

The background of the cover features a scenic view of the Washington Monument on the left, partially obscured by cherry blossom branches in the upper right. Below the monument is a dense line of cherry blossom trees along the edge of a body of water, with their reflection clearly visible in the water. The sky is a clear, bright blue.

# Report on Objectives

FISCAL YEAR 2024



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



OFFICE OF THE INVESTOR ADVOCATE

# REPORT ON OBJECTIVES

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FISCAL YEAR 2024

Section 4(g) of the Securities Exchange Act of 1934 (Exchange Act), 15 U.S.C. § 78d(g), requires the Investor Advocate to file two reports per year with the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives.<sup>1</sup> A Report on Objectives is due no later than June 30 of each year, and its purpose is to set forth the objectives of the Investor Advocate for the following fiscal year.<sup>2</sup> This report contains a summary of the Investor Advocate’s primary objectives for Fiscal Year 2024, beginning October 1, 2023.

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

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





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# MESSAGE FROM THE INVESTOR ADVOCATE



Earlier this year, I was honored to be appointed as the second Investor Advocate of the U.S. Securities and Exchange Commission (SEC). As the new Director of the Office of the Investor Advocate

and as an investor myself, I owe a debt of gratitude to Rick Fleming, who served for eight years as the first individual appointed to this role. Rick's dedication to public service, thoughtful approach to policy questions, and commitment to the fair treatment of investors are traits I aspire to emulate in my tenure as the Investor Advocate. I also wish to acknowledge Marc Sharma, Chief Counsel of the Office of the Investor Advocate, who led the Office for more than six months after Rick Fleming stepped down.

The SEC has a three-part mission: to protect investors, to maintain fair, orderly, and efficient markets, and to facilitate capital formation. These

three objectives are interrelated, and protecting investors provides a firm foundation for markets to perform at their best. Catastrophic failures to adequately protect investors led Congress to establish the SEC in 1934. Eighty years later, the commitment to investor protection was accelerated with the creation and formation of the Office of the Investor Advocate. In 2014, the Office was operational, following the passage of an act of Congress in 2010, to provide retail investors a dedicated voice inside the Commission. In the role of Investor Advocate, I am privileged to lead an office whose main objective is to identify, analyze, and address the concerns of investors.

First among the statutorily mandated functions of this Office is the directive to assist retail investors in resolving significant problems such investors may have with the Commission or with self-regulatory organizations (SROs). To fulfill this function, it is our intention to strengthen our efforts to help investors who seek our assistance with problems of this nature. In pursuit of providing the best service possible, Stacy Puente has been appointed as the new Ombudsman (Ombuds). She brings extensive securities law experience and a deep commitment to assisting individuals in her new role. Additional

staff have also been recruited to help ensure the appropriate attention and service is provided to investors who contact the Ombuds Office. In Fiscal Year 2024, we will implement improvements in the technology used to assist investors. The software updates aim to streamline the investor user experience, and make our Ombuds service more efficient. By prioritizing and resourcing these actions, we signal our unwavering commitment to serving retail investors.

Congress also directed the Office of the Investor Advocate to identify problems investors may have with financial service providers and investment products, as well as areas in which investors would benefit from changes in the Commission's or SROs' regulations and policies. To ensure that retail investors are at the center of our efforts to meet these obligations, we will place a renewed focus on engaging directly with investors and their representatives, especially those who do not routinely communicate with financial regulators. We will also continue to enhance our research strategies, which offer evidence-based solutions to the challenges—both old and new—that retail investors face in a rapidly changing investment environment.

The robust regulatory agenda of the Commission provides our Office a roadmap of proposals to analyze from the perspective of retail investors. As detailed below, our Office is currently evaluating numerous pending and forthcoming proposals of significance to retail investors, informed by our research and investor engagements. We will continue to evaluate such proposals in the next fiscal year.

As the daughter of immigrants who were not always free to enjoy the rights and opportunities that are unique to our nation, I am mindful that preserving and promoting those rights and opportunities demand our daily attention. Our capital markets are the envy of the world, and the financial freedom they offer—but do not guarantee—give millions of investors hope. In the role I have been privileged to assume, I am committed to listen to the experiences of investors, promote their interests, and encourage the conditions that can foster financial success.

I am pleased to submit this Report on Objectives for Fiscal Year 2024 on behalf of the Office of the Investor Advocate, and I welcome any questions from Members of Congress.

Respectfully Submitted,



Cristina Begoña Martin Firvida  
Investor Advocate



# OBJECTIVES OF THE INVESTOR ADVOCATE



## ASSISTING RETAIL INVESTORS

The Investor Advocate is responsible for assisting retail investors in resolving significant problems that investors may have with the Commission or with self-regulatory organizations (SROs).<sup>4</sup> To help accomplish this objective, the Investor Advocate has appointed an Ombuds to, among other things, act as the primary liaison between the Commission and retail investors in resolving problems that retail investors may have with the Commission or with SROs.<sup>5</sup> The Ombuds' Report is included within this Report on Objectives.<sup>6</sup>



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

The Investor Advocate also identifies areas in which investors would benefit from changes in the regulations of the Commission or the rules of SROs.<sup>7</sup> This is a broad mandate that authorizes the Investor Advocate to examine the entire regulatory scheme, including existing rules and regulations, to identify those areas that could be improved for the benefit of investors. For example, the Investor Advocate may review the rules and regulations governing existing equity market structure to determine whether any regulatory changes to that framework would benefit investors. These and other concerns are discussed in greater detail below in the section entitled SEC Policies and SRO Filings.



## IDENTIFYING PROBLEMS WITH FINANCIAL SERVICE PROVIDERS AND INVESTMENT PRODUCTS

The Investor Advocate also is responsible for identifying problems that investors have with financial service providers and investment products.<sup>8</sup> The Investor Advocate continues to monitor investor inquiries and complaints, SEC and SRO staff reports, enforcement actions, and other data to determine which financial service providers and investment products may be problematic. The Investor Advocate identifies these problems in the Reports on Activities filed every December.



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

The Investor Advocate analyzes the potential impact on investors of proposed regulations of the Commission and proposed rules of SROs on an ongoing basis.<sup>9</sup> In Fiscal Year (FY) 2024, the Office will review significant rulemakings of the Commission and SROs and will communicate with investors and their representatives to determine the potential impact of proposed rules. In the section entitled Investor Engagement, we expand upon our plan to engage with investors and their representatives. In addition, we will study investor behavior and utilize a variety of research methods to examine the efficacy of certain policy proposals. For example, we will study the effectiveness of various disclosures that are

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



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

The Investor Advocate may propose to the Commission changes in the regulations or orders of the Commission and to Congress any legislative, administrative, or personnel changes that may be appropriate to mitigate problems identified and to promote the interests of investors.<sup>10</sup> As we study the issues in our SEC Policies and SRO Filings, as set forth below, we may recommend to the Commission and/or to Congress changes that will promote the interests of investors.



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

Exchange Act Section 39 establishes the Investor Advisory Committee (IAC).<sup>11</sup> The purpose of the Committee is to advise and consult with the Commission on regulatory priorities, issues impacting investors, initiatives to protect investors, and related matters. The Investor Advocate is a member of the IAC,<sup>12</sup> and the Office will continue to provide staff and operational support to the IAC during FY 2024, as we have done since 2014. The section entitled Summary of Investor Advisory Committee Recommendations and SEC Responses summarizes recommendations the IAC has made since June 2022, and indicates the SEC's responses to them. Although we are not required to report IAC recommendations and SEC responses, historically, we have done so.



# POLICY AGENDA FOR FISCAL YEAR 2024

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

## SEC POLICIES AND SRO FILINGS

After discussions with numerous knowledgeable parties, both inside and outside the Commission, and after due consideration, the Office will focus on the following policies and filings during FY 2024:

- Broker and Adviser Conduct
- Private Markets
- Equity Market Structure
- Outsourcing by Investment Advisers
- Mutual Funds: Transaction Costs and Dilution

## Broker and Adviser Conduct

Retail investors typically access the securities markets through relationships with investment advisers and/or broker-dealers. Because investors are not homogenous, they benefit from the availability of diverse types of advice relationships and investment products and services. Our Office advocates to improve the quality and transparency of these relationships, to bring regulations and disclosures in line with reasonable investor expectations, and to preserve investor access (in terms of choice and cost) to a variety of investment services and products.

Since the implementation of Regulation Best Interest (Reg BI) in 2020, we have monitored how the Commission and the Financial Industry Regulatory Authority, Inc. (FINRA) use this regulatory tool to address violative conduct in the brokerage business and otherwise help to improve outcomes for retail customers. As our Office asserted at the time, the elimination of sales contests, the enhanced disclosures of conflicts of interest, and other investor-friendly improvements benefit retail investors.<sup>13</sup> We believe that Reg BI should be enforced rigorously to help ensure that broker behavior matches customers' expectations with respect to receiving investment advice.

Similarly, in connection with the Commission's interpretation regarding the standard of conduct for investment advisers, we have monitored subsequent Commission communications addressing the duty of care enforced under the Investment Advisers Act of 1940 (Advisers Act) governing registered investment advisers. Although the specific application of Reg BI and the investment adviser fiduciary standard may differ in some respects and be triggered at different times, in the staff's view, they generally yield substantially similar results in terms of the ultimate responsibilities that registered brokers and investment advisers owe to retail investors.<sup>14</sup>

With more and more discount brokers facilitating retail investor trading through mobile devices and applications, there are a host of important policy questions to consider. Although these technological developments have increased investor access and choice, they have also created new business models and conflicts of interest. These trading platforms typically offer customers zero-commission trades, with revenues to the firm often coming from the market participants who accept the trades in an arrangement known as "payment for order flow." In a sense, because the retail investor is paying nothing directly to the broker-dealer, the investor is both the product and the customer. In light of these developments, it is important to consider both: (1) how these digital platforms fit within the Reg BI framework concerning investment recommendations; and (2) to the extent that this new digital engagement does not implicate Reg BI, how other regulatory tools might help ensure that retail investors are the primary beneficiaries of this new technology.<sup>15</sup>

Similarly, to the extent that investment advisers are now providing investment advice to retail clients through digital engagement, the Commission has already made clear that it expects any such advice to be consistent with the adviser's fiduciary duty.<sup>16</sup> Registered advisers must also continue to comply with various other obligations imposed by rules adopted under the Advisers Act, including disclosure requirements, reporting requirements, marketing requirements, compliance program obligations, supervision requirements and insider trading procedures, and recordkeeping requirements.<sup>17</sup> We will continue to monitor how advisers meet their existing fiduciary obligations in light of technological changes, and we will continue to advocate for strengthened investor protection measures should new practices threaten existing protections.

We were encouraged to see the Commission's regulatory agenda, as made public pursuant to the Regulatory Flexibility Act, include rulemaking addressing brokers' and advisers' digital engagement practices for retail investors.<sup>18</sup> As noted above, however, the use of predictive data analytics, differential marketing, and behavior prompts may implicate Reg BI or an adviser's fiduciary duty. Even where enhanced content, presentations, and tailoring do not do so, it is appropriate for regulators to consider enhancements to their oversight. In FY 2024, we intend to engage with the Commission and interested parties on the fundamental question of how best to enhance investor protection in this space.



The Commission has also proposed enhancements to broker order routing behavior, an area where investors, both retail and institutional, largely depend upon their brokers' expertise to implement trades.<sup>19</sup> The proposed rules intend to enhance the existing regulatory framework maintained by FINRA and the Municipal Securities Rulemaking Board (MSRB). A broker's duty of best execution requires customers' trades to be executed at the most favorable terms reasonably available under the circumstances, but the details underlying the execution are of particular importance. Our Office continues to review the public comments received on proposed Regulation Best Execution,<sup>20</sup> and we look forward to working with the Commission to determine the most effective way to improve investor outcomes.

FINRA, as the SRO for broker-dealers, plays many additional roles in regulation and oversight. Issues related to broker conduct, including during the customer arbitration process and in its oversight of trading in the over-the-counter equity market, are the frequent subject of complaints that investors bring to the attention of SEC Ombuds Stacy Puente. The Ombuds' Office was also instrumental in analyzing the customer arbitration process for investment advisers this year, and will likely continue to focus on the issue. Thus, other important issues involving broker and adviser conduct are included below in the Ombuds' Report. Ombuds Puente and her staff will continue to lead our dialogue with the Commission and FINRA to address these issues on behalf of investors during FY 2024.

