U.S. SECURITIES AND EXCHANGE COMMISSION

Office of the Investor Advocate

REPORT ON OBJECTIVES

FISCAL YEAR 2022

OFFICE OF THE INVESTOR ADVOCATE

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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.[1] A Report on Objectives is due no later than June 30 of each year, and its purpose is to set forth the objectives of the Investor Advocate for the following fiscal year.[2] The instant report contains a summary of the Investor Advocate's primary objectives for Fiscal Year 2022, beginning October 1, 2021.

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.[3] For Fiscal Year 2022, the activities and accomplishments of the Office will be reported not later than December 31, 2022.

CONTENTS

MESSAGE FROM THE INVESTOR ADVOCATE

In recent months, some dramatic shifts have occurred in the securities markets. Commission-free online trading has surged, social media has revolutionized communication amongst retail investors, and companies increasingly have utilized non-traditional methods to raise capital in the public markets through direct listings and special purpose acquisition companies (SPACs).

For the Office of the Investor Advocate, our work plans must take into account this new environment as we look ahead to the new fiscal year. As discussed in this Report on Objectives, we will explore each of these recent trends to understand how retail investors may benefit from them and how the regulatory structure could be improved in light of the changing dynamics of the markets.

Other aspects of our work reflect longer-term projects. For example, we continue to search for ways to help improve disclosures to retail investors. Many aspects of the securities laws require disclosure of information to investors, but much work remains to be done to understand how investors process that information and use it to make decisions. We are ramping up our efforts to discover ways to make disclosures more understandable to investors and, importantly, to make those disclosures more likely to be read in an environment where consumers have become accustomed to clicking through disclosures without reading them.

In addition, our objectives for the upcoming fiscal year reflect some of the priorities of the new leadership of the Commission. We expect, for example, that the Commission will be focused on various aspects of environmental, social, and governance (ESG) disclosure. We will conduct outreach to investors and use the research tools at our disposal to help determine what policies are in the best interest of investors. These and other important topics are described below in our Policy Agenda for Fiscal Year 2022.

Beyond our research and policy work, though, is one of the most critical aspects of our Office's mission. SEC Ombudsman Tracey McNeil and her team provide direct assistance to retail investors who are often confused, frustrated, and seeking help to resolve difficult problems. In the upcoming year, they will continue their work—most often behind the scenes and unheralded—to serve investors throughout America. A summary of Ombudsman McNeil's plans and activities is set forth below in the Ombudsman's Report.

Finally, we will continue to provide support services for the SEC's Investor Advisory Committee in Fiscal Year 2022. This involves many tasks, such as processing the appointments of new members, organizing their quarterly meetings, publishing meeting notices and agendas, coordinating the panelists, assisting with travel arrangements and reimbursements, and drafting the meeting minutes. A summary of the recommendations made by the Investor Advisory Committee is included in this report.

In this, my 15th report to Congress, I am reminded again of the depth and breadth of work performed by the small team in the Office of the Investor Advocate. I am deeply grateful for these women and men who each play such a vital role in our work. On their behalf, I am pleased to submit this report on our objectives for the upcoming year, and I would be happy to answer any questions from Members of Congress.

Respectfully Submitted,

Rick A. Fleming
Investor Advocate

OBJECTIVES OF THE INVESTOR ADVOCATE

As set forth in Exchange Act Section 4(g)(4), 15 U.S.C. § 78d(g)(4), the Investor Advocate is required to perform the following functions:

> (A) assist retail investors in resolving significant problems such investors may have with the Commission or with self-regulatory organizations (SROs);
> (B) identify areas in which investors would benefit from changes in the regulations of the Commission or the rules of SROs;
> (C) identify problems that investors have with financial service providers and investment products;
> (D) analyze the potential impact on investors of proposed regulations of the Commission and rules of SROs; and
> (E) to the extent practicable, propose to the Commission changes in the regulations or orders of the Commission and to Congress any legislative, administrative, or personnel changes that may be appropriate to mitigate problems identified and to promote the interests of investors.

Assisting Retail Investors

Exchange Act Section 4(g)(4)(A) directs the Investor Advocate to assist retail investors in resolving significant problems such investors may have with the Commission or with SROs.[4] To help accomplish that objective, the Investor Advocate has appointed an Ombudsman to, among other things, act as a liaison between the Commission and any retail investor in resolving problems that retail investors may have with the Commission or with SROs.[5] As required by statute, a semi-annual report from the Ombudsman is included within this Report on Objectives.[6]

Identifying Areas in Which Investors Would Benefit from Regulatory Changes

Exchange Act Section 4(g)(4)(B) requires the Investor Advocate to identify areas in which investors would benefit from changes in the regulations of the Commission or the rules of SROs.[7] 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 look at the rules and regulations governing existing equity market structure to determine whether any regulatory changes would benefit investors. These and other concerns are discussed in greater detail below in the section entitled *Policy Agenda for Fiscal Year 2022*.

