



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

FISCAL YEAR 2025

# Report on Objectives

10TH ANNIVERSARY EDITION

## ABOUT THIS REPORT AND DISCLAIMER

Section 4(g)(6) of the Securities Exchange Act of 1934 (Exchange Act), 15 U.S.C. § 78d(g)(6), 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.<sup>1</sup> The two reports are the mid-year Report on Objectives covering the forthcoming Fiscal Year and the end-of-year Report on Activities covering the preceding Fiscal Year.

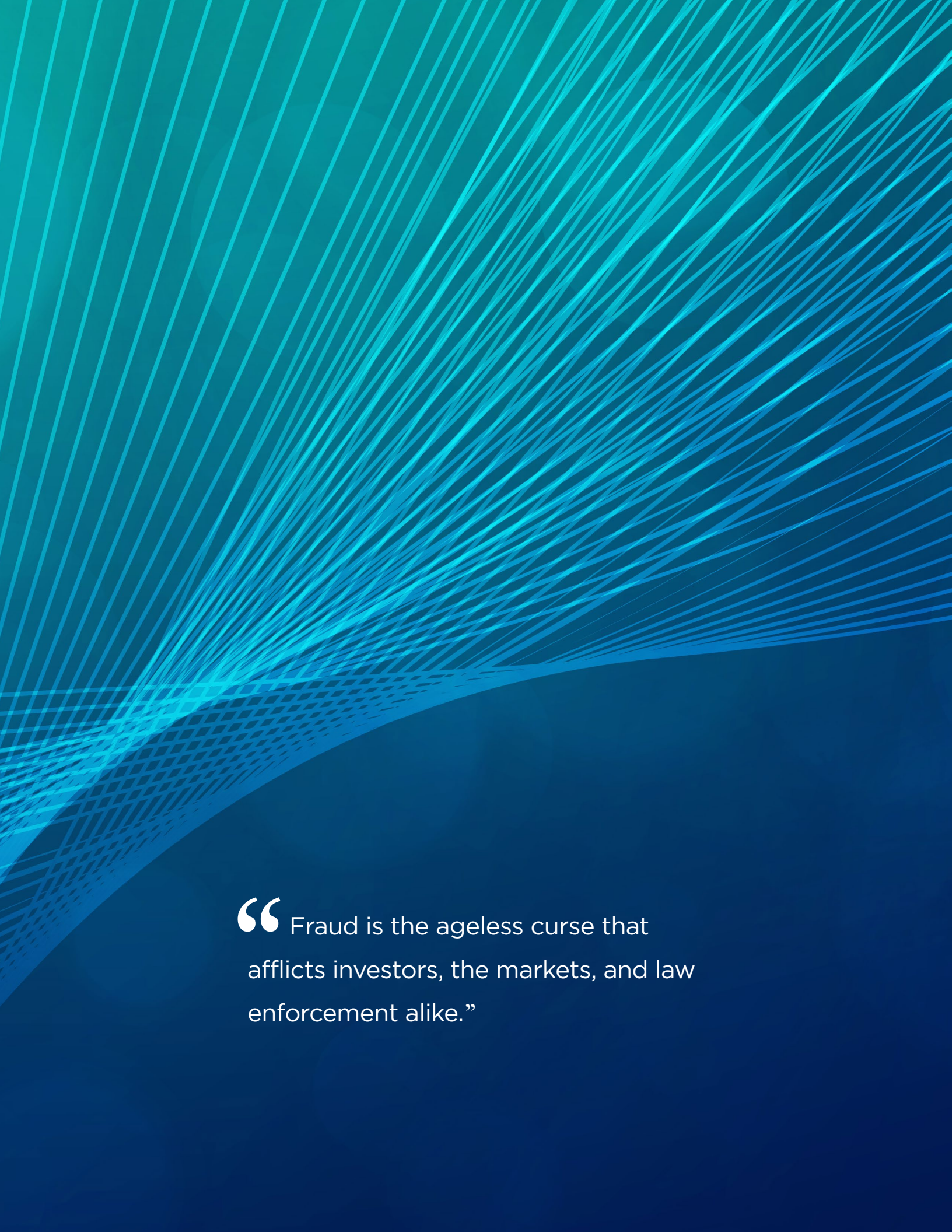
A Report on Objectives is due no later than June 30 of each year, and its purpose is to set forth the objectives of the Investor Advocate for the following Fiscal Year.<sup>2</sup> A Report on Activities is due no later than December 31 of each year.<sup>3</sup> The Report on Activities describes the activities of the Investor Advocate during the immediately preceding Fiscal Year.

**Disclaimer:** Pursuant to Exchange Act Section 4(g)(6)(B)(iii), 15 U.S.C. § 78d(g)(6)(B)(iii), this Report on Objectives is provided directly to Congress without any prior review or comment from the Commission, any Commissioner, any other officer or employee of the Commission outside of the Office of the Investor Advocate or the Office of Management and Budget. This Report on Objectives 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 this Report on Objectives and all analyses, findings, and conclusions contained herein.

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“ Fraud is the ageless curse that afflicts investors, the markets, and law enforcement alike.”

# MESSAGE FROM THE INVESTOR ADVOCATE

**TEN YEARS AGO, IN 2014**, the Office of the Investor Advocate and the Office of the Ombuds were established at the Securities and Exchange Commission. In the intervening ten years, the investment landscape has significantly changed for investors as well as markets. However, the extensive development of new technologies, products, and business models has not diminished two perennial features of the investment landscape: the need for legal assistance and the presence of fraud. What has changed is that for many investors, there are now fewer avenues to access legal assistance; and for other investors, there is potentially a greater risk to become the victim of fraud.

In 1997, two law schools in the New York City area—Fordham University and Pace University—launched securities arbitration clinics to provide free legal services to investors of modest means who could not easily access legal representation. The establishment of the clinics was a priority of then-SEC Chairman Arthur Levitt, who wanted to respond to a challenge presented by retail investors at several SEC town meetings: with claims that were too small to justify large legal fees, they often struggled to obtain counsel to represent them in arbitration. The securities arbitration clinics served this unmet need, while at the same time providing law students with valuable practical experience.

At their peak, there were 25 investor advocacy clinics across the country. Today, that number

has dwindled to ten. There are currently no clinics operating west of Chicago, or south of Washington D.C. and north of Miami, Florida. This geographic disparity leaves investors in most of the United States without access to the unique and valuable *pro bono* services these clinics can provide. As detailed in the Ombuds' report, we recognize and value the contributions of the remaining ten clinics, and we strongly encourage the expansion of these successful clinical programs to other law schools, especially in those geographic areas that lack them now.

Fraud is the ageless curse that afflicts investors, the markets, and law enforcement alike. As early as the fourth century B.C., the Greek orator Demosthenes described an elaborate insurance scheme which may be the earliest recorded case of investment fraud.<sup>4</sup> Demosthenes himself alleged that he was robbed of the value of his estate by those to whom it had been entrusted.<sup>5</sup> It is sad, but no surprise, that fraud continues to this day. What is new are the methods by which fraud is committed—and the recent surge in fraud complaints.



Multiple government agencies, here and abroad, have recently reported an increase in fraud.<sup>6</sup> Additionally, private entities are warning consumers about the same troubling trend.<sup>7</sup> The Office of the Ombuds has itself observed an increase in fraud complaints in the past six months, and the complaints are sufficiently troubling to make fraud the key theme of the Ombuds' Report.

A common element in these reports, including complaints to the Ombuds, is the role social media or advanced technology play in facilitating fraud. As noted by INTERPOL in its recent Global Financial Fraud Assessment: "Within financial fraud, technology has emerged as the key enabling factor for criminal groups. The use of AI, large language models (LLM) and cryptocurrencies can scale up certain types of financial fraud

exponentially with low levels of investment."<sup>8</sup> It should concern everyone that fraud is now possible at a scale and complexity not previously practical. We will continue to closely monitor new fraud models and their impact on investors and encourage all investors to keep vigilance as a constant companion.

As we enter our second decade of service to the investing public, we renew our commitment to provide investors with a strong, clear voice, and we look ahead to further improving the value of our contributions to the work of the Commission.

I am pleased to submit this Report on Objectives for Fiscal Year 2025 on behalf of the Office of the Investor Advocate, and I welcome any questions from Members of Congress.

Respectfully Submitted,



CRISTINA BEGOÑA MARTIN FIRVIDA  
Investor Advocate



# OBJECTIVES OF THE INVESTOR ADVOCATE

## ASSISTING RETAIL INVESTORS

The Investor Advocate is responsible for assisting retail investors in resolving significant problems which investors may have with the Commission or with self-regulatory organizations (SROs).<sup>9</sup> To help accomplish this objective, the Investor Advocate has appointed an Ombuds to, among other things, act as the primary liaison between the Commission and retail investors in resolving problems that retail investors may have with the Commission or with SROs.<sup>10</sup> The *Ombuds' Report* is included within this Report on Objectives.<sup>11</sup>

## IDENTIFYING AREAS IN WHICH INVESTORS WOULD BENEFIT FROM REGULATORY CHANGES

The Investor Advocate also identifies areas in which investors would benefit from changes in the regulations of the Commission or the rules of SROs.<sup>12</sup> 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 review the rules and regulations governing existing equity market structure to determine whether any regulatory changes to that framework would benefit investors. These and other concerns are discussed in greater detail below in the section entitled *SEC Policies and SRO Filings*.