Finally, we are considering the comments received in connection with the Commission's cybersecurity proposals, with a particular focus on amendments to Regulation S-P proposed in March 2023.<sup>21</sup> Cybersecurity breaches seem to have become more prevalent recently, and the proposed amendments to Regulation S-P are intended to enhance the protection of customer information by, among other things, requiring broker-dealers, investment companies, registered investment advisers, and transfer agents (collectively, "covered institutions") to provide notice to individuals affected by certain types of data breaches that may put them at risk of identity theft or other harm.<sup>22</sup> More specifically, the proposed amendments would: require covered institutions to adopt written policies and procedures for an incident response program to address unauthorized access to or use of customer information; require covered institutions to have written policies and procedures to provide timely notification to affected individuals whose sensitive customer information was or is reasonably likely to have been accessed or used without authorization; and broaden the scope of information covered under Regulation S-P.<sup>23</sup>

### **Private Markets**

Over the past 15 years, private markets in the United States have flourished, with the amount of capital raised in these markets during this time far surpassing the amount of capital raised in public registered offerings.<sup>24</sup> According to one estimate, total global private market assets under management reached \$11.7 trillion as of June 2022.<sup>25</sup> Private markets have become a vital avenue for companies seeking to raise capital and

for investors seeking investment opportunities and portfolio diversification.<sup>26</sup> However, investing in the private markets may involve a number of heightened risks compared to investing in the public markets, particularly for retail investors. Those risks may include reduced, incomplete or unreliable disclosure, illiquidity, and greater risk of fraud and/or investment loss.<sup>27</sup>

Recently, a panel discussion at the Investor Advisory Committee’s March 2023 meeting highlighted various factors contributing to the growth of the private markets, the impact of regulatory differences between the private and public markets, and the risks faced by retail and institutional investors in the private markets.<sup>28</sup> Among other things, the panelists explored the performance of private investments (such as private equity), the current regulatory environment, and investor protection concerns in the private markets.<sup>29</sup> The panelists also offered a range of views on different approaches to improving the regulation of the private markets.<sup>30</sup>

In the past, we have expressed concern regarding the continued shift of capital raising from public markets to private markets.<sup>31</sup> Due to a series of legislative and regulatory actions over time, a company arguably can now meet most, if not all, of its capital-raising needs, as a practical matter, without ever having to go through the registration process for securities offerings that is a central underpinning of the Securities Act of 1933.<sup>32</sup> These changes, which include an expansion of the exemptions from the registration process, have made it easier for many companies to fund their growth through capital raising on a much larger

scale without necessitating the public disclosure of information that would otherwise be required under the securities laws. Some commentators point to this development as a factor in the decline in the number of initial public offerings and public companies in the United States over the years.<sup>33</sup>

Another reason behind the continued growth of private markets is the increasing number of investors who qualify as “accredited investors” and are thus eligible to invest in private offerings under a number of offering exemptions.<sup>34</sup> Individuals qualify as accredited investors based on certain wealth<sup>35</sup> and income<sup>36</sup> thresholds, which have not been adjusted for inflation since they were adopted in the 1980s, or through other measures serving as a proxy for financial sophistication.<sup>37</sup> As noted in a prior report,<sup>38</sup> however, we recognize that the accredited investor definition has been a contested issue, with some commentators supportive of an expanded definition, others advocating for a more restrictive definition (such as higher wealth and/or income thresholds), and still others suggesting that the definition be eliminated altogether so that anyone inclined to do so can invest in private offerings.<sup>39</sup>

In managing trillions of dollars in private fund assets, registered private fund advisers also play a critical role in the private markets.<sup>40</sup> In February 2022, the Commission proposed new rules and amendments intended to enhance the regulation of private fund advisers and to protect private fund investors by increasing transparency, competition, and efficiency in the private fund space.<sup>41</sup> The proposed reforms are designed to protect private fund investors by increasing their visibility into



certain practices, establishing requirements to address practices that have the potential to lead to investor harm, and prohibiting adviser activity that is contrary to the public interest and the protection of investors.<sup>42</sup>

During FY 2024, the Office will continue to engage in outreach to investors and market participants regarding the issues surrounding the private markets, such as accredited investor status, the informational needs of investors, transparency in these markets, and the interplay between the private and public markets, and we will continue to share feedback internally with our Commission colleagues. The Commission’s Regulatory Flexibility Act Agenda currently includes several rulemaking projects relating to private markets and capital raising,<sup>43</sup> and we will endeavor to provide a voice for investors as the Commission contemplates potential changes in this area. We will also continue to monitor pending legislative proposals in Congress that address various aspects of the private markets and evaluate the impact that these bills would have on investors.<sup>44</sup>

### **Equity Market Structure**

Like others at the Commission, our Office is sensitive to the fact that equity market structure issues are complex and require a broad understanding of statutory requirements, economic principles, and practical considerations. However, while competing interests may need to be balanced for markets to work efficiently, our Office has long focused on one overriding concern as we examine these issues: whether the equity market as it exists today is fair for investors, or whether it prioritizes the interests of other market participants instead,

to the disadvantage of investors. To evaluate this concern, we consider whether the incentives in the current structure tend to favor or disfavor long-term investors, and what changes could improve the investor experience.

In December 2022, the Commission proposed a set of four significant rulemaking intended to improve the environment for retail and institutional trading in the modern market.<sup>45</sup> The rules would: (1) establish a Commission-level best execution regulatory framework (*as discussed above*); (2) require certain retail orders to be exposed to competition in open public auctions; (3) amend existing rules to narrow “tick sizes” for quoting and trading certain stocks, lower market access fee caps, and accelerate transparent pricing; and (4) amend execution quality disclosure requirements for market centers. Through the perspective of our overriding concern, we are considering how these proposed changes could, in whole or in part, help or harm retail and institutional investors.

Our Office’s analysis can draw from a variety of sources. The public comment period for these proposals closed in March 2023, and our Office continues to consider the helpful input from both retail and institutional investors in evaluating what enhancements or amendments could improve the proposals.

There are also areas that could benefit from our Office’s own behavioral research, to examine the ways that investors are able to identify and incorporate information into their decisions. The Commission has, for example, asked for

public thoughts on ways the Commission could improve the accessibility of the execution quality disclosure reports, which are intended to increase transparency for investors and facilitate the ability to compare. As proposed, this rule could require over 350 market centers to each publish human-readable, monthly reports on separate public websites.<sup>46</sup> The search costs for anyone looking to compare and contrast all of the various reports could be prohibitive. In this area, we intend to encourage the Commission to consider not only how the presentation of the information on these reports can best facilitate retail investor decision-making, but also how centralization of the reports themselves may factor into their usefulness.<sup>47</sup>

We also continue to support efforts to modernize the overall infrastructure for the collection, consolidation, and dissemination of market data for stocks.<sup>48</sup> Retail investors benefit from the improved content and competitive infrastructure for quotation and trading data, either directly when trading on mobile devices and applications or indirectly as participants in mutual and pension funds. In September 2022, the Commission disapproved an SRO proposal that would have provided key upgrades to the content and infrastructure for “core data” consolidated and widely distributed, but also would have included fees that commenters, including investors, argued were flawed and lacked justification.<sup>49</sup> The exchanges and FINRA need to submit another fee proposal, and our Office will work to ensure that the final rule addresses commenters’ concerns.

Many retail investors have expressed concern regarding the practice of short selling. We intend to support the Commission’s efforts to enhance transparency in short selling<sup>50</sup> as well as the opaque

network of stock lending and borrowing that facilitates the practice.<sup>51</sup> Maintaining a repository of relevant data could improve the Commission’s ability to monitor this area of the market in real time. Further, we will consider whether guidance concerning what constitutes a broker-dealer’s reasonable basis for the “locate” requirement for heavily shorted companies should be considered to address investor concerns in this area.

In addition to evaluating rulemaking by the Commission during FY 2023, we will continue to examine the hundreds of rule proposals that are filed with the Commission by the SROs. Typically, a number of these filings involve market structure issues that impact investors. For example, in March 2023, the Commission instituted proceedings to determine whether to approve or disapprove a FINRA proposal to allow a new entrant to post stock quotes on its Alternative Display Facility in a manner that would allow the information to be included in consolidated market data.<sup>52</sup> Given the new entrant proposes to use a novel, intentionally delayed matching process, commenters have expressed concern about whether the quotations from the system would be consistent with Regulation NMS’s definition of an “automated quotation,” and whether the integration into national market system would lead to materially worse executions for investors.<sup>53</sup> During the upcoming fiscal year, we will continue to monitor this and other SRO filings, and consider how best to advance the interests of investors during the public process.



### **Outsourcing by Investment Advisers**

In October 2022, the Commission proposed to prohibit registered investment advisers from outsourcing certain services and functions to third-party service providers without conducting due diligence and monitoring of the service providers.<sup>54</sup>

Like businesses in many other industries, investment advisers have increasingly engaged service providers to support or perform certain functions or services traditionally performed in-house.<sup>55</sup> The Commission acknowledges in the outsourcing proposal referenced above (Outsourcing Proposal) that, among other benefits, service providers may give an adviser access to certain specialized expertise, reduce risks of keeping a function in-house that the adviser is not equipped to perform, or offer cost savings that may be passed on to investors.<sup>56</sup> The Commission also notes, however, that an adviser's clients could be significantly harmed if the adviser outsources a function or service without adequate adviser oversight.<sup>57</sup>

The Advisers Act establishes a federal fiduciary duty for investment advisers that comprises a duty of loyalty and a duty of care and is made enforceable by the antifraud provisions of the Advisers Act.<sup>58</sup> This combination of obligations has been characterized as requiring the investment adviser to act in the best interests of its client at all times.<sup>59</sup> Outsourcing a particular function or service does not alter or diminish an adviser's obligations under the Advisers Act and the other federal securities laws. Despite investment advisers' fiduciary obligations, however, the Outsourcing Proposal cites an increase in issues related to outsourcing and inadequate adviser oversight.<sup>60</sup>

In an effort to address these issues, the Outsourcing Proposal would establish a regulatory framework requiring advisers to comply with specific elements as part of a due diligence and monitoring process to oversee the provision of certain "covered functions." The proposal defines a "covered function" as "(1) a function or service that is necessary for the adviser to provide its investment advisory services in compliance with the Federal securities laws, and (2) that, if not performed or performed negligently, would be reasonably likely to cause a material negative impact on the adviser's clients or on the adviser's ability to provide investment advisory services." The determination of what is a covered function would depend on facts and circumstances, as the proposed rule is meant to encompass functions or services that are necessary for a particular adviser to provide its investment advisory services.<sup>61</sup> The proposal lists examples of potential covered function categories an adviser may wish to consider, however, such as: Adviser / Subadviser; Client Services; Cybersecurity; Investment Guideline / Restriction Compliance; Investment Risk; Portfolio Management (excluding Adviser / Subadviser); Portfolio Accounting; Pricing; Reconciliation; Regulatory Compliance; Trading Desk; Trade Communication and Allocation; and Valuation.<sup>62</sup>

The Outsourcing Proposal would require an adviser, prior to retaining a service provider to perform a covered function, to reasonably identify and determine through due diligence that outsourcing the covered function to that service provider would be appropriate by considering:

- The nature and scope of the covered function;
- Potential risks resulting from the service provider performing the covered function, including how to mitigate and manage such risks;

- The service provider’s competence, capacity, and resources necessary to perform the covered function;
- The service provider’s material subcontracting arrangements related to the covered function;
- Coordination with the service provider for federal securities law compliance; and
- The orderly termination of the performance of the covered function.<sup>63</sup>

The proposal also would require the adviser to monitor the service provider’s performance and reassess the selection of the service provider, and to comply with certain reporting and recordkeeping requirements.<sup>64</sup>

The Outsourcing Proposal has encountered significant criticism, both within and outside the Commission. For instance, some commenters have challenged the proposal, indicating, among other things, that the Commission has underestimated the cost burden of the Outsourcing Proposal. These commenters argue that increased costs are likely to be passed on to adviser clients, ultimately harming investors.<sup>65</sup>

While remaining cognizant of investment advisers’ fiduciary duty obligations, we also believe strong oversight of advisers’ third-party service providers is necessary to protect investors from the risks detailed in the Outsourcing Proposal. At the same time, we are sensitive to, among other things, concerns about the compliance costs associated with the proposal. In particular, we are concerned that such cost burdens could be passed on to investors, especially retail investors who currently benefit from investing in mutual funds with low fees and expense ratios.

We look forward to working with our Commission colleagues in FY 2024 to help ensure that investors are protected against the dangers of adviser outsourcing without incurring any unnecessary costs for advisory services.

### **Mutual Funds: Transaction Costs and Dilution**

In FY 2024, we look forward to working with our colleagues in the Division of Investment Management to address investor concerns regarding the dilution of long-term shareholders’ interests in mutual funds.