Identifying Problems with Financial Service Providers and Investment Products

Exchange Act Section 4(g)(4)(C) requires the Investor Advocate to identify problems that investors have with financial service providers and investment products.[8] 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. As required by Exchange Act Section 4(g)(6), these problems will be described in the Reports on Activities to be filed in December of each year.

Analyzing the Potential Impact on Investors of Proposed Rules and Regulations

Exchange Act Section 4(g)(4)(D) directs the Investor Advocate to analyze the potential impact on investors of proposed regulations of the Commission and proposed rules of SROs.[9] As required, in Fiscal Year 2022 the Office will review all significant rulemakings of the Commission and SROs, and we will communicate with investors and their representatives to determine the potential impact of proposed rules. In addition, we will study investor behavior and utilize a variety of research methods to examine the efficacy of policy proposals. For example, we will study the effectiveness of various disclosures that are provided to retail investors. We include descriptions of our research projects and related findings in our Reports on Activities, published every December.

Proposing Appropriate Changes to the Commission and to Congress

Exchange Act Section 4(g)(4)(E) provides that, to the extent practicable, 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.[10] As we study the issues in our *Policy Agenda for Fiscal Year 2022*, as set forth below, we will likely make recommendations to the Commission and Congress for changes that will promote the interests of investors.

Supporting the Investor Advisory Committee

Exchange Act Section 39 establishes the Investor Advisory Committee (IAC).[11] As discussed in greater detail below in the section entitled *Summary of Investor Advisory Committee Recommendations and SEC Responses*, 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,[12] and the Office will continue to provide staff and operational support to the IAC during Fiscal Year 2022.

POLICY AGENDA FOR FISCAL YEAR 2022

As described above, the statutory mandate for the Office of the Investor Advocate is broad, and much of our time is consumed with the review of rulemakings that flow through the Commission and SROs. We monitor all rulemakings, but we prioritize certain issues so that we can develop expertise in those areas and maximize our impact for investors with the resources we have available. After discussions with numerous knowledgeable parties, both inside and outside the Commission, and after due consideration, the Investor Advocate has determined that the Office will focus upon the following issues during Fiscal Year 2022:

- Environmental, Social, and Governance (ESG) Disclosure
- Rule 10b5-1 Plans
- Capital-Raising Alternatives
- Equity Market Structure
- Novel Exchange-Traded Funds
- Registered Fund Disclosure
- Cryptocurrency
- Broker Conduct
- Financial Exploitation of Senior Investors

As in past years, other issues are likely to arise that will require the attention of the Office.

ENVIRONMENTAL, SOCIAL, AND GOVERNANCE (ESG) DISCLOSURE

In recent remarks, SEC Chair Gary Gensler announced that proposing rules regarding climate change and human capital risks will be among his top priorities and "an early focus" of his tenure.[13] His interest follows increasing demand from investors for Commission focus on ESG factors. Last year, for example, the Investor Advisory Committee called on the Commission to begin serious efforts to update public company reporting requirements, rejecting voluntary private-sector reporting initiatives as insufficient and inadequate to meet investor demand for reliable, material ESG information.[14] Similarly, the Asset Management Advisory Committee (AMAC), in its preliminary recommendations to the Commission in November 2020, recognized a need for mandatory disclosure standards; however, the AMAC specifically declined to recommend any change in the disclosure laws, suggesting instead the issuance of clear standards tailored by industry and overseen by an independent standard-setting entity.[15]

In Fiscal Year 2022, we will help to ensure that as the Commission takes up this complicated issue, investors' interests remain at the forefront

of the discussion. In our opinion, investors would benefit from a careful balance of prescriptive and principles-based ESG disclosure requirements. Principles-based measures are more flexible and can generate decision-useful information for investors that is most relevant within the context of a particular business. On the other hand, principles-based requirements tend to generate disclosures that can be difficult to compare across a variety of companies. Accordingly, we favor prescriptive requirements to promote comparability wherever possible, particularly with respect to disclosure requirements for objectively-determinable facts.

On climate risk in particular, the staff already has at least one tool available to assess disclosures, i.e., the Commission Guidance Regarding Disclosure Related to Climate Change issued February 8, 2010 (Climate Change Guidance).[16] The Climate Change Guidance was intended to clarify what companies should have been doing all along: making disclosures about the effects of climate-related legislation, regulation, and international accords, as well as other developments concerning climate change, if material to their businesses.

Since the issuance of the Climate Change Guidance, however, some have criticized the Commission for what they view as inconsistent efforts to ensure issuers' compliance.[17] Recently, the Division of Enforcement launched a task force to oversee division efforts to proactively identify ESG-related misconduct,[18] and the Division of Examinations highlighted a greater focus on climate-related risks in its 2021 examination priorities.[19] We will monitor these efforts in parallel with our work on rulemaking proposals, as whatever the law requires, investors benefit from consistent enforcement.

RULE 10B5-1 PLANS

Another area of corporate disclosure that will receive our attention in Fiscal Year 2022 is the administration and composition of Rule 10b5-1 trading plans. Exchange Act Rule 10b-5 specifies that the purchase or sale of a security is "on the basis of" material nonpublic information, and thus potentially prohibited insider trading, if the trader is aware of material nonpublic information when making the purchase or sale.[20] In 2000, the Commission adopted Rule 10b5-1, which allows a person to establish a trading plan before coming into possession of material nonpublic information.[21] Rule 10b5-1 plans theoretically provide for continuous trading over time, without influence of new information, and thus offer traders an affirmative defense against insider trading claims.

