HFSC Oversight Hearing (Oct. 5, 2021) - QFRs

House Committee on Financial Services

"Oversight of the Securities and Exchange Commission: Putting Investors and Market Integrity First."

Rep. Ted Budd (R-NC)
Questions for the
Record October 6, 2021

Questions for the Honorable Gary Gensler, Chairman, Securities and Exchange Commission, from Congressman Ted Budd:

1) A paper published by the CATO Institute in September 2020, titled *"Too Much Information? Investors and corporations could benefit from less frequent financial reporting"*, found that reducing the frequency of reporting earnings data to one, two, or even three times a year would ultimately result in a regime that is more equitable for all investors and provides less volatile, and more useful, information at a lower cost. Specifically, the authors stated, "The most common criticism of quarterly reporting is that it leads to managerial "short- termism" whereby firms place an excessive emphasis on achieving short-run earnings goals at the expense of long-run growth. A firm preoccupied with satisfying financial markets every three months may be tempted to reduce productive long-term investments elsewhere—such as research and development—to hit its quarterly numbers."

Do you agree that quarterly reporting frequency requirements for publicly traded companies is dated and needs to be modernized? Should companies of all sizes be given flexibility to provide financial reports less than four times a year?

2) In an op-ed in Forbes titled How to Improve Quarterly Earnings Reports? Do Them Less Frequently, by Ike Brannon published on September 25, 2020, it was stated, "What's more problematic than the manipulation of reported earnings is that the incentive to meet quarterly earnings targets may actually influence material decisions made by executives. Stockholders should want companies to make decisions that maximize the present value of its long-run earnings, but companies often make material transactions that are deleterious to the bottom line solely to bolster short-term earnings"

Does the SEC believe the frequency of interim reporting frequency is a burden on US publicly traded companies and discourages capital formation? Is the SEC considering any initiatives to modernize the frequency of quarterly reports?

3) Publicly traded U.S. corporations currently file financial information four times a year in order to provide investors timely information of their company's performance. Relative to other countries that have less frequent reporting requirements, do you believe this system is dated and does not reflect the economic realities that US companies are

faced with?

4) What is the SEC's position on moving to tri-annual reporting (i.e., reporting 3 times a year or every four months) or semi-annual for publicly traded companies of all sizes? Do you believe form 8-Ks are efficient filings for US public companies to disclose significant events or material information to investors in between regular interim SEC filings?

U.S. capital markets have benefited since the 1930's from registered issuers of securities providing both annual and quarterly reports to the public as prescribed in the Securities and Exchange Act of 1934. Quarterly disclosure as well as updates on Form 8-K and supplemental disclosure pursuant to Regulation Fair Disclosure give investors a better sense of the financial position of companies and important transactions in the periods between annual reports. This disclosure helps to foster market efficiency, investor protection, and capital formation. We will continue to work to explore ways across our various rules, including those periodic reporting to reduce unnecessary burdens or duplication for issuers, while enhancing appropriate investor protection.

Rep. Warren Davidson (R-OH)

October 5, 2021 Hearing

SEC Chairman Gensler

Question by Rep. Davidson

Question to Chair Gensler:

1. **"Chair Gensler, you stated in a recent speech that you look forward to reviewing filings of exchange-traded funds (ETFs) under the Investment Company Act ('40 Act) that are limited to CME-traded Bitcoin futures, noting "the '40 Act provides significant investor protections for mutual funds and ETFs." Can you please explain why you do not believe that the '33 Act provides investor protections akin to the '40 Act in the context of a Bitcoin ETF particularly when both types of products would be based upon the same underlying spot Bitcoin markets?"**

The statutory framework and the regulatory process for reviewing products under the '33 Act and the '40 Act are different. The Commission continues to carefully consider all exchange-traded products under the frameworks and processes applicable to them. The first of the bitcoin futures ETFs have gone effective and are operating. There are also several bitcoin futures mutual funds that are currently trading.

Rep. Anthony Gonzalez (R-OH)

QFRs for Chairman Gensler

1. ***Chair Gensler*, can you please explain why you do not believe that the '33 Act provides investor protections akin to the '40 Act in the context of a Bitcoin ETF particularly when both types of products would be based upon the same underlying spot Bitcoin markets?**

The statutory framework and the regulatory process for reviewing products under the '33 Act and the '40 Act are different. The Commission continues to carefully consider all exchange-traded products under the frameworks and processes applicable to them. The first of the bitcoin futures ETFs have gone effective and are operating. There are also several bitcoin futures mutual funds that are currently trading.

2. ***Chair Gensler,* I understand that mutual funds pay costly "processing fees" to brokers to have prospectuses and other SEC-required documents delivered to investors. These fees cost fund investors approximately $220 million annually. The SEC recently had an opportunity to reform the "processing fee" framework and failed to do so, just leaving it as it is. What is the SEC going to do to fix this broken system and protect the interests of retail fund investors?**

Thank you for your interest in the "processing fee" framework. I agree that these are important issues. A New York Stock Exchange ("NYSE") petition for Commission review of a disapproval by the staff (acting for the Commission pursuant to delegated authority) of a NYSE proposal to remove the fee schedule from its rules is currently before the Commission. The Commission looks forward to receiving additional public comments addressing this matter, and I'm looking forward to learning more about these issues. I appreciate your engagement.

Rep. Trey Hollingsworth (R-IN)

2021-10-19 Rep. Trey Hollingsworth SEC QFR

Tick Sizes:

Chair Gensler, It has come to my attention that the MEMEX recently submitted to the SEC a request for exemptive relief under subsection c of Rule 612. Rule 612, or the "Sub-Penny Rule" as it is known, prohibits market participants from displaying quotes, or accepting or ranking orders, in increments of less than 1 cent in any stock that trades for more than one dollar per share. The request for exemptive relief would allow market participants to quote in half-penny increments for stocks that consistently trade with an average quoted spread of 1.1 cents or less.

As you are aware, I have raised this issue with you in previous hearings and letters. As currently implemented, Rule 612 has distorted price discovery, and increased transaction costs for investors in a number of actively traded securities. The impact of penny quoting is particularly felt in low-priced securities that trade in the one to twenty dollar range and certain liquid ETPs.

Mr. Chairman, can you please confirm that you will prioritize updating Rule 612 within Reg NMS and offer serious consideration to any requests for exemptive relief from the Sub-Penny Rule as you conduct the reviewing process?

I have asked the staff to develop recommendations with regard to equity market structure for consideration by the Commission. In this regard, among other matters, I've asked staff to consider whether adjusting minimum tick sizes, reevaluating what is included in the National Best Bid and Offer, enhancing disclosure, payment for order flow, on-exchange rebates, access fees, or leveling competition between trading venues and wholesalers could increase transparency and competition. Minimum tick sizes and Rule 612 is one area that I've asked staff to consider when making recommendations.

NBBO:

Chair Gensler, you have articulated concerns about a number of aspects of the regulatory framework governing U.S. equity market structure, including practices such as payment for order flow and the increased trading activity away from "lit" exchanges. You have noted, however, that any changes need to be made in the context of comprehensive market structure reforms. I have serious concerns about the impact that dramatic reforms to the current regulatory framework could have on the retail investor experience and access, which has arguably never been better with low-cost trading and successful order execution for those investors. Instead of dramatically upending the existing equity market structure, have you considered less disruptive, incremental steps that could be taken to enhance the

tools available to measure execution quality to ensure that retail customers are, in fact, getting the best outcomes possible?