Millions of retail investors rely on mutual fund investments for long-term savings goals such as paying for college, buying a home, or retiring comfortably. The value of long-term investors’ mutual fund shares are diluted, however, when the fund buys portfolio investments to invest proceeds from purchasing shareholders or sells portfolio investments to meet shareholder redemptions.<sup>66</sup>

Mutual fund shares do not trade on exchanges like exchange-traded funds or closed-end funds, but are instead purchased and redeemed directly from the issuer at prices that reflect the next-calculated net asset value (NAV) of the fund at the end of the day of the purchase or redemption. Trading activity and other changes in portfolio holdings associated with the transactions, however, may occur over multiple business days following the purchase or redemption request.<sup>67</sup> The costs of the transactions are therefore borne by all shareholders remaining in the mutual fund after the purchase or redemption.

Over time, the interests of long-term shareholders in a fund may be significantly diluted by the purchase and redemption activity of other investors in the fund. The less liquid the fund's portfolio holdings, the greater this dilution effect can become, due to the higher transaction costs associated with less liquid investments. Similarly, during times of market stress, the dilution effect may be greater because the fund may be forced to buy or sell holdings at unfavorable market prices.

A mutual fund has a number of tools available to mitigate dilution under existing Commission rules, including the fund's liquidity risk management program, the option to use swing pricing, and the ability to impose purchase or redemption fees.<sup>68</sup> Effective liquidity risk management programs may reduce a fund's need to incur higher transaction costs associated with less liquid investments, even in times of market stress. Swing pricing is a fund share pricing method intended to allocate costs stemming from inflows or outflows to those investors engaged in purchasing or selling activity, rather than to other investors. And redemption fees charged to investors engaged in selling activity can help protect the interests of non-redeeming shareholders.

Notwithstanding these avenues for mitigating dilution, in March 2020 mutual funds faced significant redemptions and liquidity concerns in connection with economic shock from the onset of the COVID-19 pandemic.<sup>69</sup> Commission staff subsequently conducted a review of funds' current tools for managing liquidity and limiting dilution, finding weaknesses in funds' liquidity risk management programs and limited use of tools designed to limit dilution such as redemption

fees or swing pricing.<sup>70</sup> On November 2, 2022, the Commission voted to propose amendments intended to better prepare mutual funds (and certain other open-end funds) for stressed market conditions and to mitigate dilution of shareholders' interests.<sup>71</sup> Among other things, the Commission's proposal would require mutual funds to implement swing pricing.<sup>72</sup>

While we take no position at this time on the specific recommendations in the Liquidity and Swing Pricing Proposal, we are encouraged by the Commission's efforts to mitigate dilution. At the same time, we are sensitive to feedback received regarding the potential operational challenges that may accompany a transition to swing pricing and the impact those challenges may have on retail investors. We look forward to continuing to discuss and evaluate the proposal, as well as alternative anti-dilution approaches suggested by fund industry participants and observers.

## INVESTOR ENGAGEMENT

OIAD is statutorily mandated to identify problems that investors may have, analyze the potential impacts on investors of rules or regulations, and make proposals to the Commission to promote the interests of investors.<sup>73</sup> One of the primary ways in which OIAD collects this information and sustains a focus on investors is through ongoing investor engagement activities.<sup>74</sup> This includes investor-focused meetings, events, and activities that are designed primarily to engage directly with investors and receive feedback about policy questions, investing challenges, regulatory policy and rulemaking, investment products and services, investor issues, and/or potential misconduct.



The Office actively seeks input from a broad range and variety of investors—including individual retail investors, smaller and regional investor groups and advocates, public and private pension funds, and other small and large money managers—as well as regulatory counterparts, non-profits, and consumer groups. Retail investors, and their unique perspectives, are particularly important to OIAD. We place special emphasis on individuals and groups whose views and needs may be less frequently heard, including those who do not routinely travel to Washington, DC, to lobby government leaders, or who do not regularly submit comment letters to the Commission. Among those whom OIAD especially seeks to hear from are older investors, new investors, veterans and military spouses, affinity-connected investors, investors from historically underserved, rural, or Native American/First Nations’ communities, and investors with disabilities. The Office also solicits and encourages input from a range of stakeholders’ epistemological perspectives and values.

The goals for our investor engagement are twofold:

- Understand the authentic and unabridged voices of investors, their perspectives on policies, rulemaking, and the markets, and communicate them in a decision-useful context for Commission leaders and staff, and
- Advocate for investors’ interests in the regulatory and rulemaking environments in a manner consistent with the Office’s statutory mission.

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

## OFFICE OF INVESTOR RESEARCH

The Investor Advocate is directed by Congress to identify problems that investors have with financial service providers and investment products, as well as areas in which investors would benefit from changes in the Commission’s or SROs’ regulations.<sup>75</sup> To better identify problems that investors may have, and analyze the potential impacts on investors of rules or regulations, the Office of Investor Research (OIR) within OIAD conducts research on issues that affect a broad set of investors. OIR serves the public, OIAD, and the Commission by providing data and evidence that can inform policymaking, ultimately aiming to increase the public’s participation and opportunities for success in the investment marketplace by offering research that may lead to better decision-making and outcomes.

As detailed in OIAD’s Report on Activities for Fiscal Year 2022, OIR is focused on high-quality data collection methods; multi-modality data collection approaches; studying outcomes that represent meaningful, positive change for investors; and ensuring our work is cost-effective and timely.

We collaborate with other SEC divisions and offices to assist policymakers by contributing technical expertise and advanced data collection methods on important investor issues. We also work on deep knowledge generation projects that allow us to more thoroughly understand investors' problems and test solutions that work for investors. In both ways we seek to provide actionable insights for policymakers to tailor effective solutions to the problems that investors experience.

In the coming year, we will continue to conduct thoughtful research on issues that affect a broad set of investors while collecting customized data through testing, surveys and qualitative methods. Our research will continue in such important domains as disclosure effectiveness, financial advice, and understanding investors. To increase our policy impact by shortening our project lead time, and develop and track policy-relevant

metrics over time, we plan to launch a program of longitudinal investor surveys. Longitudinal surveys provide an effective method for quickly recruiting participants with certain characteristics, and understanding time-sensitive dynamics within a given household—information that is critical to understanding investor activity and policy efficacy. We will also continue to seek opportunities to work with rulemaking divisions and use our tools to advocate for investor-centered thinking in policy design; for example, we are currently working to inform the Division of Investment Management's potential rulemaking on Registered Indexed Linked Annuities (RILAs). In sum, these efforts seek to improve our infrastructure for providing key investor information to the Commission, increase the knowledge base with which we are able to advocate for investor interests, and directly advocate for investors in the policymaking process.







# OMBUDS' REPORT



As set forth in Exchange Act Section 4(g)(8), 15 U.S.C. § 78d(g) (8), the Ombuds 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 Ombuds.<sup>76</sup>

The Ombuds is also required to “submit a semi-annual report to the Investor Advocate that describes the activities and evaluates the effectiveness of the Ombuds during the preceding year” (Ombuds’ Report).<sup>77</sup> The Ombuds’ Report must be included in the semi-annual reports submitted by the Investor Advocate to Congress. To maintain reporting continuity, the Ombuds’ Report included in the Investor Advocate’s June 30 Report on Objectives describes the Ombuds’

activities during the first six months of the current fiscal year and provides the Ombuds’ objectives for the following full fiscal year. The Ombuds’ Report included in the Investor Advocate’s December 31 Report on Activities describes the activities and discusses the effectiveness of the Ombuds<sup>78</sup> during the full preceding fiscal year.

Accordingly, this Ombuds’ Report provides a look back on the Ombuds’ activities for the six-month period of October 1, 2022, through March 31, 2023 (Reporting Period), and discusses the Ombuds’ objectives and outlook for FY 2024, beginning October 1, 2023.

## OMBUDS ROLE AND STANDARDS OF PRACTICE

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

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

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

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

Like Ombuds at other federal financial regulators, the SEC Ombuds follows three core standards of practice:

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

## The Ombuds' Challenge

The mission statement of the SEC is to “protect investors, maintain fair, orderly, and efficient markets, and facilitate capital formation.”<sup>79</sup> A predictable question we encounter, then, is what particular role does the Ombuds play in protecting investors? Among many other things, staff in our Office submits tips, complaints, and referrals regarding credible allegations of securities law violations to the Division of Enforcement. We conduct independent research and craft tailored solutions for an investor’s question or problem. We monitor trends in retail investor complaints to identify emerging areas of concern.

Sometimes, however, our staff is unable to provide investors with the assistance or relief they request. For instance, the Ombuds may not:

- decide 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;
- intervene on behalf of, or represent the interest of, an investor in a formal dispute or investigation process;
- provide advice on how the federal securities laws may impact their particular investments or legal options; or
- change formal outcomes, including decisions about whether to investigate an allegation of wrongdoing, settle an enforcement action, or create a Fair Fund.

Given these limitations, when investors contact our Office with such requests, we may identify other means to protect their interests and preserve their legal rights. When appropriate, our staff may direct investors to other SEC resources that will address their questions or concerns, or we may direct investors to external avenues of assistance. For

example, when an investor contacts the Ombuds with concerns that fall under the purview of another federal financial regulator, our staff may, after obtaining consent from the investor, facilitate communication between the investor and the Ombuds from the appropriate regulatory agency to resolve the matter.

In addition to responding to investor complaints, requests and concerns on an *ad hoc* basis, Ombuds staff also stays current on policy issues that affect retail investors by engaging with investor advocacy groups and law school securities arbitration clinics that provide legal services to harmed investors. Through this engagement, we gain a deeper understanding of potential legal and structural difficulties retail investors may face as they interact with industry professionals and with SROs. This understanding may prompt broader Ombuds action and advocacy on behalf of retail investors, such as research into a particular area of investor concern.

## STREAMLINED COMMUNICATIONS WITH RETAIL INVESTORS

The Ombudsman Matter Management System (OMMS) is an electronic platform for receiving inquiries, tracking and analyzing matter and contact information. It ensures our Office meets all data management, confidentiality, and reporting obligations required by statute and the SEC Rules of Practice. The OMMS Form, a web-based, mobile-responsive form permitting the submission of inquiries, complaints, and documents directly to the Ombuds, guides the submitter through a series of questions specifically designed to elicit information concerning matters within the scope of the Ombuds’ function. In addition, OMMS allows staff to easily upload and maintain related documents for review.

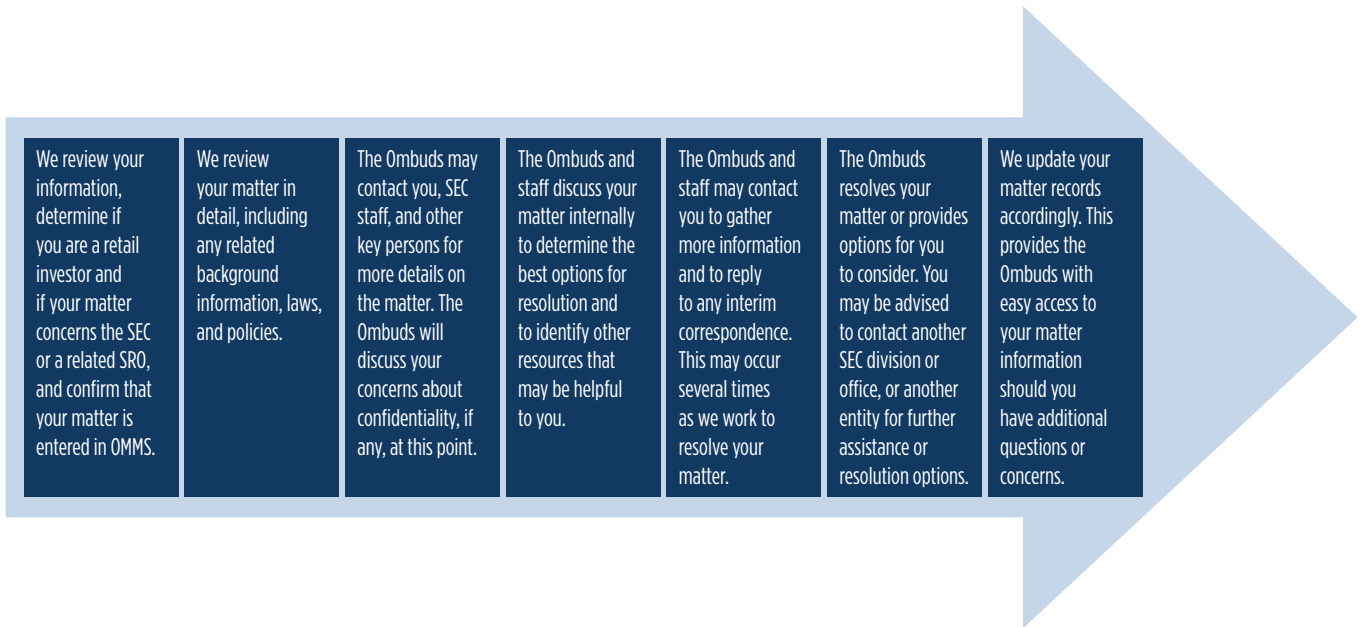


When an OMMS matter record is created, Ombuds staff can review the matter details and communicate with the investor via the OMMS platform. OMMS also enables the Ombuds and staff to search and analyze matters and contacts by submitter, primary issue, fiscal year, and a number of other categories, and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

As noted above in the *Message from the Investor Advocate*, this upcoming fiscal year, the SEC's Office of Information Technology will deploy a number of enhancements to OMMS. These enhancements will improve the accuracy with which staff classifies complaints, and will track

additional information about the disposition of OMMS matters. The enhancements will also increase the speed of service to retail investors by enabling Ombuds staff to more quickly and accurately process complaints and provide responses to investors.

