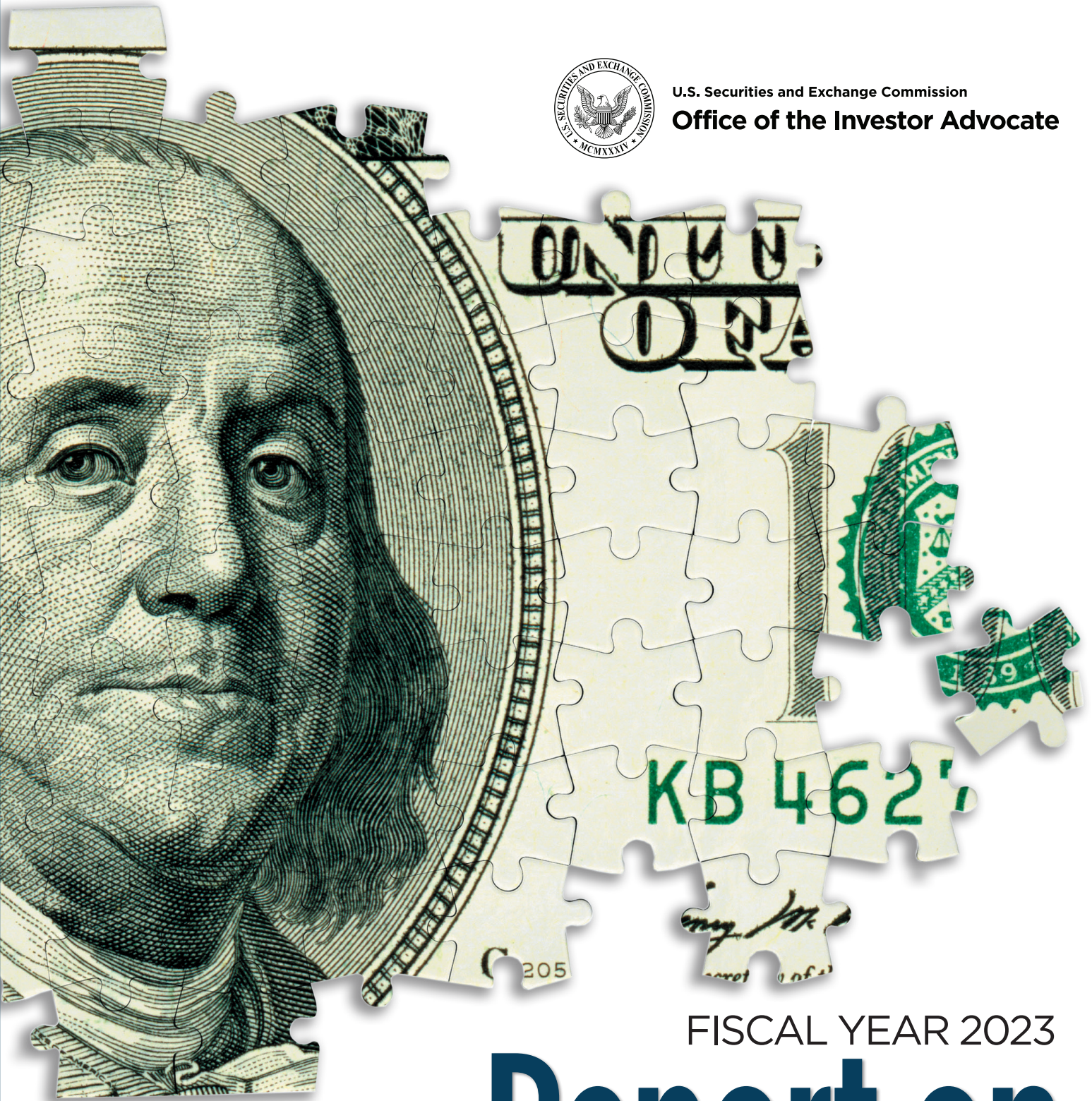


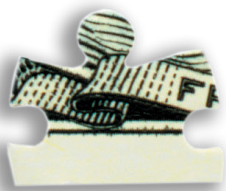


U.S. Securities and Exchange Commission
Office of the Investor Advocate



FISCAL YEAR 2023

Report on Objectives



OFFICE OF THE INVESTOR ADVOCATE

REPORT ON OBJECTIVES

FISCAL YEAR 2023

Section 4(g) of the Securities Exchange Act of 1934 (Exchange Act), 15 U.S.C. § 78d(g), requires the Investor Advocate to file two reports per year with the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives.¹ A Report on Objectives is due no later than June 30 of each year, and its purpose is to set forth the objectives of the Investor Advocate for the following fiscal year.² The instant report contains a summary of the Investor Advocate’s primary objectives for Fiscal Year 2023, beginning October 1, 2022.

A Report on Activities is due no later than December 31 of each year, and it describes the activities of the Investor Advocate during the preceding fiscal year.³ For Fiscal Year 2023, the activities and accomplishments of the Office will be reported not later than December 31, 2023.

Disclaimer: Pursuant to Section 4(g)(6)(B)(iii) of the Exchange Act, 15 U.S.C. § 78d(g)(6)(B)(iii), this Report is provided directly to Congress without any prior review or comment from the Commission, any Commissioner, any other officer or employee of the Commission, or the Office of Management and Budget. Thus, the Report expresses solely the views of the Investor Advocate. It does not necessarily reflect the views of the Commission, the Commissioners, or staff of the Commission, and the Commission disclaims responsibility for the Report and all analyses, findings, and conclusions contained herein.

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Janet L. Yellen
Secretary of the Treasury
United States

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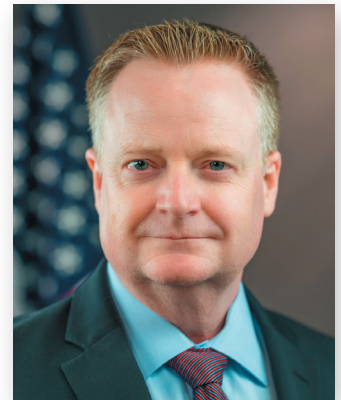
MESSAGE FROM THE INVESTOR ADVOCATE

Each year, the Office of the Investor Advocate submits two reports to Congress—a Report on Objectives that looks forward and describes the objectives of the Office for the upcoming fiscal year, and a Report on Activities that looks backward to describe the work performed by the Office during the preceding fiscal year. After eight years as the Investor Advocate, I am stepping down from the role on July 1, and I am gratified that my final report to Congress will be one that looks forward.

This report describes some of the issues and challenges that the Office of the Investor Advocate will grapple with in the coming fiscal year. As always, we identify areas in which the staff undoubtedly will devote significant time and energy, such as crypto assets and ESG, but we cannot predict everything that will arise and require our attention. This is especially true at a time like this, when a new Investor Advocate will be appointed, bringing new priorities and interests. The new Investor Advocate will also appoint a new Ombudsman to replace Tracey McNeil, who recently departed the agency for a new opportunity after serving as the inaugural SEC Ombudsman and establishing an office that will have a lasting impact for investors.

Until a new Investor Advocate is appointed, the Office of the Investor Advocate will be led by Marc Sharma, who will continue in his longstanding role as Chief Counsel while helping to administer the functions of the Office. Latisha Brown will serve as the Acting Ombudsman.

After the leadership transitions are complete, the new permanent Investor Advocate and Ombudsman will benefit from the true strength of the Office of the Investor Advocate—its people. The men and women in the Office are passionate about serving investors, and their expertise and wisdom are the fuel for the Office’s advocacy efforts. Many of the policy issues we confront are not easy, even when looking at them purely from the standpoint of serving the best interests of investors. For example, the practice known as payment for order flow creates conflicts of interest that may harm investors, yet it has contributed to a significant decline in commissions that investors must pay to trade securities. Staff in the Office have a deep understanding of complex



issues like these, can explain them in understandable terms, and exhibit extraordinary judgment in recommending policy positions for the Investor Advocate’s consideration. Similarly, as described below in the report of the Ombudsman, staff for the Ombudsman regularly confront challenging issues and do the difficult work of providing direct service to investors, and the new permanent Ombudsman will benefit from the many lessons they have learned.

Less known, but with the potential for the greatest long-term impact for investors, are our efforts to build a library of research that will contribute to data-driven advocacy and, we hope, data-driven policymaking. We recently established the Office of Investor Research within the Office of the Investor Advocate, and its role will be to collect data regarding investor demographics, investing trends, etc., and to study how to improve the disclosure of important information to investors.

The Commission, as an agency dedicated to investor protection, historically has conducted little research of this nature, and we are excited about the ways that our research program will be able to provide critical insights for future decision-making.

It is a privilege to submit this report on the objectives of the Office of the Investor Advocate for Fiscal Year 2023. It has been an honor to serve as the first Investor Advocate at the U.S. Securities and Exchange Commission, and I am proud of the foundation that I have built along with the other pioneers who joined me and sculpted new roles with such high impact—people like Tracey McNeil, Marc Sharma, Stephen Deane, Ashlee Steinnerd, and Frankie White, who arrived during my first year, as well as the many others who joined us along the way. I am confident that new leadership will build even bigger and better things upon the foundation we have laid, and I look forward to witnessing the future successes of the Office.

Respectfully Submitted,

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

Rick A. Fleming
Investor Advocate

OBJECTIVES OF THE INVESTOR ADVOCATE

As set forth in Exchange Act Section 4(g)(4), 15 U.S.C. § 78d(g)(4), the Investor Advocate is required to perform the following functions:

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

Assisting Retail Investors

Exchange Act Section 4(g)(4)(A) directs the Investor Advocate to assist retail investors in resolving significant problems such investors may have with the Commission or with SROs.⁴ To help accomplish that objective, the Investor Advocate has appointed an Ombudsman to, among other things, act as a liaison between the Commission and any retail investor in resolving problems that retail investors may have with the Commission or with SROs.⁵ As required by statute, a semi-annual report from the Ombudsman is included within this Report on Objectives.⁶

Identifying Areas in Which Investors Would Benefit from Regulatory Changes

Exchange Act Section 4(g)(4)(B) requires the Investor Advocate to identify areas in which investors would benefit from changes in the regulations of the Commission or the rules of SROs.⁷ This is a broad mandate that authorizes the Investor Advocate to examine the entire regulatory scheme, including existing rules and regulations, to identify those areas that could be improved for the benefit of investors. For example, the Investor Advocate may look at the rules and regulations governing existing equity market structure to determine whether any regulatory changes would benefit investors. These and other concerns are discussed in greater detail below in the section entitled *Policy Agenda for Fiscal Year 2023*.

Identifying Problems with Financial Service Providers and Investment Products

Exchange Act Section 4(g)(4)(C) requires the Investor Advocate to identify problems that investors have with financial service providers and investment products.⁸ The Investor Advocate continues to monitor investor inquiries and complaints, SEC and SRO staff reports, enforcement actions, and other data to determine which financial service providers and investment products may be problematic. As required by Exchange Act Section 4(g)(6), these problems will be described in the Reports on Activities to be filed in December of each year.

Analyzing the Potential Impact on Investors of Proposed Rules and Regulations

Exchange Act Section 4(g)(4)(D) directs the Investor Advocate to analyze the potential impact on investors of proposed regulations of the Commission and proposed rules of SROs.⁹ As required, in Fiscal Year 2023, the Office will review all significant rulemakings of the Commission and SROs, and we will communicate with investors and their representatives to determine the potential impact of proposed rules. In addition, we will study investor behavior and utilize a variety of research methods to examine the efficacy of policy proposals. For example, we will study the effectiveness of various disclosures that are provided to retail investors. We include descriptions of our research projects and related findings in our Reports on Activities, published every December.

Proposing Appropriate Changes to the Commission and to Congress

Exchange Act Section 4(g)(4)(E) provides that, to the extent practicable, the Investor Advocate may propose to the Commission changes in the regulations or orders of the Commission and to Congress any legislative, administrative, or personnel changes that may be appropriate to mitigate problems identified and to promote the interests of investors.¹⁰ As we study the issues in our *Policy Agenda for Fiscal Year 2023*, as set forth below, we will likely make recommendations to the Commission and Congress for changes that will promote the interests of investors.

Supporting the Investor Advisory Committee

Exchange Act Section 39 establishes the Investor Advisory Committee (IAC).¹¹ As discussed in greater detail below in the section entitled *Summary of Investor Advisory Committee Recommendations and SEC Responses*, the purpose of the Committee is to advise and consult with the Commission on regulatory priorities, issues impacting investors, initiatives to protect investors, and related matters. The Investor Advocate is a member of the IAC,¹² and the Office will continue to provide staff and operational support to the IAC during Fiscal Year 2023.

POLICY AGENDA FOR FISCAL YEAR 2023

As described above, the statutory mandate for the Office of the Investor Advocate is broad, and much of our time is consumed with the review of rulemakings that flow through the Commission and SROs. We monitor all rulemakings, but we prioritize certain issues so that we can develop expertise in those areas and maximize our impact for investors with the resources we have available. After discussions with numerous knowledgeable parties, both inside and outside the Commission, and after due consideration, the Office will focus upon the following issues during Fiscal Year 2023:

- Crypto-Assets
- Equity Market Structure
- Private Fund Adviser Regulation
- ESG Disclosures for Public Companies
- ESG Disclosures for Investment Advisers and Investment Companies
- Fund Names
- Open and Machine-Readable Data

As in past years, other issues are likely to arise that will require the attention of the Office. Moreover, with the appointment of a new Investor Advocate, the priorities of the Office may evolve during Fiscal Year 2023.

CRYPTO-ASSETS

Crypto-assets, already a volatile asset class, have been impacted by the intense financial market fluctuations during the first few months of 2022. In 2021, for instance, crypto-asset markets' transaction volume grew to \$15.8 trillion, an increase of nearly 600 percent over calendar year 2020, as investor interest in the asset class grew.¹³ So far in 2022, transaction volume has continued to increase—to \$25 trillion—but much of the increase in transaction volume was due to the fact that so many investors abandoned the asset class during the first few months of this year.

The surge in the transaction volume of crypto-asset markets has been accompanied by a two-fold increase in illicit crypto-asset activity from 2020 for a total of \$14 billion in 2021.¹⁴ As retail investor interest in crypto-assets has increased, so have the size and frequency of crypto-asset fraud and investment scams.¹⁵ The proliferation of fraud in the crypto-asset markets has prompted the SEC's Division of Enforcement to increase the staffing of the specialized unit handling some of the crypto-asset related enforcement actions.¹⁶ The Division of Enforcement recognizes that, going forward, many enforcement actions may involve some crypto-asset component.

Amid all the market volatility, there have been a number of regulatory developments in the crypto-asset space. On February 14, 2022, for example, the Commission charged BlockFi Lending LLC (BlockFi) with violations of the Investment Company Act of 1940 that resulted in its failure to register the offers and sales of its retail crypto lending product.¹⁷ In its settlement with the Commission, BlockFi agreed to pay a \$50 million penalty, cease sales of its product, and attempt to attain registration under the Investment Company Act. Then, in an April 4, 2022 speech, SEC Chair Gary Gensler identified various deficiencies in the integrity and investor protections of crypto-asset markets.¹⁸ As Chair Gensler stated, “[t]here’s no reason to treat the crypto market differently just because different technology is used. We should be technology-neutral.”¹⁹ Chair Gensler’s remarks may have proved prescient, for in May 2022, two stablecoins lost their peg and one of them ultimately failed, costing investors approximately \$40 billion in losses.²⁰ Inevitably, questions of financial stability of crypto-assets have intensified.²¹

An important linchpin of investor protection in crypto-asset markets is the custody of assets, and there is an expanding list of firms claiming to offer those services.²² As we explained in our Report on Objectives for Fiscal Year 2022, custody of crypto-assets generally involves the management of the cryptographic private keys used to execute transactions.²³ Due to recent Commission staff guidance, firms that offer custodial services of crypto-assets will have direction on how to record those custodial services on their financial statements. In Staff Accounting Bulletin No. 121 (SAB 121), Commission staff set out the accounting treatment for custodial services of crypto-assets.²⁴ Specifically, SAB 121 requires firms to record a safeguarding liability and a corresponding asset, separate from the underlying crypto-asset, at

the fair value of the underlying crypto-asset. We believe that, on balance, SAB 121 provides valuable guidance on the accounting treatment of custodial services for crypto-assets. In Fiscal Year 2023, we will continue to monitor developments related to the custody of crypto-assets, and we will advocate for policies that reduce the risks of misappropriation and other types of unethical conduct.

