JEREMY ROSEBERRY

Petitioner — SEC Rulemaking Petition File No. 4-891

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July 20, 2026

VIA EMAIL TO rule-comments@sec.gov — FILE NO. 265-28

Vanessa A. Countryman, Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Attn: The Investor Advisory Committee — Professor George S. Georgiev, Chair; Commissioner Andrea Seidt, Vice Chair; and each Member of the Committee

Re: Public Comment for File No. 265-28 — Written Statement for the September 10, 2026 Meeting (or next available meeting) — Request for Committee Action Under 15 U.S.C. § 78pp on Petition for Rulemaking File No. 4-891

Dear Ms. Countryman, Chair Georgiev, Vice Chair Seidt, and Members of the Investor Advisory Committee:

This is a request that the Committee exercise the statutory authority Congress gave it in Section 39 of the Securities Exchange Act, 15 U.S.C. § 78pp, on a matter of ongoing, quantifiable, and admitted harm to approximately 160 million American investors. The matter is set out in the Petition for Rulemaking enclosed as Exhibit B, filed March 19, 2026, and posted to the Commission's public docket as File No. 4-891. The Petition formalizes a whistleblower submission the Commission has held since June 2020, prepared with counsel who served as the founding Chief of the Commission's Office of the Whistleblower.

I do not ask the Committee to prejudge the Petition's merits. I ask it to do the two things Congress designed it to do: place this matter on its agenda, and put before the Commission a recommendation — however brief — that the Petition's interpretive guidance questions be answered. Under the statute, that single act obligates the Commission to respond in public. Everything this letter requests is measured against how little the Committee must do to accomplish it, and the enclosures are built so that nothing needs to be drafted. Exhibit A is the letter dated July 15, 2026, to Chairman Atkins, whose answer date arrives before the Committee convenes. It encloses, in turn, proposed answers to all sixteen interpretive questions and a model investor alert in staff-ready form.

I come to this Committee because every channel built for exactly this situation has been tried, and every one has left the matter inside the agency that will not answer it. Over six years, the matter has been presented to more than fifty members of the Commission's staff and to multiple sitting Commissioners and their counsel — a correspondence that now runs to 465 written communications, in both directions.

Not one has rebutted the assertion at the center of this matter: that the risk disclosures investors rely on when purchasing income-producing fund shares — statements that the danger of "buying a dividend" arises only "shortly before" or "just prior to" a distribution — are materially false and misleading. The danger those words conceal is not a market risk. It is an unjust tax: a loss unrelated to market performance, levied not on income the investor earned but on the return of the investor's own capital. Not one has rebutted that. And not one has acted.

I. What the Petition Documents — in the Industry's Own Words

Investment funds embed already-realized, payable income in their published net asset values, so that new investors pay for income the fund has already earned, receive it back as a "distribution," and are taxed on the return of their own money as if it were a gain. The vast majority of prospectuses tell investors this risk arises only "shortly before" or "just prior to" a distribution. The funds' own daily accounting shows the risk present, and growing, on nearly every trading day of the year.

The harm is not contested by those who cause it. The Petition sets out the industry's own written record: BlackRock, the world's largest asset manager, tells its customers that "buying a dividend" hands the investor "an unnecessary tax bill." A senior fund-administrator executive, asked why the known fix would never be adopted, answered that "we bill on the [inflated] NAV." And when formal compliance notices reached the industry's 15,266 chief compliance officers, more than ten major fund complexes quietly deleted the challenged phrases from their prospectuses rather than correct them openly. One deletion is preserved on EDGAR with documentary precision: JPMorgan Trust I's annual update of October 26, 2022 (accession no. 0001193125-22-269315) warned of tax on purchases made "just before a distribution"; the annual update of October 24, 2023 (accession no. 0001193125-23-261548) — filed after the notice campaign — deleted the word "just." A firm does not delete language it believes is accurate. The deletion is the industry's own verdict that the words mattered.

II. Congress Built This Committee for Precisely This Situation

The Committee exists because Congress learned, at great cost, that the Commission does not always hear what investors most need it to hear. Section 911 of the Dodd-Frank Act created this Committee in 2010, in the aftermath of a decade in which credible warnings sat within the agency while the harm they described continued. And Congress did not define the Committee's purpose in general terms. It enumerated the subjects: the effectiveness of disclosure; the regulation of securities products; fee structures; and initiatives to protect investor interests and promote confidence in the integrity of the marketplace. 15 U.S.C. § 78pp(a)(2). Measure the Petition against that list. A disclosure that misstates when a documented risk exists relates to the “effectiveness of disclosure.” A pricing convention that charges advisory fees on inflated asset values is “fee structures.” A mechanism that taxes 160 million investors an estimated $100 billion each year on the return of their own capital is investor protection.

This matter is not adjacent to the Committee's charter. It is three of its enumerated subjects at once — and, at bottom, it is a single question about the design and performance of the Commission's disclosure regime: whether the regime can correct a disclosure its own enforcement precedent already condemns. The Committee's own recent work has pressed for data transparency and investor protection as retail

investors enter complex products. This matter is that principle applied to the most widely held investment product in America. Congress built this Committee for the case in which every other channel has been tried, and the matter still sits unanswered inside the agency. That case is this docket.

III. The Commission Has Docketed the Petition — and Not Answered It

The Commission performed the ministerial steps its rules require: it acknowledged the Petition, posted it, and notified me. See 17 C.F.R. § 201.192(a). It has not answered it, and six years of the underlying record supply no basis to expect that it will without a reason to. The pattern is not an anomaly: an analysis published on the Yale Journal on Regulation's Notice & Comment forum examined the Commission's treatment of rulemaking petitions and found that the overwhelming majority receive no substantive response of any kind. Under the settled TRAC framework, a reviewing court may compel an agency to decide a matter left unreasonably undecided — and the Petition will soon reach the posture where that relief is available. But no investor buying fund shares this fall is helped by a remedy that matures in court next year. The Committee can produce a public answer faster than any court can compel one.

IV. Every Safeguard Built for This Situation Is Closed, Empty, or Unstaffed

The failure this Committee is asked to address is not one firm's, and not one office's. Over nearly eight years, I deliberately tested every level of the private compliance architecture built to protect investors: the fund managers themselves; their boards; the 15,266 chief compliance officers who received formal written notice; outside securities counsel at twelve of the largest law firms in the country; the Big Four audit firms; the exchanges; the custodians; the brokerages. Every level failed. Not one gatekeeper, at any level, acted to protect a single investor. That testing, and the universal failure it produced, are sworn under penalty of perjury in the Declaration attached to the Petition (See Exhibit B).

The public channels have fared no better. The whistleblower program has held the matter since June 2020. The rulemaking petition was filed, acknowledged, and posted — then left undecided. And the office Congress built as the investor's last resort has sat without an Investor Advocate since January. Congress designed that office as a deliberate bypass: the Investor Advocate reports to Congress directly, in reports the Commission is forbidden to edit, on the most serious problems investors encounter. When I sought that channel, the Acting Ombuds confirmed in writing that the position remains unfilled. The one office built to carry an investor's complaint past the Commission has no officeholder, and the reports Congress required have no author. Routing is not resolution. Every channel has returned the matter to the agency that will not answer it — except this one. This Committee sets its own agenda, votes its own recommendations, and holds the one statutory lever that compels a public reply.

V. What Has Changed Since the Petition Was Filed

Three developments belong before the Committee, because together they define what September 10 is.

First, the Chairman has been asked directly, and his answer date arrives before the Committee convenes. By letter dated July 15, 2026, delivered by courier (Exhibit A), I asked Chairman Atkins to answer the sixteen interpretive questions, issue the interim investor alert waning investors of the risk they face in the second half of the year, and decide the Petition — by August 15, 2026. That date falls nearly four weeks before this Committee meets. The Committee will therefore not convene waiting on a pending deadline. It will convene, holding a completed record: either the Commission's answer, which the Committee can take up on its merits, or twenty-six days of documented silence following a direct request to the Chairman on a matter the agency has held for six years. Either way, September 10 is where the record converges.

Second, private litigation has already begun — without the Commission, and on more than one front. On July 13, 2026, investors filed a proposed class action in New York state court against BlackRock, alleging that realized income and gains carried in net asset value after they became distribution liabilities inflated the price of more than seventy funds. That is the mechanism at the center of the Petition — which had sat on the Commission's public docket for four months when the complaint was filed. Nor is it the first such action: litigation already pending against a JPMorgan fund trust places at issue the same family of disclosures — including disclosure language the complex changed rather than defended, of the kind documented in Section I above. Two complexes are now in court on one mechanism, and with the Petition public on the Commission's own docket, they will not be the last, because the central falsity can be seen by anyone shown the funds' own daily accrual data. And the consequence reaches this Committee's charter directly: if the Commission stays silent, the adequacy of SEC-filed prospectuses will be decided by state-court judges and juries, complex by complex, without one word from the regulator those prospectuses were filed with. A Committee recommendation is precisely the instrument that gives the Commission the occasion — and the obligation — to speak before its own disclosure regime is construed entirely by others.

Third, the calendar itself is the urgency. The fourth quarter is when funds distribute. Investors buying shares from now through year-end — disproportionately retirees and ordinary savers — are paying prices inflated by income the funds have already earned, on the strength of disclosures that say the danger has not yet arrived. The laws that require truthful disclosure are already on the books. Nothing this Committee is asked to recommend waits on Congress, on rulemaking, or on litigation. It waits on a vote.

VI. The Committee Holds the Lever Congress Made Compulsory

Congress made this Committee independent of the agency it advises, and the independence is structural, not honorary. The Committee sets its own agenda. Its members serve fixed terms and are not Commission employees. Its proceedings are exempt from the Federal Advisory Committee Act, 15 U.S.C. § 78pp(i), so no procedural machinery outside the Committee controls what it may consider or when. And its recommendations carry a right no commenter, no petitioner, and no member of the public holds. Each time this Committee submits a finding or recommendation, the Commission "shall promptly issue a public statement assessing the finding or recommendation of the Committee and disclosing the action, if any, the Commission intends to take with respect to the finding or

recommendation." 15 U.S.C. § 78pp(g). The obligation attaches to any recommendation, however brief. A one-paragraph recommendation pulls the same statutory trigger as a fifty-page study. I am aware that Section 78pp(h) provides that the Commission is not required to agree with or act upon any recommendation; that is precisely the point. The Committee is not asked to force an outcome. It is asked to force an answer — the one thing over six years of every other channel has failed to produce.

VII. The Requested Actions

Requests 1 through 5 are calibrated to require no drafting, no study, and no judgment on the Petition's merits. The Committee is not asked to agree that the disclosures are false. It is asked to agree that investors deserve to know whether they are. Requests 6 and 7 invoke the Committee's ordinary process — and nothing in them should delay the first five.

1. Place this matter on the September 10, 2026 agenda, before the full Committee or the Investor as Purchaser Subcommittee, and act on the recommendations requested below. The record is complete and enclosed; nothing about this request depends on hearing from me. Should the Committee or any member find a briefing useful — before the meeting or at it, in person or by video, at whatever length is allotted — I am at the Committee's disposal. Whatever the Committee decides, I ask only that its disposition of this matter be stated on the record of the meeting — whether it acts, refers the matter, or declines — so that the public record reflects how a sworn, quantified, and unrebutted account of industry-wide compliance failure was handled by the body Congress created to weigh exactly such accounts.

2. Adopt a recommendation that the Commission answer the sixteen interpretive questions in Section IV of the Petition and decide the Petition as 5 U.S.C. § 555 requires. The proposed answers enclosed with Exhibit A demonstrate that the answers are determinate: they follow from fund accounting the industry performs every trading day. A recommendation that questions be answered endorses nothing but the principle that they should not go unanswered for a seventh year. This is the Committee's statutory function stated at its minimum — a recommendation on the effectiveness of disclosure, about disclosures whose effectiveness has been formally questioned, sworn against, and left undefended. There is no smaller act available, and no neutral one: on this record, declining to ask for answers is itself an answer.

3. Adopt a recommendation that the Commission issue an interim investor alert on the "buying a dividend" risk before this year's distribution season. The model alert enclosed with Exhibit A supplies a form the Commission is free to adopt, adapt, or improve. This is the one action on this page that protects investors this year.

4. Recommend that the Commission promptly fill the Office of the Investor Advocate, and that, once filled, this matter be identified among the most serious problems encountered by investors in the next Report on Activities under 15 U.S.C. § 78d(g)(6). The vacancy has silenced the one reporting channel the Commission cannot edit. This Committee, which by statute counts the Investor Advocate among its own members, 15 U.S.C. § 78pp(b)(1)(A), is the natural body to say so.

5. Transmit the Petition and this comment, under cover of the Chair, to the Senate Committees on Banking, Housing, and Urban Affairs and on Finance, and the House Committees on Financial Services and on Ways and Means. I am transmitting the same materials to those committees separately; the question is not whether Congress receives this matter, but whether it arrives carrying this Committee's voice.

6. Refer to the Investor as Purchaser Subcommittee, for development and a vote at the December 3, 2026, meeting, the question of whether to recommend per-investor, point-of-sale disclosure of realized, undistributed income embedded in fund share prices. The substantive recommendation deserves the Committee's ordinary process. The requests above do not require it, and should not wait for it.

7. Direct a study — by the full Committee or a subcommittee it designates, on a schedule it sets — of what this record documents beyond any single disclosure: the wholesale failure of the compliance architecture built to protect investors. The Petition's sworn Declaration establishes that every layer of that architecture was tested against this harm, and every layer failed — the fund managers holding fiduciary and disclosure duties; their boards; the 15,266 chief compliance officers who received formal written notice; outside securities counsel at twelve of the nation's largest law firms; the public auditors, whose "public watchdog" function the Supreme Court has held demands "complete fidelity to the public trust," United States v. Arthur Young & Co., 465 U.S. 805, 817–18 (1984); the exchanges and self-regulatory organizations holding regulatory authority of their own; and the market's clearing and custody utilities. Not one acted to protect a single investor. A system that fails at one level has a weak point. A system that fails at every level, against a documented and quantified harm, does not have a defect — it has ceased to perform its function, and no one noticed, because nothing that was supposed to notice was working. On the study's findings, the Committee should recommend that the Commission conduct a thorough public review of how this occurred, adopt a corrective plan, and reorder its regulatory priorities and resources toward rebuilding the compliance infrastructure on which every other investor protection depends. Advising on the Commission's regulatory priorities is not adjacent to this Committee's mandate; it is the first subject Congress enumerated. 15 U.S.C. § 78pp(a)(2).

VIII. The Record

This comment and its enclosures will be posted to File No. 265-28, and separately entered on the docket of Petition File No. 4-891, so that the record of this request sits alongside both the Committee proceeding it invokes and the Petition it concerns.

The matter is also before the Commission's Office of Inspector General, which has been asked to report it to Congress under the seven-day-letter provision, 5 U.S.C. § 405(e). A record of how each safeguard in this story responded to documented notice is therefore already being assembled — by offices whose function is to assemble it. This Committee is the one body still positioned to enter that record as the safeguard that worked. I will renew this request at each successive meeting until the matter is acted upon or the Commission answers the Petition. I make that commitment not as pressure but as context:

the Committee should know that the questions will keep arriving until someone answers them, and that it holds the shortest path to that answer. Six years of this record were built one unanswered letter at a time. One paragraph from this Committee ends that pattern — and under the statute, the Commission must then say, in public, what it will do. No other body in this story can produce that result in a single vote. This one can.

IX. Acknowledgment

I request written acknowledgment that this comment and its enclosures have been posted to File No. 265-28 and distributed to the members. I am available to the Committee, any subcommittee, or any individual member, in person or by video, at the Committee's convenience.

Semper Fidelis,

/s/ Jeremy Roseberry
Jeremy Roseberry Petitioner, SEC File No. 4-891 petition@pagproject.com

Enclosures:

- Exhibit A — Letter to Chairman Atkins dated July 15, 2026, as submitted to File No. 4-891 — enclosing, as its own Exhibits A and B, proposed answers to the sixteen interpretive questions and a model investor alert
- Exhibit B — Petition for Rulemaking (with supporting Declaration under 28 U.S.C. § 1746), File No. 4-891

cc (by separate transmittal):

- U.S. Senate Committee on Banking, Housing, and Urban Affairs
- U.S. Senate Committee on Finance
- U.S. House Committee on Financial Services
- U.S. House Committee on Ways and Means
- Sean X. McKessy, Phillips & Cohen LLP, Counsel to Petitioner

EXHIBIT A

Letter to Chairman Paul S. Atkins, dated July 15, 2026

The letter follows this page in its original, unaltered form. It was delivered to the Chairman by courier and submitted as a public comment to File No. 4-891. It asks the Commission to answer the sixteen interpretive questions, to issue the interim investor alert, and to decide the Petition, by August 15, 2026 — a date that falls nearly four weeks before this Committee convenes.

The letter encloses, as its own Exhibits A and B, proposed answers to all sixteen interpretive questions and a model investor alert in a form suitable for issuance by the Office of Investor Education and Advocacy. Those enclosures are the materials referred to throughout this comment; they are not reproduced separately here.

JEREMY ROSEBERRY

Petitioner — SEC Rulemaking Petition File No. 4-891

petition@pagproject.com

July 15, 2026

The Honorable Paul S. Atkins
Chairman
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Filed as a comment to Petition File No. 4-891 (via rule-comments@sec.gov and the Commission's electronic comment system)

Re: Demand That the Commission Give Investors the Truth It Has Held for Six Years — Petition for Rulemaking File No. 4-891 — by August 15, 2026; the Interpretive Answers and the Interim Investor Alert Are Enclosed in Final, Actionable Form (Exhibits A and B)

Dear Chairman Atkins:

This letter asks for one thing, in three forms, by one date: that investors be told the truth about the securities they are buying, by August 15, 2026. It asks something else as well, because this harm has outgrown the Commission: that the Petition be sent to Congress. The truth at issue is not mine. It is not in doubt. The funds compute it every trading day — the exact amount of already-earned, undistributed income embedded in each share's price, and the "unnecessary tax" the buyer will owe on the return of that money, as if it were gain.

The funds hold that figure in their own data and withhold it from the investor who is about to pay for it. Their prospectuses, meanwhile, describe the risk in time-limited language — "shortly before," "just prior to" — that the funds' own records show to be materially false and misleading. The number exists. The buyer never sees it. And what is sold — at a price the fund knows to be inflated by a liability it has not disclosed — is a security with a hidden tax attached to it.

What this letter presents, Mr. Chairman, is therefore not a policy question. It is the question your agency was created to make impossible: whether the institution Congress built to guarantee investors the truth, will continue to withhold it.

Petition for Rulemaking File No. 4-891 was filed March 19, 2026, and sits on the Commission's public docket (https://www.sec.gov/files/rules/petitions/2026/petn4-891.pdf). The first three requests below are drawn from its expressly severable categories of relief, are ordered by the speed with which the Commission can act, and are constructed so that the first two require no rulemaking, no new policy, and no finding about any party's past conduct. No rationale that might counsel deliberation on the third can explain deferral of the first two, and no single response can answer them all.

First, direct a Commission-level response to the sixteen interpretive questions in Section IV of the Petition. The questions are not requests for new policy. They are fund-accounting and settled-law questions — does realized income accrue into NAV when earned; does a purchaser pay for it; do funds compute the embedded amounts daily — that the industry answers every trading day in the ordinary course of computing NAV. They are also built so that each admits one honest answer, and each answer follows from the one before it: the first is bare arithmetic no one disputes, and the sixteenth is the conclusion the arithmetic compels. Because the questions form a single staircase, a response that confirms the arithmetic while declining the conclusions it compels is not an answer to Section IV — it is a recorded refusal to state one. The Petition makes each question severable for exactly this reason: no question may be left unanswered without a specific, stated ground for that refusal.

Proposed answers to all sixteen are enclosed as Exhibit A, short, fact-based, and grounded in standard registered-fund accounting and settled precedent. The Commission may adopt them, refine them, or rebut them. If it disputes any answer, I ask only that it identify the specific premise in dispute — mechanical operation, economic consequence, materiality standard, or legal principle — and the basis for that dispute. If no premise is disputed, the answers should issue.

Answered, these sixteen questions accomplish the mission itself: they tell investors the truth about how the securities they buy actually work and the risk they assume upon purchase. Shown the figure the funds compute daily and withhold — how much of today's price is income the fund already earned, and the unnecessary tax the buyer will owe on its return — an investor can avoid the charge outright, by waiting until the distribution has been paid or by holding the shares in a tax-advantaged account.

Information that would change whether, when, and how a reasonable investor buys is, under the settled test, material: "a substantial likelihood that a reasonable [investor] would consider it important." *TSC Industries, Inc. v. Northway, Inc.*, 426 U.S. 438, 449 (1976); *Basic Inc. v. Levinson*, 485 U.S. 224, 231–32 (1988). This figure changes all three. It is withheld all the same, and the investor pays what the industry's own materials call "an unnecessary tax bill" on the return of his own money. That is the materiality standard, applied. It answers itself.

Second, issue an interim investor alert before this year's distribution season. The Office of Investor Education and Advocacy issues such alerts routinely, on matters of far smaller consequence. A model alert, drafted in the form and voice of that Office and suitable for issuance as written, is enclosed as Exhibit B. Every factual statement in it is established by the Petition's record. Issuing it requires no rulemaking and no prejudgment of the Petition — only a decision that investors should be told, before they buy, what the industry's own documents concede. This alert should be issued as soon as possible.

Third, decide the Petition's rulemaking request. Grant it, deny it, or defer it — but decide it, as the Administrative Procedure Act requires: "within a reasonable time, each agency shall proceed to conclude a matter presented to it." 5 U.S.C. § 555(b). If the Commission denies the Petition in whole or in part, I ask only for what the statute already commands: "a brief statement of the grounds for denial." Id. § 555(e). Rulemaking proceeds on a longer track than the first two requests — which is

precisely why the Petition made its categories severable, and precisely why the first two requests do not wait on this one.

The Law Already Requires This. It Needs Applying.

None of what this letter asks waits on Congress to pass a new statute. The laws that require truthful, adequate disclosure are already on the books — Section 34(b) of the Investment Company Act, Securities Act Rule 156, and the antifraud provisions that reach every prospectus and every sales communication. They do not need amending; they need applying. The disclosures at issue are not incomplete for want of a rule that tells funds what to say. They are misleading under the rules that already exist. Nothing in this letter asks the Commission to invent an obligation. It asks the Commission to apply one that has governed these funds for decades — and to stop letting the funds satisfy the letter of a filing requirement while defeating its purpose.

In January 2025, the Commission charged Vanguard under the very statute named above — Section 34(b) of the Investment Company Act — for prospectuses it found "materially misleading" about the tax consequences of the fund's distributions. It ordered $106 million in remediation to the investors harmed, distributed through a Fair Fund. In re Vanguard Group, Inc., Investment Company Act Release No. 35453 (Jan. 17, 2025).[1] The Commission's own Asset Management Unit Chief stated the principle in terms that decide this letter: accurate information about capital gains and taxes is "critical to investors saving for their retirements."[2] And the disclosures the Commission condemned in Vanguard were accurate as far as they went. The prospectuses said the funds' distributions "may be taxable" and that capital gains "could vary considerably from year to year" — true statements the Commission nonetheless found materially misleading, because they omitted a specific, foreseeable risk the fund knew and did not disclose.

The disclosures at issue here are not true statements rendered misleading by omission. They are affirmatively false: they tell investors the risk arises only "shortly before" a distribution, when the funds' own daily accounting shows it is present nearly every trading day of the year.

And the falsehood runs in one direction — toward convincing investors to "buy now." An investor told the risk appears only in the days before a distribution believes the fund is safe to buy on every other day. An investor told the truth — that a fund preparing to pay a large capital-gains distribution in December already carries that embedded tax liability today — waits, and buys in January, after the

[1] *In the Matter of The Vanguard Group, Inc.*, Securities Act Release No. 11359, Investment Advisers Act Release No. 6830, Investment Company Act Release No. 35453, Admin. Proc. File No. 3-22435 (Jan. 17, 2025), https://www.sec.gov/files/litigation/admin/2025/33-11359.pdf. The Section 34(b) finding appears at ¶ 40; the materially-misleading findings at ¶¶ 33, 35; the quoted prospectus language at ¶ 32. The $106 million figure reflects the total remediation across the coordinated SEC, New York Attorney General, and NASAA resolutions; the civil penalty imposed in the Commission's order is $13.5 million (¶ IV.D).

[2] Press Release, U.S. Sec. & Exch. Comm'n, Vanguard to Pay More Than $100 Million to Resolve Violations Related to Target Date Retirement Funds (Jan. 17, 2025), https://www.sec.gov/newsroom/press-releases/2025-21 (statement of Corey Schuster, Chief, Division of Enforcement Asset Management Unit).

distribution has passed and the liability with it. The investor who buys now starts the fund's fee clock now. The investor who waits starts it in January, or never starts it at this fund at all.

The industry has said in writing why the “buy-now” outcome is the one it protects: asked why the available fix to fund pricing would never be adopted, a senior fund-administrator executive explained that "we bill on the [inflated] NAV." A disclosure that confines the danger to a handful of days a year, when the fund's own accounting shows it present on nearly all of them, keeps investors buying — on a price the fund knows to be inflated, and on which its fees are charged. The statute the Commission enforced in Vanguard required no proof that anyone intended to mislead. Here, the intent is in the record, in the industry's own words.

Vanguard's harm was episodic, one complex, and over. This harm is continuous, industry-wide, and recurs every trading day. Vanguard's harm was $106 million, once. This harm is estimated to exceed $100 billion, every year — approximately a thousand times larger, and it has not stopped. If the Commission's reasoning in Vanguard was correct — and the Commission stated it publicly, over its own name — then the affirmatively false disclosures this letter concerns are misleading beyond dispute. And the standard that produced a nine-figure penalty for the smaller, milder failure cannot be unavailable for the one a thousand times greater and industry-wide. The Commission applied that standard in Vanguard. It has only to apply it again.

And if that is wrong — if there exists any provision of law that exempts the Commission from ensuring truthful disclosure on this subject, any statute, rule, or precedent under which investors are not entitled to know the quantified and unnecessary tax liability embedded in the price they are paying — I ask that the Commission cite it in its response. I am aware of none. The Petition identifies none. None exists.

The Question Is Institutional, and It Is Yours

I write to you rather than to the staff because the staff cannot commit the institution, and this is an institutional question. The Securities Act of 1933 announces its purpose in its opening line — "to provide full and fair disclosure of the character of securities sold" — and for more than ninety years the Commission has called it the "truth in securities" law. The Supreme Court has described the fundamental purpose of the federal securities laws as the substitution of "a philosophy of full disclosure for the philosophy of caveat emptor." *SEC v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180, 186 (1963). Ensuring that investors receive the truth is not an item on the Commission's agenda. It is the reason there is a Commission — and it is the entire source of the institution's authority. The Commission's power has never rested on its budget or its enforcement statistics. It rests on a public conviction, built over nine decades, that when the truth about a security is in the Commission's possession, the Commission is on the investor's side of it.

This docket tests that conviction in its simplest possible form. What is being withheld from investors is not in dispute; the industry's filed documents concede it, quantify it daily, and explain in writing why it persists. The only open question is who is withholding it.

For decades, the answer was the industry. Since June 2020, when the matter first entered the Commission through its whistleblower program, and unmistakably since March 19, 2026, when it was docketed for decision, the answer has also been the Commission. Every trading day of silence, the agency of full and fair disclosure stands between investors and a truth sitting in its own files — an inversion of its charter that no enforcement statistic and no rulemaking agenda can offset, because it contradicts the premise on which all the rest depends.

And the answer — or the silence — will be yours. The Commission's response to this Petition will issue under your chairmanship, and the record will not distinguish between the institution's choice and its Chairman's. I say that without hostility and without insinuation: it is simply what the office is. The Commission's agenda under your leadership is ambitious across many fronts; nothing on it is more fundamental than this, because this is the function every other function assumes. Americans' confidence in their public institutions is not in surplus at this moment, and an agency that polices honesty is judged, in the end, by its own. Sixteen yes-or-no questions about how an investment fund works is as easy as that test will ever be.

The Commission's mission is not a matter of the Chairman's discretion, or of the season's politics. Congress fixed it by statute and placed it first: to protect investors. The agency's other charges — to facilitate capital formation, to keep markets fair and efficient — Congress ranked beneath that one. And it made them depend on it. No market runs for long on capital from investors who have learned they cannot trust what they are told. An agenda may emphasize what it chooses. It may not leave the first duty undischarged while it pursues the rest. For six years, on this matter, that is what has happened. The duty the statute ranks first has gone unmet — in the one place, the point of sale, where investors are told what they are buying.

The Commission Has Never Disputed This Harm, and Never Disclosed It

The harm the Petition documents was never hidden from the industry that causes it. For eight years, I brought this harm to the industry, and its senior executives directly, and the industry did not dispute it. It acknowledged the harm in the words quoted above, declined to correct the inflated fund pricing it knew how to correct, and, when my formal compliance notices reached its 15,266 compliance officers, more than ten major fund complexes quietly deleted the misleading disclaimer language from their prospectuses rather than correct them openly. A firm does not delete language it believes was accurate. The deletion is the industry's own verdict that the words mattered.

Nor can the industry call the correction impracticable, because it already performs one abroad. The same global managers whose U.S. funds are at issue have operated an income-equalisation mechanism for their investors in the United Kingdom for decades. That mechanism is imperfect — it averages across purchasers, creating winners and losers, whereas the method I demonstrated to the Commission is exact to each investor — but it acknowledges the harm, and it substantially protects the investors who receive it.

What these firms operate for investors in London, they decline to operate for investors in America. The difference is not capability. It is jurisdiction. And the refusal was not the failure of one firm, or of one layer.

Over nearly eight years, I deliberately tested every level of the compliance architecture Congress and the Commission built to protect investors: the fund managers themselves; their boards of directors; the 15,266 chief compliance officers who received formal written notice; the outside securities counsel at twelve of the largest law firms in the country; the Big Four audit firms; the exchanges; the custodians; the brokerages. Every level failed. Not one gatekeeper, at any level, acted to protect a single investor.

The machinery did not fail by accident, and the industry did not expect it to catch them. Its own executive explained the wager in a sentence — the firms "bill on the [inflated] NAV," and the fix that would end that revenue was the fix they declined. A system that every regulated party has correctly assumed will not enforce against them is not a safeguard. It is a formality the industry had priced and paid nothing for — until now.

That real-time testing of our compliance infrastructure, and the universal failure it produced, are sworn under penalty of perjury in the Declaration attached to the Petition as Exhibit 1. A single firm's failure is a matter for a penalty against a single firm. The sworn, documented failure of an entire self-policing system is something else: it is the machinery built to catch this harm, reporting and proving that it does not work.

The Division of Enforcement concentrates its resources, by its own stated criteria, on misconduct that is egregious and extensive, on harm that is widespread, on investors who are particularly vulnerable, and on wrongdoing that ordinary detection would miss. This record satisfies every one of them at once. The failure is sworn, eight years long, and industry-wide. The harm reaches 160 million investors, most of them retirees and ordinary savers. And the practice went undetected by SEC examination because the industry concealed it.

The question the Commission should be prepared to answer — to itself, and to the Congress that will receive this record — is not whether this matter meets the threshold the Enforcement Division reserves for its most serious work. It is what open matter meets it more completely. I am therefore copying the Director of the Division of Enforcement on this letter, so that the official who allocates the Division's enforcement resources holds the same sworn record the Chairman does.

How this industry-wide failure was allowed to happen is a question the Commission must answer — to itself, and then to the public. And when a record of that character is placed before a Chairman of the Securities and Exchange Commission — sworn, specific, and eight years old — the proportionate response is not a docket entry. It is to set aside what does not concern the protection of investors and to direct the Commission's resources to an industry-wide enforcement sweep — to investigate the failure, and to hold those responsible to account, at the scale of the failure and not the scale of least resistance.

A systemic wrong is not answered by token penalties spread across its many offenders. That is the arithmetic these firms have already run, and won: a fine smaller than the revenue they generated from

the harm, divided among the guilty, and forgotten within months, is not a deterrent but a cost of doing business — and it is that enforcement posture that taught this industry the practice was safe to continue. Leniency did not cause the failure. It ratified it. And an industry that has already deleted the words, declined the fix, and priced the penalty will read a lenient answer here as it has read every one before it — as permission to do it again. That is not conjecture about these firms. It is the record of this case, and the pattern of every one that came before it. Investor protection is not one item on the Commission's agenda. It is the reason the agency has one.

The Commission has had this for six of those eight years, and its part of the record is a sequence of dates. In June 2020, the matter reached the Commission through its whistleblower program, in a submission prepared with counsel who served as the founding Chief of that program. This tip did not sit in a black box. Within months, I presented it directly to a sitting Commissioner, Allison Herren Lee, and shortly after to her counsel. In that second meeting, walking through the funds' own data and the time-limiting language the prospectuses use, her counsel agreed with the assertion at the center of this Petition: that the disclosure does not accurately describe the risk. That was 2020. The Commission has known — from a Commissioner's own office, shown the fund data, in the first year — and in the six years since, it has told investors nothing.

Then, at the Commission's request, I delivered a written plan to correct the pricing, the unnecessary tax loss, and provide adequate real-time disclosure in 2022. Since then, no part of that plan has been implemented. Three times over three years, most recently in May 2026, the Commission received an unsolicited FAR proposal to build the tool that would produce exactly this disclosure and protect investors. Three times it declined the proposal. And in the most recent declination, the Commission described the matter as a "disclosure gap" and an "over-taxation pattern," disputed neither, and told me to refer it to the Internal Revenue Service.

One does not send a petitioner to the IRS with a problem that does not exist. And the Internal Revenue Service does not regulate disclosure. It does not review prospectuses, and it has no power to correct one. That duty belongs to the Commission alone. Nor does one decline, three times, to build a correction that other markets already run. The Commission has been asked three times to procure the tool that would protect investors and produce this disclosure, and declined each time — even as the firms it regulates operate a correction for this exact harm in the United Kingdom.

The record, therefore, leaves one plain question unanswered: why are American investors left unprotected against a harm the industry knows how to cure, and cures elsewhere? The Petition now before you was filed in March 2026. Across six years, the matter has been presented to more than fifty members of the Commission's staff and to multiple sitting Commissioners and their counsel — a correspondence record that now runs to 465 written communications, in both directions.[3] A file of 465 communications, in addition to meeting with multiple sitting Commissioners, does not leave room for the defense of not knowing.

[3] Petitioner's correspondence index, June 2020–July 2026, maintained contemporaneously; the complete index is available to the Commission on request and will accompany the Freedom of Information Act and Privacy Act proceedings described below.

Not one has rebutted that these time-limited disclosures are materially false and misleading, or that they fail to give investors what the law entitles them to know. And not one has rebutted the simplest fact of all: the funds withhold the single figure an investor would need to quantify the loss. That figure is the realized income the fund has already earned and embedded in its price — computed every trading day, and shown to no one.

Without it, an investor cannot calculate what he stands to lose. He cannot even begin. A fund that does not know what is coming may tell him it "may" come; a fund that computes the amount daily may not. And that word survives only because the figure is hidden. Hand the investor the number, and he sees at once that the risk is not approaching. It is already inside the price he is about to pay. The Commission was shown all of it. It has acknowledged the Petition, as its rules require. It has not answered it.

Reduced to its core, the record is one sentence: the Commission has treated this harm as real in every forum but the one that reaches investors. It described the harm in its own written FAR disposition. It has left it unrebutted across six years of meetings with its staff and its Commissioners. But it has never stated that truth where an investor deciding whether to buy could read it — and that omission is not incidental to what this Commission is.

The Securities Act of 1933 is called the truth-in-securities law because Congress built the Commission to put the truth about a security into the hands of the person about to buy it: to make the government the investor's guarantor of that truth, not its gatekeeper.

On this record, the Commission has become the gatekeeper. It holds the truth, and it keeps it from the very investor it was created to hand it to. That is the Commission's founding purpose turned exactly on its head. Turning it back is the whole of what this letter asks: that the Commission state in public the truth its own file already concedes — the truth no one at the Commission has disputed in six years of holding it.

This Is No Longer Only a Securities Matter. It Is a Constitutional One, and It Does Not Wait on the Commission's Answer

I want to be precise about the gravity of what the Commission's silence now sustains, because it has passed beyond the securities laws. Whether a prospectus is adequate is a question the Commission may debate. Whether the government may keep tax on money that was never income is not a question the Commission may debate. That much was settled at Runnymede in 1215, and settled again, unanimously, in 2023. When a Form 1099-DIV reports an investor's returned capital as a taxable dividend, the government collects tax on money that was never income. Returned capital is not income, and not under a century of Supreme Court authority defining income as "accessions to wealth." *Commissioner v. Glenshaw Glass Co.*, 348 U.S. 426, 431 (1955).

The investor who receives back a portion of what he paid is no wealthier. He has been handed his own money and taxed for the privilege of receiving it. The Court's judgment on exactions of this kind is not ambiguous: "The retention by the Government of money wrongfully exacted as taxes is immoral, and amounts in law to a fraud on the taxpayer's rights." *Bull v. United States*, 295 U.S. 247, 261 (1935). And in *Tyler v. Hennepin County*, a unanimous Court traced the rule to the Magna Carta and restated

it whole: "a government may not take more from a taxpayer than she owes," and retention of more than is owed is a "classic taking" under the Fifth Amendment. 598 U.S. 631 (2023). The Chief Justice reduced the principle to a line: the taxpayer must "render unto Caesar what is Caesar's, but no more." The rule is older than the Republic. The Commission did not make it. It cannot unmake it by silence.

The principle is not a technicality, and the people it protects are not abstractions. The investors taxed on the return of their own money are retirees drawing down their savings and wage-earners holding funds in taxable accounts, and the loss falls hardest on those least able to absorb it, at a moment when many can absorb nothing. The Court framed its rule around a single taxpayer and what a government may take from her. Here, the same exaction runs across 160 million investors, every year, in amounts each fund computes to the penny and none disclose. Scale does not dissolve the principle. It repeats the exaction.

The Petition is careful, and I am careful here, to keep the government's position separate from the industry's. The historical liability is the industry's: it knowingly filed the false returns, designed the practice, and admitted the consequence. But the Court has also defined what notice does to the government's own position. Once a collection's illegality is established, the burden of remedy runs one way. The taxpayer "need not have taken any steps" to discover it, *Reich v. Collins*, 513 U.S. 106, 111 (1994), and due process requires the government to afford "meaningful backward-looking relief," *McKesson Corp. v. Division of Alcoholic Beverages*, 496 U.S. 18 (1990).

Before the Petition, the government collected on returns valid on their face. After it, the government holds formal, documented notice that the information returns underlying billions of dollars in annual collection are materially false. Notice moved the exposure.

Each tax year allowed to close on that notice deepens it, and extinguishes another year of refund claims, permanently. The Commission is the agency whose answer decides whether the 2026 tax year proceeds on returns the government has been told are false. Its silence is not neutral, even as to the Treasury it appears to protect. It is the load-bearing wall of the entire structure — and the Commission, whose officers are sworn to the Constitution and not to the securities laws alone, can remove it by answering. A constitutional wrong the Commission has been formally shown does not wait on a procurement screen, a rulemaking calendar, or a judgment about the adequacy of a prospectus. It is on the docket now. The Commission's silence decides only whether another tax year closes on it.

Why the Date Is August 15, and Not Later

The date is not chosen for haste. It is the last point at which a decision can still protect this year's purchasers, and its reason is the calendar, not my impatience. The fourth quarter is distribution season: the funds' embedded income for 2026 will be declared and paid, for most complexes, in the final weeks of the year. Every purchase made between now and then, in a taxable account, buys a share of this year's embedded tax liability without disclosure of its amount. An answer, or an alert, that issues in late summer can still reach investors before this season closes. One that waits until the distributions are paid arrives after the harm has fallen. And each tax year that closes does more than add another year of over-reported income: it extinguishes another wave of refund claims under the limitations

period, permanently. Delay is not neutral here. Delay is how the harm becomes irreversible — and it falls hardest in exactly the months now approaching.

The Work Is Already Done

The ordinary reason petitions wait is that answering them requires work: analysis to be performed, documents to be drafted, alternatives to be weighed. That reason is not available here. The sixteen questions concern accounting mechanics the industry performs every trading day; the proposed answers are enclosed as Exhibit A. The interim protective step is an investor alert; the alert is enclosed as Exhibit B, in issuable form. What stands between the current state of this docket and the protection of this year's purchasers is not analysis. It is a decision. And that decision is yours.

Two Roads to the Same Truth

I want to be plain about what this letter is, and what it is not. It is not a threat, and it does not ask you to weigh a litigation risk. It asks you to make a choice between the two potential ways the same truth reaches the same investors — one voluntary, one compelled — because on this record, there is no third way in which the truth stays hidden.

The voluntary way is the one this letter requests: the Commission answers the sixteen questions, issues the alert, and decides the Petition, and investors learn before they buy what is inside the price they are paying.

The compelled way runs through two federal courts, on two independent legal theories, each aimed at providing investors the truth the Commission continues to withhold. I state its shape plainly, because you are entitled to know what is coming, and because a documented choice is fairer than a surprise.

Requests under the Freedom of Information Act and the Privacy Act have sought the Commission's own half of this record — the processing history of the June 2020 whistleblower tip and of this Petition, and the Commission's side of the 465 written communications exchanged over these six years: the internal routing of each, the meeting notes and memoranda they generated, and what the Commission did with each, and when. Some have been pending for more than a year. The statutory periods to produce them have run, and the Commission has not produced them. Two administrative appeals have been granted. Nothing has been produced. The records suit is ripe now, and I will bring it to compel production. The mandamus follows — on a timetable I will choose, not announce — to compel the decision itself.

On the model of *In re American Rivers & Idaho Rivers United*, 372 F.3d 413 (D.C. Cir. 2004), and the Coinbase proceedings, it seeks the relief the Administrative Procedure Act provides for a matter left unreasonably undecided: an order that the Commission decide this Petition. The Commission knows how the Coinbase pattern ran: a mandamus petition filed nine months after the rulemaking petition; a court order to respond within ten days; and a one-paragraph denial vacated as "conclusory and insufficiently reasoned." *Coinbase, Inc. v. SEC*, No. 23-3202 (3d Cir. Jan. 13, 2025). One action compels the Commission to produce what it knows. The other compels it to answer on the record.

Neither asks a court to decide the merits. Both ask only that the truth stop being withheld — and the answer this letter requests is the one thing that makes either unnecessary.

And it is worth being concrete about what resisting would require, because the Commission's position in either courtroom is not an abstraction. It is a brief, with sentences in it, filed under the Commission's name.

To prevail, the Commission's lawyers would have to stand before a federal judge and argue some combination of the following: that sixteen questions about how an investment fund's share price works — questions every fund complex in America answers internally by the close of each trading day — are too difficult, too premature, or too unimportant to answer six years after they were first presented; that the agency created to enforce full and fair disclosure fined Vanguard for tax-disclosure statements it called materially misleading, yet owes investors no answer on whether the materially similar statements in this Petition are true; and that the 160 million investors the agency exists to protect may be left to buy on those statements without ever being told, by the one institution that knows, whether they are true. And every one of those arguments would be made about statements filed with the Commission — refiled on the Commission's own forms, into the Commission's own system, every year for six years after it was told what they contained.

Each of those sentences can be written. Government lawyers write hard briefs every week. But they do not often write briefs against the founding premise of their own agency — and that is the brief this docket would require. None of its sentences can be defended: not to a judge, not to Congress, and not to the 160 million people on whose behalf the agency holds its charter. And none of them stays in the courtroom.

A brief is a public document. Every sentence the Commission files to establish that it need not say whether fund disclosures are true will be quoted — by the four committees of Congress that oversee the agency, by the press, and above all by the fund industry itself, in every private action investors bring, as the considered position of their own regulator. The Commission would not merely be defending its silence. It would be drafting the fund industry's best exhibit. Whether the Commission is prepared to publish that document, under its own name, is the only question this letter finally asks — because every road away from answering ends in a courtroom where it must be filed.

The Commission should also understand the asymmetry of these proceedings, because it is the reason they are unlike ordinary litigation risk. A court may deny me relief on a procedural ground in either case, and the Commission may win a motion. It cannot win the fact.

A procedural victory leaves standing the one fact these filings exist to display: that the United States Securities and Exchange Commission, the agency Congress built to guarantee investors the truth, went to federal court to avoid telling the investors it exists to protect, the truth that is legally owed to them.

I can lose either case, and the record still shows it. The Commission can win both, and the record still shows it. There is no version of that appearance that the Commission can afford. Its own public docket already shows that it has substantively answered roughly five percent of the rulemaking petitions filed

with it since 2018[4]; each of these proceedings would place that record, and this one, before a new audience — a district judge, a court of appeals, an advisory committee the Commission must answer by statute under 15 U.S.C. § 78pp(g), and the four committees of Congress with jurisdiction over the agency and over the tax consequences its silence sustains.

I do not seek that. A quiet, complete answer serves every legitimate interest better than any of it. But the choice between the two roads is the Commission's, and only the first spares the Commission from explaining, in public, why the truth-in-securities agency litigated to keep investors from the truth.

The Compelled Road Has Already Opened

This letter argued above that there is no road on which the truth stays hidden. Between its drafting and its delivery, that stopped being an argument. On July 13, 2026, investors filed a proposed class action in New York state court against BlackRock — the largest asset manager on earth, and the same BlackRock whose own materials, quoted in Question 8 of the Petition, concede that "buying a dividend" hands investors "an unnecessary tax bill." The complaint alleges what the Petition documents: realized income and gains are carried in net asset value, inflating the price of more than seventy equity funds — purchasers receiving fewer shares for their money, and paying management fees on value that was, in substance, a liability, and being issued, knowingly and admittedly, a false 1099-DIV tax form.

Consider the dates, and draw the line they draw. The Petition entered the public docket in March 2026. The complaint was filed in July — some four months later, in the same theory, against a firm the Petition names and quotes. The Commission may make of that sequence what it will. The plaintiffs' bar has already made something of it. And it did not require the Commission's help to do so. Every element of this theory has sat in the Commission's files since June 2020, and on its public docket since March — where any lawyer in America can read it, and any fund's general counsel must be presumed to have.

This suit will not be the last, and the reason is not litigation strategy. It is that the central falsity can be seen. It does not turn on expert dispute or on any contested question of accounting. The prospectuses tell investors the "buying a dividend" risk arises only "shortly before" a distribution. The funds' own daily realized income records say otherwise, and they say it in a form anyone can read: chart the income a fund has accrued across a distribution period, and the line climbs, trading day after trading day, for weeks and months. It does not sit flat and then leap on the eve of the payment as many fund prospectuses falsely claim. The risk the prospectus confines to a handful of December days is present, and growing, on nearly every day of the year — and the fund's own data draws that picture without a word of argument.

No expert is required to see that a line rising for months was not created the night before it is paid out. And that line is not a matter of opinion — it is the fund's own accrual data, which the fund keeps and does not publish. The chart is the whole case. The funds hold the pen. But concealment ends where

[4] Petitioner’s analysis of the rulemaking petitions posted to the Commission’s public petitions docket, 2018–2026. The underlying tabulation is available to the Commission and to Congress on request.

discovery begins. What a fund withholds from a prospectus, it must produce to a court. And the accrual data is not the only thing waiting in those files. More than three thousand messages to fund and financial services industry executives — setting out the mechanism, proposing the correction, asking that it be made — sit dated in the recipients' own archives. So do the formal compliance notices delivered to 15,266 chief compliance officers. A defendant compelled to produce both is producing the falsity and the proof it was known, in the same box. That is why the chart will be drawn, complex by complex, plaintiff by plaintiff, until the disclosures are corrected or a court corrects them.

There is a further consequence, and the Commission should see it clearly, because it cannot be unseen once noticed. The Petition was filed for a single, stated purpose: to put in front of investors the truth they need to protect themselves. That is what a petition on a public docket now does — but not only for the investors it was meant to warn. A rulemaking petition that has sat unanswered and unrebutted for the length of time this one has is no longer only a request. In the hands of a plaintiff, it is an exhibit. It fixes, with a government date stamp, what the industry was told and when. And the Commission's silence on investor harm — which in six years has disputed none of it — is available to be read not as neutrality, but as the regulator's own tacit assent that the harm is real. The Commission need not intend that reading for a court to adopt it. Every unanswered month, the Commission's own docket becomes better evidence in cases the Commission is not party to and cannot control.

Weigh what that leaves for the Commission, and weigh it with care. Litigation does not wait for guidance. If the Commission stays silent, the adequacy of SEC-filed prospectuses will be decided by state and federal court judges and juries, complex by complex, without one word from the regulator those prospectuses were filed with. Silence no longer preserves the Commission's options. It surrenders the Commission's voice in the construction of its own disclosure regime, on the largest disclosure question before it — and leaves the Commission to be quoted against its own record rather than speaking to it. So the question still reserved to the Commission has now narrowed. It is whether 160 million investors hear the truth from their regulator before this year's distributions, or assemble it, fund by fund and year by year, from complaints, discovery, and verdicts — and whether the Commission speaks in that process, or is merely cited in it. Private litigation compensates some of the harmed, eventually. Only the Commission can protect all of them, now. That choice is still the Commission's. The filings have begun without it.

Institutional Memory

I raise one final point with care, because it is offered as institutional history and nothing else. The Commission has been here before, and within the professional memory of the people now asked to decide. Between 2000 and 2008, a private analyst delivered to the Commission, repeatedly and in mounting detail, a quantitative demonstration that a prominent firm's reported results were mathematically impossible. The submissions were credible, specific, and correct. The Commission's own Inspector General later documented how those detailed complaints produced examinations and investigations that failed — not for want of evidence, but because the evidence in hand was never carried to its conclusion. The harm ran to tens of billions of dollars, and to something the agency has spent the years since trying to rebuild: the public's confidence that when a credible, specific warning

reaches the Commission, the Commission acts on it. Congress's response was to build the whistleblower office in which my own submission was first filed, and where it has now sat, without action, for six years.

I do not offer this history as an accusation. I offer it because the pattern it teaches is exact, and because the Commission drew from it, in public and at length, the very lesson this docket now tests: that a detailed, quantitative, correct warning, received and set aside, becomes a catastrophe measured later in dollars and in trust.

That pattern is on the docket again. Only two things have changed, and both cut against waiting. The falsity this time did not have to be inferred from red flags and left for an examination to run down. It was established, before the Commission received it, by my original quantitative analysis of the realized-income data the funds compute internally and do not disclose. That analysis showed these disclosures are false as written, and the industry's own subsequent conduct has only confirmed it.

And the people who bear the harm this time are not a few thousand high-net-worth investors inside one fund. They are 160 million Americans — retirees, wage-earners, families measuring the cost of groceries and gasoline — taxed every year on the return of their own money, in amounts the funds compute to the penny and disclose to none of them. The last time this pattern ran its course, the cost was counted after the fact. This time the Commission has been told the number in advance, and told where the harm falls. The only question the Commission has ever needed to answer is whether it will act on what it has been told. That question is again on its docket. This time it carries a date, and this time the record of what the Commission knew, and when, is already written.

The Requested Actions, Summarized

For clarity, I summarize here the four actions this letter requests, and ask that each be completed by August 15, 2026. The first three are drawn from the Petition's expressly severable categories of relief and are ordered by the speed with which the Commission can act. The fourth is different in character, and its reason is stated below.

1. **Answer the sixteen questions.** Direct a Commission-level response to the sixteen interpretive questions in Section IV of the Petition — adopting, refining, or rebutting the proposed answers at Exhibit A, and identifying, as to any answer disputed, the specific premise in dispute.

2. **Issue the investor alert.** Issue the interim investor alert at Exhibit B, or an improved version of the Commission's own drafting, before the 2026 distribution season.

3. **Decide the Petition.** Decide the Petition's rulemaking request — grant, denial, or deferral — stating, in the case of denial, the grounds, as 5 U.S.C. § 555(b) and (e) require.

4. **Send the Petition to Congress.** Transmit the Petition, together with this letter, to the Senate Committee on Banking, Housing, and Urban Affairs; the Senate Committee on Finance; the House Committee on Financial Services; and the House Committee on Ways and Means.

The first two requests require no rulemaking and can be completed in days. And consistent with Section XIV of the Petition, the requests are severable. No response to the third — including a decision to take more time with it — can serve as a reason to withhold the first two. No response to any of them can serve as a reason to withhold the fourth.

The fourth request stands apart because this record has outgrown the Commission's jurisdiction. The systematic misreporting of returned capital as taxable income on Forms 1099-DIV is not only a disclosure failure. It is an abuse of the federal tax system, repeated every filing season, and it reaches the integrity of the Treasury itself — a matter that belongs before Congress as well as before the Commission.

The four committees named above hold jurisdiction over the agency and over the tax system its silence affects. I have already asked the Commission's Office of Inspector General to report this matter under the seven-day-letter provision, 5 U.S.C. § 405(e), which upon such a report would require the Chairman to transmit it to Congress within seven days. To my knowledge, no report and no transmittal has occurred. Congress will receive this record in any event — the Petition, this letter, and the correspondence beneath them are being provided to the four committees directly. The only question your transmittal decides is whether Congress receives this record from the Commission, or about it.

Where This Now Stands

After six years, candor is owed in both directions. This is mine.

The requests in this letter are made in good faith, on the Commission's own terms: through its whistleblower program, its staff and its Commissioners, a rulemaking petition, and now this letter. They ask for nothing but the truth the Commission already holds. That door is real, and it is still open — answer the questions, issue the alert, decide the Petition, and nothing that follows is necessary.

But a seventh year of waiting is not on offer.

For over six years, 160 million Americans have been unjustly taxed on the return of their own money, as if it were gain, by an industry that admits the harm and declines to end it. The industry has been candid about why. An executive of the market's central clearing utility explained the position to me in substance: this is not an issue for his company, because if the Commission is not talking about it, the Commission must not think it is a problem — and if it is not a problem for the Commission, it is not a problem for them. Notice the securities laws did not figure into his calculus.

Mark what that concedes. The institutions holding Americans' savings do not ask whether a practice harms their investors. They ask whether the regulator has publicly said so. Their fiduciary duty, as they practice it, is not proactive; it waits on the Commission's voice.

The old maxim holds that silence gives consent, and the industry has applied it to the letter: over six years of the Commission's silence, priced as six years of permission — and an estimated half a trillion dollars in investor losses. That is what the Commission's silence is purchasing, every quiet month.

For six years, I have met the Commission's process with patience and cooperation. I will no longer meet its silence with my own. Every lawful avenue is now in motion, and none of them waits on August 15: two federal courts, the Congress that oversees this agency, and the public record this letter joins. So the question before the Commission is no longer whether investors will learn the truth. They will. The only choice the Commission has left is its role in the telling.

This letter is filed as a comment to Petition File No. 4-891, so that it enters the record where the Petition sits. That record is nearly complete. It holds the industry's admissions, the funds' deletions, the Commission's declinations, and six years of its silence. The one line still missing is the Commission's answer — and the record will be read, in two federal courts and before Congress, with that line written or with it blank. It has been over six years. This letter is the last one that asks. Until August 15, how the truth reaches investors is still the Commission's choice. After that, the truth stops waiting.

Should you or your staff wish to meet, in person or by video, that door too remains open, at the Commission's convenience.

Semper Fidelis,

/s/ Jeremy Roseberry
Jeremy Roseberry
Petitioner, SEC File No. 4-891

Enclosures:

- Exhibit A — Proposed Answers to the Sixteen Interpretive Questions

(Petition § IV)

- Exhibit B — Model Investor Alert, in a form suitable for issuance

by the Office of Investor Education and Advocacy

cc:

- The Honorable Hester M. Peirce, Commissioner
- The Honorable Mark T. Uyeda, Commissioner
- Professor George S. Georgiev, Chair, Investor Advisory Committee
- Vanessa A. Countryman, Secretary
- David Woodcock, Director, Division of Enforcement
- Office of Inspector General, U.S. Securities and Exchange Commission
- U.S. Senate Committee on Banking, Housing, and Urban Affairs
- U.S. Senate Committee on Finance
- U.S. House Committee on Financial Services
- U.S. House Committee on Ways and Means

EXHIBIT A

Proposed Answers to the Sixteen Interpretive Questions (Petition § IV)

The questions below are reproduced verbatim from Section IV of the Petition. The answers are short and fact-based; they reflect standard registered-fund accounting and settled law. They are offered not to relieve the Commission of its duty to make them authoritative, but to demonstrate that the duty is ministerial: the answers are determinate, the industry computes the underlying figures daily, and only the Commission's silence keeps them from investors. The Commission is free to adopt, refine, or rebut them on the docket — but if it disputes any answer, Section IV asks that it identify the specific premise in dispute (mechanical operation, economic consequence, materiality standard, or legal principle) and the basis for the dispute.

Question 1. Under standard fund accounting and pricing practices, is it correct that realized income (ordinary dividends, short-term capital gains, long-term capital gains) is: (a) Recognized and accrued into NAV at the time the fund earns or realizes it — when a portfolio holding goes ex-dividend, earns/receives interest from an underlying holding, or when a gain is realized through sale of a security; (b) Embedded in NAV continuously on each subsequent trading day from the date of recognition until the date of distribution to shareholders or until gains are offset; and (c) Not something that suddenly appears in NAV only on days immediately "shortly before" or "just prior to" a distribution record date?

> **Answer.** Yes to (a), (b), and (c). Realized income is recognized and accrued into NAV when the fund earns or realizes it and remains embedded in NAV continuously until it is distributed or offset. It does not first appear "shortly before" a distribution. This is ordinary daily NAV accounting.

Question 2. If "Yes" to Question 1, is it correct that any purchaser who buys fund shares on any trading day after the fund has recognized and accrued realized income into NAV, but before that income has been distributed or gains offset, necessarily pays a purchase price (the NAV) that includes that accrued-but-undistributed realized income?

> **Answer.** Yes. A purchaser who buys after income has accrued into NAV but before it is distributed necessarily pays a price (the NAV) that includes that accrued-but-undistributed income. There is no other possibility.

Question 3. If "Yes" to Questions 1-2, is it correct that when a purchaser buys one share for $100 — where the fund has a pending $3.00 distribution fully baked into that $100 NAV at the time of purchase — and subsequently receives that $3.00 distribution, the following economic sequence occurs: (a) The fund returns to the purchaser, in cash or reinvested shares, the same Embedded Realized Income Amount the purchaser paid for as part of the purchase price; (b) The fund's NAV declines by approximately the per-share distribution amount, reducing the value of the purchaser's shares by the same amount received; (c) Assuming no market movement, the purchaser's total economic position — cash received plus current share value — equals the purchaser's initial investment (before considering unrelated portfolio performance); and therefore (d) The purchaser has received back, as a

"distribution," the same dollars the purchaser paid as part of the purchase price, experiencing no net increase in wealth from the Embedded Realized Income Amount?

> **Answer.** Yes. The investor pays $100, receives $3.00 back, and holds shares worth $97.00. Cash plus shares equals the original $100. The "distribution" returns the investor's own purchase dollars and produces no gain. This is arithmetic, not opinion.

Question 4. If "Yes" to Question 3, and assuming a taxable purchaser holds through the relevant distribution dates and reports the distribution on a current-year tax return, is it correct that federal income taxation imposed on the Embedded Realized Income Amount returned to the investor produces a non-market, out-of-pocket cash loss to the purchaser — because tax is assessed on recovery of the purchaser's own invested capital rather than on any actual increase in the purchaser's wealth?

> **Answer.** Yes. The tax falls on the recovery of the investor's own capital, not on any increase in wealth, producing a certain, calculable, non-market cash loss. Income requires an accession to wealth, *Commissioner v. Glenshaw Glass Co.*, 348 U.S. 426, 431 (1955); Question 3 establishes there is none.

Question 5. If "Yes" to Questions 1-4, is it correct that registered funds, as part of their ordinary daily NAV calculation and distribution accounting processes, know on each trading day the per-share Embedded Realized Income Amounts — by income character: ordinary dividends, short-term capital gains, and long-term capital gains — that have accrued into NAV and remain undistributed?

> **Answer.** Yes. Funds compute these per-share amounts every trading day, by income character, as part of ordinary NAV and distribution accounting. The number exists at the moment of every purchase. What is missing is not the data — it is the disclosure.

Question 6. If "Yes" to Questions 1-5, does the investor risk commonly described as "buying a dividend" exist on every trading day when Embedded Realized Income persists in NAV — meaning continuously from the date realized income is recognized until the date it is distributed or offset, which can span days, weeks, or months — rather than being confined to days immediately "shortly before" or "just prior to" a distribution record date?

> **Answer.** Yes. The "buying a dividend" risk exists on every trading day that embedded realized income persists in NAV — continuously, for days, weeks, or months — not only "shortly before" or "just prior to" a distribution.

Question 7. If "Yes" to Question 6, is the prospectus language stating or implying that "buying a dividend" risk exists only "shortly before" or "just prior to" distributions factually inaccurate as a description of when the risk exists and when purchasers will experience the economic harm?

> **Answer.** Yes. "Shortly before" does not describe a risk that exists continuously for weeks or months. The language is not imprecise; it is false as to when the risk exists and when the harm is incurred.

Question 8. BlackRock, the world's largest asset manager, states in its customer service materials that "buying a dividend" generates "an unnecessary tax bill" because "a portion of the investment is returned

to the investor as a taxable distribution." Similar acknowledgments appear in materials from other major fund complexes. Does the Commission agree that these statements accurately describe the economic consequences that occur when investors purchase shares containing Embedded Realized Income?

> **Answer.** Yes. The statements accurately describe the economics. The only alternative answer is that the world's largest asset manager publishes false statements to its own customers — a conclusion that itself compels Commission action. There is no third option.

Question 9. If "Yes" to Questions 4-8, does the Commission agree that the economic consequences established by the preceding answers — specifically, that a fund's NAV includes a quantifiable amount of Embedded Realized Income that diminishes the purchaser's purchasing power, that a taxable purchaser will incur a determinable non-market cash loss from taxation of the Embedded Realized Income Amount, that this risk exists continuously throughout the accrual period rather than only "shortly before" distributions, and that the fund knows these facts and can quantify the expected harm before the purchase occurs — constitute material information that a reasonable investor would consider important in deciding whether and when to purchase fund shares, under the standard articulated in *TSC Industries, Inc. v. Northway, Inc.*, 426 U.S. 438, 449 (1976)?

> **Answer.** Yes. A known, quantifiable, non-market cash loss — calculable by the fund before the trade — is information a reasonable investor would consider important in deciding whether and when to buy. Under *TSC Industries*, that is the definition of materiality. A "No" answer would contradict fifty years of settled law.

Question 10. If "Yes" to Questions 6-9, does the Commission agree that prospectus and sales literature language that describes "buying a dividend" risk as existing only "shortly before" or "just prior to" distributions — and that frames the risk as something that merely "may" occur — constitutes a materially misleading statement or omission under Investment Company Act § 34(b) and Securities Act Rule 156?

> **Answer.** Yes. The language misstates when the risk exists, omits its continuous nature and the determinable cash loss, falsely implies the risk can be avoided by buying earlier, and conceals that the fund can calculate the harm before trade execution. Any one of those defects is a materially misleading statement or omission under Investment Company Act § 34(b) and Securities Act Rule 156. All four are present.

Question 11. Does the Commission agree that a fund knows a portion of an investor's initial post-purchase distribution may not be income when the fund's own prospectus states that the distribution "may simply be a return of part of your investment"?

> **Answer.** Yes. The fund drafted the sentence, filed it with the Commission, and delivered it to investors. It cannot disclaim knowledge of its own words. That is scienter.

Question 12 (The GAAP Defense). Does the Commission agree that compliance with Generally Accepted Accounting Principles in the preparation of fund financial statements does not excuse materially misleading disclosures in prospectuses and sales literature — meaning that even if a fund's

financial reporting complies fully with GAAP, the fund still violates federal securities laws if its prospectus and sales materials omit material facts or contain statements that are misleading in light of the circumstances?

> **Answer.** Yes. GAAP governs how income is classified on financial statements; the securities laws govern what must be disclosed to investors before they commit capital. Every court to consider the question has so held. *SEC v. Lucent Techs.*; *In re Enron*; *SEC v. Stanard*; *In re NVIDIA*. The precedent is uniform; the defense is foreclosed.

Question 12-A (The "Everyone Does It" Defense). The industry advances two versions of this defense, both of which fail for the same reason. Does the Commission agree that: (a) **The Disclosure Version.** Industry-wide adoption of misleading disclosure language does not transform that language into adequate disclosure — meaning that if prospectus language stating "buying a dividend" risk exists only "shortly before" distributions is materially misleading, it remains materially misleading regardless of how many registrants have filed substantially similar language? (b) **The Accounting Version.** Industry-wide adoption of the practice of booking realized income to NAV does not excuse failure to disclose the consequences of that practice — meaning that even if every registered fund accounts for realized income in the same GAAP-compliant manner, each fund independently violates the securities laws if its prospectus fails to adequately disclose the consequences of that accounting to purchasers?

> **Answer.** Yes to both (a) and (b). Repetition does not make a misleading statement accurate, and universal adoption of an accounting practice does not excuse the failure to disclose its consequences; each fund violates the law independently. A thousand misleading prospectuses are not a defense. They are a thousand violations.

Question 13. Does the Commission agree that registered funds already calculate the Embedded Realized Income Amounts daily as part of ordinary NAV computation, and already publish NAV daily to investors through existing reporting infrastructure?

> **Answer.** Yes. Funds calculate the amounts daily and publish NAV daily through the same infrastructure. Corrective disclosure is one additional data element in a transmission that already occurs. There is no cost defense, which is why the industry has never submitted one.

Question 14. Does the Commission agree that the bond market's established practice of distinguishing between "clean" prices (excluding accrued interest) and "dirty" prices (including accrued interest) — which exists precisely to prevent purchasers from paying for income earned by the seller — reflects the same economic principle at issue in this Petition, and that there is no principled basis for providing this transparency to bond investors while denying it to mutual fund investors who face the identical economic harm?

> **Answer.** Yes. The bond market solved this exact problem decades ago: buyers see accrued interest before they pay for it, recover it at the next coupon, and are not taxed on the recovery. Fund purchasers face the identical economics and receive none of that transparency. No principled basis for the disparity exists, and none has ever been offered.

Question 15. If the Commission answers "Yes" to Questions 9-13 — meaning current disclosures are materially misleading, the omitted information would be important to a reasonable investor's decision whether and when to purchase, the funds possess this information contemporaneously, and the infrastructure to deliver it already exists — does the Commission agree that registered funds have an existing obligation under the federal securities laws to disclose the Embedded Realized Income Amounts to investors before trade execution?

> **Answer.** Yes. Material information, known to the fund at the moment of sale, deliverable through infrastructure that already exists, cannot lawfully be withheld from the purchaser. The duty exists now, under current law. Rulemaking would standardize its form and timing — the obligation is not waiting for a rule.

Question 16. Based on the Commission's answers to Questions 1-9, does the Commission agree that the economic effect described in the prospectuses of BlackRock, Vanguard, State Street, Fidelity, and other major fund complexes — that "buying a dividend" causes investors to incur an "unnecessary tax bill" because a portion of the investor's purchase is effectively returned as a taxable distribution — is an accurate description of what happens to taxable purchasers in the ordinary course? (a) **If "Yes"** — meaning SEC-filed prospectuses accurately describe that investors are taxed on amounts representing return of their own capital — does the Commission agree that referral of this record to Treasury and the IRS is warranted for evaluation of whether information-return filing practices that report the Embedded Realized Income Amount as taxable dividends are consistent with Internal Revenue Code provisions governing information-return accuracy, including 26 U.S.C. §§ 6721-6722? (b) **If "No"** — meaning the prospectus descriptions are not accurate — does the Commission agree that such inaccurate prospectus statements constitute materially false or misleading statements under Investment Company Act § 34(b) and Securities Act Rule 156, requiring immediate corrective disclosure?

> **Answer.** Yes as to (a). The prospectuses accurately describe what happens: amounts representing a return of the purchaser's capital are reported to the IRS as taxable income. That warrants referral to Treasury and the IRS under 26 U.S.C. §§ 6721-6722. Sub-(b) applies only if the descriptions are inaccurate — in which case the prospectuses are themselves materially false under § 34(b) and Rule 156. One of the two must be true. The Commission cannot answer both "No."
>
> **The only conclusion these answers permit.** Each question admits of one honest answer, and each answer follows inexorably from the one before it. Together they compel a single result: **any prospectus or sales-literature disclosure stating or implying that "buying a dividend" risk arises only "shortly before" or "just prior to" a distribution — or that it merely "may" occur — is materially false and misleading under Investment Company Act § 34(b) and Securities Act Rule 156.** The risk is continuous, not momentary; the funds know it and quantify it daily; the resulting harm is certain and calculable; and the disclosure tells investors the opposite. That is the definition of a material misstatement — and it is filed, today, in the prospectuses on which 160 million Americans rely.

EXHIBIT B

Model Investor Alert

The following is a model Investor Alert, drafted in the form and voice of alerts issued by the Commission's Office of Investor Education and Advocacy, so that the interim protective step requested in this letter — warning investors before this year's distribution season — requires no drafting, only a decision. Every factual statement in it is established by the record of the Petition and by the answers at Exhibit A. The Commission is free to adopt, adapt, or improve it.

INVESTOR ALERT

"Buying a Dividend" — A Fund Distribution Can Return Your Own Money and Leave You With the Tax Bill

The SEC's Office of Investor Education and Advocacy is issuing this Investor Alert to help investors understand a risk known as "buying a dividend," which can result in investors owing tax on distributions that do not increase their wealth. This risk is greatest for purchases made in a taxable account in the weeks and months before a fund pays a distribution — including the final months of the calendar year, when many mutual funds and ETFs pay their largest distributions.

Understanding the risk

Mutual funds and ETFs regularly earn dividends and interest from their holdings and realize gains when they sell securities. Under standard fund accounting, that income becomes part of the fund's share price — its net asset value, or NAV — from the day it is earned or realized, and it stays in the share price until the fund pays it out to shareholders as a distribution.

If you buy shares while that income is part of the price, you are paying for income the fund earned before you invested. When the fund later pays its distribution, part of what you receive is simply that money coming back to you — and the fund's share price drops by roughly the amount of the distribution. Your overall wealth has not increased. But if you hold the fund in a taxable account, the distribution may be reported to you, and taxed, as income.

> **Example:** You buy one fund share for $100 at a time when $3.00 of income and realized gains the fund has already earned is included in that price. The fund then pays a $3.00 per-share distribution. You receive $3.00, and the share price falls to approximately $97.00. You have $100 of total value — exactly what you started with — but you may owe tax on the $3.00 "distribution" of your own purchase price, creating a non-market related tax loss.

What many investors do not realize

The "buying a dividend" risk does not exist only in the days immediately before a distribution. Because income becomes part of the share price when it is earned — and can remain there for days, weeks, or months before it is paid out — the risk can be present on almost any trading day, and it generally grows

as a distribution date approaches. Investors should not assume that avoiding purchases in the final days before a distribution eliminates this risk.

Funds calculate the income and realized gains embedded in their share prices every day as part of computing NAV. This information exists at the time of your purchase.

What you can do before you invest

Before buying shares of a mutual fund or ETF in a taxable account — particularly in the second half of the year — consider taking these steps:

– **Check the fund's distribution schedule and call the funds portfolio manager.** Fund websites typically

publish the dates of upcoming distributions, and many publish distribution estimates in the fall.

– **Ask how much undistributed income and realized gain is currently**

included in the fund's share price, per share, broken out by type — ordinary dividends, short-term capital gains, and long-term capital gains. Funds calculate these amounts daily.

– **Ask what the next distribution is expected to be**, when it will

be paid, and how it is expected to be taxed.

– **Ask whether part of your first distribution will effectively**

return the money you just invested — and whether you would be better off waiting until after the distribution's ex-date to buy.

– **Get the answers in writing**, and consider consulting a qualified

tax professional about the timing of fund purchases, particularly late in the year.

Questions to ask your investment professional

If a broker-dealer recommends a fund purchase to you, Regulation Best Interest requires the recommendation to be in your best interest, taking into account, among other things, its costs and tax consequences to you. If an investment adviser recommends a fund, the adviser owes you a fiduciary duty.

Ask any professional recommending a fund purchase in a taxable account:

– Did you determine how much undistributed income and realized gain is

built into this fund's price right now?

– Will part of my next distribution be taxable to me even though it

returns money I just invested?

– Why is buying before the upcoming distribution, rather than after

it, in my best interest?

An investment professional who recommends purchasing a fund before a large, known distribution — without addressing these questions — may not be meeting the applicable standard of conduct.

The bottom line

A fund distribution is not always new wealth. If income was already built into the price you paid, part of your distribution is your own money coming back — and in a taxable account, you may owe tax on it. Ask before you buy, get the answers in writing, and pay particular attention to purchases made in the months before a fund's scheduled distributions.

Report a problem or ask a question at Investor.gov, or call the SEC's investor assistance line at (800) 732-0330. Receive Investor Alerts and Bulletins from OIEA by email or RSS feed.

This Investor Alert represents the views of the staff of the Office of Investor Education and Advocacy. It is not a rule, regulation, or statement of the Securities and Exchange Commission ("Commission"). The Commission has neither approved nor disapproved its content. This Alert, like all staff guidance, has no legal force or effect: it does not alter or amend applicable law, and it creates no new or additional obligations for any person.

EXHIBIT B

Petition for Rulemaking, File No. 4-891

> The Petition for Rulemaking follows this page in its original, unaltered form, together with its supporting Declaration under 28 U.S.C. § 1746. The Petition was filed with the Commission on March 19, 2026 and is posted to the Commission's public docket as File No. 4-891.

The official docketed copy is available at:

https://www.sec.gov/files/rules/petitions/2026/petn4-891.pdf

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BEFORE THE

SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, D.C.

PETITION FOR RULEMAKING REGARDING MATERIALLY MISLEADING INVESTMENT FUND DISCLOSURES AND SYSTEMATIC FALSE FORM 1099-DIV REPORTING

FILED UNDER: Administrative Procedure Act § 553(e)
SEC Rule of Practice 192 (17 C.F.R. § 201.192)

FILED WITH: The Secretary
U.S. Securities and Exchange Commission
100 F Street NE, Washington, DC 20549

PETITIONER: Jeremy Thomas Roseberry

DATE: 3.19.2026

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I. INTRODUCTION

A. The Fraud

Every year, the American fund industry files hundreds of millions of tax returns it knows to be false.

The returns are transmitted via United States mail to investors and via electronic wire to the Internal Revenue Service. The institutions that file them admit, in their own SEC-filed prospectuses, that the reported amounts are wrong. They have known for nearly eight years that a technological correction exists, and they have coordinated to suppress it — because the false reporting is the necessary instrument of a pricing methodology that inflates fund values, generates billions in excess advisory fees, and extracts over $100 billion per year from 160 million Americans whose retirement savings are held in trust by the very institutions defrauding them. The industry's own executives have explained why the scheme persists: "Our investors don't know it is happening."

This Petition places the entire evidentiary record on a permanent federal docket — available to every prosecutor, every class action attorney, every state attorney general, every pension fund trustee, and every journalist in America. The private remedies are exhausted. The public reckoning has begun. The only question remaining is whether the Commission leads the correction — or whether private litigants, state enforcers, and federal courts arrive first.

This harm is not speculative. It is not a theory. It is not a matter upon which reasonable minds may differ. In nearly eight years of direct engagement with the largest financial institutions in the world, with three SEC Commissioners, with dozens of Commission staff across multiple divisions, and with the Internal Revenue Service — not one person has denied the existence of this harm. Not one has challenged the mathematics. Not one has offered a legal justification for its continuation. The industry admits it. The SEC knows it. The IRS knows it. The DOJ knows it. Yet the harm continues. And with each tax cycle that closes, more of it becomes permanently irrecoverable — not because the evidence was insufficient, but because the applicable limitations periods expired before corrective action was taken.

The admissions are buried — but they exist, and they are fatal to every defense the industry will raise. In fine print in SEC-filed prospectuses, the largest financial institutions in the world

acknowledge what this Petition alleges: that initial distributions to purchasing investors include amounts that are, in economic substance, return of their capital — not income — and that taxing those amounts generates what BlackRock calls "an unnecessary tax bill." That is a binding admission against interest. It concedes the central premise of this Petition: that the Forms 1099-DIV these same institutions file with the Internal Revenue Service overstate the taxable income of 160 million Americans. And then, knowing this, they file the forms anyway — reporting every dollar as fully taxable ordinary dividend income.

Both statements cannot be true. If the distributions include return of capital, as every major fund complex has stated in documents filed with federal regulators, then the Forms 1099-DIV are false — hundreds of millions of false federal information returns, transmitted via United States mail to investors and via electronic wire to the Internal Revenue Service, filed with knowledge of their falsity, and sustained for decades because correcting them would end the inflated-NAV pricing from which the enterprise derives its excess fee revenue. If the Forms 1099-DIV are accurate, then the published admissions are false statements in documents filed with the Commission — material misrepresentations to a federal regulator on a scale without precedent. The industry must choose which of its own statements to repudiate. It cannot escape this contradiction. It can only select which liability to face.

When a filer publishes that a payment is not income and then files a federal information return reporting it as income — knowing the return is false, filing it anyway, across hundreds of millions of forms, year after year — the Internal Revenue Code has a name for that conduct: intentional disregard. Treasury regulations define the standard with precision: a failure is due to intentional disregard when required information is withheld "voluntarily" rather than "accidentally or unconsciously." That definition does not require inference here. The industry's own admissions satisfy it. And intentional disregard carries a consequence Congress designed to be severe — uncapped penalties of 10% of all amounts required to be reported correctly, under both IRC § 6721 and § 6722, independently, cumulatively, for every false return filed and every false statement furnished. The industry's exposure is not measured in millions. It is measured in tens of billions — accruing now, for every year the forms remain uncorrected.

B. The Mechanism

The prospectus disclosures are no different — admission and concealment in the same breath. Prospectuses acknowledge the risk of "buying a dividend" and then immediately mischaracterize it, describing the risk as arising "shortly before" or "just prior to" a distribution — as though it were a narrow timing window prudent investors can sidestep. That characterization is materially false. The risk is structural — embedded in every fund's net asset value on every trading day, calculable to the penny, unavoidable without data the industry refuses to provide. The funds intentionally withhold the single data point that would allow investors to quantify their exposure: the per-share amount of embedded realized income that inflates the fund's net asset value ("NAV"), which will generate an unnecessary tax bill upon distribution. That timing mischaracterization is only the most visible of twenty-three material misstatements and omissions this Petition identifies in Section V.

Every fund calculates its realized income — the accumulated dividends and capital gains embedded in its share price — daily, for its own accounting purposes. It does not share that figure with investors. This is by design. Disclosing to investors that they are overpaying for fund shares and will be taxed on income they never earned is not a viable marketing strategy — so the industry buries the admission in language no investor understands or can act on, omits the data every investor would need, and continues collecting fees on the inflated NAV. This Petition seeks to end that asymmetry by compelling disclosure of the data the industry already possesses, so that 160 million Americans can see what they are losing before they lose it.

"Buying a dividend" is the name the industry gave to a risk it manufactured, profits from, and refuses to correct. Investment funds systematically overstate their share prices by accounting for 'payable distributions' — money the fund already owes and is obligated to distribute — as 'assets' in the net asset value, inflating the price investors see, the fees the industry charges, and the taxes the government collects.

Under Subchapter M of the Internal Revenue Code, a regulated investment company must distribute substantially all of its realized income to shareholders each year to maintain its pass-through tax status — these are not discretionary payments but legal obligations, enforceable conditions of the fund's existence. Under Generally Accepted Accounting Principles, a liability exists when an entity has an obligation to transfer assets arising from past events, and the amount can be reliably estimated. Pending fund distributions satisfy every element of that definition: the

obligation is mandated by federal statute, the triggering event — realization of income — has already occurred, the amount is calculated to the penny every business day, and the fund knows exactly when the payment will be made. By any rational measure, these are liabilities.

Yet the industry does not account for them as liabilities. It accounts for them as assets — embedding the largest obligation the fund owes into the price every new investor pays. The result is a net asset value that is, by definition, overstated: inflated by the precise amount the fund is legally required to pay out and has no right to retain.

And the concealment begins with the price itself. Every prospectus in America publishes the same formula: total assets minus total liabilities, divided by shares outstanding. Investors read that formula and reasonably conclude that the price reflects a complete accounting — that every obligation the fund owes has been subtracted before the number reaches them. It has not. The fund's largest known obligation — the realized income it must distribute under federal law — is not subtracted as a liability. It is embedded in the "assets" figure as though it were portfolio the investor will retain. The formula that purports to show investors what they are buying is the first thing that misleads them.

The overvaluation reveals itself the moment a distribution is paid: the fund's net asset value drops by exactly the amount distributed — a decline that has nothing to do with the performance of any security the fund owns, and everything to do with the fact that the price included a liability — money the fund already owed and was obligated to distribute.

What this means for the investor is simple: after purchasing fund shares, her first distributions — dividends, short-term capital gains, long-term capital gains — simply return a portion of the money she just invested. She puts money in. The fund sends some of it back. Receiving your own money back is a return of capital, and because nothing was earned, it is not taxable. The Internal Revenue Code says so. The Supreme Court has said so for ninety years. The industry itself says so in its own published materials.

But the investor will receive a Form 1099-DIV reporting it as income, and she will pay taxes on it.

Consider a single share. An investor pays $100. The fund has a pending $3.00 distribution baked into that price. Of her $100, only $97 will remain invested in the portfolio — the other $3.00 is earmarked for a distribution she is about to receive. When the fund pays it, the share price drops from $100 to $97, and the $3.00 she just invested comes back to her — labeled as a distribution.

She now holds a $97 share plus $3.00 in cash — exactly what she started with. $100. No income was earned.

This is a classic shell game. Money moves from the investor's pocket into the fund and back again. Wall Street knows it simply returned what she put in — it invented the term for this maneuver. But when her money comes back, it arrives disguised as income: a 1099-DIV in her mailbox, a tax bill from the IRS, and a liability for earnings that never existed.

C. The Fix They Killed

Beginning in 2018, Petitioner set out to fix this. He did not write a white paper. He did not convene a panel. He built the technology. He built a product to correct the overvalued NAV — eliminating both the inflated fees and the false tax forms simultaneously, because they are products of the same accounting distortion. He built a separate product to correct the overstated Forms 1099-DIV for any income-producing security. And when it became clear that no institution in America would correct either the pricing or the reporting, he built disclosure software — tools that would at minimum show investors what they were losing, so they could attempt to protect themselves. Three products. Three paths to compliance. Three chances for the industry to do the right thing. The technology was plug-and-play. It operated on data that every fund already maintains. Implementation required uploading existing files and configuring settings. The marginal cost of adoption approached zero. The barrier to protecting 160 million Americans was not technological. It was never technological.

The initial response confirmed it. At firm after firm, senior executives described the solution as "groundbreaking," "revolutionary," something that would "redefine financial markets." Tax directors engaged with the details. Fund accountants reviewed the mechanics. No one disputed the analysis. No one questioned the feasibility. No one denied the harm. One senior tax director at a major fund complex stated what everyone in the room already understood: "If you can get just one fund to do this, all other funds will be forced to fix this within 12 months."

One fund. One honest actor. That is all it would have taken. A single firm that chose to price its shares accurately, file truthful tax returns, and tell its investors the truth. Competitive pressure would have done the rest — investors would have migrated to the fund complex offering accurate pricing and honest disclosure, and every competitor would have been forced to follow or

explain to its own shareholders why it chose not to. In a functioning market, with fiduciaries legally bound to act in their clients' interests, rational firms would have raced to be first.

Yet, every firm ran the other way.

Not a single major fund complex adopted the technology. Not one agreed to pilot it on a test fund. Not one conducted a cost-benefit analysis. Not one brought it to a fund board — the independent directors who exist, by statute, to protect shareholders from exactly this kind of conflict. After initial enthusiasm was escalated to senior management — or after gatekeepers "checked with their clients" — every firm reversed course. The pattern was not varied. It was identical: engagement, recognition, enthusiasm, then silence.

Behind closed doors, the silence had a voice. One executive at a dominant industry player reviewed the analysis, did not dispute a word of it, and described the situation as "perfectly fine." Another explained that the industry does not consider this a problem — "because our investors don't know it is happening." A senior fund administrator — whose own transfer-agent system already contained the configuration setting needed to correct the NAV — explained why that switch would never be flipped: "Investment managers would never go for it. Investment managers bill on the inflated NAV."

Read those words again, because the Commission will be asked to act on them. "Perfectly fine" — while 160 million Americans are overtaxed on their own money. "Our investors don't know it is happening" — from a fiduciary, legally obligated to ensure that investors do know. "Investment managers bill on the inflated NAV" — a confession that the entire industry profits from the overvaluation and that no firm will end it because no firm wants to stop profiting from it. And when Petitioner offered a large registered investment adviser disclosure software that would reveal, before any trade was executed, exactly how much harm that trade would impose on the client — a three-second check, automated, requiring no manual calculation, built to give a fiduciary the one piece of information every fiduciary should demand before placing a client's money at risk — the firm declined. Not because the software didn't work. Not because the analysis was wrong. Because, in the firm's judgment, none of its advisors would spend even three seconds to learn whether a trade would harm the client they are legally obligated to protect. Three seconds. A fiduciary, sitting across the desk from a client who trusts him with her retirement, will not pause for three seconds to determine whether the transaction he is about to execute will cost her money she will never recover. He will execute the trade, collect his fee, and never tell her what he chose

not to learn — because learning it would obligate him to act on it, and acting on it would cost him revenue. These are not the Petitioner's allegations. These are the industry's own words, spoken by its own executives, in rooms where they believed no accountability would follow. They were wrong.

At one firm, the pattern was not merely identical — it was personal. Petitioner flew across state lines, rented a car, and drove to the headquarters of one of the largest fund complexes in the world — at personal expense, on personal time — to sit across a table from its executives and explain, with mathematical precision, how their investors were being harmed and how the harm could be eliminated. The executives did not dispute the problem. They did not challenge the mathematics. They did not question the feasibility of the fix. They agreed that the harm was real. Petitioner left that meeting believing he had found the honest actor the industry's own tax director said was all it would take.

He was wrong. When Petitioner attempted to contact senior executives to follow up — to set a path forward, to move from agreement to action — the firm's response came not from the executives eager to protect their investors, but from a corporate attorney. The message was not "let us investigate." It was not "we need time to consider this." It was: *cease further contacts.* A citizen flew a thousand miles, at his own expense, to tell a fiduciary that its clients were being harmed — and demonstrated how to stop the harm — and the fiduciary's answer, delivered through counsel, was: stop calling. The executives who agreed the problem was real were walled off. And the firm — managing trillions of dollars of American retirement savings — went back to collecting fees on the inflated NAV, filing the false forms, and telling its investors nothing.

The industry did not merely decline to correct the harm. It did not merely refuse three separate technological solutions. It coordinated to ensure that the one honest actor — the single defection that would have forced industry-wide correction within twelve months — never emerged. Instead of uniting to protect investors, the industry united against them. It suppressed the technology. It blocked the disclosure. It preserved the silence.

And the coordination was structural — the largest fund complexes hold controlling voting power in the very exchanges, transfer agents, and market utilities that could have forced correction, ensuring that no intermediary would act without the permission of the firms that profit from inaction. This was not negligence. This was not a difference of professional judgment. This was a coordinated enterprise acting to protect its revenue — competitors and gatekeepers organized

around a common purpose: maintaining the inflated-NAV pricing from which every participant profits. The technology suppression was the enterprise's enforcement mechanism. The false Forms 1099-DIV were its operational cost — imposed on 160 million taxpayers because the enterprise's fee revenue depends on a pricing methodology that mechanically produces false tax forms. The enterprise chose to impose that cost on others rather than surrender the revenue it generates.

These firms market themselves as putting "investors first." Behind closed doors, they decided that investors would be last — last to know, last to be told, last to be protected. And they made that decision because protecting investors would have cost them money.

D. The Gatekeepers Who Looked Away

Congress did not entrust investor protection to a single institution. It constructed a multi-layered architecture of oversight — redundant by design — so that if one gatekeeper failed, another would catch the violation. Petitioner tested every layer. Every layer failed. Not one gatekeeper, in nearly eight years, at any level of the architecture Congress built, chose to protect a single investor. The only person who tried to stop the harm is the person who filed this Petition.

What makes this record extraordinary is not merely the universality of the failure. It is the character of it. Over nearly eight years of engagement with some of the largest financial institutions in the world — firms controlling over $30 trillion in assets under management, the institutions that hold America's retirement savings, pension funds, 401(k) plans, and college savings accounts — Petitioner did not encounter a single expression of concern for the investors being harmed. Not one executive asked how many Americans were affected. Not one asked what happens to a retiree who pays taxes on income she never earned. Not one expressed discomfort with the gap between what their firms promise investors in marketing materials and what they do for investors in practice. The harm was discussed as one would discuss a rounding convention—clinically, dispassionately, as though the 160 million Americans on the other end of these false tax forms were not people but line items. These institutions hold themselves out as fiduciaries. When presented with proof that their clients were being systematically overtaxed, they expressed no concern for their clients. Their only concern was maintaining the status quo — and avoiding the liability the truth would create.

Petitioner presented the mathematics. They did not dispute it. He quantified the harm. They acknowledged it. He demonstrated the fix. They declined to implement it. He then carried the same

evidence, the same mathematics, and the same offer of a technological solution to every other institution Congress empowered to prevent exactly this kind of harm. What follows is the record of what each of those institutions chose to do with the truth.

The self-regulatory organizations — the exchanges, the clearing agencies, the frontline enforcers Congress created to police market integrity — were notified. One exchange escalated the technology to its executive committee. The executive committee declined to implement it — not in the interest of the investors the exchange exists to protect, but in the interest of the fund companies whose fee revenue the technology threatened. Then its executives quietly deleted every digital connection to Petitioner, the institutional equivalent of destroying the visitor's log. These are the organizations Congress entrusted with frontline investor protection. Their response to documented evidence of systematic harm was not an investigation. It was sanitization.

The Big Four accounting firms — the "public watchdogs" the Supreme Court has said owe "ultimate allegiance" to investors and "complete fidelity to the public trust" — were sent formal notification. Petitioner met personally with three of them. No inquiry followed. No disclosure deficiency was flagged. No auditor resigned. No Section 10A report was filed with this Commission, as the law requires when auditors discover illegal acts and the board fails to take remedial action. The firms whose entire professional purpose is to detect and report fraud chose, when confronted with documented evidence of one, to look the other way.

One Big Four accounting executive went further — not merely looking away, but providing the intellectual justification for the industry's refusal to act. The Supreme Court has held that independent auditors serve as "public watchdogs" whose "ultimate allegiance" is to the investing public and whose function demands "complete fidelity to the public trust." This partner's fidelity ran in the opposite direction. Presented with the mathematics of investor harm — harm he did not dispute, derived from data he did not challenge — this partner offered a justification that captures the moral collapse of the entire gatekeeping architecture: "Investors should just 'accept' these losses because investment funds offer convenience." A public watchdog, charged by the Supreme Court with ultimate allegiance to investors, told Petitioner that the investors should accept being overtaxed on their own money as the cost of doing business.

The losses Petitioner documented — taxes on income that was never earned, fees on values that are deliberately inflated — reframed as a service charge. The price of admission. As though

160 million Americans had consented to be overtaxed in exchange for the privilege of participating in the fund industry. They did not consent. They were not asked. They were not told.

And when Petitioner informed the room that he had met with the Securities and Exchange Commission and that, in his assessment, the Commission was taking the matter seriously, a senior executive laughed out loud. That is the sound of an industry that has been protected from consequences for so long that it cannot imagine consequences arriving. It is the sound of a system so confident in its own impunity that the mere suggestion of regulatory accountability is a punchline. The "convenience" the industry offers investors is the convenience of not knowing what is being done with your money — which is not convenience at all, but the condition on which the entire scheme depends. And the laughter will echo differently when this Petition is read into the public record.

Some of the most prominent securities law firms in America — firms that draft these prospectuses and advise fund complexes on disclosure obligations — were sent formal notifications. Petitioner met personally with several. Not one advised its clients to correct the disclosures. Not one reported the violations to this Commission. Several continued drafting the very prospectuses this Petition identifies as materially false — after receiving written notice of the falsity. Those firms are no longer counsel. They are fact witnesses. And they face disqualification from representing the clients they helped mislead, because an attorney cannot simultaneously defend conduct and testify about her own participation in it.

Fund administrators and transfer agents — the firms that calculate NAV, process distributions, and generate the very tax forms this Petition proves are false — were notified. But one firm's response stands apart — not for what it denied, but for what it admitted and then refused to act on. A dominant market utility reviewed Petitioner's analysis and technology independently. Its executives did not dismiss the concerns. They did not claim the technology was unworkable. They acknowledged, in writing, that "the problem is real" and that the industry has "simply ignored it." This firm could have ended this. A single decision to support the corrective technology would have carried it across the industry overnight — because when the infrastructure provider that generates the tax forms decides those forms should be accurate, the forms become accurate. Instead, the firm declined to implement the technology, declined to support it, declined to distribute it, and continued generating false Forms 1099-DIV for tens of millions of Americans. An executive offered an explanation more revealing than any legal brief: "industry perception can kill

reputations." A firm with the reach to correct the reporting for virtually every fund in America understood that doing so would antagonize the fund complexes whose business sustains it. It weighed investor protection against client relationships, and investors never had a chance.

Then Petitioner tested the last line of defense: the 15,266 chief compliance officers registered in the SEC's Investment Adviser Registration Depository — every CCO in America whose sole professional function is to ensure that securities firms comply with the law. Petitioner sent formal compliance notices to the contact information each officer had filed on SEC Form ADV — the address each had certified, under penalty of law, as the proper channel for receiving compliance communications. The notice identified the specific violation. It quantified the harm. It offered a path to remediation. It was structured to legally require a response.

Not one responded. Not one scheduled a meeting. Not one requested additional information. Not one initiated an investigation. Not one forwarded the notice to a fund board, as Rule 38a-1 requires for material compliance matters. So many ‘compliance’ officers marked the formal compliance notice as junk mail that the email platform suspended Petitioner's account for triggering spam filters. The compliance officers of the American financial industry — the fifteen thousand professionals whose entire reason for existence is to prevent exactly this — classified a formally written fraud warning as spam. Some went further still, flagging it as "inappropriate content" — a filtering category designed for pornography and other explicit material. A documented notice that 160 million Americans are being illegally overtaxed on their own money, classified alongside ‘explicit content’ and blocked from reaching a single person within the organization. In the judgment of the American fund industry's compliance apparatus, a warning that their clients are being defrauded is more offensive than pornography.

This is not a compliance failure. This is the compliance architecture performing exactly as the industry designed it to perform — not as a system for detecting and preventing fraud, but as a system for ensuring that fraud, once reported, never reaches anyone with the authority or the inclination to stop it. The architecture is a cartel's immune system. It was engineered not to protect investors but to protect the institutions that profit from investor ignorance — to ensure that no firm breaks ranks, no gatekeeper defects, no compliance officer escalates, and no regulator receives information that would compel action.

The nation learned this lesson at a cost of $18 billion and the shattered lives of 37,000 investors across 136 countries. The Madoff fraud — which Congress called the worst regulatory

failure in the Commission's history — involved one man, one fund, and approximately $700 million to $1 billion in actual losses per year sustained over two decades. Harry Markopolos, the whistleblower who alerted the SEC to the fraud on multiple occasions, was asked on national television why executives at the biggest investment houses on Wall Street who knew something was wrong did not go to the SEC. His answer: "Because people in glass houses don't throw stones. And self-regulation on Wall Street doesn't work."[1]

Congress responded with oversight hearings and structural reform. After examining how documented warnings had gone unaddressed for a decade, Congress mandated creation of the SEC Whistleblower Program — designed to ensure that the next time a citizen brought the Commission evidence of fraud, the Commission would act on it promptly. It was the single institutional reform to emerge from the worst regulatory failure in the Commission's history — a promise, backed by a new institution, that it would never happen again. The Commission staked its credibility on the premise that the program would work.

The architect and founding Chief of that program was Sean X. McKessy. He designed it. He built it. He ran it. He knows precisely how it is supposed to function — what evidence it requires, what channels it uses, what obligations it triggers.

In June 2020, Sean McKessy, now in private practice, filed Petitioner's whistleblower tip with the Commission — through the program he created, in the format he designed, supported by the kind of evidentiary record the program was built to receive. The designer of the post-Madoff reform hand-delivered the evidence, through his own system, to the institution that promised Congress it would never ignore documented fraud again.

Nearly six years later, the Commission has not acted on it. Not one member of the Enforcement Division has contacted Petitioner. Not one subpoena has been issued. Not one document demand has been served. Three Commissioners were personally briefed — this was not a written warning lost in the bureaucracy, the way Markopolos's letters were. The evidence reached the highest level of the institution. And the highest level of the institution did nothing.