While the Ombuds encourages persons to submit their inquiries via the OMMS Form, persons who do not wish, or are unable, to use the OMMS Form may contact the Ombuds by email, telephone, fax, and mail. The following graphic illustrates the general lifecycle of what happens when investors or other interested persons contact the Ombuds for assistance:



## SERVICE BY THE NUMBERS

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

### Inquiry Volume

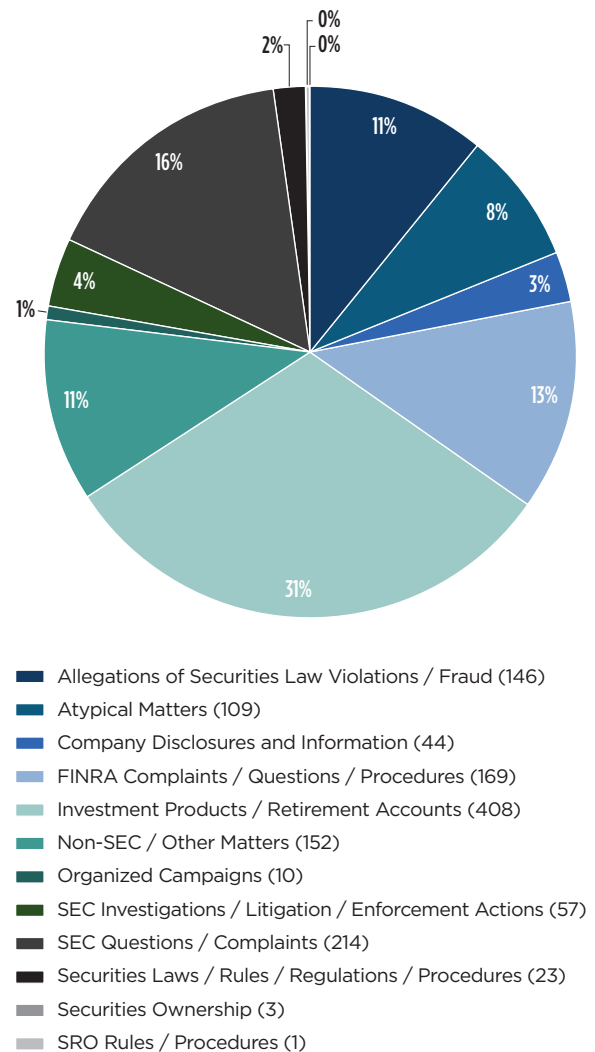
Inquiry volume is measured in terms of matters and contacts. A matter is created when an initial contact—a new, discrete inquiry—is received by or referred to the Ombuds. When a matter is created, Ombuds staff reviews the facts, circumstances, and concerns, and assesses the staff engagement and resources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

To note, a single matter may generate numerous subsequent contacts—related inquiries and communications to or from the Ombuds staff deriving from the matter. These contacts often require staff to answer additional investor questions, to explain or clarify proposed resolution options, or to discuss issues with appropriate SEC or SRO staff.

## Data across Primary Issue Categories

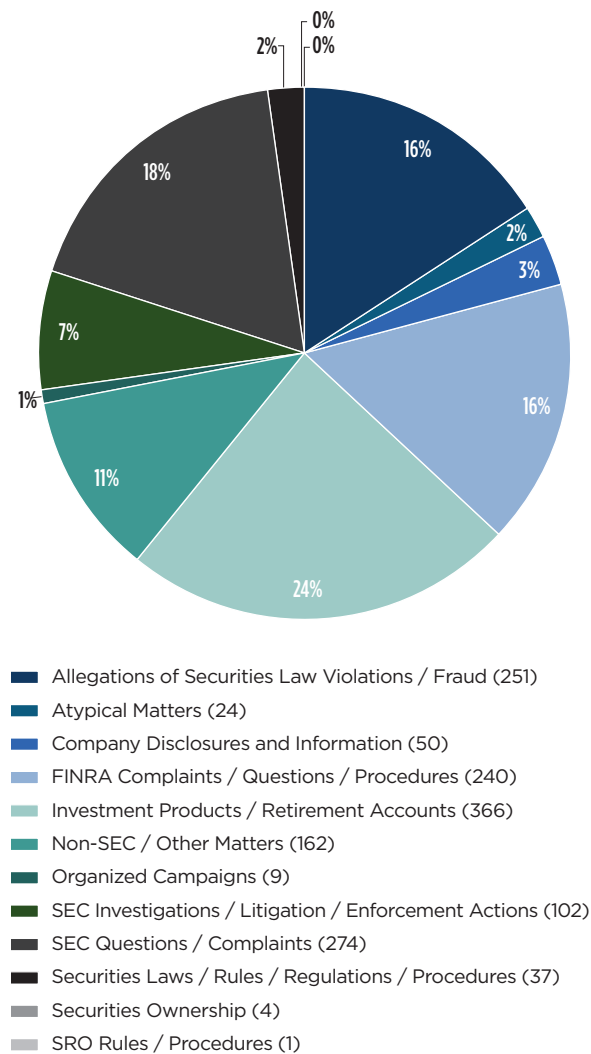
The Primary Issue Categories identified below are broad descriptive labels that reflect the nature of the primary issue raised in a submission, in light of the information in that submission. From October 1, 2022, through March 31, 2023, retail investors, industry professionals, concerned citizens, and other interested persons contacted the Ombuds for assistance on 1,336 matters covering 12 Primary Issue Categories.<sup>80</sup>

**Matters by Primary Issue Category**  
October 1, 2022 – March 31, 2023



In addition to the 1,336 matters received from October 1, 2022, to March 31, 2023, Ombuds staff fielded 1,520 subsequent contacts deriving from the original matters for a total of 2,855 contacts with the public in the first half of this fiscal year. The chart that follows displays the distribution of the additional 1,520 contacts across the 12 Primary Issue Categories:

**Contacts by Primary Issue Category**  
October 1, 2022 - March 31, 2023



This Reporting Period, we observed a significant decrease in the number of investor matters involving volatile stocks known as “meme” stocks, as compared with the same reporting period last year. At the same time, there has been an exponential increase in investor matters regarding the application of SRO rules, as well as matters regarding the SEC’s supervision of SROs. We discuss these and other notable trends in *Areas of Importance and Interest to Retail Investors* below.

### How the Numbers Inform Our Efforts

The Ombuds Office tracks matter and contact data to maintain a comprehensive view of the allocation of staff resources and to identify matters and contacts that significantly alter workflow volumes, call for the realignment of Ombuds staff assignments, or require added staff support. The data also informs staff resource allocation considerations related to proposed program development, training, and outreach efforts. By tracking data across primary issue categories, the Ombuds may more easily identify potential areas of concern for retail investors, and may act as an early warning system about the impact of particular issues or policies on retail investors and others. While the numbers above capture the volume and categories of submissions our Office receives, the data does not capture the full value of the services that Ombuds staff 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 Office’s approach as we examine SEC or SRO policies and rulemakings.

## AREAS OF INTEREST AND IMPORTANCE TO RETAIL INVESTORS

During the Reporting Period, Ombuds staff received 1,336 matter submissions, and initiated over 1,500 more contacts by telephone and email with persons who came to our office for assistance. The summaries that follow are composite descriptions of inquiries and complaints, with details generalized, modified, or removed to avoid the disclosure of nonpublic or confidential information. The summaries should help inform the reader about the variety of submissions we receive and how we respond to those submissions.

### Fraudulent Online Entities

Ombuds staff handled many matters involving investments made through unregistered online brokers and exchanges, most offering high-yield investment plans or trading in digital assets and advertised via social media. These investors believed the online brokers or exchanges were legitimate, only to later find themselves unable to access their funds. Investors generally contacted the Ombuds after receiving demands for “advance fee” payments,<sup>81</sup> sometimes by an SEC or FINRA impersonator.

When appropriate, Ombuds staff submitted complaints involving alleged securities law violations to the SEC’s tips, complaints, and referrals (TCR) system. Staff also referred matters involving SEC or FINRA impersonators to staff in the SEC’s Office of Inspector General (OIG), Office of the General Counsel (OGC), or appropriate FINRA staff, and provided harmed investors with information about advance fee fraud, as well as public information about the potentially fraudulent entities. In some cases, through these efforts, our staff was able to prevent the further loss of investor funds.

### Rules on Equity Market Structure

Many investors expressed concern about the effect of current SEC and SRO market structure rules on their personal interests or on market fairness. For instance, some investors questioned the legality or fairness of short sales conducted through alternative trading systems known as “dark pools,” which allow users to price orders without publicly displaying the size or price to other participants. Other investors expressed concern about payment for order flow and other issues involving order routing. Investors often alleged the current market structure rules enabled market makers and institutional investors to profit at the expense of retail investors.

Among other things, Ombuds staff provided these investors with educational materials about the relevant market structure regulations and SEC or SRO rules. After the SEC announced sweeping proposed reforms to its market structure rules on December 14, 2022, Ombuds staff directed investors to the proposed rules and encouraged them to submit comment letters expressing their concerns.<sup>82</sup>

### Digital Assets Issuers and Exchanges

The Ombuds received complaints regarding problems with digital assets issuers and the unregistered exchanges that trade digital assets. During the last fiscal year, many of these exchanges and issuers declared bankruptcy and investors found themselves unable to access their assets. Ombuds staff helped educate these investors on the status of digital assets regulation, including the SEC Chair’s calls for issuers and exchanges to register with the SEC. Where relevant, Ombuds staff directed investors to civil and criminal actions instituted by the SEC and U.S. Department of Justice against certain issuers and exchanges.



### **FINRA Trading Halt—Rule 6440(a)(3)**

Many retail investors have contacted our office to express concerns regarding a December 2022 trading halt implemented by FINRA pursuant to FINRA Rule 6440(a)(3). This rule permits FINRA to halt trading and quotations in over-the-counter (OTC) equity securities where FINRA determines that “an extraordinary event has occurred or is ongoing that has had a material effect on the market for the OTC Equity ... or has caused or has the potential to cause major disruption to the marketplace or significant uncertainty in the settlement and clearance process.”<sup>83</sup> We appreciate the gravity of these concerns, as well as the impact the trading halt has had on many retail investors. We will continue to monitor developments in this matter, and to provide assistance and information to interested parties in accordance with SEC policies and procedures.

### **Ombuds as a Resource**

During this Reporting Period, Ombuds staff reviewed, analyzed, and evaluated over a thousand investor matters. We researched applicable laws, rules, and regulations, and engaged in discussions with staff across the Commission to appropriately address and resolve investor concerns. The majority of our processing involves, on the one hand, internal referrals to or consultation with staff in other divisions or offices such as the Office of Investor Education and Advocacy, OIG, OGC, Enforcement/TCR/Whistleblower, Distributions/Collections, Corporation Finance, Trading and Markets, and Investment Management. On the other hand, for matters outside the SEC’s jurisdiction, Ombuds staff provide resources and referral information for the appropriate SROs or other regulatory entities, such as the Consumer Financial Protection Bureau (CFPB), Commodity Futures Trading Commission (CFTC), Federal

Deposit Insurance Corporation (FDIC), the Federal Reserve Board, Federal Trade Commission (FTC), and Departments such as Justice, Labor, and Treasury. Through our Office’s collaboration with colleagues throughout the Commission, we are able to provide retail investors the information and resources they need to address a given issue.

### **ACTING IN THE INTERESTS OF RETAIL INVESTORS**

To address issues that affect retail investors, our Office may participate in, or undertake an, analysis of those issues and, when possible, identify ways to improve existing SEC and SRO policies or processes.<sup>84</sup>

In FY 2024, Ombuds staff will focus efforts on highlighting issues surrounding mandatory arbitration in the investment advisory context. We will continue our study of the incidence and potential effects of discovery disputes in the FINRA Dispute Resolution Services (FINRA DRS) forum, and will review SRO rulemakings for their potential impact on retail investors. We will monitor market events that affect the retail investor experience and, where necessary, raise awareness of those effects within the Commission.