Another important consideration for investor protection is the extent to which the exchanges that facilitate crypto-asset trading should be regulated like traditional stock exchanges. Investors are protected by a fulsome panoply of rules that govern trading on traditional exchanges, such as fair access rules, market data rules, and corporate governance rules. Many questions remain with respect to the practicality of applying those types of rules within the context of crypto trading, and we will be active in our pursuit of policies that bring crypto-related investor protections more in line with the exchange rules that have served investors so well over the decades.

EQUITY MARKET STRUCTURE

As noted in our prior Reports on Objectives, the Commission has been engaged in a multi-year effort to improve the environment for modern trading.²⁵ We have supported a number of regulatory proposals that were recently adopted, including a proposal from the exchanges and the Financial Industry Regulatory Authority (FINRA) to modernize the governance of National Market System (NMS) plans that produce public consolidated equity market data and that disseminate trade and quote data from trading venues.²⁶ This new governance structure should reduce inherent conflicts of interest, in no small part by providing for non-SRO voting representatives on the operating committees for the

NMS plans. In Fiscal Year 2023, we will support improvements to the governance of NMS plans that include the appropriate representation of retail and institutional investors.

We also continue to support efforts to modernize the overall infrastructure for the collection, consolidation, and dissemination of market data for NMS stocks.²⁷ Retail investors may benefit from the improved content and competitive infrastructure for quotation and trading data, either directly or as participants in mutual funds and pension funds. In February 2022, the Commission instituted proceedings to determine whether to approve or disapprove the SROs' proposed fee schedule for the expanded content required by the Commission rule.²⁸ Commenters have raised significant issues with the current proposal from the exchanges, arguing that the fees are based on flawed methodologies and fail to provide a cost-based justification.²⁹

In addition, we support the full implementation of the Commission's Consolidated Audit Trail, or CAT. This system, years in the making, is intended to enhance, centralize, and generally update the regulatory data infrastructure available to market regulators.³⁰ Full implementation should occur in the fourth quarter of 2022,³¹ and in Fiscal Year 2023, we will encourage the Commission to use CAT data to improve its regulatory processes. We will also consider ways to enhance the CAT. For example, in October 2020, the Commission sought public comment on amendments to enhance data security for the CAT database,³² and we continue to consider the helpful comments provided in response to that request.

During Fiscal Year 2023, we intend to continue our engagement on numerous other relevant initiatives that we hope the Commission will continue to prioritize in the near future, including:

- Shortening the security settlement period in the U.S. financial markets from a two-day settlement (referred to as T+2) to one-day (or shorter) for transactions in U.S. equities, corporate and municipal bonds, and unit investment trusts.³³ This not only would respond to the IAC's 2015 recommendation on the matter,³⁴ but it also could reduce behind-the-scenes regulatory requirements that may have contributed to retail investor confusion and frustration during a period of volatile stock trading in January 2021.³⁵
- Enhancements to the rules governing transfer agents, as previously discussed in a December 2015 advanced notice of rulemaking and a concept release,³⁶ which could, in part, specify transfer agent obligations with respect to the tracking and removal of restrictive legends. If improved rules can prevent the improper or inappropriate removal of a legend, investors would be better protected from the harm that comes from the illegal public distribution of such securities.
- Studying and addressing the potential conflicts of interest created by exchange fees and rebates in connection with broker-dealer order routing behavior. In addition, we support efforts to evaluate the impact of "payment for order flow" by market makers when broker-dealers make off-exchange order routing decisions, especially in light of the retail trading experience during January 2021.³⁷

- Enhance transparency in short selling as well as the opaque network of stock lending and borrowing that facilitates the practice.³⁸ The period of volatile stock trading in January 2021, in several cases involving companies with significant short interest, raised a number of policy questions. Having a repository of relevant data could improve the Commission’s ability to monitor this area of the market in real time. Further, additional guidance concerning what constitutes a broker-dealer’s reasonable basis for the “locate” requirement for heavily shorted companies should be considered.

In addition to evaluating rulemaking by the Commission during Fiscal Year 2023, we will continue to examine the hundreds of rule proposals that are filed with the Commission by the SROs. Typically, a number of these filings involve market structure issues that impact investors. For example, in January 2022, the Commission approved a proposal from the CBOE BYX Exchange, Inc. to make clarifying changes to a periodic auction process it had adopted in 2021.³⁹ We are encouraged that the exchange sought to improve its rule language in advance of implementing the potentially game-changing process, and we will monitor the exchange’s implementation of these periodic auctions with an eye toward the impact on retail investors.

PRIVATE FUND ADVISER REGULATION

With more than \$18 trillion in gross assets, private funds and their advisers play an important role in our financial markets and the lives of everyday Americans. Some of the largest private fund investors include state, municipal, and private pension plans that provide retirement and other benefits to the American public. In Fiscal Year 2023, we will monitor the progress of new rules and amendments intended to enhance regulation

of private fund advisers, as proposed by the Commission on February 9, 2022, under the Investment Advisers Act of 1940 (Advisers Act).⁴⁰ This is a rulemaking of significant magnitude and, if adopted, will have far-reaching consequences. As Chair Gensler has noted, “[p]rivate fund advisers, through the funds they manage, touch so much of our economy. Thus, it’s worth asking whether we can promote more efficiency, competition, and transparency in this field.”⁴¹ In approving the proposal, the Commission indicated that “[t]he proposed reforms are designed to protect private fund investors by increasing their visibility into certain practices, establishing requirements to address practices that have the potential to lead to investor harm, and prohibiting adviser activity that is contrary to the public interest and the protection of investors.”⁴²

Specifically, if adopted as proposed, the new rules and amendments would include the following:

- *Quarterly Statement Rule.* The proposal would require registered private fund advisers to distribute a quarterly statement to private fund investors with a detailed accounting of all fees and expenses paid by the private fund during the reporting period. In addition, the statement would disclose information regarding compensation or other amounts paid by the private fund’s portfolio investments to the adviser or any of its related persons. The proposal also would require advisers to provide information regarding the private fund’s performance. For liquid funds, the quarterly statement would provide annual net total returns since inception, average annual net total returns over prescribed time periods, and quarterly net total returns for the current calendar year. For illiquid funds, the statement would provide the gross and net internal

rate of return and gross and net multiple of invested capital for the illiquid fund to capture performance from the fund's inception through the end of the current calendar quarter.⁴³

- *Private Fund Audit Rule.* The proposal would require registered private fund advisers to cause the private funds they advise to undergo a financial statement audit at least annually and upon liquidation. The proposal would require the audited financial statements to be distributed to investors promptly after the completion of the audit. These audits would provide an important check on the adviser's valuation of private fund assets, which often serve as the basis for the calculation of the adviser's fees, and protect private fund investors against misappropriation of fund assets.⁴⁴
- *Adviser-Led Secondaries Rule.* The proposal would require a registered private fund adviser to obtain a fairness opinion in connection with an adviser-led secondary transaction. In these transactions, advisers often offer existing fund investors the option to sell or exchange their interests in the private fund for interests in another vehicle advised by the adviser. An independent opinion provider would opine on the fairness of the price being offered to the private fund for any assets being sold as part of the transaction. The proposal also would require the adviser to prepare and distribute to the private fund investors a summary of any material business relationships the independent opinion provider has or has had within the past two years with the adviser or any of its related persons. This requirement would provide a check against an adviser's conflicts of interest in structuring and leading a transaction from which it may stand to profit at the expense of private fund investors.⁴⁵
- *Prohibited Activities Rule.* The proposal would prohibit all private fund advisers from engaging in certain activities and practices that tend to create conflicts of interest that could reasonably lead to fraud and investor harm because such practices incentivize an adviser to place its interests ahead of the private fund's interests.⁴⁶ These practices include:
 - » Charging certain fees and expenses to a private fund or its portfolio investments, such as fees for unperformed services (e.g., accelerated monitoring fees) and fees associated with an examination or investigation of the adviser;
 - » Seeking reimbursement, indemnification, exculpation, or limitation of its liability for certain activity;
 - » Reducing the amount of an adviser clawback by the amount of certain taxes;
 - » Charging fees or expenses related to a portfolio investment on a non-pro rata basis; and
 - » Borrowing or receiving an extension of credit from a private fund client.
- *Preferential Treatment Rule.* The proposal would prohibit all private fund advisers from providing preferential terms to certain investors regarding redemptions from the fund or information about portfolio holdings or exposures. It also would prohibit all private fund advisers from providing other preferential treatment unless disclosed to current and prospective investors. This proposal is designed to protect investors by prohibiting specific types of preferential treatment that have a material, negative effect on other investors.⁴⁷

- *Books and Records Rule Amendments.* The proposal includes amendments to the books and records rule under the Advisers Act that require advisers to retain records related to the proposed rules. The amendments would facilitate the SEC’s ability to assess an adviser’s compliance with the proposed rules.⁴⁸
- *Compliance Rule Amendments.* The proposal includes amendments to the compliance rule under the Advisers Act that require all registered advisers, including those that do not advise private funds, to document their annual review in writing.⁴⁹

We believe this package of reforms could provide significant benefits for investors in private markets. However, commenters have noted the breadth of the proposed reforms, and some have argued that the proposals could lead to unintended consequences for investors, such as the imposition of substantial compliance costs and the difficulty of attracting subsequent capital infusions into the fund. We are evaluating these concerns and look forward to working with our colleagues in the Division of Investment Management as the initiative progresses through the rulemaking process.

ESG DISCLOSURES FOR PUBLIC COMPANIES

For a number of years, investors have been demanding more information about the risks attending Environmental, Social, and Governance (ESG) matters.⁵⁰ ESG assets reportedly surpassed \$35 trillion in 2020, up from \$30.6 trillion in 2018 and \$22.8 trillion in 2016.⁵¹ By some indications, global ESG assets may exceed \$41 trillion in 2022 and \$50 trillion by 2025. A recent survey by a major auditing firm found that investors increasingly are willing to take action if they believe certain companies are not addressing ESG issues adequately, including seeking to engage the

company in dialogue, voting against executive compensation agreements, seeking inclusion of ESG targets in executive pay, voting against director appointments and, in some cases, even divesting their holdings from such companies.⁵²

There is ample evidence of investor demand for ESG disclosure and the clamor for such information can no longer be ignored. We believe that ESG information is often decision-useful, and we have a history of support for high-quality, consistent, and comparable ESG disclosure. Most recently, in our Report on Objectives for Fiscal Year 2022, we argued that while principles-based ESG measures are more flexible and can generate information for investors that is most relevant within the context of a particular business, principles-based requirements tend to generate disclosures that can be difficult to compare across a variety of companies.⁵³ For that reason, we have advocated for prescriptive requirements to promote comparability wherever possible, particularly with respect to disclosure requirements for objectively-determinable facts.

Climate-Related Disclosures

On March 21, 2022, the Commission proposed certain climate-related disclosures for investors, partly in response to the intense and long-standing investor interest in ESG disclosure.⁵⁴ The proposal, if adopted, would require registrants to provide certain climate-related information in their registration statements and annual reports, including information about climate-related financial risks and climate-related financial metrics in their financial statements.⁵⁵ According to the Commission, the disclosure of this information would provide consistent, comparable, and reliable—and therefore decision-useful—information to investors to enable them to make informed judgments about the impact of climate-related risks on current and potential investments.⁵⁶

One particular area of focus in the proposal is greenhouse gas (GHG) emissions. Generally, the proposal would require public companies to disclose information about the following:

- The registrant’s direct GHG emissions (Scope 1) and indirect GHG emissions from purchased electricity and other forms of energy (Scope 2), separately disclosed, expressed both by disaggregated constituent greenhouse gases and in the aggregate, and in absolute terms, not including offsets, and in terms of intensity (per unit of economic value or production); and
- Indirect emissions from upstream and downstream activities in a registrant’s value chain (Scope 3), if material, or if the registrant has set a GHG emissions target or goal that includes Scope 3 emissions, in absolute terms, not including offsets, and in terms of intensity.⁵⁷

The proposed disclosure of Scope 3 GHG emissions in particular has generated stiff debate over how to measure such emissions, what to include as Scope 3 emissions, and what Scope 3 information would be material.⁵⁸ In apparent recognition of these more difficult questions, the proposal would exempt Scope 3 emissions disclosure from the attestation requirements that apply to Scope 1 and Scope 2 emissions. In addition, the proposal offers some workarounds for Scope 3 emissions disclosure:

- A safe harbor for Scope 3 emissions disclosure from certain forms of liability under the federal securities laws;
- An exemption for smaller reporting companies (SRCs) from the Scope 3 emissions disclosure provision; and
- A delayed compliance date for Scope 3 emissions disclosure.⁵⁹

The proposal indicates that disclosures about climate-related risks and metrics reflecting those risks can have an impact on public companies’ financial performance or position and may be material to investors in making investment or voting decisions.⁶⁰ The proposal notes that many investors—including shareholders, investment advisers, and investment management companies—already seek information about climate-related risks from companies to inform their investment decision-making.⁶¹

We are mindful of the diversity of viewpoints associated with ESG disclosure, and we look forward to reviewing the comments submitted in response to the Commission’s climate-related disclosure proposal. As we indicated in our Report on Objectives for Fiscal Year 2022, we will help ensure that, as the Commission works through this complicated rulemaking, investors’ interests remain at the forefront of the discussion.

Human Capital

A company’s workforce is a key source of value, and investors benefit when they can look to the Commission’s corporate disclosure system to evaluate material facts related to public companies’ human capital management (HCM). Recognizing the importance of such information, in March 2019, the IAC recommended that the Commission incorporate HCM as part of the Commission’s “Disclosure Effectiveness Review” and its overall approach to modernizing corporate reporting and disclosure.⁶² Further, the IAC recommended that the Commission consider both:

- Requiring registrants to comply with principles-based disclosure requirements asking them to detail their HCM policies and strategies; and
- Developing metrics to evaluate the success of HCM strategies and investments that can reflect the varied circumstances of different businesses.

We are pleased that HCM disclosure remains on the Commission’s regulatory agenda, as made public pursuant to the Regulatory Flexibility Act.⁶³ We look forward to working with Commission staff to develop HCM disclosures that are decision-useful for investors.

ESG DISCLOSURES FOR INVESTMENT ADVISERS AND INVESTMENT COMPANIES

We will also monitor the progress of amendments to rules and reporting forms proposed by the Commission on May 25, 2022, to promote consistent, comparable, and reliable information for investors concerning funds’ and advisers’ incorporation of ESG factors.⁶⁴ According to Chair Gensler, it is “important that investors have consistent and comparable disclosures about asset managers’ ESG strategies so they can understand what data underlies funds’ claims and choose the right investments for them.”⁶⁵ We agree.

While ESG strategies have existed for decades, interest in these strategies has rapidly increased in recent years, with significant inflows of capital to ESG-related investment products and advisory services. Asset managers have responded to the increased demand by creating and marketing ESG products.⁶⁶ In the U.S. alone, in 2021 there were approximately 740 mutual funds and ETFs with assets totaling \$549 billion that could be considered as investing according to ESG criteria.⁶⁷ ESG funds reportedly attracted \$649 billion globally in the first eleven months of 2021, up from \$542 billion in all of 2020 and \$285 billion in 2019.⁶⁸

Currently, the ways that different funds and advisers define ESG can vary widely. Similarly, there are significant differences in the data, criteria, and strategies used as part of ESG strategies. The lack of disclosure requirements and a common

disclosure framework tailored to ESG investing make it harder for investors who seek to understand which investments or investment policies are associated with a particular ESG strategy. In the absence of informative disclosures, a fund’s or adviser’s disclosure could exaggerate its actual consideration of ESG factors. Our Office has indicated our concern regarding this activity (commonly known as “greenwashing”) in previous reports.⁶⁹

The proposed rule and form amendments are designed to provide consistent standards for ESG disclosures, allowing investors to make better informed decisions as they compare various ESG investments. The proposal’s framework for ESG-related strategy disclosure is designed to enable investors to determine whether a fund’s or adviser’s ESG marketing statements translate into concrete and specific measures taken to address ESG goals and portfolio allocation. The proposal also requires certain environmentally focused funds to disclose information regarding the greenhouse gas (GHG) emissions associated with their portfolio.

