

03.03.2022

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

Submitted via email to rule-comments@sec.gov

Re: File Nos. S7-03-22, S7-01-22

Dear Ms. Countryman,

Allow me to thank Chair Gensler for addressing what is a challenging problem with private equity funds and their odd relationship with pension fund staff, the depths of which remain largely unknown. Ever since the Securities and Exchange Commission stopped enforcing their own “Pay for Play” rules, the unregulated private equity industry arguably become the most politically powerful in Wall Street history.¹ This is having a negative impact on the regulatory structure, relatively defenseless middle- and working-class retirees as well as most ethical Wall Street elites.²

The first purpose of this comment letter is to outline the true political challenges Chair Gensler and the SEC will face when confronting a narrow minority involved in questionable behavior, particularly when journalism is at times muzzled. This comment letter points to brave reporting from legacy media and independent journalists on a tough to report topic, all which is documented and well-sourced. But most of all, this highlights the historic moment currently facing SEC Chair Gary Gensler.

My name is Mark Melin. As Chair Gensler may or may not be aware, during his tenure as CFTC Chair I delivered evidence in the MF Global investigation. The evidence didn’t directly target former Goldman Sachs President, New Jersey Governor and U.S. Senator Jon Corzine, but focused on a senior executive who had evidence but wasn’t initially questioned, it was documented in Congressional testimony.³ During the evidence delivery process, I was told numerous times that everyone must recognize that Wall Street is the backbone of the U.S. economy upon which every citizen benefits. What is generally unrecognized is that any SEC action against Wall Street needs to thread a needle so that it does not

¹ As late as 2014, Chicago political leaders in Chicago made a formal referral to the Securities and Exchange Commission inquiring about campaign contributions and enforcement of the agency’s “pay for play” rules: <https://www.bondbuyer.com/news/chicago-aldermen-want-sec-probe-of-mayors-campaign-contributions> They did not receive a response and I saw no major public announcement regarding the ending of this regulatory action. Obviously, Citizens United came into play, but that wasn’t until a later point. There was an enforcement window.

² “Most powerful” is based on several factors, including the number of frozen investigations and regulatory actions, as well as the ability to change transparency laws around fees and brazenly defy FBI subpoenas.

³ It’s documented in the public domain. A then Reuters and now NYT journalist who initially reported the “case is cold” inference did a good job of identifying the source of that comment. Oddly the “case cold” inference was uttered before the key witnesses had even been questioned. How does that happen?

“damage the economy.” To consider how to thread the impossible needle, I suggest the SEC look at the FBI’s Chicago-based market manipulation unit and how the DOJ prosecuted that case against individual J.P. Morgan executives.⁴

What are the options available to Chair Gensler? Could his experience at the highest perch in the regulated derivatives industry come into play by applying understandable principles to the unregulated world of private equity and pension funds? Could he make a historic stand against an industry lobby whose power is largely wielded behind the scenes, out of the headlines?

The hidden political power of the private equity industry takes irregularities to a new level. Already what is visible and documentable are multiple frozen investigations, open defiance of an FBI subpoena, ignored FBI warnings on Russian oligarchs using private equity to evade sanctions, and the ability to change laws to make what was illegal legal and vice versa. There was an important meaning when CNBC’s Andrew Ross Sorkin wondered “How is it that private equity is more powerful than any other industry in America?”⁵ Ignored FBI subpoenas and disregarded warnings about private equity protecting Russian oligarchs and defying sanctions are signs of a bigger downtrend involving frozen investigations and regulatory actions now hitting troubling depths.⁶

These are the very real stakes that Chair Gensler now faces. The skilled negotiator who engineered a breakthrough television deal for the NFL now finds himself in a negotiation where a message of real deterrence is needed but one where innocent players are not damaged.⁷

Gensler and the SEC have a big job ahead of them.

This document is organized as follows:

1.0 *Washington Post* Documents Open Defiance of FBI Subpoena

1.1 Overview of Frozen Investigations and Regulatory Enforcement Actions

2.0 Non-Transparent Investment Fees Are a Problem

2.1 Performance Reporting Needs to be Independent, Transparent, and Consistent

2.2 Returns Disparity, Investment Opportunity Allocation Issues

3.0 Pension Fund Targeting and Unequal Distribution of Benefits

4.0 What Happened to SEC Rule 206 (Pay for Play) that Forbid Private Equity Political Contributions?

⁴ J.P. Morgan’s stock price did not go down when criminal charges were announced against individual traders.