### **Mandatory Arbitration Clauses in Investment Advisory Agreements**

The Ombuds Office has previously acknowledged growing concerns about the use of mandatory arbitration clauses in investment advisory agreements among SEC-registered advisers.<sup>85</sup> In our 2022 Report on Activities, we noted the completion of a preliminary study on the frequency with which mandatory arbitration clauses and related terms appear in advisory agreements.<sup>86</sup>

Ombuds and OIAD staff have since then broadly expanded the scope of the preliminary study and identified additional methods of obtaining more data regarding mandatory arbitration clauses. Staff reviewed a broad, diverse sample of investment advisory agreements, and compiled data regarding the occurrence of mandatory arbitration clauses, as well as the occurrence of other terms that would have an impact on the affordability and accessibility of arbitration for retail investors.

Given the significance of mandatory arbitration for investors harmed by their advisers, our Office will continue its efforts to objectively study the issue and inform the public of relevant findings.

### **Potential Discovery Abuse in FINRA Arbitration**

The requirement that investors arbitrate disputes with brokerage firms in the FINRA dispute resolution forum is nearly a universal feature of broker-dealer agreements.<sup>87</sup> Mandatory arbitration has traditionally been justified on the basis that it is a faster and less expensive alternative to litigation.<sup>88</sup> Nevertheless, investor advocates and practitioners have reported that investors have greater difficulty obtaining necessary documents and information from brokers during discovery arbitration than in traditional litigation.<sup>89</sup>

Accordingly, in late 2022, the Ombuds Office initiated a study of FINRA arbitration cases to estimate the frequency with which discovery disputes take place in FINRA arbitrations, as well as the effects such disputes have on arbitral outcomes for brokerage customers. Ombuds staff will continue its focus on this issue in FY 2024.

### **Proposed Procedural, Technical, and Clarifying Changes to the FINRA Code—FINRA 2022-033**

On January 6, 2023, FINRA filed SR-FINRA-2022-033 (“FINRA 2022-33” or the “Procedural Proposal”), which would implement various procedural, technical and clarifying changes to the existing Code of Arbitration Procedure for Customer Disputes (the “Code”).<sup>90</sup> Portions of the Procedural Proposal stem from recommendations of independent counsel following a review and analysis of the FINRA DRS arbitrator selection process.<sup>91</sup>

If approved, FINRA 2022-33 would modify existing rules and practices to provide greater transparency and consistency to the arbitrator selection process. For instance, the Procedural Proposal would codify the FINRA DRS Director’s current practice of excluding arbitrators from arbitrator lists based on a manual review of conflicts of interest<sup>92</sup> authorizing the Director to remove an arbitrator upon a party’s request or upon the Director’s initiative,<sup>93</sup> and requiring the Director to provide a written explanation to the parties of the decision to remove an arbitrator.<sup>94</sup>

In addition to the proposed changes regarding arbitrator selection, the Procedural Proposal would codify various procedural, technical and clarifying changes to the Code.<sup>95</sup> According to FINRA, these proposed changes would increase efficiency and expedite processes for prehearing conferences and hearing sessions, initiating and responding to claims, motion practice, claim and case dismissals, and providing a hearing record.<sup>96</sup> For instance, the Procedural Proposal would, among other things: make video conference the default option for

prehearing conferences<sup>97</sup> and special proceedings in simplified arbitrations;<sup>98</sup> require participants in simplified arbitrations to redact personal confidential information (PCI) in filings to FINRA DRS;<sup>99</sup> and codify arbitrators' authority to combine cases.<sup>100</sup> The Procedural Proposal would also clarify various aspects of motion practice, amendment of pleadings and filing third party claims in FINRA DRS.<sup>101</sup>

Commenters largely supported the proposed rule changes.<sup>102</sup> However, several commenters suggested a number of modifications, such as providing additional guidance to parties about redacting PCI;<sup>103</sup> permitting *pro se* investors to waive PCI redaction or allowing FINRA DRS to redact PCI on their behalf;<sup>104</sup> and requesting further clarification about arbitrators' authority to combine cases.<sup>105</sup> In response to commenters,<sup>106</sup> FINRA amended the Procedural Proposal to further clarify when arbitrators may combine cases, and agreed to provide additional guidance for redacting PCI.<sup>107</sup> On April 12, 2023, the SEC solicited additional comments on the amended Procedural Proposal and instituted proceedings to determine whether to approve or disapprove the proposed changes as modified by the amendment.<sup>108</sup>

Our Office generally believes these proposed rule changes will benefit parties in FINRA DRS by increasing transparency, consistency, efficiency, and clarity of FINRA DRS procedures. We will continue to monitor the progress of the Procedural Proposal, as well as commenters' views on the proposed changes.

### **Newly Proposed Revisions to FINRA's Expungement Rules: FINRA 2022-24**

Access to accurate historical information about an individual broker's disputes with customers may inform investor decisions about whom to hire, and help regulators identify candidates for examination or enforcement action. The expungement, or removal, of a broker's customer dispute information from the Central Registration Depository system and from FINRA's BrokerCheck<sup>®</sup> may therefore lead to less-informed investor behavior, and weaken regulators' ability to detect and deter misconduct. For these and other reasons, expungement was intended to be an "extraordinary remedy," granted in accordance with FINRA rules to remove clearly inaccurate customer dispute information from the record of individual brokers.<sup>109</sup> However, continued reports that arbitrators awarded expungement relief for a vast majority of expungement requests<sup>110</sup> made clear that modifications to the existing expungement rules were likely necessary to restore expungement to its "extraordinary remedy" status. Our Office has closely monitored FINRA's previously proposed revisions to the expungement rules, with a focus on preserving retail investor interests and regulatory access to customer dispute information.<sup>111</sup>

FINRA filed its most recent expungement proposal—SR-FINRA 2022-24—("FINRA 2022-24" or the "Expungement Proposal") with the Commission on July 29, 2022.<sup>112</sup> Following a period of public comment and two partial amendments,<sup>113</sup> on April 12, 2023, the Commission announced its intent to approve FINRA 2022-24, as amended by the two partial amendments, on an accelerated basis.<sup>114</sup>

FINRA 2022-024, as amended, will significantly modify FINRA’s existing expungement rules, in part, by:

- requiring expungement requests filed by associated persons outside of customer arbitrations (straight-in requests), to be decided by a three-arbitrator panel, randomly selected from a roster of experienced public arbitrators with enhanced expungement training (Special Arbitrator Roster);
- prohibiting parties to a straight-in request from agreeing to fewer than three arbitrators to consider their expungement requests, striking any of the selected arbitrators, stipulating to an arbitrator’s removal or stipulating to the use of pre-selected arbitrators;
- notifying state securities regulators of all expungement requests, providing more opportunity for state securities regulators to attend and participate in expungement hearings in straight-in requests;
- imposing time limits for filing straight-in requests; and
- requiring unanimous agreement of the arbitrator panel to grant expungement relief.<sup>115</sup>

FINRA additionally expressed its intent to observe the effects of these rule changes and to make further adjustments to the expungement process if needed.<sup>116</sup>

We believe these changes will enhance the investor protections afforded by FINRA’s existing expungement rules, helping ensure that expungement remains an “extraordinary

remedy.”<sup>117</sup> We further believe that, by promoting the accuracy of the information publicly available in BrokerCheck®, these changes strike an appropriate balance between the reputational interests of registered representatives and the interests of investors and regulators.

While additional efforts may be needed to ensure expungement relief is reserved for factually impossible, clearly erroneous or false allegations,<sup>118</sup> the Expungement Proposal reflects an important and necessary step in protecting investors and in safeguarding the markets. We encourage retail investors and interested parties to contact our Office upon implementation of these rules, if further modification to the rules may be required.

## OMBUDS OUTREACH AND ENGAGEMENT EFFORTS

### Ombuds Outreach—Investor Advocacy Clinics

In 1997, then-SEC Chairman Arthur Levitt, Jr. announced the creation of two pilot law school investor advocacy clinics to help retail investors with small claim cases obtain quality legal representation.<sup>119</sup> Today, 11 law school investor advocacy clinics across the United States provide free legal counseling and representation to retail investors in securities industry disputes. Under the supervision of their professors, clinic students also comment on rule proposals that might affect their clients’ interests, and participate in other forms of public outreach—such as community-based presentations and dissemination of informational materials tailored to retail investors.<sup>120</sup>



Since 2016,<sup>121</sup> the Ombuds Office has actively engaged with investor advocacy clinic students and professors, exchanging information, experiences and ideas about how to protect the interests of retail investors. Each year, the Ombuds hosts an annual summit where clinic students give presentations on issues of specific interest to their clients. The summit provides a unique opportunity for students and regulators to learn about their respective work and practices, providing both with a more a well-rounded perspective on retail investor concerns.

### **2023 SEC Investor Advocacy Clinic Summit Overview**

On Wednesday, March 29, 2023, the Ombuds Office and the SEC Division of Enforcement's Retail Strategy Task Force (RSTF) hosted the fourth annual SEC Investor Advocacy Clinic Summit (Summit) as a virtual event. For the second consecutive year, the Summit was a joint endeavor between the Ombuds and RSTF. The event, livestreamed on the SEC's website, was intended to highlight the work of the law school clinics and raise public awareness of the services they provide. Students discussed the origin of the clinics and nature of their work, the role of mandatory arbitration in resolving brokerage disputes, two representative cases, resource allocation, and other challenges to the viability of the clinics. Over 1,800 viewers tuned in to the outreach event.

The event featured remarks and Q&A with SEC Chair Gary Gensler, Commissioners Hester Peirce, Caroline Crenshaw, Mark Uyeda, and Jaime Lizárraga, as well as remarks from Cristina Martin Firvida, the SEC's new Investor Advocate. All 11 active law school investor advocacy clinics from across the country shared their perspectives and engaged with SEC subject matter experts on pressing issues currently facing retail investors. Participating law schools included (in alphabetical order): Benjamin N. Cardozo School of Law, Cornell Law School, Fordham University School of Law, Howard University School of Law, New York Law School, Northwestern Pritzker School of Law, Pace University School of Law, Seton Hall University School of Law, St. John's University School of Law, University of Miami School of Law, and the University of Pittsburgh School of Law.

Given the success of this and prior summits, we look forward to hosting future summits—whether as in-person, virtual, or hybrid events—as a signature feature of the Ombuds' commitment to retail investors and the work of the law school clinics.

### **Additional Engagement Activities**

During this Reporting Period, Ombuds staff attended and participated in select securities industry events with the goal of improving our service to retail investors and educating external

groups about the services our Office can provide. These events included informational meetings and listening sessions with the American Association of Justice, the American Association of Retired Persons, directors of the law school investor advocacy clinics, and the SEC's international regulatory counterparts. Ombuds staff also met periodically with the Coalition of Federal Ombudsmen, as well as the Public Investors Arbitration Bar Association (PIABA), FINRA, and the FINRA Ombudsman. Pursuant to the Office's study of mandatory arbitration among SEC-registered investment advisers, the Ombuds conducted interviews and engaged in discussions about mandatory arbitration with PIABA, FINRA, the American Association of Individual Investors, the Securities Industry and Financial Markets Association, the North American Securities Administrators Association, Better Markets, Financial Services Institute, the American Arbitration Association, and JAMS.

In FY 2024, we will continue to expand the footprint of this Office by more actively participating in external securities industry activities, by establishing new relationships and fortifying existing relationships across the Commission through enhanced internal engagement efforts.

## OBJECTIVES AND OUTLOOK

This Reporting Period marks the beginning of my service as the SEC Ombuds. I am humbled by this appointment, and grateful to our Investor Advocate for trusting me to serve the investing public in this capacity. However, none of the Office's work would be possible without the tireless efforts of Ombuds staff or their commitment to helping those in need of our assistance. Within the SEC, our Office performs a distinct function that requires a unique combination of skills and traits. In that regard, this year we have been fortunate to add Senior Counsel Richard E. Dominguez to our team of professionals. We hope to expand our team in the next fiscal year to meet the ever-growing need to aid retail investors.

During my time in this Office, I have learned much from discussions with colleagues across the Commission, by engaging with stakeholders interested in investor protection, and by listening to the concerns of the investors we serve. I am proud of our Office's efforts to protect and promote retail investor interests, but recognize there is much more work to do.

In FY 2024, I look forward to further fostering our connection with retail investors, with the law school investor advocacy clinics, and other interested groups that share their views with our Office. I hope our work may reach those populations that most need a voice, so we may be their voice within the Commission.