- **For example, you have noted that the current benchmark for measuring execution quality – the National Best Bid and Offer, or "NBBO" – is "an old measuring stick" that "does not reflect the full market." Before taking drastic steps such as banning payment for order flow and risking a return to high-cost, commission-based trading for retail investors, shouldn't the SEC consider more measured alternatives such as updating the NBBO benchmark to include the full set of order information that is available in the marketplace, including odd lots and depth of book information?**

As noted above, I believe that our market structure should provide investor orders with an opportunity for the best possible execution. I have not reached any conclusions in this area and have asked the staff to develop recommendations for consideration by the Commission, including possible reevaluating what is included in the National Best Bid and Offer.

Exchange Rebates:

Following up on my previous comment about the recent trading trends away from exchanges, I encourage you to take a balanced approach to any changes made to the regulatory framework related to US capital market structure in order to ensure that all market participants have regulatory parity.

- **Do you agree that displayed liquidity provided by exchanges enables buyers and sellers to transact efficiently?**
- **Do you agree that exchange rebates play a central role in the price discovery process? Do you have any concern about the negative impacts to overall market quality and retail execution quality if the Commission were to eliminate exchange rebates?**

As noted above, I have not reached any conclusions with regard to equity market structure and have asked the staff to develop recommendations for consideration by the Commission. In this regard, I've asked staff to consider the potential conflicts of interest in the context of payment for order flow and on-exchange use of rebates. Your concerns with potential impacts is something I expect staff to consider when making recommendations.

E-Delivery:

Chairman Gensler, during your first appearance before the Committee in April as SEC Chair, you agreed with me that e-delivery of brokerage documents should be prioritized during your tenure. Unfortunately, the SEC's regulatory agenda released in June did not

contain any mentions of updating the rules governing electronic delivery of brokerage documents to American investors.

Please explain why this important regulatory reform was omitted from your agenda and detail what immediate steps you will take to increase the electronic delivery of trade confirmations, prospectuses, and account statements to millions of Americans?

I agree that evolving technology provides opportunities to improve investor experience with regard to the Commission's disclosure framework. In order to realize the benefits that technology can bring to the investor experience, it is important to focus on and consider how to leverage technology to improve the content of disclosures and meet the different needs of different types of investors.

The Commission has already proposed substantial modifications to fund shareholder reports, including a modernized, layered disclosure framework that would promote the use of interactive, user-friendly design features to present certain fund information electronically. The staff is reviewing comments received and is considering recommendations regarding this proposal, as reflected on the short-term Regulatory Flexibility Act agenda. We will continue to evaluate the ways in which we can modernize, where possible, to the benefit of investors.

<u>Treasuries Reform:</u>

I believe it's long overdue to make some commonsense updates to the market structure for US Treasuries. In recent years, the SEC has highlighted the need for greater public transparency into the US Treasury market, and I was encouraged to see that you highlighted the importance of reforms to the Treasury market in your recent testimony before the Senate Banking Committee.

- **One of those reforms is to bring Treasury markets on par with other bond markets, like our corporate and municipal bond markets, and bring more real-time public transparency into the marketplace. Public transparency can increase resilience, competitiveness, and liquidity. Do you agree we should take further steps towards bringing greater transparency to this critical market?**

As outlined in a recent speech at the U.S. Treasury Market Conference, there is much work that can be considered to bring greater efficiency, competition and transparency; market integrity; and resiliency to the $23 trillion Treasury markets.[1] *The SEC plays a critical role in our overall efforts to improve the functioning of the Treasury market. I've asked staff to make recommendations for the Commission's consideration to freshen up our rules to reflect the state of the Treasury market today.*

[1] https://www.sec.gov/news/speech/gensler-us-treasury-market-conference-20211117

One work stream relates to data quality. Currently, the Trade Reporting and Compliance Engine ("TRACE"), a facility operated by FINRA, facilitates the mandatory reporting of over-the-counter transactions in Treasury securities. TRACE does not publicly disseminate any information about these individual transactions. Further, only broker-dealers that are registered with FINRA, however, report Treasury transactions to TRACE, leaving out major market participants like commercial banks and proprietary trading firms. I support the Federal Reserve's recently announced new rule requiring large banks to report transactions to TRACE. I've asked staff to continue to work with FINRA, the Department of the Treasury, and the Federal Reserve to consider further enhancements to TRACE. In part to help make the TRACE data set more comprehensive, I have directed the SEC staff to consider whether non-bank firms that significantly trade in the Treasury market should be registered as dealers with the SEC and required to become TRACE-reporting members of FINRA.

Rep. David Kustoff (R-TN)

Chair Gensler, as you know, the fixed income markets are very different from equity markets, and each needs rules tailored specifically to it. I would like to raise with you today SEC rule 15c2-11 as it applies to fixed-income securities.

Market participants have recently become concerned that the application of this equities market-focused rule to fixed-income securities would deter quotation activity in a manner that would diminish, not increase, transparency. I am further concerned that the application of a rule designed around equity markets could upend liquidity and reverse recent advancements in electronic trading of bonds in the fixed income markets, which would harm investors and issuers who rely on these markets.

On September 24, 2021 the SEC issued a no-action letter (https://www.sec.gov/files/rule-15c2-11-fixed-income-securities-092421.pdf) that provides relief to fixed income markets from the provisions of the rule for just three months. Three months does not seem like enough time for firms to build compliance systems from scratch, and certainly does not seem like enough time to revise a rule to actually work in the market.

- **Chair Gensler is the Commission going to maintain that Rule 15c2-11 applies to quotations for over-the-counter fixed-income securities going forward? If so, can you commit to me that the Commission will revise Rule 15c2-11 according to the statutory rulemaking process, providing an opportunity for public notice and comment, so that the rule actually works for these markets instead of hurts them?**
- **In addition, will the Commission clarify to the markets that it will not enforce Rule 15c2-11 with respect to fixed-income quotations pending the outcome of that process?**

Rule 15c2-11 governs the publication or submission of quotations, by a broker-dealer, for securities in a quotation medium other than a national securities exchange. On September 16, 2020, the Commission adopted amendments to Rule 15c2-11 to modernize the Rule; promote investor protection; and improve transparency by, among other things, requiring key, basic information about issuers and their securities to be "current" and "publicly available" in order for a broker-dealer to initiate a quoted market or maintain it. As you mentioned, on September 24, 2021, Commission staff issued a temporary no-action letter regarding fixed income securities in response to indication from market participants that they would be unable to complete by the compliance date the operational and systems changes necessary to comply with the final rule requirements.

As stated in this Sept. 24 staff no-action letter, the recent amendments to Rule 15c2-11 did not alter the types of securities covered by the existing Rule. Since its original adoption in 1971, Rule 15c2-11 has applied to "securities," a defined term in the Exchange Act that has and continues to include fixed income securities with the exception of "exempted securities" and a specific exception for municipal securities. The Commission also has stated that Rule 15c2-11 applies to fixed income securities.

