REPORT ON ACTIVITIES FISCAL YEAR 2021

Office of the Investor Advocate

U.S. SECURITIES AND EXCHANGE COMMISSION

OFFICE OF THE INVESTOR ADVOCATE

REPORT ON ACTIVITIES

FISCAL YEAR 2021

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.[1] A Report on Objectives is due no later than June 30 of each year, and its purpose is to set forth the objectives of the Investor Advocate for the following fiscal year.[2] On June 29, 2020, the Office of the Investor Advocate (Office) filed a Report on Objectives for Fiscal Year 2021.[3]

In addition to the Report on Objectives, a Report on Activities is due no later than December 31 of each year.[4] The Report on Activities describes the activities of the Investor Advocate during the immediately preceding fiscal year. As required, this Report on Activities includes information on steps the Investor Advocate has taken during Fiscal Year 2021 to improve the responsiveness of the Securities and Exchange Commission (Commission or SEC) and self-regulatory organizations to investor concerns; a summary of the most serious problems encountered by investors during the reporting period; identification of action taken by the Commission or self-regulatory organizations to address those problems; and recommendations for administrative and legislative actions to resolve problems encountered by investors.[5]

Functions of the Investor Advocate	Reporting Obligation
According to Exchange Act Section 4(g)(4), 15 U.S.C. § 78d(g)(4), the Investor Advocate shall: (A) assist retail investors in resolving significant problems such investors may have with the Commission or with SROs; (B) identify areas in which investors would benefit from changes in the regulations of the Commission or the rules of SROs; (C) identify problems that investors have with financial service providers and investment products; (D) analyze the potential impact on investors of proposed regulations of the Commission and rules of SROs; and (E) to the extent practicable, propose to the Commission changes in the regulations or orders of the Commission and to Congress any legislative, administrative, or personnel changes that may be appropriate to mitigate problems identified and to promote the interests of investors.	According to Exchange Act Section 4(g)(6)(B), 15 U.S.C. § 78d(g)(6)(B), the Investor Advocate shall submit to Congress, not later than December 31 of each year, a report on the activities of the Investor Advocate during the immediately preceding fiscal year. This "Report on Activities" must include the following: (I) appropriate statistical information and full and substantive analysis; (II) information on steps that the Investor Advocate has taken during the reporting period to improve investor services and the responsiveness of the Commission and SROs to investor concerns; (III) a summary of the most serious problems encountered by investors during the reporting period; (IV) an inventory of the items described in subclause (III) that includes— (aa) identification of any action taken by the Commission or the SRO and the result of such action; (bb) the length of time that each item has remained on such inventory; and (cc) for items on which no action has been taken, the reasons for inaction, and an identification of any official who is responsible for such action; (V) recommendations for such administrative and legislative actions as may be appropriate to resolve problems encountered by investors; and (VI) any other information, as determined appropriate by the Investor Advocate.

Disclaimer: Pursuant to Exchange Act Section 4(g)(6)(B)(iii), 15 U.S.C. § 78d(g)(6)(B)(iii), this Report on Activities 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 Activities 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 Activities and all analyses, findings, and conclusions contained herein.

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MESSAGE FROM THE INVESTOR ADVOCATE

As we conclude another busy year, I am pleased to submit our annual report on the wide-ranging and important activities of the Office of the Investor Advocate. Earlier this year, staff in the Office were honored with the prestigious Chair's Award for Investor Protection, and I join SEC Chair Gary Gensler in thanking my team for their dedication to the mission of our Office and their service to investors throughout America.

Fundamentally, our advocacy role involves providing a voice for investors when, unbeknownst to most of those investors, important policy decisions are being made that will have an impact on them. Of course, the vast majority of investors are not familiar with the regulatory structure that protects their interests, nor does the typical retail investor stay abreast of rulemaking initiatives at the Commission or participate in the public comment process. So we work to help ensure that the needs of these investors—the Commission's most critical constituency—are being considered as changes are made to the regulations that create an environment for investors to pursue their financial goals.

As described in the section of this Report entitled "Advocacy for Investors," the attorneys in our Office of Chief Counsel review numerous rulemakings during the course of the year. Less apparent, though, are their constant interactions and negotiations with rulemaking teams across the Commission, advocating for investors behind the scenes. During Fiscal Year 2021, we have engaged in advocacy related to a multitude of topics, including corporate disclosure requirements, the proxy voting process, and equity market structure, among others. These are highly technical areas that are of great importance to investors, and the experienced attorneys in our Office of Chief Counsel provide incalculable service to investors as they analyze rulemaking proposals and help to ensure that the interests of investors are being served to the fullest possible extent.

Meanwhile, we continue to conduct investor-focused research to determine how rulemaking activities will affect individual investors. We believe this initiative is a critical part of our work, as it lays an evidence-based foundation for our advocacy efforts. In the section below entitled "Research and Investor Testing," we describe the projects that were part of our research efforts

in Fiscal Year 2021. I am also pleased to report that Chair Gensler is allocating more resources to this important work, and we look forward to harvesting even more fruit from this labor in the months and years ahead.

To help us judge what is in the best interest of investors, we also engage in outreach with a diverse array of them. These outreach efforts, organized by our Investor Engagement Manager Adam Anicich with the assistance of numerous staff, generate conversations with real people who are making investment decisions. This gives us an opportunity to hear what they think about topics such as cryptocurrency and sustainability-focused investing. These activities are described in more detail below in a new section of this Report entitled "Outreach and Investor Engagement."

Finally, I am pleased to include below the Ombudsman's Report from SEC Ombudsman Tracey McNeil. She and her team interact daily with members of the public on a wide range of issues. These interactions often require a high degree of patience, and it takes wisdom and persistence to address the problems that investors identify. We take pride in the level of service we provide to investors, as more fully detailed in the Ombudsman's Report.

It is a high honor to have this role in advocating for investors. On behalf of the professionals in the Office of the Investor Advocate, who are the true tireless advocates, I present this Report on Activities for Fiscal Year 2021. I would be pleased to answer any questions from Members of Congress.

Respectfully Submitted,

Rick A. Fleming
Investor Advocate

ADVOCACY FOR INVESTORS

On June 29, 2020, the Office of the Investor Advocate filed a Report on Objectives for Fiscal Year 2021.[6] The Report on Objectives identified six key policy areas that would be the primary focus of the Office during Fiscal Year 2021:[7] corporate disclosure, proxy voting, equity market structure, novel exchange-traded funds, registered fund disclosure, and broker conduct. This section of our annual Report on Activities describes our activities and recommendations within each of those policy areas from October 1, 2020 to September 30, 2021 (the Reporting Period). It also describes some additional work we have done related to accounting and auditing.

CORPORATE DISCLOSURE AND INVESTOR PROTECTION IN REGISTERED AND EXEMPT OFFERINGS

As described in our prior reports, the Commission has undertaken a comprehensive Disclosure Effectiveness initiative to review and modernize public company reporting requirements. The disclosure rules govern the information contained in registration statements, routine periodic reports, and proxy statements. Many of these rulemaking projects have been in the nature of streamlining, clarifying, and updating rules where feasible. During the Reporting Period, we generally supported revisions that codified prior guidance, accounted for changes in related rules or accounting standards, or mandated the use of structured and standardized disclosures. At the same time, we opposed the elimination of disclosures that investors deemed decision-useful.

On November 19, 2020, the Commission adopted changes that eliminated Item 301 (selected financial data) and amended Item 302 (supplementary financial data) and Item 303 (management's discussion and analysis) to modernize, simplify, and streamline these items with a more principles-based approach that focuses on material information.[8] We advocated for retaining a number of the prescriptive disclosure requirements based on feedback from investors that the disclosures elicited were valuable and otherwise difficult to derive. The Investor Advisory Committee (IAC) recommended that the Commission reconsider proposed changes that would permit registrants to omit fourth-quarter data from annual reports and forego presenting contractual obligations in an easy-to-follow tabular format.[9] The Commission, however, adopted the changes substantially as proposed.

We reviewed other rulemakings that were not part of the Disclosure Effectiveness initiative but were otherwise relevant to capital raising, disclosure, and investor protection. We have previously reported on the Commission undertaking a broad review

of the regulatory framework for exempt offerings with the objective of harmonizing and streamlining the rules. During the Reporting Period, the Commission advanced rulemakings stemming from that review.

On November 24, 2020, the Commission proposed amendments to Securities Act Rule 701, which provides an exemption from registration for the issuance of compensatory securities by non-reporting issuers, and Form S-8, the Securities Act registration statement for compensatory offerings by reporting issuers.[10] These proposed amendments seek to modernize the framework for compensatory securities offerings in light of the significant evolution in compensatory offerings and composition of the workforce since the Commission last substantively amended these regulations.[11]

The proposed amendments to Rule 701 would raise two of the three alternative regulatory ceilings and make the exemption available for compensatory benefit plans established by the issuer's subsidiaries, whether or not majority-owned. Specifically, the proposed changes would raise the asset cap from 15 percent to 25 percent of the total assets of the issuer, and would increase the aggregate dollar amount from $1 million to $2 million during any consecutive 12-month period. The third alternative ceiling, 15 percent of the outstanding amount of the class of securities being offered and sold, would remain the same. With respect to Form S-8, the proposed amendments would clarify the ability to add multiple plans to a single Form S-8 and to allocate securities among multiple incentive plans on a single Form S-8, and permit the addition of securities by automatically effective post-effective amendments.[12]

In a companion release, the Commission proposed rules that, on a temporary basis and subject to percentage limits (no more than 15 percent of annual compensation), dollar limits (no more than $75,000 in three years), and other conditions, would permit an issuer to provide equity compensation to certain "platform workers" who provide services available through the issuer's technology-based platform or system.[13] We are pleased that, to date, neither this proposal nor the proposed changes to Rule 701 have been finalized by the Commission.

In recent public remarks, SEC Chair Gary Gensler announced that proposing rules regarding climate change and human capital risks would be among his top priorities and "an early focus" of his tenure.[14] These objectives follow increasing demand from investors for Commission emphasis on environmental, social, and governance (ESG) factors. Last year, for example, the IAC recommended that the Commission begin serious efforts to update public company reporting requirements, rejecting voluntary private-sector reporting initiatives as insufficient and inadequate to meet investor demand for reliable, material ESG information.[15] Similarly, the Asset Management Advisory Committee (AMAC), in its recommendations to the Commission in July 2021, recognized a need for mandatory disclosure standards; however, the AMAC specifically declined to recommend any change in the disclosure laws, suggesting instead the issuance of clear standards tailored by industry and overseen by an independent standard-setting entity.[16]

In our view, investors would benefit from a careful balance of prescriptive and principles-based ESG disclosure requirements. Principles-based measures are more flexible and can generate decision-useful information for investors that is most relevant

within the context of a particular business. On the other hand, principles-based requirements tend to generate disclosures that can be difficult to compare across a variety of companies. Currently, despite an abundance of ESG data, there is often a lack of consistent, comparable, and reliable ESG information available to investors upon which to make informed investment decisions.[17] Moreover, the existing principles-based approach to human capital disclosure has resulted in low levels of disclosure that are highly variable.[18] Accordingly, we favor more prescriptive requirements to promote comparability wherever possible, particularly with respect to disclosure requirements for objectively-determinable facts.

Recently, the Division of Enforcement launched a task force to oversee division efforts to identify ESG-related misconduct proactively,[19] and the Division of Examinations highlighted a greater focus on climate-related risks in its 2021 examination priorities.[20] In addition, the Division of Corporation Finance issued a sample comment letter to companies regarding climate change disclosures.[21] This sample comment letter is consistent with the Commission's 2010 Climate Change Guidance.[22] We will monitor these efforts in parallel with our work on rulemaking proposals so that investors benefit from consistent enforcement.

Another area of corporate disclosure that we have been monitoring in Fiscal Year 2021 is the administration and composition of so-called Rule 10b5-1 trading plans. Exchange Act Rule 10b-5 specifies that the purchase or sale of a security is "on the basis of" material nonpublic information, and thus potentially prohibited insider trading, if the trader is aware of material nonpublic information when making the purchase or sale.[23] Exchange Act Rule 10b5-1 allows a person to establish a trading plan before coming into possession of material nonpublic information, and thus offers traders an affirmative defense against insider trading claims.[24]

In Chair Gensler's view, "these plans have led to real cracks in our insider trading regime," so he has directed staff to make recommendations for the Commission's consideration. Potential reforms could include cooling-off periods before initial trading under these plans, limitations on when 10b5-1 plans can be canceled, mandatory disclosures, and limits on the number of 10b5-1 plans that insiders can adopt.[25] The IAC has made similar recommendations concerning Rule 10b5-1 plans, including a cooling-off period, a prohibition on overlapping plans, and plan reporting and disclosures.[26] The Investor Advocate supported the IAC recommendations and has advocated for reforms in this important area.

In another disclosure work stream, the Holding Foreign Companies Accountable Act (HFCAA) requires the Commission to prohibit the listing of securities for companies whose auditors, or accounting firms engaged to assist in the audit, are located in jurisdictions that limit the ability of the Public Company Accounting Oversight Board (PCAOB) to inspect the auditors.[27] In March 2021, the Commission adopted interim final amendments to implement the submission and disclosure requirements of the HFCAA and requested comment on the process for identifying the affected issuers and implementing the trading prohibition requirements.[28] On December 2, 2021, the Commission adopted amendments to finalize these interim final rules, which will impose disclosure requirements and trading prohibitions on certain registrants that the Commission

identifies as having filed an annual report with an audit report issued by an accounting firm located in a foreign jurisdiction and that the PCAOB is unable to inspect or investigate. We supported the Commission's rulemaking, which addresses a significant risk to U.S. investors.

As noted in our most recent Report on Objectives, we have concerns about the resurgence of interest in special purpose acquisition company (SPAC) transactions.[29] In 2020 and 2021, record numbers of companies chose SPACs as their preferred capital-raising approach.[30] A SPAC is a company with no operations that offers securities for cash and places substantially all the offering proceeds into a trust or escrow account for future use in the acquisition of one or more private operating companies. Following its initial public offering, the SPAC identifies acquisition candidates and attempts to complete an acquisition, after which the combined company will continue operations as a public company.[31]

Chair Gensler has asked staff to develop rulemaking recommendations to elicit enhanced disclosures about SPACs, including about the fees, costs, and conflicts that may exist with SPACs.[32] Recently, the IAC recommended that the Commission enhance disclosures and analysis related to SPACs.[33] We describe our concerns with SPACs in the section below entitled "Problematic Investment Products and Practices."

PROXY VOTING AND OTHER PROXY ISSUES

During the Reporting Period, the Commission undertook two rulemakings, one regarding the use of universal proxy cards and the other on proxy voting advice, that affect the ability of investors to vote their shares on matters related to corporate governance. Both of these topics were the subject of previous IAC recommendations to the Commission and, as a member of the IAC, the Investor Advocate supported those recommendations.

On July 25, 2013, the IAC recommended that the Commission explore revising the proxy rules to provide proxy contestants with the option to use a universal proxy card in connection with short slate director nominations.[34] In October 2016, the Commission proposed amendments to the proxy rules to require the mandatory use of universal proxies in connection with all non-exempt director election contests.[35] On September 5, 2019, the IAC issued another recommendation in support of the proposed mandatory universal proxy system, while noting that a minority of Committee members favored making universal proxy voluntary rather than mandatory.[36] Earlier this year, the Commission reopened the comment period for the October 2016 proposed amendments,[37] and on November 17, 2021, the Commission adopted final rules relating to the use of universal proxy cards in contested director elections.[38] The most significant change between what was proposed in 2016 and what was adopted in 2021 was a requirement for dissident shareholders to solicit a minimum of 67 percent of the eligible voting shares rather than 50 percent as originally proposed.[39]

On December 4, 2019, the Commission proposed amendments to the proxy rules regarding proxy advisory firms, which are third-party vendors hired by institutional investors for advice and assistance in voting.[40] In January 2020, the IAC adopted a recommendation that the Commission

revise and republish the rulemaking proposal,[41] but in July 2020, the Commission adopted the final rules without heeding the IAC's recommended approach.[42] We, too, opposed the rulemaking and, in our previous Report on Activities (filed December 2020), encouraged the Commission to reconsider the amendments.

On June 1, 2021, Chair Gensler directed the staff to consider whether to recommend further regulatory action regarding proxy voting advice, including revisiting the 2020 Rule Amendments.[43] The Division of Corporation Finance subsequently issued a statement indicating that it would not recommend enforcement action to the Commission based on the 2020 Rule Amendments during the period in which the Commission is considering further regulatory action in this area.[44] Then, on November 17, 2021, the Commission proposed amendments to the proxy rules governing proxy advice expressly in light of feedback from market participants and certain developments in the market for proxy voting advice.[45] These proposed amendments would rescind conditions requiring that companies be made aware of the proxy voting advice, and that clients of proxy voting advice businesses be provided with responses by companies to the proxy voting advice.[46] In addition, the Commission proposed to remove paragraph (e) of the note to Exchange Act Rule 14a-9 in order to avoid any misperception that the addition of Note (e) to Rule 14a-9 purported to determine or alter the law governing that rule's application and scope, including its application to statements of opinion. We support these proposed amendments, which rescind the most problematic aspects of the 2020 rule amendments.

EQUITY MARKET STRUCTURE

During the early months of 2021, unanticipated trading volumes and significant pricing volatility in a small number of so-called "meme stocks" attracted public attention. While much of the aftermath appropriately focused on broker-dealer conduct, including the digital engagement practices (DEPs)[47] imbedded in online trading apps, the events also touched on aspects of equity market structure: the two-day transaction settlement cycle, payment for order flow as part of wholesaler internalization, and public short sale disclosures. Given the significant involvement of retail investors with respect to meme stocks, we were pleased to see Commission staff issue a public report that focused on January 2021 trading activity in GameStop Corp (GME).[48] The data-driven report provided insight concerning the price movement, volume changes, short interest, and the social and mainstream media coverage of GME.

Based on the report, it is clear to us that the Commission should explore amendments to existing equity market regulation to improve the experience for retail investors going forward. For example, the Commission should encourage the industry to move quickly to T+1 or shorter settlement for equities, thereby reducing the systemic risks observed in late January 2021. Cutting the settlement cycle in half could reduce intraday margin calls made on clearing brokers and unanticipated trading restrictions imposed on retail investors by thinly-capitalized broker-dealers in response to these margin calls. Similarly, we will encourage the Commission to take the experience of retail investors during these events into consideration as it evaluates the influence of payment for order flow, exchange fees and rebates, wholesaler internalization, and off-exchange trading more generally.

In more routine matters, we have long been supportive of innovative proposals designed to improve the secondary market for equity securities, especially for thinly-traded securities. Along those lines, in March 2021 the Commission approved a CBOE BYX Exchange, Inc. (BYX) proposal to introduce intra-day periodic auctions, albeit for all securities listed on the exchange, not just thinly-traded ones.[49] Although broader in scope than our Office may have preferred, given the uncertain impact of batch auctions on already highly liquid, listed equity securities, we supported the proposal to the extent it was a voluntary order type that could still lessen costs associated with the speed "arms race" in the equity market.

In August 2021, the Commission approved a proposal from the exchanges and FINRA to modernize the governance of National Market System (NMS) plans that produce public consolidated equity market data and that disseminate trade and quote data from trading venues.[50] This new governance structure should reduce inherent conflicts of interest, in no small part by providing for non-SRO voting representatives on the operating committees for the NMS plans. In Fiscal Year 2022, we will support improvements to the governance of NMS plans that include the appropriate representation of retail and institutional investors.

More broadly on equity market trading data, in December 2020 the Commission adopted rules to modernize the overall infrastructure for the collection, consolidation, and dissemination of market data for NMS stocks.[51] This should provide key upgrades to the content and infrastructure for "core data" that is consolidated and widely distributed by central securities processors (the SIP). Improving the infrastructure around market data could ultimately benefit retail investors, either directly or indirectly as participants in mutual funds and pension funds. We were pleased to see the Commission take many of the helpful comments into account when finalizing the proposal.

There were a number of other rule proposals from self-regulatory organizations (SROs) that we monitored closely during the Reporting Period.[52] For example, we reviewed the amendments to a proposal from the Investors Exchange LLC (IEX) to enhance its existing retail price improvement program, with the stated goal of attracting more retail orders to lit markets to obtain better pricing.[53] We were pleased to see the Commission approve these enhancements over the summer.

We continue to monitor progress on the implementation of the Commission's Consolidated Audit Trail (CAT), which is intended to enhance, centralize, and generally update the regulatory data infrastructure available to market regulators.[54] Promising advances are being made; in October 2020, the Commission sought public comment on possible amendments to enhance data security for the CAT database,[55] and in April 2021 began "Phase 2c" of collecting core equity reports to the database from large industry members.[56]

NOVEL EXCHANGE-TRADED FUNDS

As anticipated in our Report on Objectives for Fiscal Year 2021, we have continued to focus on developments in the exchange-traded fund (ETF) marketplace during the Reporting Period. Although we believe the Commission may not have given sufficient attention to investor protection concerns

surrounding novel and increasingly complex ETFs in recent years, we are encouraged by a number of ongoing developments in this area.

As discussed in our prior reports, in September 2019 the Commission adopted a new rule and form amendments designed to modernize the regulation of ETFs by establishing a clear and consistent framework for the vast majority of ETFs operating at that time (ETF Rule).[57] This Office welcomed the adoption of the ETF Rule, noting that it included important investor protection safeguards, such as requiring an ETF to provide full daily portfolio transparency on its website,[58] as well as a condition expressly excluding leveraged and inverse ETFs from the rule's scope.[59]

ETFs that do not provide full daily portfolio transparency (non-transparent ETFs) are not able to comply with the ETF Rule. Following the adoption of the ETF Rule, however, the Commission provided special relief to several non-transparent ETFs, which enabled them to enter the ETF marketplace.[60] Additionally, in late 2020 the Commission amended the ETF Rule to bring many leveraged and inverse ETFs within the rule's scope.[61] Both of these developments raised potential investor protection concerns, warranting our continued attention and engagement.

With respect to non-transparent ETFs, during the Reporting Period staff in the Commission's Division of Examinations indicated that they intend to focus on non-transparent ETFs' compliance with conditions attached to the special exemptive relief granted to these ETFs.[62] We are encouraged to see that the Commission staff plans to scrutinize these ETFs' compliance with the conditions that operate to exempt them from regulations applicable to other ETFs.