Stacy A. Puente

Ombuds







# 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.<sup>122</sup> As an independent advisory committee, the IAC is independent not only of the Commission, but also of OIAD, even though the Investor Advocate is a statutory member of the IAC. 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, nor more than 20, members appointed by the Commission to represent the interests of various types of individual and institutional investors.<sup>123</sup>

Exchange Act Section 39 authorizes the IAC to submit findings and recommendations for review and consideration by the Commission.<sup>124</sup> 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.<sup>125</sup> While the Commission must respond to the IAC’s recommendations, it is under no obligation to agree with or act upon the recommendations.<sup>126</sup>

As presented below, this report summarizes recommendations the IAC has made since June 2022, and the SEC’s responses to them.<sup>127</sup> Although we are not required to report IAC recommendations and SEC responses, historically, we have done so. In reviewing the summaries below, it is important to understand that the Commission currently may be pursuing initiatives that are responsive to IAC recommendations but that have not yet been made public. Because Commission staff—including the staff of this Office—are prohibited from disclosing nonpublic information,<sup>128</sup> any pending initiatives are not reflected in this Report.

For a complete list of recommendations of the IAC, please see the Spotlight on Investor Advisory Committee webpage at [SEC.gov/spotlight/investor-advisory-committee](https://www.sec.gov/spotlight/investor-advisory-committee).

## **CUSTOMER ACCOUNT STATEMENTS**<sup>129</sup>

On March 2, 2023, the IAC recommended surveying investors about statement use and utility; amending FINRA Rule 2231 to improve contents, format, and presentation; standardizing terms for comparable performance measures in statements; requiring investment advisers to provide statements at least quarterly; and continuing paper as a default delivery method with an option for electronic delivery. A response from the SEC is pending.



### **ACCOUNTING MODERNIZATION<sup>130</sup>**

On September 21, 2022, the IAC recommended establishing an advisory committee on Accounting Modernization that can assist the Financial Accounting Standards Board (FASB) in its standard-setting process; requiring that the FASB study the costs of delayed rulemaking; and urged the FASB to create a single searchable database of its authoritative literature that would be freely available to the public. On February 27, 2023, the Financial Accounting Foundation announced free access to online accounting standards codification.<sup>131</sup>

### **CLIMATE-RELATED DISCLOSURE<sup>132</sup>**

In response to the Commission's March 2022 proposed rules on public company climate-related disclosure,<sup>133</sup> on September 21, 2022, the IAC recommended adding a requirement of "Management Discussion of Climate-Related Risks & Opportunities;" requiring disclosure of material facility locations; and eliminating the disclosure requirement around board expertise. Further SEC action on the proposed rules is pending, as reflected in the SEC's Regulatory Flexibility Agenda.

### **CYBERSECURITY DISCLOSURE<sup>134</sup>**

In response to the Commission's March 2022 proposed rules on public company cybersecurity-related disclosure,<sup>135</sup> on September 21, 2022, the IAC recommended requiring companies to disclose key factors used to determine the materiality of a cybersecurity incident; extending certain disclosure provisions to registration statements; and reconsidering the disclosure requirement around board cybersecurity expertise. Further SEC action on the proposed rules is pending, as reflected in the SEC's Regulatory Flexibility Agenda.

### **PROTECTING OLDER ADULT INVESTORS<sup>136</sup>**

On June 9, 2022, the IAC recommended proposing various reforms to improve the deterrence and prosecution of investment fraud against older adults. These recommendations included shifting the foundational values that reinforce harmful victim-blaming practices; helping to decrease victim shame, deprioritization, and dehumanization; strengthening the system for reporting, addressing, and preventing investment fraud; improving efforts to encourage investors to conduct robust background checks before entrusting a firm or professional; strengthening investor protection for self-directed IRAs; developing a plan to strengthen the training of investment professionals; and encouraging the identification of a trusted third-party contact on all financial accounts. On June 12, 2023, the SEC's Office of Investor Education and Advocacy announced a public service campaign encouraging financial literacy among older investors. The campaign provides older investors with tools and resources to protect their investments and retirement assets.<sup>137</sup> A further response from the SEC is pending.

### **FUNDING INVESTOR ADVOCACY CLINICS<sup>138</sup>**

On June 9, 2022, the IAC recommended renewing a 2018 IAC recommendation regarding financial support for law school clinics that represent investors. The IAC recommended that the SEC support the Investor Justice Act of 2022, which, if enacted, would provide authority to the SEC to establish a grant program to fund qualified investor advocacy clinics with the SEC's Congressional-appropriated funds. A response from the SEC is pending.

## ENDNOTES

- 1 Exchange Act § 4(g)(6), 15 U.S.C. § 78d(g)(6).
- 2 Exchange Act § 4(g)(6)(A)(i), 15 U.S.C. § 78d(g)(6)(A)(i).
- 3 Exchange Act § 4(g)(6)(B)(i), 15 U.S.C. § 78d(g)(6)(B)(i).
- 4 Exchange Act § 4(g)(4)(A), 15 U.S.C. § 78d(g)(4)(A).
- 5 Exchange Act § 4(g)(8)(A), 15 U.S.C. § 78d(g)(8)(A).
- 6 Exchange Act § 4(g)(8)(D), 15 U.S.C. § 78d(g)(8)(D).
- 7 Exchange Act § 4(g)(4)(B), 15 U.S.C. § 78d(g)(4)(B).
- 8 Exchange Act § 4(g)(4)(C), 15 U.S.C. § 78d(g)(4)(C).
- 9 Exchange Act § 4(g)(4)(D), 15 U.S.C. § 78d(g)(4)(D).
- 10 Exchange Act § 4(g)(4)(E), 15 U.S.C. § 78d(g)(4)(E).
- 11 Exchange Act § 39, 15 U.S.C. § 78pp.
- 12 Exchange Act § 39(b)(1)(A), 15 U.S.C. § 78pp(b)(1)(A).
- 13 See 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>.
- 14 See Staff Bulletin: Standards of Conduct for Broker-Dealers and Investment Advisers Care Obligations (Apr. 20, 2023), available at <https://www.sec.gov/tm/standards-conduct-broker-dealers-and-investment-advisers>.
- 15 See, e.g., Request for Information and Comments on Broker-Dealer and Investment Adviser Digital Engagement Practices, Related Tools and Methods, and Regulatory Considerations and Potential Approaches; Information and Comments on Investment Adviser Use of Technology To Develop and Provide Investment Advice, Exchange Act Rel. No. 92766, 86 Fed. Reg. 49067, 49075 (Sept. 1, 2021), available at <https://www.federalregister.gov/d/2021-18901> (“The use of a DEP by a broker-dealer may, depending on the relevant facts and circumstances, constitute a recommendation for purposes of Reg Bl.”)
- 16 See *id.* at 49077.
- 17 See *id.* at section II.C.2.
- 18 See Proposed Rules, Office of Management and Budget, SEC Agency Rule List, Digital Engagement Practices for Broker-Dealers, RIN 3235-AN00, available at <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202210&RIN=3235-AN00>, and Digital Engagement Practices for Investment Advisers, RIN 3235-AN14, available at <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202210&RIN=3235-AN14>.
- 19 See Proposed Rule, Regulation Best Execution, Exchange Act Release No. 96496, 88 Fed. Reg. 5440 (Jan. 27, 2023), available at <https://www.federalregister.gov/d/2022-27644>.
- 20 See Comment File S7-32-22, Regulation Best Execution, available at <https://www.sec.gov/comments/s7-32-22/s73222.htm>.
- 21 See Proposed Rule, Regulation S-P: Privacy of Consumer Financial Information and Safeguarding Customer Information, Exchange Act Release No. 97141, 88 Fed. Reg. 20616 (Apr. 6, 2023), available at <https://www.federalregister.gov/documents/2023/04/06/2023-05774/regulation-s-p-privacy-of-consumer-financial-information-and-safeguarding-customer-information>.
- 22 Press Release. SEC Proposes Changes to Reg S-P to Enhance Protection of Customer Information (Mar. 15, 2023), available at <https://www.sec.gov/news/press-release/2023-51>.
- 23 Fact Sheet, SEC, Proposed Enhancements to Regulation S-P (Mar. 15, 2023), available at <https://www.sec.gov/files/34-97141-fact-sheet.pdf>.
- 24 For example, in 2019, the estimated amount of capital reported as raised in private offerings under Rule 506(b) of Regulation D was \$1.5 trillion, compared to a total of \$1.2 trillion raised in registered offerings. SEC, Staff Report to Congress on Regulation A / Regulation D Performance (2020) [hereinafter “Report on Regulation A and Regulation D”], at 16, available at <https://www.sec.gov/files/report-congress-regulation-a-d.pdf>.
- 25 See McKinsey & Co., McKinsey Global Private Markets Review 2023: Private markets turn down the volume (Mar. 2023), available at <https://www.mckinsey.com/industries/private-equity-and-principal-investors/our-insights/mckinseys-private-markets-annual-review#/> (last visited June 1, 2023).

- 26 See, e.g., Report on Regulation A and Regulation D, at 40.
- 27 See, e.g., SEC, Investor Bulletin, Private Placements under Regulation D (Aug. 17, 2022), available at <https://www.sec.gov/oiea/investor-alerts-and-bulletins/private-placements-under-regulation-d-investor-bulletin>; Rachita Gullapalli, SEC, Div. of Econ. and Risk Analysis, *Misconduct and Fraud in Unregistered Offerings: An Empirical Analysis of Select SEC Enforcement Actions* (Aug. 2020), available at <https://www.sec.gov/files/misconduct-and-fraud-unregistered-offerings.pdf>; Caroline A. Crenshaw, Commissioner, SEC, *Big “Issues” in the Small Business Safe Harbor: Remarks at the 50th Annual Securities Regulation Institute* (Jan. 30, 2023), available at <https://www.sec.gov/news/speech/crenshaw-remarks-securities-regulation-institute-013023>.
- 28 SEC Investor Advisory Committee, Meeting Agenda (Mar. 2, 2023), available at <https://www.sec.gov/spotlight/investor-advisory-committee/iac030223-agenda.htm>.
- 29 See Webcast, SEC Investor Advisory Committee Meeting (Mar. 2, 2023), available at <https://www.youtube.com/watch?v=v7t3vwxHwvg>.
- 30 *Id.*
- 31 See SEC, Office of the Investor Advocate, Report on Activities, Fiscal Year 2020, available at <https://www.sec.gov/files/sec-investor-advocate-report-activities-2020.pdf> at 6 (Amendments to the Securities Act Registration Exemptions).
- 32 See, e.g., Elisabeth de Fontenay, *The Deregulation of Private Capital and the Decline of the Public Company*, 68 *Hastings Law Journal* 445-502 (2017).
- 33 See, e.g., *id.*; Better Markets, Fact Sheet, *Expanding Private Markets Undercuts Public Markets, Investor Protections, and Capital Formation* (2023), available at [https://bettermarkets.org/wp-content/uploads/2023/04/Better\\_Markets\\_Private\\_Markets\\_Investor\\_Protection\\_Fact\\_Sheet\\_4-14-23.pdf](https://bettermarkets.org/wp-content/uploads/2023/04/Better_Markets_Private_Markets_Investor_Protection_Fact_Sheet_4-14-23.pdf) (last visited June 1, 2023). The number of IPOs in the U.S. fell from an annual average of 310 during 1980–2000 to an average of 108 during the 2001–2016 period. Jay R. Ritter, *Executive Summary: Where Have All the IPOs Gone?*, UNIV. OF FLA. (Mar. 17, 2017), available at [https://site.warrington.ufl.edu/ritter/files/2017/03/Where-Have-All-the-IPOs-Gone\\_exec-sum.pdf](https://site.warrington.ufl.edu/ritter/files/2017/03/Where-Have-All-the-IPOs-Gone_exec-sum.pdf).
- 34 For example, under Rule 506(b) of Regulation D, an issuer may sell securities to an unlimited number of accredited investors and up to 35 non-accredited investors who are financially sophisticated.
- 35 An individual is an accredited investor based on wealth when that person, either alone or together with a spouse or spousal equivalent, has a net worth that exceeds \$1 million, excluding the value of the person’s primary residence.
- 36 An individual is an accredited investor based on income when that person has had an annual income that exceeded \$200,000 (or \$300,000 with a spouse or spousal equivalent) in each of the prior two years and has a reasonable expectation of the same for the current year.
- 37 An individual can also qualify as an accredited investor through other measures of financial sophistication, for example, by holding in good standing certain professional certifications or designations. Entities can qualify as accredited investors by meeting certain criteria under the accredited investor definition.
- 38 See SEC, Office of the Investor Advocate, Report on Activities, Fiscal Year 2021, available at [https://www.sec.gov/files/FY21\\_OIAD\\_SAR\\_ACTIVITIES\\_REPORT\\_FINAL\\_508.pdf](https://www.sec.gov/files/FY21_OIAD_SAR_ACTIVITIES_REPORT_FINAL_508.pdf) at 47 (Ombudsman’s Report: Areas of Interest and Importance to Retail Investors).
- 39 See, e.g., letter from the North American Securities Administrators Association, Inc. to Erik F. Gerding, Director, Division of Corporation Finance, SEC, RE: Private Market Reforms (Mar. 7, 2023), available at <https://www.nasaa.org/wp-content/uploads/2023/03/2023-03-07-Letter-to-Erik-Gerding-Regarding-Private-Market-Reforms.pdf> (last visited May 19, 2023); *Sophistication or Discrimination? How the Accredited Investor Definition Unfairly Limits Investment Access for the Non-wealthy and the Need for Reform*, Hearing Before the Subcomm. on Capital Markets, H. Comm. on Fin. Serv., 118th Cong. (2023), available at <https://financialservices.house.gov/calendar/eventsingle.aspx?EventID=408510>.