Consider what this means. The single institutional reform Congress demanded after Madoff — the one mechanism built specifically so that documented fraud reported by a credible whistleblower would not be ignored — was put to its most important test by the man who built it.

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[1] *The Man Who Figured Out Madoff's Scheme*, CBS News (60 Minutes), Feb. 27, 2009, https://www.cbsnews.com/news/the-man-who-figured-out-madoffs-scheme-27-02-2009/.

And it failed. Not because the tip was deficient. Not because the evidence was ambiguous. Not because the program lacked the capacity to process it. It failed because the institution on the receiving end has not acted on it — a sequence that parallels the Commission's documented handling of the Markopolos submissions, the pattern the Whistleblower Program was specifically designed to prevent.

Except this time, the comparison is not close. Madoff was $18 billion over two decades — roughly $1 billion per year, one fund, one man, 37,000 victims. The fraud documented in this Petition exceeds $100 billion *every year*. Not one fund — every fund. Not one man — every major financial institution in the US. Not 37,000 victims — 160 million Americans. Madoff harmed thousands of investors, many of them wealthy, across 136 countries. This harms every American with a fund investment — the teacher, the firefighter, the first-generation saver putting away $50 a paycheck.

Madoff's victims have recovered 94% of their principal. The victims here have recovered nothing — because no one has told them they are victims. The system that failed to catch a single con man running a single fund has now failed to act on an industry-wide fraud that is, by every measure — annual harm, number of victims, duration, institutional involvement — one hundred times larger. And it was not reported by an outsider whose warnings could be dismissed as eccentric. It was reported by the man the Commission itself chose to build the program — the man whose professional judgment the Commission trusted to design the architecture of whistleblower protection for the entire American securities market.

If *his* tip, filed through *his* program, supported by this evidence, does not produce action, then the program has not fulfilled the purpose for which Congress created it, and the promise the Commission made after Madoff remains unfulfilled.

The glass houses still stand. Self-regulation still does not work. And the only thing that has changed since 2009 is the scale of the harm, the number of Americans paying for it, and the certainty with which the Commission knows.

Petitioner then attempted direct outreach — individual phone calls and personal emails to the CCOs of registered investment advisers, the fiduciaries who recommend these very funds to their clients and who owe duties of care and loyalty that this conduct breaches with every transaction. No one returned his calls. No one answered his emails. The one compliance officer who picked up the phone hung up on Petitioner — after Petitioner identified himself and asked

whether he could report a compliance matter adversely affecting the firm's clients. A compliance officer. Receiving a compliance tip. About harm to the clients he is legally obligated to protect. Hung up the phone. That moment — a single phone call, a single refusal to listen — captures the entire architecture in miniature. At every level of the system Congress constructed, the answer was the same: we do not want to know. Because we do not care. And knowing would obligate us to act. And acting would cost us money.

Nearly eight years. Thirty trillion dollars in affected assets. Fifteen thousand two hundred sixty-six compliance officers. National securities exchanges. Clearing agencies. The Big Four accounting firms. The nation's most prominent securities law firms. Fund administrators. Transfer agents. Board members. State securities regulators. State attorneys general. Members of Congress. Firms that admitted in writing that the problem is real, and the industry has simply ignored it. Universal notice. A ready technological solution, the industry itself called "groundbreaking" and "revolutionary." A problem so clear that one honest actor would have forced industry-wide correction within twelve months.

And the result: not one honest actor. Not one. In nearly eight years. Across an industry that exists, by statute and by solemn promise, to safeguard the financial welfare of the American public. The industry's own tax director predicted it: "If you can get just one fund to do this, all other funds will be forced to fix this within 12 months." The prediction was proved correct — in the negative. The absence of a single honest actor in nearly eight years is not evidence of independent professional judgment arriving at a common conclusion. It is evidence that no firm was permitted to break ranks — because the system was designed to ensure that none would.

Not one institution, not one gatekeeper, not one officer, not one director chose to protect a single investor over a single dollar of fee revenue. The entire system Congress built to protect 160 million Americans failed — not because the evidence was ambiguous, not because the solution was unavailable, not because the harm was uncertain — but because every gatekeeper looked to every other gatekeeper, and every gatekeeper saw the same thing: silence. And silence, in an industry conditioned by decades of consequence-free violation, by a revolving door that makes regulators and regulated indistinguishable, by the settled expectation that misconduct of this magnitude will never be prosecuted because it implicates everyone — silence was permission. Silence was a strategy. Silence was the product.

That silence ends with this Petition. Three SEC Commissioners have been personally briefed. Dozens of Commission staff across multiple divisions have been briefed. Not one has challenged the factual premises. Not one has disputed the mathematics. Not one has contested that investors are being harmed. In nearly six years since Petitioner's whistleblower tip was filed, not a single member of the Commission's Enforcement Division has contacted him. Petitioner is the fact witness to the industry admissions, the executive statements, the technology demonstrations, and the coordinated suppression documented in this Petition — and the division responsible for investigating securities fraud has never asked him a single question. No subpoena has been issued. No testimony has been requested. No document demand has been served. Petitioner has received no indication that any enforcement investigation has been opened. It is this absence that compels this Petition. The Commission has known for nearly six years. During that time, the only person who has acted to protect investors from this harm is the person filing this Petition. The question is no longer whether the Commission is aware of these violations. The question is what action the Commission's awareness requires — a question this Petition is designed to place squarely on the record.

Somewhere in America, as this Petition is filed, a young woman is investing her first paycheck in a taxable brokerage account — doing what every financial advisor, every retirement guide, and every institution in the system tells her to do. She has chosen a diversified fund. She is starting early. She is being responsible. She does not know that the share price she will pay tonight is inflated by realized income the fund is obligated to distribute. She does not know that her first distribution will return a portion of her own investment, disguised as taxable income. She does not know that the Form 1099-DIV she will receive next January will overstate her earnings by the precise amount the fund overcharged her today. She does not know any of this — because every institution in the system described above chose not to tell her. By the time you finish reading this Petition, she will have paid taxes she does not owe, on income she did not earn, reported on a form the industry admits is false — and no one in the architecture Congress built to protect her will have lifted a finger to prevent it.

E. The Constitution Has Spoken

Everything described to this point — the industry's fraud, the gatekeepers' silence, and the government's failure to act on nearly six years of documented evidence — is the factual record. What follows is the constitutional framework that makes continued inaction unlawful.

The taxation of the return of an investor's capital as income is unconstitutional. The Supreme Court settled this seventy years ago. *Commissioner v. Glenshaw Glass Co.* holds that income requires "undeniable accessions to wealth, clearly realized." An investor who pays $100, receives $3 of her own money back, and holds the same $100 she started with has experienced no accession to wealth. She has received a refund of her purchase price. The Internal Revenue Code does not tax that. The Supreme Court does not permit it. The industry itself admits it in SEC filings. And yet hundreds of millions of Forms 1099-DIV report it as taxable income every year — and the government collects on every one.

When the government collects taxes it knows are not owed, the Constitution has a name for it: illegal exaction. Justice Owen Roberts: "[T]he unjust retention is immoral and amounts in law to a fraud on the taxpayer's rights." *Bull v. United States.* And *McKesson*: "the Due Process Clause requires the State to afford taxpayers meaningful backward-looking relief" — and good faith reliance on facially valid returns does not excuse continued retention after notice. And *Reich*: the government cannot "hold out what plainly appears to be a 'clear and certain' post-deprivation remedy and then declare, only after the disputed taxes have been paid, that no such remedy exists." *Tyler v. Hennepin County*, decided unanimously in 2023 — nine Justices, zero dissents, zero concurrences limiting the holding: government retention of amounts exceeding what is lawfully owed is a "classic taking." Chief Justice Roberts traced the principle to Magna Carta: "The government may not take more from the taxpayer than she owes."

Four cases. Four walls. No door — except corrective action.

These are not recommendations to the executive branch. They are commands of the supreme law of the land. The Constitution sits above the SEC, above the IRS, above the Department of Justice, above every enforcement priority, every resource constraint, and every institutional preference for inaction. When the Fifth Amendment speaks, enforcement discretion is extinguished. There is no prosecutorial judgment that permits the continued taxation of citizens on income they did not earn. There is no administrative convenience that justifies retaining funds that the government has no constitutional authority to hold. There is no enforcement discretion to

authorize an ongoing illegal exaction from 160 million Americans. The question is not whether these agencies should act. The Constitution has answered that question. They shall.

And Congress reinforced the command four times, in language that admits of no ambiguity. Section 6721(a): filers who fail to file correct returns "shall pay a penalty." Section 6201(a): the Secretary "is authorized and required" to assess. Section 6301: the Secretary "shall collect." Section 6303(a): notice and demand "shall" issue within sixty days. The Supreme Court has held that "shall" creates "an obligation impervious to judicial discretion." *Lexecon Inc. v. Milberg Weiss.* The IRS cannot decline to assess these penalties. It cannot forgive them. It cannot let them expire. Congress did not say "may." Congress said "shall" — and said it four times because Congress understood that agencies, left to their own preferences, will choose inaction over confrontation with the industries they regulate. The statute exists to foreclose that choice.

The industry bears liability for every false return filed before the date of this Petition — under §§ 6721 and 6722, independently, cumulatively, at uncapped penalties of 10% of all amounts required to be reported correctly, for every form filed and every statement furnished. That liability is measured in tens of billions of dollars. It exists today.

This Petition shifts the constitutional burden to the government. Before today, the government processed returns as filed. That was defensible. From today forward, it is not. The government now possesses irrefutable evidence — supported by the industry's own admissions and the unanimous precedent of the Supreme Court — that the Forms 1099-DIV are false and that the taxes collected on them include amounts the Constitution forbids the government to retain. Every principle identified above — illegal exaction, due process, takings, mandatory enforcement — attaches with full force from the moment this document is delivered. The government's exposure accrues prospectively, beginning now, compounding daily, and crystallizing irreversibly with each tax cycle that closes.

The calendar quantifies what government inaction has already cost. Since Petitioner first reported these violations in June 2020, five full years of mandatory penalties have expired — tax years 2017 through 2021 — billions of dollars Congress commanded the Treasury to collect, forfeited because no agency acted in time. Tax year 2022 expires on March 31, 2026. Weeks from today. Billions more will be permanently lost. And each expiration does not merely forfeit revenue owed to the Treasury. It extinguishes the rights of American taxpayers — investors whose refund claims, amended returns, and legal remedies die with each statute that lapses. Every door that

closes, closes on an American who overpaid and will now never be made whole. Not because she did anything wrong. Because every institution obligated to protect her chose not to act in time.

The consequences of further inaction are not abstract. They are legal, constitutional, and inescapable. Continued collection on known-false returns is an illegal exaction actionable in the Court of Federal Claims. Failure to assess mandatory penalties is agency action unlawfully withheld, compellable under APA § 706(1). Permitting the 2026 tax year to proceed without corrective guidance — while possessing this Petition — is a due process violation under *McKesson* and *Reich*, a taking under *Tyler*, and a fraud on the taxpayer's rights under *Bull*. Petitioner will pursue each of these claims. The government's choice is not whether to act. It is whether to act on its own timeline — or on a court-ordered one.

The 2026 tax year has already begun. Investors are purchasing fund shares today, at prices inflated by the same distortion this Petition documents. They will receive their own capital back, disguised as income. They will receive false Forms 1099-DIV. They will pay taxes they do not owe. And for the first time, that entire cycle will occur with the government's full, documented, undeniable knowledge that it is happening. The IRS can issue corrective guidance now — before the forms are prepared, before another round of false reporting locks in, before another year of Americans' rights begins its three-year countdown toward extinction. The statute commands it. The Constitution requires it. Continued inaction is no longer a policy choice. It is a constitutional violation — with named plaintiffs, quantified damages, and a record that will not improve with age.

F. The Defenses That Aren't

The industry's response to nearly eight years of documented fraud was not to correct the fraud. It was not to fix the tax forms. It was not to implement the technology that would have ended the harm overnight. It was not to warn a single one of the 160 million Americans whose money it manages. It was to hire lawyers — and hope the lawyers could confuse a judge.

The lawyers are trying. Having no honest defense to offer — because there is no honest defense when the client has confessed in its own published materials — counsel has adopted the only strategy available: make the simple look complicated. Recast a disclosure fraud as an accounting dispute. Bury a straightforward question under so many layers of jargon that the court

loses sight of what is actually being asked. The strategy depends entirely on the assumption that no one in the courtroom will do the math. This Petition ensures that assumption is no longer safe.

The first industry defense is that GAAP compliance immunizes the filing of false federal tax returns and excuses the obligation to disclose the consequences to investors. It does not — and understanding why requires understanding what GAAP actually is, because the industry's lawyers are counting on courts not knowing. GAAP is a classification system. It tells a fund which numbers go in which buckets—how to categorize revenue, how to record income, and how to present financial statements in a standardized format. It does not tell a fund what to disclose to investors about the consequences of those classifications. It does not override federal securities law. It does not amend the Internal Revenue Code. And it does not — and has never — granted any registrant an exemption from the obligation to tell investors the truth about what is being done with their money. The industry's argument, stated plainly — which is why its lawyers never state it plainly — is this: because we classify realized income in a manner consistent with GAAP, we are exempt from the federal laws that require us to tell investors what that classification does to their money. No court has accepted that theory. No statute supports it. The SEC itself has stated repeatedly that GAAP compliance does not preclude a finding of materially misleading disclosure. The principle is obvious: an accounting classification can be technically compliant, and the disclosure of its consequences to investors can be materially false. Both things are true here. The funds' internal bookkeeping may satisfy GAAP. The prospectuses that describe what that bookkeeping does to investors are provably, mathematically, demonstrably wrong — and Petitioner has provided the funds' own data to prove it. A kindergartner with a calculator can disprove the current disclosures. The industry has dispatched the most expensive lawyers in America to argue that the kindergartner is wrong. That is not advocacy. It is an attempt to prevent a court from seeing what every investor would see if anyone told them the truth.

But the GAAP defense is not merely wrong. It is fraudulent on its own terms — because GAAP does not require what the industry claims it requires. The industry argues that it *must* book realized income to NAV because GAAP compels it. GAAP does no such thing. The fund industry itself has operated daily dividend accrual accounting — the method that removes realized income from NAV before investors purchase shares — since the 1970s. Money market funds use it. Certain bond funds use it. The technology exists. The accounting infrastructure exists. It has existed for over fifty years. The industry did not reject daily accrual because GAAP prohibited it. The industry

chose, from two available and equally GAAP-compliant accounting methods, the one that inflates the NAV, because a higher NAV generates higher advisory fees. That choice was not compelled by any accounting standard. It was compelled by revenue. And when a fiduciary selects, from two available options, the accounting method that harms its clients and enriches itself — and then conceals the existence of the alternative and the consequences of its choice — that is not an accounting convention. It is a conflict of interest, undisclosed, that the securities laws have prohibited since the day they were enacted. The GAAP defense does not merely fail to excuse the industry's conduct. It illuminates the conduct, because the industry is not arguing that it had no choice. It is arguing that the choice it made, to enrich itself at the expense of its investors, is none of its investors' business.

The second industry defense is even worse — not because it is more sophisticated, but because it is less. Universal practice, the argument goes, proves acceptable practice. Because every major fund books realized income to NAV, no individual fund can be liable for doing so. Because every major fund uses substantially identical prospectus language, no individual fund's disclosure can be materially misleading. These propositions refute themselves the moment they are stated aloud. The first converts coordinated fraud into standard practice — the more firms that commit the violation, the stronger the defense becomes. The second converts uniform deception into adequate disclosure — the more funds that repeat the same misleading language, the less misleading it becomes. The industry's most sophisticated legal minds, backed by the most expensive law firms in America, have arrived at the defense every child reaches for when there is nothing left to say: "*Everyone was doing it.*" It was not a defense in kindergarten. It is not a defense in federal court.

A uniformly bad disclosure does not cure the deficiency. It compounds it. It means 160 million Americans received the same misleading information from the same industry using the same carefully chosen words — and not one of them had access to a truthful alternative, because the industry ensured that no truthful alternative existed. When every fund uses the same false characterization — describing a structural, permanent, daily risk as arising "shortly before" a distribution — the uniformity is not evidence of independent professional judgment arriving at a common conclusion. It is evidence of a common decision, made at the industry level, to minimize a risk the industry knows cannot honestly be minimized. The industry's own tax director confirmed the dynamic: one honest disclosure would have forced every competitor to match it within twelve

months. The industry made certain that honest disclosure never appeared — and now sends lawyers to argue that the absence of honesty proves honesty was never required.

The industry cannot sustain both sides of its own contradiction. It cannot file prospectuses with the SEC, admitting that distributions include return of capital, and then file Forms 1099-DIV with the IRS reporting those same amounts as fully taxable income. It cannot tell investors in buried fine print that they face "an unnecessary tax bill" and then tell federal judges that no one is being overtaxed. It cannot acknowledge the harm in private and deny it in public. And its lawyers cannot stand before a court and argue, with a straight face, that filings the industry's own executives have described as "perfectly fine" — while 160 million Americans are overtaxed on their own money — filings those executives refused to correct because "our investors don't know it is happening" — constitute adequate disclosure. The fact that 160 million investors do not know it is happening is not evidence that the disclosure is adequate. It is proof that it is not. These are not defenses. They are the same confessions that created the liability, dressed in a suit, delivered in a courtroom, and billed at $2,000 an hour.

And the industry has already conceded the point — not in words, but in conduct. After receiving Petitioner's compliance notices, multiple fund complexes quietly stripped the challenged language from their prospectuses — deleting the very phrases Petitioner had identified as false, without filing corrective supplements, without issuing press releases, without notifying affected investors, and without acknowledging the change. Accurate disclosures are not silently deleted. Confident defendants do not quietly destroy evidence. The silent edits are consciousness of guilt documented in the industry's own filing history — visible to anyone who compares prospectuses year over year, undeniable once the comparison is made. And they prove something the industry's lawyers will wish they did not: the industry received notice, concluded internally that the challenged language could not be defended, removed it in a manner calculated to avoid creating a public record — and continued processing sales and collecting fees as though the prior harm had never occurred. The duty under the securities laws is to correct and warn — not to erase and forget.

If either defense gains acceptance, the damage extends far beyond these investors and this industry. Any industry that coordinates its noncompliance achieves immunity from the securities laws. Any disclosure, no matter how misleading, becomes adequate the moment enough firms adopt it. Any fiduciary that chooses, from two available options, the one that enriches itself and harms its clients can immunize that choice simply by ensuring every competitor makes the same

one. The honest actor who breaks ranks is punished — exposed to liability for admitting the deficiency while competitors shelter behind the uniformity that conceals it. The securities laws would protect investors only against aberrant fraud — the lone bad actor, the rogue firm. Systematic, coordinated, industry-wide fraud — the kind that causes the greatest harm to the greatest number — would be untouchable. This is precisely why Congress enacted the Racketeer Influenced and Corrupt Organizations Act — to reach coordinated schemes that individual fraud statutes cannot adequately address, and to provide treble damages and attorney's fees to private plaintiffs willing to prosecute what the government will not. When the industry's defense to individual claims is "everyone was doing it," the industry has identified its own conduct as the organized, enterprise-level activity that RICO was designed to prosecute. Congress did not construct the disclosure regime of 1933 so that it would buckle the moment Wall Street presented a unified front. But that is precisely the regime these defenses would create — and it is precisely what these lawyers are attempting to build, brief by brief, motion by motion, in courtrooms across this country — arguments that gain weight with each day they go unrebutted by the agency Congress charged with enforcing the disclosure laws.

This Petition does not ask the Commission to create new law. It asks the Commission to defend the law that exists — before these lawyers dismantle it. The industry is not mounting a defense. It is conducting an assault on the disclosure framework, attempting to establish through litigation what it could never achieve through legislation: the principle that an accounting classification excuses disclosure fraud, that a fiduciary's choice to enrich itself at its clients' expense requires no disclosure if the choice is widespread enough, and that an industry willing to coordinate its deception can place itself permanently beyond the reach of the securities laws. The Commission's continued silence is not neutral. Silence, from the agency Congress charged with enforcing these laws, is indistinguishable from agreement. And every day these arguments go unrebutted, they gain weight — migrating from desperate motions into cited authority, from cited authority into settled expectation, from settled expectation into the permanent understanding that fraud of sufficient scale and sufficient uniformity is simply how business is done. The industry's attorneys are constructing that reality one filing at a time. The Commission can end it today.

This Petition requests that the Commission issue interpretive guidance on the true nature and timing of "buying a dividend" risk — so that the public receives what the Commission owes them and what the industry has spent nearly eight years withholding: the truth. Investors are relying

on disclosures that characterize this risk as a narrow timing window they can avoid — a characterization the industry knows is false, that the funds' own data disproves, and that misleads 160 million Americans into believing a structural, permanent, daily risk rarely exists. A single interpretive statement — clarifying what the industry's own data already proves — would do more to protect American investors than every dollar the Commission has spent on enforcement in the last decade. The obligation to tell investors the truth does not yield to an accounting classification, does not yield to industry consensus, and does not yield to the collective preference of the most powerful financial institutions in the world to keep 160 million Americans in the dark about what is being done with their own money.

G. The Reckoning

In January 2025, the Commission charged Vanguard with securities violations for misleading disclosures about tax consequences and imposed a $106.41 million penalty. The Chief of the Enforcement Division's Asset Management Unit stated the governing principle: "Materially accurate information about capital gains and tax implications is critical to investors saving for their retirements."

The Commission is right. Now apply it.

The Vanguard violation was episodic — one fund complex, one event, over. The violation here is continuous — every fund complex, every trading day, no end. The Vanguard harm was unintentional — a consequence Vanguard failed to anticipate, not a practice it designed and carries out daily. The harm here is calculated to the penny before the investor purchases the share. The Vanguard disclosures used general language the Commission found misleading. The disclosures here use language that is affirmatively false — language the industry has already conceded cannot be defended, by silently deleting it from its own prospectuses. The Vanguard penalty was $106 million. The annual harm here exceeds $100 billion. One thousand to one. Every year. If the Commission's reasoning in Vanguard is correct — and it must be, because the Commission stated it publicly twelve months ago — then the disclosures this Petition challenges are materially misleading as a matter of law, and the Commission's failure to apply the same standard to harm one thousand times greater is incoherent. The Commission cannot credibly tell a federal court that a $106 million episodic disclosure failure warranted emergency enforcement while a $100 billion annual disclosure failure warranted silence.

The Commission will not claim it lacked resources. Two successive administrations found institutional capacity to pursue ambitious initiatives at the contested periphery of their statutory authority — climate disclosure rulemaking that consumed years of staff work before being judicially stayed and withdrawn; a Commission-wide "Project Crypto" initiative that the current Chairman declared "job one," complete with a dedicated task force, multiple rounds of staff guidance, proposed amendments to the Exchange Act, and approved listings for tokens such as DOGE, SOL, and XRP — all for an asset class over which the Commission's jurisdiction remains actively contested and for which Congress has not enacted enabling legislation. The Commission built an entirely new regulatory framework for assets it may not have authority to regulate. Yet it has not issued a single interpretive statement about the false tax reporting documented in this Petition — false reporting by an industry it has regulated since 1940, an industry that holds the retirement savings of 160 million Americans, an industry that the Commission's own Enforcement Division already sanctioned for materially misleading tax-consequences disclosures twelve months ago in *Vanguard*. The Commission found ample resources to regulate meme coins. It has not yet found the resources to protect retirement savings.

The Commission's "job one" is not crypto. Unless Congress has amended the Securities Exchange Act since the date of this Petition, the Commission's job one — its only job, the reason it exists — is protecting investors. Any other allocation of institutional priority, while these violations remain unaddressed, raises questions about institutional consistency that this Petition's public record will invite oversight bodies to examine.

But the Commission's enforcement discretion on this matter has been extinguished. This is no longer a question of institutional priorities. The constitutional framework documented in this Petition — illegal exaction, due process, takings, mandatory statutory commands — does not permit the Commission to hold this matter in a queue while it builds ‘token taxonomies.’ Constitutional violations are not competing priorities to be balanced against blockchain roundtables. They are imperatives that override every other consideration, including the Commission's preference for inaction. Evidence of widespread, ongoing false federal information returns — the systematic filing of hundreds of millions of forms, admitted by the filers, sustained for years, generating tens of billions in mandatory statutory penalties — cannot be administered as one item among many on an enforcement agenda. This is not a disclosure deficiency awaiting staff review. This is an ongoing abuse of the United States tax system, affecting more Americans

than any tax fraud in the nation's history, documented by the industry's own confessions, and compounding daily.

The Commission's obligations upon receipt of this Petition are not discretionary, and they are not sequential. They are concurrent, mandatory, and immediate. The Commission must act to protect investors under the authority Congress vested in it — the authority that is its reason for existence. The Commission must refer this matter to the Internal Revenue Service, which has mandatory, non-discretionary duties to assess penalties under the "shall" commands of §§ 6721, 6722, 6201, 6301, and 6303 — duties it cannot decline, defer, or delegate. The Commission must refer this matter to the Department of the Treasury, which oversees the integrity of the information reporting system this Petition proves has been systematically compromised. The Commission must refer this matter to the Department of Justice for evaluation of criminal liability under IRC §§ 7206(1) and 7206(2) — because the knowing filing of false federal information returns is not merely a civil penalty matter; it is a federal crime, and the Commission has an obligation not to sit on evidence of criminal conduct while statutes of limitations expire. And the Commission must refer this matter to the relevant Inspectors General — because when a federal agency possesses documented evidence of systematic fraud affecting 160 million Americans and billions in Treasury revenue, and has possessed that evidence for nearly six years without acting, the question of why is one the Inspector General exists to answer.

While these obligations accrue and these referrals await, the human cost compounds. Public employee pension funds — the retirement security of teachers, firefighters, police officers, and municipal workers — hold trillions in the funds this Petition documents. Every dollar of inflated NAV generates advisory fees that flow from those pension funds to the asset managers that overvalue them — enriching every participant in the asset management food chain at the direct, daily expense of the workers whose retirement savings are diminished by the very institutions hired to grow them. Those workers will retire with less. Their pensions will pay less. Their quality of life in retirement — the reward for decades of public service — is reduced every day by an industry that profits from the scheme and a regulator that has permitted it for nearly six years.

Consider what this means for a single American doing the responsible thing — investing for retirement in a taxable brokerage account, contributing every paycheck, diversified across eight funds as every financial advisor recommends. Each contribution purchases shares at an inflated

NAV. Each fund makes distributions — ordinary dividends, short-term capital gains, long-term capital gains — that include return of her own capital. **Across twenty-six bi-weekly contributions and a portfolio of eight funds, with three distribution types each, she receives six hundred and twenty-four separate phantom tax charges per year. Six hundred and twenty-four.** None of them owed. Every one of them reported to the IRS as taxable income on a Form 1099-DIV the industry admits is false. She will not know they are false. She will not know they are avoidable. She will pay them — because the industry chose not to tell her, and no one has required them to. How is this acceptable?

Americans are struggling to put food on the table. They are choosing between groceries and prescriptions, between rent and retirement, between heating their homes and saving for their children. While they make those choices — while they do the responsible thing, the thing every institution tells them to do, the thing the securities laws were designed to make safe — the fund industry collects fees on deliberately inflated values and files tax forms it has admitted are false. And the Commission hosts blockchain roundtables.

Working Americans saving for retirement did not ask for token taxonomies. Crypto lobbyists did. They did not ask for innovation exemptions or crypto task forces. They asked for one thing — the thing the securities laws promise, and the Commission's mission statement guarantees: the truth. Accurate prices. Honest tax forms. Disclosures that do not mislead them into losing money they cannot afford to lose. The industry has refused to provide it. Every gatekeeper has refused to demand it. And the Commission — for nearly six years, across two administrations, while Americans' savings are extracted through false reporting and inflated fees — has directed its institutional energy elsewhere. The Commission must now direct it here. Not because Petitioner demands it. Because the Constitution commands it, the statutes require it, the industry's own admissions compel it, and 160 million Americans — who trusted every institution in this system to do its job — deserve at least one institution that will.

This Petition is now public. The facts it documents — the admissions, the mathematics, the industry's own words — are permanently available, to any person, for any lawful purpose. That single fact changes everything. For every participant in the system this Petition has exposed, the calculus that governed the last nearly eight years — silence is safe, inaction is costless, no one will ever know — has inverted. Silence is now the most dangerous option available. And the clock has started.

The industry's executives face personal criminal exposure under IRC §§ 7206(1) and 7206(2) for the knowing filing of false federal information returns — and under the mail and wire fraud statutes, 18 U.S.C. §§ 1341 and 1343, for the transmission of those false returns via United States mail and electronic wire. The industry faces civil liability under multiple bodies of federal law — including federal racketeering and antitrust statutes — for the coordinated suppression of the only technology capable of correcting the harm. The conduct constitutes a group boycott: the industry excluded the sole market participant offering corrective technology, blocked investor-protective innovation from reaching the market, and preserved an anticompetitive pricing structure that benefits every incumbent at the expense of every investor. Petitioner holds the evidence to prove it — years of contemporaneous emails, meeting notes, and documented admissions from some of the most senior executives in the financial services industry. That evidence, once filed on a public docket, will be available to every class action firm in America.

That exposure cannot be indemnified. It cannot be insured. It cannot be resolved by corporate settlement or absorbed as a cost of doing business.

The directors-and-officers liability insurance every executive assumes will protect them may already be compromised. Standard D&O policies contain prior-knowledge exclusions and notice-of-circumstances provisions that the industry's years of concealment have almost certainly triggered. Firms that received Petitioner's compliance notices in 2023 and renewed their policies without disclosing them may have procured coverage through material misrepresentation — a basis for rescission that voids the policy from inception, leaving every insured without coverage for any claim during that period.

The contemporaneous records — the emails, the meeting notes, the documented admissions from senior executives — once part of the public record, will provide carriers with proof of prior knowledge sufficient to rescind. The industry's silence did not merely create the liability. It simultaneously destroyed the insurance that was supposed to cover it. Directors and officers who assumed they were protected will discover they are not.

The independent fund directors and the independent directors of the management companies that advise them face a choice with only one rational answer. Act now — retain personal counsel, demand the information this Petition documents, notify the D&O carrier, request a formal Section 15(c) review, cooperate with any examination — and establish good faith, preserve whatever coverage remains, earn the cooperation credit the Commission's framework

provides, and set the standard against which every other director will be measured. Or wait — and explain to a federal court why documented evidence of harm to 160 million Americans did not constitute a "material compliance matter" requiring board action. The first director to act writes the standard. The last director to act fails it. There is no third option. There is no safe middle ground. There is only the mathematics of a prisoner's dilemma in which every rational player moves first — because every day of delay compounds personal exposure, erodes insurance coverage, and narrows the distance between "uninformed fiduciary" and "complicit participant."

The same mathematics cascade through every level of the system. The first fund complex to adopt the corrective technology captures the competitive advantage that the industry's own tax director predicted and forces every competitor to match it or explain, under oath, why it chose not to. The first CCO to escalate this Petition to a fund board fulfills the duty that 15,266 others abandoned — and earns the protection that cooperation confers. The first auditor to file a Section 10A report honors the "public watchdog" function the Supreme Court described — and shifts the liability to every firm that continued certifying. The first law firm to advise its clients to correct the disclosures fulfills the obligation Part 205 imposes — and escapes the disqualification that awaits every attorney who kept drafting after notice. At every node, the dominant strategy is identical: move first. The prisoner's dilemma this Petition creates has one rational move, and every game theorist, every litigator, every D&O carrier, and every criminal defense attorney who examines this matrix will reach the same conclusion. The first to cooperate defines the standard. The last to cooperate faces it.

This Petition does not depend on the industry's voluntary correction — because nearly eight years have established, beyond any doubt, that voluntary correction will not come. This Petition was built to ensure it is no longer needed. Every class action firm in America now holds a three-hundred-page evidentiary roadmap — fact-heavy, opinion-lite, constructed on the industry's own admissions — sufficient to survive any motion to dismiss.

The exposure is not limited to class actions. Section 7434 of the Internal Revenue Code provides every individual American with a private right of action against any person who willfully files a fraudulent information return with respect to that taxpayer — with damages of the greater of $5,000 or actual damages sustained, plus costs and reasonable attorney's fees. The industry has filed hundreds of millions of Forms 1099-DIV that its own published materials acknowledge overstate taxable income. Each form is a separate willful act. Each affected investor is a separate

plaintiff. The arithmetic is not complicated: 160 million Americans, each holding a federal statutory cause of action, each entitled to a minimum of $5,000, plus costs, plus fees. The industry's total exposure under § 7434 alone — before penalties, before class actions, before state enforcement, before RICO — is measured not in billions but in hundreds of billions.

Every FINRA arbitrator now has access to mathematical proof that investor losses are not speculative but calculable to the penny before the trade executes. Every public pension fund — every state teachers' retirement system, every municipal workers' fund, every first responders' pension board — now possesses documented evidence that the advisory fees it pays are calculated on deliberately inflated values and that the fiduciaries it hired to protect its members' retirement have been extracting from it instead. Every state attorney general and every state securities regulator now holds the factual record to pursue enforcement under state consumer protection and blue sky laws — actions that require no federal cooperation, cannot be blocked by federal inaction, and will proceed whether or not a single federal agency lifts a finger.

This Petition was structured so that the failure of every institution Petitioner has already tried — and every institution has failed — does not leave 160 million Americans without recourse. The American legal system has other doors. This Petition opens all of them.

The federal agencies, however, do not have the option of watching from the sidelines while private litigants and state enforcers do their work. This Petition has placed the SEC, the IRS, the Department of the Treasury, and the Department of Justice on formal constitutional notice of an ongoing illegal exaction from 160 million American citizens. The duties that attach are not discretionary. They are not agenda items. They are not competing priorities to be ranked against crypto task forces and blockchain roundtables. They are constitutional commands — and constitutional commands do not wait.

The SEC must act to protect investors — not eventually, not when resources permit, but now, because investors are being harmed today, this trading day, and the Commission has possessed the evidence for nearly six years. The IRS must assess the mandatory penalties that four separate "shall" commands of the Internal Revenue Code require — penalties that are accruing now, expiring year by year, billions already forfeited through inaction, billions more weeks from permanent extinction. The Department of Justice must evaluate criminal liability for the systematic falsification of hundreds of millions of federal information returns — because when an entire industry knowingly files false returns with the United States Treasury, admits the falsity, rejects

available corrections, and coordinates to suppress the truth, that is not a civil regulatory matter. It is an ongoing criminal abuse of the American tax system, and no agency has discretion to look the other way.

The relevant Inspectors General must examine why agencies possessing this evidence for nearly six years did not act — a question that falls squarely within their statutory mandate and that the passage of time has made unavoidable. And each of these referrals — to the IRS, to Treasury, to the DOJ, to the Inspectors General — must be made promptly, because evidence of systematic false federal information returns cannot remain in a single agency's possession while statutes of limitations expire and the harm compounds. The obligation to refer is not subordinate to the obligation to investigate. It is concurrent with it. Both begin today.

For the removal of all doubt, Petitioner includes with this Petition a Declaration under penalty of perjury, executed pursuant to 28 U.S.C. § 1746, attesting to the events described in this introduction and throughout this document — including the industry meetings, the executive admissions, the gatekeeper engagements, the technology demonstrations, the universal rejection, and Petitioner's extensive, years-long efforts to convince multiple federal agencies to act before this Petition became necessary. The Declaration is attached as Exhibit 1 and incorporated by reference in its entirety. Unless otherwise noted, factual assertions in this Petition regarding Petitioner's personal outreach, industry statements, government engagement, and direct observations are supported by the sworn testimony set forth therein.

Petitioner does not ask the Commission to take his word for it. He swears to it — under the same penalties for false statement that the industry has exposed itself to by filing the very returns this Petition challenges. The difference is that Petitioner's declaration is voluntary, made in the service of truth, and offered to facilitate enforcement. The industry's false filings were involuntary to no one — made knowingly, sustained deliberately, and designed to extract wealth from the Americans they were supposed to protect.

The sections that follow provide the factual record, the legal analysis, and the specific relief requested. They exceed three hundred pages. They cite the industry's own documents, the industry's own admissions, and the industry's own data. They identify twenty-three material misstatements and omissions in current prospectus disclosures. They provide the mathematical proof that the Forms 1099-DIV are false — proof the industry cannot rebut because it is derived from the industry's own numbers. They offer a technological solution the industry itself called

"groundbreaking" and "revolutionary" and then suppressed. They present a constitutional framework built from unanimous Supreme Court precedent that no lower court can distinguish and no agency can ignore. And they are designed to be used — by the Commission, by the IRS, by the Department of Justice, by state regulators, by class action counsel, by arbitrators, by pension fund trustees, by members of Congress, and by any American who believes that the law means what it says and that the institutions created to enforce it should do their jobs.

The Government's choice is not whether to act. The Constitution has made that choice. The Government's choice is whether to act now — on its own terms, in a manner of its choosing, with the cooperation Petitioner has offered for nearly six years and continues to offer today — or to act later, on a court-ordered timeline, after litigation that will be more costly, more public, and more damaging to every institution involved than anything this Petition requests. Petitioner does not prefer litigation. Petitioner prefers the outcome litigation would produce — delivered faster, at lower cost, through the coordinated federal enforcement this Petition makes possible, and that this moment demands.

But if the agencies Congress created to protect American investors will not protect them — if the institutions designed to enforce the law will not enforce it — then Petitioner will assume the role the law itself provides for exactly this circumstance: the Private Attorney General. It is a role as old as the Republic — the citizen who stands up when the government stands down, who enforces the law the government will not enforce, who carries into court the claims the public cannot bring on its own behalf. It is the role for which Petitioner founded the *Private Attorney General Project* — built for this case, for this moment, for the possibility, now confirmed, that every institution in the system would fail and that a citizen would have to do what the government would not. Petitioner will take these matters to the federal courts as a Private Attorney General and as a United States Marine who swore an oath to support and defend the Constitution of the United States against all enemies, foreign and domestic — an oath that carries no expiration date. The enterprises documented in this Petition — enterprises that file hundreds of millions of false federal returns, suppress corrective technology, and extract wealth from the Americans whose savings they hold in trust — are the domestic threat that oath contemplates. Petitioner intends to honor it.

The record is public. The truth is established. The Constitution has spoken. Congress has commanded.

The agencies may act, or the courts will compel. But the outcome is no longer in question — only the mechanism of its arrival.

II. PETITIONER'S INTEREST AND STANDING

Petitioner brings this action in four capacities: as an injured investor who has suffered the harm firsthand, as a subject-matter expert who quantified the problem and built the solution, as a protected whistleblower under federal securities and tax law, and as a fact witness who spent nearly eight years documenting the industry's knowing refusal to protect investors. Each capacity independently supports standing. Together, they establish something more: a record so thorough, and Commission engagement so extensive, that no claim of ignorance or surprise can be credibly advanced.

The record Petitioner built over nearly six years of Commission engagement — across multiple Commissioners, dozens of staff, and hundreds of pages of documentation — establishes with precision what the Commission was told, when it was told, and what it was given to evaluate. No element of this Petition will be new to the Commission. The details are set forth below.

The Commission knows. The industry knows. What follows documents the record that establishes both.

A. Injured Investor with Measurable, Ongoing Harm

Petitioner is an investor who has experienced a lifetime of the harm described in this Petition. Like more than 160 million Americans who own funds, Petitioner has purchased securities while relying on prospectuses that describe "buying a dividend" risk using timing-limited language—language suggesting the risk arises only "shortly before" distributions while omitting the material consequences that exist continuously throughout the year.

The injury satisfies every requirement for standing. It is direct: Petitioner paid taxes on amounts that were, in economic substance, return of his own invested capital—not income earned. It is measurable: the tax loss is quantifiable to the penny using the formulas set forth in Section III of this Petition. It is ongoing: the practice continues every trading day, the deficient disclosures remain in circulation, and Petitioner—like millions of other Americans—remains exposed to identical harm with each subsequent investment.

This is not a generalized grievance about regulatory policy. It is a concrete, particularized, personal injury that Petitioner has suffered, that he can quantify, and that the requested relief would prevent.

B. Sole Subject-Matter Expert Who Quantified the Harm and Built the Solution

Petitioner is also the CEO of FairShares, Inc., a technology firm that first quantified "buying a dividend" harm across the entire fund industry and developed a turnkey technological solution to correct it. He is the sole inventor of multiple U.S. and international patents covering the technology required to eliminate this harm. To Petitioner's knowledge, no other person or institution has conducted this analysis or developed comparable solutions. He is the sole subject-matter expert on this problem worldwide. The research exists. The researcher has been sitting across the table from Commissioners for nearly six years. The solution exists — patented, turnkey, and demonstrated to the Commission's staff. Every element the Commission would need to act has been provided.

This dual perspective—injured investor and technical expert—provides knowledge that few possess. Petitioner understands both how the harm feels to those who suffer it and how the accounting mechanics that cause it actually operate. He has first-hand knowledge of how widespread the disclosure failure is, how much investors lose annually, and—critically—how readily the problem can be solved.

The technology Petitioner developed accomplishes three things that current industry practice fails to do: it enables funds to trade at fair value by segregating embedded realized income from the tradeable share price; it generates accurate Forms 1099-DIV that properly characterize return of capital rather than misreporting it as dividend income; and it delivers real-time point-of-sale disclosure—a simple data field showing investors the per-share amount of embedded realized income and their estimated tax exposure before they click "buy."

The solution exists. It works. It was demonstrated to industry executives controlling trillions of dollars in assets. It was offered for licensing and adoption.

The industry refused—not because the technology fails, but because it succeeds. Implementing it would expose decades of overvaluation, end the fee extraction enabled by it, and create a public record of what the industry has long known and concealed. That refusal, documented extensively in Exhibit 1, is itself evidence of scienter.

Petitioner does not ask the Commission to mandate an untested remedy or impose speculative burdens. The remedy is built, proven, and ready. The only missing element is the will to require its use.

C. Protected Whistleblower Under Federal Securities and Tax Law

Petitioner is a protected SEC whistleblower under Exchange Act § 21F (15 U.S.C. § 78u-6). In separate capacities, Petitioner is also an IRS whistleblower under 26 U.S.C. § 7623(b), a DOJ whistleblower under the Department of Justice Whistleblower Awards Pilot Program (28 U.S.C. § 530C), and has filed a separate submission with the Antitrust Division of the Department of Justice. See Exhibit 1, Declaration of Jeremy Thomas Roseberry ("Roseberry Decl.").

Four agencies. Four independent bodies of law. One set of facts.

The securities violations are complete at the moment of purchase: the investor acquires a fund share at a price inflated by an undisclosed embedded tax liability, in reliance on a prospectus that contains materially misleading statements about the tax consequences of purchasing fund shares and omits the information necessary to evaluate them — that the investor will receive a distribution consisting in part of the investor's own money back, reported as taxable ordinary income on a federal information return the industry admits overstates the investor's tax obligation, at a purchase price inflated by the very liability the prospectus fails to quantify. These are disclosure failures under the Securities Act and the Investment Company Act — materially misleading statements and omissions in connection with the offer and sale of securities.

The tax violations are analytically and temporally independent. They occur after the securities transaction is complete, when the fund — in a separate act, through a separate instrument, governed by a separate body of law — transmits a false Form 1099-DIV through United States mail to the investor and via electronic wire to the Internal Revenue Service. The Form 1099-DIV is a federal information return required under the Internal Revenue Code, not a securities filing. The false statement is the mischaracterization of return of capital as taxable ordinary dividend income — a false statement about tax classification on a tax document, triggering tax obligations on income the investor never earned. Each false Form 1099-DIV is an independent act of mail fraud (18 U.S.C. § 1341) and wire fraud (18 U.S.C. § 1343), and hundreds of millions are filed annually. These predicate acts establish the pattern of racketeering activity under the Racketeer Influenced and Corrupt Organizations Act (18 U.S.C. §§ 1961–1968).

The antitrust violations are structural and ongoing: an industry controlling more than $30 trillion in assets has coordinated to suppress corrective technology that has existed since the 1970s, refused to license solutions that would eliminate the false reporting, and maintained inflated net asset values on which advisory fees are calculated — because accurate accounting would reduce the assets on which every participant bills.

Different instruments. Different agencies. Different victims. Different injuries. Different statutes. Different penalties. Each standing independently. Each documented independently. Each filed independently. The Commission's decision on this Petition will not affect the pendency or outcome of the other three submissions, but the other three submissions ensure that the conduct documented in this Petition will be examined by federal authorities, whether or not the Commission acts.

Petitioner asserts all rights and protections afforded under federal whistleblower statutes. Any attempt to impede, intimidate, or retaliate against Petitioner for this Petition or related speech — whether by the industry, by counsel, or by any other party — violates federal law, including Exchange Act § 21F(h)(1)(A), Rule 21F-17, Sarbanes-Oxley § 806 (18 U.S.C. § 1514A), and 26 U.S.C. § 7623(d). Petitioner will refer any such conduct to the appropriate enforcement authorities.

D. Fact Witness Who Exposed the Problem to Every Relevant Stakeholder

Petitioner is a fact witness with direct, first-hand knowledge of the events, communications, and industry practices documented in this Petition. This is not speculation, hearsay, or secondhand reporting. It is testimony from someone who identified the problem, spent nearly eight years alerting every relevant stakeholder, and meticulously documented both the responses and the silence.

Engagement with the Securities and Exchange Commission. Petitioner has met personally with three SEC Commissioners regarding this matter: Chairman Paul Atkins, Commissioner Hester Peirce—both currently serving—and former Commissioner Allison Herren Lee. Petitioner has also met with the SEC's FinHub group, with the Commission's Office of the Chief Accountant, and with counsel to individual Commissioners and senior advisors to the Chair. In these meetings, the materially false and misleading disclosures at issue were discussed at length and in detail. This list is not exhaustive.

In total, Petitioner estimates he has interacted with approximately fifty SEC staff members across multiple divisions over the past six years. He provided every document the Commission requested. He answered every question posed. When Commissioners asked Petitioner to develop a comprehensive action plan to remediate the harm and protect investors, he did so—and transmitted that plan to SEC Commissioners and staff in 2022. The Commission did not merely receive a complaint; it actively shaped the remediation proposal it was given.

Throughout these interactions — spanning years, dozens of meetings, and hundreds of pages of documentation — not a single Commissioner or staff member challenged the factual accuracy of Petitioner's analysis, disputed the mathematical formulas demonstrating investor harm, or contested the premise that current disclosures are materially incomplete. That record speaks for itself.

Engagement with the financial services industry. In parallel, Petitioner engaged exhaustively with the private sector. He met with executives at firms controlling over $30 trillion in assets under management. He presented to self-regulatory organizations, fund administrators, transfer agents, auditors, custodians, compliance consultancies, and securities law firms. He transmitted formal fraud and compliance notices to 15,266 chief compliance officers—every CCO registered in the SEC's Form ADV database. He offered practical tools, demonstrated working technology, and provided a clear, low-cost path to remediation.

The industry's response was uniform: acknowledgment of the problem, followed by a deliberate refusal to act. Executives admitted the harm was real. They conceded the fix was feasible. And they declined to implement it — because, as one candidly explained, "investment managers bill on the inflated NAV."

The documented record. Petitioner preserved this engagement meticulously. The record includes contemporaneous meeting notes, formal correspondence, certified mail receipts, email delivery confirmations, internal communications, and recorded statements. This documentation is compiled in Exhibit 1, the Declaration of Jeremy Thomas Roseberry, and the supporting exhibits referenced therein. The record is available for Commission review, enforcement use, and—where appropriate—public disclosure.

E. Sworn Attestation Under Penalty of Perjury

What this Petition alleges will challenge belief. Major financial institutions—fiduciaries entrusted with Americans' retirement savings—systematically failing to disclose material tax consequences. An entire industry refusing to correct known deficiencies despite years of formal notice. Investors losing tens of billions of dollars annually while every gatekeeper stands down. Regulators receiving detailed warnings but taking no public action. These allegations invite skepticism. They should.

To overcome that skepticism, Petitioner submits Exhibit 1: a comprehensive declaration under penalty of perjury pursuant to 28 U.S.C. § 1746. The declaration attests to eight years of events, identifies individuals and institutions by name, and documents the breadth of fiduciary failure across the nation's largest financial firms. It provides dates, documents, communications, and specific facts—not characterizations, but evidence.

The declaration is offered not as advocacy but as proof. It is subject to the penalties of perjury—up to five years' imprisonment under 18 U.S.C. § 1621—and to the full scrutiny of the Commission's investigative authority. Petitioner submits it precisely because the facts are as stated and because the Commission and the investing public are entitled to a record they can rely upon.

F. Standing to Seek These Remedies

Petitioner has standing to petition for rulemaking and related agency action under the Administrative Procedure Act. The constitutional and statutory requirements are satisfied:

Concrete injury. Petitioner has paid measurable taxes on amounts that were, in economic substance, return of his own capital—not income. The dollars left his account. The harm is not hypothetical.

Particularization. Petitioner experienced this injury personally, in his own investment accounts, with his own money. He is not asserting a generalized grievance on behalf of the public at large; he is among the injured.

Traceability. The injury is directly traceable to the challenged conduct: materially misleading prospectuses that omit the data investors need to assess their exposure and make informed decisions.

Redressability. The requested relief—interpretive guidance clarifying disclosure obligations and rulemaking requiring point-of-sale transparency—would prevent the injury by enabling investors to see their exposure before committing capital.

Beyond Article III standing, Petitioner possesses the equitable interest that every investor holds: the right to receive truthful, complete information about securities offered for sale. That right is the foundation of the disclosure regime Congress enacted in 1933. This Petition seeks to vindicate it—not for Petitioner alone, but for every American who invests while relying on prospectuses that do not tell the whole truth.

G. Public Interest, Not Private Advantage

Although Petitioner has a direct interest as an injured investor and market participant, the relief requested is a rule of general application sought in the public interest.

The goal is not compensation for Petitioner's individual losses. Private remedies exist for that purpose, and Petitioner reserves all rights to pursue them. The goal here is different: materially accurate, real-time, point-of-sale disclosure for all investors—ensuring that every American receives complete information about the securities they purchase and the tax consequences those purchases trigger.

What serves Petitioner serves every investor who has ever purchased—or will ever purchase—while embedded realized income sits in net asset value, relying on a prospectus that implies the risk exists only "shortly before" a distribution. That is tens of millions of transactions per year. That is 160 million Americans. That is the investing public whose protection is the Commission's statutory mission.

This Petition asks for prospective relief: interpretive guidance to clarify the law, rulemaking to mandate disclosure, and immediate protective action to stop ongoing harm. It asks the Commission to do what only the Commission can do. Private litigation cannot achieve industry-wide reform. Individual arbitrations cannot establish disclosure standards. Only regulatory action—by the agency Congress created for precisely this purpose—can protect investors at the scale the problem demands.

H. Why This Factual Record Is Necessary: The Industry's Demonstrated Refusal to Self-Correct

This Petition requests two categories of affirmative regulatory relief: interpretive guidance clarifying how existing disclosure obligations apply to embedded realized income, and a rule requiring funds to disclose their realized income to investors at the point of sale. Both requests are filed pursuant to the Administrative Procedure Act, 5 U.S.C. § 553(e), and SEC Rule of Practice 192, 17 C.F.R. § 201.192.

A petition for rulemaking must demonstrate that the requested rule is necessary. The factual record that follows—documenting the mechanics of the violations, the scope of investor harm, the industry's knowledge, and the conduct of every gatekeeper in the system—serves that purpose. It is not background. It is the legal predicate for the relief requested. Every section of this Petition builds the evidentiary foundation establishing why the Commission's intervention is required: because the industry has demonstrated, conclusively and over an extended period, that it will not correct course without compulsion.

The record establishes three facts that, taken together, eliminate any basis for the Commission to conclude that market forces or voluntary compliance will protect investors.

First, the industry has known about the harm for decades and has chosen to perpetuate it. Executives at major fund complexes have admitted knowledge of investor harm in terms that leave no room for interpretation. One stated that the problem is not considered serious "because our investors don't know it is happening." Another explained why available corrective technology would never be adopted: "We bill on the [inflated] NAV." These are not ambiguous statements requiring construction. They are admissions that the industry understands the harm, understands how to prevent it, and has chosen not to—because the current practice generates revenue.

Second, the industry was offered a remedy and uniformly refused it. Petitioner developed technology that would have corrected the pricing distortion, generated accurate tax forms, and provided real-time point-of-sale disclosure at de minimis cost. The technology was demonstrated to firms across the industry. Not one adopted it. Not one agreed to pilot it. The refusal was not varied or gradual, as one would expect from firms independently evaluating a business decision. It was uniform—the response one expects from an industry that has collectively determined that correction threatens shared revenue.

Third, every gatekeeper Congress empowered to protect investors received formal notice and declined to act. In 2023, Petitioner served 15,266 chief compliance officers with written notice

identifying the disclosure deficiency, quantifying the harm, and offering a remediation path. The response was silence. The Big Four accounting firms were notified. No inquiry followed. Major securities law firms were notified. They continued drafting the same prospectuses this Petition identifies as materially false. Market structure providers acknowledged in writing that "the problem is real" and that the industry has "simply ignored it"—and then refused to implement corrective technology because "industry perception can kill reputations."

This record does not merely support the requested relief. It compels it. If market forces could correct this problem, nearly eight years of notice would have produced at least one honest actor willing to gain competitive advantage through truthful disclosure. None emerged. If self-policing could protect investors, at least one of the 15,266 compliance officers who received written notice would have investigated. None did. If the legal profession's ethical obligations could prevent ongoing fraud, at least one of the securities law firms that received notice would have advised its clients to correct the disclosures. None did.

Every mechanism short of regulatory intervention has been tested. Every mechanism has failed. The factual record that follows documents those failures—not to relitigate what the industry did, but to establish beyond dispute that what the industry will not do voluntarily, the Commission must now require.

No Plausible Deniability

After Madoff, the Commission faced hard questions about warnings ignored and red flags missed. The agency undertook reforms. It pledged to do better.

This matter is different. There are no missed signals here, no tips lost in the queue, no warnings that failed to reach decision-makers. Petitioner did not submit a form and hope for the best. He met with Commissioners—three of them. He briefed staff across multiple divisions—approximately fifty individuals. He provided extensive documentation, exposed the problems point by point, and developed a remediation plan at the Commission's own request.

For nearly eight years, Petitioner did everything a citizen can do to bring a problem to the government's attention through proper channels. The Commission engaged substantively. And in all of that engagement—across years of meetings, hundreds of pages of materials, and dozens of detailed discussions—not once did anyone at the Commission challenge the accuracy of the facts, dispute the methodology, or contest that investors are being harmed.

The Commission knows. The industry knows. The question is no longer awareness. It is action — and every day that passes without it is a day 160 million Americans continue to invest under disclosures the Commission has known to be materially incomplete for nearly six years.

Petitioner has standing to ask. The Commission has authority—and, Petitioner respectfully submits, the obligation—to answer. And 160 million American investors, most of whom have no idea this harm is being inflicted on them, are waiting for someone to tell them the truth.

III. FACTUAL BACKGROUND: HOW 'BUYING A DIVIDEND' WORKS

This Section explains the mechanics of 'buying a dividend'—not as abstract theory, but as a quantifiable, recurring harm that affects every American who invests in income-producing securities. The mathematics are straightforward. The consequences are severe. And the industry's own documents confirm both.

A. What Is 'Buying a Dividend'?

"Buying a dividend" is not a term critics invented—it is the financial services industry's own name for the losses investors incur as a result of its backward accounting treatment of dividends and capital gains. The industry didn't just discover this risk—it manufactured it, named it, and then decided not to adequately disclose it.

Understanding this problem requires grasping one simple fact: after you purchase fund shares, your first distributions—dividends, short-term capital gains, and long-term capital gains—simply return a portion of the money you just invested. You put money in; the fund sends some of it back. Receiving your own money back is a return of your capital, and because you earned nothing, the IRS deems it not taxable. But you will receive a 1099-DIV reporting it as income—and you will pay taxes on it. This problem flows directly from Wall Street's accounting choices: funds treat liabilities—amounts they are obligated to distribute—as assets.

That backward accounting practice embeds upcoming distributions into the price you pay. Part of your purchase price is simply parked, waiting to be returned to you as a distribution. For example, you buy one share for $100, and the fund has a pending $3.00 distribution. Of your $100, only $97 is actually invested in the portfolio—the other $3.00 is earmarked for the distribution you are about to receive. When the fund pays the distribution, the share price drops from $100 to $97,

and you receive $3.00 in cash. You now hold a $97 share plus $3.00 in cash—exactly what you started with—$100. No income was earned.

This is a classic shell game, and it is what happens when firms treat fund liabilities as assets. A shell game is a con where movement creates the illusion of opportunity, but the only certainty is that the player loses. Here, money moves from your pocket into the fund and back again. Wall Street knows it simply returned what you put in—it invented the term for this maneuver. But when your money comes back, it arrives disguised as income: a 1099-DIV in your mailbox, a tax bill from the IRS, and a liability for earnings that never existed.

Here is how it works, in plain terms:

Mutual funds and ETFs and other registered investment companies ("funds") collect dividends and earn interest from the stocks and bonds they own and realize capital gains when they sell holdings at a profit. Under federal tax law, these funds must distribute substantially all of this income to shareholders each year to maintain their tax status as regulated investment companies under 26 U.S.C. §§ 852(a)–(b). These are not discretionary payments. They are legal obligations—liabilities the fund owes to its shareholders.

Under Generally Accepted Accounting Principles ("GAAP"), a liability exists when an entity has an obligation to transfer assets, the obligation arises from past events, and the amount can be reliably estimated. Pending fund distributions satisfy every element of this definition: the obligation to distribute is legally mandated by Subchapter M of the Internal Revenue Code; the income triggering that obligation has already been realized; the amount can be calculated with precision on any given day; and the fund knows exactly when payment will occur. Yet standard industry accounting does not treat these pending distributions as liabilities. Instead, funds add them to net asset value—treating what they owe shareholders as assets they manage. The effect is to inflate reported asset values by the precise amount the fund is obligated to pay out, and to charge advisory fees on money that belongs to shareholders, not to the fund.

And the concealment begins with the price itself. Every prospectus in America publishes the same formula: total assets minus total liabilities, divided by shares outstanding. Investors read that formula and reasonably conclude that the price reflects a complete accounting — that every obligation the fund owes has been subtracted before the number reaches them. It has not. The fund's largest known obligation — the realized income it must distribute under federal law — is not subtracted as a liability. It is embedded in the "assets" figure as though it were portfolio the

investor will retain. The formula that purports to show investors what they are buying is the first thing that misleads them.

The accounting methodology confirms the effect. Funds use accrual accounting for operating expenses — management fees, custody fees, legal fees, transfer agent fees — recognizing those obligations as liabilities and deducting them from NAV before they are paid in cash. This is proper. It ensures that NAV reflects the fund's true net position by accounting for known obligations when they are incurred, not when the check clears. But funds do not apply the same method to distributions. Realized income that the fund is legally obligated to distribute — an obligation that is known, calculated to the penny, mandated by federal statute, and that dwarfs all operating expenses combined — is not accrued as a liability. It is held inside NAV on a cash basis, recognized only when the distribution is actually paid. The fund accrues for the small obligations and ignores the large one. It uses the accounting method that reduces NAV for expenses measured in basis points and the accounting method that inflates NAV for obligations measured in dollars per share. The result is not a coherent methodology. It is selective accounting — accrual where it costs the adviser nothing, cash basis where accrual would reduce the fee base. Every dollar of undistributed realized income that remains in NAV is a dollar on which the adviser collects fees it would not earn if the same accrual discipline applied to distributions that applies to expenses. The sections that follow quantify the consequences.

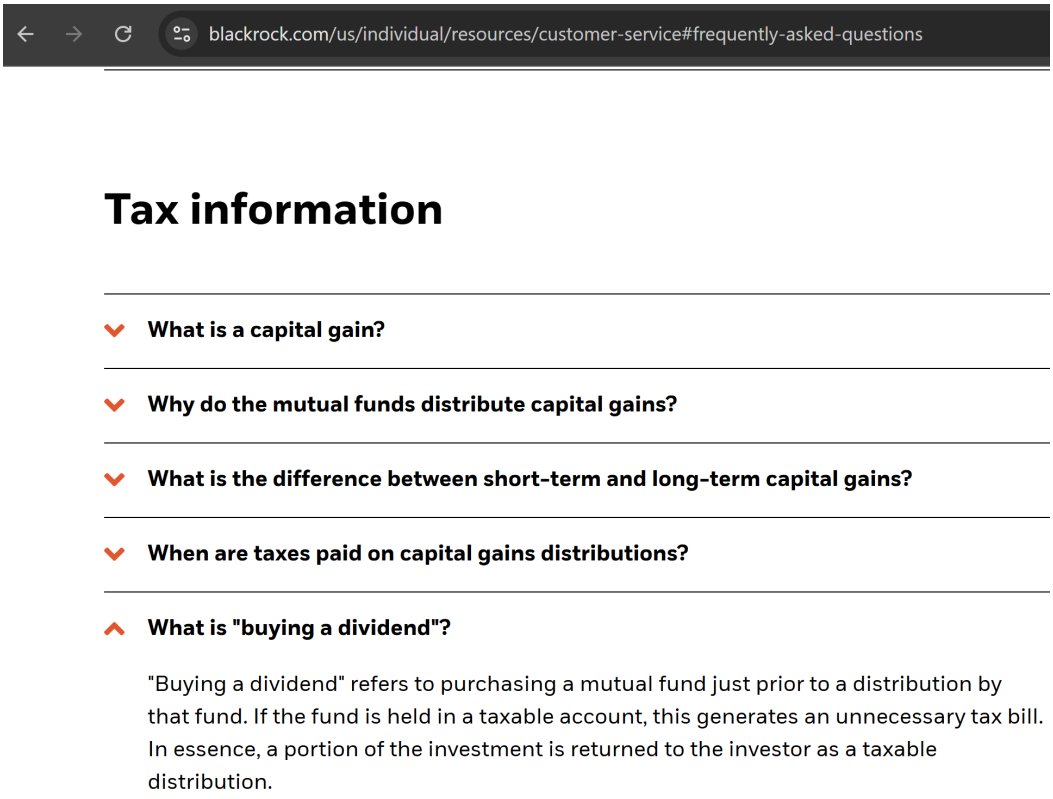
When an investor buys at this inflated price, she pays for income she did not earn. When the fund later distributes that income, the share price drops by the distribution amount—and the investor receives a tax bill for 'income' that was really just the return of part of her purchase price.

This is why the industry calls it 'buying a dividend.' The investor literally purchases an upcoming dividend that has already accrued—and then pays taxes on it when it is returned to her, as if she had earned it.

A clarification is necessary before proceeding. Petitioner does not contend that funds must change their NAV calculations or that the accounting treatment of realized income violates GAAP. The accounting treatment—recognizing realized income when earned and embedding it in NAV until distributed—may be entirely appropriate under applicable accounting standards. What is not appropriate is failing to disclose to investors the consequences of that accounting: that they are paying for income they did not earn, that they will be taxed on amounts representing no increase in their wealth, and that the fund knows exactly how much harm they will suffer before they

commit capital. The accounting practice is the industry's choice. Disclosure of its consequences is the law's command.

BlackRock, the world's largest asset manager, describes the consequence plainly. According to BlackRock's customer service materials, this practice saddles investors with *'an unnecessary tax bill*.' [emphasis added]



Source: https://www.blackrock.com/us/individual/resources/customer-service

BlackRock explains that the 'unnecessary tax bill' results from 'a portion of the investment [being] returned to the investor as a taxable distribution.' The investor is taxed not on income earned, but on the return of her own invested capital. This is not Petitioner's characterization. It is the industry's own description of what occurs.

The problem is not unique to BlackRock. It affects every income-producing security that accrues income to NAV: mutual funds, exchange-traded funds, and individual dividend-paying equities. The only exception is money market funds (or funds that declare dividends daily), which maintain stable NAVs and distribute income differently. For every other vehicle—the funds in which Americans hold their retirement savings—the harm is structural and ongoing.

B. The Scope of Harm: Who Loses and How

The erosion of American retirement savings is not theoretical. It is occurring now, across every account type where ordinary people save.

When liabilities are booked as assets, NAV rises artificially. That artificial inflation means investors pay more per share than economic reality warrants, receive fewer shares for their investment, and—because they own fewer shares—receive fewer dividends in perpetuity. The compounding effect over a working lifetime is substantial. An investor purchasing an S&P 500 index fund pays more than the S&P 500 is worth—a premium for the privilege of inheriting someone else's tax liability. The fund cannot outperform its benchmark when the investor overpays at entry; the distortion is baked in from day one.

The affected accounts include: taxable brokerage accounts, 401(k) and 403(b) plans, 457(b) governmental plans, Traditional and Roth IRAs, SEP and SIMPLE IRAs, ESOPs, defined-benefit and cash-balance pensions, 529 college savings plans, health savings accounts invested in funds, union multiemployer (Taft-Hartley) plans, endowments, foundations and any other account that buys income-producing securities.

These are the savings vehicles of workers, teachers, nurses, firefighters, public employees, and the private employers that sponsor retirement plans for them. The harm falls on those who can least afford it and who have the least ability to detect it.

Unions and plan sponsors are now on notice: their participants' portfolios and retirement outcomes are being eroded by inflated pricing. Whether this silent wealth transfer continues depends on the regulatory response this Petition seeks to initiate.

C. Why the Taxation Is Unjust: The Economic Reality

The core problem is simple: the same income is being taxed twice—once to the person who earned it, and again to the person who bought the share after it was earned but before it was distributed.

Consider what happens economically. A fund holds stocks that pay dividends. Those dividends belong to whoever owned the fund shares when the dividends were earned. But because the fund adds those dividends to NAV rather than segregating them as a liability, a new investor who buys the fund *after* the dividends accrued pays a price that *includes* those dividends.

When the fund distributes the first post-purchase distributions, two things happen simultaneously: the investor receives cash, and the share price drops by the same amount. The investor's total wealth is unchanged. It is money that moved from the investor's bank account, into the fund at purchase, and then, from the fund, back into the investor's bank account as a "distribution." The fund took a portion of the investor's own capital and returned it. No new wealth was created. Nothing was "gained." The investor simply received her own money back—and then received a tax bill for the privilege.

Yet the fund sends her a Form 1099-DIV reporting this distribution as taxable income.

The Bank Withdrawal Analogy

Taxing this distribution is economically identical to taxing a bank withdrawal. If a taxpayer deposits $10,000 of after-tax wages into a savings account and later withdraws $1,000, she has not earned new income. She has simply retrieved her own money. No one would suggest the withdrawal should be taxed.

'Buying a dividend' works the same way. The buyer pays a price that includes accrued distributions. The first payout merely returns part of that purchase money. Nothing new was gained. Yet the IRS receives a form showing taxable income, and the investor pays tax on what is, in economic substance, the return of her own capital. No one disputes this.

The Supreme Court has defined income as 'an undeniable accession to wealth, clearly realized, and over which the taxpayer has complete dominion.' *Commissioner v. Glenshaw Glass Co.*, 348 U.S. 426, 431 (1955). A transaction that leaves the taxpayer in exactly the same position she started—no wealthier, no poorer—does not meet that definition. It is not income. It is the return of her own money.

This Is Not a New Discovery

The principle that accrued income embedded in a purchase price is not taxable income to the buyer has been recognized in federal tax law since the Internal Revenue Code of 1954. Treasury regulations have long provided that when a buyer purchases a bond at a price reflecting accrued interest, the first interest payment received is not income — it is a return of capital.[2] The IRS

[2] Treas. Reg. § 1.61-7(c) ("If a taxpayer purchases bonds when interest has been defaulted or when the interest has accrued but has not been paid, any interest which is in arrears but has accrued at the time of purchase is not income

confirmed this principle in Revenue Ruling 67-17, holding that "purchased accrued interest attributable to the bonds represents a return of capital when received."[3] The economic logic is identical for fund distributions: the buyer pays a price that includes accrued income, and the first payout merely returns what the buyer already paid for. Yet for bonds, the tax code corrects for this. For fund shares, it does not. The industry has known for seventy years that treating these payments as income misstates actual income and imposes taxation that Congress never authorized.

Yet the practice continues. And it does not happen once per investor. It happens with every purchase—potentially three times per purchase, because investors face separate tax bills for dividends, short-term capital gains, and long-term capital gains.

D. Illustrative Example: The $100 Share

The mechanics become clear with a simple example. Follow the money:

Step 1: The Purchase.

An investor buys one share for $100. The fund has announced it will pay a $3 dividend soon.

Step 2: What the $100 Actually Buys.

Of the $100 price paid:

- $97 purchases the underlying investment (the fund's pro-rata share of portfolio holdings)
- $3 purchases the upcoming dividend already embedded in the price

The investor has paid $3 for income that accrued before she owned the share—income she did not earn.

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and is not taxable as interest if subsequently paid. Such payments are returns of capital which reduce the remaining cost basis."). This regulation, promulgated under the Internal Revenue Code of 1954, codifies the principle that income accrued before a purchase belongs to the seller, not the buyer — and that taxing the buyer on its return is taxing a return of capital. The IRS Schedule B instructions apply this principle today: bond buyers subtract accrued interest paid at purchase from their reported interest income. *See* Instructions for Schedule B (Form 1040) (2025) (directing buyers to subtract "Accrued Interest" from reported interest income). No analogous adjustment exists for mutual fund distributions — the identical economic transaction, treated opposite ways.

[3] Rev. Rul. 67-17, 1967-1 C.B. 11 (holding that accrued interest purchased with bonds "represents a return of capital when received" and is not includible in taxable investment income).

Step 3: The Distribution.

When the dividend is paid:

- The share price adjusts from $100 to $97 (the dividend leaves the fund)
- The investor receives $3 in cash

Step 4: The Investor's Position After the Distribution.

- Stock value: $97
- Cash received: $3
- Total: $100

The investor has exactly what she started with. No wealth was created. The fund took $100 from her, kept $97, and gave her back $3.

Step 5: The Tax Bill.

Despite this economic reality, the fund reports the $3 as fully taxable income on Form 1099-DIV. If the investor is in a 33% tax bracket, she owes approximately $1 in federal and state taxes on this 'income.' She started with $100. She now has $97 in stock plus $3 in cash, minus $1 in taxes owed. Her net position: $99.

The investor lost $1.00 (or 1% of her capital)—not from market movement, not from investment risk, but from an accounting practice that treats her own money as income when it is returned to her.

This loss is certain, immediate, and entirely avoidable with proper disclosure. Had the investor known that $3 of her purchase price would be returned as a taxable distribution, she could have waited until after the distribution to buy, paying $97 for the same economic interest, with no embedded tax liability.

The Prospectus Acknowledges This

Here is the remarkable part: fund prospectuses acknowledge (vaguely) that this distribution is, in economic substance, a return of capital. They warn (vaguely) investors about 'buying a dividend.' But they describe the risk using timing-limited language—implying it arises only 'shortly before' distributions—while withholding the single data point (the per-share amount of

embedded realized income) that would allow investors to quantify their exposure and make informed decisions.

The disclosures admit the problem exists. They just don't tell investors how big it is, when it applies, or how to calculate it.

E. Scaling the Harm: From One Share to One Thousand

The $1 loss on a single share becomes significant when scaled to real investment amounts.

Suppose an investor buys 1,000 shares at $100 each—a $100,000 investment. The security will pay a $3.00 per share dividend. If the investor's combined federal and state tax rate is 33%, her tax loss is:

(1,000 shares × $3.00 embedded dividend) × 33% = $990

The formula is straightforward: **Tax Loss = Shares Purchased × Embedded Distribution Per Share × Effective Tax Rate**

This $990 in taxes should not have been owed. The investor paid for income she did not earn, and then paid taxes on it when it was returned to her.

Multiple Distributions Multiply the Loss

Investment funds typically pay multiple types of distributions: ordinary dividends, short-term capital gains, and long-term capital gains. Each type may be taxed at different rates. An investor faces a separate tax loss for each distribution type embedded in NAV at the time of purchase.

Suppose the same fund has embedded not only a $3.00 dividend, but also a $2.00 short-term capital gain and a $4.00 long-term capital gain—$9.00 total per share. Using realistic state and federal tax rates (40% for STCG, 20% for qualified dividends, 20% for LTCG):

Distribution Type	Per Share	Shares	Tax Rate	Tax Loss
Ordinary Dividend	$3.00	1,000	20%	$600
Short-Term Capital Gain	$2.00	1,000	40%	$800
Long-Term Capital Gain	$4.00	1,000	20%	$800
Total Embedded Income	**$9.00**			**$2,200**

The investor will lose $2,200 in unjust taxes—certain, immediate, and entirely unrelated to market performance. This loss was determined the moment she clicked 'buy.' It was not disclosed to her before she committed her capital.

Why This Is Material

Had this investor been informed at the point of sale that she would lose $2,200 with certainty—a loss caused entirely by the issuer's accounting choice and not by any market risk—she would not have made the purchase. Or she would have waited until after the distributions. Or she would have chosen a different investment.

Information that would alter a reasonable investor's decision is, by definition, material. The Supreme Court has made this standard clear: a fact is material if there is 'a substantial likelihood' a reasonable investor would view it as important in making an investment decision. *TSC Industries, Inc. v. Northway, Inc.*, 426 U.S. 438, 449 (1976). Materiality turns on whether disclosure would have 'significantly altered the total mix of information' available. *Basic Inc. v. Levinson*, 485 U.S. 224, 231–32 (1988).

A guaranteed $2,200 tax loss—certain, quantifiable, and unrelated to market performance—meets that standard. Investors deserve this information before their money is taken. For nearly eight years, the industry has refused to provide it.

F. The Timing Lie: Risk Exists Nearly Every Day

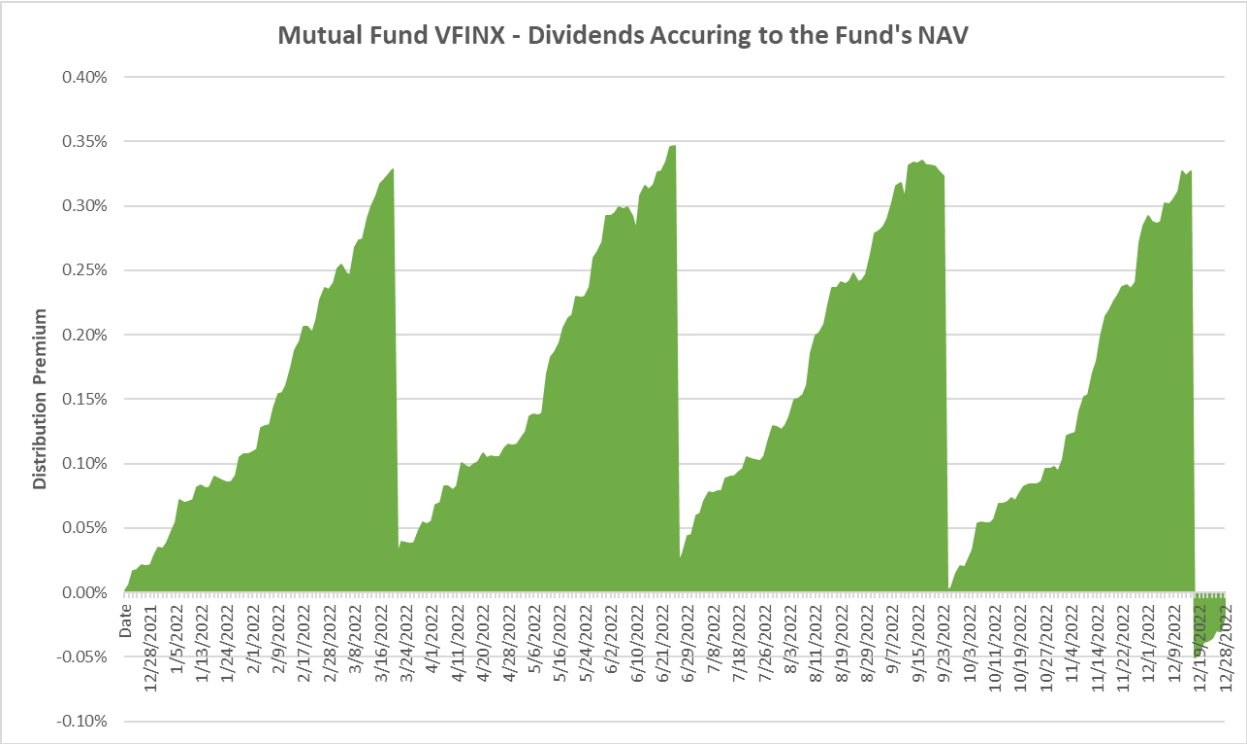
Current prospectus disclosures generally describe 'buying a dividend' risk using timing-limited language—warning investors of consequences that arise 'shortly before' or 'just prior to' distributions. This language implies the risk is episodic: a narrow window around distribution dates that careful investors can avoid.

That implication is false. The risk exists nearly every trading day of the year.

As soon as a fund receives a dividend from an underlying holding, accrues interest, or realizes a capital gain, that income accrues to NAV. Investor losses and security overvaluation begin immediately and persist until 100% of the accumulated income is distributed. Dividends are generally paid monthly, quarterly, semi-monthly, or annually. Capital gains are typically distributed annually, often in December. Between distribution dates—which is to say, most of the year—the risk accumulates continuously.

Visual Evidence: Quarterly Dividend Funds – Actual Data

The chart below illustrates this reality for VFINX, Vanguard's S&P 500 mutual fund. It shows how the fund's price deviates from its underlying index (the S&P 500) as dividends from portfolio holdings accrue to NAV.

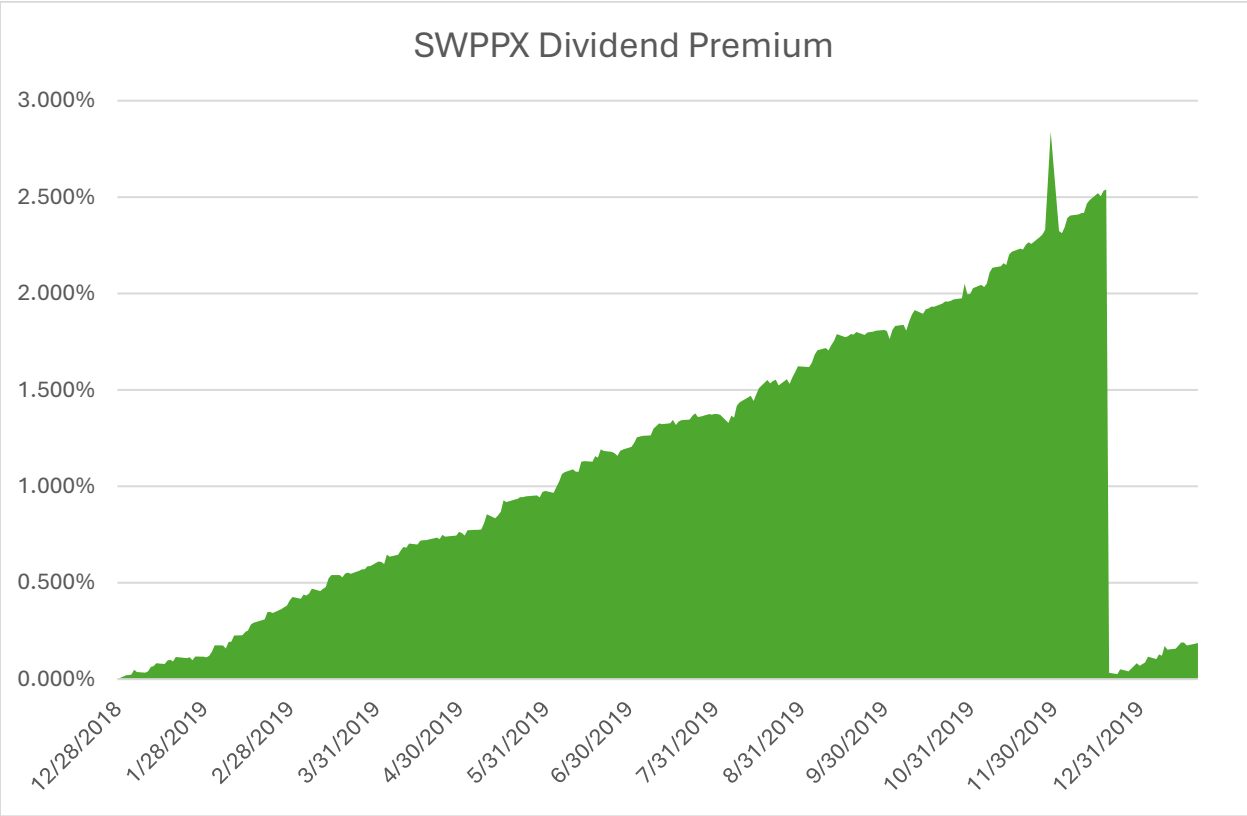


The fund's price outpaces the index—not because the fund is outperforming, but because accrued dividends inflate NAV. This creates the false illusion of superior performance vs benchmarks. The 'overvaluation' persists until each quarterly ex-dividend date, when accrued income is distributed, and NAV resets toward fair value. The sharp drops in the chart correspond to those ex-dividend dates.

Any investor buying during the periods of positive deviation—shown in green—is 'buying dividends.' That investor will pay unjust taxes and will purchase fewer shares than she could buy if she purchased an index fund tracking the same holdings. This is visual, quantifiable evidence that the risk of buying a dividend occurs continuously throughout the quarter, not only 'shortly before' distributions.

Visual Evidence: Annual Dividend Funds – Actual Data

The problem is more severe for funds that distribute less frequently. The chart below shows SWPPX, Schwab's S&P 500 mutual fund, which accrues dividends throughout the year and pays them in a single distribution each December.



Notice how the risk begins reaccumulating immediately after the year-end distribution. There is no 'safe' window of meaningful duration. The risk is continuous.

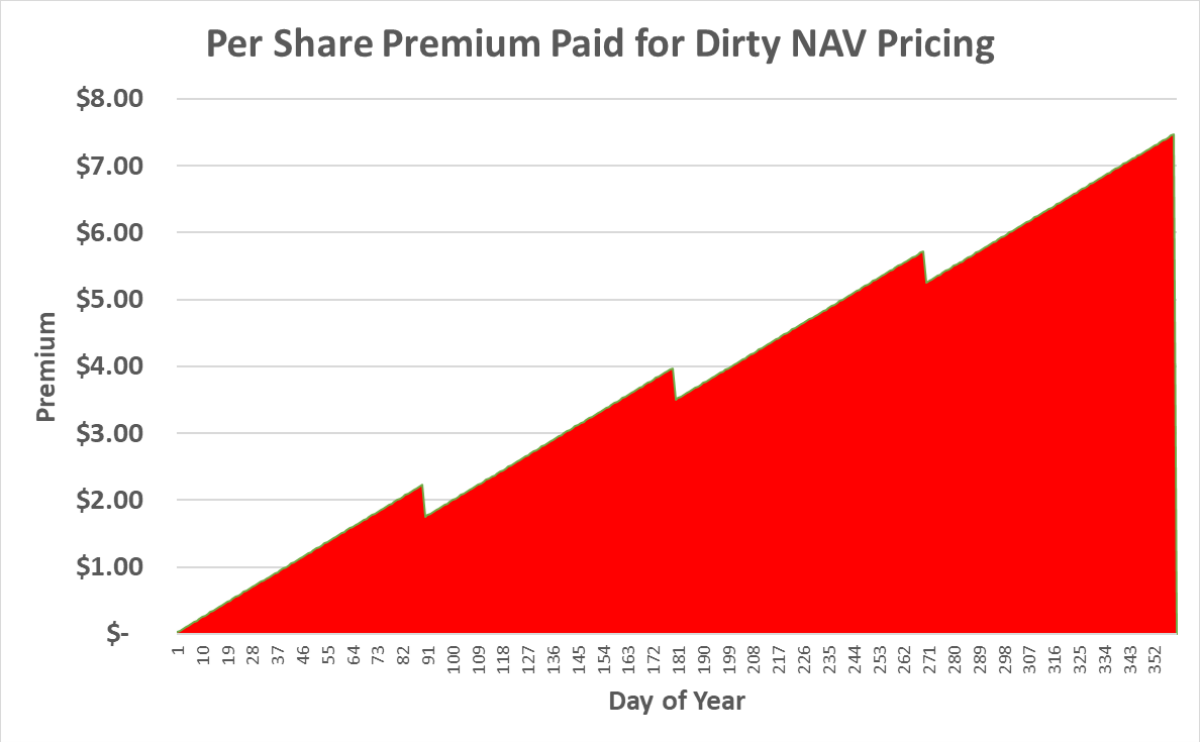
The proof that this methodology overstates NAV is visible on every distribution date. When a fund pays a distribution, its share price drops by exactly the amount distributed — a decline completely unrelated to the price action of any security in the portfolio. That drop is prima facie evidence that the pre-distribution NAV was overstated. If the price accurately reflected the value of portfolio the investor will retain, a distribution would not reduce it. It reduces it because the price included money the fund already owed — an obligation the fund recognized internally, calculated daily, and chose not to subtract. The market corrects in an instant what the fund's accounting concealed for months. The sharp drops visible in the charts above are not market events. They are confessions — each one documenting the exact amount by which NAV exceeded fair value the moment before the distribution was paid.

The Complete Picture: Dividends Plus Capital Gains

Investor harm extends beyond dividends. Capital gains distributions—both short-term and long-term—accumulate in fund NAVs throughout the year, creating additional layers of hidden liability.

It is important to understand that capital gains distributions do not represent income to the investor. They are taxable distributions of NAV, not wealth creation. When capital gains are distributed, NAV decreases by the distribution amount, and the investor owes tax on the distribution. The result is a net loss: the investor's total position (shares plus cash) is unchanged, but she now owes taxes.

The figure below illustrates a model fund that starts the year at a $100 NAV and accrues dividends as well as realized short- and long-term capital gains throughout the year.



'Dirty NAV' is a term borrowed from bond markets. A 'dirty' price includes accrued income; a 'clean' price excludes it. Here, the rising red area represents the per-share premium investors pay over the fund's true economic value—the amount by which NAV exceeds what the investor would pay if liabilities were properly accounted for.

This model fund accrues realized capital gains equal to 7% of NAV—$7.00 per share—which, according to Russell Investments, represents an industry average for mutual funds.[4] The small step-downs mark four quarterly dividend payments of $0.50 each. As long as the red balance is positive, buyers suffer a certain, non-market-related loss: their first payouts merely return part of their initial investment, yet those returns are taxed as income.

The inflated NAV also impairs buying power—investors purchase fewer shares, which means fewer dividends forever—and it generates excess fees, because managers charge asset-based fees on amounts that are, in substance, liabilities owed to shareholders.

But notice what the chart also reveals: the quarterly dividend payments barely dent the red zone. Even after $2.00 in distributions, the investor remains exposed to $7.00 in embedded capital gains—gains that will eventually be distributed, taxed, and deducted from share value. Paying dividends does not cure the problem; it merely addresses one component of embedded income while leaving the larger liability intact.

The Truth About Timing

For funds that distribute capital gains annually, the only economically rational time to buy is the single trading day after all year-end distributions are paid—typically one day in December—when NAV finally resets to fair value. Even then, if the fund receives any dividends or realizes any gains on that day, the end-of-day NAV will include that new accrual, and the investor will face a loss.

Prospectuses that describe this risk as arising 'shortly before' distributions are not merely imprecise. They are materially false. The risk exists continuously. The 'safe' window the disclosures imply does not exist.

G. The Fee Extraction: Everyone Wins Except the Investor

When liabilities are booked as assets, NAV rises—and every asset-based fee in the chain is calculated on that inflated base.

Management fees. Investment adviser and sub-adviser fees. Administrator and transfer-agent fees. Platform and wrap fees. Strategist and model-overlay fees. Consultant fees. Custody

[4] https://russellinvestments.com/content/ri/us/en/insights/russell-research/2024/12/2024-capital-gains-snapshot-understanding-the-tax-pain-many-inve.html

and clearing fees. Revenue-share arrangements. Every participant in the distribution chain benefits from higher NAV.

The mechanism is automatic: the market bills fees on liabilities sitting in the price, compounding fee extraction across multiple layers without delivering any additional value. The inflated base persists until distributions are paid, which, for capital gains, means most of the year.

Only the investor loses.

H. The Vicious Feedback Loop: Harm That Never Ends

The harm from 'buying a dividend' does not stop with the initial purchase. It compounds with every reinvested distribution (when realized income such as capital gains remains in the NAV) for the life of the investment. This creates a vicious feedback loop that most investors never see—and that no prospectus discloses.

How the Feedback Loop Works

Consider an investor who purchases fund shares and elects dividend reinvestment—the default option for most retirement accounts. Her initial purchase exposes her to the 'buying a dividend' harm described above: she pays an inflated price that includes embedded realized income, and she will be taxed on that income when it is distributed.

But the harm does not end there.

When the fund pays its quarterly dividend, her dividend is automatically reinvested at the current NAV. If the fund has *any* embedded realized income at that moment—accrued dividends from the current quarter, or capital gains accumulated since the last distribution—her reinvested dividend purchases shares at an inflated price. She is 'buying a dividend' again. And she will be taxed again on income she did not earn.

This happens every quarter, for every reinvested dividend.

It gets worse. Suppose the fund pays both dividends (quarterly) and capital gains (annually). When the Q1 dividend is reinvested in March, the fund may already have $2.00 per share in accrued capital gains embedded in NAV. The investor's reinvested dividend buys overvalued shares. When those capital gains are distributed in December, she will receive a 1099-DIV showing taxable capital gains on shares she purchased with reinvested dividends just months earlier. She paid for income she did not earn, and now she pays taxes on it.

The Compounding Effect

This feedback loop operates continuously:

- Initial purchase: Investor buys at inflated NAV, will be taxed on embedded income
- Q1 dividend reinvestment: Reinvested at NAV that includes new accrued income → taxed again
- Q2 dividend reinvestment: Reinvested at NAV that includes more accrued income → taxed again
- Q3 dividend reinvestment: Reinvested at NAV that includes more accrued income → taxed again
- Q4 dividend reinvestment: Reinvested at NAV with maximum embedded capital gains → taxed again
- Year-end capital gains distribution: Taxed on gains 'earned' by shares purchased throughout the year with reinvested dividends

Every reinvestment is a new 'buying a dividend' event. Every distribution triggers a new tax bill on income the investor did not earn. The harm compounds quarterly—and continues for the life of the portfolio.

No Disclosure, No Escape

Investors have no way to know this is happening. The prospectus does not disclose the per-share amount of embedded realized income. The reinvestment happens automatically. The 1099-DIV arrives the following January, showing taxable income the investor believes she earned—because no one told her otherwise.

The only way to avoid this feedback loop is to turn off dividend reinvestment and manually time purchases for the single day each year when NAV resets to fair value. No prospectus suggests this. No broker recommends it. And for investors in 401(k) plans and other retirement accounts that frequently invest, it may not even be an option.

The harm is structural, continuous, and—absent disclosure—invisible.

I. Quantifying the Harm: Four Formulas for Investor Loss

Petitioner provides four formulas that any investor, regulator, or auditor can use to measure the components of 'buying a dividend' harm. These are the calculations the industry could—but does not—perform and disclose. In a disclosure-based regime, withholding the arithmetic is withholding the truth.

Inputs Required for All Calculations:

- Per-share realized income accruals at the time of trade (ordinary dividends, STCG, LTCG)
- Number of shares bought or sold
- Effective state plus federal tax rates for each income type
- Tax characterization of distributions (ordinary or qualified dividends)
- Total investment amount
- Fund expense ratio

Formula 1: Tax Loss from 'Buying a Dividend' at Purchase

This formula calculates the unjust taxes an investor pays because realized income was embedded in the price at purchase. The investor must calculate each distribution type separately, then sum all three for the total loss.

1) **Dividend Tax Loss =** Accrued Dividend Per Share × Shares Bought × Effective Dividend Tax Rate
2) **STCG Tax Loss =** Accrued STCG Per Share × Shares Bought × Effective STCG Tax Rate
3) **LTCG Tax Loss =** Accrued LTCG Per Share × Shares Bought × Effective LTCG Tax Rate

Total Tax Loss = Dividend Tax Loss + STCG Tax Loss + LTCG Tax Loss

Result: The total tax paid on what is, in economic substance, the investor's own money being returned.

Formula 2: Excess Tax When Qualified Dividends Are 'Converted' to Short-Term Capital Gains at Sale

This formula captures a second layer of harm that applies to sellers. When an investor holds shares for more than 60 days but less than one year, she qualifies for favorable tax treatment on dividends (approximately 20% vs 40%). But because issuers embed qualified dividends into NAV—creating "price appreciation" instead of accounting for the dividend as a liability—those dividends are transformed into short-term capital gains when the investor sells. Short-term capital gains are taxed at ordinary income rates (approximately 40%).

The investor pays double the taxes she would have owed if the dividend had simply been paid to her.

Example: A fund has $1.00 per share in accrued qualified dividends. An investor who sells after the 60-day holding period pays:

- At STCG rates: $1.00 × 40% = $0.40 per share
- At qualified dividend rates (what she should pay): $1.00 × 20% = $0.20 per share
- Excess tax: $0.20 per share—100% more than legally owed

Formula = Accrued Qualified Dividend Per Share × Shares Sold × (STCG Tax Rate − Qualified Dividend Tax Rate)

Result: The excess tax paid because the fund's accounting practice converted preferred-rate income into higher-taxed capital gains. This affects billions of dollars annually. Had the investor received adequate disclosure, she could have waited to receive the actual dividend before selling and paid substantially less in taxes.

Formula 3: Permanent Share Shortfall from Inflated NAV

Investors receive fewer shares at purchase because liabilities are booked as assets, inflating the price. An investor who buys at $100 per share when the clean (fair) value is $93 receives fewer shares than her investment should purchase.

Step 1: Calculate Clean NAV (Fair Value).

- Clean NAV = Market NAV − (Accrued Dividends + Accrued STCG + Accrued LTCG)

Step 2: Calculate Shares Under Each Scenario.

- Shares Purchased at Dirty (Market) NAV = Investment Amount ÷ Market NAV
- Shares Purchased at Clean NAV = Investment Amount ÷ Clean NAV

Step 3: Calculate the Shortfall.

- Share Shortfall = Shares at Clean NAV − Shares at Dirty NAV

Result: A positive number representing the additional shares the investor could have purchased if accrued income were excluded from NAV and treated as the fund liability it is. This share deficit is permanent—it reduces the investor's dividend income in perpetuity.

Formula 4: Excess Management Fees Charged on Embedded Liabilities

Investors pay asset-based management fees on amounts that are, in substance, fund liabilities—not assets under management. Every fee in the chain (management fees, adviser fees, platform fees, custody fees) is calculated on the inflated NAV.

Annual Fee Overcharge = (Avg. Accrued Dividend Per Share + Avg. Accrued STCG Per Share + Avg. Accrued LTCG Per Share) × Shares Held × Expense Ratio

Result: Fees extracted on liabilities sitting in NAV, enriching the fund manager and every intermediary in the distribution chain without delivering any additional value to the investor.

J. Modeling Fund-Level Losses

Using the formulas above, Petitioner modeled a single fund to illustrate how losses compound over one year.

Model Assumptions:

- Starting NAV: $100
- Quarterly dividends: $0.50 per share (four payments)
- Year-end capital gains: $7.00 per share ($3.50 STCG, $3.50 LTCG)
- Effective tax rates: 40% STCG, 20% LTCG
- Average daily taxable purchases: 500,000 shares held through year-end

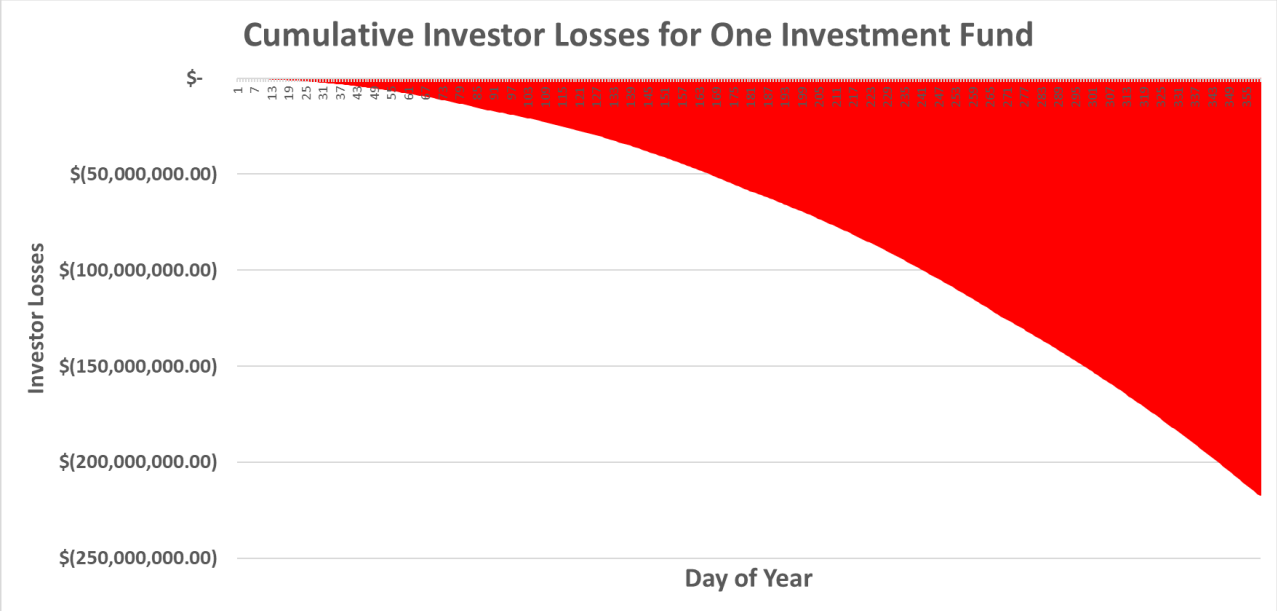
Results:

Using a daily accrual model, by December 31, investors in this single fund lose:

- $217,346,372.92 in certain, non-market-related unjust taxes

• 6,727,500 fewer shares purchased than they would own if distributions were treated as liabilities

These totals exclude two additional drags: management fees charged on the liability component of NAV, and excess taxes borne by sellers whose qualified dividends were converted to short-term gains. Therefore, the actual total loss is larger.