In reality, evidence suggests some executives have used these plans to skirt the law and trade on information not available to the rest of the market.[22] Critics contend that some executives have, for example, established plans and made initial trades based on material nonpublic information already in their possession, or canceled or revised plans based on newly-acquired information.[23] In a June 7, 2021 speech, Chair Gensler noted that in his view, "these plans have led to real cracks in our insider trading regime."[24]

Aside from misuse of 10b5-1 plans, the market's lack of transparency into plan details may operate to the disadvantage of retail investors. Under the rule, for example, plans may provide that if company shares hit a predetermined price level, company executives will automatically sell previously-determined portions of their shares.[25] These potentially large sales may then limit or depress share value after positive news,[26] which purchasing investors have no ability to predict.

In our view, adjustments to Rule 10b5-1 may be in order. Over the next year, we will study the rule itself and its application to assess whether, among other things, trading pursuant to these plans should be paused for a set "cooling off" period or companies or their executives should be required to disclose plan details. In April 2021, Commissioner Allison Lee (then Acting Chair) instructed Commission staff to review the rule and develop recommendations for possible revisions.[27] On June 10, 2021, the IAC hosted a panel discussion on the topic.[28] Our colleagues inside the Commission have been analyzing this issue closely, and we look forward to working with them to enhance protections for public shareholders.

CAPITAL-RAISING ALTERNATIVES

Entities seeking to raise money from investors must decide which capital-raising method best suits the companies' economic goals. During Fiscal Year 2022, we will study whether novel capital-raising methods result in adequate disclosures for investors or implicate other investor-protection considerations.

In our December 2020 Report on Activities, we noted concern regarding the shift of capital-raising from public markets to private markets, where investors do not benefit from the same robust disclosure regime required of public companies under the Securities Act of 1933.[29] This concern remains, but in recent months the public markets have experienced a resurgence of interest by companies seeking to raise capital, often by utilizing non-traditional methods such as direct listings[30] and special purpose acquisition company (SPAC) transactions.[31] Affording companies more than a binary choice between the private market and a traditional initial public offering (IPO) promises expanded opportunities for investors and may lower issuers' cost of capital. Yet, we worry that even in the public market, investors may not understand the full implications of the capital-raising strategy a company chooses to implement. For example, those raising capital may be selecting a path to investors by asking which method best enables them to limit their liability to those investors.

In 2020 and 2021, record numbers of companies chose SPACs as their preferred capital-raising approach.[32] A SPAC is a company with no operations that offers securities for cash and places substantially all the offering proceeds into a trust or escrow account for future use in the acquisition of one or more private operating companies. Following its initial public offering, the SPAC identifies acquisition candidates and attempts to complete an acquisition, after which the combined company will continue operations as a public company.[33]

Unlike the traditional IPO process in which a private operating company sells its securities at prices arrived at through market-based discovery, when a SPAC elects to acquire a private company, the SPAC's sponsors, directors, and officers decide how to value it and how much the SPAC will pay for it. That creates conflicts of interest that investors may not appreciate without clear disclosure. In December 2020, the Division of Corporation Finance issued guidance directing SPACs to make such disclosures (and others), but staff guidance lacks the force of law.[34]

A benefit for companies undergoing a SPAC transaction is the speed at which they can become public companies. Retail investors may also benefit by having greater access to investments in earlier-stage companies with potentially high growth. This haste, however, also increases the risk that investors may invest in companies with serious internal controls weaknesses. A private company may spend years preparing to go public through a traditional IPO, allowing time to ensure it has proper infrastructure and expertise to handle the additional regulatory responsibilities of a public company. Through a

SPAC merger, a private company may make that transition in just a few months. In March 2021, the Acting Director of the Commission's Office of the Chief Accountant, Paul Munter, issued a public statement warning private companies considering SPAC transactions to first "evaluate the status of various functions, including people, processes, and technology, that will need to be in place to meet SEC filing, audit, tax, governance, and investor relations needs post-merger."[35] His statement included suggested areas of consideration, which companies should carefully study before undergoing a SPAC merger, but retail investors often will have little visibility into those preparations when making investment decisions.

Limitations on projections and other forward-looking statements present another potential difference between protections afforded traditional IPO investors and those who invest in SPACs. The Private Securities Litigation Reform Act (PSLRA) provides established, publicly-traded reporting companies a safe harbor against private lawsuits arising from forward-looking statements. Companies undergoing a traditional IPO cannot avail themselves of that safe harbor, but many argue SPACs and their merger targets can. Some companies may opt to go public through SPAC transactions in part because of the assumption the PSLRA limits investors' ability to pursue legal claims on overly optimistic projections. John Coates, the Division of Corporation Finance's Acting Director, highlighted this issue in an April 2021 public statement.[36] Similarly, the fact that SPAC transactions do not involve underwriters, which must operate within their own regulatory obligations[37] and reputational risk considerations, may lead some companies to believe that going public through a SPAC transaction will allow them to engage in more aggressive marketing.