Similarly, with respect to leveraged and inverse ETFs, we are encouraged by the Commission's renewed attention to the longstanding investor protection concerns associated with these products. As Chair Gensler noted in recent remarks:

> Some (exchange traded products [ETPs]) use strategies and structures that are more complex than typical stocks and bonds. For example, there are products such as "leveraged ETFs" and "inverse ETFs." For more than a decade, SEC staff and a number of Commissioners have been warning the public that these products, often called "complex ETPs," [63] can pose risks to individual investors. In 2009, the SEC's Office of Investor Education and Advocacy highlighted the risks that [leveraged and inverse ETFs] can pose to investors who buy and hold them for longer than one day. In 2015, the Commission sought public comment on a broad range of issues relating to ETPs, including listing standards and broker-dealer sales practices. Even more recently, the Commission settled charges against financial professionals who recommended that retail customers buy and hold ETPs designed for very short-term trading strategies. [In October 2020], then-SEC Chairman Jay Clayton and several SEC Division directors expressed their concern that certain ETPs "may present investor protection issues—particularly for retail investors who may not fully appreciate the particular characteristics or risks of such investments." These ETPs, however, can pose risks even to sophisticated investors, and can potentially create system-wide risks by operating in unanticipated ways when markets experience volatility or stress conditions.[64]

Despite its longstanding concerns, the Commission amended the ETF Rule on October 28, 2020 to include inverse and leveraged ETFs within its scope.[65] In effect, this allows sponsors to form and operate leveraged and inverse ETFs pursuant to the ETF Rule, just like traditional "plain-vanilla" ETFs. The Commission simultaneously adopted a rule relating to funds' use of derivatives (Derivatives Rule), and while that rule prevents the creation of new ETFs with greater than 200 percent or -200 percent leverage, many pre-existing leveraged and inverse ETFs (leveraged up to 300 percent/-300 percent) were simply exempted from the Derivatives Rule's leverage limitations because they "generally could not satisfy the limit on fund leverage risk in [the Derivatives Rule]."[66]

In our view, the Commission's adoption of the Derivatives Rule (and simultaneous amendment of the ETF Rule) was a missed opportunity to address longstanding investor protection issues related to leveraged and inverse ETFs. When initially proposed, the Derivatives Rule would have included a requirement that broker-dealers and investment advisers "exercise due diligence on retail investors before approving retail investor accounts to invest in 'leveraged/inverse investment vehicles,'" but this requirement was ultimately dropped from the final Derivatives Rule.[67] The Derivatives Rule adopting release states that the Commission "believe[s] that it is important to continue to consider these funds in light of investor protection concerns,"[68] but the release indicates that those concerns would be better addressed as part of a broader staff review of complex investment products.[69]

Toward the end of the Reporting Period, Chair Gensler instructed Commission staff to conduct a review along the lines of the review contemplated by the Derivatives Rule adopting release.[70] On the same day, Commissioners Allison Herren Lee and Caroline A. Crenshaw issued a joint statement on complex ETPs indicating, among other things, that the Commission should renew its efforts to adopt tailored sales practice requirements for leveraged and inverse investment companies.[71] While we believe the dangers of leveraged and inverse ETFs are well known and could be mitigated more quickly without subjecting them to a broad and potentially lengthy staff review, we are encouraged that a review of complex ETPs is underway. We hope that the review will result in a fresh acknowledgement of the longstanding investor protection concerns associated with inverse and leveraged ETFs and, to the extent these products remain exempt from the leverage limits applicable to all other ETFs, we believe the Commission should consider alternative safeguards such as tailored sales practice requirements to mitigate those concerns.

Another important development during the Reporting Period has been the rising investor demand for investments related to bitcoin and other digital assets. Near the end of the Reporting Period, the Commission permitted an application for an ETF that invests in bitcoin futures (in lieu of holding bitcoin directly) to become effective, and the newly launched ETF rapidly attracted a substantial amount of assets.[72] The Commission also has received applications for ETFs that

would invest directly in cryptocurrencies[73] and has even received applications for ETFs that would provide leveraged and/or inverse exposure to cryptocurrencies.[74] Some of these applications are still under review, but we note that the ETF Rule's adopting release reiterated that, in the Commission staff's view, "ETFs and other funds that hold substantial amounts of cryptocurrencies and related products raise significant questions regarding how they would satisfy certain other requirements of the Investment Company Act and its rules."[75] As of the date of this report, the Commission has not approved any ETFs with an investment strategy focused on direct cryptocurrency investments, nor has it approved any leveraged or inverse cryptocurrency ETFs.

We believe that the allowance of the bitcoin futures ETF was an acceptable step toward giving investors access to cryptocurrency-related investments. However, we also believe the Commission's cautious approach to additional novel cryptocurrency-related ETFs is warranted, given the concerns we have previously expressed regarding the custody of digital assets and the lack of a regulated exchange.[76] Until those dangers are addressed, we do not believe the Commission can reasonably make a finding that such products satisfy the requirements of the Investment Company Act, and we recommend resolving these pre-existing concerns before permitting new novel ETFs to present new novel risks.[77] We look forward to working with Commission staff as they assess these types of products in the future.

REGISTERED FUND DISCLOSURE

During the Reporting Period, we continued to focus on the effectiveness of disclosure provided to investors in SEC-registered funds. As we have noted in prior reports, such disclosure is at the heart of the Commission's efforts to help ensure that investors are making thoughtful, well-informed decisions about their investments as they save for college expenses, look towards retirement, or plan for other goals. The Commission and its staff strive to provide registered fund investors with clear, concise disclosure regarding funds' investment strategies, risks, costs, and other attributes.

With these considerations in mind, the Commission issued a significant proposal in August 2020 to update and tailor mutual fund and ETF disclosures to retail investors' needs (Tailored Shareholder Reports Proposal).[78] The proposal would, if adopted as proposed: require streamlined reports to shareholders that would include, among other things, fund expenses, performance, illustrations of holdings, and material fund changes; significantly revise the content of these items to better align disclosures with developments in the markets and investor expectations; encourage funds to use graphic or text features—such as tables, bullet lists, and question-and-answer formats—to promote effective communication; and promote a layered and comprehensive disclosure framework by continuing to make available online certain information that is currently required in shareholder reports but may be less relevant to retail shareholders generally. The proposed framework

would provide an alternative approach to keeping investors informed about their ongoing fund investments. Instead of receiving both prospectus updates and shareholder reports, which today can be lengthy and complex, existing investors would receive the streamlined shareholder report.[79]

The comment period for the proposal closed during the Reporting Period, on January 4, 2021, and we were encouraged by a number of comment letters urging the Commission and its staff to utilize investor testing to determine whether the disclosure framework in the proposal conveys information more effectively than the current disclosure framework. For example, the CFA Institute indicated that the Commission should "direct the staff to conduct its own investor testing on the proposed changes" and should, "going forward: 1) integrate investor testing at an early stage into all future rulemakings on retail investor disclosures; 2) conduct its own independent investor testing; and 3) deploy the objective research capabilities of the Office of the Investor Advocate in those efforts."[80] The Investment Company Institute, meanwhile, stated that the Commission should "perform investor testing of the [Tailored Shareholder Reports Proposal's] proposed terminology changes to ensure that they do in fact improve understanding before proceeding."[81] The Consumer Federation of America urged the Commission "to engage in testing to evaluate the effectiveness of these [proposed] reports" and stated that "the results of that testing should be used to refine the Commission's approach where appropriate."[82] Additionally, Broadridge Financial Solutions, Inc. conducted its own analysis of investor reactions to an example report and feedback flier that accompanied the Tailored Shareholder Reports Proposal,[83] and Better Markets, Inc. stated "[t]he Commission would do well by investors if it fully embraces investor testing before approving the various aspects of this Proposal."[84]

The Office of the Investor Advocate has long championed the use of investor testing to inform rulemaking initiatives, particularly those initiatives involving changes to disclosures provided to retail investors, and we join these commenters in urging the Commission to utilize such data to inform the Tailored Shareholder Reports Proposal. Meanwhile, we continue to conduct research of our own, employing surveys, focus groups, and other methods to gain insight into investor behavior and provide data regarding disclosure-related policy choices. We believe these efforts produced valuable information during the Reporting Period and will continue to do so, potentially helping inform initiatives such as the Tailored Shareholder Reports Proposal. We look forward to working with our colleagues to continuously improve and enhance the information provided to registered fund investors.

BROKER CONDUCT

Since the implementation of Regulation Best Interest (Reg BI) on June 30, 2020, we have monitored how the Commission and FINRA have used the new tools to address unethical or abusive conduct in the brokerage business. As our Office stated at the time, Reg BI appears to be a step in the right direction because it includes several

improvements over the suitability standard for broker-dealers.[85] However, the utility of Reg BI will ultimately depend upon how it is enforced by the Commission and FINRA.

Recent analysis by the North American Securities Administrators Association (NASAA) seems to suggest that while the initial implementation of Reg BI led to some improvements, most firms are operating in the same manner as they were under the prior suitability rule, especially when it comes to harmful compensation conflicts.[86] Their Report concludes that "[c]learer regulatory guidance is needed to allow a course correction that would help Reg BI earn the 'best interest' label that it bears."[87]

Market events have also raised questions about Reg BI's effectiveness. As noted previously, during the winter of 2021, unanticipated trading volumes and significant pricing volatility in a small number of "meme stocks" highlighted a concerning development with regard to broker-dealer conduct—the so-called "gamification" of retail stock trading.[88] While not a precise term, gamification refers generally to the use of technological tools to make trading easier and more exciting. Broker-dealers, as well as some investment advisers, now utilize a variety of digital engagement practices, or DEPs, to connect with a broader array of retail investors, particularly younger investors who grew up with similar design features in other online apps and games on their devices.

On the one hand, these developments appear to have some benefits for investors. Advances in technology can lower the barriers to entry for investors, particularly those of limited means, and these technological tools have given broker-dealers the opportunity to think more creatively about ways to educate and serve their customers. This demonstrates that it is possible for brokers to use DEPs in a positive manner and enhance investor protection in the spirit of Reg BI, and we look forward to encouraging this innovation going forward.

Our Office is, however, concerned that gamification has the potential to induce trading that is more frequent or higher-risk than an investor would choose in the absence of the DEPs. It is possible that these digital platforms could go well beyond merely adopting game-like features, and instead tailor products to individual retail investors using predictive data analytics, differential marketing, and behavioral prompts. To regulate this new generation of online brokers effectively, we need to fully understand the scope of DEPs in the industry and how they might influence investor behavior and decision-making.

The Commission has begun this process by issuing a recent Request for Information and Comment on the use of DEPs.[89] While we will continue to consider the comments submitted in response,[90] our Office has already begun to advocate for the Commission to make clear that "recommendations," which trigger the important investor protections of Reg BI, include instances where a broker-dealer utilizes DEPs to nudge investors in a way that reasonably could be viewed as encouraging trading.[91]

More generally, we have monitored FINRA's rulemaking efforts to protect retail investors and were pleased to see two proposals receive Commission approval in Fiscal Year 2021. First, in December 2020, the Commission approved a FINRA proposal to address risks presented by individual brokers with a significant history of misconduct.[92] Under the new rules, FINRA hearing officers can now impose, during the appeal of a disciplinary matter, restrictions or conditions on the activities of a broker-dealer and require heightened supervisory procedures for associated persons.

Second, in July 2021, the Commission approved new FINRA rules targeting firms with a disproportionate history of broker and other misconduct relative to their similarly-sized peers.[93] New Rule 4111 (Restricted Firm Obligations) will impose, in certain instances, conditions or restrictions on member operations, including requirements for deposits of cash or qualified securities that could not be withdrawn without FINRA's prior written consent, if a firm exceeds a certain threshold calculation of broker or other misconduct. We reviewed the comments received, analyzed the data behind the rule, and met with FINRA staff to express our support for the concept and the analysis. We look forward to FINRA implementing the new rule in the coming months.

We continue to review other initiatives by FINRA that remain outstanding. For example, in June 2021, FINRA proposed amendments to its existing framework for protecting seniors and other specified adults from financial exploitation.[94] It appears that FINRA's proposal could benefit investors because it grants additional time for brokerage firms to resolve matters of suspected financial exploitation, and for Adult Protective Services agencies, state regulators and law enforcement to conduct thorough investigations.

ACCOUNTING AND AUDITING

We look forward to engaging with the newly-appointed members to the Public Company Accounting Oversight Board (PCAOB), which was established by the Sarbanes-Oxley Act (SOX) to oversee the audits of public companies and SEC-registered brokers and dealers.[95] Given the PCAOB's pivotal role in protecting investors, we encourage the PCAOB to reinstitute a meaningful investor advisory group as one of its first orders of business. The PCAOB also has important work ahead implementing the just-approved rule to determine which foreign audit firms are and are not complying with the Holding Foreign Companies Accountable Act.[96] In addition, the adoption and implementation of a new audit quality standard and reporting of inspections in a more thematic, impactful way remain outstanding.

In addition to PCAOB, we monitored developments at the Financial Accounting Standards Board (FASB) and auditing and accounting policies at the Commission. One area of unfinished business from the Dodd-Frank Act is a rulemaking regarding listing standards for companies to adopt policies clawing back erroneous compensation.[97] Typically,

a company claws back compensation when the company files a restatement, or a material adjustment to the financial statements of prior periods, as opposed to revisions, which are adjustments to the prior period financial statements that are not material. It is management that determines whether or not a potential disclosure is material enough to warrant a restatement.

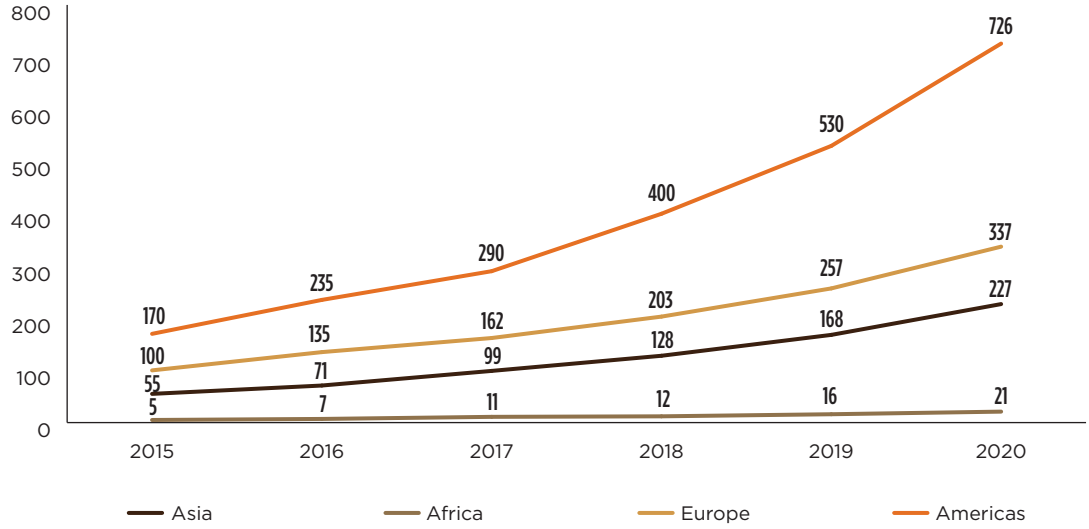
On October 14, 2021, the Commission reopened the comment period to the 2015 proposed rulemaking requiring listing standards for erroneously awarded compensation.[98] The request for comment specifically asked for feedback on the scope of proposed rulemaking as including not only restatements but also revisions, on the inclusion of deferred and non-GAAP measured compensation, and on enhanced disclosures of instances where a clawback was considered and/or initiated. We support the reopened rule proposal because, in our view, it gives companies the necessary discretion to recover compensation from wrongdoers but also informs investors of the exercise (or non-exercise) of that discretion.

Relatedly, we are concerned by the growing body of evidence that suggests some revisions are, in reality, restatements in disguise, and that in some cases management may be opportunistically adjusting its definition of materiality to avoid clawbacks or other negative consequences of a restatement.[99] Materiality is subject to both quantitative and qualitative factors where investors have every reason to expect similar transactions be reported and disclosed accurately and consistently in accordance with accounting standards. Sometimes, however, it appears that adjustments may be motivated by considerations such as earnings targets, compensation metrics, or performance measures, rather than what an investor would consider to be material. Ultimately, the character of the adjustment, as material or not, should be decided upon by the company's audit committee after consultation with the independent auditor.

Similarly, we are tracking the accumulation of "goodwill" on balance sheets—a staggering $3.5 trillion as of 2020—in light of the recent flurry of deal activity taking place at elevated prices.[100] The challenge appears to be in how to reduce the value of goodwill, whether through impairment, amortization, or some other method.[101] We are also paying attention to the accounting treatment of digital assets. For instance, we are aware that the Canadian Public Accountability Board has found that seven of eight inspections identified significant deficiencies in the audits of issuers active in digital asset markets.[102] We wonder whether these deficiencies extend to audits of issuers in digital asset markets in the United States.

Another area of concern is the rise of supply chain financing or reverse factoring and its potential distortion of the financial health of a company. The use of such payment schemes has accelerated to nearly $1.3 trillion in 2020.[103]

Figure 1: **2015–2020 Volume (USD billions)**



Source: World Supply Chain Finance Report 2021.

As noted in our Report on Activities for 2019,[104] we encouraged requiring disclosure of the use, scope, and amounts related to supply chain financing given the liquidity, credit, and default risks. FASB appears poised to take action by the end of the year.[105] We await the release of their proposed rulemaking and support measures to provide investors with the information necessary to make better-informed investing decisions.

PROBLEMATIC INVESTMENT PRODUCTS AND PRACTICES

Among other statutory duties, the Investor Advocate is required to identify problems that investors have with financial service providers and investment products. Exchange Act Section 4(g)(6)(B) mandates that the Investor Advocate, within the annual Report on Activities, shall provide a summary of the most serious problems encountered by investors during the preceding fiscal year. The statute also requires the Investor Advocate to make recommendations for such administrative and legislative actions as may be appropriate to resolve those problems.[106]

To determine the most serious problems related to financial service providers and investment products, staff of the Office of the Investor Advocate reviewed information from the following sources:

- Investor Alerts, Tips, and Bulletins issued by the SEC, FINRA, and the North American Securities Administrators Association, Inc. (NASAA);
- SEC enforcement actions and FINRA disciplinary actions;
- NASAA's Activity Report,[107] 2021 Enforcement Report,[108] and Top Investor Threats;[109]
- The SEC Division of Examinations' 2021 Examination Priorities;[110]
- SEC and SRO staff reports providing guidance and interpretations relating to investment products; and
- Discussions with SRO staff, including a November 15, 2021 call with Mark Kim, Chief Executive Officer, and other leaders of the MSRB, highlighting municipal market practices that may have an adverse impact on retail investors.

The table below lists certain potentially problematic products or practices during Fiscal Year 2021 as reported by these sources. Although not exhaustive, the lists reflect some of the concerns of these organizations. Details regarding these products and practices are available on the organizations' websites.

SEC[111]	NASAA[112]	FINRA[113]	MSRB[114]
• Digital Assets and Crypto Investment Scams • Bitcoin Futures • Fractional Share Investing • SPACs • Leveraged Investing Strategies	• Expense Ratios • Social Media, Online Trading, and Investing • ESG Investing • Protecting Online Accounts	• Investing and Social Media • Broker Imposter Scams (confirming broker registration) • Fake Check Scams • High-Yield CD Offers as Bait for High-Commission Investments • Fraudulent Binary Options	• Evolving ESG Considerations • Informational Disparities between Individual Investors and Institutional Investors • Market Dependence on Mutual Fund Flows

Each of the products and practices listed above represents an area of concern for investors during the Reporting Period. Based on our review of the resources described above and consultations with knowledgeable professionals, we highlight the following three areas of concern: payment for order flow; meme stocks; and special purpose acquisition companies (SPACs). Previous reports have highlighted other issues, including reverse factoring,[115] dual-class share structures,[116] the LIBOR transition,[117] initial coin offerings,[118] binary options,[119] public non-traded REITS,[120] municipal market disclosure practices,[121] below-minimum denomination positions in municipal securities,[122] Simple Agreements for Future Equity in crowdfunding investments,[123] the new-issue process for investment-grade corporate bonds, and leveraged and inverse ETPs.

PAYMENT FOR ORDER FLOW FROM RETAIL INVESTORS

Over the last few years, most retail brokers have stopped charging commissions for stock and option trades. These brokers now make money through alternative revenue streams, including a process called "payment for order flow." In a payment for order flow arrangement, retail brokerage firms enter into agreements with wholesale market makers who purchase their customers' order flow. Per these agreements, for a small fee paid to the broker, wholesalers can either trade against the customers' orders directly or route them to other trading venues, like the exchanges, for execution.

At first glance, this practice appears to be a positive development for retail investors. So-called "zero commission" trading lowers the barrier for new investors to begin saving for the long term. In addition, the wholesalers typically provide some level of price improvement, giving the customer a better price than if their order had executed on an exchange at the displayed National Best Bid or Offer (NBBO). In theory, investors now pay nothing for their trades and save a few cents on price.

However, as discussed more fully in the Staff Report on Equity and Options Market Structure Conditions in Early 2021, there are trade-offs involving payment for order flow and price improvement.[124] First, higher volumes of trades generate more payments for order flow to the broker-dealer, which raises concerns about whether brokers have inherent conflicts of interest when they enter into these arrangements. This structure could incentivize brokers to encourage excessive trading by their customers, possibly through questionable digital engagement practices, or DEPs. Active trading, even with zero commissions, may not be in the retail customer's long-term best interest.

Second, brokers may be motivated to contract with wholesalers offering higher payment for order flow, but less price improvement than other wholesalers may be offering. Absent fulsome disclosure, retail customers may not be aware of the true costs of choosing to trade with the firm. In addition, although the broker may obtain a slightly better price than the NBBO, the broker may not be providing its customers with best execution because it fails to seek the best reasonably available terms.

Finally, these arrangements potentially may impact the stock market as a whole. With nearly half of equity trading occurring in dark pools or through wholesale market maker internalization, the NBBO itself does not reflect a significant portion

of trading interest. Some have asked whether this bifurcation of the market has resulted in a wider NBBO bid-ask spread, disadvantaging even the retail orders that otherwise appear to be receiving "price improvement" relative to the NBBO.

Concerns about payment for order flow have led some to suggest that it should be banned in U.S. markets. This, in turn, could lead more trading back onto the "lit" exchanges and theoretically result in price improvement across the board. However, as we have noted previously, the use of so-called "maker-taker" fee-and-rebate pricing for exchange transactions may create other conflicts of interest in broker-dealer order routing behavior to the various exchanges.[125] Brokers may route retail orders to the exchange where they may receive the largest rebate, rather than to an exchange where their customers might receive best execution. It is not clear, absent a better understanding of the interplay between exchange fees and rebates and broker incentives, that simply moving more retail order flow to the exchanges would improve retail execution quality or market quality more generally.

In our view, these are highly complex and interconnected issues, and changes to the rules could have far-reaching and unintended consequences. Accordingly, we favor an approach that is data-driven in order to help ensure that reforms intended to benefit investors do not leave them worse off in the long run. We urge the Commission and Congress to proceed with caution in addressing any concerns related to payment for order flow.