## IDENTIFYING PROBLEMS WITH FINANCIAL SERVICE PROVIDERS AND INVESTMENT PRODUCTS

The Investor Advocate also is responsible for identifying problems that investors have with financial service providers and investment products.<sup>13</sup> 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. The Investor Advocate identifies these problems in the Reports on Activities filed every December.

## ANALYZING THE POTENTIAL IMPACT ON INVESTORS OF PROPOSED RULES AND REGULATIONS

The Investor Advocate analyzes the potential impact on investors of proposed regulations of the Commission and proposed rules of SROs on an ongoing basis.<sup>14</sup> In Fiscal Year 2025, the Office will review significant rulemakings of the Commission and SROs and will communicate with investors and their representatives to determine the potential impact of proposed rules. In the section entitled *Investor Engagement*, we expand upon our plan to engage with investors and their representatives. In addition, we will study investor behavior and utilize a variety of research methods to examine the efficacy of certain policy proposals. For example, we will study the effectiveness of various disclosures

that are provided to retail investors. Included in the section *Office of Investor Research* are descriptions of our upcoming research projects. In our December Report on Activities, we will describe the findings of our various research projects.

### **PROPOSING APPROPRIATE CHANGES TO THE COMMISSION AND TO CONGRESS**

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.<sup>15</sup> As we study the issues in our *SEC Policies and SRO Filings*, as set forth below, we may recommend to the Commission and/or to Congress changes that will promote the interests of investors.

### **SUPPORTING THE INVESTOR ADVISORY COMMITTEE**

Exchange Act Section 39 establishes the Investor Advisory Committee (IAC).<sup>16</sup> 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 statutory member of the IAC,<sup>17</sup> and the Office will continue to provide staff and operational support to the IAC during Fiscal Year 2025, as we have been doing so since 2014.



# FISCAL YEAR 2025 AGENDA

## AS DESCRIBED ABOVE, THE OBJECTIVES

of the Office of the Investor Advocate are broad in scope. Among the many activities that we undertake to satisfy those objectives, we evaluate and, where applicable, provide recommendations on Commission rulemakings and SRO filings. We communicate regularly with investors and their representatives and seek their feedback on investor-focused concerns. We also observe and report out on investor behavior and trends. In fulfilling the responsibilities of our Office, we approach our work with investor interests foremost.

## SEC POLICIES AND SRO FILINGS

After discussions with numerous knowledgeable parties, both inside and outside the Commission, and after due consideration, the Office will focus on the following policies and filings during Fiscal Year 2025:

- Broker and Adviser Conduct
- Private Markets
- Innovation and Disclosure

### Broker and Adviser Conduct

As noted in last year's report, retail investors often access the securities markets through client or customer relationships with investment advisers and/or broker-dealers. Because investors are not homogenous, they benefit from the availability of diverse types of advice relationships and investment products and services. Our Office continues to advocate to improve the quality and transparency

of these relationships, to bring regulations and disclosures in line with reasonable investor expectations, and to preserve investor access (in terms of choice and cost) to a variety of investment services and products.

Since the implementation of Regulation Best Interest (Reg BI) in 2020, we have monitored how the Commission and the Financial Industry Regulatory Authority, Inc. (FINRA) use this regulatory tool to address violative conduct in the brokerage business and otherwise help to improve outcomes for retail customers.<sup>18</sup> Similarly, in connection with the Commission's interpretation regarding the standard of conduct for investment advisers, we have monitored subsequent Commission communications addressing the duty of care enforced under the Investment Advisers Act of 1940 (Advisers Act) governing registered investment advisers. Although the specific application of Reg BI and the investment adviser fiduciary standard may differ in some respects and be triggered at different times, in the staff's view, they generally yield substantially similar results in terms of the ultimate responsibilities that registered brokers and investment advisers owe to retail investors.<sup>19</sup>

There are a host of important policy questions to consider as more and more discount brokers facilitate retail investor trading through mobile devices and applications. Although these technological developments have increased investor

access and choice, they have also created new business models and the potential for more conflicts of interest. Our Office continues to consider both: (1) how these digital platforms fit within the Reg BI framework concerning investment recommendations; and (2) to the extent that this new digital engagement does not implicate Reg BI, how other regulatory tools might help ensure that retail investors are the primary beneficiaries of this new technology.<sup>20</sup>

Similarly, to the extent that investment advisers provide investment advice to retail clients through digital engagement, the Commission has already made clear that it expects any such advice to be consistent with the adviser's fiduciary duty.<sup>21</sup> Registered advisers must comply with various other obligations imposed by rules adopted under the Advisers Act, including disclosure requirements, reporting requirements, marketing requirements, compliance program obligations, supervision requirements and insider trading procedures, and recordkeeping requirements.<sup>22</sup> We continue to scrutinize how advisers meet their existing fiduciary obligations in light of technological changes, and we continue to advocate for strengthened investor protection measures should new advisory practices threaten existing protections.

We were encouraged to see the Commission proposed rulemaking addressing brokers' and advisers' digital engagement practices (DEPs) for retail investors.<sup>23</sup> The use of predictive data analytics (PDA), differential marketing, and behavior prompts may implicate Reg BI or an adviser's fiduciary duty. Even where enhanced content, presentations, and tailoring do not do so, it is appropriate for regulators to consider enhancements to their oversight. In Fiscal Year 2025, we intend to continue our engagement with the Commission and interested parties on the fundamental question of how best to enhance investor protection in this space. We

expect our engagement to focus, at least in part, on issues that the Investor Advocate raised in a comment letter that we submitted in response to the Commission's Digital Engagement Practices Proposal.<sup>24</sup> The comment letter notes, among other things, our concern that current investor protection efforts are struggling to keep pace with technological innovation.<sup>25</sup>

The Commission has also proposed enhancements to broker order routing behavior, an area where investors, both retail and institutional, largely depend upon their brokers' expertise to implement trades.<sup>26</sup> The proposed rules intend to enhance the existing regulatory framework maintained by FINRA and the Municipal Securities Rulemaking Board (MSRB). A broker's duty of best execution requires customers' trades to be executed at the most favorable terms reasonably available under the circumstances, but the details underlying the execution are of particular importance. Our Office has reviewed the public comments received on proposed Regulation Best Execution,<sup>27</sup> and we look forward to working with the Commission to determine the most effective way to improve investor outcomes in this space.

FINRA, as the self-regulatory organization for broker-dealers, plays many additional roles in regulation and oversight. Issues related to broker conduct, including during the customer arbitration process and in its oversight of trading in the over-the-counter (OTC) equity market, are the frequent subject of complaints that investors bring to the attention of SEC Ombuds Stacy Puente. The Ombuds' Office was also instrumental in analyzing the customer arbitration process for investment advisers last year and continues to hear from investors on the issue. Ombuds Puente and her staff will continue to participate in our dialogue with the Commission and FINRA to address these types of issues on behalf of investors during Fiscal Year 2025.

## Private Markets

As described in our prior Reports, the Office of the Investor Advocate has long focused on the issues surrounding the considerable expansion of the private markets in the United States over the past two decades.<sup>28</sup> The private markets encompass a broad array of asset classes that range from funding start-up companies to investing in pooled investment vehicles such as hedge funds and private equity funds. We have noted previously that the private markets have become a vital avenue both for companies seeking to raise capital and for investors seeking investment opportunities and portfolio diversification.<sup>29</sup> We have also expressed concern about the heightened risks of investing in the private markets compared to investing in the public markets, particularly for retail investors.<sup>30</sup> These risks may include reduced, incomplete or unreliable disclosure, illiquidity, and greater risk of fraud and/or investment loss.<sup>31</sup>

In view of the ever-expanding size and significance of the private markets, the Office will continue to pay close attention to the issues surrounding the private markets during the Reporting Period. We will maintain our ongoing outreach effort to investors and market participants regarding topics such as accredited investor status, the degree of transparency in the private markets, and the interplay between the private and public markets, and we will continue to share feedback internally with our Commission colleagues.

Throughout our investor outreach efforts, we have received feedback from a variety of individual investors, or their representatives, of different demographics and ranging in age from millennials to retirees. Notably, these investors hold diverse views on the subject of the accredited investor definition. Generally, they agree that annual income and net worth are imperfect proxies for financial sophistication. However, their perspectives diverge on the question of whether to tighten the

current accredited investor financial thresholds (for instance, pegging those benchmarks to inflation, or excluding retirement savings from the benchmarks) or to expand the categories of investors who would qualify under the definition so as to increase access to private markets. Access, in particular, is a concern for traditionally underrepresented groups of investors. Based on the feedback we have heard from many individual investors, we have become aware of the tension between the preference for greater investor protections with respect to private markets and the desire for greater access to those private markets. We believe that in order to achieve an appropriate balance between investor protection and investor access, the difficult task of making amendments to the accredited investor definition may require more than the adjustment of the thresholds alone can accomplish.