⁵ CNBC Squawk Box September 30, 2021

⁶ Daily Poster article: <https://www.dailyposter.com/bidens-ukraine-plans-face-wall-street-roadblock/>

⁷ Strategically punishing individuals who are involved in potential bribery / influence schemes can be done without damaging stock prices, is one lesson from history.

1.0 *Washington Post* Documents Open Defiance of FBI Subpoena

January 23 was a notable day. This is when the *Washington Post* published the first known instance of an elite pension fund executive openly defying an FBI subpoena.⁸ Never in the known notorious history of Wall Street criminality has an FBI subpoena been openly defied.

Here are the two key facts from the *Washington Post* reporting:

- An FBI subpoena requesting information on fees paid to private investment advisors goes unanswered. (Documented fact)
- In court documents, the pension fund's longtime General Counsel and Ethics Officer allege that she was instructed by the pension fund's top executive not to comply with the FBI subpoena. (Allegation, not fact.)

Now ask this question: What was so important to keep hidden that a top pension fund executive would risk obstruction of justice charges?

The senior pension fund executive is alleged to have been involved in a scheme to block the FBI from the investigation of investment fees paid to private equity and other lightly regulated hedge funds. This case comes amid documented instances of exotic travel to discrete Caribbean Islands where there are no limits. But be careful, comes the warning afterward. There may be a video, was a warning that came from a well-known Wall Street trader.⁹

Tie this in with other FBI investigations, particularly in Philadelphia with the potential for Chicago confronting a machine-like influence system. What type of material benefits might pension fund staff be receiving? If elite executives received any benefit, including exotic travel or worse, in exchange for asset allocation considerations, it is crossing a dangerous line.¹⁰

Playing legal games with regulators was a common elite sport ever since the bailout of Long Term Capital Management changed the unregulated derivatives landscape forever.¹¹ Connect this dot with the first time an FBI subpoena is being so openly defied by a financial elite and what you see is a clear historical downtrend with many benchmarks in-between. Normally those on Wall Street respect, not openly fight, this authority. Today a disrespect for the rule of law seems apparent.

Overview of Article Content:

This leads to a discussion of commonsense solutions. Can Chair Gensler and the SEC institute common reporting standards used by derivatives regulators to improve pension fund staff accountability? This section 2.0 concludes by considering privately authorized investigations surrounding the Chicago Police Department (CPD), as well as benchmark work in Ohio and Kentucky, all to illustrate how certain staff are consistently violating a fiduciary duty and preventing board members from conducting their legitimate oversight role. But before digging into any of this we briefly examine a dangerous trend of

⁸ I have never witnessed a "Wall Street elite" defy an FBI subpoena: <https://www.washingtonpost.com/dc-md-va/2022/01/23/dc-pension-fund-investigation/>

⁹ The subject of a report to the FBI.

¹⁰ Ibid above. Just wow.

¹¹ This was an unregulated derivatives joke. Also of note, legendary Wall Street trader Jon Corzine was assigned to manage the bailout. Odd how he just always pops up at strategic points in derivatives history...

frozen investigations and regulatory actions benefiting a narrow and consistently defined group. For instance, there is reason to believe that two SEC investigations and/or regulatory actions have been frozen surrounding pension fund irregularities.¹² In a separate letter, details regarding the exact basis upon which these suspicions are built is outlined along with a Freedom of Information Act (FOIA) request.¹³

In the section 3.0 we examine bias in pension fund administration of benefits, a situation similar to unlawful payment for order flow except it appears to target denials based on gender and race as well as mental health considerations. Then in section 4.0 we question what happened regarding Pay for Play rules immediately after a big win against Goldman Sachs took place?

