investors in municipal securities markets and corporate bond markets.

ACCOUNTING AND AUDITING

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

In previous reports to Congress, we have emphasized the importance of public companies' internal control over financial reporting (ICFR) as well as attestation of a company's ICFR from an independent external auditor.⁵³ We also have flagged the potential issue of expanding exemptions for smaller companies from the requirement to obtain attestation of ICFR from an independent external auditor.⁵⁴ Both activities—ICFR and auditor attestation—serve to promote investor confidence in financial reporting.

On May 9, 2019, the Commission voted to propose amendments that would have the effect of exempting more smaller companies from the requirement to obtain auditor attestation of ICFR.⁵⁵ As a result of the proposed amendments, smaller reporting companies with less than \$100 million in revenues would not be required to obtain such auditor attestation. All companies, including smaller ones, would continue to be subject to requirements to establish, maintain, and assess the effectiveness of their ICFR. In the coming months, we will closely monitor this rulemaking, and we encourage investors to submit comments on it.

As in past years, we will stay abreast of new developments in accounting and auditing while continuing to focus on recent trends, including the use of non-GAAP financial measures. We will continue to monitor developments at the Financial Accounting Standards Board (FASB) and the Public Company Accounting Oversight Board (PCAOB), and we will explore ways to identify and close any

expectation gaps regarding financial reporting and the role of the auditor. We also will continue to follow developments in international accounting and auditing standards and their impact on U.S. companies and investors.

NON-TRANSPARENT EXCHANGE-TRADED FUNDS

On May 20, 2019, the Commission granted the exemptive relief requested by Precidian ETFs Trust (Precidian) to introduce into the exchange-traded fund (ETF) marketplace a novel type of actively managed ETF—called an “ActiveShares ETF”—that would not be required to disclose its portfolio holdings on a daily basis.⁵⁶ As a result, should ActiveShares ETFs come to market, they would be permitted to operate without being subject to the current daily portfolio transparency condition required of other actively managed ETFs.⁵⁷

The Commission based its grant of exemptive relief on the reasons articulated in a notice issued in connection with Precidian's application on April 8, 2019 (the Notice),⁵⁸ as well as on other considerations discussed in the Commission's approval order. The Notice explained that Section 6(c) of the Investment Company Act of 1940 (the '40 Act) allows the Commission to exempt any person, security, or transaction, or any class thereof, only “if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of [the '40 Act].”⁵⁹ The Notice stated that the Commission intended to grant the requested relief because “the Commission believes that ActiveShares ETFs meet the standard for exemptive relief under section 6(c)” of the '40 Act.⁶⁰

Given the novelty of the ActiveShares ETF, Precidian has agreed to comply with certain protective conditions outlined in the Notice, including, among other things, providing public

disclosures explaining that the bid-ask spreads and premiums/discounts for ActiveShares ETFs may be wider than those for traditional ETFs (thus making trading in ActiveShares ETFs more expensive); disclosure of the risk of “reverse engineering” an ActiveShares ETF’s trading strategy, which could increase opportunities for trading practices that may disadvantage the ActiveShares ETF and its shareholders; the inclusion of a legend on the outside cover page of each ActiveShares prospectus, as well as on its website and marketing materials, to highlight the differences between the ActiveShares ETFs and fully transparent actively managed ETFs; compliance with the requirements of Regulation Fair Disclosure as if it applied to Precidian, thus prohibiting ActiveShares ETFs’ selective disclosure of any material non-public information; and the commitment to take remedial actions as necessary if the ActiveShares ETFs do not function as anticipated.⁶¹

Among the other considerations informing the Commission’s determination to grant the requested exemptive relief were the two submissions that the Commission received from a third party following the issuance of the Notice.⁶² Those submissions contended that the proposed operation of the ActiveShares ETFs as provided for in Precidian’s application for exemptive relief would involve insider trading in violation of section 10(b) of the Exchange Act and rule 10b-5 thereunder.⁶³ After reviewing the submissions, Precidian’s response to them, and Precidian’s application for exemptive relief, the Commission was not persuaded that the operation of the ActiveShares ETFs as specified in Precidian’s application would involve unlawful trading in material non-public information.⁶⁴ For the foregoing reasons, among others, the Commission granted the requested exemptions.

We have been, and will continue to be, involved in discussions with Commission leadership and

staff regarding non-transparent ETFs generally. We anticipate additional requests for exemptive relief for other types of non-transparent ETFs well into Fiscal Year 2020, and we expect to remain engaged in internal conversations regarding such investment products during that time. The age-old challenge associated with these types of products is how to achieve the appropriate balance between financial innovation, which can result in new products coming to market that may be beneficial to investors, and investor protection concerns that may arise from new products coming to market.

PROTECTING SENIOR INVESTORS

When our Office was established five years ago, we made protecting seniors a priority issue, and we have focused on this topic ever since. As a result of demographic, financial and other trends, elder financial exploitation and diminished capacity are important issues today, and the problems are expected to grow dramatically in coming years. In recent years, there also has been increasing recognition of the challenges of protecting seniors. We have seen significant regulatory and legal developments at the state and federal levels to give financial firms and financial professionals new tools to protect their senior customers. We supported these efforts, and our office has published two white papers in 2018 and 2019 that discuss causes of elder financial exploitation as well as legal and regulatory developments.⁶⁵

In the coming fiscal year, we intend to continue our efforts to raise public awareness and to elucidate issues and policy choices. We plan to monitor new legal or regulatory developments and, in general, to contribute to the Commission’s efforts to protect senior investors. In addition, we are exploring potential research projects, utilizing our investor testing program, to fill gaps in the existing data regarding the impact of cognitive decline on financial capability.

BROKER MIGRATION AND MISCONDUCT

Last December, in our Report on Activities for Fiscal Year 2018, we discussed the persistent problem of broker migration and misconduct.⁶⁶ 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.⁶⁷ Research also has identified a propensity for roving bad brokers to congregate at high-risk firms with other brokers of similar character (sometimes referred to as “cockroaching”).⁶⁸

As outlined in our last report, FINRA took steps in Fiscal Year 2018 to curb broker migration by re-emphasizing or strengthening existing standards and by publishing multiple proposed rule changes. FINRA focused on expanded restrictions on broker movement if there are pending or unpaid arbitration awards,⁶⁹ requirements for materiality consultations with FINRA if a member firm seeks to enter into certain specified relationships with a bad broker,⁷⁰ modified sanctioning guidelines,⁷¹ enhanced supervisory procedures,⁷² and augmented disclosure standards.⁷³

On May 2, 2019, FINRA published a new 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)⁷⁴ would impose, in certain instances, 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.⁷⁵

Generally, we are encouraged that FINRA has begun 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,⁷⁶ 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 in the proposed rule, the procedures governing the remediation⁷⁷ and appeals process, and comments by other proponents for retail investors.

Issues related to broker misconduct 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 2020.

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.⁷⁸

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).⁷⁹ The Ombudsman’s Report must be included in the semi-annual reports submitted by the Investor Advocate to Congress. To maintain reporting continuity, the Ombudsman’s Report included in the Investor Advocate’s June 30 Report on Objectives will describe the Ombudsman’s activities during the first six months of the current fiscal year and provide the Ombudsman’s objectives and outlook for the following full fiscal year. The Ombudsman’s Report included in the Investor Advocate’s December 31 Report on Activities will provide a look back on the Ombudsman’s activities during the full preceding fiscal year.

Accordingly, this Ombudsman’s Report provides a look back on the Ombudsman’s activities for the six month period of October 1, 2018 through March 31, 2019 (Reporting Period) and discusses the Ombudsman’s objectives and outlook for Fiscal Year 2020, beginning October 1, 2019.

SERVICE BY THE NUMBERS

The Ombudsman⁸⁰ 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 does not do. For example, individuals may ask us to provide financial or legal advice, participate in a formal investigation, make binding decisions or legal determinations for the SEC, or overturn decisions of existing dispute resolution or appellate bodies.

To respond to inquiries effectively and efficiently, the Ombudsman monitors the volume of inquiries and the staff resources devoted to addressing the particular concerns raised. The Ombudsman tracks all inquiries received by, or referred to, the Ombudsman, as well as all related correspondence and communications to and from Ombudsman staff. We track the status of the inquiry from its receipt to its ultimate resolution or referral, and we monitor the amount of staff engagement and resources that were utilized to respond to the inquiry. We maintain these types of records in order to identify and respond to problems raised, 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.