The Commission staff engaged with the industry to further understand their operational issues in complying with the Rule. On December 16, in response to requests from industry representatives that have indicated they need additional time to complete the operational and systems changes

necessary to comply with the amended Rule for fixed income securities, the staff of the Commission issued a second no-action letter –over three separate phases – to allow for an orderly and good faith transition into compliance with amended Rule 15c2-11.[2] *The amendments to Rule 15c2-11 are designed to modernize the Rule and to enhance investor protection by requiring that current and publicly available issuer information be accessible to investors. This three-phase approach is to further allow for broker-dealers that publish or submit quotations for fixed income securities in a quotation medium to achieve the goals of Rule 15c2-11.*

Rep. Barry Loudermilk (R-GA)

House Committee on Financial Services

Full Committee Hearing: Oversight of the U.S. Securities and Exchange Commission

October 5, 2021

Questions for the Record from Congressman Barry Loudermilk (GA-11)

The Honorable Gary Gensler, Chair, U.S. Securities and Exchange Commission

The definition of a "facility" of a national securities exchange under Exchange Act Section 78c(a)(2) has not been updated in many decades, despite rapid technological and trading evolution which have enabled exchanges to serve investors and members with services never contemplated when the law was enacted.

This regulatory ambiguity allows agency staff to routinely attempt to regulate commercial activity that is unrelated to exchange operations and not regulated when engaged in by non-exchanges. This stifles innovation and the use of modern technologies, making U.S. exchanges less competitive domestically as compared to dark pools and other off-exchange venues, as well as globally for the cross-border flow of capital. It has also triggered needless, costly, and inefficient litigation in federal courts. This demonstrates the need for the SEC to establish clear standards for regulated conduct, a primary job of any regulatory agency.

- **Will the SEC provide clear, certain, transparent guidance that the term "facility" of a national securities exchange under Exchange Act Section 78c(a)(2) is reasonably limited and tied to the modern day operations of an exchange?**

Congress drafted broad definitions and illustrations of the terms "exchange" and "facility" in the Securities Exchange Act of 1934 to ensure flexibility as markets change and evolve. The Commission has

[2] *See* Letter from Josephine Tao, Assistant Director, Office of Trading Practices, Division of Trading and Markets to Racquel Russell, Senior Vice President and Director of Capital Markets Policy, Office of the General Counsel, FINRA (Dec. 16, 2021) (Staff No-action Letter Regarding Rule 15c2-11 and Fixed Income Securities) at: https://www.sec.gov/files/fixed-income-rule-15c2-11-nal-finra-121621.pdf

frequently applied this definition in responding to rules proposed by national securities exchanges. Recently, the SEC addressed the question of what constitutes a facility of a national securities exchange in an order approving the request of a group of exchanges to provide wireless connectivity services at a data center in northern New Jersey where a significant volume of trading occurs. In its order, the Commission explained that as a system of communication offered by a group of persons providing a market place for bringing together purchasers and sellers of securities, wireless connectivity services are offered for the purposes of effecting or reporting transactions on the Exchanges; and also that these wireless services were using the premises and property of the group of persons providing a market place for bringing together purchasers and sellers of securities for such purposes. The D.C. Circuit affirmed the Commission's order in a decision entered on January 21, 2022.

Rep. Frank Lucas (R-OK)

October 5 at 10:00 AM: The Committee on Financial Services will hold a virtual hearing entitled, "Oversight of the U.S. Securities and Exchange Commission: Wall Street's Cop Is Finally Back on the Beat."

Questions for the Record

Representative Frank Lucas

1. **The new reporting regimes for security-based swaps that begin to take effect in November will bring important transparency to the market and the SEC staff and Commissioners should be commended.**

   With regard to "historical swap reporting", it is my understanding that swaps that were live as of the date of enactment of the Dodd Frank Act (July 21, 2010), but closed at any time thereafter, will still be required to be reported to the SEC. This would include swaps, for example, that terminated in 2010, over 11 years ago. By comparison, the CFTC's historical swap reporting regime launched much closer to the date of enactment, so it had a much shorter "lookback" period for the reporting of old swaps. ESMA eventually removed their backloading requirement for EMIR purposes.

   Is it the SEC's intent to require reporting of swap transactions that closed out many years ago, or is this an unintended consequence of the SEC's timing? What would be the value of requiring this data, and if the costs would potentially outweigh the benefits, would the SEC be able to request this data from firms on an as needed basis or otherwise shorten the time horizon by where closed contracts must be reported?

   The SEC's Regulation SBSR requires reporting of historical security-based swaps. Congress directed the Commission to promulgate a rule requiring all security-based swaps that were open as of the date of enactment or opened after the date of enactment to be reported to a Swap Data Repository. Consistent with the Congressional mandate, these data will allow for a comprehensive overview of the market. That said, the SEC's rule about historical transactions requires reporting only to the extent that information about those transactions "is available." No one has to attempt to recreate and then report transaction data that are no longer available.

2. **In February, then-Acting SEC Chair Allison Herren Lee directed the Division to review the 2010 "Commission Guidance Regarding Disclosure Related to Climate Change." Is this sample letter a product of this review? Did the Division engage with public companies, as directed, before developing this sample letter? If so, where can my office identify the names of the public companies involved in that consultation and the sectors they represent?**

The sample letter was written by staff of the Division of Corporation Finance to help provide guidance to companies as to some of the types of climate-related disclosure issues that the Division may consider in reviewing companies disclosures under existing disclosure rules. The sample letter drew on the Commission's 2010 guidance, the staff's review of filings, and other sources. Any staff comment letters issued to individual companies will be made available on the Commission's website for public review as soon as 20 days after the completion of a review.

3. **Does the SEC plan on conducting any stakeholder outreach to public companies or trade associations representing public companies in advance of issuing a proposed rule to mandate climate-related disclosures? If not, how can my office be assured that you are appropriately considering the concerns and recommendations raised in written comments by regulated entities that have unique business impacts and opportunities related to climate change?**

We encourage public engagement and have multiple means to ensure that stakeholders are able to share their views. We have benefited from the input that the public submitted this spring in response to the request for public input issued by then Acting Chair Lee. We have since had a number of discussions with different stakeholders, including investors, issuers, and trade groups, and will continue to do so. If the Commission proposes a rule, we will publish any such rule proposal for public comment and would consider the views expressed in those comment letters as we consider any final rules.

Rep. Carolyn B. Maloney (D-NY)

Questions for the Record

Hearing: "Oversight of the U.S. Securities and Exchange Commission: Wall Street's Cop Is Finally Back on the Beat"
Date of Hearing: October 5, 2021
Member: Rep. Carolyn B. Maloney

Chair Gensler, at your Senate nomination hearing and in subsequent hearings, you've briefly spoken on e-delivery requirements for consumer communications. You noted your general support, and said you hope we can continue to look at doing so while protecting investors and ensuring they receive the proper disclosures. I agree – we must ensure that investors are appropriately protected. At the same time, the SEC hasn't comprehensively updated its regulatory framework for electronic delivery in over 20 years. A lot has changed during the last twenty years and many consumers' preference have also changed in that time.

- **Chair Gensler, what are your plans to reform the Commission's e-delivery framework?**
- **And do you support making e-delivery the default method, subject to the important investor protections and the ability to opt for paper documents at any time?**

I agree that evolving technology provides opportunities to improve investor experience with regard to the Commission's disclosure framework. In order to realize the benefits that technology can bring to the investor experience, it is important to focus on and consider how to leverage technology to improve the content of disclosures and meet the different needs of different types of investors. The Commission has already proposed substantial modifications to fund shareholder reports, including a modernized, layered disclosure framework that would promote the use of interactive, user-friendly design features to present certain fund information electronically. The staff is reviewing comments received and is considering recommendations regarding this proposal, as reflected on the short-term Regulatory Flexibility Act agenda. We will continue to evaluate the ways in which we can modernize, where possible, to the benefit of investors.