- 40 See Private Fund Advisers; Documentation of Registered Investment Adviser Compliance Reviews, Investment Adviser Act Rel. No. 5955, 17 C.F.R. pt. 275 (Feb. 9, 2022), available at <https://www.sec.gov/rules/proposed/2022/ia-5955.pdf>, at n. 6 and accompanying text.
- 41 See *Id.* See also SEC, Office of the Investor Advocate, Report on Objectives, Fiscal Year 2023, at 8, available at <https://www.sec.gov/files/sec-office-investor-advocate-report-objectives-fy2023.pdf>.
- 42 *Id.* at note 42 and accompanying text. The Commission also recently adopted amendments to Form PF, the confidential reporting form for certain SEC-registered investment advisers to private funds, designed to enhance the ability of the Financial Stability Oversight Council to assess systemic risk and to bolster the Commission’s oversight of private fund advisers and its investor protection efforts. See Amendments to Form PF to Require Event Reporting for Large Hedge Fund Advisers and Private Equity Fund Advisers and to Amend Reporting Requirements for Large Private Equity Fund Advisers, Investment Adviser Act Rel. No. 6297 (May 3, 2023), available at <https://www.sec.gov/rules/final/2023/ia-6297.pdf>.
- 43 These include rulemakings pertaining to Regulation D and Form D; the definition of securities held of record under Exchange Act Section 12(g); and the holding period for restricted securities under Securities Act Rule 144. See Regulatory Flexibility Agenda, Securities Act Release No. 11118, Exchange Act Release No. 96009, Investment Advisers Act Release No. 6165; Investment Company Act Release No. 34725, 88 Fed. Reg. 11376-01 (Feb. 22, 2023); Office of Info. and Regulatory Affairs, Office of Mgmt. and Budget, Agency Rule List—Fall 2022, SEC available at [https://www.reginfo.gov/public/do/eAgendaMain?operation=OPERATION\\_GET\\_AGENCY\\_RULE\\_LIST&currentPub=true&agencyCode=&showStage=active&agencyCd=3235&Image58.x=18&Image58.y=15&Image58=Submit](https://www.reginfo.gov/public/do/eAgendaMain?operation=OPERATION_GET_AGENCY_RULE_LIST&currentPub=true&agencyCode=&showStage=active&agencyCd=3235&Image58.x=18&Image58.y=15&Image58=Submit) (last visited May 19, 2023).
- 44 For example, there are a number of bills that, if enacted, would modify the accredited investor definition as well as other bills pertaining more generally to the regulation of private offerings under the Securities Act.
- 45 See SEC, Newsroom, SEC Proposals: Market Structure, available at <https://www.sec.gov/newsroom/market-structure-proposals-december-2022>.
- 46 See Proposed Rule, Disclosure of Order Execution Information, Exchange Act Rel. No. 96493, 88 Fed. Reg. 3786 at 3826 (Jan. 20, 2023).
- 47 See, e.g., Proposed Rule, Disclosure of Order Execution Information, 88 Fed. Reg. 3786 at 3825 (“Would it be preferable for the Plan to establish the required format, including an associated schema, for the summary reports? ... Should the Commission require that summary Rule 605 reports be posted in a centralized location?”).
- 48 See Market Data Infrastructure, Exchange Act Release No. 90610, 86 Fed. Reg. 18596 (Apr. 9, 2021), available at <https://www.federalregister.gov/d/2020-28370>.
- 49 See, e.g., Consolidated Tape Association, Order Disapproving the Twenty-Fifth Charges Amendment to the Second Restatement of the CTA Plan and Sixteenth Charges Amendment to the Restated CQ Plan, Exchange Act Release No. 95851, 87 Fed. Reg. 58613 (Sept. 27, 2022), available at <https://www.federalregister.gov/d/2022-20833>.
- 50 See Proposed Rule, Short Position and Short Activity Reporting by Institutional Investment Managers, Exchange Act Release No. 94313, 87 Fed. Reg. 14950 (Mar. 16, 2022), available at <https://www.federalregister.gov/d/2022-04670>.
- 51 See Proposed Rule, Reporting of Securities Loans, Exchange Act Release No. 93613, 86 Fed. Reg. 69802 (Dec. 8, 2021), available at <https://www.federalregister.gov/d/2021-25739>.



- 52 See Financial Industry Regulatory Authority, Inc.; Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change Relating to Alternative Display Facility New Entrant, Exchange Act Rel. No. 97195, 88 Fed. Reg. 19173 (March 30, 2023), available at <https://www.federalregister.gov/d/2023-06557>.
- 53 See *id.*, 88 Fed. Reg. at 19175.
- 54 Outsourcing by Investment Advisers, Advisers Act Rel. No. 6176 (Oct. 26, 2022), 87 Fed. Reg. 68816 (Nov. 16, 2022), available at <https://www.govinfo.gov/content/pkg/FR-2022-11-16/pdf/2022-23694.pdf> (“Outsourcing Proposal”).
- 55 See Outsourcing Proposal at 68817.
- 56 See *id.*
- 57 See *id.*
- 58 See Outsourcing Proposal at note 21 and accompanying text.
- 59 See Outsourcing Proposal at note 22 and accompanying text.
- 60 See Outsourcing Proposal at 68819 (“We have observed an increase in such outsourcing and issues related to the outsourcing and advisers’ oversight. One recent example is an enforcement action for alleged violations of section 206 of the Advisers Act against investment advisers that used models and volatility guidelines from a third-party subadviser without first confirming that they worked as intended. In another recent action, an adviser allegedly failed to oversee a third-party vendor that did not properly safeguard customers’ personal identifying information. . . . In response to our staff’s requests for documents, some advisers have not provided the information necessary to demonstrate compliance with the Advisers Act and its rules because of outsourcing. For example, some advisers that use client relationship management providers have asserted that they have complied with rule 204–3 because brochure delivery is programmed into the providers’ software, though they cannot produce records to evidence that delivery took place.”) (internal citations omitted).
- 61 See Outsourcing Proposal at section II.A.1.
- 62 See *id.*
- 63 See SEC Fact Sheet, Outsourcing by Investment Advisers, available at <https://www.sec.gov/files/ia-6176-fact-sheet.pdf>.
- 64 See *id.*
- 65 See, e.g., Comment Letter from Gail C. Bernstein, General Counsel, Investment Adviser Association, to the Commission re: Outsourcing by Investment Advisers (Dec. 23, 2022), available at <https://www.sec.gov/comments/s7-25-22/s72522-20153667-320948.pdf>.
- 66 See Investment Company Swing Pricing, Investment Company Act Rel. No. 32316 (Oct. 13, 2016), 81 Fed. Reg. 82084 (Nov. 18, 2016), available at <https://www.federalregister.gov/documents/2016/11/18/2016-25347/investment-company-swing-pricing> (“Swing Pricing Adopting Release”) at section II.A.1.
- 67 See *id.*
- 68 See *id.* at text accompanying note 11 (“Commission rules currently provide open-end funds with several tools to mitigate dilution from shareholder purchase or redemption activity and facilitate a fund’s ability to meet shareholder redemptions in a timely manner. These tools include a fund’s liquidity risk management program, the option to use swing pricing for certain funds, the ability to impose purchase or redemption fees, and/or the ability to redeem in kind.”).
- 69 See *id.*
- 70 See Open-End Fund Liquidity Risk Management Programs and Swing Pricing; Form N-PORT Reporting, Investment Company Act Release No. 34726 (Nov. 2, 2022), 87 Fed. Reg. 77172 (Dec. 16, 2022), available at <https://www.federalregister.gov/documents/2022/12/16/2022-24376/open-end-fund-liquidity-risk-management-programs-and-swing-pricing-form-n-port-reporting>, at note 67 and accompanying text (“Today, no fund has implemented swing pricing, and funds rarely use redemption fees to address dilution other than in the case of short-term trading of fund shares, meaning shareholders may experience dilution both in normal and stressed conditions, particularly when purchases or redemptions are large or when funds invest in markets with high transaction costs relative to other markets.”).

- 71 See SEC, Press Release, SEC Proposes Enhancements to Open-End Fund Liquidity Framework (Nov. 2, 2022), available at <https://www.sec.gov/news/press-release/2022-199>.
- 72 Many commenters on the Commission’s Liquidity and Swing Pricing Proposal strongly oppose the proposed swing pricing requirement and an accompanying “hard close” requirement the Commission proposed to help effect swing pricing. See, e.g., Comment Letter of Investment Company Institute (Feb. 14, 2023), available at <https://www.sec.gov/comments/s7-26-22/s72622-20157306-325651.pdf> (“We strongly oppose the hard close on mutual fund orders (typically set by most funds at 4:00 p.m. ET) and mandatory swing pricing for mutual funds. Neither fund experience nor the proposal’s economic analysis establishes that such costly measures are warranted. The harm and disruption for everyday mutual fund investors resulting from them would be far too high. Implementing a hard close would require significant systems rebuilds across the industry, affecting the entire fund ecosystem, including intermediaries such as broker-dealers and retirement plan recordkeepers, administrators, custodians, transfer agents, and the industry utility (DTCC). The cost, resources, and effort to build these systems would be enormous and lead to lost processing efficiencies.”).
- 73 Exchange Act § 4(g)(4), 15 U.S.C. § 78d(g)(4).
- 74 See SEC’s Performance Goal #6: Investor Engagement Activities, available at [https://www.sec.gov/files/fy-2024-congressional-budget-justification\\_final-3-10.pdf#page=117](https://www.sec.gov/files/fy-2024-congressional-budget-justification_final-3-10.pdf#page=117) (last visited June 1, 2023).
- 75 § 78d(g)(4), *supra* note 73.
- 76 Exchange Act § 4(g)(8)(B), 15 U.S.C. § 78d(g)(8)(B).
- 77 Exchange Act § 4(g)(8)(D), 15 U.S.C. § 78d(g)(8)(D).
- 78 As used in this report, the term “Ombuds” may refer to the Ombuds, the Ombuds and staff in the Ombuds Office, and, at times, to staff, contractors, and interns in the Office of the Investor Advocate directly supporting the Ombuds function.
- 79 See SEC, About the SEC, available at <https://www.sec.gov/about.shtml> (last visited June 1, 2023).
- 80 To note, matters categorized as “Non-SEC/Other Matters” refer to matters outside the jurisdiction of the SEC, which fall within the jurisdiction of another regulatory agency. Matters characterized as “Atypical Matters” refer to matters where the submitter’s characterization or description of the issue makes it difficult to determine the nature of the complaint.
- 81 Advance fee frauds ask investors to pay a fee up front—in advance of receiving any proceeds, money, stock, or warrants—in order for the deal to go through. The advance payment may be described as a fee, tax, commission, or incidental expense that will be repaid later. Some advance fee schemes target investors who already purchased underperforming securities and offer to sell those securities if an “advance fee” is paid, or target investors who have already lost money in investment schemes, see Investor.gov, Protect Your Investments, Advance Fee Fraud, available at <https://www.investor.gov/protect-your-investments/fraud/types-fraud/advance-fee-fraud>.
- The SEC’s Office of Investor Education and Advocacy has published a number of investor publications about advance fee fraud schemes on its website, available at <https://www.investor.gov/>.
- 82 The SEC issued a press release regarding the market proposals, see SEC, SEC Proposals: Market Structure, available at <https://www.sec.gov/newsroom/market-structure-proposals-december-2022>. The proposed rules are Regulation Best Execution; Order Competition Rule; Regulation NMS: Minimum Pricing Increments, Access Fees, and Transparency of Better Priced Orders; and Disclosure of Order Execution Information.
- 83 FINRA Rule 6440(a)(3), available at <https://www.finra.org/rules-guidance/rulebooks/finra-rules/6440-0#the-rule> (last visited June 1, 2023).
- 84 Exchange Act § 4(g)(8)(B)(ii), 15 U.S.C. § 78d(g)(8)(B)(ii).
- 85 See SEC, Office of the Investor Advocate, Report on Activities, Fiscal Year 2022 (Dec. 2022), available at <https://www.sec.gov/files/fy22-oiad-sar-activities-report.pdf>.