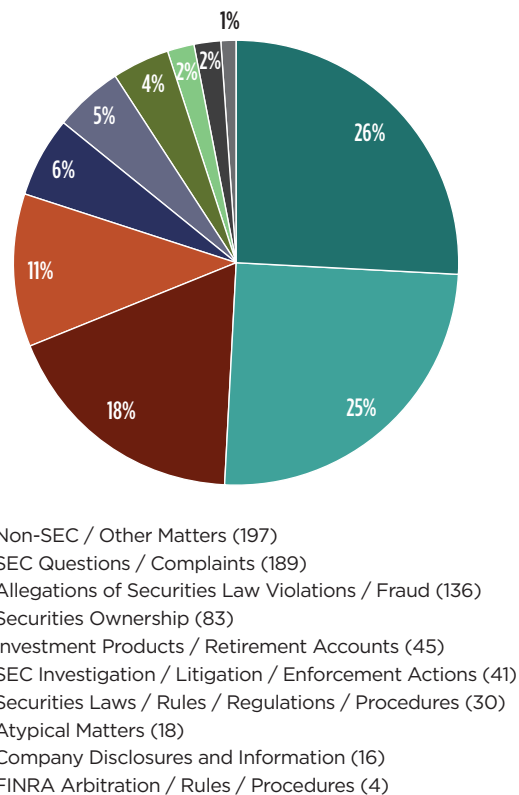
Once a matter is created, it may generate subsequent contacts—related inquiries and communications to

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

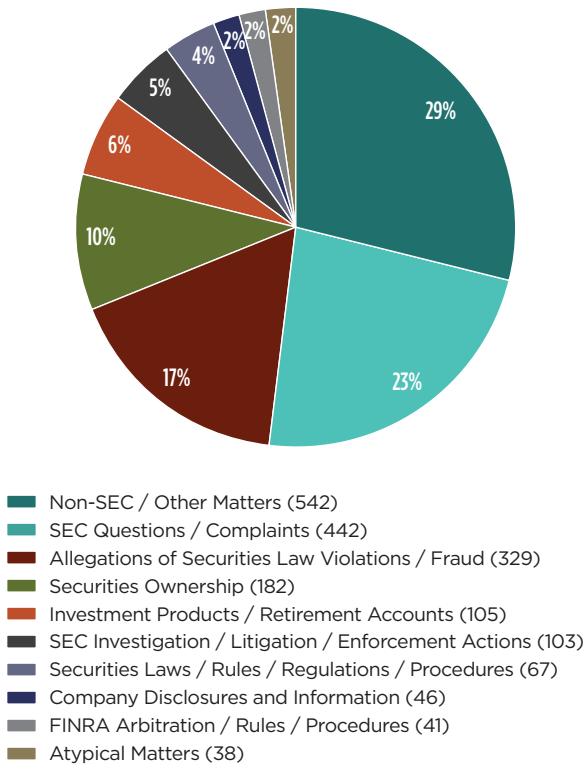
During the Reporting Period, retail investors, industry professionals, concerned citizens, and other interested persons contacted the Ombudsman for assistance on 759 matters covering 10 primary issue categories (Figure 1).

Figure 1: **Matters by Primary Issue Category**
October 1, 2018–March 31, 2019



In addition to the 759 matters received, we fielded 1,136 contacts covering 10 primary issue categories during the Reporting Period, for a total of 1,895 contacts. The chart that follows (Figure 2) displays the distribution of the 1,895 total contacts by primary issue category.

Figure 2: **Contacts by Primary Issue Category**
October 1, 2018–March 31, 2019



How the Numbers Inform our Efforts

The Ombudsman tracks matter and contact data to maintain a comprehensive view of the allocation of staff resources and to identify matters and contacts that significantly alter workflow volumes, call for the realignment of Ombudsman staff assignments, or require added staff support to manage effectively. The data also informs resource allocation considerations related to proposed program development, training, and outreach efforts. By tracking the distribution of matters and contacts across primary

issue categories, the data helps the Ombudsman identify potential areas of concern or interest and enables the Ombudsman to act as an early warning system, 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 establish their expectations based upon the potential outcome each option offers. For these investors, the Ombudsman serves a valuable resource function, but the investor retains responsibility for choosing how to proceed based on the resources the Ombudsman presents. Investors who want 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 confidential information relating to SEC

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

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

Numerous investors contacted the Ombudsman from late December 2018 through late January 2019 while the SEC was closed due to the partial federal government shutdown. Although the Ombudsman was unable to respond to general investor questions and routine matters during that time, all investor inquiries were monitored on a regular basis. Many of these investors submitted questions and concerns relating to potential advance fee fraud schemes during the shutdown. Because of the limited SEC staff available and the time-sensitive nature of this type of fraud, the Ombudsman personally responded to each of these investors. One elderly investor told the Ombudsman that he received a phone call informing him that he was owed close to \$100,000 under a fraud claim "processed" by the SEC. The investor was instructed by the fraudster to call another number with a DC area code to claim the money. The second fraudster informed the investor that his claim funds would be released to him after he submitted thousands of dollars in "legal fees." The investor shared with the Ombudsman that he was defrauded years before and was concerned that this was yet another scam. The Ombudsman agreed that his concerns were valid, provided him with information on how to recognize advance fee frauds and imposters, recommended that he cease communicating with the fraudsters, and assured him that Ombudsman staff would follow up with him once the SEC reopened. After the SEC reopened, we exchanged several calls and emails with the investor and recommended that he also submit his complaint directly to the Division of Enforcement. The investor thanked us for helping him better understand advance fee frauds and avoid this scam.

During the Reporting Period, a number of retail investors contacted the Ombudsman to complain about how the Division of Enforcement handled certain statements made on social media relating to a publicly traded company's business and financial outlook. These investors alleged that the SEC was harming, rather than protecting, investors, and they feared that the SEC's actions would negatively impact the value of their shares. They also requested a wide range of assistance from the Ombudsman, from nonpublic SEC information relating to the company to demands that the Ombudsman stop the Division of Enforcement from pursuing the matter. With each investor, the Ombudsman staff answered general questions, discussed salient aspects of the information available to the public, and directed the investors to the appropriate Division of Enforcement resources for further information and updates.

An investor told the Ombudsman that she had been trying to reach a live person at the SEC for two weeks via phone and email to report misconduct on the part of her investment adviser. The investor complained that the difficulty she had with reaching a live person made her feel like no one at the SEC cared about her issue. Moreover, while she understood that she might not ever recover the money she lost, she at least wanted to formally file a complaint with the SEC in the hopes of warning other investors about the investment adviser's misconduct. Ombudsman staff provided her with additional information, discussed her various options, and gave her the contact information for the appropriate SEC offices. Although the Ombudsman was not the appropriate resource to pursue her misconduct claim, the investor was still grateful that the Ombudsman took the time to call her back, listen to her concerns, and provide her with additional resources.

An investor contacted the Ombudsman with questions about his personal investment losses. The investor also wanted his name added to the list of harmed investors eligible for a Fair Fund distribution. After Ombudsman staff advised the investor to contact the appropriate SEC office, he called back weeks later stating that he followed those directions but had not yet received a response. Ombudsman staff was able to research and confirm for the investor that the appropriate SEC office received his request, and advised the investor to call the Ombudsman back if he did not receive the follow up information he needed. During the next week, the Ombudsman confirmed that the investor was contacted by SEC staff to follow up on his request.

Our interactions with investors provide insight into the information investors rely upon and the assistance they want when making investment decisions. When our interactions with investors highlight their lack of information or gaps in their understanding, we attempt to deliver personalized, straightforward service by communicating the information necessary to help investors better understand the solutions the SEC can provide, by liaising with the appropriate persons and entities, and by empowering and equipping investors to 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. The Ombudsman also manually creates an OMMS matter record for each inquiry received by telephone, email, or other means outside of the OMMS Form. 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, primary issue, fiscal year, and a number of other categories, and review data and customize specific reports when a deeper examination is required.

The Ombudsman also worked with the SEC Office of Public Affairs (OPA) during the Reporting Period to create a stronger public presence on the SEC's www.sec.gov home page and on the SEC's social media channels to better inform the public about the role of the Ombudsman and the resources the Ombudsman provides. For example, a button linking to the sec.com/Ombudsman web page and OMMS Form is available on the sec.gov homepage. Another web-based effort, "Q&A with the SEC Ombudsman," now available on the Ombudsman web page, was featured as an SEC Spotlight topic on the www.sec.gov home page for several weeks, and was posted on the SEC News Twitter account.

As a result of our ongoing efforts to streamline and enhance communications with retail investors, from October 1, 2018 through March 31, 2019, we received 412 new matters submitted via the OMMS Form, representing 55 percent of the 754 new matters received during this six month Reporting Period. As a comparison, from October 1, 2017 through September 30, 2018, the first full fiscal year the OMMS Form was available to the public, we received 164 new matters submitted via the OMMS Form. The Ombudsman will continue to encourage persons to submit their inquiries via

the OMMS Form, closely monitor questions and suggestions relating to the OMMS Form, and work with OIT, the technology contractor, and OPA to enhance the OMMS user experience and the Ombudsman-related information and resources available to the public.

The following graphic (Figure 3) illustrates the standard lifecycle of what happens when investors or other interested persons contact the Ombudsman for assistance:

Figure 3: What Happens When You Contact the Ombudsman



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 financial agencies, the Ombudsman follows three core standards of practice: confidentiality, impartiality, and independence (box below).

The Ombudsman’s Challenge

The SEC’s mission is to “protect investors, maintain fair, orderly, and efficient markets, and

facilitate capital formation.”⁸¹ 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 these situations, investors frequently assume the purpose for SEC investigations and enforcement actions is to protect investors by getting their money back. While the SEC’s enforcement actions may at times align with the personal interests of harmed investors, the SEC does not pursue investigations and enforcement actions solely to represent an investor’s particular legal interest or to recover money a particular investor may have lost. Rather, the SEC is tasked with enforcing the federal securities laws to serve the broad interests of all citizens by maintaining fair, orderly, and efficient capital markets.

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 brought to her attention. The Ombudsman maintains a neutral position, considers the interests and concerns of all involved parties, and works to resolve questions and complaints by clarifying issues and procedures, facilitating discussions, and identifying options and resources.</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>

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.

While the Ombudsman staff cannot represent the interests of investors in private disputes, we do serve these investors by providing information that will assist them in making choices for themselves.

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. We look for ways in which processes or regulations of the SEC or SROs could be improved for the benefit of investors, and we advocate for those types of reforms.