The proposal identifies three categories of ESG funds, and sets forth requirements tailored to each category:

- *Integration Funds.* Funds that integrate ESG factors alongside non-ESG factors in investment decisions would be required to describe how ESG factors are incorporated into their investment process.
- *ESG-Focused Funds.* Funds for which ESG factors are a significant or main consideration would be required to provide detailed disclosure, including a standardized ESG strategy overview table.
- *Impact Funds.* A subset of ESG-Focused Funds that seek to achieve a particular ESG impact would be required to disclose how it measures progress on its objective.

Integration Funds would be required to make generally similar disclosures in their brochures with respect to their consideration of ESG factors in the significant investment strategies or methods of analysis they pursue and report certain ESG information in their annual filings with the Commission.

Certain ESG-Focused Funds would be required to provide additional information about their strategies, including information about the impacts they seek to achieve and key metrics to assess their progress. The proposal would require funds that use proxy voting or engagement with issuers as a significant means of implementing their ESG strategy to provide additional information about their proxy voting or ESG engagements, as applicable.

The proposal generally would require ESG-Focused Funds that consider environmental factors in their investment strategies to disclose additional information regarding the GHG emissions associated with their investments. These funds would be required to disclose the carbon footprint and the weighted average carbon intensity of their portfolio. The requirements are designed to meet demand from investors seeking environmentally focused fund investments for consistent and comparable quantitative information regarding the GHG emissions associated with their portfolios and to allow investors to make decisions in line with their own ESG goals and expectations. Funds that disclose that they do not consider GHG emissions as part of their ESG strategy would not be required to report this information. Integration Funds that consider GHG emissions would be required to disclose additional information about how the fund considers GHG emissions, including the methodology and data sources the fund may use as part of its consideration of GHG emissions.

We look forward to reviewing the comments on this significant rulemaking and to continuing our engagement with Division of Investment Management staff as we help ensure that the interests of investors are well-represented throughout the rulemaking process.

FUND NAMES

On May 25, 2022, the Commission proposed amendments to enhance and modernize the Investment Company Act “Names Rule” to address changes in the fund industry and compliance practices that have developed in the approximately 20 years since the rule was adopted.⁷⁰ In Fiscal Year 2023, we will work with Commission staff to assess public comments on the proposal and provide input with an investor-protection focus as any changes are finalized.

Broadly, the proposal recommends the following amendments:

- *Modernization of the 80 percent Investment Policy Requirement.* The Names Rule currently requires funds with certain names to adopt a policy to invest 80 percent of their assets in the investments suggested by that name. The proposal would expand this requirement to apply to any fund name with terms suggesting that the fund focuses in investments that have, or investments whose issuers have, particular characteristics. This would include, for example, fund names with terms such as “growth” or “value” and those indicating that the fund’s investment decisions incorporate one or more ESG factors. Further, to address the rule’s application to derivatives investments, the proposal would require a fund to use a derivatives instrument’s notional amount, rather than its market value, for the purpose of determining the fund’s compliance with its 80 percent investment policy.⁷¹

- *Temporary Departures from a Fund's 80 percent Investment Policy.* The proposal would specify the particular circumstances under which a fund may depart from its 80 percent investment policy, such as sudden changes in market value of underlying investments, including specific time frames for returning to 80 percent.⁷²
- *Unlisted Closed-End Funds and Business Development Companies (BDCs).* The proposal would prohibit a registered closed-end fund or BDC whose shares are not listed on a national securities exchange from changing its 80 percent investment policy without a shareholder vote. This prohibition would ensure these investors could vote on a change in investment policy given their limited options to exit their investments if the change were made.⁷³
- *Enhanced Prospectus Disclosure, Reporting, and Recordkeeping.* The proposal would include a number of amendments to provide enhanced information to investors and the Commission about how fund names track their investments. The proposal would require fund prospectus disclosure that defines the terms used in a fund's name. The proposal also includes amendments to Form N-PORT to require greater transparency on how the fund's investments match the fund's investment focus. The proposal would, furthermore, require funds to keep certain records regarding how they comply with the rule or why they think they are not subject to it.⁷⁴
- *Materially Deceptive and Misleading Use of ESG Terminology.* Under the proposal, a fund that considers ESG factors alongside but not more centrally than other, non-ESG factors in its investment decisions would not be

permitted to use ESG or similar terminology in its name. Doing so would be defined to be materially deceptive or misleading. For such "ESG Integration Funds," the ESG factors are generally no more significant than other factors in the investment selection process, such that ESG factors may not be determinative in deciding to include or exclude any particular investment in the portfolio.⁷⁵

- *Modernization of Notice Requirement.* The proposal would retain the current rule's requirement that, unless the 80 percent investment policy is a fundamental policy of the fund, notice must be provided to fund shareholders of any change in the fund's 80 percent investment policy. The proposal would update the rule's notice requirement to expressly address funds that use electronic delivery methods to provide information to their shareholders.⁷⁶

We look forward to working with our Commission colleagues as this rulemaking initiative progresses. Our Office is always focused on disclosure to investors because it is found at the core of many investor-protection efforts, and a fund's name may constitute the single most significant piece of disclosure considered by many investors.

OPEN AND MACHINE-READABLE DATA

Currently, the majority of filings to the SEC's EDGAR system are submitted in HTML or ASCII, both of which are unstructured data languages. Information disclosed in these filings is difficult for investors and markets to access, compile, and analyze as compared to information that is submitted in a machine-readable data language. However, in several recent rulemaking proposals, the Commission has sought to require that filings

be made using a machine-readable data language.⁷⁷ For instance, in a 2021 proposal to amend rules regarding disclosure about repurchases of an issuer's equity securities, often referred to as "buybacks," the Commission proposed requiring Inline XBRL tagging of the repurchase disclosures, which would make the disclosures more readily available and easily accessible to investors, market participants, and others for aggregation, comparison, filtering, and other analysis.⁷⁸

The Commission's structured disclosure initiatives are consistent with a statutory directive known as the Foundations of Evidence-Based Policymaking Act of 2018 (the "Evidence Act").⁷⁹ Among other things, the Evidence Act requires federal agencies⁸⁰ to put more data assets of the federal government into the public domain and make them available in open, machine-readable formats.⁸¹

The Evidence Act builds on a series of earlier laws and policies designed to promote the federal government's transparency and accountability to the public at large. For instance, the Freedom of Information Act provides general-public access, with limited exemptions, to documents pertaining to federal agency activities.⁸² United States Department of Justice (DOJ) guidelines from 2009 encourage agencies implementing the Freedom of Information Act to make discretionary disclosures of information and to readily and systematically post information online in advance of any public request.⁸³ The Evidence Act codifies the presumption of openness of the DOJ guidelines: if a data asset that is maintained by an agency is subject to disclosure under the Freedom of Information Act, then the Act directs the agency to put the data asset in the public domain as a matter of course, or by default rule, unless the agency has a valid basis for not doing so.⁸⁴

Similarly, the Evidence Act extends a provision of another law governing federal agencies engaged in the collection and dissemination of information. The Paperwork Reduction Act directs federal agencies to consider making the information available in a manner that maximizes, to the extent feasible, the utility of the information to agencies and to the public from an information processing standpoint.⁸⁵ Various policies further encourage agencies to collect or create information in a way that supports downstream information processing and dissemination, including specifically by utilizing data standards in order to maximize interoperability and machine-readability.⁸⁶ Simply put, data standards are common ways of expressing information, and the Evidence Act requires agencies to utilize data standards going forward.

Systematic implementation of the Evidence Act will involve intra-agency work streams as well as inter-agency coordination. The statute requires agencies to inventory their data assets⁸⁷ and make them available in an open format.⁸⁸ Agencies must make determinations regarding whether or not data assets that they maintain have been, or may be, released to the public, including under the Freedom of Information Act. For those data assets that are subject to disclosure under the Freedom of Information Act, agencies must make determinations regarding whether or not to release them to the public, taking into account existing law and other applicable restrictions.⁸⁹ For those data assets that agencies determine to release to the public, the agencies must release them in open, machine-readable formats.

Unfortunately, implementation of the Evidence Act carries lopsided risks for agencies. Careful procedures must be in place for agency determinations regarding whether or not data assets are public data assets, as the consequences of releasing certain types of information required to be kept non-public, such as personal data and trade secrets, are not just irreversible but potentially illegal. On the other hand, there is no statutory penalty for failing to meet the Evidence Act's requirements. The sheer scope of the overall directive and the lack of accompanying appropriated funds create implementation challenges, and the statute by its terms gives agencies flexibility in determining which data assets to prioritize.⁹⁰ These circumstances might incline some agencies to wait for statutorily required implementation guidance to be issued by the Office of Management and Budget before taking any action at all.⁹¹

Our Office has long advocated the use of machine-readable data languages for disclosure filings because we believe that fundamental investment

analysis will be made more economically feasible as investors and third party data providers are able to obtain access to machine-readable data.⁹² Accordingly, we support the Commission's recent steps to require the filing of disclosures in a structured format. While these initiatives may seem technical and prosaic, they are vitally important for serving the investing public in our increasingly digital world—akin to earlier initiatives to move from paper to electronic filings.

The Commission has considerable experience with providing voluminous information to the public and, in our view, may be in a position to lead the federal government in implementation of the Evidence Act. The pay-off for investors is potentially enormous: more of the federal government's vast trove of information made publicly available for the first time and made available in a way that facilitates maximal information processing capabilities. We will monitor developments in this area and continue making the legal and policy case for each of the Commission's structured disclosure initiatives.

OMBUDSMAN'S REPORT

As set forth in Exchange Act Section 4(g)(8), 15 U.S.C. § 78d(g)(8), the Ombudsman is required to: (i) act as a liaison between the Commission and any retail investor in resolving problems that retail investors may have with the Commission or with self-regulatory organizations; (ii) review and make recommendations regarding policies and procedures to encourage persons to present questions to the Investor Advocate regarding compliance with the securities laws; and (iii) establish safeguards to maintain the confidentiality of communications between investors and the Ombudsman.⁹³

The Ombudsman is also required to “submit a semi-annual report to the Investor Advocate that describes the activities and evaluates the effectiveness of the Ombudsman during the preceding year” (Ombudsman’s Report).⁹⁴ The Ombudsman’s Report must be included in the semi-annual reports submitted by the Investor Advocate to Congress. To maintain reporting continuity, the Ombudsman’s Report included in the Investor Advocate’s June 30 Report on Objectives describes the Ombudsman’s activities during the first six months of the current fiscal year and provides the Ombudsman’s objectives for the following full fiscal year. The Ombudsman’s Report included in the Investor Advocate’s December 31 Report on Activities describes the activities and discusses the effectiveness of the Ombudsman⁹⁵ during the full preceding fiscal year.

Accordingly, this Ombudsman’s Report provides a look back on the Ombudsman’s activities for the six-month period of October 1, 2021 through March 31, 2022 (Reporting Period), and discusses the Ombudsman’s objectives and outlook for Fiscal Year 2023, beginning October 1, 2022.

OMBUDSMAN ROLE AND STANDARDS OF PRACTICE

The Ombudsman assists retail investors and other persons with concerns or complaints about the SEC or the SROs the SEC oversees. The assistance the Ombudsman provides includes, but is not limited to:

- listening to inquiries, concerns, complaints, and related issues;
- helping persons explore available SEC options and resources;
- clarifying certain SEC decisions, policies, and practices;
- taking objective measures to informally resolve matters that fall outside of the established resolution channels and procedures at the SEC; and
- providing periodic updates to SEC leadership so that they are aware of trends and significant emerging issues that are brought to our attention, and otherwise acting as an alternate channel of communication between retail investors and the SEC.

In practice, individuals often seek the Ombudsman's assistance as an initial point of contact to resolve their inquiries or as a subsequent or ongoing point of contact when they are dissatisfied with the outcome, rate of progress, or resolution of their inquiries.

The broad role and function of the Ombudsman is somewhat similar to the broad roles and functions of ombudsmen at the other federal financial regulatory agencies.

Ombudsmen at the Federal Financial Regulatory Agencies



CONSUMER FINANCIAL PROTECTION BUREAU (CFPB)

CFPBOmbudsman@cfpb.gov | (855) 830-7880
www.consumerfinance.gov/cfpb-ombudsman/

The CFPB Ombudsman's Office is an independent, impartial, and confidential resource that assists consumers, financial entities, consumer or trade groups, and others in informally resolving process issues arising from CFPB activities. Contact us on individual or systemic issues if existing CFPB processes did not address your concerns, or to keep your concerns confidential. We may assist, for example, by: facilitating discussions, brainstorming options, and providing feedback and recommendations to the CFPB.



FEDERAL DEPOSIT INSURANCE CORPORATION (FDIC)

ombudsman@fdic.gov | (877) 275-3342
www.fdic.gov/regulations/resources/ombudsman/index.html

The FDIC Office of the Ombudsman is a confidential, neutral, and independent source of information and assistance to anyone affected by the FDIC in its regulatory, resolution, receivership, or asset disposition activities. If you have a problem or complaint with the FDIC that is not involved in litigation, arbitration, or mediation, you may contact the Office of the Ombudsman for confidential assistance. Our office will work with other FDIC divisions and offices as a liaison to address your issue.



FEDERAL RESERVE BOARD (FRB)

ombudsman@frb.gov | (800) 337-0429
www.federalreserve.gov/aboutthefed/ombudsman.htm

The Ombudsman's office facilitates the fair and timely resolution of complaints related to the Federal Reserve System's regulatory activities. The Ombudsman serves as an independent, confidential resource for individuals and institutions that are affected by the Federal Reserve System's regulatory and supervisory actions.



OFFICE OF THE COMPTROLLER OF THE CURRENCY (OCC)

OCCombudsman@occ.treas.gov | (202) 649-5530
www.occ.gov/about/who-we-are/organizations/office-of-enterprise-governance-and-the-ombudsman/index-office-of-enterprise-governance-and-the-ombudsman.html

The OCC Ombudsman, who reports directly to the Comptroller of the Currency and operates outside of bank supervision, ensures that bankers have access to the appeals process and that appeals are reviewed fairly according to existing standards. The OCC appeals process for national banks and federal savings associations (collectively, banks) provides an independent, fair, and binding means of resolving disputes arising during the supervisory process; helps ensure the most sound supervision decisions possible; and promotes open, continuous communication between banks and the OCC.



NATIONAL CREDIT UNION ADMINISTRATION (NCUA)

ombudsman@ncua.gov | (703) 518-1175
www.ncua.gov/about/open-government/ombudsman

NCUA's Ombudsman reviews consumer complaints and recommends possible solutions. The issues generally result from process concerns. As a consumer, you may choose to bring your concern to the Ombudsman after attempting to obtain resolution from the NCUA Consumer Assistance Center.



U.S. SECURITIES AND EXCHANGE COMMISSION (SEC)

ombudsman@sec.gov | (877) 732-2001
www.sec.gov/ombudsman

The SEC Ombudsman is a confidential, impartial, and independent resource who serves as a liaison to help retail investors—sometimes referred to as individual investors or Main Street investors—resolve problems they may have with the SEC or with the self-regulatory organizations the SEC oversees. The SEC Ombudsman also reviews and recommends policies and procedures to encourage persons to present questions and feedback about the securities laws, and establishes safeguards to maintain the confidentiality of communications between individuals and the SEC Ombudsman.