Along these lines, Commissioner Elad Roisman recently offered his own thoughts on steps the Commission could take to improve order execution quality disclosure and promote operational transparency for wholesalers.[126] For example, he suggests enhancing the existing monthly execution quality reports issued by market centers pursuant to Reg NMS Rule 605 to include new elements and metrics to bring the rule up to date with twenty years of market developments and make the reports more useful to institutional investors. To assist retail investors in this area, he suggests developing a separate monthly order execution quality report for retail brokers so that retail investors can better compare brokers on an apples-to-apples basis. And considering the significant role of internalizing wholesalers, Commissioner Roisman suggests requiring they publicly disclose their operations in a manner similar to market centers that file Form ATS-N with the Commission. We hope the Commission will consider these thoughtful suggestions, as they could provide both institutional and retail investors with near-term benefits even as the Commission continues to consider larger issues related to payment for order flow and off-exchange trading.[127]

"MEME" STOCKS AND FUNDAMENTAL VALUATION

A number of corporate stocks, mostly consumer-focused with familiar public names, experienced a dramatic increase in their share price in January 2021 as bullish sentiments of individual investors saturated social media. As these companies' share prices skyrocketed to new highs, increased media attention followed, and their shares became

known as "meme" stocks. Then, as the end of January approached, several retail broker-dealers temporarily prohibited certain activity in some of these stocks and options.

In October 2021, Commission staff provided a detailed report on the areas of market structure and broker conduct that may have contributed to these dramatic events.[128] The report noted that a confluence of factors appeared to link many of the "meme" stocks: (1) large price moves; (2) large volume changes; (3) large short interest; (4) frequent Reddit website mentions; and (5) significant coverage in the mainstream media. The report also noted that the social media discussion of these stocks appeared to make arguments using traditional financial analysis—with some commenters making the case that the stocks were undervalued based upon fundamental analysis such as their discounted future cash flows.

Some have raised questions as to whether these stocks, which appear prone to wild and unpredictable swings from retail trading based upon rumors and internet message-board discussions, are actually trading at prices that have any regard for valuation models or the business's underlying fundamental soundness.[129] Researchers have started to see that when stocks gain 'meme' status (by crossing an internet message-board attention threshold), they begin to exhibit greater total risk, measured by volatility, and much greater correlation with other meme stocks.[130]

Others have made the point that, when stock prices become separated from fundamental valuation, it could feed public perception that markets can be manipulated and therefore cannot be trusted.[131] It is possible that well-organized groups of retail traders who encourage each other to buy and hold on internet message boards could become a typical feature of the market. These developments beg the question as to whether there is a role for regulators to play if, and when, stocks appear to move based on factors seemingly unrelated to the underlying performance of the business; and if regulation is warranted, how should regulators address this phenomenon?

The Federal Reserve, in its November 2021 Financial Stability Report, analyzed the potential implications of meme stocks on the broader market.[132] While finding that the recent changes in retail equity investor characteristics and behavior appeared to have limited implications for financial stability, the report suggested regulators continue to monitor developments in the following areas: (1) changes in the amount of leverage in young stock investors' household balance sheets; (2) changes in the risk appetite of retail investors using social media; and (3) the recalibration of risk management practices of financial institutions in response to these two trends. We agree that further exploration of these issues is warranted.

While we favor the right of individual investors to freely express their opinions about investing, the Commission and FINRA also must remain vigilant in monitoring for manipulative practices deployed through social media, such as undisclosed compensation for investing tips or payment for 'up-votes' of social media posts. Absent this type of manipulation, we believe market forces ultimately may correct apparent bubbles and minimize future price dislocations. If these episodes of higher volatility become more frequent, however, regulators may need to consider additional steps to support the resilience of the financial system.

SPECIAL PURPOSE ACQUISITION COMPANIES (SPACS)

The resurgence of interest in SPAC transactions raises a number of concerns. As noted above, in 2020 and 2021, record numbers of companies chose SPACs as their preferred capital-raising approach.[133] A SPAC is a company with no operations that offers securities for cash and places substantially all the offering proceeds into a trust or escrow account for future use in the acquisition of a target company. The SPAC then attempts to complete a merger (the "de-SPAC" transaction), after which the combined company will continue operations as a public company.[134]

Recent academic research on SPACs has identified substantial dilution of the post-merger shares that stems from the sponsor's promote fee, underwriting fees, and warrants. These costs are primarily borne by the SPAC shareholders.[135] According to the academic literature, the median cost of a SPAC is 50.4 percent of the amount raised in the offering, which is far higher than the total IPO costs of approximately 27 percent of cash raised.[136]

Unlike the traditional IPO process in which a private operating company sells its securities at prices arrived at through market-based discovery, when a SPAC elects to acquire a private company, the SPAC's sponsors, directors, and officers decide how to value the company and how much the SPAC will pay for it. This process offers greater certainty regarding the valuation of the shares, but it creates conflicts of interest that outside investors may not appreciate without clear disclosure. In addition, institutional investors may supply additional financing in a concurrent private investment in public equity (PIPE). The financial interests of a SPAC IPO investor may conflict not only with the financial interests of an investor who purchases shares later in the secondary markets, but also with the financial interests of PIPE investors who receive discounted shares.

In light of these issues, the Division of Corporation Finance in December 2020 issued guidance directing SPACs to disclose such conflicts (among other disclosures).[137] In addition, the Office of Investor Education and Advocacy published an investor alert about investing in SPACs.[138] While we support this much-needed guidance, we believe investors require more enhanced disclosures and analysis regarding the "promote" and other conflicts of interest, and recently the Investor Advisory Committee made similar recommendations to the Commission.[139] We also agree with Commissioner Hester Peirce, who has observed that "SPACs are not all identical so disclosure needs to enable investors to understand each SPAC on its own terms," and that standardized tabular disclosure of the economics of the transaction could be helpful to investors.[140] We are pleased that Chair Gensler has asked staff to develop rulemaking recommendations to elicit enhanced disclosures about SPACs, including disclosure about the fees, costs, and conflicts that may exist.[141]

One benefit for companies undergoing a SPAC transaction is the speed at which they can become public companies. This haste, however, also increases the risk that investors may invest in companies with serious internal controls weaknesses. A private company may spend years preparing to go public through a traditional IPO, allowing time to ensure it has proper infrastructure and expertise to handle the additional regulatory responsibilities of a public company. By contrast, in

a SPAC merger, a private company may make the transition to becoming public in just a few months. Cognizant of the risks that attend a SPAC merger, in March 2021 the SEC staff issued a public statement warning private companies considering SPAC transactions to first "evaluate the status of various functions, including people, processes, and technology, that will need to be in place to meet SEC filing, audit, tax, governance, and investor relations needs post-merger."[142]

Concerns about accounting and control weaknesses appear to be valid. In April 2021, SEC staff issued another statement on accounting and reporting considerations for warrants issued by SPACs.[143] Approximately 85 percent of SPACs have restated their financial statements, which may indicate that these companies were not prepared to handle the heightened regulatory responsibilities of public companies.[144]

Limitations on projections and other forward-looking statements present a potential difference between protections afforded traditional IPO investors and those who invest in SPACs. The Private Securities Litigation Reform Act (PSLRA) provides established, publicly-traded reporting companies a safe harbor against private lawsuits arising from forward-looking statements. Companies undergoing a traditional IPO cannot avail themselves of that safe harbor, but many commentators argue that SPACs and their merger targets can do so. Some companies may even opt to go public through SPAC transactions in part because of the assumption the PSLRA limits investors' ability to pursue legal claims on overly optimistic projections.[145] Similarly, the fact that SPAC transactions do not involve underwriters, which must operate within their own regulatory obligations[146] and reputational risk considerations, may lead some companies to believe that going public through a SPAC transaction will allow them to engage in more aggressive marketing. These differences in potential liability could result in a type of "regulatory arbitrage" because regulatory considerations rather than economic factors may drive the choice between a SPAC and a traditional IPO.[147] To address this inconsistency in the marketplace, we believe that the Commission should consider harmonizing the rules for SPACs and traditional IPOs in order to create a more level regulatory playing field.

Another concern arises from the significant incentives for a SPAC to consummate a merger with the target identified by the sponsor. Under the typical terms of a SPAC's governing instruments, if the SPAC does not complete a business combination transaction within a specified timeframe, it must liquidate and distribute the net offering proceeds to its public shareholders. If this happens, the sponsors and their affiliates likely will incur a substantial loss.[148] Moreover, the underwriter of the SPAC IPO may only earn its deferred compensation when the business combination transaction is completed, so it would suffer a loss as well.[149] Thus, sponsors, affiliates, and the underwriters of the SPAC IPO all have financial incentives to complete a business combination transaction even if the transaction may not be in the best interest of other shareholders.

With an increasing number of SPACs competing to acquire private operating businesses, we believe it is important to consider whether attractive target companies will become scarcer.[150] In fact, SPAC mergers with foreign companies are on the rise, in part due to the competition to find suitable acquisitions in the United States[151] We worry that the scarcity of high-quality merger targets, coupled with the overwhelming incentives to complete mergers, may result in a flood of low-quality companies in our public markets.

A potential way to stem this tide is to reconsider rules that have previously prevented de-SPAC mergers when a substantial portion of shareholders redeemed their shares rather than becoming shareholders in the merged company. These rules addressed a misalignment of interests that can occur due to the fact that, when a SPAC's sponsors have identified a private operating company to merge with the SPAC, the shareholders typically have two important rights: (1) a vote on whether to approve the acquisition; and (2) the choice to redeem their shares from the SPAC and get their money back, or convert those shares into shares of the merged company. Ordinarily, we would expect that if a shareholder does not believe the SPAC should merge with the private operating company, then the shareholder would vote against the merger and redeem her shares. However, SPAC shareholders often have an incentive to vote in favor of the merger even though they may want to redeem their shares because, in addition to shares, they may have been given warrants that likely will become worthless unless the merger is approved.

Research has found that while SPAC mergers are overwhelming approved (with a mean "yes" vote of 89 percent), redemption rates are also high (on average, 54 percent), resulting in a misalignment of economic and voting interests.[152] This "empty voting" creates the impression that early or sophisticated investors in the SPAC are in favor of acquiring the target even as they withdraw their investment in the SPAC, which may result in later or retail investors misinterpreting this market signal.[153] Some researchers propose that if more than 50 percent of the SPAC shares are redeemed, then the merger should not be consummated.[154]

Originally, when the New York Stock Exchange permitted SPACs to be listed in 2008, a SPAC could not consummate its business combination if shareholders owning in excess of 40 percent of the shares exercised their redemption rights.[155] However, this threshold was eliminated in 2017 over concerns about apparent "greenmail," in which hedge funds or other institutional investors acquire enough ownership to demand preferential terms as a condition of approving the merger. We recommend that the Commission and the national exchanges consider a return to a rule that would prevent the listing of shares when a majority of shareholders choose to redeem. Such a requirement would align a shareholder's investment and voting decisions and protect the markets from companies that perhaps are not ready to become public companies. In our view, to the extent that greenmail is a legitimate concern, it should be addressed through other means.

RESEARCH AND INVESTOR TESTING

In 2017, we launched our investor testing initiative, Policy-Oriented Stakeholder and Investor Testing for Innovative and Effective Regulation—or POSITIER—to conduct academic-quality research into investor demographics and to better understand how investors respond to markets and Commission policy. The program allows us to identify issues of importance to investors, such as financial literacy deficiencies, the inadequacy of mandated disclosures, or problematic investment products. It also gives us the means to collect objective data and examine the impacts upon investors of proposed regulatory changes, as mandated by our authorizing statute, which in turn helps us advocate more effectively for investors. For the SEC—an agency that possessed little data regarding the investor population despite its investor protection mission—POSITIER was devised to serve as a source of new and exhaustive empirical evidence to help the Commission fulfill its mission.

POSITIER is unique in that it provides rapidly deployable, cost-effective, and high-quality data collection capacities with a high degree of flexibility. With a small but developing staff unit, we have used these tools to engage in a wide variety of innovative data collection projects, including studies on digital assets and cryptocurrency, wealth measurement, the effects of COVID-19 on households, mutual fund disclosures, round number bias in retail trading, and investor participation and outcomes, particularly with respect to meme stocks. During calendar year 2021, we have engaged in eleven testing efforts, including eight nationally representative probability-based surveys, one quota sample study, and two qualitative research studies.

Since initial data collection began in June of 2017, our cumulative data collection efforts have yielded over 30 million quantitative data elements. We have conducted nearly 40 survey research projects, including a nationally representative panel study conducted on a monthly basis from July 2020 through June 2021 that enabled us to track the evolution of household finances during the COVID-19 pandemic. We have received results from more than 70,000 completed surveys, almost all using high-quality, probability-based survey samples. In addition, we have conducted 11 large-scale qualitative studies on an assortment of topics. In total, these involved over 250 participants in one-on-one interviews and focus group-style interactions.

Perhaps unsurprisingly, much of our research has focused on fund company investments—i.e., investments in mutual funds or ETFs. These investments remain a staple of household investment portfolios because they are widely

prevalent in the retirement savings accounts that represent the most common pathway through which investors access financial markets.[156] With the transition from defined benefit to defined contribution retirement plans that has occurred over the past several decades, households' retirement security largely relies on the ability of investors to make investment decisions for themselves, or to find an appropriate professional with whom to make decisions (and this is a task that itself may be as daunting as the task of investing itself).[157]

Decisions regarding fund investments rely on the ability of an investor to comprehend the technical features of funds in the marketplace, and the consequences of poor decisions may be enormous to the investor over time. For example, an investor investing $100,000 over a 25-year horizon that choses a high cost index fund rather than an alternative low cost index fund from a broker's menu would pay around $85,000 more in fees and may wind up with a nearly $180,000 lower balance after 25 years. For these reasons, during the past year, researchers in the Office of the Investor Advocate have worked with co-authors to produce two groundbreaking papers related to mutual fund investments.

MUTUAL FUND KNOWLEDGE IN THE UNITED STATES

(Scholl and Fontes, 2021)

A forthcoming paper by Brian Scholl of the Office of the Investor Advocate and Angela Fontes of NORC provides a new measure of investor knowledge of the technical features of mutual funds.[158] The paper was motivated by our observation that in the funds domain, while regulatory protections are largely focused on disclosure of technical information to investors, the concepts underlying the disclosed information seem to be either unknown to investors or their implications are unclear. That is, in order to make a well-informed decision about investments in funds, one may need to take into account such issues as fees, risks, strategies, historical performance, and other characteristics of the investments under consideration. However, we do not know the extent to which investors comprehend these concepts.

Lack of knowledge can leave investors in a vulnerable position. How, for example, can an investor make an intelligent decision about mutual fund load fees if the investor does not understand what loads are, how and when they are paid, and what alternatives to a load-based mutual fund may be offered by the marketplace? Or, how can an investor make an intelligent decision about fees if the investor is unaware how fees affect the accrual of investment returns over time?

To study this issue, we developed an eleven-question survey battery to ascertain investor knowledge of the technical features of mutual funds. The battery has the advantage of being easily and quickly deployable on a survey instrument. As described in Scholl and Fontes (2021), the battery is highly correlated with financial well-being (as measured via the Consumer Financial Protection Bureau's validated scale),[159] whether or not an individual invests in financial markets (i.e., an individual's stock market participation). It also is strongly predictive of a survey respondent's ability to correctly answer a fee calculation question—a question, incidentally, that has been answered correctly by only about a fifth of our

survey respondents. Overall, the 11 questions were deemed to be valuable in the sense of measuring investors' ability to understand and apply information in mutual fund disclosures for the purpose of making quality investment decisions.

Our knowledge battery includes 11 questions in four categories: (1) investor knowledge of marketplace alternatives; (2) risk; (3) performance history; and (4) fees. The questions are as follows:

Category	Questions	True or False
Marketplace Alternatives Category	M1. Financial markets offer thousands of different mutual funds to investors.	✓
Risk Category	M2. Mutual funds pay a guaranteed rate of return.	✗
	M3. It is possible to lose money in a stock mutual fund.	✓
	M4. It is possible to lose money in a bond mutual fund.	✓
	M5. If a mutual fund is registered with the Securities and Exchange Commission (the SEC) or state securities regulators, you cannot lose money.	✗
Performance History Category	M6. A good predictor of the future performance of a mutual fund is its past performance.	✗
Fee Category	M7. A no-load mutual fund charges yearly expenses.	✓
	M8. A load fee is charged only when the fund is initially purchased.	✗
	M9. Fees and expenses for the mutual fund industry are capped at a maximum level by regulatory authorities.	✗
	M10. Fund fees are required to be reported in the fund's prospectus document.	✓
	M11. The fees or expenses charged by the mutual fund company in a given year can be approximated by multiplying the fund's net expense ratio by the investment gains for the year.	✗

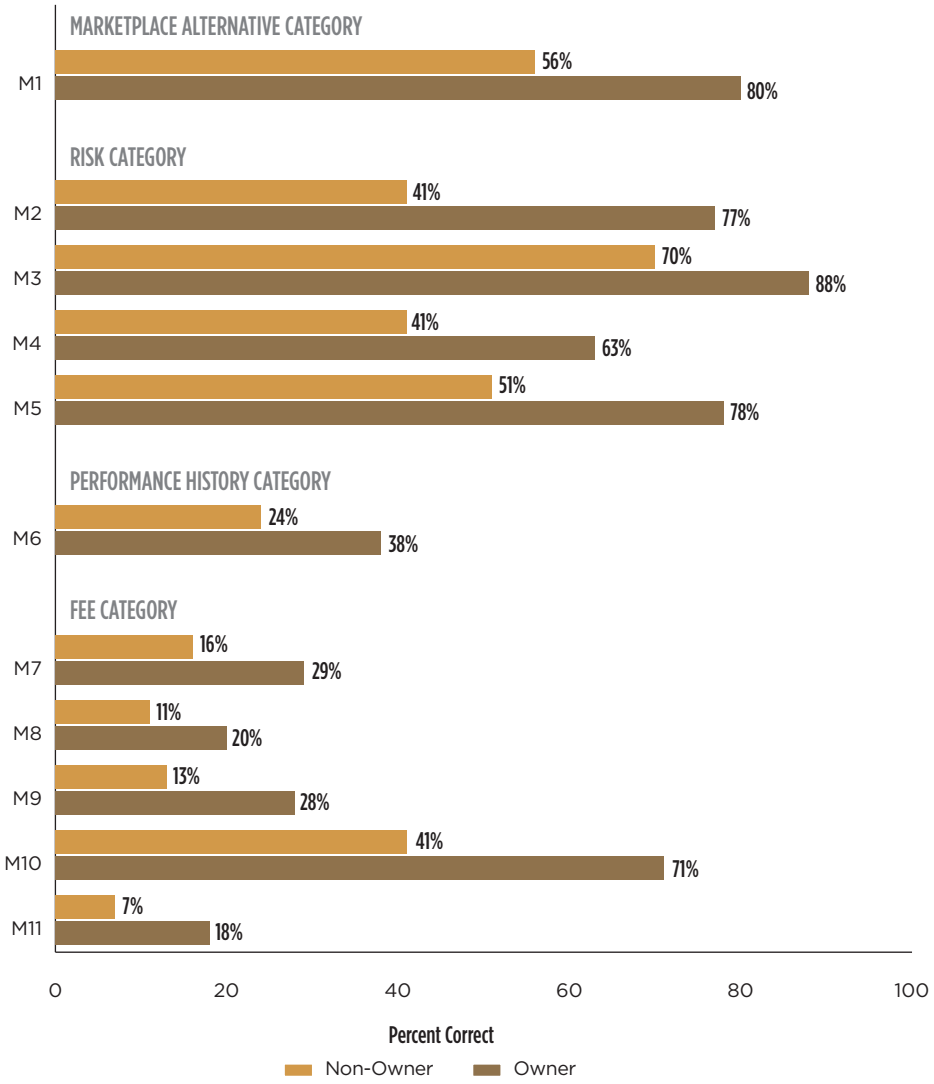
✓ *True* ✗ *False*

Figure 2 below provides a summary of results from our initial fielding of the battery according to whether the respondents own mutual funds (owner) or they do not (non-owner). As can be quickly ascertained by the figure, respondents' ability to correctly answer the questions varied considerably across the questions. Nearly 90 percent of mutual fund owners in our sample were able to correctly answer Question M3, the risk question regarding the possibility of losing money in a stock mutual fund. At the same time, responses to the five fee-related questions (M7–M11) ranged from bad to worse. About 7 out of 10 owners knew that fund fees are required to be reported in the fund's prospectus document (M10), while only about two-fifths of non-owners correctly answered this question. Yet, even for the presumably more experienced owner group, less than 3 out of 10 respondents could accurately answer any of the other fee questions (M7, M8, M9, M11). In fact, less than 20 percent of owners correctly answered Question M11. Question M11 was designed to identify whether a respondent erroneously believes that fund fees are calculated based solely on a fund's investment returns, or alternatively, if they have the correct belief that fees are calculated based on an investor's total balance invested in the fund. For a one-year investment of $10,000 at a 10 percent return in a fund that has an expense ratio of one percent, the results on Question M11 suggest that 82 percent of mutual fund owners would be off in their calculation of fees paid by a factor of 11; i.e., if the implications of these survey results are taken at face value, true fees on such an investment are 11 times higher than 82 percent of owners believe they are.[160]

While this index of financial knowledge requires more debate and development going forward, the results overall are worrisome. They raise questions about the level of preparation the investing public has to make important investment decisions affecting their financial lives. They also call into question whether the existing mutual fund disclosures are sufficient to inform investors about their investments. The results on fee questions in particular are concerning given the considerable attention paid to fees by consumer advocacy organizations, the IAC, and the Commission itself.[161]

Note that this battery of questions was developed as a measurement tool to understand investor knowledge of mutual funds in the population as a whole, but there is no evidence to suggest that they are exploitable as a financial education tool, or that they may be used by financial professionals to determine the suitability of particular investments for a particular individual. That is, while our research has indicated that this survey battery may be a proxy for decision-making quality in some instances, we have not tested the idea that targeted financial literacy interventions designed to "school-up" investors on these concepts would result in better decision quality. To put a finer point on it, while we encourage better education programs to help investors understand these concepts, a "train and test" approach to these questions may break down the observed relationship between knowledge scores and decision-making quality for the trained individuals. The battery should not be used as a test of product suitability without further investigation by the authors.

Figure 2: **Percent of Mutual Fund Owners and Non-Owners Correctly Answering Knowledge Questions**



MUTUAL FUND FEE JARGON
(Chin, Scholl, and VanEpps 2021)

We took the results of Scholl and Fontes (2021) a step further in a paper by Alycia Chin, Brian Scholl, and Eric VanEpps. In this paper, we examined the effects of specific linguistic barriers to investor comprehension of mutual fund fees. We conducted two related studies on mutual fund jargon to first ascertain the preferences of study participants for alternative terminology, and second, to test whether the more preferred fund terminology resulted in an improved match between fee terms and underlying fee concepts. Figure 3 provides a summary description of the two studies.