Ranking Member Patrick McHenry (R-NC)

Committee on Financial Services Republicans – 10/5/21 Full Committee Hearing: "Oversight of the U.S. Securities and Exchange Commission: Wall Street's Cop Is Finally Back on the Beat" – Hon. Patrick McHenry Questions for the Record[3]

ESG Rulemakings

1. **The Consolidated Appropriations Act, 2021, Public Law No. 116-260, instructed the SEC to deliver two reports about small issuers by June 2021 – one on analyst research and one about the effects of the 10% limitation on investments by investment companies. These reports are now months overdue. What is the estimated timeframe for delivery of these reports?**

    a. **Will you commit to completing those reports before engaging in further rulemaking?**

SEC staff are in the process of preparing the requested reports based on a review of relevant legal and regulatory requirements, academic literature, and available data. These are important topics that require careful consideration and evaluation of a number of issues. We expect to complete the reports shortly.

2. **In a speech on October 12, 2021, you noted that certain digital engagement practices "could be based upon data that reflects historical biases" and stated that the Commission has a role in ensuring that the capital markets "don't instead reinforce societal inequities."[4] Please provide an explanation of the provisions of law that provide the Commission with the authority to address "societal inequities," and any limitations on the Commission's ability to create marketplace or disclosure rules relating to societal inequities.**

The Commission's long-standing tripartite mission—to protect investors, maintain fair, orderly, and efficient markets, and facilitate capital formation—remains our touchstone. Various provisions in the federal securities laws authorize the Commission to implement this mission.

When the Commission announced that it was requesting information and public comment on matters related to the use of digital engagement practices ("DEPs") by broker-dealers and investment advisers (the "Request"), I stated that, while new technologies can bring us greater access and product choice, they also raise questions as to whether we as investors are appropriately protected when we trade and get financial advice. I also noted that I am particularly focused on how we protect investors engaging with technologies that use DEPs.

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[3] All references to "you" or "your" herein refer to Chair Gensler and his office.

[4] *See* Gary Gensler, "Prepared Remarks at SEC Speaks" (Oct. 12, 2021), *available at* https://www.sec.gov/news/speech/gensler-sec-speaks-2021-10-12.

Accordingly, the Request provided an opportunity for investors and other market participants and interested parties to share their perspectives on the use of DEPs and the related tools and methods, and the potential benefits to retail investors, as well as potential investor protection concerns, including in connection with the practices I touched upon in my October 12, 2021 speech.

The Request will help facilitate an assessment by the Commission and its staff of existing regulations and consideration of whether regulatory action may be needed to further the Commission's mission including protecting investors and maintaining fair, orderly, and efficient markets in connection with firms' use of DEPs and related tools and methods.

3. **Is there any limitation under current SEC legal authority for the Commission to address a non-investment-return related social goal if three Commissioners determine a rule designed to attack such a social goal is in the public interest? If in your view such a limitation exists, please describe examples of such goals that the SEC may not seek to address under current authorities.**

The SEC's statutory authority is generally premised on promulgating rules that are in the public interest and consistent with the protection of investors, as well as its other statutory mandates. Whenever the SEC is engaged in rulemaking and is required to consider or determine whether an action is necessary or appropriate in the public interest, it also must consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation. I am confident that any rules the Commission proposes will be consistent with these statutory provisions and our long-standing tripartite mission to protect investors, maintain fair, orderly, and efficient markets, and facilitate capital formation.

4. **You often say that "investors want" ESG disclosures.[5] What is the rule or standard you use for investor desire and whether that desire is worthy of SEC resources and mandatory disclosure, given that a majority of shareholder proposals on almost every topic do not win a majority of votes at public companies?**

    a. **Are there topics of potential disclosures that, under your rule or standards, investors "want" but that are not on your proposed rulemaking agenda?**

When the SEC conducts rulemaking, we consider, among other things, whether the proposed rules are in the public interest and consistent with the protection of investors. The Commission's

[5] *See, e.g.*, Bob Pisani, "SEC Chair Gensler Says Investors Want Mandatory Disclosure on Climate Risks", CNBC (Jul. 28, 2021), *available at* https://www.cnbc.com/2021/07/28/sec-chair-gensler-says-investors-want-mandatory-disclosure-on-climate-risks.html.

staff evaluates the information available when formulating rule proposals for consideration by the Commission. After we have proposed rules for public comment, we consider the comments submitted by the full range of stakeholders, including investors. We consider these letters carefully when crafting final rules. Where investors express a reasoned desire for certain information to inform their investment and voting decisions and processes, we take that input into account as well as the input of other stakeholders. Our Division of Economic and Risk Analysis also conducts economic analyses of rule proposals that evaluate a number of factors and data sources, including the comment letters received with regard to the proposals.

5. **What types of modeling are you and the SEC staff doing to determine which form of additional climate-related disclosures will yield the most informative disclosures for investors?**

SEC staff is considering available data and information to better understand what climate-related disclosures investors are currently using to make informed investment decisions and how those disclosures could be improved to be more consistent, comparable, and decision-useful. The staff's analysis will be reflected in any proposed rulemaking so that we can receive public comment on what disclosures would best serve investors.

6. **Does the SEC currently employ any climatologists or environmental scientists who have the capacity to review detailed climate-related disclosures (e.g., "Scope 3" disclosures) for veracity?**
    a. **If no, are you planning on hiring climatologists or environmental scientists to help with your climate change disclosure rulemaking?**
    b. **Given that Commission resources are limited, what program or programs do you intend to cut in order to build out the SEC's offices that can appropriately review the new disclosures you intend to put into place?**

In our rulemaking, we will seek public comment on a variety of issues and hope to gain useful input from a range of stakeholders, including appropriate experts. We also consult with outside experts as appropriate and conduct our staffing in a manner designed to enable us to fulfill our mission, balancing the demands on our staff time and the range of issues that arise. The focus of considerations remains on investors and their needs for decision-relevant information, as well as other aspects of our statutory mandate.

7. **Questions have been raised about the SEC's statutory authority to adopt mandatory disclosure rules on climate-change and other ESG issues. Please cite the specific statutes that you believe authorize the SEC's current effort to propose such disclosure rules.**

    a. **If the SEC proposes such rules, will you commit to including a more than cursory explanation of the SEC's statutory authority in the proposing release?**

The staff are working on several recommendations related to climate change and other ESG issues in the Divisions of Investment Management and Corporation Finance, which have different statutory underpinnings based on the specific rules that may be the subject of the proposals. Before proposing any rules under the Securities Act, Exchange Act, Investment Advisers Act and/or Investment Company Act, the SEC considers its statutory authority to do so and explains in any rulemaking release the basis for the proposed rules, consistent with its obligations under the Administrative Procedure Act.

8. **Do you believe the SEC currently has the authority to establish or designate a third-party to establish standards to promulgate ESG disclosure requirements? If so, please cite the specific statutes that you believe authorize such a designation.**

I have asked the staff of the Division of Corporation Finance to develop recommendations for the Commission to consider. The staff are currently engaged in that process, including considering how best to structure any recommended disclosure proposals.