To retail investors, FINRA is perhaps the most well-known SRO⁸² under SEC oversight. FINRA operates BrokerCheck⁸³ and a dispute resolution forum,⁸⁴ both of which are commonly used by retail investors. As discussed in prior reports, the Ombudsman closely follows FINRA's dispute resolution forum activities that have a direct and significant impact on retail investors. Two of these areas of interest and importance to retail investors are discussed below. A third area of concern, related to broker migration and misconduct (known as "cockroaching"), is discussed in the section of this Report on Objectives entitled Policy Agenda for Fiscal Year 2020.

AREAS OF INTEREST AND IMPORTANCE TO RETAIL INVESTORS

FINRA Arbitration Panel Diversity

In the Report on Activities for Fiscal Year 2018, we noted a 2014 study by the Public Investors Arbitration Bar Association (PIABA) on the lack of diversity among FINRA arbitrators.⁸⁵ The PIABA study determined that approximately 80 percent of the arbitrators on the FINRA roster were men and 40 percent were over the age of 70.⁸⁶ Following the PIABA study, FINRA announced a multi-year effort to improve representation among arbitrators, and posted survey data on its website showing the demographic composition of its overall arbitrator roster from 2015 to 2018.⁸⁷

Gender

Demographic	2018 Survey		2017 Survey		2016 Survey		2015 Survey	
	Joined October 2017-2018	Overall Roster	Joined October 2016-2017	Overall Roster	Joined October 2015-2016	Overall Roster	Joined October 2014-2015	Overall Roster
Male	60%	70%	62%	72%	66%	74%	75%	75%
Female	37%	27%	35%	25%	33%	24%	26%	23%

Race

Demographic	2018 Survey		2017 Survey		2016 Survey		2015 Survey	
	Joined October 2017-2018	Overall Roster	Joined October 2016-2017	Overall Roster	Joined October 2015-2016	Overall Roster	Joined October 2014-2015	Overall Roster
Caucasian	76%	83%	69%	84%	76%	86%	79%	86%
African-American	15%	7%	15%	6%	14%	5%	4%	4%
Hispanic or Latino	8%	4%	4%	4%	7%	4%	17%	4%
Asian	1%	2%	4%	2%	3%	1%	2%	1%
Multi-Racial	4%	2%	4%	2%	2%	2%	7%	2%
American Indian or Alaska Native	0%	<1%	1%	0%	0%	<1%	0%	<1%

LGBT Status

Demographic	2018 Survey		2017 Survey		2016 Survey		2015 Survey	
	Joined October 2017-2018	Overall Roster	Joined October 2016-2017	Overall Roster	Joined October 2015-2016	Overall Roster	Joined October 2014-2015	Overall Roster
LGBT	5%	3%	2%	2%	3%	2%	3%	2%

Age

Demographic	2018 Survey		2017 Survey		2016 Survey		2015 Survey	
	Joined October 2017-2018	Overall Roster	Joined October 2016-2017	Overall Roster	Joined October 2015-2016	Overall Roster	Joined October 2014-2015	Overall Roster
70 or older	12%	38%	18%	39%	15%	39%	12%	37%
69 to 61	28%	26%	30%	27%	30%	31%	29%	33%
60 or younger	45%	20%	51%	29%	54%	30%	58%	29%

Note: Consulting firm AON Hewitt conducted the 2016 and 2015 surveys. The 2017 and 2018 surveys were conducted by Aight Solutions, formerly a part of AON Hewitt. Neutral responses were completely voluntary, confidential and anonymous. In the 2015 survey, the overall response rate was 68%. In the 2016 survey, the overall response rate was 55%. In the 2017 survey, the overall response rate was 37%. In the 2018 survey, the overall response rate was 39%.

Source: FINRA, Our Commitment to Achieving Arbitrator and Mediator Diversity at FINRA, available at finra.org/arbitration-and-mediation/diversity-and-finra-arbitrator-recruitment.

According to the FINRA survey data, in 2018, women were 27 percent, African-Americans were seven percent, Hispanics or Latinos were four percent, Asians were two percent and members of the LGBT community were three percent of the FINRA overall arbitrator roster.⁸⁸ Further, 83 percent of arbitrators identified as Caucasian, 70 percent of arbitrators were men, and 38 percent of arbitrators were 70 years of age or older.⁸⁹ While FINRA noted that increased percentages of women, Hispanic and Latino, and LGBT arbitrators joined its overall arbitrator roster in 2018,⁹⁰ further improvement across all of the categories should remain a priority. As an example, in 2015, we note that women represented 23 percent of the overall arbitrator roster, and in 2018, that percentage rose to 27 percent. However, the increased percentage of women on the overall roster from 2015 through 2018, while encouraging, is significantly less than the estimated 46 percent of women that comprised the U.S. retail investor population back in 2016.⁹¹ Although the numbers and percentages may fluctuate over time, we encourage FINRA to aim for diversity on its overall arbitrator roster that better reflects the diversity of the U.S. retail investor population.

FINRA acknowledges that increasing both the number of arbitrators and the diversity of its overall arbitrator roster is a long-term effort, and it has taken many steps to do so, including broadening its outreach to diverse organizations,⁹² expanding its recruitment staff, and leveraging the use of social media.⁹³ We agree with FINRA that “providing a diverse pool of arbitrators from which parties can choose” is important, and we support and encourage their efforts to recruit new arbitrators from “diverse backgrounds, professions, and geographical locations”⁹⁴ as they work to make overall improvements to their arbitrator recruitment and selection processes.

In late 2018, the importance of diversity in the arbitration process was further thrust into the

mainstream by a notable arbitration case in a separate forum.⁹⁵ Some of the issues raised by that case relating to minority underrepresentation in arbitrator pools may also prove relevant to the FINRA arbitrator selection process,⁹⁶ including the level of effectiveness of algorithmic tools used to generate random pools of arbitrators for a given case, and the impact on the fairness of the arbitration process—real and perceived—when the arbitrator selection pool lacks diversity.⁹⁷ As a related matter, we also understand the importance of addressing issues that may discourage the selection of diverse arbitrators new to the FINRA roster. To the extent that arbitrator selection may be influenced by the number or amount of prior awards, or years of service,⁹⁸ or by the algorithmic pool selection process, newer additions to the roster may be less likely to be selected. FINRA may wish to consider additional steps to overcome issues in the arbitrator selection process which may operate to reduce the likelihood that parties select new arbitrators to hear their matters. While expanding the diversity of the arbitrator pool is a positive step forward, progress may be undermined if new, diverse arbitrators are sidelined disproportionately during the selection process.

Financial Technology Innovation

On July 30, 2018, FINRA issued a special notice seeking comment on how it can support innovation in financial technology (“Fintech”) consistent with its mission of investor protection and market integrity.⁹⁹ On September 18, 2018, FINRA announced the release of an additional report on regulatory technology (“Regtech”) focused on developments in the securities industry with implications for broker-dealers.¹⁰⁰ Most recently, on April 24, 2019, FINRA announced the formation of an Office of Financial Innovation to improve collaboration within FINRA and between FINRA and various external stakeholders (including industry participants, regulators, and investors) on “issues related to significant financial innovations by FINRA member firms.”¹⁰¹



While FINRA’s Fintech and Regtech initiatives are in the early stages, we are encouraged by the possibility for innovation which improves the experiences of and outcomes for retail investors. During Fiscal Year 2020, we will monitor rulemaking activities related to Fintech and Regtech for their impact on retail investors and, in particular, how they affect the nature, frequency, and resolution of disputes between customers, and brokers-dealers.

Funding for New and Existing Investor Advocacy Clinics

As discussed more fully in the Report on Activities for Fiscal Year 2018, investor advocacy clinics¹⁰² were established as a result of concerns expressed to then-SEC Chairman Arthur Levitt by small investors at SEC town hall meetings.¹⁰³ In response, Chairman Levitt announced in 1997 the start of pilot clinics at two New York-area law schools to assist investors with small claims who had difficulty obtaining legal representation for arbitration proceedings.¹⁰⁴ Over the next fifteen years, several clinics were launched at law schools across the country, with many receiving funding from state securities fraud enforcement cases¹⁰⁵ and state securities commissions.

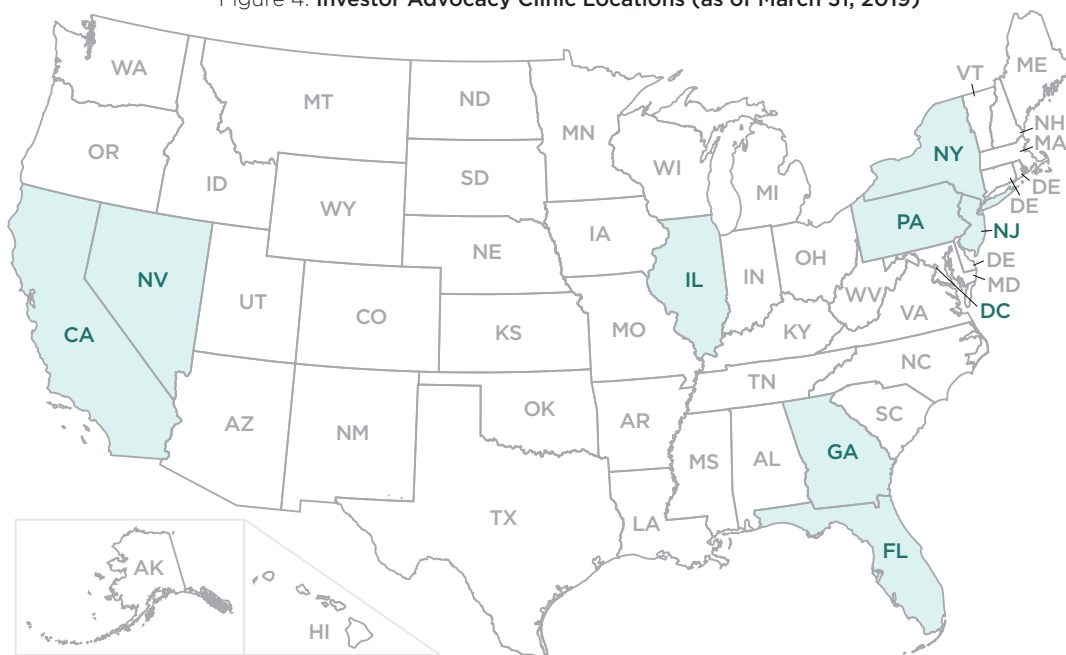
From 2009 to 2012, the FINRA Investor Education Foundation (Foundation) provided an additional source of funding in the form of clinic start-up grants of \$250,000 each awarded to eight law schools.¹⁰⁷ While the Foundation start-up grants were adequate to launch these clinics, it was anticipated that the

additional funds needed for the clinics to sustain their operations beyond the three year grant period would be secured from other funding sources or from the respective law schools. No Foundation funds were awarded to investor advocacy clinics after 2012,¹⁰⁸ and several clinics unable to secure additional funding were forced to shut down.