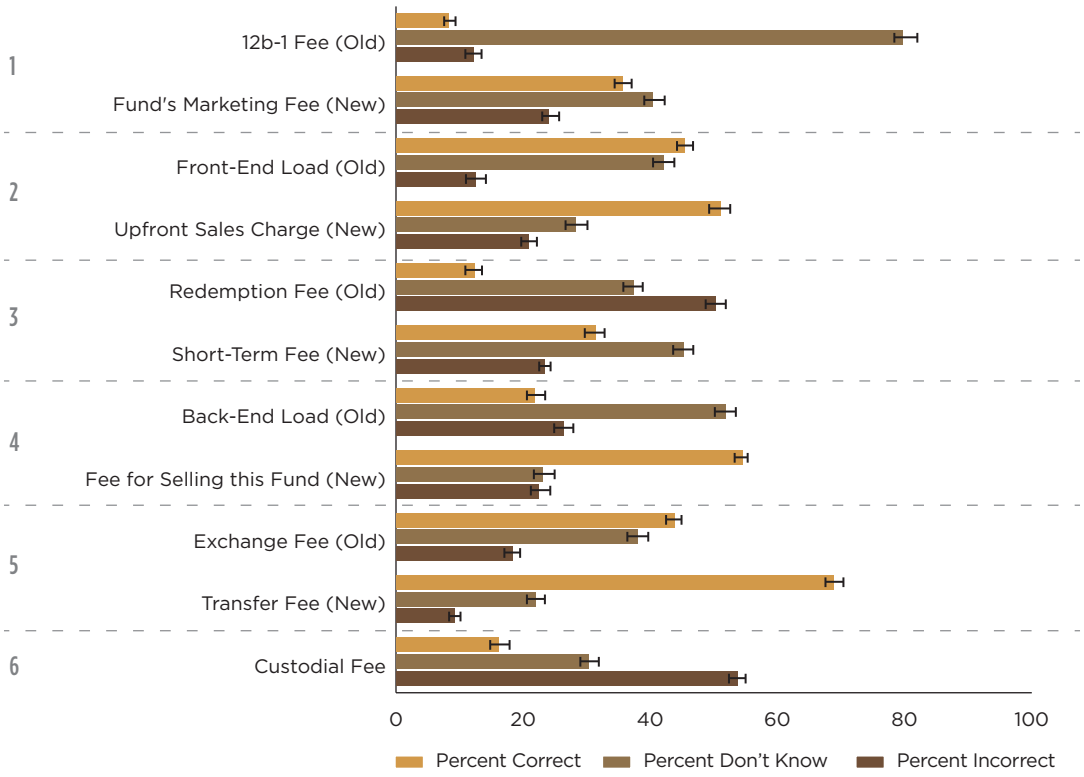
Our main results from the two studies suggest that significant improvements in participant recognition of underlying fee concepts can be achieved with a more intuitive set of fee terms vis-à-vis the more standard jargon terms used widely in the fund industry. Figure 4 provides a comparison of respondents' success in matching existing jargon terms (labeled "old") with the correct fee concept, versus the more intuitive terms we tested (labeled "new"). Overall, the results suggest that our new terms strongly increased match correctness, and generally reduced respondents' confusion as measured by their propensity to answer "I don't know" when presented with a particular fee term.

For example, in contrast to the oft-referred "12b-1 fee," Study 1 found that almost any other term we considered was more preferable for participants—even some meaningless terms we included as decoys! The results in Figure 4 suggest that when participants are provided with the term "12b-1 fee," less than 10 percent could correctly connect that term with the underlying fee concept and nearly 80 percent simply responded that they could not reasonably guess. With our alternative term "fund's marketing fee," the fraction of respondents who identified the correct fee concept approximately quadrupled and the "I don't know" responses were cut approximately in half, although we did also note an increase in the rate of incorrect responses. Responses for our alternative to the widely used "back-end load" were equally promising and somewhat less ambiguous in implications: correct responses more than doubled, "I don't know" responses were cut in half, and incorrect responses declined slightly.

Figure 3: **Design Summary of Fee Jargon Research**

Study 1 Goal: Identify terms/phrases that intuitively convey fees	▪ We chose 6 common fund fees and generated a definition for each ▪ We brainstormed 8 alternative terms/phases for conveying each fee ▪ Through a carefully designed task, we assess participants' perceptions of each alternative
Study 2 Goal: Determine whether more intuitive terms improve comprehension	▪ We identified the most intuitive terms from Study 1, according to participants' ratings ▪ We showed a new set of participants each original and new term, asking them to pick the definition of each (comprehension) ▪ Our analysis shows improvements in comprehension for each fee

Figure 4: **Respondents Correctly Identifying Concepts of Old and New Terms**



While we do not claim to have identified the absolute best possible terminology connected to each of these commonly used terms, our results provide an important demonstration that alternative terms may help facilitate investor understanding of key issues in mutual fund investing.

Looking Forward

As we continue to build out POSITIER's capacity to help the SEC achieve better results that investors deserve, we look forward to introducing more research and testing into the policy development context of the agency. We are guided by the belief that dedicated research and analysis, such as investor reactions and actual responses to the information that the Commission seeks to regulate, should be central in the Commission's approach to policymaking. We will continue our efforts, for example, to help the Commission think about the specific types of decisions that investors are intended to make with disclosure documents and how to improve the salience of disclosure through design features such as layering information. We welcome the opportunity to test whether those disclosures actually help investors make more informed decisions.

In last year's Report on Activities, we outlined an approach to investor testing that would, if implemented, lead to policymaking that is more informed by social science research and practice, and thus more attuned to the needs of investors. Not every policymaking activity by the Commission necessitates the use of investor testing, but for the policies that have a direct impact or interface with investors, we believe a serious evidentiary basis should be the starting point for policy development rather than an afterthought. And, even for rulemakings that do not require formal investor testing, we believe the Commission could benefit from engaging in the thoughtful process that one would need to go through with investor testing. That process includes identifying outcomes of interest and tracing a realistic pathway by which a set of proposed policy actions can achieve the desired outcomes using theory and evidence from the social sciences. To put this another way, we believe that all policies the SEC pursues would benefit from outcomes-centered critical thinking. Such a revamp of thinking would have advantages in both mechanism design and evaluation of the effectiveness of the projects. It also would make testing projects that the SEC decided to go forward with more efficient, because the basis for testing would be established at the outset.

Looking forward, the POSITIER team will continue to conduct research and encourage institutional change that promotes a better environment for investors to succeed in capital markets. As we look ahead to the next year of effort, we are currently eager to pursue research related to the Commission's proposed Summary Shareholder Report, fee disclosure, arbitration processes, participation in financial markets, and financial literacy topics.

OUTREACH AND INVESTOR ENGAGEMENT

Identifying innovative strategies for engaging with investors has long been an operational focus of the Office of the Investor Advocate. The goal, among other things, is to obtain real-life feedback from investors about their perspectives on investing, better understand their processes for making investment and shareholder voting decisions, and develop partnerships that we can leverage to comprehend investor-related issues more deeply. This engagement more fully informs the Investor Advocate about the impact various rules or regulations may have on the investing public and helps us identify emerging issues that may warrant further attention by policymakers.

In Fiscal Year 2021, the Office conducted a series of engagement activities involving retail investors, institutional investors, and various advocacy organizations. In particular, we strove to enhance our engagement with investors who do not meet regularly with SEC officials or submit comment letters in response to regulatory initiatives. We sought to engage with diverse communities, including investors in the disability community, ethnic-based groups, veterans, and young adults.

Fiscal Year 2021 was also a period of necessary innovation resulting from the pandemic, which has led to sustainable improvements regarding the manner in which the Office conducts its external engagement activities. During the year, the Office utilized a virtual engagement model that enabled investor engagement to continue and expand. This approach increased not only the quantity of engagements, but also facilitated engagement with groups and entities that previously would not have been able to travel to such meetings. Specifically, this pivot made possible a number of hybrid[162] larger multi-party listening sessions, diverse geographic events, and assorted meetings and presentations.

For example, in January 2021 our Office began coordinating with universities, graduate schools, and law schools across the country to develop multi-date, multi-university listening sessions co-hosted by SEC Commissioners together with the Investor Advocate. The objective was to capture the "voices" of university-aged populations regarding their perspectives on investing and emerging market trends. A wide range of topics were presented,

including the advisability of developing mandatory ESG metrics, the regulation of digital assets, and the so-called "gamification" of trading. Students prepared for their presentations as an academic development exercise—planning the subject matter, developing content, conducting research, drafting supporting materials, and preparing for public speaking. University faculty served as advisors to the students, providing guidance and help in coordinating relevant curriculum objectives.

Another key event in our investor engagement efforts was a roundtable that included individuals whose livelihoods were affected by the pandemic, including service industry workers, hourly staff, and workers who spend their time in the field (construction, landscaping, etc.). The participants discussed their introduction to investing, the impact of COVID as it related to their financial futures, their interest in cryptocurrencies, and the idea of recreational investing and gamification. The perspectives of these types of ordinary retail investors are extremely valuable to us, and we intend to continue these types of engagements in the months and years to come.

OMBUDSMAN'S REPORT

As set forth in Exchange Act Section 4(g)(8), 15 U.S.C. § 78d(g)(8), the Ombudsman is required to: (i) act as a liaison between the Commission and any retail investor in resolving problems that retail investors may have with the Commission or with self-regulatory organizations; (ii) review and make recommendations regarding policies and procedures to encourage persons to present questions to the Investor Advocate regarding compliance with the securities laws; and (iii) establish safeguards to maintain the confidentiality of communications between investors and the Ombudsman.[163]

The Ombudsman is also required to "submit a semi-annual report to the Investor Advocate that describes the activities and evaluates the effectiveness of the Ombudsman during the preceding year" (Ombudsman's Report).[164] The Ombudsman's Report must be included in the semi-annual reports submitted by the Investor Advocate to Congress. To maintain reporting continuity, the Ombudsman's Report included in the Investor Advocate's Report on Objectives due no later than June 30 of each year describes the Ombudsman's activities during the first six months of the current fiscal year and provides the Ombudsman's objectives for the following full fiscal year. The Ombudsman's Report included in the Investor Advocate's Report on Activities due no later than December 31 of each year describes the activities and discusses the effectiveness of the Ombudsman during the full preceding fiscal year.

Accordingly, this Ombudsman's Report describes the activities and discusses the effectiveness of the Ombudsman[165] for the full fiscal year from October 1, 2020 through September 30, 2021 (the Reporting Period), and provides a brief outlook for Fiscal Year 2022.

SERVICE BY THE NUMBERS

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

- listening to inquiries, concerns, complaints, and related issues;
- helping investors explore available SEC options and resources;
- clarifying certain SEC decisions, policies, and practices;
- taking objective measures to informally resolve matters that fall outside of established SEC resolution channels and procedures; and

- providing periodic updates to SEC leadership so that they are aware of trends and significant emerging issues that are brought to our attention, and otherwise acting as an alternate channel of communication between retail investors and the SEC.

In practice, individuals often seek the Ombudsman's assistance as an initial point of contact to resolve their inquiries or as a subsequent or ongoing point of contact when they are dissatisfied with the outcome, rate of progress, or resolution. At times, individuals request the Ombudsman's assistance with things the Ombudsman does not do. For example, individuals may ask us to provide financial or legal advice, participate in a formal investigation, make binding decisions or legal determinations for the SEC, or overturn decisions of existing dispute resolution or appellate bodies.

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

Figure 5: **What Happens When You Contact the Ombudsman**

To respond to inquiries effectively and efficiently, the Ombudsman monitors the volume of inquiries and the staff resources devoted to addressing the particular concerns raised. The Ombudsman tracks all inquiries received by, or referred to, the Ombudsman, as well as all related correspondence and communications to and from Ombudsman staff. We track the status of the inquiry from its receipt to its ultimate resolution or referral, and we monitor the amount of staff engagement and resources that were utilized to respond to the inquiry. We maintain these types of records in order to identify and respond to problems raised, analyze inquiry volume and trends, and provide data-driven support for recommendations presented by the Ombudsman to the Investor Advocate for review and consideration.

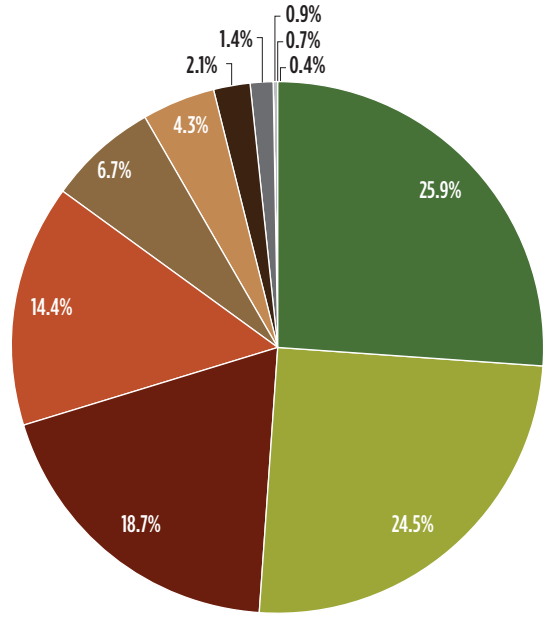
Inquiry volume is counted in terms of matters and contacts. The initial contact—a new, discrete inquiry received by or referred to the Ombudsman—is the contact that creates a matter. When a matter is created, the Ombudsman reviews the facts, circumstances, and concerns, and assesses the staff engagement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

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

Data Across Primary Issue Categories

The Primary Issue Categories used below are broad, descriptive labels that reflect the submitter's description or characterization of their matter, based upon the information the submitter provided.[166] During the Reporting Period, retail investors, industry professionals, concerned citizens, and other interested persons contacted the Ombudsman on 2,401 matters covering 11 primary issue categories:

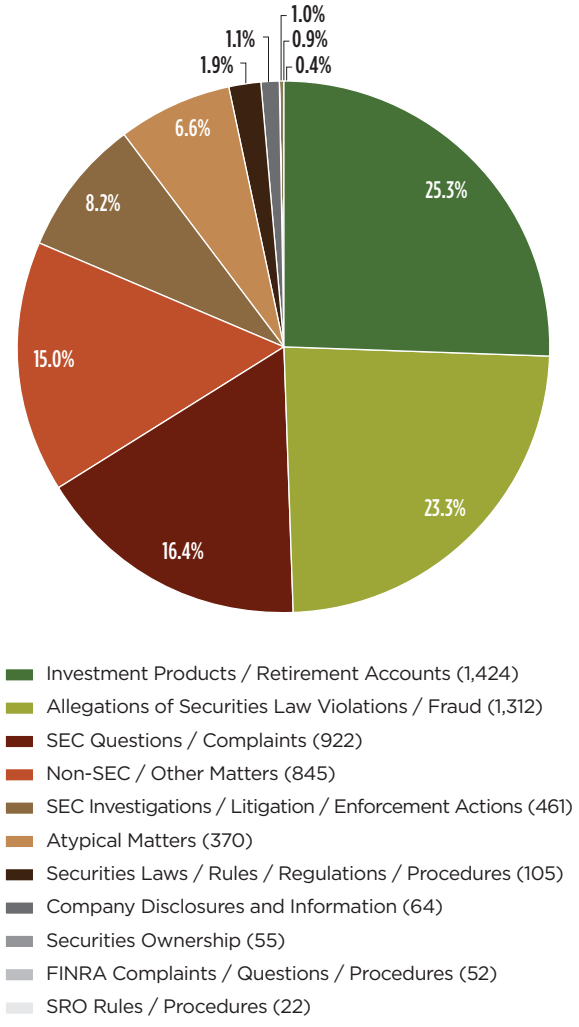
Figure 6: **Matters by Primary Issue Category**
October 1, 2020–September 30, 2021



- Allegations of Securities Law Violations / Fraud (622)
- Investment Products / Retirement Accounts (588)
- SEC Questions / Complaints (449)
- Non-SEC / Other Matters (345)
- SEC Investigations / Litigation / Enforcement Actions (162)
- Atypical Matters (104)
- Securities Laws / Rules / Regulations / Procedures (51)
- Company Disclosures and Information (33)
- Securities Ownership (21)
- FINRA Complaints / Questions / Procedures (17)
- SRO Rules / Procedures (9)

In addition to the 2,401 matters received, we fielded 3,231 contacts covering 11 primary issue categories during the Reporting Period, for a total of 5,632 contacts. The chart that follows displays the distribution of the 5,632 total contacts by primary issue category:

Figure 7: **Contacts by Primary Issue Category**
October 1, 2020–September 31, 2021



How the Numbers Inform Our Efforts

The Ombudsman tracks matter and contact data to maintain a comprehensive view of issues raised by retail investors. As one example, the 2,401 matters received during the Reporting Period represent a 45.7 percent increase over the 1,647 matters received during Fiscal Year 2020. This increase was due in part to investor matters relating to meme stocks,[167] online trading platforms, and the possible manipulation of stock prices by hedge funds, which began to climb in January 2021. And, as with many of the investor concerns described in this Ombudsman's Report, we brought these concerns to the attention of SEC leadership.

This example highlights how data helps the Ombudsman act as an early warning system, when necessary, on the potential impact of specific investor concerns and trends on regulatory and policy considerations. When appropriate, the data may also inform and support our research, hiring needs, and outreach efforts.

SERVICE BEHIND THE NUMBERS

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

Among the most common problems and concerns brought to the Ombudsman are those from investors who are unfamiliar with the existing channels established to resolve the particular concerns they raise, unsure which resolution channel to use, or unable to get the specific outcome they want through the resolution channels available. Typically, investors who are unfamiliar with or unsure of the available resolution channels will thoughtfully consider the advantages and disadvantages of the resolution options the Ombudsman presents, and establish their expectations based upon the potential outcome each option offers. For these investors, the Ombudsman serves a valuable resource function, but the investor retains responsibility for choosing how to proceed based on the resources the Ombudsman presents.

Investors who want a particular outcome or believe that the Ombudsman is permitted to do whatever they request can be more challenging to assist. For instance, the Ombudsman routinely receives requests from investors who want the Ombudsman to act as their personal representative in a legal matter, provide them with immediate access to monetary awards from a Fair Fund, or modify an existing SEC or SRO rule. At times, it is difficult to explain the nature of the Ombudsman's impartial role, and even more difficult for retail investors to accept the limitations of that role.

The vignettes that follow are simplified, composite descriptions of retail investor submissions received during this Reporting Period, with certain details generalized, modified, or removed to avoid the disclosure of nonpublic or confidential information. These vignettes are included to help the reader better understand the context of the investor experience when an investor contacts the Ombudsman, and to provide the reader with a sense of the variety of issues we receive from retail investors better than the number of matters and contacts alone.

Retail investors complained about the SEC's perceived failure to stop large hedge funds from manipulating trading in shares of meme stocks to drive down the share prices. Many of these retail investors identified themselves as first-time investors drawn to the market by the availability and ease of use of investment apps. Their complaints often contained very similar language and typically coincided with significant drops in the prices of these shares. Some investors went so far as to view the SEC's lack of apparent action as proof that the agency was colluding with hedge funds at the expense of retail investors, and provided links to various social media platforms to substantiate their complaints that the manipulation was accomplished through dark pools, synthetic shares, and naked short selling. Others urged the SEC to take immediate action against the hedge funds rather than simply allowing the manipulation to continue. In many instances, these submissions provided an opportunity for the Ombudsman to provide investors with information and resources from SEC.gov on topics including market volatility, social media, and online investing,[168] and general information about the SEC investigation and enforcement action process.

Numerous retail investors contacted the Ombudsman to express frustration with the SEC for what they viewed as a lack of clarity as to when a digital asset is considered a security and subject to SEC oversight, and when it is not.[169] Many investors noted that investing in digital assets gave them access to a market where they could participate in a way not available to them in the traditional financial markets. Investors who owned digital assets subject to an enforcement action reported that they experienced significant losses as a result, and often questioned why the Commission brought enforcement actions against the offer and sale of some digital assets, while declining to do so against others. For investors who wished to submit rulemaking suggestions to the agency, the Ombudsman provided information about the SEC rulemaking process and guidance on how to submit comments and request rulemaking.

The Ombudsman received complaints from investors encountering difficulties communicating with their brokers. Some investors were concerned that their accounts at certain online brokerages were frozen without explanation, making it impossible for them to make trades or withdraw funds. Others complained that their brokers did not respond to their concerns that hackers may have accessed their accounts. The overarching theme of these complaints was the breakdown in communication between brokers and investors. Because these investor complaints related to their personal investments and financial matters, the Ombudsman liaised with attorneys in the SEC Office of Investor Education and Advocacy (OIEA) as needed and referred these investors to OIEA for additional assistance.

Retail investors expressed concerns about an SEC request for information and comments that could result in regulatory changes affecting the use of digital engagement practices, or DEPs, on investment apps and other online platforms.[170] They urged the Commission to consider that these apps allowed certain retail investors access to the market for the first time because they could move in and out of the market without paying fees and commissions. Some investors suggested that the SEC focus on the actions of hedge funds rather than punish retail investors by eliminating their access to the market. The Ombudsman thanked each investor for sharing their views, and encouraged them to stay informed of the Commission's activities in this area through resources available on the agency's website and social media channels.

The Ombudsman heard from several investors with concerns about Fair Funds. Some investors worried that they did not receive a distribution days after a Fair Fund was created, while others asked questions about Fair Funds created and distributed years before. Many retail investors did not understand the process used to collect disgorgement and monetary penalties from wrongdoers, establish a Fair Fund, and ultimately, distribute funds to harmed investors. The Ombudsman responded to these investors by providing information on the specific Fair Fund at issue, explaining the process, and providing links to resources for harmed investors available on SEC.gov. In some cases, the Ombudsman called retail investors to walk them through the Fair Fund process.

Our interactions with investors provide insight into the information they rely upon and believe to be important when making investment decisions, and their understanding about the role of the SEC. The tailored information and responses the Ombudsman provides to investors often require a high degree of securities law analysis and expertise, conflict resolution skills, diplomacy, and judgment. Even when the information or response communicated to an investor appears simple, the threshold questions and considerations required to understand the inquiry and to identify next steps, SEC staff resources, and potential policy implications necessitate having staff with a level of securities law knowledge typically gained through several years of prior experience.

When our interactions with investors highlight their lack of information or gaps in their understanding, we attempt to deliver personalized, straightforward service by communicating the information necessary to help investors better understand the solutions the SEC can provide, by liaising with the appropriate persons and entities, and by empowering and equipping investors to make well-informed decisions.

STREAMLINED COMMUNICATIONS WITH RETAIL INVESTORS

The Ombudsman Matter Management System (OMMS) is an electronic platform for receiving inquiries, as well as tracking and analyzing matter and contact information, while ensuring all necessary data management, confidentiality, and reporting requirements are met. The OMMS Form, a web-based, mobile friendly form permitting the submission of inquiries, complaints, and documents directly to the Ombudsman, guides the submitter through a series of questions specifically tailored to elicit information concerning matters within the scope of the Ombudsman's function. In addition, the OMMS Form allows submitters to easily upload and submit related documents for staff review. For any persons who do not wish, or are unable, to use the OMMS Form, they may still contact the Ombudsman by email, telephone, fax, and mail.