Similar to ombudsmen at the other federal financial regulatory agencies, the Ombudsman follows three core standards of practice:

Confidentiality	Impartiality	Independence
<p>The Ombudsman has established safeguards to protect confidentiality, including the use of OMMS, a separate email address, dedicated telephone and fax lines, and secure file storage. The Ombudsman generally treats matters as confidential, and takes reasonable steps to maintain the confidentiality of communications. The Ombudsman also attempts to address matters without sharing information outside of the Ombudsman staff, unless given permission to do so. However, the Ombudsman may need to contact other SEC divisions or offices, SROs, entities, and/or individuals and share information without permission under certain circumstances including, but not limited to: a threat of imminent risk or serious harm; assertions, complaints, or information relating to violations of the securities laws; allegations of government fraud, waste, or abuse; or if otherwise required by law.</p>	<p>The Ombudsman does not represent or act as an advocate for any individual or entity, and does not take sides on any issues. The Ombudsman maintains a neutral position, considers the interests and concerns of all involved parties, and works to resolve questions and complaints by clarifying issues and procedures, facilitating discussions, and identifying options and resources.</p>	<p>By statute, the Ombudsman reports directly to the Investor Advocate, who reports directly to the Chairman of the SEC. However, the Office of the Investor Advocate and the Ombudsman are designed to remain somewhat independent from the rest of the SEC. Through the Congressional reports filed every six months by the Investor Advocate, the Ombudsman reports directly to Congress without any prior review or comment by the Commission or other Commission staff.</p>

The Ombudsman's Challenge

The mission statement of the SEC is to “protect investors, maintain fair, orderly, and efficient markets, and facilitate capital formation.”⁹⁶ A primary question we encounter, then, is what can the Ombudsman do for investors who have been harmed by violations of the federal securities laws? In appropriate circumstances, the Ombudsman may be able to present options to investors or foster communications between the investor and SEC or SRO staff. However, the Ombudsman is not authorized to do certain things that investors request, including:

- deciding the facts in a dispute that the investor has with the Commission or an SRO, or in a dispute before an SRO, such as an arbitration or mediation;
- intervening on behalf of, or representing the interest of, an investor in a formal dispute or investigation process;
- providing advice on how the federal securities laws may impact their particular investments or legal options; or
- changing formal outcomes, including decisions about whether to investigate an allegation of wrongdoing, settle an enforcement action, or create a Fair Fund.

With such limitations in mind, when investors contact the Ombudsman with these and similar requests, the Ombudsman staff routinely explains to investors that they have the ability to pursue other options, protect their interests, and preserve their legal rights in ways that the Ombudsman cannot. When appropriate, Ombudsman staff may inform investors about other SEC resources available to help address their question or concern, or may direct investors to external avenues of assistance. For example, when an investor contacts the Ombudsman with concerns that fall under the

purview of another federal financial regulatory agency, the Ombudsman may, after obtaining consent from the investor, facilitate communication between the investor and the ombudsman from the appropriate federal financial regulatory agency in an effort to address the matter.

In addition to responding to investor complaints, requests and concerns on an ad hoc basis, Ombudsman staff also stays current on policy issues that affect retail investors by engaging with investor advocacy groups such as the North American Securities Administrators Association (NASAA), the Public Investors Arbitration Bar Association (PIABA), and law school securities arbitration clinics, which provide legal services to harmed investors. Through our engagement, we gain a deeper understanding of potential legal and structural difficulties retail investors may face as they interact with industry professionals and with SROs. This understanding may prompt broader Ombudsman action and advocacy on behalf of retail investors, such as research into a particular area of investor concern.

STREAMLINED COMMUNICATIONS WITH RETAIL INVESTORS

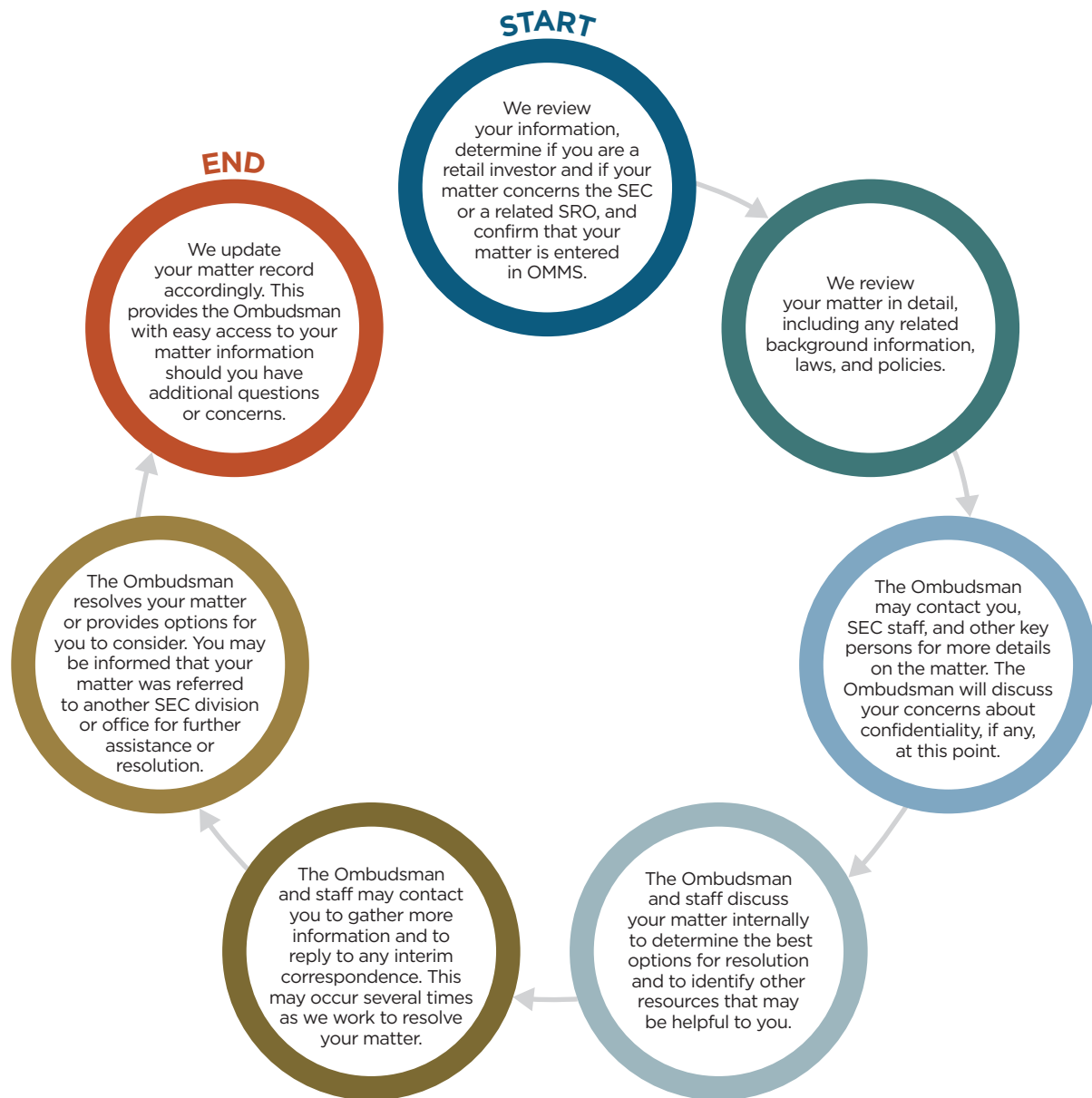
The Ombudsman Matter Management System (OMMS) is an electronic platform for receiving inquiries, as well as tracking and analyzing matter and contact information, while ensuring all necessary data management, confidentiality, and reporting requirements are met. The OMMS Form, a web-based, mobile-friendly form permitting the submission of inquiries, complaints, and documents directly to the Ombudsman, guides the submitter through a series of questions specifically tailored to elicit information concerning matters within the scope of the Ombudsman's function. In addition, the OMMS Form allows submitters to easily upload and submit related documents for staff

review. When an OMMS matter record is created, the Ombudsman can review the matter details and communicate with the investor via the OMMS platform. OMMS also allows the Ombudsman and staff to search and analyze matters and contacts by submitter, primary issue, fiscal year, and a number of other categories, and to review data and customize specific reports when a deeper examination is required.

While the Ombudsman encourages persons to submit their inquiries via the OMMS Form, for any persons who do not wish, or are unable, to use the OMMS Form, they may still contact the Ombudsman by email, telephone, fax, and mail.

The following graphic illustrates the general lifecycle of what happens when investors or other interested persons contact the Ombudsman for assistance:

What Happens When You Contact the Ombudsman



SERVICE BY THE NUMBERS

To respond to inquiries effectively and efficiently, the Ombudsman monitors the volume of inquiries and the staff resources devoted to addressing the particular concerns raised. The Ombudsman tracks all inquiries received by, or referred to, the Ombudsman, as well as all related correspondence and communications to and from Ombudsman staff. We track the status of the inquiry from its receipt to its resolution or referral, and we monitor the staff engagement and resources utilized to respond to the inquiry. This helps the Ombudsman identify systemic or problematic issues, analyze matter volume and trends, and provide data-driven support for recommendations presented by the Ombudsman to the Investor Advocate for review and consideration.

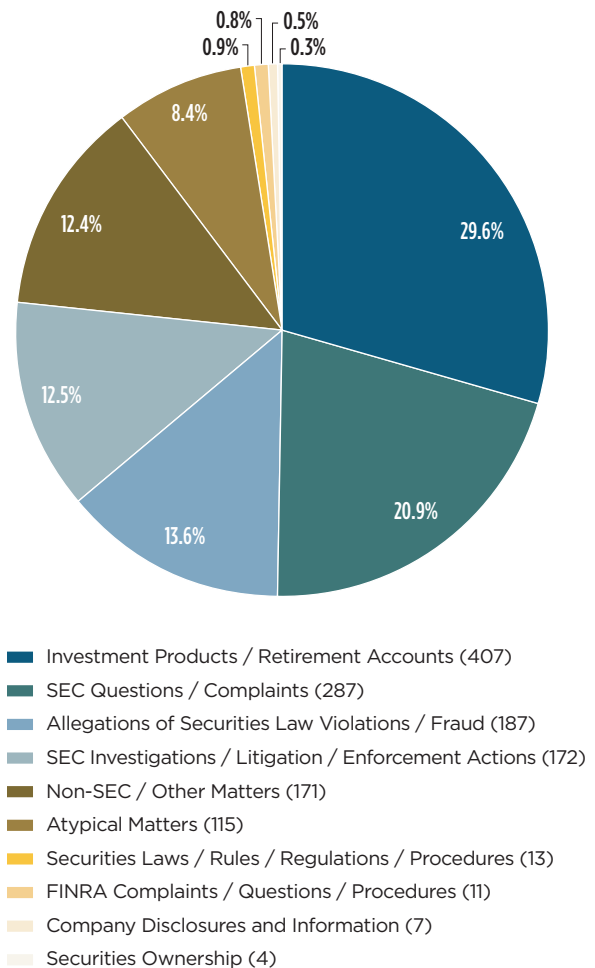
Inquiry volume is counted in terms of matters and contacts. A matter is created when an initial contact—a new, discrete inquiry—is received by or referred to the Ombudsman. When a matter is created, the Ombudsman reviews the facts, circumstances, and concerns, and assesses the staff engagement and resources that may be required to respond to, refer, or resolve the matter.

Once a matter is created, it may generate subsequent contacts—related inquiries and communications to or from the Ombudsman staff deriving from the matter. These contacts often require further attention to answer additional investor questions, explain or clarify proposed resolution options, discuss issues with appropriate SEC or SRO staff, or respond to challenging or persistent communications from an investor. This system of counting matters and contacts helps the Ombudsman quickly assess volume and resource issues related to each matter.

Data Across Primary Issue Categories

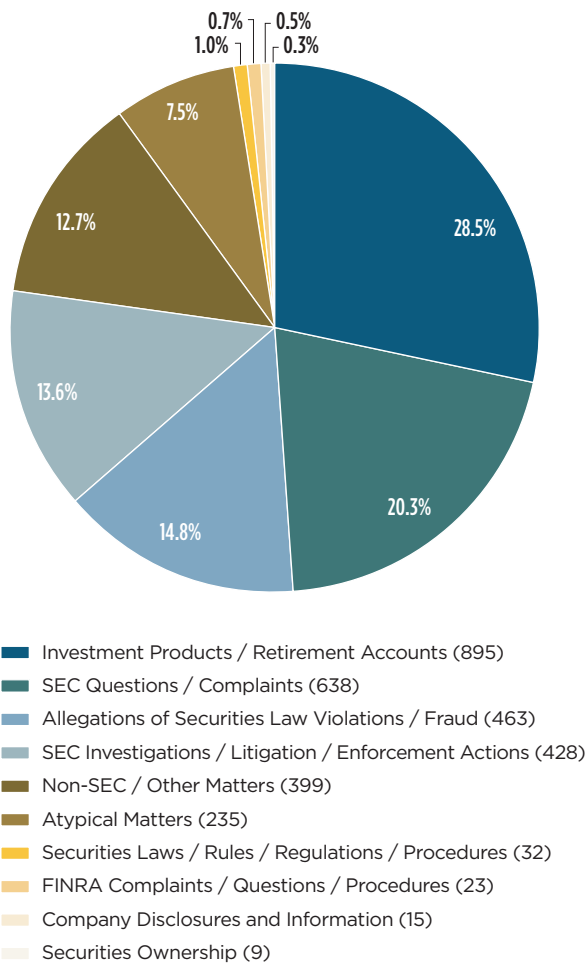
The Primary Issue Categories used below are broad descriptive labels that reflect the submitter’s description or characterization of their complaint, based upon the information the submitter provided.⁹⁷ During the six-month Reporting Period, retail investors, industry professionals, concerned citizens, and other interested persons contacted the Ombudsman for assistance on 1,374 matters covering 10 primary issue categories:

Matters by Primary Issue Category
October 1, 2021 – March 31, 2022



In addition to the 1,374 matters received, we fielded 1,763 contacts covering 10 primary issue categories during the Reporting Period, for a total of 3,137 contacts. The chart that follows displays the distribution of the 3,137 total contacts by primary issue category:

Contacts by Primary Issue Category
October 1, 2021 – March 31, 2022



How the Numbers Inform Our Efforts

The Ombudsman tracks matter and contact data to maintain a comprehensive view of the allocation of staff resources and to identify matters and contacts that significantly alter workflow volumes, call for the realignment of Ombudsman staff assignments, or require added staff support. The data also informs staff resource allocation considerations related to proposed program development, training, and outreach efforts. By tracking matters and contacts across primary issue categories, the data also helps the Ombudsman identify potential areas of concern or interest and enables the Ombudsman to act as an early warning system, as necessary, on the potential impact of particular issues and concerns raised by retail investors and others.

While the matter and contact numbers capture the volume and categories of inquiries the Ombudsman receives, the numbers do not capture the full value of the services the Ombudsman provides to the investing public. Assisting just one investor with one issue can make a significant difference to that investor, and at times, may inform our approach as we examine policies, regulations, and rulemakings.

AREAS OF INTEREST AND IMPORTANCE TO RETAIL INVESTORS

As noted above, the Ombudsman received just under 1,400 matter submissions by retail investors during the first half of FY 2022. The vignettes that follow are simplified composite descriptions of recurring inquiries and complaints, with details generalized, modified, or removed to avoid the disclosure of nonpublic or confidential information. These vignettes are included to help the reader better understand the context of the investor experience when an investor contacts the Ombudsman and to provide the reader with a better sense of the variety of submissions we receive from retail investors.

Crypto Exchanges⁹⁸

The Ombudsman received numerous retail investor complaints about investments made through crypto exchanges. Some investors reported that their accounts had been hacked or frozen, and that they were unable to reach customer service for assistance. Other investors reported they had invested through crypto exchanges that appeared to be legitimate, only to learn when they tried to take out their alleged earnings that they had been defrauded. These investors were typically contacted through social media by individuals purporting to be brokers, or sometimes by individuals on dating sites as part of a “romance scam.”⁹⁹ Ombudsman staff submitted complaints on behalf of many of these investors through the SEC’s Tips, Complaints and Referrals (TCR) system,¹⁰⁰ and provided them with information and resources from the SEC’s Investor.gov website.

Dark Pools/Naked Short Selling

Many retail investors who contacted the Ombudsman expressed their frustration with the continuing market volatility in shares of certain stocks. A consistent complaint among these investors related to hedge fund short selling of certain stocks through alternative trading systems known as “dark pools” that allow users to place orders without publicly displaying the size and price of their orders to other participants.¹⁰¹ These investors frequently alleged that hedge funds manipulated the price of certain stocks through illegal dark pool short sales, causing retail investors to suffer losses. Among other things, the Ombudsman informed these investors of the SEC’s proposal to amend Rule 13f-2 and corresponding Form SHO, which would require certain institutional investors to report short sale information to the SEC on a monthly basis, and make information about large short sale positions for each individual security publicly available. Ombudsman staff also encouraged these investors to submit comments on the proposed rules.¹⁰²

ESG Disclosure

On March 21, 2022, the SEC released its Proposed Rules to Enhance and Standardize Climate-Related Disclosures for Investors.¹⁰³ Since that time, the Ombudsman has received a broad range of submissions from numerous investors regarding these proposed rules. A number of investors argued that the SEC lacked authority to require any type of environmental impact disclosure, and/or accused the SEC of regulatory overreach. Others asked for more information about the costs and benefits to individual investors if such disclosures were ultimately required. Several others expressed support of the proposed rules, although some suggested that the proposed rules did not go far enough, or raised concerns that reporting loopholes would allow companies to obscure the information they were required to report. The Ombudsman thanked these investors for sharing their views and provided guidance regarding how to submit comments regarding the proposed rule.