As of March 31, 2019, only fifteen investor advocacy clinics remained in operation across the United States—in California, the District of Columbia, Florida, Georgia, Illinois, Nevada, New Jersey, New York, and Pennsylvania.¹⁰⁹ While funding remains a serious challenge, these remaining clinics continue to provide essential no-cost legal representation and resources to eligible retail investors of limited means (some clinics set client income and asset guidelines) and with smaller claims (usually less than \$100,000) who are unable to afford or retain legal counsel.¹¹⁰

In addition to representing their retail investor clients during the arbitration process, the clinics also conduct outreach to retail investors in their local communities. These outreach efforts cover a range of important topics, including questions to ask before investing, how to learn more about a financial professional, and tips to spot and avoid scams—particularly those scams aimed at specific communities such as immigrants, veterans, and senior investors. When a clinic is forced to turn away clients, curtail its outreach efforts, or in many cases, shut down due to a lack of funding,

Figure 4: Investor Advocacy Clinic Locations (as of March 31, 2019)



the resulting loss is significant for retail investors, given the small number and location of clinics in operation (Figure 4).

The significance of access to affordable representation and the services provided by investor advocacy clinics should not be understated. For example, most broker-dealer customer account agreements contain arbitration clauses. When opening an account, customers are typically required to consent to arbitration as a forum for resolving any disputes that may arise. While arbitration is often viewed as a simpler alternative to litigation, it can place unsophisticated *pro se* investors at a severe disadvantage against experienced opposing counsel representing broker-dealer firms. As a result, most retail investors face lower success rates and receive smaller award amounts when they represent themselves in arbitration disputes.¹¹¹ Higher success rates are usually achieved by retail investors when they are represented by legal counsel.¹¹²

As discussed more fully in the Report on Activities for Fiscal Year 2018, in March 2018, the SEC

Investor Advisory Committee (IAC) recommended that the Commission explore short-term and long-term solutions to the funding crisis confronting law school investor advocacy clinics.¹¹³ In the short term, the IAC recommended that the Commission work with FINRA to provide continued funding of existing clinics, potentially through the use of fines and penalties levied by FINRA. The IAC also recommended that the Commission work with the North American Securities Administrators Association, Inc. (NASAA) and others to identify potential funding sources. As a longer term effort, the IAC encouraged the Commission to request legislation from Congress to consider permanently funding law school investor advocacy clinics, possibly via a matching grant program through the SEC Investor Protection Fund modeled after a similar program initiated by the IRS Office of the Taxpayer Advocate.

In January 2019, FINRA released a final status report from its Dispute Resolution Task Force which addressed a number of recommendations under consideration for final action by FINRA, including a recommendation to consider funding law school investor advocacy clinics through

FINRA fines and penalties.¹¹⁴ The report noted that the recommendation was not implemented, and that beginning with its 2018 fiscal year, FINRA fine monies are authorized for use for only four specific purposes:

- (1) capital/initiatives or nonrecurring strategic expenditures that promote more effective and efficient regulatory oversight by FINRA (including leveraging technology and data in a secure manner) or that enable improved compliance by member firms;
- (2) activities to educate investors, promote compliance by member firms through education, compliance resources or similar projects, or ensure our employees are highly trained in the markets, products, and businesses we regulate;
- (3) capital/initiatives required by new legal, regulatory, or audit requirements; and
- (4) replenishing reserves in years where such reserves drop below levels reasonably appropriate to preserve FINRA's long-term ability to fund its regulatory obligations.¹¹⁵

Investor advocacy clinics need and deserve predictable and dependable sources of funding. These clinics help level the playing field when retail investors find themselves the victims of financial losses or fraud with limited, or no, representation options available to them in the arbitration forum. The failure to prioritize funding for the creation and preservation of investor advocacy clinics severely underestimates the important services they provide, including representing retail investors with small claims, providing community-level outreach and education to vulnerable and underserved communities, and benefitting FINRA and the industry by screening out nonviable claims and explaining to investors why their claims may lack merit.¹¹⁶ As such, the Ombudsman fully supported, and continues to fully support, the March 2018 IAC recommendation that the Commission work with FINRA to provide

funding for law school clinics possibly through the use of FINRA fines and penalties, work with NASAA and others to identify potential funding sources at the state and local levels, and request legislation from Congress to permanently fund investor advocacy clinics.¹¹⁷

LAW SCHOOL CLINIC OUTREACH PROGRAM

Our Law School Clinic Outreach Program (LSCOP) continued to expand during the Reporting Period. As discussed in prior Ombudsman's Reports, LSCOP was created to complement our Office's statutory mandate and core functions, foster connections with investor advocacy clinics at law schools across the country, and benefit law student clinic participants and the investing public.

Investor advocacy clinic directors and law students are front line champions of investor protection, and are uniquely positioned to gather and convey information to our Office about the real world concerns of Main Street investors. Given their ability to advocate for and represent the financial interests of retail investors in ways that the SEC cannot, the clinics also provide the Ombudsman and the Investor Advocate with pertinent feedback on the issues their clients face in light of existing and proposed SEC rulemakings and policies.

LSCOP affords clinic directors and law students the opportunity to hear from and work with OIAD and SEC staff directly through three main methods: on-site clinic and law school visits by the Ombudsman, clinic and law school visits hosted at SEC headquarters, and ongoing communications with the clinic directors. This Reporting Period included all of these methods, as the Ombudsman continued to cultivate relationships with the clinic directors, field insightful questions and perspectives from the law students on innovative approaches to retail investor concerns, and gather input aimed at ameliorating common problems experienced by their clients.¹¹⁸

On-Site Visits

During this Reporting Period, the Ombudsman made an on-site visit to Georgia State University College of Law to attend the final student presentations for its inaugural Legal Analytics course. The course, co-taught by the Investor Advocacy Clinic Director, consisted of students from the law school, several of whom were enrolled in the Investor Advocacy Clinic, and the business school. The students used analytics to find patterns and extract insights from the text of approximately 55,000 FINRA arbitration awards, and then used that data to explore and present several research topics, including, for example, the impact of factors such as hearing location, arbitrator panel composition, and the number of previous FINRA appearances on arbitration win rates.

Hosted Visits

During the Reporting Period, the Ombudsman hosted a professor and students from the George Washington University Law School Securities Law seminar. During the morning, the students discussed topics of interest with Commissioner Peirce, a senior advisor to Chairman Clayton, a senior counsel to then-Commissioner Stein, the Investor Advocate and Ombudsman, and senior counsels from the Division of Investment Management, Division of Corporation Finance, and Office of International Affairs. The robust discussions covered a wide range of topics, from Commission regulatory priorities and initial coin offerings (ICOs), to SEC career paths and unique job opportunities. That afternoon, the Ombudsman accompanied the professor and students to the SEC Proxy Process Roundtable event. While George Washington University Law School, like most law schools, does not have an established clinic, we hope that LSCOP and our interest in supporting the important work of investor advocacy clinics will lend support to law schools considering establishing and funding investor advocacy clinics.

Communications with Investor Advocacy Clinic Directors

During the Reporting Period, the Ombudsman planned the first ever SEC Investor Advocacy Clinic Summit (Summit) to bring the investor advocacy clinics together at SEC headquarters to share their perspectives on issues facing retail investors. While the investor advocacy clinic directors periodically convene, and some clinic directors and students visit the SEC from time to time, the Summit would be the first event of its kind, providing the existing clinic directors and students the opportunity to gather in person to discuss issues of importance with each other and with SEC staff.

The preparations for the Summit began in November 2018. As part of these preparations, the Ombudsman conducted exploratory meetings with her staff and with the Investor Advocate to assess the feasibility of such a large-scale event. Based on these discussions, the Ombudsman determined that her small staff could meet the logistical challenges of the proposed event. Subsequently, the Ombudsman staff contacted the investor advocacy clinic directors in early December 2018 to request feedback on their interest in the Summit, proposed discussion topics, and the anticipated student participation. Unfortunately, the SEC was forced to cease routine operations for approximately five weeks from late December 2018 to late January 2019 due to the partial federal government shutdown.¹¹⁹ During this period, the Ombudsman and her staff were unable to work on Summit planning matters. When the SEC resumed full operations in late January 2019, the Ombudsman and staff returned to enthusiastic expressions of interest.¹²⁰ After reviewing the feedback from the clinic directors, it was determined that the Summit would be held on April 4, 2019.

With approximately 40 business days remaining prior to the Summit, the Ombudsman and her small staff prepared intensively for the event.