When an OMMS Form is submitted, OMMS automatically creates a matter record. The Ombudsman also manually creates an OMMS matter record for each inquiry received by telephone, email, or other means outside of the OMMS Form. Once an OMMS matter record is created, the Ombudsman and staff can review the matter and related correspondence, update matter details, and communicate with the investor via the OMMS platform. OMMS also allows the Ombudsman and staff to review matters by submitter, primary issue category, fiscal year, and other groupings, and customize specific reports and analyze data when a deeper examination is required.

Of the 2,401 matters received during Fiscal Year 2021, 1,329 matters (55.4 percent) were submitted via the OMMS Form. As a comparison, of the 1,647 matters received during Fiscal Year 2020, 715 matters (43.4 percent) were submitted via the OMMS Form. During Fiscal Year 2018, the first full fiscal year the OMMS Form was available to the public, of the 449 matters received, 164 matters (36.5 percent) were submitted via the OMMS Form.

The Ombudsman will continue to encourage persons to submit their inquiries via the OMMS Form and will closely monitor questions and suggestions relating to the OMMS Form. In addition, the Ombudsman will continue working

closely with the technology contractor until the contract term ends in December 2021, the Office of Information Technology, and the Office of Public Affairs to improve the OMMS user experience and to make Ombudsman-related information and resources more easily accessible to the public.

OMBUDSMAN ROLE AND STANDARDS OF PRACTICE

The broad role and function of the Ombudsman, including helping retail investors identify existing SEC options and resources to help resolve their concerns, and assisting retail investors with informally addressing issues that may fall outside of the SEC's existing inquiry and complaint processes, is somewhat similar to the broad roles and functions of ombudsmen at the other federal financial regulatory agencies. To exchange ideas, discuss best practices, and facilitate ongoing communication, the Ombudsman participates in scheduled quarterly meetings and interim meetings as needed with the ombudsmen at other federal financial regulatory agencies. When an investor contacts the Ombudsman with questions or concerns under the purview of another federal financial regulatory agency, the Ombudsman often facilitates communication with the appropriate ombudsman counterpart to direct the investor to staff at that agency best suited to address the matter.

Ombudsmen at the Federal Financial Regulatory Agencies

CONSUMER FINANCIAL PROTECTION BUREAU (CFPB)

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

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

FEDERAL DEPOSIT INSURANCE CORPORATION (FDIC)

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

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

FEDERAL RESERVE BOARD (FRB)

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

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

NATIONAL CREDIT UNION ADMINISTRATION (NCUA)

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

The Ombudsman assists in resolving problems by helping the complainant define options and by recommending actions to the parties involved, but the Ombudsman cannot at any time decide on matters in dispute or advocate the position of the complainant, NCUA or other parties. The Ombudsman will make recommendations to appropriate agency officials for systemic changes to deal with recurring problems revealed through investigations. The Ombudsman reports to the NCUA Board and is independent from operational programs.

OFFICE OF THE COMPTROLLER OF THE CURRENCY (OCC)

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

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

U.S. SECURITIES AND EXCHANGE COMMISSION (SEC)

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

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

Any retail investor with an issue or concern related to the SEC or an SRO subject to SEC oversight may contact the Ombudsman. The Ombudsman is available to identify existing SEC options and resources to address issues or concerns, and to explore informal, objective steps to address issues or concerns that may fall outside of the agency's formal inquiry and complaint processes. Similar to ombudsmen at other federal agencies, the Ombudsman follows three core standards of practice:

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

The Ombudsman's Challenge

The mission statement of the SEC is to "protect investors, maintain fair, orderly, and efficient markets, and facilitate capital formation."[171] At the center of many complaints the Ombudsman receives is a misunderstanding about the SEC's relationship and obligations to individual investors because of the "protect investors" language in the mission statement. In these situations, investors frequently assume the purpose for SEC investigations and enforcement actions is to address their specific allegations or protect their specific, individual interests. While the SEC's enforcement actions may at times align with the personal interests of harmed investors, the SEC does not pursue investigations and enforcement actions solely to represent a specific investor's particular legal interests or to recover money a particular investor may have lost. Rather, the SEC advocates for—or supports—the collective interests of all investors and the public by maintaining fair, orderly, and efficient capital markets through the enforcement of the federal securities laws.

A primary question we encounter is, then, what can the Ombudsman do for investors who have been harmed by violations of the federal securities laws? In appropriate circumstances, the Ombudsman may be able to present options to investors or foster communications between the investor and SEC or SRO staff. However, the Ombudsman is not authorized to do many things that investors request, including:

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

With these limitations in mind, when investors contact the Ombudsman with these, and similar requests, the Ombudsman staff routinely explains to investors that they have the ability to pursue other options, protect their interests, and preserve their legal rights in ways that the Ombudsman cannot. For example, an investor can file an arbitration or mediation complaint with FINRA to address a broker dispute, or hire private legal counsel to advise the investor on the best ways to protect the investor's rights or reach a particular outcome. Investors who do not have the means to hire legal counsel may want to request representation through no-cost legal clinics sponsored by various law schools.

While the Ombudsman staff cannot represent the interests of investors in private disputes, we do serve these investors by providing information that will assist them in making better-informed choices for themselves.

Assisting Investors through Advocacy

Even when we cannot help investors achieve the specific results they desire, the concerns we hear from investors help to shape the policy agenda of the Office of the Investor Advocate. We also stay current on policy issues affecting retail investors

through our engagement with investor advocacy groups and law school investor advocacy clinics that provide legal counsel and representation to harmed investors. Through this engagement, we gain a deeper understanding of legal and structural difficulties retail investors may face as they invest in the market or interact with industry professionals and with SROs. These difficulties might arise, for example, from the misconduct of industry professionals, or from the unintended consequences of certain rules and policies imposed by the Commission or by SROs.

As discussed in prior reports, the Ombudsman also looks for ways to improve SEC or SRO processes, rules, and regulations for the collective benefit of retail investors, and advocates for those types of reforms. Selected areas of interest and importance to retail investors are discussed below.

AREAS OF INTEREST AND IMPORTANCE TO RETAIL INVESTORS

Accredited Investors and the Private Markets

Historically, retail investors have had limited access to the private markets, primarily due to the increased risks associated with private offerings. Public companies listed and traded on the stock exchanges must register and file certain disclosures with the SEC. Companies in the private markets, however, are often exempt from the same rigorous disclosure obligations and do not offer the same investor protections that arise from registration with the SEC.[172] As a result, to invest in private offerings, retail investors have historically been required to demonstrate a certain level of financial resiliency to withstand the heightened risks of private investments.

In 1982, the SEC adopted wealth thresholds to grant certain retail investors access to the private markets. A retail investor with: (i) a net worth exceeding $1 million (excluding the value of the investor's primary residence), (ii) income exceeding $200,000 in each of the two most recent years, or (iii) joint income with a spouse exceeding $300,000 in each of those years and a reasonable expectation of reaching the same income level in the current year, qualified as an "accredited investor."[173] These accredited investor wealth thresholds were "intended to encompass those persons whose financial sophistication and ability to sustain the risk of loss of investment or fend for themselves render the protections of the Securities Act's registration process unnecessary."[174] Because of these wealth thresholds, however, most retail investors—and most Americans—do not qualify as accredited investors and are unable to invest in the private markets.[175]

Over the last decade, private markets have flourished. As of 2020, private market assets under management grew by $4 trillion, an increase of 170 percent within the past 10 years.[176] Moreover, private markets grew both in terms of the absolute amounts raised and amounts raised relative to the public markets, with private investments eclipsing investments in public companies.[177] While many factors have arguably contributed to the surge, the SEC has, over time, tacitly or explicitly permitted a broader swath of investors to access the private markets. For instance, although the SEC removed the primary residence from the calculation of net worth, the SEC has not otherwise updated the $1 million net worth and $200,000 individual income thresholds since 1982, nor the $300,000 joint income threshold since 1988. Consequently,

the SEC recently estimated that the number of U.S. households qualifying as accredited investors has grown from approximately 2 percent of the population of U.S. households in 1983 to 13 percent in 2019 as a result of inflation alone.[178] Moreover, on August 26, 2020, the SEC amended the accredited investor definition to enable additional investors to invest in private offerings based on defined measures of professional knowledge or experience, or by obtaining certain professional certifications, designations, and other credentials.[179] The amendments therefore created new categories of investors deemed "accredited" by their demonstrated capability to evaluate an investment opportunity—regardless of their wealth.[180]

The accredited investor definition has been, and continues to be, a contested issue. During the rulemaking process, the SEC received over 200 comment letters in response to the proposed amendments to the accredited investor definition.[181] Many commenters supported expanding the accredited investor definition, while others did not.[182] Still other commenters suggested eliminating the definition altogether so that anyone could invest in private offerings.[183]

On June 11, 2021, the SEC announced its Annual Regulatory Agenda,[184] which included "ensuring appropriate access to and enhancing the information available" to investors about exempt private offerings.[185] As of the end of this Reporting Period, such considerations were in the pre-rule stage and included a possible recommendation that the Commission seek public comment on how the rules related to private offerings may more effectively promote investor protection—including possible updates to the wealth thresholds in the accredited investor definition.[186]

Given the impact that modifying the wealth or other thresholds might have on currently accredited retail investors, or retail investors that seek to become accredited, we strongly encourage retail investors to share their views with the Ombudsman so that we can better understand retail investors' perceived or actual experiences regarding the risks and rewards associated with private market investments. We also encourage retail investors to monitor developments regarding the SEC's possible request for public comment and, if given the opportunity, to submit comments for the Commission's consideration.

FINRA Special Notice Requesting Comment on Education for Newer Investors

During the Reporting Period, a number of first-time retail investors contacted the Ombudsman to express their concerns about perceived manipulation of markets by large hedge funds. Most of these investors utilized mobile investment apps offered by online broker-dealers, and many of their complaints cited to information they obtained from various social media platforms.

On June 30, 2021, FINRA published a Special Notice (Notice) seeking comments to assist FINRA and the FINRA Investor Education Foundation (FINRA Foundation) in developing new investor education initiatives.[187] In particular, the Notice sought suggestions for reaching newer investors who have entered the market in extraordinary numbers, often through self-directed accounts at online brokers.[188] The Notice described the results of a survey designed to determine the attributes of new account openers, defined as people who opened a non-retirement investment account for the first time in 2020.[189] The survey showed that more than half of new investors are younger than 45, and have more limited income and account balances

than investors who owned investment accounts prior to 2020.[190] It also found that new investors were more likely to seek investment information from friends, family and co-workers than from investment professionals or personal research.[191]

Because of this dramatic shift in market participants and rapid development of advanced technology, FINRA recognized that its current investor education program needed to adapt to these changing circumstances. The Notice requested comments from a wide swath of stakeholders, including firms, investors, academics, and various investor organizations. As of November 1, 2021, FINRA had received 45 comments from every category of stakeholder, the majority of whom agreed with FINRA's premise that its investor education program needs to adapt to this new reality.[192]

Several commenters emphasized the impact of social media on this group of newer investors. For instance, the Public Investors Arbitration Bar Association (PIABA) observed that "younger people have grown up in the digital age and obtain the vast majority of their information through social media," and suggested that FINRA keep up with the social media platforms being used by these younger investors.[193] PIABA noted that FINRA does not have a notable presence on social media platforms that younger investors rely on for information.[194] PIABA cited a 2021 study finding that the most popular social media platforms used by adults between the ages of 18 and 29 are Instagram (71 percent), Snapchat (65 percent), and TikTok (48 percent).[195] By contrast, the platforms used by FINRA to inform investors, Twitter and Facebook, are used by 70 percent and 42 percent of adults in this age group, respectively.[196] PIABA encouraged FINRA to expand its social media campaign to include the platforms most popular with younger investors.[197]

This sentiment was echoed by the St. John's University School of Law Securities Arbitration Clinic, which offered a unique perspective because not only do the law students assist investors who use retail trading platforms, many of the law students use retail investment apps themselves.[198] The clinic noted that FINRA competes for the attention of new investors with so many other sources of information, primarily through social media, and should tailor its social media outreach accordingly.[199] One suggestion was that FINRA avoid lengthy Twitter posts that investors are unlikely to read in their entirety,[200] and instead use a "layered dissemination of information" to provide just enough information to get the investors' attention, with links or embedded videos to communicate additional information.[201]

Commenters also noted the dearth of basic investor education in both high school and college, and recommended that FINRA advocate for financial literacy in schools. Both the Securities Industry and Financial Markets Association Foundation and the Financial Services Institute emphasized the importance of early education, and recommended that FINRA advocate for legislation requiring schools to add financial and investor education classes to their core curricula.[202]

Protections for Senior Investors: Proposed Amendments to FINRA Rule 2165

On June 9, 2021, FINRA submitted to the SEC various proposed amendments to Rule 2165 – Financial Exploitation of Specified Adults.[203] Rule 2165 defines specified adults as all individuals who

are 65 years of age or older or who have physical or mental disabilities that impair their ability to advocate for their own financial interests.[204] The proposed changes would amend Rule 2165 in three ways:

- a member firm would be permitted to place a temporary hold on a securities transaction (in addition to disbursements of funds and securities) where there is a reasonable belief of financial exploitation of a specified adult;[205]
- the time period for extending a temporary hold on a disbursement of funds, securities, or a transaction in securities, would be extended for an additional 30-business days if the member firm has reported the matter to a state regulator, agency or a court of competent jurisdiction.[206] This would increase the potential maximum duration of the temporary hold from 25 days to 55 business days;[207] and
- a member firm would be required to retain records of the reason for any extension of a temporary hold including any related communications with, or by, a state regulator, agency or court of competent jurisdiction.[208]

Through these proposed amendments to Rule 2165, FINRA would create the first uniform national standard for placing holds on securities transactions related to suspected financial exploitation.[209]

Prior to filing the proposed rule amendments, FINRA invited comments on the proposed changes during a Retrospective Review of Rule 2165.[210] FINRA received additional comments in response to the proposed rule changes filed with the SEC.[211] Regarding the length of time for temporary holds, commenters in favor of the extension to 55 days noted that investigations and court proceedings can be time intensive.[212] Those opposed felt that the current 25-day model is sufficient.[213] Commenters supportive of extending Rule 2165 to include holds on securities transactions noted that 34 states already have laws allowing for such holds to be placed, and 20 of those 34 states (containing approximately half of the U.S. population) have enacted laws permitting investment advisers and broker-dealers to place temporary holds on both disbursements and transactions.[214]

FINRA also received suggestions and concerns apart from those addressing the proposed changes directly. Subjects raised included the possibility of a national standard of mandated reporting as well as a question on whether evidence of actual exploitation should be required prior to a hold being placed.[215] In contrast, other commenters expressed concerns that member firms may not be well-positioned to determine if a customer is suffering from cognitive decline or diminished capacity in the absence of suspected financial exploitation.[216]

On August 23, 2021, FINRA responded to the comments,[217] asserting that the proposed rule amendments tried to strike a reasonable balance between giving member firms adequate time to investigate, contact relevant parties, and seek input from state regulators, agencies or courts, against the seriousness of granting firms the discretion to use an open-ended hold period.[218] FINRA also addressed concerns that member firms were not positioned to determine whether a customer is suffering from cognitive decline or diminished capacity by noting that it did not propose to extend Rule 2165 to such situations.[219] FINRA maintained that a member firm using its discretion to place a temporary hold allows for the judicious use of temporary holds to protect customers from financial exploitation.[220]

On September 28, 2021, the SEC instituted proceedings to determine whether to approve or disapprove the proposed amendments to Rule 2165.[221] The current deadline for the Commission to make its determination is December 25, 2021. Given the direct and potentially significant impact this rulemaking has on senior retail investors, the Ombudsman will continue to monitor the status of these proposed rule amendments.

Discovery Abuse and Retail Investor Arbitration Outcomes

As noted in the Report on Objectives for Fiscal Year 2022, it may be beneficial to study and identify potential correlations between discovery abuse and the cost, duration and disposition of FINRA customer arbitration cases and the potential implications of discovery abuse on arbitral outcomes for retail investors.[222] This data may help evaluate whether and to what extent arbitration is, in fact, faster, cheaper, and less complex than litigation, and whether the arbitration process is a beneficial alternative to litigation for retail investors.[223] The data may also shed light on what, if any, practical changes to the discovery process and arbitration forum should be considered to ensure that retail investors have adequate access to the evidence and information they need to support their claims and obtain fairer outcomes.[224]

During the Reporting Period, Ombudsman staff began working with economists from the Office of the Investor Advocate to plan and design the study into arbitral discovery abuse. Ombudsman staff plan to continue refining the design of this study in Fiscal Year 2022 and should provide an update in the next report.

OUTREACH AND ENGAGEMENT EFFORTS

Law School Clinic Outreach Program

The importance and impact of law school investor advocacy clinics have increased considerably since 1997, when then-SEC Chairman Arthur Levitt, Jr. announced the creation of two pilot law school investor advocacy clinics to help retail investors with small claim amounts obtain quality legal representation.[225] Today, there are 12 law school investor advocacy clinics across the United States that provide legal counseling and representation to retail investors involved in securities industry disputes, comment on rule proposals, and engage with many more investors through community-based presentations and informational materials.[226]

As discussed in prior Ombudsman's Reports, the Law School Clinic Outreach Program (LSCOP) was launched in 2016 to complement the Office's statutory mandate and core functions.[227] One goal of the LSCOP was, and remains, the exchange of information and ideas between the law school investor advocacy clinics and SEC staff. In their unique roles as counsel to retail investors with small claims or limited incomes, clinics are uniquely positioned to examine issues that confront retail investors from a perspective unavailable to SEC staff. The LSCOP allows the Office of the Investor Advocate to interact directly with the clinics, engage in meaningful policy discussions, and gain a better understanding of their views on suggested regulatory changes and policy initiatives. Our engagement with the law school clinics also provides an excellent opportunity to inform law

students interested in securities law and investor protection issues about internships, externships, and career opportunities at the SEC. Moreover, our outreach program aligns with the SEC's diversity and inclusion efforts, creates an additional path to attract a diverse pool of potential applicants, and demonstrates the SEC's commitment to a diverse and inclusive workforce at all levels of the agency.

LSCOP began with our on-site visits to the law school clinics in 2016, expanded to include clinic directors and law students attending IAC meetings at SEC headquarters in 2017 and 2018, and resulted in the first SEC Investor Advocacy Clinic Summit hosted by the Investor Advocate and the Ombudsman at SEC headquarters in 2019.[228] LSCOP continues to provide opportunities for meaningful involvement between the law school clinics, the Commission, and SEC staff, such as the 2021 SEC Investor Advocacy Clinic Summit.

2021 SEC Investor Advocacy Clinic Summit

As described in greater detail in the Report on Objectives for FY 2022,[229] on March 25, 2021, the Investor Advocate and Ombudsman hosted the second SEC Investor Advocacy Clinic Summit (the Summit). Given the COVID-19 pandemic and the resulting work from home status of the agency, the Summit, unlike the 2019 SEC Investor Advocacy Clinic Summit[230] at SEC headquarters, was held as a virtual event.[231] The 12 active law school investor advocacy clinics from across the country were invited to share their perspectives and engage with SEC staff on the some of the most pressing issues currently facing retail investors.

Summit Overview

The Summit included opening remarks from then-Acting SEC Chair Lee, as well as remarks and question and answer sessions with SEC Commissioners Peirce, Roisman, and Crenshaw. The Summit also featured two panel discussions that highlighted recent challenges facing retail investors. During the first panel, "The Risks of Online Trading for Retail Investors," panelists addressed the rise of online brokerage platforms, the specific risks they pose to retail investors, as well as the manner in which social media amplifies those risks. During the second panel, "Virtual Arbitration Hearings: Costs, Risks and Benefits to Retail Investors,"[232] panelists explored the difficulties and advantages of representing clients in virtual FINRA arbitrations, as well as a recent study[233] that suggests virtual hearings might disproportionately result in negative outcomes for retail investors.

A highlight of the Summit was a two-part panel entitled "Lessons Learned from Harmed Investors," during which clinic directors and law students discussed notable experiences representing retail investors in FINRA arbitration hearings.[234] The panel presentations were timely and thought provoking, and covered key lessons learned throughout the arbitration hearing process. The law students demonstrated an impressive command of the securities laws as they identified takeaways and topics for regulatory consideration.

Summit Feedback and Impact

The virtual format resulted in an increase in overall attendance and participation. All 12 investor advocacy clinics were present, and close to 200 law students, clinic directors, SEC staff, and commissioners attended and participated in the Summit throughout the day. Following the Summit, clinic directors and their students expressed overwhelming enthusiasm for the exceptional opportunity to engage and exchange ideas with the Commission, SEC staff, and each other.[235]

Given the success of the prior SEC Investor Advocacy Clinic Summits, the Investor Advocate and the Ombudsman look forward to hosting future summits—whether as in-person, virtual, or hybrid events—as a signature feature of the Law School Clinic Outreach Program. During the Reporting Period, the Office of the Ombudsman began exploring options for a possible third SEC Investor Advocacy Clinic Summit in 2022.

Additional Outreach Activities

In addition to the Summit, the Ombudsman continued to seek out opportunities to increase awareness and elevate the visibility of the services the SEC provides to retail investors. These opportunities included participation in the following ombudsman and securities industry events, professional conferences, and outreach activities during the Reporting Period.

- American Bar Association Section of Dispute Resolution—Ombudsmen Subcommittee monthly meetings
- American Bar Association Section of Dispute Resolution—2020 ABA Ombuds Day webinar speaker
- Coalition of Federal Ombudsmen, 2020 Annual Conference Co-Chair
- Coalition of Federal Ombudsmen monthly meetings
- Federal Financial Ombudsmen Working Group quarterly meetings
- Fordham University School of Law Securities Litigation and Arbitration Clinic seminar speaker
- International Ombudsman Association Annual Conference
- Northeast Ombudsmen Working Group quarterly meetings
- Practising Law Institute, The SEC Speaks in 2020, program faculty and speaker
- Securities Arbitration Clinic Directors Annual Roundtable

Internal Agency Engagement

The Office of the Ombudsman increased its internal engagement efforts with agency stakeholders during the Reporting Period. In targeted meetings and presentations, we provided an overview of the Ombudsman's statutory responsibilities along with a high-level discussion on how we assist retail investors. In addition, we flagged pertinent and trending issues, shared our perspectives, and explored ways that the Ombudsman could assist the work of other divisions and offices within the Commission. Through these internal engagement efforts, divisions and offices obtained a better understanding of the resources and services that we offer, and the Ombudsman fortified existing relationships and opened new communication lines with division and office leaders.