We will work with the Division of Corporation Finance, the Office of the Chief Accountant, and others to assess whether SPAC investors would benefit from additional guidance, regulatory changes, or clarification on the scope of the PSLRA or other laws.

Additionally, we recognize that despite their recent popularity, SPACs may not enjoy long-term favor from retail investors. Recent scholarship highlighted at the Investor Advisory Committee's March 2021 meeting suggests that in many cases, SPAC share prices drop significantly after the business combination, leaving investors holding shares at that point with sometimes substantial losses.[38] If that pattern holds true over time, investors and companies alike may sour on this model of capital formation. Indeed, media reports suggest that such disenchantment may already be occurring.[39]

Nonetheless, whether or not SPACs enjoy long-term popularity, they represent an evolution in the process of going public and present an opportunity for the Commission to consider how to assess future evolutions. We will study the SPAC phenomenon to determine whether additional regulatory refinements may be necessary to prepare for future innovations in the capital markets.

EQUITY MARKET STRUCTURE

As noted in our prior Reports on Objectives, the Commission has been engaged in a multi-year effort to improve the environment for modern trading.[40] We have supported a number of regulatory proposals that were recently adopted, including amendments to Rule 15c2-11 that address a specific type of stale quotations in "over-the-counter" (OTC) securities not listed on the exchanges,[41] as well as efforts to modernize the overall infrastructure for the collection, consolidation, and dissemination of market data for National Market System (NMS)

stocks.[42] Retail investors may benefit from the improved content and competitive infrastructure for quotation and trading data, either directly or as participants in mutual funds and pension funds. We will monitor the implementation and impact of both rules in Fiscal Year 2022.

We will continue to encourage the Commission to finalize on-going initiatives to enhance the capital markets and benefit investors. For example, in October 2020, the Commission published for public comment a proposal to modernize the governance of NMS plans that produce public consolidated equity market data and disseminate trade and quote data from trading venues.[43] We support the adoption of this NMS Plan, as it should improve the representation of retail and institutional investors in the decision-making process. We also support the full implementation of the Commission's Consolidated Audit Trail, or CAT. This system, years in the making and years behind schedule, is intended to enhance, centralize, and generally update the regulatory data infrastructure available to market regulators.[44] Promising progress is being made; in October 2020, the Commission sought public comment on amendments to enhance data security for the CAT database[45] and also began "Phase 2a" of collecting core equity reports to the database.

During Fiscal Year 2022, we intend to continue our engagement on numerous other relevant initiatives that we hope the Commission will be able to move forward with in the near future, including:

- *Shortening the security settlement period in the U.S. financial markets from a two-day settlement (referred to as T+2) to one-day (or shorter) for transactions in U.S. equities, corporate and municipal bonds, and unit investment trusts*. The successful industry transition from T+3 in September 2017 now provides an opportunity to further reduce risk in the financial system for the benefit of all market participants, including retail investors. This not only would respond to the Investor Advisory Committee's 2015 long-standing recommendation on the matter,[46] but it also could reduce behind-the-scenes regulatory requirements that may have contributed to retail investor confusion and frustration during a period of volatile stock trading in January 2021.
- *Pilot programs for thinly-traded securities to explore the effects of restricting unlisted trading privileges (UTP)*. UTP permits all exchanges to act as separate trading venues for any listed security.[47] Some have argued that concentrating trading on the primary listing exchange would improve liquidity by making it easier for buyers and sellers to find each other in the smaller segment of the equity market. A pilot program to explore this idea could also allow for integration with other innovative market structure solutions, including periodic batch auctions.
- *Enhancements to the rules governing transfer agents*. As previously discussed in a December 2015 advanced notice of rulemaking and a concept release,[48] these enhancements could, in part, specify transfer agent obligations with respect to the tracking and removal of restrictive legends. This could deter the improper or inappropriate removal of a legend, and investors would be better protected from the harm that comes from the illegal public distribution of such securities.
- *Studying and addressing the potential conflicts of interest created by exchange fees and rebates in connection with broker-dealer order routing behavior*. Although in June 2020, the U.S. Circuit Court of Appeals for the District of Columbia struck down the Commission's intended Transaction Fee Pilot regarding NMS stocks, which would have collected experimental data on this subject,[49] we continue to believe it is worth studying, and we support efforts to evaluate the issue in light of the Court's instructive guidance.

In addition, we would support efforts to evaluate the impact of "payment for order flow" by market makers when broker-dealers make off-exchange order routing decisions.

- *Enhance transparency in short selling as well as the opaque network of stock lending and borrowing that facilitates the practice*. The period of volatile stock trading in January 2021, in several cases involving companies with significant short interest, raised a number of policy questions. Having a repository of data in this space could improve the Commission's ability to monitor this area of the market in real time. Further, additional guidance concerning what constitutes a broker-dealer's reasonable basis for the "locate" requirement for heavily shorted companies should be considered.