1.1 Overview of Frozen Investigations and Regulatory Enforcement Actions

Looking at the world in the regulated derivatives industry from 2010 forward points to an interesting downtrend that was validated and worsened. At this time, investigations into elicited and unregulated Wall Street derivatives had already been frozen, as PBS Frontline investigation so bravely pointed out in 2009.¹⁴ Likewise, PBS Frontline did an excellent job of documenting that investigations into the 2008 financial crisis (which included unregulated derivatives) were assumed frozen in the Untouchables series.¹⁵ What happened after the frozen 2008 financial crisis investigations has yet to be publicly documented, but one can argue the trend of Wall Street criminality only worsened. In other words, frozen investigations enabled the worst kind of elite criminal behavior damaging the middle- and working-class while smearing the reputation of ethical elites. This topic still bitterly divides a nation.¹⁶

As Chair Gensler is aware, in March 2010 an accomplished and swashbuckling trader, Jon Corzine, took control of MF Global. The knee-jerk, emotional reactions were interesting: Wall Street bank insiders scoffed that the regulated derivatives industry was far beneath a former Goldman Sachs CEO. Certain Chicago derivatives insiders, however, celebrated his apparent transformation from unregulated to regulated, while other derivatives insiders were skeptical from the start.¹⁷ The optimistic question was: Has Corzine been redeemed after having seen how the unregulated side operates? Looking back, how naïve was that thought?

¹² The goal in this letter and resulting FOIA request is not to publicly identify individuals involved, but to highlight the raw political power and identify methods and practices involved in frozen investigations.

¹³ Just as a heads up, one of the potential manipulated investigations involve Jess Staley and another well-known sexual predator, an issue that has been reported to the FBI; the second investigation involves a pretty clear case of a regulatory enforcement action being frozen.

¹⁴ From my perspective, the PBS Frontline documentary “The Warning” was a historical benchmark in documentary television only eclipsed by the “Untouchables.” <https://www.pbs.org/video/frontline-the-warning/>

¹⁵ Must watch: <https://www.pbs.org/video/frontline-untouchables/> After PBS Frontline ran the Untouchable series, DOJ Criminal Chief Lanny Breuer stepped down. <https://www.pbs.org/wgbh/frontline/article/report-doj-criminal-chief-lanny-breuer-stepping-down/> It is interesting to note that Breuer might not have been the one to make the call on the documented freezing of the MF Global investigation.

¹⁶ The popularity of David Sirota’s “Meltdown” podcast shows interest in this topic remains high: <https://www.audible.com/pd/Meltdown-Podcast/B09J733SQR>

¹⁷ Corzine was celebrated on the cover of Futures Magazine and a WSJ reporter called me and I told him I was thrilled. Corzine had a bold vision: compete against Goldman Sachs! It can be argued this was a brilliant concept and Corzine actually came close to pulling it off. Those sovereign debt trades were months away from paying off.

Soon after, the truth was discovered. 2011 Corzine took MF Global into bankruptcy in the dark of night and transformed the firm into a guided missile aimed directly at the heart of the regulated derivatives industry, its sacred customer segregated account. Customer assets were unlawfully transferred out of what was described as “the most secure account type in the world.” Questions immediately swirled among professional investors: What impact would this breach have on regulated derivatives industry trust? Would big bank accounts become the only “safe” accounts for pension funds and institutional investors?¹⁸ Did unregulated derivatives threaten global security after 2010 to punctuate the problem?¹⁹

What happened next, however, was even more chilling.

As is documented in the public domain, MF Global investigations (plural) were frozen.²⁰ Soon after, a fight to defend all regulated industries was on, and from the start, those fighting on behalf of regulators had both hands tied behind their back. The fight between regulators and Wall Street is between David and Goliath. But today, in addressing the private equity problem, arguably a new battlefield for an old fight is defined, a punishing downtrend exposed. Is it time for the rule of law and regulatory treatment to be applied equally? Chair Gensler is now at the helm for a historic moment.²¹

####

2.0 FBI Subpoena Defiance Points to Non-Transparent Investment Fees Being a Problem

In section 2.0 we examine a vexing problem: Why is transparency into investment fees paid to private equity and certain hedge funds so important to remain secret?

What are the risk/reward calculations in Wall Street types defying an FBI subpoena? What advice did they receive, and did they think they are immune from the rule of law? What would happen if a black or brown kid living just east of the White House defied an FBI subpoena?

These are the questions that must be asked amid the FBI warning that private equity firms may be assisting Russian oligarchs in evading sanctions.²² Such actions are points in a longer trend that has current correlations. Numerous examples of non-transparent high-fee investments recommended by fiduciaries appear imprudent. For instance, a forensic investigation into the Chicago Police pension fund conducted by independent investment auditor Chris Tobe uncovered several investment oddities that raise more questions than answers.²³ Why does the CPD pension fund in desperate need of liquidity

¹⁸ I heard this several times during the MF Global fight.