The Commission's Regulatory Flexibility Act Agenda includes several rulemaking projects relating to private markets and capital raising, and we will endeavor to provide a voice for investors as the Commission contemplates potential changes in this area.<sup>32</sup> We will also continue to monitor pending legislative proposals in Congress that address various aspects of the private markets and evaluate the impact that these bills would have on investors if enacted.

Consistent with our overall interest in new and innovative approaches to disclosure informed by investor testing data, one of our areas of focus will be on potential approaches to improving the quality and usability of the disclosures provided to investors who are considering making initial investments in private offerings. Currently, issuers are not required to provide disclosures to accredited investors when conducting private offerings pursuant to the widely used Rule 506(b) exemption under Regulation D, though, in practice, many accredited investors receive some, and at times extensive, disclosures in these offerings.<sup>33</sup>

During the Reporting Period, we will explore, among other things, possible ways in which issuers could more effectively provide the information necessary for investors to make well-informed decisions as to whether or not to invest in certain private offerings, including whether investor testing conducted by our Office of Investor Research (OIR) could be a source of useful objective data to assist the Commission in considering various policy approaches in this area.<sup>34</sup>

### Innovation and Disclosure

Disclosure to investors, particularly disclosure intended for retail investor consumption, is an evergreen topic of interest for OIAD. Fiscal Year 2025 will be no exception. As we've noted in previous reports to Congress, we believe that, as innovation in financial products and services continues to accelerate, the Commission's approach to disclosure will also need to innovate to keep pace.<sup>35</sup> More generally, we are concerned that the Commission's historical core approach to investor protection—traditional disclosure models and informed consent—may prove insufficient for many highly complex financial products and services.

Today's retail investors are presented with a virtually unlimited menu of financial products, many of which are of recent vintage. Although most sponsors of these products strive to disclose the features and risks of every product in accordance with Commission regulations (for the products that fall under the Commission's regulatory jurisdiction) we are not aware of any research indicating that retail investors actually comprehend all the information presented to them in these required disclosures. Anecdotally, investors inundated with volumes of information for numerous financial products tell us that, in fact, they do *not* understand much of the disclosure surrounding those products. Moreover, qualitative and quantitative investor-testing research OIAD recently conducted on disclosure relating to at least one complex financial product demonstrated that

various traditional approaches to disclosure were ineffective in achieving investor understanding of the product, even for sophisticated retail investors.<sup>36</sup>

Currently, many if not most investor protection efforts rely on a presumption that traditional disclosure by financial product sponsors is sufficient to allow investors to make fully informed decisions about investment products. Investor testing of disclosures thus far does not support this presumption. If investor-testing research indicates that disclosure in its current form is not fully understood by investors, then we have to question whether traditional disclosure models need to be revisited for financial product sponsors and financial professionals who provide investment advice to meet their regulatory obligations.

In Fiscal Year 2025, we intend to continue to encourage investor testing on both existing and proposed disclosures to retail investors. Additionally, we will continue to advocate for innovative, and more investor focused, approaches to disclosure. There is justified concern among some investor advocates that much of the disclosure ostensibly written to inform investors serves instead to shield financial product sponsors and professionals from litigation. Disclosures written for lawyers by lawyers can often result in communications that are opaque to many investors. To the extent data reveals that disclosure related to any given financial product or service is inadequate to fully inform a reasonable investor of the product/service's features and risks, we urge the Commission to explore new and innovative approaches to fairly and fully informing investors. Finally, where even the most well-designed, best-intentioned disclosure proves inadequate, we will support Commission efforts to target its investor-protection efforts toward measures designed to enhance investor protection and that may be more effective when coupled with disclosure.<sup>37</sup>



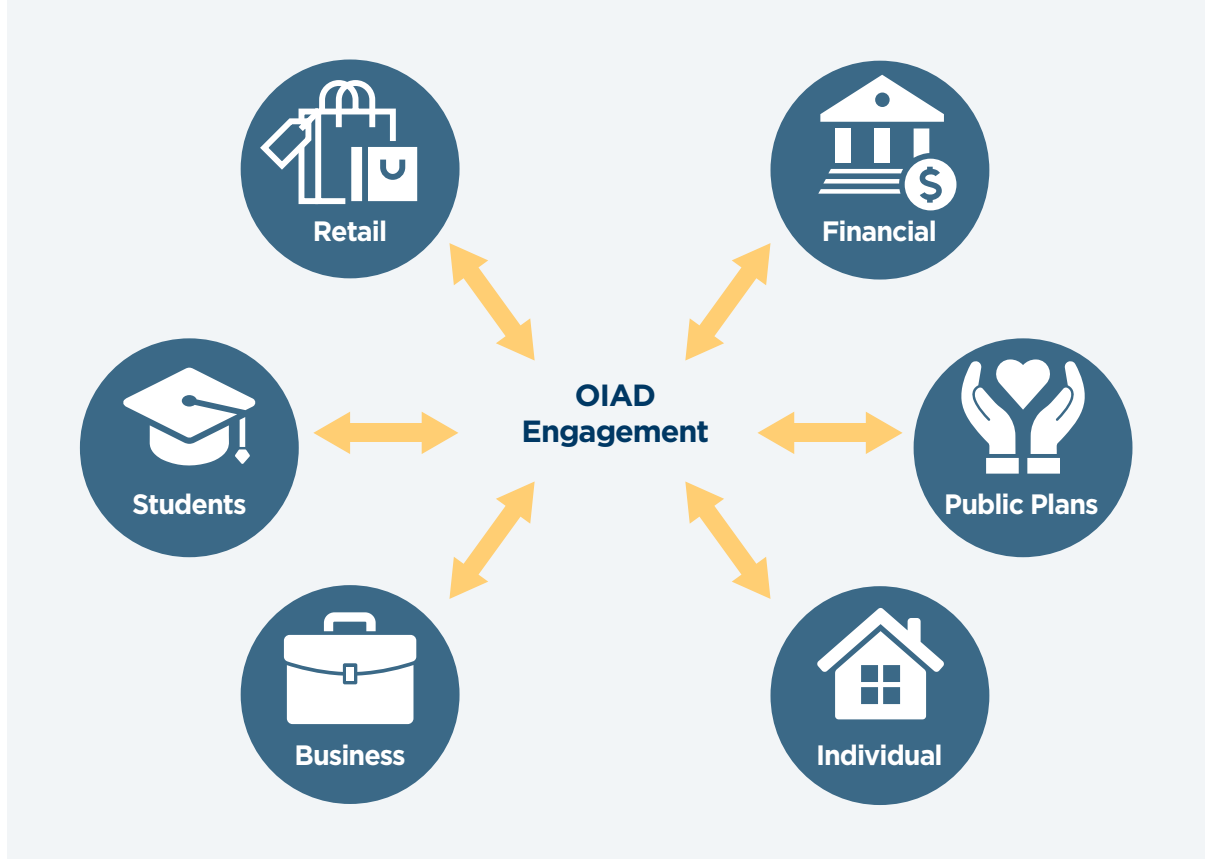
## INVESTOR ENGAGEMENT

The Office of the Investor Advocate is statutorily mandated to identify problems that investors may have, analyze the potential impacts on investors of rules or regulations, and make proposals to the Commission to promote the interests of investors.<sup>38</sup> One of the primary ways in which OIAD collects this information and sustains a focus on investors is through ongoing investor engagement activities.<sup>39</sup> This includes investor-focused meetings, events, and activities that are designed primarily to engage directly with investors and receive feedback about policy questions, investing challenges, regulatory policy and rulemaking, investment products and services, investor issues, and/or potential misconduct.

The Office actively seeks input from a broad range and variety of investors—including individual retail investors, smaller and regional investor groups, non-profits and consumer groups, academics and researchers, public and private pension funds, and other small and large money managers—as well as regulatory and law enforcement counterparts (see Figure 1).

Retail investors, and their unique perspectives, are particularly important to OIAD. We place special emphasis on individuals and groups whose views and needs may be less frequently heard, including those who do not routinely travel to Washington, D.C. to lobby government leaders, or who do not regularly submit comment letters to the

FIGURE 1. Diversity of Investors Represented



Commission. Among those whom OIAD especially seeks to hear from are older investors, new investors, veterans and military spouses, affinity-connected investors, investors from historically underserved, rural, or Native American/First Nations' communities, investors with disabilities, and investors with varying levels of exposure to capital markets. The Office also solicits and encourages input from stakeholders with a range of epistemological perspectives and values.

The goals for our investor engagement are twofold:

- Understand investor experiences and perspectives regarding products, practices, regulations, rulemakings, and the markets, and communicate them in a decision-useful context for Commission leaders and staff; and
- Advocate for investors' interests in the regulatory and rulemaking environments in a manner consistent with the Office's statutory mission.

In the coming fiscal year, we anticipate expanding engagement opportunities where retail investors can share their experiences directly with Commission leadership and staff, meeting with a broad array of investors and investor representatives to gain from their perspectives and inform policy, and identifying and advocating

for the trends, issues, and policies that investors consider to be important.

The Office plans to continue partnering with other SEC Divisions and Offices, federal departments, state agencies, and law enforcement partners, to hear directly from investors how the Commission can best serve them.