In addition to evaluating rulemaking by the Commission during Fiscal Year 2022, 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 April 2021, the Commission approved a proposal by the CBOE BYX Exchange, Inc. (BYX) for intra-day, periodic auctions for all securities traded on the exchange.[50] We did not oppose this proposal but would have preferred a narrower initial approach that was more targeted to thinly-traded securities with less risk of creating systemic latency in a bifurcated market. In Fiscal Year 2022, we will monitor the implementation of the proposal, with the hope that it will lessen costs associated with the speed "arms race" in the equity market without causing significant unintended consequences. We will also consider whether this novel batch auction process, now Commission-approved, could be adopted by a primary listing exchange with an eye towards improving liquidity for thinly-traded securities.

NOVEL EXCHANGE-TRADED FUNDS

In September 2019, the Commission adopted a new rule and form amendments designed to establish a modernized, clear, and consistent ETF regulatory framework (ETF Rule).[51] We welcomed the adoption of the ETF Rule at the time, noting that it included important investor protection safeguards, such as requiring an ETF to provide full daily portfolio transparency on its website,[52] as well as a condition expressly excluding leveraged and inverse ETFs from the rule's scope.[53] Separately, however, the Commission has also provided special relief to several industry participants, allowing ETFs that do not provide full daily portfolio transparency (non-transparent ETFs) to enter the ETF marketplace. Additionally, in late 2020, the Commission amended the ETF Rule to bring many leveraged and inverse ETFs within the ETF Rule's ambit. Each of these developments raises potential investor protection concerns and warrants our continued attention and engagement in Fiscal Year 2022.

First, we will maintain a focus on non-transparent ETFs. Pursuant to special relief that the Commission granted to Precidian ETFs Trust (Precidian),[54] non-transparent ETFs began trading on an exchange for the first time in April 2020.[55] This development represented a significant departure from the way that ETFs have typically functioned. A traditional ETF with full daily portfolio transparency can rely on financial institutions to directly identify and act on arbitrage opportunities when the market value of the ETF's shares are over- or under-valued relative to the ETF's portfolio holdings. In contrast, non-transparent ETFs utilizing the Precidian model provide confidential information concerning the securities that the ETF would exchange for its shares only to agents working on behalf of financial institutions. The agents then facilitate the transactions expected to keep the market value

of the ETF's shares in line with the value of the ETF's holdings.[56] Not long after granting special relief to Precidian's non-transparent ETF model, the Commission granted special relief allowing for the introduction of several other types of non-transparent ETF models.[57] The details of these models vary slightly amongst each other. Generally, however, each provides daily information regarding a "proxy portfolio" in lieu of providing full daily portfolio transparency. The proxy portfolios are intended to give financial institutions enough information to engage in transactions that mimic the traditional ETF arbitrage mechanism. The first of these second-generation non-transparent ETFs launched in June 2020.[58] Though early data is encouraging, it is not yet clear whether any of these novel variations on the traditional ETF arbitrage mechanism will function as anticipated or whether investors in these funds will be kept fully informed of the risks associated with transacting in non-transparent ETFs.[59] As non-transparent ETFs continue to build an operating track record, we look forward to working with Commission staff to assess whether they are functioning as intended and evaluate the unique risks they may present to investors.

Second, we will continue to monitor developments related to leveraged and inverse ETFs. These ETFs were brought within the scope of the ETF Rule as part of the Commission's adoption of a rule relating to funds' use of derivatives (Derivatives Rule) on October 28, 2020.[60] Although the Commission ceased granting special relief to would-be sponsors of leveraged and inverse ETFs in 2009, sponsors may now form and operate these ETFs pursuant to the amended ETF Rule, akin to traditional "plain-vanilla" ETFs.[61] Unfortunately, because many existing leveraged and inverse ETFs (those with greater than 200% or -200% leverage) "generally could not satisfy the limit on fund leverage risk in [the Derivatives Rule]," these ETFs were simply exempted from the Derivatives Rule's leverage limitations.[62] We find this development worrisome because the Commission has long acknowledged the unique investor protection concerns that leveraged/inverse investment vehicles present,[63] numerous enforcement cases at the Commission and the Financial Industry Regulatory Authority (FINRA) have shown that investment professionals themselves often lack a basic understanding of these complex products,[64] and media outlets have documented the confusion and harm these products cause.[65] When initially proposed, the Derivatives Rule would have included other safeguards, such as a requirement that broker-dealers and investment advisers "exercise due diligence on retail investors before approving retail investor accounts to invest in 'leveraged/inverse investment vehicles,'" but unfortunately this requirement was dropped from the final Derivatives Rule.[66] Although the Derivatives Rule adopting release states that the Commission "believe[s] that it is important to continue to consider these funds in light of investor protection concerns,"[67] the release indicates that those concerns would be better addressed as part of a broader staff review of complex investment products.[68]

While we believe that exempting highly leveraged and inverse ETFs from the Derivatives Rule's limit on fund leverage risk will harm investors, we are encouraged that a broader review of complex investments is underway. We hope that the review will result in a fresh acknowledgement of the well-known investor protection concerns associated with inverse and leveraged ETFs and, to the extent these products remain exempt from the leverage limits applicable to all other ETFs, we believe the Commission should consider alternative safeguards to mitigate those concerns.