During that time, the Summit grew to include nearly 100 expected attendees, speakers, and participants, including ten investor advocacy clinic directors and over 50 law students. Scheduled speakers and breakout session facilitators included two SEC Commissioners; the Investor Advocate, Ombudsman, and senior counsels from OIAD; and senior counsels from the Division of Enforcement, Division of Corporation Finance, Division of Investment Management, and Division of Trading and Markets. In addition, invited featured speakers included senior leaders from FINRA and NASAA.

The Summit was successfully convened on April 4, 2019 after the conclusion of this Reporting Period. We will discuss the Summit in greater detail in the Ombudsman's Report included in the Report on Activities for Fiscal Year 2019.

OBJECTIVES AND OUTLOOK

During the Reporting Period, retail investors continued to raise questions and complaints that highlighted a fundamental lack of understanding about how the SEC protects investors. The Ombudsman will continue to examine the various ways the SEC communicates with the investing public to identify areas for improvement. The Ombudsman will also continue to work with SEC divisions and offices to identify places where our messaging and processes that significantly impact retail investors may be refined and improved. Given some recent concerns and complaints raised by retail investors, one area of focus will likely be the SEC Fair Fund process, including how and what the SEC communicates to retail investors awaiting Fair Fund distributions.

To focus our efforts and staff resources properly, the Ombudsman will continue to track matter and contact data, identify trends, and conduct detailed research and analysis. The Ombudsman anticipates OMMS will help identify additional areas of concern to investors and permit more targeted research and analysis in this regard. The Ombudsman will also continue to explore ways to leverage technology to maximize our reach to investors across the country, including the use of web chats, videoconferencing, and social media.

Finally, the Ombudsman looks to Fiscal Year 2020 as an opportunity to continue to strengthen relationships with law school investor advocacy clinics and other organizations focused on retail investor concerns. Investor advocacy clinics remain eager to identify areas in which retail investors could potentially benefit from rulemaking and policy changes, and to offer feedback and practical solutions. The Ombudsman will continue to seek opportunities to engage with the clinics and solicit their perspectives. Most importantly, the Ombudsman will continue to foster an environment for the voices of retail investors to be heard and considered as a vital part of the work of the agency. I look forward to providing updates on our activities and progress in these areas in my next 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.¹²¹ 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.¹²²

Exchange Act Section 39 authorizes the Committee to submit findings and recommendations for review and consideration by the Commission.¹²³ 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.¹²⁴ While the Commission must respond to the IAC’s recommendations, it is under no obligation to agree with or act upon the recommendations.¹²⁵

In each of our reports to Congress, the Office of the Investor Advocate summarizes the IAC recommendations and the SEC’s responses to them.¹²⁶ 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.¹²⁷ Therefore, any such initiatives are not reflected in this Report.

Topic	Date	IAC Recommendation	SEC Response
Human Capital Management (HCM) Disclosure ¹²⁸	March 28, 2019	Recognize the significance of HCM and incorporate it as a part of the Commission’s Disclosure Effectiveness Review and the Commission’s approach to modernizing corporate reporting and disclosure, including augmenting current disclosure requirements regarding (1) the number of people employed; (2) competitive conditions; and (3) how human capital within a firm is being incentivized and managed.	Pending.
Proposed Regulation Best Interest, Form CRS, and IA Fiduciary Guidance. ¹²⁹ Follows a recommendation of Nov. 22, 2013, on Broker-Dealer Fiduciary Duty. ¹³⁰	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.
Transaction Fee Pilot for NMS Stocks ¹³¹	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 SEC announced that it had voted to adopt new Rule 610T of Regulation NMS to conduct a Transaction Fee Pilot in NMS stocks. ¹³² On March 28, 2019, following a lawsuit filed by several exchanges, the SEC issued an order staying the rule and pilot program pending final resolution of the petitions. ¹³³
Financial Support for Law School Clinics that Support Investors ¹³⁴	March 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.

Topic	Date	IAC Recommendation	SEC Response
Dual Class and Other Entrenching Governance Structures in Public Companies ¹³⁵	March 8, 2018	The SEC Division of Corporation Finance should encourage companies to improve the disclosure of risks related to dual class structures and commence a pilot program to monitor shareholder disputes and to determine if enhanced disclosure requirements are necessary.	Pending.
Mutual Fund Cost Disclosure ¹³⁶	April 14, 2016	Enhance investors' understanding of mutual fund costs and the impact of those costs on total accumulations over time. Provide standardized disclosure of actual dollar costs on customer account statements.	On June 4, 2018, the SEC 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. ¹³⁷ 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.). ¹³⁸
Accredited Investor Definition ¹³⁹	Oct. 9, 2014	Consider enabling individuals to qualify as accredited investors based on their financial sophistication.	On December 18, 2015, the SEC issued a staff report that discussed, among other alternatives, using sophistication as an element of the accredited investor definition.
Impartiality in the Disclosure of Preliminary Voting Results ¹⁴⁰	Oct. 9, 2014	Ensure impartiality in the disclosure of preliminary voting results.	Pending.
Universal Proxy Ballots ¹⁴¹	July 25, 2013	Allow universal ballots in connection with short slate director nominations.	On October 26, 2016, the SEC proposed amendments to the proxy rules to require parties in a contested election to use universal proxy cards that would include the names of all board of director nominees. ¹⁴²



End Notes

- 1 Exchange Act § 4(g)(6), 15 U.S.C. § 78d(g)(6).
- 2 Exchange Act § 4(g)(6)(A)(i), 15 U.S.C. § 78d(g)(6)(A)(i).
- 3 Exchange Act § 4(g)(6)(B)(i), 15 U.S.C. § 78d(g)(6)(B)(i).
- 4 Exchange Act § 4(g)(4)(A), 15 U.S.C. § 78d(g)(4)(A).
- 5 Exchange Act § 4(g)(8)(A), 15 U.S.C. § 78d(g)(8)(A).
- 6 Exchange Act § 4(g)(8)(D), 15 U.S.C. § 78d(g)(8)(D).
- 7 Exchange Act § 4(g)(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 Securities Act of 1933 §§ 7, 10 and 19(a), 15 U.S.C. §§ 77g(a)(10), 77j and 77s(a); Exchange Act §§ 3(b), 12, 13, 14, 15(d) and 23(a), 15 U.S.C. §§ 78c(b), 78l, 78m(a), 78n(a), 78o(d) and 78w(a).
- 14 See Joel Seligman, *The Historical Need for a Mandatory Corporate Disclosure System*, 9 J. CORP. L. 1, 24 (1983).
- 15 Securities Act of 1933, § 2(b), 15 U.S.C. § 77b(b); Exchange Act § 23(a)(2), 15 U.S.C. § 78w(a)(2).
- 16 See William Hinman, Director, Division of Corporation Finance, SEC, *Keynote Address at the PLI's Seventeenth Annual Institute on Securities Regulation in Europe* (Feb. 1, 2018), <https://www.sec.gov/news/speech/speech-hinman-020118>.
- 17 See Disclosure Update and Simplification, Securities Act Release No. 10532, 83 Fed. Reg. 50,148 (Oct. 4, 2018).
- 18 See *TSC Industries, Inc. v. Northway, Inc.*, 426 U.S. 438 (1976).
- 19 See 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>.
- 20 See Center for Political Accountability, *The 2018 CPA-Zicklin Index of Corporate Political Disclosure and Accountability* (Oct. 2, 2018), available at <https://politicalaccountability.net/index>. From page 13: “294 S&P 500 companies disclosed some or all of their election-related spending, or prohibited such spending in 2018, compared with 295 for 2017. When these numbers are broken down further, 232 companies disclosed some or all election-related spending in 2018, compared to 236 such companies in 2017.” See also Lucian A. Bebchuk et al., *The Untenable Case for Keeping Investors in the Dark* (Feb. 2019), available at <https://ssrn.com/abstract=3281791> (arguing that voluntary disclosures have limitations and cannot be relied on to provide public-company investors with information about corporate political spending).
- 21 See Asjylyn Loder, *Funds Don't Always Vote for Policies They Publicly Back*, THE WALL ST. J. (Apr. 2, 2019), <https://www.wsj.com/articles/funds-dont-always-vote-for-policies-they-publicly-back-11554206401> (citing Morningstar).
- 22 See *Testimony Before the Financial Servs. and General Government Subcomm. of the S. Comm. on Appropriations*, 116th Cong. (May 8, 2018) (testimony of Jay Clayton, Chairman, SEC), <https://www.sec.gov/news/testimony/testimony-financial-services-and-general-government-subcommittee-us-senate-committee>.
- 23 See Business and Financial Disclosure Required by Regulation S-K, Exchange Act Release No. 77599, 81 Fed. Reg. 23,915 (Apr. 22, 2016).
- 24 See Request for Comment on Possible Changes to Industry Guide 3 (Statistical Disclosure by Bank Holding Companies), Securities Act Release No. 10321, Exchange Act Release No. 10321, 82 Fed. Reg. 12,757 (Mar. 7, 2017).
- 25 See Amendments to the Accelerated Filer and Large Accelerated Filer Definitions, Exchange Act Release No. 85814 (May 9, 2019), <https://www.sec.gov/rules/proposed/2019/34-85814.pdf>.
- 26 See Amendments to Financial Disclosures about Acquired and Disposed Businesses, Securities Act Release No. 10635, Exchange Act Release No. 85765 (May 3, 2019), <https://www.sec.gov/rules/proposed/2019/33-10635.pdf>. See also Request for Comment on the Effectiveness of Financial Disclosures About Entities Other Than the Registrant, Securities Act Release No. 9929, Exchange Act Release No. 75985, 80 Fed. Reg. 59,083 (Oct. 1, 2015).
- 27 See Financial Disclosures About Guarantors and Issuers of Guaranteed Securities and Affiliates Whose Securities Collateralize a Registrant's Securities, Securities Act Release No. 10526, Exchange Act Release No. 83701, 83 Fed. Reg. 49,630 (Oct. 2, 2018).
- 28 See Solicitations of Interest Prior to a Registered Public Offering, Securities Act Release No. 10607, 84 Fed. Reg. 6,713 (Feb. 28, 2019).
- 29 See *id.*
- 30 See Webcast: Roundtable on the Proxy Process (Nov. 15, 2018) (on file with the SEC), https://www.sec.gov/video/webcast-archive-player.shtml?document_id=111518roundtable.