As staff put together their recommendations, we have benefited from the input that the public submitted this spring. Among other frameworks and standards, many commenters referred to the Task Force on Climate-related Financial Disclosures (TCFD) framework. I've asked staff to learn from these external sources. As the staff considers the most effective means by which to structure their recommendations, they will remain mindful of the Commission's statutory authority.

9. **Complying with disclosures diverts company resources and costs companies money. Large public companies often have vast compliance departments full of specialized lawyers and accountants. Some even have designated ESG compliance offices. Frequently, smaller public companies have few compliance lawyers and accountants that serve as generalists to handle all requisite compliance matters. Are you concerned that the SEC's forthcoming mandatory climate change and other ESG-related disclosures will be easier to comply with and less costly for larger,**

incumbent companies as compared to smaller, younger companies? If so, is the SEC considering exemptions, such as exemptions for smaller reporting companies?

In recommending any rule proposals, the staff provides an economic analysis, including the burdens of any rule proposal, as well as its benefits. We take those factors into account in our rulemaking process. We also ask questions and solicit public input into questions such as whether any different treatment should be afforded companies of different sizes or maturity, among other factors. Of course, we also need to factor in the interests of investors in those companies and how best to protect their interests.

10. **The SEC recently approved a board diversity proposal for Nasdaq that would require Nasdaq-listed companies to (a) have at least two diverse directors on its board or explain why not and (b) provide standardized disclosures on the composition of its board. However, identical requirements wouldn't apply to foreign issuers, which have less-stringent diversity requirements.**

    a. **In recent statements, you raised concerns about risks relating to foreign-related issuers in general and Chinese-based issuers in particular.[6] Why then did you vote for a proposal that apparently imposes a lesser regulatory burden on China-based companies than American companies?**

    b. **Does your approval of this lesser burden for Chinese companies and other foreign issuers mean they can expect preferential treatment under the SEC's forthcoming ESG disclosure rulemakings?**

The protection of investors in our markets is important, whether they invest in U.S. companies or foreign companies. We do sometimes regulate foreign issuers differently than domestic issuers as they are subject to comparable but slightly different disclosure systems. When adopting new disclosure standards, we weigh carefully whether and how to apply the requirements to foreign issuers in the context of existing standards for international cooperation, similarities and differences in foreign disclosure regimes, and the needs of investors in U.S. markets.

11. **Commentators have noted that for certain (though not all) identity-based categories that were included in the NASDAQ order, there is no evidence, academic or otherwise, that diversity in those categories leads to better shareholder returns or**

[6] *See* Gary Gensler, "Statement on Investor Protection Related to Recent Developments in China," (Jul. 30, 2021), *available at* https://www.sec.gov/news/public-statement/gensler-2021-07-30.

higher company valuation.[7]

a. **In your view, are there limits under the federal securities laws on what categories of identity-based disclosures the SEC can force upon public companies with regard to executives or a company's workforce absent concrete evidence of investor or issuer benefit?**

b. **Even if, in your view, the securities laws do not provide such limitations, are there any identity-based categories that you believe the SEC *should* not (as opposed to *cannot*) provide disclosure based on privacy considerations? If so, what guiding philosophy or standard will you use to make such determinations for possible disclosures?**

c. **Could the Commission force a company to survey its workforce or board members for disclosure of political affiliation?**

d. **Do you believe the categories of diversity that you approved in the NASDAQ order are more important than ideological diversity?**

e. **Do you believe the categories of diversity that you approved in the NASDAQ order are more important than socioeconomic diversity?**

f. **Do you believe the categories of diversity that you approved in the NASDAQ order are more important than religious diversity?**

g. **Do you believe the categories of diversity that you approved in the NASDAQ order are more important than diversity of geographic background?**

h. **Are there other categories of diversity that you believe are more important than those categories approved in the NASDAQ order?**

The Commission's approval of this order is currently the subject of legal challenge. Because I cannot comment on pending litigation, I cannot address these questions at this time.

Other Rulemakings

12. **When do you anticipate completing SEC rulemaking pursuant to the Holding Foreign Companies Accountable Act?**

[7] *See, e.g.*, letter from Boyden Gray & Associates PLLC on behalf of Alliance for Fair Board Recruitment, dated April 6, 2021, *available at* https://www.sec.gov/comments/sr-nasdaq-2020-081/srnasdaq2020081-8639478-230941.pdf.

On December 2, 2021, the Commission adopted amendments to finalize rules implementing the submission and disclosure requirements in the Holding Foreign Companies Accountable Act (HFCAA) by amending Forms 20-F, 40-F, 10-K, and N-CSR. On that date, the Commission established procedures to identify, as required by that statute, issuers that have filed an annual report with an audit report issued by a registered public accounting firm that is located in a foreign jurisdiction and that the Public Company Accounting Oversight Board (PCAOB) is unable to inspect or investigate completely. The Commission also established procedures to prohibit the trading of the securities of certain registrants as required by the HFCAA. On December 16, the PCAOB notified the Commission of its determinations that it is unable to inspect or investigate completely registered public accounting firms headquartered in mainland China or Hong Kong. Staff is now preparing to follow the procedures described in the December 2 release.

13. What important capital formation projects do you intend to complete within the next calendar year?

Facilitating capital formation, along with protecting investors and maintaining fair and orderly markets, is the mission of the Securities and Exchange Commission. Cost-effective access to capital for companies of all sizes plays a critical role in our national economy. We are continuously assessing what is working, what barriers may exist in the facilitation of capital formation, and how well we are serving investors interests in public and private markets. It is important to ensure that investors have access to material information and the liability protections that help to support investor confidence in our markets. In this regard, the SEC's Fall, 2021 Regulatory Agenda includes several initiatives on which staff is developing recommendations for consideration, including enhanced disclosure on a variety of topics of great importance to both companies and investors. As we potentially move forward with these initiatives, we will carefully weigh the public comments and economic analysis in balancing concerns relating to the impact on companies participating in the U.S. markets with the regulatory purpose of the rules.

14. Will you commit to completing the gig-worker equity compensation rulemaking that was proposed last year?[8]

The Commission is considering rulemakings in a number of areas. The Fall 2021 regulatory agenda includes a list of the short-term and long-term regulatory actions that I anticipate the Commission will consider. I expect that the Commission will continue to monitor developments

[8] *See* "SEC Proposes Temporary Rules to Facilitate Measured Participation by Certain 'Platform Workers' in Compensatory Offerings Under Rule 701 and Form S-8" (Nov. 24, 2020).

in employment arrangements and equity compensation to determine what regulatory steps should be taken consistent with our three-part mission, including whether to proceed with the previously proposed temporary program that would permit an issuer provide equity compensation to certain "platform workers" who provide services available through the issuer's technology-based platform or system.

15. On September 27, 2021, the SEC's Asset Management Advisory Committee (AMAC) recommended individual investors be given increased access to invest in private funds. This would provide more investment opportunities to all Americans. Will you commit to taking up the AMAC recommendations within the next year?

The AMAC issued a Final Report and Recommendations for Private Funds on September 27, 2021. The Final Report and Recommendations acknowledges the need to balance wider access with investor protection. In February, concerns about investor protection in the private fund market prompted the Commission to propose a set of reforms to the rules governing private fund advisers. I look forward to the comments on this set of proposals. I also look forward to hearing input from the members of the SEC's Division of Investment Management who are reviewing the Final Report and Recommendations.