REGISTERED FUND DISCLOSURE

In Fiscal Year 2022, we will also continue our focus on the effectiveness of disclosure provided to investors in SEC-registered funds. As we have noted in reports for previous fiscal years, such disclosure is at the heart of the Commission's efforts to help ensure that investors are making thoughtful, well-informed decisions about their investments as they save for college expenses, look towards retirement, or plan for other goals.

The Commission attempts to provide registered fund investors with clear, concise disclosure regarding funds' investment strategies, risks, costs, and other attributes. With these considerations in mind, the Commission issued a significant proposal on August 5, 2020 to update and tailor mutual fund and ETF disclosures to retail investors' needs (Tailored Shareholder Reports Proposal).[69] This proposal would, if adopted as proposed: require streamlined reports to shareholders that would include, among other things, fund expenses, performance, illustrations of holdings, and material fund changes; significantly revise the content of these items to better align disclosures with developments in the markets and investor expectations; encourage funds to use graphic or text features—such as tables, bullet lists, and question-and-answer formats—to promote effective communication; and promote a layered and comprehensive disclosure framework by continuing to make available online certain information that is currently required in shareholder reports but may be less relevant to retail shareholders generally. The proposed framework would provide an alternative approach to keeping investors informed about their on-going fund investments. Instead of receiving both prospectus updates and shareholder reports, which today can be lengthy and complex, existing investors would receive the streamlined shareholder report.[70]

This initiative follows on the heels of other Commission efforts to improve fund disclosure in recent years. On June 5, 2018, the Commission issued a request for comment seeking input from individual investors and other interested parties on enhancing disclosures by mutual funds, ETFs, and other types of investment funds to improve the investor experience and to help investors make more informed investment decisions (the Investor Experience RFC).[71] Responses to the Investor Experience RFC have since aided rulemaking efforts within the Commission's Division of Investment Management, including the Tailored Shareholder Reports Proposal, as well as the recent adoption of a new rule and related form and rule amendments to simplify and streamline disclosures for investors about variable annuities and variable life insurance contracts.[72]

Additionally, on May 21, 2020, the Investor Advisory Committee approved a Recommendation on Disclosure Effectiveness,[73] acknowledging that the Commission faces a daunting challenge in developing effective disclosures. The Committee noted that investors have a wide range of choices and that "the factors to consider in an effort to identify the best or most appropriate option can be numerous and difficult to analyze." The Committee encouraged the Commission to utilize more scientific methods, including iterative research and testing to refine proposed disclosures, and made a number of other recommendations to enhance the effectiveness of disclosures for retail investors.

Meanwhile, the Office of the Investor Advocate is pursuing such efforts by utilizing surveys, focus groups, and other methods to gain insight into investor behavior and provide data regarding disclosure-related policy choices. We expect these efforts to produce valuable information in the upcoming reporting period and beyond, and to help inform initiatives such as the Tailored Shareholder Reports Proposal. We look forward to working

with our colleagues to continuously improve and enhance the information provided to registered fund investors.

CRYPTOCURRENCY

The emergence of cryptocurrency as an asset class is creating new opportunities for investors, and there is significant demand for investments in various crypto assets. The value of the total cryptocurrency market has surged to more $2 trillion in the past year, up from about $260 billion.[74] Similarly, trading volume in crypto assets has risen as more investors have been able to access crypto markets through a range of trading platforms.[75]

We see much promise in the underlying distributed ledger technology, or blockchain, which has the potential to transform the infrastructure of our markets by making it easier, for example, to track the ownership of specific shares of a company. This could unleash efficiencies in clearance and settlement, share voting, and communication with shareholders, among other innovations. More broadly, as Commissioner Hester Peirce has observed, given "its ability to reach people without intermediaries and its ease of storage, transport, and access, crypto can be an important part of the survival story of people living under the threat of harm by their families, people in their communities, or repressive governments."[76]

At the same time, the proliferation of crypto assets has created new challenges for investor protection. While crypto assets may be appropriate for certain investors seeking to include uncorrelated assets in a diversified investment portfolio, investors also are exposed to unique risks. For instance, because crypto assets are traded on unregulated exchanges, there is no government oversight of the trading rules to ensure that purchasers receive the best price for the assets. These trading platforms could unfairly discriminate between their users, and some investors may not receive fair access when placing orders on the platform. The platforms could have significant undisclosed conflicts of interest, and there is no reason to believe that the exchange-like functions—offering order books with updated bid and ask pricing and data about executions on the system—have the same integrity as that provided by the regulated national securities exchanges.