FINRA Arbitration

The Ombudsman received several complaints regarding the nature and processes of FINRA arbitration. One investor, unaware that FINRA arbitration is a private system of dispute resolution, took issue with the fact that the hearing and any briefings or filings would not be available to the public. Another investor complained that a lack of information about the rules governing FINRA arbitration resulted in his failure to amend the statement of claim in a timely manner, and ultimately in a ruling in the respondent's favor. The investor contacted the Ombudsman to determine what his options were after the arbitrator's ruling. In replying to these investors, the Ombudsman provided them with information about FINRA arbitration generally, including the fact that the SEC cannot amend or overturn an arbitrator's decision, and that FINRA does not allow for the appeal of an arbitration award.¹⁰⁴ These types of complaints and issues relating to the retail investor experience in the FINRA arbitration forum are part of the Ombudsman's study of FINRA arbitration, further described below.

Fair Fund Distributions

Ombudsman staff helped many investors navigate the process for submitting reimbursement claims through SEC Fair Funds. Although most of these investors were aware that the SEC had initiated an action against certain individuals or companies for allegedly violating the securities laws, many had no idea if or how they could recover their personal losses. Ombudsman staff reviewed the enforcement actions in question to determine whether a distribution process had been established by the court through a Fair Fund and, if so, directed the investors to status reports on distribution proceedings in each case.¹⁰⁵ In one instance, Ombudsman staff assisted an investor whose distribution claim would have otherwise been rejected by connecting him with appropriate SEC staff.

ACTING IN THE INTERESTS OF RETAIL INVESTORS

As discussed above, Ombudsman staff field retail investor complaints, monitor SRO rulemakings and activities, and engage with external stakeholders regarding issues of importance to retail investors. When possible, we look for ways to improve SEC and SRO processes, rules and regulations for the collective benefit of retail investors, and we advocate for those types of reforms.

In FY 2023, Ombudsman staff will continue to focus efforts on studying the incidence and potential effects of discovery abuse in the FINRA Dispute Resolution forum, and will explore the use of mandatory pre-dispute arbitration clauses in investment adviser account agreements. Ombudsman staff will additionally track matters that affect senior investors, such as SRO rules that provide additional protections for seniors.

Discovery Abuse in FINRA Arbitration

As noted above, parties to a FINRA arbitration sometimes seek the assistance of the Ombudsman to alter or overturn an arbitration award. Unfortunately, many people are unaware that the SEC lacks authority to modify a FINRA arbitration award. Similarly, FINRA has no part in deciding or altering an award, and there is no avenue for appeal of an arbitration award through FINRA.¹⁰⁶ An arbitrator's decision is therefore final and binding, and is subject to review only in federal or state court.¹⁰⁷ A court may only modify or vacate an arbitral award in specific, rare instances.¹⁰⁸

Arbitrators' decisions are final throughout the arbitration process—including discovery, the process by which parties exchange documents and information about their case. In situations where

the parties disagree about whether to exchange certain documents or information, arbitrators can order a party to produce the documents or information at issue, or sanction a party for its failure to do so. Because arbitrators may therefore act as gatekeepers for the flow of information between parties, it is critical that arbitrators ensure the parties “cooperate to the fullest extent practicable in the exchange of documents and information to expedite the arbitration.”¹⁰⁹ A party's lack of access to discovery will likely impede that party's ability to present its case. Viewed more broadly, as FINRA recently noted, “[f]ailure to comply with the discovery rules hinders the efficient and cost-effective resolution of disputes and undermines the integrity and fairness of FINRA's forum.”¹¹⁰

Given the significance of the discovery process to the fairness of the FINRA arbitration forum, in FY 2023, Ombudsman staff will continue its study of discovery in FINRA arbitration in an effort to collect empirical data on this issue. Among other things, the study will seek to identify correlations, if any, between the parties' failure to comply with FINRA's discovery rules and the cost, duration, and outcome of FINRA arbitrations.

Mandatory Pre-Dispute Arbitration Clauses in Investment Advisory Agreements

As members of FINRA, broker-dealers can avail themselves of the FINRA Dispute Resolution forum, and virtually all brokerage account agreements include clauses stipulating that any customer dispute arising in connection with the business activities of the broker will be arbitrated in FINRA's Dispute Resolution forum.¹¹¹ However, investment advisers that are registered with the SEC or state governments (RIAs) are not members

of FINRA, and there is currently no comparable, dedicated forum for adjudicating disputes between RIAs and their clients. Nonetheless, many RIAs have begun including mandatory pre-dispute arbitration provisions in investment advisory agreements that require clients to resolve future disputes in a designated arbitral forum of the RIA's choosing.¹¹² The merits of including these arbitration clauses in RIA account agreements have been increasingly debated among industry analysts and interested groups. Given the importance of the issue for retail investors, the Office of the Ombudsman has been monitoring this issue and is preparing to undertake an inquiry into the subject.

Support for mandatory arbitration is rooted in the notion that arbitration is more efficient than litigation both in terms of time and money. Arbitration proceedings are generally not bound by the same rules of discovery and procedure as the courts, with fewer formal appearances and more relaxed standards for the admission of evidence.¹¹³ As a result, arbitrations can purportedly be commenced and resolved more quickly than traditional court proceedings.¹¹⁴ Supporters also assert that arbitrators versed in securities matters are more adept than juries in understanding these matters and in applying the law, thereby further expediting the arbitration process.¹¹⁵

However, critics of mandatory arbitration clauses in investment advisory agreements have raised several distinct concerns. First, allowing the RIA to select the arbitral forum might create an interdependent system wherein RIAs select the arbitral forum most likely to treat them favorably, and the arbitral forum has financial incentive to be selected by the RIA.¹¹⁶ Second, commenters

have argued that the fees assessed by arbitral fora commonly selected by RIAs can be cost-prohibitive to claimants, rendering the supposed financial efficiencies of arbitration moot.¹¹⁷ Third, unlike FINRA arbitration cases, neither the SEC nor any other regulatory agency has oversight of or insight into other private arbitrations. Critics assert that this results in procedures and decisions that are less likely to favor retail investors.¹¹⁸ Moreover, while FINRA makes its dispute resolution statistics publicly available,¹¹⁹ there is no similar mechanism to track statistics from other private arbitral fora.

Taking into account the varying perspectives on mandatory arbitration in the RIA context, Ombudsman staff intends to study the frequency with which these arbitration clauses are used in investment advisory agreements, the arbitral fora selected and other terms included in mandatory arbitration clauses. This survey will provide a more complete understanding of RIA arbitration, and will help identify any problematic issues impacting retail advisory clients.

FINRA Rule 2165 Expands Protections for Seniors and Other Investors

The emergence of complex and risky investment strategies has created new opportunities for fraudsters to target seniors and others that might be less familiar with such strategies. Not surprisingly, as these investment strategies have become more popular, Ombudsman staff has received an increased volume of complaints from senior investors and their caregivers. To better serve the investors who contact our office for assistance, Ombudsman staff closely follows policies and rules that affect senior investors' interests.

In February 2022, FINRA expanded existing protections for seniors by broadening the scope of Rule 2165 – Financial Exploitation of Specified Adults.¹²⁰ Rule 2165 allows member firms to place temporary holds on the accounts of Specified Adults in relation to specific types of securities transactions where the firm reasonably believes the account owner has been, is being, or will be, exploited.¹²¹ The term ‘Specified Adults,’ as defined by Rule 2165, refers to natural persons age 65 and older, or natural persons age 18 and older who the member firm reasonably believes has a mental or physical impairment that renders the individual unable to protect his or her own interests.¹²² The recently enacted amendments changed Rule 2165 in three primary ways.

- First, member firms are now permitted to place a temporary hold on securities transactions (in addition to disbursements of funds and securities) where there is a reasonable belief of financial exploitation of a specified adult, as defined by the Rule.¹²³
- Second, the time period for extending a temporary hold on a disbursement of funds, securities, or a transaction in securities has been extended for an additional 30-business days, where the member firm has reported the matter to a state regulator, agency or a court of competent jurisdiction.¹²⁴ This change increased the potential maximum duration of a temporary hold from 25 business days to 55 business days.¹²⁵
- Third, member firms are now required to retain records of the reason for any extension of a temporary hold, including any related communications with, or by, a state regulator, agency or court of competent jurisdiction.¹²⁶

The amendments went into effect on March 17, 2022.¹²⁷ In our view, the Rule and its related amendments should serve as a more flexible tool to assist brokers in the protection of seniors and certain other customers where concerns exist that financial exploitation is or might be occurring. Ombudsman staff will continue to monitor and evaluate SRO and SEC rule proposals for potential benefits and harms to senior investors.

OMBUDSMAN OUTREACH AND ENGAGEMENT EFFORTS

Law School Clinic Outreach Program

The importance and impact of law school investor advocacy clinics have increased considerably since 1997, when then-SEC Chairman Arthur Levitt, Jr. announced the creation of two pilot law school investor advocacy clinics to help retail investors with small claim cases obtain quality legal representation.¹²⁸ Today, there are 11 law school investor advocacy clinics in active operation across the United States that provide legal counseling and representation to retail investors involved in securities industry disputes, comment on rule proposals, and engage with many more investors through community-based presentations and informational materials.¹²⁹

As discussed in prior Ombudsman’s Reports, our Law School Clinic Outreach Program (LSCOP) was launched in 2016 to complement the Ombudsman’s statutory mandate and core functions.¹³⁰ One goal of the LSCOP was, and remains, the exchange of information and ideas between the law school investor advocacy clinics and SEC staff. In their unique roles as counsel to retail investors with small claims or limited incomes, clinics are uniquely positioned to examine issues that confront retail investors from a perspective unavailable to

SEC staff. The LSCOP allows the Office of the Investor Advocate to interact directly with the clinics, engage in meaningful policy discussions, and gain a better understanding of their views on suggested regulatory changes and policy initiatives. Our engagement with the law school clinics also provides an excellent opportunity to inform law students interested in securities law and investor protection issues about internships, externships, and career opportunities at the SEC. Moreover, our outreach program aligns with the SEC's diversity and inclusion efforts, creates an additional path to attract a diverse pool of potential applicants, and demonstrates the SEC's commitment to a diverse and inclusive workplace at all levels of the agency.

What began in 2016 as a series of on-site visits to the law school clinics continued with the attendance of clinic directors and law students at public meetings of the Investor Advisory Committee at SEC headquarters in 2017 and 2018, and subsequently culminated in the first SEC Investor Advocacy Clinic Summit at SEC headquarters, hosted by the Investor Advocate and the Ombudsman in 2019.¹³¹ The LSCOP continues to provide opportunities for meaningful involvement between the law school clinics and SEC staff.

2022 SEC Investor Advocacy Clinic Summit

On Thursday, March 31, 2022, the Office of the Investor Advocate and the SEC Division of Enforcement's Retail Strategy Task Force (RSTF) hosted the third SEC Investor Advocacy Clinic Summit (Summit) as a virtual event. The 2022 Summit marked the first joint endeavor between the Office of the Ombudsman and RSTF, as well as the first time a portion of the program was broadcast live to the public. The event

featured remarks from SEC Chair Gary Gensler, Commissioner Hester Peirce, Commissioner Allison Herren Lee, and Commissioner Caroline Crenshaw. All 11 active law school investor advocacy clinics from across the country shared their perspectives and engaged with subject matter experts from the SEC, FINRA and AARP on some of the most pressing issues currently facing retail investors.¹³²

Summit Overview

The Summit consisted of two programs. The morning program, an outreach event for senior investors and their caregivers, was open to the public and viewable through www.sec.gov. The afternoon program, open to participating law schools, SEC staff, and invited guests, consisted of presentations from clinic students about crypto-asset investments, options and margin trading, and digital engagement practices, or "gamification," in online trading platforms. Over 400 viewers joined the livestreamed portion of the event, and over 150 viewers and participants joined the rest of the event through the virtual platform.

Both morning and afternoon programs helped inform investors, practitioners and regulators alike of the risks for retail investors in today's complex market.

Safeguarding the Golden Years: Avoiding Financial Fraud

In this inaugural collaboration, RSTF and the Office of the Ombudsman worked to create a public outreach event that spoke directly to the unique challenges senior investors and their caregivers are currently facing. The outreach team established and monitored an email Inbox specifically for the event, where the public could pose questions and share views on the concerns of senior investors and their caregivers.

During the program, law students from Fordham University’s Securities Arbitration and Litigation Clinic discussed ways that predatory financial professionals might target senior investors. The students described a recent case where a senior couple invested with a firm they deemed to be trustworthy, in reliance on advertisements suggesting that the firm served the interests of seniors. Without authorization and against their wishes, the couple’s broker invested their funds into various unsuitable, risky investments.

Law students from the University of Miami’s Investor Rights Clinic discussed the importance of establishing a caregiver plan and highlighted a recent case where the caregiver of a defrauded senior met obstacles in trying to prevent the fraud from occurring.

Panelists from the SEC, AARP, and the FINRA Investor Education Foundation offered their expert insight into the issues raised by these cases, provided advice on how seniors and their caregivers might avoid predatory financial professionals, and responded to questions from the moderator and members of the public who had submitted questions through the designated Summit Inbox.

Clinic Presentations

The afternoon program featured timely presentations from nine law school clinics about areas of complexity and concern for retail investors. Each discussion panel was followed by question and answer sessions with SEC subject matter experts in these areas.

In the first panel, “Speculative Investing: Digital Assets and Meme Stocks,” students from the University of Pittsburgh School of Law Securities Arbitration Clinic, Cornell Law School Securities Law Clinic, and the Seton Hall University School of

Law FINRA Investor Advocacy Project presented on the risks for retail investors when investing in digital assets, meme stocks, and non-fungible tokens (NFTs). The students addressed the heightened risks of these investments caused by the spread of misinformation on social media platforms and by celebrity influencers. The students also identified hurdles for regulators and best practices to avoid high-tech securities fraud schemes.

The second panel focused on the “Risks of Options and Margin Trading.” Students from Howard University School of Law Investor Justice and Education Clinic, Cardozo Law School Securities Arbitration Clinic, and St. John’s University School of Law Securities Arbitration Clinic described a client who suffered losses as a result of a broker’s improper execution of options trades, as well two clients whose lack of understanding contributed to significant losses in margin trades. Students suggested ways to bridge certain regulatory gaps in options and margin trading for retail investors.

During the third panel, “Gamification and Investor Behavior,” students from Northwestern Pritzker School of Law’s Investor Protection Center, New York Law School’s Securities Arbitration Clinic, and Pace University Elisabeth Haub School of Law’s RealFi Investor Rights Clinic identified concerns about the impact of “gamification” on investor decision-making. The students’ presentations were based on their own experiences as novice investors, as well as the experiences of clinic clients. Noted concerns included the encouragement of addictive behaviors, and the influence of gamification techniques to increase trading activity—like daily mover lists, analyst ratings, and push notifications. The students made suggestions to address these concerns, such as reminders regarding trading app usage, and the potential application of SEC rules regarding investment “recommendations.”

Summit Feedback

Following the Summit, clinic directors and their students expressed unanimous enthusiasm for the opportunity to engage and exchange ideas with the Commission, SEC staff, and each other. Given the success of the prior SEC Investor Advocacy Clinic Summits, the Investor Advocate and the Ombudsman look forward to hosting future summits—whether as in-person, virtual, or hybrid events—as a signature feature of the Law School Clinic Outreach Program.