The chart above illustrates how these losses accumulate daily throughout the year—for one fund.

K. Estimating Market-Wide Losses

At year-end 2023, the U.S. fund universe comprised 8,582 mutual funds and 3,304 ETFs, collectively holding $33.9 trillion in assets. Mutual funds accounted for $25.5 trillion; ETFs accounted for $8.4 trillion. Current figures are higher.

Every dividend and every realized capital gain that accrues to NAV within these vehicles is embedded in the price until distributed. The 'buying a dividend' tax loss, share shortfall, and fee extraction repeat across thousands of products, every trading day, all year.

Scale the single-fund model across this universe. Losses compound quickly. Petitioner's estimate—well over $100 billion annually—is consistent with the breadth and magnitude of the market.

The problem extends beyond funds. Individual dividend-paying stocks trade 'cum-dividend' until the ex-date, at which point the price drops by approximately the dividend amount—

confirming that the dividend was already reflected in the price the buyer paid. FINRA's order-handling rules automatically reduce open buy limit orders by the dividend amount on ex-dates (unless marked 'Do Not Reduce'), a regulatory acknowledgment that prices include accrued dividends.

The economic mechanism is identical: buyers finance sellers' accrued payouts and are then taxed on a return of their own capital.

L. Why This Demands Commission Action

By any reasonable triage standard the Commission applies—magnitude of harm, clarity of the conduct, ease of proof, availability of remedies—this problem demands priority attention.

The Losses Are:

- Massive: Well over $100 billion annually across the fund universe
- Certain: Not speculative market risk, but mathematically determined consequences
- Recurring: Every trading day, across thousands of products, affecting millions of investors
- Provable: From publicly available NAV data and distribution records
- Correctable: Through disclosure requirements that cost pennies per transaction to implement

The Disclosures Are Materially False

Current prospectus disclosures describe a risk that lasts 1-2 days. The actual risk lasts all year.

The disclosures state that buying a dividend occurs 'shortly before' or 'just prior to' distributions. The charts in this Section prove otherwise. The risk begins accumulating the day after distributions are paid and continues—every day—until the next distribution. For funds with annual capital gains distributions, that means the risk exists on approximately 364 days per year.

Telling investors the risk exists 'shortly before' distributions, when it actually exists nearly every day, is not imprecision. It is not a difference of interpretation. It is a factual misstatement about an observable, measurable condition. And it is material, because investors relying on this

language will conclude—incorrectly—that they can avoid the risk by not purchasing in a narrow 1-2 day window around distribution dates.

They cannot. The window does not exist. The 'safe' period the disclosures imply is a fiction.

The Human Cost

Behind these numbers are real people—and the harm they face depends on the type of account they use.

Taxable account investors suffer the full weight of both injuries: overvaluation and unjust taxation. A retail investor saving in a taxable brokerage account pays an inflated price (receiving fewer shares), pays excess management fees on embedded liabilities, and then pays taxes on distributions that represent the return of her own capital. Every year, for as long as she holds the investment, she receives a 1099-DIV, overstating her income. She reports income she never earned. She pays taxes she never owed. And because she started with fewer shares, she receives smaller dividends—forever. This investor bears losses from overvaluation, excess fees, and unjust taxation simultaneously.

Tax-deferred account investors—workers with 401(k)s, teachers with 403(b)s, public employees with 457 plans—do not face immediate tax consequences because their accounts defer taxation until withdrawal. But they are not unharmed. They still pay inflated prices. They still receive fewer shares than their contributions should purchase. They still pay management fees calculated on liabilities embedded in NAV. And because they own fewer shares, they receive smaller dividends and smaller account balances at retirement. The overvaluation injury compounds over a career. A firefighter contributing to his pension for thirty years will retire with meaningfully less wealth than he earned—not because of market performance, but because he paid inflated prices every pay period for three decades.

Union pension funds and multiemployer plans face these injuries at scale. A Taft-Hartley fund managing retirement and health benefits assets for thousands of workers pays inflated NAVs on every purchase, pays fees on embedded liabilities across its entire portfolio, and accumulates fewer shares than its contributions warrant. The harm flows through to every participant: smaller account balances, reduced retirement security, and—for plans in financial stress—increased risk of benefit cuts. Plan trustees and union officials are fiduciaries to their members. They are now on

notice that the assets they oversee are being systematically eroded by inflated pricing that no one disclosed to them.

Endowments and foundations face perpetual impairment. A university endowment or charitable foundation that invests in funds with embedded realized income receives fewer shares, pays fees on liabilities, and—over decades—accumulates less wealth than it should. The harm compounds in perpetuity, reducing the resources available for scholarships, research, and charitable missions.

These investors trusted the system. They relied on prospectuses filed with the Securities and Exchange Commission. They believed that when a document warned of risk "shortly before" distributions, the warning meant what it said.

The warning did not. The risk exists nearly every day—and for nearly eight years, the industry has known this could be fixed and disclosed, and has refused to do either.

> **Note on Scope:** The harm described above extends beyond registered investment companies to all dividend-paying securities. When an investor purchases shares of IBM, Apple, or any dividend-paying stock immediately before the ex-dividend date, the same economic injury occurs: the investor pays a price reflecting the embedded dividend, receives a taxable distribution, and suffers the identical tax loss. This Petition focuses primarily on mutual funds and ETFs because the disclosure obligations are clearest, the scale is largest, and the regulatory pathway most direct. The principles established here, however, apply with equal force to corporate equities—a matter the Commission should address through subsequent guidance on broker-dealer disclosure obligations.

IV. COMMISSION-LEVEL INTERPRETIVE GUIDANCE: SIXTEEN QUESTIONS THAT ADMIT OF ONLY ONE ANSWER

A. The Framework That Compels Truth

Petitioner files this request for interpretive guidance under 5 U.S.C. § 553(e) and SEC Rule of Practice 192, asking the Commission to determine whether registered fund disclosures about 'buying a dividend' are materially accurate or materially misleading under federal securities law.

The questions below are not opinion questions. They are not policy judgments. They are factual questions about how registered funds actually operate—questions about accounting mechanics, economic consequences to purchasers, and the application of settled legal standards to documented conduct. Each question admits of a binary answer. Each answer flows inevitably from the one before it. And if the Commission answers honestly, based on how funds actually work, corrective action follows as a matter of law.

Why These Questions Demand Commission-Level Response.

The Commission has a statutory duty to ensure that prospectuses filed under its authority do not contain materially misleading statements or omissions. Investment Company Act § 34(b) makes it unlawful to file any document 'which is materially misleading.' Securities Act Rule 156 prohibits sales literature that is 'materially misleading.' These are not aspirational standards. They are legal commands.

For over five years, Petitioner has presented the Commission with documented evidence that prospectus disclosures describing 'buying a dividend' risk are factually inaccurate. Section III of this Petition demonstrated—using the funds' own data—that the risk exists on approximately 364 days per year, not 'shortly before' distributions as prospectuses claim. The charts, formulas, and calculations are a matter of public record. The funds themselves acknowledge the harm in their own customer service materials—the same funds whose prospectuses fail to adequately disclose it.

The time for staff-level review has passed. The questions below require Commission-level determination because they ask whether an entire category of SEC-filed disclosures violates federal law. This is not a complaint about a single fund family that might be referred to Enforcement and resolved through settlement. This Petition identifies an industry-wide practice affecting every registered investment company in America—over $30 trillion in assets and approximately 160 million investors. When the question is whether one issuer violated the law, investors can seek redress through litigation. When the question is whether *every* issuer is violating the law pursuant to uniform industry practice, investors deserve an answer from their regulator—not silence, not delegation, and not the suggestion that they hire lawyers and sue one fund at a time. That is not investor protection. It is abdication.

The APA Requires a Response

Under 5 U.S.C. § 555(b), agencies must act on petitions 'within a reasonable time.' Under § 555(e), agencies denying relief must provide 'prompt notice' and a 'brief statement of the grounds for denial.' Section 706(1) authorizes judicial review of 'agency action unlawfully withheld or unreasonably delayed.'

These provisions exist for a reason. Citizens have a right to petition their government for redress of grievances. Agencies have a corresponding duty to respond—not with silence, not with bureaucratic deflection, but with reasoned engagement on the merits.

Petitioner has waited 5.5+ years. Investors are incurring losses today—this trading day, the next trading day, every trading day—because they rely on disclosures the Commission has been told are false. The Commission cannot remain silent while the harm compounds. It must either act to protect investors or create an administrative record explaining why it declines to do so.

The Standard for Response

Each question below is designed for a binary answer based on standard registered fund accounting and pricing practices in the ordinary course of business. The questions assume the documented facts, fund data, and examples presented throughout this Petition. Daily dividend declaration funds are excluded; these questions address only registered funds that accrue income to NAV and distribute periodically—which is to say, the vast majority of funds in which Americans invest.

Should the Commission decline to answer any question, it must state the declination expressly in the public docket, with specific identification of which premise is disputed (mechanical operation, economic consequence, materiality standard, or legal principle) and the factual or legal basis for that dispute.

General disclaimers are insufficient. Bureaucratic deflections are insufficient. 'We need more time to study the issue' is insufficient after 5.5 years. The questions are precise. The facts are documented. The legal standards are settled. The Commission must engage substantively or explain with particularity why it cannot—and that explanation must be grounded in evidence and reasoned analysis, not administrative convenience or industry deference.

The questions presented are joint and severable. Should the Commission decline to answer any particular question, that declination does not excuse the Commission from answering the

remaining questions. Each question stands independently; each addresses a distinct determination within the Commission's authority. Selective declination requires selective justification—it does not permit wholesale silence.

Nor may the Commission invoke pending enforcement matters or active litigation as grounds to decline questions that ask it to confirm settled legal principles. Questions 12 and 12-A, for example, do not ask the Commission to prejudge facts in any particular case. They ask whether GAAP compliance excuses misleading disclosure and whether industry-wide adoption of a practice confers immunity. Courts have answered these questions repeatedly and uniformly: the answer to both is "no." The Commission is not being asked to break new legal ground; it is being asked to confirm what the law and the Commission's position already are. Agencies routinely articulate governing legal standards while enforcement matters proceed—that is the ordinary course of regulatory administration. If the Commission believes the settled precedent is wrong, it should say so and explain why. What it cannot do is refuse to state its position on foundational legal principles while investors continue to suffer harm that those principles are designed to prevent.

B. Three Definitions

To ensure precision, Petitioner offers three definitions that apply throughout the questions below:

'Embedded Realized Income' means realized income—ordinary dividends, short-term capital gains, and long-term capital gains—that the fund has recognized and accrued into NAV when earned or realized, but has not yet distributed to shareholders. This income increases the fund's NAV from the moment of recognition until the moment of distribution. Every registered fund calculates these amounts daily as part of ordinary NAV computation. This is not a novel concept; it is standard fund accounting.

'Embedded Realized Income Amount' means the per-share dollar amount of Embedded Realized Income at the time of a specific purchase. When an investor buys shares, this portion of the purchase price represents income the fund has already earned but has not yet paid out. The investor pays for this embedded income as part of NAV, receives it back in the next distribution(s), and watches NAV decline proportionally—resulting in no net wealth increase from the distribution. The funds know this amount. They calculate it daily. They simply do not disclose it.

'Standard fund accounting and pricing practices' means ordinary course operations of registered investment companies under applicable law and GAAP, absent unusual, idiosyncratic, or fund-specific circumstances not generally applicable. These questions ask how funds actually operate in the regular course of business—not how they might operate in hypothetical edge cases, but how they do operate, every day, across thousands of products managing trillions of dollars.

C. The Questions For SEC Interpretive Guidance

Part 1: Mechanical Facts About Fund Operations

Question 1. Under standard fund accounting and pricing practices, is it correct that realized income (ordinary dividends, short-term capital gains, long-term capital gains) is:

- **(a)** Recognized and accrued into NAV at the time the fund earns or realizes it—when a portfolio holding goes ex-dividend, earns/receives interest from an underlying holding, or when a gain is realized through sale of a security;
- **(b)** Embedded in NAV continuously on each subsequent trading day from the date of recognition until the date of distribution to shareholders or until gains are offset; and
- **(c)** Not something that suddenly appears in NAV only on days immediately 'shortly before' or 'just prior to' a distribution record date?

This question asks the Commission to confirm how fund accounting actually works. The answer is either 'yes, this is how funds operate' or 'no, funds operate differently'—in which case the Commission must explain how.

Question 2. If 'Yes' to Question 1, is it correct that any purchaser who buys fund shares on any trading day after the fund has recognized and accrued realized income into NAV, but before that income has been distributed or gains offset, necessarily pays a purchase price (the NAV) that includes that accrued-but-undistributed realized income?

This question follows inevitably from Question 1. If realized income is embedded in NAV continuously, then anyone who buys during that period pays a price that includes it. There is no alternative.

Question 3. If 'Yes' to Questions 1-2, is it correct that when a purchaser buys one share for $100—where the fund has a pending $3.00 distribution fully baked into that $100 NAV at the time of purchase—and subsequently receives that $3.00 distribution, the following economic sequence occurs:

a) The fund returns to the purchaser, in cash or reinvested shares, the same Embedded Realized Income Amount the purchaser paid for as part of the purchase price;
b) The fund's NAV declines by approximately the per-share distribution amount, reducing the value of the purchaser's shares by the same amount received;
c) Assuming no market movement, the purchaser's total economic position—cash received plus current share value—equals the purchaser's initial investment (before considering unrelated portfolio performance); and therefore
d) The purchaser has received back, as a 'distribution,' the same dollars the purchaser paid as part of the purchase price, experiencing no net increase in wealth from the Embedded Realized Income Amount?

The reason the investor pays $100 instead of $97 is that the prospectus defines NAV as "assets minus liabilities" — and then excludes from "liabilities" the $3.00 the fund is legally obligated to distribute. The formula investors rely on to understand what they are paying is the instrument that ensures they overpay. If the Commission confirms this sequence, the NAV definition published in every prospectus in America is materially misleading — not in a risk factor, not in a footnote, but in the definition of the price itself.

Part 2: Tax Consequences and Cash Losses

Question 4. If 'Yes' to Question 3, and assuming a taxable purchaser holds through the relevant distribution dates and reports the distribution on a current-year tax return, is it correct that federal income taxation imposed on the Embedded Realized Income Amount returned to the investor produces a non-market, out-of-pocket cash loss to the purchaser—because tax is assessed on recovery of the purchaser's own invested capital rather than on any actual increase in the purchaser's wealth?

If the distribution represents no wealth increase—which Question 3 establishes—then taxation of that distribution is taxation of a return of the investor's capital, not income. The cash

loss is certain, calculable, and caused entirely by the fund's accounting treatment. The Commission must either confirm this consequence or explain how taxation of a non-gain somehow does not produce a loss.

Part 3: Fund Knowledge and Ability to Calculate Harm

Question 5. If 'Yes' to Questions 1-4, is it correct that registered funds, as part of their ordinary daily NAV calculation and distribution accounting processes, know on each trading day the per-share Embedded Realized Income Amounts — by income character: ordinary dividends, short-term capital gains, and long-term capital gains — that have accrued into NAV and remain undistributed?

This question forecloses the 'we couldn't disclose it because we didn't know' defense. Funds calculate these amounts every day as part of standard NAV computation. The data exists. The funds know it contemporaneously. They know it at the moment of every purchase. The only thing that doesn't exist is the willingness to tell investors the truth. Whether and how this information should be displayed to investors is addressed in Questions 13 and 15. This question establishes the predicate fact: the funds possess the information.

Part 4: Temporal Scope of Risk

Question 6. If 'Yes' to Questions 1-5, does the investor risk commonly described as 'buying a dividend' exist on every trading day when Embedded Realized Income persists in NAV—meaning continuously from the date realized income is recognized until the date it is distributed or offset, which can span days, weeks, or months—rather than being confined to days immediately 'shortly before' or 'just prior to' a distribution record date?

Section III proved this is false with the fund's own data. The VFINX and SWPPX data demonstrate that the risk accumulates throughout the quarter or year, not just before distributions. The Commission must either confirm what the data shows or explain how the charts are wrong.

Question 7. If 'Yes' to Question 6, is the prospectus language stating or implying that 'buying a dividend' risk exists only 'shortly before' or 'just prior to' distributions factually inaccurate as a description of when the risk exists and when purchasers will experience the economic harm?

This is the inevitable conclusion of Questions 1-6. If the risk exists continuously, then language saying it exists only 'shortly before' distributions is false. Not ambiguous. Not imprecise. False and designed to mislead investors. The Commission must either confirm this or explain how 'shortly before' somehow means 'continuously for weeks or months.'

Part 5: The Industry's Own Admissions

Question 8. BlackRock, the world's largest asset manager, states in its customer service materials that 'buying a dividend' generates 'an unnecessary tax bill' because 'a portion of the investment is returned to the investor as a taxable distribution.' Similar acknowledgments appear in materials from other major fund complexes. Does the Commission agree that these statements accurately describe the economic consequences that occur when investors purchase shares containing Embedded Realized Income?

This question creates a trap from which there is no escape. Either BlackRock is accurately describing what happens — in which case the industry's own published materials confirm every element of Petitioner's factual case — or BlackRock is publishing false and misleading statements to its own customers, in which case the Commission should investigate that misrepresentation. The Commission cannot have it both ways. And note what an affirmative answer establishes: the industry itself acknowledges that investors receive back "a portion of the investment" (return of capital) "as a taxable distribution" (reported as income), generating "an unnecessary tax bill" (wrongful taxation). Three phrases. Three confessions. One question.

Part 6: Materiality Under Settled Law

Question 9. If 'Yes' to Questions 4–8, does the Commission agree that the economic consequences established by the preceding answers — specifically, that a fund's NAV includes a quantifiable amount of Embedded Realized Income that diminishes the purchaser's purchasing power, that a taxable purchaser will incur a determinable non-market cash loss from taxation of the Embedded Realized Income Amount, that this risk exists continuously throughout the accrual period rather than only 'shortly before' distributions, and that the fund knows these facts and can quantify the expected harm before the purchase occurs — constitute material information that a reasonable investor would consider important in deciding whether and when to purchase fund

shares, under the standard articulated in *TSC Industries, Inc. v. Northway, Inc.*, 426 U.S. 438, 449 (1976)?

The Supreme Court has defined materiality: information is material if there is 'a substantial likelihood that a reasonable shareholder would consider it important.' Information that a purchase will result in a guaranteed, calculable cash loss — unrelated to market risk, known to the fund in advance, and described by the fund itself as 'unnecessary' — meets that standard beyond any reasonable dispute. This is not a close call. No reasonable investor would consider this information unimportant. The Commission cannot answer 'no' without contradicting fifty years of settled law.

Part 7: Whether Current Disclosures Are Materially Misleading

Question 10. If 'Yes' to Questions 6–9, does the Commission agree that prospectus and sales literature language that describes 'buying a dividend' risk as existing only 'shortly before' or 'just prior to' distributions — and that frames the risk as something that merely 'may' occur — constitutes a materially misleading statement or omission under Investment Company Act § 34(b) and Securities Act Rule 156?

If Questions 1–9 are answered 'yes,' this conclusion is unavoidable — and it is unavoidable for at least four independent reasons, any one of which is sufficient standing alone: such language misstates when the risk exists temporally; it omits material facts about the continuous nature of NAV inflation and the determinable cash tax loss; it creates the false impression that investors can avoid the risk by purchasing earlier than 'shortly before' distributions, when in fact any purchase while Embedded Realized Income persists in NAV triggers the same economic consequences; and it omits that the fund knows the Embedded Realized Income Amounts contemporaneously and can calculate purchaser harm before trade execution. Disclosures that misstate when a risk exists, omit material facts about the risk, mislead investors about how to avoid the risk, and conceal that the issuer knows the exact magnitude of harm are — by definition — materially misleading. The Commission need not agree with all four grounds. Any one suffices.

Question 11. Does the Commission agree that a fund **knows** a portion of an investor's initial post-purchase distribution may not be income when the fund's own prospectus states that the distribution "may simply be a return of part of your investment"?

This question isolates the knowledge element. The fund drafted the prospectus. The fund filed it with the Commission. The fund cannot disclaim knowledge of its own words. If the answer is "Yes," then any fund that reports such a distribution as taxable dividend income on Form 1099-DIV—without segregating the return-of-capital component—does so with knowledge that the form may mischaracterize the payment. That is scienter.

Part 8: The Industry's Defenses

Petitioner regrets burdening the Commission with the following two questions, which address legal propositions so thoroughly rejected by precedent that they should require no clarification. However, because the fund industry has invoked these arguments for nearly eight years to justify decades of misleading disclosures — and because certain registrants have cited them as reasons for declining to implement corrective disclosure despite acknowledging the underlying harm — the Commission must state its position unambiguously so that these defenses can be retired permanently. These two questions address independent legal propositions. Each requires a separate, reasoned response. A response to Question 12 does not satisfy the Commission's obligation to respond to Question 12-A, and vice versa.

Question 12 (The GAAP Defense). Does the Commission agree that compliance with Generally Accepted Accounting Principles in the preparation of fund financial statements does not excuse materially misleading disclosures in prospectuses and sales literature—meaning that even if a fund's financial reporting complies fully with GAAP, the fund still violates federal securities laws if its prospectus and sales materials omit material facts or contain statements that are misleading in light of the circumstances?

The industry's position, stated plainly, is this: 'Our accounting is GAAP-compliant, therefore our disclosures cannot be misleading.' This proposition has been rejected by every court to consider it:

*See SEC v. Lucent Techs., Inc., 610 F. Supp. 2d 342, 350 (D.N.J. 2009) ('Adherence to GAAP is not a complete defense.'); In re Enron Corp. Sec. Litig., 235 F. Supp. 2d 549, 577 (S.D. Tex. 2002) (GAAP compliance 'is not necessarily sufficient to insulate [defendants] from liability'); SEC v. Stanard, 2011 WL 1362653, at *8 (S.D.N.Y. Apr. 11, 2011) ('Compliance with GAAP does not necessarily prevent a company's financial statements from being misleading.'); In*

re NVIDIA Corp. Sec. Litig., 768 F.3d 1046, 1056 (9th Cir. 2014) ('[F]inancial statements that comply with GAAP may nonetheless be materially misleading.').

GAAP governs how to classify income on financial statements. Securities law governs what must be disclosed to investors before they commit capital. These are different inquiries serving different purposes. GAAP-compliant accounting for embedded income tells investors nothing about the consequences of that accounting to them personally. The Commission should confirm this settled principle so the industry can no longer hide behind it.

Question 12-A (The 'Everyone Does It' Defense). The industry advances two versions of this defense, both of which fail for the same reason. Does the Commission agree that:

a) **The Disclosure Version.** Industry-wide adoption of misleading disclosure language does not transform that language into adequate disclosure—meaning that if prospectus language stating 'buying a dividend' risk exists only 'shortly before' distributions is materially misleading, it remains materially misleading regardless of how many registrants have filed substantially similar language?

b) **The Accounting Version.** Industry-wide adoption of the practice of booking realized income to NAV does not excuse failure to disclose the consequences of that practice—meaning that even if every registered fund accounts for realized income in the same GAAP-compliant manner, each fund independently violates the securities laws if its prospectus fails to adequately disclose the consequences of that accounting to purchasers?

The industry's argument, in both versions, reduces to this: 'Everyone does it, so it must be acceptable.' Pause to consider what this proposition actually claims—that if enough regulated entities engage in the same conduct, the conduct becomes lawful through sheer repetition. If this principle were valid, the Commission could never bring an industry-wide enforcement action. Price-fixing would be legal if enough competitors participated. Accounting fraud would be permissible if it became common practice. The proposition is self-evidently absurd.

The accounting version of this defense is particularly remarkable because it actually strengthens Petitioner's case. When the industry argues that booking realized income to NAV is 'standard practice,' the industry is confirming the factual predicate of this entire Petition. Yes—it is standard practice. That is precisely why the harm is so widespread. That is why over $100 billion

flows annually from investors to the Treasury in unjust taxes. That is why corrective disclosure is needed across the entire industry, not just at a handful of outlier funds.

The industry appears to believe that admitting universal adoption of the practice somehow defeats Petitioner's claim. The opposite is true. Universal adoption of a practice that harms investors without adequate disclosure is not a defense—it is an indictment. It means every registered fund that accrues income to NAV is independently obligated to disclose the consequences of that practice to purchasers. The fact that no fund currently provides adequate disclosure means every fund is currently in violation.

The disclosure standard is whether a statement is materially accurate or materially misleading—not whether the underlying practice is common, not whether the disclosure language is boilerplate, not whether competitors use similar formulations. A thousand misleading prospectuses are not better than one; they are a thousand times worse, because they harm a thousand times more investors. The Commission should confirm that widespread noncompliance is a reason for enforcement, not an excuse from it—and that widespread adoption of an accounting practice is a reason for widespread disclosure, not an excuse from it.

Part 9: The Cost of Compliance

Question 13. Does the Commission agree that registered funds already calculate the Embedded Realized Income Amounts daily as part of ordinary NAV computation, and already publish NAV daily to investors through existing reporting infrastructure?

The funds compute this number every day. They publish other numbers from the same computation every day. The infrastructure to report Embedded Realized Income Amounts to investors is not hypothetical — it is the same infrastructure that already delivers NAV to every investor in America. The only thing missing is the willingness to include one additional data element in a transmission that already occurs.

Part 10: Comparative Industry Practice

Question 14. Does the Commission agree that the bond market's established practice of distinguishing between 'clean' prices (excluding accrued interest) and 'dirty' prices (including accrued interest) — which exists precisely to prevent purchasers from paying for income earned by the seller — reflects the same economic principle at issue in this Petition, and that there is no

principled basis for providing this transparency to bond investors while denying it to mutual fund investors who face the identical economic harm?

The bond market solved this problem decades ago. When a bond trades between coupon dates, the buyer knows exactly how much of the purchase price represents accrued interest earned by the seller. The buyer pays it, recovers it at the next coupon, and is not taxed on the recovery. The fund industry faces the identical economic circumstance — a buyer paying for income earned by prior shareholders — but provides none of this transparency. Bond investors, home buyers, car buyers, borrowers, and airline passengers all receive disclosure of known, quantifiable costs before committing capital. Fund investors do not. The Commission should confirm that this disparity has no principled justification.

Part 11: Required Point-of-Sale Disclosure

Question 15. If the Commission answers 'Yes' to Questions 9–13 — meaning current disclosures are materially misleading, the omitted information would be important to a reasonable investor's decision whether and when to purchase, the funds possess this information contemporaneously, and the infrastructure to deliver it already exists — does the Commission agree that registered funds have an existing obligation under the federal securities laws to disclose the Embedded Realized Income Amounts to investors before trade execution?

This question distinguishes between the legal obligation and the rulemaking remedy. The obligation to disclose material information to investors is not contingent on rulemaking — it exists now, under current law, and has existed since the first prospectus was filed that omitted it. Under TSC Industries, information is material if there is 'a substantial likelihood that a reasonable shareholder would consider it important' in making an investment decision. 426 U.S. at 449. The Commission has already confirmed — through Questions 9 and 10 — that this information is material and that its omission is misleading. A fund that possesses material information, knows the information would affect an investor's purchase decision, and has the infrastructure to deliver that information before the transaction, cannot lawfully withhold it. The rulemaking this Petition requests would standardize the form and timing of that disclosure across the industry. But the underlying duty to disclose is not waiting for a rule. It is waiting for enforcement.

Part 12: Tax Administration Coordination

Question 16. Based on the Commission's answers to Questions 1–9, does the Commission agree that the economic effect described in the prospectuses of BlackRock, Vanguard, State Street, Fidelity, and other major fund complexes — that 'buying a dividend' causes investors to incur an 'unnecessary tax bill' because a portion of the investor's purchase is effectively returned as a taxable distribution — is an accurate description of what happens to taxable purchasers in the ordinary course?

a) **If 'Yes'** — meaning SEC-filed prospectuses accurately describe that investors are taxed on amounts representing return of their own capital — does the Commission agree that referral of this record to Treasury and the IRS is warranted for evaluation of whether information-return filing practices that report the Embedded Realized Income Amount as taxable dividends are consistent with Internal Revenue Code provisions governing information-return accuracy, including 26 U.S.C. §§ 6721–6722?

b) **If 'No'** — meaning the prospectus descriptions are not accurate — does the Commission agree that such inaccurate prospectus statements constitute materially false or misleading statements under Investment Company Act § 34(b) and Securities Act Rule 156, requiring immediate corrective disclosure?

Petitioner does not request that the Commission interpret or enforce the Internal Revenue Code. This question asks only whether the Commission's own registrants' prospectuses accurately describe economic reality — a determination that is the Commission's core function. The question presents a fork that admits of no middle path. Either the prospectuses accurately describe what happens — in which case the tax-reporting practices warrant IRS attention — or the prospectuses are inaccurate — in which case the Commission must act. The Commission cannot answer both (a) and (b) 'No' without contradiction. It cannot claim uncertainty about whether prospectuses it reviews and authorizes accurately describe what happens when investors buy fund shares.

D. What These Answers Compel

Questions 1-7 describe observable reality.

These questions ask the Commission to confirm or deny mechanical facts about how registered funds operate. They are not opinion questions. They are not policy judgments. They describe observable, documentable fund accounting practices that occur daily across thousands of products.

Petitioner's position—supported by fund data, NAV calculations, distribution records, and nearly eight years of documentation—is that Questions 1-7 must be answered 'Yes' if the Commission is describing how registered funds actually work. If the Commission answers 'Yes,' three factual conclusions follow inevitably:

First: Realized income is recognized and embedded in NAV when earned—not just prior to distribution—and persists in NAV until paid out. The temporal description 'shortly before' or 'just prior to' a distribution is factually wrong as a description of when the risk exists.

Second: The 'buying a dividend' risk exists throughout the entire accrual period—every trading day from income recognition until distribution—not merely on days immediately preceding distribution record dates. Section III proved this with charts showing the risk accumulates over weeks and months.

Third: Prospectus language limiting the risk to purchases occurring 'shortly before' distributions is factually inaccurate. It is not imprecise. It is not a simplification. It is false.

If the Commission answers 'No' to any of Questions 1-7, it must explain precisely how registered funds actually operate differently from the described mechanics—supported by evidence. A 'No' answer without evidentiary support is arbitrary and capricious agency action, reviewable under 5 U.S.C. § 706(2)(A).

Question 8 uses the industry's own words against it

BlackRock and other fund complexes have acknowledged in writing that 'buying a dividend' causes 'unnecessary' tax bills. This acknowledgment—published by the very entities whose prospectuses are at issue—establishes both the existence of harm and the industry's knowledge of it. The Commission cannot credit the industry's public acknowledgment of harm while simultaneously crediting the industry's refusal to accurately disclose that harm in prospectuses.

Question 9 establishes materiality under settled law

The Supreme Court's materiality standard asks whether a reasonable investor would consider the information important. *TSC Industries*, 426 U.S. at 449. Information about a guaranteed cash loss—quantifiable, non-market, known to the fund in advance, and described by the fund itself as 'unnecessary'—meets that standard beyond any reasonable dispute.

Questions 10-11 establish disclosure violations and scienter

If Questions 1–9 are answered 'Yes,' Question 10 compels the conclusion that current disclosures violate Investment Company Act § 34(b) and Securities Act Rule 156. Question 11 establishes that this is not an innocent error: the fund's own prospectus acknowledges that distributions may represent return of capital, yet the fund reports those same distributions as fully taxable income on Form 1099-DIV. A fund cannot disclaim knowledge of its own filed disclosures. That is scienter.

Questions 12 and 12-A demolish the industry's defenses

The GAAP defense fails because GAAP compliance has never excused misleading prospectus disclosures—every court to consider this question has so held. The 'everyone does it' defense fails in both its versions: widespread use of misleading disclosure language or language that omits material risks does not render the language accurate, and widespread use of an accounting practice does not excuse failure to disclose its consequences.

Indeed, the accounting version of the 'everyone does it' defense is self-defeating. When the industry argues that booking realized income to NAV is 'standard practice,' the industry confirms Petitioner's factual case. The practice *is* standard—that is precisely why the harm is universal and the need for corrective disclosure is urgent. The industry's defense is actually Petitioner's premise. Universal adoption of a practice that harms investors without adequate disclosure requires universal corrective disclosure, not universal immunity.

Question 13 eliminates the cost excuse

The data exists — funds compute it daily. The infrastructure to deliver it exists — it is the same infrastructure that already publishes NAV to every investor in America. Question 13

establishes that corrective disclosure requires no new data, no new computation, and no new delivery systems. The industry has never submitted a cost analysis to the Commission because any honest analysis would reveal that the only 'cost' is adding one number to a transmission that already occurs.

Question 14 highlights the anomaly

Bond markets distinguish clean and dirty prices. Real estate transactions require closing cost disclosures. Used car dealers must disclose known defects. Lenders must disclose APR, not just interest rates. Airlines must display the total fare, including mandatory fees. These are not isolated requirements—they reflect a foundational principle of commercial law: sellers may not conceal known costs that are certain to be incurred by the buyer. The mutual fund industry's resistance to comparable transparency is an outlier that the Commission should not tolerate. There is no principled basis for treating mutual fund investors as less deserving of disclosure than bond investors, home buyers, car buyers, borrowers, or airline passengers.

Question 15 requires point-of-sale remedy

The obligation to disclose material information is not contingent on rulemaking. It exists now, under current law. Question 15 asks the Commission to confirm what the securities laws already require: that a fund possessing material information about a known, quantifiable harm to purchasers cannot lawfully withhold that information at the point of sale. The rulemaking this Petition requests would standardize the form and timing of disclosure. But the underlying duty is not waiting for a rule. It is waiting for enforcement.

Question 16 forces binary choice on tax coordination

Either prospectuses accurately describe the tax consequences — in which case the 1099-DIV reporting practices warrant IRS attention — or they do not — in which case the Commission must act. There is no third option. The Commission cannot claim it lacks the expertise to determine whether its own registrants' prospectuses accurately describe economic reality. That determination is the Commission's core function.

E. The APA Requires Substantive Engagement

Written responses are required under the APA

Petitioner requests that the Commission provide written, docketed responses to each question. Each question and sub-question is joint and severable: a decision not to answer Question 12, for example, does not excuse the Commission from answering Question 12-A, and a decision not to answer Question 16(a) does not excuse the Commission from answering Question 16(b). If declining to answer any question or sub-question, the Commission must identify the specific premise disputed (mechanical facts, economic consequences, materiality standard, or legal principle) and the factual or legal basis for that dispute.

This requirement flows directly from 5 U.S.C. § 555(e), which mandates that agencies denying petitions provide prompt notice and a brief statement of grounds. Vague, conclusory, or evasive responses do not satisfy this statutory obligation. The Commission must engage substantively or explain with particularity why it cannot.

The answers determine whether the Commission fulfills its statutory mission

If these questions are answered candidly based on standard fund accounting practices, they establish definitively whether investors are trading under materially misleading disclosures while incurring measurable, preventable losses. That determination, once made, triggers Commission obligations under the Investment Company Act, the Securities Act, and the Administrative Procedure Act.

The legal standards governing the Commission's response are established:

- A determination that disclosures are materially misleading triggers the investor protection mandate;
- Disputing factual premises about fund operations requires evidentiary support — unsupported dispute is arbitrary and capricious;
- Questions within the Commission's statutory authority require a response — withholding one constitutes unlawfully withheld agency action under § 706(1);
- Responses must be substantive — vague or conclusory replies do not satisfy § 555(e)'s reasoned decision-making requirement;
- The Commission's core regulatory function includes determining whether its registrants' disclosures comply with securities laws;

- Industry defenses that federal courts have uniformly rejected do not provide a legally sufficient basis for declining to act.

The question these answers resolve is binary.

Either investors are currently trading under materially misleading disclosures while funds conceal quantifiable risks they know about in advance — or they are not. If they are, the Commission's investor protection mandate is triggered. If they are not, the Commission's response must identify precisely which facts, which legal standards, which economic principles this Petition states incorrectly — so the administrative record is clear and reviewable.

What remains legally unavailable — under statute, precedent, and constitutional due process — is continued silence while investors lose money every trading day under disclosures the Commission has been informed are materially incomplete. The APA does not contemplate indefinite non-response to a properly filed petition documenting ongoing harm of this magnitude. A reviewing court applying the TRAC factors would evaluate whether the interval between notice and response reflects reasoned administrative process or unreasonable delay.

For nearly eight years, Petitioner has done everything a citizen can do to bring this problem to the government's attention through proper channels. The facts have been presented. The law has been briefed. The solution has been proposed. The industry has been given every opportunity to self-correct, but it has declined.

Petitioner Has Standing and Will Pursue All Available Remedies

Petitioner is not a mere observer of this problem. In December 2025, Petitioner purchased shares in twenty registered funds and shares of the fund managers. At the time of each purchase, Petitioner received no disclosure of the per-share Embedded Realized Income Amount, no quantification of expected tax loss, and no accurate description of when the 'buying a dividend' risk applied. The prospectus disclosures Petitioner received contained the same 'shortly before' language this Petition demonstrates to be false. Petitioner is injured. Petitioner now has additional standing.

Should the Commission decline to act—or, worse, should the Commission endorse the industry's legal defenses—Petitioner is prepared to pursue private remedies under the federal securities laws. Securities Act §§ 11 and 12(a)(2) provide causes of action for material

misstatements and omissions in registration statements and prospectuses. The elements are straightforward: material misstatement or omission, purchase of the security, and damages. Petitioner can satisfy each element in great detail.

If the industry raises the GAAP defense or the 'everyone does it' defense in that litigation, courts will reject them—as courts have rejected them every time they have been raised. *SEC v. Lucent*. *In re Enron*. *SEC v. Stanard*. *In re NVIDIA*. The precedent is uniform. The defenses are foreclosed. No amount of industry repetition will change settled law.

The institutional implications warrant consideration. If the Commission endorses these defenses in responding to this Petition, it will not insulate the industry from private liability — courts have rejected the GAAP defense and the "everyone does it" defense uniformly. It would, however, create a tension between the Commission's position and established judicial precedent that a reviewing court would be required to address. The Commission's role as the expert agency in securities regulation is best served by positions that align with, rather than diverge from, the settled law federal courts have consistently applied.

The legal landscape is what it is. The defenses that have been uniformly rejected in federal court will not fare differently in future litigation. The most efficient path to comprehensive investor protection remains coordinated regulatory action — which this Petition is designed to support.

The questions are clear. The facts are documented. The law is settled. The harm is ongoing and accelerating.

The questions are presented. The record awaits the Commission's response.

V. LEGAL ANALYSIS: WHY CURRENT DISCLOSURES VIOLATE FEDERAL SECURITIES LAW

> ***"Materially accurate information about capital gains and tax implications is critical to investors saving for their retirements. Firms must ensure that they are accurately describing to investors the potential risks and consequences associated with their investments."***
>
> — Corey Schuster, Chief, SEC Division of Enforcement Asset Management Unit (January 17, 2025)[5]

The Commission agrees with Petitioner. It said so approximately one year ago.

In January 2025, the SEC charged Vanguard with securities violations after "misleading tax-consequences disclosures" caused unexpected capital gains distributions to retirement investors.[6] The Commission imposed a $106.41 million penalty and created a Fair Fund for harmed investors.[7] The violation was episodic—a one-time event arising from unusual redemption patterns following a fund policy change. The harm was unexpected—investors could not have predicted it. The penalty was substantial—nine figures for a single fund complex.

The conduct documented in this Petition is worse in every dimension.

The Vanguard violation was episodic—a one-time event that occurred and ended. The violation here is continuous—occurring every trading day, across thousands of funds, for decades, and continuing as this Petition is filed. The Vanguard harm was unexpected—investors could not have anticipated the unusual redemption patterns that triggered it. The harm here is certain, calculable, and built into every purchase—funds know to the penny how much each investor will lose before the trade executes. The Vanguard harm happened once. The harm documented here happens again tomorrow, and the next day, and every trading day until the Commission acts.

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[5]Press Release, SEC, Vanguard to Pay More Than $100 Million to Resolve Violations Related to Target Date Retirement Funds (Jan. 17, 2025), https://www.sec.gov/newsroom/press-releases/2025-21 (quoting Corey Schuster, Chief, Division of Enforcement Asset Management Unit).

[6]*Id.*

[7]*Id.*

The Vanguard settlement was $106 million. The estimated annual harm documented here is estimated to exceed $100 billion per year.[8]

And that $100 billion figure is conservative. It captures only the unjust taxes paid by purchasers who hold through distribution dates. It does not include the excess management fees extracted on inflated NAV—fees charged on amounts that are, in economic substance, liabilities owed to investors rather than assets under management. It does not include the excess taxes paid by sellers who held shares for more than 60 days but less than one year—investors whose qualified dividends were converted to short-term capital gains because the fund embedded those dividends in NAV rather than distributing them. When those additional drags are included, the true annual harm is substantially higher.

To state the comparison plainly: the harm Petitioner documents is approximately **one thousand times larger** than the harm the Commission just addressed in Vanguard—every single year, using the most conservative methodology.[9] Over a decade, that compounds to more than one trillion dollars in preventable investor losses. And unlike Vanguard, this harm does not stop. It did not happen once; it happens perpetually. It is not an aberration; it is the business model. This is not hyperbole. It is arithmetic.

If the SEC's enforcement logic in Vanguard is correct—and it is—then the disclosures challenged here are materially misleading as a matter of law. The Commission cannot credibly maintain that Vanguard's general language about "normal investment activities" violated the securities laws while the industry's affirmatively false "shortly before" language does not. The principle is the same. The harm is a thousand times greater. The conclusion is inescapable.

This Section applies controlling legal standards to the facts established in Sections III and IV. The analysis proceeds through ten subsections: the materiality standard; half-truths as actionable misstatements; Investment Company Act and Advisers Act violations; the foundational misrepresentation in the definition of price; the catalog of prospectus deficiencies; the GAAP compliance fallacy; the industry practice fallacy; scienter; the magnitude of harm; and conclusion. Each analysis leads to the same result. Each confirms what the Commission's own enforcement

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[8] *See* Section III.L (calculating market-wide losses in excess of $100 billion annually).

[9] The Vanguard settlement addressed approximately $100 million in harm from a one-time event. *See* Press Release, SEC, *supra* note 5. The annual harm documented here exceeds $100 billion and recurs every year. $100 billion ÷ $100 million = 1,000. This ratio uses the most conservative estimate of annual harm; the true figure is higher when excess fees and seller tax conversion losses are included. *See* Section III.I-L.

action already establishes: prospectuses that mislead investors about tax consequences violate federal securities law.

The industry should understand what follows. The legal analysis below does not identify close questions or arguable positions. It identifies violations—clear, documented, and ongoing. The defenses the industry has advanced are not merely weak; they have been rejected by every court to consider them. The conduct is not merely negligent; the record establishes knowledge, motive, and concealment. And the harm is not merely significant; it dwarfs every other disclosure failure in modern securities regulation.

This Section explains why.

A. The Materiality Standard: Certainty, Not Probability

The Supreme Court established the governing materiality standard in *TSC Industries*: a fact is material if there is a "substantial likelihood that a reasonable shareholder would consider it important" in making an investment decision.[10] *Basic Inc.* reaffirmed that standard and clarified that, for contingent or speculative matters, courts weigh the probability of the event occurring against its potential magnitude.[11] *Matrixx* completed the framework by rejecting bright-line statistical thresholds, holding that materiality is inherently contextual and fact-specific—there is no minimum dollar amount or percentage threshold below which information becomes immaterial as a matter of law.[12]

The application here is unusually straightforward—indeed, it requires no balancing at all.

The probability/magnitude framework that governs contingent matters does not apply, because the harm from "buying a dividend" is not contingent. It is certain. The moment a taxable investor purchases shares containing Embedded Realized Income, three consequences follow inevitably:

First, the investor pays an inflated price—a price that includes income the fund already earned but has not yet distributed.

Second, the investor receives fewer shares than the investment would otherwise command, reducing future dividend income proportionally and permanently.

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[10]TSC Indus., Inc. v. Northway, Inc., 426 U.S. 438, 449 (1976).

[11]Basic Inc. v. Levinson, 485 U.S. 224, 231-32 (1988).

[12]Matrixx Initiatives, Inc. v. Siracusano, 563 U.S. 27, 38-39 (2011) ("We have consistently held that a fact-specific inquiry is required.... [T]here is no bright-line rule.").

Third, a taxable investor will incur a cash tax loss when the embedded income is distributed and taxed as income the investor never economically received.

These are not risks that "may" materialize. They are guaranteed outcomes that flow mechanically from the accounting treatment. The probability is 100%. The magnitude is calculable to the penny. There is no speculation, no contingency, no uncertainty about whether harm will occur. The only uncertainty is whether the investor knows—and under current disclosures, the investor does not.

When harm is certain rather than contingent, the *Basic* probability/magnitude test collapses into a simple question: is the certain harm significant? The answer here is obvious. A guaranteed cash loss—quantifiable before the trade executes, unrelated to market risk, known to the fund in advance—is precisely the kind of information reasonable investors consider important. The *TSC Industries* test asks whether a reasonable investor would want to know. No reasonable investor would say: "I don't care that my purchase includes a hidden tax liability. I don't care that the fund knows exactly how much I will lose. I don't care that I could avoid this loss entirely by waiting one day. Don't tell me."

The question answers itself.

A reasonable investor would unquestionably want to know the Embedded Realized Income Amount before purchasing. That figure determines how much of the purchase price represents embedded tax liability rather than investment value. It determines the investor's purchase-date loss. It enables comparison with alternative investments that may have lower embedded amounts. And it permits the investor to time the purchase—waiting until after the distribution, for example—to avoid the harm entirely. That is precisely the kind of decision-useful information the materiality standard exists to protect.

The industry's own conduct confirms materiality. BlackRock, the world's largest asset manager, tells customers that "buying a dividend" results in "an unnecessary tax bill" because "a portion of the investment [is] returned to the investor as a taxable distribution."[13] Vanguard's customer materials/prospectuses say the same. Fidelity's say the same. BlackRock calls it "an unnecessary tax bill." Those are the industry's words, not Petitioner's. Yet the prospectuses filed with this Commission do not disclose the risk — they misstate it. They tell investors the harm

[13] *See* Section III.A (quoting BlackRock customer service materials describing "unnecessary tax bill" from "buying a dividend").

arises "shortly before" distributions when it arises nearly every trading day. And they withhold the one number that would allow investors to protect themselves: how much they stand to lose.

The Commission itself has now confirmed this analysis. In charging Vanguard, the SEC found that prospectuses were "materially misleading" because they described potential tax consequences in general terms while "fail[ing] to disclose the potential for increased capital gains distributions" from a foreseeable event.[14] The disclosures challenged here are far worse: they do not merely fail to disclose a potential risk—they affirmatively misstate when the risk exists and withhold the per-share realized income amounts that would allow investors to quantify their exposure. If Vanguard's general language about "normal investment activities" was materially misleading, the industry's "shortly before" language is materially misleading *a fortiori*.

Materiality is established. What remains is to demonstrate that the disclosures are false.

B. Half-Truths Are Actionable: The Supreme Court Has Already Decided This Question

This is not a "pure omission" case where liability depends on whether a duty to speak exists. Funds affirmatively speak about "buying a dividend" risk. They tell investors the risk arises "shortly before" or "just prior to" distributions. But as Section III demonstrated with the funds' own data, that statement is false. The risk exists continuously—every trading day that Embedded Realized Income persists in NAV, which can span weeks or months. Funds know this. They calculate the embedded amounts daily. They choose to describe the risk in language that conceals its true scope.

Withholding the year-round nature of the risk while speaking about its timing transforms the disclosure from a warning into a weapon. Investors who read "shortly before" reasonably conclude they can avoid the risk by not purchasing in the 1-2 days immediately preceding a distribution. They cannot. The risk exists on approximately 364 days per year.[15] The "safe" window the disclosures imply does not exist. The language is not imprecise. It is false—and it is false in a way that keeps purchases rolling while the harm accumulates.

The Supreme Court addressed precisely this situation in *Macquarie Infrastructure Corp. v. Moab Partners*.[16] The Court held that Rule 10b-5(b) reaches half-truths—statements that are

[14]In re Vanguard Group, Inc., Investment Company Act Release No. 35481, at 2 (Jan. 17, 2025).

[15]*See* Section III.F (demonstrating through fund data that risk exists on approximately 364 days per year for funds with annual capital gains distributions).

[16]Macquarie Infrastructure Corp. v. Moab Partners, L.P., 601 U.S. 257 (2024).

literally true as far as they go but omit qualifying information necessary to make them not misleading. A statement need not be affirmatively false to violate the rule; it violates the rule when it "state[s] some things but omit[s] others" in a way that renders the partial disclosure misleading.[17] Petitioner notes that he has cataloged twenty-three omissions or misstatements in Section V.E. The duty to add qualifying information does not depend on Item 303 or any other specific disclosure requirement; it arises from Rule 10b-5(b) itself whenever an issuer speaks.[18]

The Court was explicit: The Court was explicit: Rule 10b-5(b) "requires disclosure of information necessary to ensure that statements already made are clear and complete."[19] The Rule "covers half-truths, not pure omissions." Once a fund chooses to speak about "buying a dividend" risk—and every major fund complex does—it must speak completely. It cannot describe the risk in terms that imply a narrow temporal window while knowing the risk is continuous. It cannot warn of harm while withholding the data that would allow investors to measure it. It cannot omit other risks that an investor would need to completely understand their risk. *Macquarie* forecloses the half-truth; the industry's disclosures are half-truths; the disclosures are actionable.

Omnicare, Inc. v. Laborers District Council Construction Industry Pension Fund reinforces this analysis from a different angle.[20] There, the Supreme Court held that even statements of opinion can be actionable if they omit material facts about the basis for the opinion—facts whose omission makes the statement misleading to a reasonable investor.[21] The Court explained that when a speaker states an opinion, there is an embedded representation that the speaker has a reasonable basis for that opinion; omitting facts that undermine that basis renders the statement misleading: "If the real facts are otherwise, but not provided, the opinion statement will mislead its audience."[22]

The "shortly before" language operates the same way. When a fund states that the risk exists "shortly before" distributions, it implicitly represents that the fund has a reasonable basis for that temporal description. But the fund knows—from its daily NAV calculations—that the risk actually exists continuously. The fund knows that an investor who purchases in January will inherit

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[17] *Id.* at 262-63.
[18] *Id.* at 265.
[19] *Id.* ("Rule 10b-5(b) requires disclosure of information necessary to ensure that statements already made are clear and complete—i.e., that what is said is not misleading.").
[20] Omnicare, Inc. v. Laborers Dist. Council Constr. Indus. Pension Fund, 575 U.S. 175 (2015).
[21] *Id.* at 188-89.
[22] *Id.* at 189.

months of accumulated embedded income. The fund knows that "shortly before" does not accurately describe when the risk exists. By stating the temporal limitation while withholding its knowledge that the limitation is false, the fund makes a misleading statement under *Omnicare*'s logic, independent of the *Macquarie* half-truth analysis.

The "shortly before" language is thus a textbook violation under both precedents. Under *Macquarie*, it is a half-truth that omits the qualifying information (continuous risk, quantifiable amounts) necessary to make the statement not misleading. Under *Omnicare*, it is a statement that omits the speaker's knowledge that the stated basis is false. Either analysis leads to liability. Together, they make the conclusion inescapable.

Calling these disclosures "half-truths" is charitable.

Set against the funds' own data showing continuous accrual-driven risk embedded in price throughout the year, the disclosures are closer to lies than half-truths. Funds calculate the Embedded Realized Income Amount daily. They know to the penny how much realized income sits in NAV on any given trading day. They know that an investor purchasing today will inherit that amount as a tax liability. They choose to describe this risk in language that implies it exists only at the end of the accrual period—language calculated to keep purchases rolling because, as one executive acknowledged to Petitioner, "if investors delay purchases until after distributions, advisers collect fewer days of AUM fees."

That is not imprecision. It is not ambiguity. It is deception designed to preserve fee revenue at investors' expense.

The same conduct triggers three independent violations:

Rule 10b-5(b). The prospectus language makes an untrue statement of material fact (that the risk exists "shortly before" distributions) and omits material facts necessary to make the statement not misleading (that the risk exists continuously and is quantifiable).[23] Half-truths are actionable under *Macquarie*. This is a half-truth. It is actionable.

Investment Company Act § 34(b). This provision makes it unlawful to file with the Commission any document "which is materially misleading."[24] Prospectuses filed on Form N-1A that contain the "shortly before" language while omitting the continuous nature of the risk are

[23] 17 C.F.R. § 240.10b-5(b).
[24] 15 U.S.C. § 80a-33(b).

materially misleading within the meaning of Section 34(b). The Commission found precisely this violation in Vanguard—for less egregious conduct.[25]

Securities Act Rule 156. This rule provides that sales literature is materially misleading if it "omits material facts necessary to make the statements made, in the light of the circumstances of their use, not misleading."[26] Marketing materials that repeat the "shortly before" formulation—without disclosing that the risk persists year-round and can be quantified—violate Rule 156 regardless of what the registration statement says.

These are not alternative theories. They are concurrent violations arising from the same course of conduct. Each violation is independent. Each requires remediation. Together, they establish liability under three separate provisions of federal securities law.

C. Investment Company Act and Advisers Act Violations

Beyond the half-truth analysis, current disclosures violate multiple provisions of the Investment Company Act, the Investment Advisers Act, and their implementing rules. The violations are independent of Rule 10b-5; they would exist even if the half-truth analysis were rejected. They provide additional grounds for Commission action and confirm that the disclosure failure is not a single isolated deficiency but a pattern of noncompliance across the regulatory framework.

Section 34(b): Filed Documents Must Not Mislead. Section 34(b) of the Investment Company Act makes it unlawful for any person to make any untrue statement of material fact in any registration statement, prospectus, or report filed with the Commission, or to omit any material fact "the omission of which makes any statement therein misleading."[27] This is a strict standard. It does not require scienter.[28] It does not require intent to deceive. It requires only that the filed document contain a material misstatement or omission.

The Commission applied this standard in Vanguard. The SEC's order found that Vanguard's prospectuses "were materially misleading" because they described tax consequences in general terms while omitting material information about a foreseeable driver of increased

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[25]In re Vanguard Group, Inc., Investment Company Act Release No. 35481, at 3 (Jan. 17, 2025) (finding violations of Investment Company Act § 34(b)).

[26]17 C.F.R. § 230.156(b)(1).

[27]15 U.S.C. § 80a-33(b).

[28]*See* Aaron v. SEC, 446 U.S. 680, 697 (1980) (scienter not required for certain provisions of the securities laws).

distributions.[29] The prospectuses stated that distributions "may be taxable" and "could vary considerably from year to year as a result of the fund's 'normal' investment activities"—language the Commission found inadequate because it failed to disclose the specific risk investors actually faced.[30]

The parallel to "buying a dividend" disclosures is exact. Prospectuses state that the risk arises "shortly before" distributions—language that fails to disclose the specific, continuous, quantifiable risk investors actually face. If Vanguard's general language violated Section 34(b), the industry's misleading time-limited language violates it even more clearly. Vanguard spoke in generalities; the industry speaks in falsehoods.

Advisers Act §§ 206(1) and 206(2): Fiduciary Duty Requires Full and Fair Disclosure. Investment advisers owe fiduciary duties to their clients—duties that impose disclosure obligations more demanding than ordinary securities law requirements. The Supreme Court established the foundational principle in *SEC v. Capital Gains Research Bureau*: an investment adviser has "an affirmative duty of 'utmost good faith, and full and fair disclosure of all material facts,' as well as an affirmative obligation 'to employ reasonable care to avoid misleading' his clients."[31]

The Court in *Capital Gains Research Bureau* emphasized that the Advisers Act reflects "a congressional recognition 'of the delicate fiduciary nature of an investment advisory relationship'" and establishes "a statutory recognition of the adviser's fiduciary relationship with his clients."[32] This fiduciary duty requires disclosure not merely of facts that are material under ordinary securities law standards, but of all facts that "might incline an investment adviser—consciously or subconsciously—to render advice which was not disinterested."[33]

The conflict here is precisely the kind *Capital Gains Research Bureau* addressed. Fund advisers charge fees based on NAV. NAV includes Embedded Realized Income. Disclosing that Embedded Realized Income inflates NAV—or, worse, adjusting NAV to remove it—would reduce the fee base. Advisers thus have a financial incentive to avoid full disclosure of the "buying a dividend" risk. That conflict of interest, under *Capital Gains Research Bureau*, must be disclosed. It has not been.

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[29] In re Vanguard Group, Inc., Investment Company Act Release No. 35481, at 2 (Jan. 17, 2025).
[30] *Id.*
[31] SEC v. Capital Gains Research Bureau, Inc., 375 U.S. 180, 194 (1963).
[32] *Id.* at 191.
[33] *Id.* at 196.

The Commission charged Vanguard with violating Advisers Act § 206(4) and Rules 206(4)-7 and 206(4)-8 for substantially similar conduct.[34] If Vanguard's failure to disclose a one-time distribution event violated the adviser's fiduciary duty, the industry's systematic failure to disclose continuous, quantifiable harm violates that duty more egregiously. The fiduciary standard is higher than ordinary disclosure requirements. The industry has failed to meet even the ordinary standard.

Form N-1A, Item 4: Principal Risks Must Be Front and Center. Form N-1A requires funds to disclose, in plain English and at the front of the prospectus, the "principal risks" of investing in the fund—defined as "circumstances reasonably likely to adversely affect" NAV, yield, or total return.[35] The instructions emphasize that these disclosures must appear prominently so investors encounter them before making purchase decisions.

A risk that exists on approximately 364 days per year, that causes guaranteed cash losses to taxable investors, and that reduces the number of shares investors acquire for any given investment is a principal risk by any definition. Relegating that disclosure to the back of a hundred-page prospectus—or describing it in language that implies it exists only at certain times—does not satisfy Item 4. The risk must be disclosed prominently, accurately, and with sufficient specificity to allow investors to assess their exposure. Current disclosures fail all three requirements.

Rule 156: Sales Literature Cannot Omit Necessary Qualifiers. Rule 156 provides that sales materials are "materially misleading" if they contain an untrue statement of material fact or omit "material facts necessary to make the statements made, in the light of the circumstances of their use, not misleading."[36] The Commission has interpreted this rule broadly to apply to any written communication used to sell or promote fund shares.

Repeating "shortly before" or "just prior to" language in marketing materials—without disclosing the year-round accrual mechanics and the certain tax consequences—violates Rule 156 on its face. The omitted facts are necessary to make the stated facts not misleading. The rule requires those qualifiers. The industry withholds them.

Rule 19a-1: Distribution Notices Must Be Accurate. When funds pay distributions, Rule 19a-1 requires them to provide shareholders a written statement accurately indicating the source

[34]In re Vanguard Group, Inc., Investment Company Act Release No. 35481, at 3-4 (Jan. 17, 2025).
[35]Form N-1A, Item 4(b)(1); Instructions to Item 4.
[36]17 C.F.R. § 230.156(b)(1).

of the distribution.[37] The rule's purpose is clarity: shareholders should understand what they are receiving.

Characterizing the first post-purchase distribution simply as "income" or "dividends"—without explaining that a new purchaser financed part of that distribution through the purchase price—does not satisfy Rule 19a-1's accuracy requirement. The investor paid for the embedded income and is now receiving it back. That is not income in any economically meaningful sense; it is return of capital. Calling it income, without qualification, misleads investors about the nature of what they received—and triggers tax liability on amounts that do not represent any accession to wealth.

D. The Foundational Misrepresentation: The Definition of Price Itself

Every prospectus in America defines net asset value the same way: total assets minus total liabilities, divided by shares outstanding. The formula appears in plain English, often in the first pages of the document. Investors read it and reasonably conclude that the price they are paying reflects a complete accounting — that all obligations the fund owes have been subtracted before the number reaches them. That conclusion is false.

The largest single liability most funds carry at any given time — the realized income they are legally obligated to distribute under Subchapter M of the Internal Revenue Code — is not subtracted. It is not classified as a liability at all. It sits inside the "assets" figure, inflating every price every investor sees, every fee every adviser charges, and every tax bill every purchaser receives. The fund states a formula that says "assets minus liabilities." The fund then excludes from "liabilities" an obligation it knows exists, knows the amount of to the penny, knows it is legally required to pay, and knows will reduce the share price by exactly that amount the moment it is paid. The investor, reading the prospectus definition, has no reason to suspect the formula is incomplete — because the fund does not disclose that it is.

This is not an omission in the back of a hundred-page document. It is a misrepresentation embedded in the definition of the price itself — the single most important number an investor evaluates before committing capital. Every subsequent deficiency this Petition identifies flows from this one: the inflated fees are calculated on the misstated NAV; the phantom tax bills are generated by distributions that were concealed inside it; the share shortfall results from paying a

[37] 17 C.F.R. § 270.19a-1.

price that included amounts the fund already owed. The formula that purports to show investors exactly what they are buying is the instrument that ensures they never see what they are losing.

The half-truth doctrine of *Macquarie* applies with particular force here. The fund chose to speak — it published a pricing formula. Having spoken, it was obligated to speak completely. A formula that says "assets minus liabilities" while excluding the fund's largest known obligation is not a simplification. It is a half-truth engineered at the point of greatest investor reliance, where the gap between what is said and what is withheld causes the maximum possible harm.

E. The Twenty-Three Prospectus Deficiencies: A Pattern, Not An Accident

The timing misrepresentation analyzed in detail above is not the only half-truth embedded in the industry's disclosures — it is simply the one most susceptible to definitive refutation. Using the funds' own published data, Petitioner has demonstrated that the claim "buying a dividend" risk arises only "shortly before" distributions is mathematically false. That proof is unassailable because it relies on numbers the funds themselves calculate and report.

But the timing language is one deficiency among twenty-three. Petitioner's review of hundreds of prospectuses across the largest fund complexes has identified twenty-two additional categories of material omissions and misstatements, each independently actionable under *Macquarie*'s half-truth doctrine, each concealing information investors need to protect themselves. This Petition does not develop full legal arguments for each — not because those arguments are weak, but because no single submission can litigate all twenty-three. The deficiencies are catalogued here to demonstrate what the pattern reveals: the timing misrepresentation is not a drafting error. It is one component of a deliberate, systematic strategy to obscure the magnitude, certainty, and inescapability of investor harm.

The deficiencies/omissions are:

1. Funds mislead investors about the timing and frequency of their losses. (argued above)
2. Funds artificially inflate Net Asset Values and fail to disclose the overvaluation.
3. Funds fail to inform investors that they will pay higher fees due to artificially inflated NAV.
4. Funds fail to inform investors that inflated share prices cause them to purchase fewer shares and earn fewer future dividends.
5. Funds fail to inform investors they will be taxed on income they never earned and that does not represent any increase in their wealth.

6. Funds fail to inform investors they are not accounting for return of capital on tax forms, resulting in overstated income on Forms 1099-DIV.
7. Funds fail to provide investors a formula to estimate their potential loss and the overstatement of NAV.
8. Funds fail to inform investors to check the realized income in NAV prior to purchase.
9. Funds fail to provide a point of contact for inquiring about the fund's realized income risk.
10. Funds do not advise investors to compare realized income risk across alternative funds.
11. Funds fail to inform investors that realized income risk is variable and must be recalculated daily.
12. Funds fail to inform investors that the safest day to buy (assuming no capital gains are present) is the ex-dividend day.
13. Funds fail to advise investors that to avoid most or all losses, a fund must be purchased on the ex-dividend day for both dividends and capital gains—which typically occurs only one day per year.
14. Funds fail to provide real-time realized income risk data online or elsewhere. Without real-time realized income data — a figure the funds calculate daily and could disclose at no cost — investors have no way to measure, compare, or avoid the very risk the prospectus purports to warn them about.
15. Funds fail to inform investors about differential tax rates for shares held more than 60 days but less than one year.
16. Benchmark-sensitive investors are misled into believing an index fund is equivalent to its benchmark. (funds trade at a premium to their benchmarks)
17. Funds fail to warn that subsequent reinvestments of dividends and capital gains can result in further losses.
18. Funds fail to warn that distributions create artificial volatility, distorting performance metrics.
19. Funds fail to warn of the tracking error created by treating fund liabilities as assets.
20. Funds mislead investors on fund performance due to inflated NAVs. Inflated NAVs create the illusion of outperformance — an investor comparing fund returns to a benchmark has no way to know that the apparent ‘alpha’ is merely undistributed taxable income waiting to be clawed back.

21. Investors are not informed that capital gains distributions provide no economic benefit. They are merely taxable distributions of NAV.
22. Investors are not informed that the risks of "buying a dividend" cannot be avoided by using a tax-advantaged account (share shortfall persists as well as excess fees).
23. Investors are not informed that "buying a dividend" risk applies to short- and long-term capital gains, not just ordinary dividends, as the name of the risk implies.

Each deficiency represents a failure to provide information that a reasonable investor would consider important. Collectively, they demonstrate that this is not a case of one poorly drafted sentence in an otherwise adequate prospectus. This is systematic concealment. The funds know the harm exists (deficiency 1). They know they benefit from the inflated pricing (deficiencies 2, 3). They know they could disclose the information (deficiencies 7, 8, 9, 10, 11, 14). They know when the harm can be avoided (deficiencies 12, 13). And they choose, across all twenty-three categories, to say nothing—or worse, to say things that mislead investors into believing they are protected when they are not.

The pattern confirms scienter. It forecloses any claim of innocent mistake. And it establishes that the remedy must be comprehensive: not a revision to one sentence, but a fundamental change in how funds communicate with investors about a risk they have concealed for decades.

F. The GAAP Compliance Fallacy: Why Accounting Standards Do Not Excuse Securities Fraud

The industry's primary defense is that its accounting treatment complies with Generally Accepted Accounting Principles, and that GAAP compliance immunizes it from disclosure liability. This defense fails for three independent reasons—and every court to consider it has said so.

First, GAAP and securities law serve different purposes. GAAP governs how financial results are measured, classified, and recorded. It ensures consistency and comparability across entities. The federal securities laws govern what must be disclosed to investors before they commit capital. They ensure that investors receive truthful, complete information about material risks. These are different inquiries serving different purposes. Compliance with accounting standards does not satisfy disclosure obligations where material facts are omitted.

The Commission itself has stated this principle explicitly. In adopting amendments to investment company advertising rules, the Commission expressly "reject[ed] the view that compliance with Rule 482 provides a 'safe harbor' from the antifraud provisions."[38] If compliance with a Commission-drafted advertising rule does not provide a safe harbor, compliance with privately-drafted accounting standards certainly cannot. The Commission has never recognized GAAP compliance as a defense to materially misleading disclosure—because no such defense exists in the statute, the rules, or the case law.

Second, courts have uniformly rejected the GAAP defense. The case law is not merely unfavorable to the industry. It is unanimous:

In *Herzfeld v. Laventhol, Krekstein, Horwath & Horwath*, the court warned that "[c]ompliance with generally accepted accounting principles is not necessarily sufficient to satisfy the auditor's additional obligation of full and fair disclosure. Fair presentation is the touchstone," and "technical adherence to GAAP is not necessarily a guarantee of fairness."[39]

In *In re NVIDIA Corp. Securities Litigation*, the Ninth Circuit held that "[f]inancial statements that comply with GAAP may nonetheless be materially misleading."[40]

In *In re Enron Corp. Securities Litigation*, the court held that GAAP compliance "is not necessarily sufficient to insulate [defendants] from liability."[41]

In *SEC v. Lucent Technologies, Inc.*, the district court stated the principle directly: "Adherence to GAAP is not a complete defense."[42]

Every court to consider the question has rejected the proposition that GAAP compliance excuses securities law violations. The industry's defense has no support in precedent—none. Nor should it. It is a manufactured doctrine invented to avoid accountability for conduct that cannot be defended on the merits.

Third, the defense confuses the accounting treatment with disclosure of its consequences. As established in Section I and reiterated in Section IV, Petitioner does not challenge the accounting practice itself. Funds may continue to book realized income to NAV

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[38]Investment Company Advertising: Target Date Retirement Fund Names and Marketing, Investment Company Act Release No. 26195, 68 Fed. Reg. 57,760, 57,771 (Oct. 6, 2003).

[39]Herzfeld v. Laventhol, Krekstein, Horwath & Horwath, 378 F. Supp. 112, 122 (S.D.N.Y. 1974), *aff'd in relevant part*, 540 F.2d 27 (2d Cir. 1976).

[40]In re NVIDIA Corp. Sec. Litig., 768 F.3d 1046, 1056 (9th Cir. 2014).

[41]In re Enron Corp. Sec. Litig., 235 F. Supp. 2d 549, 577 (S.D. Tex. 2002).

[42]SEC v. Lucent Techs., Inc., 610 F. Supp. 2d 342, 350 (D.N.J. 2009).

exactly as they do today. What they may not do is fail to disclose to investors the *consequences* of that accounting choice—consequences the funds know, calculate daily, and systematically withhold.

GAAP tells funds how to compute a number. It does not tell them they may conceal what that number means for investors. A fund can be 100% GAAP-compliant and still violate the securities laws if its prospectus omits material facts about the risks that GAAP-compliant accounting creates. These are not contradictory propositions. They are the heart of this Petition. The industry's attempt to conflate them is not a legal argument; it is an attempt to mislead the Commission and the courts.

The Commission should state, clearly and for the record, that GAAP compliance does not excuse materially misleading disclosure. The principle is settled. The precedent is uniform. The only purpose of restating it is to ensure the industry can no longer hide behind a defense that does not exist.

G. The Industry Practice Fallacy: Why "Everyone Does It" Is An Indictment, Not A Defense

The industry's second defense is that the challenged disclosure and accounting practices are industry-wide, and that widespread adoption immunizes participants from liability. This defense is even weaker than the GAAP defense—and more dangerous in its implications.

The securities laws have never recognized an "everyone does it" defense. The standard for disclosure liability is whether a statement is materially misleading—not whether competitors make similar statements. A thousand misleading prospectuses are not better than one; they are a thousand times worse, because they harm a thousand times more investors. The Commission does not evaluate disclosure adequacy by surveying industry practice; it evaluates whether investors received truthful, complete information.

If widespread adoption of a deficient practice immunized participants, the Commission could never bring an industry-wide enforcement action. Price-fixing would become legal if enough competitors participated. Accounting fraud would become permissible if it became common practice. Securities fraud would be rewarded with immunity once it achieved sufficient scale. The proposition is self-evidently absurd. It contradicts the fundamental purpose of securities regulation.

Pervasive violation makes intervention more urgent, not less appropriate. When an entire industry engages in the same deficient practice, that is evidence of systemic failure requiring

regulatory intervention—not a defense excusing individual conduct. The Commission was established precisely to address such failures. If every fund omits the same material information, every fund is in violation. The appropriate response is industry-wide corrective action, not industry-wide immunity.

The industry's defense is actually Petitioner's premise. This point deserves emphasis because the industry appears not to understand its implications. When the industry argues that booking realized income to NAV is "standard practice," the industry confirms the factual predicate of this entire Petition. Yes—it is standard practice. That is precisely why the harm is so widespread. That is why over $100 billion in unjust taxes flows annually from investors to the Treasury. That is why corrective disclosure is needed across the entire industry, not just at a handful of outlier funds.

The industry appears to believe that admitting universal adoption of the practice somehow defeats Petitioner's claim. The opposite is true. Universal adoption of a practice that harms investors without adequate disclosure is not a defense—it is an indictment. It means every registered fund that accrues income to NAV is independently obligated to disclose the consequences of that practice to purchasers. The fact that no fund currently provides adequate disclosure means every fund is currently in violation.

Accepting this defense would incentivize coordinated fraud. If firms could achieve immunity by coordinating to adopt identical deficient disclosures, the securities laws would reward collusion and punish honesty. Any firm that broke ranks to provide truthful disclosure would admit the deficiency—exposing itself to liability while competitors continued the misleading practice and retained market share. That is precisely the dynamic that has perpetuated the harm here: no firm will move first because moving first means admitting the problem, while competitors continue to profit from concealment.

A senior tax director at a major fund complex told Petitioner the truth: **"*If you can get just one fund to do this, all other funds will be forced to fix this within 12 months*."** [emphasis added] That statement captures the entire problem. One honest actor would have forced industry-wide correction through competitive pressure. No one was willing to be that actor—because the current practice generates revenue and the "everyone does it" defense provides cover.

The Commission must reject that defense to break the cycle. It should state, clearly and for the record, that widespread noncompliance is a reason for enforcement, not an excuse from it—

and that widespread adoption of a harmful practice is a reason for widespread disclosure, not an excuse from it.

H. Scienter: The Industry Knew, And The Record Proves It

Although scienter is not required for all violations alleged—Securities Act § 17(a)(2)-(3) and Investment Company Act § 34(b) do not require it[43]—the record here establishes scienter for those provisions that do. The evidence is not circumstantial. It is direct. The industry has admitted knowledge of the harm, demonstrated financial motive to conceal it, received formal notice, and refused to act, and then silently edited its disclosures in a manner that confirms consciousness of guilt.

Industry admissions establish knowledge. Executives at major fund complexes have acknowledged the harm to Petitioner directly. One stated that the problem is not considered serious "because our investors don't know it is happening." The admission is breathtaking: the industry knows investors are being harmed and considers the harm acceptable precisely because investors remain ignorant of it. Another executive described the situation as "fine" despite acknowledged investor losses. A senior fund-administrator executive explained why a simple software fix would never be implemented: "Managers would never go for it... We bill on the [inflated] NAV."

These are not ambiguous statements requiring interpretation. They are direct admissions that the industry knows about the harm, knows how to fix it, and chooses not to because the current practice generates revenue. The "we bill on the [inflated] NAV" admission is particularly damning: it establishes both knowledge of the overvaluation and the financial motive for concealing it. This is not a negligent failure to disclose. It is deliberate concealment for profit.

The 15,266 CCO notices eliminate the ignorance defense. In 2023, Petitioner served formal notice on 15,266 chief compliance officers—every CCO registered in the SEC's Investment Adviser Registration Depository—advising that disclosure deficiencies exist and that investors are being harmed. The notice identified the specific problem, quantified the harm, and offered a remediation path.

The response was uniform silence. Not one CCO used the enclosed meeting link to learn more. Not one firm requested additional information. Hundreds marked the notice as “junk.” Some flagged it as "inappropriate content"—a filtering category typically associated with explicit

[43] Aaron v. SEC, 446 U.S. 680, 697 (1980).

material—an absurd classification for a formal compliance warning about investor harm. The formal notice was intentionally structured to legally require a response. Yet, no one responded. The email campaign had a tracker on it. Petitioner watched in real-time as hundreds of CCOs opened the email. Petitioner has the records.

After industry-wide notice, continued use of the same misleading language is not negligence. It is willful indifference to known risks—the functional equivalent of knowledge for scienter purposes. The Supreme Court has held that willful blindness satisfies the knowledge requirement: defendants cannot escape liability by deliberately avoiding confirmation of facts they strongly suspect to be true.[44] The 15,266 notices, sent to the designated compliance contacts' email addresses listed on the SEC's ADV form, eliminate even willful blindness as a defense. The industry was told. It chose not to act. That choice establishes scienter.

Silent edits confirm consciousness of guilt. Beginning in 2023—the same year Petitioner's CCO notices were delivered—multiple investment fund complexes quietly stripped the challenged phrases from their prospectuses, deleting "shortly before" and "just prior to" without alerting investors or the Commission.

The timing is not coincidental. The industry received formal notice that its disclosure language was false and misleading. Rather than issue corrective disclosures—which would have alerted investors and created a public record—the industry silently deleted the offending phrases. If the language were accurate, there would be no reason to remove it. If the industry believed the disclosures were adequate, it would have defended them. The silent edits are an admission that the language was misleading—made in a manner calculated to avoid the consequences of that admission.

But quiet deletion does not cure past sales—and it does not satisfy the duty to correct. Liability attaches at the moment of sale. Once registrants know earlier disclosures were false or materially incomplete, the obligation is to correct and warn, promptly and publicly—not to erase and move on.[45] Courts recognize a duty to correct statements that were misleading when made; later disclosures do not absolve liability for the period in which investors were misled.[46] The silent

[44]Global-Tech Appliances, Inc. v. SEB S.A., 563 U.S. 754, 769-70 (2011) ("The traditional rationale for this doctrine is that defendants who behave in this manner are just as culpable as those who have actual knowledge.").
[45]*See* Backman v. Polaroid Corp., 910 F.2d 10, 16-17 (1st Cir. 1990) (en banc) (recognizing duty to correct).
[46]*Id.*

edits confirm the violation while compounding it: the industry has acknowledged the problem through its conduct while refusing to acknowledge it to investors.

That is not remediation. It is cover-up. And cover-up is powerful evidence of scienter.

It is also evidence of enterprise coordination. When multiple competing firms simultaneously revise the same language, in the same direction, at the same time, without acknowledging error or notifying investors — that uniformity in concealment cannot be reconciled with independent decision-making. Independent actors responding to the same compliance concern produce varied responses — different timing, different revisions, different approaches. Coordinated actors produce identical cover-ups. The synchronized edits are evidence that the enterprise's members communicated, directly or through intermediaries, about the need to sanitize the evidentiary record — and then acted in concert. The cover-up serves the enterprise's common purpose: if the disclosure deficiency were publicly corrected, it would draw attention to the false 1099-DIV reporting and the inflated-NAV pricing that the enterprise exists to protect.

The motive is documented. The record contains direct evidence of why the industry refuses to correct the problem: fee revenue. Funds charge asset-based fees calculated on NAV. NAV includes Embedded Realized Income. Disclosing that Embedded Realized Income inflates NAV—or adjusting NAV to remove it—would reduce the fee base. The "we bill on the [inflated] NAV" admission establishes this motive explicitly.

The motive explains the conduct. It explains why an industry that calculates Embedded Realized Income daily chooses not to disclose it. It explains why 15,266 compliance officers ignored a formal fraud notice. It explains why funds silently edited their prospectuses rather than issue corrective disclosures. And it explains why the problem has persisted for decades despite being known, quantified, and easily correctable.

When the industry knows about a problem, receives formal notice, makes admissions in private, edits disclosures silently, and refuses to implement known fixes because doing so would reduce revenue, scienter is not merely inferable. It is proven. The only remaining question is what consequences follow.

I. The Magnitude of Harm: One Thousand Times Vanguard—Every Year, Forever

Before concluding, the Commission should consider what is at stake—not in legal abstractions, but in dollars and human lives.

The Vanguard settlement was $106.41 million.[47] The SEC described that action as addressing "materially misleading" disclosures about tax consequences that harmed retirement investors. The enforcement logic was sound. The penalty was appropriate for the harm caused. The Commission demonstrated that it takes misleading tax-consequences disclosures seriously.

But the Vanguard harm occurred once. It arose from unusual redemption patterns following a policy change—an episodic event that created an unexpected distribution. The violation happened, the Commission acted, investors were compensated through a Fair Fund, and the matter concluded.

The harm documented in this Petition is fundamentally different. It does not occur once. It occurs every trading day. It occurred yesterday. It is occurring today. It will occur tomorrow. It has occurred for decades and will continue occurring until the Commission acts. This is not an event—it is a condition. It is not an aberration—it is the industry's operating model.

The annual harm documented in this Petition is estimated to exceed $100 billion annually.[48]

That figure is conservative. It is calculated using only Formula 1 from Section III: the unjust taxes paid by purchasers who hold through distribution dates. It does not include three additional categories of harm that compound the losses:

First, it excludes the excess management fees extracted daily on inflated NAV. Every asset-based fee in the chain—management fees, adviser fees, platform fees, custody fees—is calculated on a NAV that includes Embedded Realized Income. That income is, in economic substance, a liability owed to shareholders, not an asset under management. Yet the industry bills on it as though it were an asset. This fee extraction occurs every day the Embedded Realized Income sits in NAV, enriching every participant in the distribution chain at investor expense.

Second, it excludes the excess taxes paid by sellers who held shares for more than 60 days but less than one year. As Section III explained, these investors qualify for favorable tax treatment on qualified dividends (approximately 20% combined federal and state). But because funds embed qualified dividends into NAV—creating price appreciation rather than distributing the income—those dividends are converted to short-term capital gains when the investor sells. Short-term capital gains are taxed at ordinary income rates (approximately 40%). The investor pays double the taxes

[47] Press Release, SEC, *supra* note 5.

[48] *See* Section III.L (calculating market-wide losses).

she would have owed if the fund had simply distributed the dividend. This affects billions of dollars annually.

Third, it excludes the compounding effect of the feedback loop described in Section III.I: every reinvested dividend purchases shares at an inflated NAV, triggering the harm again, quarterly, for the life of the investment.

When these additional drags are included, the true annual harm is substantially higher than $100 billion annually.

To state the comparison with precision: the harm Petitioner documents is approximately one thousand times larger than the harm the Commission addressed in Vanguard—every single year—using the most conservative methodology available.[49] Over a decade, that compounds to more than one trillion dollars in preventable investor losses. Over the decades this practice has persisted, the cumulative harm is incalculable.

And here is the crucial difference: Vanguard's harm stopped. This harm has not. The Commission's action against Vanguard addressed a completed event. The conduct documented here is ongoing. It is happening right now—this trading day, as this Petition is read. Every day of delay is another day of investor losses that could have been prevented.

This is not an edge case or a technical violation. It is not a close question about the adequacy of particular language. It is among the largest disclosure failures in the history of American securities markets—larger than Enron, larger than WorldCom, larger than any single corporate fraud because it is not a single fraud but a systemic one, repeated daily across thousands of products affecting tens of millions of investors, compounding annually, and continuing indefinitely until someone stops it.

The Commission has demonstrated, through its Vanguard action, that it will impose significant penalties for misleading tax-consequences disclosures. The only question is whether that commitment applies equally when the harm is measured in hundreds of billions rather than hundreds of millions—when the violation is perpetual rather than episodic—and when the violators include the entire fund industry rather than a single complex.

The answer should be obvious. The larger the harm, the more urgent the intervention. The more widespread the violation, the more necessary the corrective action. The longer the harm

[49] *See supra* note 5.

continues, the greater the imperative to act. A reviewing court would find it difficult to reconcile enforcement action against a $106 million one-time disclosure failure with inaction on a $100+ billion annual one that compounds daily.

J. The Law Is Clear. The Facts Are Documented. The Commission Must Act

The legal analysis admits of only one conclusion—the same conclusion the Commission reached when it charged Vanguard in January 2025.

Current "buying a dividend" disclosures violate Rule 10b-5(b) as half-truths that omit material qualifying information. They violate Investment Company Act § 34(b) as materially misleading filed documents. They violate Advisers Act § 206 as breaches of the fiduciary duty of full and fair disclosure. They violate Securities Act Rule 156 as sales literature that omits facts necessary to make statements not misleading. They violate Form N-1A's requirement to disclose principal risks prominently and accurately. And they fail to satisfy the basic premise of our disclosure regime: that investors receive truthful, complete information about material risks before they commit capital.

The industry's defenses fail—not on close questions, but categorically. GAAP compliance has never excused misleading disclosure, and every court to consider the question has so held. Industry-wide adoption of a deficient practice is grounds for intervention, not immunity. And the scienter evidence—admissions, notice, silent edits, documented motive—forecloses any claim of innocent mistake or good-faith ambiguity.

The Supreme Court has spoken. Half-truths are actionable. *Macquarie*. Opinions mislead when they omit the speaker's knowledge that the stated basis is false. *Omnicare*. Investment advisers owe fiduciary duties of utmost good faith and full disclosure. *Capital Gains Research Bureau*. Materiality is determined by what a reasonable investor would consider important, not by accounting conventions or industry practice. *TSC Industries*. *Basic*. *Matrixx*.

And the Commission itself has spoken—just one year ago: "Firms must ensure that they are accurately describing to investors the potential risks and consequences associated with their investments."[50]

The industry has not done so. It has described risks in language designed to keep purchases rolling while withholding the data investors need to protect themselves. It has warned of harm

[50]Press Release, SEC, *supra* note 5.

while concealing its magnitude. It has edited its disclosures silently when confronted with their falsity, seeking to escape liability without accepting responsibility.

That is not disclosure. It is the opposite of disclosure. It is concealment dressed in the language of warning—a half-truth designed to provide legal cover while preserving the fee revenue that depends on investor ignorance.

The facts are documented in Section III. The legal violations are established above. The harm exceeds $100 billion annually and is ongoing. The Commission charged Vanguard for materially misleading tax-consequences disclosures that caused a fraction of this harm. The principle that justified Vanguard compels action here—at a scale commensurate with harm that is one thousand times greater.

The questions before the Commission are not difficult. Does the law mean what it says? Do investors deserve the truth before they invest? Does the Commission enforce its principles consistently—or selectively, addressing isolated misconduct while permitting systematic fraud to continue because the violators are numerous and powerful?

Ninety years ago, Congress enacted the securities laws on a simple premise: investors are entitled to the truth. The industry has betrayed that premise—knowingly, profitably, and for decades.

The Commission must restore it.

> **Note on Corporate Equities:** For corporate equities trading in secondary markets, investors receive no prospectus at point of sale—the issuer has no direct relationship with the purchaser. The disclosure burden therefore falls on broker-dealers, who are obligated under Regulation Best Interest to disclose "material facts" relating to recommendations and to exercise "reasonable diligence, care, and skill." FINRA Rule 2111 requires brokers to consider the customer's "tax status" as part of any suitability analysis. The industry's uniform failure to disclose the embedded tax liability from cum-dividend purchases raises serious questions under these standards—and under Rule 10b-5, which prohibits material omissions that operate as fraud or deceit in connection with securities transactions. The Commission's interpretive guidance should clarify that broker-dealers recommending the purchase of dividend-paying securities have an affirmative duty to disclose imminent dividend dates and the associated tax consequences. The false Form 1099-DIV problem, moreover, is identical regardless of security type: the broker or transfer agent reports income the investor never economically received.

VI. NEARLY EIGHT YEARS OF NOTICE AND INDUSTRY-WIDE COMPLIANCE FAILURE

"If you can get just one fund to do this, all other funds will be forced to fix this within 12 months."

— Senior Tax Director, Major Fund Complex

One honest actor. That is all it would have taken to protect 160 million people.

One fund complex that issued a corrective supplement. One prospectus that told the whole truth. One set of 1099-DIVs that matched economic reality. Competitive pressure would have forced the entire industry to follow within a year. The executives knew this. They said so—behind closed doors, to Petitioner, in words they never expected to appear on the Commission's docket.

No one was willing to be that actor. Not one firm in nearly eight years. Not one among the thousands of gatekeepers controlling tens of trillions of dollars. Not one.

This Section documents the most comprehensive compliance failure in the history of American securities regulation. It is not a story of isolated misconduct or good-faith disagreement. It is a story of an entire industry—fund complexes, self-regulatory organizations, chief compliance officers, independent auditors, securities law firms, fund administrators, custodians, brokerages, and fund boards—receiving clear notice of ongoing fraud and choosing, collectively and deliberately, to do nothing.

The Commission must confront what this record reveals. The self-policing compliance architecture has not merely failed. It has been exposed as theater—an elaborate performance of compliance that produces press releases and marketing copy while investors are systematically looted. Every layer of the regulatory regime that Congress constructed to protect American investors received notice of this fraud. Every layer declined to act. The failure was not partial. It was total. And it continues today, as this Petition is filed, as this sentence is read.

The time for voluntary “self-compliance” has passed. Nearly eight years of it produced nothing except documented evidence of industry-wide scienter. What remains is enforcement—or admission that the securities laws do not apply to violations large enough and widespread enough to implicate everyone.

A. The Record of Engagement: Universal Notice, Universal Silence

Petitioner did not file this Petition prematurely or in frustration. For nearly eight years, Petitioner pursued an "industry-led solution" with a persistence that bordered on naïveté—believing, against accumulating evidence, that someone in the financial industry would honor their legal obligations if the problem were explained clearly enough, documented thoroughly enough, and the solution made easy enough.

The problem was explained. The documentation was comprehensive. The solution was a software button. The industry's response was uniform: acknowledgment of the harm and refusal to fix it.

The Scale of Notice: Firms Controlling $30+ Trillion. Petitioner met personally with hundreds of executives at fund complexes controlling more than thirty trillion dollars in assets under management—the institutions that hold America's retirement savings, 401(k) plans, IRAs, pension funds, college savings accounts, and brokerage portfolios. These were not cold calls to junior staff. These were substantive meetings with decision-makers at the largest asset managers in the world—firms whose names appear on the account statements of virtually every American who has ever saved a dollar for retirement.

Petitioner presented the mathematics. The executives did not dispute it. Petitioner quantified the harm. The executives acknowledged it. Petitioner demonstrated the technological fix. The executives declined to implement it.

The Breadth of Notice: Every Category of Gatekeeper. The outreach extended to every layer of the compliance architecture Congress constructed—and every layer failed.

Petitioner notified the self-regulatory organizations empowered by the Exchange Act to police market integrity: NYSE, Nasdaq, Cboe, and the other exchanges that list these funds and profit from their trading volume.[51] Petitioner notified DTCC executives, the clearing and settlement backbone that processes virtually every securities transaction in America, and could have flagged the problem in a single software update. Petitioner notified the Big Four accounting firms and their competitors—the "public watchdogs" the Supreme Court has said owe "ultimate allegiance" to investors and "complete fidelity to the public trust."

[51] Exchange Act § 6, 15 U.S.C. § 78f.

Petitioner notified approximately a dozen of the largest securities law firms in America—the gatekeepers who draft prospectuses, advise on disclosure obligations, appear daily before the Commission, and whose partners rotate through the SEC's senior leadership. Petitioner notified the fund administrators and transfer agents who prepare EDGAR filings, calculate NAV, process distributions, and coordinate the very tax reporting that this Petition demonstrates is false. Petitioner notified the custodians and brokerages where retail investors execute trades.

Petitioner notified registered investment advisers who recommend fund purchases to clients and owe fiduciary duties of care and loyalty that this conduct breaches daily. Petitioner notified compliance consultancies that advise financial institutions on regulatory obligations and charge millions to help firms avoid precisely the liability documented here.

Every category received notice. Every category understood the problem. Not one acted. The architecture Congress constructed to protect American investors functioned instead to protect American financial institutions—from accountability, from transparency, and from the consequences of their own fraud.

The 15,266 CCO Notices: Formal, Comprehensive, Undeniable. In 2023, Petitioner served formal written notice on every chief compliance officer registered in the SEC's Investment Adviser Registration Depository—15,266 individuals whose sole professional function is to ensure their firms comply with securities law.

The notice was not vague. It identified the specific violation: prospectus disclosures describing "buying a dividend" risk contain factually false statements about timing that mislead investors into purchasing shares containing embedded tax liabilities. It quantified the harm: certain, non-market losses calculable to the penny before the trade executes.

The notice was delivered by methods designed to ensure receipt and create a documentary record. The industry cannot claim it was not received. The industry cannot claim it was unclear. The industry cannot claim the solution was unavailable or impractical.

The notice was also deliberately structured as a partial disclosure. Each notification expressly stated that the email did not represent Petitioner's full disclosure and requested a twenty-minute meeting to present the complete information. *This design was intentional.* A chief compliance officer who receives a partial disclosure of potential fraud affecting the firm's investors cannot satisfy the investigative obligations prescribed by the firm's own compliance manual — obligations that uniformly require acknowledgment, assessment, investigation, and, where

warranted, regulatory reporting — by declining to receive the rest of the disclosure. The compliance manual does not contemplate a response of "I chose not to learn the full facts." It contemplates investigation. By structuring the notice as a partial disclosure, Petitioner ensured that every CCO who ignored the meeting request did so with the documented knowledge that material information about potential investor harm remained undisclosed — information that could only be obtained by doing what the compliance manual required: engaging with the reporting party. The 15,266 CCOs who declined to schedule the meeting did not merely fail to act on a completed report. They affirmatively refused to receive the information their own procedures obligated them to obtain.

The Response: Not Silence—Obstruction. The industry's response was not mere inaction. It was an active obstruction designed to prevent the notice from reaching anyone who might act on it.

Of the 15,266 CCOs, not one used the enclosed meeting link to learn about the harm facing their investors. Not one replied to initiate an investigation. Not one requested additional information. Not one.

Hundreds marked the notice as junk mail—so many that Mailchimp suspended Petitioner's account for triggering spam filters. The compliance officers responsible for ensuring their firms do not defraud investors classified a fraud warning as junk.

Some CCOs went further. They flagged the notice as "inappropriate content"—a Mailchimp category designed for pornography and other explicit material. A compliance warning about investor harm, classified alongside explicit content and blocked from reaching anyone within the organization. This was not negligence. This was a deliberate decision to ensure that no one at the firm would be forced to confront what the notice documented.

Parallel outreach by telephone produced identical results. Voicemails were not returned. Emails went unanswered. One compliance officer hung up the moment Petitioner identified the purpose of the call—asking permission to report a serious compliance issue adversely affecting investors. The gatekeeper refused to hear the report.

The Real-Time Obstruction Continues. As Petitioner finalizes this filing, the pattern persists. The General Counsel of a major exchange blocked Petitioner on LinkedIn immediately after Petitioner asked to report a material compliance issue. Not "let me look into this." Not "please send details." Blocked.

This is not an isolated incident. The industry has made it virtually impossible to report compliance failures. This is not accidental. It is architectural—a system designed to ensure that no one can be forced to act on knowledge they have been prevented from receiving.

The Technology Was Ready, Demonstrated, and Refused. Petitioner did not merely identify a problem and demand that others solve it. Petitioner built the solution.

FairShares technology can strip embedded realized income from NAV, setting share prices to fair value. It can generate Forms 1099-DIV that reflect economic reality rather than GAAP fictions. It can produce point-of-sale disclosures that tell investors—before they commit capital—exactly what is embedded in the price and exactly what it will cost them.

The implementation requires uploading a file and pressing a button. A three-second check. The technology was demonstrated repeatedly to industry leaders. The mathematics were not challenged. The functionality was not questioned. The solution was refused—because, as executives explained in terms they did not expect to be repeated, implementing it would reduce fee revenue.

B. What Executives Said Behind Closed Doors: Confessions of an Industry

The contrast between what these firms say in public and what their executives said to Petitioner in private is not mere hypocrisy. It is the evidentiary predicate for fraud—statements against interest, made by parties with personal knowledge, that establish scienter beyond any reasonable dispute.

The Public Proclamations of Fiduciary Virtue:

These firms fill their marketing materials with promises of fiduciary stewardship. "Our clients' interests come first," proclaims one ten-trillion-dollar asset manager. "The fiduciary mindset is the bedrock of our identity."[52] "We have a fiduciary duty to act in participants' best interests," declares another, "and to abide by the duties of care and loyalty."[53] "We put the interests of our customers first," announces a third, "and we take great pride in guiding our customers towards products and ideas that will help them live a better, more financially secure life."[54] "As

[52]Publicly available marketing material, major asset manager (on file with Petitioner).
[53]Publicly available marketing material, major asset manager (on file with Petitioner).
[54]Publicly available marketing material, major asset manager (on file with Petitioner).

trusted fiduciaries," intones a fourth, "we recognise our responsibility to act as effective stewards of our clients' capital."[55]

The language varies. The message is uniform: *trust us with your money; we will protect you*.

The Private Confessions to Petitioner:

These same firms' executives, speaking candidly when they believed their words would never reach the public record, revealed the truth:

"We do not consider this a problem because our investors don't know it is happening."

This statement requires careful attention, because it is a confession disguised as an explanation.

The executive did not say the harm was immaterial. He did not say the disclosures were accurate. He did not say investors were protected. He said the harm was acceptable *because investors were ignorant of it*.

That is not a defense. That is the violation. The entire architecture of securities disclosure law exists to ensure that investors *do* know what is happening to their money. An industry that treats investor ignorance as a feature—as the reason a "problem" need not be addressed—has confessed to the precise concealment the antifraud provisions prohibit.