- 86 *Id.*
- 87 See FINRA Rule 13200, available at <https://www.finra.org/rules-guidance/rulebooks/finra-rules/13200> (last visited June 1, 2023).
- 88 See generally FINRA, Arbitration-Mediation Overview, available at <https://www.finra.org/arbitration-mediation/overview> (last visited June 1, 2023).
- 89 See, e.g., Petition for Rulemaking, George Brunelle, Brunelle & Hadjickow, P.C., Rulemaking Petition Regarding Complex Securities Arbitrations (Jul. 19, 2016), available at <https://www.sec.gov/rules/petitions/2016/petn4-702.pdf>.
- 90 See SEC, Exchange Act Rel. No. 34-96607, File No. SR-FINRA-2022-033 (“FINRA 2022-033”), 88 Fed. Reg. 2144 (Jan 12, 2023), available at <https://www.federalregister.gov/documents/2023/01/12/2023-00425/self-regulatory-organizations-financial-industry-regulatory-authority-inc-notice-of-filing-of-a>.
- 91 *Id.*
- 92 See *id.* To note, FINRA currently describes this process on its website and in SEC filings.
- 93 *Id.* at 2145.
- 94 *Id.*
- 95 *Id.*
- 96 *Id.*
- 97 *Id.*
- 98 *Id.* at 2146. Investors may request that special proceedings be conducted telephonically with 60 days advance notice.
- 99 *Id.* Parties in simplified arbitrations are currently exempt from complying with this requirement.
- 100 *Id.* at 2149. Because the dismissal of all of a claimant’s claims would dispose the case, it is the current practice to require the issuance of an award in such dismissals. See also FINRA, DISPUTE RESOLUTION SERVICES ARBITRATOR’S GUIDE (2023), available at <https://www.finra.org/sites/default/files/arbitrators-ref-guide.pdf>.
- 101 See generally *id.* at 2147-8.
- 102 See Comment Letter from Hugh Berkson, President, Public Investors Advocate Bar Association (“PIABA”) (Feb. 1, 2023), available at <https://www.sec.gov/comments/sr-finra-2022-033/srfinra2022033-20156362-324502.pdf> (“PIABA Letter”); Comment Letter from William A. Jacobson, Esq., Director, Cornell Securities Law Clinic, Dustin Hartuv, Erik Olson and Jianing Zhao (Feb. 2, 2023), available at <https://www.sec.gov/comments/sr-finra-2022-033/srfinra2022033-20156446-324602.pdf> (“Cornell Letter”); Comment Letter from Elissa Germaine, Supervising Attorney, Fairbridge Investor Rights Clinic, and Carolina Carasa, Roberto Quiroga (Feb. 2, 2023), available at <https://www.sec.gov/comments/sr-finra-2022-033/srfinra2022033-20156445-324601.pdf> (“Fairbridge Letter”); Comment Letter from Christine Lazaro, Director of the Securities Arbitration Clinic, St. John’s University, and Gavriel Rosenbaum, Julia Shea, Jacob Wetter (Feb 2, 2023), available at <https://www.sec.gov/comments/sr-finra-2022-033/srfinra2022033-20156450-324629.pdf> (“St. John’s Letter”).
- 103 See Fairbridge Letter, *supra* note 102 at 2-3.
- 104 See St. John’s Letter, *supra* note 102 at 2.
- 105 See *id.*
- 106 See Comment Letter from Kristine Vo, Assistant General Counsel and Office of General Counsel, FINRA (April 11, 2023) (“FINRA Letter”), available at <https://www.sec.gov/comments/sr-finra-2022-033/srfinra2022033-20164047-333995.pdf>.
- 107 See FINRA Letter, *supra* note 106, at 8. See also SEC, Exchange Act Rel. No. 34-97291, File No. SR-FINRA-2022-033, 88 Fed. Reg. 23720, 23723 (Apr. 18, 2023), available at <https://www.federalregister.gov/documents/2023/04/18/2023-08145/self-regulatory-organizations-financial-industry-regulatory-authority-inc-notice-of-filing-of>.
- 108 See generally SEC, Exchange Act Rel. No. 34-97291; File No. SR-FINRA-2022-033 (Apr. 12, 2023); 88 Fed. Reg. 23720 (April 18, 2023), available at <https://www.finra.org/sites/default/files/2023-04/sr-finra-2022-033-app-disapp.pdf>.
- 109 See FINRA, Expungement of Customer Information, available at <https://www.finra.org/rules-guidance/key-topics/expungement> (last visited June 1, 2023) (“Expungement, as an extraordinary remedy, should be recommended only in circumstances in accordance with FINRA rules to remove clearly inaccurate customer dispute information from the record of an individual broker that is associated with a broker-dealer firm.”).

- 110 See, e.g., PIABA and The PIABA Foundation, 2021 Updated Study on FINRA Expungements, at 5 (May 18, 2021), available at <https://piaba.org/system/files/2021-05/REPORT%20-%202021%20Updated%20Study%20on%20FINRA%20Expungements.pdf>, (“Arbitrators have continued to grant expungement requests 90% of the time. . .”).
- 111 See e.g., SEC, Office of the Investor Advocate, Report on Activities, Fiscal Year 2022 (Dec. 2022), at 52–54, available at <https://www.sec.gov/files/fy22-oiad-sar-activities-report.pdf>; SEC, Office of the Investor Advocate, Report on Objectives, Fiscal Year 2022 (June 2022), at 31–34, available at <https://www.sec.gov/files/sec-office-investor-advocate-report-objectives-fy2022.pdf>.
- 112 See SEC, Exchange Act Rel. No. 34-95455; File No. SR-FINRA 2022-024 (Aug. 9, 2022); 87 Fed. Reg. 50170 (Aug. 15, 2022), available at <https://www.federalregister.gov/documents/2022/08/15/2022-17430/self-regulatory-organizations-financial-industry-regulatory-authority-inc-notice-of-filing-of-a>.
- 113 FINRA 2022-024 was published for comment in the Federal Register on Aug. 9, 2022. On Sept. 27, 2022, FINRA consented to an extension of the period in which the Commission must approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change to Nov. 11, 2022. On Nov. 10, 2022, FINRA responded to the comment letters received in response to the Notice and filed an amendment to the proposed rule change (“Amendment No. 1”). On Nov. 10, 2022, the Commission published a notice of filing of Amendment No. 1 and an order instituting proceedings to determine whether to approve or disapprove the proposed rule change, as modified by Amendment No. 1. On Dec. 8, 2022, FINRA consented to an extension of the period in which the Commission must approve or disapprove the proposed rule change to Apr. 12, 2023. On Apr. 3, 2023, FINRA responded to the comment letters received in response to the Order Instituting Proceedings and filed a second amendment to the proposed rule change (“Amendment No. 2”). On Apr. 19, the Commission published notice of approval of the proposed rule change, as modified by Amendments Nos. 1 and 2, on an accelerated basis, and solicited comments on Amendment No. 2 from interested persons. See SEC, Exchange Act Rel. No. 34-97294; File No. SR-FINRA-2022-024 (Apr. 12, 2023) (“FINRA 2022-24 Order”); 88 Fed. Reg. 24282 (Apr. 19, 2023).
- 114 See FINRA 2022-024 Order, *supra* note 113, at 24282.
- 115 See *id.*
- 116 See Comment Letter from Mignon McLemore, Associate General Counsel, FINRA at 18-19, (Apr. 3, 2023), available at <https://www.sec.gov/comments/sr-finra-2022-024/srfinra2022024-20163319-333785.pdf>.
- 117 See FINRA, Expungement of Customer Information, *supra* note 109.
- 118 FINRA Rule 2080(b)(1), available at <https://www.finra.org/rules-guidance/rulebooks/finra-rules/2080> (last visited June 1, 2023).
- 119 Press Release, SEC, SEC Announces Pilot Securities Arbitration Clinic to Help Small Investors—Levitt Responds to Concerns Voiced at Town Meetings, 97-101 (Nov. 12, 1997), available at <https://www.sec.gov/news/press/pressarchive/1997/97-101.txt>.
- 120 For more information on the significance of law school investor advocacy clinics to retail investors, see SEC, Office of the Investor Advocate, Report on Activities, Fiscal Year 2019, at 33-34 (Dec. 2019), available at <https://www.sec.gov/files/sec-investor-advocate-report-activities-2019.pdf>.
- 121 For an overview of the Ombuds’ involvement with the law school clinics, see SEC, Office of the Investor Advocate, Report on Objectives, Fiscal Year 2023, at 29 (June, 2022), available at <https://www.sec.gov/files/sec-office-investor-advocate-report-objectives-fy2023.pdf>.
- 122 Exchange Act § 39(a), 15 U.S.C. § 78pp(a).
- 123 *Id.*
- 124 Exchange Act § 39(a)(2)(B), 15 U.S.C. § 78pp(a)(2)(B).
- 125 Exchange Act § 39(g), 15 U.S.C. § 78pp(g).
- 126 Exchange Act § 39(h), 15 U.S.C. § 78pp(h).
- 127 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.”
- 128 17 C.F.R. §§ 200.735-3(b)(2)(i), 230.122 (2014); Exchange Act § 24(b), 15 U.S.C. § 78x; 5 U.S.C. § 552a(i)(1); SECR18-2, Section 8.5 (Nonpublic Information) (July 31, 2005).



- 129 SEC, Recommendation of the SEC Investor Advisory Committee to Improve Customer Account Statements to Better Inform Investors (Mar. 2, 2023), available at <https://www.sec.gov/files/20230302-recommendation-customer-account-statements.pdf>.
- 130 SEC, Recommendation of the SEC Investor Advisory Committee Regarding Accounting Modernization (Sept. 21, 2022), available at <https://www.sec.gov/spotlight/investor-advisory-committee-2012/20220921-accounting-recommendation.pdf>.
- 131 *See* Financial Accounting Foundation Debuts Enhanced Free Access to Online Accounting Standards Codification and Governmental Accounting Research System, Financial Accounting Foundation (Feb. 27, 2023), available at [https://accountingfoundation.org/page/getarticle?uid=faf\\_MediaAdvisory-02-27-23](https://accountingfoundation.org/page/getarticle?uid=faf_MediaAdvisory-02-27-23).
- 132 SEC, Recommendation of the SEC Investor Advisory Committee Related to Climate-Related Disclosure Rule Proposals (Sept. 21, 2022), available at <https://www.sec.gov/spotlight/investor-advisory-committee-2012/20220921-climate-related-disclosure-recommendation.pdf>.
- 133 *See* Proposed Rule, The Enhancement and Standardization of Climate-Related Disclosures for Investors, Securities Act Release No. 11042, Exchange Act Release No. 94478 (Mar. 21, 2022), 87 Fed. Reg. 21334 (Apr. 11, 2022), available at <https://www.federalregister.gov/documents/2022/04/11/2022-06342/the-enhancement-and-standardization-of-climate-related-disclosures-for-investors>.
- 134 SEC, Recommendation of the SEC Investor Advisory Committee Regarding Cybersecurity Risk Management, Strategy, Governance, and Incident Disclosure (Sept. 21, 2022), available at <https://www.sec.gov/spotlight/investor-advisory-committee-2012/20220921-cybersecurity-disclosure-recommendation.pdf>.
- 135 *See* Proposed Rule, Cybersecurity Risk Management, Strategy, Governance, and Incident Disclosure, Securities Act Release No. 11038, Exchange Act Release No. 94382, Investment Company Act Release No. 34529 (Mar. 9, 2022), 87 Fed. Reg. 16590 (Mar. 23, 2022), available at <https://www.federalregister.gov/documents/2022/03/23/2022-05480/cybersecurity-risk-management-strategy-governance-and-incident-disclosure>.
- 136 SEC, Recommendation of the SEC Investor Advisory Committee to Better Protect Older Adult Investors (June 9, 2022), available at <https://www.sec.gov/spotlight/investor-advisory-committee-2012/20220609-protecting-older-investor-recommendation.pdf>.
- 137 Press Release, SEC, SEC Unveils New Public Service Campaign Encouraging Older Investors to Never Stop Learning (June 12, 2023), available at <https://www.sec.gov/news/press-release/2023-106>.
- 138 SEC, Recommendation of the SEC Investor Advisory Committee Regarding Investor Advocacy Clinic Funding (June 9, 2022), available at <https://www.sec.gov/spotlight/investor-advisory-committee-2012/20220609-investor-clinic-recommendation.pdf>.



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