16. The SEC recently proposed amendments to Form N-PX. In a public statement alongside the proposal, Commissioner Peirce noted that she asked for the inclusion of a question about whether the mandatory public disclosure of fund votes should be eliminated altogether. Had that question been included, that vote would have been 5-0 instead of 4-1.[9] Adding a question to a proposing release does not have serious substantive effect, but does allow for more robust debate and discussion.

a. Why did you not allow for Commissioner Peirce's question to the N-PX rulemaking proposal be included in the release?

b. Will you commit to more robust and fully bipartisan proposals going forward?

Consulting with all of the other members of the Commission is important to me as chair of the agency. During the open meeting for the Form N-PX proposal, we discussed the question Commissioner Peirce raised and the questions included in the proposing release about the form's economic impact. I am particularly interested in whether the proposal could bring

[9] *See* Hester Peirce, "Statement on Enhanced Reporting of Proxy Votes by Registered Management Investment Companies; Reporting of Executive Compensation Votes by Institutional Investment Managers" (Sept. 29, 2021), *available at* https://www.sec.gov/news/public-statement/peirce-open-meeting-2021-09-29.

greater efficiencies. I welcome continued engagement with my fellow Commissioners and the public on this and the other important issues the proposal seeks to address.

17. Do you believe that the Commission has legal authority to require any substantive disclosure on private companies? If not, what are the legal bounds to which the Commission is subject, and in your view what types of disclosures would be allowed and disallowed under those bounds?

a. Do you agree with Commissioner Lee that it should be a goal of the SEC to increase the number of public companies in part so that "unions bargaining for employee rights and protections [are less likely to] lack important financial information about companies employing tens of thousands of workers"?[10]

b. Is providing unions with information about private companies a permissible goal for the Commission under the federal securities laws? If so, please provide an explanation of the provisions of law that provide the Commission with the authority to address that goal.

c. That concern aside, do you agree with Commissioner Lee that the Commission should redefine shareholders of record under Securities Exchange Act section 12(g) in order to force more companies into the public markets?

Over the last four decades, the Commission has adopted several rules to create safe harbors from registration requirements under Section 5 of the Securities Act. These regulations provide issuers with greater certainty than statutory exemptions alone. Many of these existing regulatory transaction and resale exemptions include disclosure requirements.

Our focus in drafting or amending disclosure rules has been in serving our three part mission. Commission-required disclosure is intended to help investors make investment decisions, facilitate capital formation, and promote fair, orderly and efficient markets.

As noted in the Fall 2021 regulatory agenda, staff in the Division of Corporation Finance are considering recommending amendments to the Commission on the definition of "held of record" for purposes of section 12(g) of the Exchange Act. Our objective, is pursuing the mandates under the federal securities statutes.

18. Nearly four years ago the Commission moved on a bipartisan basis from T+3 to T+2. The Commission's Reg Flex agenda included shortening the settlement cycle.

[10] *See* Commissioner Allison Herren Lee, "Going Dark: The Growth of Private Markets and the Impact on Investors and the Economy" (Oct. 12, 2021), *available at* https://www.sec.gov/news/speech/lee-sec-speaks-2021-10-12.

Will you describe the staff progress on proposing such rulemaking?

a. What are your views on the merits of moving to a same-day settlement cycle as compared to the T+2 or T+1 cycle?

On February 9, the Commission approved a proposal regarding the clearing and settling of securities transactions.

First, the proposal would shorten the standard settlement cycle for most broker-dealer transactions from T+2 to T+1. The proposal, if adopted as proposed, would establish a compliance date of March 31, 2024, setting up a transition to T+1 in the first quarter of 2024.

Second, the proposal would require affirmations, confirmations, and allocations to take place as soon as technologically practicable on trade date ("T+0"). These steps are key preparations that must take place prior to settlement. Ensuring that these three key elements of the clearing process take place as soon as technologically practicable on the trade date further lowers risk in the system.

Third, the proposal would require clearing agencies that provide central matching services to have policies and procedures to facilitate straight-through processing — i.e., fully automated transactions processing.

Lastly, the proposal includes a robust discussion and request for comment on shortening beyond T+1 to same-day settlement, or "T+0." In the proposal, we use "T+0" to refer to shortening the settlement cycle to the end of trade date, so that netting and other existing risk management tools could continue to serve market participants as they do today. We try to identify potential paths to T+0 and discuss some topics that market participants have previously identified as potential challenges to achieving T+0. We look forward to the comments on this helping us to chart a path to T+0.

Recent SEC Guidance and Other Actions

19. Prior to your confirmation, John Coates, the then-Acting Director of SEC's Division of Corporation Finance and later your Acting General Counsel, made a statement opining whether SPAC mergers were really IPOs. Additionally, alongside the SEC's Acting Chief Accountant, Coates issued another statement about the accounting treatment of warrants issued in SPAC offerings. A major law firm noted the latter statement effectively froze the SPAC market and added they were unaware of a statement issued without notice and comment that had such a significant chilling effect on activity within our capital markets.[11]

[11] *See* Davis Polk, "SEC Statement on Accounting Treatment of Warrants in SPAC Transactions Will Have Significant Near-Term Impact on Capital Markets" (Apr. 14, 2021), *available at*

Then-Acting Director Coates testified before this Committee shortly after those comments and was asked if he determined such significant market-moving statements are appropriate. Mr. Coates' answered that "we believe that the statements were appropriate for protection of investors and for protecting issuers and capital formation."

a. Do you agree with Mr. Coates' substantive views on both the statements he made?

b. Do you agree that each of the statements were appropriate for the then-head of the Division of Corporation Finance to make?

c. In general, are market-moving statements appropriate as guidance rather than appropriate for notice-and-comment rulemaking?

Our capital markets have witnessed an unprecedented surge in non-traditional IPOs by special purpose acquisition companies (SPACs). There are many moving parts and novel aspects to these vehicles, and it is important to consider whether investors are being adequately protected. To reduce the potential for information asymmetries, conflicts of interest (in which certain participants in those markets may have interests that do not align with those of investors), and fraud, I've asked the staff for proposals for the Commission's consideration around how to better align the treatment of SPACs and their participants with the investor protections provided in other IPOs, with respect to disclosure, marketing practices, and gatekeeper obligations.

Staff have made a number of public statements on SPACs to be transparent about their views about how existing laws and regulations apply to SPACs.

Consistent with longstanding practice, staff make statements from time to time as appropriate to respond in real time developments in the market and to alert issuers and investors regarding staff positions on important legal matters under existing laws and regulations.

Any proposals for new regulations regarding SPACS, would be conducted via notice and comment rulemakings, and the Commission would welcome and carefully consider comments received.

20. Rule 15c2-11 was designed to address fraudulent behavior with trading in stocks in the over-the-counter (OTC) market. Not once in the Rule's 50-year history has it been applied to fixed income and there has been no enforcement of the rule by the SEC. By way of instruction, Commissioner Peirce noted in a statement on

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https://www.davispolk.com/sites/default/files/2021-06/sec_statement_on_accounting_treatment_of_warrants_in_spac_transactions_will_have_significant_near-term_impact_on_capital_markets.pdf.