OBJECTIVES AND OUTLOOK

The Office of the Ombudsman was able to maintain its peak staff level during the Reporting Period—the Ombudsman, one senior special counsel, one senior counsel, one senior law clerk contractor, and one senior paralegal contractor. However, in April 2022, Tracey L. McNeil, the first SEC Ombudsman, departed the agency for a new opportunity.

As the Acting Ombudsman, I look forward to continuing with the external and internal engagement efforts that the Office of the Ombudsman has implemented and executed, to strengthen relationships and increase awareness of the Ombudsman function. Additionally, I look forward to the opportunity to work with the ombudsmen at the other financial federal regulatory agencies to help investors understand our roles and the resources we provide. Lastly, I look forward to the opportunity to review the Ombudsman Matter Management System and to continue to give retail investors the quality of information and service that the Office of the Ombudsman provides as we liaise with retail investors.

Latisha R. Brown
Acting Ombudsman

SUMMARY OF INVESTOR ADVISORY COMMITTEE RECOMMENDATIONS AND SEC RESPONSES

Congress established the Investor Advisory Committee (IAC) to advise and consult with the Commission on regulatory priorities, initiatives to protect investor interests, initiatives to promote investor confidence and the integrity of the securities marketplace, and other issues.¹³³ The IAC is composed of the Investor Advocate, a representative of state securities commissions, a representative of the interests of senior citizens, and not fewer than 10 or more than 20 members appointed by the Commission to represent the interests of various types of individual and institutional investors.¹³⁴

Exchange Act Section 39 authorizes the IAC to submit findings and recommendations for review and consideration by the Commission.¹³⁵ The statute also requires the SEC “promptly” to issue a public statement assessing each finding or recommendation of the IAC and disclosing the action, if any, the Commission intends to take

with respect to the finding or recommendation.¹³⁶ While the Commission must respond to the IAC’s recommendations, it is under no obligation to agree with or act upon the recommendations.¹³⁷

In each of its reports to Congress, including this one, the Office of the Investor Advocate summarizes the IAC recommendations and the SEC’s responses to them.¹³⁸ We continue to report on recommendations until we believe the Commission’s response is final. For summaries of Commission activities related to previous IAC recommendations, please see our earlier reports to Congress. The Commission may be pursuing initiatives that are responsive to IAC recommendations but have not yet been made public. Commission staff—including the staff of this Office—are prohibited from disclosing nonpublic information.¹³⁹ Therefore, any such initiatives are not reflected in this Report.

Topic	Date	IAC Recommendation	SEC Response
Protecting Elder Investors	June 9, 2022	Propose various reforms to improve the deterrence and prosecution of investment fraud against seniors.	Pending.
Funding Investor Advocacy Clinics	June 9, 2022	Renewing a 2018 IAC recommendation to provide grants to law school clinics which represent investors.	Pending.
Individual Retirement Accounts (IRAs) ¹⁴⁰	Dec. 2, 2021	Encourage federal agencies to address portability and force outs; have the SEC address the use of alternative investments in IRAs; and coordinate with other federal and state regulators to improve investor protections over retirement savings.	Pending.
Special Purpose Acquisition Companies (SPACs) ¹⁴¹	Sept. 9, 2021	Enhance disclosure requirements regarding the SPAC sponsor, potential conflicts of interest, mechanics of the SPAC and de-SPAC transactions, the target search process, and any additional funding. Publish an analysis of SPAC participants, their compensation, and their incentives.	On March 30, 2022, the SEC proposed adding and amending rules to enhance investor protection and disclosure related to SPAC and de-SPAC transactions. ¹⁴²
Rule 10b5-1 Plans ¹⁴³	Sept. 9, 2021	Require a “cooling off” period and prohibit overlapping Rule 10b5-1 plans. Require enhanced plan reporting and disclosures.	On Jan. 13, 2022, the SEC proposed amendments to Rule 10b5-1 including enhancements to plan reporting and disclosure. ¹⁴⁴

Topic	Date	IAC Recommendation	SEC Response
Minority and Underserved Inclusion ¹⁴⁵	March 11, 2021	Support regulations, legislation, programs and other steps that increase acquisition of financial assets and services by minority communities. Through regulatory oversight of financial services, enable a more hospitable environment for minority investment. Continue and build upon SEC programs that are directed toward increasing financial literacy and supporting minority investment. Help registered financial services firms expand and improve their ability to encourage investment by under-represented communities.	Pending.
Credit Rating Agencies ¹⁴⁶	March 11, 2021	Identify in Office of Credit Rating (OCR) reports specific nationally recognized statistical rating organizations whose conduct was deemed to be materially deficient. Remodel OCR's annual examination reports to conform to the approach utilized in the Public Company Accounting Oversight Board's annual public inspection reports.	Pending.
Accounting and Financial Disclosure ¹⁴⁷	May 21, 2020	Reconsider a 2020 rulemaking proposal that would permit issuers to omit fourth quarter results in annual reports and that would eliminate the tabular presentation of contractual obligation information. Closely monitor issuers' use of non-GAAP (Generally Accepted Accounting Principles) metrics and accounting developments relating to reverse factoring.	On June 23, 2020, the SEC's Division of Corporation Finance staff published disclosure guidance addressing supplier finance programs in the context of pandemic-related disruptions. ¹⁴⁸ On October 21, 2020, the Financial Accounting Standards Board (FASB) decided to add a project to its technical agenda to address the disclosure of supplier finance programs involving trade payables. ¹⁴⁹ On November 19, 2020, the Commission adopted the amendments to Regulation S-K, largely as proposed. ¹⁵⁰ On December 20, 2021, FASB proposed new disclosures of supplier finance programs. ¹⁵¹

Topic	Date	IAC Recommendation	SEC Response
ESG Disclosure ¹⁵²	May 21, 2020	Commence an effort to update issuer reporting requirements to include material, decision-useful disclosure concerning environmental, social, and governance matters. Consider the utility of both principles-based and prescriptive reporting requirements.	On February 24, 2021, Acting Chair Lee directed the SEC's Division of Corporation Finance to enhance its focus on climate-related disclosure in public company filings. ¹⁵³ On March 3, 2021, the SEC's Division of Examinations announced its 2021 examination priorities, which included a greater focus on climate-related risks. ¹⁵⁴ On March 4, 2021, the Commission announced the creation of a Climate and ESG Task Force in its Division of Enforcement. ¹⁵⁵ On March 15, 2021, Acting Chair Lee issued a call for public input on climate change disclosures. ¹⁵⁶ On March 21, 2022, the SEC proposed a new disclosure rule for climate-related information in public company filings. ¹⁵⁷ On March 25, 2022, the SEC proposed amendments to rules and reporting forms intended to promote consistent, comparable, and reliable information for investors concerning funds' and advisers' incorporation of ESG factors. ¹⁵⁸
Disclosure Effectiveness ¹⁵⁹	May 21, 2020	Enhance the effectiveness of new and existing disclosure relied on primarily by retail investors by, among other things, adopting an iterative process that includes disclosure research, design, and testing.	On August 5, 2020, the Commission proposed comprehensive modifications to the mutual fund and exchange-traded fund disclosure framework. ¹⁶⁰ The Office of the Investor Advocate is conducting investor research that may be relevant to this proposal.

Topic	Date	IAC Recommendation	SEC Response
SEC Guidance and Rule Proposals on Proxy Advisors and Shareholder Proposals ¹⁶¹	Jan. 24, 2020	Revisit priorities in improving the proxy system, revise and republish the 2019 proxy voting rulemaking proposals, and reconsider the 2019 proxy voting guidance.	<p>On July 22, 2020, the Commission adopted the amendments to the proxy rules without republishing them for further comment.¹⁶² On September 23, 2020, the Commission adopted the amendments to Exchange Act Rule 14a-8 without republishing them for further comment.¹⁶³</p> <p>On June 1, 2021, Chair Gensler directed Commission staff to consider whether to recommend further regulatory action regarding proxy voting advice, in particular whether to recommend the Commission revisit its related 2019 and 2020 actions.¹⁶⁴ Also on June 1, 2021, the Division of Corporation Finance issued a statement that it will not recommend enforcement action based on the 2019 guidance or the 2020 amendments while the Commission is considering further regulatory action in this area.¹⁶⁵</p>
Exchange Rebate Tier Disclosure ¹⁶⁶	Jan. 24, 2020	Require the national securities exchanges to provide the Commission with regular disclosures regarding rebate tiers offered to their members, and take steps to require monthly public disclosure of these rebate practices.	Pending.
Proxy Plumbing ¹⁶⁷	Sept. 5, 2019	Require end-to-end vote confirmations to end users of the proxy system, require all involved to cooperate in reconciling vote-related information, conduct studies on investor views on anonymity and share lending, and finalize the 2016 universal proxy rulemaking proposal.	On April 16, 2021, the Commission reopened the comment period on the proposed rules for the use of universal proxy cards in all non-exempt solicitations for contested director elections. ¹⁶⁸ On November 17, 2021, the Commission adopted rule and form amendments to require the use of a universal proxy card in all non-exempt director election contests, except those involving registered investment companies and business development companies. ¹⁶⁹

Topic	Date	IAC Recommendation	SEC Response
Structural Changes to the US Capital Markets Regarding Investment Research in a Post-MiFID II World ¹⁷⁰	July 25, 2019	Prioritize certain concepts and guiding principles, including the following: (1) consumers of research, regardless of location, should be allowed to choose whether to purchase research “bundled” or “unbundled” from trading costs; and (2) there should be greater transparency regarding research costs and how those costs are borne.	On November 12, 2019, the Commission extended temporary no-action relief from compliance with registration under the Advisers Act for brokers that receive payments for research in hard dollars or through research payment accounts from managers subject to MiFID (Markets in Financial Instruments Directive) II through July 3, 2023. ¹⁷¹
Human Capital Management Disclosure ¹⁷²	Mar. 28, 2019	Revise issuer disclosure requirements to elicit more insightful disclosure concerning how human capital within a firm is managed and incentivized.	On August 26, 2020, the Commission adopted rule amendments to modernize the description of business, legal proceedings, and risk factor disclosures that issuers are required to make pursuant to Regulation S-K. The amendments include the addition of human capital resources as a disclosure topic. ¹⁷³
Transaction Fee Pilot for NMS Stocks ¹⁷⁴	Sept. 13, 2018	Adopt a proposed Transaction Fee Pilot with the following conditions: (1) include a “no rebate” bucket; (2) permit companies to opt out of the pilot; and (3) consider consolidating Test Groups 1 and 2.	On December 19, 2018, Commission approved the adoption of new Rule 610T of Regulation NMS to conduct a Transaction Fee Pilot in NMS stocks. ¹⁷⁵ On June 16, 2020, following a lawsuit filed by several exchanges, the transaction fee pilot was struck down in the U.S. Circuit Court of Appeals for the District of Columbia. ¹⁷⁶
Financial Support for Law School Clinics that Support Investors ¹⁷⁷	Mar. 8, 2018	Explore ways to improve external funding sources to the law school investor advocacy clinics. Work with FINRA, the North American Securities Administrators Association (NASAA), and other potential partners, and request legislation from Congress to consider permanent funding.	Pending.

Topic	Date	IAC Recommendation	SEC Response
Dual Class and Other Entrenching Governance Structures in Public Companies ¹⁷⁸	Mar. 8, 2018	Direct Division of Corporation Finance staff to scrutinize disclosure documents filed by issuers with dual class and other entrenching governance structures, comment on such documents so as to enhance the salience and detail of risk disclosure, and develop guidance to address a range of issues that such structures raise.	Pending.
Mutual Fund Cost Disclosure ¹⁷⁹	Apr. 14, 2016	Enhance investors' understanding of mutual fund costs and the impact of those costs on total accumulations over time. Provide standardized disclosure of actual dollar costs on customer account statements.	<p>On June 5, 2018, the Commission published a request for comment on ways to enhance the delivery, design, and content of fund disclosures, including shareholder reports and prospectuses. The request for comment solicited investor feedback on fund fees and expenses, and it included other questions related to the IAC recommendation (e.g., dollar vs. percentage disclosure, disclosure within account statements, etc.).¹⁸⁰</p> <p>On Oct. 30, 2018, the Commission proposed amendments to help investors make informed investment decisions regarding variable annuity and variable life insurance contracts.¹⁸¹</p> <p>On March 11, 2020, the Commission adopted the amendments largely as proposed.¹⁸²</p>
Shortening the Settlement Cycle ¹⁸³	Feb. 12, 2015	Shorten the security settlement period in the U.S. financial markets from a three-day settlement cycle (referred to as T+3) to a one-day settlement cycle (T+1) for "at least" transactions in U.S. equities, corporate and municipal bonds, and unit investment trusts.	On February 9, 2022, the Commission proposed to shorten the settlement cycle to T+1 for equities, corporate bonds, and other non-exempt securities. ¹⁸⁴

Topic	Date	IAC Recommendation	SEC Response
Accredited Investor Definition ¹⁸⁵	Oct. 9, 2014	Evaluate whether the current definition achieves the goal of identifying a class of individuals who are able to make an informed investment decision and protect their interests without the protections of registration and disclosure. Consider other definitional approaches.	On August 26, 2020, the Commission adopted amendments to the definition of accredited investor. ¹⁸⁶ Among other changes, the amendments allow individuals to qualify as accredited investors if they possess certain professional credentials or affiliations, even if they do not meet the income or net worth thresholds. The Commission chose not to modify the definition's income or net worth thresholds.
Impartiality in the Disclosure of Preliminary Voting Results ¹⁸⁷	Oct. 9, 2014	Ensure impartiality in the disclosure of preliminary voting results.	Pending.
Universal Proxy Ballots ¹⁸⁸	July 25, 2013	Allow universal ballots in connection with short-slate director nominations.	On October 26, 2016, the Commission proposed amendments to the proxy rules to require parties in a contested election to use universal proxy cards that would include the names of all board of director nominees. ¹⁸⁹ On April 16, 2021, the Commission reopened the comment period on the proposed rules. ¹⁹⁰ On November 17, 2021, the Commission adopted rule and form amendments to require the use of a universal proxy card in all non-exempt director election contests, except those involving registered investment companies and business development companies. ¹⁹¹