- **Divisions and Offices** The Office is expanding opportunities for investors to communicate their perspectives directly with the Divisions. For example, earlier in 2024 we hosted the SEC-NASAA-Georgia Secretary of State Joint Public Roundtable in Georgia.<sup>40</sup> This event, which took place over two days at two different colleges in northern Georgia, was an opportunity to hear directly from investors and the public on topics important to them and was attended by the Director of the Division of Enforcement, and the Deputy Director of the Division of Examinations, amongst other Commission Leaders.
- **Federal Departments and Agencies** Other federal departments and agencies are constantly working to protect the financial markets, products, and consumers. As part of the Office's regular course of business, we often communicate and partner with federal agencies to support the larger investor advocacy mission,

## DIVISIONS AND OFFICES. Investor Roundtable



Atlanta Regional Office Director Nekia Hackworth Jones and Division of Enforcement Director Gurbir Grewal at the Joint Investor Roundtables at the University of North Georgia and Dalton State College

STATE AGENCIES. SEC-NASAA-Wisconsin DFI Joint Public Roundtable



Commissioner Mark Uyeda, Investor Advocate Cristina Martin Firvida, Wisconsin Securities Administrator Leslie Van Buskirk, and others in Madison, Wisconsin.

or to obtain diverse investor and stakeholder feedback consistent with our statutory mission. For example, OIAD recently joined the Secretary of Veterans Affairs, the Honorable Denis McDonough, and other federal financial regulators, at the Joseph Maxwell Cleland

FEDERAL DEPARTMENTS AND AGENCIES. Joseph Maxwell Cleland Atlanta Department of Veterans Affairs Medical Center panel discussion

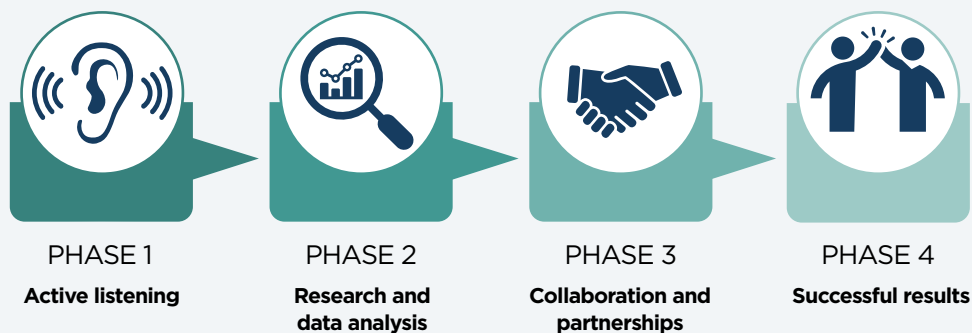


Secretary of Veterans Affairs Denis McDonough and Adam Anicich, Special Advisor and Investor Engagement Manager, OIAD discussing investor-related topics in Atlanta, GA.

Atlanta Department of Veterans Affairs Medical Center for a panel discussion on retail investor-related topics and investor advocacy.

- **State Agencies** State Securities Regulators play a critical part in the regulatory and investor protection mosaic, and the Office intends to continue to enhance the already very strong connections with the North American Securities Administrators Association (NASAA) and individual state regulators. A recent example of this was the SEC-NASAA-Wisconsin DFI Joint Public Roundtable, held in the State Offices in Madison, Wisconsin, co-hosted with NASAA and the Wisconsin Department of Financial Institutions.<sup>41</sup>
- **Law Enforcement Partners** As part of OIAD's commitment to investors, understanding the frauds and crimes perpetrated against investors through financial services providers and investment products is of paramount concern. In order to enhance the Office's ability to mitigate problems and promote the interests of investors, OIAD will convene recurring meetings between law enforcement at the federal, state, and local levels, and the Commission Staff.

FIGURE 2. Phases of Investor Engagement



### *Creating Accessibility and Enhancing Communications with Investors*

In the coming fiscal year, we anticipate a pivot to conducting more virtual events, which will allow the Commission to hear from *more voices, more often*, and will enhance the geographic area of those we are able to reach. While in-person events offer unique opportunities to build connections with investors, we feel the benefits clearly outweigh the downside when conducting virtual events:

- Expanding accessibility for investors from a greater diversity of locations, including more remote areas, to share their perspectives and voices with the Commission;
- Expanding accessibility for investors with a greater diversity of abilities to travel to a single location or to communicate in a public setting to also share their experiences;
- Reducing costs associated with hosting and participating in larger, in-person events for all participants;
- Enhancing OIAD's posture of good stewardship of resources.

Our intention is to expand the opportunities for investors to share their perspectives while also engaging in good stewardship of the taxpayer resources with which we are entrusted to

produce meaningful results aligned with our statutory authority.

### *Quality Enhancement and Continuous Improvement*

One area in which OIAD seeks to further mature is the support we can provide to decision makers regarding the insights our office develops with regard to investor preferences, capabilities, and trends. OIAD has the unique ability to identify, answer, evaluate, and operationalize the questions of:

- What do we learn from investors?
- What do we do with that information?

One method through which OIAD does this is through research, as detailed in the next section of this report. Another manner in which we transmit what we hear from investors is by partnering with other Divisions and Offices so that they may hear directly from investors regarding the impact that potential rules and regulations have on them. We will continue to seek additional avenue and formats in which OIAD can share learnings from investors with the Commission. The goal is to further elevate input from a broader set of stakeholders into more stages of the Commission's operations (see Figure 2).




Another area in which OIAD is enhancing capability is by seeking out new investor groups with whom to engage and obtain feedback from regarding regulations and policies that affect them. This includes attempting to arrange more engagements with a wider variety of participants, enhancing platforms that allow investors to provide more informal feedback on policy and rulemaking, developing additional partnerships with investor-related groups, and actively seeking-out marginalized voices throughout the investment landscape.

## INVESTOR RESEARCH

The Investor Advocate has a mandate to identify problems that investors have with financial service providers and investment products, as well as areas in which investors would benefit from changes in the Commission's or SROs' regulations. The Office of Investor Research (OIR) within OIAD conducts research that may help to augment other OIAD efforts to identify problems that investors (especially retail investors) may have, and analyze the potential impacts of rules or regulations on investors. OIR serves the public by providing data and evidence that can inform policymaking. As detailed in OIAD's Report on Activities for Fiscal Year 2023, OIR aims to provide deep insight into how investors and other stakeholders interact with the investment marketplace and how they could be or are affected by SEC policy.

In the coming year, we will continue to conduct thoughtful research on issues that affect a broad set of investors. In particular, we intend to continue researching disclosure effectiveness. Building on our recent research on Registered Index Linked Annuity Products (detailed more fully in our 2023 Report on Activities), we continue to seek opportunities to generate insights that allow investors and policymakers to be better aware of the risks and challenges of an emerging set of complex products and decision environments. We will also continue to seek opportunities to work with rulemaking divisions and use our tools to advocate for investor-centered thinking in policy design.

To expand our capacity to provide timely insights, in 2023 we launched a program of longitudinal investor surveys. Longitudinal surveys provide an effective method for monitoring key investor developments and offer the potential to serve as an early warning system that can help to detect emerging investor issues. Moreover, a survey product of this type allows for rapidly recruiting participants and understanding time-sensitive dynamics within a given household—information that is critical to understanding investor activity and promoting policy efficacy. This program provides an infrastructure that allows us to quickly respond to policymakers' needs by shortening the lead time required to collect information from a variety of U.S. households. Our vision is to use these surveys to support investor testing and develop and track policy metrics over time, and our intention is to develop and improve this research infrastructure as resources allow.

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“ As part of our Office’s duty to protect investors, we must consider whether our own communications with the public sufficiently equip retail investors to make informed decisions in this new, sometimes perilous landscape.”

# MESSAGE FROM THE OMBUDS

**TODAY'S MARKET IS A RUGGED LANDSCAPE.** Technological advancements have opened doors for new populations of investors to participate in the markets and build wealth. However, these same advancements have created a wider pool of potential fraud victims. Between Fiscal Year 2022 and Fiscal Year 2023, the Ombuds Office saw a 17 percent increase in alleged securities fraud. Notably, this number does not reflect the significant number of fraud allegations involving digital assets, which might not implicate the securities laws. Some victims are defrauded more than once—perhaps as part of the same ongoing scheme. As we see daily, the financial and psychological impact of these frauds on investors is immeasurable.

As discussed in this report below,<sup>42</sup> social media drives much of the fraud reported to our office. Over time, the proliferation of social media and internet forums has made market information more decentralized and less reliable. Market “information” is now often tailored to targeted audiences and posted for the purpose of acquiring subscribers, or worse: manipulating investors with similar views to make misguided investment decisions as part of a scam.

Congress charged the Investor Advocate and the Ombuds to assist retail investors in resolving concerns with financial service providers and investment products that cause them harm. This significant responsibility is increasingly challenging—as the markets rapidly increase in complexity, and the web of online misinformation spreads across the globe.

As part of our Office's duty to protect investors, we must consider whether our own communications with the public sufficiently equip retail investors to make informed decisions in this new, sometimes perilous landscape. We must consider how to quell the rising tide of online misinformation.



This Ombuds Report is dedicated to those retail investors who are most vulnerable to online fraud and who most deserve our protection.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'Stacy A. Puente'.