¹⁹ https://www.cliffordchance.com/briefings/2015/05/the_greek_debt_crisisandderivatives.html

²⁰ The first was clearly documented in December 2011 Congressional testimony from a regulatory authority, the second was documented in spring of that year when an investigative authority inferred the case was “cold” before the primary suspects had been questioned, a fact uncovered by a Florida Congressman during video questioning.

²¹ Think back to the individual who “gave the call” to tell Gary, as he described it the “Welcome to the club” phone call. You are CFTC Chair. That person also noted that “Gary’s history is yet to be written.” That point leads to today.

²² Daily Poster with the big scoop: <https://www.dailyposter.com/bidens-ukraine-plans-face-wall-street-roadblock/>

²³ His report, paid for by an organized group of disabled CPD officers, is titled “Twisted Priorities.” <http://www.christobe.com/reports/twisted-priorities/>

invest in low liquidity real estate?²⁴ At present, how are investment managers valuing downtown Chicago “Loop” real estate they own? Tobe has also indicated that the real estate deals in question may have beneficial relationships with people associated with the investment process along with further suspicions regarding SWAP derivative transactions.²⁵ Tobe’s issues cannot be confirmed because the pension fund is fighting a FOIA seeking fee transparency and access to contractual details. Separately, disabled CPD officers allege gender and political discrimination amid bias in benefits denials.²⁶

Tobe, an expert at complex pension fund investments, should know about pension fund staff obstructing oversight. As a Kentucky state pension fund board member, he recalls working with pension fund staff to understand investments was a frustrating experience because they obfuscated or outright obstructed trustees to understand their investment decisions.²⁷ He and numerous ethical pension fund board members point to a process that pushes them out and enables passive and easily influenced board members to fill critical oversight roles.²⁸

As a final note on fees, the *Financial Times* recently pointed to an SEC document that claimed private equity “provides inaccurate or misleading information about their performance and overcharge(s) fees.”²⁹ Based on numerous independent audits, including the probing work of former SEC lawyer Ted Siedle and Ohio journalist John Damschroder, the fee issue appears to be negatively impacting retirees nationwide while enriching a narrow group of politically powerful investment managers.³⁰

Overlaying a Regulated Derivatives Methodology to Policy: All public pension fund investment fees should be fully transparent to investors and beneficiaries in a fashion like a CFTC regulated segregated account. Contractual details that define the investment product and determine how fees are calculated and expenses determined, along with all contractual details with full disclosure statements, should be available to investors and beneficiaries. Penalties for non-compliance should be meaningful and ideally target non-compliant individuals rather than firm fines that punish the innocent.

²⁴ It will be interesting to see how the downtown Chicago real estate investments are valued, as reporting from Crain’s Chicago Business and public data shows them losing value. Here is an article on the condominium market: <https://www.chicagobusiness.com/residential-real-estate/loop-condo-market-worst-mid-2000s-crash>

²⁵ It should be noted that Gensler is also asking for hedge funds to disclose material changes to their financial position, including counterparty default: https://www.wsj.com/articles/sec-to-propose-new-disclosure-mandates-for-private-equity-hedge-funds-11643209201?mod=hp_lead_pos5

²⁶ Densley Cole, a disabled CPD hero, has a Chicago political machine story to tell. The CPD officers have agreed to go on the record in video interviews to come.

²⁷ Read the book *Kentucky Fried Pensions* for Tobe’s full background. <https://www.amazon.com/Kentucky-Fried-Pensions-Cover-up-Corruption/dp/1483964752>

²⁸ This Philadelphia Inquirer article asks, who is in charge, the pension fund staff or board? <https://www.inquirer.com/business/psers-pension-fund-fbi-executives-board-managers-sec-20220227.html>

²⁹ <https://www.ft.com/content/ec661f96-4c71-4361-a823-00bb69ba0fc0>

³⁰ <https://www.msn.com/en-us/money/savingandinvesting/john-damschroder-new-pension-study-confirms-our-reporting/ar-AAKPsZp> and <https://www.forbes.com/sites/edwardsiedle/2021/06/29/forensic-investigation-of-ohio-teachers-pension-reveals-widespread-failures-and-mismanagement/?sh=52a10edbeb67>