The Ombudsman also engaged with SEC divisions and offices on agency programs and outreach projects. As one example, the SEC Chief Operating Officer invited the Ombudsman to speak at a brown bag lunch program with his front office staff. That presentation was well received and led to invitations to speak to a cohort of the SEC Staff Mentoring Program, and to present a professional development session to the SEC MBA student internship program. Each of these programs provided an invaluable opportunity to share information about the Office of the Ombudsman with a wider audience, and to demonstrate how the office facilitates communication, identifies issues, and works with other SEC divisions and offices to address retail investor concerns.

As another example, the Office of the Ombudsman is collaborating with the Division of Enforcement's Retail Strategy Task Force to develop an outreach program to inform senior retail investors and their caretakers about fraudulent financial and investment schemes. Preliminary plans are to conduct outreach in New York and Florida, and, if feasible, to replicate and expand the program to include broader outreach to senior retail investors and their caretakers nationwide.

In addition to these efforts, the Ombudsman continues to maintain open communications with SEC senior staff to address areas of importance to retail investors, and to offer insights on policy and regulatory initiatives. Going forward, the Ombudsman intends to initiate and participate in engagement efforts throughout the SEC on a regular basis to share perspectives and to inform policy and regulatory considerations to improve the retail investor experience.

OUTLOOK FOR FISCAL YEAR 2022

The peak staff level reached during the Reporting Period—the Ombudsman, one senior special counsel, one senior counsel, one senior law clerk contractor, and one senior paralegal contractor—was instrumental in expanding our ability to tackle targeted research and policy issues, and to determine whether more detailed research is warranted. Moreover, the increased staff facilitated opportunities to expand our internal engagement efforts across the agency. In the past, these internal engagement efforts occurred on an occasional basis. For example, several offices requested demonstrations of the Ombudsman Matter Management System as they worked to create or refine similar systems of their own. At other times, particular investor matters necessitated increased collaboration with other divisions and offices, and as a result, created subsequent opportunities to strengthen relationships and increase awareness of the Ombudsman function.

During the Reporting Period, the increase in staff allowed us to launch an internal engagement strategy, test its feasibility with several targeted meetings, and further tailor the strategy to meet the needs of the office. Based on the success of these internal engagement efforts, during Fiscal Year 2022, the Office of the Ombudsman plans to expand its internal engagement efforts to include division and office stakeholders as appropriate,

and to include additional SEC regional offices. The Office of the Ombudsman also plans to expand its external engagement efforts by participating in more ombudsmen-related conferences and trainings, which will increase our opportunities to both learn from other practitioners and to share our best practices and successes.

A number of investor matters also created opportunities to engage with the FINRA Ombudsman during the Reporting Period. I am pleased to work with the FINRA Ombudsman on investor matters, and I look forward to a scheduled meeting with the new FINRA Ombudsman in a few weeks. In addition to a high-level discussion about handling investor concerns, I anticipate this meeting will cover additional engagement opportunities to help investors better understand our roles and the resources we provide.

At times, the number of matters and contacts we receive are viewed as indicative of the value of our work. While the numbers are impressive, especially given the small size of the office, the quality of the information we provide as we liaise with retail investors is also a meaningful measure of the value of our work. From an investor's perspective, out of all of the matters we receive, their matter is the most important. How we address their matter may impact their view of the office and the agency, and potentially, their willingness to participate in the capital markets. We will continue to keep these factors in mind as we liaise with investors to help resolve their concerns, and we will continue to make quality a hallmark of our interactions. I look forward to providing updates on our activities and progress in these areas in my next report.

Tracey L. McNeil
Ombudsman

SUMMARY OF INVESTOR ADVISORY COMMITTEE RECOMMENDATIONS AND SEC RESPONSES

Congress established the Investor Advisory Committee (IAC) to advise and consult with the Commission on regulatory priorities, initiatives to protect investor interests, initiatives to promote investor confidence and the integrity of the securities marketplace, and other issues.[236] The IAC is composed of the Investor Advocate, a representative of state securities commissions, a representative of the interests of senior citizens, and not fewer than 10 or more than 20 members appointed by the Commission to represent the interests of various types of individual and institutional investors.[237]

Exchange Act Section 39 authorizes the IAC to submit findings and recommendations for review and consideration by the Commission.[238] The statute also requires the SEC "promptly" to issue a public statement assessing each finding or recommendation of the IAC and disclosing the action, if any, the Commission intends to take with respect to the finding or recommendation.[239] While the Commission must respond to the IAC's recommendations, it is under no obligation to agree with or act upon the recommendations.[240]

In each of its reports to Congress, including this one, the Office of the Investor Advocate summarizes the IAC recommendations and the SEC's responses to them.[241] We continue to report on recommendations until we believe the Commission's response is final. For summaries of Commission activities related to previous IAC recommendations, please see our earlier reports to Congress. The Commission may be pursuing initiatives that are responsive to IAC recommendations but have not yet been made public. Commission staff—including the staff of this Office—are prohibited from disclosing nonpublic information.[242] Therefore, any such initiatives are not reflected in this Report.

Topic	Date	IAC Recommendation	SEC Response
Individual Retirement Accounts	Dec. 2, 2021	Propose added investor protections to self-directed individual retirement accounts.	Pending.
Special Purpose Acquisition Companies (SPACs)[243]	Sept. 9, 2021	Enhance disclosure requirements regarding the SPAC sponsor, potential conflicts of interest, mechanics of the SPAC and de-SPAC transactions, the target search process, and any additional funding. Publish an analysis of SPAC participants, their compensation, and their incentives.	Pending.
Rule 10b5-1 Plans[244]	Sept. 9, 2021	Require a "cooling off" period and prohibit overlapping Rule 10b5-1 plans. Require enhanced plan reporting and disclosures.	Pending.
Minority and Underserved Inclusion[245]	March 11, 2021	Support regulations, legislation, programs and other steps that increase acquisition of financial assets and services by minority communities. Continue and build upon SEC programs that are directed toward increasing financial literacy and supporting minority investment.	Pending.
Credit Rating Agencies[246]	March 11, 2021	Identify in Office of Credit Rating (OCR) reports specific nationally recognized statistical rating organizations whose conduct was deemed to be materially deficient. Remodel OCR's annual examination reports to conform to the approach utilized in the Public Company Accounting Oversight Board's annual public inspection reports.	Pending.
Accounting and Financial Disclosure[247]	May 21, 2020	Reconsider a 2020 rulemaking proposal to amend Regulation S-K that would permit issuers to omit fourth quarter results in annual reports and that would eliminate the tabular presentation of contractual obligation information. Closely monitor issuers' use of non-GAAP metrics and accounting developments relating to reverse factoring.	On June 23, 2020, the SEC's Division of Corporation Finance staff published disclosure guidance addressing supplier finance programs in the context of pandemic-related disruptions.[248] On October 21, 2020, the FASB decided to add a project to its technical agenda to address the disclosure of supplier finance programs involving trade payables.[249] On November 19, 2020, the Commission adopted the amendments to Regulation S-K, largely as proposed.[250]

Topic	Date	IAC Recommendation	SEC Response
ESG Disclosure[251]	May 21, 2020	Commence an effort to update issuer reporting requirements to include material, decision-useful disclosure concerning environmental, social, and governance matters. Consider the utility of both principles-based and prescriptive reporting requirements.	Pending.
Disclosure Effectiveness[252]	May 21, 2020	Enhance the effectiveness of new and existing disclosure relied on primarily by retail investors by, among other things, adopting an iterative process that includes disclosure research, design, and testing.	On August 5, 2020, the Commission proposed comprehensive modifications to the mutual fund and exchange-traded fund disclosure framework.[253] The Office of the Investor Advocate is conducting investor research that may be relevant to this proposal.
SEC Guidance and Rule Proposals on Proxy Advisors and Shareholder Proposals[254]	Jan. 24, 2020	Revisit priorities in improving the proxy system, revise and republish the 2019 proxy voting rulemaking proposals, and reconsider the 2019 proxy voting guidance.	On July 22, 2020, the Commission adopted the amendments to the proxy rules without republishing them for further comment.[255] On September 23, 2020, the Commission adopted the amendments to Exchange Act Rule 14a-8 without republishing them for further comment.[256] On November 17, 2021, the Commission proposed amendments to the rules governing proxy advice in light of feedback from market participants and certain developments in the market for proxy voting advice.[257]
Exchange Rebate Tier Disclosure[258]	Jan. 24, 2020	Require the national securities exchanges to provide the Commission with regular disclosures regarding rebate tiers offered to their members, and take steps to require monthly public disclosure of these rebate practices.	Pending.

Topic	Date	IAC Recommendation	SEC Response
Proxy Plumbing[259]	Sept. 5, 2019	Require end-to-end vote confirmations to end users of the proxy system, require all involved to cooperate in reconciling vote-related information, conduct studies on investor views on anonymity and share lending, and finalize the 2016 universal proxy rulemaking proposal.	On November 17, 2021, the Commission adopted final rules relating to the use of universal proxy cards in contested director elections.[260]
Structural Changes to the US Capital Markets Regarding Investment Research in a Post-MiFID II World[261]	July 25, 2019	Prioritize certain concepts and guiding principles, including the following: (1) consumers of research, regardless of location, should be allowed to choose whether to purchase research "bundled" or "unbundled" from trading costs; and (2) there should be greater transparency regarding research costs and how those costs are borne.	On November 12, 2019, the Commission extended temporary no-action relief from compliance with registration under the Advisers Act for brokers that receive payments for research in hard dollars or through research payment accounts from managers subject to MiFID II through July 3, 2023.[262]
Human Capital Management Disclosure[263]	Mar. 28, 2019	Revise issuer disclosure requirements to elicit more insightful disclosure concerning how human capital within a firm is managed and incentivized.	On August 26, 2020, the Commission adopted rule amendments to modernize the description of business, legal proceedings, and risk factor disclosures that issuers are required to make pursuant to Regulation S-K. The amendments include the addition of human capital resources as a disclosure topic.[264]
Financial Support for Law School Clinics that Support Investors[265]	Mar. 8, 2018	Explore ways to improve external funding sources to the law school investor advocacy clinics. Work with FINRA, NASAA, and other potential partners, and request legislation from Congress to consider permanent funding.	Pending.

Topic	Date	IAC Recommendation	SEC Response
Dual Class and Other Entrenching Governance Structures in Public Companies[266]	Mar. 8, 2018	Direct Division of Corporation Finance staff to scrutinize disclosure documents filed by issuers with dual class and other entrenching governance structures, comment on such documents so as to enhance the salience and detail of risk disclosure, and develop guidance to address a range of issues that such structures raise.	Pending.
Accredited Investor Definition[267]	Oct. 9, 2014	Evaluate whether the current definition achieves the goal of identifying a class of individuals who are able to make an informed investment decision and protect their interests without the protections of registration and disclosure. Consider other definitional approaches.	On August 26, 2020, the Commission adopted amendments to the definition of accredited investor.[268] Among other changes, the amendments allow individuals to qualify as accredited investors if they possess certain professional credentials or affiliations, even if they do not meet the income or net worth thresholds. The Commission chose not to modify the definition's income or net worth thresholds.
Impartiality in the Disclosure of Preliminary Voting Results[269]	Oct. 9, 2014	Ensure impartiality in the disclosure of preliminary voting results.	Pending.
Universal Proxy Ballots[270]	July 25, 2013	Allow universal ballots in connection with short-slate director nominations.	On October 26, 2016, the Commission proposed amendments to the proxy rules to require parties in a contested election to use universal proxy cards that would include the names of all board of director nominees.[271] On November 17, 2021, the Commission adopted final rules relating to the use of universal proxy cards in contested director elections.[272]

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 *See* SEC, Office Of The Investor Advocate, Report on Objectives, Fiscal Year 2021 (June 29, 2020) [hereinafter Report on Objectives, Fiscal Year 2021], https://www.sec.gov/files/sec-office-investor-advocate-report-on-objectives-fy2021.pdf.

4 Exchange Act § 4(g)(6)(B)(i), 15 U.S.C. § 78d(g)(6)(B)(i).

5 *Id.* Exchange Act Section 4(g)(6)(B) requires the Report on Activities to include an "inventory" of the most serious problems encountered by investors during the Reporting Period. The inventory must identify any action taken by the Commission or an SRO to resolve each problem, the length of time that each item has remained on our inventory and, for items on which no action has been taken, the reasons for inaction and an identification of any official who is responsible for such action.

6 Report on Objectives, Fiscal Year 2021, *supra* note 3.

7 The Office of the Investor Advocate was established pursuant to Section 915 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act). On February 24, 2014, SEC Chair Mary Jo White appointed Rick A. Fleming as the Commission's first Investor Advocate.

8 *See* Management's Discussion and Analysis, Selected Financial Data, and Supplementary Financial Information, Securities Act Rel. No. 10890, 86 Fed. Reg. 2,080 (Jan. 11, 2021), https://www.sec.gov/rules/final/2020/33-10890.pdf.

9 *See* SEC, Recommendation of the Investor Advisory Committee Regarding Recommendation of the Investor as Owner Subcommittee on Accounting and Financial Reporting Disclosure (May 5, 2020), https://www.sec.gov/spotlight/investor-advisory-committee-2012/accounting-and-financial-disclosure.pdf.

10 *See* Modernization of Rules and Forms for Compensatory Securities Offerings and Sales, Securities Act Rel. No. 10891, 85 Fed. Reg. 80,232 (Dec. 11, 2020), https://www.sec.gov/rules/proposed/2020/33-10891.pdf.

11 *See id.*

12 *See id.*

13 *See* Temporary Rules to Include Certain "Platform Workers" in Compensatory Offerings under Rule 701 and Form S-8, Securities Act Rel. No. 10892, 85 Fed. Reg. 79,936 (Dec. 11, 2020), https://www.sec.gov/rules/proposed/2020/33-10892.pdf.

14 *See* Gary Gensler, Chair, SEC, Public Remarks at Eighth Annual Conference on Financial Regulation Day 1 (May 13, 2021), https://www.sec.gov/video/webcast-archive-player.shtml?document_id=financial-market-regulation-051321-1.

15 SEC, Recommendation of the Investor Advisory Committee Relating to ESG Disclosure (May 21, 2020), https://www.sec.gov/spotlight/investor-advisory-committee-2012/esg-disclosure.pdf.

16 *See* SEC, Asset Management Advisory Committee Recommendations for ESG (July 7, 2021), https://www.sec.gov/files/spotlight/amac/recommendations-esg.pdf.

17 *See* John Coates, Acting Dir., SEC Div. of Corp. Fin., ESG Disclosure—Keeping Pace with Developments Affecting Investors, Public Companies and the Capital Markets (Mar. 11, 2021), https://www.sec.gov/news/public-statement/coates-esg-disclosure-keeping-pace-031121.

18 *See* Alison Omens, Aleksandra Radeva, and Kavya Vaghul, JUST Capital, The Current State of Human Capital Disclosure, Harvard Law School Forum on Corporate Governance (Oct. 31, 2021), https://corpgov.law.harvard.edu/2021/10/31/the-current-state-of-human-capital-disclosure/.

19 Press Release, SEC, SEC Announces Enforcement Task Force Focused on Climate and ESG Issues (Mar. 4, 2021), https://www.sec.gov/news/press-release/2021-42.

20 Press Release, SEC, SEC Division of Examinations Announces 2021 Examination Priorities: Enhanced Focus on Climate-Related Risks (Mar. 3, 2021), https://www.sec.gov/news/press-release/2021-39.

21 SEC, Sample Comment Letter to Companies Regarding Climate Change Disclosure (Sept. 22, 2021), https://www.sec.gov/corpfin/sample-letter-climate-change-disclosures.

22 Commission Guidance Regarding Disclosure Related to Climate Change, Securities Act Rel. No. 33-9106, 75 Fed. Reg. 6290 (Feb. 8, 2010) ("2010 Climate Change Guidance"), https://www.sec.gov/rules/interp/2010/33-9106.pdf.

23 17 C.F.R. § 240.10b-5.

24 17 C.F.R. § 240.10b5-1.

25 *See* Gary Gensler, Chairman, SEC, Prepared Remarks at CFO Network Summit (June 7, 2021), https://www.sec.gov/news/speech/gensler-cfo-network-2021-06-07.

26 SEC, Recommendation of the Investor Advisory Committee Regarding Recommendation of the Investor-as-Owner Subcommittee on Rule 10b5-1 Plans (Sept. 9, 2021), https://www.sec.gov/spotlight/investor-advisory-committee-2012/draft-recommendation-of-the-iao-subcommittee-on-10b5-1-plans-082621.pdf.

27 Pub. L. No. 116-222, 134 Stat. 1063 (Dec. 18, 2020).

28 Holding Foreign Companies Accountable Act Disclosure, Exchange Act Rel. No. 91364, 86 Fed. Reg. 17,528 (Apr. 5, 2021), https://www.sec.gov/rules/interim/2021/34-91364.pdf.

29 SEC, Office Of The Investor Advocate, Report on Objectives, Fiscal Year 2022 (June 28, 2021) [hereinafter Report on Objectives, Fiscal Year 2022], at 7, https://www.sec.gov/files/sec-office-investor-advocate-report-on-objectives-fy2022.pdf.

30 Over the course of 2020, 248 SPACs were formed, a 420% increase over 2019's 59. In 2021, at least 489 SPACs have been launched. *See* SPAC Statistics, SPACInsider, https://spacinsider.com/stats/ (last visited October 24, 2021).

31 SEC, Div. of Corp. Fin., Disclosure Guidance: Topic No. 11, Special Purpose Acquisition Companies (Dec. 22, 2020), https://www.sec.gov/corpfin/disclosure-special-purpose-acquisition-companies.

32 *See* Gary Gensler, Chair, SEC, Prepared Remarks Before the Small Business Capital Formation Advisory Committee (Sept. 27, 2021), https://www.sec.gov/news/public-statement/gensler-sbcfac-2021-09-27; Gary Gensler, Chair, SEC, Prepared Remarks Before the Investor Advisory Committee (Sept. 9, 2021), https://www.sec.gov/news/public-statement/gensler-iac-2021-09-09.

33 SEC, Recommendation of the Investor Advisory Committee Regarding Recommendation of the Investor-as-Owner Subcommittee on Special Purpose Acquisition Companies (Sept. 9, 2021), https://www.sec.gov/spotlight/investor-advisory-committee-2012/draft-recommendation-of-the-iap-and-iao-subcommittees-on-spacs-082621.pdf.

34 *See* Recommendations of the Investor Advisory Committee Regarding SEC Rulemaking to Explore Universal Proxy Ballots (adopted July 25, 2013), https://www.sec.gov/spotlight/investor-advisory-committee-2012/universal-proxy-recommendation-072613.pdf.

35 *See* Universal Proxy, Exchange Act Rel. No. 79164, 81 Fed. Reg. 79,122 (Nov. 10, 2016), https://www.sec.gov/rules/proposed/2016/34-79164.pdf.

36 *See* Recommendation of the Investor Advisory Committee: Proxy Plumbing (Sept. 5, 2019), https://www.sec.gov/spotlight/investor-advisory-committee-2012/iac-recommendation-proxy-plumbing.pdf.

37 *See* Reopening of Comment Period for Universal Proxy, Exchange Act Rel. No. 91603, 86 Fed. Reg. 24,364 (May 6, 2021), https://www.sec.gov/rules/proposed/2021/34-91603.pdf.

38 *See* Universal Proxy, Exchange Act Rel. No. 93596 (Nov. 17, 2021), https://www.sec.gov/rules/final/2021/34-93596.pdf.

39 *See id.*

40 *See* Amendments to Exemptions from the Proxy Rules for Proxy Voting Advice, Exchange Act Rel. No. 87457, 84 Fed. Reg. 66518 (Dec. 4, 2019), https://www.sec.gov/rules/proposed/2019/34-87457.pdf.

41 *See* Recommendation of the SEC Investor Advisory Committee Relating to SEC Guidance and Rule Proposals on Proxy Advisors and Shareholder Proposals (Jan. 24, 2020), https://www.sec.gov/spotlight/investor-advisory-committee-2012/sec-guidance-and-rule-proposals-on-proxy-advisors-and-shareholder-proposals.pdf.

42 *See* Exemptions from the Proxy Rules for Proxy Voting Advice, Exchange Act Rel. No. 89372, 85 Fed. Reg. 55,082 (Sept. 3, 2020), https://www.sec.gov/rules/final/2020/34-89372.pdf.

43 *See* Gary Gensler, Chair, SEC, Statement on the Application of the Proxy Rules to Proxy Voting Advice (June 1, 2021), https://www.sec.gov/news/public-statement/gensler-proxy-2021-06-01; Commission Interpretation and Guidance Regarding the Applicability of the Proxy Rules to Proxy Voting Advice, Exchange Act Rel. No. 86721, 84 Fed. Reg. 47,416 (Sept. 10, 2019) ("2019 Interpretation and Guidance"), https://www.sec.gov/rules/interp/2019/34-86721.pdf.

44 *See* Div. of Corp. Fin., SEC, Statement on Compliance with the Commission's 2019 Interpretation and Guidance Regarding the Applicability of the Proxy Rules to Proxy Voting Advice and Amended Rules 14a-1(l), 14a-2(b), 14a-9 (June 1, 2021), https://www.sec.gov/news/public-statement/corp-fin-proxy-rules-2021-06-01. This statement mentions that Institutional Shareholder Services, Inc. has filed a lawsuit challenging the 2020 Rule Amendments. *See Institutional Shareholder Services, Inc. v. SEC*, No. 1:19-cv-3275-APM (D.D.C.). That case is currently being held in abeyance until the earlier of December 31, 2021 or the promulgation of final rule amendments addressing proxy voting advice. In addition, on October 13, 2021, the National Association of Manufacturers and Natural Gas Services Group, Inc. filed a lawsuit arising out of a statement issued by the Div. of Corp.Fin. on June 1, 2021 regarding the 2020 Final Rules. *See National Association of Manufacturers et al. v. SEC*, No. 7:21-cv-183 (W.D. Tex.).

45 *See* Proxy Voting Advice, Exchange Act Rel. No. 93595 (Nov. 17, 2021), https://www.sec.gov/rules/proposed/2021/34-93595.pdf.

46 *See id.*

47 Digital engagement practices, or DEPs, are utilized by broker dealers and investment advisers as a means of interacting with retail investors on digital platforms. These include "social networking tools; games, streaks and other contests with prizes; points, badges, and leaderboards; notifications; celebrations for trading; visual cues; ideas presented at order placement and other curated lists or features; subscriptions and membership tiers; and chatbots." *See* Request for Information and Comments on Broker-Dealer and Investment Adviser Digital Engagement Practices, Related Tools and Methods, and Regulatory Considerations and Potential Approaches; Information and Comments on Investment Adviser Use of Technology To Develop and Provide Investment Advice, Securities Exchange Act Release No. 92766 (August 27, 2021), 86 Fed Reg. 49,067 (Sept. 1, 2021), available at https://www.federalregister.gov/d/2021-18901.