ENDNOTES

- 1 Exchange Act § 4(g)(6), 15 U.S.C. § 78d(g)(6).
- 2 Exchange Act § 4(g)(6)(A)(i), 15 U.S.C. § 78d(g)(6)(A)(i).
- 3 Exchange Act § 4(g)(6)(B)(i), 15 U.S.C. § 78d(g)(6)(B)(i).
- 4 Exchange Act § 4(g)(4)(A), 15 U.S.C. § 78d(g)(4)(A).
- 5 Exchange Act § 4(g)(8)(A), 15 U.S.C. § 78d(g)(8)(A).
- 6 Exchange Act § 4(g)(8)(D), 15 U.S.C. § 78d(g)(8)(D).
- 7 Exchange Act § 4(g)(4)(B), 15 U.S.C. § 78d(g)(4)(B).
- 8 Exchange Act § 4(g)(4)(C), 15 U.S.C. § 78d(g)(4)(C).
- 9 Exchange Act § 4(g)(4)(D), 15 U.S.C. § 78d(g)(4)(D).
- 10 Exchange Act § 4(g)(4)(E), 15 U.S.C. § 78d(g)(4)(E).
- 11 Exchange Act § 39, 15 U.S.C. § 78pp.
- 12 Exchange Act § 39(b)(1)(A), 15 U.S.C. § 78pp(b)(1)(A).
- 13 See CHAINALYSIS, THE 2022 CRYPTO CRIME REPORT 3 (2022), <https://go.chainalysis.com/2022-Crypto-Crime-Report.html>.
- 14 See *id.*
- 15 See Press Release, FTC, FTC Data Shows Huge Spike in Cryptocurrency Investment Scams (May 17, 2021), <https://www.ftc.gov/news-events/news/press-releases/2021/05/ftc-data-shows-huge-spike-cryptocurrency-investment-scams>; see also *Blockchain Analysis in a Multi-Asset World: When Funds Cross Blockchains*, CHAINALYSIS (May 12, 2022), <https://gateway.on24.com/wcc/eh/3537848/lp/3752594/blockchain-analysis-in-a-multi-asset-world-when-funds-cross-blockchains> (comparing 251 theft incidents of crypto-assets in 2021 valued at \$3.1 billion with 43 theft incidents in the first quarter of 2022 valued at \$1.2 billion).
- 16 See Press Release, SEC, SEC Nearly Doubles Size of Enforcement’s Crypto Assets and Cyber Unit (May 3, 2022), <https://www.sec.gov/news/press-release/2022-78>.
- 17 See Press Release, SEC, BlockFi Agrees to Pay \$100 Million in Penalties and Pursue Registration of its Crypto Lending Product (Feb 14, 2022), <https://www.sec.gov/news/press-release/2022-26>; but see Statement from Hester M. Peirce, Comm’r, SEC, Statement on Settlement with BlockFi Lending LLC (Feb. 14, 2022), <https://www.sec.gov/news/statement/peirce-blockfi-20220214>.
- 18 See Gary Gensler, Chairman, SEC, Prepared Remarks of Gary Gensler on Crypto Markets at the Penn Law Capital Markets Association Annual Conference (Apr. 4, 2022), <https://www.sec.gov/news/speech/gensler-remarks-crypto-markets-040422>.
- 19 *Id.*
- 20 See *Unstable Coins*, GLASSNODE (May 16, 2022), <https://insights.glassnode.com/the-week-onchain-week-20-2022>.
- 21 See Martin Arnold, *Crypto Links with Banks Pose Threat to Financial Stability, Says ECB*, FINANCIAL TIMES (May 24, 2022), <https://www.ft.com/content/5124fe2d-0f37-4173-89ba-fe9812e09e67>; Bd. OF GOVERNORS, FED. RSRV. SYS., FINANCIAL STABILITY REPORT (May 2022), <https://www.federalreserve.gov/publications/files/financial-stability-report-20220509.pdf>.
- 22 See Press Release, Alt. Inv. Mgmt. Ass’n, AIMA Publishes Guidance on Digital Asset Custody (Apr. 27, 2022), <https://www.aima.org/article/press-release-aima-publishes-guidance-on-digital-asset-custody.html>.
- 23 SEC, OFF. OF THE INV. ADVOC., REPORT ON OBJECTIVES, FISCAL YEAR 2022, at 14, <https://www.sec.gov/files/sec-office-investor-advocate-report-on-objectives-fy2022.pdf>.
- 24 See OFF. OF THE CHIEF ACCT., SEC, Staff Accounting Bulletin No. 121 (Mar. 31, 2022), 87 Fed. Reg. 21015 (Apr. 11, 2022) (to be codified at 17 C.F.R. pt. 211), <https://www.sec.gov/oca/staff-accounting-bulletin-121>; but see Statement from Hester M. Peirce, Comm’r, SEC, Response to Staff Accounting Bulletin No. 121 (Mar. 31, 2022), <https://www.sec.gov/news/statement/peirce-response-sab-121-033122>.
- 25 See generally Concept Release on Equity Market Structure, Exchange Act Release No. 61358, 75 Fed. Reg. 3594 (Jan. 21, 2010).
- 26 Joint Industry Plan, Order Approving, as Modified, a National Market System Plan Regarding Consolidated Equity Market Data, Exchange Act Release No. 92586, 86 Fed. Reg. 44,142 (Aug. 11, 2021), <https://www.federalregister.gov/d/2021-17113>.
- 27 See Market Data Infrastructure, Exchange Act Release No. 90610, 86 Fed. Reg. 18,596 (Apr. 9, 2021), <https://www.federalregister.gov/d/2020-28370>.

- 28 See Consolidated Tape Association, Order Instituting Proceedings To Determine Whether To Approve or Disapprove the Twenty-Fifth Charges Amendment to the Second Restatement of the CTA Plan and Sixteenth Charges Amendment to the Restated CQ Plan, Exchange Act Release No. 94309, 87 Fed. Reg. 11,763 (Mar. 2, 2022), <https://www.federalregister.gov/d/2022-04334>; see also Joint Industry Plan, Order Instituting Proceedings To Determine Whether To Approve or Disapprove the Fifty-Second Amendment to the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privileges Basis, Exchange Act Release No. 94307, 87 Fed. Reg. 11,787 (Mar. 2, 2022), <https://www.federalregister.gov/d/2022-04332>.
- 29 See *id.* at 11,766.
- 30 See Joint Industry Plan, Order Approving the National Market System Plan Governing the Consolidated Audit Trail, Exchange Act Release No. 79318, 81 Fed. Reg. 84,696 (Nov. 23, 2016), <https://www.sec.gov/rules/sro/nms/2016/34-79318.pdf>.
- 31 See Timeline, CONSOLIDATED AUDIT TRAIL, available at <https://www.catnmsplan.com/timeline/phase> (last visited June 7, 2022); see also Full CAIS Production Certification and Compliance Deadlines Extended, CONSOLIDATED AUDIT TRAIL, <https://www.catnmsplan.com/announcements/full-cais-production-certification-and-compliance-deadlines-extended> (last visited June 7, 2022).
- 32 See Proposed Amendments to the National Market System Plan Governing the Consolidated Audit Trail to Enhance Data Security, Exchange Act Release No. 89632, 85 Fed. Reg. 65,990 (Oct. 16, 2020), <https://www.govinfo.gov/content/pkg/FR-2020-10-16/pdf/2020-18801.pdf>.
- 33 See Proposed Rule, Shortening the Settlement Cycle, Exchange Act Release No. 94196 (Feb. 9, 2022), 87 Fed. Reg. 10,436 (Feb. 24, 2022), <https://www.federalregister.gov/d/2022-03143>.
- 34 See SEC, Recommendation of the Investor Advisory Committee: Shortening the Trade Settlement Cycle in U.S. Financial Markets (Feb. 12, 2015), <https://www.sec.gov/spotlight/investor-advisory-committee-2012/settlement-cycle-recommendation-final.pdf>.
- 35 See SEC, Staff Report on Equity and Options Market Structure Conditions in Early 2021 (Oct. 14, 2021), <https://www.sec.gov/files/staff-report-equity-options-market-structure-conditions-early-2021.pdf>.
- 36 See Press Release, SEC, SEC Seeks Public Comment on Transfer Agent Rules (Dec. 22, 2015), <https://www.sec.gov/news/pressrelease/2015-288.html>.
- 37 Digital engagement practices, or DEPs, are utilized by broker dealers and investment advisers as a means of interacting with retail investors on digital platforms. These include “social networking tools; games, streaks and other contests with prizes; points, badges, and leaderboards; notifications; celebrations for trading; visual cues; ideas presented at order placement and other curated lists or features; subscriptions and membership tiers; and chatbots.” See Request for Information and Comments on Broker-Dealer and Investment Adviser Digital Engagement Practices, Related Tools and Methods, and Regulatory Considerations and Potential Approaches; Information and Comments on Investment Adviser Use of Technology To Develop and Provide Investment Advice, Exchange Act Release No. 92766 (Aug. 27, 2021), 86 Fed. Reg. 49,067 (Sept. 1, 2021), <https://www.federalregister.gov/d/2021-18901>.
- 38 See Proposed Rule, Reporting of Securities Loans, Exchange Act Release No. 93613, 86 Fed. Reg. 69,802 (Dec. 8, 2021), <https://www.federalregister.gov/d/2021-25739>.
- 39 Self-Regulatory Organizations, Cboe BYX Exchange, Inc.; Notice of Filing of Amendment No. 2 and Order Approving on an Accelerated Basis a Proposed Rule Change, as Modified by Amendment No. 2, To Make Clarifying Changes Regarding Its Periodic Auctions, Exchange Act Release No. 94012, 87 Fed. Reg. 4,060 (Jan. 26, 2022), <https://www.federalregister.gov/d/2022-01465>.
- 40 See Private Fund Advisers; Documentation of Registered Investment Adviser Compliance Reviews, Investment Adviser Act Release No. 5955, 17 C.F.R. pt. 275 (Feb. 9, 2022), <https://www.sec.gov/rules/proposed/2022/ia-5955.pdf> [hereinafter Private Fund Advisers Release].
- 41 See Statement from Gary Gensler, Chairman, SEC, Statement on Private Fund Advisers Proposal (Feb. 9, 2022), <https://www.sec.gov/news/statement/gensler-statement-private-fund-advisers-proposal-020922>.
- 42 See Fact Sheet, Private Fund Proposed Reforms, SEC (Feb. 9, 2022), <https://www.sec.gov/files/ia-5955-fact-sheet.pdf>.
- 43 See Private Fund Advisers Release, *supra* note 40, at section II.A.
- 44 See *id.* at section II.B.
- 45 See *id.* at section II.C.

- 46 *See id.* at section II.D.
- 47 *See id.* at section II.E.
- 48 *See id.* at section III.
- 49 *See id.*
- 50 *See, e.g.,* Lauren Foster, *The SEC Is Proposing Climate-Change Disclosures. What to Know.*, BARRON'S (Mar. 19, 2022), <https://www.barrons.com/articles/sec-climate-change-apple-stock-51647467317>.
- 51 *Id.*
- 52 *See* James Chalmers, Emma Cox, & Nadja Picard, *The Economic Realities of ESG*, PwC (Oct. 28, 2021) (highlighting results of PwC 2021 Global Investor Survey).
- 53 SEC, OFF. OF THE INV. ADVOC., REPORT ON OBJECTIVES, FISCAL YEAR 2022, at 5, <https://www.sec.gov/files/sec-office-investor-advocate-report-on-objectives-fy2022.pdf>.
- 54 *See* The Enhancement and Standardization of Climate-Related Disclosures for Investors, Securities Act Release No. 33-11042, Exchange Act Release No. 34-94478, 17 C.F.R. pts. 210, 229, 232, 239, 249 (Mar. 21, 2022) <https://www.sec.gov/rules/proposed/2022/33-11042.pdf> [hereinafter Climate Release].
- 55 *Id.*
- 56 *Id.*
- 57 SEC, Fact Sheet, The Enhancement and Standardization of Climate-Related Disclosure for Investors at 2, <https://www.sec.gov/files/33-11042-fact-sheet.pdf>.
- 58 *See* Statement from Hester Peirce, Comm'r, SEC, We Are Not the Securities and Environment Commission – At Least Not Yet (Mar. 21, 2022), <https://www.sec.gov/news/statement/peirce-climate-disclosure-20220321>; *see also* Letter from Joe Manchin III, Sen., to Gary Gensler, Chairman, SEC (Apr. 4, 2022), <https://www.manchin.senate.gov/imo/media/doc/SEC%20ClimateDisclosure%20Letter.pdf?cb>.
- 59 Climate Release, *supra* note 54, at 210.
- 60 *See id.*
- 61 *Id.*
- 62 SEC, Recommendation of the Investor Advisory Committee Regarding Human Capital Management Disclosure (Mar. 28, 2019), <https://www.sec.gov/spotlight/investor-advisory-committee-2012/human-capital-disclosure-recommendation.pdf>.
- 63 *See* Proposed Rule, Office of Management and Budget, SEC Agency Rule List, Human Capital Management, RIN 3235-AM88, <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202110&RIN=3235-AM88>.
- 64 *See* Enhanced Disclosures by Certain Investment Advisers and Investment Companies about Environmental, Social, and Governance Investment Practices, Investment Adviser Act Release No. 6034, Investment Company Act Release No. 34594, 17 C.F.R. pts. 200, 230, 232, 239, 249, 274, 279 (May 25, 2022) <https://www.sec.gov/rules/proposed/2022/ia-6034.pdf> [hereinafter ESG Release].
- 65 *See* Statement from Gary Gensler, Chairman, SEC, Statement on ESG Disclosures Proposal (May 25, 2022), <https://www.sec.gov/news/statement/gensler-statement-esg-disclosures-proposal-052522>.
- 66 *See* Press Release, Bloomberg Intelligence, ESG May Surpass \$41 Trillion Assets in 2022, but Not Without Challenges, Finds Bloomberg Intelligence (Jan. 24, 2022), <https://www.bloomberg.com/company/press/esg-may-surpass-41-trillion-assets-in-2022-but-not-without-challenges-finds-bloomberg-intelligence>.
- 67 *See* 2022 Investment Company Fact Book, INVESTMENT COMPANY INSTITUTE, at 42, https://www.icifactbook.org/pdf/2022_factbook.pdf.
- 68 *See* Katanga Johnson & Ross Kerber, *U.S. SEC Unveils Rules to Ensure ESG Funds Follow Through on Investments*, REUTERS (May 25, 2022) (citing Refinitiv Lipper data).
- 69 *See, e.g.,* OFF. OF THE INV. ADVOC., REPORT ON ACTIVITIES, FISCAL YEAR 2020, at 9, <https://www.sec.gov/files/sec-investor-advocate-report-on-activities-2020.pdf> (“We are also concerned with ‘greenwashing,’ the practice of making misleading claims regarding companies’ or funds’ ESG credentials in order to draw the interest of investors who place value in ESG matters. Greenwashing is likely to grow increasingly problematic as companies and funds viewed as ESG-friendly continue to attract assets at an accelerating pace.”).

- 70 See Investment Company Names, Investment Company Act Release Act No. 34593 (May 25, 2022), <https://www.sec.gov/rules/proposed/2022/ic-34593.pdf>; see also Investment Company Names, Investment Company Act Release No. 24828 (Jan. 17, 2001), 66 FR 8509 (Feb. 1, 2001), <https://www.sec.gov/rules/final/ic-24828.htm>.
- 71 See *id.* at section II.A.1.
- 72 See *id.* at section II.A.2.
- 73 See *id.* at section II.A.4.
- 74 See *id.* at section II.B.
- 75 See *id.* at section II.D.
- 76 See *id.* at section II.E.
- 77 See, e.g., Share Repurchase Disclosure Modernization, Exchange Act Rel. No. 93783, 87 Fed. Reg. 8443, 8451 (Feb. 15, 2022); Rule 10b5-1 and Insider Trading, Exchange Act Rel. No. 93782, 87 Fed. Reg. 8686 (Feb. 15, 2022); Prohibition Against Fraud, Manipulation, or Deception in Connection With Security-Based Swaps; Prohibition Against Undue Influence Over Chief Compliance Officers; Position Reporting of Large Security-Based Swap Positions, Exchange Act Rel. No. 93784, 87 Fed. Reg. 6652 (Feb. 4, 2022).
- 78 See Share Repurchase Disclosure Modernization, Exchange Act Rel. No. 93783, 87 Fed. Reg. 8443, 8451 (Feb. 15, 2022).
- 79 See Foundations for Evidence-Based Policymaking Act of 2018, Pub. L. No. 115-435, 132 Stat. 5529 (Jan. 14, 2019).
- 80 The requirement in 44 U.S.C. 3506 applies to the SEC: the term “agency” is defined in 44 U.S.C. 3502 and includes any “independent regulatory agency,” which, in turn, is defined to include the Securities and Exchange Commission. See Section 3502(1) and (5).
- 81 The statute defines the term “data” to mean “recorded information, regardless of form or the media on which the data is recorded” and the term “data asset” to mean “a collection of data elements or data sets that may be grouped together.” 44 U.S.C. 3502(16) and (17).
- 82 See 5 U.S.C. 552 *et seq.*
- 83 See OFF. OF THE ATT’Y GEN., THE FREEDOM OF INFORMATION ACT (FOIA) (2009).
- 84 See 44 U.S.C. 3502(22) (defining the term “public data asset” to mean “a data asset, or part thereof, maintained by the Federal Government that has been, or may be, released to the public, including any data asset, or part thereof, subject to disclosure under section 552 of title 5 [*i.e.*, the Freedom of Information Act]”); 44 U.S.C. 3506(b)(6)(B) (with respect to general information resources management, requiring each agency, in accordance with guidance from the Office of Management and Budget Director, to make each public data asset available as an open Government data asset and under an open license, where “open Government data asset” is defined in Section 3502(20) to mean, among other things, machine-readable); 44 U.S.C. 3511 (requiring each agency to develop and maintain a comprehensive data inventory and requiring each agency to submit public data assets as open Government data assets to a single public interface online as a point of entry dedicated to sharing agency data assets with the public, which shall be known as the “Federal data catalogue”).
- 85 See 44 U.S.C. 3501 *et seq.* (see in particular Section 3506(b)(1)(C) and (c)(3)(H)).
- 86 See OFF. OF MGMT. & BUDGET, EXEC. OFF. OF THE PRESIDENT, OMB M-13-13, OPEN DATA POLICY—MANAGING INFORMATION AS AN ASSET (2013); OFF. OF MGMT. & BUDGET, EXEC. OFF. OF THE PRESIDENT, OMB CIRCULAR A-130, MANAGEMENT OF FEDERAL INFORMATION RESOURCES (1996).
- 87 See 44 U.S.C. 3511(a)(1) (requiring the head of each agency, to the maximum extent practicable, to develop and maintain a comprehensive data inventory that accounts for all data assets created by, collected by, under the control or direction of, or maintained by the agency).
- 88 See 44 U.S.C. 3506(b)(6)(A) (with respect to general information resources management, requiring each agency, in accordance with guidance from the Office of Management and Budget Director, to make each data asset of the agency available in an open format).
- 89 See 44 U.S.C. 3511(a)(2)(E) (requiring guidance from the Office of Management and Budget Director to include specified criteria for the head of an agency to use in determining whether a particular data asset should not be made publicly available). The Freedom of Information Act authorizes agencies to withhold nine enumerated categories of information. The Freedom of Information Act does not itself prohibit the agency from voluntarily disclosing the exempted information in its discretion, but there may be other statutes prohibiting disclosure, or other relevant considerations.