2.1 Performance Reporting Needs to be Independent, Transparent, and Consistent

In section 2.1 we examine performance reporting issues, highlighting work from the *Philadelphia Inquirer* and the dedicated pursuit of a hard story to report. The continual coverage of pension fund irregularities led to the nation's first major investigation into odd fiduciary decisions, an ongoing effort.³¹

Media coverage of elite criminality can be challenging on several levels, including the threat of a lawsuit, reputational harm if any charges are incorrect or unsupported, as well as potential corporate advertiser backlash. The *Philadelphia Inquirer* and columnist Joseph Distefano, however, recognized the importance of potential mismanagement at the Public School Employees Retirement System (PSERS). Distefano and a team of journalists uncovered issues that led to FBI and SEC investigations, the quick resignation of top pension fund executives, and bans on exotic travel.³² In the FBI investigation, if certain material benefits received by pension fund staff are uncovered that are tied to imprudent allocation decisions, this journalistic work could lead to stopping a damaging societal trend.

A few key issues point to the need for SEC reform and oversight:

- The PSTERS pension fund has made illogical or seemingly imprudent investments in high-fee exotic investments, most of which have underperformed a passive stock index fund. The highly paid pension fund staff is underperforming lower-budget pension fund peers who invest mostly in low-fee index funds.³³
- Pension fund staff invested in questionable real estate ventures that may have benefited related parties to pension fund staff.³⁴ This has potential to be a systemic issue.³⁵
- Top pension fund staff purchased in luxury travel at pension fund/taxpayer expense.³⁶
- The SEC investigation and the timing of material compensation and gifts might roughly correlate on a timeline with seemingly illogical, high-fee, illiquid, often poor-performing and opaque investment decisions.³⁷ In court, however, it is important to note correlation is not causation.
- PESERS performance reporting irregularities reportedly triggered an FBI investigation.³⁸

³¹ It will be interesting to see how deep the FBI investigation goes. Arguably there could be serious criminal charges, particularly as they relate to material benefits provided to those compliant with a "system," as one Wall Street source described it in a well-documented conversation.

³² Joseph Distefano has been driving coverage: https://www.inquirer.com/author/distefano_joseph_n/

³³ How is it possible that the largest and highest paid pension fund staff are underperforming local county pension funds? <https://www.inquirer.com/business/butler-psers-pension-investments-20220110.html> Could it be the level of complexity deployed is unnecessary?

³⁴ Article on questionable Real Estate: <https://www.inquirer.com/business/psers-real-estate-lawyers-fbi-justice-department-grossman-financial-disclosure-20211011.html>

³⁵ Considerable real estate issues have been identified in Chicago through Chris Tobe's work:

³⁶ <https://www.inquirer.com/business/psers-pension-teachers-travel-expenses-sers-public-school-trips-cost-20210403.html>

³⁷ <https://www.inquirer.com/news/pennsylvania/spl/pa-psers-teacher-pension-fund-sec-federal-investigation-20210929.html> the basis for the "high-fee, illiquid and opaque" description comes from this recap, near the end of the article: <https://www.inquirer.com/business/psers-sers-pension-fbi-scandal-investigation-teachers-20210411.html>

³⁸ <https://www.inquirer.com/business/psers-real-estate-lawyers-fbi-justice-department-grossman-financial-disclosure-20211011.html>

- Separately, a New York Times column by Michelle Celarier pointed out that the estimated yearly performance estimate submitted by private equity fund managers can be materially different from the actual, 10-year performance the pension funds received at end of the contract term.³⁹

Overlaying a Regulated Derivatives Methodology to Policy: Fund managers should not be allowed to estimate their own performance and then have these often overly optimistic projections be the basis of pension fund staff performance bonuses. Much like performance reporting in a regulated CTA/managed futures account uses relatively consistent performance calculation methodologies, private equity regulations should be driven with the general goal to uphold this core derivatives regulation principle.⁴⁰ Given the well-documented irregularities, the performance expectations, and logic behind why an investment was selected and how the risk/reward variables were defined should also be available, at minimum, to the pension fund board and potentially all pension fund beneficiaries. When a bank SWAPs transaction is made, the fiduciary making that decision should define how the “risk of unlimited loss” fits in with counterparty risk in their decision modeling.