- 31 See Jay Clayton, Chairman, SEC, *SEC Rulemaking Over the Past Year, the Road Ahead and Challenges Posed by Brexit, LIBOR Transition and Cybersecurity Risks* (Dec. 6, 2018), <https://www.sec.gov/news/speech/speech-clayton-120618>.
- 32 See *supra* note 22.
- 33 See Rick A. Fleming, Investor Advocate, SEC, *Important Issues for Investors in 2019* (Apr. 8, 2019), <https://www.sec.gov/news/speech/fleming-important-issues-investors-2019>.
- 34 See generally Concept Release on Equity Market Structure, Exchange Act Release No. 61358, 75 Fed. Reg. 3,594 (Jan. 21, 2010).
- 35 See Regulation of NMS Stock Alternative Trading Systems, Exchange Act Release No. 83663, 83 Fed. Reg. 38,768 (Aug. 7, 2018). See also Comment Letter, Rick A. Fleming, Investor Advocate, SEC, RE: File No. S7-23-15, Regulation of NMS Stock Alternative Trading Systems (Sept. 9, 2016), <https://www.sec.gov/about/offices/investorad/investor-advocate-comment-letter-regulation-ats.pdf>.
- 36 See Disclosure of Order Handling Information, Exchange Act Release No. 84528, 83 Fed. Reg. 58,338 (Nov. 19, 2018).
- 37 See Jay Clayton, Chairman, and Brett Redfearn, Director, Division of Trading and Markets, SEC, Remarks at Gabelli School of Business, Fordham University: *Equity Market Structure 2019: Looking Back & Moving Forward* (Mar. 8, 2019), <https://www.sec.gov/news/speech/clayton-redfearn-equity-market-structure-2019>.
- 38 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>.
- 39 See Transaction Fee Pilot for NMS Stocks, Exchange Act Release No. 84875, 84 Fed. Reg. 5,202 (Feb. 20, 2018).
- 40 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>.
- 41 See Joint Industry Plan, Order Approving the National Market System Plan Governing the Consolidated Audit Trail, Exchange Act Release No. 79318 (Nov. 15, 2016), <https://www.sec.gov/rules/sro/nms/2016/34-79318.pdf>.
- 42 See Self-Regulatory Organizations; NASDAQ Stock Market LLC; Notice of Filing of Proposed Rule Change To Revise the Exchange's Initial Listing Standards Related to Liquidity, Exchange Act Release No. 85503, 84 Fed. Reg. 14,172 (Apr. 9, 2019).
- 43 Fixed income markets are typically segmented by sector according to the category of issuer such as corporate securities, mortgage related securities, asset-backed securities, federal agency securities, treasury securities, money market securities, and municipal securities. Certain segments of the fixed income market have high rates of participation by individual investors, while others have higher participation by institutional investors. Corporate and municipal securities, in particular, may be an important part of individual investors' investment and retirement strategies because they may provide an income-producing investment. See SIFMA, Bonds Outstanding, <https://www.sifma.org/resources/research/fixed-income-chart/> (last visited Jun. 20, 2019). See also Written Testimony of Randy Snook, Executive Vice President, Securities Industry and Financial Markets Association, Before the U.S. House of Representatives, Committee on Financial Services, Subcommittee on Capital Markets, Securities, and Investment: A Review of Fixed Income Market Structure (July 14, 2017) [hereinafter Testimony of Randy Snook], <https://www.sifma.org/resources/submissions/andy-snook-on-a-review-of-fixed-income-market-structure/>; *What Are Corporate Bonds*, SEC Office of Investor Education and Advocacy [hereinafter *What Are Corporate Bonds*], <https://www.investor.gov/additional-resources/news-alerts/alerts-bulletins/what-are-corporate-bonds> (last visited Apr. 18, 2019).
- 44 Municipal securities may be held indirectly by individual investors through mutual funds, money market funds, or closed end funds and exchange-traded funds (ETFs) and are a valuable source of funding for state and local projects that affect residents' quality of life. Individuals may be exposed to corporate bonds through mutual funds and bond ETFs. See Federal Reserve Board, *Financial Accounts of the United States: Flow of Funds, Balance Sheets, and Integrated Macroeconomic Accounts, Fourth Quarter 2017*, 121 tbl.L.212 (Mar. 8, 2018, 12:00 PM), <https://www.federalreserve.gov/releases/z1/20180308/z1.pdf>. See also Testimony of Randy Snook, *supra* note 43, at 4; *What Are Corporate Bonds*, *supra* note 43.
- 45 See SEC, Fixed Income Market Structure Advisory Committee, Preliminary Recommendation for a Pilot Program to Study the Market Implications of Changing the Reporting Regime for Block-Size Trades in Corporate Bonds (2018), <https://www.sec.gov/spotlight/fixed-income-advisory-committee/transparency-subcommittee-preliminary-recommendation-fimsa-040918.pdf>. See also Webcast: Meeting of the SEC Fixed Income Market Structure Advisory Committee (Apr. 9, 2018) (on file with the SEC) [hereinafter FIMSAC April Webcast], https://www.sec.gov/video/webcast-archive-player.shtml?document_id=040918fimsac.

- 46 FINRA, Regulatory Notice 19-12; Trade Reporting and Compliance Engine (TRACE) (Apr. 12, 2019), <https://www.finra.org/industry/notices/19-12>.
- 47 SEC, Press Release, SEC Issues Agenda for Inaugural Meeting of Fixed Income Market Structure and Advisory Committee (Jan. 8, 2018), <https://www.sec.gov/news/press-release/2018-1>; SEC, Fixed Income Market Structure Advisory Committee, Agenda for April 9, 2018, Meeting, <https://www.sec.gov/spotlight/fixed-income-advisory-committee/fimsac-agenda-040918.htm> (last visited June 4, 2018); *see also* FIMSAC April Webcast, *supra* note 45.
- 48 The Subcommittee recommended, in part, the following actions to correct abusive use of last-look: (1) FIMSAC requests that the SEC make a statement disapproving of the repeated use of last-look in either the municipal or corporate bond markets on any electronic trading venue; (2) the Commission should encourage FINRA to publish a request for comment on the use of last-look in the corporate bond market similar to the one the MSRB issued on September 7, 2018. On June 11, 2019, the FIMSAC voted to approve the recommendation. SEC, Fixed Income Market Structure Advisory Committee, Preliminary Recommendations Regarding the Use of Last-Look in the Corporate and Municipal Bond Markets, <https://www.sec.gov/spotlight/fixed-income-advisory-committee/technology-and-electronic-trading-subcommittee-preliminary-recommendation-061119.pdf>.
- 49 With respect to the first preliminary recommendation, the subcommittee recommended that the Commission:
- consider a rule that permits a broker-dealer to meet the requirements of section 206(3) of the Advisers Act when acting in a principal capacity to sell certain client bond positions within the normal liquidated process, by allowing dealers to submit a “blind bid” on a principal basis against its advisory clients.
- SEC, Fixed Income Market Structure Advisory Committee, Preliminary Recommendations Regarding Certain Principal Transactions with Advisory Clients Seeking to Liquidate Bond Positions, <https://www.sec.gov/spotlight/fixed-income-advisory-committee/preliminary-recommendation-certain-principal-transactions-with-advisory-clients-2.pdf>. *See* SEC, Fixed Income Market Structure Advisory Committee, Agenda for April 15, 2019, Meeting, <https://www.sec.gov/spotlight/fixed-income-advisory-committee/fimsac-agenda-041519.htm> (last visited Apr. 16, 2019).
- With respect to the second preliminary recommendation, the subcommittee recommended the Commission:
- Consider a rule that permits a broker dealer that negotiates and underwrites a new-issue municipal bond or is a co-manager or member of the selling group to meet the requirements of section 206(3) of the Advisers Act when acting in a principal capacity to sell new-issue municipal bonds during the negotiated order period.
- 50 *See* Press Release, Jennifer A. Galloway, MSRB Chief Communications Officer, MSRB Holds Quarterly Board Meeting (Feb. 4, 2019), <http://www.msrb.org/News-and-Events/Press-Releases/2019/MSRB-Holds-Quarterly-Meeting.aspx>; Press Release, Jennifer A. Galloway, MSRB Chief Communications Officer, MSRB Holds Quarterly Board Meeting (Apr. 29, 2019), <http://www.msrb.org/News-and-Events/Press-Releases/2019/MSRB-Board-Quarterly-Meeting.aspx>.
- 51 With respect to Retrospective Rule Review, the MSRB Board agreed to a formal approach and the highest priority rules to review in 2019. The highest priority rules to review include: MSRB Rule G-23 on activities of financial advisors; MSRB Rule G-34 on CUSIP numbers, new issue and market information requirements; and MSRB Rule G-29 on availability of Board rules. The MSRB Board also discussed feedback from the MSRBs second request for comment relating to MSRB Rule G-17 relating to interpretive guidance concerning the application of the rule to underwriters of municipal securities. The MSRB Board plans to review possible amendments to the guidance. Finally, the Board discussed comments received on its draft interpretive guidance relating to penny and directed staff to conduct additional analysis before considering next steps. With respect to Market Transparency the MSRB Board discussion focused on timeliness of financial disclosures and the MSRB Board agreed to begin a project to improve MSRB Form G-32. The MSRB Board discussed its Electronic Municipal Market Access (EMMA) tool and adding third-party evaluated pricing services to the EMMA website. With respect to Financial oversight, the MSRB Board discussed continuing to evaluate reserve levels and determine steps to responsibly manage reserve to appropriate target levels. Jennifer A. Galloway, MSRB Chief Communications Officer, MSRB Holds Quarterly Board Meeting (Feb. 4, 2019), <http://www.msrb.org/News-and-Events/Press-Releases/2019/MSRB-Holds-Quarterly-Meeting.aspx>.
- 52 *See* Press Release, Jennifer A. Galloway, MSRB Chief Communications Officer, MSRB Holds Quarterly Meeting (Apr. 29, 2019), <http://www.msrb.org/News-and-Events/Press-Releases/2019/MSRB-Board-Quarterly-Meeting.aspx>, *see also* Agenda, MSRB Board of Directors Meeting Discussion Items, <http://msrb.org/About-MSRB/Governance/MSRB-Board-of-Directors/~media/9A99A1BB7D2D488CA15E5F2E7C938161.ashx>.

