

United States Senate

June 25, 2020

The Honorable Jay Clayton
Chairman
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

Dear Chairman Clayton,

On December 10, 2019 you testified at the Committee on Banking, Housing, and Urban Affairs oversight hearing on the Securities and Exchange Commission. During that hearing I asked you about fraudulent comment letters that were submitted on the SEC's proposed rule on Procedural Requirements and Resubmission Thresholds under Exchange Act Rule 14a-8¹ – an issue also raised by some of my colleagues on the Committee.

In my questions to you, I noted that several of the letters you had cited in your public statement² about the proposed rule as coming from “Main Street” investors, and used to justify these new proxy regulations, had in fact been orchestrated by a dark money group known as “60 Plus.” I also pointed out that many of the signatories had not actually written the letters, and that several were related to 60 Plus personnel.

During the hearing, you did not specifically acknowledge that the letters, first reported by Bloomberg News³, were in fact fraudulent. You stated that there was an investigation underway, that both the SEC's General Counsel and Inspector General had been notified following the Bloomberg reports, and that you would wait to see what happened with the investigations.

Today, with more than six months having passed since that hearing, I ask that you report on the status of these investigations. Please provide my office with any and all reports or findings of the General Counsel and the Inspector General, and whether there have been any referrals for criminal prosecution for the false representations made. If the investigations have not yet concluded, please provide my office with an estimated timetable for their completion.

¹ Procedural Requirements and Resubmission Thresholds under Exchange Act Rule 14a-8, 84 FR 66458 (proposed December 4, 2019) (to be codified at 17 CFR Part 240)

<https://www.sec.gov/rules/proposed/2019/34-87458.pdf>

² U.S. Securities and Exchange Commission Chairman Jay Clayton. (2019, November 5). Statement at Open Meeting on Proposals to Enhance the Accuracy, Transparency and Effectiveness of Our Proxy Voting System [Public statement]. Retrieved June 22, 2020, from <https://www.sec.gov/news/public-statement/statement-clayton-2019-11-05-open-meeting>

³ Mider, Z. and Elgin, B. (2019, November 19). SEC Chairman Cites Fishy Letters in Support of Policy Change. Bloomberg. <https://www.bloomberg.com/news/articles/2019-11-19/sec-chairman-cites-fishy-letters-in-support-of-policy-change>

I would also like to know how the SEC intends to account for the fact that the changes it is seeking in the regulation of proxy advisors do not appear to be based on concerns of “Main Street” investors, as the revelations around the public comments clearly show, but instead emanate from corporate heads and boards that oppose investor oversight or review of their actions and proposals. Until the investigation of this orchestrated campaign of fraudulent comment letters is resolved, I urge that the SEC refrain from finalizing the SEC’s proposed rule on Procedural Requirements and Resubmission Thresholds under Exchange Act Rule 14a-8.

Sincerely,



Chris Van Hollen
United States Senator

Cc: Members of the SEC
SEC Inspector General

STATE OFFICES

ROCKVILLE OFFICE
111 ROCKVILLE PIKE
SUITE 960
ROCKVILLE, MD 20850
PHONE (301) 545-1500
FAX (301) 545-1512

ANNAPOLIS OFFICE
60 WEST STREET
SUITE 107
ANNAPOLIS, MD 21401
PHONE (410) 263-1325

CAMBRIDGE OFFICE
204 CEDAR STREET
SUITE 200C
CAMBRIDGE, MD 21613

BALTIMORE OFFICE
1900 NORTH HOWARD STREET
SUITE 100
BALTIMORE, MD 21218
PHONE (667) 212-4610
FAX (667) 212-4618

HAGERSTOWN OFFICE
32 WEST WASHINGTON STREET
SUITE 203
HAGERSTOWN, MD 21750
PHONE (301) 797-2826

LARGO OFFICE
1101 MERCANTILE LANE
SUITE 210
LARGO, MD 20774
PHONE (301) 322-6560