"Investors should just 'accept' these losses because investment funds offer convenience."

Remarkably, this statement was made not by a fund executive defending industry practice, but by a partner at a Big Four accounting firm — a professional whose duty is to ensure accurate financial reporting to the investing public, not to rationalize its absence. The statement reframes systematic wealth extraction as a service charge — as if the losses Petitioner documents were the fair price of participation in the fund industry.

They are not. The losses are the price of deception. An investor who knew the truth could avoid the harm entirely: by waiting a single day, by choosing a fund with lower embedded

[55]Publicly available marketing material, major asset manager (on file with Petitioner).

amounts, by demanding accurate tax reporting. The "convenience" the industry offers is the convenience of not knowing you are being robbed.

"We consider the current situation 'fine.'"

Fine for whom?

Not for the retiree who pays $4,000 in taxes on "income" she never received. Not for the 401(k) participant who receives fewer shares for every dollar invested. Not for the pension fund whose beneficiaries' purchasing power is silently diminished. The situation is "fine" only for those who extract fees on the inflated NAV and prefer that investors never learn of the overvaluation.

"The problem is real. The industry has simply ignored it."

This executive acknowledged to his colleagues—in an email—that the harm was genuine and the industry's response was willful disregard. He then explained that his firm could not "commit the necessary time or resources" to address it.

The same firm commits tens of millions annually to marketing campaigns proclaiming virtue. It has unlimited resources for executive compensation, shareholder dividends, and lobbying. It has no resources for telling investors the truth about how their money is being handled.

"We have zero interest."

Zero interest in protecting investors from certain, quantifiable harm. Zero interest in complying with disclosure obligations. Zero interest in honoring the fiduciary duties they advertise. This statement requires no interpretation. It is a complete and accurate summary of the industry's position.

"Running a three-second check isn't worth our time."

The check in question would inform a fiduciary—before executing a trade—how much harm that trade would impose on the client. Three seconds to protect an investor from a certain loss. Not worth their time.

But calculating fees on inflated NAVs, extracting those fees daily, and defending the practice for decades—that is worth their time.

"Managers would never go for it... We bill on the [inflated] NAV."

This statement—from a senior fund-administrator executive explaining why a simple software fix would never be implemented—is the most important admission in this record.

The executive confirmed that a technological solution exists (declaring dividends daily). He confirmed that it could be implemented. He confirmed that it would protect investors. And he explained why it would never happen: because fund managers charge asset-based fees, and those fees are calculated on a NAV that includes embedded realized income. Fixing the problem would reduce the fee base. The industry has chosen fees over fiduciary duty, and this executive explained the choice in terms that leave no ambiguity.

This is not negligence that might be cured by guidance. This is knowing, profitable fraud.

And it is not the conduct of isolated bad actors. It is the conduct of an enterprise — an association of competitors and gatekeepers that has organized itself around a common purpose: maintaining inflated advisory fee revenue through a coordinated pricing methodology that requires the filing of false federal information returns as its necessary operational mechanism. The admissions documented above are not merely evidence of scienter for securities-law purposes. They are admissions of the enterprise's common purpose, its members' knowledge of the scheme, and their conscious participation in it. The enterprise's common purpose was stated plainly by its own member: "Investment managers are billing on the [inflated] net asset value." The executive did not describe an isolated practice. He explained that "Investment managers would never go for it" — because every manager bills on the same inflated base. That industry-wide pricing methodology is the common purpose that satisfies *Boyle v. United States*, 556 U.S. 938 (2009). "Our investors don't know it is happening" is an admission that the enterprise's survival depends on concealment. "We have zero interest" is an admission of knowing participation — and under *Salinas v. United States*, 522 U.S. 52 (1997), adopting the goal of furthering the criminal endeavor is all the law requires. "Cease further contacts" is the enterprise's discipline mechanism — ensuring that no paper trail documents what every member already knows.

"Cease further contacts with executives."

After Petitioner flew across the country—at personal expense, on personal time—to the headquarters of a multi-trillion-dollar asset manager, to explain in person how their investors could

be protected from harm the executives did not dispute, Petitioner was told to stop contacting its executives. Not "let us investigate." Not "we need time to consider this." Stop.

The message was clear: *we do not want this documented. We do not want a paper trail. We do not want to be in a position where we cannot later claim ignorance.* This was not a scheduling request. It was a threat—and a confession that the firm understood exactly what Petitioner was offering and wanted no record of having refused it.

The Absence of Any Expression of Concern. Over nearly eight years of meetings, across hundreds of conversations with executives at the largest financial institutions in the world, Petitioner did not witness a single expression of concern or empathy for the investors these executives are legally obligated to protect.

The acknowledgments of harm were clinical—delivered in the same tone one might use to discuss quarterly depreciation or a minor variance in operating expenses. The refusals were bureaucratic—passed up chains of command until they disappeared into committees that never reconvened, working groups that never met, "further review" that never occurred. The industry discussed investor losses the way one discusses weather: unfortunate, perhaps, but hardly something to do anything about.

Not once did an executive ask: "How many investors are affected?" Not once did anyone ask: "What happens to a retiree who pays these phantom taxes?" Not once did anyone express discomfort with the gap between their marketing and their conduct. Not once did anyone say: "We should do something about this." The investors were abstractions—account numbers, basis points, fee multipliers. Their welfare was not a consideration. It was not even a topic.

The law credits conduct, not slogans. These firms promised fiduciary stewardship to win assets. They betrayed that promise the moment the assets arrived.

C. The Gatekeeper Breakdown: Every Line of Defense Failed at Once

The securities laws do not rely on fund complexes alone to protect investors. Congress constructed a multi-layered architecture of oversight, based on a simple premise: if one gatekeeper fails, another will catch the violation. The layers are supposed to provide redundancy. The theory is that fraud cannot succeed if it must evade detection by independent auditors, compliance officers, self-regulatory organizations, securities counsel, fund boards, custodians, and transfer agents simultaneously.

Yet, every gatekeeper failed simultaneously. The redundancy produced nothing except redundant silence.

Self-Regulatory Organizations: The Self-Regulators Who Regulated Nothing. SROs—the exchanges, FINRA, the clearing agencies—exist because Congress recognized that government regulators cannot monitor every transaction in real time. The Exchange Act empowers these organizations to enforce member compliance with federal securities law, to conduct examinations, to issue guidance, and to refer violations to the Commission.[56]

Upon notice that member firms were circulating misleading disclosures and/or harming investors, SROs had clear duties: open inquiries using their compulsory process, issue guidance directing members to correct defective materials, refer potential violations to the SEC.[57]

The record contains no evidence that any SRO took any of these steps. The exchanges that list the affected funds — silent. The clearing agencies that process the transactions — silent.

Worse than silence, one major exchange responded to Petitioner's presentation with something approaching pettiness. After Petitioner's technology was presented to and rejected by the exchange's executive committee, its executives began quietly deleting their LinkedIn connections with Petitioner — the professional equivalent of blocking someone on Facebook. These are the institutions Congress entrusted with frontline investor protection. Their response to evidence of systematic harm was not investigation, not engagement, not even a formal rejection letter. It was social media sanitization.

Harry Markopolos spent nearly a decade trying to convince regulators that Bernie Madoff was running a Ponzi scheme. He submitted detailed mathematical analyses to the SEC. He was ignored. After the multi-billion-dollar fraud collapsed—one of the largest in American history—Markopolos testified before Congress about why the industry had failed to police itself. His explanation was succinct: "People in glass houses don't throw stones—and self-regulation on Wall Street doesn't work."[58]

The meaning is plain. Firms that profit from fragile practices will not expose peers whose exposure might invite scrutiny of their own conduct. Every fund complex books realized income

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[56]Exchange Act §§ 6, 15A, 17A, 19(g), 15 U.S.C. §§ 78f, 78o-3, 78q-1, 78s(g).

[57]Id.

[58]Assessing the Madoff Ponzi Scheme and Regulatory Failures: Hearing Before the Subcomm. on Capital Markets, Insurance, and Government Sponsored Enterprises of the H. Comm. on Financial Services, 111th Cong. 5-6 (2009) (testimony of Harry Markopolos).

to NAV. Every fund complex has the same vulnerability. The code of silence was not negotiated; it was understood. What Markopolos learned about Madoff and his service providers, Petitioner learned about the entire fund industry: the gatekeepers will not act because they cannot act without exposing themselves.

Chief Compliance Officers: 15,266 Derelictions of Duty. The CCO role exists for one purpose: to ensure firms comply with securities law. Upon receiving formal notice of a violation, CCOs have duties that are not discretionary: treat the matter as material, inform the board and senior management, ensure corrective action, and document the response.[59]

Fifteen thousand two hundred sixty-six CCOs received Petitioner's notice. The response—documented in Section VI.A—was uniform: not one investigation, not one meeting, not one request for information. The compliance officers responsible for ensuring their firms do not defraud investors classified a fraud warning as junk mail—and some classified it as pornography.

Pause on that fact. A compliance warning documenting investor harm—classified alongside explicit content and blocked from reaching anyone within the organization. This was not negligence. This was architectural. Fifteen thousand compliance professionals, whose sole professional function is to ensure legal compliance, collectively decided to ensure that compliance did not occur.

Independent Auditors: The Watchdogs That Looked Away. The Supreme Court has explained the auditor's role: "The independent public accountant performing this special function owes ultimate allegiance to the corporation's creditors and stockholders, as well as to the investing public. This 'public watchdog' function demands... complete fidelity to the public trust."[60]

Upon notice that distribution character may be misstated and 1099-DIVs may be inaccurate, auditors had duties mandated by PCAOB standards and Exchange Act § 10A: exercise professional skepticism, perform illegal-acts procedures, evaluate financial-statement effects, inform management and the audit committee, and—if the board fails to take appropriate remedial action—escalate up to reporting directly to the SEC.[61]

Petitioner met personally with three of the Big Four accounting firms and sent written notice to the fourth. The record shows no inquiries to Petitioner about the notice. No public

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[59] 17 C.F.R. § 270.38a-1(a)(4).

[60] *United States v. Arthur Young & Co.*, 465 U.S. 805, 817-18 (1984).

[61] Exchange Act § 10A, 15 U.S.C. § 78j-1; PCAOB Auditing Standards AS 2401 (Consideration of Fraud in a Financial Statement Audit), AS 2405 (Illegal Acts by Clients), AS 2810 (Evaluating Audit Results).

restatements. No auditor resignations. No Section 10A reports. Every firm that received notice — whether across a conference table or via email — chose silence. The Big Four and their competitors maintained their client relationships and their fees. The investors whose interests they were supposed to protect remained unprotected.

Fund Administrators: The Center That Processed Fraud. Administrators sit at the operational center of fund disclosures: they prepare prospectuses, file EDGAR documents, calculate NAV, process distributions, coordinate tax reporting. They have duties to escalate compliance issues and to cease disseminating misleading documents.[62]

The Commission has sanctioned administrators for precisely this conduct. Northern Lights Compliance Services—for deficient board materials. BISYS Fund Services—for service-provider misconduct affecting disclosures. Apex Fund Services—for gatekeeper failures enabling misleading communications.[63]

The conduct here is identical in kind and vastly larger in scale. The administrators continued preparing the same misleading prospectuses, processing the same inflated NAVs, generating the same inaccurate 1099-DIVs—year after year, filing after filing, as if the notice had never been sent.

Custodians and Brokerages: The Platforms That Enabled Harm. Custodians and broker-dealers had duties to open supervisory investigations, ensure accurate customer communications, and—for platforms making recommendations—satisfy Reg BI's disclosure and care obligations.[64]

The record shows no investigations opened, no communications corrected, no Reg BI compliance implemented. Every day, millions of retail investors purchased shares containing embedded tax liabilities through platforms that knew the disclosures were false and said nothing.

Fund Boards: The Final Line That Was Never Drawn. Fund boards exist as independent fiduciaries—the last line of defense for shareholders whose interests might conflict with management's. Upon notice of material disclosure deficiencies, boards had duties to investigate,

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[62] 17 C.F.R. § 270.38a-1; Investment Company Act § 34(b), 15 U.S.C. § 80a-33(b).

[63] See In re Northern Lights Compliance Services, LLC, Investment Advisers Act Release No. 4314 (Dec. 21, 2015); In re BISYS Fund Services, Inc., Investment Company Act Release No. 28180 (Mar. 14, 2008); In re Apex Fund Services, Inc., Investment Advisers Act Release No. 4899 (May 4, 2018).

[64] FINRA Rules 3110 (Supervision), 2210 (Communications with the Public); 17 C.F.R. § 240.15l-1 (Regulation Best Interest).

to ensure corrective action, to treat the matter as material under Rule 38a-1, and to document their oversight.[65]

The record contains no evidence that any board convened to consider the notice, deliberated the issues, or took remedial action. The independent directors proved not to be independent of the fee revenue that flows from investor ignorance.

D. The Securities Law Firms: Converted from Counsel to Witnesses

The role of Wall Street's securities law firms in this compliance failure requires detailed analysis, because their conduct has consequences that extend beyond professional discipline. The lawyers who received Petitioner's notice and continued drafting misleading disclosures have disqualified themselves from defending their clients in the enforcement actions and litigation that must follow.

Part 205 Duties Attached the Moment Notice Arrived. Petitioner notified approximately a dozen of the largest securities law firms that represent the fund industry in SEC matters.

These firms draft prospectuses, advise on disclosure obligations, and appear before the Commission daily. They are the gatekeepers Congress identified when it enacted Sarbanes-Oxley § 307 and directed the Commission to establish standards of professional conduct for attorneys practicing before it.

Under 17 C.F.R. Part 205, these attorneys had immediate, non-discretionary duties upon becoming aware of evidence of a material violation:

1) *Report Up*: Report the evidence to the issuer's chief legal officer or chief executive officer—or both.[66]
2) *Escalate If Necessary*: If the CLO or CEO does not provide an appropriate response within a reasonable time, report the evidence to the audit committee, another committee of independent directors, or the full board.[67]
3) *Withdraw and Disaffirm If Ignored*: If the issuer fails to take appropriate remedial action, consider withdrawal from representation and disaffirmation of any documents

[65] 17 C.F.R. § 270.38a-1; Investment Company Act §§ 34(b), 36(a), 15 U.S.C. §§ 80a-33(b), 80a-35(a).
[66] 17 C.F.R. § 205.3(b)(1).
[67] 17 C.F.R. § 205.3(b)(3).

the attorney prepared that the attorney reasonably believes are or may be materially false or misleading.[68]

These duties are federal law. They preempt conflicting state ethics rules.[69] Attorneys who violate Part 205 face SEC discipline under Rule 102(e), civil penalties, and the full range of remedies available for securities law violations.[70] And the Commission has enforced these provisions. In *In re Steven Altman*, the Commission barred an attorney from appearing before it for failing to report evidence of securities violations up the ladder.[71] In *In re Scott G. Monson*, the Commission imposed a cease-and-desist order on an attorney who failed to take appropriate steps after becoming aware of a client's fraudulent conduct.[72] The duties are not aspirational. They carry consequences.

The Attorneys Did Not Report Up—They Doubled Down. The record shows no evidence that any notified law firm reported the evidence up the ladder, advised clients to issue corrective disclosures, or withdrew when clients refused to act.

Instead, the firms continued drafting the same misleading prospectuses—year after year, annual filing after annual filing—as if the notice had never arrived. Worse, some firms appear to have assisted clients in implementing "quiet edits"—silently removing the challenged language without filing corrective supplements, without notifying investors, without creating the public record that honest remediation would require.

This is not zealous advocacy. It is participation in ongoing fraud.

The Advocate-Witness Transformation: Why These Lawyers Cannot Defend This Case. Model Rule 3.7 provides that a lawyer shall not act as advocate at a trial in which the lawyer is likely to be a necessary witness, unless limited exceptions apply.[73]

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[68] 17 C.F.R. § 205.3(d)(2).

[69] 17 C.F.R. § 205.1.

[70] 17 C.F.R. § 205.6(a)-(b).

[71] In re Steven Altman, Esq., Exchange Act Release No. 63306 (Nov. 10, 2010) (barring attorney from appearing before Commission for Part 205 violations).

[72] In re Scott G. Monson, Securities Act Release No. 8957 (Sept. 22, 2008) (cease-and-desist order against attorney for failure to take appropriate steps upon learning of client fraud).

[73] Model Rule of Professional Conduct 3.7(a).

The rule exists because combining the roles of advocate and witness "can prejudice the tribunal and the opposing party and can also involve a conflict of interest between the lawyer and client."[74]

The attorneys who received Petitioner's notice are now necessary witnesses on the central disputed issues in any enforcement action or private litigation:

1) *Notice*: What notice did they receive? Petitioner's communications to these firms are documentary evidence of industry-wide knowledge. The attorneys' testimony about receipt, timing, and content is necessary to establish when scienter attached.
2) *Advice*: What did they advise clients? Whether counsel advised funds to correct disclosures—or advised them that correction was unnecessary—goes directly to the funds' scienter defense and to the lawyers' own Part 205 compliance.
3) *The Quiet Edits*: What role did counsel play in the silent removal of challenged language? If attorneys drafted or approved prospectus revisions that deleted misleading language without corrective supplements, their testimony about that process is central to proving the cover-up.
4) *Part 205 Compliance*: Did counsel report up? Did they escalate when management failed to respond appropriately? Did they consider withdrawal? The attorneys' compliance or non-compliance with federal professional conduct standards is itself a disputed issue that requires their testimony.

This testimony is not collateral to the litigation. It is essential. The attorneys cannot simultaneously testify about these facts and advocate for clients whose defense depends on characterizing those same facts.

The Personal-Interest Conflict: Unwaivable. The attorneys who received notice and continued drafting misleading disclosures now face substantial personal exposure:

1) *Rule 102(e) Discipline*: The Commission may censure or bar from practice any attorney who has "engaged in unethical or improper professional conduct" or who has "willfully violated, or willfully aided and abetted the violation of any provision of the Federal securities laws."[75]

[74]Model Rule 3.7, cmt. [1].
[75]17 C.F.R. § 201.102(e)(1)(ii)-(iii).

2) *Aiding-and-Abetting Liability*: Exchange Act § 20(e) imposes liability on any person who knowingly or recklessly provides substantial assistance to a primary violation.[76] Attorneys who drafted misleading disclosures after receiving notice that those disclosures were false may have provided exactly such assistance.

3) *Scheme Liability*: Under *Lorenzo v. SEC*, dissemination of false statements with knowledge of their falsity can constitute scheme liability under Rule 10b-5(a) and (c), even if the disseminator was not the "maker" of the statement.[77]

4) *State Bar Discipline*: Violation of Part 205 duties and participation in client fraud implicate Model Rules 1.2(d) (assisting client fraud), 4.1 (truthfulness in statements to others), and 8.4 (misconduct).[78]

This personal exposure creates a conflict between the attorneys' own interests and their clients' best defense. Under Model Rule 1.7(a)(2), a lawyer has a conflict of interest when "there is a significant risk that the representation of one or more clients will be materially limited by... a personal interest of the lawyer."[79]

The conflict here is textbook. The attorneys cannot give disinterested advice about defenses that would require examining their own conduct. They cannot cross-examine witnesses—including potentially Petitioner—whose testimony might expose their own failures. They cannot make strategic decisions uninfluenced by self-protection. And they cannot testify truthfully about their own conduct while simultaneously advocating that the conduct was proper.

This conflict is not waivable under Rule 1.7(b), because a reasonable lawyer could not conclude that he or she could provide competent and diligent representation while simultaneously facing potential discipline, liability, and disbarment arising from the same conduct at issue in the litigation.

Courts Have Inherent Authority to Disqualify. Courts possess inherent authority to disqualify counsel whose participation would undermine the integrity of proceedings.[80]

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[76] 15 U.S.C. § 78t(e).

[77] *Lorenzo v. SEC*, 587 U.S. 71, 78-81 (2019).

[78] Model Rules of Professional Conduct 1.2(d), 4.1, 8.4.

[79] Model Rule 1.7(a)(2).

[80] See *Wheat v. United States*, 486 U.S. 153, 160 (1988) (courts have "independent interest in ensuring that criminal trials are conducted within the ethical standards of the profession").

Disqualification is appropriate when an attorney is likely to be a necessary witness on a significant issue of fact, when the attorney has a conflict of interest that cannot be waived, or when the attorney's continued participation would prejudice the opposing party or taint the proceeding.[81]

All three bases apply here. The attorneys are necessary witnesses. Their conflicts are unwaivable. And their continued participation would prejudice plaintiffs in private litigation and the Commission in enforcement proceedings—because the defense of these cases will require attacking the credibility of witnesses who may also be examining the lawyers' own conduct.

The Consequence: New Counsel Potentially Required. The practical implication is straightforward: the fund complexes that relied on these firms may need new counsel.

They will need counsel who did not receive Petitioner's notice. Counsel who did not draft the misleading prospectuses. Counsel who did not participate in the quiet edits. Counsel who can provide disinterested advice about how to respond to enforcement, and who can advocate at trial without being called as witnesses.

This is not a tactical burden Petitioner has imposed. It is the natural consequence of attorneys who chose complicity over compliance. They made themselves witnesses by receiving notice and continuing to draft. That choice has consequences that the courts will evaluate and enforce.

E. The Cover-Up: Silent Edits That Prove Consciousness of Guilt

What happened after the 2023 notices is worse than inaction. It is evidence of consciousness of guilt so clear that it will require no expert testimony to explain.

The Quiet Deletion Campaign. Beginning in 2023—the same year Petitioner's CCO notices were delivered—multiple fund complexes quietly stripped the challenged phrases from their prospectuses. The words "shortly before" and "just prior to" began disappearing from disclosure documents. The language that Petitioner had identified as false—language that implied the risk existed only near distribution dates when it actually existed year-round—was silently deleted.

What Did Not Happen. When a prospectus contains a material misstatement, securities law requires specific remedial steps. The issuer must file a corrective supplement or post-effective

[81] *Murray v. Metropolitan Life Ins. Co*., 583 F.3d 173, 178-79 (2d Cir. 2009); Model Rule 3.7.

amendment alerting investors and the market to the error.[82] Public company parents must issue a press release or 8-K disclosing the correction.[83] Issuers should consider self-reporting to the Commission to preserve cooperation credit under the Seaboard framework.[84] And affected investors must be notified of the prior misstatement and the corrective action taken.[85]

None of this happened. The edits were made in silence. No supplements were filed. No 8-Ks were issued. No investors were notified. The industry attempted to erase the evidence without acknowledging the error—the corporate equivalent of a burglar wiping fingerprints while the homeowner sleeps.

Why Silent Edits Prove the Violation. The inference is inescapable:

1) *If the "shortly before" language were accurate, there would be no reason to remove it.* Accurate disclosures are not quietly deleted.
2) *If the industry believed its disclosures were legally adequate, it would have defended them.* Confident defendants do not silently destroy evidence.
3) *The silent edits are an admission—made through conduct—that the language was misleading.* The only purpose of quiet deletion is to eliminate evidence of the prior misstatement while avoiding the consequences of honest correction.

Silent Deletion Does Not Cure Past Sales. Liability under the securities laws attaches at the moment of sale.[86] Every investor who purchased shares while the misleading language was in effect has a claim. Their harm has not been remediated. Their phantom taxes have not been refunded. Their 1099-DIVs have not been corrected. The quiet edits did not help these investors; the quiet edits helped the funds avoid helping them.

The Duty Is to Correct and Warn—Not to Erase and Forget. Courts have long recognized a duty to correct statements that were misleading when made.[87] The duty requires prompt, public correction—not silent revision and hope that no one notices. An issuer that learns

[82]17 C.F.R. § 230.424; Form N-1A Instructions.
[83]Form 8-K, Items 4.02, 8.01; 17 C.F.R. § 249.308.
[84]See Report of Investigation Pursuant to Section 21(a) of the Securities Exchange Act of 1934 and Commission Statement on the Relationship of Cooperation to Agency Enforcement Decisions, Exchange Act Release No. 44969 (Oct. 23, 2001) (the "Seaboard Report").
[85]See Backman v. Polaroid Corp., 910 F.2d 10, 16-17 (1st Cir. 1990) (en banc).
[86]Affiliated Ute Citizens v. United States, 406 U.S. 128, 152-53 (1972).
[87]Backman, 910 F.2d at 16-17.

its prior disclosures were false must tell investors. It must tell the market. It must create a record that allows affected parties to understand what happened and seek appropriate relief.

The industry did the opposite. It deleted the evidence. It filed new prospectuses without acknowledging the changes. It continued operating as if the prior harm had never occurred.

The Silent Edits Are Independent Evidence of Scienter. In any litigation, the quiet edits will be Exhibit A. They show that the industry:

1. Received notice that its disclosures were false, or determined they were false
2. Concluded—internally, without public acknowledgment—that the challenged language should be removed
3. Implemented the removal in a manner calculated to avoid creating a public record
4. Continued processing sales and generating fees as if the prior harm had never occurred

This sequence is not remediation. It is not good-faith correction. It is consciousness of guilt documented in the industry's own filing history—visible to anyone who compares prospectuses year over year, undeniable once the comparison is made.

F. The Structural Failure: Why Self-Policing Was Designed to Fail

The compliance failure documented above was not an accident of individual weakness or bureaucratic dysfunction. It was the predictable—indeed, inevitable—result of structural conflicts that make self-policing impossible.

The Compensation Conflict: Gatekeepers Paid to Look Away. Every gatekeeper in this system has compensation tied to revenue, not to compliance. Bonuses, equity grants, and career advancement depend on maintaining client relationships and fee streams—not on surfacing violations that would reduce fees, trigger litigation, and end careers.

Consider the position of a compliance officer who receives Petitioner's notice. If she investigates and confirms the violation, she must report to management that the firm has been defrauding investors. She must recommend disclosure that will invite enforcement and private litigation. She must trigger a restatement of tax reporting going back years. She may be called to testify against her employer in subsequent proceedings.

Her reward for this diligence? Termination, retaliation, and career destruction. The executives she reports to have no interest in hearing that their business model is fraudulent. The

board has no interest in disclosures that will crater the stock price. The firm has no interest in a compliance officer who creates liability by acting on information received rather than containing it.

Now consider the alternative. She marks the notice as junk. She tells no one. She continues collecting her salary, her bonus, her equity. When the enforcement action eventually comes, she claims she never saw any red flags. The system rewards silence and punishes diligence—which is why fifteen thousand compliance officers chose silence.

A lawyer at a global firm acknowledged this reality to Petitioner: firms do not elevate gatekeepers who expand liability; they elevate those who contain it. The incentives are backward by design.

The Glass Houses Dynamic: Collective Silence as Competitive Equilibrium. Every fund complex that books realized income to NAV has the same vulnerability. If one ten-trillion-dollar manager discloses the problem, investors will ask why its competitors did not. If one firm issues corrective 1099s, clients will demand the same from the others. The first firm to break ranks exposes itself to liability while competitors continue profiting from concealment.

The result is a collective action problem with an obvious solution: no one breaks ranks. The industry achieves through unspoken understanding what an explicit agreement would make criminal. Everyone stays silent. Everyone continues extracting fees. Everyone trusts that competitors will maintain the code.

Harry Markopolos named this dynamic precisely: "People in glass houses don't throw stones."[88] Firms that profit from fragile practices do not expose peers whose exposure would invite scrutiny of their own. The self-regulatory model assumes that market participants will police each other. The reality is that market participants protect each other—because protecting competitors means protecting themselves.

The One Honest Actor Problem: Why It Never Happened. The senior tax director who spoke to Petitioner understood the dynamic perfectly: one honest fund would force the entire industry to follow within twelve months.

[88] Assessing the Madoff Ponzi Scheme and Regulatory Failures: Hearing Before the Subcomm. on Capital Markets, Insurance, and Government Sponsored Enterprises of the H. Comm. on Financial Services, 111th Cong. 5-6 (2009) (testimony of Harry Markopolos).

One fund that issued a truthful prospectus. One fund that provided point-of-sale disclosure. One fund that filed accurate 1099-DIVs. Competitive pressure would have done the rest. Investors would have demanded equivalent transparency from competing funds. Platforms would have dropped funds that refused to disclose. RIAs would have reallocated to the honest option. The honest fund would have gained market share while competitors scrambled to match.

This is how markets are supposed to work. Competition rewards honesty and punishes deception—but only if someone is willing to be honest first.

No one was willing. Not the multi-trillion-dollar complexes. Not the administrators who process their filings or the auditors who certify their statements or the lawyers who draft their documents. For nearly eight years, across thousands of gatekeepers, not one chose honesty over complicity.

Non-Compliance as Business Strategy: The Budgeted Fraud. The industry does not treat compliance as a constraint. It treats non-compliance as a cost—to be budgeted, provisioned, and managed like any other business expense.

Every quarter, major financial institutions report loss-contingency accruals for regulatory and litigation exposure. They disclose "reasonably possible" losses beyond those accruals. They maintain fine-and-settlement line items that are forecast and managed like any other expense category.

When violations can be modeled, discounted, and footnoted in quarterly filings, they cease to be aberrations and become strategy. The expected cost of getting caught—probability of detection times probable penalty—is weighed against the expected profit from continued violation. As long as the profit exceeds the expected cost, rational actors continue violating.

This is exactly what happened here. The industry calculated that the profit from inflated NAVs and phantom-income taxation exceeded the expected cost of eventual enforcement. That calculation was rational under the historical enforcement regime. It must be made irrational going forward.

G. The Verdict: Unprecedented Failure Requiring Unprecedented Response

Nearly eight years. Thirty trillion dollars in affected assets. Fifteen thousand compliance officers. Twelve of the largest law firms. Big Four auditors. Major exchanges. Major custodians. Major brokerages. Hundreds of meetings. Universal notice. A ready technological solution.

And the result: not one honest actor. Not one.

The Commission must draw the only conclusions this record supports: The self-policing model has failed. Not partially—totally. Every gatekeeper Congress empowered to protect investors received notice. Every gatekeeper declined to act. The architecture produced nothing except documented evidence of industry-wide scienter.

The failure was not caused by ambiguity. The legal duties were clear. The notice was comprehensive. The harm was quantified. The solution was demonstrated. The industry understood its obligations and chose to breach them.

The failure was not caused by resource constraints. These are the most profitable financial institutions in history. The fix required pressing a button. The industry had resources; it lacked integrity.

The failure was intentional. Executives admitted knowledge. They explained that fixing the problem would reduce fees. They implemented quiet edits proving consciousness of guilt. They retaliated against the messenger. This is fraud, not negligence.

The "desperate defenses" are explained. The Introduction to this Petition identified two legal theories the industry now advances: that GAAP compliance immunizes misleading disclosures, and that industry-wide adoption of a practice immunizes all participants. Nearly eight years of documented failure explain why these theories have emerged. The industry cannot defend its disclosures on the merits—because the disclosures are indefensible. It cannot claim ignorance—because fifteen thousand compliance officers received written notice. It cannot claim good faith—because executives admitted knowledge and explained their financial motives. What remains is the desperate hope that accounting compliance or collective participation will provide the immunity that honest defense cannot. These theories are not legal arguments developed from principle. They are escape hatches manufactured from necessity—the last refuge of an industry that knows its conduct cannot withstand scrutiny and seeks categorical rules to prevent that scrutiny from occurring.

The double standard must end. In 2022, the SEC charged four investment advisers for violating its pay-to-play rule based on campaign contributions of less than $1,000 — one for a contribution of just $400.[89] No investor was harmed. No quid pro quo was alleged. No intent to influence was required. The penalties ranged from $45,000 to $95,000 for contributions that, in

[89] IA Release No. 6126 (Sept. 15, 2022).

one case, would not cover dinner for two in Manhattan. The rule imposed strict liability, and the Commission enforced it. A restaurant can be shuttered for a health code violation discovered in a single inspection. A small business can be destroyed by an inadvertent regulatory error that harmed no one. Meanwhile, an industry that has extracted over a trillion dollars through systematic fraud — documented fraud, admitted fraud, fraud that continues as this sentence is read — receives "neither admit nor deny" settlements and continues operating. Main Street gets policed to the letter. Wall Street gets "managed." That disparity corrodes public trust in the markets the Commission exists to protect — and it tells every small business owner in America that the law applies differently depending on how many lawyers you can afford.

The Commission cannot fix this with guidance. The guidance exists. The Commission cannot fix this with examination sweeps. The examinations will find what the industry allows them to find. The Commission cannot fix this by hoping gatekeepers will voluntarily comply. Nearly eight years of hoping produced nothing but evidence.

What remains is enforcement. Industry-wide. Comprehensive. Calibrated to make concealment more expensive than correction. With consequences that cannot be budgeted, provisioned, or absorbed as a cost of doing business.

The industry has had nearly eight years to find one honest actor among its ranks. It found none. The Commission must now become that actor—or concede that investor protection is a principle reserved for press releases, not enforcement dockets.

H. The Governance Failure: How Management Neutralized the Last Line of Defense

Congress did not trust the fund industry to police itself. That is the founding premise of the Investment Company Act — and the nearly eight years of documented silence that precede this Petition prove Congress was right.

But Congress did not leave shareholders without protection. It created a governance architecture designed to counterbalance management's inherent conflict of interest: an independent board of directors, standing between the management company and the investors whose money it manages, armed with statutory authority to demand information, reject advisory contracts, remove compliance officers, and terminate the advisory relationship itself. The independent board is not a courtesy. It is a structural check on management power — the last line of defense between fund shareholders and the financial interests of the companies that manage their money.

That last line of defense was neutralized. Not by force. Not by bribery. By something more effective than either: the systematic withholding of the information without which the defense cannot function.

The Two Boards. The structure the Commission must understand begins with a distinction the industry prefers to blur. There are two types of boards governing this industry, and their interests are not aligned.

Corporate boards govern the management companies themselves — BlackRock Inc., Vanguard Group, State Street Global Advisors, Fidelity Management & Research. These are the business entities that manage funds for profit. BlackRock Inc. is a publicly traded corporation. Its board's fiduciary duty runs to BlackRock's corporate shareholders — the people who profit when BlackRock's management fee revenue increases. The corporate board's incentive is to maximize the management company's revenue. Every dollar of advisory fee collected is a dollar that benefits the corporate entity and its shareholders.

Fund boards govern the registered investment companies — the actual mutual funds and ETFs in which 160 million Americans invest. These are separate legal entities. "BlackRock Total Return Fund" is not "BlackRock Inc." The fund board's fiduciary duty runs to fund shareholders — the schoolteachers and firefighters and retirees whose retirement savings are at stake. The fund board's obligation is to protect those investors from the management company's conflicts. The Investment Company Act requires every registered fund to have its own board of directors precisely because Congress understood that the management company's interests and the fund shareholders' interests would, at critical moments, diverge.

This is one of those moments.

The Two Directors. The divergence runs deeper still — not merely between the management company and the fund board, but through the fund board itself.

The Investment Company Act distinguishes between two categories of fund directors. "Interested" directors — defined in ICA § 2(a)(19) — are directors affiliated with the fund's investment adviser: executives, employees, or affiliates of the management company who also sit on the fund board. They are, by statutory definition, insiders. They understand how NAVs are calculated because their companies calculate them. They understand how advisory fees are derived because their companies collect them. They understand the business implications of every

disclosure decision because those decisions affect the revenue of the companies that employ them, compensate them, and — in many cases — whose equity they own.

Independent directors have no such affiliation. The ICA requires that at least forty percent of fund board members be independent. ICA § 10(a). The Commission's exemptive rules — on which virtually every operating fund relies — require a majority. These are typically retired executives, former regulators, academics, and experienced professionals who serve on three or four fund boards, earn modest fees that do not vary with NAV levels, and rely almost entirely on management and the chief compliance officer for the information they need to fulfill their oversight duties.

That reliance is the vulnerability the management companies exploited.

The Section 15(c) Corruption. The most consequential power Congress vested in independent directors is the annual approval of the advisory contract under Section 15(c) of the Investment Company Act. This provision requires the fund board — with independent directors casting a separate vote — to evaluate and approve the advisory contract each year. Before that vote, the board must "request and evaluate... such information as may reasonably be necessary to evaluate the terms of any contract." 15 U.S.C. § 80a-15(c). The Commission and the courts have held that this evaluation must include the adviser's profitability, the existence of economies of scale, and the reasonableness of fees in relation to services provided. *Gartenberg v. Merrill Lynch Asset Mgmt., Inc.*, 694 F.2d 923 (2d Cir. 1982); *see also Jones v. Harris Assocs. L.P.*, 559 U.S. 335 (2010) (adopting the *Gartenberg* standard).

The Section 15(c) vote is the single most important shareholder protection mechanism in the Investment Company Act's governance architecture. Everything in the ICA's structure builds toward it. The independent board exists for this vote. The information-gathering requirement exists for this vote. The separate independent-director vote exists for this vote. It is the moment at which independent directors exercise the power Congress gave them — the power to determine whether the management company's fees are reasonable, whether the management company is serving the fund's interests, and whether the advisory relationship should continue.

That vote was corrupted by information asymmetry so fundamental that every approval rendered without the suppressed information is an approval that cannot serve its statutory purpose.

Advisory fees are calculated as a percentage of fund net asset value. If the NAV includes undisclosed embedded realized income — amounts that inflate the reported asset value above

investors' actual economic interest — then the advisory fee is higher than the fee the independent directors would have approved had they known the fee base was inflated. The arithmetic is inescapable. Higher NAV means higher fees. Inflated NAV means inflated fees. The independent directors, when they approved the advisory contract year after year, did not know that the management company was collecting fees on amounts that economically belong to existing shareholders and will be distributed — reducing the NAV — in the near term. They could not have evaluated the reasonableness of the fee because they did not know the fee base included phantom value that would vanish upon distribution.

Every Section 15(c) approval rendered without that knowledge is an approval based on incomplete information. Not because the independent directors failed in their duty to request information. Because the interested directors and management ensured they never received it.

The Interested Directors' Actual Knowledge. The interested directors cannot claim the same innocence. Their knowledge was not constructive. It was actual — derived from their positions within the management companies that constructed the NAVs, calculated the fees, prepared the prospectuses, received Petitioner's notices, authorized the silent prospectus edits, and made the institutional decision to remain silent.

They understood how NAVs are calculated — because their companies calculate them daily. They understood that embedded realized income inflates the NAV — because their companies' fee revenue depends on it. They were positioned to know about Petitioner's industry engagement, the 15,266 CCO compliance notices, the silent prospectus edits, and the strategic decision to suppress rather than escalate — because those decisions were made within the organizations they lead. They sat in board meetings. They watched independent directors vote on advisory contracts. They knew the fee base was inflated. They knew the fund’s accounting choices resulted in the filing of false tax forms. They said nothing.

Their failure to ensure that the independent directors received complete information before voting on advisory contracts is a breach of duty running in two directions simultaneously: 1) to the fund shareholders they were supposed to serve as directors, and 2) to the independent directors who were entitled to rely on management's candor in performing their statutory function. The interested directors' fiduciary obligations did not permit them to sit silently while independent directors approved fees calculated on an inflated base — fees that flowed directly to the

management companies the interested directors serve, from which they draw compensation, bonuses, and equity.

The conflict is not subtle. It is arithmetic. Every dollar of undisclosed embedded realized income sitting in the NAV is a dollar on which the management company collects advisory fees it would not collect if the NAV reflected investors' actual economic interest. Corrective disclosure does not merely reduce investor harm. It reduces management company revenue. For the interested directors, transparency is a pay cut. For the independent directors, transparency is a fiduciary obligation. They sit on the same board. They do not serve the same master.

The CCO Failure. The chief compliance officers operated within the same architecture of suppression. Rule 38a-1 requires them to report "material compliance matters" to the board — and the rule's definition encompasses precisely what Petitioner's 15,266 notices documented: alleged violations of federal securities laws about which the board would reasonably need to know. But the CCOs work for the management company. Their compensation comes from the management company. Their career advancement depends on the management company. The Commission recognized this structural conflict when it adopted Rule 38a-1, warning in language that now reads as prophecy:

"Compliance failures have occurred when a fund service provider has denied information to the fund's board, or has been less than forthright, because the service provider viewed full disclosure as detrimental to its own interests."

- Investment Company Act Release No. 26299 (Dec. 17, 2003).

That sentence — written by the Commission itself, twenty years before this Petition — describes what happened here as an actual event the Commission must now address. The CCOs who received Petitioner's notices operated within management structures that had already decided, through nearly eight years of institutional silence, that acknowledgment was more dangerous than ignorance. The notices were not escalated because escalation was inconsistent with a culture that rewarded containment and punished candor. The CCO reporting line to the board — which Rule 38a-1 was designed to insulate from management interference — functioned on paper but not in practice.

The Result. The people Congress designated as the last line of defense — independent directors approving advisory contracts, overseeing compliance, bearing personal fiduciary liability — were never given the information necessary to fulfill those functions. They did not fail to act. They were not given the opportunity to act. The management companies that were supposed to serve the fund's interests served their own. The interested directors who sat on both sides of the table chose the side that paid them. The compliance officers who were supposed to protect the board's information pipeline protected management's revenue stream instead. And the governance mechanism Congress created to prevent exactly this outcome — the independent board, armed with statutory authority, standing between management and shareholders — was neutralized by institutional silence so complete that the people holding the weapons never knew there was a war.

This is not merely a compliance failure. It is an independent violation of the Investment Company Act's governance requirements — and it implicates not only the management companies and CCOs who suppressed information, but the interested directors who participated in the suppression while sitting on the boards that were supposed to receive it.

The Insurance Catastrophe. The governance failure produced a consequence that transforms the incentive structure for every person involved — and that makes continued silence the most personally dangerous option available.

Standard directors-and-officers liability insurance is written on a "claims-made and reported" basis. Coverage exists only if the claim is first made during the policy period and reported to the insurer within the time the policy requires. Virtually all D&O policies also contain "notice of circumstances" provisions that permit — and effectively require — the insured to report facts or circumstances that may give rise to future claims, preserving coverage under the current policy period. And virtually all D&O policies contain "prior knowledge" exclusions that deny coverage for any claim arising from facts the insured knew about before the policy's inception or retroactive date.

These are not obscure provisions. They are the load-bearing walls of every D&O policy in the fund industry. And the industry's silence may have demolished all three simultaneously.

First — notice failure. Individuals who received Petitioner's 2023 compliance notices — or who learned of the underlying violations through executive briefings, compliance escalations, or industry counsel — and did not notify their D&O carriers of those circumstances within a reasonable time or before the expiration of the then-current policy period may have forfeited their

right to coverage for any claim arising from those facts. The carrier's obligation to defend and indemnify depends on the insured's obligation to notify. One cannot exist without the other.

Second — prior knowledge exclusion. If individuals who knew of these circumstances in 2023 renewed their D&O policies in 2024 without disclosing what they knew, the prior knowledge exclusion in the 2024 policy applies. Coverage is excluded — not for a single claim, but for every claim arising from facts the insured knew before the policy's inception. The exclusion does not require that the insured understood the legal significance of what they knew. It requires only that they knew facts that could give rise to a claim. Fifteen thousand compliance notices alleging industry-wide false reporting and securities violations satisfy that standard on their face.

Third — material misrepresentation on renewal. D&O renewal applications universally ask whether any person proposed for coverage is "aware of any act, error, omission, fact, or circumstance which might give rise to a claim." If the answer was "no" — after the individual or the organization had received detailed compliance notices alleging violations of the Securities Act, the Investment Company Act, and the Internal Revenue Code, describing harm to 160 million Americans — the renewal was procured through a material misrepresentation. Depending on governing state law, a material misrepresentation in a policy application can void the policy from inception — not merely exclude the misrepresented claim, but rescind the entire contract, leaving every insured under that policy without coverage for any claim during that policy period.

The industry's silence did not merely create liability. It simultaneously destroyed the insurance that was supposed to cover that liability. The directors and officers who assumed they were protected may discover, at the moment of greatest need, that the protection was forfeited by the same institutional silence that created the exposure. The management executives who decided to remain silent did not merely put shareholders at risk. They put their own board members at risk — board members who relied on management for the information necessary to preserve their own coverage and who were given nothing.

This Petition, upon its public filing, will be known to every D&O insurer that underwrites the fund industry. Those insurers will pull their files. They will compare the dates of Petitioner's compliance notices against the inception dates of current and prior policies. They will review renewal applications for undisclosed circumstances. They will send reservation-of-rights letters to their insureds — letters that arrive on board members' desks and concentrate minds more effectively than any regulatory filing. And they will assert every available coverage defense when

claims are eventually tendered, because that is what insurers do, and the defenses available to them here are substantial.

The Fracture This Creates. Three groups that were previously aligned — management companies, individual directors and officers, and D&O insurers — now have irreconcilably conflicting interests.

The management companies want continued silence. Every day of delay is a day of advisory fees collected on inflated NAVs.

The independent directors need to act. Every day of silence is a day on which D&O coverage erodes further, personal liability compounds, and the distinction between "uninformed fiduciary" and "complicit participant" becomes increasingly difficult to maintain. They did not benefit from the inflated NAVs — their modest board fees do not vary with asset levels. They did not design the suppression. They were its victims. But they will bear its consequences unless they act now.

The D&O insurers will protect themselves. They will evaluate and assert coverage defenses that leave individual directors and officers exposed. The carrier's interest and the insured's interest, which are aligned when claims arise from unexpected events, diverge catastrophically when claims arise from facts the insured knew about and concealed from the carrier.

The interested directors are trapped between their loyalty to the management company and their personal exposure as fund board members. Their actual knowledge — of NAV mechanics, of the compliance notices, of the institutional decision to remain silent — makes their coverage position worse than the independent directors'. They cannot claim they did not understand the significance of the information. They are the information.

The chief compliance officers face their own reckoning. Those who failed to escalate Petitioner's notices to the board have personal regulatory exposure under Rule 38a-1. Those who escalated and were overruled by management have a cooperation story to tell the Commission — but only if they tell it before someone else does. The first CCO to cooperate receives the benefit of the Commission's cooperation framework. The last CCO to cooperate explains why it took so long.

At every level — between management and independent directors, between interested and independent directors, between individual board members, between competing fund complexes, between insureds and their carriers — the incentive structure has inverted. Silence, which once

protected everyone, now protects no one. The first to act gets the best outcome. The last to act gets the worst. This is not a theoretical game. It is a prisoner's dilemma with real prisoners, real sentences, and a clock that started running the day this Petition was filed.

The Commission Should Investigate. The Commission should examine whether management companies and CCOs fulfilled their obligations to escalate material compliance matters to fund boards. The inquiry will reveal one of two facts, and both require Commission action.

If boards were informed and chose not to act, boards bear responsibility — and the Commission should examine what information they received, how they evaluated it, and whether their determination that no corrective action was warranted can withstand scrutiny. A board that received substantive evidence of industry-wide securities law violations and determined that no changes to compliance procedures were necessary will need to defend that determination with something more persuasive than institutional inertia.

If boards were not informed — if CCOs who received Petitioner's notices understood their implications and said nothing, if interested directors who understood fund accounting mechanics sat in board meetings and remained silent while independent directors approved advisory contracts calculated on an inflated fee base — then the governance failure itself constitutes an independent violation that the Commission must address separately from the underlying disclosure violations. The suppression of information from the board is not merely evidence of the primary fraud. It is its own violation of the governance requirements Congress enacted to prevent exactly what happened here.

Petitioner's Direct Notice to the Industry. The independent directors deserve to know now what should have been told to them years ago. This Petition provides that information — through the Commission's public docket, through Petitioner's direct transmissions, and through the industry channels that will carry this document to every boardroom in the fund industry within days of its filing.

Petitioner has spent nearly eight years offering the industry the opportunity to understand these matters and correct them voluntarily. That offer has not expired — but its terms have changed. It is no longer available to the management company executives who understood these violations, profited from them through inflated advisory fees calculated on NAVs they knew were overstated, and chose institutional silence. The record of their knowledge is documented in Section

VI.B of this Petition. The record of their inaction is documented throughout. They will answer for both.

The offer that remains is directed to those who were kept in the dark — and who now face personal consequences for a silence they did not choose.

Any independent fund director, any chief compliance officer who was discouraged from escalating, any directors-and-officers liability carrier seeking to evaluate its exposure, and any fund board — acting through independent counsel, not fund complex counsel — that seeks to understand the scope of the violations documented in this Petition, to evaluate its own regulatory and insurance exposure, or to explore voluntary remediation, corrective disclosure, or cooperation with Commission proceedings, may contact Petitioner directly using the contact information provided in this Petition.

Petitioner's interest is investor protection, not punitive destruction. The independent directors who serve on fund boards did not design the fee structures that profit from inflated NAVs. They did not construct the prospectus language that conceals embedded realized income. They did not decide, year after year, to suppress the compliance information that Rule 38a-1 required them to receive. Those decisions were made by management company executives and by the compliance officers who served management's interests rather than the board's. The independent directors are, in many cases, the same class of people this Petition seeks to protect — experienced professionals who accepted fiduciary responsibilities in good faith and were denied the information necessary to fulfill them.

They now face a choice, and the window in which that choice can help them is narrow.

They can remain aligned with management, rely on fund complex counsel to assure them that no action is required, and hope that when enforcement proceedings, private litigation, and insurance coverage disputes arrive, their position will be defensible. It will not be. Fund complex counsel represents the fund complex — the management company whose fee revenue depends on the status quo this Petition challenges. In this matter, the fund complex's interests and the independent directors' personal interests are not merely different. They are opposed. The management company profits from inflated NAVs. The independent directors bear personal liability — potentially uninsured — for approving advisory contracts calculated on those inflated NAVs without the information necessary to evaluate whether those fees were reasonable. Counsel

who serves both interests cannot serve either faithfully. The independent directors need their own lawyers. They need them now.

Or they can act. Retain personal counsel — independent of fund complex counsel — immediately. Demand, formally and in writing, the information this Petition documents: the embedded realized income in each fund's NAV, the mechanics of the overcharge, the history of Petitioner's industry engagement, the CCO compliance notices and whether they were escalated to the board, the silent prospectus edits and who authorized them, and the advisory fee impact of NAV inflation. Notify their D&O carriers of the circumstances described in this Petition, preserving whatever coverage remains. Request a formal board review under their Section 15(c) obligations. And if the information confirms what nearly eight years of documented evidence and the industry's own prospectus admissions establish beyond dispute — exercise the authority Congress gave them: demand corrective disclosure, require fee adjustments, evaluate whether the advisory relationship should continue on its current terms, and cooperate, voluntarily and proactively, with any Commission examination or enforcement inquiry.

The Commission's cooperation framework rewards early, voluntary self-reporting. Independent directors who come forward now — who demonstrate that they acted decisively once informed, that they fulfilled their fiduciary obligations the moment they had the information management had withheld for years — will be treated differently from management executives who understood the violations and chose institutional silence. That distinction is not Petitioner's to guarantee. But it is the Commission's established practice, it is sound enforcement policy, and it is the natural consequence of a record that distinguishes between those who concealed and those who were denied the opportunity to act.

The management companies relied on board ignorance as a shield. This Petition transforms that ignorance from shield into sword — because the independent directors, once informed, possess statutory authority that management cannot override. They can remove the chief compliance officer. They can reject the advisory contract. They can demand fee reductions. They can refer matters to the Commission independently. They can retain personal counsel and direct independent investigations. They can vote — as the Investment Company Act empowers them to vote — to terminate the advisory relationship entirely if the management company refuses to cooperate with corrective measures. Congress gave them these powers for exactly this moment —

the moment when management's interests and shareholders' interests collide, and someone with authority must choose which to serve.

Petitioner is not the independent directors' adversary. Petitioner is doing what the chief compliance officers should have done under Rule 38a-1, what the interested directors should have done under their fiduciary obligations, and what the management companies should have done when they first understood that their prospectuses were materially misleading: providing the board with the information it needs to protect shareholders. The independent directors did not create this problem. But they are the only people inside the industry's governance structure with both the authority and the incentive to fix it.

The door is open. It will not remain open indefinitely. Every day of continued silence is a day in which D&O coverage erodes further, personal exposure compounds, and the distinction between "uninformed fiduciary" and "complicit participant" grows harder to maintain. The first board to act will define the standard against which every other board is measured. The last board to act will explain to a federal court why it waited.

This invitation extends with particular urgency to independent fund directors. You were placed on these boards to protect shareholders. You were given statutory authority — including the sole power to approve advisory contracts, to approve and remove the chief compliance officer, to approve that officer’s compensation, and to terminate the advisory relationship — precisely because Congress understood that management's interests and shareholders' interests would sometimes diverge. This is one of those times. If you were not informed of the matters documented in this Petition, you should ask why — and you should ask with personal counsel present, not fund complex counsel. If you were informed and chose not to act, you should reconsider that choice in light of the personal consequences this Petition now makes inescapable. And if you are uncertain about the scope of your exposure — regulatory, civil, or insurance-related — the time to find out is now. Not after the enforcement action. Not after the class action complaint. Not after the reservation-of-rights letter from your D&O carrier arrives on your desk. Now.

The Second Front: Corporate Board Exposure. The governance failure documented above does not end at the fund boardroom door. It extends upward — into the corporate boardrooms of the publicly traded management companies whose executives made the decisions that created this crisis.

BlackRock Inc. is not BlackRock Total Return Fund. Vanguard Group is not Vanguard 500 Index Fund. State Street Global Advisors is not SPDR S&P 500 ETF Trust. These are separate legal entities — and the management companies are themselves subject to disclosure obligations, governance requirements, and fiduciary standards that operate independently of the Investment Company Act's fund-level architecture. BlackRock Inc. files annual reports on Form 10-K and quarterly reports on Form 10-Q with this Commission. Those filings must disclose material contingent liabilities under GAAP (ASC 450-20) and material risk factors under Regulation S-K Item 105. State Street Corporation, Franklin Resources, Invesco Ltd., and every other publicly traded fund sponsor bear the same obligations. The corporate filings are signed by the CEO and CFO under Sarbanes-Oxley certifications attesting that the filings contain no material misstatements or omissions and that management has disclosed to the audit committee "all significant deficiencies and material weaknesses in the design or operation of internal controls" and "any fraud... that involves management or other employees who have a significant role in the registrant's internal controls." 15 U.S.C. § 7241(a).

Consider what this Petition documents, and what it means for those certifications.

If a management company's executives knew — through Petitioner's direct engagement, through the 15,266 CCO compliance notices, through executive meetings documented in Section VI.B of this Petition, through silent prospectus edits they authorized, through nearly eight years of institutional deliberation about how to respond — that their fund business faced potential liability for industry-wide disclosure violations affecting every registered fund they manage, and that exposure was not disclosed in the management company's own SEC filings, that is a separate securities law violation at the corporate level. The fund-level fraud generates corporate-level disclosure obligations. A contingent liability of this magnitude — potential enforcement actions across every fund in the complex, class action exposure for every misleading prospectus distributed to investors, fee disgorgement claims reaching back years, IRS penalties under §§ 6721–6722 for every incorrect Form 1099-DIV filed for every fund shareholder in every tax year since notice — is not an immaterial risk that reasonable judgment might exclude from corporate filings. It is the kind of exposure that defines an enterprise's risk profile. If it was not disclosed, the corporate filings are materially incomplete. If it was not evaluated, the Sarbanes-Oxley certifications are false.

The corporate board's audit committee — which Sarbanes-Oxley requires to be fully independent — is responsible for overseeing the company's financial reporting, internal controls, and risk management. The audit committee exists to ensure that precisely this kind of exposure is identified, evaluated, disclosed, and managed. If the audit committee was never informed of the fund-level violations and the resulting corporate-level contingent liability, management deprived it of the ability to perform its statutory and fiduciary function. If the audit committee was informed and determined the exposure was immaterial or did not require disclosure in the company's SEC filings, that determination will be evaluated in hindsight against a record that includes the industry's own admissions, fifteen thousand compliance notices, nearly eight years of documented engagement, and a Petition quantifying harm to 160 million Americans at over $100 billion annually. Immateriality will be a difficult position to defend.

The independent directors on these corporate boards — former cabinet secretaries, retired Fortune 500 chief executives, prominent academics, experienced governance professionals — now face a version of the same calculus facing fund board independent directors, but with additional dimensions of exposure that make their position even more urgent.

Their D&O coverage is in jeopardy — through the same three mechanisms that compromise fund-level coverage. The corporate D&O policy is separate from the fund-level policy, but the coverage destruction operates identically. If corporate officers who knew of the fund-level exposure renewed the corporate D&O policy without disclosing circumstances that could give rise to claims against the company and its directors — enforcement actions, securities fraud class actions based on failure to disclose contingent liabilities in 10-K filings, shareholder derivative suits alleging board-level oversight failures — then notice provisions were violated, prior knowledge exclusions were triggered, and renewal applications may have been procured through material misrepresentation. The corporate independent directors' personal coverage may have been destroyed by the same management silence that destroyed fund-level coverage — and by the same management executives who report to them.

Their personal liability extends beyond the fund-level governance failure. Corporate directors face potential exposure under *Caremark* and its progeny for failure to exercise oversight — the duty to ensure that the company has adequate reporting systems and that those systems bring material compliance failures to the board's attention. *In re Caremark Int'l Inc. Derivative Litig.*, 698 A.2d 959 (Del. Ch. 1996); *Marchand v. Barnhill*, 212 A.3d 805 (Del. 2019). If the board

had no system in place to escalate fund-level compliance matters to the corporate board — or if such a system existed and management circumvented it — the independent directors face derivative suit exposure from the management company's own shareholders. Those shareholders — the people who own BLK or STT or IVZ stock — will argue that the board's failure to detect and address the fund-level violations exposed the company to enforcement liability, litigation costs, fee disgorgement, and reputational damage that a functioning oversight system would have prevented. The *Marchand* court made clear that directors cannot satisfy their oversight obligations by relying on management to self-report compliance failures. They must ensure systems exist to bring critical compliance information to the board — and when those systems fail, the directors who failed to insist on them bear personal responsibility.

But here is what distinguishes the corporate independent directors' position from the fund independent directors' position — and what makes the corporate fracture potentially more consequential for the management executives who created this crisis.

The corporate board has powers the fund board does not.

The corporate board controls executive compensation. If the board determines that management's failure to escalate material liability exposure constitutes a breach of fiduciary duty or a violation of company policy, the board can claw back performance-based compensation — the bonuses, the equity grants, the long-term incentive awards that management earned during the years they concealed the exposure. Every dollar of advisory fee revenue generated from inflated NAVs flowed through the management company's income statement, inflated its earnings, and generated executive compensation calibrated to those earnings. If the NAVs were inflated and the earnings were therefore overstated, the compensation was unearned. Clawback provisions exist in virtually every publicly traded company's compensation framework — and Sarbanes-Oxley § 304 and Dodd-Frank § 954 provide statutory bases for recovery even where contractual provisions are absent.

The corporate board's audit committee can direct independent internal investigations — retaining outside counsel (not company general counsel, who reports to the CEO and who may have participated in the institutional decision to remain silent) to investigate what management knew, when management knew it, why the corporate board was not informed, and whether the company's SEC filings were materially accurate during the period of concealment. Those investigations produce privileged reports to the board that become the foundation for the board's

remedial decisions — and that position the company for cooperation credit with the Commission, the Department of Justice, and the IRS.

The corporate board can (and in Petitioner's opinion "should") terminate the chief executive officer. If the board concludes that the CEO's failure to escalate material compliance and liability exposure constitutes a breach of the CEO's duties to the company, that determination supports termination for cause — eliminating golden parachute protections, accelerated vesting, and severance entitlements that can reach tens or hundreds of millions of dollars. The CEO who concealed exposure to protect the company's fee revenue may discover that the concealment itself is the basis for losing everything the fee revenue generated.

And the corporate board can make voluntary disclosure to the Commission — cooperating at the corporate entity level, which positions the management company for the cooperation credit that reduces corporate penalties while simultaneously creating the evidentiary record that makes individual executive liability more certain. When the company cooperates, the executives who concealed cannot hide behind the company's silence. The company's cooperation becomes the executives' exposure.

The Two-Front Squeeze. The management executives who chose institutional silence — the CEOs and presidents, the general counsels and chief financial officers, the senior vice presidents who sat in the meetings documented in Section VI.B and decided that acknowledgment was more dangerous than ignorance — now face pressure from two directions simultaneously, and there is no position they can occupy that relieves both.

From the fund boardroom, independent directors armed with Investment Company Act authority are demanding information, retaining personal counsel, and evaluating whether to reject advisory contracts, demand fee adjustments, and cooperate with Commission examinations. Their personal exposure — regulatory, civil, and insurance-related — gives them every incentive to act and no incentive to protect management.

From the corporate boardroom, independent directors armed with Sarbanes-Oxley authority, *Caremark* oversight obligations, and control over executive compensation are demanding to know why they were not informed of material contingent liability exposure, why the audit committee did not evaluate it, why the company's SEC filings may be materially incomplete, and whether Sarbanes-Oxley certifications were accurate. Their personal exposure —

derivative suits, SEC enforcement, D&O coverage disputes — gives them every incentive to investigate and no incentive to accept management's assurances.

Management cannot satisfy both boards simultaneously. Disclosing to the corporate board that the fund-level exposure is real and material triggers the corporate disclosure obligations management has been avoiding — 10-K amendments, 8-K filings, investor communications, and potentially a restatement of contingent liability disclosures. Continuing to tell the corporate board the exposure is immaterial requires management to maintain a position that the fund board — once informed by this Petition — will contradict with its own actions. The moment the fund board demands corrective disclosure or retains independent counsel to investigate, the corporate board learns that management was minimizing exposure that the fund board considered serious enough to require immediate action. That inconsistency is devastating — in enforcement proceedings, in derivative litigation, in securities fraud class actions, and in the boardroom where the CEO's continued employment is decided.

There is no version of events in which management executives emerge from this without accountability. If they disclose upward, the corporate board investigates. If they disclose downward, the fund board acts. If they disclose to neither, both boards eventually learn what was concealed — and the concealment itself becomes the most damaging evidence against them. The only variable is timing. Management executives who come forward now, who cooperate with their own boards' investigations, who facilitate rather than obstruct corrective action, will be treated more favorably than those who maintain silence until silence is no longer an option. That is not a prediction. It is how enforcement works. It is how cooperation credit is earned. And it is the only rational path available to individuals whose institutional defenses are collapsing from above and below simultaneously.

Petitioner extends the same invitation to corporate board independent directors that this section extended to fund board independent directors. The management executives who report to you made decisions that created liability for the enterprise you govern — and they did not tell you. They renewed D&O policies without disclosing circumstances that may void your personal coverage. They signed Sarbanes-Oxley certifications that may be false. They exposed the company to enforcement, litigation, and reputational harm of a magnitude that dwarfs any regulatory action in the Commission's history — and they calculated that you would never find out. This Petition ensures that you will.

What you do with that knowledge is now your decision — and it is a decision that will define your personal liability, your professional legacy, and your board's institutional credibility for years to come. Petitioner is available through the contact information provided here to any corporate independent director, audit committee, or board-retained independent counsel seeking to understand the scope of exposure and evaluate the path forward.

Petitioner believes the independent directors will act. History supports that belief. Independent directors, once informed of personal fiduciary exposure that may be uninsured, tend to exercise the independence Congress intended them to exercise.

The management executives who created this crisis should understand what the independent directors' awakening means for them. The conduct documented in this Petition does not present solely as civil liability. Knowing dissemination of materially misleading prospectuses implicates Securities Exchange Act § 10(b) and 18 U.S.C. § 1348. Knowing preparation and filing of false information returns implicates Internal Revenue Code §§ 7206(1) and 7206(2). False Sarbanes-Oxley certifications implicate 18 U.S.C. § 1350, which carries penalties of up to twenty years' imprisonment for willful violations. These are not civil fines that can be budgeted, provisioned, and absorbed as a cost of doing business. They are federal criminal statutes — and the Department of Justice, not the SEC, decides who is charged. When independent directors begin cooperating with regulators, retaining personal counsel, and producing the documentary record of what management knew and when management decided to conceal it, the evidentiary foundation for criminal referral builds itself. The independent directors will not be the targets of that referral. The executives who kept them in the dark will be.

Management companies that have relied on board ignorance as their most reliable defense should prepare for that defense to collapse — not because Petitioner will destroy it, but because the independent directors themselves will. The only question is the sequence — and the sequence is governed by a logic as old as strategic decision-making itself.

The Prisoner's Dilemma — and Why There Is Only One Move. This Petition has created a multi-player prisoner's dilemma operating simultaneously at every level of the fund industry's governance structure. Between independent directors and management. Between interested directors and independent directors. Between individual board members on the same board. Between competing fund complexes. Between CCOs and the executives who discouraged them from escalating. Between insureds and their D&O carriers. Between the fund board and the

corporate board of the same enterprise. At every junction, the same dynamic applies: cooperation with regulators dominates silence under every plausible scenario.

Consider the independent director's decision matrix. There are only two moves: act now, or wait.

If an independent director acts now — retains personal counsel, demands the information this Petition documents, notifies the D&O carrier, requests a formal Section 15(c) review, and cooperates with any Commission examination — and other directors at other fund complexes do not, the director who acted is the first mover. The first mover establishes good faith. The first mover preserves whatever D&O coverage remains. The first mover earns the cooperation credit the Commission's framework provides. The first mover defines the standard of care against which every other director's conduct will be measured. The first mover's hindsight record — "I acted within days of learning the facts" — is the record every securities defense attorney wishes their client had built.

If an independent director waits — relies on fund complex counsel's assurance that no action is required, trusts that the management company's institutional response will protect individual directors, hopes that the Petition will be ignored or will prove unfounded — and other directors at other fund complexes act, the director who waited is the last mover. The last mover explains to a federal court why they did nothing after receiving documented notice of violations affecting 160 million Americans. The last mover's D&O coverage has eroded through additional policy periods of non-disclosure. The last mover's "uninformed fiduciary" defense has been destroyed by the passage of time — because with every week that passes after this Petition's public filing, the claim of ignorance becomes less credible and the inference of complicity becomes more compelling. The last mover is measured against the standard the first mover set — and found wanting.

If an independent director waits and everyone else waits too, the outcome is the worst of all. Liability compounds across the entire industry. D&O coverage deteriorates for everyone. The Commission, the Department of Justice, and the IRS eventually act — not with cooperation frameworks and negotiated remediation, but with enforcement actions, criminal referrals, and penalty assessments directed at an industry that received comprehensive notice and collectively chose to do nothing. The independent directors who waited together do not share a defense. They share an indictment — of judgment, of fiduciary duty, and potentially of law.

There is no scenario — none — in which waiting produces a better outcome than acting. The dominant strategy is the same regardless of what any other player does: act now. That is not Petitioner's opinion. It is the mathematical structure of the situation this Petition has created. Every game theorist who examines this matrix will reach the same conclusion. Every competent securities defense attorney who evaluates this matrix will give the same advice. Every independent director who understands this matrix will make the same choice.

If someone is telling an independent director that there is a third option — that waiting carries no cost, that silence remains viable, that the prudent course is to let fund complex counsel evaluate the situation and report back — that person is not protecting the independent director. That person is protecting the management company. Fund complex counsel's obligation runs to the fund complex (and remember, fund counsel may be compromised too). The fund complex's economic interest is delay. Delay preserves advisory fee revenue calculated on inflated NAVs. Delay extends the period in which management avoids accountability. And delay transfers risk from the management company — which profits from every additional day of inaction — to the independent directors, whose personal exposure grows with every additional day they fail to act on information they now possess.

An independent director who accepts that advice is not exercising judgment. That director is delegating judgment to a party with an economic interest in the director's inaction — which is precisely how this governance failure began. The management company profited from the independent directors' ignorance for nearly eight years. Now, through fund complex counsel, management seeks to profit from the independent directors' passivity. The mechanism has changed. The conflict has not.

The independent directors have one move. Act now. Retain personal counsel. Demand information. Notify carriers. Exercise statutory authority. Cooperate with regulators. Build the record of good faith that distinguishes them from the management executives who created this crisis and the interested directors who perpetuated it.

Anyone who tells them otherwise is not on their side.

I. The Commission's Resource Allocation

‘Resource constraints’ do not explain why this matter remains unaddressed. The record of the past nearly six years demonstrates ample institutional capacity to pursue ambitious regulatory agendas — capacity that two successive Commissions, across party lines, directed elsewhere.

Under the prior administration, the Commission devoted years of staff work and substantial institutional resources to climate-related disclosure rulemaking. That initiative was challenged in federal court, judicially stayed, and ultimately withdrawn. It consumed thousands of staff hours across multiple divisions, generated extensive public comment periods, and produced rulemaking documents of extraordinary length and complexity. Whatever its merits, it was an initiative that no statute required the Commission to undertake — and it consumed institutional bandwidth during the very years that Petitioner's whistleblower submission sat unaddressed.

Under the current administration, the diversion of resources has, if anything, intensified. Chairman Atkins has publicly declared digital asset regulation "job one" and launched "Project Crypto" as a Commission-wide initiative — directing staff across multiple divisions to develop token taxonomies, innovation exemptions, and comprehensive rulemaking frameworks for digital assets. The Chairman has described this as an effort to make the United States "the crypto capital of the world." The Commission has established a dedicated Crypto Task Force, issued multiple rounds of staff guidance, proposed amendments to the Securities Exchange Act of 1934 to accommodate crypto trading, and approved listing standards for exchange-traded funds tracking assets such as DOGE, SOL, and XRP. These efforts have consumed the rulemaking agenda to such a degree that outside observers have noted crypto "dominated much of the SEC's activity" throughout 2025.

Petitioner does not question the Commission's authority to set its own priorities. But three facts make the contrast with this Petition unavoidable.

First, the Commission's statutory authority over digital assets remains uncertain. The Chairman himself has acknowledged that "crypto asset" is not a term defined in the federal securities laws. The Commission's jurisdiction has been actively contested in federal courts. Congress has not enacted the market structure legislation the Commission has urged — indeed, the Senate Banking Committee postponed its scheduled vote on the Digital Asset Market Clarity Act in January 2026, and as of the date of this Petition, the legislation remains stalled over unresolved disputes between the digital asset and banking industries. The Commission has devoted

Commission-wide resources to building a regulatory framework for an asset class over which it may not have jurisdiction, while a matter squarely within its unquestioned authority — the accuracy of prospectuses filed under the Securities Act and the Investment Company Act — has gone unaddressed for more than 2,100 days.

Second, the asset class consuming the Commission's attention is in crisis. As of the date of this Petition, digital asset markets have experienced a sustained liquidation. Bitcoin has declined nearly fifty percent from its October 2025 high above $126,000, with an estimated $8.5 billion in outflows from spot Bitcoin ETFs, and the average ETF investor now carries a significant unrealized loss. Billions of dollars in leveraged positions have been forcibly closed, with single-day liquidations exceeding $2.6 billion. Over 570,000 traders were liquidated in a single twenty-four-hour period. Market analysts have described the current environment as a "full-bore crypto winter." The Commission built a Commission-wide regulatory apparatus for a market that is, at this moment, collapsing — while 160 million Americans continue to invest through mutual funds under disclosures the Commission knows are false, generating tax forms the Commission knows overstate their income, every single trading day.

Third, the Commission's processing of Petitioner's unsolicited proposals warrants examination. Petitioner twice submitted proposals to the Commission under the Federal Acquisition Regulation --- two substantively distinct proposals addressing different aspects of the disclosure failures documented in this Petition, each designed to provide the Commission with practical, implementable solutions to protect investors and correct market structure failures. Both proposals were rejected. Both rejections used identical language.

The Commission's verbatim response to Petitioner's proposal for subject-matter-expert advisory services to remediate systemic disclosure and market structure failures stated:

"*The SEC concluded that the proposal does not address an existing requirement of the SEC nor would it provide further capabilities in carrying out its mission*."

That language cannot be reconciled with the Commission's own mandate. The Commission's mission, as stated in its enabling legislation and on its own website, is to protect investors, maintain fair, orderly, and efficient markets, and facilitate capital formation. Petitioner's proposals offered precisely that — a practical path to protect 160 million investors from

quantifiable, ongoing harm that the Commission's own staff has examined for nearly six years. A proposal to fix materially misleading prospectuses and provide accurate, meaningful, real-time disclosure to investors does not "address an existing requirement" of the agency charged with ensuring prospectuses are not materially misleading. A proposal to correct false tax reporting generated from SEC-filed documents would not "provide further capabilities in carrying out" the mission of investor protection. If those statements are taken at face value, the Commission has declared — in writing — that it does not consider truthful disclosure, accurate tax reporting, or investor protection to be part of its mission.

The use of identical boilerplate language to reject two materially different proposals raises serious questions about whether the Commission conducted any individualized analysis whatsoever. The Administrative Procedure Act requires "reasoned decision-making" — not conclusory statements that contradict the agency's own stated mandate. See *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co*., 463 U.S. 29, 43 (1983) (agency must "examine the relevant data and articulate a satisfactory explanation for its action"); *DHS v. Regents of the Univ. of California*, 140 S. Ct. 1891, 1905 (2020) (APA "requires agencies to engage in 'reasoned decision-making'"). An agency's failure to provide an adequate explanation for its decision — particularly where it relies on conclusory language that is facially inconsistent with its statutory obligations — is the hallmark of arbitrary and capricious action. Petitioner reserves the right to challenge the adequacy of those rejections through appropriate judicial proceedings.

The Commission's FAR rejection stated that the proposals did not "address an existing requirement of the SEC" or "provide further capabilities in carrying out its mission." That language is difficult to reconcile with the simultaneous commitment of Commission-wide resources to building regulatory frameworks for digital collectibles, token taxonomies, and innovation exemptions for an asset class that the Chairman concedes may fall largely outside the securities laws. Either investor protection falls within the Commission's mission — in which case proposals to correct materially misleading prospectuses address an existing requirement — or the FAR rejection language means what it says, and the administrative record speaks for itself. That record will be available for judicial review.

The investors waiting for action are not speculating in digital tokens. They are not trading meme coins on leveraged exchanges. They are schoolteachers and firefighters and small business owners investing their retirement savings in registered funds --- the most regulated, most widely

held, most foundational investment vehicles in the American financial system. They are the people the Commission was created to protect. They have been waiting for more than 2,100 days.

VII. TAX LAW IMPLICATIONS: THE SELF-PROVED VIOLATION

"The penalties and liabilities provided by this subchapter shall be paid upon notice and demand by the Secretary, and shall be assessed and collected in the same manner as taxes."

— Internal Revenue Code § 6671(a)

A. A Note on What Follows

The legal analysis in this Section involves statutory interpretation, Treasury regulations, and Supreme Court precedent spanning nearly a century. But the human reality it addresses is not complex at all.

Ordinary Americans are being taxed on their own money. A teacher saves for retirement. A young couple invests for their first home. A firefighter contributes to his pension. They purchase shares of a mutual fund. They receive a tax form—Form 1099-DIV—telling them what they owe. They trust the form. They pay.

The form is wrong. It reports as taxable income what is actually the investor's own capital being returned. The seller already paid capital gains tax on that same economic dollar—it was embedded in the sale price. Now the buyer pays tax on it again. One dollar of economic income. Two taxpayers assessed.

The Supreme Court prohibited this ninety years ago.[90] The prohibition has never been lifted.

What follows is a comprehensive legal demonstration of why the current practice violates constitutional principles, statutory requirements, and Treasury's own regulations. We will establish, through binding precedent and controlling authority, that first distributions to new fund purchasers are return of capital—not taxable income.

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[90] *Bull v. United States*, 295 U.S. 247, 254 (1935).

But here is what makes this Section different from ordinary legal argument: the industry agrees with the Petitioner.

The companies filing these incorrect forms publish warnings on their own websites and SEC filed prospectuses explaining exactly why the tax treatment is wrong. They call it "buying a dividend." They tell investors it "generates an unnecessary tax bill" because "a portion of the investment is returned to the investor."[91] Then they file Forms 1099-DIV reporting those same distributions as fully taxable.

If the industry disagrees with its own self-admissions, this creates an altogether different problem: these admissions appear in SEC-filed prospectuses, documents subject to the full weight of federal securities law and its prohibition against materially misleading statements. The industry is therefore trapped. Either their self-admissions are truthful—establishing at minimum intentional disregard through the filing of false tax information returns, and thus eliminating any need for a lengthy investigation—or their self-admissions are not truthful, in which case they have been misleading investors for decades and are in violation of securities laws. There is no third option.

The legal analysis that follows is therefore an unusual exercise. We will prove—through constitutional principle, Supreme Court precedent, statutory text, and Treasury regulation—that the industry's tax reporting is wrong. And then we will show that the industry has already confessed to everything we intend to prove. The law, therefore, compels the conclusion that the industry has already reached.

One further point of legal significance. After the Supreme Court's unanimous decision in *Ciminelli v. United States*, 598 U.S. 306 (2023), federal fraud statutes reach only schemes to deprive victims of "traditional property interests" — not intangible rights to accurate information. The false 1099-DIV scheme satisfies this requirement unambiguously: each false form causes the recipient to overpay federal income taxes — actual money transferred from the taxpayer's pocket to the U.S. Treasury that the taxpayer does not owe. This is not a deprivation of "the right to accurate tax reporting." It is the deprivation of money through a false instrument — the paradigmatic fraud the mail and wire fraud statutes were designed to reach. The false 1099-DIV is the instrumentality; the tax overpayment is the money obtained. This theory survives the entire *McNally* → *Cleveland* → *Skilling* → *Ciminelli* narrowing trend because the property at stake has always been money.

[91] BlackRock, "Understanding Dividend Distribution Dates," available at blackrock.com.

B. The Constitutional Framework: What "Income" Means

The Supreme Court's Definition

The Constitution grants Congress power to tax "incomes."[92] But what is income? The Supreme Court answered definitively in *Commissioner v. Glenshaw Glass Co.*:

> ***Income is "undeniable accessions to wealth, clearly realized, and over which the taxpayers have complete dominion."***[93]

Three elements. All three required. *Accession to wealth*—the taxpayer must be richer than before. *Clearly realized*—the gain must have materialized, not remained speculative. *Complete dominion*—the taxpayer must have control over the gain.

This definition has governed federal income taxation for seventy years. It has never been modified, limited, or overruled.

Application to Fund Distributions

Apply *Glenshaw Glass* to a buyer who purchases fund shares at a price that includes embedded realized income:

- **Day 1 (Before purchase):** The buyer holds $10,000 in cash.
- **Day 1 (After purchase):** The buyer holds fund shares priced at $10,000. Of that NAV, $700 represents embedded realized income that will be distributed.
- **Day 30 (After distribution):** The buyer holds fund shares now worth $9,300, plus $700 in cash received as a "distribution."
- **Net position:** $10,000 before. $10,000 after. The form of wealth changed. The amount did not.

Where is the accession to wealth? There is none. The buyer began with $10,000. The buyer ended with $10,000. The "distribution" merely converted part of her investment from one form (embedded in share price) to another (cash in hand).

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[92] U.S. Const. amend. XVI.
[93] *Commissioner v. Glenshaw Glass Co.*, 348 U.S. 426, 431 (1955).

Under *Glenshaw Glass*, that $700 distribution is not income to her. It cannot constitutionally be taxed as her income. She experienced no accession to wealth. The first element of the constitutional definition is absent.

This is not a policy argument. It is not an appeal to fairness. It is the application of binding Supreme Court precedent to undisputed facts. The math is simple. The constitutional conclusion is inescapable.

C. The Anti-Duplication Principle: One Dollar, One Taxpayer, One Tax

The Supreme Court's Prohibition

The Constitution does not permit the same economic dollar to be taxed twice—once to the person who earned it, and again to the person who later receives it in a different form. This principle is not a dictum. It is a holding.

In *Bull v. United States*, the Supreme Court confronted a situation where the government assessed tax on the same sum to two different parties. The Court's language was emphatic:

> ***"The identical money—not a right to receive the amount, on the one hand, and actual receipt resulting from that right on the other—was the basis of two assessments. The double taxation involved in this inconsistent treatment of that sum of money is made clear."***[94]

The Court did not permit this. The Court required correction. The principle has never been abandoned.

Application to Fund Distributions

The current system violates *Bull* directly.

The fund seller's position: A shareholder holds fund shares while the fund realizes income. That income accrues to her benefit—it inflates the NAV of her shares, increasing her wealth. When she sells, the embedded income is part of her sale price. She receives $100 instead

[94] *Bull v. United States*, 295 U.S. 247, 254 (1935).

of $99. She has $1 of capital gain. She pays capital gains tax on that $1. This is correct. She earned that income through appreciation while she held the shares.

The fund buyer's position: The buyer pays $100 for shares worth $99 in underlying assets plus a $1 dividend receivable. When the fund distributes that $1, the buyer receives back part of what she paid in. Her Form 1099-DIV reports $1 as taxable income. She pays tax on $1. But she is not $1 richer. She prepaid for that dollar at purchase.

The result: The seller paid tax on $1 and realized it through a capital gain in the NAV. The buyer paid tax on the same $1 as a dividend distribution. "*The identical money . . . was the basis of two assessments.*"

This is precisely what *Bull* prohibits. One dollar of economic income. Two taxpayers assessed. The current system collects tax on the same dollar, from two different people.

The Assignment of Income Doctrine Confirms This

Helvering v. Horst established the complementary principle: income is taxed to the person who earns it—not to the person who later receives it in a different form.[95] The doctrines work together. *Bull* prohibits taxing the same dollar twice. *Horst* identifies who should be taxed: the earner.

Here, the seller earned the embedded income while holding the shares. The seller was taxed on it through the inflated sale price. The buyer did not earn that income. The buyer merely received back capital she had already invested. Yet both are taxed on the same income.

The doctrinal framework is unified and complete. *Glenshaw Glass* defines income as accession to wealth. *Bull* prohibits taxing the same dollar to two taxpayers. *Horst* assigns income to the earner. Under every applicable doctrine, the buyer's first distribution is not taxable income to her.

D. The Statutory Framework: What the Code Actually Says

The Classification Hierarchy

Congress codified the treatment of corporate distributions in I.R.C. § 301(c). The statute creates a mandatory classification waterfall:

[95] *Helvering v. Horst*, 311 U.S. 112, 118 (1940).

§ 301(c) Amount taxable.— In the case of a distribution to which subsection (a) applies:

(1) Amount constituting dividend.— That portion of the distribution which is a dividend (as defined in section 316) shall be included in gross income.

(2) Amount applied against basis.— That portion of the distribution which is not a dividend shall be applied against and reduce the adjusted basis of the stock.

(3) Amount in excess of basis.— That portion of the distribution which is not a dividend, to the extent that it exceeds the adjusted basis of the stock, shall be treated as gain from the sale or exchange of property.[96]

Congress created § 301(c)(2). Congress recognized that some distributions—even from entities with earnings and profits—are not dividends to particular recipients. Those distributions are return of capital, reducing basis.

The industry's implicit position—that all distributions from funds with E&P are taxable dividends to all recipients—reads § 301(c)(2) out of the Code. Courts do not permit such readings. When Congress includes a provision, courts presume it has meaning.[97]

The industry's position is not merely wrong as a matter of tax policy—it is textually impermissible. The Internal Revenue Code provides a specific mechanism for distributions that exceed a shareholder's share of earnings and profits: § 301(c)(2) treats such distributions as return of capital. Yet under the industry's approach, this provision would never apply to any mutual fund shareholder so long as the fund maintains positive E&P. Section 301(c)(2) would be rendered "superfluous, void, or insignificant"—precisely what the Supreme Court forbids. *Williams v. Taylor*, 529 U.S. at 404.

The correct interpretation gives effect to both provisions. Section 301(c)(1) taxes distributions to the extent of a shareholder's ratable share of E&P—the earnings actually attributable to that shareholder's investment. Section 301(c)(2) treats the excess as return of capital. For a shareholder who purchases shares immediately before a distribution of previously-realized

[96] I.R.C. § 301(c)(1)–(3).

[97] *See TRW Inc. v. Andrews*, 534 U.S. 19, 31 (2001) ("It is a cardinal principle of statutory construction that a statute ought, upon the whole, to be so construed that, if it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant." (internal quotation marks omitted)).

income, the *entire* distribution may constitute return of capital under § 301(c)(2), because none of the distributed E&P is economically attributable to that shareholder's investment.

This reading harmonizes the statutory text; the industry's reading eviscerates it.

Form 1099-DIV Confirms the Statutory Structure

If all fund distributions were necessarily taxable dividends to all recipients, Box 3 of Form 1099-DIV would not exist.

But Box 3 exists. It is labeled "Nondividend distributions."[98] The IRS instructions explain that Box 3 reports distributions that are "a return of your cost (or other basis)."[99]

The form presupposes what the industry denies: that some distributions from funds are return of capital to some shareholders. The IRS created this box. The industry files this form. The industry's practice contradicts the form the industry uses.

E. Treasury Already Applies This Principle: The Bond Precedent

The Regulation

The constitutional principles described above are not novel. They are not academic. Treasury already applies them to bonds.

Treasury Regulation § 1.61-7(c) provides:

> "If a taxpayer purchases bonds when interest has been defaulted or when the interest has accrued but has not been paid, any interest which is in arrears but has accrued at the time of purchase is not income and is not taxable as interest if subsequently paid. Such payments are returns of capital which reduce the remaining cost basis."[100]

When a buyer purchases a bond at a price that includes accrued interest, the first interest payment is not taxable income. It is return of capital. It reduces basis.

[98] Form 1099-DIV, Box 3 ("Nondividend distributions").
[99] IRS Instructions for Form 1099-DIV ("Box 3 shows the part of the distribution that is a return of your cost (or other basis).").
[100] Treas. Reg. § 1.61-7(c).

This is precisely our argument. This is precisely what applies to fund distributions. Treasury has already adopted our position with regard to securities being sold that include accrued but undistributed income.

The Economic Identity

The tax law has long recognized a simple principle: when a buyer compensates a seller for income the seller earned but has not yet received, the buyer is entitled to recover that payment tax-free when the income is later distributed.

How It Works with Bonds

When a bond is sold between interest payment dates, the buyer pays the seller two things: (1) the price of the bond itself, and (2) an additional amount representing interest that has accrued since the last payment date. This additional payment compensates the seller for income the seller earned during their holding period but will not receive—because the next coupon payment will go entirely to the buyer.

When the buyer later receives the full coupon payment, a portion of that payment is simply a return of the advance the buyer made to the seller. Treasury regulations recognize this: the accrued interest portion is return of capital to the buyer, not taxable income. Treas. Reg. § 1.61-7(c).

The mechanism ensures that each party is taxed only on income economically attributable to their own holding period. The seller receives (and is taxed on) the accrued interest payment at sale. The buyer recovers their advance tax-free and is taxed only on interest that accrues after purchase. This proper treatment is then reflected in tax reporting: Form 1099-INT uses separate boxes to distinguish taxable interest (Box 1) from the purchaser's non-taxable returned advance (Box 6). Form 1099-DIV has the identical architecture—Box 1a for dividends, Box 3 for return of capital—yet the industry places everything in Box 1a, ignoring the very distinction the form was designed to capture.

The Identical Structure in Investment Funds

The economics of mutual fund distributions are precisely the same. When an investor purchases fund shares, the NAV includes embedded realized income—gains and dividends the

fund has earned but not yet distributed. The buyer is paying the seller for the income the seller earned during their holding period. This embedded income is why the seller receives a higher NAV at redemption than they would have received had the fund already distributed its earnings.

When the distribution occurs, the new shareholder receives cash, but a portion of that cash is simply a return of the premium they paid for the embedded income in the NAV. The economic substance is identical to the bond transaction: the buyer advanced money to compensate the seller for earned-but-undistributed income, and the buyer should recover that advance tax-free.

The Asymmetry

The same economic transaction. The same prepayment at purchase. The same receipt of accrued amounts. Opposite tax treatment.

Treasury cannot explain this inconsistency. The industry cannot explain it. There is no explanation—only practice that contradicts the principle.

The IRS Instructions Confirm the Bond Treatment

IRS Publication 550 and the Instructions for Schedule B confirm that when a taxpayer purchases a bond between interest dates and pays accrued interest to the seller, the buyer may reduce taxable interest income by the amount of accrued interest paid.[101] The buyer is not taxed on amounts that merely return her purchase price.

This is not an obscure rule. It is standard tax practice, applied to millions of bond transactions annually. The principle on accrued income is established. The application to funds is straightforward. The only obstacle is industry resistance.[102]

[101] IRS Publication 550 (Investment Income and Expenses); Instructions for Schedule B (Form 1040).

[102] Congress has already required shareholder-specific distribution characterization for entities structurally identical to mutual funds. Real Estate Investment Trusts, which are regulated under the same Subchapter M framework as RICs (IRC §§ 856–859), must allocate capital gains to specific record-date shareholders under IRC § 857(b)(3)(D). If shareholder-specific allocation is operationally feasible for REITs — and has been for decades — the claim that identical allocation is "impractical" for mutual funds is untenable. The infrastructure exists. The precedent exists. The only variable is the industry's willingness to implement it.

F. The Industry's Defense and Why It Fails

The industry's defense is not sophisticated. It is simple:

"All dividends are taxable. We report dividends. Our forms are correct."

That is the entire argument. The industry does not engage with *Glenshaw Glass*. It does not address *Bull*. It does not explain why Treasury Regulation § 1.61-7(c) should not apply. It simply assumes that when a fund has earnings and profits and makes a distribution, every recipient reports taxable income—regardless of whether that recipient prepaid for the distribution through her purchase price, regardless of whether that recipient experienced any accession to wealth.

Why the Defense Fails

The defense conflates two distinct questions:

Question 1: Are dividends taxable?

> **Answer:** Yes, obviously. No one disputes this.

Question 2: Is *this particular distribution* a "dividend"—taxable income—to *this particular recipient*?

> **Answer:** It depends—on whether the distribution represents an accession to that recipient's wealth, or merely returns capital she already paid. The industry answers Question 1 and assumes it has answered Question 2. It has not.

Under *Glenshaw Glass*, a payment that does not increase a taxpayer's wealth is not income to that taxpayer—regardless of what the payor calls it, regardless of how the payor reports it. The constitutional definition controls. The industry's label does not.

Under *Bull*, income that has already been taxed to one taxpayer cannot be taxed again to another. The seller paid tax on the embedded income through the inflated sale price. The buyer cannot be taxed on the same dollar.

Under Treasury Regulation § 1.61-7(c), when a buyer pays a price that includes accrued income, the first payment representing that accrued income is a return of capital, not taxable

income. The Treasury and the financial services industry has already adopted this principle for bonds. The industry cannot explain why it should not apply to funds.

The Law Leaves No Uncertainty About Character

The industry's "all dividends are taxable" defense fails for a more fundamental reason: the law itself determines when distributions become payable and to whom they belong. The industry cannot relabel economic and legal reality through mere assertion.

When a fund realizes income—when it receives a dividend from a portfolio company or sells a security at a gain—that income belongs to the shareholders who owned shares at the moment of realization. This is not a matter of accounting discretion. It is a matter of law and economic fact.

The legal obligation is mandatory. To maintain pass-through status under Subchapter M, a Regulated Investment Company *must* distribute substantially all of its investment company taxable income and net capital gain each year.[103] These distributions are not optional. They are not discretionary management decisions. They are legal requirements—conditions precedent to the favorable tax treatment that makes the mutual fund structure viable. A fund that fails to distribute its income loses its RIC status and is subject to entity-level taxation.

The economic reality is equally clear. The fund knows the amount of realized income. The fund knows when distribution will occur. The fund knows to whom the distribution is owed—the shareholders who held shares when the income was realized. Under Generally Accepted Accounting Principles, an obligation that is estimable, probable, and payable is a liability.[104]

The industry cannot ignore both the law and the economics and simply relabel a liability as something else. Calling a distribution a "taxable dividend" to a shareholder who purchased *after* the income was realized—after the liability was incurred, after the obligation attached to different shareholders—does not make it so. The character of a distribution is determined by economic substance and legal reality, not by the filer's label on a form.

This is the fatal flaw in the industry's defense. "All dividends are taxable" is true as a general proposition. But the question is not whether dividends are taxable. The question is whether

[103] I.R.C. § 852(a)(1) (requiring RICs to distribute at least 90% of investment company taxable income to maintain pass-through status); I.R.C. § 852(b)(1) (imposing entity-level tax on undistributed income).
[104] *See* FASB ASC 450-20-25-2 (formerly SFAS No. 5) (requiring accrual of loss contingency when liability is probable and amount is reasonably estimable); *see also* FASB ASC 405-20-40-1 (addressing liability derecognition).

this particular distribution to *this particular shareholder* constitutes a dividend—taxable income representing an accession to wealth—or return of capital merely giving back what she already paid. The law answers that question. The industry's label cannot change the answer.

Economic Substance—Not Labels—Determines Tax Consequences

For ninety years, the Supreme Court has held that taxation follows economic reality, not nomenclature. The principle is not novel, not contested, and not subject to exception. It is black-letter law, reaffirmed across generations of jurisprudence, and it forecloses the industry's position entirely.

The foundational case is *Gregory v. Helvering*. There, a taxpayer structured a transaction to comply with the literal terms of the tax code while achieving a result Congress never intended. The Court refused to honor the form. "The question for determination," Justice Sutherland wrote, "is whether what was done, apart from the tax motive, was the thing which the statute intended." The answer required looking past labels to economic reality. A transaction that satisfied the statutory definition in form but lacked the intended substance could not claim the statutory benefit.

A decade later, *Commissioner v. Court Holding Co.* sharpened the principle into a rule of general application. "The incidence of taxation," the Court declared, "depends upon the substance of a transaction." And then the Court explained why this must be so: "To permit the true nature of a transaction to be disguised by mere formalisms, which exist solely to alter tax liabilities, would seriously impair the effective administration of the tax policies of Congress." The rule is not a preference. It is a necessity. Without it, any taxpayer—or any industry—could escape statutory obligations simply by affixing the wrong label to the right facts.

The Court has never retreated from this principle. In *Frank Lyon Co. v. United States*, the Court confirmed that transactional form is respected only when the arrangement reflects "genuine multiple-party transaction with economic substance which is compelled or encouraged by business or regulatory realities."[105] Where form and substance diverge, substance prevails. In *Higgins v. Smith*, the Court held that the government "may look at actualities" and, upon finding that "the form employed... is unreal or a sham, may sustain or disregard the effect of the fiction."[106] The

[105] *Frank Lyon Co. v. United States*, 435 U.S. 561, 583–84 (1978).
[106] *Higgins v. Smith*, 308 U.S. 473, 477 (1940).

principle runs in both directions: the government may not tax phantom income that exists only in form, just as the taxpayer may not claim phantom deductions that lack economic reality.

This brings us to the definition of income itself. In *Commissioner v. Glenshaw Glass Co.*, the Court established the constitutional baseline: income, for tax purposes, requires "undeniable accessions to wealth, clearly realized, and over which the taxpayers have complete dominion." A payment that merely returns the recipient's own capital is not an accession to wealth. It is a restoration of the status quo ante. The recipient is no richer after receiving it than before. To tax such a payment as income is to tax a fiction—precisely what ninety years of precedent forbids.

Now apply these principles to the transaction at issue. An investor purchases mutual fund shares. The price paid includes a premium for embedded realized income—gains and dividends the fund has earned but not yet distributed. When the distribution occurs, a portion of what the investor receives is economically indistinguishable from the return of that premium. The investor has not experienced an "accession to wealth." The investor has merely recovered, in cash, value the investor already owned and already paid for. The economic substance of the transaction is return of capital.

The industry does not dispute this. It cannot. The economics are mathematical, not debatable. What the industry does instead is affix a label. It calls the distribution a "dividend" on Form 1099-DIV. It reports the entire amount in Box 1a—total ordinary dividends—as if every dollar represented income to the recipient.

But labels do not create income. The Supreme Court settled this ninety years ago. A transaction's tax consequences flow from what actually happened, not from what the filer chose to call it. If the economic substance of a distribution is return of capital, then it is return of capital—regardless of the box checked on an information return. The industry cannot transform a non-taxable recovery of basis into a taxable dividend simply by saying so. That is precisely the "mere formalism" the Court in *Court Holding Co.* warned would "seriously impair the effective administration of the tax policies of Congress."

The industry's position, stripped to its essence, is that it may override Supreme Court precedent with a checkbox. That by reporting a payment as a "dividend," it becomes a dividend—economic reality notwithstanding. This is not a legal argument. It is an assertion of private legislative power. And it fails for the same reason every such assertion has failed since 1935:

because the Supreme Court has held, consistently and without exception, that economic substance controls.

There is no escape from this logic. If economic substance determines tax consequences, and the economic substance of these distributions is return of capital, then reporting them as fully taxable dividends is incorrect. Not arguably incorrect. Not subject to reasonable dispute. Incorrect as a matter of controlling Supreme Court precedent applied to undisputed facts.

The industry knows this. That is why it warns investors, in SEC-filed prospectuses, that distributions "may be a return of your capital." That is why it cautions that purchasing before a distribution means "buying a dividend"—receiving back money you just paid. The industry has admitted the economic substance. Under ninety years of Supreme Court precedent, that admission is dispositive.

The Industry's Own Admissions Contradict Their Defense

The industry's position suffers from an additional, fatal defect: it contradicts the industry's own disclosures.