- 53 See SEC, Office of the Investor Advocate, *Report on Objectives for Fiscal Year 2018* (June 29, 2017), at 10-11, <https://www.sec.gov/advocate/reportspubs/annual-reports/sec-office-investor-advocate-report-on-objectives-fy2018.pdf>.
- 54 See SEC, Office of the Investor Advocate, *Report on Activities for Fiscal Year 2018* (Dec. 20, 2018) [hereinafter *Report on Activities, Fiscal Year 2018*], at 10-11, <https://www.sec.gov/advocate/reportspubs/annual-reports/sec-investor-advocate-report-on-activities-2018.pdf>.
- 55 See *supra* note 25.
- 56 See Investment Company Act Rel. No. 33477 (May 20, 2019).
- 57 *Id.*
- 58 See Investment Company Act Rel. No. 33440 (Apr. 8, 2019).
- 59 *Id.*, citing 15 U.S.C. §80a-6(c).
- 60 See *supra* note 58.
- 61 *Id.*
- 62 See *supra* note 56.
- 63 *Id.*
- 64 *Id.*
- 65 See Stephen Deane, SEC Office of the Investor Advocate, *How the SEC Works to Protect Senior Investors* (May 2019), <https://www.sec.gov/about/offices/investorad/how-the-sec-works-to-protect-senior-investors.pdf>; and Stephen Deane, SEC Office of the Investor Advocate, *Elder Financial Exploitation: Why it is a concern, what regulators are doing about it, and looking ahead* (June 2018), <https://www.sec.gov/files/elder-financial-exploitation.pdf>.
- 66 See Report on Activities, Fiscal Year 2018, *supra* note 54, at 18.
- 67 Jean Eaglesham and Rob Barry, *More Than 5,000 Stockbrokers From Expelled Firms Still Selling Securities*, THE WALL ST. J. (Oct. 4, 2013).
- 68 See Mark Egan, Gregor Matvos, and Amit Seru, “The Market for Financial Adviser Misconduct,” J. POL. ECON. 127, no. 1 (Feb. 2019), 233, 270-271, <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”).
- 69 FINRA, Regulatory Notice 18-06, Membership Application Program (Feb. 8, 2018), http://www.finra.org/sites/default/files/notice_doc_file_ref/Regulatory-Notice-18-06.pdf [hereinafter FINRA, Regulatory Notice 18-06]. The proposed amendments would include limitations on the ability of firms to transfer assets to avoid satisfaction of judgements and the ability of firms to expand by adding associated persons with certain pending arbitration claims or unpaid arbitration awards or settlements. The restrictions under Regulatory Notice 18-06 are generally subject to materiality consultations.
- 70 FINRA, Regulatory Notice 18-16, High Risk Brokers, (Apr. 30, 2018), <http://www.finra.org/sites/default/files/Regulatory-Notice-18-16.pdf> [hereinafter FINRA, Regulatory Notice 18-16]. This proposed amendment was discussed in our Report on Activities Fiscal Year 2017 shortly after the FINRA board authorized FINRA to amend its rules. See also FINRA, Regulatory Notice 18-23, Membership Application Proceedings at 42 (July 26, 2018), http://www.finra.org/sites/default/files/notice_doc_file_ref/Regulatory-Notice-18-23.pdf (noting that FINRA has refrained from setting additional standards “pending further development” related to outstanding proposals in Regulatory Notice 18-06 and Regulatory Notice 18-16 “to strengthen controls on brokers with a history of past misconduct and to ensure greater accountability for firms that choose to employ high-risk brokers, and to incentivize payment of arbitration awards.”).
- 71 FINRA, Regulatory Notice 18-17, Sanctioning Guidelines (May 2, 2018), <https://www.finra.org/sites/default/files/Regulatory-Notice-18-17.pdf> (revising FINRA sanction guidelines to instruct adjudicators to consider adverse arbitration awards or settlements in customer-initiated arbitrations when assessing sanctions).
- 72 See FINRA, Regulatory Notice 18-06, *supra* note 69; see also FINRA, Regulatory Notice 18-15, Heightened Supervision (Apr. 30, 2018), http://www.finra.org/sites/default/files/notice_doc_file_ref/Regulatory-Notice-18-15_1.pdf (reiterating existing obligations of member firms to supervise associated persons with a history of past misconduct).
- 73 Under FINRA Rule 3170, a firm incurs an obligation to adopt significant monitoring measures, including recording of certain calls to customers, if the percentage of brokers hired from expelled or disciplined firms exceeds a certain threshold. See http://finra.complinet.com/en/display/display_main.html?rbid=2403&element_id=11348. The proposed amendment to Rule 8312 would require a firm disclose on BrokerCheck its status as a “taping firm.” See FINRA, Regulatory Notice 18-16, *supra* note 70.
- 74 FINRA, Regulatory Notice 19-17; Protecting Investors from Misconduct (May 2, 2019), https://www.finra.org/sites/default/files/notice_doc_file_ref/Regulatory-Notice-19-17.pdf.

- 75 *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.
- 76 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 investor-friendly resources capable of processing such information. *See Report on Activities, Fiscal Year 2018, supra* note 54 at 20.
- 77 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.
- 78 Exchange Act § 4(g)(8)(B), 15 U.S.C. § 78d(g)(8)(B).
- 79 Exchange Act § 4(g)(8)(D), 15 U.S.C. § 78d(g)(8)(D).
- 80 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.
- 81 *What We Do*, SEC (June 10, 2013), <https://www.sec.gov/Article/whatwedo.html>.
- 82 There is debate whether FINRA constitutes a self-regulatory organization. In 1996, the SEC censured the NASD due to the undue influence by NASDAQ market makers over NASD’s operations and regulatory affairs. As a consequence, the SEC required NASD to increase the role of public members on the NASD board among other remedies, which in turn changed the organization to one independent of its membership which, in the view of one critic, shifted the organization from an SRO to a regulator with industry representation. *See, e.g., Hester Peirce, The Financial Industry Regulatory Authority: Not Self-Regulation after All 8-9*, 18 (Mercatus Working Paper, Jan. 2015). <https://www.mercatus.org/system/files/Peirce-FINRA.pdf>; *see* David R. Burton, *Reforming FINRA*, THE HERITAGE FOUND. BACKGROUNDER NO. 3181, 2 (Feb. 1, 2017), <http://www.heritage.org/sites/default/files/2017-02/BG3181.pdf>.
- 83 BrokerCheck is a free tool that enables investors to research the professional backgrounds of brokers and brokerage firms. *About BrokerCheck*, <http://www.finra.org/investors/about-brokercheck> (last visited Nov. 1, 2018).
- 84 When an investor opens an account at a brokerage firm, the agreement almost always includes a mandatory pre-dispute arbitration clause that specifies that any legal dispute between the investor and the broker will be resolved via FINRA dispute resolution. As a result, investors have become aware of FINRA’s arbitration and mediation forum.
- 85 *See* Report on Activities, Fiscal Year 2018, *supra* note 54, at 35.
- 86 PIABA, *Study: Industry-Run FINRA Arbitrator Pool Lacks Diversity and Fails to Detect, Communicate Potential Biases*, (Oct. 7, 2014) (noting that approximately 80 percent of the arbitrators in the FINRA pool were men and 40 percent were over the age of 70), available at [https://piaba.org/sites/default/files/newsroom/2014-10/The%20Importance%20of%20Arbitrator%20Disclosure%20\(October%207,%202014\).pdf](https://piaba.org/sites/default/files/newsroom/2014-10/The%20Importance%20of%20Arbitrator%20Disclosure%20(October%207,%202014).pdf).
- 87 FINRA, *Our Commitment to Achieving Arbitrator and Mediator Diversity at FINRA*, available at <http://www.finra.org/arbitration-and-mediation/diversity-and-finra-arbitrator-recruitment>.
- 88 *Id.*
- 89 *Id.*
- 90 *Id.*
- 91 FINRA, *Investors in the United States 2016*, at 3, https://www.usfinancialcapability.org/downloads/NFCS_2015_Inv_Survey_Full_Report.pdf.
- 92 *See supra* note 87.
- 93 FINRA, *FINRA Dispute Resolution Task Force Recommendations – Final Report* (Jan. 15, 2019), available at https://www.finra.org/sites/default/files/DR_task_report_status_011519.pdf.
- 94 *See supra* note 87.
- 95 *See* Brandon Pierson and Matthew Lewis, *Jay-Z’s \$204 million arbitration case halted over lack of racially diverse arbitrators*, Reuters (Nov. 28, 2018), <https://www.nbcnews.com/news/us-news/jay-z-s-204-million-arbitration-case-halted-over-lack-n941471>; *see also* Jonathan Stempel, *Reuters, Jay-Z wins fight for African-American arbitrators in trademark case*, Reuters (Jan. 30, 2019), <https://www.reuters.com/article/us-people-jayz-lawsuit/jay-z-wins-fight-for-african-american-arbitrators-in-trademark-case-idUSKCN1PO32T>.