STACY A. PUENTE  
Ombuds



## WHO WE ARE

The Securities and Exchange Act requires the Investor Advocate to appoint an Ombudsman (Ombuds) to act as a liaison for retail investors to relay their concerns and questions about the Commission and the self-regulatory organizations (SROs) the Commission oversees.<sup>43</sup> The Ombuds staff consists of an experienced team of lawyers, each with differing subject matter expertise, all dedicated to providing personalized, tailored assistance to the retail investors that contact the Ombuds Office for help. Through direct engagement with investors, relevant parties within the Commission, and external stakeholders committed to investor protection issues, the Ombuds Office fulfills its statutory duty to help retail investors resolve issues relating to the Commission or SROs.

Among other statutory duties, the Ombuds must submit biannual reports to Congress describing the work of the office and its effectiveness in assisting retail investors.<sup>44</sup> This Ombuds' Report provides a look back on the Ombuds' activities for the six-month period of October 1, 2023, through March 31, 2024 (Reporting Period), and discusses the Ombuds' objectives and outlook for Fiscal Year 2025.

## What We Do

As noted above, the Ombuds is required by statute to:

- 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;

FIGURE 3. Ombuds Process: Review, Research, Resolve



### Review

The Ombuds team reviews all incoming investor correspondence to determine if and how we may assist.



### Research

The Ombuds team identifies the nature of the issue, conducts tailored research, and engages with appropriate personnel within the Commission or SROs to gather relevant information.



### Resolve

The Ombuds team works to resolve investor questions and complaints by providing investors with requested information and access to additional resources, by escalating certain matters through appropriate channels, when necessary, and by monitoring outcomes.



- review and make recommendations regarding policies and procedures that encourage investors to present questions to the Investor Advocate regarding compliance with the securities laws; and
- establish safeguards to maintain the confidentiality of communications between retail investors and the Ombuds.<sup>45</sup>

## HOW WE HELP

Our overarching responsibility is to assist retail investors by resolving concerns, questions, and complaints about the SEC and the SROs subject to SEC oversight. We accomplish this in several ways—most commonly by conducting research, providing information, making referrals, and collaborating with other divisions, offices, and SROs about complaints that impact investor interests. We submit credible allegations of securities violations to the Division of Examinations and the Division of Enforcement for potential examination or investigation, sometimes thwarting fraud before it occurs. We study and report on issues of widespread impact to retail investors. Last, we inform the Investor Advocate and other interested parties within the Commission about trending investor protection concerns and areas of potential reform.

Figure 3 illustrates the process by which we receive and assist investors with their requests.

## HOW TO CONTACT US

Our primary means of communication with the public is through the Ombudsman Matter Management System (OMMS), an online portal for receiving, responding to, and managing data submitted to our Office. The public can also contact us by email, telephone, and regular mail.

## INVESTOR VOICES, BY THE NUMBERS



The Ombuds team maintains records in OMMS of all submissions and responses handled by our Office.

Matters are assigned a label or “Primary Issue Category,” reflecting the nature of the issues raised in the submission. The 12 Primary Issue Categories can be defined as follows:

1. **Allegations of Securities Law Violations:** Investor alleges that an individual, firm, or entity has violated or is violating the U.S. securities laws.
2. **Atypical matters:** Matters of undetermined or harassing nature.
3. **FINRA Complaints/Questions/Procedures:** Questions or complaints relating to a FINRA investigation or arbitration, a FINRA employee, or about FINRA rules, policies, or procedures.
4. **Inquiries about Corporate Disclosure/Registration:** Questions about SEC filings and other matters relating to corporate disclosure.
5. **Investment Products – Questions/Complaints:** Questions or complaints about a specific type of investment product.
6. **Investor Account Matters:** Questions or complaints relating to a retail investor’s personal investments or finances.
7. **Non-SEC/Other Matters:** Questions or complaints about issues that do not fall within the SEC’s jurisdiction.
8. **Other SEC Questions/Complaints:** Questions or complaints about the SEC, including its policies, procedures, rules, and employees.

9. **Other SRO Complaints/Questions/Procedures:** Questions or complaints relating to the policies, procedures, or rules of an SRO other than FINRA.
10. **Potential Organized Campaign:** Submission appears to be part of a coordinated effort by multiple individuals to contact the Ombuds' Office about the same issue.
11. **SEC Investigations/Litigation/Enforcement Actions:** Questions or complaints about SEC investigations, litigation, or other related issues, such as distributions.
12. **SEC/Other Impersonators:** Complaints about SEC or SRO impersonators, and complaints involving fraudulent use of the SEC or SRO seal.

In tracking investor submissions by volume and by Primary Issue Category, OMMS may serve as an early warning system, identifying existing or potential concerns for retail investors.

During the Reporting Period (October 1, 2023 – March 31, 2024), the Ombuds Office received and processed 1,346 matters submitted by U.S. and foreign investors, market participants, and other interested members of the public. Figure 4 illustrates the number of matters divided into 12 Primary Issue Categories used to classify the nature of the submissions.

In addition, the Ombuds team made approximately 1,298 follow-up emails, phone calls, and other forms of correspondence to resolve the 1,346 matters received—for a combined total of 2,644 contacts with or on behalf of submitters from October 1, 2023, to March 31, 2024. Figure 5 details the number of follow-up contacts with the public, separated by Primary Issue Category.

As noted previously, the data above reveals a notable increase in the reported number of fraud schemes involving securities and digital assets. This comports with recent data released by the Federal Trade Commission, which found that consumers reported losing more than \$4.6 billion in investment scams in 2023—reflecting a 21 percent increase over the collective amount lost to investment scams in 2022.<sup>46</sup> In the following section, we highlight the most common types of reported fraud and the role of social media in perpetuating these scams.

**FIGURE 4. Matters by Primary Issue Category, October 1, 2023 - March 31, 2024**

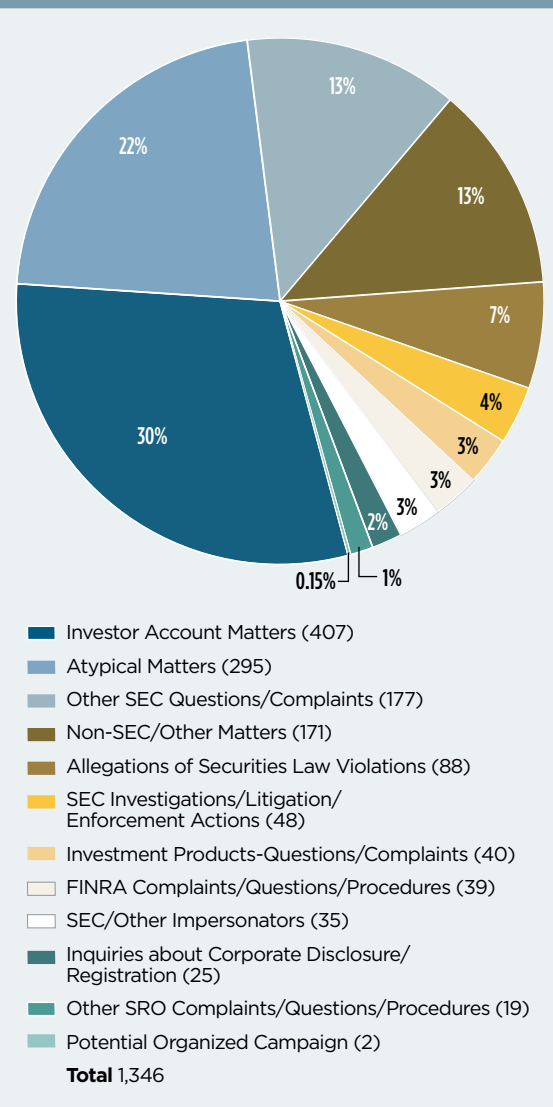
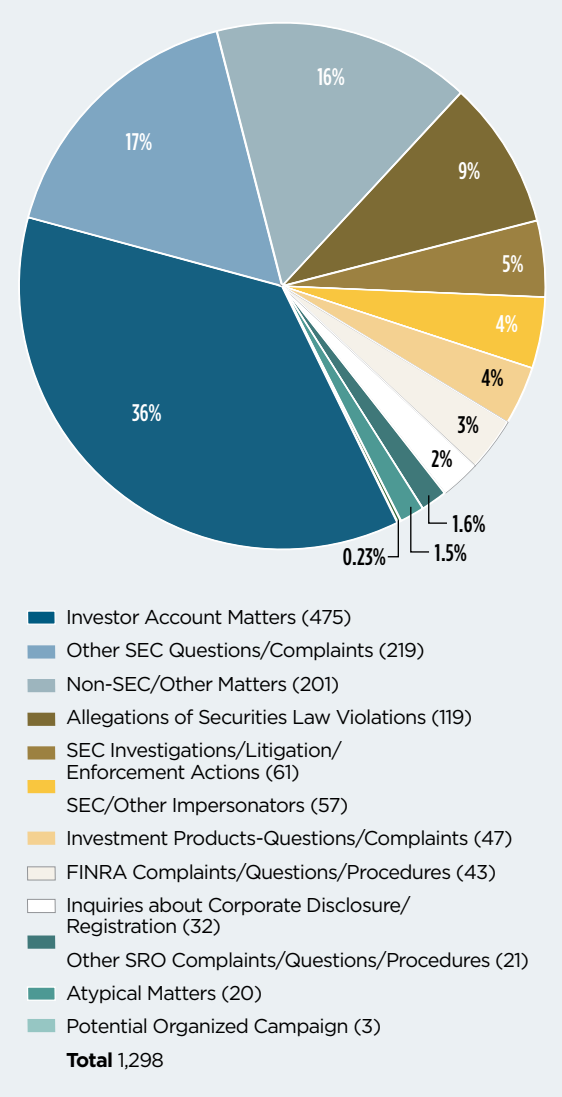
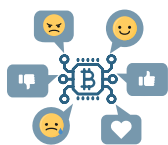


FIGURE 5. Contacts by Primary Issue Category, October 1, 2023 – March 31, 2024



### SPOTLIGHT: SOCIAL MEDIA MISINFORMATION AND EFFECTS ON INVESTORS



This Reporting Period, the Ombuds team has devoted significant resources to addressing investor reports of fraud and misrepresentation in the markets. Nearly every day, our office hears from investors who have suffered great personal and financial loss after being targeted by scammers in the U.S. and abroad. Based

on our research and discussions with defrauded investors, we have found that nearly all frauds were initiated through online contact.