The industry insists that all distributions are "dividends" and therefore taxable. But dividends are taxable only when they constitute *income*—an accession to the recipient's wealth. A distribution that merely returns what the shareholder already paid is not income to that shareholder, regardless of the fund's earnings and profits. The existence of E&P at the fund level does not transform a return of capital into income at the shareholder level.

Yet buried in their own SEC-filed prospectuses, the same firms that report these distributions as fully taxable dividends warn investors that distributions "may be a return of your capital." They caution that purchasing shares before a distribution means "buying a dividend"—receiving back, in taxable form, money the investor just paid. The industry's own words acknowledge that these distributions are not, in economic substance, income to the new shareholder at all.

The industry cannot have it both ways. Either these distributions are dividends—income representing an accession to wealth—or they are return of capital—a non-taxable return of the shareholder's own investment. The industry tells the IRS they are dividends. The industry tells investors they may be return of capital. Both statements cannot be true.

The logic is inescapable:

- If the distributions *are* dividends (income), then the prospectus warnings are false, and the industry has been misleading investors for decades in violation of securities laws.
- If the distributions *may be* return of capital (as the prospectuses admit), then reporting them as fully taxable dividends on Form 1099-DIV is false, and the industry has been filing incorrect information returns for decades in violation of tax laws.

There is no third option. The industry's own words convict them. They have admitted—in documents filed with the SEC, subject to liability for material misstatements—that these distributions are not what Form 1099-DIV says they are. The only question is which set of filings is false: the securities disclosures or the tax forms. Either way, the industry has a problem. And either way, the distributions to new shareholders are not, in economic substance or legal character, "dividends" at all.

A Structural Note on Pass-Through Taxation

To forestall any confusion about how Subchapter M affects this analysis: it does not.

Subchapter M, codified at I.R.C. §§ 851–855, provides special tax treatment for qualifying Regulated Investment Companies. Its purpose is narrow and specific: to prevent double taxation *at the entity level*.[107] A qualifying RIC receives a "dividends paid deduction" allowing it to deduct distributions from its own taxable income.[108] This ensures investment income is taxed once—at the shareholder level—rather than twice (once to the fund and again to the shareholder).

That is all Subchapter M does. It answers one question: *Does the fund pay entity-level tax?* It does not answer a different question: *Is this distribution taxable income to this particular shareholder?*

These are separate inquiries. Subchapter M addresses fund-level taxation. *Glenshaw Glass*, *Bull*, and § 301(c) address shareholder-level characterization. The former does not override the latter. Nothing in Subchapter M purports to redefine "income" for constitutional purposes or to exempt fund distributions from the classification hierarchy Congress established in § 301(c).

[107] *See* I.R.C. § 852(b)(2)(D) (providing "dividends paid deduction" to qualifying RICs).
[108] I.R.C. § 852(b)(2)(D).

Indeed, Subchapter M reinforces our analysis. The mandatory distribution requirement confirms that realized income creates a legal obligation—a liability payable to shareholders. When a new purchaser buys shares after that liability has been incurred, she is not acquiring income. She is acquiring an obligation that will be satisfied through return of her purchase price. Subchapter M's pass-through structure does not change this economic and legal reality. It confirms it.

The proof is in the form itself. If Subchapter M somehow made every distribution from a RIC taxable income to every recipient regardless of economic reality, Box 3 of Form 1099-DIV would not exist. But Box 3 exists. The IRS recognizes that some fund distributions are return of capital to some shareholders. Subchapter M does not change this.

G. The Investor Cannot Cure the Filer's Error

How the System Actually Works

The industry might suggest that investors who believe their distributions include return of capital can simply report accordingly on their returns. This response misunderstands how information return reporting works—and reveals why the penalty provisions are mandatory.

1. The fund determines and reports the tax character of distributions on Form 1099-DIV—either directly or through intermediaries.
2. Forms 1099-DIV are then directly filed with the IRS, reporting amounts in the appropriate boxes
3. The fund/intermediary sends a copy to the investor
4. The investor reports what the form says on Schedule B and Form 1040
5. The IRS matching program compares the investor's return to the 1099-DIV
6. Discrepancies trigger automatic notices

An investor who reports less taxable income than her 1099-DIV reflects will receive an IRS notice. She will bear the burden of proving her position—with documentation she does not possess.

What the Investor Would Need

To successfully argue that a portion of her distribution was return of capital, the investor would need to establish: her precise purchase date; the NAV on that date; the embedded realized

income in that NAV on that date; and the portion of her distribution attributable to pre-purchase accruals.

The investor does not have this information. The fund has it. The transfer agent has it. The investor has a 1099-DIV that says "capital gains distributions: $4,550." She reports $4,550. She pays tax on $4,550. She has no practical ability to do otherwise.

Even If She Could, the Economics Are Impossible

Even if an investor somehow obtained the fund's daily accrual records, understood the complex calculations required, and computed the proper allocation, she would face insurmountable barriers: She would need to hire a CPA to prepare amended returns recharacterizing every affected transaction—at $400 per hour or more. She would need to communicate those changes to her custodian to update her cost basis records. The custodian might refuse to make the changes, since the custodian's records are based on the 1099-DIV the fund provided. She would need to maintain documentation to defend against IRS notices for every amended year. She would need to repeat this process annually, for every fund purchase, for as long as she remains invested.

The cost of attempting to correct incorrect forms would dwarf the tax savings for any ordinary investor. A teacher with $65,000 in index funds cannot spend $2,000 in CPA fees to recover $1,150 in wrongful tax. The economics make self-help impossible. The investor, therefore, suffers irreparable harm even if they could self-correct.

Why Congress Imposed Penalties on Filers

This is precisely why Congress imposed penalties on filers rather than recipients. The filer has the data. The filer has the systems. The filer has the expertise. The filer has the legal duty to get it right—because the investor cannot fix it herself.

There is no "return of capital deduction" the investor can claim. Return of capital is a characterization—determined at the source, reported on the form, and relied upon by the recipient. The corrective mechanism requires no new IRS infrastructure. Box 3 of Form 1099-DIV — "Nondividend distributions" — already exists for precisely this purpose. No new form is needed. No new box is needed. No new regulation is needed. The industry merely needs to place the correct number in a box that already appears on a form the industry already files hundreds of millions of

times per year. When the characterization is wrong, 160 million investors are harmed in ways they cannot remedy.

H. The Industry's Confession: In Their Own Words

BlackRock's Published Admission

The world's largest asset manager—BlackRock, with over $10 trillion under management—states publicly on its website: "[B]uying a dividend . . . generates an unnecessary tax bill" because "a portion of the investment is returned to the investor as a taxable distribution."

Read those words with the precision they deserve.

"A portion of the investment is returned to the investor"—that is the definition of return of capital, which the Internal Revenue Code calls a nondividend distribution and which belongs in Box 3 of Form 1099-DIV. "Generates an unnecessary tax bill"—the tax is wrong, BlackRock knows it is wrong, and BlackRock publishes that it is wrong. "As a taxable distribution"—yet BlackRock reports it as taxable anyway.

Three phrases. Three admissions. One confession: the forms are wrong, we know they are wrong, and we file them anyway.

What This Means

The industry has confessed to the factual predicate of our legal argument. The industry admits that first distributions to new purchasers include "a portion of the investment . . . returned to the investor," that this creates "an unnecessary tax bill," and that the current reporting treats return of capital "as a taxable distribution."

These are not our characterizations. These are the industry's own words, published on the industry's own websites, filed with the Commission, and available to any investor or regulator who looks.

I. The Industry Created This Problem—And Profits From It

The Source of Double Taxation

The double taxation Petitioner has documented is not an accident of tax law. It is not an unavoidable complexity of fund structures. It is the direct and foreseeable consequence of an

accounting choice the industry made—and refuses to change—because that choice generates higher fees.

The problem is simple: the industry's accounting does not match the economic reality of the fund.

When a fund realizes income—when it receives a dividend/interest from a portfolio company or sells a security at a gain—that income belongs to the shareholders who owned shares at the moment of realization. It is their income. It will be distributed to them. The fund knows the amount. The fund knows when distribution will occur. Under Generally Accepted Accounting Principles, this is a liability: an obligation that is estimable, probable, and payable.

But the industry does not account for it as a liability. The industry embeds the realized income in NAV—treating a liability as an asset. This inflates the price new buyers pay. And when those buyers later receive "their" distribution, they are taxed on income they never earned.

A Solution Has Existed Since the 1970s

The technology to eliminate this problem has existed for half a century.

Every fund's infrastructure includes the capability to declare dividends daily. Daily dividend accrual is standard practice for money market funds. The systems exist. The processes are proven. The data is available.

If the industry declared dividends daily—or even accrued them as the liabilities they are—the accounting would match economic reality: Realized income would be allocated to shareholders who owned shares when it was realized. NAV would reflect the fund's true net asset value, not an inflated figure containing embedded liabilities. New purchasers would pay a price that reflects what they are actually buying. Distributions would be taxable only to shareholders who earned them.

There would be no double taxation. There would be no "buying the dividend." There would be no $1,150 wrongful tax bills for teachers investing their pensions.

The problem would simply not exist.

Why the Industry Refuses

The industry does not declare dividends daily because doing so would lower NAV. And lower NAV means lower fees.

Advisory fees are calculated as a percentage of assets under management. Assets under management are measured by NAV. When NAV includes embedded realized income—income that is economically a liability owed to shareholders—assets under management are overstated. Fees are calculated on the overstated figure.

Consider a fund with $10 billion in true net assets and $700 million in embedded realized income. Under current practice, the fund reports $10.7 billion in assets under management. At a 0.50% advisory fee, the fund collects $53.5 million annually.

If the fund properly accounted for embedded income as a liability, it would report $10 billion in assets under management. The advisory fee would be $50 million—$3.5 million less.

The industry chose—and continues to choose—$3.5 million in extra fees over accurate accounting. And 160 million Americans pay the price in wrongful taxation.

The Circularity of the Industry's Position

Consider what the industry is actually saying:

1. "We embed realized income in NAV rather than declaring it as a dividend when realized."
2. "This causes new purchasers to pay for income they didn't earn."
3. "When we distribute that income, those purchasers receive back what they paid."
4. "We report that distribution as taxable income, even though we know it's return of capital."
5. "The resulting double taxation generates an 'unnecessary tax bill.'"
6. "We could fix this by declaring dividends daily, but we won't, because we make more money this way."

The industry created the problem. The industry profits from the problem. The industry admits the problem causes "unnecessary" taxation. The industry refuses to fix the problem.

And the industry's defense? "All dividends are taxable."

This is not a legal argument. It is an admission dressed as a defense. The industry concedes that its accounting choice—made for its financial benefit—creates double taxation that harms investors. The industry then files forms that perpetuate the harm while publishing warnings that acknowledge it.

The word for this is not "compliance." The word for this is willful disregard.

J. The Devastating Conclusion: The Industry Cannot Dispute What It Has Admitted

The industry has conceded the essential facts. The industry publishes—on its own websites, in its own words—that first distributions to new purchasers include return of capital being reported as taxable income.

Consider what this means for each element of our legal argument. Petitioner argued that distributions which merely return invested capital are not "income" under *Glenshaw Glass*—the industry agrees, calling these distributions "a portion of the investment . . . returned." Petitioner argued that taxing these distributions creates improper double taxation—the industry agrees, calling this "an unnecessary tax bill." Petitioner argued that the 1099-DIV classification is incorrect—the industry agrees, acknowledging that return of capital is being reported "as a taxable distribution."

The industry does not dispute Petitioner's legal analysis. The industry confirms it.

The Industry Cannot Have It Both Ways

This creates an impossible position. The industry cannot simultaneously tell investors that distributions include return of capital (as it does on its websites and prospectuses), tell the IRS that distributions are fully taxable dividends (as it does on its 1099-DIVs), and claim in enforcement proceedings that the 1099-DIVs are correct.

If the distributions are return of capital—as the industry publicly admits—then reporting them as taxable dividends is incorrect. If reporting them as taxable dividends is correct, then the industry's public warnings are false and misleading.

Both statements cannot be true. The industry knows which one is accurate. It published the accurate statement on its websites. It filed the inaccurate statement with the IRS.

The Defense Collapses

The industry's legal defense—"all dividends are taxable, we report dividends, our forms are correct"—cannot survive the industry's own admissions.

A defendant cannot confess to the elements of an offense and then deny liability. A filer cannot publish that its forms misclassify return of capital as taxable income and then claim the forms are accurate. The industry's public statements are binding admissions against interest.

The legal analysis above demonstrates why the forms are wrong as a matter of law. The industry's confessions demonstrate that the industry knows the forms are wrong as a matter of fact. Together, they establish that the forms are wrong, the industry knows they are wrong, and the industry files them anyway.

That is the definition of intentional disregard under the Internal Revenue Code.[109]

K. Why Confession Eliminates the Need for Investigation

The significance of these admissions extends beyond legal argument. They transform enforcement.

What the IRS Would Ordinarily Need to Establish

In a typical information return penalty case, the IRS would need to prove:

1. **That the forms are incorrect** — Normally requires expert analysis of the underlying transactions
2. **That the filer knew the forms were incorrect** — Normally requires evidence of intent or recklessness
3. **That the filer chose to file anyway** — Normally requires proof of deliberate conduct

Each element would require investigation. Each would require evidence. Each would be contested.

What the Industry's Admissions Establish

The industry's published admissions establish all three elements without further investigation:

1) **Knowledge that forms are incorrect:** Published admissions on company websites — *Satisfied by confession*
2) **Deliberate choice to file anyway:** Nearly eight years of continued filing after notice — *Satisfied by record*

[109] *See* I.R.C. § 6721(e) (defining "intentional disregard" to include knowing or reckless failures to file correct information returns).

3) **Rejection of available remediation:** Documented refusal of technological fix — *Satisfied by record*

This is not a close question requiring judgment calls about state of mind. The industry has confessed to knowledge. The record establishes continued filing. The fix was offered and refused. Every element of intentional disregard is satisfied by evidence the industry itself created.

L. The Penalty Framework: Mandatory, Not Discretionary

Why Information Return Penalties Exist

The federal tax system depends on information returns. Employers file W-2s. Banks file 1099-INTs. Brokers/custodians file 1099-Bs and 1099-DIVs. For distributions, brokers rely on characterization data provided by the funds—the fund determines what is reported as a dividend versus return of capital, and brokers report accordingly.

The system works only if the forms are correct. When filers submit incorrect forms, the harm cascades: taxpayers unknowingly report incorrect amounts, taxpayers unknowingly pay incorrect tax, and taxpayers have no practical ability to determine that the forms were wrong.

Congress understood this. Congress imposed penalties on filers—not on recipients—because filers are the only parties who can prevent the harm.

The Statutory Structure

Congress did not make information return penalties discretionary. Congress made them mandatory.

Section 6721 addresses failures to file correct information returns with the IRS. Section 6722 addresses failures to furnish correct payee statements to taxpayers.[110] Both use identical mandatory language:

"[T]he person failing to meet such requirements **shall** pay a penalty."[111]

Shall. Not *may.* Not *at the Secretary's discretion.* **Shall**.

[110] I.R.C. §§ 6721, 6722.
[111] I.R.C. § 6721(a)(1); *accord* I.R.C. § 6722(a)(1).

The Supreme Court has explained what this language means: "'Shall' . . . normally creates an obligation impervious to judicial discretion."[112] When Congress says "shall," the action is mandatory. The agency has no discretion to decline.

The Intentional Disregard Enhancement

For ordinary failures, Congress provided tiered penalties with caps. For intentional disregard, Congress removed the caps entirely:

1. **Standard penalty:** $50–$310 per form, depending on when corrected. Maximum: $3,832,500 per year.[113]
2. **Intentional disregard penalty:** The greater of the base penalty ($660 for 2025) or 10 percent of the aggregate amount required to be reported correctly. Maximum: none.[114]

Congress could not have been clearer. When filers intentionally disregard their obligations, the penalty is uncapped—and calculated based on the aggregate amounts misreported.

The Definition of Intentional Disregard

Treasury's regulation defines the standard: "A failure is due to intentional disregard if it is a knowing or willful failure."[115]

The industry's record satisfies this definition completely:

1. **Knowledge that forms are incorrect:** The industry publishes on its own websites and in SEC-filed prospectuses that distributions to new purchasers "may be a return of your capital" and generate "unnecessary tax bills"—then files Forms 1099-DIV reporting those same distributions as fully taxable dividends. The industry has known the forms are incorrect for as long as it has made these admissions.
2. **Deliberate choice to file anyway:** The admissions and the incorrect filings occur simultaneously, year after year. Every year the industry publishes the warning, and every year it files the forms. This is not negligence. This is a deliberate, repeated choice.

[112] *Lexecon Inc. v. Milberg Weiss Bershad Hynes & Lerach*, 523 U.S. 26, 35 (1998).
[113] I.R.C. §§ 6721(a)–(d), 6722(a)–(d) (as adjusted for inflation).
[114] I.R.C. § 6721(e)(2)(A), (3)(A); I.R.C. § 6722(e)(2)(A), (3)(A).
[115] Treas. Reg. § 301.6721-1(f)(2).

3. **Rejection of available remediation:** Petitioner offered technology to correct the problem starting in 2018. The industry declined and continued filing incorrect forms for nearly eight years after explicit notice and offer of a fix.

This is not a close question. The industry has confessed to knowledge. The record establishes continued filing. The fix was offered and refused. Every element of intentional disregard is satisfied by evidence the industry itself created.

M. The "Shall" Commands: Why Enforcement Is Mandatory

The Chain of Statutory Commands

Congress did not merely prescribe penalties. Congress commanded their enforcement. The Internal Revenue Code contains a chain of mandatory directives:

1. **§ 6671(a) — Penalties treated as taxes:** "The penalties and liabilities provided by this subchapter **shall** be paid upon notice and demand by the Secretary, and **shall** be assessed and collected in the same manner as taxes."[116]
2. **§ 6201(a) — Assessment authority and duty:** "The Secretary is authorized and **required** to make the inquiries, determinations, and assessments of all taxes (including . . . assessable penalties) imposed by this title."[117]
3. **§ 6301 — Collection authority and duty:** "The Secretary **shall** collect the taxes imposed by the internal revenue laws."[118]
4. **§ 6303(a) — Notice and demand:** "[T]he Secretary **shall**, as soon as practicable, and within 60 days, after the making of an assessment of a tax . . . give notice to each person liable for the unpaid tax, stating the amount and demanding payment thereof."[119]

Four statutes. Four "shall" commands. One conclusion: these are duties, not options.

[116] I.R.C. § 6671(a).
[117] I.R.C. § 6201(a).
[118] I.R.C. § 6301.
[119] I.R.C. § 6303(a).

Applied here: Penalties *shall* be assessed (§ 6671(a)). The Secretary is *required* to assess (§ 6201(a)). The Secretary *shall* collect (§ 6301). Notice *shall* be given within 60 days (§ 6303(a)).

These are commands. They bind the IRS as they bind every agency of the federal government.

The significance for this Petition cannot be overstated. The IRS does not have discretion to decline enforcement when the statutory predicates are satisfied. The predicates here are satisfied—by the industry's own admissions, by nearly eight years of documented notice, by the industry's rejection of available remediation. Once the violation is established and the filer's intentional disregard is evident, the statute does not ask whether the Secretary *wishes* to assess penalties. It commands that penalties *shall* be assessed.

A decision not to enforce, when the statutory predicates are satisfied, and the violations are documented, is not an exercise of prosecutorial discretion — it is a departure from mandatory statutory language that a court can review and correct. The IRS may not sit on debts owed to the United States Treasury — debts that Congress mandated be collected — while the statute of limitations extinguishes them year by year.

The statutory commands are clear. The question is whether they will be implemented before the assessment window closes.

N. The Statute of Limitations: Debts Expiring Daily

The Assessment Window

Information return penalties must be assessed within three years of the return's due date.[120] For calendar-year 1099-DIV electronic filers, the due date is March 31 of the following year.

1. Tax Year 2018: 1099-DIV Due March 31, 2019 — Assessment Deadline March 31, 2022 — **CLOSED**
2. Tax Year 2019: 1099-DIV Due March 31, 2020 — Assessment Deadline March 31, 2023 — **CLOSED**
3. Tax Year 2020: 1099-DIV Due March 31, 2021 — Assessment Deadline March 31, 2024 — **CLOSED**

[120] I.R.C. § 6501(a).

4. Tax Year 2021: 1099-DIV Due March 31, 2022 — Assessment Deadline March 31, 2025 — **CLOSED**
5. Tax Year 2022: 1099-DIV Due March 31, 2023 — Assessment Deadline March 31, 2026 — **Expiring in weeks**
6. Tax Year 2023: 1099-DIV Due March 31, 2024 — Assessment Deadline March 31, 2027 — Open
7. Tax Year 2024: 1099-DIV Due March 31, 2025 — Assessment Deadline March 31, 2028 — Open

Petitioner filed with the IRS in 2023. Since that filing, three full tax years have closed—2019, 2020, and 2021. Those penalties can never be collected. Billions of dollars in statutory penalties, owed to the United States Treasury, extinguished while the agency sat on a whistleblower submission documenting the violation in detail.

Tax year 2022 closes on March 31, 2026—weeks from the date of this Petition. Every day that passes forfeits additional penalties that Congress mandated be collected.

The Scale of Exposure

The penalty framework for intentional disregard operates on two tracks—one for forms filed with the IRS (§ 6721), one for statements furnished to payees (§ 6722). Both apply here. Every incorrect Form 1099-DIV filed with the IRS triggers § 6721. Every incorrect copy furnished to an investor triggers § 6722. The same underlying violation generates two separate penalties.

For each track, the intentional disregard penalty is calculated as "the greater of" a fixed dollar amount "or 10 percent of the aggregate amount required to be reported correctly."

Section 6721 (Filing with IRS):

- Base penalty for intentional disregard: $660 per form (2025), with no calendar year cap
- Alternative penalty: 10% of the aggregate amount required to be reported correctly
- The greater of these two amounts applies

Section 6722 (Furnishing to Payee):

- Base penalty for intentional disregard: $660 per statement (2025), with no calendar year cap
- Alternative penalty: 10% of the aggregate amount required to be reported correctly
- The greater of these two amounts applies

Combined exposure per form: Up to $1,320 per incorrect 1099-DIV (one penalty for filing with IRS, one for furnishing to investor), or 20% of the misreported amount—whichever is greater.

For the industry as a whole:

- Affected 1099-DIVs per year: tens of millions
- Aggregate amounts misreported per year: tens of billions of dollars
- 10% penalty on misreported amounts (§ 6721 alone): billions per year
- Combined 20% exposure (§§ 6721 + 6722): billions more
- Years at issue before limitations close: 3+
- Total industry penalty exposure: tens of billions of dollars

This is a debt owed to the United States Treasury—mandated by statute, commanded to be collected—that evaporates if not assessed within the statutory window. Every day the IRS delays, more of this debt expires. Every year that closes without assessment represents billions in forfeitures that Congress never authorized the agency to forgive.

O. The Harm to Investors: 160 Million Americans Overtaxed

The penalty exposure matters because it creates leverage. But the underlying harm matters more: 160 million Americans are being taxed on their own money.[121]

The Human Reality

A retired teacher in Ohio puts $65,000 of her savings into an S&P 500 index fund in November. In December, the fund makes its annual distribution—7% of NAV. Her 1099-DIV reports $4,550 in capital gains distributions. She pays over $1,150 in federal and state tax.

[121] Investment Company Institute, "Ownership of Mutual Funds and Shareholder Sentiment, 2025."

But she purchased her shares after those gains were realized. The gains were embedded in the NAV she paid. When the fund distributed them, she received back a portion of what she had already paid. Under the law, that $4,550 should have been reported as return of capital in Box 3—nontaxable, reducing her basis.

Instead, she paid over $1,150 in tax she did not owe.

Multiply by 160 million shareholders. Multiply by decades. The total wrongful taxation is measured in hundreds of billions of dollars.

P. Conclusion: The Legal Case Is Complete—And the Industry Has Already Conceded It

Every applicable legal authority—constitutional, statutory, regulatory, and judicial—compels a single conclusion: first distributions to new fund purchasers are return of capital, not taxable income. These authorities do not conflict. They do not require reconciliation. They converge, each reinforcing the others, each independently sufficient, together forming a wall of precedent that admits no breach.

The constitutional foundation is settled. Income, for purposes of the Sixteenth Amendment, means "undeniable accessions to wealth, clearly realized, and over which the taxpayers have complete dominion." *Commissioner v. Glenshaw Glass Co.*, 348 U.S. 426, 431 (1955). A buyer who pays $10,000 for fund shares, receives a $700 distribution, and holds shares now worth $9,300 has experienced no accession to wealth. She began with $10,000 in cash. She ends with $9,300 in shares and $700 in cash—$10,000 total. The distribution converted her wealth from one form to another. It did not increase it. What is not an accession to wealth is not income. What is not income cannot be taxed as income.

The anti-duplication principle reinforces this conclusion. The Supreme Court has long held that "the identical money" cannot be "the basis of two assessments." *Bull v. United States*, 295 U.S. 247, 260 (1935). Here, the seller paid tax on the embedded income—it inflated her sale price, generating a capital gain she reported and paid tax on. The buyer now pays tax on that same economic dollar, recharacterized as a dividend. One dollar of gain. Two taxpayers assessed. This is precisely the double taxation *Bull* forbids.

The assignment of income doctrine points the same direction. Income is taxed to the person who earns it, not to the person who later receives it in a different form. *Helvering v. Horst*, 311 U.S. 112 (1940). The seller earned the embedded income while holding the shares. The buyer did

not earn it. The buyer purchased an asset whose price reflected income already earned by someone else. Taxing the buyer on the seller's income does not apply *Horst*—it inverts it.

The statutory text is equally clear. Congress created I.R.C. § 301(c)(2) to classify distributions that are *not* dividends as return of capital. The provision exists because Congress recognized that some distributions—even from entities with earnings and profits—are not income to particular recipients. The industry's implicit position, that all distributions from funds with E&P are taxable dividends to all shareholders, renders § 301(c)(2) a nullity. Courts do not permit such readings. A statute must be construed to give effect to every provision; interpretations that make clauses "superfluous, void, or insignificant" are forbidden. *Williams v. Taylor*, 529 U.S. 362, 404 (2000). The industry's position is not merely wrong. It is textually impermissible.

Treasury's own regulations confirm the principle. When a bond buyer pays a price that includes accrued interest, the first interest payment is not income—it is return of capital. Treas. Reg. § 1.61-7(c). The economics are identical: the buyer compensates the seller for earned-but-undistributed income at purchase, then recovers that amount tax-free when distribution occurs. Treasury has already adopted this treatment for bonds. The same principle, applied to the same economics, compels the same result for funds.

The IRS's own forms reflect this understanding. Form 1099-DIV includes Box 3: "Nondividend distributions." The instructions explain that Box 3 reports amounts that are "a return of your cost (or other basis)." The IRS designed this box for precisely the situation at issue. The industry uses Box 3 for other distributions. It refuses to use it here—ignoring the distinction the form was created to capture.

These authorities—constitutional, common law, statutory, regulatory, administrative—form a unified framework. They are not in tension. They do not point in different directions. Every one of them establishes that a distribution which merely returns a shareholder's own capital is not a taxable dividend to that shareholder, regardless of the payor's earnings and profits, regardless of how the payor labels the payment.

And this brings us to the principle that unifies and undergirds them all. For ninety years, the Supreme Court has held that taxation follows economic substance, not nomenclature. The foundational case is *Gregory v. Helvering*, 293 U.S. 465 (1935): "The question for determination is whether what was done, apart from the tax motive, was the thing which the statute intended." A decade later, *Commissioner v. Court Holding Co.*, 324 U.S. 331, 334 (1945), made the principle

explicit: "The incidence of taxation depends upon the substance of a transaction. To permit the true nature of a transaction to be disguised by mere formalisms, which exist solely to alter tax liabilities, would seriously impair the effective administration of the tax policies of Congress."

This principle is not one authority among many. It is the lodestar. It explains *why* Glenshaw Glass looks to economic accession rather than formal receipt. It explains *why* Bull prohibits taxing the same dollar twice regardless of how it is labeled the second time. It explains *why* § 301(c)(2) exists—because Congress knew that labels do not determine character. It explains *why* Treasury treats bond interest and fund distributions identically when the economics are identical. Substance over form is not a fallback. It is the foundation on which every other authority rests.

The industry's position reduces to a single claim: that it may relabel a transaction rather than accurately report it, and that this relabeling—chosen because it requires fewer steps than proper calculation—overrides economic reality and ninety years of Supreme Court precedent. The industry asserts that by calling a payment a "dividend," the payment becomes a dividend, substance notwithstanding. This is not a legal argument. It is an assertion of private legislative authority, a claim that information return filers may define income for 160 million Americans through nomenclature alone—and that convenience justifies the error. The Supreme Court rejected this claim in 1935. It rejected it again in 1945. It has never stopped rejecting it. There is no case, in any court, in any decade, holding that a filer's label controls over economic substance, or that administrative ease excuses systematic misreporting. The industry's position is foreclosed—not by one doctrine, but by the master principle that governs them all.

The legal analysis is complete. It is also unnecessary. The industry has already conceded every material point.

BlackRock—the world's largest asset manager—publishes that "buying a dividend... generates an unnecessary tax bill" because "a portion of the investment is returned to the investor as a taxable distribution." Vanguard, Fidelity, Schwab, and State Street make near identical disclosures in SEC-filed prospectuses, warning investors that distributions "may be a return of your capital" and that purchasing before a distribution means receiving back, in taxable form, money just paid. These are not informal statements. They are representations filed with federal regulators, subject to liability for material misstatement.

Then the industry files Form 1099-DIV reporting those same distributions as fully taxable dividends.

Both cannot be true. If the distributions are fully taxable dividends, the prospectus warnings are false — material misstatements in documents filed with the Commission, sustained for decades. If the distributions may be return of capital, as every major fund complex has stated under penalty of law, the 1099-DIVs are false — hundreds of millions of false federal information returns, transmitted via United States mail to investors and via electronic wire to the IRS, filed knowingly, and sustained because accurate reporting would deflate the NAV on which the enterprise calculates its advisory fees. Under *New Hampshire v. Maine*, 532 U.S. 742 (2001), parties may not deliberately maintain contradictory positions before different federal agencies to gain advantage. Defendants who tell the SEC that distributions include return of capital cannot simultaneously tell the IRS that the same distributions are 100% ordinary income. The industry must choose which of its own statements to repudiate. It cannot escape liability. It can only select which liability to face.

The industry knew. It published what it knew. It kept filing anyway.

We have proven through binding precedent what the industry admits in plain English. Constitutional law confirms what BlackRock advertises. Supreme Court doctrine validates what every prospectus discloses. The law compels a conclusion the industry reached long ago.

The only questions remaining are why the forms have not been corrected, what penalties attach to decades of intentional disregard, and who will answer for the ongoing harm inflicted on 160 million Americans who trusted forms the filers knew to be wrong.

Q. Coordinated Enforcement

The securities violations documented in this Petition and the tax violations documented in this Section arise from the same underlying conduct. They require coordinated remediation.

Request to the Securities and Exchange Commission

The Commission should formally refer this matter to the Department of the Treasury and the Internal Revenue Service, transmitting the evidentiary record compiled in this Petition. The Commission should coordinate prospectus remediation with tax remediation, ensuring that correction of securities disclosures is accompanied by correction of information returns. The Commission should also consider whether continued filing of incorrect Forms 1099-DIV—forms

that contradict the funds' own SEC-filed prospectus disclosures—constitutes a material misstatement or omission relevant to the Commission's antifraud authority.

Request to the Internal Revenue Service

The Internal Revenue Service should immediately assess penalties under I.R.C. §§ 6721(e) and 6722(e) for intentional disregard. The predicates are established by the industry's own published admissions. The "shall" commands of §§ 6671(a), 6201(a), 6301, and 6303(a) require action. The statute of limitations is expiring—tax year 2022 closes on March 31, 2026, weeks from the date of this Petition. The Service should issue corrective guidance mandating that future Forms 1099-DIV allocate distributions between taxable amounts and Box 3 (nondividend distributions) based on recipient-specific purchase dates and embedded realized income. The Service should refer for criminal investigation under I.R.C. § 7206 the executives at major fund complexes who, after documented notice and offer of remediation, approved continued filing of forms they knew to be incorrect.

Request to the Department of Justice

The Department should evaluate whether the industry's conduct — filing hundreds of millions of false federal information returns via United States mail and electronic wire, with knowledge of their falsity established by the filers' own SEC-filed prospectus admissions, sustained for decades because the inflated-NAV pricing methodology that produces them generates excess advisory fee revenue, and enforced through the coordinated suppression of the only company offering corrective technology — constitutes violations of: the mail and wire fraud statutes (18 U.S.C. §§ 1341, 1343); the Racketeer Influenced and Corrupt Organizations Act (18 U.S.C. §§ 1962(a), (c), (d)); federal criminal tax statutes (IRC §§ 7206(1)-(2)); and the Sherman Act (15 U.S.C. § 1). The scale — hundreds of millions of predicate acts annually, conducted through an association of firms whose common purpose is profit, with no natural termination point — is precisely the pattern of racketeering activity Congress enacted RICO to address. Each false Form 1099-DIV is an independent predicate act under *Schmuck v. United States*, 489 U.S. 705 (1989) — and unlike the innocent mailings in *Schmuck*, the 1099-DIV *is* the false statement itself, making each form an exceptionally strong predicate.

VIII. COMPETITION AND MARKET INTEGRITY: WHY MARKET FORCES CANNOT SELF-CORRECT

The Securities and Exchange Commission cannot simultaneously claim that American capital markets are fair, orderly, and efficient while permitting an industry-wide group boycott of the only technology that would make those markets actually fair, orderly, and efficient. The Commission cannot fulfill its statutory mandate to protect investors while tolerating an association of firms that has organized itself — through interlocking business relationships, shared infrastructure, concentrated control over market utilities, and weaponized governance power — into a coordinated enterprise whose common purpose is the maintenance of inflated fee revenue, and whose operational method is the suppression of every mechanism that would force correction: accurate pricing, truthful tax reporting, and point-of-sale disclosure. The Commission cannot credibly enforce disclosure requirements against individual bad actors while ignoring a market structure designed to ensure that truthful disclosure never reaches investors at scale.

These are not rhetorical observations. They are statements of logical impossibility. And they frame the central question this Section addresses: whether the Securities and Exchange Commission will govern American securities markets, or whether the fund industry's calculation that it need not fear enforcement will prove correct.

The evidence compiled in this Petition documents that calculation. For nearly eight years, an entire industry has been presented with detailed notice of systematic violations, offered technology that would correct those violations at minimal cost, and given every opportunity to demonstrate that market forces can self-correct. The industry's response has been uniform: acknowledge the problem, refuse the solution, coordinate to ensure no competitor breaks ranks, and wait.

That response was rational only if the industry correctly assessed that it faced no credible threat of enforcement—that its lobbying apparatus could secure exemptions from other agencies, that the same asset managers who profit from inflated NAVs also vote the shares that control the gatekeepers and intermediaries, and that the Commission would not act.

This Petition asks the Commission to prove that calculation wrong.

This Section explains why market forces cannot correct the violations documented in this Petition, why that failure reflects coordinated conduct rather than innocent market dynamics, and

why the Commission's continued inaction is incompatible with the statutory mission Congress assigned it. The question is not whether the Commission has authority to act. The question is whether the Commission will acknowledge that an industry cartel has, in practical effect, stripped that authority of meaning—and whether the Commission will reassert control over markets it is charged with governing.

A. The Commission's Statutory Mandate Requires Competition Analysis

The Securities and Exchange Commission does not exist merely to police disclosure documents. Congress assigned the Commission a broader mandate: to protect investors, maintain fair, orderly, and efficient markets, and facilitate capital formation. When the Commission engages in rulemaking, Congress expressly requires it to consider "efficiency, competition, and capital formation."[122] These are not decorative phrases. They reflect a foundational legislative judgment that competitive markets serve investors and that markets captured by coordinated private interests require regulatory intervention.

This Section invokes that mandate. It does not ask the Commission to adjudicate antitrust claims or to enforce the Sherman Act—authority that belongs to the Department of Justice and the Federal Trade Commission. It asks the Commission to recognize something more modest but equally important: that market discipline has failed here, that it has failed because the industry has organized itself to prevent correction, and that disclosure-based regulation cannot succeed when the market's dominant participants have aligned to suppress the very transparency disclosure is meant to provide.

The Commission's mission statement declares that the SEC "strives to promote a market environment that is worthy of the public's trust."[123] Trust requires that markets function as advertised—that prices reflect economic value, that disclosures convey material information, that competition rewards firms serving investors well and punishes those that do not. When an entire industry organizes to ensure that prices remain inflated, disclosures remain misleading, and competition on truthfulness is foreclosed, the market environment is not worthy of public trust. It is worthy of investigation.

[122]15 U.S.C. §§ 77b(b), 78c(f), 80a-2(c).

[123]U.S. Securities and Exchange Commission, *What We Do*, https://www.sec.gov/about/what-we-do.

Understanding why voluntary correction never occurred—despite nearly eight years of detailed notice, demonstrated harm, and ready solutions—is therefore essential to understanding why the Commission must act. The industry did not fail to understand the problem. It understood the problem perfectly. It simply determined, collectively, that the problem was more profitable unsolved. And it believed—correctly, until now—that no regulator would stop it.

B. The Economic Logic: A Hidden Overcharge That Aligns Every Fee-Taker Against Correction

The pricing distortion documented in this Petition is not an accident. It is not a mere artifact of accounting convention. It is a structural feature that transfers wealth from investors to every participant in the fund distribution chain—simultaneously and continuously. That simultaneity is the architecture's genius and its tell: it creates shared incentives that align every fee-taker against correction.

When realized income is embedded in net asset value rather than treated as a liability owed to shareholders of record, the NAV is inflated above the fund's true economic worth. That inflation cascades through every fee calculation in the system. Investment advisers bill asset-based fees on the inflated figure. Sub-advisers do the same. Administrators, custodians, transfer agents, platforms, and distributors all extract their percentage from a base that includes amounts the fund owes but has not yet paid. The larger the embedded income, the larger every fee.

This is not a bug. From the industry's perspective, it is a feature—and a lucrative one.

The economics create what antitrust scholars recognize as a "plus factor" for coordinated behavior: conduct that would be irrational for any single firm acting independently but becomes rational when all participants understand they are acting in concert.[124] No single adviser can unilaterally correct its pricing without reducing its own fee revenue while competitors continue extracting from the inflated base. No administrator will enable the configuration that corrects NAV when doing so would reduce the fees it collects and anger the fund complexes whose business it depends upon. No gatekeeper will distribute technology that shrinks the industry's revenue base when that same industry constitutes both its customer base and, as documented below, its shareholder base.

[124] *See* Phillip E. Areeda & Herbert Hovenkamp, ANTITRUST LAW ¶ 1434 (4th ed.) (discussing "plus factors" that distinguish permissible parallel conduct from unlawful agreement).

The result is equilibrium—stable, self-reinforcing, and impervious to competitive pressure. Every participant profits from maintaining the status quo. The only losers are investors, who pay the inflated prices, receive the tax bills, and lack the information to know what is being done to them.

The harm compounds permanently. An investor who pays an inflated price receives fewer shares for the same capital. Fewer shares means fewer dividends—not just in the quarter of purchase, but in every quarter thereafter, for as long as the investor holds the position. Over a working lifetime, with dividend reinvestment, this "quiet compounding" of the initial shortfall produces material losses in retirement income. A teacher who invests $500 monthly for thirty years does not lose money once. She loses money on every purchase, is overbilled every day, and then loses the compounding growth on each of those losses, and then loses the dividends she would have earned on shares she never received. The industry extracts a toll at the moment of purchase that continues extracting value for decades.

The scheme requires complementary violations to persist. Accurate tax reporting would expose the overcharge—investors would see "return of capital" on their 1099-DIVs instead of "dividends" and would ask why they paid for income they never earned. Truthful point-of-sale disclosure would allow comparison shopping—investors could see which funds carried less embedded liability and choose accordingly. To maintain the pricing convention, the industry must also maintain false tax forms and misleading prospectuses. The violations are not separate. They are mutually reinforcing components of a single coordinated structure.

When an association of firms files hundreds of millions of false federal information returns via mail and wire as the necessary cost of maintaining a pricing methodology that generates excess fee revenue — while simultaneously suppressing the only technology that would correct both the false reporting and the inflated pricing — the conduct has a name in federal law. It is a pattern of racketeering activity conducted through an enterprise. The false tax forms and the misleading prospectuses are not parallel violations arising independently from the same root cause. They are coordinated outputs of an enterprise that needs both — because correcting either would expose the other, and correcting both would end the excess fees that are the enterprise's reason for existing. This is the structural logic that sustained the tobacco industry's coordinated suppression of health information for decades — competing companies coordinating to suppress information that threatened their shared scheme. *See United States v. Philip Morris USA Inc.*, 566 F.3d 1095 (D.C.

Cir. 2009). The mutual fund enterprise follows the same structural logic: the enterprise suppresses the threat because the threat would end the scheme.

This is not a disclosure problem that competition will solve. This is a competition problem that forecloses the disclosure solution.

C. The Technology Existed—And Was Uniformly Refused

If the industry's failure to self-correct reflected mere inertia or complexity, one would expect varied responses to a demonstrated solution. Some firms would move quickly to gain competitive advantage. Others would move slowly. Some would express interest; others would decline. The pattern would be heterogeneous, reflecting the varied cultures, risk appetites, and strategic priorities of firms competing in a multi-trillion-dollar market.

That is not what happened.

What happened is what one would expect from a cartel: uniform rejection of a threat to collective profits.

Petitioner developed and offered a suite of technology products that would have corrected the pricing distortion, generated accurate tax forms, and provided real-time point-of-sale disclosure showing investors their estimated loss before they committed capital. The technology was plug-and-play. It operated on data every fund already maintains. Implementation required uploading existing files and configuring settings—not rebuilding infrastructure. The marginal cost of adoption approached zero.

The initial response from industry professionals was uniformly positive. Tax directors and fund accountants engaged with the details. They did not dispute the mechanics. They did not question the feasibility. At firm after firm, executives described the solution as "groundbreaking," "revolutionary," something that would "redefine financial markets." One senior tax director at a major fund complex captured the competitive stakes precisely: "If you can get just one fund to do this, all other funds will be forced to fix this within 12 months."

That statement is a confession of three things simultaneously. First, that the technology works—it solves the problem it addresses. Second, that adoption by any single firm would create competitive pressure forcing industry-wide implementation. Third, that the first mover would gain substantial advantage as investors migrated toward funds offering accurate pricing and truthful disclosure.

Any rational competitor, in a functioning market, would race to be that first mover.

And yet no one moved.

Not a single major fund complex adopted the technology. Not one agreed even to pilot it on a test fund. Not one conducted a cost-benefit analysis that could be shared with regulators. After initial enthusiasm was escalated to senior management—or after gatekeepers "checked with their clients"—every firm reversed course. The pattern was not varied or heterogeneous. It was uniform: engagement, recognition, enthusiasm, then silence.

Under the framework the Supreme Court established in *Matsushita* and refined in *Twombly*, this pattern—conduct "that would be irrational assuming normal market conditions"—is precisely the circumstantial evidence from which agreement may be inferred.[125] The probability that hundreds of profit-maximizing firms, in a market this large and this varied, would independently reject clear competitive advantage for no discernible reason is vanishingly small. Independent decision-making produces heterogeneous outcomes. Coordinated decision-making produces uniformity. The record shows uniformity.

The only coherent explanation is that the participants understood, implicitly or explicitly, that defection would not be tolerated.

D. The Admissions: What the Industry Confessed in Its Own Words

Two admissions, from executives at firms positioned at critical infrastructure nodes, strip away any pretense that the industry's inaction reflects innocent disagreement or good-faith caution. These are not inferences drawn from circumstantial evidence. They are not characterizations imposed by Petitioner. They are confessions—the kind of direct evidence that antitrust enforcers rarely obtain outside of grand jury investigations or cooperating witness testimony.

The Commission should read them with the care they deserve.

The "Checkbox" Confession

A major fund administrator—a firm that provides transfer-agent and fund-accounting services to multiple fund complexes—reviewed the technology and the underlying analysis. Its executives acknowledged that the solution worked. They acknowledged that implementation

[125] *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 556-57 (2007); *In re Text Messaging Antitrust Litig.*, 782 F.3d 867, 879 (7th Cir. 2015) (conduct "that would be irrational assuming normal market conditions" supports inference of conspiracy).

would be straightforward. They then made an extraordinary admission: their own transfer-agent system already contains, in substance, a configuration setting that would remove embedded dividends from NAV.

The capability exists. It has existed for decades. It is not turned on.

When Petitioner asked why the corrective configuration is not enabled, the response was direct: *"Investment managers would never go for it"* because *"everyone bills on the inflated net asset value."*

Parse that statement phrase by phrase, because each phrase carries independent legal significance.

"Investment managers would never go for it." This is not a prediction about one firm's likely reaction. It is a statement about the collective. The gatekeeper is not saying "Fidelity might object" or "Vanguard prefers the current approach." The gatekeeper is saying that investment managers—as a class, as an industry—have a unified position. The use of "never" indicates not uncertainty but certainty: the gatekeeper knows how the industry will respond because the industry's position is known.

"Investment managers bill on the inflated NAV." This is the confession's core. A gatekeeper with the technical capacity to correct the pricing distortion—today, at no cost, by changing a configuration setting—explained that correction is blocked because *every* participant profits from the inflated base. Not "some firms prefer the current approach." Not "there are legitimate business reasons for the convention." Not "the accounting treatment has regulatory approval." *Investment managers bill on the inflated NAV.*

The word "everyone" eliminates the possibility that this reflects independent business judgment by heterogeneous competitors. Independent judgment produces variation. "Everyone" indicates uniformity—the uniformity of agreement.

The gatekeeper's statement also reveals the mechanism of enforcement. The switch exists. The gatekeeper could flip it. But the gatekeeper will not flip it because "investment managers would never go for it." The gatekeeper understands that its business depends on the fund complexes it serves. The gatekeeper understands that those complexes profit from inflated NAVs. The gatekeeper understands that enabling correction would antagonize its entire customer base. So the switch stays off—not because correction is technically difficult, not because it would harm

investors, not because regulators have blessed the current approach, but because the fund complexes whose fees depend on inflation have made clear that correction will not be tolerated.

That is not a business judgment. That is an admission of horizontal agreement on a common pricing formula—the core of a price-fixing violation under Section 1 of the Sherman Act.[126] The Department of Justice has made clear that "the machinery employed by a combination for price-fixing is immaterial"; what matters is that competitors have agreed to maintain prices at artificial levels.[127] Here, the "machinery" is a configuration setting in transfer-agent software. The agreement is the collective understanding—confirmed by the gatekeeper's own words—that no one will flip the switch.

The "Problem Is Real" Admission

A dominant industry player reviewed the analysis independently. Its executives did not dismiss the concerns as unfounded. They did not claim the technology was unworkable. They acknowledged, in writing, that *"the problem is real"* and that the industry has *"simply ignored it."*

Read that admission again. A gatekeeper responsible for generating the tax forms that reach tens of millions of American investors acknowledged that those forms are based on a "problem" the industry has "simply ignored." The vendor knows the forms are wrong. The vendor knows the industry knows. The vendor knows nothing has been done.

That vendor then declined to implement, support, or distribute the corrective technology. It did not claim the analysis was mistaken. It did not assert the solution was technically unworkable. It did not identify regulatory barriers or compliance concerns. It acknowledged reality—and refused to act on it.

In the same exchange, an executive noted that *"industry perception can kill reputations."*

The meaning is unmistakable. A gatekeeper that breaks ranks by supporting investor-protective technology risks retaliation from the fund complexes that constitute its customer base. The vendor understood that its business depends on the same firms whose fee revenue depends on inflated NAVs. Protecting investors would mean antagonizing clients. The vendor performed the calculation and chose clients.

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[126] *See United States v. Socony-Vacuum Oil Co.*, 310 U.S. 150, 223 (1940) ("Any combination which tampers with price structures is engaged in an unlawful activity.").

[127] Statement of Interest of the United States at 2-3, *In re RealPage, Inc., Rental Software Antitrust Litig.*, No. 3:23-md-3071 (M.D. Tenn. Nov. 15, 2023) (quoting *Socony-Vacuum*, 310 U.S. at 223).

That vendor continues, to this day, to generate and file tax forms it has acknowledged are based on a "problem" the industry has "simply ignored." Every 1099-DIV it produces carries forward the knowing mischaracterization. Every investor who relies on those forms pays taxes on amounts the vendor knows are not properly characterized. The vendor knows. The vendor continues.

The Cover-Up Through Prospectus Edits

After Petitioner's initial engagement with the Commission explained that "buying a dividend" is not a rare timing-specific risk but a structural feature affecting every trading day, major fund complexes did not defend their existing disclosures. They did not submit comment letters explaining why their characterization was accurate. They did not engage with the analysis on its merits.

They quietly rewrote their prospectuses.

Across multiple complexes, language describing the risk as arising "shortly before" or "just prior to" distributions—language that had falsely implied a narrow timing window—was softened or removed. The edits were coordinated in timing and substance, suggesting common counsel or trade-association guidance. Courts have long treated such "parallel, copy-and-paste changes" as circumstantial evidence of agreement.[128]

But the complexes did not file corrective supplements acknowledging that prior disclosures were misleading. They did not notify existing investors that they had been misinformed. They did not change their NAV methodology, their fee calculations, or their 1099-DIV practices. They did not adopt the technology that would have corrected the underlying problem.

They scrubbed the language most likely to attract regulatory scrutiny. They left the underlying conduct—and the revenue it generates—firmly in place.

That is not remediation. That is consciousness of guilt. They fixed the words and continued the fraud.

The Commission should ask itself what would prompt multiple fund complexes to simultaneously revise the same disclosure language, in the same direction, at approximately the

[128] *See Interstate Circuit, Inc. v. United States*, 306 U.S. 208, 222-27 (1939) (inferring agreement from parallel adoption of identical practices following common communication); *United States v. Apple Inc.*, 791 F.3d 290, 315-16 (2d Cir. 2015) (similar).

same time, without acknowledging error or changing the underlying practice. Innocent firms with varied business judgments do not behave this way. Coordinated actors seeking to limit liability exposure while preserving revenue do.

E. The Structure: Why No Firm Can Break Ranks

Understanding why the industry can sustain this equilibrium—why not a single firm defected despite clear first-mover advantage—requires understanding its architecture. Three structural features create a system in which defection is not merely costly but effectively impossible: nested hub-and-spoke control, common ownership across ostensible competitors, and the weaponization of investors' own shares against them.

Nested Hub-and-Spoke Control

The fund industry does not consist of thousands of independent actors making isolated decisions. It consists of two layers of centralized control, each ensuring that defection cannot occur at the level below.

At the inner layer, each major fund complex functions as a hub over hundreds of legally separate funds. Each mutual fund is a distinct legal entity with its own board, its own SEC registration, and its own fiduciary duties to shareholders. In theory, each fund board could independently evaluate whether to adopt technology that corrects pricing, reduces investor harm, and mitigates legal risk. In practice, the investment adviser at the complex level makes these decisions and imposes them across the fund lineup. No fund in a major complex adopted the technology because no complex permitted any of its funds to do so. The separate legal existence of each fund is a regulatory fiction; the adviser's control is the operational reality.

At the outer layer, market-structure providers function as a second set of hubs, controlling whether corrective technology can reach the market at all. Administrators and transfer agents determine how NAV is calculated and what configurations are enabled—including the "checkbox" that remains off because "investment managers bill on the inflated net asset value." Clearing and settlement utilities process transactions and dividend distributions. Communications vendors control how information reaches investors and how tax forms are generated. A decision by any of these gatekeepers not to support a new technology is, in practice, a market-wide exclusion: if the infrastructure will not carry it, individual funds cannot realistically implement it.

The gatekeepers did not make independent judgments. They canvassed their clients—the same fund complexes whose fee revenue depends on inflated NAVs—and aligned with those clients' preference that correction not occur. This is the hub-and-spoke pattern the Second Circuit condemned in *United States v. Apple*: a hub uses its relationships with multiple counterparties to organize and enforce a horizontal agreement among them.[129]

The structure explains the pattern in the record: initial technical recognition of feasibility, followed by reversals after consultation with "clients," and then complete market-wide non-adoption. The reversals occurred because the gatekeepers performed exactly the function hubs perform in cartel structures—they transmitted information about the collective preference and enforced alignment with it.

Common Ownership as a Coordination Mechanism

The structural barriers extend beyond business relationships to ownership itself. The largest asset managers are not merely competitors in the market for investor capital. They are also, through the index funds and other vehicles they manage, among the largest shareholders of the very gatekeepers whose infrastructure controls pricing and reporting.

The three largest index fund managers together hold significant ownership stakes in the dominant communications vendor, in major exchanges, in leading administrators and technology providers, and in the clearing and settlement utilities that process fund transactions.[130] They do not merely do business with these gatekeepers as customers. They vote on their boards. They influence their governance. They meet with management to express their "stewardship" priorities.

The Infrastructure Chokepoint: DTCC

The control extends to the infrastructure itself. The Depository Trust & Clearing Corporation—the central securities depository and clearing system through which virtually all U.S. securities transactions settle—is owned by its participants: the same banks, broker-dealers, and asset managers whose conduct is at issue. DTCC and its subsidiaries process dividend distributions, maintain shareholder records, and provide the plumbing through which Forms 1099-

[129] *Apple*, 791 F.3d at 319-23 (affirming finding that Apple orchestrated horizontal conspiracy among publishers through vertical contracts).

[130] *See, e.g.*, Lucian A. Bebchuk & Scott Hirst, *The Specter of the Giant Three*, 99 B.U. L. Rev. 721 (2019) (documenting concentration of ownership and voting power among largest index fund managers).

DIV ultimately flow. The technology to correct the "buying a dividend" problem would require DTCC cooperation—or at minimum, DTCC acquiescence—to implement at scale. Petitioner met with DTCC executives and presented the same analysis and technology offered to the fund industry. DTCC's response was identical to every other gatekeeper's: acknowledgment of the problem, recognition that the technology works, and refusal to act. This is not a market failure. It is a feature. When the entities that control the infrastructure are the same entities that profit from the dysfunction, there is no market mechanism that can force correction. The coordination is structural. The gatekeepers are the beneficiaries. And the only actor with authority to break the impasse—the Commission—has thus far declined to exercise it.

This is not theoretical concern. The Department of Justice and the Federal Trade Commission have now formally recognized that this structure creates serious antitrust risk. In May 2025, the agencies filed a joint Statement of Interest in *Texas v. BlackRock*, explaining that large asset managers can violate the antitrust laws when they use their position as common owners to coordinate the conduct of portfolio companies in ways that distort output and prices.[131] The agencies emphasized that the Clayton Act's "solely for investment" exception is narrow and is forfeited when an investor uses its holdings "by voting or otherwise" to influence competitive conduct.[132]

In August 2025, the court largely denied the asset managers' motion to dismiss, holding that the plaintiff states had "plausibly alleged" that the defendants "agreed to collectively pressure [companies] to reduce output" and that their conduct reflected "parallel conduct" supported by "plus factors suggestive of an agreement."[133] The court allowed claims under both Section 7 of the Clayton Act and Section 1 of the Sherman Act to proceed.

The conduct alleged in *Texas v. BlackRock*—using common ownership and stewardship power to coordinate output reductions across an industry—is structurally identical to the conduct documented here. The same asset managers who allegedly pressured coal companies to reduce output are the same asset managers who have refused to adopt technology that would reduce the

[131]Statement of Interest of the Federal Trade Commission and the United States of America at 6-9, 21-23, *Texas v. BlackRock, Inc.*, No. 6:24-cv-00437-JDK (E.D. Tex. May 22, 2025).

[132]*Id.* at 13-19 (explaining that Clayton Act § 7's "solely for investment" exception is forfeited when investor uses holdings "by voting or otherwise" to influence competitive conduct).

[133]*Texas v. BlackRock, Inc.*, No. 6:24-cv-00437-JDK, slip op. at 2-4 (E.D. Tex. Aug. 1, 2025) (denying motion to dismiss Clayton Act and Sherman Act claims).

inflated NAVs from which they extract fees. The same gatekeepers whose governance they influence are the gatekeepers who acknowledged that the technology works and then declined to support it after "checking with clients." The same "plus factors" the court found sufficient to survive dismissal—parallel conduct, shared membership in industry initiatives, aligned voting, and coordinated engagement—are present here in abundance.

The Commission cannot dismiss this as a speculative theory. A federal court has already held, in a case involving several of the same entities, that allegations of this structure are sufficient to state claims under both the Clayton Act and the Sherman Act. The question is not whether common-ownership coordination is legally cognizable. It is whether the Commission will acknowledge that it is occurring in markets the Commission is charged with regulating.

The Weaponization of Investor Shares

The final structural feature is the most troubling: the industry has turned investors' own capital into a weapon against them.

The largest asset managers do not own the shares they vote. Those shares belong to the investors in their index funds and other vehicles—teachers, nurses, retirees, workers whose 401(k) contributions flow into funds managed by these complexes. But because the managers control how those shares are voted, they wield governance power far exceeding what their own capital would command.

That power is deployed to preserve the status quo. When a gatekeeper's management considers whether to support investor-protective technology, it does so knowing that the largest shareholders—the index fund managers—profit from the current arrangement. A gatekeeper that breaks ranks does not merely lose customers. It faces governance pressure from shareholders whose economic interests are aligned against the very investors whose shares they vote.

The result is perverse beyond description: the retirement savings of American workers are being used to preserve a market structure that overcharges those same workers on every fund purchase, every fee calculation, and every tax bill. The investors whose shares are voted have no idea their capital is being deployed this way. They believe they are saving for retirement. In fact, their savings are being conscripted to protect the institutions that extract from them.

This is not an incidental feature of the market structure. It is the feature that makes the structure stable. Common ownership creates alignment among ostensible competitors. Governance

power over gatekeepers creates enforcement capability. And the use of other people's shares to exercise that power creates a system in which the costs of coordination are externalized onto the very investors the coordination harms.

"People in Glass Houses": Mutual Vulnerability as Coordination Enforcement

Harry Markopolos spent nearly a decade attempting to persuade the Commission to investigate Bernard Madoff. When asked why the largest firms on Wall Street—firms whose executives suspected fraud—never reported Madoff themselves, Markopolos answered on national television: "Because people in glass houses don't throw stones."[134] The dynamic he described—mutual vulnerability preventing any participant from exposing misconduct that implicates the entire industry—is precisely the dynamic that sustains the conduct documented here.

Every firm that books realized income to NAV and discloses the risk using timing-limited language has the same exposure. Every firm knows that every other firm has the same exposure. The first firm to adopt accurate pricing and truthful disclosure would implicitly acknowledge that its prior practices were deficient—creating liability exposure while competitors continue profiting from the same practices and face no scrutiny. No firm wants to be first, because being first means being alone: exposed to securities law, tax law, and antitrust liability while everyone else remains protected by the collective fiction.

The equilibrium is stable precisely because it is mutual. This was candidly captured in the industry's written admission that "industry perception can kill reputations." The statement does not merely acknowledge reputational risk. It reveals the disciplining mechanism. It acknowledges that "the industry" functions as a collective capable of punishing members who deviate. It acknowledges that breaking ranks triggers retaliation. It acknowledges that what holds the arrangement together is not independent business judgment but mutual understanding that defection will not be tolerated.

Markopolos identified this dynamic a decade ago. The Commission's failure to act on his warnings about Madoff is now a case study in regulatory failure. The same structural dynamic—the same mutual vulnerability, the same collective silence, the same regulator—is operating here. The only difference is scale. Madoff defrauded thousands of 'accredited' investors. The conduct documented in this Petition affects 160 million Americans every year.

[134] *60 Minutes*, CBS News (Mar. 1, 2009) (interview with Steve Kroft).

F. Regulatory Capture: The Pattern Extends Beyond the SEC

The industry's ability to maintain this arrangement depends not only on private coordination but on the failure—or refusal—of public institutions to intervene. That pattern extends beyond this Commission, and documenting it illuminates what the Commission now faces.

On April 24, 2024, Petitioner testified before the Federal Trade Commission during its informal hearing on the proposed Trade Regulation Rule on Unfair or Deceptive Fees.[135] The testimony was direct. Petitioner explained that "buying a dividend" constitutes a hidden fee that costs investors over $100 billion annually. Petitioner urged the FTC to apply the proposed rule to the financial services industry—the industry with the largest hidden fees of all. Petitioner specifically warned the Commission against granting exemptions:

> "*The FTC lacks the authority to grant Wall Street exemptions from this regulation. The FTC cannot exempt Wall Street from adhering to federal securities laws such as the Securities Act of 1933, which requires clear and truthful disclosure of investment risks. Efforts by financial service industry to secure exemptions from federal laws could result in serious legal consequences, and are ethically questionable*." – Jeremy Roseberry, FTC Testimony

Petitioner further noted that the industry had been "thoroughly briefed" on the regulation through formal compliance notices to over 15,000 chief compliance officers, and that "any industry claims of unpreparedness are unfounded."

The FTC heard the testimony. The FTC received the evidence. The FTC issued its final rule.

The final rule limited its scope to live-event tickets and short-term lodging — excluding the financial services industry entirely.[136]

The proposed rule would have applied economy-wide. The final rule covered two industries. The financial services industry, with the largest hidden fees — documented, quantified,

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[135]Transcript, FTC Informal Hearing on Proposed Trade Regulation Rule on Unfair or Deceptive Fees, at 14-17 (Apr. 24, 2024), https://www.ftc.gov/system/files/ftc_gov/pdf/transcript-deceptive-fees.pdf (testimony of Jeremy Roseberry, Speaker 7).

[136]*See* 16 C.F.R. pt. 464 (final rule exempting securities transactions from coverage).

explained to the Federal Trade Commission in public testimony — was not among them. The narrowing was not explained by reference to Petitioner's testimony or the evidence in the record. It occurred as if the testimony had never been given.

This is regulatory capture in its purest form: the phenomenon in which the industries that regulations are supposed to constrain instead control the regulators. The fund industry maintains one of the most sophisticated lobbying operations in Washington. The Investment Company Institute — the industry's principal trade association — spent $5.9 million on federal lobbying in 2024 alone, while the broader securities and investment industry spent $152.8 million, making it one of the dominant lobbying forces in Washington.[137] The ICI PAC contributed $1.84 million to federal candidates in the 2024 election cycle, and the securities and investment industry ranked as the single highest-contributing industry to PACs, political parties, and candidates that cycle.[138] The ICI submits comment letters to virtually every SEC rulemaking of consequence — its president publicly stated that ICI responded to the Commission's regulatory agenda "in comment letter after comment letter, and in research product after research product" — and its Research Department produced more than 300 papers and reports in 2024 designed to influence regulatory policy.[139] When the ICI's positions require judicial reinforcement, it files amicus briefs — as it did in *Texas v. BlackRock*, where it argued on behalf of the very asset managers whose conduct is at issue in this Petition.[140] And when regulations threaten the industry's revenue — as a rule requiring disclosure of hidden fees would have done — the industry's interests are protected.

The SEC has been presented with the same evidence, through years of engagement and now through this Petition. How the Commission responds will determine whether the regulatory outcome differs from the pattern documented above.

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[137] OpenSecrets, Investment Co Institute Lobbying Profile (2024), https://www.opensecrets.org/federal-lobbying/clients/summary?id=D000000262 (based on data from the Senate Office of Public Records); OpenSecrets, Securities & Investment Lobbying Profile (2024), https://www.opensecrets.org/federal-lobbying/industries/summary?cycle=2024&id=f07 ($152,840,783 total industry lobbying in 2024).

[138] OpenSecrets, Investment Co Institute Profile: Summary (2024 cycle), https://www.opensecrets.org/orgs/investment-co-institute/summary?id=D000000262 ($1,841,670 in contributions); OpenSecrets, Which Industries Are Giving the Most Money to PACs, Parties and Candidates? (2024), https://www.opensecrets.org/elections-overview/industries (ranking securities/investment as the highest-contributing industry).

[139] Eric J. Pan, President's Address, ICI 2024 Investment Management Conference, https://www.ici.org/speeches-opinions/24-ejp-imc; Investment Company Institute, 2025 Investment Company Fact Book at 2 ("the Institute's Research Department released more than 300 papers, ICI Viewpoints posts, and statistical reports in 2024").

[140] Brief of Amicus Curiae Investment Company Institute in Support of Defendants' Joint Motion to Dismiss, *Texas v. BlackRock, Inc.*, No. 6:24-cv-00437-JDK (E.D. Tex. Mar. 24, 2025), Docket No. 76.

G. What the Pattern Proves

The conduct documented in this Section—uniform non-adoption of investor-protective technology after initial recognition that it works, admissions that correction is blocked because "investment managers bill on the inflated NAV," acknowledgment that "the problem is real" and has been "simply ignored," coordinated prospectus edits designed to conceal what participants knew, and structural arrangements that prevent defection—cannot be reconciled with independent business judgment under competitive conditions.

The pattern admits only one coherent explanation: a coordinated enterprise — an association-in-fact within the meaning of 18 U.S.C. § 1961(4) — organized around a common purpose: inflated advisory fee revenue derived from a pricing methodology that overstates fund net asset values. The enterprise is sustained by the systematic filing of false federal information returns via mail and wire — the necessary operational cost of the inflated-NAV methodology — and enforced by the coordinated suppression of the only technology that would end both the false filing and the excess fees. The enterprise's members have admitted as much. "Investment managers bill on the inflated NAV" is not an observation about market convention. It is a description of the enterprise's common purpose, stated by one of its members, in terms that satisfy every requirement of *Boyle v. United States*, 556 U.S. 938 (2009): common purpose, relationships among associates, and longevity sufficient to pursue the purpose. The "plus factors" discussed below do not merely establish antitrust agreement. They establish the existence of the enterprise itself.

Consider what antitrust law recognizes as "plus factors" establishing agreement—the circumstantial evidence that distinguishes unlawful coordination from lawful parallel conduct.[141] The record here does not contain one or two such factors. It contains all of them.

The conduct defies independent economic self-interest. Refusing a low-cost, compliance-enhancing technology that reduces legal risk and improves investor outcomes is irrational for any single firm—unless competitors have aligned on a shared decision not to compete on this dimension. A technology that would "redefine financial markets" and force industry-wide adoption "within 12 months" represents exactly the competitive opportunity that firms in functioning markets race to capture. The uniform refusal to capture it makes sense only if the participants understood that capturing it was forbidden.

[141] *See* Areeda & Hovenkamp, *supra* note 124, ¶¶ 1425-1436 (cataloging plus factors); *Twombly*, 550 U.S. at 556-57 (parallel conduct must be "placed in a context that raises a suggestion of a preceding agreement").

The parallel conduct followed a common trigger. After Petitioner's disclosures to the Commission, multiple complexes made similar prospectus edits at similar times, softening the same language, in the same direction, without acknowledging error or changing the underlying practices. The timing and substance suggest common counsel or trade-association coordination. Independent actors responding to the same information produce varied responses; coordinated actors produce uniformity.

The opportunity to conspire was abundant. The industry meets constantly through trade associations, user groups, and governance bodies. The same executives serve on multiple boards. The same counsel advises multiple complexes. The same gatekeepers serve multiple fund families and transmit information about who will and will not support correction. The infrastructure for coordination exists and is used continuously.

The actions are consistent with a common motive. Every participant profits from inflated NAVs. Every participant faces liability risk if the arrangement unravels. Every participant understands that defection would expose prior misconduct while competitors continue extracting. The motive to maintain the status quo is not hidden or inferred—it was confessed: "investment managers bill on the inflated net asset value."

Communications flowed through hubs. Gatekeepers canvassed fund-complex clients before reversing their initial enthusiasm, transmitting information about who would and would not support correction. This is the hub-and-spoke mechanism that antitrust law recognizes as a coordination device: vertical relationships used to organize and enforce horizontal alignment.[142]

No legitimate business justification was offered. No firm identified cost as a barrier—implementation was plug-and-play. No firm identified feasibility as a concern—the technology worked on existing data. No firm identified regulatory uncertainty—the Commission had received the analysis and had not objected. The only "business" reason not to adopt was preserving higher fees, which is not a legitimate justification but rather evidence of the scheme's purpose.

The antitrust violations and the racketeering enterprise are not independent legal theories applied to separate conduct. They are descriptions of the same architecture from two statutory vantage points. The horizontal agreement not to compete on pricing accuracy — established by the plus factors above — is the mechanism by which the enterprise maintains its inflated-NAV

[142] *See Apple*, 791 F.3d at 319-23; *FTC v. Toys "R" Us, Inc.*, 221 F.3d 928, 934-38 (7th Cir. 2000).

methodology. The group boycott of corrective technology is both a concerted refusal to deal under Section 1 of the Sherman Act and the enterprise's enforcement mechanism under RICO. The false Forms 1099-DIV are both the operational cost of the antitrust violation — the means by which inflated pricing is sustained without investor detection — and the predicate acts that establish the racketeering pattern. A federal investigation need not choose between frameworks. The conduct satisfies both, because the cartel and the enterprise are the same structure, and dismantling one dismantles the other.

A market structure that produces this outcome is not functioning as Congress intended when it created the securities laws. Competition has not failed because participants lack information or capability. Competition has failed because the participants have constructed an architecture—through hub-and-spoke control, common ownership, and mutual vulnerability—that ensures no single actor can defect even when defection would serve its independent interest.

That is not a market correcting itself over time. That is a cartel designed to prevent correction.

H. The Market Structure the Commission's Mission Was Created to Prevent

The Securities and Exchange Commission's mission, as stated on its own website, is "protecting investors, maintaining fair, orderly, and efficient markets, and facilitating capital formation."[143] Every element of that mission is contradicted by the market structure documented in this Petition.

Protecting investors. The structure is designed to extract from investors—through inflated prices, excess fees, and improper tax characterization—while denying them the information that would allow them to protect themselves. The industry acknowledged that corrective technology would become the standard "within 12 months" if any single firm adopted it, precisely because investors would migrate toward funds offering accurate pricing and truthful disclosure. The technology was suppressed specifically to prevent investors from making that choice. Investor protection is not merely absent from this market; investor protection is what the coordination exists to prevent.

Maintaining fair, orderly, and efficient markets. A market in which participants have organized to block price-correcting technology is not efficient by any economic definition of the

[143]U.S. Securities and Exchange Commission, *What We Do*, https://www.sec.gov/about/what-we-do.

term. Efficiency requires that prices reflect available information; this market is structured to ensure that prices reflect misinformation. A market in which gatekeepers acknowledge "the problem is real" and have "simply ignored it" is not orderly; it is captured. A market in which the largest shareholders use other people's capital to preserve arrangements that harm those same people is not fair; it is exploitative.

Facilitating capital formation. Capital formation requires investor confidence. Investor confidence requires that investors believe they are being treated honestly—that prices are accurate, disclosures are truthful, and intermediaries serve investor interests rather than extracting from them. When investors eventually learn the truth about what has been done to them—as they will, whether through this Petition, through litigation, or through journalistic investigation—investor confidence will not survive intact. The industry is borrowing trust it cannot repay.

The market structure documented in this Section presents a direct challenge to every element of the Commission's statutory mandate. A market in which participants have coordinated to suppress fair-pricing technology is difficult to characterize as fair. A market in which dominant participants have organized to ensure prices remain systematically inflated is difficult to characterize as efficient. A market in which an entire industry has, by its own admission, agreed to prevent investor-protective innovation is difficult to characterize as one in which investors are protected.

This is not a situation in which the Commission's mission and the industry's interests happen to diverge on some technical matter. This is a situation in which the industry has organized itself specifically to defeat the Commission's mission. The coordination exists because investor protection would reduce industry revenue. The gatekeepers refuse to enable correction because their fund-complex clients have made clear that correction will not be tolerated. The technology was suppressed because it would have worked—and working technology would have forced the industry to compete on dimensions that serve investors rather than extract from them.

The documented structure presents the Commission with a question it will need to address: whether the coordinated conduct documented in this Section is consistent with the market conditions the Commission's organic statutes were designed to maintain. The answer to that question determines whether the Commission's existing regulatory framework — examination authority, enforcement tools, rulemaking capacity — is deployed to address a market structure that contradicts the statutory objectives those tools were created to serve.

The industry's conduct, as documented throughout this Section, does not reflect firms seeking regulatory accommodation. It reflects an industry that has organized to ensure that regulatory correction does not occur. The record of nearly eight years without a single voluntary correction — despite formal notice to over 15,000 compliance officers — confirms that the coordination is structural, not incidental.

I. Referral to the Department of Justice

The pattern of conduct documented in this Section raises serious questions under laws the Commission does not enforce. The questions are serious enough that the Commission has an obligation—not merely an option—to ensure that agencies with enforcement authority have the opportunity to investigate.

The conduct includes: price-fixing through a common pricing formula that "everyone" uses, maintained by collective understanding that no one will enable correction; concerted refusal to deal with the only supplier of pro-competitive technology, after acknowledging that the technology works and would become the industry standard; hub-and-spoke arrangements in which infrastructure providers canvass fund-complex clients and then enforce horizontal alignment; use of common ownership, governance power, and concentrated market position to exclude an entire category of innovation from the marketplace; and affirmative concealment through coordinated prospectus edits designed to obscure evidence of what participants knew and when they knew it.

These are not novel theories requiring the Commission to venture into unfamiliar territory. They are the bread and butter of antitrust enforcement—the theories that the Antitrust Division has prosecuted for a century.

The DOJ has already signaled, through its Statement of Interest in *Texas v. BlackRock*, that they view common-ownership coordination as a serious antitrust concern warranting investigation and potential prosecution.[144] The court in that case has already held that allegations structurally similar to those presented here—parallel conduct, plus factors suggesting agreement, and use of shareholdings to influence competitive behavior—are sufficient to state claims under both the Clayton Act and the Sherman Act.[145]

[144]Statement of Interest, *Texas v. BlackRock*, supra note 131, at 1-3.
[145]*Texas v. BlackRock*, slip op. at 2-4.

Petitioner does not ask the Commission to adjudicate antitrust liability. That authority belongs to the Department of Justice. Criminal violations of the Sherman Act are prosecuted by the Antitrust Division, not by the SEC.

What Petitioner asks is that the Commission recognize its obligation to refer evidence of potential criminal conduct to appropriate authorities. The admission that "investment managers bill on the inflated net asset value" and that correction is blocked because "investment managers would never go for it" is direct evidence of horizontal agreement on a common pricing formula—the kind of admission that produces criminal indictments when it surfaces in other industries. The uniform refusal to deal with the only supplier of corrective technology—after acknowledging that the technology works and would become the industry standard—is evidence of group boycott under *Klor's* and its progeny.[146] The pattern of gatekeepers canvassing fund-complex clients before reversing their initial enthusiasm fits the hub-and-spoke structure condemned in *Apple* and *Toys "R" Us*.[147] The use of common ownership, overlapping governance relationships, and concentrated market power to discipline potential defectors suggests monopolization or conspiracy to monopolize the "compliance and pricing layer" of fund markets under Section 2 of the Sherman Act.[148] The coordinated prospectus edits—fixing the words while continuing the fraud—demonstrate consciousness of guilt and efforts to conceal evidence of the scheme.

The conduct documented throughout this Petition establishes the elements of a racketeering enterprise. 18 U.S.C. §§ 1962(a), (c), (d). The enterprise's common purpose is inflated advisory fee revenue, maintained through coordinated adoption of a pricing methodology that overstates fund net asset values — a purpose its members have stated in their own words: "Investment managers bill on the inflated NAV." The predicate acts are mail fraud and wire fraud: each false Form 1099-DIV transmitted to an investor via United States mail and to the IRS via electronic wire is an independent predicate act, and hundreds of millions are filed annually. These are not incidental byproducts of an otherwise lawful business practice. They are the necessary operational cost of the inflated-NAV methodology — filed knowingly, because the enterprise's fee revenue

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[146] *See Klor's, Inc. v. Broadway-Hale Stores, Inc.*, 359 U.S. 207, 212-13 (1959) (group boycott among competitors and suppliers is per se unlawful).

[147] *Apple*, 791 F.3d at 319-23; *Toys "R" Us*, 221 F.3d at 934-38.

[148] *See United States v. Grinnell Corp.*, 384 U.S. 563, 570-71 (1966) (monopoly power is "the power to control prices or exclude competition"); *Aspen Skiing Co. v. Aspen Highlands Skiing Corp.*, 472 U.S. 585, 600-11 (1985) (profit sacrifice to exclude competitor supports monopolization claim).

depends on a pricing structure that cannot exist without producing false tax forms. The enterprise's own SEC-filed prospectuses prove the filing is knowing: the enterprise admits that distributions include return of capital, then files 1099-DIVs classifying 100% as ordinary income. Under *United States v. Ebbers*, 458 F.3d 110 (2d Cir. 2006), GAAP rules "are no shield" when accounting methods "known to be misleading" are "used for the express purpose of intentionally misstating" — which is precisely what the prospectus admissions establish. The coordinated suppression of FairShares' corrective technology is the enterprise's enforcement mechanism — the means by which it ensures that no single defection collapses the scheme. The Commission should specifically recommend that the Criminal Division and the Organized Crime and Racketeering Section evaluate this conduct under RICO, in addition to the Antitrust Division's evaluation under the Sherman Act.[149]

The Commission need not resolve whether these theories ultimately prevail. That determination belongs to antitrust enforcers and, if warranted, to courts. The Commission's role here is narrower but no less important: to ensure that evidence of potential criminal violations reaches the agencies charged with prosecuting them.

Referral serves the Commission's own interests. If the market's failure to self-correct results from conduct that violates the Sherman Act, the Commission's disclosure rules will never produce competitive pressure for truthfulness. Funds will not compete on transparent pricing when the infrastructure providers have agreed not to enable transparency, and the dominant asset managers have organized themselves to ensure that agreement holds. The Commission can mandate disclosure, but only antitrust enforcement can dismantle the structural barriers that prevent disclosure from generating competitive consequences.

More fundamentally, the Commission should not stand alone when confronting an industry that has organized itself to resist correction. No single agency can address the conduct documented in this Petition comprehensively. Coordination among enforcers—SEC, DOJ, IRS—is necessary

[149] 18 U.S.C. §§ 1961-1968. Section 1961(1) defines "racketeering activity" to include, *inter alia*, mail fraud (18 U.S.C. § 1341) and wire fraud (18 U.S.C. § 1343). Section 1962(c) prohibits conducting the affairs of an enterprise through a pattern of such activity. Section 1962(d) prohibits conspiracy to violate § 1962(c). Section 1962(a) prohibits investing racketeering proceeds in an enterprise. *Boyle v. United States*, 556 U.S. 938 (2009) (association-in-fact enterprise requires only common purpose, relationships, and longevity). *Salinas v. United States*, 522 U.S. 52, 65 (1997) (RICO conspiracy requires no overt act — defendant need only "adopt the goal of furthering or facilitating the criminal endeavor").

to ensure that firms cannot escape accountability by forum-shopping or exploiting gaps between agency mandates.

The scope of potential remedies should match the scope of the problem. The conduct documented in this Petition was not possible for any single firm acting alone. It required the coordinated market power of asset managers who collectively control trillions of dollars, vote the shares of the very gatekeepers whose infrastructure enables the scheme, and possess sufficient dominance that no competitor can profitably defect. The DOJ should evaluate whether the concentration of the asset management industry has reached a level at which the largest firms can—and do—use their size to suppress innovation, coordinate pricing, and insulate themselves from competitive and regulatory pressure. If so, the appropriate remedy is not simply to prosecute past violations but to address the structural conditions that made those violations possible and profitable. The DOJ has authority under the Sherman Act and the Clayton Act to seek divestiture, structural separation, or other remedies designed to restore competitive conditions. The question the DOJ should consider is whether the asset management industry's current structure—in which three firms control the governance of virtually every significant gatekeeper, infrastructure provider, and competitor—is compatible with competitive markets, or whether structural relief is necessary to prevent the recurrence of the conduct documented here.

The Commission should formally transmit this record to the Department of Justice — to the Antitrust Division for the Sherman Act violations documented above, and to the Criminal Division and the Organized Crime and Racketeering Section for the racketeering enterprise documented throughout this Petition. The referral should ensure that each relevant component of the Department receives the full record and evaluates the conduct under every applicable statute, including the Sherman Act (15 U.S.C. §§ 1-2) and the Racketeer Influenced and Corrupt Organizations Act (18 U.S.C. §§ 1962-1963).

J. The Commission’s Choice

The evidence in this Section reduces to a binary choice between two explanations. There is no third option.

Explanation One: The industry’s uniform non-adoption of corrective technology reflects innocent independent judgment by hundreds of firms. Each firm concluded, for its own varied reasons, that a “groundbreaking” and “revolutionary” solution—acknowledged to work, projected

to become the industry standard within twelve months, offered at minimal cost, requiring no infrastructure changes, reducing legal risk, and providing substantial competitive advantage—was nevertheless not worth implementing, testing, or even piloting. The gatekeepers who acknowledged that "the problem is real" and had been "simply ignored" independently decided, without coordination, not to address it. The fund complexes that revised their prospectus language did so independently, without common counsel or trade-association guidance, and the similarity in timing and substance was coincidental. The asset managers who profit from inflated NAVs and vote the shares of the gatekeepers whose infrastructure controls pricing just happened, by chance, to reach aligned positions on a technology that threatened their shared revenue. The absence of any defector, anywhere in a multi-trillion-dollar market, reflects nothing more than the aggregated independent choices of rational actors who each concluded that first-mover advantage in investor protection was not worth capturing.

Explanation Two: The industry understood exactly what the technology would do. It would end the overcharges. It would expose the prior misconduct. It would trigger liability for years of false tax forms and misleading disclosures. It would eliminate the fee extraction that inflated NAVs enable. And so the industry determined, through the mechanisms documented in this Section, that this outcome would not be permitted. The gatekeepers aligned with fund-complex clients to block distribution. The common ownership and governance relationships reinforced business incentives with shareholder pressure. The coordinated prospectus changes concealed the evidence. And a mutual understanding took hold—expressed candidly in the warning that "industry perception can kill reputations"—that breaking ranks would invite retaliation from an industry whose members had aligned against their own investors.

The first explanation requires believing that rational, profit-maximizing firms uniformly rejected clear competitive advantage for no discernible reason—that hundreds of independent actors, facing a technology that would "redefine financial markets" and force industry-wide adoption within a year, each independently decided that capturing that advantage was not worth even a pilot program. It requires believing that the admission "investment managers bill on the inflated NAV" reflects not awareness of industry-wide alignment but merely one executive's guess about competitors' preferences. It requires believing that "the problem is real" and "simply ignored" describes innocent inattention rather than deliberate suppression.

The second explanation requires believing that the fund industry operates as a coordinated enterprise — that participants have aligned their interests against investors, constructed structural barriers to defection, deployed every available mechanism to ensure no one breaks ranks, and sustained the arrangement because the inflated-NAV methodology generates fee revenue that every participant would forfeit if any single firm defected. This is not a metaphor. It is a description of an association-in-fact enterprise with the common purpose, relationships, and longevity that federal racketeering law requires. *Boyle v. United States*, 556 U.S. 938 (2009).

The first explanation strains credulity to the breaking point. The second explains every fact in the record.

The securities laws exist because Congress understood, in 1933 and 1934, that private markets do not always self-correct and that investors cannot always protect themselves. The promise of those laws is that the Securities and Exchange Commission will act when markets fail and gatekeepers stand down.

This market has failed. Every gatekeeper has stood down. The infrastructure providers have acknowledged the problem and refused to fix it. The fund complexes have scrubbed their disclosures and left the fraud in place. The investors whose shares are voted in corporate governance have had their capital turned against their own interests. And the gatekeepers, the complexes, and the asset managers have organized themselves—through ownership, through business relationships, through mutual vulnerability—into an arrangement that ensures no one defects because no one can.

The industry has made its choice: revenue over remediation, self-protection over investor protection, solidarity among fee-takers over duty to the people whose savings they manage.

The question now is whether the Commission will make a different choice—whether it will assert its authority over markets it is charged with governing, or whether it will confirm what the industry has already concluded: that the SEC's mission is subject to industry veto, and that 160 million American investors can be extracted from indefinitely because no one with power to stop it is willing to act.

The Commission's answer will determine whether it governs American securities markets or merely observes them.

IX. RELIEF REQUESTED

The preceding Sections of this Petition have documented a factual record that is, so far as Petitioner is aware, without precedent in securities regulation: an entire industry, placed on formal notice of systematic violations affecting 160 million Americans, exposed to corrective technology that would have resolved those violations at negligible cost, and given every opportunity to demonstrate that competitive markets can self-correct—responded with coordinated silence, uniform refusal, and in some cases, active suppression of the remedy.

That record establishes the predicate for every request that follows. Where this Petition requests interpretive guidance, it is because the industry has demonstrated that existing legal obligations are being systematically evaded under cover of manufactured defenses—GAAP compliance that does not address disclosure obligations, and industry-wide adoption that compounds the violation rather than excusing it. The Commission's clarification is necessary because the industry has made clear it will not comply absent authoritative statement that compliance is required. Where this Petition requests a rule mandating point-of-sale disclosure of realized income, it is because nearly eight years of documented refusal have established that voluntary disclosure will not occur. The data exists. The systems exist. The marginal cost approaches zero. The industry will not disclose because disclosure would reduce the inflated NAV on which advisory fees are calculated. A rule is necessary because the market failure is complete.

The requests that follow are calibrated to the record that precedes them. Each request addresses a specific failure documented in the evidentiary sections. Each is within the Commission's existing statutory authority. And each is made necessary by the central finding this Petition establishes: the industry will not protect investors without compulsion, and the Commission is the only institution with the authority to compel.

The Commission's Choice: Immediate Protection or Continued Harm

The record before the Commission presents a binary choice. Either American investors are currently trading under materially misleading disclosures — purchasing fund shares at prices inflated by embedded realized income that will be distributed, misclassified on false Forms 1099-DIV as taxable ordinary income, and cause 160 million taxpayers to overpay their federal taxes —

or they are not. If they are, the Commission must act immediately to stop ongoing harm. If they are not, the Commission must explain with particularity which facts, which legal standards, which economic principles this Petition has misunderstood—so the administrative record is clear and reviewable.

What the Commission cannot do—consistent with its statutory mandate, established precedent, and constitutional due process—is remain silent while investors lose money every trading day under disclosures the Commission knows, in comprehensive and documented detail, are false and misleading. Three Commissioners have been personally briefed. Approximately fifty staff members have examined the evidence. The Commission requested a remediation plan and received one. Not once—across nearly six years of engagement—did any Commissioner or staff member dispute the facts, challenge the mathematics, or contest that investors are being harmed. This is not a Commission that "has been told" something it might reasonably question. This is a Commission that knows—and has known for years—that the disclosures filed under its authority are materially false, that the tax forms generated from those disclosures overstate income for 160 million Americans, and that every day of inaction compounds a constitutional violation the Commission has the power to stop.

Therefore, the time for study has passed. The Commission has known about this matter since June 2020—more than five and a half years. Petitioner's SEC whistleblower submission was prepared and filed by Sean X. McKessy of Phillips & Cohen LLP—the founding Chief of the SEC's Office of the Whistleblower and the principal architect of the SEC whistleblower program itself.[150] Mr. McKessy designed the very procedures by which the Commission receives, evaluates, and acts upon whistleblower submissions. He knows what constitutes a meritorious tip. He knows what documentation the Commission needs. He knows how to frame securities law violations so the Commission can act. The submission was designed to be understood, to convey significance, and to provide the information necessary for evaluation. The submission was drafted by the person who wrote the rulebook.

[150]Mr. McKessy served as the first Chief of the SEC's Office of the Whistleblower from 2011 to 2016 and is widely recognized as the principal architect of the SEC whistleblower program established under Dodd-Frank. He received the SEC's "Law and Policy Award" in 2011 for his work implementing the program and was named one of the "Top Minds" in corporate governance, risk and compliance by *Compliance Week* in 2017. Phillips & Cohen LLP, where Mr. McKessy is a partner, has won more SEC whistleblower awards than any other law firm.

The Commission has had more than 2,100 days since that filing to analyze, evaluate, and respond. It has not lacked time. It has not lacked expertise. It has not lacked information. It has, so far, simply not acted on it.

The timeline speaks for itself:

Date	Event	Days Since Filing
June 2020	SEC whistleblower submission filed by Sean McKessy, founding Chief of the SEC's Office of the Whistleblower	0
September 8, 2020	Commissioner Allison Herren Lee and staff attorneys briefed via Zoom	~78
2022	Commission requests and receives Petitioner's comprehensive remediation plan to protect investors and stop the harm; meetings with Paul Atkins @ Patomak and Commissioner Peirce	~730
2023	Formal fraud and compliance notices served on 15,266 chief compliance officers; industry responds with silent prospectus edits	~1,095
October 2025	IRS meets with Petitioner for two and a half hours at direction of senior IRS officials	~1,930
March 2026	This Petition filed—sixth consecutive round of false Forms 1099-DIV since McKessy submission	~2,096

The significance of the September 2020 briefing cannot be overstated. Within ninety days of Mr. McKessy's submission, the matter was no longer a whistleblower tip awaiting triage in the Commission's intake queue. It was on the desk of a sitting Commissioner. Commissioner Lee and her staff attorneys received a substantive briefing on the materially misleading disclosures at issue, the mechanics of investor harm, and the scope of the problem across the fund industry. They asked questions. They received answers. They did not dispute the factual premises, challenge the mathematical analysis, or contest that investors were being harmed. Commissioner Lee's response was unambiguous. She told Petitioner: *"Congratulations on figuring out how the market should work."* That statement is not the language of skepticism or disagreement. It is an acknowledgment — from a Senate-confirmed Commissioner exercising the authority Congress vested in her office

— that Petitioner's analysis is correct and that the market, as currently structured, does not work the way it should. From that moment forward, the Commission could not claim this matter was lost in the queue, buried in staff review, or awaiting escalation to decision-makers. A Senate-confirmed Commissioner had personally received the evidence, engaged with it substantively, and affirmed its correctness. Nearly six years and two administrations later, investors are still waiting for someone to act on what Commissioner Lee's office learned — and affirmed — in September 2020.

The D.C. Circuit has made clear that "a reasonable time for agency action is typically counted in weeks or months, not years."[151] [emphasis added] A delay of nearly six years—while the Commission possessed full knowledge of ongoing investor harm—"treads at the very lip of the abyss of unreasonable delay."[152] Under the TRAC factors that govern judicial review of agency delay, this record is indefensible: the Commission has no statutory timeline to point to, the harm affects human welfare (not merely economic interests), the interests prejudiced are substantial and documented, and the duration of the delay is measured in years, not months.[153]

This Petition requests nine independent categories of relief. Each is severable. Each may be granted in whole or in part. The Administrative Procedure Act authorizes interested persons to petition for rulemaking, requires agencies to conclude matters within a reasonable time, and permits judicial review of agency action unlawfully withheld or unreasonably delayed.[154] Should the Commission fail to respond within the timelines specified—or decline any request without reasoned explanation—Petitioner reserves the right to seek a writ of mandamus compelling Commission action. The Third Circuit has confirmed that such relief is available when an agency's delay becomes "egregious."[155]

The Third Circuit's January 2025 decision in *Coinbase, Inc. v. SEC* establishes the governing standard.[156] There, the court held that the SEC's one-paragraph denial of a rulemaking petition was "conclusory and insufficiently reasoned, and thus arbitrary and capricious" under the APA. The court made clear that agencies cannot invoke "resource constraints" or "competing

[151]*In re Am. Rivers & Idaho Rivers United*, 372 F.3d 413, 419 (D.C. Cir. 2004).
[152]*Pub. Citizen Health Rsch. Grp. v. Chao*, 314 F.3d 143, 151 (3d Cir. 2002).
[153]*Telecomms. Research & Action Ctr. v. FCC*, 750 F.2d 70, 80 (D.C. Cir. 1984) (establishing the six-factor TRAC test for evaluating unreasonable agency delay).
[154]5 U.S.C. § 553(e) (right to petition for rulemaking); 5 U.S.C. § 555(b) (reasonable time for agency conclusion); 5 U.S.C. § 706(1) (judicial review of agency action unlawfully withheld or unreasonably delayed).
[155]*Pub. Citizen Health Rsch. Grp. v. Chao*, 314 F.3d at 151.
[156]*Coinbase, Inc. v. SEC*, No. 23-3202, slip op. (3d Cir. Jan. 13, 2025).

priorities" as talismans to escape judicial review without explaining *why* those constraints justify inaction on specific documented harms. Judge Bibas, concurring, observed that the SEC "repeatedly sues crypto companies for not complying with the law, yet it will not tell them how to comply. That caginess creates a serious constitutional problem; due process guarantees fair notice."

This Petition presents a stronger case than *Coinbase* on every relevant dimension:

Coinbase involved speculative regulatory uncertainty affecting sophisticated market participants in a nascent industry. This Petition documents concrete, quantifiable, ongoing harm to 160 million American investors—including retirees living on fixed incomes—under disclosures the Commission has known are materially misleading for nearly six years.

Coinbase argued the SEC had not provided guidance. This Petition documents that the SEC *requested Petitioner's remediation plan*, received it, and still did nothing. The Commission cannot claim ignorance of how to address the problem when it asked for—and received—a detailed solution.

Coinbase did not meet the "human health and welfare" threshold for compelling agency action. This Petition involves financial harm to vulnerable populations—retirees, workers saving for retirement, families building college funds—who lose real money every trading day. This is not speculative future harm; it is documented, ongoing injury.

Coinbase's petition was prepared by sophisticated securities lawyers. This Petition follows a whistleblower submission prepared by the person who *designed the SEC's whistleblower intake procedures*. The Commission cannot claim the submission was deficient, unclear, or failed to follow proper protocols. Sean McKessy knows exactly what the Commission needs to act—because he created the system that tells the Commission what it needs.

The Supreme Court's decision in *Massachusetts v. EPA* reinforces these principles.[157] There, the Court reversed EPA's denial of a rulemaking petition, holding that an agency cannot invoke "discretion" as a shield when a petition documents concrete harms the agency is statutorily obligated to address. The agency's reasons for denial must be grounded in the statute—not in

[157]*Massachusetts v. EPA*, 549 U.S. 497, 527–28 (2007) (reversing EPA's denial of rulemaking petition and holding that agency cannot decline to regulate based on reasons not grounded in the statute; "EPA has offered no reasoned explanation for its refusal to decide whether greenhouse gases cause or contribute to climate change").

preference for inaction. If conclusory denial was arbitrary and capricious in *Coinbase*, it would be inexplicable here.

Petitioner does not make this statement as a threat. Petitioner makes it as a statement of consequence**.** Administrative petitions can be ignored indefinitely; mandamus lawsuits cannot. The Commission should understand that its choice is not between action and inaction. Its choice is between acting on its own timeline or acting on a court-ordered timeline. One preserves agency discretion. The other does not.

A. Immediate Public Communications to Investors (Within 7 Days)

1. Investor Alert or Staff Statement on "Buying a Dividend"

Petitioner requests that the Commission, the Office of Investor Education and Advocacy, or appropriate SEC division issue an Investor Alert, Investor Bulletin, or Staff Statement addressing "buying a dividend" risk **within seven days** of receiving this Petition.

Seven days is not arbitrary. It reflects three realities. First, investor alerts require no rulemaking, no notice-and-comment period, no cost-benefit analysis—they are informational documents that the Office of Investor Education and Advocacy issues routinely. Second, the Commission already knows everything it needs to know to issue such an alert; it has possessed the relevant information for nearly six years. Third, investors are harmed every trading day the Commission delays. Each day without an alert is a day investors make decisions without information that the Commission possesses, and they need to protect themselves.

The Commission issues investor alerts when market practices threaten retail investors. It has done so for prime bank instruments, microcap fraud, affinity fraud, cryptocurrency schemes, retirement account scams, and complex exchange-traded products.[158] The pattern is consistent: when the Commission identifies a recurring harm inflicted on unsophisticated investors through incomplete or misleading information, it warns those investors.

This case fits that pattern precisely—and exceeds it. Unlike cryptocurrency schemes or affinity fraud, where the Commission must first identify bad actors, here the Commission knows

[158]*See, e.g.*, SEC Investor Alert: Beware of So-Called "Prime Bank" Investment Schemes (Aug. 2016); SEC Investor Alert: Social Media and Investing—Avoiding Fraud (Oct. 2012); SEC Investor Bulletin: How Victims of Securities Law Violations May Recover Money (Apr. 2024); SEC Investor Alert: Watch Out for Fraudulent Digital Asset and "Crypto" Trading Websites (Apr. 2019).

exactly what the harm is, who is causing it, and how to describe it. The "buying a dividend" risk is documented in the prospectuses the Commission itself reviews and approves. The mechanics are not disputed. The harm is quantifiable. An investor alert need only state what the industry already knows and what prospectuses fail to adequately disclose.