- 96 See FINRA, Arbitrator Selection, <https://www.finra.org/arbitration-and-mediation/arbitrator-selection>.
- 97 Rita Raagas De Ramos, What Jay-Z Wants, FINRA Insists It Already Has, FINANCIALADVISORIQ (Feb. 8, 2019), https://financialadvisoriq.com/c/2196683/263053/what_wants_finra_insists_already?referrer_module=mostPopularRead&module_order=3.
- 98 See Egan, et al, Arbitration with Uninformed Consumers (Nat'l Bureau of Econ. Research, Working Paper 25150, Oct. 2018), <https://www.nber.org/papers/w25150.pdf>.
- 99 Press Release, FINRA, FINRA Requests Comment on Fintech Innovation in Broker-Dealer Industry (July 30, 2018), <https://www.finra.org/newsroom/2018/finra-requests-comment-fintech-innovation-broker-dealer-industry>.
- 100 Press Release, FINRA, FINRA Releases Report on the Rise of RegTech (Sept. 10, 2018), <http://www.finra.org/newsroom/2018/finra-releases-report-rise-regtech>. This report highlighted “five areas where industry participants have most prominently leveraged RegTech innovations: Surveillance and monitoring, customer identification and anti-money laundering compliance, regulatory intelligence, reporting and risk management and investor risk assessment.”
- 101 Press Release, FINRA, FINRA Forms Office of Financial Innovation, Announces Haimera Workie as Head (Apr. 24, 2019), <https://www.finra.org/newsroom/2019/finra-forms-office-financial-innovation-announces-haimera-workie-head>.
- 102 As formal clinic names vary, for purposes of this Report, all securities law, securities arbitration, and investor protection focused clinics referenced herein are referred to as investor advocacy clinics or clinics.
- 103 Press Release, SEC, SEC Announces Pilot Securities Arbitration Clinic to Help Small Investors—Levitt Responds to Concerns Voiced at Town Meetings, 97- 101 (Nov. 12, 1997), <https://www.sec.gov/news/press/pressarchive/1997/97-101.txt>.
- 104 See *id.*
- 105 Office of the New York State Attorney General, Press Release, Former Telecom Executive Agrees to Turn Over IPO Profits (Dec. 4, 2003), <https://ag.ny.gov/press-release/former-telecom-executive-agrees-turn-over-ipo-profits>.
- 106 Press Release, University of Pittsburgh, Pitt Law School to Open Securities Arbitration Clinic, (May 2, 2011), <http://www.news.pitt.edu/news/pitt-law-school-open-securities-arbitration-clinic>.
- 107 Press Release, FINRA Foundation Announces \$1 Million in Grants to Fund Securities Advocacy Clinics (Jan. 28, 2010), <http://www.finra.org/newsroom/2010/finra-foundation-announces-1-million-grants-fund-securities-advocacy-clinics>; see also Jill I. Gross, The Improbable Birth and Conceivable Death of the Securities Arbitration Clinic, 15 *Cardozo J. Conflict Resol.* 597, 604 (2014) [hereinafter Gross]. (“As a result of these [FINRA] grants, clinics opened at other law schools such as Florida International University, Howard University, Suffolk University, and Pepperdine in 2009; at Seton Hall University and University of Miami in 2010; and at Georgia State and Michigan State University in 2012.”).
- 108 See Gross, *supra note* 107, at 619.
- 109 As of March 31, 2019, there were fifteen clinics in operation: six located in New York (Benjamin N. Cardozo School of Law, Cornell Law School, Fordham University School of Law, New York Law School, Pace University Elisabeth Haub School of Law, and St. John’s University School of Law), two in California (Pepperdine University School of Law and University of San Francisco School of Law), and one each in the District of Columbia (Howard University School of Law), Florida (University of Miami School of Law), Georgia (Georgia State University College of Law), Illinois (Northwestern University Pritzker School of Law), Nevada (UNLV William S. Boyd School of Law), New Jersey (Seton Hall University School of Law), and Pennsylvania (University of Pittsburgh School of Law). In May 2019, the Georgia State University College of Law Investor Advocacy Clinic ceased operations.
- 110 As another aspect of client eligibility, clinics may also give preference to senior citizens. For example, the Pittsburgh region is considered to have one of the highest aging populations in the country and, as a result, has many senior citizen clients. Senior citizens and retirees, however, are not a clinic’s only clients. Clinic clients also include regular, middle-class Americans such as hairdressers, mail carriers, welders, schoolteachers, librarians, first-time investors, and millennials. See Letter from Nicole G. Iannarone Director, Investor Advocacy Clinic, Georgia State University College of Law, et al. to FINRA (June 19, 2017), at 2, https://www.finra.org/sites/default/files/notice_comment_file_ref/SN-32117_GSU_comment.pdf [hereinafter Iannarone Letter].
- 111 See Gross, *supra note* 107, at 600-01.
- 112 See *id.* at 600.

- 113 In June 2017, 13 investor advocacy clinic directors submitted a joint letter to the SEC containing recommendations for clinic funding. The directors recommended that fines and penalties levied by FINRA would be an appropriate source of continued funding. The directors also recommended legislation to secure additional or alternative funding from the FINRA Investor Education Foundation or a government grant-matching program similar to the successful Internal Revenue Service model used to fund low-income taxpayer clinics. *See* Iannarone Letter, *supra* note 110.
- 114 FINRA, FINRA Dispute Resolution Task Force Recommendations – Final Report (Jan. 15, 2019), https://www.finra.org/sites/default/files/DR_task_report_status_011519.pdf.
- 115 *Id.*; *see also* FINRA, FINRA 2018 Annual Budget Summary, https://www.finra.org/sites/default/files/2018_Annual_Budget_Summary.pdf; *see also* FINRA, Report on Use of 2017 Fine Monies, available at <https://www.finra.org/about/report-use-2018-fine-monies>.
- 116 SEC, *Recommendation of the Investor Advisory Committee: Financial Support for Law School Clinics that Support Investors* (Mar. 8, 2018), <https://www.sec.gov/spotlight/investor-advisory-committee-2012/law-clinics-recommendation.pdf>.
- 117 *See* SEC, Office of the Investor Advocate, *Report on Objectives for Fiscal Year 2019*, 23-29 (June 29, 2018) [hereinafter *Report on Objectives, Fiscal Year 2019*], <https://www.sec.gov/advocate/reportspubs/annual-reports/sec-office-investor-advocate-report-on-objectives-fy2019.pdf>.
- 118 The Investor Advocate, the Ombudsman, and the Office are extremely appreciative of the time and effort extended, and the comprehensive recommendations made, by the clinic faculty and students in helping us consider meaningful changes to policies affecting retail investors, particularly those investors in vulnerable populations.
- 119 *See* Meghan Morris, *The government shutdown hits the SEC starting Thursday – here’s how it’s impacted*, Business Insider (Dec. 26, 2018), <https://markets.businessinsider.com/news/stocks/how-sec-affected-by-partial-government-shutdown-2018-12-1027832560>.
- 120 *See* Rebecca Ballhaus, Kristina Peterson and Vivian Salama, *Trump Signs Spending Bill, Ending Longest Government Shutdown in U.S. History*, THE WALL ST. J. (Jan. 25, 2019), <https://www.wsj.com/articles/trump-considering-agreeing-to-sign-three-week-spending-bill-as-early-as-friday-11548439078>.
- 121 Exchange Act § 39(a), 15 U.S.C. § 78pp(a).
- 122 *Id.*
- 123 Exchange Act § 39(a)(2)(B), 15 U.S.C. § 78pp(a)(2)(B).
- 124 Exchange Act § 39(g), 15 U.S.C. § 78pp(g).
- 125 Exchange Act § 39(h), 15 U.S.C. § 78pp(h).
- 126 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).
- 127 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).
- 128 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>.
- 129 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>.
- 130 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>.
- 131 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>.
- 132 SEC, *Transaction Fee Pilot for NMS Stock*, Release No. 34-84875 (Dec. 19, 2018), <https://www.sec.gov/rules/final/2018/34-84875.pdf>.

- 133 SEC, Order Issuing Stay, (March 28, 2019), <https://www.sec.gov/rules/other/2019/34-85447.pdf>.
- 134 *See supra* note 111.
- 135 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>.
- 136 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>.
- 137 Request for Comment on Fund Retail Investor Experience and Disclosure, Securities Act Release No. 10503, Exchange Act Release No. 83376, Investment Company Act Release No. 33113 (June 5, 2018).
- 138 *Id.*
- 139 *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>.
- 140 *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>.
- 141 *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>.
- 142 *See* Universal Proxy, Exchange Act Release No. 79164, Investment Company Act Release No. 32339, 81 Fed. Reg. 79,122 (proposed Nov. 10, 2016).



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