

Congress of the United States

Washington, DC 20510

July 26, 2022

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

Dear Chairman Gensler:

We write to you regarding the SEC's recent announcements on Rule 15c2-11 and their implications for Rule 144A debt offerings.

As you know, in 1990 the SEC established Rule 144A to allow public and private companies to raise capital from qualified institutional buyers (QIBs), such as pension funds and mutual funds. Rule 144A offerings require issuers to provide QIBs with reasonably current information about the issuer, including the issuer's balance sheet, earnings statement, profit statements, and similar financial statements. Importantly, this information about the issuer is not made public to investors who the issuer is not raising capital from and is only made available to other QIBs on the secondary market. Rule 144A offerings are a key part of the debt capital markets, providing liquidity, competitive pricing, and opportunities to help many companies – including privately held companies – the chance to create jobs, grow, and innovate. Of the roughly \$5 trillion of outstanding 144A securities, approximately \$4.2 trillion represents capital raised by companies largely in manufacturing, agriculture, construction, and health care. At least 30 of the largest private companies in the U.S. are 144A debt issuers, employing over 900,000 people.

In December 2021, SEC staff clarified in a No-Action letter that the agency would begin enforcing Rule 15c2-11 in fixed income markets including for Rule 144A offerings. This announcement came after the SEC finalized a 2020 rule that amended Rule 15c2-11, which aimed to enhance disclosure and investor protection in OTC markets. Despite the SEC's argument that Rule 15c2-11 has always applied to all securities – including fixed-income – this rule has been commonly understood by the financial services sector to only apply to equities. Since 1971, Rule 15c2-11 has never been enforced in the debt markets by the SEC. The recent decision by SEC staff appears to reverse decades of regulatory practice by applying Rule 15c2-11 to fixed-income securities, including 144A debt offerings. As we understand it, this change indicates that 144A issuers, including private companies, would be required to make information about their finances publicly available if QIBs wish to trade their 144A debt securities in a liquid secondary market.

We are concerned that this change will make it more difficult and expensive for privately held companies to raise capital through 144A offerings, negatively impacting their investors, employees, customers, and prospects for spurring growth in the U.S. economy. In addition, we are concerned that because this change was made through staff guidance and not explicitly made

clear in the formal rulemaking process, the SEC did not have an opportunity to fully analyze the costs and benefits of the change or solicit feedback from market participants.

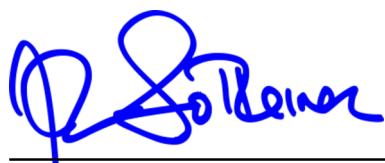
The SEC's decision surprised bond issuers, broker-dealers, and former SEC officials when it confirmed the SEC's intent to apply the amended Rule 15c2-11 to the 144A market. The 2019 amended rule was crafted primarily to protect retail investors trading equities, not QIBs trading in 144A debt markets. Recent statements by former SEC commissioners and staff that analyzed the 2020 rule indicate that there was no discussion during the rulemaking process of applying the rule to the 144A market, and it is unclear what, if any, economic analysis was conducted on the potential effect of applying the rule to fixed income securities.

We do not believe the 2019 rulemaking clearly stated the SEC's intention to reverse the decades-long practice of excluding fixed-income securities from the requirements of Rule 15c2-11 and that the SEC should provide an opportunity for 144A stakeholders to comment on a separate rule reflecting that significant shift in policy.

We respectfully ask that the SEC extend the terms of the no-action letter indefinitely until the SEC completes a rulemaking on this issue. We believe that a change or reconsideration of Rule 144A—including the requirements regarding the availability of issuer financial information—should be done transparently through a formal Commission rulemaking with a robust economic impact analysis and significant public input. We are confident that public input from those stakeholders most affected by this decision will help the SEC protect investors and foster strong markets.

Thank you for your attention to this issue. We look forward to hearing from you on this important matter.

Sincerely,



Josh Gottheimer
Member of Congress



David Kustoff
Member of Congress



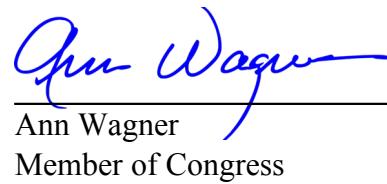
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Bill Huizenga
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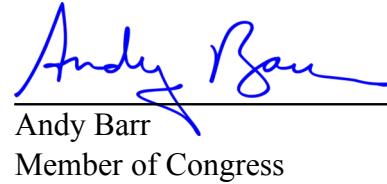
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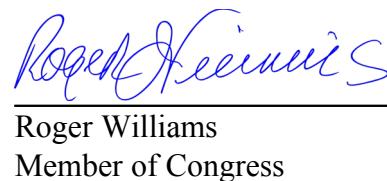
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cc:

The Honorable Hester M. Peirce, Commissioner
The Honorable Caroline A. Crenshaw, Commissioner
The Honorable Mark T. Uyeda, Commissioner
The Honorable Jaime Lizárraga, Commissioner