- 90 See 44 U.S.C. 3504(b)(6)(C) (requiring the Office of Management and Budget Director to issue guidance for agencies to implement Section 3506(b)(6) in a manner that takes into account, among other things, the cost and benefits to the public of converting a data asset into a machine-readable format that is accessible and useful to the public); 44 U.S.C. 3506(d)(6)(B) (requiring, with respect to information dissemination, each agency to provide the public with the opportunity to request specific data assets to be prioritized for disclosure and to provide suggestions for the development of agency criteria with respect to prioritizing data assets for disclosure); 44 U.S.C. 3511(a)(2)(E) (requiring the Office of Management and Budget Director to issue guidance for agencies to develop and maintain comprehensive data inventories; the guidance shall include criteria for the head of an agency to use in determining whether a particular data asset should not be made publicly available in a manner that takes into account, among other things, the cost and benefits to the public of converting the data into a format that could be understood and used by the public).
- 91 The U.S. Government Accountability Office reported that as of December 2021 the Office of Management and Budget had not issued the statutorily-required implementation guidance to agencies on making data open by default. The Government Accountability Office report's first recommendation is for the Office of Management and Budget to issue that guidance. See U.S. GOV'T ACCOUNTABILITY OFF., GAO-22-104574, OPEN DATA: ADDITIONAL ACTION REQUIRED FOR FULL PUBLIC ACCESS 36 (2021).
- 92 See, e.g., Rick A. Fleming, Investor Advocate, SEC, Remarks Before XBRL US Investor Forum 2016: Finding Value with Smart Data: Improving Disclosure with Smart Data (Oct. 24, 2016), <https://www.sec.gov/news/speech/improving-disclosure-with-smart-data.html>.
- 93 Exchange Act § 4(g)(8)(B), 15 U.S.C. § 78d(g)(8)(B).
- 94 Exchange Act § 4(g)(8)(D), 15 U.S.C. § 78d(g)(8)(D).
- 95 As used in this report, the term "Ombudsman" may refer to the Ombudsman, the Ombudsman and staff in the Office of the Ombudsman, and, at times, to staff, contractors, and interns in the Office of the Investor Advocate directly supporting the ombudsman function.
- 96 See SEC, About the SEC, <https://www.sec.gov/about.shtml> (last visited June 7, 2022).
- 97 The Primary Issue Category labels are similar to the category labels used by other divisions and offices in public reports, where the category labels are based upon the submitter's own characterization or description of the issue. See, for example, SEC, OFF. OF THE WHISTLEBLOWER, WHISTLEBLOWER PROGRAM 2020 ANNUAL REPORT TO CONGRESS, at 28 and related footnote 80: "This breakdown reflects the categories selected by whistleblowers and, thus, the data represents the whistleblower's own characterization of the violation type." The exceptions in this Ombudsman's Report are the "Non-SEC/Other Matters" category label used for matters not under the jurisdiction of the SEC, and the "Atypical Matters" category label used for matters where the submitter's characterization or description of the issue makes it difficult to determine the nature of the complaint.
- 98 A crypto exchange is a platform on which an investor can buy and sell crypto. These exchanges can be used to trade one crypto for another, or to buy crypto using regular currency, such as US dollars. See Want to Buy Crypto? Here's What to Look for in a Crypto Exchange, NextAdvisor (May 3, 2022) <https://time.com/nextadvisor/investing/cryptocurrency/what-are-cryptocurrency-exchanges/#:~:text=A%20crypto%20exchange%20is%20a,of%20the%20cryptocurrencies%20they%20offer>.
- 99 See *Scammers Defraud Victims of Millions of Dollars in New Trend in Romance Scams*, Public Service Announcement, Federal Bureau of Investigation (Sept. 16, 2021) <https://www.ic3.gov/Media/Y2021/PSA210916>.
- 100 SEC, Online Portal, Report Suspected Securities Fraud or Wrongdoing, <https://www.sec.gov/tcr> (last visited June 7, 2022).
- 101 See Investor.gov, Glossary, Alternative Trading Systems (ATSS), <https://www.investor.gov/introduction-investing/investing-basics/glossary/alternative-trading-systems-atss> (last visited June 7, 2022).
- 102 See SEC, Short Position and Short Activity Reporting by Institutional Investment Managers, Exchange Act Release No. 34-94313 (Feb. 25, 2022); <https://www.sec.gov/rules/proposed/2022/34-94313.pdf> (proposing release).
- 103 See Climate Release, *supra* note 54.
- 104 See Investor Bulletin, Broker-Dealer/Customer Arbitration (Dec. 20, 2016) https://www.sec.gov/oiea/investor-alerts-bulletins/ib_arbitration.html.

- 105 See SEC, Information for Harmed Investors, <https://www.sec.gov/enforce/information-for-harmed-investors> (last visited June 7, 2022).
- 106 See 2021 FINRA Arbitrators Guide, at p. 11 (February 2021) (“FINRA makes available an arbitration forum—pursuant to rules approved by the SEC—but has no part in deciding the award.”), available at <https://www.finra.org/sites/default/files/arbitrators-ref-guide.pdf>.
- 107 See FINRA Rule 12904.
- 108 A Court may issue an order vacating an arbitration award in any of the following cases: “(1) where the award was procured by corruption, fraud, or undue means; (2) where there was evident partiality or corruption in the arbitrators, or either of them; (3) where arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; or of any other misbehavior by which the rights of any party have been prejudiced; or (4) where the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter was not made.” 9 U.S.C. § 10(a).
- 109 FINRA Rule 12505.
- 110 See 2021 FINRA Dispute Resolution Services Arbitrator’s Guide, at p. 41 (February 2021), <https://www.finra.org/sites/default/files/arbitrators-ref-guide.pdf>.
- 111 See FINRA Rule 12200. See also Arbitration Overview, FINRA.ORG, (n.d.), <https://www.finra.org/arbitration-mediation/arbitration-overview#:~:text=A%20broker%20or%20a%20brokerage,firms%20and%20brokers%2C%20or%20brokers>.
- 112 See Christine Lazaro and Michael S. Edmiston, Op Ed: Costly Forced Arbitration against RIAS Harms Investors, (January 14, 2022) (hereinafter PIABA Op Ed), <https://www.piaba.org/piaba-newsroom/oped-costly-forced-arbitration-against-rias-harms-investors-christine-lazaro-and>.
- 113 See, e.g., *McMahon v. Shearson/American Express, Inc.*, 482 U.S. 220, 229-30 (1987) (parties to arbitration trade “the procedures and opportunity for review of the courtroom for the simplicity, informality and expedition of arbitration”).
- 114 *Id.*
- 115 See, e.g., JAMS, Arbitration: A Powerful Tool for Achieving Fair, Expeditious Resolution, <https://www.jamsadr.com/arbitration> (last visited May 16, 2022) (“Arbitration at JAMS allows the parties to select a neutral with industry-specific expertise and to define the process best suited to resolve their dispute...”).
- 116 Press Release, Sen. Jeff Merkley (D-OR) & U.S. Rep. Bill Foster, (D-IL), *Foster; Merkley Lead Bicameral Investor Choice Act* (Dec. 6, 2019) (hereinafter Foster, Merkley Press Release), <https://www.merkley.senate.gov/news/press-releases/foster-merkley-lead-bicameral-investor-choice-act-2019> (“[W]hen an investment advisor or broker chooses the judge, pays the judge, and promises future business to the judge, you know that the system is rigged against you.”) (quoting Sen. Jeff Merkley).
- 117 See PIABA Op Ed, *supra* note 112.
- 118 See generally Foster, Merkley Press Release, *supra* note 116.
- 119 See FINRA, Dispute Resolution Statistics, <https://www.finra.org/arbitration-mediation/dispute-resolution-statistics>.
- 120 See FINRA Regulatory Notice 22-05 (Feb. 15, 2022) (hereinafter FINRA Reg. Notice 22-05), <https://www.finra.org/sites/default/files/2022-02/Regulatory-Notice-22-05.pdf>.
- 121 FINRA, Rule 2165 (2022), <https://www.finra.org/rules-guidance/rulebooks/finra-rules/2165>.
- 122 FINRA, Rule 2165(a) (2022) <https://www.finra.org/rules-guidance/rulebooks/finra-rules/2165>.
- 123 FINRA Reg. Notice 22-05, at p. 3.
- 124 *Id.* at p. 4.
- 125 *Id.*
- 126 *Id.*
- 127 *Id.* at p. 1.
- 128 Press Release, SEC, SEC Announces Pilot Securities Arbitration Clinic to Help Small Investors—Levitt Responds to Concerns Voiced at Town Meetings, 97-101 (Nov. 12, 1997), <https://www.sec.gov/news/press/pressarchive/1997/97-101.txt>.

- 129 For more information on the significance of law school investor advocacy clinics to retail investors, see REPORT ON ACTIVITIES, FISCAL YEAR 2019, at 33-34.
- 130 For an overview of the Law School Clinic Outreach Program (LSCOP), see SEC, OFF. OF THE INV. ADVOC., REPORT ON OBJECTIVES, FISCAL YEAR 2021, at 33, <https://www.sec.gov/files/sec-office-investor-advocate-report-on-objectives-fy2021.pdf>.
- 131 For a timeline highlighting the Ombudsman’s formal outreach and engagement efforts from the start of the LSCOP in October 2016 through June 2019, see *id.* at 34-35.
- 132 Participating law schools included (in alphabetical order): Benjamin N. Cardozo School of Law, Cornell Law School, Fordham University School of Law, Howard University School of Law, New York Law School, Northwestern Pritzker School of Law, Pace University School of Law, Seton Hall University School of Law, St. John’s University School of Law, University of Miami School of Law and the University of Pittsburgh School of Law.
- 133 Exchange Act § 39(a), 15 U.S.C. § 78pp(a).
- 134 *Id.*
- 135 Exchange Act § 39(a)(2)(B), 15 U.S.C. § 78pp(a)(2)(B).
- 136 Exchange Act § 39(g), 15 U.S.C. § 78pp(g).
- 137 Exchange Act § 39(h), 15 U.S.C. § 78pp(h).
- 138 According to Exchange Act Section 4(g)(6)(B)(ii), 15 U.S.C. § 78d(g)(6)(B)(ii), a Report on Activities must include several enumerated items, and it may include “any other information, as determined appropriate by the Investor Advocate.”
- 139 17 C.F.R. §§ 200.735-3(b)(2)(i), 230.122 (2014); Exchange Act § 24(b), 15 U.S.C. § 78x; 5 U.S.C. § 552a(i)(1); SECR18-2, Section 8.5 (Nonpublic Information) (July 31, 2005).
- 140 SEC, Recommendation of the Investor Advisory Committee Regarding Individual Retirement Accounts (Dec. 2, 2021), <https://www.sec.gov/spotlight/investor-advisory-committee-2012/20211202-ira-recommendation.pdf>.
- 141 SEC, Recommendation of the Investor Advisory Committee Regarding Recommendation of the Investor-as-Owner Subcommittee on Special Purpose Acquisition Companies (Sept. 9, 2021), <https://www.sec.gov/spotlight/investor-advisory-committee-2012/draft-recommendation-of-the-iap-and-iao-subcommittees-on-spacs-082621.pdf>.
- 142 See Special Purpose Acquisition Companies, Shell Companies, and Projections, Securities Act Release No. 33-11048 (Mar. 30, 2022) (proposing release).
- 143 SEC, Recommendation of the Investor Advisory Committee Regarding Recommendation of the Investor-as-Owner Subcommittee on Rule 10b5-1 Plans (Sept. 9, 2021), <https://www.sec.gov/spotlight/investor-advisory-committee-2012/draft-recommendation-of-the-iao-subcommittee-on-10b5-1-plans-082621.pdf>.
- 144 See Rule 10b5-1 and Insider Trading, Securities Act Release No. 33-11013, 87 Fed. Reg. 8686 (Jan. 13, 2022) (proposing release).
- 145 SEC, Recommendation of the Investor Advisory Committee Regarding Minority and Underserved Inclusion in Investment and Financial Services (Mar. 11, 2021), <https://www.sec.gov/spotlight/investor-advisory-committee-2012/20210311-minority-and-underserved-inclusion-recommendation.pdf>.
- 146 SEC, Recommendation of the Investor Advisory Committee Regarding Recommendation of the Market Structure Subcommittee on Credit Rating Agencies (Mar. 11, 2021), <https://www.sec.gov/spotlight/investor-advisory-committee-2012/20210311-credit-rating-agencies-recommendation.pdf>.
- 147 SEC, Recommendation of the Investor Advisory Committee Regarding Recommendation of the Investor as Owner Subcommittee on Accounting and Financial Reporting Disclosure (May 5, 2020), <https://www.sec.gov/spotlight/investor-advisory-committee-2012/accounting-and-financial-disclosure.pdf>.
- 148 See Coronavirus (COVID-19)—Disclosure Considerations Regarding Operations, Liquidity, and Capital Resources, SEC Div. of Corp. Fin. Disclosure Guidance Topic No. 9A (June 23, 2020), <https://www.sec.gov/corpfin/covid-19-disclosure-considerations>.
- 149 See Julie Steinberg, *FASB to Explore Greater Disclosure of Supply-Chain Financing*, WALL ST. J. (OCT. 22, 2020, 6:05 AM ET), <https://www.wsj.com/articles/fasb-to-explore-greater-disclosure-of-supply-chain-financing-11603361147>.
- 150 See Management’s Discussion and Analysis, Selected Financial Data, and Supplementary Financial Information, Securities Act Release No. 10890 (Nov. 19, 2020), <https://www.sec.gov/rules/final/2020/33-10890.pdf>.
- 151 See FASB, Exposure Draft, Disclosure of Supplier Finance Program Obligations (Dec. 20, 2021) https://www.fasb.org/page/getarticle?uid=fasb_Media_Advisory_12-20-21_Body_0228221200.

- 152 SEC, Recommendation of the Investor Advisory Committee Regarding Recommendation of the Investor as Owner Subcommittee on ESG Disclosure (May 14, 2020), <https://www.sec.gov/spotlight/investor-advisory-committee-2012/esg-disclosure.pdf>.
- 153 Statement from Allison Herren Lee, Acting Chair, SEC, Statement on the Review of Climate-Related Disclosure (Feb. 24, 2021), <https://www.sec.gov/news/public-statement/lee-statement-review-climate-related-disclosure>.
- 154 Press Release, SEC, Division of Examinations Announces 2021 Examination Priorities (Mar. 3, 2021), <https://www.sec.gov/news/press-release/2021-39>.
- 155 Press Release, SEC, SEC Announces Enforcement Task Force Focused on Climate and ESG Issues (Mar. 4, 2021), <https://www.sec.gov/news/press-release/2021-42>.
- 156 Statement from Allison Herren Lee, Acting Chair, SEC, Public Input Welcomed on Climate Change Disclosures (Mar. 15, 2021), <https://www.sec.gov/news/public-statement/lee-climate-change-disclosures>.
- 157 *See* The Enhancement and Standardization of Climate-Related Disclosures for Investors, Securities Act Release No. 33-11042, 87 Fed. Reg. 21334, (Mar. 21, 2022) (proposing release).
- 158 *See* ESG Release, *supra* note 64.
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