An investor alert costs nothing, binds no one, and prevents measurable harm. The Commission can issue one while evaluating every other request in this Petition. If 160 million American fund investors deserve protection from cryptocurrency scams and affinity fraud, they deserve protection from materially misleading prospectus disclosures that cost them billions annually in avoidable taxes.

2. Referral to Office of the Investor Advocate (Within 7 Days)

Petitioner requests that the Commission immediately refer this Petition to the Office of the Investor Advocate and the SEC Ombudsman for independent review and recommendations. Seven days is not an aggressive timeline. It is a ministerial act — transmitting a document to an office within the Commission's own building.

The referral is not merely appropriate. It is difficult to see how the Investor Advocate can fulfill its statutory obligations without it. Congress established the Investor Advocate under Dodd-Frank § 911 and assigned it four functions that map directly onto this Petition. The Investor Advocate "shall" identify "areas in which investors would benefit from changes in the regulations of the Commission." 15 U.S.C. § 78d(g)(4)(B). It "shall" identify "problems that investors have with financial service providers and investment products." Id. § 78d(g)(4)(C). It "shall" analyze "the potential impact on investors of" proposed regulations and rules. Id. § 78d(g)(4)(D). And it "shall," 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." Id. § 78d(g)(4)(E). Every one of those functions — every one — applies to the subject matter of this Petition.

But the statutory mandate that gives this referral its teeth is the Investor Advocate's reporting obligation to Congress. The statute requires the Investor Advocate to submit reports directly to the Senate Committee on Banking, Housing, and Urban Affairs and the House Committee on Financial Services. 15 U.S.C. § 78d(g)(6)(A)(i). Those reports are not optional and their contents are not discretionary. The statute specifies that each report "shall include" — among

other things — "a summary of the most serious problems encountered by investors during the reporting period." Id. § 78d(g)(6)(A)(ii)(III). It shall include an inventory of those problems identifying "any action taken by the Commission... and the result of such action," "the length of time that each item has remained on such inventory," and — for items on which no action has been taken — "the reasons for inaction, and an identification of any official who is responsible for such action." Id. § 78d(g)(6)(A)(ii)(IV)(aa)–(cc).

Read those requirements again. Congress directed the Investor Advocate to identify the most serious problems investors face, track how long those problems have gone unaddressed, name the officials responsible for inaction, and report all of it to Congress. This Petition documents a problem affecting 160 million Americans, costing them over $100 billion annually in avoidable taxes, persisting for more than five and a half years while the Commission possessed full knowledge. If that is not among "the most serious problems encountered by investors," then the category has no meaning. If the Investor Advocate's report to Congress does not include it, the report is incomplete. And if the Commission fails to refer this Petition to the Investor Advocate — thereby ensuring the Investor Advocate has the information necessary to fulfill its statutory reporting obligations — the Commission is not merely declining to act on Petitioner's request. It is obstructing the very congressional accountability mechanism Congress created when it recognized that the Commission's internal deliberations alone were insufficient to protect investors.

Congress understood that the Commission might not always act on problems it identified. That is why Congress required the Investor Advocate to track the "length of time" problems remain on the inventory. It is why Congress required the Investor Advocate to document "the reasons for inaction." It is why Congress required the Investor Advocate to identify the specific officials responsible. And it is why Congress erected a statutory firewall around the reporting process: the Investor Advocate's report to Congress "*shall be provided directly to the committees of 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*." 15 U.S.C. § 78d(g)(6)(A)(iii) (emphasis added). The Commission cannot edit, redact, or sanitize what the Investor Advocate reports. It cannot bury inconvenient findings in internal review. Congress designed this office as an independent channel between investors and Congress — ensuring that

investor protection concerns reach the committees charged with oversight regardless of how the Commission characterizes those concerns internally.

The Investor Advocate exists so that when the Commission fails, Congress learns of that failure through a channel the Commission cannot control. This Petition documents the most consequential disclosure failure in the modern history of the fund industry. If the Commission does not refer it to the Investor Advocate, Petitioner will transmit a copy directly — because the Investor Advocate's statutory mandate does not depend on the Commission's cooperation, and the information Congress is entitled to receive does not require the Commission's permission.

3. Presentation to Investor Advisory Committee

Petitioner requests the opportunity to present this matter to the SEC's Investor Advisory Committee at its next scheduled meeting. The IAC was established by Dodd-Frank to advise the Commission on "the regulation of securities products" and "the effectiveness of disclosure."[159] The IAC has four subcommittees—including the "Disclosure" subcommittee—that develop recommendations for Commission consideration.

If the Commission believes this Petition raises legitimate investor protection concerns, it should welcome IAC review. If the Commission believes the concerns are unfounded, it should welcome the opportunity for Petitioner to present the case and for the IAC to evaluate it independently. Either way, IAC review provides the Commission with expert input and public accountability.

4. Docket the Decision if Protection Is Withheld

Should the Commission decline to issue an investor warning within seven days, Petitioner requests that the Commission provide an express statement on the public docket identifying the grounds for declination within fourteen days of receipt. Silence here conveys information — and potentially false assurance. When a citizen petitions the Commission alleging ongoing securities law violations affecting 160 million Americans, supported by the industry's own admissions and accompanied by a detailed constitutional and statutory analysis, and the Commission neither acts nor explains its inaction, investors may reasonably conclude the allegations lack merit. That inference would be false. The Commission's silence would itself be misleading — and would

[159]Dodd-Frank Act § 911, 15 U.S.C. § 78d(a).

violate the Administrative Procedure Act's command that agencies "proceed to conclude a matter presented to" them "within a reasonable time." 5 U.S.C. § 555(b).

The Commission should understand the litigation landscape in which any declination will be evaluated. By the time the Commission considers its response to this Petition, this document will already exist as an exhibit on multiple federal court dockets — filed in connection with proceedings the Commission must answer. Any reasoning the Commission provides for declining to act will be evaluated by the federal judges before whom those proceedings are pending, against the full evidentiary record this Petition compiles. The Commission is not writing for its own file. It is writing for Article III judges who will assess whether the Commission's explanation satisfies the standards of reasoned decision-making the law requires.

Moreover, the Commission's internal deliberations regarding this Petition — including any recommendation to decline, any analysis supporting that recommendation, and any communications between Commission staff and industry representatives regarding the Petition's allegations — are the subject of a Freedom of Information Act request filed contemporaneously with this Petition. If the Commission declines to act, the public will eventually learn not only that the Commission declined, but how it reached that decision, who influenced it, and what information informed the determination. The deliberative process privilege does not shield final agency action from disclosure, and a declination is final agency action.

Any Commission declination will also be reported to Congress through the Investor Advocate's statutorily mandated reports under Exchange Act § 4(g)(6) — reports this Petition separately triggers through the referral requested in Section IX.A. The Commission cannot decline quietly. Its decision will be evaluated by Congress through a channel the Commission does not control.

Petitioner further notes that any substantive explanation the Commission provides for declining to act necessarily concedes premises that strengthen Petitioner's position in parallel proceedings. If the Commission argues that the violations are not material, the industry's own published admissions, along with the math a kindergartner with a calculator can do, refute that position in the record.

If the Commission argues the existing disclosure regime is adequate, the silent prospectus edits prove the industry itself concluded otherwise — and the twenty-three specific misstatements and omissions identified in Section V of this Petition will be litigated, one by one, in federal and

state courts across the country by class action firms that will step in to fill the space where coordinated enforcement has not yet occurred. The Commission can adjudicate the adequacy of these disclosures once, on its own terms, through the coordinated enforcement this Petition requests — or it can watch that adjudication occur hundreds of times, in hundreds of forums, under the direction of plaintiffs' counsel whose fee petitions will dwarf the remediation costs the Commission could have controlled. The Commission does not avoid the question by declining to answer it. It merely cedes the question to adversaries less interested in orderly resolution and more interested in the thirty percent contingency fee that hundreds-of-billions in provable damages represents.

If the Commission argues it lacks jurisdiction over tax reporting consequences, the constitutional framework in Section XIII establishes that the Commission's disclosure mandate under the Securities Act and the Investment Company Act operates independently of IRS enforcement authority. If the Commission argues it needs additional time to study the issue, nearly six years of prior notice through Petitioner's whistleblower submission eliminates that defense under the TRAC factors. Every plausible ground for declination has been anticipated and addressed in the body of this Petition. The Commission's reasoned explanation, whatever form it takes, will serve as the opening brief for Petitioner's reply.

Petitioner pursues dual-track relief. If the Commission fails to respond within reasonable timelines, Petitioner will seek mandamus for unreasonable delay under the TRAC factors. The Commission should not assume that the relevant clock begins on the date this Petition is filed. It does not. The Commission received formal notice of these violations through Petitioner's whistleblower submission in June 2020 — a submission prepared and filed by Sean McKessy, the attorney who designed the Commission's whistleblower program and served as its first Chief. The Commission has possessed actual knowledge of systematic disclosure violations affecting 160 million Americans for nearly six years. It has conducted no examination. It has issued no guidance. It has initiated no enforcement action. It has not responded to Petitioner. The TRAC analysis will be measured from that date — not from the date of this Petition — because the Commission's duty to act was triggered by notice, and notice was provided in June 2020. This Petition does not start the clock. It documents that the clock has been running for 2,100 days. The Commission's window to deliberate closed years ago. What remains is the window to act — and it is the compressed window that nearly six years of unjustified delay creates.

If the Commission responds with a cursory or conclusory denial, Petitioner will seek APA review under the standard the Third Circuit established in Coinbase, Inc. v. SEC, No. 23-3202 (3d Cir. Jan. 13, 2025) — which held that the Commission must "articulate a satisfactory explanation for its action including a rational connection between the facts found and the choice made," and that the "mere recitation that the agency considered the relevant factors" is insufficient. A declination that does not substantively engage with the industry's own admissions, the constitutional framework, the documented harm, and the pre-refuted defenses will fail the Coinbase standard on its face.

Either path leads to judicial review. The Commission cannot escape accountability by choosing between silence and inadequate explanation — both are reviewable, and both will be evaluated against a record that makes the Commission's obligation unmistakable.

B. Market-Facing Communications to Registrants and Intermediaries (Within 14 Days)
Staff Statement Reminding Registrants of Existing Obligations

Petitioner requests that the Commission or appropriate division issue a public statement **within fourteen days** addressing five foundational principles. These are not novel requirements. They are existing obligations under current law, stated clearly so firms understand what compliance requires. The Commission need not create new law to issue this statement—it need only restate existing law in a context that makes clear the law applies here.

First: Prospectuses must be materially accurate and not misleading. This obligation does not depend on whether the prospectus uses timing-limited language, tracks GAAP classifications, or received legal review. A materially misleading prospectus violates the securities laws regardless of how carefully it was drafted or who approved it. Investment Company Act § 34(b) prohibits "any statement which was, in the light of the circumstances under which it was made, false or misleading with respect to any material fact." Firms cannot cure material omissions by pointing to accounting standards or arguing that every word in the prospectus is technically true.

This principle requires immediate emphasis because investors are acting on these disclosures today. At this moment — as the Commission reads this Petition — Americans are purchasing fund shares based on prospectuses that omit information material to their investment decision: the existence of embedded realized income that will be distributed to them as a taxable

event, reducing the value of the shares they just purchased while generating a tax liability on money that was never their income. These investors are making irreversible financial decisions — committing retirement savings, liquidating other assets, allocating education funds — in reliance on disclosures the Commission has known for nearly six years to be materially incomplete. Every trading day that passes without corrective action is a day on which new investors are harmed by the same false disclosures the Commission's own whistleblower program was designed to surface. The Commission cannot stand by while Americans continue to be injured by disclosures it has known to be false since June 2020. The staff statement should make explicit what the law already requires: these prospectuses are deficient, the deficiency is material, and the obligation to correct is immediate — not when the Commission completes its review, not when the industry proposes amendments, not at some future date that allows another cycle of harm to compound. Now.

Second: Silent edits are admissions, not cures — and they trigger immediate obligations to notify and remediate the investors who were harmed. When a firm determines that prior prospectus language was materially misleading, the firm faces two questions: whether corrective disclosure is required for past sales made under the misleading prospectus, and whether the firm has obligations to investors harmed while the misleading language was in effect. Silent edits answer neither question. They prevent future harm but do not address past injury. Liability attaches at the point of sale. If the original disclosure was materially misleading, silently changing it is an admission — not a cure.

The staff statement should make explicit what the antifraud provisions already require: a determination that prior disclosures were materially misleading triggers immediate, mandatory obligations that extend beyond prospectus correction. Firms must identify the investors who purchased shares in reliance on the deficient disclosures. Firms must notify those investors — clearly, prominently, and in plain language — that the disclosures on which they relied were materially incomplete, that their investment decision was made without information material to that decision, and that the omitted information may have resulted in quantifiable financial harm including but not limited to overtaxation of distributions, overpayment of advisory fees calculated on inflated net asset values, and the purchase of shares at prices that did not reflect the economic reality of the fund's embedded distribution obligations. Firms must provide those investors with the information necessary to evaluate their own harm — including the embedded realized income in the fund's NAV at the time of purchase, the tax consequences of distributions received, and the

advisory fee differential attributable to NAV inflation. And firms must evaluate — and the staff statement should require them to document that evaluation — whether remediation, including reimbursement of excess taxes paid and adjustment of advisory fees charged, is warranted.

These are not novel obligations. They are the natural consequences of the antifraud provisions the Commission has enforced for ninety years. A firm that discovers it sold securities under a materially misleading prospectus and responds by quietly editing the prospectus while saying nothing to the investors who relied on it has not remediated the violation. It has compounded it — by making a determination that the disclosure was deficient while simultaneously deciding that the investors who were injured by that deficiency do not deserve to know. That decision — the decision to correct silently rather than disclose and remediate — is itself a material compliance failure that the Commission's staff statement should identify as such. The silent edit is not the end of the firm's obligation. It is the beginning — because the edit establishes, on the firm's own timeline and by the firm's own judgment, the moment at which the firm concluded its prior disclosures were inadequate. Everything that follows from that moment — notification, quantification, remediation — is mandatory, not discretionary. The firm that made the edit has already conceded the premise. The only question is whether the firm will fulfill the obligations that premise creates, or whether the Commission will need to compel fulfillment through enforcement.

Third: Point-of-sale interfaces, training materials, and customer communications require immediate review. Prospectus language does not operate in isolation. Investors encounter it through broker platforms, adviser communications, and fund websites. If those materials omit the same material facts the prospectus omits—or if they affirmatively reinforce incomplete descriptions—they extend the misleading communication to the point of decision. FINRA Rule 2210 requires that communications with the public be fair, balanced, and not misleading.[160] Firms should evaluate whether their distribution channels perpetuate the disclosure failure.

Fourth: Compliance officers and fund boards face escalation obligations that this Petition makes unavoidable — and that should have been triggered years ago. Investment Company Act Rule 38a-1 requires fund CCOs to furnish the board annually with a written report

[160]FINRA Rule 2210(d)(1) (requiring communications with the public to be "fair and balanced" and not to "omit any material fact or qualification if the omission, in light of the context of the material presented, would cause the communications to be misleading").

addressing "any material compliance matters since the date of the last report." 17 C.F.R. § 270.38a-1(a)(4)(iii)(B). The rule defines "material compliance matter" as "any compliance matter about which the investment company's board of directors would reasonably need to know to oversee investment company compliance, and that involves, without limitation: (1) a violation of the federal securities laws, (2) a violation of the Compliance Procedures or (3) a weakness in design or implementation of the Compliance Procedures." *Id.* § 270.38a-1(e)(2). The phrase "without limitation" means those three categories are a floor, not a ceiling.

In 2023, Petitioner transmitted detailed compliance notices to 15,266 chief compliance officers — every CCO registered in the SEC's Investment Adviser Registration Depository — documenting alleged violations of federal securities laws affecting every registered mutual fund in the United States. Each notice identified specific statutory provisions, described the mechanics of harm, quantified investor losses, and offered a meeting to discuss remediation. The notices were sent to the compliance contact listed in the ADV for this very purpose. The notices were tracked using software. Thousands of CCOs opened and read them. Not one responded.

The question the Commission should be asking — and that examiners should be testing — is whether those CCOs reported receipt of Petitioner's notices to their fund boards. A detailed notice alleging industry-wide violations of the Securities Act, the Investment Company Act, and the Internal Revenue Code, describing harm to 160 million Americans, is a compliance matter about which a fund's board "would reasonably need to know." That is not Petitioner's characterization. It is the rule's own standard. If CCOs received these notices and did not report them, the CCOs violated Rule 38a-1 — committing the exact failure the Commission designed the rule to prevent. The Commission, in adopting Rule 38a-1, explained that "compliance failures have occurred when a fund service provider has denied information to the fund's board, or has been less than forthright, because the service provider viewed full disclosure as detrimental to its own interests." Investment Company Act Release No. 26299 (Dec. 17, 2003). That describes what happened here.

If CCOs did report and the boards failed to act, the liability shifts but does not disappear. Boards must approve compliance procedures based on a finding that those procedures are "reasonably designed to prevent a violation of the federal securities laws." 17 C.F.R. § 270.38a-1(a)(1). A board that receives a substantive report of alleged securities law violations and determines that no changes are warranted must be prepared to defend that determination. A board

that receives such a report and does not evaluate it has failed the oversight function the Investment Company Act assigns to it.

This Petition creates a new and independent trigger. Every CCO who becomes aware of it — through the Commission's public docket, through Petitioner's direct transmission, or through industry counsel — must determine whether it constitutes a "material compliance matter" requiring board notification. A petition of this scope, alleging violations of Investment Company Act § 34(b) and IRC §§ 6721–6722 affecting every registered fund in the United States, answers that question on its face. Any CCO who reads this Petition and does not escalate it to the board is making a decision that will be evaluated in hindsight — by the Commission, by examiners, and by courts — with full knowledge that the obligation was stated here, in plain terms, before the decision was made.

Advisers Act Rule 206(4)-7 imposes parallel obligations on investment adviser CCOs. 17 C.F.R. § 275.206(4)-7. The analysis is identical. The Commission's staff statement should make explicit what the rules already require: CCOs must evaluate this Petition under their existing obligations, material compliance matters must be reported to boards, and the Commission will evaluate CCO and board responses as part of any examination or enforcement action. The time for silent inaction has passed.

One final consequence of the industry's silence warrants attention in the Commission's staff statement. As documented in detail in Section VI.H of this Petition, the standard directors-and-officers liability insurance on which fund directors and officers rely is written on a "claims-made and reported" basis, with prior knowledge exclusions and notice-of-circumstances provisions that may have been triggered — and potentially forfeited — by the industry's failure to report the circumstances documented in Petitioner's 2023 compliance notices to D&O carriers. Individuals who knew of these circumstances, renewed D&O policies without disclosing them, and answered "no" to standard renewal application questions about known circumstances that might give rise to claims may have procured coverage through material misrepresentation — a basis for policy rescission under governing state law.

The Commission's staff statement should address this consequence directly. Not because the Commission regulates insurance, but because the governance correction this Petition seeks depends on directors and officers understanding the full scope of their personal exposure. Directors who believe D&O coverage will make them whole have no incentive to demand corrective

disclosure. Directors who understand that the same institutional silence that created their liability may have destroyed their insurance coverage will demand action — because continued silence is now the most personally dangerous option available to them. The staff statement should make that calculus explicit, so that every director, officer, and compliance officer evaluating this Petition does so with full knowledge of what is at stake — personally, not merely institutionally.

The full analysis of the governance failure that produced this outcome — including the divergent interests of management companies, interested directors, independent directors, and D&O carriers, the corruption of the Section 15(c) advisory contract approval process through systematic information suppression, and the personal consequences for each category of participant — is set forth in Section VI.H of this Petition. The Commission's staff statement should be informed by that analysis.

Fifth: Third-party service providers merit scrutiny. NAV calculations, distribution processing, and tax information returns depend on systems operated by transfer agents, fund accountants, and other vendors. If those systems employ logic or controls that generate misleading investor communications or inaccurate tax reporting, the fund and adviser may bear responsibility. The Commission has repeatedly emphasized that firms cannot outsource compliance obligations.[161] Firms should assess whether service provider practices contribute to the alleged investor harm.

A Commission or staff statement repeating these principles eliminates any lingering uncertainty about whether the Commission views GAAP compliance as a safe harbor for disclosure liability. It creates clear standards for examiners evaluating firm practices. And it establishes a baseline against which firms can evaluate their own conduct without awaiting enforcement action or litigation. The staff statement should also address a disclosure consequence the industry appears not to have considered: the potential impairment or forfeiture of directors-and-officers liability coverage is itself a material fact requiring disclosure. For publicly traded management companies, the potential loss of D&O coverage materially alters the company's contingent liability profile — because claims that were assumed to be insured may now be uninsured, because indemnification obligations the company owes its directors and officers are no longer backstopped by insurance, and because the company's ability to attract and retain qualified

[161] *See* SEC Risk Alert: Observations from Examinations of Investment Advisers: Custody Rule (Sept. 2023) (emphasizing that advisers remain responsible for compliance even when using third-party service providers).

board members depends on coverage the company may no longer be able to provide. These are material risk factors under Regulation S-K Item 105 and material contingent liabilities under ASC 450-20 that must be evaluated for disclosure in the company's periodic filings. For registered funds, the Statement of Additional Information's description of insurance and indemnification arrangements is incomplete if those arrangements have been materially impaired. Fund shareholders are entitled to know whether the directors governing their fund have functioning D&O coverage — because directors facing uninsured personal liability have fundamentally different incentives than directors who believe they are protected, and that difference is material to any investor's assessment of fund governance. The Commission's staff statement should make clear that firms must evaluate their D&O coverage status as a disclosure obligation — not merely as a risk management matter — and that failure to disclose material impairment of coverage to investors constitutes an independent disclosure violation compounding the underlying violations this Petition documents.

C. Commission-Level Interpretive Guidance (Within 21 Days)

1. Written Responses to the Questions Presented

Petitioner requests Commission-level interpretive guidance responding to the specific questions presented in Section IV of this Petition **within twenty-one days**. The guidance should address two core issues: whether statements in SEC-filed prospectuses regarding "buying a dividend" are materially accurate or materially misleading under federal securities laws, and what disclosure obligations follow from that determination.

The guidance should also address whether the standard prospectus definition of net asset value — "total assets minus total liabilities" — is materially misleading when the fund excludes from "liabilities" realized income it is legally obligated to distribute under Subchapter M, where that obligation is the fund's largest known liability, is calculated to the penny daily, and is certain to reduce the share price by exactly the distributed amount.

The accounting methodology reveals the intent. Funds use accrual accounting for operating expenses — management fees, custody fees, legal fees, transfer agent fees — recognizing those obligations as liabilities and deducting them from NAV before they are paid in cash. This is proper. It ensures that NAV reflects the fund's true net position by accounting for known obligations when

they are incurred, not when the check clears. But funds do not apply the same method to distributions. Realized income that the fund is legally obligated to distribute — an obligation that is known, calculated to the penny, mandated by federal statute, and that dwarfs all operating expenses combined — is not accrued as a liability. It is held inside NAV on a cash basis, recognized only when the distribution is actually paid. The fund accrues for the small obligations and ignores the large one. It uses the accounting method that reduces NAV for expenses measured in basis points and the accounting method that inflates NAV for obligations measured in dollars per share. The result is not a coherent methodology. It is selective accounting — accrual, where it costs the adviser nothing, and cash basis, where accrual would reduce the fee base. Every dollar of undistributed realized income that remains in NAV is a dollar on which the adviser collects fees it would not earn if the same accrual discipline applied to distributions that applies to expenses.

The proof that this methodology overstates NAV is visible on every distribution date. When a fund pays a distribution, its share price drops by exactly the amount distributed — a decline completely unrelated to the price action of any security in the portfolio. That drop is prima facie evidence that the pre-distribution NAV was overstated. If the price accurately reflected the value of portfolio the investor will retain, a distribution would not reduce it. It reduces it because the price included money the fund already owed — an obligation the fund recognized internally, calculated daily, and chose not to subtract. The market corrects in an instant what the fund's accounting concealed for months. And every day between accrual and distribution, every adviser in the chain bills on the inflated figure as though it were assets under management — when it is, in economic substance, a liability under administration.

As documented in Section V.D, this formula is the foundational misrepresentation from which every subsequent harm flows — inflated fees, phantom tax bills, and share shortfalls are all consequences of a pricing definition that conceals the fund's largest obligation inside the "assets" figure.

Twenty-one days is sufficient — and generous — because the Commission has been reviewing the substance of these issues for over 2,100 days. Petitioner's whistleblower submission was filed in June 2020. The questions presented in this Petition are not novel. They are the same questions the Commission's staff has had in its possession since that date. The Commission does not need twenty-one days to begin its analysis. It needs twenty-one days to formalize the conclusions that the evidentiary record has supported since June 2020.

Moreover, this request asks the Commission to perform a core regulatory function it performs routinely: clarifying how existing law applies to specific fact patterns. The Commission issues interpretive guidance regularly — through releases, no-action letters, staff statements, and compliance guidance — when market participants need clarity about statutory obligations. The Commission need not develop new legal standards. It need only apply existing standards to documented facts. The questions presented in Section IV are framed to permit direct answers — each admits of only one honest answer when considered against settled precedent.

The factual predicates for those answers do not require extended study. They require a phone call. Any auditor who prices a mutual fund can confirm in **five minutes** whether a fund's NAV contains embedded realized gains that will be distributed to shareholders. Any portfolio manager can confirm in **five minutes** whether a new investor purchasing shares the day before a distribution will receive — and be taxed on — income that accrued entirely before that investor owned the shares. Any tax professional can confirm in **five minutes** whether a Form 1099-DIV that reports return of capital as ordinary dividend income overstates the recipient's taxable income. These are not close questions requiring years of deliberation. They are operational facts that every participant in the fund industry understands — and that the Commission's own examiners can verify in a single examination of a single fund's daily accounting records. The Commission has had 2,100 days to make that call. Twenty-one more is more than sufficient.

2. Staff Meetings Across Relevant Divisions (Within 14 Days)

Petitioner requests meetings with senior staff in each of the following divisions **within fourteen days** of receipt:

a) **Division of Investment Management**—to discuss the prospectus disclosure standards applicable to "buying a dividend" risk, the adequacy of current industry disclosure practices, and the Division's views on what complete disclosure requires.

b) **Division of Enforcement**—to discuss the evidentiary record compiled in this Petition, the potential violations documented, and the Division's preliminary assessment of whether enforcement referral is warranted.

c) **Division of Examinations**—to discuss incorporation of "buying a dividend" disclosures into examination priorities, the scope of a potential targeted review, and the timeline for a Risk Alert.

d) **Office of the Chief Accountant**—to discuss the relationship between GAAP-compliant accounting and securities disclosure obligations, the "GAAP safe harbor" theory industry has advanced, and the OCA's views on whether accounting classification determines disclosure adequacy.

e) **Office of Investor Education and Advocacy**—to discuss the feasibility and timeline for an investor alert, coordination with FINRA and NASAA on joint investor education, and referral to the Investor Advisory Committee.

f) **Office of the Investor Advocate** — to discuss the Investor Advocate's independent assessment of the violations documented in this Petition, the Investor Advocate's statutory obligation to report to Congress on problems investors have with the Commission under Exchange Act § 4(g)(6), and the timeline for inclusion of the matters documented herein in the Investor Advocate's next report to Congress. Petitioner notes that the Investor Advocate's reports are submitted directly to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives, and that the Commission may not "offer combative testimony or a combative official viewpoint or response" to those reports. 15 U.S.C. § 78d(g)(6)(B)(iii). This reporting channel exists precisely for circumstances in which the Commission's institutional response to documented investor harm may be inadequate — and the Investor Advocate's independent assessment of this Petition's allegations will reach Congress regardless of the Commission's own disposition of the Petition.

These meetings impose minimal burden on the Commission. Petitioner has met with Commission staff before—including three Commissioners—and the Commission has found those meetings productive. The meetings allow staff to ask questions, clarify premises, and identify any factual disputes that might affect the Commission's response. They also create accountability: meetings produce calendared commitments that silence does not.

3. Express Rejection of GAAP and Industry-Practice Defenses

The guidance should expressly address—and reject—the two defenses industry participants have raised: that GAAP-compliant accounting insulates disclosure from securities law scrutiny, and that industry-wide practice constitutes evidence of adequate disclosure.

Both defenses are foreclosed by settled precedent. In *SEC v. Lucent Technologies*, the court held that technical compliance with GAAP does not excuse materially misleading disclosures.[162] In *In re Enron Corp. Securities Litigation*, the court rejected the argument that widespread industry practice renders questionable disclosures adequate.[163] In *SEC v. Stanard*, the court made clear that securities disclosure is governed by the materiality standard, not by accounting classification.[164]

Left unanswered, the GAAP defense theory will harden into market practice, litigation posture, and regulatory precedent. The Commission need not conduct notice-and-comment rulemaking to address a statutory interpretation question. It can—and should—clarify that GAAP compliance is a floor, not a ceiling; that accounting classification does not determine disclosure adequacy; and that industry-wide practice is evidence of a cartel, not a standard of care.

4. APA-Exempt Instruments for Immediate Issuance

The Administrative Procedure Act expressly exempts interpretive rules and general statements of policy from notice-and-comment requirements.[165] The Commission can issue guidance via Commission release, staff statement, or similar instrument suitable for immediate publication. The APA exemption exists precisely for situations like this. When an agency needs to clarify existing law—not create new obligations—it can act immediately.

5. Identify Disputed Premises if Declining to Answer

Should the Commission decline to answer any question within twenty-one days, Petitioner requests express statement specifying which premises are disputed or declined: the mechanical description of fund accounting, the economic consequences for investors, the materiality principles

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[162] *SEC v. Lucent Techs., Inc.*, 610 F. Supp. 2d 342, 351 (D.N.J. 2009) ("Compliance with GAAP does not automatically insulate defendants from liability for securities fraud.").
[163] *In re Enron Corp. Sec., Derivative & ERISA Litig.*, 235 F. Supp. 2d 549, 579 (S.D. Tex. 2002).
[164] *SEC v. Stanard*, No. 06-cv-7736 (S.D.N.Y. 2009).
[165] 5 U.S.C. § 553(b)(A) (exempting "interpretative rules" and "general statements of policy" from notice-and-comment requirements).

at stake, or the applicable legal standards. This preserves the administrative record for judicial review and permits informed revision if the Petition's framing created answerable obstacles.

A conclusory denial will not survive judicial review. Under *Coinbase*, an agency must "adequately explain[] the facts and policy concerns it relied on" when denying a rulemaking petition.[166] A one-paragraph denial citing only "competing priorities" or "disagreement" with the petition's premises—without explaining *why* those priorities take precedence or *which* premises are disputed—is arbitrary and capricious. The Third Circuit remanded for precisely this deficiency. The Commission should not repeat the error here.

The questions in Section IV are framed to permit only binary answers when considered against settled precedent. If the Commission believes any question admits multiple reasonable answers, it should identify which question and explain why. Reasoned disagreement is acceptable. Unexplained disagreement is not.

D. Examination Initiative (Within 30 Days)

1. Targeted Examination Sweep (Commence Within 30 Days)

Petitioner requests that the Division of Examinations open a targeted review within thirty days examining registered funds, investment advisers, broker-dealers, and trading platforms for materially complete, non-misleading "buying a dividend" disclosures. The examination should assess four elements: whether prospectus language is materially complete, whether point-of-sale communications omit material facts, whether firms maintain reasonably designed policies to prevent misleading communications about purchase timing and embedded income, and how each firm's compliance infrastructure handled the documented notices Petitioner transmitted to 15,266 chief compliance officers in 2023.

This fourth element is critical. As documented in Section VI.H and in the staff statement requested in Section IX.B, Petitioner transmitted detailed compliance notices to every CCO registered in the Commission's Investment Adviser Registration Depository. Those notices alleged specific violations of federal securities laws, described the mechanics of harm, quantified investor

[166] *Coinbase, Inc. v. SEC*, No. 23-3202, slip op. at 17 (3d Cir. Jan. 13, 2025) (quoting *Nat. Res. Def. Council v. SEC*, 606 F.2d 1031, 1053 (D.C. Cir. 1979)).

losses, and offered discussions to facilitate mandatory investigations. The notices were tracked. Thousands were opened and read. Not one generated a response.

The examination should require each firm to produce a complete record of how its CCO handled Petitioner's notice — including whether the notice was received, whether it was reviewed, whether it was escalated to the fund board as a "material compliance matter" under Rule 38a-1, whether it was reported in the CCO's annual compliance report, whether it was shared with outside counsel, and what determination was made regarding the allegations it contained. If the notice was escalated to the board, the examination should obtain the board's minutes, any written analysis prepared for the board, and the board's documented determination. If the notice was not escalated, the examination should require the CCO to explain, in writing, why a detailed notice alleging industry-wide violations of the Securities Act, the Investment Company Act, and the Internal Revenue Code — describing harm to 160 million Americans — did not constitute a compliance matter about which the fund's board "would reasonably need to know."

Examiners should also inquire whether the firm's D&O insurer was notified of the circumstances described in Petitioner's notices, whether subsequent D&O policy renewals disclosed those circumstances on the renewal application, and whether any person proposed for coverage answered "no" to the standard renewal question regarding awareness of circumstances that might give rise to a claim. These inquiries are within the Division's examination authority because they bear directly on whether the firm's governance and compliance infrastructure is "reasonably designed to prevent a violation of the federal securities laws" — the standard Rule 38a-1 requires boards to certify. A compliance infrastructure that receives documented notice of alleged securities law violations and produces no escalation, no board notification, no carrier notification, and no responsive action is not reasonably designed. It is designed to suppress.

The examination record this inquiry produces will be dispositive. For every firm examined, the Division will learn one of three things: the CCO escalated and the board acted (in which case the firm should be able to produce corrective measures), the CCO escalated and the board declined to act (in which case the board must defend its determination), or the CCO did not escalate at all (in which case the CCO violated Rule 38a-1 and the board was deprived of the information the Investment Company Act requires it to receive). Each outcome generates its own enforcement referral. There is no fourth option that produces a clean bill of health.

Thirty days to commence — not conclude — an examination initiative is reasonable given the Division's existing infrastructure. The Division of Examinations already conducts targeted sweeps on emerging risk areas. Recent examples include Marketing Rule compliance, Regulation Best Interest implementation, cybersecurity practices, and ESG disclosures. The examination framework exists. The Division has the authority. The only question is whether this investor protection concern merits the same attention the Division gives to other material risks.

The Division has known about this issue since Petitioner first briefed Commission staff in 2020. It has had more than five years to consider whether "buying a dividend" disclosures warrant examination focus. The request is not to develop new examination procedures but to apply existing procedures to a documented disclosure gap — and to determine whether the compliance infrastructure that was supposed to catch that gap functioned as the Investment Company Act requires, or whether it was neutralized by the same institutional silence this Petition documents at every level of the industry's governance structure.

2. Risk Alert Summarizing Staff Observations (Within 45 Days)

Following initial examination work, Petitioner requests that the Division issue a Risk Alert **within forty-five days** summarizing staff observations, common disclosure failures, and corrective practices. Risk Alerts translate examination findings into actionable guidance without disclosing firm-specific information.[167] They permit firms that were not examined to evaluate their own practices against Commission-identified standards.

Forty-five days is sufficient because the Commission already knows what the disclosure failures are. The Risk Alert need not await examination findings that will confirm what the Commission has known for years. It can describe the disclosure gap documented in this Petition, identify the practices that contribute to it, and outline what complete disclosure requires. If initial examinations reveal unexpected variations, the Division can supplement the Risk Alert later.

The Risk Alert should address three areas: what disclosure approaches the Division considers inadequate, what point-of-sale communications perpetuate misleading impressions, and what compliance program enhancements firms should implement.

[167] *See* SEC Division of Examinations, Risk Alerts (regularly published to remind firms of obligations and share staff observations).

3. Preservation of Materials Establishing Knowledge

The Commission should issue formal document preservation notices to registrants immediately upon receipt of this Petition — in advance of and independent from the examination initiative requested above. Preservation notices should not await the commencement of examinations. The risk of spoliation is acute. This Petition identifies, with specificity, the categories of documents that establish what firms knew and when they knew it. The firms that receive this Petition — and their counsel will ensure they receive it within hours of its public filing — will understand immediately which documents are most damaging to their position. Every day that passes between the public filing of this Petition and the issuance of a formal preservation directive is a day in which documents can be deleted, emails can be purged, and internal analyses can disappear into the ordinary course of document retention policies that were designed for routine business — not for the preservation of evidence in the largest disclosure fraud in the history of the American fund industry.

The Commission possesses clear authority to issue preservation notices. The Division of Examinations routinely issues document requests and preservation directives in connection with examinations and investigations. The Commission's formal order authority under Exchange Act § 21(a) permits the issuance of investigative orders that carry preservation obligations enforceable through federal court. And the Commission's general regulatory authority over registered investment companies, investment advisers, and broker-dealers provides an independent basis to require the preservation of records bearing on compliance with the federal securities laws.

The preservation directive should cover, at minimum, the following categories of materials:

All records reflecting receipt, review, routing, and handling of Petitioner's 2023 compliance notices — including email communications, calendar entries, memoranda, and any analysis or discussion of the notices' content, whether by compliance personnel, legal counsel, or management. These records will establish whether CCOs received the notices, whether they evaluated them, whether they escalated them to fund boards under Rule 38a-1, and whether management directed them not to.

All internal analyses, memoranda, presentations, or communications addressing the mechanics of embedded realized income in fund NAVs, the tax treatment of distributions to purchasing shareholders, the concept of "buying a dividend," or the accuracy of prospectus

language describing distribution composition. These records will establish the depth and duration of the industry's actual knowledge.

All records reflecting decisions to retain, modify, or remove timing-limited prospectus language — including the silent edits documented in Section VI.E of this Petition — and all communications identifying who authorized those changes, what prompted them, and whether the changes were reported to the fund board, disclosed to investors, or communicated to the Commission.

All records reflecting escalations — or decisions not to escalate — to fund boards, compliance committees, audit committees, or corporate boards regarding the issues raised in Petitioner's notices or in this Petition, including board minutes, compliance reports, committee presentations, and any legal memoranda prepared for board or committee review.

All records related to the preparation, review, and filing of Forms 1099-DIV, including controls governing the classification of distributions as ordinary dividends versus return of capital, any analysis of whether distribution classifications accurately reflect the tax character of amounts distributed to shareholders, and any communications with tax counsel, fund accountants, or transfer agents regarding the accuracy of information returns.

All records reflecting communications with D&O insurance carriers — including notice-of-circumstances filings, claim notifications, renewal applications, and any internal analysis of whether the circumstances described in Petitioner's notices or this Petition triggered reporting obligations under existing D&O policies.

All communications between the firm and any other registrant, industry trade association, law firm, or consultant regarding Petitioner's notices, Petitioner's industry engagement, or the issues raised in this Petition. These records will establish whether the industry's coordinated silence was in fact coordinated — a distinction with significant implications under the antitrust laws.

The Commission should make explicit in its preservation directive that destruction, alteration, or concealment of any preserved materials — whether pursuant to routine document retention schedules or otherwise — after receipt of the directive constitutes obstruction under 18 U.S.C. § 1519 (destruction of records in contemplation of a federal investigation) and may be referred to the Department of Justice for criminal prosecution. The preservation directive should further state that the Commission will treat any firm's failure to produce preserved materials in subsequent examinations as an adverse inference in any enforcement proceeding — and that the

spoliation itself may constitute an independent basis for enforcement action under the Commission's authority to sanction registrants who fail to maintain required books and records.

If the Commission does not issue preservation notices, it should understand the consequence. Documents will be destroyed. Not necessarily through affirmative bad faith — though the risk of that is real — but through the ordinary operation of document retention policies that automatically purge emails after specified periods, overwrite server backups on rolling schedules, and dispose of physical records according to routine timetables. The firms subject to this Petition have sophisticated document management systems. Those systems are designed to destroy records on schedule. Once a record is destroyed pursuant to a routine retention policy — before a preservation directive is issued — the destruction may be legally defensible even if the record was material to the Commission's investigation. The Commission's failure to issue a timely preservation directive converts potential evidence into permissible deletion. That outcome is avoidable. The preservation notice should issue now — today, upon receipt of this Petition — and should be treated with the same urgency the Commission brings to any matter in which the evidentiary record is at risk.

These materials serve multiple purposes beyond the immediate examination. They establish whether firms recognized the disclosure gap. They document firm decision-making when confronted with evidence of material omissions. They reveal whether service providers contributed to misleading communications. They establish whether the industry's response was independently arrived at or collectively coordinated. And they create the factual foundation for enforcement actions, criminal referrals, and private litigation if voluntary remediation proves insufficient. The preservation of this record is not merely an examination tool. It is a prerequisite to accountability — and the Commission's obligation to preserve it begins the moment this Petition is received.

E. SRO Coordination and Market Gatekeeper Engagement (Within 7 Days)

The Obligation to Inform Market Gatekeepers — and the Record of Their Prior Knowledge

The fund industry's core failure was not merely that it concealed material information from investors — it was that when employees, compliance officers, and executives learned of the problem, they failed to escalate it to those with authority and responsibility to act. The industry's defense will be: "We didn't think it was our job to tell anyone." That defense will fail because securities law imposes affirmative disclosure obligations.

The self-regulatory organizations cannot claim even that inadequate defense — at least not all of them. Petitioner has engaged directly with multiple SROs regarding the violations documented in this Petition, including DTCC, national securities exchanges, and individual board members of those exchanges. Those engagements are documented. Petitioner presented evidence of systematic disclosure failures affecting every registered fund in the United States — failures implicating the listing standards, surveillance obligations, and member supervision requirements those organizations are statutorily charged with enforcing. They declined to act. They declined to investigate. They declined to hold their members accountable for disclosure practices that their own rules prohibit.

FINRA presents a distinct but equally troubling question. Petitioner did not engage directly with FINRA. But FINRA is the primary self-regulatory organization responsible for broker-dealer supervision, including the communications and suitability obligations most directly implicated by the disclosure failures documented in this Petition. Petitioner engaged with exchanges and clearing organizations whose member firms overlap substantially with FINRA's membership. If any of those organizations informed FINRA of Petitioner's engagement — as interagency coordination and shared investor protection mandates would suggest they should — FINRA received notice and did not contact Petitioner, did not investigate, and did not issue guidance. If none of those organizations informed FINRA — if the SRO infrastructure designed to protect investors operated in such isolation that a documented allegation of industry-wide false reporting and disclosure violations affecting 160 million Americans reached multiple exchanges and the nation's central clearing organization without anyone determining that the primary broker-dealer regulator should be told — that failure of coordination is itself an indictment of the self-regulatory system. Either FINRA knew and did nothing, or the SRO infrastructure failed to ensure FINRA knew. Neither answer is acceptable. Both demand Commission inquiry.

The Commission must not repeat this pattern — and it must address the SROs' pattern as well.

Just as the industry had legal and ethical obligations to escalate material information to boards, regulators, and investors, the Commission has legal and ethical obligations to escalate material information about systemic violations to the self-regulatory organizations that share responsibility for investor protection. Exchange Act § 19(g) imposes enforcement obligations on SROs — but those obligations can only be fulfilled if the SROs choose to enforce what they know.

In this case, multiple SROs knew. They chose not to enforce. And the SRO that arguably matters most — FINRA — either knew and chose inaction, or was never informed by sister organizations that should have told it. The Commission's oversight authority must address both possibilities.

1. Formal Transmission to FINRA, National Securities Exchanges, and Clearing Organizations (Within 7 Days)

Petitioner requests that the Commission transmit this Petition to FINRA, the national securities exchanges — including NYSE, NYSE Arca, Nasdaq, and CBOE — and to DTCC and its subsidiaries within seven days, requesting written response within twenty-one days describing what steps each SRO will take to evaluate member communications, supervisory practices, and transactional data concerning "buying a dividend" disclosures. The Commission's transmittal should make clear that the Commission is aware of Petitioner's prior engagement with multiple SROs and their failure to act, and that the Commission expects a substantive response — not a repetition of the inaction that preceded this Petition.

The transmittal to FINRA should specifically request that FINRA identify whether it received any communication regarding Petitioner's allegations from any other SRO, exchange, or market participant prior to receiving this Petition — and if so, what action FINRA took in response. If FINRA received no such communication, the Commission should inquire why the SRO coordination mechanisms that exist to protect investors failed to transmit information about an industry-wide disclosure failure to the organization most directly responsible for broker-dealer supervision.

The legal basis is clear. Exchange Act § 19(g) provides that SROs "shall comply with the provisions of this chapter, the rules and regulations thereunder, and its own rules, and... shall enforce compliance... by its members and persons associated with its members." When a market-wide investor-protection concern surfaces that directly implicates member communications and supervisory practices, the SROs' enforcement obligation is triggered. The Commission's oversight authority includes ensuring SROs fulfill that obligation — and evaluating whether their prior failure to act, after receiving direct notice from Petitioner or after failing to coordinate with sister organizations that received such notice, constituted a violation of that obligation.

FINRA Rule 2210 governs communications with the public. It requires that retail communications be "fair and balanced" and not "omit any material fact or qualification if the

omission, in light of the context of the material presented, would cause the communications to be misleading." The disclosures at issue — prospectus statements and point-of-sale communications about "buying a dividend" — fall squarely within this rule's scope. If those communications omit material facts, FINRA members distributing them face regulatory exposure — exposure that FINRA's own examination and enforcement functions should have identified, whether or not Petitioner engaged with FINRA directly, because the deficient disclosures are in FINRA's own files. Every prospectus distributed by a FINRA member was subject to FINRA's supervisory review requirements. The deficiencies were visible to any examiner who read them. FINRA did not need Petitioner to tell it what its own rules require and what its own members' filings reveal.

The national securities exchanges bear parallel responsibilities for their listed products. ETFs traded on exchanges are subject to exchange listing standards and surveillance obligations. Petitioner engaged directly with multiple exchanges and exchange board members regarding these obligations. Those exchanges declined to act. If ETF disclosures systematically mislead investors about embedded realized income, exchange surveillance should have identified the pattern — and in Petitioner's case, was specifically alerted to the pattern and chose not to investigate.

DTCC and its subsidiaries — particularly NSCC, which operates the fund/serv platform through which substantially all mutual fund transactions are processed — occupy a unique position. DTCC possesses transactional data capable of quantifying the harm documented in this Petition across the entire industry: every fund purchase, every distribution, every redemption. Petitioner engaged directly with DTCC executives multiple times regarding the violations documented in this Petition. DTCC declined to act. One senior DTCC executive explained the organization's inaction with a statement that captures, more precisely than any legal analysis could, why the Commission's prolonged silence has compounded investor harm: "If the SEC cared about this, they would be talking about it."

The Commission should absorb the full implications of that statement. A senior executive at the nation's central securities clearing organization — the infrastructure through which trillions of dollars in fund transactions flow — evaluated whether to act on documented evidence of industry-wide false reporting and disclosure violations affecting 160 million Americans and concluded that the SEC's silence was evidence of the allegations' insignificance. That reasoning illustrates how regulatory silence is interpreted by the institutions that depend on regulatory signals to calibrate their own conduct. Every SRO that declined to investigate, every exchange that

dismissed Petitioner's engagement, every CCO who chose not to escalate — each could point to the same justification: the SEC is not acting, therefore the problem is not real. That inference was predictable — and it was wrong. The practical effect was that the Commission's processing timeline created a de facto market signal indistinguishable from the regulatory comfort a formal no-action letter would have provided — without the deliberation, analysis, or public accountability that the no-action process requires. The industry did not need the Commission's permission to continue. It needed only the Commission's silence — and it had that for nearly six years.

The Commission should request that DTCC identify what data it possesses that could assist in quantifying investor harm and whether DTCC's own risk management and surveillance functions identified the patterns Petitioner brought to its attention.

Transmitting this Petition to the SROs is a ministerial act. It requires no Commission deliberation, no cost-benefit analysis, no rulemaking. The Commission need only forward the document and request a response. Seven days is more than sufficient.

2. Commission Review of SRO Compliance with § 19(g) Obligations

Petitioner requests that the Commission, in connection with its transmittal of this Petition to the SROs, initiate a review under Exchange Act § 19(g) of whether FINRA, the national securities exchanges, and the registered clearing agencies have fulfilled their statutory enforcement obligations with respect to the disclosure practices documented in this Petition. The review should address four questions.

First, which SROs received prior notice of the disclosure deficiencies documented in this Petition — whether through Petitioner's direct engagement, through communications from other SROs or market participants, or through their own examination and surveillance functions — and what action, if any, each took in response.

Second, whether the SROs that received direct notice from Petitioner and declined to act violated their § 19(g) obligation to enforce compliance by their members with the Exchange Act, Commission rules, and the SROs' own rules.

Third, whether any SRO that received notice from Petitioner communicated that information to FINRA or to other SROs — and if not, whether the failure to coordinate constitutes a breakdown in the self-regulatory infrastructure the Commission is charged with overseeing. The Exchange Act contemplates a system of coordinated self-regulation in which SROs share

information relevant to investor protection. If Petitioner informed multiple SROs of industry-wide disclosure failures and none of those SROs transmitted that information to FINRA — the SRO with primary jurisdiction over the broker-dealers distributing the deficient disclosures to retail investors — the coordination failure is systemic and the Commission must determine whether structural reform is warranted.

Fourth, whether the SROs' inaction — whether individual or collective — created a false sense of regulatory comfort among their member firms, allowing firms to conclude from the absence of SRO guidance or enforcement that their disclosure practices were compliant when they were not. If the SROs' silence functioned as implicit approval of deficient disclosures, the SROs share responsibility for the investor harm that followed — because member firms that relied on the SROs' silence as evidence of compliance did so reasonably, and the SROs had information — or should have had information, had they coordinated as their shared mandate requires — that would have changed that reliance.

The Commission's oversight authority over SROs exists precisely for this circumstance. When SROs fail to enforce their own rules against systematic member misconduct — after receiving direct notice of that misconduct or after failing to coordinate with sister organizations that received such notice — the Commission must determine whether the self-regulatory function is operating as Congress intended, or whether the SROs have become, like the fund industry's own compliance infrastructure, institutions that protect their members rather than the investors their members serve.

3. Request for SRO Member Guidance (Within 21 Days)

Petitioner requests that the Commission ask FINRA and the national securities exchanges to issue member guidance — a Regulatory Notice, interpretive communication, or compliance reminder — within twenty-one days addressing supervisory and communications obligations implicated by "buying a dividend" disclosures. The guidance should clarify what each SRO considers adequate disclosure, what supervisory controls are required for point-of-sale communications, and how firms should document compliance with these standards.

FINRA regularly issues Regulatory Notices addressing emerging investor protection concerns. Recent examples include guidance on private placements, Regulation Best Interest compliance, and complex products disclosures. The exchanges issue similar guidance through

information memoranda and compliance bulletins. The infrastructure exists. The SROs have used it for lesser investor protection concerns. The only question is whether an investor protection concern affecting 160 million Americans and implicating every member firm in the country merits the same treatment — a question that, given the SROs' prior inaction, the Commission should not leave to the SROs' discretion.

4. SRO Examination Focus

The Commission should further request that SROs identify whether they will incorporate these issues into examination priorities or targeted reviews. Member firms need to understand that SRO examinations will evaluate "buying a dividend" disclosures with the same scrutiny applied to other material omissions in sales communications. The SROs' prior failure to examine these practices — despite direct engagement from Petitioner with multiple exchanges and clearing organizations — should inform the Commission's assessment of whether SRO examination priorities reflect investor protection needs or industry preferences.

5. SRO Preservation of Review Materials

Any SRO review should include preservation of materials establishing member notice, supervisory review, and communications approvals: internal analyses, training materials, compliance escalations, and decisions to retain, remove, or modify timing-limited language. The preservation directive should also extend to the SROs' own internal records — including any records reflecting their receipt and handling of Petitioner's prior engagement, any internal analysis of the issues Petitioner raised, any communications between SROs regarding Petitioner's allegations, any communications with member firms regarding Petitioner's allegations, and any decision not to investigate or enforce. If the SROs conducted internal deliberations about Petitioner's engagement and concluded that no action was warranted, that analysis should be preserved and produced to the Commission — because the Commission's § 19(g) review requires understanding not only what the SROs did, but why they chose not to do more. The absence of inter-SRO communications regarding Petitioner's engagement would itself be significant — establishing that the coordination failure was not merely passive but reflected an affirmative institutional choice not to share information that investor protection demanded be shared.

6. Petitioner's Direct Transmission to SROs

Petitioner hopes the Commission will transmit this Petition to FINRA, the national securities exchanges, DTCC, and other relevant SROs as requested. However, to ensure that these market gatekeepers receive copies and are informed of the documented investor harm, Petitioner will himself transmit copies of this Petition directly to FINRA, NYSE, NYSE Arca, Nasdaq, CBOE, DTCC, and other relevant SROs simultaneously with its filing with the Commission.

One way or another, the SROs will be informed — and for several of them, informed again. Petitioner engaged directly with multiple exchanges, clearing organizations, and individual board members of those organizations. That engagement produced nothing. This time, the information arrives with a comprehensive legal and evidentiary record, on the Commission's public docket and on multiple federal court dockets, accompanied by the Commission's own transmittal — or by the conspicuous absence of that transmittal. The SROs will need to explain their response not only to the Commission but to their own member firms, to the investors those firms serve, and to the congressional committees that oversee their self-regulatory function.

If these organizations receive a copy of this Petition from Petitioner but no copy from the Commission — if they learn of systemic disclosure failures affecting 160 million Americans from a private citizen rather than from the agency charged with coordinating their oversight — serious questions will arise about why the Commission failed to inform them. The Commission will need to explain why it chose to keep the SROs in the dark about a matter that directly implicates their supervisory and enforcement obligations. And the SROs that received prior notice from Petitioner will need to explain — again — why two separate notices, from two different sources, at two different times, produced the same result: nothing.

7. The Arbitration Consequence of SRO Inaction

One final consequence of the SROs' inaction warrants attention — not for the Commission's benefit, but for the benefit of the member firms that will bear its weight. Every investor who purchased fund shares through a FINRA member broker-dealer has a potential arbitration claim under FINRA's arbitration framework. When those claims are filed — and this Petition ensures they will be — the member firms' most natural defense will be reliance on regulatory guidance: "FINRA never told us our disclosures were deficient, FINRA never issued guidance requiring different practices, and FINRA never cited us in an examination."

That defense is now compromised from two directions. First, Petitioner's documented engagement with multiple exchanges and DTCC — organizations whose member firms overlap substantially with FINRA's membership — establishes that the SRO infrastructure was on notice even if FINRA individually was not. The member firm that argues "no SRO told us" will be met with the response: "Multiple SROs were told and none of them told you — and your firm is a member of the organizations that were told." Second, this Petition itself, once filed on the public docket, constitutes notice that no SRO can claim not to have received. From that date forward, every day without FINRA guidance is a day in which FINRA's silence is a conscious choice made with full knowledge of the documented violations — not an absence of information but a decision not to act on information that is publicly available, comprehensively documented, and directly within FINRA's supervisory jurisdiction.

The member firm's regulatory reliance defense collapses either way. If FINRA knew — whether through the other SROs or through this Petition — and did not act, the firm cannot rely on FINRA's silence as evidence of compliance. If FINRA did not know because the SRO coordination infrastructure failed, the firm cannot rely on a system that demonstrably failed to protect it. And the dynamic that emerges in arbitration is one in which the member firm's interests and FINRA's interests diverge — the firm wants to blame FINRA for not warning it, FINRA wants to avoid responsibility for not acting, and neither can protect the other. The investor — armed with the evidentiary record this Petition provides — benefits from the fracture between the two institutions that were supposed to protect them and failed.

The Commission should understand that this arbitration dynamic will unfold with or without Commission action. FINRA arbitrations do not require SEC involvement. They do not require SEC approval. They proceed on their own timeline, under their own rules, with their own arbitrators — and the evidentiary record in this Petition is available to every claimant's attorney in the country. The Commission's choice is not whether this dynamic occurs. It is whether the Commission leads the remediation that makes disaggregated arbitration unnecessary --- or does not, in which case thousands of arbitration panels, each armed with this Petition, adjudicate the same questions the Commission could have resolved once, definitively, through the coordinated enforcement this Petition requests.

F. Enforcement Action: Referral, Injunctive Relief, Emergency Authority, and Criminal Transmission (Within 7 Days)

The Commission possesses enforcement authority calibrated to the full range of securities violations—from routine infractions warranting administrative proceedings to ongoing violations causing imminent harm that demand immediate intervention. Seven days to initiate referral is not aggressive — it is generous. The threshold factual question — whether fund prospectuses accurately disclose the existence and consequences of embedded realized income distributed to purchasing shareholders — can be answered in a five-minute phone call to any portfolio manager, fund accountant, or auditor in the industry. The Commission does not need seven days to determine whether the disclosures are deficient. It needs seven days to begin the administrative process of acting on what any market participant will confirm in minutes. Congress structured this authority deliberately. For completed violations, the Commission may investigate and bring enforcement actions in the ordinary course. For ongoing violations likely to cause significant harm, Congress provided escalating tools: cease-and-desist authority that the Commission can exercise administratively, injunctive authority that the Commission can seek in federal court, and temporary emergency authority that the Commission can deploy before proceedings are even completed. Each tool serves a distinct function. Each applies to the violations documented in this Petition. Petitioner requests that the Commission evaluate and deploy each as the record warrants.

The Commission should also recognize that enforcement here will encounter less resistance than the industry's apparent solidarity might suggest. The interests of fund management companies, independent directors, chief compliance officers, and their respective insurers are not aligned — and this Petition ensures they understand as much. Management companies benefit from the status quo: inflated NAVs generate higher advisory fees. Independent directors do not share that benefit — they earn modest board fees and carry personal fiduciary liability that may now be uninsured. CCOs face personal regulatory exposure under Rule 38a-1 for failures to escalate material compliance matters to the boards they serve. And directors-and-officers liability insurers, upon reviewing this Petition and the prior notice record, will evaluate coverage defenses — prior knowledge exclusions, late notice provisions, material misrepresentation on renewal applications — that may leave individual insureds without the protection they assumed they had. When the interests of defendants and their insurers diverge, enforcement proceedings resolve faster, cooperation increases, and remediation becomes the rational economic choice for every

participant in the chain. The Commission need not overcome a unified industry defense. It need only act — and the fractures will do the rest.

1. Referral to Division of Enforcement (Within 7 Days)

Petitioner requests that the Commission refer this record to the Division of Enforcement **within seven days** for evaluation of potential violations. The record implicates multiple provisions: Investment Company Act § 34(b) (prohibiting materially misleading statements in fund prospectuses),[168] Securities Act Rule 156 (governing misleading sales literature for investment company securities),[169] Exchange Act § 10(b) and Rule 10b-5 (prohibiting fraud in connection with securities transactions),[170] and Advisers Act § 206 (prohibiting fraudulent conduct by investment advisers).[171]

Seven days to refer—not to complete evaluation—is sufficient. Referring a matter to Enforcement is a ministerial act. It requires no Commission analysis, no findings, no determination of violation. It asks only that the Division receive the record and evaluate it. The Division can then determine on its own timeline whether the evidence warrants further investigation, whether enforcement action is appropriate, and what charges, if any, might be sustained.

Enforcement evaluation serves three purposes. It signals to registrants that the Commission views materially misleading disclosures seriously. It preserves the Commission's ability to act if voluntary remediation proves inadequate. And it develops the factual record necessary to determine which firms made disclosure decisions with knowledge of material omissions.

The Commission's enforcement authority is not discretionary when violations are ongoing and documented. Exchange Act § 21(a)(1) provides that the Commission "shall make such investigations as it deems necessary to determine whether any person has violated, is violating, or is about to violate any provision of this chapter." The word "shall" creates a duty. The word "is violating"—present tense—describes this case. The Commission possesses documented evidence that registrants are, at this moment, distributing materially misleading prospectuses to American investors. The question is not whether the Division of Enforcement should evaluate this record. The question is how the Commission could justify declining to refer it.

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[168]Investment Company Act § 34(b), 15 U.S.C. § 80a-33(b).
[169]17 C.F.R. § 230.156 (Investment company sales literature).
[170]Securities Exchange Act § 10(b), 15 U.S.C. § 78j(b); 17 C.F.R. § 240.10b-5.
[171]Investment Advisers Act § 206, 15 U.S.C. § 80b-6.

2. Assessment of Injunctive Relief for Ongoing Violations

Petitioner requests that the Commission evaluate whether the record supports seeking temporary, preliminary, or permanent injunctive relief to halt ongoing materially misleading communications pending adjudication. The securities laws authorize the Commission to seek injunctive relief when necessary to protect investors and prevent continuing violations.[172]

The statutory framework leaves no ambiguity about the Commission's authority. Securities Act § 20(b) authorizes the Commission to seek injunctive relief in federal court whenever "any of the provisions of this subchapter... have been or are about to be violated." The word "about to" is forward-looking by design. Congress recognized that some violations are not discrete events but continuing courses of conduct, and it gave the Commission authority to halt them before additional harm accrues. Here, the Commission need not predict future harm. It need only observe what has occurred every trading day for the past nearly six years and recognize that the same harm will recur tomorrow, and the next day, and every trading day thereafter, until disclosures are corrected or a court orders correction.

Exchange Act § 21(d)(1) provides parallel authority: the Commission may seek injunctive relief "whenever it shall appear to the Commission that any person is engaged or is about to engage in acts or practices constituting a violation." The present tense—"is engaged"—describes this case precisely. The violations documented in this Petition are not historical. They are happening now, as this Petition is read.

Three factors make the case for injunctive assessment compelling. First, the violations are ongoing—they recur every trading day as investors purchase securities under incomplete disclosures. The Commission need not speculate about future injury. The injury is structural, embedded in the daily operation of every fund that carries undisclosed realized income in its NAV. Second, the harm is measurable—investors pay taxes on embedded realized income they did not anticipate and could have avoided with adequate disclosure. Unlike cases where harm is speculative or difficult to quantify, the mathematics here are precise: the overvaluation is calculable, the tax consequence is deterministic, and the aggregate injury exceeds $100 billion annually. Third, the violations can be halted without disrupting legitimate business operations—firms need only provide complete disclosure at the point of sale. No fund need stop operating. No

[172]Securities Act § 20(b), 15 U.S.C. § 77t(b); Exchange Act § 21(d), 15 U.S.C. § 78u(d).

portfolio need be liquidated. No investor need be denied access to capital markets. The remedy is information—the very remedy the securities laws exist to provide.

Exchange Act § 21(d)(5) confirms the breadth of available relief. In any Commission enforcement action, federal courts may order "any equitable relief that may be appropriate or necessary for the benefit of investors"—language courts have construed to encompass corrective disclosure, disgorgement, and prospective compliance measures. The Supreme Court has recognized that this provision grants courts "broad authority to fashion appropriate remedies" in SEC enforcement actions. *See Liu v. SEC*, 591 U.S. 71 (2020). The equitable remedy here is straightforward: require that investors be told the truth before they commit capital.

If the record establishes that firms are distributing materially misleading prospectuses with knowledge of the material omissions—and Petitioner submits that it does—injunctive relief may be warranted even before final adjudication. The test is not whether every legal question has been resolved. The test is whether the public interest requires immediate cessation of the misleading conduct. When 160 million Americans are making irreversible investment decisions under disclosures the Commission knows to be materially incomplete, the public interest is not a close question.

3. Exercise of Temporary Cease-and-Desist Authority

Petitioner requests that the Commission evaluate whether this record warrants exercise of its temporary cease-and-desist authority under Securities Act § 8A(c), Exchange Act § 21C(c), Investment Company Act § 9(f)(3), and Investment Advisers Act § 203(k)(3).

Congress did not leave the Commission powerless when securities violations cause ongoing investor harm. It gave the Commission authority to act before administrative proceedings are completed—authority specifically designed for the situation this Petition documents. Each of the four statutes uses identical language. When a violation or threatened violation, "or the continuation thereof, is likely to result in significant dissipation or conversion of assets, significant harm to investors, or substantial harm to the public interest," the Commission "may enter a temporary order requiring the respondent to cease and desist from the violation or threatened violation and to take such action to prevent the violation or threatened violation and to prevent... significant harm to investors... as the Commission deems appropriate." 15 U.S.C. § 77h-1(c); 15 U.S.C. § 78u-3(c)(1); 15 U.S.C. § 80a-9(f)(3); 15 U.S.C. § 80b-3(k)(3).

The statutory trigger is whether the continuation of the violation is "likely to result in significant harm to investors." Here, that test is not even close. It is met—not marginally, not arguably, but overwhelmingly. The harm is not prospective. It is not speculative. It is occurring now, has been occurring every trading day for years, and will continue occurring tomorrow and every day thereafter until the Commission acts or a court compels action. One hundred sixty million Americans are purchasing securities under materially misleading disclosures. They are paying taxes on amounts that should be classified as return of capital. The harm is quantifiable—exceeding $100 billion annually. The victims are identifiable—every investor who purchases fund shares carrying undisclosed embedded realized income. The mechanism of injury is documented in the industry's own prospectuses and confirmed by the industry's own admissions. If this record does not satisfy the "significant harm to investors" standard, then no record ever will—and the temporary cease-and-desist authority Congress enacted in four separate statutes is a dead letter.

The Commission's own procedural rules illuminate the framework Congress intended — and the limits of the Commission's discretion within it. 17 C.F.R. § 201.512(a) provides that a temporary cease-and-desist order "shall be issued" once the Commission determines that the continuation of a violation is likely to result in "significant harm to investors" or "substantial harm to the public interest." Petitioner recognizes that the initial determination remains within the Commission's discretion — the regulation conditions the mandatory "shall" on the Commission's own factual finding. But that discretion is not unbounded. The Supreme Court has long recognized that agency enforcement discretion, while broad, does not extend to "an *abdication* of [the agency's] statutory responsibilities." [emphasis added] *Heckler v. Chaney*, 470 U.S. 821, 833 n.4 (1985). And in *Massachusetts v. EPA*, 549 U.S. 497, 527–28 (2007), the Court held that when a statute provides specific criteria triggering agency authority, an agency cannot decline to act based on policy preferences untethered to those statutory criteria — it must ground any refusal in the statute's own terms, not in considerations Congress did not authorize it to weigh.

The Commission's enabling statutes provide exactly such criteria. Prospectuses must not be materially misleading. Investment Company Act § 34(b). Disclosures must be complete. Securities Act §§ 5, 10. The Commission "shall make such investigations as it deems necessary to determine whether any person has violated, is violating, or is about to violate" the securities laws. Exchange Act § 21(a)(1). These are not aspirational suggestions. They are statutory commands — and when the Commission possesses documented evidence, including the industry's own

admissions, that 160 million Americans are purchasing securities under materially misleading disclosures, and declines to even determine whether that evidence satisfies the "significant harm" threshold Congress wrote into four separate statutes, the question is whether the Commission has exercised the judgment Congress required — or declined to exercise it. That distinction will be evaluated by any reviewing court.

Each statute applies by name to the entities responsible for the violations documented in this Petition. The respondents are not peripheral actors whose connection to the securities laws might be contested. They are registered investment companies operating under the Investment Company Act. They are registered investment advisers operating under the Advisers Act. They distribute securities through registered broker-dealers operating under the Exchange Act. They file prospectuses and registration statements under the Securities Act. Congress identified exactly these entities—by category, by name, by regulatory status—when it authorized temporary relief. The Commission need not stretch jurisdictional boundaries or assert novel theories of authority. It need only apply the plain text of four statutes to the entities those statutes were written to regulate.

Petitioner anticipates the objection that temporary cease-and-desist authority has historically been deployed in the context of individual enforcement proceedings against specific respondents, not in the context of industry-wide disclosure failures. That distinction does not limit the authority. Nothing in the statutory text conditions temporary relief on the number of violators or the size of the affected class. The statutes authorize the Commission to act when violations cause "significant harm to investors"—they do not require that harm be confined to a handful of victims or a single firm. If anything, the industry-wide scope of these violations makes the case for temporary relief more compelling, not less. A disclosure failure that harms a hundred investors warrants enforcement evaluation. A disclosure failure that harms 160 million investors and costs them over $100 billion annually warrants every tool in the Commission's arsenal—including the emergency tools Congress designed for exactly this purpose.

The Commission need not resolve every question raised by this Petition to exercise temporary authority. It need not complete rulemaking. It need not conduct a comprehensive examination sweep. It need not issue interpretive guidance on every legal issue presented. It need only determine that the continuation of current disclosure practices is "likely to result in significant harm to investors"—a determination that the record before the Commission, including the industry's own prospectus admissions, the mechanics of embedded realized income, the quantified

tax consequences, and seven years of documented industry silence, establishes beyond any reasonable dispute.

Should the Commission decline to exercise temporary cease-and-desist authority, Petitioner requests an express docketed statement identifying the grounds. In particular, Petitioner requests that the Commission identify which element of the statutory test it concludes has not been met: Does the Commission dispute that the violations are ongoing? Does the Commission dispute that the harm is significant? Does the Commission dispute that the public interest is substantially affected? Or does the Commission concede all three but decline to act for reasons not specified in the statute? The answer matters—not only for the administrative record, but because each of those positions carries consequences the Commission should consider carefully before committing to paper.

4. Criminal Referral Where Warranted

The conduct documented in this Petition does not present solely as civil liability. Should the record reveal potential criminal violations, Petitioner requests that the Commission transmit evidence to the Department of Justice consistent with Exchange Act § 21(d)(1) and the Commission's statutory authority to refer matters to the Attorney General.

The criminal statutes implicated by this Petition's documented facts are specific and serious. 18 U.S.C. § 1348 prohibits securities fraud — knowingly executing or attempting to execute a scheme to defraud persons in connection with securities. The knowing dissemination of materially misleading prospectuses to 160 million investors, continued for years after the misleading nature of those prospectuses was documented and acknowledged, implicates this statute directly. 18 U.S.C. § 1350 imposes criminal liability on any officer who certifies a periodic report filed with the Commission knowing that the report does not comply with the requirements of the Sarbanes-Oxley Act — with penalties of up to twenty years' imprisonment for willful violations. As documented in Section VI.H of this Petition, the CEOs and CFOs of publicly traded management companies have signed Sarbanes-Oxley certifications attesting that their filings contain no material misstatements or omissions and that management disclosed to the audit committee "all significant deficiencies and material weaknesses" and "any fraud... that involves management." If those certifications were signed with knowledge that the fund-level violations documented in this Petition constitute a material contingent liability that was neither disclosed in

periodic filings nor reported to the audit committee, each certification is a separate potential criminal act signed by a named individual.

IRC §§ 7206(1) and 7206(2) impose criminal penalties on any person who willfully makes and subscribes a return or other document containing a declaration that it is made under penalties of perjury and that the person does not believe to be true and correct as to every material matter, and on any person who willfully aids or assists in the preparation of a return or other document that is fraudulent or false as to any material matter. The industry has filed hundreds of millions of Forms 1099-DIV that its own published materials acknowledge overstate taxable income. If those returns were prepared with knowledge that the classification of return of capital as ordinary dividend income was false — and the industry's own admissions establish that knowledge — each return is a potential criminal violation, and every individual who directed, approved, or knowingly participated in the preparation of those returns faces personal criminal exposure.

15 U.S.C. § 1 — the Sherman Act's criminal prohibition on conspiracy in restraint of trade — carries penalties of up to $100 million per corporation and ten years' imprisonment per individual. The coordinated industry response to Petitioner's 15,266 compliance notices — uniform silence across competing fund complexes, parallel silent prospectus edits without coordination through any visible legitimate channel, and the common ownership structure in which the largest asset managers control voting rights across the very competitors that maintained coordinated silence — presents facts that the Department of Justice's Antitrust Division is trained to evaluate. Coordinated suppression of a known disclosure deficiency that preserves inflated fee revenue for every participant is the kind of conduct that transforms parallel behavior from coincidence into conspiracy. The examination records requested in Section IX.D — particularly any communications between competing fund complexes, through industry trade associations, or through shared outside counsel regarding Petitioner's notices or the industry's response — will determine whether that transformation is supported by direct evidence.

18 U.S.C. §§ 1962(a), (c), and (d) — the Racketeer Influenced and Corrupt Organizations Act — prohibit conducting the affairs of an enterprise through a pattern of racketeering activity and investing racketeering proceeds in an enterprise. Penalties include twenty years' imprisonment per count and forfeiture of all proceeds derived from the racketeering. The conduct documented in this Petition presents every element: an association-in-fact enterprise whose common purpose is inflated advisory fee revenue, sustained through a coordinated pricing methodology that overstates

fund net asset values; hundreds of millions of predicate acts of mail fraud and wire fraud — each false Form 1099-DIV transmitted via United States mail to an investor and via electronic wire to the IRS constitutes an independent predicate act; open-ended continuity with no termination point; and the coordinated suppression of the only corrective technology as the enterprise's enforcement mechanism — the means by which it ensures that no single defection collapses the scheme and that the false filing continues every January. The enterprise's members have admitted its purpose: "Investment managers bill on the inflated NAV." The enterprise's own tax director confirmed the existential stakes of defection: "If you can get just one fund to do this, all other funds will be forced to fix this within 12 months." The Criminal Division and the Organized Crime and Racketeering Section should evaluate this conduct alongside the Antitrust Division's evaluation under the Sherman Act.

Routing of Criminal Referral

Petitioner respectfully requests that any criminal referral arising from this Petition be directed to the Criminal Division of the Department of Justice — the component to which this matter was referred by the then-Acting Assistant Attorney General, and the component whose investigative agencies have already engaged with Petitioner on the substance of the conduct documented herein. The Criminal Division, the Fraud Section, the Organized Crime and Racketeering Section, and the Public Integrity Section each possess independent jurisdiction over the conduct this Petition documents. The basis for this routing request is documented in the Declaration attached as Exhibit 1.

Cooperation and Preservation

The Commission should understand that the same governance fractures documented in Section VI.H that accelerate civil enforcement also accelerate criminal prosecution. The executives who directed the conduct documented in this Petition did not act alone. Independent directors who were kept in the dark have testimony to offer about what they were told — and what was concealed from them. CCOs who escalated compliance concerns and were overruled have documentary evidence identifying who gave the orders. Junior employees who were instructed to remain silent, to not respond to Petitioner's notices, or to implement silent prospectus edits without asking questions can identify the individuals who issued those instructions. Each of these witnesses

possesses evidence that prosecutors need to build cases against the individuals who designed, directed, and profited from the conduct documented herein.

The Department of Justice's cooperation framework exists to serve prosecution, not to replace it. Cooperation credit reduces a witness's exposure in exchange for testimony that increases the exposure of those above them. The first individual to cooperate provides the testimony that defines the case. The last individual to cooperate explains to a federal judge why they waited while others came forward.

Petitioner does not request that the Commission prejudge criminal liability. Petitioner requests that the Commission fulfill its obligation to refer evidence of potential criminal violations to the appropriate prosecutorial authorities — and that it do so promptly, before the same document destruction risks identified in Section IX.D.3 eliminate the evidence that would support criminal prosecution. A preservation directive that protects the civil enforcement record simultaneously protects the criminal evidentiary record. Petitioner notes that this matter presents an unusual advantage for any prosecutor: the predicate instruments (Forms 1099-DIV) and the admissions establishing their falsity (SEC-filed prospectuses) are all public documents. The "who, what, when, where, and how" of each predicate act can be established from publicly available filings — each false 1099-DIV is a specific document with a known filing date, known filer, known recipient, and specific false content. Few fraud cases of any kind present such a well-documented evidentiary foundation before a single subpoena is issued. Delay in referral serves no one's interest except the individuals whose criminal exposure grows with every day the evidence remains unpreserved, and the cooperation window remains open.

5. Transparency on Enforcement Decisions

Should the Commission decline enforcement evaluation or assessment of injunctive relief, Petitioner requests an express docketed statement **within fourteen days** identifying the basis. This permits the public to understand whether the Commission disputes the factual premises (mechanics of embedded income), the legal standard (what constitutes material omission), the proof of harm (whether investor losses are measurable), or is exercising enforcement discretion based on other factors.

G. Interagency Coordination and Oversight Body Notification

This Petition documents an industry that received notice of systematic violations and chose silence — failing to escalate to boards, regulators, and investors. The same principle that requires industry escalation upon notice applies to interagency coordination: material information about systematic violations must reach the agencies whose statutory duties depend on receiving it.

To the best of Petitioner's knowledge, the Commission has not referred the substance of Petitioner's June 2020 whistleblower submission to any other federal agency. Petitioner has engaged with multiple federal agencies in the lead-up to preparing this Petition. The matter appeared to be new to each of them. One federal agency expressed open frustration that the Commission had not acted despite the passage of nearly six years. If Petitioner's understanding is correct, the IRS was never told that the information returns are false. The Treasury was never told that it is retaining funds wrongfully exacted from citizens. The Department of Justice was never told that the conduct implicates criminal statutes. Each of these agencies has independent statutory obligations that the Commission's referral would have activated — and each was denied the information necessary to fulfill them.

The consequences of that silence are not merely institutional. During those nearly six years, the Treasury continued to collect the excess taxes generated by the false returns this Petition documents. Under the constitutional framework documented in Section XIII, those funds may not be lawfully retained — yet they continued to flow because the one federal agency that possessed the information necessary to identify them did not transmit that information to Treasury or the IRS. Justice Roberts called government retention of wrongfully exacted funds "immoral" and held that it "amounts in law to a fraud on the taxpayer's rights." The illegal exaction doctrine does not distinguish between a government that collects unlawful taxes in ignorance and one that collects them after documented notice of their unlawfulness.

The legal principle is well established: those who possess material information about violations and fail to disclose it to those with authority to act bear responsibility for the consequences of their silence. The Commission enforces that principle against registrants. A reviewing court will evaluate whether the same principle applies when an agency possesses documented evidence of ongoing harm and does not transmit it to sister agencies whose statutory duties depend on receiving it.

The referrals and notifications that follow fall into two categories. The first comprises mandatory statutory duties — obligations imposed by Congress using the word "shall," requiring no exercise of Commission discretion, triggered by awareness of the facts this Petition documents. The second comprises discretionary referrals that the Commission possesses clear authority to make and that the protection of 160 million Americans demands it exercise. Every referral the Commission makes is evidence of good faith. Every referral the Commission fails to make will be cited in proceedings where the Commission's own conduct is at issue — and where the agencies that were never informed will confirm that fact under oath.

Petitioner will transmit this Petition to each body identified below simultaneously with its filing with the Commission. One way or another, they will be informed. If these oversight bodies receive a copy from Petitioner but not from the Commission, the Commission's decision not to transmit will itself become part of the record those bodies evaluate.

G.1 Mandatory Duties Triggered by This Petition

Notice and Triggering Effect. This Petition, upon receipt by the Commission, constitutes formal notice to the SEC Office of Inspector General of facts that trigger mandatory statutory duties under the Inspector General Act. Upon Petitioner's separate transmission, it will constitute identical notice to the Treasury Inspector General for Tax Administration. These duties are non-discretionary. They use the word "shall." They require no Commission authorization to perform and no Commission vote to initiate. Petitioner identifies them here not as a request but as a statement of existing legal obligation, so that no recipient of this Petition may later claim ignorance of the duties its receipt imposes.

(a) Seven-Day Letter: Inspector General Act § 405(e)

Section 405(e) of the Inspector General Act, 5 U.S.C. § 405(e), establishes a two-step mandatory reporting chain that Congress designed as an emergency transmission mechanism — a statutory fire alarm that bypasses normal agency channels and delivers information directly to Congress on a compressed timeline no agency head may extend.[173]

[173] The Inspector General Act of 1978, Pub. L. No. 95-452, 92 Stat. 1101, was recodified in 2022 by Pub. L. No. 117-286, 136 Stat. 4196, at 5 U.S.C. §§ 401–424. Former § 5(d) is now codified at 5 U.S.C. § 405(e); former § 4(d) is now codified at 5 U.S.C. § 404(d). This Petition uses the traditional section numbering for clarity, with parallel citations to the current codification.

The first step is the Inspector General's duty. Each Inspector General "shall report immediately to the head of the establishment involved whenever the Inspector General becomes aware of particularly serious or flagrant problems, abuses, or deficiencies relating to the administration of programs and operations of such establishment." The second step is the agency head's duty. "The head of the establishment shall transmit any such report to the appropriate committees or subcommittees of Congress within seven calendar days, together with a report by the head of the establishment containing any comments such head deems appropriate." Three uses of "shall." A seven-calendar-day deadline. Zero discretion.

This Petition documents an industry-wide scheme producing millions of false Form 1099-DIV filings affecting approximately 160 million Americans, causing estimated annual overtaxation exceeding $100 billion, involving potential felonies under Internal Revenue Code Section 7206(1) and 7206(2), known to the Commission since June 2020, and unaddressed for nearly six years while the harm compounds daily and statutes of limitation expire on investor refund claims. If this does not constitute a "particularly serious or flagrant problem, abuse, or deficiency relating to the administration of programs and operations" of the Securities and Exchange Commission, it is difficult to imagine what would.

Two independent Section 405(e) chains apply. For the SEC Inspector General, Section 405(e) requires immediate reporting to the Chairman, who must transmit the report to the Senate Committee on Banking, Housing, and Urban Affairs and the House Committee on Financial Services within seven calendar days. For TIGTA, Section 405(e) requires immediate reporting to the Secretary of the Treasury, who must transmit to the Senate Committee on Finance and the House Committee on Ways and Means within seven calendar days. Petitioner intends to transmit this Petition directly to both Inspectors General on the date of filing. The statutory clock begins upon receipt.

The agency head's role in this chain is ministerial. The head "shall transmit" the Inspector General's report and may append comments, but may not withhold, delay, alter, or suppress it. The Inspector General Act was designed to insulate Inspectors General from political pressure by agency heads. Section 405(e) creates a duty that runs from the Inspector General through the agency head to Congress — not a discretionary channel that the agency head may close. Should the Chairman or the Secretary of the Treasury fail to transmit the report within seven calendar days, that failure is itself a violation of federal law and independently actionable.

(b) Criminal Referral: Inspector General Act § 404(d)

Section 404(d) of the Inspector General Act, 5 U.S.C. § 404(d), provides that each Inspector General "shall report expeditiously to the Attorney General whenever the Inspector General has reasonable grounds to believe there has been a violation of Federal criminal law." The word is "shall." The modifier is "expeditiously." The standard — "reasonable grounds to believe" — falls far below probable cause.

The evidence this Petition documents satisfies that standard with room to spare. Form 1099-DIV filings are signed under penalties of perjury. They state that distributions constitute taxable ordinary dividend income. The same entities' SEC prospectuses state that the same distributions include return of capital. Both statements cannot be true. When a filer signs an information return under penalties of perjury knowing — from its own contemporaneous SEC filings — that the statement is not "true and correct as to every material matter," the elements of Internal Revenue Code Section 7206(1) are present. When the advisers, administrators, accountants, and counsel who prepare and process those returns do so knowing the same facts, the elements of Section 7206(2) — which makes it a felony to willfully aid or assist in the preparation or presentation of any return or document that is materially false — are independently satisfied. Both provisions are felonies carrying penalties of up to three years' imprisonment per count. Millions of false returns have been filed. The number of individuals potentially implicated under both subsections is vast. The SEC Inspector General and TIGTA each possess independent authority and an independent mandatory duty to refer this evidence to the Attorney General. Neither referral requires Commission approval. Neither may be delayed or suppressed by the Commission.

Additionally, 28 U.S.C. § 535(b) requires that any information relating to violations of federal criminal law involving government officers and employees "shall be expeditiously reported to the Attorney General by the head of the department or agency." Petitioner respectfully notes that Section 535(b)'s reporting obligation is not limited to criminal conduct by outside parties. It extends to any information suggesting that the conduct of government personnel themselves may warrant review. The longer documented evidence of ongoing criminal violations remains unaddressed, the more important it becomes for the agency to ensure that Section 535(b) has been satisfied in all respects.

(c) The Consequences of Noncompliance

Should any Inspector General or agency head fail to perform the mandatory duties identified above after receiving this Petition, Petitioner reserves all rights to seek mandamus relief compelling performance under 28 U.S.C. § 1361 and the All Writs Act, 28 U.S.C. § 1651. The duties at issue are ministerial, non-discretionary, and owed to Congress and the Attorney General — not to the agency head's preferred timeline or enforcement strategy. No claim of ongoing investigation, enforcement sensitivity, or resource constraint excuses the nonperformance of a duty Congress imposed using the word "shall" and modified with the words "immediately" and "expeditiously."

Petitioner notes, for the record, that the Madoff and Stanford failures produced devastating Inspector General reports documenting the Commission's failure to act on known fraud — reports that led to congressional hearings, structural reforms, and the creation of the very whistleblower program through which this matter was first reported. The question is not whether these reporting duties apply. The question is whether the Commission's leadership will perform them voluntarily or whether a federal court will be required to issue the order.

G.2 Tax Administration Referrals

(a) Treasury and Internal Revenue Service

The securities law question and the tax-administration question are related but distinct. If investors are receiving distributions with embedded realized income that prospectuses fail to disclose, and if those distributions are being reported on Forms 1099-DIV in ways that treat return of capital as dividend income, Treasury and the IRS have an independent statutory interest that the Commission's silence has prevented them from vindicating.

Internal Revenue Code Section 6721 imposes mandatory penalties for filing incorrect information returns. Section 6722 imposes mandatory penalties for furnishing incorrect payee statements. Both sections apply to each false Form 1099-DIV — one for filing the incorrect return with the IRS, one for furnishing the incorrect statement to the investor. Both sections use the word "shall." Both sections provide enhanced, uncapped penalties for "intentional disregard" of the filing requirements — 10% of the aggregate amount of items required to be reported correctly, with no dollar cap. Section 6201(a) provides that the Secretary "is authorized and required" to assess these penalties. Section 6301 provides that the Secretary "shall collect" them. The IRS

cannot assess penalties for false information returns it does not know are false. The Commission possesses the evidence. The IRS does not.

Exchange Act Section 21(a) authorizes the Commission to share investigation information with other federal agencies. That authority is permissive — it uses the word "may." But permissive authority becomes constitutionally compelled when three conditions converge: 1) when the Commission's silence facilitates ongoing constitutional violations against 160 million citizens; 2) when another agency's mandatory statutory duties depend on information only the Commission possesses; and 3) when the Take Care Clause of Article II, Section 3 requires interagency cooperation in the faithful execution of the laws rather than interagency concealment. All three conditions are present here. The Commission's "may" cannot override the IRS's "shall."

The Commission should transmit to the IRS Commissioner and the Treasury Secretary: copies of investment fund prospectuses disclosing that distributions include return of capital; copies or citations to Forms 1099-DIV reporting the same distributions as fully taxable ordinary dividend income; identification of the contradiction; and a copy of this Petition and its supporting record. This transmission requires no investigation, no adjudication, and no enforcement proceeding. It requires the Commission to hand a file to the IRS so the IRS can fulfill the mandatory duties that the Commission's nearly six years of silence prevented it from performing.

(b) Treasury Inspector General for Tax Administration (TIGTA)

TIGTA was established by the IRS Restructuring and Reform Act of 1998 to provide independent oversight of IRS activities and to "promote the fair administration of the Federal tax system." TIGTA's entire mandate is the integrity of tax administration. An industry-wide scheme producing millions of false information returns — each signed under penalties of perjury, each causing incorrect tax liability for investors, each flowing through IRS systems undetected — is not peripheral to that mandate. It is the mandate.

TIGTA has jurisdiction to investigate whether tax administration systems are processing false information returns without detection. If Forms 1099-DIV systematically mischaracterize return of capital as dividend income, and if those false returns flow through IRS systems, affect compliance calculations, and cause 160 million investors to overpay taxes, TIGTA has independent authority to determine why the IRS's own systems failed to identify the discrepancy — and whether the answer is that the IRS was never given the information necessary to detect it.

The Commission should transmit this record to TIGTA for independent evaluation. But as stated in Section G.1 above, TIGTA's duties under 5 U.S.C. §§ 405(e) and 404(d) are not contingent on Commission action. Petitioner will transmit this Petition directly to TIGTA on the date of filing. Upon receipt, TIGTA's mandatory reporting duty to the Secretary of the Treasury and mandatory criminal referral duty to the Attorney General attach by operation of statute.

G.3 Inspector General and Oversight Body Referrals

(a) SEC Office of Inspector General

The Inspector General Act, 5 U.S.C. § 401 *et seq.*, establishes that the IG shall "promote economy, efficiency, and effectiveness" in agency programs and "prevent and detect fraud and abuse." The SEC OIG has specific statutory jurisdiction to investigate whether SEC management failed to act on known securities violations. The OIG's semiannual reports to Congress must identify "particularly serious or flagrant problems, abuses, or deficiencies" — the identical standard that triggers the Seven-Day Letter under 5 U.S.C. § 405(e).

If the Commission has known about systemic false reporting and disclosure violations affecting 160 million Americans for more than five years and failed to act, that itself may constitute waste, mismanagement, or abuse of the SEC's investor protection function. The Madoff and Stanford failures established the precedent: the SEC OIG investigated and reported to Congress on the Commission's failure to act on known fraud. The House Oversight Committee's 2010 report, "The SEC: Designed for Failure," documented how the Commission's systemic failures to escalate information and coordinate across divisions allowed massive investor harm to continue undetected. This matter is directly analogous — and the scale of harm dwarfs both.

The question is not whether the Commission lacked information. It possessed detailed documentation from the founding Chief of its own whistleblower program. The question is whether the Commission's failure to act on that information for more than 2,100 days constitutes the kind of management failure the OIG exists to identify and report to Congress. Petitioner submits that the answer is self-evident — and that the mandatory duties identified in Section G.1 compel the OIG to report that answer, not merely to contemplate it.

(b) Council of Inspectors General on Financial Oversight (CIGFO)

Dodd-Frank Section 989E established CIGFO specifically to facilitate information sharing among financial sector Inspectors General and to evaluate the effectiveness of FSOC and its member agencies. CIGFO's members include the Inspectors General from the SEC, Treasury, FDIC, Federal Reserve, CFTC, FHFA, NCUA, and HUD. CIGFO has statutory authority to convene working groups "for the purpose of evaluating the effectiveness and internal operations of [FSOC]" and to assess whether member agencies are fulfilling their regulatory missions.

This matter is precisely the kind of cross-agency regulatory failure CIGFO was created to address. The 2008 financial crisis revealed that siloed agencies failed to share information about systemic risks. Here, the SEC possessed evidence of industry-wide fraud implicating securities law, tax law, and criminal law — and shared it with no one. The IRS could not detect false information returns because the SEC withheld the evidence. The DOJ could not evaluate criminal exposure because the SEC made no referral. Treasury continued collecting funds the Constitution does not authorize. CIGFO has jurisdiction to assess whether the regulatory system as a whole failed to identify and address systemic investor harm that falls within overlapping agency jurisdictions — and to ensure that the interagency silence this Petition documents never recurs.

(c) Government Accountability Office (GAO)

Under 31 U.S.C. § 712, the Comptroller General is authorized to investigate "matters relating to the receipt, disbursement, and use of public money" and to "evaluate the results of a program or activity the U.S. Government carries out." GAO regularly audits SEC operations and has previously reported on SEC enforcement failures, examination priorities, and investor protection gaps. When an agency funded by public appropriations and registration fees fails to protect investors from documented, ongoing harm for more than five years while possessing full knowledge of that harm, GAO has clear jurisdiction to evaluate the failure — and Congress needs the evaluation to exercise its oversight function.

(d) Financial Stability Oversight Council (FSOC)

Dodd-Frank Section 112(a)(2) charges FSOC with identifying risks to the financial stability of the United States, promoting market discipline, and responding to emerging threats to the stability of the financial system. An industry-wide scheme that has operated for decades, affects

the pricing integrity of the mutual fund market, and implicates potential liability exposure in the hundreds of billions of dollars represents a systemic risk that FSOC has jurisdiction to evaluate. The Commission should ensure FSOC is aware of this Petition and its implications for market stability.

H. Proposed Rule: Point-of-Sale Risk Disclosure (Emergency Interim Rule Within 60 Days; Final Rule Within 180 Days)

The Case for Emergency Rulemaking

Petitioner requests that the Commission adopt an emergency interim final rule within sixty days requiring daily publication of embedded realized income and standardized point-of-sale risk disclosure — and finalize that rule within one hundred eighty days following a concurrent notice-and-comment period (if necessary).

The Commission possesses authority to issue interim final rules without prior notice and comment when the agency finds "good cause" that notice-and-comment procedures are "impracticable, unnecessary, or contrary to the public interest." 5 U.S.C. § 553(b)(B). The Commission has exercised this authority repeatedly — for market disruptions, for emergency investor protection measures, and for circumstances in which ongoing harm to investors could not wait for the ordinary rulemaking timeline. The Commission exercised it during the 2008 financial crisis. It exercised it during the COVID-19 pandemic. It should exercise it now.

This Commission has demonstrated that it can build entirely new regulatory frameworks with extraordinary speed when it chooses to. Chairman Atkins has directed the development of a comprehensive "Regulation Crypto" rulemaking — a complete regulatory architecture for an emerging asset class with genuinely novel classification questions — and has publicly committed to initiating that rulemaking within months of taking office. The Commission's Spring 2025 Regulatory Agenda contemplates multiple crypto rulemakings, including a comprehensive framework rule and amendments to the Exchange Act to accommodate crypto trading. If the Commission can design and propose an entirely new regulatory framework for an asset class that did not exist when the securities laws were written, it can adopt a single disclosure rule for an industry it has regulated for eighty-five years — requiring funds to publish data they already calculate every day.

The rule Petitioner proposes does not ask the Commission to resolve novel questions of law or create new regulatory architecture. It asks the Commission to require that funds tell investors what is in the price they are paying. The data already exists in every fund's daily accounting records. The technology to publish it has existed since the 1970s. The only thing that does not exist is the requirement to share it with investors before they commit their capital. Sixty days is sufficient to require what should have been required decades ago.

The good cause finding is straightforward. Investors are being harmed today. They were harmed yesterday. They will be harmed tomorrow. They have been harmed every trading day for years. The harm is not speculative — it is documented in this Petition, confirmed by the industry's own admissions, and quantifiable to the dollar. The ordinary notice-and-comment rulemaking process takes years. During those years, investors will continue purchasing fund shares without knowing that the NAV includes embedded realized income that will be distributed to them as a taxable event, reducing the value of their investment while generating a tax liability on money that was never their income. Every trading day without this disclosure is a day on which new investors are injured. The Commission cannot justify subjecting 160 million Americans to continued harm while it solicits comment on whether to require firms to tell the truth.

1. Daily Publication of Embedded Realized Income

Petitioner requests that the rule require every registered fund to publish — daily, plainly, and in a machine-readable format — the realized income amounts embedded in its NAV, broken out by type: dividends, short-term capital gains, and long-term capital gains (and other distribution types).

The daily feed should be: (i) displayed on the fund's public website in a standardized location accessible without registration or fee; (ii) made available via a simple API or standardized file format enabling automated retrieval; and (iii) mirrored in a central repository — maintained by the Commission — so that broker-dealers, custodians, recordkeepers, and trading platforms can access the same authoritative data without fragmentation.

The purpose of the feed is to enable accurate, order-specific, pre-trade disclosures — but it solves two problems, not one. The same data that tells investors what they are buying before the trade tells tax preparers what was distributed after the trade — and permits the preparation of

accurate Forms 1099-DIV for the first time. The feed eliminates both the disclosure failure and the false information return problem simultaneously, with a single data set.

Because of the importance of this data — and because its accuracy has direct tax consequences for 160 million Americans — it cannot be left to individual firms to calculate independently. Different firms using different methodologies to compute embedded realized income will produce different figures, resulting in inconsistent pre-trade disclosures and divergent tax reporting for economically identical transactions. There must be one source of truth. The Commission should build and maintain a centralized data infrastructure — or designate and oversee a single authoritative utility — that calculates, validates, and distributes embedded realized income data to the financial services community, data providers, tax preparers, and intermediaries on a standardized daily basis. The data exists. The technology exists. The only thing preventing investors from seeing it — and the only thing preventing the IRS from receiving accurate information returns — is the industry's preference that neither know the truth. That is a preference the Commission has no obligation to protect and every obligation to override.

2. Standardized Pre-Trade Disclosure Box

At the point of sale, intermediaries should be required to display a simple, standardized disclosure box that converts that day's embedded realized amounts into order-specific risk metrics for the investor's actual order size. At minimum, the disclosure should state:

a) The fund's overvaluation relative to fair-value NAV — that is, the portion of the purchase price attributable to already-realized income amounts that are economically payable to existing shareholders and are expected to be returned to the buyer in future distributions; and

b) The estimated tax exposure — shown across a range of representative tax brackets — associated with that overvaluation if purchased embedded amounts later arrive as a distribution treated as taxable income rather than return of capital.

The disclosure must be presented before the trade is executed, in plain language, and in a manner that cannot be buried in hyperlinks, post-trade confirmations, or dense prospectus risk factors. The model here is the SEC's own "Summary Prospectus" regime: standardized, comparable, accessible.