We have grouped reports of fraud to the Ombuds into three generalized paths that lead to investor loss:

1. Investors are *misled by misinformation or manipulative content* posted on social media by issuers, promoters, and unregistered investment professionals.

SEC-registered investment professionals are required to act in the best interest of their clients and disclose conflicts of interest.<sup>47</sup> By contrast, investors sometimes rely on the advice of social media influencers and promoters, who may receive undisclosed compensation<sup>48</sup> or establish undisclosed positions<sup>49</sup> in exchange for their endorsement. Unaware of these conflicts, investors may make misinformed decisions and lose their invested funds.

2. Investors are *invited by romance scammers* through social media channels to send funds to unregistered investment professionals or companies.

Many investor losses are tied to financial grooming schemes, a particularly cruel type of romance fraud. In these situations, an initial contact suggesting interest in a romantic relationship with a potential victim is made through social media. After a relationship and trust is established, the victim is invited to invest in a lucrative opportunity with high rates of return. Often, the victim will be instructed to purchase and transmit cryptocurrency through known but unregistered platforms to wallets associated with fraudulent websites. Unfortunately, these accounts do not have the same rights and protections available to investors with accounts at firms registered with the SEC and subject to SEC oversight.

- Investors with common views *join private discussion channels* where scammers and unregistered investment professionals manipulate them into misguided investment decisions that lead to the investors' loss.

Akin to affinity fraud, scammers and unregistered investment professionals infiltrate online discussion channels created by people with shared views. After gaining the group's trust, the scammer might feed the group misinformation about a company's value to spur a buying frenzy and "pump" up the value of the company's stock, then "dump" their own shares at the pumped-up price. In the end, the value of the stock typically falls and investors lose the value of their investments.<sup>50</sup>

Sadly, many investors suffer further losses after being contacted online by "recovery scammers," who often impersonate SEC and other regulators with the promise that, for a fee, they will help recover the investor's funds.<sup>51</sup> Some recovery scams even advertise on mainstream social media sites, giving them the appearance of legitimacy. Our office has referred these matters to the Federal Trade Commission and the FBI's Internet Crime Complaint Center.

Centuries ago, Jonathan Swift wrote "Falsehood flies, while the truth comes limping after it."<sup>52</sup> Based on our observation of this troubling trend, anyone can fall victim to these highly manipulative and sophisticated schemes. The lucrative nature of these operations strongly suggests we should expect them to multiply in number and scope. In addition to our duty to protect investors, we should consider the consequences of rampant online misinformation and fraud to the fair, orderly, and efficient operation of our markets.

## Naked Short-Selling



In a related vein, our Office has received many complaints from retail investors alleging that hedge funds and other institutional investors are conspiring to drive down the price of their stocks through "naked" short selling.<sup>53</sup>

These complaints allege that a high volume of short sales<sup>54</sup> or the inclusion of a security on a "threshold list"<sup>55</sup> are proof that illegal activity has occurred and caused a stock to lose value. These complaints often do not reflect additional market factors that may affect a stock's value, or the role that undisclosed conflicts may play in subsequent investment losses.

Before effecting a short sale order in any equity security, SEC's Regulation SHO requires a broker-dealer to reasonably believe and document that the security can be borrowed and delivered on the specified due date.<sup>56</sup> In a "naked" short sale, the seller does not borrow or arrange to borrow the securities in time to deliver the security to the buyer by the delivery date, which can cause a "failure to deliver."<sup>57</sup> "Naked" short selling is not necessarily a violation of federal securities laws or the Commission's rules, and in certain circumstances, "naked" short selling contributes to market liquidity.<sup>58</sup> For instance, market makers engaged in bona fide market making activities do not have to locate stock before selling short, because they need to be able to provide liquidity.

Regulation SHO also requires firms to purchase securities to close out positions where there is a failure to deliver. If too many failures to deliver occur in a specific security, the security will be added to a "Threshold List" disseminated by an SRO. The inclusion of a security on a threshold list does not necessarily mean that there has been abusive "naked" short selling or any impermissible trading in the stock.<sup>59</sup>



Although the vast majority of short sales are legal, abusive short sale practices are illegal.<sup>60</sup> For example, it is prohibited for any person to engage in a series of transactions in order to create actual or apparent active trading in a security or to depress the price of a security for the purpose of inducing the purchase or sale of the security by others.<sup>61</sup> Thus, short sales effected to manipulate the price of a stock are prohibited.

The Commission's Office of Investor Education and Advocacy has made available publications that provide helpful guidance on the securities markets and sales and trading practices, including short selling, and has also established a website dedicated to retail investors.<sup>62</sup> In addition, investors can research important information about the securities and financial professionals with which they invest by using the following tools, free of cost:

- **Investor.gov:** Provides access to helpful investment resources and answers to common investment-related questions.
- **EDGAR:** Allows investors to search corporate filings and registration information, and other information collected by the SEC.
- **PCAOB Auditor Search:** Allows investors to search information submitted to the PCAOB for each audit report issued for a public company.
- **BrokerCheck:** Search tool that enables investors to research the background of financial professionals regulated by the SEC and/or FINRA.
- **Investment Adviser Public Disclosure (IAPD):** Search tool that provides information on investment advisers registered with the SEC.

## Discovery in FINRA Arbitration



As a nearly universal feature of brokerage agreements, customers are required to arbitrate disputes with their brokers in the FINRA Dispute Resolution Services (FINRA DRS) forum.<sup>63</sup>

Because it is the only venue for broker/customer arbitration, it is imperative that parties to an arbitration in FINRA DRS receive equal treatment through a fair process. Discovery, or the process by which parties exchange relevant documents and materials prior to an evidentiary hearing,<sup>64</sup> is critical to a fair process, providing the parties access to the information needed to build their claim or defense.

Ombuds staff has collected empirical data relating to parties' conduct during the discovery process in arbitrations before FINRA DRS. In Fiscal Year 2024, we intend to study the potential impact of discovery disputes on the cost, duration, and outcomes for investors in these arbitrations.

## ENGAGING WITH THE PUBLIC

### 2024 SEC Investor Advocacy Clinic Summit Overview

On Friday, March 1, 2024, the Ombuds Office hosted the fifth annual Investor Advocacy Clinic Summit at SEC Headquarters. The event, held in person for the first time since 2019, was also livestreamed on the SEC's website. Joined by the Office of Investor Education and Advocacy and the Office of Minority and Women Inclusion, the purpose of the event was to highlight the work of the law school clinics and emphasize the need for additional law school clinics in underserved parts of the U.S. At their peak, there were 25 investor advocacy clinics across the country. Due to funding



Students engaged with SEC experts about their clinic experiences in securities industry arbitrations, as well as the importance of outreach, and diversity, equity, inclusion, and accessibility efforts in investor advocacy.



SEC staff from the six divisions were available during lunch and refreshment receptions before and after the Summit to discuss their work and potential career opportunities at the Commission.



Nearly 1,000 viewers attended the livestreamed event, and over 170 guests (clinic students and their professors, academic faculty from other law schools, SEC staff, and other state and federal regulators) attended the event in person.



and other constraints, however, that number has since dwindled to 10. There are currently no clinics operating west of Chicago, or south of Washington D.C. and north of Miami, Florida, leaving investors in most of the geographic U.S. without access to the unique and valuable *pro bono* services these clinics can provide.

At the Summit, all 10 active law school investor advocacy clinics shared their perspectives and engaged with SEC subject matter experts on the issues facing retail investors. 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, 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.

Prior to the official Summit, clinic directors held a roundtable to discuss the benefits of securities industry clinic experience for their students, their law schools, and their communities.