September 24th that, in adopting amendments to rule 15c2-11 last year, she thought of the rule's application only in the OTC equity context, stating "we are now grappling for the first time with whether the application of the amended rule to fixed-income securities could undermine transparency, rather than enhance it as it is expected to do for equities."[12]

On September 24, 2021 the SEC issued a no-action letter that provides relief to fixed-income markets from the provisions of the rule for three months. As Commissioner Peirce noted, the three months of relief is not enough time to consider if the rule should apply—or how to apply it—to fixed income securities.[13]

a. Do you intend to maintain that Rule 15c2-11 applies to quotations for over-the-counter fixed-income securities going forward?

b. Will the Commission revise Rule 15c2-11 according to the statutory rulemaking process, providing an opportunity for public notice and comment, so that the rule works for fixed-income markets instead of unintentionally doing harm? If yes, will the Commission clarify that it will indefinitely suspend enforcement of Rule 15c2-11 with respect to fixed-income quotations pending the outcome of a rulemaking process?

Rule 15c2-11 governs the publication or submission of quotations, by a broker-dealer, for securities in a quotation medium other than a national securities exchange. On September 16, 2020, the Commission adopted amendments to Rule 15c2-11 to modernize the Rule; promote investor protection; and improve transparency by, among other things, requiring key, basic information about issuers and their securities to be "current" and "publicly available" in order for a broker-dealer to initiate a quoted market or maintain it. As you mentioned, on September 24, 2021, Commission staff issued a temporary no-action letter regarding fixed income securities in response to indication from market participants that they would be unable to complete by the compliance date the operational and systems changes necessary to comply with the final rule requirements.

As stated in this Sept. 24 staff no-action letter, the recent amendments to Rule 15c2-11 did not alter the types of securities covered by the existing Rule. Since its original adoption in 1971, Rule 15c2-11 has applied to "securities," a defined term in the Exchange Act that has and continues to include fixed income securities with the exception of "exempted securities" and a specific exception for municipal securities. The Commission also has stated that Rule 15c2-11 applies to fixed income securities.

The Commission staff engaged with the industry to further understand their operational issues in complying with the Rule. On December 16, in response to requests from industry representatives that have indicated they need additional time to complete the operational and systems changes necessary to comply with the amended Rule for fixed income securities, the staff of the

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[12] *See* Hester Peirce, "Statement on Staff No-Action Letter Regarding Amended Rule 15c2-11 in Relation to Fixed-Income Securities," (Sept. 24, 2021), *available at* https://www.sec.gov/news/public-statement/peirce-nal-rule-15c2-11-2021-09-24.

[13] *See id.*

Commission issued a second no-action letter –over three separate phases – to allow for an orderly and good faith transition into compliance with amended Rule 15c2-11. The amendments to Rule 15c2-11 are designed to modernize the Rule and to enhance investor protection by requiring that current and publicly available issuer information be accessible to investors. This three-phase approach is to further allow for broker-dealers that publish or submit quotations for fixed income securities in a quotation medium to achieve the goals of Rule 15c2-11.

21. When do you anticipate releasing the SEC staff report on so-called "meme stock" trading and associated market volatility in January 2021?

On October 14, 2021, the staff released the report titled "Staff Report on Equity and Options Market Structure Conditions in Early 2021," which is publicly available at the following link: https://www.sec.gov/files/staff-report-equity-options-market-struction-conditions-early-2021.pdf

22. We appreciate your answers to Ranking Member Huizenga's questions at the hearing regarding the PCAOB and the decision to fire Chairman Duhnke and require the re-application of the remaining Board members. We know, however, that two Commissioners objected to the Commission actions.[14]

a. Did Commissioner Lee vote to approve these actions? If yes, did she receive approval or a waiver from the Office of Ethics Counsel?

b. To your knowledge, did Commissioner Lee order a review of the PCAOB organization when she was Acting Chair and, if so, is that review still ongoing?

c. If the review is ongoing (and thus is now subject to your oversight), how is this review not redundant with the taxpayer-funded report produced by Kalorama Legal Services that has already been released to the public?[15]

The Commission is tasked with the oversight of the PCAOB. Commissioner Lee voted to approve the removal of Chairman Duhnke and the solicitation of nominations for new Board Members. Each Commissioner works closely with the Ethics Office to determine, based on facts and circumstances known to them, whether their participation in any specific matter is permissible.

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[14] *See* Hester Peirce and Elad Roisman, "Statement on the Commission's Actions Regarding the PCAOB," (June 4, 2021), *available at* https://www.sec.gov/news/public-statement/peirce-roisman-pcaob-2021-06-04.

[15] *See* Kalorama Legal Services, Report on the Corporate Governance of the Public Company Accounting Oversight Board (Jan. 10, 2021), *available at* https://republicans-financialservices.house.gov/uploadedfiles/kls_pcaob_governance_report.pdf.

I cannot comment on any review at this time, including whether one exists, because of the non-public nature of any such possible review.

SEC Operations

23. You recently asked for a significant increase in appropriations in part because of a lowered headcount in recent years. Has the SEC staff received raises over the course of the past year? If yes, please describe those raises, and please explain why it is appropriate to use such funds to give current staff raises instead of hiring additional staff.

The SEC makes determinations regarding compensation consistent with statutory mandates that require the Agency to maintain comparability with other financial regulatory agencies. All compensation is negotiated with our labor union in accordance with statutory collective bargaining requirements and is strategically calculated to help ensure our overall compensation package enables us to recruit and retain a highly skilled professional staff in a highly competitive labor market.

In April 2021, employees received an annual increase of 5.3% that provided both cost of living and merit/performance components, consistent with the typical practice in other financial regulatory agencies and private sector entities. This adjustment helps ensure a competitive compensation package necessary to recruit and retain mission-critical talent. In that same year, we hired 292 new employees in order to address attrition and fulfill our critical mission.

24. It was recently reported that the SEC signed a 1.2 million square foot lease to relocate its headquarters. Given that there is no firm timetable for a return to full in-person operations at the Commission, and given that the staff has been able to operate with some efficacy from home, please explain why the Commission signed a new lease with such a large office-space footprint.

Since 2011, leasing requirements for all of the SEC's office locations have been administered by GSA, which is responsible for site selection decisions, including the decision to relocate the SEC's Headquarters operations. The SEC began working through GSA to secure a leased space for SEC Headquarters operations in late 2015. In September 2021, GSA announced the award of a lease for the SEC's Headquarters operations. GSA conducted negotiations and signed the lease with the awardee on September 30, 2021. We will be working closely with GSA to address the SEC's spacing needs in the post-pandemic environment.

25. When do you anticipate hiring full-time heads of all major Divisions at the Commission, including Trading and Markets, the Division of Investment

Management, and the Division of Examinations?

The Directors of the Divisions of Enforcement, Economic and Risk Analysis, and Corporation Finance started work at the SEC earlier this year. The new Director of Trading and Markets and the new Director of Investment Management both began work in December 2021. The hiring process for the Director of Examinations is ongoing.

26. The EDGAR Business Office recently announced that it is considering changes to the EDGAR filing system.[16] Will you commit to a significant reconsideration of the filing system overall, so that the Commission isn't beholden to decades-old technology going forward and hopefully will put an end to so-called "fake filings"?