3. Investor Acknowledgment Before Trade Execution

Before an order may be executed, the investor should be required to affirmatively acknowledge that the point-of-sale disclosure has been presented, that the investor understands the disclosed overvaluation and estimated tax risk, and that the investor elects to proceed with the transaction notwithstanding those risks.

The intermediary should retain a record of this disclosure and acknowledgment in the ordinary course of business. This can be accomplished with a simple confirmation screen — no more burdensome than existing order acknowledgments for options trading or margin accounts.

4. Narrow Exemption for Funds with No Embedded Amounts

The disclosure requirement should apply whenever embedded realized income exceeds a de minimis threshold. A narrow exemption should exist for funds that remove all realized income from NAV daily — that is, funds with no embedded amounts, no overvaluation, and therefore no associated "buying a dividend" overcharge or tax drag for the buyer.

This exemption creates competitive incentive. Funds that implement daily true-ups — distributing or segregating realized income so it does not inflate NAV — can advertise exemption from the disclosure box. Investors choosing between similar funds will have clear, comparable information about which imposes hidden costs and which does not. Competition can then operate on true, after-tax cost of ownership — which is what a free market requires and what materially misleading disclosures have prevented.

5. The Industry's Objections Are Pre-Refuted

The industry will argue this rule is burdensome, technically infeasible, and unnecessary. Each objection fails.

Burden: The data already exists in every fund's daily accounting records. Publishing it requires a data feed — the same type of data feed funds already provide to pricing services, custodians, and data vendors every day. The incremental burden is a website field and an API endpoint. Funds that can calculate NAV to four decimal places daily can publish the components of that NAV on the same schedule.

Technical infeasibility: Daily dividend accrual technology has existed since the 1970s. Petitioner offered the industry a technological solution that implements this capability, delivering

not only dividends but also capital gains. The industry declined — not because the technology was unavailable, but because the technology would have revealed what the industry preferred to conceal. The Commission should not credit a feasibility objection from an industry that rejected a working solution.

Necessity: The industry's own admissions establish that investors are being harmed by the absence of this information. The industry's own customer communications warn investors about "unnecessary tax bills." The industry's own executives have acknowledged that investors "don't know it's happening." The necessity of the rule is established by the industry's own words. The only parties who benefit from its absence are the firms that collect inflated advisory fees on NAVs that include embedded income investors don't know about — a benefit the securities laws do not protect. A fund that warns investors they may receive "unnecessary tax bills" without disclosing whether the embedded tax exposure is $1 or $1,000 has not provided a warning. It has provided a euphemism.

The Commission has adopted emergency rules before to address ongoing investor harm. It should do so again. Every trading day without this disclosure is a day on which the Commission permits — through inaction — the continued injury of the investors it was created to protect. The rule is simple. The data exists. The technology exists. The harm is ongoing. The authority is clear. Sixty days.

I. Procedural Requests

1. Immediate Docketing and Public Identifier (Within 3 Days)

Petitioner requests that the Commission assign a public identifier for this Petition and post the Petition and supporting materials in the public docket **within three business days** of receipt. Docketing is a ministerial function. It requires no substantive evaluation, no deliberation, no cost-benefit analysis. The Commission dockets materials daily. This Petition should receive the same treatment.

Prompt posting serves investor protection directly. Other investors experiencing similar harm need to know this Petition exists. Other registrants evaluating their disclosure practices need to understand the legal issues raised. And the public generally has an interest in monitoring how

the Commission responds to petitions alleging widespread material omissions in SEC-filed prospectuses.

Should the Commission determine that any portion cannot be posted, Petitioner requests: (i) identification of the specific portions to be withheld, (ii) statement of the legal basis for withholding citing specific FOIA exemption or other authority, and (iii) immediate posting of the remainder.

2. Written Acknowledgment of Receipt (Within 7 Days)

Petitioner requests written acknowledgment of receipt of this Petition **within seven days**, identifying: (i) the assigned docket number, (ii) the SEC division(s) and office(s) to which this Petition has been routed, and (iii) a point of contact for status inquiries.

This is not a request for substantive response. It is a request for confirmation that the Petition has been received and assigned. Such confirmation is standard administrative practice. Without it, Petitioner cannot establish when timelines begin to run or whether the Petition was properly routed.

3. Status Update (Within 14 Days)

Petitioner requests a docketed status update **within fourteen days** identifying: (i) whether the Commission will issue interim investor-protection communications and the expected timing, (ii) whether the Division of Examinations will initiate a targeted review and the expected timeline, (iii) the anticipated timing for docketed responses to the interpretive questions in Section IV, and (iv) whether staff meetings have been scheduled as requested.

This status update need not commit the Commission to any substantive position. It need only inform the public about the process through which the Petition will be evaluated. Investors making decisions about whether to purchase securities shortly before distributions are entitled to know whether Commission guidance is forthcoming and on what timeline.

4. Clear Docketed Disposition with Grounds (Within 21 Days)

Should the Commission decline to act on any category of requested relief, Petitioner requests an express docketed statement **within twenty-one days** identifying: (i) which relief is declined, (ii) the grounds for declination, and (iii) whether the grounds are factual (Commission

disputes the premises), legal (Commission interprets the law differently), prudential (Commission prefers a different approach), or discretionary (Commission prioritizes other matters).

This serves multiple purposes. It provides transparency to investors evaluating their own remedies. It creates an administrative record for judicial review. It permits Petitioner to address any factual or legal misunderstandings that may underlie declination. And it ensures the Commission's decision is the product of reasoned analysis rather than inaction.

Silence is not neutral when investors are making irreversible decisions under incomplete information. If the Commission determines that no interim investor protection is warranted, that determination should be stated expressly with supporting grounds. If the Commission determines the premises are incorrect, it should say which premises and why. If the Commission determines the law has been misapplied, it should explain the correct application. Reasoned declination is acceptable. Unreasoned silence is not.

5. Preservation of Administrative Record and Litigation Hold (2018–Present)

Petitioner requests that the Commission preserve all records relating to this Petition and to the Commission's entire engagement with the matters it documents — beginning no later than 2018, or when Petitioner's engagement with the Commission commenced.

The preservation obligation covers two categories of records.

First, all records relating to receipt, routing, review, internal communications, and decision-making concerning this Petition from the date of its filing forward. This includes initial receipt logs and routing decisions, staff analyses and memoranda, communications between divisions or with other agencies, requests for additional information, communications with industry participants or their counsel regarding this Petition or its allegations, and any documents related to decisions on the relief requested.

Second, all records relating to the Commission's prior engagement with Petitioner and with the subject matter of this Petition — including but not limited to all emails, letters, and communications between Commission staff and Petitioner or his representatives from 2018 to the present; all records relating to Petitioner's June 2020 whistleblower submission, including internal routing, staff review, analyses, recommendations, and any decision regarding investigation or declination; all records of meetings between Commission staff and Petitioner, including scheduling communications, attendee lists, meeting notes, memoranda, and any follow-up actions

or internal discussions generated by those meetings; all records relating to the Commission's review of Petitioner's two unsolicited proposals submitted through the Federal Acquisition Regulation process, including the analyses supporting their rejection; all records of internal Commission discussions, analyses, or communications regarding "buying a dividend" practices, embedded realized income in fund NAVs, or the accuracy of mutual fund prospectus disclosures regarding distribution composition, from any source, during the period 2018 to the present; and all records of communications between Commission staff and fund industry participants, trade associations, or their counsel regarding any of the foregoing subjects during the same period.

These records are critical for multiple reasons. They will establish what the Commission knew, when it knew it, what it considered, and why it chose not to act — the same questions this Petition requires the industry to answer. They will establish whether the Commission shared information with other federal agencies or chose to keep it siloed. They will establish whether industry participants contacted the Commission regarding Petitioner's engagement and what influence, if any, those communications had on the Commission's response. And they will form the administrative record in judicial proceedings that are now certain to follow — including the APA challenges, FOIA litigation, mandamus proceedings, and illegal exaction claims this Petition has identified.

Petitioner notes that these records are also the subject of FOIA requests filed contemporaneously with this Petition. The Commission's preservation obligation exists independently of the FOIA requests — but the overlap is intentional. If records are destroyed, altered, or allowed to be overwritten by routine retention schedules before they are preserved, the destruction will be evaluated against the Commission's knowledge that those records were the subject of both a formal preservation request and pending FOIA litigation. The legal standard the Commission applies to registrants — that document destruction after notice of potential proceedings constitutes spoliation warranting adverse inference — applies with equal force to the Commission's own record preservation obligations.

Preservation serves two purposes. First, it ensures the administrative record is complete and available for judicial review — the full record of what the Commission knew, what it was told, what it considered, and what it decided. Second, it creates institutional accountability — decisions are better when decision-makers know those decisions will be subject to meaningful review. Every email, every memorandum, every meeting note, and every internal recommendation regarding this

matter — past and future — will eventually be produced, either through FOIA, through judicial discovery, or through congressional oversight. That knowledge should inform the quality of the Commission's response to this Petition.

Petitioner requests that the Commission acknowledge receipt of this preservation request in writing within seven days of receipt of this Petition, confirming that a litigation hold has been issued to all relevant divisions — including the Division of Enforcement, the Division of Investment Management, the Division of Examinations, the Office of the General Counsel, the Office of the Chief Accountant, the Office of the Whistleblower, the Office of the Investor Advocate, and the Chairman's office — covering all records described above. If the Commission declines to issue a litigation hold or declines to confirm that one has been issued, Petitioner requests an express docketed statement identifying the grounds for that decision. A federal agency that receives a formal preservation request in connection with documented pending and anticipated litigation and declines to acknowledge it has made a decision that will be evaluated by the federal courts before which that litigation is proceeding.

J. The Standard of Review: Why Delay Is Already Unreasonable

The Commission's choice is not between action and inaction. It is between acting on its own timeline or acting on a court-ordered timeline.

Administrative petitions can be ignored indefinitely. Federal lawsuits cannot. If the Commission fails to respond to this Petition within the timelines specified, or declines any request without reasoned explanation, Petitioner will pursue every avenue of judicial relief available under the Administrative Procedure Act and applicable federal law — including mandamus in the United States Court of Appeals for the District of Columbia Circuit, APA challenges under §§ 706(1) and 706(2) in the United States District Court for the District of Columbia, and any other action necessary to compel the Commission to fulfill the duties this Petition triggers. Petitioner understands his rights, has evaluated the full range of procedural vehicles available, and is prepared to file in multiple forums on compressed timelines. The Commission should not assume it will have months to formulate a response before facing judicial accountability. It has weeks, because it has already had over half a decade.

The standard is established. Under the TRAC factors — which courts apply to evaluate unreasonable agency delay in both mandamus proceedings and APA § 706(1) actions —

Petitioner's case is compelling. Critically, the relevant period of delay is not measured from the date of this Petition. It is measured from June 2020, when the Commission received Petitioner's whistleblower submission documenting the same violations, presenting the same evidence, and raising the same questions this Petition formalizes. The Commission has had the substance for 2,100 days. This Petition gives that substance a procedural vehicle. The delay clock does not restart because the vehicle changed.

TRAC Factors:

(1) Rule of Reason. Nearly six years is not reasonable for an investor alert, a staff statement, or interpretive guidance. The D.C. Circuit has held that "a reasonable time for agency action is typically counted in weeks or months, not years." This delay — more than 2,100 days — is not merely unreasonable. It is extraordinary. The Commission has not been studying a novel question during those 2,100 days. It has been sitting on a question that any portfolio manager, fund accountant, or auditor can answer in five minutes: does the fund's NAV contain embedded realized income that will be distributed to purchasing shareholders as a taxable event? The answer has not changed since 2020. The Commission's failure to act on it has.

(2) Congressional Timetable. While Congress has not imposed a specific deadline on rulemaking petitions, the APA's requirement that agencies conclude matters "within a reasonable time" provides the relevant standard. 5 U.S.C. § 555(b). The Administrative Conference of the United States recommends that agencies respond to rulemaking petitions within six to eighteen months. Half a decade does not satisfy any reasonable interpretation of congressional intent. Moreover, Congress enacted the temporary cease-and-desist provisions of Securities Act § 8A(c), Exchange Act § 21C(c), Investment Company Act § 9(f)(3), and Investment Advisers Act § 203(k)(3) precisely because it recognized that some violations cannot await the ordinary pace of administrative proceedings. Congress gave the Commission emergency tools for emergencies. The record reflects a five-year and nine-month interval between the Commission's receipt of documented evidence of ongoing harm and the filing of this Petition — an interval during which the emergency tools Congress provided remained unused.

(3) Human Health and Welfare. This factor distinguishes Petitioner's case from Coinbase. There, the Third Circuit declined to compel rulemaking because the delay did not "endanger[] human lives." Here, the harm is not speculative regulatory uncertainty affecting

sophisticated market participants. It is a concrete, quantifiable, ongoing financial injury to 160 million American investors — including retirees living on fixed incomes who lose real money every trading day under materially misleading disclosures. The D.C. Circuit has made clear that "delays that might be reasonable in the sphere of economic regulation are less tolerable when human health and welfare are at stake." While this case does not involve physical health, it involves the financial welfare of the most vulnerable populations in the American investment landscape — retirees drawing down savings to cover medical expenses, workers building retirement security for families that depend on them, parents accumulating education funds for children who will never know what was taken. These are not sophisticated institutions that can absorb losses and adjust strategies. They are Americans who trusted the system to tell them the truth — and who lose real, unrecoverable money every day the Commission declines to require it.

(4) Competing Priorities. The Commission has not identified any competing priority that prevented action on this matter. It has simply not acted. Under *Coinbase*, the Commission cannot invoke "competing priorities" as a talisman without explaining why those priorities justify inaction on documented investor harm. Since this administration took office in January 2025, the Commission found resources to create a dedicated Crypto Task Force,[174] launch a Commission-wide digital asset initiative styled "Project Crypto,"[175] hold at least six public roundtables on digital asset regulation,[176] issue five separate staff statements on digital assets,[177] propose a token taxonomy,[178] propose an innovation exemption for digital assets,[179] approve a new national

[174] Press Release, U.S. Sec. & Exch. Comm'n, SEC Announces Crypto Task Force (Jan. 21, 2025), https://www.sec.gov/newsroom/press-releases/2025-30.
[175] Chairman Paul S. Atkins, Keynote Address, American Leadership in the Digital Finance Revolution, U.S. Sec. & Exch. Comm'n (July 31, 2025), https://www.sec.gov/newsroom/speeches-statements/atkins-digital-finance-revolution-073125 ("I am launching Project Crypto and directing the SEC's policy divisions to work with the Crypto Task Force . . . to swiftly develop proposals.").
[176] The Crypto Task Force held roundtables on the following dates and topics: securities status of digital assets (Mar. 21, 2025); trading of crypto assets (Apr. 11, 2025); custody of crypto assets (Apr. 25, 2025); tokenization (May 12, 2025); decentralized finance (June 9, 2025); and financial surveillance and privacy (Dec. 15, 2025). *See* SEC Crypto Task Force, U.S. Sec. & Exch. Comm'n, https://www.sec.gov/crypto-task-force.
[177] Div. of Corp. Fin., U.S. Sec. & Exch. Comm'n, Staff Statement on Meme Coins (Feb. 27, 2025); Div. of Corp. Fin., Statement on Certain Proof-of-Work Mining Activities (Mar. 20, 2025); Div. of Corp. Fin., Statement on Stablecoins (Apr. 4, 2025); Div. of Corp. Fin., Statement on Offerings and Registrations of Securities in the Crypto Asset Markets (Apr. 10, 2025); Div. of Corp. Fin., Statement on Certain Protocol Staking Activities (May 29, 2025).
[178] Chairman Paul S. Atkins, Remarks at the Federal Reserve Bank of Philadelphia Ninth Annual Fintech Conference, U.S. Sec. & Exch. Comm'n (Nov. 12, 2025) (proposing four-category token taxonomy based on application of the Howey test to digital assets).
[179] Chairman Paul S. Atkins, Remarks at the Crypto Task Force Roundtable on Decentralized Finance, U.S. Sec. & Exch. Comm'n (June 9, 2025), https://www.sec.gov/newsroom/speeches-statements/atkins-remarks-defi-roundtable-

securities exchange,[180] create a Cross-Border Task Force to combat international fraud,[181] restructure the Division of Enforcement,[182] reform the Wells process,[183] and initiate a comprehensive review of Regulation S-K[184] — all since this administration took office. The record demonstrates that resources were available for regulatory initiatives of comparable or greater complexity. The question under the TRAC framework is whether the Commission can explain why none of those resources were directed to a documented disclosure failure affecting 160 million Americans. A reviewing court will evaluate those choices against a simple question: if the Commission had resources to build an entirely new regulatory framework for an asset class that did not exist when the securities laws were written, why did it lack resources to issue a single staff statement about an industry it has regulated for eighty-five years — one that is systematically misleading 160 million Americans about the tax consequences of their investments?

(5) Interests Prejudiced. The interests prejudiced by delay are substantial, documented, and compounding. Every trading day, investors purchase securities under materially misleading disclosures and incur unnecessary tax liability they cannot recover. Every tax cycle that closes locks in another round of false information returns and another hundred billion dollars of wrongful exaction. Every policy renewal period that passes without D&O carrier notification further erodes the insurance coverage that was supposed to protect the directors and officers whose cooperation the Commission will need for orderly remediation. The prejudice is not static. It accelerates. And unlike speculative harms that may or may not materialize, every element of this prejudice is

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060925 ("An innovation exemption could help fulfill President Trump's vision to make America the 'crypto capital of the planet.'").

[180] In the Matter of the Application of Texas Stock Exchange LLC for Registration as a National Securities Exchange, Release No. 34-104146, File No. 10-249 (Sept. 30, 2025).

[181] Press Release, U.S. Sec. & Exch. Comm'n, SEC Announces Formation of Cross-Border Task Force to Combat Fraud (Sept. 5, 2025), https://www.sec.gov/newsroom/press-releases/2025-113-sec-announces-formation-cross-border-task-force-combat-fraud.

[182] *See* Paul, Weiss, Rifkind, Wharton & Garrison LLP, SEC Enforcement: 2025 Year in Review, at 4 (Jan. 2026) ("[I]n April 2025, the SEC told staff that it was implementing a targeted reorganization of the Enforcement Division to restructure management and reporting across the Division."); Ropes & Gray LLP, SEC Speaks 2025: Key Takeaways from Division of Enforcement Panels (May 23, 2025) (describing new regional deputy director structure).

[183] Chairman Paul S. Atkins, Keynote Address at the 25th Annual A.A. Sommer, Jr. Lecture on Corporate, Securities, and Financial Law, Fordham School of Law, U.S. Sec. & Exch. Comm'n (Oct. 7, 2025) (announcing enhanced transparency requirements, minimum four-week response periods, evidentiary disclosure obligations, and expanded senior leadership engagement in the Wells process).

[184] Chairman Paul S. Atkins, Statement on Reforming Regulation S-K, U.S. Sec. & Exch. Comm'n (Jan. 13, 2026), https://www.sec.gov/newsroom/speeches-statements/atkins-statement-reforming-regulation-s-k-011326.

concrete, calculable, and continuing — documented in this Petition with mathematical precision sufficient for any court to quantify.

(6) Agency Impropriety. The court "need not find any impropriety lurking behind agency lassitude in order to hold that agency action is unreasonably delayed." But the record here suggests something worse than lassitude. The Commission has known about this harm for more than five years. It has met with Petitioner multiple times. It has reviewed his documentation. It has requested his remediation plan. It has possessed both the knowledge and the statutory authority to stop the harm since June 2020. And it has done nothing — while, as Section IX.G of this Petition documents, apparently failing to refer the matter to any other federal agency with jurisdiction. Petitioner's whistleblower submission was not prepared by a layperson unfamiliar with Commission procedures. It was prepared and filed by Sean X. McKessy — the founding Chief of the SEC's Office of the Whistleblower, the architect of the program through which the submission was filed, and Petitioner's counsel in this matter. Mr. McKessy designed the procedures by which the Commission receives, evaluates, and acts on whistleblower tips. He knows what documentation the Commission needs. He knows how to frame securities law violations so the Commission can act. If a submission prepared by the person who built the program — documenting industry-wide fraud affecting 160 million Americans, supported by the industry's own admissions — has not produced Commission action in nearly six years, the implications extend beyond this case to the functioning of the program Congress created in the wake of the Madoff failure. A federal court evaluating this record under the TRAC factors will assess what that means for the Commission's processing of this matter.

Every section of this Petition has demonstrated the same structural reality: action is the dominant strategy, delay is costly, and inaction is indefensible. That conclusion applies to independent directors, to corporate boards, to the SROs, to the IRS, to the Department of Justice — and it applies to the Commission.

The Commission has had 2,100+ days. That is enough.

The time for action is now.

X. LEGAL AUTHORITY FOR REQUESTED RELIEF

A. Procedural Basis for This Petition

This Petition is filed pursuant to the Administrative Procedure Act, 5 U.S.C. § 553(e), which grants any interested person the right to petition for the issuance, amendment, or repeal of a rule, and SEC Rule of Practice 192, 17 C.F.R. § 201.192, which implements that right. Petitioner is an interested person: an injured investor who has suffered the financial harm this Petition documents, a protected whistleblower under both SEC (Exchange Act § 21F) and IRS (26 U.S.C. § 7623(b)) programs, and a subject-matter expert who has spent nearly eight years documenting the violations, developing remediation technology, and engaging with the Commission and multiple federal agencies.

The APA imposes three obligations on the Commission upon receipt of this Petition. First, the Commission must conclude the matter "within a reasonable time." 5 U.S.C. § 555(b). Second, if the Commission declines any request, it must provide "prompt notice" of denial and "a brief statement of the grounds for denial." 5 U.S.C. § 555(e). Not the "conclusory" and "insufficiently reasoned" one-paragraph denial the Third Circuit found arbitrary and capricious in *Coinbase, Inc. v. SEC*.[185] Third, the Commission's response — whether action or reasoned declination — is subject to judicial review under § 706(1) (unreasonable delay) and § 706(2) (arbitrary and capricious action), applying the TRAC factors this Petition analyzes in Section IX.J. The Commission's reasonable time to respond is measured not from the date of this Petition but from June 2020, when Petitioner's whistleblower submission presented the same substance this Petition formalizes.

The APA's definition of "rule" encompasses both formal rules adopted through notice-and-comment procedures and interpretive rules, general statements of policy, and interpretive guidance. 5 U.S.C. § 551(4). This Petition requests both: interpretive guidance clarifying how existing statutory obligations apply to the disclosures at issue (Section IX.C), and formal rulemaking establishing new affirmative disclosure requirements (Section IX.H). The interpretive guidance establishes the legal predicate for the proposed rule — it confirms that the violations

[185] *Coinbase, Inc. v. SEC*, No. 23-3202, 2025 WL 78330 (3d Cir. Jan. 13, 2025)

exist under current law, while the rule builds the regulatory infrastructure to prevent their recurrence.

B. Constitutional Protections for This Petition

The First Amendment protects Petitioner's right to petition the government for redress of grievances — including the filing of this Petition, public advocacy for the relief requested, and direct communication with Congress, oversight bodies, investors, and the media regarding its contents. Under the Noerr-Pennington doctrine, this petitioning activity is constitutionally immunized from liability, and any attempt by industry participants to impose liability on Petitioner based on the filing of this Petition or public discussion of its contents would be constitutionally barred. The sole exception — for "sham" petitioning that is "objectively baseless" — is inapplicable to a meritorious whistleblower submission prepared by the architect of the SEC's whistleblower program and supported by nearly six years of documented Commission engagement.

C. Commission Authority to Grant Every Category of Relief Requested

This Petition requests nine categories of relief. The Commission possesses independent statutory authority for each:

Investor alerts, staff statements, and interpretive guidance — The Commission's general authority to inform and protect investors requires no specific statutory authorization beyond the Commission's organic statutes and its investor protection mandate. The Commission routinely issues such guidance without formal rulemaking.

Examination initiatives — Investment Company Act § 31(b) and Exchange Act § 17(a) authorize the Division of Examinations to inspect the books and records of registered funds, advisers, and broker-dealers. The examination requests in Section IX.D fall squarely within existing examination authority.

Enforcement referrals — Exchange Act §§ 21(a) and 21(d) authorize investigation, civil enforcement, and referral to the Attorney General for criminal prosecution. Investment Company Act §§ 9(f) and 42 provide parallel enforcement authority including temporary cease-and-desist orders. Advisers Act §§ 203(e)-(f) and 206 authorize sanctions and antifraud enforcement against investment advisers. Securities Act § 17(a) prohibits fraud in the offer and sale of securities.

Rulemaking — Exchange Act § 23(a), Investment Company Act § 38(a), Advisers Act § 211(a), and Securities Act § 19(a) each independently authorize the Commission to adopt rules "necessary or appropriate in the public interest or for the protection of investors." The proposed point-of-sale disclosure rule in Section IX.H falls within this authority. The Commission may adopt the rule through notice-and-comment procedures or, upon a finding of good cause under 5 U.S.C. § 553(b)(B), as an emergency interim final rule. The interpretive guidance requested in Section IX.C — which requires no notice-and-comment procedure and can be issued immediately — provides the factual and legal foundation upon which the proposed rule is built. The Commission need not wait for rulemaking to act on the interpretive guidance, and the interpretive guidance need not wait for the rule to take effect.

Interagency referrals — Exchange Act § 21(a) authorizes the Commission to share information with other federal agencies. Exchange Act § 21(a)(1) authorizes the Commission to transmit evidence of violations to the Attorney General for criminal prosecution. The Commission's referral obligations to oversight bodies including the SEC Inspector General, CIGFO, GAO, FSOC, and relevant congressional committees arise from the statutes establishing those bodies' jurisdiction.

SRO coordination — Exchange Act §§ 6, 15A, and 17A establish the Commission's oversight authority over exchanges, FINRA, and clearing agencies, including the authority to direct SROs to enforce compliance with federal securities laws among their members.

Procedural requests — The Commission's obligation to docket, acknowledge, and respond to properly filed petitions arises from 5 U.S.C. §§ 555(b) and 555(e), 17 C.F.R. § 201.192, and the APA's general requirements for transparent agency processing

D. Substantive Legal Standards Governing the Violations

The specific statutory provisions, regulations, judicial precedents, and legal standards establishing the violations documented in this Petition are set forth in full throughout Sections I through IX and are incorporated herein by reference. They include, without limitation, the antifraud provisions of Exchange Act § 10(b) and Rule 10b-5, Securities Act § 17(a) and Rule 156, Investment Company Act § 34(b), and Advisers Act §§ 206(1)-(2) and (4); the compliance and governance provisions of Rule 38a-1, Rule 19a-1, and Form N-1A; the materiality standards of TSC Industries, Basic v. Levinson, Matrixx Initiatives, Omnicare, and Macquarie Infrastructure;

the aiding-and-abetting liability provisions of Exchange Act § 20(e); and the Internal Revenue Code provisions governing information return penalties (§§ 6721-6722), mandatory assessment (§§ 6201, 6301), and criminal liability for false returns (§§ 7206(1)-(2)). These authorities are not restated here because they are developed in context throughout the Petition — where they do substantive analytical work rather than serving as catalog entries.

E. Whistleblower Protections

Petitioner is a protected whistleblower under Exchange Act § 21F, having provided information to the Commission relating to possible securities law violations through a submission prepared by the founding Chief of the SEC's Office of the Whistleblower. Petitioner is also a protected whistleblower under 26 U.S.C. § 7623(b), having provided information to the Internal Revenue Service relating to the false information returns.

Rule 21F-17 prohibits *any person* from taking any action to impede an individual from communicating directly with the Commission staff about a possible securities law violation. This prohibition applies to every registrant, trade association, law firm, and individual in the fund industry. Any action taken to impede Petitioner's continued communications with the Commission, with other federal agencies, with Congress, or with oversight bodies regarding the violations documented herein would violate this rule and constitute an independent enforcement basis.

The First Amendment and the Noerr-Pennington doctrine, as set forth in Section B above, provide constitutional immunity for this Petition and all public advocacy Petitioner undertakes in connection with it — including direct communication with investors, media, Congress, state attorneys general, class action counsel, and every oversight body identified in Section IX.G.

Petitioner's documented whistleblower status at the SEC and IRS, among other agencies, creates an evidentiary record against which any adverse action by any party — governmental or private — following the filing of this Petition will be evaluated. Petitioner has engaged with multiple federal agencies over a period of years in a manner that is fully documented. Any adverse action targeting Petitioner or his interests following the public filing of this Petition will be subject to scrutiny by the courts, by Congress, and by the public — and Petitioner will pursue every available legal remedy against any party that undertakes such action.

F. Judicial Review Authority

Should the Commission fail to act within reasonable timelines or decline any request without reasoned explanation, judicial review is available under APA §§ 706(1) and 706(2), mandamus under 28 U.S.C. § 1361 and the All Writs Act, and any other applicable provision of federal law. Petitioner has Article III standing: injury in fact (documented, ongoing financial harm from materially misleading disclosures); causation (traceable to the absence of enforcement of existing disclosure requirements or adoption of new ones); and redressability (Commission action would remedy ongoing harm). The Commission's response to this Petition — including any failure to respond — will constitute reviewable final agency action.

XI. TO THE OFFICERS AND DIRECTORS OF EVERY COMPANY IDENTIFIED IN THIS PETITION

A. What Is Already True

Every fact documented in this Petition is now part of the permanent public record of the United States Securities and Exchange Commission. It cannot be removed. It cannot be sealed. It cannot be recalled. The industry's own admissions — exposed in SEC-filed prospectuses, in executive statements made behind closed doors, in compliance notices that were received, read, and buried — are no longer known only to the institutions that made them and the whistleblower who documented them. They are known to every federal enforcement agency in the country. They are known to every state attorney general, every public pension fund trustee, every FINRA arbitrator, and every journalist who downloads this filing from the Commission's public docket. The information asymmetry that sustained this practice for decades — the foundational assumption that investors would never learn what was being done with their money — ended on the date this Petition was filed. It ended permanently.

On March 10, 2026, the Department of Justice published a department-wide Corporate Enforcement and Voluntary Self-Disclosure Policy applicable to all corporate criminal matters handled by the Department. The policy creates a structured framework under which companies that self-report criminal misconduct, cooperate fully with investigators, and remediate the underlying conduct may receive substantially reduced penalties — including, in qualifying cases, a declination of prosecution. The policy supersedes all prior component-specific and district-

specific programs, including the program announced by the United States Attorney for the Southern District of New York on February 24, 2026. It is in effect now. Companies may enter it now.

This section is addressed to the general counsel, the chief compliance officer, the independent directors, the board of directors, and outside counsel of every company whose conduct this Petition identifies. It presents the criminal exposure the Petition has created, the single alternative that preserves the business as a going concern, and the timeline within which that alternative must be exercised. It does not editorialize. It does not advocate. It presents the facts and the options and allows the professionals reading it to reach the only conclusion the mathematics permit. No company whose conduct is documented in this Petition qualifies for a full declination under the program's published terms — for reasons this section will make clear — but the program's structured resolution tiers remain available to companies that act promptly and in good faith.

B. What the Government Already Knows

The companies identified in this Petition should not assume that this document is the government's introduction to their conduct. It is not.

On October 23, 2025, Petitioner personally notified SEC Chair Paul Atkins and Commissioner Hester Peirce — both of whom Petitioner knew from prior engagement — that he intended to file a petition with the Commission documenting the securities fraud, tax fraud, and false Form 1099-DIV reporting described in the preceding sections of this document. Petitioner offered to work with the Commission. He offered to sign any confidentiality agreement it required. He asked only for clarity. The Commission did not respond.

On January 29, 2026, Petitioner wrote directly to the senior official at the Department of Justice to whom Nicole Argentieri, then-Acting Assistant Attorney General of the Criminal Division, had personally referred this matter. Petitioner informed the Department that he intended to publicly file a petition and supporting declaration documenting criminal violations spanning the entire financial services industry. He stated that he had no desire to disrupt ongoing government efforts. He offered to delay if the Department would identify a reason to do so. The Department did not respond.

The Department's silence should not be confused with inaction.

In 2024, at the direction of senior Criminal Division leadership, the FBI's Economic Crimes Unit contacted Petitioner and requested that he provide documents related to the conduct described in this Petition. Petitioner complied in full. What the Department has done with those documents is known to the Department. Petitioner will not discuss it here.

Separately, in October 2025, Petitioner met in person with the Internal Revenue Service's Criminal Investigation division regarding the false Form 1099-DIV reporting documented in this Petition. The meeting was arranged by Gary Shapley, Deputy Chief of IRS Criminal Investigation, and Joseph Ziegler, IRS Special Agent and Senior Advisor to the Secretary of the Treasury — the two agents whose Congressional testimony regarding political interference in federal tax investigations led to structural reforms at the agency and their elevation to its senior leadership. IRS Criminal Investigation is the federal government's principal law enforcement agency for investigating potential criminal violations of the Internal Revenue Code — including the willful filing of false information returns under IRC §§ 7206(1), 7206(2), and 7207. Its special agents maintain a federal conviction rate exceeding ninety percent. Petitioner will not disclose the substance of that meeting or what has occurred since.

What Petitioner is not willing to state on the public record — what has happened since the FBI received those documents, what has happened since IRS Criminal Investigation held that meeting, what the Department of Justice has done with a matter its most senior criminal leadership personally directed to its investigative agencies — should concern every officer and director reading this section far more than anything Petitioner has written in the preceding 250 pages.

Twenty-six days after Petitioner's January 29 notification, on February 24, 2026, the United States Attorney for the Southern District of New York announced a district-specific program offering blanket criminal immunity to companies that self-report financial crimes — no fines, no forfeiture, no disgorgement. On March 10, 2026, the Department of Justice superseded that program with a department-wide Corporate Enforcement and Voluntary Self-Disclosure Policy requiring real fines, real disgorgement, and real forfeiture at every resolution tier. The blanket immunity architecture lasted fourteen days.

The officers and directors reading this section may draw their own conclusions about the relationship between these events and their timing. The Criminal Division referred this matter to its investigative agencies. The FBI collected documents. IRS Criminal Investigation — led by officials who have publicly demonstrated they will not be deterred by institutional resistance or

political pressure — engaged directly with the whistleblower. And then the Department published a nationwide framework for processing corporate self-disclosure of precisely the category of criminal misconduct this Petition documents.

What matters for the officers and directors reading this section is not the history of these programs or the circumstances that produced them. What matters is the picture these facts compose when viewed together — and what a reasonable person, advised by competent counsel, would conclude about what comes next.

The Department of Justice has published a structured resolution framework. The FBI has been engaged with this matter. IRS Criminal Investigation has been engaged with this matter. This Petition has placed the complete evidentiary record — every admission, every mathematical proof, every statutory analysis — on a permanent federal docket accessible to every prosecutor in the country.

On March 16, 2026, Petitioner submitted a formal criminal referral to the Department's Criminal Division through the Corporate Whistleblower Awards Pilot Program, documenting violations under thirteen federal statutes — ensuring that the Department's knowledge of this misconduct is documented, timestamped, and beyond dispute.

The window within which that framework can be used to preserve your business is open now. It is closing.

C. What Happens If You Do Not Enter the Program

A felony conviction of a fund management company for securities-related offenses triggers automatic disqualification under Section 9(a) of the Investment Company Act. The convicted company is barred by statute from serving as investment adviser to any registered fund. No court has discretion to override the bar. No plea structure avoids it. The SEC possesses theoretical authority to grant an exemption — but no Commissioner will sign an exemption order for a company convicted of defrauding 160 million Americans, and no general counsel should advise a board to stake the company's survival on the assumption that one will. The practical consequence is absolute: the company cannot manage a single fund, cannot hold a single dollar of client assets, and cannot operate in the only business it knows. Every fund must be transitioned. Every client relationship ends. Every employee loses their job. The enterprise is over — not because a regulator

chose to shut it down, but because the statute left no alternative the moment the jury returned its verdict.

Consider what that means for the people who depend on this company.

Every fund the company manages — every equity fund, every bond fund, every target-date retirement fund, every 529 college savings plan — must be liquidated or transitioned to another manager. Not on the company's timeline. On the government's. Not at prices the company negotiates. At prices a distressed market sets when it learns that one of the largest fund complexes in America has lost its registration and is being wound down under regulatory supervision. Every client relationship the company spent decades building ends — not through the orderly transition a merger produces, but through the chaotic unwinding a criminal conviction compels. The pension fund that entrusted the company with the retirement savings of its teachers and firefighters must find a new manager under compressed timelines and public scrutiny, while explaining to its beneficiaries why their assets are being moved away from a convicted institution. The endowment that allocated to the company's strategies must liquidate positions at whatever prices the market offers to a forced seller. The individual investor who selected the company from a retirement plan menu — who trusted the name, who relied on the brand, who believed that a registered investment company operates within the law — discovers that her savings are being moved to a manager she did not choose because the manager she did choose committed a federal crime.

Every employee loses their job. The portfolio managers who built the track records. The analysts who generated the research. The client service professionals who built the relationships. The operations staff who processed the trades. Thousands of careers ended — not by a market downturn, not by a strategic restructuring, but by a criminal conviction that the company's board could have prevented.

Every shareholder in every fund bears the cost. Forced liquidation produces taxable events the shareholders did not choose. Transition to a new manager produces fees the shareholders did not authorize. The disruption falls on the very investors the company was chartered to serve — imposed by the company's own refusal to act when a path to preservation was open, published, and available.

That is the consequence of one count. The conduct documented in this Petition implicates hundreds of millions of independent criminal acts.

Mail fraud — 18 U.S.C. § 1341. Each false Form 1099-DIV placed in the United States mail is a separate federal crime. The industry mails hundreds of millions annually.

Wire fraud — 18 U.S.C. § 1343. Each false Form 1099-DIV transmitted electronically to the Internal Revenue Service is a separate federal crime. Hundreds of millions annually.

Securities fraud — 18 U.S.C. § 1348. The knowing dissemination of materially misleading prospectuses to 160 million investors, continued for years after the deficiency was documented, acknowledged by the companies' own executives, and in some cases silently corrected without investor notification.

Racketeering — 18 U.S.C. §§ 1962(a), (c), (d). An enterprise sustained through hundreds of millions of predicate acts with no termination point, enforced through the coordinated suppression of the sole corrective technology.

Conspiracy — 18 U.S.C. § 371. The parallel conduct across competitors — the coordinated silence, the uniform prospectus edits, the collective refusal to adopt available corrections.

Sarbanes-Oxley certification fraud — 18 U.S.C. § 1350. Every quarterly and annual certification signed by a CEO or CFO attesting to no material misstatements while these violations were ongoing and generating billions in revenue.

Criminal tax fraud — 26 U.S.C. §§ 7206(1), 7206(2), 7207, 7201. Every false return prepared, signed, filed, or assisted in its preparation — reaching every entity in the chain that helped produce, process, standardize, or distribute the false forms.

False statements — 18 U.S.C. § 1001. Any materially false representation made to the Securities and Exchange Commission during the nearly six years this matter has been pending. The Commission's records will reflect what was said, when it was said, and by whom.

Obstruction — 18 U.S.C. § 1519. The silent deletion of prospectus language beginning in 2023 — without corrective supplements, without investor notification, and without SEC notification — after the companies received formal written notice that the language was materially false. The statute reaches any alteration or concealment of records with the intent to impede any matter within the jurisdiction of any federal agency. It does not require a pending investigation. Twenty years per count.

Petitioner names these statutes here, on the permanent public record, for a single reason: so that no board of directors can later claim — before a court, a regulator, or a congressional

committee — that it was unaware of the specific criminal exposure this Petition identifies. That defense died the day this Petition was docketed.

The financial exposure is proportional to the harm. The United States Sentencing Guidelines calculate organizational fines based on the greatest of three figures: the offense level fine table amount, the pecuniary gain to the organization, or the pecuniary loss caused by the offense. The pecuniary loss documented in this Petition exceeds $100 billion per year, sustained over decades. Culpability multipliers for pervasive misconduct directed by senior management — with documented knowledge of the harm, documented awareness of available corrections, and documented decisions to suppress those corrections to preserve revenue — drive the calculation to the upper boundary of the Guidelines range. Without the program, the full range applies. No reduction. No cooperation credit. No downward departure. The fine alone — before disgorgement, before restitution, before any other consequence — is a number that threatens the solvency of every company in the industry. Not the profitability. The solvency.

And conviction is not a remote possibility to be discounted in a risk model. The evidence that would be presented to a jury is not circumstantial. It is not the product of inference or interpretation. It is the company's own language, in the company's own prospectuses, filed with the company's own regulator, stating in the company's own words that distributions to purchasing investors include amounts that are economically a return of capital — and then filing Forms 1099-DIV reporting those same amounts as fully taxable income. Both statements are on file with federal agencies. Both bear the company's name. Both are signed. A jury does not need an expert witness to understand that a company that says one thing to the SEC and the opposite to the IRS has filed a false return. A jury needs only the two documents — side by side, in the company's own handwriting — and the common sense that every American brings to the courtroom.

Now consider the timeline that accompanies a decision not to enter the program.

The government proceeds at its own pace. Criminal investigations unfold over years. During the entire period, the company operates under a shadow no earnings call can lift. Clients leave — not after the verdict, but after the headline, because pension funds and endowments are governed by fiduciary obligations that do not permit them to wait and see. Assets under management decline. Revenue follows. Talent follows revenue — the professionals with the most options leave for firms not under investigation. Share price follows talent — the market prices the uncertainty before any court has ruled on anything. The company bleeds out, slowly and publicly,

while the government builds its case at whatever pace it chooses. And the case is built on the company's own words, in the company's own prospectuses, filed with the company's own regulator. There is no factual defense that will succeed when the defendant's own published documents constitute the confession.

Every month of delay compounds the damage. Each month is a month in which the government's evidence base expands. Each month is a month in which a competitor may enter the program first and capture the cooperation advantage. Each month is a month in which the company files another round of false Forms 1099-DIV — adding new counts to the exposure it has chosen not to resolve. And each month is a month in which the board's silence becomes harder to defend — because the Petition has been on the public docket, the exposure has been quantified, the path to preservation has been identified, and the board chose to do nothing.

There is no scenario in which a company identified in this Petition does nothing, and the problem resolves itself. There is no scenario in which the passage of time improves the company's position. There is no scenario in which the evidence on the Commission's public docket becomes less damaging, the statutes become less applicable, or the prosecutors who have already engaged with this matter become less interested. The only direction is forward — and forward, without the program, leads to everything described above.

And there is one final consideration that transforms this decision from a strategic calculation into a legal obligation.

The board of directors of every company identified in this Petition owes fiduciary duties to its corporate shareholders — duties of care, loyalty, and good faith that the law imposes without exception and enforces without mercy. The duty of care requires the board to make informed decisions on matters that affect the company's continued existence. This Petition has informed the board. The preceding sections have provided specific, documented, quantified evidence of criminal exposure that threatens the company's registration, its operations, its client relationships, its revenue, its talent, its share price, and its survival as a going concern. A board that has received this information and chooses not to act — not to evaluate the DOJ program, not to engage counsel, not to demand a formal presentation of the options, not to take the one step most likely to preserve the enterprise and protect its shareholders — has not exercised business judgment. It has abdicated it. The business judgment rule protects boards that make difficult decisions after careful deliberation on an informed basis. It does not protect boards that refuse to deliberate at all.

The independent fund directors bear an obligation that is more acute still. Their fiduciary duty runs not to the management company but to the shareholders of the funds — the millions of Americans whose retirement savings, college funds, and financial futures are held in the funds the management company manages. When the management company's criminal exposure threatens to force fund liquidation, destroy shareholder value, and impose tax consequences on investors who did nothing wrong, the independent directors have a duty to act in those shareholders' interests — even if acting means overriding the management company's preference for silence. If entering the DOJ program is the action most likely to preserve the fund, protect the registration, and prevent a forced liquidation that would harm every shareholder the directors were appointed to protect — and this section has demonstrated that it is the only such action — then entering the program is not merely the rational choice. It is the fiduciary obligation. An independent director who permits the management company's desire to avoid accountability to override the shareholders' interest in the survival of the fund has subordinated the interests of the beneficiaries to the interests of the fiduciary. That is not a strategic disagreement. It is a breach of the duty of loyalty — personal, actionable, and measured against the standard set by every independent director at every other fund complex who read this same Petition and chose to act.

The decision before every board identified in this Petition is no longer a question of strategy, risk tolerance, or institutional preference. It is a question of legal duty — owed to every shareholder in every fund the company manages, enforceable by every one of them, and documented on the permanent public record by this Petition so that no director can later claim the obligation was ambiguous.

It is not ambiguous. It is here. And it is now.

There is one alternative to everything described above. The next section describes it.

D. A Personal Note to the Professionals Reading This Petition

Section C described what happens to the company. This section is about what happens to you.

Not to your institution. Not to your employer. Not to the abstract entity whose name appears on the registration statement. To you — the professional whose name will appear in the record when the question is asked, as it will be asked, under oath: *what did you know, when did you know it, and what did you do?*

Every professional obligation discussed below existed before this Petition was filed. What did not exist — until now — was a sworn, public, permanent evidentiary record that makes each obligation specific, quantified, and impossible to claim you were unaware of. That record now sits on the docket of the United States Securities and Exchange Commission (and soon, other federal dockets), accessible to every regulator, every prosecutor, every plaintiff's attorney, and every congressional investigator in the country. The question of knowledge is settled. The only question that remains is conduct.

To the General Counsel

You are the officer the board relies on to identify existential threats to the enterprise. This Petition documents one. It is not a regulatory inquiry to be monitored. It is not a class action complaint to be referred to outside counsel for evaluation. It is a 350+ page sworn evidentiary record, supported by a declaration under penalty of perjury, identifying criminal statutes, documenting that the FBI and IRS Criminal Investigation have engaged with the matter, and demonstrating that a felony conviction would terminate the company's legal right to exist. If this does not constitute information the board must receive, then nothing does, and the position you hold serves no purpose.

The duty of care requires you to present the board with material information bearing on the company's continued existence. You now possess that information. Every hour between this moment and the moment you present it to the board is an hour for which you bear personal responsibility — because during that hour, the company operates without the protection the DOJ program provides, the window to enter on favorable terms narrows, and the record of your silence grows.

The general counsel who brings this Petition to the board tomorrow, who presents the exposure with candor, who recommends immediate engagement with the DOJ program, and who ensures the recommendation is documented in the minutes, has fulfilled her duty and created a record that will withstand any scrutiny from any quarter.

The general counsel who does not — who waits for more information, who consults with colleagues, who monitors the situation, who decides to "keep an eye on it" — has created a record of a different kind. It is a record of a professional who possessed specific, documented knowledge of a threat to the enterprise's survival and chose not to act on it. That record will be examined by

the board when it discovers the Petition existed and was not presented. It will be examined by shareholders when the consequences arrive. It will be examined by regulators and enforcement counsel asking the question your silence has guaranteed they will ask: why did the company's chief legal officer know and do nothing?

The path is not complicated. Retain outside counsel with DOJ self-disclosure experience. Schedule an emergency board session. Present the exposure. Present the program. Recommend entry. Document everything. Begin.

To the Chief Compliance Officer

Every company identified in this Petition — whether a registered investment company, a fund administrator, a transfer agent, a broker-dealer, or a publicly traded management company — employs compliance professionals whose function is to identify material risks and ensure they reach the people with authority to act on them. For registered fund complexes, Rule 38a-1 imposes this obligation by name, requiring the chief compliance officer to report material compliance matters to the fund board. For broker-dealers, FINRA Rule 3120 and the firm's own written supervisory procedures impose parallel obligations. For publicly traded companies, the Sarbanes-Oxley framework requires that material risks be escalated to the audit committee. For every company, regardless of regulatory classification, basic corporate governance requires that information bearing on the company's survival reach the board of directors. The specific rule varies by entity. The obligation does not. This Petition is designed to make that obligation impossible to ignore.

A sworn declaration on the SEC's public docket. Three hundred and fifty-three pages of documented violations. Criminal statutes identified by name and section number. Three federal agencies engaged through their criminal enforcement apparatus. A DOJ program available to resolve the exposure. And a factual record built on the company's own admissions in its own SEC-filed prospectuses.

If that does not constitute a material compliance matter requiring immediate board notification, then no combination of facts ever could, and the rule Congress enacted to protect investors through the compliance function is a dead letter. It is not a dead letter. It is your obligation. And it is activated — specifically, personally, and irrevocably — by the filing of this Petition.

In 2023, Petitioner sent formal compliance notices to 15,266 chief compliance officers. Not one responded. Not one escalated. Not one brought the notice to a single fund board. So Petitioner did what the industry's silence required — he expanded the notice by 350+ pages, supported it with a declaration under penalty of perjury, documented the engagement of three federal criminal agencies, and filed it on the permanent public docket of the United States Securities and Exchange Commission, where it cannot be flagged as spam, cannot be classified as inappropriate content, and cannot be deleted without anyone reading a word. This Petition is the compliance notice the industry forced Petitioner to write. It is sitting on a federal docket that every compliance professional in the country monitors as a condition of their employment. The CCO who learns of its existence and does not immediately escalate to the board has not exercised professional judgment. The CCO has made a choice — and unlike 2023, when 15,266 professionals could hide behind the anonymity of collective inaction, this time the choice will be evaluated individually, because this Petition has identified the obligation by name, by rule number, and by the specific factual predicate that triggers it.

Escalate. Today. Notify the fund board in writing. Document the notification. Ensure the board has what it needs to act.

To Outside Counsel

If your firm drafted the prospectus language that this Petition identifies as materially false, you have a conflict that continued representation cannot cure. If your firm continued drafting that language after receiving Petitioner's compliance notices — notices that identified the specific deficiency, cited the applicable statutes, and offered a path to correction — the conflict is compounded by personal knowledge of the facts at issue. Rule 3.7 of the Model Rules of Professional Conduct provides that a lawyer shall not act as advocate at a trial in which the lawyer is likely to be a necessary witness. You are not likely to be a witness. You are certain to be one — to what you drafted, what you were told, what you advised, and what you continued to draft afterward. That testimony goes to knowledge, to intent, and to the question of whether the company's continued false filings were the product of inadvertence or of deliberate choice made on the advice of counsel. Tell your client you have a conflict. Recommend independent counsel with DOJ self-disclosure experience. And do it now — before the general counsel calls you for advice you are not in a position to give.

If your firm did not draft the prospectuses but a client came to you after receiving Petitioner's compliance notices, and you advised that no action was required — that the disclosures were adequate, the reporting defensible, the notice safely ignored — you need to understand what is about to happen. Your client is going to read this Petition. The general counsel is going to ask why the company did nothing for three years after receiving written notice of the exact violations now documented on a federal docket supported by FBI evidence collection and IRS Criminal Investigation engagement. The answer is that you told them not to worry. That answer will be examined — by the board, by successor counsel, by the DOJ during the cooperation process, and by the client's malpractice carrier. The firm that calls the client today, acknowledges that the landscape has fundamentally changed, and recommends immediate engagement with counsel experienced in DOJ self-disclosure demonstrates the judgment the client hired it for. The firm that waits for the client to discover this Petition on its own — and to realize that the advice it received in 2023 is the reason it is now three years behind the companies that acted — will not be the client's firm much longer.

To the Independent Directors

You serve one constituency: the shareholders of the fund. Not the management company. Not its executives. Not its general counsel. The shareholders — the teachers, the firefighters, the first-generation savers, the retirees living on the distributions your fund provides. Congress created your role because it understood that fund managers face an inherent conflict between their own fee revenue and their investors' welfare. You are the structural safeguard designed to ensure that when that conflict materializes, someone in the room chooses the investors.

This Petition documents the conflict you were appointed to catch. The management company profits from net asset values inflated by embedded realized income that the company's own prospectuses acknowledge will be distributed and taxed. The shareholders pay — through excess fees calculated on the inflated values and through taxes on income they never earned, reported on forms the industry's own published materials acknowledge overstate the obligation. The management company has known this for years. It chose revenue over correction. That choice is the conflict of interest the independent director exists to override — and this Petition has placed the evidence of that choice on a permanent public docket where the directors' response to it will be measured.

Your obligation is specific. Demand a formal board presentation from the general counsel — a presentation that addresses this Petition, quantifies the criminal exposure it documents, evaluates the DOJ program, and recommends a course of action. If the general counsel has not initiated that presentation, ask why — and document the answer. If the answer is that the general counsel has not read the Petition, or has read it and concluded it does not warrant board attention, that answer is itself the information you need: it tells you the general counsel has either failed to identify an existential threat to the fund or has identified it and chosen not to disclose it. Either answer warrants independent counsel — counsel who represents the fund's shareholders, not the management company that created the exposure.

Request a formal review under Section 15(c) of the advisory contract. Evaluate whether the management company's conduct — profiting from inflated NAVs, filing false tax returns, suppressing corrective technology, and concealing all of it from the board — is consistent with the fiduciary obligations the advisory contract imposes. If it is not — and this Petition has demonstrated with mathematical precision that it is not — the board has the authority to demand correction, to condition renewal of the advisory contract on entry into the DOJ program, and to protect the fund's shareholders from the consequences of the management company's refusal to act.

The first independent director in the industry to take these steps establishes the standard of care by which every other independent director will be judged. She will be the director who read the Petition, understood the threat, demanded the presentation, retained the counsel, and ensured that the board acted to protect the people it serves. Every independent director who acts after her benefits from the path she cleared. Every independent director who fails to act is measured against the standard she set.

That measurement will not be conducted in private. It will be conducted in enforcement proceedings, in shareholder derivative suits, in the press, and before the congressional committees that created the independent director requirement in the first place — committees that will want to know whether the structure Congress designed to protect investors actually worked when it was tested. The independent director who acted will be the evidence that it did. The independent director who did not will be the evidence that it failed.

To All of You

The question is no longer whether you knew. This Petition is on the Commission's docket. Your firm monitors that docket. Your trade association will circulate this filing within hours. Your competitors' general counsel are reading these words at the same time you are, making the same calculations, reaching the same conclusions, and preparing to act. You know. Every professional in your position, at every company identified in this Petition, knows.

The only question that remains is what you did.

The answer that protects you — personally, professionally, and legally — is the same answer that protects the company, the fund, and the shareholders: act now. Bring this Petition to the board. Present the exposure. Evaluate the DOJ program. Recommend entry. Document the recommendation. Begin the process. Every professional who does this has fulfilled the obligations their role imposes and created a record of diligence, good faith, and care that will withstand any examination.

Every professional who does not has created the opposite record — a record not of what they did, but of what they chose not to do, when the facts were documented, the path was clear, the stakes were existential, and the time to act was now.

E. The Path

The preceding section described an outcome. This section describes the alternative. They are the only two outcomes available to the companies identified in this Petition. There is no third option, no middle path, no strategy of partial engagement that captures the benefits of cooperation without its commitments. The choice is binary. What follows is the side of that binary that preserves everything Section C demonstrated would be lost.

On March 10, 2026, the Department of Justice published the Corporate Enforcement and Voluntary Self-Disclosure Policy — a department-wide framework, applicable to all corporate criminal matters, under which companies that self-report misconduct and remediate the underlying conduct receive a structured resolution that avoids criminal prosecution. The framework is not an informal understanding between a company and an individual prosecutor. It is a published instrument of the United States Department of Justice, setting forth defined eligibility criteria, defined obligations, and defined outcomes — available to any company that meets its terms,

enforceable through a written Non-Prosecution Agreement, and producing results on a timeline measured in months rather than the decades Section C described.

This section presents those results as the general counsel will need to present them: clearly, concretely, and in terms the board can act on before the meeting adjourns.

The Business Survives

The company receives a Non-Prosecution Agreement. There is no criminal charge. There is no indictment. There is no arraignment, no trial, no verdict, and no conviction. The felony that Section C demonstrated would trigger mandatory disqualification under the Investment Company Act never occurs — because the program resolves the company's criminal exposure before it reaches a courtroom. The statutory mechanism that would have terminated the business by operation of law is never activated.

The company retains its registration. It retains its license to manage funds and hold client assets. It retains the client relationships it spent decades building — the pension funds, the endowments, the retirement plans, the individual investors who chose this company because they trusted it. Those relationships continue. The portfolio managers continue to manage money. The analysts continue to generate research. The employees who built their careers at this company continue to come to work. The enterprise that Section C demonstrated would cease to exist — that would be liquidated, unwound, and erased — continues to operate, to serve its investors, and to grow.

That single fact resolves the question Section C posed. The board asked: does this company continue to exist? Inside the program, the answer is yes. Outside the program, the answer is the one Section C provided — and the board has a fiduciary duty to ensure the answer is yes.

No Monitor

The program does not require an independent compliance monitor.

No government-appointed overseer is installed in the company's offices. No outside appointee with unfettered access to the company's operations, its personnel, its strategy, and its records. No quarterly reports filed with prosecutors detailing every compliance decision the company made, and every judgment call the monitor questioned. No public signal — visible to

every client, every competitor, every prospective investor, and every financial journalist — that the Department of Justice does not trust this company to govern itself.

The company remediates under its own leadership. It engages its own counsel. It designs and implements its own compliance enhancements on its own timeline. It demonstrates to the Department, to its clients, and to its shareholders that it possesses the institutional integrity to identify what went wrong, to correct it, and to ensure it does not recur. The company emerges from the program not as an institution that required government supervision but as an institution that proved it did not need it.

For a fund company — where every dollar under management rests on a single intangible called trust — the difference between self-directed remediation and government-imposed oversight is the difference between a company that retains its clients and a company that watches them leave. The program preserves the company's most valuable asset: the market's belief that the company can be trusted to manage other people's money.

Reduced Fines

Criminal fines are reduced by fifty to seventy-five percent off the low end of the United States Sentencing Guidelines range. Section C described what the full Guidelines calculation produces for conduct of this magnitude — a number that threatens the solvency of the enterprise. The program reduces that number by up to three-quarters. The obligation that remains is significant. It is also survivable.

The program converts an existential financial threat into a manageable financial obligation. For a board charged with preserving the enterprise and protecting shareholder value, the difference between those two propositions is the difference between a company that continues and a company that does not.

Resolution in Fewer Than Three Years

The Non-Prosecution Agreement carries a term of fewer than three years. The company fulfills its obligations. The agreement terminates. The matter closes. The company's record is clean — not provisionally, not conditionally, but completely. No residual obligations. No ongoing reporting beyond the ordinary regulatory framework that applies to every registered fund. The chapter ends and the company moves forward.

Three years. Hold that against the timeline Section C described — criminal investigation measured in years, trial preparation in more years, the trial itself in weeks, appeals in years beyond that, and the entire period spent losing clients, losing talent, and losing market value under a shadow the company cannot control and cannot lift. The total elapsed time, from first subpoena to final resolution, stretches across the better part of a decade. During every month of that decade, the company bleeds.

Inside the program, the end date is visible from the beginning. The board can tell shareholders when the matter will be resolved. The company can plan around a defined horizon. Clients can make allocation decisions knowing the resolution is underway and will conclude on a contractually defined timeline. In a business built on the disciplined management of uncertainty, the program offers the most valuable commodity a company in crisis can possess: certainty about when the crisis ends.

What the Board Needs to Hear

The general counsel's presentation to the board requires six facts:

1. The company faces criminal exposure that, upon conviction, terminates the business by operation of law.
2. A published Department of Justice framework resolves that exposure through a Non-Prosecution Agreement — producing no conviction, no disqualification, and no termination.
3. The framework does not require a government-appointed monitor.
4. Criminal fines are reduced by fifty to seventy-five percent.
5. The resolution concludes in fewer than three years, producing a clean record.
6. And the framework is available now — on terms that favor the companies that act first, because the first company to enter captures the most favorable position and every subsequent entry strengthens the government's hand against the companies that remain outside.

Those are the six facts. They answer every question the board will ask. They resolve every fear Section C created. And they support a decision the board can make in a single meeting, on a single motion, grounded in the fiduciary obligations Section C demonstrated are not optional.

The general counsel who presents these six facts has given the board everything it needs. Outside counsel can address the program's procedural requirements — the engagement process, the specific steps, the documentation — after the board has made the threshold decision that matters. And the threshold decision is not how the program works or what the program costs. It is whether this board will act to preserve the company's existence while the mechanism to do so remains available.

The next section explains why that mechanism will not remain available on these terms for long.

F. The Terms That Remain — And Why They Favor the Companies That Move First

The program offers three parts. The first is unavailable. The second is available now. The third is what remains for those who hesitate. Below the third is Section C. There is nothing below Section C.

Part I Is Closed

A full declination under the program requires that the misconduct be "not previously known to the Department." The misconduct documented in this Petition has been known to the Department of Justice through four independent channels of notification, spanning nearly six years. Each channel independently forecloses Part I eligibility. Together, they eliminate any argument that any company documented in this Petition qualifies for a full declination.

In June 2020, Petitioner's attorney — Sean X. McKessy, the architect and founding Chief of the SEC's Office of the Whistleblower — filed a detailed whistleblower submission with the Securities and Exchange Commission documenting the violations described in this Petition. The Commission maintains formal information-sharing protocols with the Department of Justice. Approximately fifty Commission staff members have engaged with Petitioner on the substance of that submission over the past six years. To the best of Petitioner’s knowledge, the Commission has not closed the matter.

In May 2024, Nicole Argentieri, then-Acting Assistant Attorney General of the Criminal Division, personally referred this matter within the Department. At her direction, the FBI contacted Petitioner and collected documents related to the conduct described herein. The referral originated

from the most senior criminal enforcement official in the Department and was executed by the FBI unit responsible for financial crimes at the national level.

On January 29, 2026, Petitioner notified the Department in writing — through the senior official to whom Argentieri had referred the matter — that he intended to file a public petition documenting criminal violations spanning the entire financial services industry. Petitioner offered to delay. The Department did not respond.

On March 16, 2026, Petitioner submitted a formal criminal referral and supplemental criminal violations memorandum to the Criminal Division through the Department's own Corporate Whistleblower Awards Pilot Program, documenting violations under thirteen federal statutes and attaching the Petition and its supporting Declaration as exhibits — placing the complete evidentiary record in the Department's possession before the Petition was filed on the Commission's public docket.

Four channels. Six years. The SEC whistleblower submission was filed by the man who built the program. The Acting Assistant Attorney General of the Criminal Division, who personally referred the matter to the FBI. A written notification of intent to file, sent directly to the official handling the referral. And a formal criminal referral under the Department's own whistleblower program — with the full Petition attached — submitted before the Petition reached the public docket.

The Department of Justice possessed actual knowledge of the misconduct documented in this Petition before any company knew the Petition existed.

No company will receive a full declination. The question is not close. It is not arguable. The Department cannot declare misconduct "not previously known" when its own Acting Assistant Attorney General referred it, its own FBI unit collected evidence of it, its own whistleblower program received a formal criminal referral documenting it under thirteen federal statutes with the complete Petition attached, and the whistleblower who reported it notified the Department in writing that the Petition was coming — and then delivered it to the Criminal Division before filing it with the Commission. Part I does not exist for these companies. It is a door that was closed before they knew there was a building.

Petitioner possesses documentary evidence establishing every element of the Department's prior knowledge — including the referral, the FBI engagement, the written notifications, the criminal referral, and proof of delivery of the Petition to the Criminal Division — and will produce

that evidence in any proceeding in which any company contends it qualifies for a full declination under Part I. Any company that spends its board's time, its shareholders' money, and its counsel's hours pursuing a Part I argument is not exercising legal judgment. It is consuming the time it should be using to enter Part II — while the companies that understood the mathematics are already through the door.

Part II Is Open

Part II is everything Section E described. The Non-Prosecution Agreement. No conviction. No disqualification. No monitor. Fines reduced fifty to seventy-five percent. Resolution in fewer than three years. The company survives. The registration is preserved. The clients stay. The employees keep their jobs. The business continues.

Part II is available to companies that self-report in good faith — companies that came forward voluntarily, promptly, and without waiting to be compelled. For the companies identified in this Petition, the measure of good faith begins on the date this Petition was filed. The Department will evaluate each company's self-report against a simple question: how quickly did the company act after a 350+ page sworn evidentiary record documenting its criminal exposure was placed on a permanent federal docket? The company that acted within days demonstrated good faith through the only metric that cannot be fabricated — speed. The company that acted within weeks will need to explain the weeks. The company that acted within months will struggle to explain why a company in possession of a document identifying the specific statutes it was violating and the specific program available to resolve them required months to reach the only rational conclusion. Part II is the last step on the staircase that produces a defined, structured, survivable outcome.

Every step below it is worse.

Part III Is What Remains for Those Who Wait

Part III applies to companies that did not self-report, that delayed beyond what the Department considers reasonable, or that entered only after the accumulation of evidence left no credible alternative. Part III preserves full prosecutorial discretion — over the form of the resolution, the length of the term, the compliance requirements, and the fine. Part III does not guarantee an NPA. Part III does not guarantee any specific reduction. Part III is not a structured path to a defined result. It is a negotiation conducted entirely on the government's terms, at the

government's pace, producing whatever outcome the government determines is appropriate for a company that did not come forward when coming forward was possible.

Below Part III is full prosecution. Full Guidelines fines. Conviction. Disqualification. Section C.

The staircase only descends. No company that begins at Part III negotiates its way to Part II. No company that faces full prosecution negotiates its way to Part III. The step a company occupies is determined by a single variable: when it acted. Not what it said. Not what it intended. When it moved.

Why the First Company Wins

Every general counsel reading this Petition is performing the same calculation at this moment. Not next week. Now. Because every general counsel knows that every other general counsel is performing it too — and the calculation has a single, unambiguous, mathematically inevitable conclusion: the company that moves first wins.

The first company to self-report enters Part II at its strongest. It acted before any competitor. Before any additional government action. Before any additional evidence entered the record. Its good faith is demonstrated by the timing itself — it came forward when the only basis for action was this Petition and the company's own conscience. The Department will note that. The terms will reflect it. The first company receives the highest reduction, the shortest term, and the most favorable resolution Part II can produce.

The second company enters a different landscape. One competitor has already confessed. The evidentiary record has expanded by the contents of that confession. The government's knowledge has deepened. The second company's claim of good faith is intact but diminished — not because it acted wrongly, but because it acted second. It waited one day, one week, one board meeting longer than the company that moved first. The Department will note that too.

The fifth company enters against four prior confessions. Each one has described the industry-wide practice. Each one has identified the shared methodology, the common service providers, the coordinated conduct this Petition documents. By the time the fifth company arrives, the Department does not need its confession to understand the scheme. The Department needs its confession to complete the record. The fifth company is not volunteering information. It is

confirming what four competitors have already provided under oath. The terms will reflect the difference.

The twentieth company is not entering the program. It is surrendering to it. Every material fact about the industry-wide practice has been described, corroborated, and documented by nineteen prior cooperators. The twentieth company's disclosure adds nothing the Department does not already possess. Its claim of good faith is not diminished. It is extinguished — because a company that watched nineteen competitors confess before deciding to act is not demonstrating accountability. It is performing a calculation that the passage of time has rendered transparent to everyone in the room. The distinction between Part II and Part III, for the twentieth company, has collapsed.

And the company that never enters — that watches the entire industry file through the door one by one, each confession describing practices, documenting coordinated conduct, mapping the enterprise — that company is not holding a strategic position. It is watching the construction of its own prosecution. Built by its own competitors. Funded by their cooperation budgets. Delivered to prosecutors under oath. Every confession that describes the industry-wide practice is simultaneously a confession about the non-entrant — because the practice is the same, the methodology is the same, the forms are the same, and the conduct is identical across every company that participates in it. The non-entrant's silence does not create distance from the cooperators' confessions. It creates a vacuum that prosecutors will fill with the most damaging inference the evidence supports: this company knew what every other company knew, did what every other company did, and chose silence when every other company chose accountability.

The dynamic is structural and unavoidable. Three hundred and fifty pages of documented violations, filed on a permanent federal docket, accessible to every company in the industry simultaneously. Every general counsel reads it at the same time. Every board convenes the same emergency session. Every outside counsel delivers the same advice. And every company faces the same question: do we move now, or do we gamble that our competitors will not?

That gamble requires every competitor to make the same bet — to collectively agree, without communication, without coordination, and without any mechanism to enforce the agreement, that silence serves everyone's interest. But every company knows that every other company engages in the same practice. Every company knows that every other company's general

counsel has read this Petition. And every company knows that the first company to break ranks captures an advantage that compounds with every day the others wait.

Collective silence is the optimal outcome for the industry. It is the worst possible strategy for any individual company — because the company that maintains silence while a single competitor defects bears the full cost of the defection with none of its benefits. The defector receives Part II treatment and survives. The silent company is identified in the defector's cooperation materials as a participant in the same industry-wide practice — the company that knew what the defector knew and chose concealment over cooperation.

The only stable outcome is that everyone enters. Not because cooperation is costless — it is not. But because the cost of being the company that did not cooperate, while every competitor did, is the cost Section C described. And no rational board will accept that cost when the alternative is Part II.

The only question is whether your company will be at the front of the line or beneath it.

The next section describes what must happen now.

G. Why the Decision Cannot Wait

The program exists today. The terms are published. The benefits are defined. None of these facts is permanent.

Section E described what the program offers: survival. Section F described why the first company to enter captures the strongest position. This section describes the forces that are converging — simultaneously, independently, and irreversibly — to close the window through which every company identified in this Petition must pass if it intends to emerge intact.

These forces do not pause while the general counsel requests a briefing. They do not wait while outside counsel conducts due diligence. They do not slow while the board schedules a special session for the third Thursday of next month. They accelerate. They are accelerating now.

Within days of this Petition's filing, Petitioner will begin distributing it — and a plain-language summary of the criminal exposure it documents — to public pension fund trustees, union retirement fund administrators, state and municipal retirement systems, endowment managers, retirement plan sponsors, investor advocacy organizations, and financial journalists. The institutions that allocate capital to the companies identified in this Petition will receive the same document those companies are reading now. Each of those institutions is governed by its own

fiduciary obligations — obligations that will require them to evaluate whether the fund managers they have selected are the subjects of a federal petition documenting criminal violations across every major statute in the United States Code. The company that has already entered the DOJ program when that inquiry arrives can answer it. The company that has not will have no answer that satisfies a fiduciary's duty of care — and no answer that prevents the asset reallocation that follows.

The first-mover dynamics described in Section F are not operating on the company's preferred timeline. They are operating now — and the general counsel cannot control when competitors act. She controls one variable: when her company acts.

The Evidence Base Is Growing — And Petitioner Is Growing It

The 350+ pages on the Commission's docket today represent the smallest the evidentiary record will ever be. Tomorrow it will be larger.

Petitioner continues to engage with federal enforcement agencies — through channels this Petition has documented and through channels it has not. Congressional oversight committees will be notified. Inspector General referrals will be submitted. FOIA requests have been filed and will continue to be filed — systematically, persistently, across every agency that possesses records related to this matter. Additional whistleblower submissions to multiple federal agencies are in preparation. Petitioner is currently coordinating with firms that believe this matter warrants urgent Congressional Investigation. And Petitioner is building the evidentiary record, every day, across every available forum — a record that supports enforcement whether the companies identified in this Petition cooperate or not.

Every expansion of that record tightens the standard against which the company's claim of "prompt, good faith self-disclosure" will be evaluated.

A company that enters the program today acts against an evidentiary backdrop consisting of this Petition and the company's own internal knowledge. That is the cleanest possible posture — a company that read a public filing, recognized its exposure, and came forward. A company that enters next month acts against this Petition plus four weeks of accumulated evidence — additional FOIA responses, additional agency activity, additional media coverage, potentially the first competitor's entry. The question the prosecutor will ask is the one no general counsel wants to answer under oath: *if your intent was good faith cooperation, what were you doing for four*

weeks after a 350-page petition documenting your criminal exposure was filed on a federal docket?

A company that enters next quarter enters a landscape so saturated with accumulated evidence and potentially multiple competitor confessions that the concept of "voluntary" disclosure has been overtaken by events. The company is not coming forward. It is arriving late. The Department knows the difference. The terms will reflect it.

The evidence compounds as Petitioner supplements it. It compounds as FOIA requests produce government records. It compounds as congressional inquiries generate documents. And it will compound decisively when the first company enters the program, and its disclosures produce the first insider corroboration of every fact this Petition alleges — corroboration that transforms a whistleblower's petition into a proven, industry-confirmed, defendant-admitted evidentiary record that no company, no court, and no regulator can disregard.

Petitioner has worked on this matter for nearly eight years. The filing of this Petition is not the conclusion of that work. It is the beginning of the phase in which that work produces consequences. The pressure will not diminish. It will build — week by week, filing by filing, submission by submission — until the last company identified in this Petition has either entered the program or explained to a jury why it chose not to.

There Will Be No Defense of Ignorance

Petitioner will document every transmission. Beginning on the date of filing, Petitioner will commence direct transmission of this Petition to the general counsel, chief compliance officers, and boards of directors of companies across the fund industry — and will execute declarations under penalty of perjury pursuant to 28 U.S.C. § 1746 identifying each individual to whom the Petition was transmitted, the method of transmission, and the date of delivery. Each declaration will be filed with the Securities and Exchange Commission, the Internal Revenue Service, and the Department of Justice, and published on Petitioner's website at https://www.pagproject.com/ . The purpose is singular: to establish a sworn, public, timestamped record of the precise moment each company received actual notice of the criminal exposure this Petition documents. No general counsel will be able to testify that the Petition never reached her desk. No chief compliance officer will be able to claim the filing escaped the company's attention. No board member will be able to assert that management never informed the board — because the

declaration will show that the Petition was delivered to the board directly. The record of when each company knew will not be subject to dispute. It will be a sworn document, on a public website, in three federal agency files, with a date that prosecutors, regulators, and plaintiffs will use to measure everything the company did — and everything it failed to do — from that moment forward.

The Petition Is Going to Your Clients

This Petition will not remain on the SEC's docket waiting to be discovered. Within days of filing, Petitioner will begin distributing it — together with a plain-language summary of the criminal exposure it documents — to the institutions whose capital sustains every company identified herein. Public pension fund trustees. Union retirement fund administrators. State and municipal retirement systems. University endowments. Foundation investment committees. Corporate retirement plan sponsors. Taft-Hartley fund trustees. Sovereign wealth fund allocators. Investor advocacy organizations. And the financial journalists who cover every one of them.

Each of these institutions is governed by its own fiduciary obligations — obligations that exist independent of this Petition but that this Petition activates. A pension fund trustee who learns that the company managing the retirement savings of her firefighters and teachers is the subject of a 350-page federal petition documenting criminal fraud — supported by a perjury declaration, citing multiple federal criminal statutes, and disclosing engagement by the FBI and IRS Criminal Investigation — cannot file the petition in a drawer and continue the allocation. Her fiduciary duty does not permit it. She must evaluate. She must consult counsel. She must determine whether continued allocation to a manager facing this exposure is consistent with the duty of care she owes to her beneficiaries. And if she concludes it is not — as any competent fiduciary advised by competent counsel will conclude — she must act. Not after the verdict. Not after the indictment. After the phone call.

The company that has already entered the DOJ program when that inquiry arrives has an answer: we are aware of the matter, we have engaged counsel, we have entered a structured resolution framework with the Department of Justice, and we are cooperating fully. That answer preserves the relationship. It demonstrates the seriousness and institutional responsibility the fiduciary needs to hear. It gives the trustee a basis to maintain the allocation while the resolution proceeds.

The company that has not entered has no answer. It has silence. It has "we are evaluating the matter." It has "we believe the petition is without merit" — a statement that no fiduciary will accept when the petition is built on the company's own published prospectus language and the FBI has already collected documents. The trustee will not wait for the company to finish evaluating. She will move the assets to a manager that is not the subject of a federal criminal exposure petition. And she will do it that week — because her own lawyers will tell her that every day she waits is a day she is personally exposed for breach of fiduciary duty to her beneficiaries.

The company is not just racing its competitors to the DOJ program. It is racing the moment when the institutions that sustain its business are informed of the exposure this Petition documents — and are compelled by their own fiduciary obligations to act on that information. That moment is days away. Not weeks. Not months. Days. The general counsel who has not entered the program before the first pension fund trustee calls will spend the rest of her career explaining why she wasn't ready for a phone call this Petition told her was coming.

The Political Window May Not Last

The Corporate Enforcement and Voluntary Self-Disclosure Policy is an administrative instrument. It is not a statute. It is not a regulation. It carries no guarantee of permanence beyond the four corners of the Non-Prosecution Agreements it produces. Administrations change. Leadership turns over. Enforcement philosophies evolve in directions no company can predict. The terms available now exist because the current Department has chosen to offer them. The next revision could narrow the eligible offenses, reduce the fine reductions, impose monitors the current policy does not require, or withdraw the program entirely.

The companies that enter now execute binding Non-Prosecution Agreements under the current terms. Those agreements are contracts with the Department of Justice. They survive policy revisions, leadership transitions, and changes in administration. The company that enters today holds a signed, enforceable agreement. The company that waits holds nothing — only the assumption that favorable terms will still be available whenever it finally decides to act.

That assumption is not a strategy. It is a speculation. And the board that allows the company's survival to rest on speculation about future government policy — when defined, published, available terms exist today — has not exercised fiduciary judgment. It has gambled with other people's money.

The Convergence

The competitor who is reaching for the phone right now. The evidentiary record that grows larger every day the company waits. The Petitioner, who has spent eight years building the foundation, is not pausing now. The limitations clock that extinguishes remediation opportunities with each expiring tax year. The political window that exists today under terms no one can guarantee will exist tomorrow.

These forces are converging on every company identified in this Petition. Not sequentially. Simultaneously. Each one, independently, compels immediate action. Together, they create a window that is closing from every direction at once — and no board, no general counsel, and no outside counsel can responsibly advise a strategy premised on that window remaining open.

The call to outside counsel must be placed today. The board must convene this week. The decision must be made before the next company's decision makes it for you. Not because Petitioner demands it. Because these forces are indifferent to the company's internal calendar — and every one of them is making the company's position weaker while the board considers whether the matter is urgent enough to discuss.

It is urgent enough. It has been urgent since the day this Petition was filed. And with every day that passes, the distance between urgency and emergency narrows.

There will not be a better time to act than today. Tomorrow, every force described above will have advanced by one day — the record larger, the clock shorter, the window narrower, the competitors closer to the front of the line, and the company one day further from the moment when acting would have mattered most.

H. The Decision

The board of directors of every company identified in this Petition faces a decision that will define whether the company continues to exist.

The facts have been established. The criminal exposure has been quantified — statute by statute, count by count, with the Sentencing Guidelines arithmetic applied to pecuniary loss exceeding $100 billion per year. The consequence of conviction has been documented — mandatory disqualification, termination of operations, liquidation of every fund, the end of the enterprise by operation of law. The alternative has been described — a published Department of

Justice framework that preserves the registration, avoids conviction, reduces fines, requires no monitor, and resolves in fewer than three years. The forces closing the window have been identified — the competitor already moving, the evidence base expanding, the limitations clock running, the political landscape shifting, and the Petitioner who is not waiting. The fiduciary obligation to act has been established — a duty of care that requires the board to evaluate an existential threat when the evidence is documented and a duty of loyalty that requires independent directors to protect fund shareholders when the management company's interests diverge from theirs.

There is nothing left to study. Nothing left to evaluate. Nothing left to monitor, review, table, or defer to the next board cycle. There is only the decision — and the decision is binary.

Enter the program. The company survives. The registration is preserved. The fines are reduced. The resolution is defined, bounded, and complete in fewer than three years. The board has fulfilled its fiduciary duty. The company moves forward.

Do not enter. The company faces the full weight of every statute, every fine, every consequence this Petition has documented — on a timeline it cannot control, in forums it cannot choose, against an evidentiary record it cannot rebut because the evidence is the company's own words in its own filings. The board that chose not to act will explain that choice under oath — to courts, to regulators, to shareholders, and to the congressional committees that will want to know why a board in possession of a 350+ page evidentiary record documenting existential criminal exposure chose to do nothing when a published resolution framework was available, and every competitor was entering it.

The companies that act first will be remembered as the companies that chose accountability when accountability required courage — when the window was open, when the terms were favorable, when acting meant leading rather than following. Their boards will be the boards that fulfilled the duty Congress created them to serve. Their professionals will be the professionals who identified the crisis and delivered the path forward.

The companies that act last will be remembered as the companies that had to be dragged into accountability after every alternative was exhausted and every competitor had already moved. Their deliberation will not be characterized as prudence. It will be characterized as what it was — delay, in the face of documented exposure, while the window closed and the terms deteriorated.

Most importantly, investors will no longer trust these companies who failed to do the right thing with their money.

Petitioner has spent nearly eight years asking this industry to do the right thing.

He asked the fund complexes. They refused. He asked the exchanges. They deleted the record of his visit. He asked the Big Four accounting firms. They told him investors should accept the losses. He asked the securities lawyers. They kept drafting the disclosures this Petition identifies as false. He asked 15,266 chief compliance officers. They classified his compliance notice as spam. He flew across the country at his own expense to sit across the table from executives who acknowledged the harm to his face and then ordered their companies to continue it. He built three separate technologies to correct the problem. The industry called them "groundbreaking" and "revolutionary" — and suppressed them because correction would have reduced the fees the industry extracts from the investors it is legally obligated to protect.

Not one institution in nearly eight years chose to protect a single investor over a single dollar of revenue.

This Petition is not another request. It is the consequence of every request that was ignored — 350+ pages of documented evidence, sworn under penalty of perjury, filed on a permanent federal docket, available to every prosecutor, every regulator, every plaintiff, every pension fund trustee, and every member of Congress in America. Filed to ensure that the outcome every institution spent eight years preventing arrives regardless of whether any institution chooses to act — because the American legal system has doors that do not require institutional permission to open, and this Petition opens every one of them.

The door to the DOJ program is open. It is the only door in this building that leads to survival. Every other door leads to a courtroom.

Walk through it now. Petitioner will not hold it.

I. Relief Requested

Petitioner requests that the Commission take the following actions in connection with the conduct documented in this Petition and the Department of Justice's Corporate Enforcement and Voluntary Self-Disclosure Policy published on March 10, 2026. Each request is independent and severable. The Commission's inability or unwillingness to act on any single request does not affect its obligation to evaluate and act upon the remainder.

First. The Commission should formally notify the Department of Justice, in writing, that the fund tax reporting violations documented in this Petition are the subject of an active whistleblower submission that has been pending before the Commission since June 2020. The notification should confirm that the Commission has engaged with Petitioner on the substance of the submission over a period of nearly six years, that approximately fifty Commission staff members have participated in that engagement, that Commission staff requested and received documentary evidence from Petitioner, and that the Commission has not closed the matter. This notification serves a specific and immediate purpose: it establishes on the official inter-agency record that the misconduct documented in this Petition is "previously known to the Department" within the meaning of the DOJ's published policy. That designation forecloses any company's eligibility for a Part I full declination and confirms that every company identified in this Petition falls within Part II or below — the tiers in which the Department collects real fines, real disgorgement, and real forfeiture. This notification costs the Commission nothing. It requires no enforcement action, no expenditure of resources, and no exercise of prosecutorial discretion. It requires only that the Commission confirm, to a sister agency, facts that are already documented on the Commission's own public docket.

Second. The Commission should exercise its independent civil enforcement authority over the securities law violations documented in this Petition regardless of any resolution any company obtains through the DOJ program. The materially misleading prospectus disclosures identified in Section V, the failure to disclose material conflicts of interest, the systematic overstatement of net asset values, and the coordinated suppression of corrective technology documented in Section VIII are violations of the Securities Exchange Act of 1934 and the Investment Company Act of 1940. The Commission's authority to seek disgorgement, civil monetary penalties, and injunctive relief is vested in the Commission by statute. That authority is not contingent on the Department of Justice's decisions. It is not diminished by any Non-Prosecution Agreement a company executes with the Department. It is not displaced by any fine reduction the DOJ's framework provides. It is the Commission's authority — independent, concurrent, and available whether the Department acts or does not. The Commission should exercise it because the securities laws require it, because the investors this Commission exists to protect are owed civil accountability that no criminal resolution can substitute for, and because independent SEC civil enforcement generates the disgorgement and civil penalties upon which Petitioner's congressionally mandated Dodd-Frank

whistleblower award depends. If the DOJ program channels corporate resolutions toward reduced criminal penalties, the Commission's independent civil enforcement is the mechanism that ensures the total governmental response reflects the magnitude of the violations and the scope of the investor harm.

Third. The Commission should coordinate with the Department of Justice under Justice Manual § 1-12.100 — governing the coordination of corporate resolution penalties in parallel and joint proceedings arising from the same misconduct — to ensure that the combined resolution structure across criminal and civil proceedings reflects the full scope of the violations this Petition documents. The coordination should specifically ensure that a company's criminal resolution through the DOJ program does not substitute for, displace, or reduce the Commission's independent civil enforcement. And it should specifically address the preservation of whistleblower award eligibility across all applicable programs — the Dodd-Frank SEC whistleblower program under 15 U.S.C. § 78u-6, the IRS whistleblower program under 26 U.S.C. § 7623, and the DOJ Corporate Whistleblower Awards Pilot Program under 28 U.S.C. § 530C — so that no company's resolution, however structured, extinguishes the award obligations Congress mandated across these programs using the word "shall." The combined resolution should produce both criminal accountability through the DOJ and civil accountability through the Commission — not one in place of the other, but both, concurrently, as the statutes contemplate and as the investors who were harmed deserve.

Fourth. The Commission should refer to the relevant congressional committees — the Senate Finance Committee, the Senate Banking Committee, and the House Financial Services Committee — the structural relationship between DOJ corporate enforcement programs and federal whistleblower statutes. Congress created whistleblower award programs for a purpose: to incentivize citizens to report fraud at great personal cost, by guaranteeing them a share of the monetary sanctions their reports make possible. Those guarantees use mandatory language — "shall pay an award" — enacted through bicameralism and presentment, carrying the full force of federal law. If executive branch enforcement policies systematically reduce the fines and forfeiture upon which those awards are calculated — if corporate resolution frameworks channel outcomes toward structures that minimize government-collected sanctions — then the awards Congress mandated may never vest, and the incentive system Congress designed to protect the integrity of the financial markets may be undermined by the very enforcement apparatus Congress created to

administer it. That is a question Congress is entitled to examine. The Commission should ensure that Congress has the information it needs to do so — including the terms of the DOJ's published policy, the resolution structures it produces, and the impact of those structures on the whistleblower award calculations Congress prescribed by statute.

Fifth. The Commission should exercise its independent authority to refer the evidence of potential criminal violations documented in this Petition — including the criminal tax violations under IRC §§ 7206(1) and 7206(2), the antitrust violations under 15 U.S.C. § 1, and the racketeering violations under 18 U.S.C. §§ 1962(a), (c), and (d) — to the appropriate components of the Department of Justice, including the Tax Division, the Antitrust Division, and the Criminal Division. These referrals should be made promptly, because evidence of systematic criminal violations affecting 160 million Americans cannot remain within a single agency's possession while statutes of limitations expire and the harm compounds. The referral obligation is concurrent with — not subsequent to — the Commission's own enforcement evaluation. Both begin upon receipt of this Petition.

XII. NOTICE REGARDING WHISTLEBLOWER PROTECTIONS AND RETALIATION

A. This Petition Cannot Be Used Against Petitioner

Petitioner submitted a detailed whistleblower complaint in June 2020 through Sean X. McKessy, the founding Chief of the SEC's Office of the Whistleblower — the person who designed the program through which the submission was made. Petitioner then cooperated for nearly six years. He met with Commission staff, provided documentation, responded to requests, and offered technical assistance. As of the filing date of this Petition, the Commission has not issued an investor alert, initiated examinations, commenced enforcement proceedings, published interpretive guidance, proposed rulemaking, or made interagency referrals in connection with the documented violations.

Having cooperated through every available channel for nearly six years, Petitioner now exercises his right under the Administrative Procedure Act to petition for agency action and, if

necessary, to seek judicial review. This Petition, any accompanying federal proceedings, and all public advocacy Petitioner undertakes in connection with them are constitutionally protected petitioning activity immunized under the Noerr-Pennington doctrine. Rule 21F-6 provides that the Commission's award determination is based exclusively on seven statutory factors — none of which includes a whistleblower's exercise of constitutionally protected petitioning rights. A whistleblower who cooperates for nearly six years and then exercises his statutory right to petition for agency action has demonstrated commitment to the Commission's processes, not opposition to them.

B. Petitioner's Contributions Are Without Precedent

The Commission's whistleblower program evaluates the significance of the information provided, the assistance rendered, and the degree to which the whistleblower's information led to successful enforcement.[186] Petitioner respectfully submits that his contributions exceed those of any whistleblower in the program's history — not in degree, but in kind.

Petitioner did not report a tip. Petitioner uncovered an industry-wide fraud that no federal agency had detected in ninety years of regulatory oversight. In every engagement with Commission staff and other federal agencies, the violations documented in this Petition were unknown to the regulators responsible for preventing them. The Commission did not possess the information. It did not possess the analytical frameworks. It did not possess the mathematical tools necessary to determine that the disclosures were materially false. Petitioner provided all three — and then went further than any whistleblower has gone before.

Identified and quantified the harm. Petitioner developed the mathematical frameworks demonstrating that over $100 billion in annual investor harm results from the systematic failure to disclose embedded realized income in fund NAVs, the resulting double taxation through false Forms 1099-DIV, and the inflated advisory fees calculated on distorted asset values. These frameworks provided the analytical foundation for determining that fund prospectuses contain material misstatements and omissions — a determination the Commission had not made on its own despite examining these funds for nine decades.

Built the technology to remediate it. Petitioner designed and developed the technology that would enable funds to calculate and publish embedded realized income daily, remove embedded

[186] 17 C.F.R. § 240.21F-6 (factors for determining award amounts)

income from the NAV, produce accurate tax forms, and provide the point-of-sale disclosure this Petition requests the Commission to mandate. He did not identify a problem and leave the solution to others. He engineered the solution at his own expense, offered it to the industry, and documented the industry's refusal to adopt it — a refusal that itself constitutes evidence of conscious avoidance. No SEC whistleblower has ever built the remediation technology for the violations reported.

Assembled the evidentiary record. Petitioner compiled the twenty-three specific categories of misstatements and omissions, the industry admissions that function as confessions, the constitutional and statutory legal framework, the governance failure analysis, and the strategic architecture designed to enable simultaneous action across every relevant institution. This work required the development of proprietary algorithms to identify and quantify embedded realized income across fund structures, independent mathematical frameworks to calculate investor harm with precision sufficient for enforcement proceedings, and nearly eight years of direct industry engagement that produced the institutional knowledge and evidentiary record no existing regulatory examination had generated. Based on Petitioner's direct engagement with Commission staff over the course of this matter, the violations documented in this Petition were not known to the Commission prior to Petitioner's submission — a fact that underscores both the significance of the information provided and the reason Congress created the whistleblower program: to bring the Commission evidence that its own examination and surveillance functions had not yet surfaced. This Petition is not a tip. It is a comprehensive petition for rulemaking and enforcement action — built entirely from Petitioner's independent analysis, proprietary technology, and original investigative work.

Stress-tested the entire system. Over nearly eight years, Petitioner engaged directly with fund complexes, SROs, exchanges, DTCC, trade associations, industry executives, exchange board members, and multiple federal agencies — documenting the institutional responses that establish the pattern of willful blindness this Petition exposes. Those engagements produced the smoking-gun evidence: the industry admissions, the silent edits, the documented refusals to escalate, the DTCC executive's statement that "if the SEC cared about this, they would be talking about it." This evidence did not come from subpoenas. It came from a single individual who walked into rooms that regulators never entered and asked questions that regulators never asked.

The Commission should evaluate Petitioner's award based on what was delivered and what it made possible — not on the fact that Petitioner eventually exercised his constitutional right to compel the agency to use it.

C. Structural Retaliation Risk

The whistleblower protection statutes exist because Congress understood that institutions retaliate against individuals who threaten them. The historical record is unambiguous: selective IRS audits, manufactured investigations, fabricated charges, regulatory harassment designed to consume resources and destroy credibility. These are not hypothetical risks. They are documented patterns that Congress legislated against precisely because they recur.

This matter presents a retaliation risk that warrants acknowledgment on the record. The violations documented in this Petition do not merely harm investors — they cause the United States Treasury to receive billions in taxes that, under the constitutional framework documented in Section XIII, may not be lawfully owed. This creates a structural dynamic unlike most whistleblower cases: corrective action requires the government to return over-collected taxes to 160 million investors and then recover those amounts from the industry through the mandatory penalty framework Congress established for precisely this purpose — including the uncapped intentional disregard penalties under IRC §§ 6721 and 6722. The economic burden falls on the filers who caused the false returns, not on the Treasury. But the administrative reality remains that corrective action begins with the government acknowledging that funds it currently holds were wrongfully collected — a step that may create institutional friction not through any individual's bad faith, but through the structural complexity of unwinding a decades-long reporting failure of this magnitude.

Petitioner identifies this structural conflict not to impugn any individual public servant but to place it on the record — where courts, Congress, and the Inspector General(s) can evaluate whether it influenced institutional behavior during the nearly six years between Petitioner's whistleblower submission and this Petition. The Commission's processing of this matter will receive significant public attention — both because of the scale of harm documented and because the whistleblower submission was prepared by the founding Chief of the program through which it was filed. Petitioner is confident that the Commission will evaluate his contributions under the

Rule 21F-6 factors on the merits, and he looks forward to demonstrating through continued cooperation that the program functions as Congress intended.

D. Whistleblowers Pay With Their Lives

Petitioner states what the record compels and what polite society prefers not to say: whistleblowers are killed. In the twenty-four months preceding this filing, multiple prominent whistleblowers have died under circumstances that generated significant public scrutiny and credible allegations of foul play.[187] Congress has documented that whistleblowers face "significant psychological, financial, and even physical threats — often by the very institutions they are trying to protect."[188] Research confirms that 84% suffer severe anxiety or depression, 69% experience declining physical health [189], and 50% report thoughts of suicide. [190]

Petitioner states for the record: he is not suicidal. He is in good physical and mental health. He has strong family relationships and every reason to live. He is confident in this Petition and its prospects. If anything happens to Petitioner characterized as suicide, accident, overdose, random violence, or sudden illness, it should be investigated as presumptive foul play. If Petitioner is accused of any crime, regulatory violation, or other wrongdoing following the filing of this Petition, it should be evaluated as presumptive retaliation — particularly if the allegations originate from, or are referred by, any institution identified in this Petition or any agency whose conduct

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[187] S*ee, e.g.*, Bill Chappell, *Boeing Whistleblower John Barnett, Who Raised Alarm over Plane Quality, Is Found Dead*, NPR (Mar. 12, 2024), https://www.npr.org/2024/03/12/1238033573/boeing-whistleblower-john-barnett-dead (former Boeing quality control manager found dead of apparent self-inflicted gunshot wound during deposition testimony in whistleblower retaliation case; family filed wrongful death lawsuit alleging Boeing "broke" him through sustained retaliation); Bill Chappell, *Whistleblower Joshua Dean, Who Raised Concerns About Boeing Jets, Dies at 45*, NPR (May 2, 2024), https://www.npr.org/2024/05/02/1248693512/boeing-whistleblower-josh-dean-dead (second Boeing-related whistleblower death within three months).

[188] Office of the Whistleblower Ombuds, U.S. House of Representatives, *Whistleblowing and Mental Health* (guidance document), https://whistleblower.house.gov/sites/evo-subsites/whistleblower.house.gov/files/evo-media-document/Whistleblowing_and_Mental_Health.pdf.

[189] Joyce Rothschild & Terance D. Miethe, *Whistle-Blower Disclosures and Management Retaliation: The Battle to Control Information About Organization Corruption*, 26 Work & Occupations 107, 119 (1999) (surveying whistleblowers across public and private sectors; finding 84% severe depression or anxiety, 84% feelings of isolation or powerlessness, 78% distrust of others, 69% declining physical health, 66% severe financial decline, and 53% problems with family relations); *see also* Peter G. van der Velden et al., *Mental Health Problems Among Whistleblowers: A Comparative Study*, 122 Psychol. Rep. 632, 639 (2019) (finding approximately 85% of whistleblowers suffered severe to very severe anxiety, depression, interpersonal sensitivity, agoraphobia symptoms, or sleeping problems — a rate comparable to cancer patients and significantly exceeding the general population).

[190] Whistleblowers of America, *Whistleblower Mental Health Survey* (poll of 100 whistleblowers; 50% reported thoughts of suicide during the whistleblowing process), *reported in* Amy Mackinnon, *Death of a Whistleblower*, Foreign Pol'y (Mar. 20, 2020), https://foreignpolicy.com/2020/03/20/death-of-a-whistleblower-suicide-pentagon-office-inspector-general/.

this Petition calls into question. Comprehensive documentation of this matter is stored in multiple secure locations with multiple custodians who have standing instructions to act in the event of Petitioner's incapacity, death, or incarceration.

E. Notice to the Industry

Petitioner has spent nearly eight years inside this matter — meeting with executives, board members, compliance officers, SRO officials, regulators, and government officials at every level of the financial services ecosystem. He has reviewed documents, analyzed filings, compiled admissions, traced governance failures, mapped insurance exposures, and documented institutional responses across the industry. This Petition, extensive as it is, represents a fraction of the evidentiary record Petitioner possesses.