The event featured remarks and Q&A with SEC Chair Gary Gensler, Commissioners Hester Peirce, and Jaime Lizárraga, as well as remarks from Richard Berry, the Director of Financial Industry Regulatory Authority (FINRA) Dispute Resolution Services, Cristina Martin Firvida, the SEC's Investor Advocate, Richard Best, Director of the SEC's Division of Examinations, Eric Gerding, Director of the SEC's Division of Corporation Finance, Gurbir Grewal, Director of the SEC's Division of Enforcement, and William Birdthistle, Director of the SEC's Division of Investment Management (in order of appearance). Keynote remarks were delivered by Nicole Iannarone, Chair of FINRA's National Arbitration and Mediation Committee and Professor of the Drexel University Kline School of Law.

Given the need for legal assistance to harmed investors in underserved populations, our Office looks forward to other opportunities where we can promote the honorable work of these law students, and press for the establishment of other clinics across the U.S.

## **ADDITIONAL ENGAGEMENT ACTIVITIES**

In addition to the Summit, Ombuds staff participated in other external engagements with the goal of improving our service to retail investors and educating external groups about the services our Office can provide. The Ombuds team attended informational meetings and listening sessions with industry groups, other federal financial regulators and self-regulatory organizations, investment clubs, and directors of the law school investor advocacy clinics. Ombuds staff also continued its periodic meetings with the Coalition of Federal Ombudsmen and the Public Investors Arbitration Bar Association (PIABA).

## **OMBUDS OUTLOOK: FY 2025**

In Fiscal Year 2025, the Ombuds Office will maintain its focus on issues relating to retail investor arbitration, will continue to represent the interests of retail investors in our public engagements, and will monitor developing trends in submissions to our Office. Specifically, we will monitor the volume and nature of online fraud allegations, and advocate for Commission involvement in combating this troubling trend.

We learn from the retail investors we assist every day. Above all, we continue to prioritize their interests and their protection in all aspects of our work.

## 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 Demosthenes, *Against Zenothemis*, (A.T. Murray, trans., Harvard University Press, 1939), <https://www.perseus.tufts.edu/hopper/text?doc=Perseus%3Atext%3A1999.01.0076%3Aspeech%3D32%3Asection%3D1>.
- 5 Demosthenes, *Against Aphobus*, (A.T. Murray, trans., Harvard University Press, 1939), <https://www.perseus.tufts.edu/hopper/text?doc=Perseus%3Atext%3A1999.01.0074%3Aspeech%3D27%3Asection%3D57>.
- 6 See Federal Trade Commission, Press Release, *As Nationwide Fraud Losses Top \$10 Billion in 2023, FTC Steps Up Efforts to Protect the Public*, (Feb. 9, 2024), <https://www.ftc.gov/news-events/news/press-releases/2024/02/nationwide-fraud-losses-top-10-billion-2023-ftc-steps-efforts-protect-public>. See also INTERPOL, *Financial Fraud Assessment: A global threat boosted by technology* (Mar. 11, 2024), <https://www.interpol.int/en/News-and-Events/News/2024/INTERPOL-Financial-Fraud-assessment-A-global-threat-boosted-by-technology>.
- 7 Bank of Ireland, Press Release, *Rise in Purchase Scams Duping Consumers* (May 20, 2024), <https://www.bankofireland.com/about-bank-of-ireland/press-releases/2024/rise-in-purchase-scams-duping-consumers/>.
- 8 INTERPOL, *Financial Fraud Assessment: A global threat boosted by technology* (Mar. 11, 2024), <https://www.interpol.int/en/News-and-Events/News/2024/INTERPOL-Financial-Fraud-assessment-A-global-threat-boosted-by-technology>.
- 9 Exchange Act § 4(g)(4)(A), 15 U.S.C. § 78d(g)(4)(A).
- 10 Exchange Act § 4(g)(8)(A), 15 U.S.C. § 78d(g)(8)(A).
- 11 Exchange Act § 4(g)(8)(D), 15 U.S.C. § 78d(g)(8)(D).
- 12 Exchange Act § 4(g)(4)(B), 15 U.S.C. § 78d(g)(4)(B).
- 13 Exchange Act § 4(g)(4)(C), 15 U.S.C. § 78d(g)(4)(C).
- 14 Exchange Act § 4(g)(4)(D), 15 U.S.C. § 78d(g)(4)(D).
- 15 Exchange Act § 4(g)(4)(E), 15 U.S.C. § 78d(g)(4)(E).
- 16 Exchange Act § 39, 15 U.S.C. § 78pp.
- 17 Exchange Act § 39(b)(1)(A), 15 U.S.C. § 78pp(b)(1)(A).
- 18 See Statement Regarding the SEC’s Rulemaking Package for Investment Advisers and Broker-Dealers, Rick A. Fleming, Investor Advocate (June 5, 2019), <https://www.sec.gov/news/public-statement/statement-regarding-sec-rulemaking-package-investment-advisers-broker-dealers>.
- 19 See Staff Bulletin: Standards of Conduct for Broker-Dealers and Investment Advisers Care Obligations (Apr. 20, 2023), <https://www.sec.gov/tm/standards-conduct-broker-dealers-and-investment-advisers>.
- 20 See, e.g., 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 Rel. No. 92766, 86 Fed. Reg. 49067, 49075 (Sept. 1, 2021), <https://www.federalregister.gov/d/2021-18901> (“The use of a DEP by a broker-dealer may, depending on the relevant facts and circumstances, constitute a recommendation for purposes of Reg BI.”)
- 21 See *id.* at 49077.
- 22 See *id.* at section II.C.2.
- 23 See Proposed Rule, Conflicts of Interest Associated With the Use of Predictive Data Analytics by Broker-Dealers and Investment Advisers, Exchange Act Release No. 97990, 88 Fed. Reg. 53,960 (August 9, 2023) (“Digital Engagement Practices Proposal” or “DEP Proposal”), <https://www.federalregister.gov/d/2023-16377>.
- 24 Letter from Cristina Martin Firvida, Investor Advocate, SEC, to Vanessa Countryman, Secretary, SEC, re Digital Engagement Practices Proposal (April 8, 2024) (“DEPs Letter”), <https://www.sec.gov/comments/s7-12-23/s71223-457071-1170414.pdf>.
- 25 See *id.* at 3.
- 26 See Proposed Rule, Regulation Best Execution, Exchange Act Release No. 96496, 88 Fed. Reg. 5440 (Jan. 27, 2023), <https://www.federalregister.gov/d/2022-27644>.
- 27 See Comment File S7-32-22, Regulation Best Execution, available at <https://www.sec.gov/comments/s7-32-22/s73222.htm>.
- 28 See, e.g., SEC, Office of the Investor Advocate, Report on Activities, Fiscal Year 2023 (Dec. 5, 2023), available at <https://www.sec.gov/files/2023-oiad-annual-report.pdf> [hereinafter Report on Activities, Fiscal Year 2023] and SEC, Office of the Investor Advocate, Report on Activities, Fiscal Year 2020 (Dec. 29, 2020), <https://www.sec.gov/files/sec-investor-advocate-report-activities-2020.pdf> [hereinafter Report on Activities, Fiscal Year 2020]. The estimated amount of capital reported as raised in private offerings under Rule 506(b) of Regulation D between 2009 and 2022 was \$19 trillion. SEC, Review of the “Accredited Investor” Definition under the Dodd-Frank Act (Dec. 14, 2023), at 42, available at <https://www.sec.gov/files/review-definition-accredited-investor-2023.pdf>.
- 29 See, e.g., Report on Activities, Fiscal Year 2023; SEC, Office of the Investor Advocate, Report on Objectives, Fiscal Year 2024 (Jun. 29, 2023), <https://dcm.sec.gov/files/fy24-oiad-sar-objectives-report.pdf> [hereinafter Report on Objectives, Fiscal Year 2024]; and Report on Activities, Fiscal Year 2020.