Lack of regulation of cryptocurrency exchanges can result in broad harm, as exemplified by recent events in the Republic of Turkey. Media reports have highlighted the predicament of Turkish investors and present a cautionary tale regarding the risks related to crypto assets and the failure of cryptocurrency exchanges.[77] Turkey has a high adoption rate of digital assets, and Turkish citizens have some of the highest per capita bitcoin usage in the world.[78] In 2020, for instance, Turkey had approximately 2.4 million users of cryptocurrency, with bitcoin being the most popular crypto asset (before the Turkish government banned cryptocurrency payments on April 30, 2021).[79] According to a 2018 ING international survey, around 18 percent of Turkish respondents reported owning cryptocurrency, compared to about eight percent in the United States.[80] The widespread adoption of crypto assets among Turkish investors, however, has resulted in major losses stemming from the collapse of two cryptocurrency exchanges in Turkey within the span of a week.[81] By some accounts, losses from the collapse of just one of those exchanges could reach $2 billion.[82] While the actual causes of those exchange failures have yet to be pinpointed definitively, Turkish government officials have cited regulatory gaps as a contributing factor.[83] Now, not only has Turkey's Central Bank banned cryptocurrencies as a form of payment, it has also forbidden payment and electronic money institutions from mediating money transfers to cryptocurrency platforms.[84] Moreover, additional regulation is "in the pipeline" as the Central Bank of Turkey has promised even greater regulation of Turkish cryptocurrency exchanges.[85]

In addition to unregulated exchanges, another enduring area of concern is cryptocurrency custody. Custody is arguably the most important component of cryptocurrency infrastructure because it involves the management of the cryptographic private keys used by crypto-asset owners to execute transactions.[86] On a given blockchain network, it is the holder of a cryptographic "private key" who controls the specific crypto-assets recorded on the blockchain.[87] The cryptographic private key is used to unlock a "public key" wallet address, which in turn is used to execute transactions and move assets (or tokens) on the network.[88] The role of the cryptocurrency custodian is to maintain ownership rights for those private key holders based on internal custody systems of record.[89] Therefore, it is imperative for a cryptocurrency custodian to safeguard digital assets by ensuring that investors' private keys are maintained securely.[90] To accomplish this, a cryptocurrency custodian can store the crypto assets in any variety of ways, for example: (1) online—a method known as "hot storage;" (2) offline—a method known as "cold storage;" (3) by employing a multiple approval approach, known as "multi-signature;" or (4) by using "smart contract wallets."[91]

According to a recent report by a major accounting firm, cryptocurrency "hacks" have caused approximately $9.8 billion in losses since 2011.[92] These losses are global in scope, impacting investors in countries as disparate as Japan, Italy, Slovenia, Germany, and South Korea, among others.[93] But hacking is not the only threat to cryptocurrency infrastructure. According to the Federal Trade Commission, U.S. consumers have reported losing more than $80 million to cryptocurrency investment scams during the fourth quarter of 2020 and the first quarter of 2021.[94]

Issues related to cryptocurrency investing have a substantial history at the Commission. In June 2021, for example, the Division of Investment Management (IM) issued a public "Staff Statement on Funds Registered under the Investment Company Act Investing in the Bitcoin Futures Market" (Staff Statement on Bitcoin Futures).[95] Among other things, that statement acknowledged that the "Bitcoin futures market…has not presented the custody challenges associated with some cryptocurrency-based investing because the futures are cash-settled."[96] Nonetheless, the Staff Statement on Bitcoin Futures signaled that IM staff, in coordination with staff from the Division of Economic Risk and Analysis and the Division of Examinations, would monitor closely "the impact of mutual funds' investment in Bitcoin futures on investor protection, capital formation, and the fairness and efficiency of markets."[97] Then, based upon the experience of mutual funds investing in this market, staff indicated that they would consider whether the Bitcoin futures market could accommodate ETFs. According to the Staff Statement on Bitcoin Futures, ETFs require different considerations because "unlike mutual funds, [ETFs] cannot prevent additional investor assets from coming into the ETF if the ETF becomes too large or dominant in the market, or if the liquidity in the market starts to wane."[98]

The Staff Statement on Bitcoin Futures references the IM staff's January 18, 2018, letter addressed jointly to the Investment Company Institute and the Securities Industry and Financial Markets Association on the subject of "Engaging on Fund Innovation and Cryptocurrency-related Holdings" (Cryptocurrency Holdings Letter). The Cryptocurrency Holdings Letter observed that the growth in cryptocurrency-related products has attracted significant attention and acknowledged that certain sponsors were interested in offering

registered funds that would hold these new digital products.[99] The Cryptocurrency Holdings Letter also noted, however, "that there are a number of significant investor protection issues that need to be examined before sponsors begin offering these funds to retail investors."[100] The letter identified five issues requiring further consideration: valuation, liquidity, custody, arbitrage (for ETFs), and potential manipulation or other risks.[101] Regarding custody, in particular, the Cryptocurrency Holdings Letter raised the following questions:

- To the extent a fund plans to hold cryptocurrency directly, how would it satisfy the custody requirements of the 1940 Act and relevant rules?
- How would a fund intend to validate existence, exclusive ownership and software functionality of private cryptocurrency keys and other ownership records?
- To what extent would cybersecurity threats or the potential for hacks on digital wallets impact the safekeeping of fund assets under the 1940 Act?
- To the extent a fund plans to hold cryptocurrency-related derivatives that are physically settled, under what circumstances could the fund have to hold cryptocurrency directly?
- If the fund may take delivery of cryptocurrencies in settlement, what plans would it have in place to provide for the custody of the cryptocurrency?