48 *See* SEC, Staff Report on Equity and Options Market Structure Conditions in Early 2021 (Oct. 14, 2021), https://www.sec.gov/files/staff-report-equity-options-market-struction-conditions-early-2021.pdf.

49 Cboe BYX Exchange, Inc.; Notice of Filing of Amendments No. 3 and No. 4, and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendments No. 3 and No. 4, to Introduce Periodic Auctions for the Trading of U.S. Equity Securities, Exchange Act Release No. 91423, 86 Fed. Reg. 17,230 (April 1, 2021), https://www.federalregister.gov/d/2021-06676.

50 Joint Industry Plan, Order Approving, as Modified, a National Market System Plan Regarding Consolidated Equity Market Data, Exchange Act Release No. 92586, 86 Fed. Reg. 44,142 (published August 11, 2021), https://www.federalregister.gov/d/2021-17113.

51 *See* Market Data Infrastructure, Exchange Act Release No. 90610, 86 Fed. Reg. 18,596 (published April 9, 2021), https://www.federalregister.gov/documents/2021/04/09/2020-28370/market-data-infrastructure.

52 In addition to reviewing Commission rulemakings, the Office of the Investor Advocate is responsible for analyzing the potential impact on investors of proposed rules of self-regulatory organizations (SROs). *See* Exchange Act § 4(g)(4), 15 U.S.C. § 78d(g)(4).

53 Investors Exchange LLC; Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, To Revise the Definitions of Retail Orders and Retail Liquidity Provider Orders and Disseminate a Retail Liquidity Identifier Under the IEX Retail Price Improvement Program, Exchange Act Release No. 92398, 86 Fed. Reg. 38,166 (July 19, 2021), https://www.govinfo.gov/content/pkg/FR-2021-07-19/pdf/2021-15199.pdf.

54 *See* Joint Industry Plan, Order Approving the National Market System Plan Governing the Consolidated Audit Trail, Exchange Act Release No. 79318 (Nov. 15, 2016), https://www.sec.gov/rules/sro/nms/2016/34-79318.pdf.

55 *See* Proposed Amendments to the National Market System Plan Governing the Consolidated Audit Trail To Enhance Data Security, Exchange Act Release No. 89632 (Aug. 21, 2020), 85 Fed. Reg. 65,990 (Oct. 16, 2020), https://www.federalregister.gov/d/2020-18801.

56 *See* Timeline, Consolidated Audit Trail, available at https://www.catnmsplan.com/timeline/phase.

57 *See* Exchange-Traded Funds, Securities Act Release No. 10695, Investment Company Act Release No. 33646, 84 Fed. Reg. 57162 (Oct. 24, 2019), https://www.federalregister.gov/documents/2019/10/24/2019-21250/exchange-traded-funds.

58 *See id.* at section II.C.4.

59 *See id.* at section II.A.3.

60 *See* Investment Company Act Release No. 33477 (May 20, 2019); Investment Company Act Release No. 33710 (Dec. 10, 2019); Investment Company Act Release No. 33711 (Dec. 10, 2019); Investment Company Act Release No. 33712 (Dec. 10, 2019); Investment Company Act Release No. 33713 (Dec. 10, 2019).

61 *See* Use of Derivatives by Registered Investment Companies and Business Development Companies, Investment Company Act Release No. 34084, https://www.sec.gov/rules/final/2020/ic-34084.pdf, at section II.F.6.

62 *See* SEC, Division of Examinations, *2021 Examination Priorities* (March 3, 2021), https://www.sec.gov/files/2021-exam-priorities.pdf, at 29.

63 The term "ETP" in these remarks refers to exchange-traded products, including but not limited to exchange-traded funds. The categories of ETPs that should be permitted to label themselves as ETFs is a matter of debate, with some arguing that leveraged and inverse ETPs (and certain other ETPs) should be considered "exchange traded instruments" instead of ETFs. *See* Comment Letter of BlackRock, Inc. on Proposed Rule 6c-11 (Sept. 26, 2018), https://www.blackrock.com/corporate/literature/publication/sec-proposed-rule-exchange-traded-funds-092618.pdf, at 25.

64 Gary Gensler, Chair, SEC, Statement on Complex Exchange-Traded Products (Oct. 4, 2021), https://www.sec.gov/news/public-statement/gensler-statement-complex-exchange-traded-products-100421 (internal citations omitted). Prior to the 2020 remarks from then-Chairman Clayton referenced by Chair Gensler, Chairman Clayton was even more direct about the dangers of leveraged and inverse ETFs, stating "I believe it would be premature to include leveraged and inverse ETFs within the scope of the [ETF Rule] before the Commission has addressed the investor protection concerns that have been raised regarding these products." Jay Clayton, Chairman, SEC, Taking Significant Steps to Modernize Our Regulatory Framework (Sept. 26, 2019), https://www.sec.gov/news/public-statement/clayton-2019-09-26-three-rulemakings.

65 *See* Derivatives Rule, *supra* note 61 at section II.F.6.

66 *See* Derivatives Rule, *supra* note 61 at section II.F.5.

67 *See* Derivatives Rule, *supra* note 61 at sections II.F.1-2.

68 *See* Derivatives Rule, *supra* note 61 at section II.F.5.

69 *See* Derivatives Rule, *supra* note 61 at sections II.F.4 and II.F.5 ("While we believe that it is important to continue to consider these funds in light of investor protection concerns, and the staff review that we discuss above will assess these funds in addition to other complex investment products, we believe that these concerns would most appropriately be addressed holistically as a result of any Commission action that may result from the staff review.").

70 Gary Gensler, Chair, SEC, Statement on Complex Exchange-Traded Products (Oct. 4, 2021), https://www.sec.gov/news/public-statement/gensler-statement-complex-exchange-traded-products-100421 ("This week, I directed staff of the Securities and Exchange Commission to study the potential risks of complex financial products that are listed and traded on exchanges. I also asked them to present recommendations for the Commission's consideration on potential rulemaking proposals to address those risks, as part of a broader look at exchange-traded products.").

71 Allison Herren Lee and Caroline A. Crenshaw, Commissioners, SEC, Statement on Complex Exchange-Traded Products (Oct. 4, 2021), https://www.sec.gov/news/public-statement/lee-crenshaw-statement-complex-exchange-traded-products-100421.

72 *See* Katherine Greifeld, Bloomberg, *ProShares Bitcoin ETF Tops $1 Billion Assets in Just 2 Days* (Oct. 20, 2021), https://www.bloombergquint.com/markets/proshares-bitcoin-etf-tops-1-billion-in-assets-in-just-two-days.

73 *See* Lizzy Gurdus, CNBC, *Spot bitcoin ETF unlikely to arrive until at least mid-2022, Valkyrie Funds CIO says* (Oct. 28, 2021), https://www.cnbc.com/2021/10/28/spot-bitcoin-etf-unlikely-until-at-least-mid-2022-valkyrie-funds-cio.html ("More than a dozen firms have filed for ETFs tracking bitcoin itself").

74 *See* Michael Wursthorn, *SEC Won't Approve Leveraged Bitcoin Fund* (Oct. 27, 2021), https://www.wsj.com/articles/sec-wont-approve-leveraged-bitcoin-fund-source-says-11635370934 ("Valkyrie Investments . . . proposed to launch a fund that sought to amplify the daily returns of a portfolio of bitcoin derivatives, including futures contracts and options, by using 1.25 times leverage . . . Direxion filed plans for an ETF that aimed to allow investors to effectively bet against the bitcoin futures contracts used by the [ProShares Bitcoin Strategy ETF]").

75 *See* ETF Rule, *supra* note 57 at footnote 57 (citing Letter from Dalia Blass, Director of Investment Management, to Paul Schott Stevens, President and CEO, Investment Company Institute and Timothy W. Cameron, Asset Management Group—Head, Securities Industry and Financial Markets Association [Jan. 18, 2018], http://www.sec.gov/divisions/investment/noaction/2018/cryptocurrency-011818.htm).

76 *See* Report on Objectives, Fiscal Year 2022, *supra* note 29 at 13-16.

77 *See, e.g.*, Fredrick Vold, cryptonews.com, *First Bitcoin ETF in Immediate Danger of Hitting Cap on Contracts Held*, https://cryptonews.com/news/first-bitcoin-etf-in-immediate-danger-of-hitting-cap-on-contracts-held.htm ("[The ProShares Bitcoin Strategy ETF] is reportedly already in danger of breaching a limit on the number of futures contracts it is allowed to hold under current Chicago Mercantile Exchange (CME) rules. . . . [C]hoosing to get around the maximum limits by buying longer-dated contracts will mean the ETF has to get its bitcoin exposure at prices that are increasingly higher than spot. This could result in high costs when contracts are rolled over at expiry that will eventually be paid by the ETFs investors in the form of lower returns.").

78 *See* Tailored Shareholder Reports, Treatment of Annual Prospectus Updates for Existing Investors, and Improved Fee and Risk Disclosure for Mutual Funds and Exchange-Traded Funds; Fee Information in Investment Company Advertisements, Securities Act Release No. 10814, Exchange Act Release No. 89478, Investment Company Act Release No. 33963, 85 Fed. Reg. 70716 (Nov. 5, 2020) [hereinafter Tailored Shareholder Reports Proposal], https://www.federalregister.gov/documents/2020/11/05/2020-17449/tailored-shareholder-reports-treatment-of-annual-prospectus-updates-for-existing-investors-and.

79 *See id.*

80 *See* CFA Institute Comment Letter on the Tailored Shareholder Reports Proposal, https://www.sec.gov/comments/s7-09-20/s70920-8197202-227325.pdf at 3.

81 *See* ICI Comment Letter on the Tailored Shareholder Reports Proposal, https://www.sec.gov/comments/s7-09-20/s70920-8186011-227164.pdf at 39.

82 *See* Consumer Federation of America Comment Letter on the Tailored Shareholder Reports Proposal, https://www.sec.gov/comments/s7-09-20/s70920-8204376-227513.pdf at 2.

83 *See* Broadridge Comment Letter on the Tailored Shareholder Reports Proposal, https://www.sec.gov/comments/s7-09-20/s70920-8204380-227517.pdf.

84 *See* Better Markets Comment Letter on the Tailored Shareholder Reports Proposal, https://www.sec.gov/comments/s7-09-20/s70920-8204323-227467.pdf at 1.

85 *See* Statement Regarding the SEC's Rulemaking Package for Investment Advisers and Broker-Dealers, Rick A. Fleming, Investor Advocate (June 5, 2019), available at https://www.sec.gov/news/public-statement/statement-regarding-sec-rulemaking-package-investment-advisers-broker-dealers.

86 *See* NASAA, Report and Findings of NASAA's Regulation Best Interest Implementation Committee, National Examination Initiative Phase II(A) (November 2021), https://www.nasaa.org/wp-content/uploads/2021/11/NASAA-Reg-BI-Phase-II-A-Report-November-2021_FINAL.pdf.

87 *See id.* at 4.

88 *See, e.g.*, SEC, Staff Report on Equity and Options Market Structure Conditions in Early 2021 (Oct. 14, 2021), *supra* note 48.

89 *See supra* note 47.

90 *See* Comments on File No. S7-10-21, available at https://www.sec.gov/comments/s7-10-21/s71021.htm.

91 *See* Speech, Rick Fleming, Investor Advocate, Investor Protection in the Age of Gamification: Game Over for Regulation Best Interest?, Remarks at SEC Speaks, Washington D.C. (Oct. 13, 2021), https://www.sec.gov/news/speech/fleming-sec-speaks-101321.

92 FINRA, Order Approving a Proposed Rule Change, as Modified by Amendment No. 1, to Address Brokers with a Significant History of Misconduct, Exchange Act Release No. 90635, 85 Fed. Reg. 81,540 (Dec. 16, 2020), https://www.federalregister.gov/d/2020-27626.

93 FINRA, Notice of Filing of a Proposed Rule Change To Amend Rule 2165 (Financial Exploitation of Specified Adults), Exchange Act Rel. No. 92225, 86 Fed. Reg. 34,084 (June 28, 2021), https://www.federalregister.gov/d/2021-13653.

94 FINRA, Order Approving a Proposed Rule Change, as Modified by Amendment No. 1, to Address Brokers with a Significant History of Misconduct, Exchange Act Release No. 90635, 85 Fed. Reg. 81,540 (Dec. 16, 2020), https://www.federalregister.gov/d/2020-27626.

95 *See* SEC Appoints New Chairperson and Board Members to the Public Company Accounting Oversight Board, Nov. 8, 2021, https://www.sec.gov/news/press-release/2021-228.

96 PCAOB Adopts Rule to Create Framework for HFCAA Determinations, Sep. 22, 2021, https://pcaobus.org/news-events/news-releases/news-release-detail/pcaob-adopts-rule-to-create-framework-for-hfcaa-determinations.

97 *See* SEC Reopens Comment Period for Listing Standards for Recovery of Erroneously Awarded Compensation, Oct. 14, 2021, https://www.sec.gov/news/press-release/2021-210.

98 *See id.*

99 *See* Thompson, Rachel, Reporting Misstatements as Revisions: An Evaluation of Managers' Use of Materiality Discretion, Sep. 17, 2021, https://ssrn.com/abstract=3450828; *see also* Acito, Andrew and Burks, Jeffrey J. and Johnson, W. Bruce, The Materiality of Accounting Errors: Evidence From SEC Comment Letters, Jun. 1, 2018, Contemporary Accounting Research, Forthcoming, https://ssrn.com/abstract=3220458.

100 *See* What's New in Goodwill, Sep. 24, 2021, https://www.youtube.com/watch?v=1xJb6tDKHvg.

101 The Challenge of Accounting for Goodwill—Impact of a Possible Return to Amortization, Nov. 2019, https://www.cpajournal.com/2019/11/27/the-challenge-of-accounting-for-goodwill/.

102 Auditing in the Crypto-Asset Sector, Nov. 2019, https://www.cpab-ccrc.ca/docs/default-source/inspections-reports/2019-crypto-inspections-insights-en.pdf?sfvrsn=9aa5c0d2_20.

103 World Supply Chain Finance Report 2021, https://bcrpub.com/world-supply-chain-finance-report-2021 at v.

104 SEC, Office Of The Investor Advocate, Report on Activities, Fiscal Year 2019, [hereinafter Report on Activities, Fiscal Year 2019], at 19 https://www.sec.gov/advocate/reportspubs/annual-reports/sec-investor-advocate-report-on-activities-2019.pdf.

105 FASB Tentative Board Decisions, June 30, 2021, https://www.fasb.org/cs/ContentServer?c=FASBContent_C&cid=1176176862817&d=&pagename=FASB%2FFASBContent_C%2FActionAlertPage.

106 Exchange Act § 4(g)(6)(B)(ii)(V), 15 U.S.C. § 78d(g)(6)(B)(ii)(V).

107 NASAA, *NASAA 2017-2018 Activity Report, Working Together to Protect Investors*, https://www.nasaa.org/wp-content/uploads/2019/06/NASAA-2017-2018-Activity-Report.pdf.

108 NASAA, *NASAA Enforcement Report: 2021 Report Based on 2020 Data* (Sept. 2021), https://www.nasaa.org/wp-content/uploads/2021/09/2021-Enforcement-Report-Based-on-2020-Data-FINAL.pdf.

109 NASAA, *Top Investor Threats*, https://www.nasaa.org/investor-education/fraud-center/top-investor-threats/ (last visited Nov. 9, 2021).

110 SEC, Division of Examinations, *Examination Priorities for 2021* (Mar. 3, 2021), https://www.sec.gov/files/2021-exam-priorities.pdf.

111 This list of problematic products identified by the SEC is based on staff analysis of the alerts and bulletins issued by the SEC's Office of Investor Education and Advocacy and the SEC's Division of Examinations during Fiscal Year 2021. *See* SEC, Office of Investor Education and Advocacy, Investor Alerts and Bulletins, https://www.sec.gov/investor/alerts (last visited Nov. 9, 2021); *see also* SEC, Division of Examinations, Risk Alerts, https://www.sec.gov/exams (last visited Nov. 9, 2021).

112 *See* NASAA, Investor Advisories, https://www.nasaa.org/category/investor-education/investor-advisories/ (last visited Nov. 9, 2021).

113 This list of problematic products is based on the alerts and bulletins issued by FINRA for investors during FY 2021. *See* FINRA, Investor Alerts, https://www.finra.org/investors/alerts (last visited Nov. 9, 2021).

114 Letter of Mark Kim, Chief Executive Officer, Municipal Securities Rulemaking Board, dated Nov. 8, 2021.

115 Report on Activities, Fiscal Year 2019, *supra* note 104, at 19 – 20.

116 *Id.* at 20 – 21.

117 *Id.* at 21 – 22.

118 SEC, Office Of The Investor Advocate, Report On Activities, Fiscal Year 2018 (Dec. 20, 2018) [hereinafter Report On Activities, Fiscal Year 2018], at 17 https://www.sec.gov/advocate/reportspubs/annual-reports/sec-investor-advocate-report-on-activities-2018.pdf.

119 SEC, Office of the Investor Advocate, Report on Activities, Fiscal Year 2014 (Dec. 23, 2014), at 10, https://www.sec.gov/advocate/reportspubs/sec-investor-advocate-report-on-activities-2014.pdf.

120 *Id.* at 8 – 9.

121 SEC, Office of the Investor Advocate, Report on Activities, Fiscal Year 2015 (Dec. 23, 2015), at 16 – 17, https://www.sec.gov/advocate/reportspubs/annual-reports/sec-investor-advocate-report-on-activities-2015.pdf.

122 SEC, Office of the Investor Advocate, Report on Activities, Fiscal Year 2017 (Dec. 20, 2017) at 13 – 14, https://www.sec.gov/advocate/reportspubs/annual-reports/sec-investor-advocate-report-on-activities-2017.pdf.

123 SEC, Office of the Investor Advocate, Report on Activities, Fiscal Year 2016 (Dec. 21, 2016), at 20 – 21, https://www.sec.gov/advocate/reportspubs/annual-reports/sec-investor-advocate-report-on-activities-2016.pdf.

124 *See, e.g., supra* note 48.

125 *See* Speech, Enhancing Equity Market Competition, Commissioner Elad L. Roisman (Oct. 15, 2021), https://www.sec.gov/news/speech/roisman-enhancing-equity-market-competition-2021-10.

126 *See, e.g.. supra* note 118 at 7-8 (Dec. 20, 2018); https://www.sec.gov/advocate/reportspubs/annual-reports/sec-investor-advocate-report-on-activities-2018.pdf.

127 *See, e.g.*, Speech, Testimony Before the House Committee on Financial Services, Chair Gary Gensler, Washington D.C. (May 6, 2021), https://www.sec.gov/news/testimony/gensler-testimony-20210505, and Speech, Prepared Remarks at the Meeting of SEC Investor Advisory Committee, Chair Gary Gensler (June 10, 2021), https://www.sec.gov/news/public-statement/gensler-iac-2021-06-10.

128 *See, e.g.*, *supra* note 48.

129 *See, e.g.*, Blog, *Meme Stocks and Systematic Risk*, Derek Horstmeyer and Valerie Mayer, CFA Institute (August 9, 2021), https://blogs.cfainstitute.org/investor/2021/08/09/meme-stocks-and-systematic-risk/.

130 *See id.*

131 *See, e.g.*, Newsletter, *The End of Stock Market Fundamentals?*, Andrew Ross Sorkin et al, New York Times Dealbook (June 3, 2021), https://www.nytimes.com/2021/06/03/business/dealbook/amc-meme-stocks.html.

132 *See* Federal Reserve, *Financial Stability Report* (Nov. 8, 2021), pages 18 – 22, https://www.federalreserve.gov/publications/files/financial-stability-report-20211108.pdf.

133 Over the course of 2020, 248 SPACs were formed, a 420% increase over 2019's 59. In 2021, at least 489 SPACs have been launched. *See* SPAC Statistics, SPACInsider, https://spacinsider.com/stats/ (last visited October 24, 2021).

134 SEC, Div. of Corp. Fin., Disclosure Guidance: Topic No. 11, Special Purpose Acquisition Companies (Dec. 22, 2020), https://www.sec.gov/corpfin/disclosure-special-purpose-acquisition-companies.

135 Michael Klausner et al., A Sober Look at SPACs, European Corporate Governance Institute (ECGI) Finance Working Paper No. 746/2021 (revised Apr. 2, 2021), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3720919. *See also* Gary Gensler, Chair, SEC, Prepared Remarks Before the Small Business Capital Formation Advisory Committee (Sept. 27, 2021), https://www.sec.gov/news/public-statement/gensler-sbcfac-2021-09-27; Gary Gensler, Chair, SEC, Prepared Remarks Before the Investor Advisory Committee (Sept. 9, 2021), https://www.sec.gov/news/public-statement/gensler-iac-2021-09-09.

136 *See* Michael Klausner et al., A Sober Look at SPACs, European Corporate Governance Institute (ECGI) Finance Working Paper No. 746/2021 (revised Apr. 2, 2021), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3720919.

137 *See supra* note 134.

138 *See* SEC, Off. of Inv. Educ. & Advoc., What You Need to Know About SPACs – Updated Investor Bulleting (May 25, 2021), https://www.sec.gov/oiea/investor-alerts-and-bulletins/what-you-need-know-about-spacs-investor-bulletin.

139 SEC, Recommendation of the Investor Advisory Committee Regarding Special Purpose Acquisition Companies (Sept. 9, 2021), https://www.sec.gov/spotlight/investor-advisory-committee-2012/draft-recommendation-of-the-iap-and-iao-subcommittees-on-spacs-082621.pdf.

140 *See* Hester Peirce, Comm'r, SEC, Inside Chicken: Remarks before Fordham Journal of Corporate and Financial Law Conference: "Here to Stay: Wrestling with the Future of the Quickly Maturing SPAC Market," (Oct. 22, 2021), https://www.sec.gov/news/speech/peirce-remarks-fordham-journal-102221.

141 *See* Gary Gensler, Chair, SEC, Prepared Remarks Before the Small Business Capital Formation Advisory Committee (Sept. 27, 2021), https://www.sec.gov/news/public-statement/gensler-sbcfac-2021-09-27; Gary Gensler, Chair, SEC, Prepared Remarks Before the Investor Advisory Committee (Sept. 9, 2021), https://www.sec.gov/news/public-statement/gensler-iac-2021-09-09.

142 Paul Munter, Acting Dir., SEC Off. of the Chief Acct., Financial Reporting and Auditing Considerations of Companies Merging with SPACs (Mar. 31, 2021), https://www.sec.gov/news/public-statement/munter-spac-20200331.

143 John Coates, Acting Dir., SEC Div. of Corp. Fin., and Paul Munter, Acting Dir., SEC Off. of the Chief Acct., Staff Statement on Accounting and Reporting Considerations for Warrants Issued by Special Purpose Acquisition Companies ("SPACs") (Apr. 12, 2021), https://www.sec.gov/news/public-statement/accounting-reporting-warrants-issued-spacs.