2.2 Returns Disparity, Investment Opportunity Allocation

There seems to be a significant performance gap between public pension funds serving middle-class teachers, firefighters, and police, and the superior performance of private pensions and endowments, particularly those serving the Ivy League.⁴¹ What explains this performance disparity? Do the private pension funds invest in the same high-fee, opaque investments (and bank derivatives) as public pensions? Or are the public pension funds not getting the best private equity deals?⁴²

The book “The Myth of Private Equity” by John Hopkins University Professor Jeffery Hooke points out that private equity managers can arbitrarily give themselves or their designees the best-performing investments.⁴³ Hooke also notes that, while private equity had, at one point, a small number of managers chasing numerous profitable deals, those ratios have flipped. With the flood of new private equity funds all scouring a pool of fewer uncontested investment opportunities, returns expectations from years past should be adjusted. The old regulatory mantra “past performance is not indicative of future results” really applies in this circumstance. Do well-educated pension fund staff recognize this?

Overlaying a Regulated Derivatives Methodology to Policy: In regulated derivatives, a brokerage firm is not allowed to separate the best trades and give them to personally beneficial designees. In an NFA regulated CTA structure, for instance, trades (investment opportunities) are assigned to individual accounts following a documented and consistent mathematical formula that randomizes results. This ensures discretion is not used in assigning the best investments. The managers of a private equity firm not abiding by well-known common-sense regulations should be individually punished.

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³⁹ This is a well-balanced article: <https://www.nytimes.com/2021/12/04/business/is-private-equity-overrated.html>

⁴⁰ Obviously private equity can be much more esoteric, but a common framework can be developed and used as a rough template, even in negotiated contracts.

⁴¹ <https://www.forbes.com/sites/michaelnietzel/2021/10/15/elite-university-endowments-soar-to-record-highs/>

⁴² Just based on cumulative performance history this case can be argued. Ivy League pension funds, for instance, have higher private equity performance than those examined in the Chicago Police pension fund examples, with other examples found in Ohio investigations.

⁴³ In regulated derivatives such self-dealing is a significant rule violation.

3.0 Pension Fund Targeting and Unequal Distribution of Benefits

Over the course of my independent investigation into allegations made by disabled CPD officers that were included in a report to the FBI, several consistencies stood out. Disabled CPD officers uniformly cited a lack of public documentation regarding benefit management / medical processes and inconsistent rulings that often-disadvantaged minorities including women and those with mental health issues.⁴⁴ In the case of disabled officer Densey Cole, who was told by political leaders that they “had his back,” there appears to be the need for an investigation of the potential skimming and denial of benefits, a Chicago political machine remnant tactic.⁴⁵ If allegations regarding Cole are proven accurate, similar charges made by other disabled officers might have merit.

Overlaying a Regulated Derivatives Methodology to Policy: In a similar fashion to rules guiding “lit” derivatives exchanges, all pension fund rules regarding benefits processing, allocation, and administration rules should be publicly available. Further, documentation regarding benefits determination logic and weighing of arguments should be made available to the beneficiaries impacted by such decisions. Likewise, ongoing public tracking of benefits decisions should be conducted with benefits decisions cross-referenced, in part, based on racial, gender, and health issue type.

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4.0 What Happened to the SEC “Pay to Play” Rule that Forbid Private Equity Political Contributions?

To what extent has political defiance of regulators and the rule of law been perverted? Consider that a one tactic of certain private equity firms is not just reducing the quality of services provided in health care, as President Biden noted in the State of the Union address, but segments of the industry appear to be best at offshoring jobs, breaking up labor unions and disrupting society’s core functions, such as journalism. Private equity fund Alden Global Capital’s migration into acquiring control of reporting, including in leading publications across the nation, led to drastic reductions in the newsroom staff and a lack of reporting on local private equity abuses. Before being purchased by Alden Global, the *Chicago Tribune*, for instance, was actively seeking information on fees paid by the Chicago Teachers pension fund.⁴⁶ The status of that effort remains but what is clear is that serious problems plague all public Chicago pension funds. As CBS 60 Minutes recently noted, when local journalism coverage of government abuse is reduced or eliminated, a spike in misconduct has been observed.⁴⁷

Evident in Hooke’s book and listening to pension fund whistleblowers and on the record statements from former pension board members: the influence of private equity managers is oversized and dangerous.

⁴⁴ There were also allegations along racial lines.

⁴⁵ The Densey Cole story has yet to be told in its entirety. Here is one of the low-points: <https://wgntv.com/news/injured-officer-faces-eviction-says-city-is-turning-its-back-on-him/>

⁴⁶ Publicly unclassified FOIA documentation.