The SEC is in the middle of a multi-year, multi-phase effort to modernize the EDGAR system. For example, in 2020 and 2021, the EDGAR Business Office (EBO) completed a significant modernization of EDGAR technology, including the addition of enhanced EDGAR search functionality and a data application programming interface (API).

EBO is currently engaged in a project to improve EDGAR access and user management using Login.gov, multifactor authentication and individual user accounts. This effort was the subject of a Commission request for comment issued on September 30, 2021. Among other benefits, these proposed enhancements would help mitigate the risk of fake filings.

EBO works closely with SEC divisions and offices to address suspicious filings. In 2020, the Commission clarified EBO's authority to prevent acceptance of filings and/or remove certain filings from EDGAR when filer corrective disclosure is not sufficient. EBO performs heightened scrutiny of all requests to gain access to EDGAR to make filings and flags any requests that contain an indicia of possible fraud. In 2019, EBO also formed a new branch devoted solely to the heightened scrutiny of highest-risk access requests.

[16] *See* "EDGAR Next-Improving Filer Access and Account Management" (Sept. 30, 2021), *available at* https://www.sec.gov/oit/announcement/edgar-next.

Rep. Bryan Steil (R-WI)

Questions for the Record

Full Committee Hearing: Oversight of the U.S. Securities and Exchange Commission
October 5, 2021
Rep. Bryan Steil

Digital asset ETFs

1. **In remarks before the Aspen Security Forum, you seemed to indicate that ETFs that invest in Bitcoin futures, as opposed to investing in the spot market, may have a better likelihood of approval from the Commission because the "'40 Act provides significant investor protections." By implication, are you indicating that investor protections are lacking under the '33 Act for associated spot market ETFs? How have you come to that judgment?**
2. **As Chairman, have you personally met with '33 Act ETF applicants, reviewed their data, and had an iterative set of engagements with them to understand their responses to your concerns?**
3. **Can I – and this Committee – have your commitment that before you make a decision on whether or not to approve a product, you or your senior staff – not just the Trading Markets or Investment Management staff – will meet with applicants in order to have a fulsome set of conversations in order to help market participants understand your concerns over their specific applications and how to address them, and not simply prejudge based on theoretical or academic views?**

The statutory framework and the regulatory process for reviewing products under the '33 Act and the '40 Act are different. The Commission continues to carefully consider all exchange-traded products under the frameworks and processes applicable to them. The first of the bitcoin futures ETFs have gone effective and are operating. There are also several bitcoin futures mutual funds that are currently trading. The Commission, and its staff, including senior staff welcome engagement with registrants and their counsel and we continue to invite engagement in this space, in particular.

Co-investment rules for Business Development Companies

In April of 2020, the SEC provided regulatory relief to Business Development Companies (BDC) to promote liquidity and flexibility during the economic downturn caused by the pandemic.

Specifically, the SEC allowed more flexibility for BDCs in calculating their asset coverage and also provided follow-on flexibility for co-investments.

Follow-on flexibility for co-investments allowed BDCs to deploy their capital to support Main Street Businesses while protecting individual retail investors in BDCs.

4. **Do you intend to make these flexibilities permanent?**

The Commission provided a temporary exemptive order to BDCs, which expired on December 31, 2021. The order addressed the issuance and sale of senior securities and, for BDCs with existing co-investment orders, participating in follow-on investments that would otherwise be prohibited. Commission staff subsequently stated that it would not recommend enforcement action with respect to BDC follow-on investments that is set to expire on March 31, 2022. The Commission is aware of requests by BDCs for similar relief and continues to assess requests.

Rep. Nikema Williams (D-GA)

Williams (GA) Questions for the Record House Committee on Financial Services

Full Committee Hearing: "Oversight of the Securities and Exchange Commission: Wall Street's Cop is Finally Back on the Beat"

October 5, 2021, at 12PM

Our job on this committee is to make sure our financial system works for all the people. As we build back from an economically devastating pandemic, what people need right now is stability. They don't need Washington arguing over whether the federal government is going to pay its own bills.

Right now, Republicans have a choice. They can join Democrats in addressing the debt ceiling – something that has been done seven times in the last ten years, each time on a bipartisan basis – or they can play political games. Personally, I'll choose doing what's right for our people and our economy.

1. **Chair Gensler, if Republicans refuse to join Democrats in addressing the debt ceiling, what would the impact be in the everyday life of one of my constituents? How would inaction impact people who are trying to get back on their feet and build a better life for themselves and their families?**

Addressing the debt ceiling is simply a choice about whether or not we're going to allow the government to pay the bills we've already agreed to. We can't allow this to continue to be politicized at the risk of our people and economy.

That's why I've cosponsored the *End the Threat of Default Act*, led by my committee colleague Bill Foster and cosponsored by 49 House members including the Majority Leader and Majority Whip. This legislation would eliminate the debt ceiling – and eliminate any impression that we have a choice to *not* pay our bills.

2. **Chair Gensler, can you tell us about the economic advantages of avoiding debt limit standoffs in the future, and what benefits would this provide my typical constituent?**

Thank you for these two questions. Treasuries are at the heart of our markets. As a result, a default could affect all of our financial markets. While there is a great deal of uncertainty about what would happen in the event of a default, I expect that we would see significant volatility in the markets and perhaps some breakages. Indeed, I would anticipate that we would face some of the greatest challenges we've seen in our financial markets.

Rep. Lee Zeldin (R-NY)
Hearing Date: Tuesday, October 05, 2021

Hearing Title: Oversight of the U.S. Securities and Exchange Commission: Wall Street's Cop Is Finally Back on the Beat

Requesting Member: Congressman Lee Zeldin

Witness: The Honorable Gary Gensler, Chair, Securities and Exchange Commission

Question for the Record:

Chairman Gensler - In a hearing before the Senate Banking Committee on September 14th, Senator Daines brought up concerns about broker-dealers with financial ties to the Chinese Communist Party (CCP).

You responded that it was important to ensure that U.S. investor data be protected.

Is the SEC considering the risk that when companies with ties to the CCP are invested in U.S. broker-dealers, it is possible that certain predictive data being collected by those broker-dealers could end up being shared with the CCP?

What specific steps is the SEC taking to ensure that data does not flow into the hands of the CCP or any other bad actors?

The Committee on Foreign Investment in the United States ("CFIUS") plays a key gatekeeper role in helping to address some of the concerns your question raises. CFIUS is an interagency committee authorized to review certain transactions involving, among other things, foreign investment in the United States in order to determine the effect of such transactions on the national security of the United States. SEC staff has and will continue to provide technical assistance, as needed, on issues related to foreign investment or ownership in U.S. broker-dealers.

On data protection generally, certain SEC rules including Regulation S-P and Regulation S-ID are intended to protect against bad actors such as hackers and identity thieves. Regulation S-P requires broker-dealers, investment companies, and SEC-registered investment advisers to adopt written policies and procedures that address administrative, technical, and physical safeguards for the protection of customer records and information. Regulation S-ID, which the SEC adopted jointly with the CFTC, requires that certain regulated entities subject to the SEC's enforcement authority that offer or maintain certain types of accounts must develop and implement a written identity theft prevention program designed to detect, prevent, and mitigate identity theft. I've asked staff for recommendations for the Commission's consideration for possible updates of Regulation S-P and other data protection rules.

To fulfill the SEC's mandate to protect investors in U.S. capital markets, we stand ready to continue engagement regarding on-going concerns with data security.