- 30 See Report on Activities, Fiscal Year 2023 and Report on Objectives, Fiscal Year 2024. Retail investors have a number of avenues with which to access the private markets, even if they are non-accredited investors. For example, under Rule 506(b) of Regulation D, an issuer may sell securities to an unlimited number of accredited investors and up to 35 non-accredited investors who are financially sophisticated. Additional ways for such investors to access the private markets include Rule 504 and Regulation Crowdfunding, among other exceptions.
- 31 See, e.g., SEC, Investor Bulletin, Private Placements under Regulation D (Aug. 17, 2022), <https://www.sec.gov/oiea/investor-alerts-and-bulletins/private-placements-under-regulation-d-investor-bulletin>; Rachita Gullapalli, SEC, Div. of Econ. and Risk Analysis, *Misconduct and Fraud in Unregistered Offerings: An Empirical Analysis of Select SEC Enforcement Actions* (Aug. 2020), <https://www.sec.gov/files/misconduct-and-fraud-unregistered-offerings.pdf>; Caroline A. Crenshaw, Commissioner, SEC, *Big “Issues” in the Small Business Safe Harbor: Remarks at the 50th Annual Securities Regulation Institute* (Jan. 30, 2023), <https://www.sec.gov/news/speech/crenshaw-remarks-securities-regulation-institute-013023>.
- 32 These include rulemakings pertaining to Regulation D and Form D; the definition of securities held of record under Exchange Act Section 12(g); and the holding period for restricted securities under Securities Act Rule 144. See *Regulatory Flexibility Agenda*, Office of Info. and Regulatory Affairs, Office of Mgmt. and Budget, Agency Rule List—Fall 2023, SEC, [https://www.reginfo.gov/public/do/eAgenda-Main?operation=OPERATION\\_GET\\_AGENCY\\_RULE\\_LIST&currentPub=true&agencyCode=&showStage=active&agencyCd=3235&Image58.x=18&Image58.y=15&Image58=Submit](https://www.reginfo.gov/public/do/eAgenda-Main?operation=OPERATION_GET_AGENCY_RULE_LIST&currentPub=true&agencyCode=&showStage=active&agencyCd=3235&Image58.x=18&Image58.y=15&Image58=Submit) (last visited May 28, 2024).
- 33 In contrast, issuers are required to furnish certain financial statement and non-financial statement information to non-accredited investors a reasonable time prior to the sale of securities in a Rule 506(b) offering. Rule 502(b) of Regulation D.
- 34 OIR may explore the possibility of engaging in further research on this and other topics relating to the private markets and investor welfare, drawing on OIR’s multidisciplinary research expertise in economics, finance, psychology, and communications.
- 35 See Report on Activities, Fiscal Year 2023 at 2.
- 36 See Letter from Cristina Martin Firvida, Investor Advocate, SEC, to Vanessa Countryman, Secretary, SEC, re Registration for Index-Linked Annuities; Amendments to Form N-4 for Index-Linked and Variable Annuities (Dec. 22, 2023), <https://www.sec.gov/files/registration-index-linked-annuities-122223.pdf>.
- 37 See, e.g., DEPs Letter at 2 (“I support the requirement in the proposed rule for firms to eliminate [rather than simply disclose] conflicts or their effects when the conflicts are the result of exceptionally complex and opaque technologies.”).
- 38 Exchange Act § 4(g)(4), 15 U.S.C. § 78d(g)(4).
- 39 See SEC’s Performance Goal #6: *Investor Engagement Activities*, [https://www.sec.gov/files/fy-2024-congressional-budget-justification\\_final-3-10.pdf#page=117](https://www.sec.gov/files/fy-2024-congressional-budget-justification_final-3-10.pdf#page=117) (last visited May 28, 2024).
- 40 SEC, Event Webcasts, SEC-NASAA-Georgia Secretary Of State Joint Investor Roundtable (Mar. 27, 2024), <https://www.sec.gov/news/upcoming-events/sec-nasaa-georgia-secretary-state>.
- 41 SEC, Event Webcasts, SEC / DFI / NASAA Joint Public Roundtable (Jul. 25, 2023), <https://www.sec.gov/news/upcoming-events/sec-dfi-nasaa-joint-public-roundtable>.
- 42 See Social Media Misinformation and its Effects on Investors, Report on Objectives FY2025, at 19.
- 43 Exchange Act Section 4(g)(8)(A), 15 U.S.C. § 78d(g)(8)(A).
- 44 Exchange Act Section 4(g)(8)(D), 15 U.S.C. § 78d(g)(8)(D).
- 45 Exchange Act Section 4(g)(8)(B), 15 U.S.C. § 78d(g)(8)(B).
- 46 See Federal Trade Commission, Press Release, *As Nationwide Fraud Losses Top \$10 Billion in 2023, FTC Steps Up Efforts to Protect the Public*, (Feb. 9, 2024), <https://www.ftc.gov/news-events/news/press-releases/2024/02/nationwide-fraud-losses-top-10-billion-2023-ftc-steps-efforts-protect-public>. See also Federal Trade Commission, Press Release, *FTC Data Shows Major Increases in Cash Payments to Government Impersonation Scammers*, (June 14, 2024), <https://www.ftc.gov/news-events/news/press-releases/2024/06/ftc-data-shows-major-increases-cash-payments-government-impersonation-scammers>.
- 47 See, generally, SEC, Regulation Best Interest: The Broker-Dealer Standard of Conduct, Release No. 34-86031, 84 Fed. Reg. 33318, <https://www.federalregister.gov/documents/2019/07/12/2019-12164/regulation-best-interest-the-broker-dealer-standard-of-conduct>. See also, SEC, Commission Interpretation Regarding Standard of Conduct for Investment Advisers, Rel. No. IA-5248, 84 Fed. Reg. 33669 (July 12, 2019). (<https://www.federalregister.gov/documents/2019/07/12/2019-12208/commission-interpretation-regarding-standard-of-conduct-for-investment-advisers>).



- 48 See e.g., Administrative Proceeding File No. 3-21197, *In the matter of Kim Kardashian* (<https://www.sec.gov/files/litigation/admin/2022/33-11116.pdf>), Administrative Proceeding File No. 3-21347, *In the matter of Jake Joseph Paul* (<https://www.sec.gov/files/litigation/admin/2023/33-11171.pdf>), Administrative Proceeding File No. 3-21857, *In the matter of Van Eck Associates Corporation* (<https://www.sec.gov/files/litigation/admin/2024/ic-35132.pdf>), *SEC v. Ian Balina*, No. 1:22-CV-950 (W.D. Texas filed Sept. 19, 2022) (<https://www.sec.gov/files/litigation/complaints/2022/comp-pr2022-167.pdf>).
- 49 See, e.g., *Securities and Exchange Commission v. Edward Constantin, et al.*, No. 4:22-cv-04306 (S.D. Tex. filed Dec. 13, 2022) (<https://www.sec.gov/litigation/litreleases/lr-25591>); *Securities and Exchange Commission v. Michael M. Beck, aka @BigMoneyMike6, and Relief Defendant Helen P. Robinson*, No. 2:22-cv-00812 (C.D. Cal. filed February 7, 2022) (<https://www.sec.gov/litigation/litreleases/lr-25325>).
- 50 See SEC, Investor.gov, Pump and Dump Schemes, <https://www.investor.gov/introduction-investing/investing-basics/glossary/pump-and-dump-schemes>.
- 51 See Federal Trade Commission, Press Release, *FTC Data Shows Major Increases in Cash Payments to Government Impersonation Scammers*, (June 14, 2024), <https://www.ftc.gov/news-events/news/press-releases/2024/06/ftc-data-shows-major-increases-cash-payments-government-impersonation-scammers>.
- 52 See The Examiner, Number 15, Jonathan Swift, Quote Page 2, Column 1 (Nov. 2 -Nov. 9, 1710) (excerpt available at <https://books.google.com/books?id=Ki-gTAAAAQAAJ&q=%22Truth+comes%22#v=snippet&q=%22Truth%20comes%22&f=false>).
- 53 Naked shorting occurs when a short seller has not borrowed or arranged to borrow the securities to be delivered to the buyer within the standard two-day settlement period; this results in a “fail to deliver.” Naked short selling is not necessarily illegal. However, short selling, when used to manipulate the price of a stock (also referred to as abusive naked short selling), is generally prohibited. See SEC Investor Publication, “Key Points about Regulation SHO,” <https://www.sec.gov/investor/pubs/regsho.htm>. See also SEC, Fast Answers: Naked Short Sales (Apr. 13, 2015), <https://www.sec.gov/answers/nakedshortsale>.
- 54 FINRA requires firms to report short interest positions in all customer and proprietary accounts in all equity securities twice a month. All short interest positions must be reported by 6 p.m. Eastern Time on the second business day after the reporting settlement date designated by FINRA. See FINRA, Short Interest Reporting, <https://www.finra.org/filing-reporting/regulatory-filing-systems/short-interest>.
- 55 Threshold securities are equity securities that have an aggregate fail to deliver position for five consecutive settlement days at a registered clearing agency (e.g., National Securities Clearing Corporation (NSCC)); totaling 10,000 shares or more; and equal to at least 0.5% of the issuer’s total shares outstanding. As provided in Rule 203 of Regulation SHO, threshold securities are included on a list disseminated by a self-regulatory organization (“SRO”). See SEC Investor Publication, “Key Points about Regulation SHO,” <https://www.sec.gov/investor/pubs/regsho.htm>. FINRA publishes a list of OTC threshold securities, see <https://www.finra.org/finra-data/browse-catalog/otc-threshold>. You can also obtain SRO threshold lists at the following websites:  
The Nasdaq Stock Market LLC (<http://www.nasdaqtrader.com/Trader.aspx?id=RegSHOThreshold>);  
New York Stock Exchange LLC, NYSE MKT LLC and NYSE Arca, Inc (<https://www.nyse.com/regulation/threshold-securities>). Other national securities exchanges that are not the primary listing exchange for any securities at this time are currently not publishing threshold securities lists.
- 56 See, “Key Points about Regulation SHO,” (modified May 31, 2022), <https://www.sec.gov/investor/pubs/regsho.htm>.
- 57 See *id.*.
- 58 See *id.*.
- 59 See *id.*.
- 60 See *id.*.
- 61 See *id.*.
- 62 See SEC, Investor.gov, <https://www.investor.gov/>.
- 63 See SEC, Broker-Dealer/Customer Arbitration: Investor Bulletin (June 14, 2022) [https://www.sec.gov/oiea/investor-alerts-bulletins/ib\\_arbitration](https://www.sec.gov/oiea/investor-alerts-bulletins/ib_arbitration).
- 64 See FINRA Rule 12505.



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