144 Robert Freedman, Almost 90% of SPACs have had to restate financials, CFO Dive (Aug. 2, 2021), https://www.cfodive.com/news/almost-90-percent-spacs-restate-financials/604267/.

145 The Division of Corporation Finance's former Acting Director, John Coates, highlighted this issue in an April 2021 public statement. *See* John Coates, Acting Dir., SEC Div. of Corp. Fin., Public Statement: SPACs, IPOs, and Liability Risk Under the Securities Laws (Apr. 8, 2021), https://www.sec.gov/news/public-statement/spacs-ipos-liability-risk-under-securities-laws.

146 *See, e.g.*, Securities Act § 11, 15 U.S.C. § 77k; Securities Act § 12(a)(2), 15 U.S.C. § 77l(a). Pursuant to the Commission's December 22, 2020 rule regarding the New York Stock Exchange's listing requirements, direct listings also do not require use of a firm-commitment underwriter. In a December 23, 2020 public statement, Commissioners Lee and Crenshaw discussed possible investor-protection risks arising from the absence of an underwriter. *See* Allison Herren Lee & Caroline A. Crenshaw, Comm'rs, SEC, Statement on Primary Direct Listings (Dec. 23, 2020), https://www.sec.gov/news/public-statement/lee-crenshaw-listings-2020-12-23.

147 *See* SPACs: Insider IPOs, Usha Rodrigues, University of Georgia School of Law, and Michael Stegemoller, Baylor University (2021), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3906196.

148 *See supra* note 134.

149 *See id.*

150 *See* SEC, Off. of Inv. Educ. & Advoc., What You Need to Know About SPACs—Updated Investor Bulleting (May 25, 2021), https://www.sec.gov/oiea/investor-alerts-and-bulletins/what-you-need-know-about-spacs-investor-bulletin.

151 *See* Desperate for deals, America's SPACs target more foreign companies, Pitchbook (July 8, 2021), https://pitchbook.com/news/articles/US-spacs-search-overseas-blank-check-deals.

152 *See supra* note 147.

153 *See id.*

154 *See id.*

155 *See* Order Approving Proposed Rule Change to Adopt New Initial and Continued Listing Standards to List Securities of Special Purpose Acquisition Companies, Exchange Act Rel. No. 57785, 73 Fed. Reg. 15,246 (Mar. 21, 2008), https://www.sec.gov/rules/sro/nyse/2008/34-57785.pdf. In 2017, the NYSE eliminated the 40% redemption threshold, noting "greenmail" concerns that certain activist investors had sometimes employed a strategy of acquiring an interest in a SPAC and then using their ability to vote against a proposed business combination to obtain additional consideration. *See* Order Granting Approval of a Proposed Rule Change Amending Initial and Continued Listing Standards for Special Purpose Acquisition Companies, Exchange Act Rel. No. 80199, 82 Fed. Reg. 13,905 (Mar. 15, 2017), https://www.sec.gov/rules/sro/nyse/2017/34-80199.pdf.

156 *See* Scholl, Brian, Angela A. Hung, Alycia Chin, Drew M. Anderson, Michelle Bongard, Katherine Carman, N. Clancy et al. "The Retail Market for Investment Advice." Securities and Exchange Commission (2018), https://www.sec.gov/files/retail-market-for-investmentadvice.pdf.

157 *Id.*

158 Scholl, Brian and Angela Fontes, "Mutual Fund Knowledge Assessment for Policy and Decision Problems" (2021).

159 Consumer Financial Protection Bureau. "CFPB Financial Well-Being Scale: Scale Development Technical Report," (May 2017), https://files.consumerfinance.gov/f/documents/201705_cfpb_financial-well-being-scale-technical-report.pdf.

160 This error factor is provided for illustrative purposes only. It is entirely possible that some respondents that get this question wrong may actually be making much larger errors in their fee calculations than implied here.

161 *See, e.g.*, "Recommendation of the Investor Advisory Committee Regarding Mutual Fund Cost Disclosure," (April 14, 2016), https://www.sec.gov/spotlight/investor-advisory-committee-2012/recommendation-mf-fee-disclosure-041916.pdf; SEC Office of Investor Education and Advocacy, Investor Bulletin, "How Fees and Expenses Affect Your Investment Portfolio, https://www.sec.gov/investor/alerts/ib_fees_expenses.pdf; Roper, Barbara and Brobeck, Stephen, "Investors' Mutual Fund Purchase Practices: An Analysis of Survey Results," Consumer Federation of America, June 2006, http://consumerfed.org/_archives/elements/www.consumerfed.org/file/finance/mutual_fund_survey_report.pdf).

162 A hybrid event is one in which some parties appear in person, while others appear by utilizing an on-line video connection.

163 Exchange Act § 4(g)(8)(B), 15 U.S.C. § 78d(g)(8)(B).

164 Exchange Act § 4(g)(8)(D), 15 U.S.C. § 78d(g)(8)(D).

165 As used in this report, the term "Ombudsman" may refer to the Ombudsman, the Office of the Ombudsman staff and contractors, or the Office of the Investor Advocate staff and contractors who, from time to time, directly support the ombudsman function.

166 The Primary Issue Category labels are similar to the category labels used by other divisions and offices in public reports, where the category labels reflect the submitter's characterization or description of the issue. *See, e.g.*, SEC, Off. of the Whistleblower, Whistleblower Program 2020 Annual Report to Congress, at 28 and related n. 80 (Nov. 16, 2020), https://www.sec.gov/files/2020_OWB_Annual_Report.pdf ("This breakdown reflects the categories selected by whistleblowers and, thus, the data represents the whistleblower's own characterization of the violation type.") The exceptions in this Ombudsman's Report are the "Non-SEC/Other Matters" category label used for matters not under the jurisdiction of the SEC, and the "Atypical Matters" category label used for matters where the submitter's characterization or description of the issue makes it difficult to determine the nature of the matter.

167 For a more detailed discussion on meme stocks can be found under section "Meme" Stocks and Fundamental Valuation starting on page 19 of this Report on Activities.

168 *See, e.g.*, "Thinking About Investing in the Latest Hot Stock?," SEC, Off. of Inv. Ed. and Advocacy (January 30, 2021), available at: https://www.sec.gov/oiea/investor-alerts-and-bulletins/risks-short-term-trading-based-social-media-investor-alert (last visited 11/26/2021).

169 Retail investors often use the terms "crypto" and "cryptocurrency" in their submissions. However, in this report, we use the term "digital assets" to more broadly refer to cryptocurrencies, coins, and tokens such as those offered in so-called initial coin offerings (ICOs). *See* SEC, Off. Of Inv. Ed. and Advocacy, Investor Alert, "Digital Assets and 'Crypto' Investment Scams" (Sept. 1, 2021), https://www.investor.gov/introduction-investing/general-resources/news-alerts/alerts-bulletins/investor-alerts/digital-asset.

170 *See supra* note 47.

171 SEC, *What We Do*, https://www.sec.gov/about/what-we-do (last visited Nov. 26, 2021).

172 *See* Accredited Investor Definition, Exchange Act Rel. Nos. 33–10824; 34–89669 (Aug. 26, 2021), 85 Fed. Reg. 64234 at 64234 (Oct. 16, 2020) ("Accredited Investor Final Rules"). Private offerings are sometimes referred to as "exempt offerings," as they are exempt from the registration requirements of Section 5 of the Securities Act of 1933. *See* 17 C.F.R. § 230.500(a).

173 *See* Revision of Certain Exemptions from Registration for Transactions Involving Limited Offers and Sales, Exchange Act Rel. No. 33-6389, 47 Fed. Reg. 11262 (Mar. 16, 1982), as amended at 53 Fed. Reg. 7868 (Mar. 10, 1988), and as amended at 54 Fed. Reg. 11372 (Mar. 20, 1989).

174 *See* Regulation D Revisions; Exemption for Certain Employee Benefit Plans, Exchange Act Rel. No. 33-6683 (Jan. 16, 1987), 52 Fed. Reg. 3015 at 3017 (Jan. 30, 1987).

175 Commissioner Hester M. Peirce, *Prosperity's Door*, Speech at The FINRA Certified Regulatory and Compliance Professional Program, Georgetown University (June 21, 2021) ("Prosperity's Door") ("Essentially, then, most Americans cannot participate in the private markets. . . . Individuals who do not meet the accredited investor standard are increasingly deprived of the opportunity to participate in these potentially significant early gains."), https://www.sec.gov/news/speech/peirce-prosperity-door-072121.

176 *See* McKinsey & Co., *A new decade for private markets*, McKinsey Global Private Markets Review 2020 (Feb. 2020), at 2, https://www.mckinsey.com/~/media/mckinsey/industries/private%20equity%20and%20principal%20investors/our%20insights/mckinseys%20private%20markets%20annual%20review/mckinsey-global-private-markets-review-2020-v4.ashx (last visited Nov. 24, 2021).

177 For instance, in 2019, public offerings accounted for $1.2 trillion (30.8 percent) of new capital, compared to an estimated $2.7 trillion (69.2 percent) raised through private offerings. *See generally* Facilitating Capital Formation and Expanding Investment Opportunities by Improving Access to Capital in Private Markets, Exchange Act Rel. No. 33-10884 (Nov. 2, 2020); 85 Fed. Reg. 17956 at 17957 (Mar. 31, 2020). *See also* Scott Bauguess, Rachita Gullapalli and Vladimir Ivanov, SEC, Div. of Econ. and Risk Analysis, Capital Raising in the U.S.: An Analysis of the Market for Unregistered Securities Offerings, 2009-2017 (Aug. 2018), https://www.sec.gov/files/DERA%20white%20paper_Regulation%20D_082018.pdf.

178 Accredited Investor Final Rules, 85 Fed. Reg. at 64272-64273.

179 *See id.* at 64277 – 64278.

180 *See generally id.* at 64235.

181 *See* Accredited Investor Final Rules, 85 Fed. Reg. at 64236. Comments on the proposed changes to the accredited investor definition are available at https://www.sec.gov/comments/s7-25-19/s72519.htm (last visited Nov. 29, 2021).

182 *Id. See also id.* at n. 14 – 15.

183 *Id. See also id.* at n. 16.

184 Press Release, SEC, *SEC Announces Annual Regulatory Agenda* (June 11, 2021), https://www.sec.gov/news/press-release/2021-99.

185 SEC Prerule Stage, Exempt Offerings, RIN 3235-AM85, https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202104&RIN=3235-AM85

186 *Id.*

187 FINRA Special Notice, FINRA Requests Comment on Effective Methods to Educate Newer Investors (June 30, 2021), https://www.finra.org/rules-guidance/notices/special-notice-063021#notice.

188 *Id.*

189 *Id.* at n. 4, citing FINRA Investor Education Foundation and NORC at the University of Chicago, *Investing 2020: New Accounts and the People Who Opened Them* (Feb. 2021), https://www.finrafoundation.org/sites/finrafoundation/files/investing-2020-new-accounts-and-the-people-who-opened-them_1_0.pdf.

190 *Id.*

191 *Id.*

192 *See supra* note 187 for the comment letters.

193 *See* Letter from David P. Meyer, President, Public Investors Advocate Bar Association to Jennifer Piorko Mitchell, Office of the Corporate Secretary, FINRA (Aug. 31, 2021), https://www.finra.org/sites/default/files/NoticeComment/David%20Meyer_PIABA_8.30.2021%20-%20FINRA%20Special%20Notice%20-%206.30.21%20%28August%2031%202021%29.pdf.

194 *Id.*

195 *Id.* at n. 3, citing *Social Media Use in 2021, Pew Research Center* (April 7, 2021), https://www.pewresearch.org/internet/2021/04/07/social-media-use-in-2021/.

196 *Id.*

197 *See supra* note 193.

198 *See* Letter from Matthew Kipness, Intern, and Christine Lazaro, Esq. Director of the Securities Arbitration Clinic and Professor of Clinical Legal Education, St. John's University School of Law Securities Arbitration Clinic to Jennifer Piorko Mitchell, Office of the Corporate Secretary, FINRA (Aug. 30, 2021), https://www.finra.org/sites/default/files/NoticeComment/Matthew%20Kipnis%20%26%20Christine%20Lazaro_St.%20Johns_8.30.2021%20-%20Comment%20Letter%20-%20FINRA%20Special%20Notice.pdf.

199 *Id.*

200 *Id.*

201 *Id.*

202 *See* Letter from Melanie Mortimer, President, SIFMA Foundation to Jennifer Piorko Mitchell, Office of the Corporate Secretary, FINRA (Aug. 30, 2021), https://www.finra.org/sites/default/files/NoticeComment/Melanie%20Mortimer_SIFMA_8.30.2021%20-%20SIFMA%20Foundation%20Comment%20on%20FINRA%20Special%20Notice%20on%20Investor%20Education.pdf. *See* also Letter from Robin Traxler, Senior Vice President Policy and Deputy General Counsel, Financial Services Institute to Jennifer Piorko Mitchell, Office of the Corporate Secretary, FINRA (Aug. 30, 2021), (https://www.finra.org/sites/default/files/NoticeComment/Robin%20Traxler_FSI_8.30.2021%20-%20FSI%20Comment%20on%20FINRA%20Special%20Notice%20on%20Investor%20Education.pdf).

203 *See* Exchange Act Rel. No. 92225; File No. SR–FINRA–2021–016, (Jun. 22, 2021), 86 Fed. Reg. 34084 (Jun. 28, 2021) (Proposed Amendments to Rule 2165) https://www.sec.gov/rules/sro/finra/2021/34-92225.pdf (last visited Nov. 26, 2021).

204 *See* FINRA Rule 2165(a)(1) https://www.finra.org/rules-guidance/rulebooks/finra-rules/2165.

205 Proposed Amendments to Rule 2165, 86 Fed. Reg. at 34084.

206 *Id.*

207 *See* Exchange Act Rel. No. 34–93103; File No. SR–FINRA– 2021–01686 (Sept. 22, 2021); Fed. Reg. 53696, 53697 (Sept. 28, 2021), https://www.federalregister.gov/documents/2021/09/28/2021-20970/self-regulatory-organizations-financial-industry-regulatory-authority-inc-order-instituting#citation-1-p53696.

208 Proposed Amendments to Rule 2165, 86 Fed. Reg. at 34087.

209 *Id.* at 34086.

210 *See* FINRA Regulatory Notice 19-27 (Aug. 9, 2019), https://www.finra.org/sites/default/files/2019-09/Regulatory-Notice-19-27.pdf. *See also* FINRA Regulatory Notice 20-34 (Oct. 5, 2020), Regulatory Notice 20-34 (finra.org).

211 Comments on the proposed amendments to FINRA Rule 2165 are available at https://www.sec.gov/comments/sr-finra-2021-016/srfinra2021016.htm (last visited Nov. 29, 2021).

212 *See, e.g.*, Letter from William Benson, National Policy Adviser, and Kendra Kuehn, National Policy Adviser, National Adult Protective Services Association to Vanessa Countryman, Secretary, SEC (July 29, 2021), https://www.sec.gov/comments/sr-finra-2021-016/srfinra2021016-9101913-246872.pdf).

213 Letter from Christopher Gerold, President, NASAA, to Jennifer Piorko Mitchell, Office of the Corporate Secretary, FINRA, at 2 (Oct. 8, 2019), https://www.finra.org/sites/default/files/NoticeComment/12.8.2020%20-%20NASAA%20Comment%20Letter%20Re%20Reg.%20Notice%2020-34%20%5BLisa%20Hopkins%5D.pdf. *See* also 86 Fed. Reg. at 34087.

214 *See, e.g.*, Letter from Lisa Bleier and Marin E. Gibson, SIFMA, to Securities Exchange Commission, at 1 (July 28, 2021), https://www.sec.gov/comments/sr-finra-2021-016/srfinra2021016-9106725-246951.pdf).

215 *See e.g.*, Letter from Christine Lazaro, Director of the Securities Arbitration Clinic and Professor of Clinical Legal Education, St. John's University to Ms. Vanessa Countryman, Office of the Secretary, U.S. Securities and Exchange Commission, at 2 (Jul. 19, 2021), https://www.sec.gov/comments/sr-finra-2021-016/srfinra2021016-9072406-246548.pdf; and Letter from Ron Long, Head of Aging Client Services, Wells Fargo, to Secretary, Securities and Exchange Commission, at 2 (Jul. 15, 2021), https://www.sec.gov/comments/sr-finra-2021-016/srfinra2021016-9065925-246467.pdf.

216 *See* Letter from Jeanette Wingler, Associate General Counsel, FINRA, to Vanessa Countryman, Secretary, U.S. Securities and Exchange Commission, at 5 (Aug. 21, 2021) ("FINRA Response Letter"), https://www.sec.gov/comments/sr-finra-2021-016/srfinra2021016-9160159-247786.pdf.

217 *See generally id*.

218 *Id.* at 3.

219 *Id.* at 5.

220 *Id.* at 4.

221 Exchange Act Rel. No. 34–93103; File No. SR–FINRA– 2021–016 (Sept. 22, 2021), 86 Fed. Reg. 53696 (Sept. 28, 2021) https://www.sec.gov/rules/sro/finra/2021/34-93103.pdf.

222 *See* Report on Objectives, Fiscal Year 2022, *supra* note 29, at 30 – 31.

223 *Id.*

224 *Id.*

225 Press Release, SEC, *SEC Announces Pilot Securities Arbitration Clinic to Help Small Investors—Levitt Responds to Concerns Voiced at Town Meetings* (Nov. 12, 1997), https://www.sec.gov/news/digest/1997/dig111297.pdf.

226 Twelve law school investor advocacy clinics were in active operation at the close of this Reporting Period: six in New York (Benjamin N. Cardozo School of Law, Cornell Law School, Fordham University School of Law, New York Law School, Pace University School of Law, and St. John's University School of Law); and one each in the District of Columbia (Howard University School of Law), Florida (University of Miami School of Law), Illinois (Northwestern University School of Law), Nevada (University of Nevada Las Vegas School of Law), New Jersey (Seton Hall University School of Law), and Pennsylvania (University of Pittsburgh School of Law). For more information on the significance of law school investor advocacy clinics to retail investors, *see* Report on Activities, Fiscal Year 2019, *supra* note 104 at 33-34.

227 For an overview of the Law School Clinic Outreach Program (LSCOP), *see* Report on Objectives, Fiscal Year 2021, *supra* note 3, at 33.

228 For a timeline highlighting the Ombudsman's formal outreach and engagement efforts from the start of the LSCOP in October 2016 through June 2019, and a discussion of the postponed 2020 Investor Advocacy Clinic Summit, *see id*. at 34-36.

229 *See* Report on Objectives, Fiscal Year 2022, *supra* note 29, at 35 – 37.

230 *See* Report on Activities, Fiscal Year 2019, *supra* note 104, at 34.

231 *See* Report on Objectives, Fiscal Year 2022, *supra* note 29, at 35.

232 Due to the COVID-19 pandemic, FINRA temporarily moved to virtual arbitration proceedings. *See* Report on Activities, Fiscal Year 2019, *supra* note 104, at 46. In-person hearings resumed at all FINRA Dispute Resolution hearing locations on August 2, 2021. *See* FINRA, *Coronavirus Impact on Arbitration & Mediation Hearing*, https://www.finra.org/rules-guidance/key-topics/covid-19/hearings/impact-on-arbitration-mediation (last visited Nov. 26, 2021).

233 *See* Craig McCann & Chuan Qin, *The Impact of ZOOM on FINRA Arbitration Hearings*, SLCG (Jan. 22, 2021), https://www.slcg.com/pdf/sampleresults/Impact%20of%20Zoom%20on%20FINRA%20Claimants%20Final.pdf.

234 Presenting law school clinics included the University of Nevada Las Vegas, University of Miami, Pace University, Northwestern University, Fordham University, New York Law School, and Cardozo School of Law. While other law school clinics wanted to make presentations, some were unable to do so, given their clinic structure (semester versus full academic year) and limited opportunities to represent retail investors during the pandemic.

235 For a fuller description of Summit feedback, see Report on Objectives, Fiscal Year 2022, *supra* note 29, at 36.

236 Exchange Act § 39(a), 15 U.S.C. § 78pp(a).

237 *Id.*

238 Exchange Act § 39(a)(2)(B), 15 U.S.C. § 78pp(a)(2)(B).

239 Exchange Act § 39(g), 15 U.S.C. § 78pp(g).

240 Exchange Act § 39(h), 15 U.S.C. § 78pp(h).

241 According to Exchange Act Section 4(g)(6)(B)(ii), 15 U.S.C. § 78d(g)(6)(B)(ii), a Report on Activities must include several enumerated items, and it may include "any other information, as determined appropriate by the Investor Advocate."

242 17 C.F.R. §§ 200.735-3(b)(2)(i), 230122 (2014); Exchange Act § 24(b), 15 U.S.C. § 78x; 5 U.S.C. § 552a(i)(1); SECR18-2, Section 8.5 (Nonpublic Information) (July 31, 2005).

243 SEC, Recommendation of the Investor Advisory Committee Regarding Recommendation of the Investor-as-Owner Subcommittee on Special Purpose Acquisition Companies (Sept. 9, 2021), https://www.sec.gov/spotlight/investor-advisory-committee-2012/draft-recommendation-of-the-iap-and-iao-subcommittees-on-spacs-082621.pdf.

244 SEC, Recommendation of the Investor Advisory Committee Regarding Recommendation of the Investor-as-Owner Subcommittee on Rule 10b5-1 Plans (Sept. 9, 2021), https://www.sec.gov/spotlight/investor-advisory-committee-2012/draft-recommendation-of-the-iao-subcommittee-on-10b5-1-plans-082621.pdf.

245 SEC, Recommendation of the Investor Advisory Committee Regarding Minority and Underserved Inclusion in Investment and Financial Services (Mar. 11, 2021), https://www.sec.gov/spotlight/investor-advisory-committee-2012/20210311-minority-and-underserved-inclusion-recommendation.pdf.

246 SEC, Recommendation of the Investor Advisory Committee Regarding Recommendation of the Market Structure Subcommittee on Credit Rating Agencies (Mar. 11, 2021), https://www.sec.gov/spotlight/investor-advisory-committee-2012/20210311-credit-rating-agencies-recommendation.pdf.

247 SEC, Recommendation of the Investor Advisory Committee Regarding Recommendation of the Investor as Owner Subcommittee on Accounting and Financial Reporting Disclosure (May 5, 2020), https://www.sec.gov/spotlight/investor-advisory-committee-2012/accounting-and-financial-disclosure.pdf.

248 *See* Coronavirus (COVID-19)—Disclosure Considerations Regarding Operations, Liquidity, and Capital Resources, CF Disclosure Guidance Topic No. 9A (June 23, 2020), https://www.sec.gov/corpfin/covid-19-disclosure-considerations.

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