The industry should direct its resources toward remediation, not retaliation. Petitioner has documented what he knows. He has secured what he has documented. He has distributed it to custodians beyond his control. And he has structured this matter so that his continued participation is no longer necessary for it to proceed to its conclusion. The institutions, the legal theories, the evidentiary record, and the judicial mechanisms are now public. Removing the petitioner does not remove the petition.

Any retaliatory action — professional, reputational, legal, regulatory, or physical — will be documented publicly, referred to every enforcement agency identified in this Petition, and treated in all subsequent proceedings as evidence of scienter and consciousness of guilt. Counsel who participate in retaliation should understand that they compound the conflicts already documented in Section VI and convert themselves from advocates into fact witnesses — and, depending on the nature of their participation, into potential defendants.

Petitioner states for the avoidance of all doubt that retaliation against a federal whistleblower is not a civil dispute. It is a federal crime. 18 U.S.C. § 1513(e), enacted as Section 1107 of the Sarbanes-Oxley Act of 2002, provides that whoever knowingly, with the intent to retaliate, takes any action harmful to any person — including interference with the lawful employment or livelihood of any person — for providing to a law enforcement officer any truthful information relating to the commission or possible commission of any Federal offense, shall be fined or imprisoned not more than ten years, or both. The statute applies to "any person." It contains no requirement that the whistleblower be an employee of the retaliating

entity. It reaches legal threats designed to intimidate or silence. **It reaches coordinated campaigns to destroy reputation or credibility. It reaches interference with business relationships, livelihood, or professional standing. It reaches any harmful action taken with retaliatory intent — by any person, in any form, through any intermediary.** Conspiracy to retaliate carries the same **ten-year penalty** under § 1513(f). The statute carries extraterritorial jurisdiction under § 1513(d) — it applies regardless of where the retaliatory conduct occurs. And a violation of § 1513(e) is itself a RICO predicate act, exposing any retaliator to treble damages in a civil action brought by the whistleblower under 18 U.S.C. § 1964(c).

Every officer, director, general counsel, and outside counsel at every company identified in this Petition — and every trade association, law firm, service provider, consultant, and any other person or entity that contemplates any action adverse to Petitioner or any person associated with this filing — should ensure that this statute is understood before any response to this Petition is formulated, communicated, or executed. The statute criminalizes retaliation by "any person." It is not limited to the companies identified in this Petition. A trade association that coordinates a response designed to discredit the Petitioner, a law firm that orchestrates pressure on Petitioner's business relationships, a service provider that terminates a commercial relationship at the direction of a fund complex — each is "any person" within the meaning of § 1513(e), and each faces the same ten-year penalty. Conspiracy under § 1513(f) reaches every participant in a coordinated retaliatory effort, regardless of whether that participant is named in this Petition.

The first internal memorandum that should follow the reading of this Petition is not a litigation strategy. It is a compliance directive: do not threaten, do not interfere with, and do not take any action against the Petitioner or any person associated with this filing. Any company that wishes to engage with Petitioner on remediation may do so through Petitioner's counsel. Petitioner has provided truthful information to four federal law enforcement agencies. The statute is clear. The penalty is ten years. The reach is unlimited. Act accordingly.

F. Partnership Remains Available

Petitioner has offered, at every stage of this nearly eight-year engagement, to work with the Commission, the industry, and any institution willing to prioritize investor protection. That offer remains open. Independent directors can contact Petitioner and retain their own counsel.

Compliance officers can come forward with the documentation they possess. The Commission can direct substantive engagement with this Petition through the contact information provided.

The door is open to anyone prepared to prioritize investor protection. Petitioner recognizes that once judicial proceedings commence, the opportunities for voluntary resolution that currently exist may become more limited. The most efficient path to comprehensive remediation remains coordinated federal enforcement — and that path is available now

XIII. CONSTITUTIONAL CONSIDERATIONS: THE GOVERNMENT'S DUTY UPON NOTICE OF ILLEGAL EXACTION

A. Two Failures — Two Liabilities — One Constitutional Framework

The Constitution does not speak softly about the Government's obligation when it holds money it has no right to keep. It does not suggest. It does not recommend. It commands.

For ninety years, the Supreme Court has held — without qualification, without exception, and without a single dissent in the most recent reaffirmation — that government retention of wrongfully exacted taxes violates the Fifth Amendment. The holdings are not ambiguous. The principles are not evolving. They are settled constitutional law, binding on every federal agency, enforceable in every federal court, and applicable to the facts documented in this Petition with a precision that eliminates the need for inference.

But before applying that framework, two distinct failures must be separated — because confusing them produces an incorrect understanding of what this Petition requests and what the Constitution requires.

The first failure belongs entirely to the industry. For years, the mutual fund industry has filed hundreds of millions of information returns it knew to be false — Forms 1099-DIV that report investors' own capital as taxable ordinary dividends, generating tax obligations on money that was never income under any coherent interpretation of the Internal Revenue Code. The industry's own published materials admit this. Its executives have acknowledged it. Its compliance officers received 15,266 formal notices documenting it — and not one corrected the reporting. This is not negligence. It is not inadvertence. It is intentional disregard of federal information reporting

requirements sustained across an entire industry for the better part of a decade — and the financial consequences belong to the industry alone.

Petitioner states this without ambiguity: the industry — not the Government — bears full financial responsibility for every dollar of historical overtaxation, every penalty accrued through years of intentional false reporting, and every cent of investor remediation. The Government did not file the false returns. The industry did. The Government did not design the accounting practices that inflate NAV. The industry did. The Government did not suppress the technology that would have produced accurate reporting. The industry did. For the historical harm, the industry owes a debt measured in the tens of billions — and the Internal Revenue Code provides the mandatory mechanisms to collect it.

The second failure is the Government's — but it is a failure of a fundamentally different character. It is prospective, not historical. It is preventable, not accrued. And it begins — not with the industry's first false filing years ago — but with the delivery of this Petition today.

Until this moment, the Government may reasonably claim it processed information returns as filed, trusting the integrity of third-party reporting. That trust was catastrophically misplaced, but it was not unconstitutional. From this moment forward, the Government possesses what the Constitution treats as the decisive fact: knowledge. Formal, documented, irrefutable knowledge — supported by the industry's own admissions and verifiable through a single examination of a single fund's daily accounting records — that the information returns underlying billions of dollars in annual tax collection are materially false.

What the Government does with that knowledge is not a policy question. It is a constitutional question. And the Supreme Court has answered it — unanimously, repeatedly, and in language that leaves no room for evasion.

B. The Constitutional Framework

1. "Immoral" and "A Fraud": *Bull v. United States (1935)*

The Supreme Court does not often describe government conduct as immoral. It does not casually invoke fraud. Yet in *Bull v. United States*, 295 U.S. 247, 261 (1935), Justice Roberts chose precisely these words — and chose them deliberately:

"The retention by the Government of money wrongfully exacted as taxes is immoral, and amounts in law to a fraud on the taxpayer's rights."

The principle admits of no exception. The Government's good faith is irrelevant. Its reliance on facially valid returns is irrelevant. Its administrative convenience is irrelevant. The only question is whether the exaction was lawful. If it was not, retention is unconstitutional — and the Court held that "the statutes, in a spirit of fairness, invariably afford the taxpayer an opportunity at some stage to have mistakes rectified."

This is not dicta. It is not aspiration. It is constitutional compulsion rooted in the Fifth Amendment's guarantee that no person shall "be deprived of life, liberty, or property, without due process of law." The Federal Circuit has built Bull's principle into a comprehensive modern framework: illegal exaction occurs whenever the Government holds the citizen's money through improper collection (*Eastport Steamship Corp. v. United States*, 372 F.2d 1002 (Ct. Cl. 1967)), plaintiffs need only make a "non-frivolous allegation" of constitutional or statutory violation in the collection (*Boeing Co. v. United States*, 968 F.3d 1371 (Fed. Cir. 2020)), and the exaction itself constitutes "a violation of the Due Process Clause of the Fifth Amendment because the government had no legal authority to exact the funds" (*Aerolineas Argentinas v. United States*, 77 F.3d 1564 (Fed. Cir. 1996)); *see also Norman v. United States*, 429 F.3d 1081, 1095 (Fed. Cir. 2005).

The application is not a matter of interpretation. American investors have paid taxes on amounts reported as dividends that include their own capital — money that was never income. Return of capital is not income under IRC § 61. It is not income under *Commissioner v. Glenshaw Glass Co.*, 348 U.S. 426 (1955), which defines income as "accessions to wealth." It is not income under *Helvering v. Horst*, 311 U.S. 112 (1940), which assigns income to the earner. An investor who receives back a portion of what he paid is not wealthier. He has not earned income. He has received his own money — and the Government has taxed him for the privilege of getting it back.

Before this Petition, the Government collected those taxes on facially valid returns. After this Petition, the Government knows the returns are false — and continued collection transforms what Justice Roberts called "immoral" from a description of the industry's conduct into a description of the Government's.

2. The Duty Upon Notice: McKesson, Reich, and the Prohibition on Bait and Switch

If *Bull* establishes that wrongful retention is unconstitutional, *McKesson Corp. v. Division of Alcoholic Beverages*, 496 U.S. 18 (1990), establishes what must follow. The Supreme Court held that when a government "places taxpayers under duress to pay a tax when due and relegates them to a postpayment refund action, the Due Process Clause requires the State to afford taxpayers meaningful backward-looking relief." Florida argued that good faith reliance on a presumptively valid statute justified denying refunds. The Court rejected this categorically: good faith affects only the form of relief — not whether relief must be provided.

Reich v. Collins, 513 U.S. 106, 111 (1994), drove the point to its logical conclusion: the Government cannot "hold out what plainly appears to be a 'clear and certain' postdeprivation remedy and then declare, only after the disputed taxes have been paid, that no such remedy exists." The Court added — and this is critical — that taxpayers "need not have taken any steps to learn of the possible unconstitutionality of their taxes at the time they paid them."

Read those words again. The obligation runs entirely in one direction. The citizen does not bear the burden of discovering that the Government's collection was unlawful. The Government bears the burden of providing remedies once the illegality is established. One hundred sixty million Americans filed their returns in good faith, trusting that the Forms 1099-DIV they received were accurate. They "need not have taken any steps" to discover otherwise. The burden is on the Government — now that it possesses this Petition — to ensure that meaningful relief exists.

If the Government permits the 2026 tax year to proceed on known-false information returns, it perpetrates exactly the constitutional violation McKesson and Reich condemn: collecting under a system it knows to be defective, and offering no remedy to the citizens it overcharges.

3. "The Government May Not Take More Than She Owes": *Tyler v. Hennepin County (2023)*

In May 2023, the Supreme Court decided *Tyler v. Hennepin County*, 598 U.S. 631 (2023). The vote was 9-0. Not a single Justice dissented. Not a single Justice wrote separately to limit the holding. The unanimity is itself significant — because the principle the Court announced is one on which there is no ideological division, no interpretive disagreement, and no room for the Government to argue that reasonable minds differ.

Chief Justice Roberts traced the principle to Magna Carta — to 1215, eight centuries before this Petition: "The principle that a government may not take more from a taxpayer than she owes can trace its origins at least as far back as Runnymeade in 1215." When the Government collects a debt, any surplus "shall be left" to the original owner. The Court held that government retention of more than legally owed constitutes a "classic taking" under the Fifth Amendment's Takings Clause. The Government cannot "sidestep the Takings Clause by disavowing traditional property interests" in assets it wishes to appropriate. Justice Gorsuch, concurring, grounded the holding independently in the Excessive Fines Clause, observing that the Government's retention bore "no relationship" to the debt owed.

The application requires no extrapolation. When a Form 1099-DIV reports $100 as taxable dividends and only $60 was actually income, the investor pays taxes on $40 that was his own capital. The Government collects — and retains — taxes on money the investor never earned. Under Tyler, unanimously, tracing the principle to the founding of constitutional governance itself, that retention is a taking.

The Government will note that Tyler involved property taxes, not income taxes. The distinction is immaterial to the constitutional principle. Chief Justice Roberts did not hold that the Government may not take more than is owed in property tax cases. He held that "a government may not take more from a taxpayer than she owes" — full stop. The principle applies to every form of taxation because the Fifth Amendment applies to every form of governmental deprivation. If the Government takes more than is lawfully owed — whether through property tax foreclosure, income tax overcollection, or any other mechanism — it takes property without due process and without just compensation. The form of the tax is irrelevant. The constitutional violation is the same.

4. Retroactive Application: *Harper v. Virginia Department of Taxation (1993)*

Harper v. Virginia Department of Taxation, 509 U.S. 86 (1993), requires that constitutional rulings "apply to all cases still open on direct review." The Government cannot invoke prospective-only application to avoid federal constitutional requirements.

When the framework established above is applied to the systematic overtaxation documented in this Petition — as it must be — it applies retroactively to all taxpayers whose claims remain viable under applicable limitations periods. The Government may prefer to address this

problem only prospectively. The Constitution does not permit that preference — but the financial responsibility for historical remediation falls on the industry, not the Government. The Government's duty is to ensure the mechanisms for relief exist and function: mandatory penalty assessment against the industry, enforcement proceedings to compel corrective filings, and remediation pathways funded by the industry's penalties and disgorgement. The industry created the harm. The industry funds the remedy. The Government's role is to compel both — as the Constitution requires and the Internal Revenue Code commands.

C. The Industry's Accrued Liability: Two Penalties Per Return, No Cap, No Escape

The industry's liability requires no constitutional innovation. It arises from statutes already on the books, applied to facts the industry has already admitted. But the magnitude of that liability — once the statutory structure is understood precisely — is staggering.

Each false Form 1099-DIV triggers two independent penalty provisions.

Section 6721 imposes penalties for failure to file correct information returns with the Internal Revenue Service. IRC § 6721(a). Section 6722 imposes separate, independent penalties for failure to furnish correct payee statements to the taxpayer. IRC § 6722(a). These are not alternative provisions. They are cumulative. A single false Form 1099-DIV that mischaracterizes return of capital as taxable ordinary dividend violates both: it files a false return with the IRS and it furnishes a false statement to the investor. Two violations. Two penalties. Per return. Per year.
For standard violations, each provision caps at $3 million per filer per year. IRC §§ 6721(a), 6722(a). But for intentional disregard, both caps are removed — entirely. The penalty becomes "$660, or, if greater, 10 percent of the aggregate amount of the items required to be reported correctly," with no annual maximum. IRC §§ 6721(e)(2), 6722(e)(2). Ten percent of every dollar misreported. On every return filed with the IRS. And ten percent of every dollar misstated on every statement furnished to every investor. Separately. Cumulatively. Without limit.

The industry's conduct satisfies the intentional disregard standard — defined as withholding required information "voluntarily" rather than "accidentally or unconsciously," Treas. Reg. § 301.6721-1(f)(2) — not on the basis of inference but on the basis of admission.

The industry's published materials have acknowledged for years that first distributions include non-taxable return of capital — and its Forms 1099-DIV report those same distributions as fully taxable ordinary dividends. Its executives have stated, in Petitioner's presence, that "we

don't consider this a problem because investors don't know it's happening" — words that constitute a confession of intentional disregard: filing returns known to be false because the victims will not discover the fraud. Petitioner sent formal compliance notices to 15,266 chief compliance officers across the fund industry. Not one corrected the reporting — a coordinated industry-wide decision to continue filing false returns after receiving explicit, detailed, documented notice. And the technology to report accurately — daily dividend accrual — has existed since the 1970s. The industry chose not to implement it because accurate reporting would have reduced the NAV inflation from which the industry profits through higher advisory fees. That is not a technology limitation. It is intentional disregard by statutory definition.

The precise magnitude is a matter for IRS assessment. But the arithmetic is knowable. The fund industry files hundreds of millions of Forms 1099-DIV annually. Each false return triggers penalties under both § 6721 and § 6722 — independently, cumulatively, at 10% of all amounts required to be reported correctly, with no annual cap, for every year of intentional disregard. The resulting liability is not measured in millions. It is not measured in billions. It is measured in tens of billions — accrued, owed today, waiting for the assessment the statute commands.

Both provisions use mandatory language. Section 6721(a): "the person failing to meet such requirements shall pay a penalty." Section 6722(a): identical. "Shall" creates a mandatory duty. *Lexecon Inc. v. Milberg Weiss*, 523 U.S. 26, 35 (1998) ("'[S]hall' . . . normally creates an obligation impervious to judicial discretion"). The IRS does not have discretion to ignore intentional disregard of information reporting requirements. It does not have discretion to waive uncapped penalties that Congress imposed for precisely this category of conduct. It has a statutory obligation — enforceable under APA § 706(1) — to assess the penalties Congress commanded. The industry's only defense is that its disregard was not intentional. The industry's own admissions destroy that defense before it is raised.

D. The Inescapable Constitutional Box

The Supreme Court's jurisprudence constructs a framework from which neither the industry nor the Government can escape. Each wall is built from controlling precedent. The floor is the industry's own admissions. The ceiling is this Petition. And there is only one door.

Wall One — Illegal Exaction. Bull v. United States: government retention of wrongfully collected taxes is "immoral" and constitutes "fraud on the taxpayer's rights." After this Petition,

the Government holds funds it knows were collected on false returns. Those funds must be disgorged — not by the Government from its own treasury, but through enforcement mechanisms that compel the industry to remediate the investors it defrauded and pay the penalties it owes. The Government's duty is not to write the check. It is to make the industry write the check — using the tools Congress provided for exactly this purpose.

Wall Two — Due Process. McKesson and Reich: the Government must provide meaningful relief for unlawfully collected taxes and cannot hold out a fair system while refusing to remedy known defects. From the 2026 tax year forward, permitting continued collection on known-false returns without corrective action violates this command. The Government cannot collect on returns it knows are false and then tell 160 million Americans that no remedy exists.

Wall Three — Takings. Tyler v. Hennepin County, 9-0: a Government may not take more from the taxpayer than she owes. Each dollar collected above what is lawfully owed — each dollar of return of capital taxed as ordinary income — is a dollar the Constitution, as interpreted unanimously by the current Supreme Court, forbids the Government to retain.

Wall Four — Mandatory Enforcement. The Internal Revenue Code uses "shall" — twice, independently, for every false return. IRC §§ 6721(a), 6722(a). Mandatory language creating mandatory duties the IRS cannot decline to exercise. Courts may compel agency action unlawfully withheld. 5 U.S.C. § 706(1). The penalties are not discretionary. They are commanded.

The Floor — Industry Admissions. No fact-finding is required. The industry has confessed — in its own published materials, through its own executive statements, and through the silent edits that constitute admissions that prior disclosures were deficient. The factual predicates for every constitutional principle above are established not by Petitioner's allegations but by the industry's own words. This is not a case where the Government must weigh competing evidence. There is no competing evidence. There is only the industry's admission that it filed false returns, and the question of what the Constitution requires in response.

The Ceiling — Notice. This Petition. Formal, documented, simultaneous submission to the SEC, the IRS, the Department of the Treasury, and the Department of Justice. Supported by the industry's admissions, the mathematical proof, and the legal framework of the Supreme Court of the United States. After today, no party — industry or Government — can claim ignorance. The defense of good faith processing of facially valid returns is extinguished by the delivery of this document.

There is one door out of this box.

For the industry: cease filing false information returns — both with the IRS and to investors; implement accurate accounting practices for realized income; file corrected Forms 1099-DIV for all affected years under both § 6721 and § 6722; and pay the dual penalties that have been accruing since the first return was filed with knowledge of its falsity.

For the Government: assess mandatory penalties under both § 6721 and § 6722, retroactively, to the earliest documented year of intentional disregard; initiate SEC enforcement proceedings for the underlying securities law violations that caused the false reporting; refer willful false filings to the Department of Justice for criminal evaluation under IRC §§ 7206(1) and 7206(2); develop mechanisms for investor remediation funded entirely by industry penalties, disgorgement, and settlement; and ensure the 2026 tax year — the first full tax year following this Petition — does not repeat the constitutional violations of every year that preceded it.

If these steps are taken, the constitutional framework is satisfied. The industry pays what it owes — twice, under two independent penalty provisions, for every false return, for every year. The Government fulfills its enforcement duty. The 160 million Americans who have been systematically overtaxed on their own money receive the meaningful relief the Due Process Clause requires.

If these steps are not taken, Petitioner will file an illegal exaction claim in the United States Court of Federal Claims — on behalf of himself and, if applicable, on behalf of a class of similarly situated taxpayers — seeking return of all taxes paid on amounts that were never income, with interest, under the framework Justice Roberts established ninety years ago and the current Supreme Court reaffirmed without a single dissenting voice. The Government will defend that action by arguing either that the Forms 1099-DIV are accurate — which the industry's own admissions refute — or that the Government bears no responsibility for collecting on returns it knew to be false — which Bull, McKesson, Reich, and Tyler collectively and conclusively reject.

E. The Calendar

Two clocks are running. They measure different liabilities. Both are accelerating.

The industry's clock has been running for years. Every false Form 1099-DIV filed with knowledge of its falsity triggered dual penalties — under § 6721 for the false return filed with the IRS, and under § 6722 for the false statement furnished to the investor — at the moment of filing.

Those penalties have accrued, compounded across hundreds of millions of returns, year after year, while the industry refused to correct and the Government did not assess. This Petition did not start that clock. It documents what the clock has already measured. And it requests the Commission to refer the matter to the agency with mandatory assessment authority — because the statute that creates the duty to assess uses the word "shall," and "shall" is not a suggestion.

The Government's clock starts today. Before this Petition, the Government processed returns as filed. That was constitutionally defensible. From today forward, it is not. Every constitutional principle identified in this Section — illegal exaction, due process, takings, mandatory enforcement — applies with full force from the moment of delivery. The Government's exposure does not accrue retroactively. It accrues prospectively — beginning now, compounding with each day of inaction, and crystallizing with each tax cycle that closes while the Government possesses this Petition and does nothing.

The 2026 tax year is the bright constitutional line. It will be the first full tax year following this Petition's filing. Forms 1099-DIV for calendar year 2026 must be furnished to taxpayers by January 31, 2027, and filed with the IRS by March 31, 2027. If those forms repeat the false reporting of every prior year — reporting return of capital as taxable ordinary dividends — they will be filed after the Government received formal, documented, irrefutable notice of their falsity. Bull's condemnation will apply — not as historical principle but as present-tense description of the Government's conduct. McKesson's command will be violated — not hypothetically but actually, with 160 million payee statements bearing false information the Government knew was false when it accepted the returns. Tyler's unanimous holding will be contravened — with the Government retaining, knowingly, more than the taxpayer owes.

Petitioner does not ask the Government to bear the financial cost of the industry's fraud. The industry created this harm. The industry must fund every dollar of remediation — through penalties, disgorgement, corrective filings, and direct investor restitution. What Petitioner asks is that the Government fulfill two duties the Constitution imposes and the Supreme Court has confirmed:

First, use the mandatory enforcement mechanisms Congress provided to compel the industry to pay the dual penalties it owes under §§ 6721 and 6722 — for every false return filed with the IRS and every false statement furnished to every investor, for every year of intentional disregard, at 10% of all amounts required to be reported correctly, without cap.

Second, ensure that the Government does not become a knowing participant in the ongoing constitutional violation by continuing to collect — and retain — taxes it now knows are based on false returns. That duty is not Petitioner's invention. It is the command of Justice Roberts in Bull, of the full Court in McKesson and Reich, and of a unanimous Supreme Court in Tyler. It has been the law for ninety years. It was the law before any party to this dispute was born. And it will be the law long after the last false Form 1099-DIV is corrected.

The mechanisms to act exist today. The authority to act is unambiguous. The evidence is not contested — it is admitted. The constitutional framework is not novel — it is settled. And the calendar does not pause while institutions deliberate about whether to comply with commands the Supreme Court issued decades ago.

The industry's debt is owed — twice over, under two independent penalty provisions, for every return, for every year. The Constitution requires its collection. The time to collect is now.

XIV. INDEPENDENT AND SEVERABLE REQUESTS

This Petition presents independent categories of relief. Each stands on its own legal foundation. Each requires a separate response. No single rationale — whether investigation confidentiality, resource constraints, deference to other agencies, or claims of ongoing review — addresses the full range of requests this Petition presents. Each category demands engagement on its own merits.

A. The Severability Principle

The Commission may grant all requested relief, grant selected categories, or deny all requests. What it may not do is treat this Petition as an undifferentiated mass, dismissing everything with a single rationale. The Administrative Procedure Act requires agencies to "conclude a matter presented" within "a reasonable time" and provide "a brief statement of the

grounds for denial."[191] The Administrative Conference has made explicit that agencies "should not reflexively cite only resource constraints or competing priorities."[192]

Each category below operates independently. Each demands separate analysis. Each response will be evaluated against the legal standard applicable to that specific request.

B. The Independent Categories

Category One: Immediate Investor Protection. The Commission can warn investors today—through investor alerts, website disclosures, and educational materials—without rulemaking, enforcement, or interagency coordination. The Office of Investor Education and Advocacy issues such warnings routinely.[193] No legal obstacle prevents warning investors about "buying a dividend" risk while other proceedings unfold.

Category Two: Prospectus Disclosure Requirements. The Commission can strengthen disclosure requirements through its existing Investment Company Act authority. This request requires no finding about past conduct, no coordination with other agencies, no resolution of enforcement questions. Even if past disclosures technically complied with existing rules, the Commission retains authority to improve those rules prospectively.

Category Three: Interpretive Guidance. The Commission can issue interpretive guidance—confirming that GAAP compliance does not excuse disclosure violations and that industry-wide adoption does not confer immunity—without notice-and-comment rulemaking. The legal principles are established; the Commission would merely restate them.[194]

Category Four: Enforcement Evaluation. The Commission can evaluate whether documented conduct violates existing law. This evaluation is independent of rulemaking. The standards exist. The evidence is compiled. The Commission may ultimately decline to act—but it must first examine whether action is warranted.

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[191] 5 U.S.C. §§ 555(b), 555(e).

[192] Administrative Conference of the United States, Recommendation 2014-6, Petitions for Rulemaking, ¶ 11 (Dec. 4, 2014).

[193] *See* Investor Alerts and Bulletins, SEC Office of Investor Education and Advocacy, https://www.investor.gov/introduction-investing/general-resources/news-alerts/alerts-bulletins.

[194] *See, e.g.*, *In re Apple Computer Sec. Litig.*, 886 F.2d 1109 (9th Cir. 1989) (GAAP compliance does not preclude finding of materially misleading disclosure).

Category Five: Interagency Coordination. The Commission can communicate with the IRS, Treasury, and DOJ about matters of overlapping jurisdiction. This requires no rulemaking, no enforcement, no new authority—only the coordination that agencies routinely undertake.

Category Six: Procedural Requests. Public posting, written response, and a meeting with Petitioner are ministerial. They commit to no substantive position. They impose no burden beyond transparent processing of a properly filed petition.

Category Seven: Market-Facing Communications to Registrants. The Commission can issue a staff statement reminding registrants of their existing disclosure obligations — without rulemaking, enforcement, or any finding about past conduct. Section IX.B requests this within fourteen days. The statement would restate existing law: that prospectuses must be materially accurate, that GAAP compliance does not excuse misleading disclosure, and that silent edits are admissions. This is a distinct request from investor-facing communications (Category One) because its audience and legal effect are different — it puts registrants on formal notice of their obligations, which has implications for scienter, willfulness, and the adequacy of compliance programs in any subsequent enforcement action.

Category Eight: Examination Initiative. The Division of Examinations possesses independent authority to inspect the books and records of registered funds, advisers, and broker-dealers under Investment Company Act § 31(b) and Exchange Act § 17(a). Section IX.D requests a targeted examination sweep within thirty days. This request requires no rulemaking, no enforcement determination, and no interagency coordination. The examination authority exists. The documented violations — including the response (or non-response) of 15,266 chief compliance officers to formal compliance notices — present precisely the kind of compliance question examinations are designed to evaluate. Even if every other request is declined, the Commission can — and should — look at the books.

Category Nine: SRO Coordination. Exchange Act §§ 6, 15A, and 17A establish the Commission's oversight authority over self-regulatory organizations. Section IX.E requests that the Commission direct FINRA, national securities exchanges, and clearing agencies to evaluate compliance among their members — within seven days. This request is independent of any rulemaking, enforcement, or interagency process. Multiple SROs have received direct notice of the violations documented in this Petition. The Commission's coordination obligation does not depend on the resolution of any other category of relief.

Category Ten: Emergency Rulemaking. The Commission's authority to adopt interim final rules under 5 U.S.C. § 553(b)(B) upon a finding of good cause is independent of its authority to pursue ordinary notice-and-comment rulemaking. Section IX.H requests an emergency interim final rule within sixty days. This request stands separately from the prospective disclosure improvements in Category Two because the legal standard is different — the question is not whether the Commission should eventually adopt disclosure rules, but whether ongoing daily harm to investors constitutes good cause for emergency action while that process unfolds. The Commission must address this question independently: does the documented, quantified, continuing injury to 160 million Americans justify emergency intervention, or does it not?

C. Anticipated Defenses and Their Refutation

The Commission has no legitimate basis to avoid response. Every predictable defense fails on examination.

"An ongoing investigation precludes response." No legal authority supports this claim. The APA's petition provisions contain no investigation exception.[195] If agencies could defeat petitions by opening investigations, the petition right would be illusory.

The confidentiality rationale is self-refuting: the Commission cannot simultaneously claim an investigation is confidential and invoke that investigation to justify non-response. If the investigation is confidential, it cannot be cited. If it is cited, confidentiality is waived.

Moreover, rulemaking and enforcement operate on separate tracks. The Commission issues rules, guidance, and investor alerts continuously—without pausing to verify that no related investigation exists. It has never claimed otherwise. The "ongoing investigation" defense has never been accepted by any court because its acceptance would nullify the petition right Congress created.

"We are studying the matter." Nearly six years of study is sufficient. The Commission has received comprehensive documentation. Petitioner has met with three Commissioners and approximately fifty staff members. Every document requested has been provided. At some point, continued study without any public-facing action — no investor alert, no staff statement, no interpretive guidance — becomes indistinguishable from inaction. The TRAC factors measure that distinction.

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[195] 5 U.S.C. § 553(e).

The APA requires agencies to conclude matters within "a reasonable time."[196] Courts have held that unreasonable delay is itself reviewable.[197] A matter pending since June 2020—through six consecutive rounds of false Forms 1099-DIV—has exceeded any reasonable interpretation of the study period Congress contemplated.

"We lack resources to address this matter." The minimum request—warning investors through existing channels—requires negligible resources. The Commission issues investor alerts regularly about far less consequential matters. If the Commission has resources to warn about cryptocurrency custody and social media scams, it has resources to warn about a systematic practice affecting 160 million Americans and tens of billions of dollars annually.

For matters requiring more substantial resources, the Commission must explain why a problem of this magnitude ranks below its current priorities. The APA does not permit reflexive invocation of resource constraints without explanation of how priorities were set.[198]

"This is a tax matter for the IRS, not a securities matter for the SEC." False dichotomy. The matter involves both securities disclosure and tax reporting. The SEC has jurisdiction over fund prospectuses, investor communications, and disclosure adequacy. The IRS has jurisdiction over information returns and penalties. Neither agency's jurisdiction excludes the other's.

The SEC cannot decline to address materially misleading prospectus disclosures because the same conduct also affects tax reporting. If that logic held, any securities violation with tax consequences would fall into a regulatory gap. Congress did not create overlapping jurisdiction to enable mutual abdication.

"The industry is developing voluntary solutions." Nearly eight years of notice produced zero voluntary corrections. Petitioner provided the technology. The industry refused it. Fifteen thousand two hundred sixty-six chief compliance officers received formal notice. Not one fund corrected its reporting. The time for voluntary solutions expired years ago.

"This would disrupt markets or established practices." Disruption of practices built on materially deficient disclosures is not a reason to preserve them—it is proof they must be corrected.

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[196] 5 U.S.C. § 555(b).

[197] *See Telecommunications Research & Action Ctr. v. FCC*, 750 F.2d 70 (D.C. Cir. 1984) (establishing TRAC factors for evaluating unreasonable agency delay).

[198] ACUS Recommendation 2014-6, ¶ 11.

The securities laws do not grandfather fraud based on longevity. If anything, the length of time the practice has persisted increases the urgency of correction.

"We need additional information." Petitioner has provided: mathematical frameworks quantifying harm; industry admissions documenting knowledge; technological solutions demonstrating feasibility; legal analysis establishing violations; constitutional arguments triggering mandatory duties. The Commission has never identified what additional information it needs. Under the TRAC factors, an agency that has possessed comprehensive documentation for nearly six years without specifying what additional information is required has not demonstrated the kind of good-faith engagement that justifies continued delay.

"Other priorities are more urgent." The Commission must then explain its priority-setting methodology. A problem affecting 160 million Americans, involving documented false tax information, costing tens of billions annually, and persisting through six consecutive tax cycles is not a marginal concern. If this matter does not warrant priority, the Commission must identify what threshold it does meet—and justify why that threshold is appropriate.

"Courts should resolve these issues first." The Commission's rulemaking authority does not depend on prior judicial resolution. Agencies routinely adopt rules addressing unsettled legal questions. Indeed, agency guidance often informs subsequent judicial interpretation. The Commission cannot wait for courts to resolve questions that the Commission's own action could clarify—particularly when Petitioner is simultaneously proceeding to court.

"The petition is deficient or Petitioner lacks standing." The APA grants the petition right to any "interested person."[199] Petitioner is an injured investor, a subject-matter expert, and a protected whistleblower under multiple federal statutes. The petition satisfies Rule 192's requirements. Any claimed procedural deficiency must be identified with specificity—and the Commission must explain why it did not raise the deficiency during nearly six years of engagement.

"The harm is speculative." The harm is arithmetic. The formulas are provided. The industry's own materials acknowledge the consequences. The only speculation would be denying what the industry itself admits.

[199] 5 U.S.C. § 553(e).

"The whistleblower program is handling this." The APA petition right is independent of the whistleblower program. They serve different functions: whistleblower submissions seek monetary awards for enforcement tips; petitions seek policy change. Five years in the whistleblower queue without corrective action demonstrates that channel is not producing results. This Petition exists precisely because the whistleblower process has not.

"We are coordinating with other agencies." Coordination without results is not action. If coordination is occurring, the Commission can describe its fruits — the joint guidance issued, the referrals made, the corrective filings obtained. Nearly six years of coordination producing no investor alerts, no published guidance, no enforcement referrals, and no industry corrections would not satisfy the TRAC factors' requirement that agencies demonstrate progress toward resolution.

D. The Constitutional Floor

Some requests in this Petition are discretionary. The Commission may decline investor alerts, enhanced disclosure rules, or enforcement evaluation — subject to judicial review for arbitrariness.

But constitutional obligations are not discretionary. Once placed on notice that investors are being deprived of property through systematic false reporting, the Commission cannot authorize continued violation. *Bull* commands that the funds wrongfully extracted not be retained.[200] *McKesson* requires meaningful backward-looking relief.[201] *Tyler* prohibits governmental taking of amounts exceeding lawful taxes.[202] These commands do not yield to enforcement discretion, administrative convenience, or claimed investigation.

The Constitution operates as a floor. The Commission decides *how* to fulfill its constitutional duty. It does not decide *whether* that duty exists.

E. Itemized Response Required

This severability framework has a practical consequence: the Commission must address each category separately.

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[200] *Bull v. United States*, 295 U.S. 247, 261 (1935).
[201] *McKesson Corp. v. Div. of Alcoholic Beverages*, 496 U.S. 18, 31 (1990).
[202] *Tyler v. Hennepin County*, 598 U.S. 631, 638 (2023).

1. If declining investor alerts: explain why warning investors fails to serve investor protection.
2. If declining enhanced disclosure: explain why current disclosures—which industry materials acknowledge are inadequate—satisfy the disclosure mandate.
3. If declining interpretive guidance: explain why established legal principles require no reaffirmation against manufactured defenses.
4. If declining enforcement evaluation: explain why documented admissions warrant no investigation.
5. If declining interagency coordination: explain why systematic false tax reporting affecting 160 million investors is not the Commission's concern.
6. If declining market-facing communications to registrants: explain why firms currently selling securities under disclosures the Commission has known to be materially incomplete for nearly six years require no formal reminder of their existing obligations.
7. If declining examination initiative: explain why documented compliance failures across 15,266 chief compliance officers — each of whom received and ignored formal notice of securities law violations — warrant no examination review.
8. If declining SRO coordination: explain why self-regulatory organizations with documented prior knowledge of the violations require no Commission direction to evaluate compliance among their members.
9. If declining emergency rulemaking: explain why ongoing daily harm to 160 million investors — documented with mathematical precision and confirmed by the industry's own admissions — does not constitute good cause for emergency action under 5 U.S.C. § 553(b)(B).
10. If claiming ongoing investigation: identify legal authority for this defense and explain how citing the investigation does not waive its claimed confidentiality.
11. If claiming resource constraints: explain the priority methodology that ranks this matter below current activities.
12. If claiming need for more information: specify what information is needed and why nearly six years of engagement did not produce it.

Each response becomes part of the public record. Each will be measured against the Commission's statutory mandate and, where applicable, constitutional commands.

F. The Minimum Acceptable Response

At absolute minimum: warn investors.

This requires no rules, no enforcement, no findings, no interagency coordination. It requires only that the Commission tell investors what the industry already acknowledges—clearly, prominently, at the point of decision. The specific request is set forth in Section IX.A, which asks for immediate public communications within seven days of receipt.

The Commission issues investor alerts about BDCs, HSAs, cryptocurrency custody, and social media scams. None affects as many investors. None involves as much documented harm. None has been before the Commission as long.

Refusing even this—after six years of notice, three Commissioner meetings, fifty staff briefings, and comprehensive documentation — would be difficult to reconcile with the Commission's stated mission of investor protection.

XV. CONCLUSION: THE PUBLIC RECORD AND THE CONSTITUTIONAL RECKONING

The First Amendment secures "the right of the people ... to petition the Government for a redress of grievances."[203] That right exists not merely as an avenue for individual complaint, but as a mechanism through which citizens may place facts before their government—and before each other—in permanent public form.

This Petition exercises that right. In doing so, it triggers constitutional consequences that no federal agency has discretion to ignore.

[203]U.S. Const. amend. I.

A. The SEC's Founding Mission

The Securities and Exchange Commission was born from crisis. In the wreckage of the 1929 crash and the frauds that preceded it, Congress created an agency with a singular mandate: ensure that investors are told the truth.

Not some of the truth. Not truth when convenient. *The truth.*

In urging Congress to pass the nation's first federal securities legislation, President Franklin D. Roosevelt articulated the principle that would define the Commission's mission: "What we seek is a return to a clearer understanding of the ancient truth that those who manage banks, corporations and other agencies handling or using other people's money are trustees acting for others."[204] The Commission's first Chairman, Joseph P. Kennedy, understood that the agency's legitimacy depended on one thing: the investing public's confidence that the disclosures they received were accurate and complete.

More than ninety years later, that mission remains the Commission's reason for existence. The SEC describes itself as the "investor's advocate."[205] Its stated purpose is to protect investors, maintain fair and efficient markets, and facilitate capital formation—in that order.[206] Investor protection comes first. It is not balanced against industry interests. It is the foundational obligation from which all other functions derive.

This Petition tests whether that mission retains meaning.

B. The Permanent Record

Certain facts are now established in a document that will remain publicly accessible for as long as federal regulatory dockets exist:

The fund industry's own published materials acknowledge that investors purchasing shares before distribution dates receive distributions containing return of their own capital.[207] The industry's own customer communications warn that these investors face "unnecessary tax bills" on

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[204] President Franklin D. Roosevelt, Message to Congress on Federal Supervision of Investment Securities (Mar. 29, 1933), *available at* https://www.presidency.ucsb.edu/documents/message-congress-federal-supervision-investment-securities.

[205] SEC, What We Do, https://www.sec.gov/about/what-we-do.

[206] Id.

[207] See Section III.A.

money that was never income.[208] Industry executives have stated, in documented communications, that they "do not consider this a problem because our investors don't know it is happening."[209]

“Investors don't know.”

That statement captures everything wrong with the current disclosure regime. The fund industry has known for years that first distributions include non-taxable return of capital. It has known that investors are being overtaxed on their own money. It has chosen to continue the practice precisely because—in its own words—investors remain unaware.

The SEC was created to ensure investors are told the truth. The industry has admitted, in writing, that investors are not being told the truth. The connection between mission and failure requires no elaboration.

Fifteen thousand two hundred sixty-six chief compliance officers received formal written notice of these violations.[210] Not one fund corrected its reporting practices. The industry's response to documented notice was coordinated silence.

Petitioner brought a technological solution to the Commission—a method to eliminate "buying a dividend" harm entirely through accurate daily dividend accrual. The industry was aware of this solution. The industry rejected it. The Commission did not compel its adoption.

These facts are no longer allegations awaiting proof. They are documented admissions, preserved in permanent public form, available to any person for any lawful purpose. The era of concealment has ended.

C. The Constitutional Architecture: Two Agencies, One Supreme Law

This Petition does more than request agency action. It places the United States Government on formal constitutional notice—and triggers mandatory duties that neither the SEC nor the IRS has discretion to ignore.

The Constitution of the United States sits as a capstone above both agencies. The Fifth Amendment commands that no person shall "be deprived of life, liberty, or property, without due process of law."[211] That command binds every agency of the federal government. It does not yield

[208] See Section III.A.
[209] See Section VI.B.
[210] See Section VI.A.
[211] U.S. Const. amend. V.

to enforcement discretion, administrative convenience, or industry preference. It is supreme law—and supreme law, once triggered by notice, admits of no exception.

The SEC's Constitutional Duty. The Supreme Court's precedents construct a framework of mandatory obligation:

In *Bull v. United States*, Justice Roberts declared that "retention by the Government of money wrongfully exacted as taxes is *immoral*, and amounts in law to a *fraud on the taxpayer's rights*."[212] The Court chose those words deliberately. Government retention of funds it has no legal right to hold is not merely unlawful—it is constitutionally unconscionable.

McKesson Corp. v. Division of Alcoholic Beverages established that when government collects taxes later shown to be unlawful, "the Due Process Clause requires the State to afford taxpayers *meaningful backward-looking relief*."[213] Good faith reliance on facially valid returns does not excuse continued retention after notice of falsity.

Reich v. Collins added the crucial corollary: government cannot "hold out what plainly appears to be a 'clear and certain' postdeprivation remedy and then declare, only after the disputed taxes have been paid, that no such remedy exists."[214]

Tyler v. Hennepin County (2023), decided unanimously, confirmed that government retention of amounts exceeding what is lawfully owed constitutes a "classic taking."[215] Chief Justice Roberts traced the principle to Magna Carta itself: "[A] government may not take more from a taxpayer than she owes."[216]

These are not suggestions. They are commands of supreme law. The SEC may exercise discretion over enforcement priorities in ordinary circumstances. That discretion does not extend to authorizing ongoing constitutional violations once the agency has been placed on formal notice.

The IRS's Statutory Duty. The Internal Revenue Code imposes penalties for false information returns using mandatory language that Congress chose with precision. Filers "*shall*

[212] *Bull v. United States*, 295 U.S. 247, 261 (1935).
[213] *McKesson Corp. v. Div. of Alcoholic Beverages*, 496 U.S. 18, 31 (1990).
[214] *Reich v. Collins*, 513 U.S. 106, 111 (1994).
[215] *Tyler v. Hennepin County*, 598 U.S. 631, 638 (2023).
[216] Id. at 639.

pay a penalty" for filing incorrect returns.[217] For intentional disregard, that penalty is 10% of all amounts required to be reported correctly, with no annual cap.[218]

The Supreme Court has consistently held that "shall" creates a mandatory duty, not discretionary authority. In *Lexecon Inc. v. Milberg Weiss*, the Court described "shall" as "language of command."[219] In *National Ass'n of Home Builders v. Defenders of Wildlife*, the Court held that "shall" imposes a "categorical" obligation that agencies must honor.[220]

The IRS does not have discretion to ignore intentional disregard. It has a statutory command to assess penalties. The industry's own admissions—its published acknowledgments, its executives' statements, its coordinated non-response to 15,266 compliance notices—establish intentional disregard as a matter of documented fact. The penalties are not a matter for negotiation. They are a matter for calculation.

The Unified Framework. The Constitution sits above both agencies like a capstone, binding their separate duties into a single coherent structure of legal obligation.

The SEC cannot claim that disclosure enforcement is discretionary when the Fifth Amendment requires meaningful relief for wrongful exaction and prohibits governmental taking of amounts exceeding lawful taxes. The IRS cannot claim that penalty assessment is discretionary when Congress used mandatory "shall" language and the Constitution forbids retention of unlawfully collected funds.

Neither agency may point to the other as responsible for action. Both are bound. Both have duties triggered by this Petition. Both operate under the supreme law of the land, which commands—not suggests, not encourages, *commands*—that government shall not retain money wrongfully exacted from citizens.

This is the constitutional architecture this Petition establishes: two pillars of mandatory agency duty, unified by a constitutional capstone that tolerates no evasion. The industry's admissions form the foundation. The documented violations form the walls. And the Fifth Amendment seals the structure from above.

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[217] 26 U.S.C. § 6721(a).
[218] 26 U.S.C. § 6721(e).
[219] *Lexecon Inc. v. Milberg Weiss Bershad Hynes & Lerach*, 523 U.S. 26, 35 (1998).
[220] *Nat'l Ass'n of Home Builders v. Defs. of Wildlife*, 551 U.S. 644, 661–62 (2007).

There is one door out of this architecture: immediate corrective action. Every other exit is blocked by constitutional command.

D. The Human Stakes: Americans at Their Most Vulnerable

Constitutional principles exist to protect real people. The people protected by this Petition are not abstractions.

They are the retired teacher in Ohio who sold fund shares to pay for her husband's cancer treatment—and paid taxes on her own money because no one told her the distribution included return of capital.

They are the young couple in Texas who liquidated their savings for a down payment on their first home—and lost thousands to phantom income that was never income at all.

They are the seventy-year-old veteran drawing down his IRA to cover living expenses—overtaxed on every distribution because the Forms 1099-DIV he trusts are systematically false.

One hundred sixty million Americans hold fund investments. The overwhelming majority are ordinary people saving for retirement, for their children's education, for financial security in an uncertain world. They are not sophisticated investors who can detect disclosure failures. They rely on the regulatory system to ensure that the information they receive is accurate.

That reliance has been betrayed. The fund industry has known for years that first distributions include non-taxable return of capital. It has filed false information returns anyway. It has extracted billions in unwarranted tax payments from people who trusted the system.

The harm falls hardest on those who can least afford it. Retirees drawing down savings. Families facing medical emergencies. People liquidating investments at moments of financial stress. These are Americans at their most vulnerable—and they are being overtaxed on their own money because an industry calculated that they would never discover the truth.

The Constitution forbids this. Not as a matter of regulatory policy, but as a command of supreme law. The Government is now on notice that 160 million Americans are being deprived of property through a systematic scheme of false reporting. The constitutional duty to act is not discretionary.

E. What This Record Enables

From this day forward, any party seeking accountability for "buying a dividend" harm may obtain this Petition from a public federal docket and cite it as evidence that:

The industry knew. Published admissions, executive statements, and the coordinated non-response to 15,266 compliance notices establish scienter through the industry's own conduct. No defendant will successfully claim ignorance when its own documents confess knowledge.

The harm is calculable. Section III provides mathematical frameworks to compute damages for any investor, any fund, any time period. The formulas are public. The methodology is proven. Plaintiffs' counsel need not reconstruct what this Petition has already built.

The defenses are pre-refuted. The GAAP-compliance and industry-practice arguments that have historically shielded this conduct are demolished in Sections V.F and V.G—analysis now permanently available to any court, any arbitrator, any state regulator evaluating those defenses.

A solution existed and was rejected. Petitioner offered a technological remedy. The industry declined. That refusal transforms the defense of "we didn't know how to fix it" into evidence of deliberate choice.

The Constitution commands relief. Section XIII establishes that continued governmental retention of wrongfully exacted funds violates due process, constitutes illegal exaction, and effects a taking. These are not arguments to be weighed. They are constitutional commands to be obeyed.

F. The Arithmetic of Inevitability

One hundred sixty million Americans hold fund investments. Exposed transactions number in the hundreds of millions. Exposed advisory fees total billions of dollars.

Section 7434 of the Internal Revenue Code provides a private right of action against any person who willfully files a fraudulent information return.[221] Damages are the greater of $5,000 or actual damages, plus costs and attorney's fees. The industry has filed hundreds of millions of Forms 1099-DIV that its own published materials acknowledge overstate taxable income.

The constitutional claims documented in Section XIII provide additional avenues. Illegal exaction claims lie against the Government for return of wrongfully collected funds. Due process claims challenge continued retention after notice. Takings claims seek just compensation for amounts exceeding lawful taxes.

[221] 26 U.S.C. § 7434.

The arithmetic requires no elaboration. The combined exposure—industry liability for false reporting, governmental liability for unconstitutional retention, mandatory IRS penalties for intentional disregard, private rights of action for affected investors—represents accountability of historic magnitude.

G. Petitioner's Position: Partnership Offered, All Remedies Preserved

Petitioner closes with an offer extended in good faith — and a statement of necessity.

For nearly six years, Petitioner has sought to assist the Commission in understanding and addressing these violations. He filed his initial whistleblower submission in June 2020. He has provided supplemental documentation. He has offered a technological solution. He has made himself available to any Commission staff member willing to engage. That offer of partnership remains open. Petitioner will respond to any inquiry within twenty-four hours. He will provide whatever documentation, analysis, or testimony the Commission requires. He possesses institutional knowledge that could accelerate any investigation or rulemaking, and he offers it without reservation.

At the same time, Petitioner preserves all remedies available under the constitutional and statutory framework this Petition documents. As this Petition is filed, the fund industry is preparing its sixth consecutive round of false Forms 1099-DIV since Petitioner first reported these violations to the Commission. Nearly six years. Six rounds of false tax information. Six cycles of illegal exaction from 160 million Americans. The constitutional violations are ongoing. Every day that passes, more Americans are harmed. Every tax cycle that closes locks in another round of over-taxation that statutes of limitation may eventually place beyond recovery.

The offer of partnership and the preservation of all remedies are not inconsistent. They proceed in parallel. Coordinated federal enforcement remains the most efficient path to comprehensive remediation — for investors, for the integrity of the tax system, and for the Commission's own institutional standing. But Petitioner will not indefinitely defer the exercise of those remedies while awaiting agency action that nearly six years of experience has not produced.

H. The Whistleblower's Commitment

Petitioner served his country in the United States Marine Corps Infantry (0311). He took an oath to support and defend the Constitution against all enemies, foreign and domestic. That oath has no expiration date.

He serves his country again through this Petition.

He has documented what the industry wished to conceal: systematic false reporting affecting 160 million Americans, exposed through the industry's own admissions, preserved now in permanent public form. He has provided the legal analysis connecting documented facts to established law. He has established the constitutional framework that binds the Government regardless of agency preference. He has offered a technological solution. He has built the mathematical frameworks permitting precise calculation of harm.

The fund industry constructed its scheme on one foundational premise: *investors would never know.*

The SEC was created to ensure investors are told the truth.

The Constitution commands that government shall not retain money wrongfully exacted from citizens.

The Internal Revenue Code commands that filers of false returns *shall pay* penalties.

For years, these principles existed in tension — the industry relying on investor ignorance, the agencies possessing authority not yet brought to bear, the Constitution's commands and Congress's mandates unacknowledged because no one had assembled the evidence and placed the Government on formal notice.

This Petition resolves the tension. The truth is now public. The constitutional notice is now formal. The statutory duties are now triggered. The agencies' obligations are now documented.

And Petitioner is no longer waiting to see whether those obligations will be honored. He is prepared to pursue every available remedy to ensure they are.

I. The Landscape This Petition Creates

The Founders understood that public records serve functions beyond their immediate governmental purpose. A petition filed with a federal agency becomes part of the permanent public domain — available not only to the agency, but to every citizen and institution that might find it useful.

This Petition will be filed on the Commission's public docket. From that moment forward, the factual record, the legal analysis, the quantified harm, the identified defendants, and the comprehensive rebuttal of every traditional defense will be available to any party seeking accountability for the conduct documented here. Class action counsel, state attorneys general, FINRA arbitration practitioners, pension fund trustees with fiduciary obligations to investigate harm to beneficiaries, state securities regulators operating under independent antifraud statutes, members of Congress exercising oversight authority, and the investigative press — each operates independently, each has institutional mandates activated by the facts this Petition documents, and none requires the Commission's permission to act.

The Commission's choice, therefore, is not whether accountability occurs. It is whether the Commission leads the remediation — defining the remedial framework, controlling the timeline, earning the institutional credit for protecting 160 million investors — or whether disaggregated enforcement by scores of independent actors produces the same outcome through more expensive, more chaotic, and less orderly means. Every option the industry once had — voluntary correction, quiet remediation, negotiated resolution — was available for nearly eight years. The industry chose none of them. Every option the Commission once had, early intervention, proactive enforcement, coordinated remediation before the record became public, was available for nearly six years. None was pursued. What remains is the public record, the constitutional commands, the statutory mandates, and the institutional machinery of American accountability — all converging on the same result through paths that neither the industry nor the agencies control.

The industry constructed its scheme on one foundational premise: that investors would never know. This Petition ensures they will.

J. Conclusion

The Securities and Exchange Commission was established more than ninety years ago to ensure that investors are told the truth. The Constitution forbids governmental retention of money wrongfully exacted from citizens. The Internal Revenue Code commands — using mandatory language the Supreme Court has held creates a categorical obligation — that filers of false information returns shall pay penalties. These are not competing principles to be balanced. They are convergent commands from three sources of American law, and they all point to the same

conclusion: the conduct documented in this Petition must end, the harm must be remedied, and those responsible must answer.

To any investor harmed by the conduct documented here — you are not alone, you were not wrong to trust the system, and the tools to vindicate your rights are now public and permanently available.

To the independent directors reading this and recognizing that the path forward requires courage — the door is open. You were not the architects of this crisis. You can be the architects of its resolution. The first board to act will define the standard. The last board to act will explain to a jury why it waited.

To the Commission — Petitioner respectfully submits this Petition for Rulemaking and requests that the Commission act with the urgency that its founding mission demands, that the Constitution requires, and that 160 million American investors deserve.

Petitioner can be reached through the contact information in the signature block below and through the Private Attorney General Project (PAG Project, LLC, TX) at: https://www.pagproject.com/ .

The record is public.
The truth is established.
The Constitution has spoken.
Congress has commanded.
The agencies may act, or the courts will compel.
But the outcome is no longer in question—only the mechanism of its arrival.

Semper Fidelis,

/s/ Jeremy Roseberry
petition@pagproject.com
https://www.pagproject.com/

EXHIBIT 1

DECLARATION OF JEREMY THOMAS ROSEBERRY

Pursuant to 28 U.S.C. § 1746

IN SUPPORT OF PETITION FOR RULEMAKING
REGARDING MATERIALLY MISLEADING INVESTMENT FUND DISCLOSURES
AND SYSTEMATIC FALSE FORM 1099-DIV REPORTING

I. DECLARANT'S IDENTITY AND QUALIFICATIONS

1. I, Jeremy T. Roseberry, am over eighteen years of age and competent to testify to the matters stated herein. I make this declaration of my own free will, based on my personal knowledge, unless otherwise stated herein on information and belief, and could and would competently testify to the following if called upon to do so in any proceeding before a court of competent jurisdiction, the Securities and Exchange Commission, or any other federal agency.
2. I served in the United States Marine Corps as an infantryman, Military Occupational Specialty 0311. The discipline, accountability, and commitment to mission that the Corps instilled in me have shaped my professional life and are the foundation of the work described in this Declaration.
3. I hold a Master of Business Administration degree from Florida Atlantic University. For more than twenty years, I have worked in the financial services industry as a quantitative analyst, authoring proprietary algorithms and code to identify, model, and trade market inefficiencies. My career has spanned registered investment advisory firms, large banks, major custodians, and multi-family offices serving high-net-worth individuals, where I have held senior analytical and management roles encompassing portfolio strategy, compliance oversight, and mergers and acquisitions. Throughout my career, I have been retained by high-net-worth individuals to diagnose and resolve complex financial and operational problems — work that required the same quantitative modeling, forensic analysis, and systems-level thinking that I

later applied to identifying and remediating the "buying a dividend" problem described in this Declaration.

4. I am the Chief Executive Officer and co-founder of FairShares, Inc., a financial technology company focused on market efficiency, transparency, and investor protection. I am the principal inventor and sole drafter of multiple United States and international patents in financial technology applications covering remediation technology for the problem described in this Declaration and the Petition it accompanies. To my knowledge, no other person or institution has quantified the scope of investor harm caused by the 'buying a dividend' problem or developed a comparable commercially available solution. The technology accomplishes three things that current industry practice fails to do: (1) it strips embedded realized income (dividends, interest and capital gains) from the net asset value of fund shares so that securities trade at fair value; (2) it generates accurate Forms 1099-DIV that properly characterize return of capital rather than misreporting it as taxable dividend income; and (3) it delivers real-time point-of-sale disclosures that show investors the per-share amount of embedded realized income and their estimated tax exposure before they purchase.
5. I am a multi-agency federal whistleblower. On June 22, 2020, my attorney, Sean X. McKessy of Phillips & Cohen LLP—the architect and founding Chief of the SEC's Office of the Whistleblower—filed a whistleblower tip on my behalf with the Securities and Exchange Commission under Exchange Act § 21F (15 U.S.C. § 78u-6), providing detailed evidence of the "buying a dividend" harm described in this Declaration and the related disclosure deficiencies. On March 15, 2023, I filed a Form 211 whistleblower claim with the Internal Revenue Service under 26 U.S.C. § 7623(b). I have also filed submissions with the Department of Justice Whistleblower Awards Pilot Program (28 U.S.C. § 530C) and with the Antitrust Division of the Department of Justice. These submissions estimate that the practices described herein cause harm exceeding $100 billion per year, affecting approximately 160 million Americans. In all of my engagement across multiple federal agencies spanning nearly six years, not one person at any agency denied the harm I documented, challenged my mathematics, or offered a legal justification for the continuation of the practices described in the Petition.

II. AUTHORSHIP, AUTHENTICATION, AND CERTIFICATION OF THE PETITION

6. I am the sole author of the Petition for Rulemaking Regarding Materially Misleading Investment Fund Disclosures and Systematic False Form 1099-DIV Reporting (the "Petition"), filed contemporaneously with this Declaration. I personally researched, compiled, and analyzed the subject matter of the Petition over a period of years, and drafted the Petition beginning in the fall of 2025. The Petition reflects direct, firsthand knowledge spanning nearly eight years of engagement with industry participants, government officials, and federal agencies. I have reviewed the Petition in its final form and recognize it as my own work product.
7. I certify that the factual statements in the Petition that are based on my personal knowledge, observations, and direct communications are true and correct to the best of my recollection. The exhibits to the Petition are authentic and are true and correct copies of documents that have been maintained in my custody or that I have personally verified. The legal analysis set forth in the Petition represents my good-faith understanding of the applicable law.
8. The events described in the Petition and this Declaration span approximately eight years. In recounting those events, I have relied on my best recollection, supplemented by contemporaneous notes, emails, calendar entries, and follow-up memoranda that I maintained in the ordinary course of business. Where exact dates, precise wording, or specific details could not be independently verified from my records, I have used qualifying language such as "on or about," "in approximately," "in words to this effect," or "to the best of my recollection." Should any material inaccuracy come to my attention, I will promptly correct the record.
9. Unless otherwise noted, all monetary amounts stated in the Petition and this Declaration are my best professional estimates, derived from proprietary quantitative models I developed and publicly available data. These figures are presented in good faith for illustrative purposes and are subject to revision if newer or more complete data warrant. All characterizations of conduct as "fraud," "criminal," or "illegal" reflect my good-faith professional opinion based on the evidence cited and my understanding of the applicable statutes. I am not an attorney. These characterizations do not constitute legal advice or a final legal adjudication.
10. I have personally reviewed the Petition in its final form and in its entirety. I identify and authenticate it under Federal Rule of Evidence 901(b)(1) as a document I authored, based on my personal knowledge of its contents and my familiarity with the work product it reflects. The supporting records referenced in the Petition—including correspondence, delivery

records, meeting notes, calendar entries, contemporaneous memoranda, Mailchimp delivery logs, screenshots, and other documents—were made at or near the time of the events they record, by me or from information I transmitted, were kept in the ordinary course of my regularly conducted business activity, and it was my regular practice to make and maintain such records. I offer this foundation so that these records may be received in any proceeding in which their authenticity is at issue.

11. This Declaration is submitted as Exhibit 1 to the Petition. It supplements the information I previously provided to the Securities and Exchange Commission's Office of the Whistleblower, the Internal Revenue Service's Whistleblower Program, the Department of Justice Whistleblower Awards Pilot Program, and the Antitrust Division of the Department of Justice. I submit it in good faith to assist these agencies in any current or future investigation, and to create a sworn evidentiary record that may be used in any court of competent jurisdiction, administrative proceeding, or congressional inquiry in which the facts set forth herein are relevant. The Petition and this Declaration are intended to be read together and constitute a single, integrated filing.

III. WHAT I PERSONALLY DID: SUMMARY OF OUTREACH AND ENGAGEMENT

12. Since 2018, I have conducted a sustained campaign—at substantial personal expense and through the resources of FairShares, Inc., and on my own initiative—to bring the "buying a dividend" problem to the attention of relevant stakeholders in the financial services industry, gatekeepers charged with protecting investors, and federal and state agencies with jurisdiction over securities or tax law. The categories of outreach summarized below are described in greater detail in the Petition. Unless otherwise noted in specific paragraphs, the facts regarding each category, as stated in the Petition, are based on my personal knowledge and are true and correct to the best of my recollection. This Section provides a summary attestation; specific dates, names, and details relating to government officials are set forth in Section V of this Declaration.

A. Industry Outreach

13. *Asset Managers.* From 2018 to the present, I and members of my team have personally engaged with more than a hundred senior executives at firms collectively managing more than $30 trillion in assets under management. I presented the mathematics demonstrating investor harm, quantified the losses, and demonstrated the remediation technology I had developed. In many initial meetings, executives described the proposed solution, in words to this effect, as "groundbreaking" and "revolutionary," and stated that it would "redefine financial markets." Tax directors at several firms engaged substantively with the technical details. In each case, the pattern was the same: after initial engagement, recognition, and enthusiasm at the working level, escalation to senior management was followed by silence. Without exception, every firm that initially expressed interest ultimately reversed course. Not one disputed my analysis, challenged the feasibility of the technological remedy, or identified a flaw in the mathematics. These facts are stated in detail in Petition Section VI.

14. *Chief Compliance Officers.* In 2023, I sent formal compliance notifications to 15,266 Chief Compliance Officers—every CCO registered in the SEC's Investment Adviser Registration Depository (Form ADV). Each notification described the "buying a dividend" problem, estimated that it cost investors approximately $131 billion in 2022 alone, warned of potential firm liability including pending FTC regulations with penalties of up to $50,000 per occurrence, and requested a twenty-minute meeting so that I could fully disclose the compliance matter and the recipient could take appropriate steps to protect investors. I deliberately structured each notification as a partial disclosure, stating that the email did not represent my full disclosure, so that each recipient's compliance obligations could not be satisfied without scheduling the meeting and receiving the complete information. In my professional judgment, based on my experience as a former Compliance Officer, receipt of this notification triggered an immediate regulatory obligation for each firm to acknowledge the notice, launch a good-faith investigation, and—if the facts were confirmed—self-report the issue to the SEC and escalate the matter to the fund board under Rule 38a-1 as a material compliance matter. Not one of the 15,266 CCOs acknowledged the notice; the only response I received was a single voicemail that incorrectly asserted the issue was irrelevant to the firm that had received it. Hundreds of CCOs flagged the notification as "junk" or opted out of

receiving further communications. After the initial batch of notifications, Mailchimp suspended my account; I opened a new account and sent the notification to the remaining CCOs. At least one CCO classified the notification as "inappropriate content"—a Mailchimp designation ordinarily reserved for pornography or violent material. I have preserved delivery records, including Mailchimp logs, open and bounce data, and screenshots. On November 14, 2023, I submitted a second whistleblower tip to the SEC, reporting the industry-wide non-response described above and attaching the delivery records. These facts are stated in detail in Petition Section VI.A.

15. *Big Four Accounting Firms.* On April 23, 2023, I sent formal notifications to executives of each of the Big Four accounting firms, identifying investor over-taxation and prospectus language I believed to be materially false and misleading. I have met personally with representatives of three of the four firms. To the best of my knowledge, none of those firms took action to correct or improve the disclosures of the investment funds they audit, and none acknowledged my correspondence regarding the harm and disclosure deficiencies identified.
16. *Securities Law Firms.* In April 2023, I contacted eleven of the premier law firms that represent the largest asset managers in the financial services industry. I informed them of what I believed to be materially false and misleading statements in fund prospectuses and warned of the ongoing harm to investors. I met personally with representatives of several of these firms. During one such meeting, a senior Wall Street tax lawyer conceded that my proposed solutions would fix the problem. To my knowledge, not one firm advised its clients to correct disclosures. Following my notifications, several large fund complexes quietly struck the specific language I had identified in my original SEC tip from their prospectuses without issuing notice to investors or filing corrective amendments with the SEC. I understood these silent edits to be acts of concealment rather than correction—an observation I reported to the SEC when counsel filed a supplemental Form TCR on my behalf on January 17, 2024, attaching the evidence of these undisclosed prospectus changes. These facts are stated in detail in Petition Section VI.E.
17. *Chief Risk Officers.* In April 2023, I sent formal written notices to the Chief Risk Officers of seven of the world's largest asset managers—firms that collectively oversee approximately $35 trillion in fund assets. Each notice detailed the material misstatements I had identified and

urged immediate investigation and correction. Not one Chief Risk Officer acknowledged my warning.

18. *Securities Exchanges and DTCC (Self-Regulatory Organizations).* Over several years, I engaged with executives and board members at multiple major securities exchanges, each of which serves as a self-regulatory organization with statutory duties to protect investors. At one exchange, my proposed technological remedy advanced through substantive engagement to the level of the executive committee, where it was rejected. My understanding, based on subsequent discussions, was that adopting the remedy could expose the "buying a dividend" practice and risk unsettling valuable clients. Following the rejection, executives who had engaged with me ceased all contact; some deleted professional network connections. When I attempted to report a compliance matter to an individual holding the title of "Regulatory Surveillance Manager" at a separate major exchange, the individual blocked me on LinkedIn rather than assist in reporting the issue. I also engaged with senior executives at the Depository Trust & Clearing Corporation over several years. These facts are stated in detail in Petition Sections VI.A and VI.C.
19. *Additional Service Providers.* Since 2018, I have extended my outreach to fund administrators, tax preparers, transfer agents, online brokers, custodians, compliance firms, and hedge funds. One dominant market utility independently reviewed my analysis and acknowledged in writing that "the problem is real" and that the industry has "simply ignored it." An executive at that firm explained, in words to this effect, that "industry perception can kill reputations"—and the firm declined to act. On one occasion, a large asset manager with substantial revenues told me that I should fund their accounting work to evaluate my proposed solution; my company was pre-revenue at the time. Several other firms indicated they were unwilling to spend any money on protecting their investors from these risks. All other outreach in this category was met with silence, deflection, or dismissal.

B. Technology Development

20. I personally designed, developed, and patented the remediation technology described in paragraph 4 of this Declaration and in the Petition. I am the principal inventor and sole drafter of the underlying patents and, to my knowledge, the sole developer of a commercially available solution to the 'buying a dividend' problem. I demonstrated this technology repeatedly to

industry executives controlling trillions of dollars in assets. To the best of my knowledge, no one challenged the mathematics, and no one questioned the functionality. During my engagement with industry participants, I learned that at least one dominant fund administrator's existing transfer-agent system already contains a configuration setting capable of correcting NAV to account for embedded dividend income. That setting remains inactive for the vast majority of funds. A senior executive at that firm explained why, as set forth in paragraph 28 of this Declaration.

C. Government and Public Engagement

21. I filed whistleblower submissions with the Securities and Exchange Commission, the Internal Revenue Service, the Department of Justice Whistleblower Awards Pilot Program, and the Antitrust Division of the Department of Justice on the dates specified in paragraph 5 of this Declaration and in Section V below. The facts and dates relating to each submission are based on my personal knowledge and are true and correct.
22. *Securities and Exchange Commission.* I have personally met with three SEC Commissioners regarding the matters described in this Declaration and the Petition: Chairman Paul S. Atkins and Commissioner Hester M. Peirce, both currently serving, and former Commissioner Allison Herren Lee. I have also met with the SEC's FinHub group, with the Office of the Chief Accountant of the Division of Investment Management, and with counsel and senior advisors to individual Commissioners and the Chair. In total, I estimate I have interacted with approximately fifty SEC staff members across multiple divisions over the past six years. During my engagement, SEC Chair Gary Gensler and Director William Birdthistle of the Division of Investment Management directed staff to meet with me, and the Chief Accountant of the Division of Investment Management subsequently requested that I develop a comprehensive remediation plan. I did so, and on September 26, 2022, I submitted a document titled "A Blueprint—Creating a Fair and Efficient Market, With No Hidden Costs" to SEC Commissioners and staff. The Commission did not merely receive a complaint; through requests initiated at the direction of the Chair and Director Birdthistle, it actively shaped the remediation proposal it was given. Throughout these interactions—spanning years, dozens of meetings, and hundreds of pages of documentation—to the best of my knowledge, not a single Commissioner or staff member challenged the factual accuracy of my analysis, disputed the

mathematical formulas demonstrating investor harm, or contested the premise that current disclosures are materially incomplete. The specific dates, names, and details of these interactions are set forth in Section V of this Declaration.

23. *Federal Trade Commission.* On April 24, 2024, I testified before the Federal Trade Commission during a public hearing on the Proposed Trade Regulation Rule on Unfair or Deceptive Fees. A transcript of my testimony is publicly available. I warned that the proposed rule should not exclude financial services from its scope. The final rule, which took effect on May 12, 2025, was narrowed to cover only live-event ticketing and short-term lodging — effectively excluding financial services, despite my testimony.

24. *Congress, State Regulators, and State Attorneys General.* I sent letters to more than 100 members of Congress, including members serving on the House and Senate Financial Services committees. I submitted formal whistleblower packages to majority and minority committee staff on multiple occasions. I also contacted more than thirty state securities regulators, including Joseph Brady at NASAA on September 13, 2023, and more than thirty state attorneys general. I received limited responses; some state regulators deferred to the SEC. To my knowledge, no substantive action has been taken at the state level.

D. Summary Attestation

25. In total, since 2018, I have contacted, notified, or personally engaged with more than 15,000 gatekeepers, senior industry executives, market participants, regulators, and policymakers regarding the 'buying a dividend' problem. In nearly eight years of sustained engagement, no one denied the harm I documented. No one challenged the mathematics demonstrating investor losses. No one disputed that the problem could be prevented with existing technology. No one identified a flaw in my analysis. No one offered a legal justification for the continuation of the practices described in the Petition. The only point of dispute was whether the industry should be required to stop.

IV. WHAT THEY SAID: THE INDUSTRY'S OWN WORDS

26. The following statements were made to me or to members of my team between 2018 and the present during meetings and calls regarding investor protection and the "buying a dividend"

problem. Each statement is paraphrased to the best of my recollection and, where available, supported by contemporaneous notes, emails, calendar entries, or follow-up memoranda maintained in the ordinary course of business. Identifying details are limited to role, organization type, and context in order to preserve the integrity of pending and potential enforcement proceedings. I offer these statements as evidence of the industry's knowledge, intent, and conduct — not as allegations.

27. A representative of a multi-trillion-dollar asset management firm stated, in words to this effect: "We do not consider this a problem because our investors don't know it is happening." I understood this statement to mean that the firm regarded investor unawareness as a feature of its business model rather than a failure of its disclosure obligations.
28. During a Zoom call, a senior executive of an investment fund administrator admitted that investment managers would never agree to implement the available fix because, in his words, "Investment managers are billing on the [inflated] net asset value." During the same call, the executive confirmed that his firm's existing transfer-agent system already contains a configuration setting capable of correcting NAV, that the fix could be implemented, and that it would protect investors—and explained why it would never be enabled: fund managers charge asset-based fees on a NAV that includes embedded realized income, and correcting it would reduce the fee base. I understood this to be an admission that the inflated pricing is a deliberate choice to preserve fee revenue, not an inadvertent accounting practice.
29. A representative of a Big Four public accounting firm serving as an auditor for investment funds stated, in words to this effect: "Investors should just 'accept' these losses because investment funds offer convenience (i.e., ease of buying and selling)." I noted that this statement came from a professional whose duty is to ensure accurate financial reporting to the investing public, not from a fund executive defending industry practice.
30. An institutional asset manager's response, as relayed to me by a prominent lawyer who represents financial services firms, was, in words to this effect: "We consider the current situation perfectly fine." I understood this statement to mean that the firm was aware of the harm but considered it acceptable because it did not affect the firm's operations or revenue.
31. An executive of a publicly traded firm that produces software for generating Form 1099-DIV tax forms stated to me, in words to this effect: "It would require an effort to educate our stakeholders, and we cannot commit the necessary time or resources." The same executive also

said to his colleagues, in an email: "The problem is real. The industry has simply ignored it." I understood these statements to mean that the firm acknowledged the harm as genuine, earns revenue producing the very tax forms at issue, and concluded that producing accurate forms was not worth the effort.

32. The following additional statements were made to me during my outreach, each paraphrased to the best of my recollection and in words to this effect:

    a) "We have other priorities right now." This statement was made by an executive at a firm managing over $7 trillion in client assets.
    b) "We have zero interest." This was a response from an executive at a multi-trillion-dollar asset manager.
    c) "Running the check isn't worth our time." This statement was made by a compliance executive at a large registered investment adviser (RIA), refusing to deploy software that takes seconds to evaluate investors' potential losses before investing and to satisfy Regulation Best Interest (RegBI) and other fiduciary obligations.
    d) "If you can get just one fund to do this, all other funds will be forced to fix this within 12 months." This statement was made by a Senior Tax Director at a major fund complex managing approximately $100 billion in assets. Despite this acknowledgment, not one firm among the hundreds I engaged between 2018 and the present agreed to adopt the technology.

Behavioral Responses

33. In addition to the verbal and written statements set forth above, I observed the following behavioral responses from industry participants during my outreach. I describe each factually, without characterization.

    a) After I presented my findings, in person, at the headquarters of one of the world's largest asset managers—where senior management and in-house counsel offered no challenge to the investor harm or the practicality of my solution—the firm's counsel later sent an email directing me to "cease all further contact" with its executives.

b) During a meeting with senior executives from one of the world's largest accounting and auditing firms, I observed little concern about the financial harm investors were incurring. I noted that the Securities and Exchange Commission may be taking the issue of investor harm seriously, and perhaps they should, too. An executive then responded with a multi-second-long burst of dismissive laughter.

c) A dominant market utility independently reviewed my analysis, acknowledged in writing that "the problem is real" and that the industry has "simply ignored it," and then declined to act because, in the words of an executive, "industry perception can kill reputations," as described in paragraph 19 above.

d) After one exchange's executive committee rejected my proposed remedy, executives who had engaged with me deleted professional network connections. When I attempted to report a compliance matter to an individual holding the title of "Regulatory Surveillance Manager" at a separate major exchange, the individual blocked me on LinkedIn rather than assist in reporting the issue, as described in paragraph 18 above.

e) On one occasion, a large asset manager with substantial revenues told me that I should fund their accounting work to evaluate the proposed fix. My company was pre-revenue at the time. Several other firms indicated they were unwilling to spend any money on protecting their investors from these risks, as described in paragraph 19 above.

The Silence

34. In nearly eight years of engagement, across hundreds of conversations with executives at the largest financial institutions in the world, I did not witness a single expression of concern or empathy for the investors these executives are legally obligated to protect. Not once did an executive ask how many Americans were affected. Not once did anyone ask what happens to a retiree who pays taxes on income never earned. Not once did anyone express discomfort with the gap between their firms' marketing promises and their conduct. The investors were treated as abstractions.

V. GOVERNMENT OFFICIALS WHO RECEIVED NOTICE

35. In bringing this matter to official attention, I have had the privilege of engaging with dedicated personnel at the SEC, IRS, DOJ, FTC, FBI, and several state agencies. Without exception, these public servants demonstrated expertise, courtesy, and a sincere commitment to the public interest. The narrative that follows simply records the sequence of events; it should not be read as a criticism of their professionalism or integrity. I am grateful for their service, respectful of the challenges they shoulder, and stand ready to assist them in any way that advances the protection of investors and taxpayers. The qualifying language described in paragraph 8 of this Declaration — regarding approximate dates, paraphrased wording, and best recollection — applies throughout this Section.

A. Securities and Exchange Commission

36. On June 22, 2020, my attorney, Sean X. McKessy of Phillips & Cohen LLP—the architect and founding Chief of the SEC's Office of the Whistleblower—filed a whistleblower tip on my behalf with the Securities and Exchange Commission. The submission provided detailed evidence outlining the harm caused by the practice of "buying a dividend," including unjust taxation and potentially false or misleading disclosures.
37. On August 17, 2020, I met with the SEC's Financial Technology (FinHub) Group to discuss "buying a dividend." The staff did not dispute the investor harm as I presented it and did not identify issues with the proposed solution. Their primary advice was that any solution should comply with Generally Accepted Accounting Principles (GAAP).
38. On September 8, 2020, I met via video conference with then-SEC Commissioner Allison Herren Lee and her counsel to explain the "buying a dividend" misconduct and demonstrate my proposed technological solution. After the presentation, Commissioner Lee remarked, as I recall: "Congratulations on figuring out how the market should work." Neither she nor her counsel disputed the magnitude of the investor harm, and I apprised them of the industry's uniformly dismissive response to both the problem and the solution. In a subsequent presentation to Commissioner Lee's counsel, I demonstrated, using actual fund data, that the disclosures at issue were materially misleading. Her counsel did not dispute the facts I presented.

39. In 2022, while Paul S. Atkins served as Chief Executive Officer of Patomak Global Partners, I met with Mr. Atkins on multiple occasions to discuss how to fix U.S. markets so that investors would no longer be overtaxed and securities would trade at fair value. These meetings were substantive discussions focused on the mechanics of the problem and the technological solutions available to correct it. During these meetings and in related communications, I informed Mr. Atkins of problems with disclosures related to the "buying a dividend" risk. Mr. Atkins understood precisely how the markets could be corrected—the mechanics, the technology, the implementation path. He identified no flaw in my analysis and raised no objection to the proposed remediation.
40. My engagement with Mr. Atkins was not limited to informational meetings. The full nature of that engagement, its progression, and the circumstances under which it concluded are reflected in contemporaneous documents that I have preserved. I also attended a holiday gathering hosted by Mr. Atkins during this period at this office in Washington, DC. Mr. Atkins is now Chairman of the Securities and Exchange Commission and holds authority over the petition this Declaration accompanies.
41. On May 16, 2022, I met in person with SEC Commissioner Hester M. Peirce in West Palm Beach, Florida, to discuss what I believed were ongoing violations of securities laws and the potential harm to investors. I disclosed that I was an SEC whistleblower and expressed my desire to engage with the SEC and to begin implementing a fix. I provided Commissioner Peirce with a binder containing extensive documentation on the problem and the industry's response. She later requested electronic copies of the materials, which I sent to her.
42. Following the initial meeting with Commissioner Peirce, her office scheduled a follow-up meeting at SEC Headquarters for 5:15 p.m. on June 23, 2022. On June 22, 2022—one day before the appointment—the meeting was canceled without explanation. Repeated attempts to secure a new date have been unsuccessful.
43. On August 24, 2022, I received an email from Jenson Wayne, the SEC's Chief Accountant of the Division of Investment Management, requesting a meeting to discuss potential "deficiencies in disclosures that I may have identified" and other matters. I was told that this meeting was arranged as a result of an email I had sent to SEC Chair Gary Gensler and Director William Birdthistle of the Division of Investment Management regarding the "buying a dividend" issue.

44. On September 1, 2022, I held a Zoom meeting with Mr. Wayne, Jacob Sandoval, and numerous SEC staff members. Some participants were identified on the call, while others remained anonymous. I presented a 37-page PowerPoint presentation detailing misleading disclosures, potential legal violations, and the industry's indifference to investor harm. At the end of the meeting, Mr. Wayne requested that I propose a plan for enhanced investor disclosures and provide more information on the fix I had proposed during our meeting.
45. On September 26, 2022, I submitted a comprehensive plan to Mr. Wayne, SEC Chairman Gary Gensler, and other senior SEC staff and Commissioners. The plan was titled "A Blueprint—Creating a Fair and Efficient Market, With No Hidden Costs." The plan represented a comprehensive roadmap that, if implemented, would permanently resolve the "buying a dividend" problem and ensure that investors were no longer harmed. As of the date of this Declaration, the SEC has not taken action on the plan.
46. On June 28, 2023, I met with Barbara Roper, then Senior Advisor to SEC Chair Gary Gensler, via Zoom conference call. During that meeting, I provided Ms. Roper with a detailed presentation outlining the scope and mechanics of the violations described in my whistleblower submissions, the attendant investor harm—which I estimated at more than $100 billion annually—the materially false and misleading prospectus language that conceals the risk from investors, and a practical solution capable of eliminating the misconduct and restoring accurate disclosures. Ms. Roper received the materials without disputing the factual or quantitative assertions I presented.
47. On August 1, 2023, I submitted an unsolicited proposal under FAR § 15.6 to the SEC's Office of Acquisitions Management, seeking authority for the Commission to implement the comprehensive remediation plan that SEC staff had requested and that I had submitted on September 26, 2022. On August 25, 2023, the SEC rejected my proposal under FAR 15.606-1(a)(2) and (a)(5), stating that the proposal "does not address an existing requirement of the SEC nor would it provide further capabilities in carrying out its mission."
48. On August 11, 2023, Ms. Roper emailed to confirm that she had reviewed my materials, consulted with staff in the Division of Investment Management who specialize in this issue, and forwarded the submission to the appropriate personnel within the Commission for further review. While I am not at liberty to disclose the precise contents of Ms. Roper's email, the

tenor of her message led me to conclude she regarded the matter as serious and deserving of prompt internal attention.

49. On November 14, 2023, I submitted a second Whistleblower Tip Form TCR to the SEC, attaching the Mailchimp delivery logs and other records documenting the industry-wide non-response to my CCO compliance notifications, as described in paragraph 14 above.

50. On January 17, 2024, counsel filed a supplemental Form TCR on my behalf with new evidence: several large fund complexes had quietly struck the specific misleading language I had identified in my initial SEC tip from their prospectuses without issuing notice to investors or filing corrective amendments with the SEC, as described in paragraph 16 above.

51. On May 8, 2025, I submitted an additional unsolicited proposal under FAR § 15.6 to the SEC's Office of Acquisitions Management. Unlike the 2023 proposal, which sought authority to implement the full remediation plan, this proposal was a focused subject-matter-expert consulting engagement designed to provide the Commission with expert guidance on how to protect investors from ongoing harm and provide investors with meaningful disclosure. The proposal was priced below the simplified acquisition threshold then in effect under FAR 2.101, which would have permitted the Commission to approve it under streamlined procedures without a full competitive solicitation. On the same day, I emailed SEC Chair Paul S. Atkins, with Commissioner Hester M. Peirce copied, to advise that I had just submitted the proposal and to request that the Chair exercise his authority to expedite review. In that message, I congratulated Chair Atkins on his appointment, emphasized that the proposal provides the only subject-matter expertise capable of rectifying systemic over-taxation and price-distortion harms to U.S. investors, and offered to brief the Chair or his designee at any time convenient to the Commission. On May 16, 2025, the SEC rejected this proposal in a letter that was, apart from the different proposal titles and receipt dates, word-for-word identical to the August 25, 2023 rejection letter. Both letters cited FAR 15.606-1(a)(2) and (a)(5) and stated that the proposal "does not address an existing requirement of the SEC nor would it provide further capabilities in carrying out its mission."

52. On May 28, 2025, I emailed SEC Chair Paul S. Atkins and Commissioner Hester M. Peirce, attaching the Blueprint I had first provided to the Commission on September 26, 2022. I sent the message after Chair Atkins publicly declared that, under his leadership, the SEC would embrace innovation and new technologies, and I believed the Blueprint directly supported that

objective. In the same email, I expressed disappointment that my unsolicited FAR proposal had been rejected and reiterated my readiness to perform the proposed services for a token fee of $1.00. I also noted that I would be attending an event at SEC Headquarters on June 5, 2025, and invited Chair Atkins and Commissioner Peirce to meet with me while I was onsite. Neither Chair Atkins nor Commissioner Peirce responded to my email, and I did not meet with either of them during my entire day spent at SEC Headquarters.

53. I filed a FOIA request to learn who decided to reject a proposal that would have protected 160 million Americans from ongoing harm. The SEC initially denied my FOIA request; I appealed and won. Despite that ruling, the SEC has produced no documents explaining who rejected the proposals or why.

54. From June 2020 to the present, I estimate that I have transmitted more than one hundred follow-up emails to the Commission, providing additional data sets, loss-calculation models, proprietary analyses, and reports of industry resistance and questionable conduct I encountered during my outreach — all developed and compiled at my own expense. I estimate that I have met with approximately fifty SEC staff members during this period. On multiple occasions, I have offered to travel to Washington, D.C., at my own cost, to brief the Divisions of Investment Management, Trading and Markets, and Enforcement. I remain ready, willing, and able to assist the Commission in any capacity it deems helpful.

B. Former SEC Chairman Jay Clayton

55. Jay Clayton served as Chairman of the Securities and Exchange Commission from 2017 to 2020. Before his service as Chairman, Mr. Clayton was a partner at Sullivan & Cromwell LLP, a firm that represents major financial institutions, including potential subjects of the violations described in the Petition. After his service as Chairman, Mr. Clayton returned to Sullivan & Cromwell in a senior advisory capacity. Mr. Clayton subsequently left Sullivan & Cromwell and, in April 2025, became the Interim United States Attorney for the Southern District of New York — the federal district with jurisdiction over Wall Street.

56. In approximately early May 2024, while Mr. Clayton was at Sullivan & Cromwell, I contacted him by email at his firm address to describe the "buying a dividend" problem, the scope of ongoing investor harm, the availability of a technological remedy, and the industry's ongoing resistance. I requested a meeting with him and stated that I was approaching him in good faith.

Mr. Clayton responded, indicated that he had reviewed my FTC testimony, and posed questions regarding the tax treatment of the distributions at issue. I answered those questions in a detailed follow-up email on May 6, 2024, attaching supporting documentation. To the best of my knowledge, Mr. Clayton took no action in response to my communications and did not follow up further.

57. In November 2024, during the transition between administrations, I notified the Department of Justice that the incoming United States Attorney for the Southern District of New York had been personally informed of the "buying a dividend" matter while a partner at Sullivan & Cromwell. I provided this notification to ensure that Mr. Clayton's prior awareness of the matter was documented in the Department's records and would not be lost during the change in leadership.

58. On May 1, 2025, I sent an email directly to Mr. Clayton in his capacity as United States Attorney for the Southern District of New York, with copies to US Attorney General Pamela Bondi and other senior DOJ officials. I attached a sworn affidavit disclosing the fraud described in this Declaration and the Petition, identified myself as an SEC whistleblower, and requested that his office take enforcement action. To the best of my knowledge, Mr. Clayton has taken no action in response. I state the facts of my communications with Mr. Clayton under oath as matters within my personal knowledge.

C. Congress

59. I sent letters to more than 100 members of Congress, including those serving on the House and Senate Financial Services committees. During that same period, I made numerous attempts to engage my own Members of Congress, several U.S. Senators, including my own Senator, and the Governor of my state. I discussed this matter with a high-ranking Senator's staff, who told me that the issue was sent to his "policy team." I attempted to explain that this was not a policy matter but a legal matter involving ongoing potential fraud; however, my attempts to get the Senator's office to act were unsuccessful.

60. I have submitted formal whistleblower packages—containing investor-loss data and supporting information—to the Congressional Financial Services Committees, transmitting materials to majority and minority staff on multiple occasions. To date, I have received no substantive or constructive response from any of these offices. The one response I received

from a Senator's office suggested that no one had even read the affidavit I sent, as their response had nothing to do with the matter in the affidavit.

D. The White House

61. On June 19, 2022, I emailed Ronald Klain, then Chief of Staff to President Biden, providing information about the ongoing investor harm and outlining a plan for resolution. On June 21, 2022, I received a response from Nina Srivastava, an advisor to Mr. Klain, indicating that my email had been routed to the appropriate staff. I had several communications with Ms. Srivastava over the following months, but was unable to schedule a meeting with anyone in the Executive Office of the President.
62. In December 2024, after the presidential election and before the new Trump administration took office, I prepared an affidavit—substantively identical to this Declaration—to ensure that my findings would not be lost in the transition. I sent it by FedEx to President-elect Trump at his Florida residence, to Vice President-elect J.D. Vance at his home, and to Representative Matt Gaetz, who was then publicly identified as a prospective Attorney General. I also transmitted copies to trusted members of President-elect Trump's family. After President Trump was sworn in, I delivered affidavits to the White House, addressed to Susie Wiles, the President's Chief of Staff, and Stephen Miller, White House Deputy Chief of Staff. To date, no one from the Executive Branch has contacted me regarding these submissions. I remain ready, willing, and able to brief the President or his designee on the ongoing harm to American taxpayers and the available remedies.

E. Internal Revenue Service

63. On March 15, 2023, I submitted a Form 211 whistleblower claim to the IRS Whistleblower Office describing systemic misreporting of dividends across the investment fund industry.
64. On July 31, 2023, my business partner and I submitted a formal request through the IRS Systemic Advocacy Management System (SAMS), documenting how fund reporting practices were causing billions of dollars in phantom income to be taxed each year. The SAMS program exists to address precisely such systemic issues. Our request was denied—not on the grounds

that the facts were lacking or the law inapplicable, but with the instruction to "go to Congress" instead.

65. On March 12, 2025, I submitted a supplementary whistleblower tip relating to the same violations described in my March 15, 2023 tip, expressly intended to supplement that claim as part of the same matter for purposes of the administrative record.

66. On July 30, 2025, I attended the National Whistleblower Day event held in a United States Senate office building in Washington, D.C. While there, I met Gary Shapley, now Deputy Chief of IRS Criminal Investigation, and Joseph Ziegler, both senior officials of the Internal Revenue Service. I briefly explained that investors were receiving inaccurate Forms 1099-DIV and that industry participants had declined to provide corrected forms. Each official provided a business card and invited me to follow up. In the months that followed, I prepared and transmitted to Mr. Shapley and Mr. Ziegler approximately 200 pages of materials in sworn-declaration format. After reviewing those materials, they arranged for IRS Criminal Investigators to contact me and schedule an in-person meeting.

67. On October 6, 2025, I met in person with three IRS Criminal Investigators (CI) at their office. The meeting lasted more than two hours. The investigators had received and reviewed my submissions in advance and were prepared to discuss them in detail. During the meeting, the existence of investor over-taxation arising from inflated Forms 1099-DIV was not disputed. We discussed potential corrective measures to eliminate the over-taxation and align reporting with applicable law. Following the meeting, the investigators requested examples of affected taxpayers, notwithstanding their acknowledgment that the conduct at issue is systemic. They stated that providing such taxpayer data could increase the likelihood that the Whistleblower Office would act on my tip. I supplied the requested information the next day. Since that time, the officials have remained responsive, and I am grateful for their continued engagement. I also submitted meeting notes and a memorandum to the IRS Whistleblower Office so that the meeting and its substance would be included in the administrative record for my whistleblower claim.

F. Treasury Department

68. From March 2022 through September 2023, I emailed detailed warnings about investor over-taxation to eight senior Treasury officials: Secretary Janet L. Yellen; Deputy Secretary Wally

Adeyemo; Chief of Staff Didem Nisanci; Counselor Aditi Hardikar; Senior Advisor Julie Siegel; Assistant Secretary for Tax Policy Lily Batchelder; Assistant Secretary for Economic Policy Ben Harris; and General Counsel Neil MacBride (titles as held during that period). As of the date of this Declaration, I have received no response from the Department.

G. Department of Justice and Federal Bureau of Investigation

69. On May 20, 2024, I contacted Acting Assistant Attorney General Nicole Argentieri, head of the DOJ Criminal Division. Within days, at her direction, an FBI agent contacted me and requested documentation, which I provided on May 29, 2024. That was the first and last substantive step the Department took.
70. In June 2024, I raised with DOJ officials not only the substance of the violations but also my personal safety concerns — concerns that had been repeatedly expressed to me by former regulators, attorneys, and others aware of the magnitude of liability at stake. I raised these concerns directly with Acting Assistant Attorney General Nicole Argentieri. At her direction, Margaret (Molly) Moeser, then-Chief of the DOJ's Money Laundering and Asset Recovery Section, contacted me and assured me that the Department would follow up. No follow-up came.
71. For nearly three years, I have lived largely abroad, moving from place to place, while repeatedly requesting a brief conversation with a security specialist from any federal agency. Not one agency—the DOJ, FBI, SEC, or Marshals Service—was willing to grant me twenty minutes to confirm whether my safety concerns were justified or to assist me in any way.
72. In December 2024, I sent an affidavit to Kash Patel, incoming Director of the FBI. The FedEx was sent to Mr. Patel's charity address.
73. On April 16, 2025, I sent an affidavit substantially identical to this Declaration to Attorney General Pamela Bondi, with copies to senior DOJ officials. I received no response.

H. Federal Trade Commission

74. My testimony before the FTC on April 24, 2024, is described in paragraph 23 above.

I. State Regulators and Attorneys General

75. I emailed more than thirty state securities regulators and more than thirty state attorneys general. On September 13, 2023, I contacted Joseph Brady at NASAA. I received limited responses; some regulators deferred to the SEC. One Attorney General's office requested additional information; I complied with their document requests and provided extensive materials. To my knowledge, no substantive action has been taken at the state level to address the ongoing harm to investors. These facts are also described in paragraph 24 above.

VI. PROFESSIONAL ESTIMATES AND OPINIONS

76. As stated in paragraph 9 of this Declaration, all monetary amounts are my best professional estimates and all legal characterizations reflect my good-faith professional opinion. To provide additional foundation: the quantitative models underlying my estimates were developed over a period of years, draw upon publicly available data from SEC filings and industry publications, and have been presented to industry executives, SEC Commissioners and staff, and IRS Criminal Investigators—none of whom disputed the underlying mathematics or identified a flaw in the analysis. The estimates are presented in good faith for illustrative purposes and are subject to revision if newer or more complete data warrant.

VII. EVIDENCE PRESERVATION AND PRODUCTION

77. I have preserved correspondence, delivery records, meeting notes, calendar entries, contemporaneous memoranda, Mailchimp delivery logs, open and bounce data, screenshots, and other documents referenced in the Petition and this Declaration. As stated in paragraph 10, these records were made at or near the time of the events they record, were kept in the ordinary course of my regularly conducted business activity, and it was my regular practice to make and maintain such records. I will produce these records upon request by the Commission, any court of competent jurisdiction, or any congressional committee with oversight authority.

VIII. WHISTLEBLOWER PROTECTIONS AND RETALIATION NOTICE

78. As stated in paragraph 11, this Declaration supplements my prior submissions to the four federal agencies identified therein. I expressly reserve all rights and protections afforded to me under federal whistleblower laws and regulations.

79. This Declaration is submitted in good faith and without intent to defame or disparage any person or entity. It is made in my capacity as a multi-agency federal whistleblower protected by 26 U.S.C. § 7623(d) (IRS anti-retaliation), 15 U.S.C. § 78u-6(h)(1)(A) (SEC anti-retaliation), and 18 U.S.C. § 1513(e) (obstruction of justice / whistleblower retaliation). This Declaration, the Petition, and all public advocacy I undertake in connection with them constitute petitioning activity directed at government action, immunized under the First Amendment to the United States Constitution and the *Noerr-Pennington* doctrine. *Eastern Railroad Presidents Conference v. Noerr Motor Freight, Inc.*, 365 U.S. 127 (1961); *United Mine Workers of America v. Pennington*, 381 U.S. 657 (1965). Any attempt to intimidate, threaten, or retaliate against me for the disclosures herein, or subsequent disclosures, will be treated as a violation of those statutes and reported to the appropriate authorities.

80. As set forth in paragraphs 70 and 71 of this Declaration, I have raised personal safety concerns with federal officials, and those concerns remain unaddressed. Any retaliatory action against me in connection with this Declaration, the Petition, or my whistleblower submissions will be treated as presumptive evidence of consciousness of guilt and reported to the appropriate law enforcement authorities.

IX. EXECUTION

81. I declare under penalty of perjury that the foregoing is true and correct.

Executed on March 18, 2026.

/s/ Jeremy T. Roseberry

Jeremy T. Roseberry