⁴⁷ I pitched the Chicago Tribune on an article idea pointing to pension fund fraud and did not hear back. Here is the 60 Minutes report: <https://www.cbsnews.com/news/local-news-financial-firms-60-minutes-video-2022-02-27/>

To understand the recent trend history, consider in 2010, for example, a much-heralded regulation made it illegal for investment managers to make political contributions and contrast it with the start of the pension fund fee issue and the associated regulatory and criminal investigations.⁴⁸

In 2013 *New York Times* columnist Gretchen Morgenson and Rolling Stone's Matt Taibbi both reported on lobbying and political influence poisoning public pension funds were at issue. In 2014 independent journalist David Sirota conducted deeper research and uncovered that investment managers working with pension funds made significant political donations and received over-sized fee compensation. To this point in history, there had been no apparent recall or adjustment to the pay for play rules making this illegal.⁴⁹ This apparent illegal lobbying correlates with efforts to change laws to make what was illegal legal, such as laws on fee transparency that are now used to cover up irregularities or worse.⁵⁰

What happened to the pay to play regulation (Rule 206(4)-5) that restricted political contributions from pension fund investment advisors and managers?⁵¹ In 2012 the SEC made a major splash by charging a senior Goldman Sachs investment manager over "pay for play" violations.⁵² After this, other reported examples were ignored, including a referral from multiple political leaders in Chicago as well as public journalistic reporting?⁵³

Overlaying a Regulated Derivatives Methodology to Policy: In regulated derivatives, there are rules limiting or restricting payments to unregistered beneficial relationships. The SEC should categorize payments made by fund managers to political leaders that can influence asset management outcomes as some sort of payment for order flow-like designation or illegal rebate payment, which could revive the spirit of the "pay to play" prohibition Rule 206(4)-5 of the Investment Advisors Act of 1940.

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⁴⁸ Rule 206(4)-5 and amendments to Rules 204-2 and 206(4)-3 (the "Rule") under the U.S. Investment Advisers Act of 1940 (the "Advisers Act"). This "pay for play" rule was a powerful and important measure that restricted payments to related beneficiaries: <https://www.sec.gov/rules/final/2010/ia-3043.pdf>

⁴⁹ Pay for play charges against senior pension fund staff are not uncommon: <https://www.sec.gov/news/pressrelease/2016-272.html> Real deterrence is needed.

⁵⁰ New York Times reporter Gretchen Morgenson covered the topic in 2013: <https://www.nytimes.com/2013/12/08/business/playing-pension-games.html> The Oregonian published Sirota a piece on the larger topic available to the public:

https://www.oregonlive.com/opinion/2014/09/a_pension_jackpot_for_wall_str.html There are numerous other articles, including this: <https://www.ibtimes.com/illinois-governor-elect-bruce-rauner-received-cash-firms-managing-state-pension-money-1722669> Matt Taibbi in 2013: <https://www.rollingstone.com/politics/politics-news/looting-the-pension-funds-172774/>

⁵¹ Citizens United ultimately came into play, but it is my understanding that there was a window when the interpretation had not applied to SEC rule 206. This shows the historic benchmarks: <https://theintercept.com/2018/10/20/public-pensions-crisis-wall-street-fees/>

⁵² This was really amazing. Seldom do Wall Street elites at this level get challenged: <https://www.sec.gov/news/press-release/2012-2012-199htm>

⁵³This is a big topic. Obviously Citizens United eventually changed the nature of this law. But there was a period of time when the regulatory rule had been enforced and yet there was no public statement as to it being repealed. There is a long trail of journalistic inquiry, particularly from the *Chicago Tribune*, who was asking key questions. This will be detailed in a future article on the freezing of investigations and regulatory enforcement actions.

Conclusion

Again, thank you to Chair Gensler and the SEC for addressing a vexing problem, one where the real risks of political ostracism and career derailment are a deterrent to people speaking out. This is a very challenging time and it might be difficult for some to recognize the tough position you find yourself. You have a deep respect and understanding of how Wall Street works, and you recognize how important this institution can be when it operates inside regulatory guidelines. This realization might have occurred over time, and I see a fascinating arch to your story. Write your own history now.

Best of luck to Chair Gensler and the SEC at threading a very difficult needle to thread.

Kind Regards,

Mark H. Melin