



United States House of Representatives
One Hundred Eighteenth Congress
Committee on Financial Services
2129 Rayburn House Office Building
Washington, DC 20515

September 26, 2023

The Honorable Gary Gensler
U.S. Securities and Exchange Commission
100 F Street NE
Washington, D.C. 20549

Chair Gensler:

We write to express our concerns regarding the recent rulemaking process of the Securities and Exchange Commission (the “Commission”). We are troubled by the Commission’s reluctance to consider stakeholder feedback and its failure to conduct thorough economic analysis. Moreover, we are concerned that the Commission has considered rules related to one another in a siloed fashion and deliberately failed to assess their cumulative impact on investors and the U.S. capital markets. As such, the Commission should stop finalizing or implementing any rule until it has comprehensively evaluated the real and cumulative impact of its rulemaking, including the impact on competition.

The substantial volume and scope of recent Commission rulemakings, along with the shortened and compounding timelines, undermines the SEC’s congressional mandate to protect investors, maintain fair, orderly, and efficient markets, and facilitate capital formation. As highlighted in the October 2022 *Inspector General’s Statement on the SEC’s Management and Performance Challenges*, Commission staff are increasingly concerned about the “aggressive agenda” and shortened comment periods. These limitations have resulted in reduced feedback during rulemaking and insufficient time for staff research and analysis, including cost-benefit analysis. In fact, a review of the SEC’s comment files underscores these concerns. The comments reveal:

- Inadequate comprehensive cost-benefit analysis when considering proposals, especially related proposals, in the aggregate.
- Staggering aggregate costs and unprecedented operational challenges will result from adopting certain rules as proposed, especially for smaller and emerging firms.
- An overwhelmed public that has not been granted sufficient time to evaluate proposals and provide meaningful input due to the number and interconnectedness of the Commission’s prolific, compounding, and fast-passed agenda.

The Department of Justice has raised similar concerns regarding the Commission’s failure to account for the aggregate impact of rulemaking. Specifically, the Department of Justice submitted a comment letter emphasizing the need to assess the potential interactions of substantial, often

interlocking proposals.¹ While not all the Commission's proposals are interconnected, many revolve around three critical areas:

1. Private funds;
2. Equity market structure; and
3. Corporate governance.

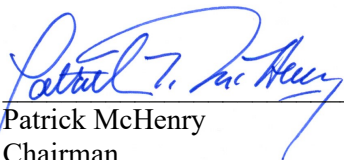
The relatedness of the proposals in each of these areas demands that the Commission carefully evaluate: (1) The cumulative effect of these rules, and (2) The merits of a plan to stagger compliance with final rules to prevent undue burdens. If the Commission fails to evaluate aggregate impacts of related rules and subsequently plan staggered compliance, it will risk stultifying U.S. capital markets, and, ultimately, U.S. competition. There is precedence for soliciting feedback on sequencing plans. In 2012, the Commission solicited comments on compliance with the security-based swap provisions of Title VII of the *Dodd-Frank Wall Street and Consumer Protection Act of 2010*.²

To that end, no rule should be finalized or implemented until the Commission takes the following actions:

1. Conduct a comprehensive cost-benefit analysis of the aggregate impact of rules in the aforementioned categories and seek public comment on this analysis.
2. Propose a reasonable, workable, and staggered schedule for public comment on the adoption and implementation of the proposals, considering their overlapping nature, significant compliance and operational burdens, and if they may be insurmountable for smaller or emerging firms.

Addressing these concerns promptly is essential to ensure a fair, transparent, and ultimately beneficial rulemaking process for investors, market participants, and the broader U.S. capital markets. We appreciate your attention to these critical matters.

Sincerely,


Patrick McHenry
Chairman

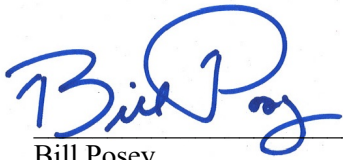

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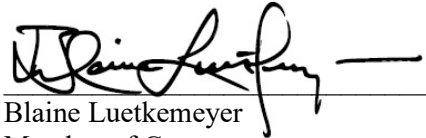

Pete Sessions
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¹ See Comment of the Antitrust Division of the United States Department of Justice (Apr. 11, 2023), available at <https://www.sec.gov/comments/s7-29-22/s72922-20164065-334011.pdf>.

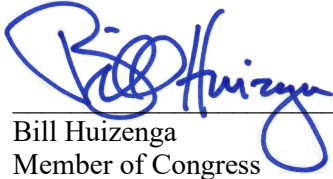
² See Statement of General Policy on the Sequencing of the Compliance Dates for Final Rules Applicable to the Security-Based Swaps Adopted Pursuant to the Securities Exchange Act of 1934 and the Dodd-Frank Wall Street Reform and Consumer Protection Act (Jun. 12, 2012), available at <https://www.govinfo.gov/content/pkg/FR-2012-06-14/pdf/2012-14576.pdf>. See also Implementing the Dodd-Frank Wall Street Reform and Consumer Protection Act, available at <https://www.sec.gov/securities-topics/dodd-frank-act>.



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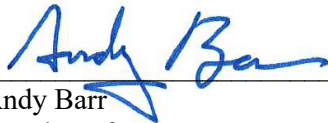
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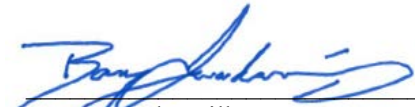
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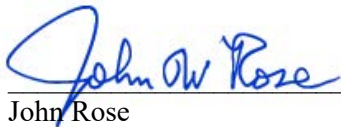
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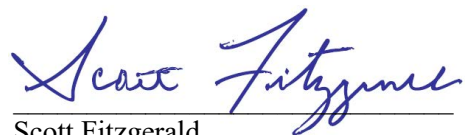
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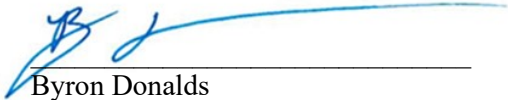
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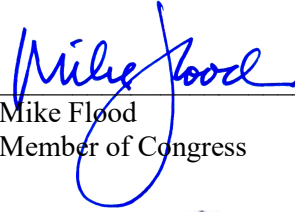
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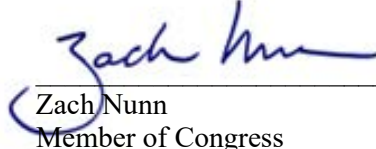
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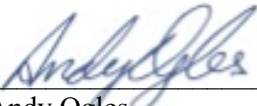
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