Relatedly, on March 12, 2019, IM staff issued a letter to the Investment Adviser Association on "Engaging on Non-DVP Custodial Practices and Digital Assets" (2019 Staff Letter).[102] Among other things, the 2019 Staff Letter addressed the custody of digital assets vis-à-vis the custody rule under the Investment Advisers Act of 1940. The 2019 Staff Letter questioned whether and how characteristics peculiar to digital assets might affect compliance with the custody rule: for example, the use of distributed ledger technology (DLT) to record ownership, the use of public and private cryptographic key pairings to transfer digital assets, the "immutability" of blockchain, the inability to restore or recover digital assets when lost, the generally anonymous nature of DLT transactions, and the challenges posed to auditors in examining DLT and digital assets. To gain more clarity on these issues, the 2019 Staff Letter posed a series of questions on which it sought input and engagement from interested parties.

On December 23, 2020, the Commission issued a statement and request for comment regarding the custody of digital asset securities by broker-dealers.[103] In that release, the Commission indicated that it expects broker-dealers to perform the full set of their traditional functions with respect to digital asset securities—including maintaining custody of those assets in a manner that addresses their unique attributes and minimizes risk to investors and other market participants.[104] The Commission recognized that the "manner in which digital assets, including digital asset securities, are issued, held, or transferred may create greater risk that a broker-dealer maintaining custody of this type of asset, as well as the broker-dealer's customers, counterparties, and other creditors, could suffer financial harm."[105] The Commission cited as examples of potential harm those circumstances in which the broker-dealer could be victimized by fraud or theft, could lose a private key necessary to transfer a client's digital assets, or could transfer a client's digital assets to an unintended address without the ability to reverse a fraudulent or mistaken transaction.[106] The Commission also raised the possibility of malicious activity that could render the broker-dealer unable to transfer a customer's digital assets.[107] The Commission released its statement in part to carve out a five-year safe harbor "to provide market participants with an opportunity to

develop practices and processes that will enhance their ability to demonstrate possession or control over digital asset securities" so long as certain enumerated conditions are met, and also to provide the Commission with experience to inform further action in this area.[108]

More recently, at a May 6, 2021 hearing before the House Committee on Financial Services, Chair Gensler testified that the cryptocurrency sector "could benefit from greater investor protection" and that it is "only Congress that can really address it."[109] Chair Gensler testified further that "trading in these crypto assets [does] not have a regulatory framework" and "right now there's not a market regulator around these crypto exchanges, and thus there's really not protection against fraud or manipulation" in that space.[110]

Currently, there are several applications for ETFs with crypto asset-focused investment strategy (cryptocurrency ETFs) pending before the Commission.[111] In our view, the most important obstacles to the launch of well-regulated cryptocurrency ETFs are the custody issues discussed above and the lack of regulation of crypto asset trading platforms. While some traditional mutual funds are currently allocating a small percentage of their assets to bitcoin futures, as noted above, the Staff Statement on Bitcoin Futures indicates that the ETF structure may present challenges not present in the traditional mutual fund space.[112] These challenges are amplified to the extent these ETFs intend to engage in direct investment in crypto assets rather than investments in futures.[113] In our view, the issues raised by the Cryptocurrency Holdings Letter remain relevant, and we anticipate that satisfactory answers to those questions would be critical to any eventual SEC approval of a cryptocurrency ETF application in the future. In Fiscal Year 2022, we will continue to monitor developments involving crypto assets, including the pending ETF applications, with a view toward helping investors gain access to new investment opportunities while maintaining appropriate investor protections.

BROKER CONDUCT

For the past two years, we have highlighted two items relevant to broker-dealer conduct as it relates to retail investors: (1) the Commission's new "best interest" standard of conduct for recommendations;[114] and (2) the persistent problem of broker migration and misconduct.[115]

With Regulation Best Interest (Reg BI) implemented on June 30, 2020, we continue to monitor how the Commission and FINRA use the new tools to address unethical or abusive conduct in the brokerage business. As our Office said at the time of adoption, the elimination of sales contests, the enhanced disclosures of conflicts of interest, and many other adjustments in the rule should improve the outcome for retail investors compared to the old suitability standard. However, Reg BI must be enforced rigorously enough to ensure that broker behavior matches customers' expectations when receiving investment advice from their brokers.

With more and more online-only broker-dealers facilitating retail investor trading through phone-based applications, it is important for the Commission to consider how these platforms fit within Reg BI. These platforms typically offer customers zero-commission trades, with revenues to the firm coming from the market participants who accept the trades in an arrangement known as "payment for order flow." In a sense, because the investor is paying little or nothing to the broker-dealer, the investor becomes the product of the broker-dealer in addition to being its customer. This creates a new dynamic that raises many important policy questions.

In Fiscal Year 2022, we intend to advocate for the Commission and FINRA to consider whether the design of these apps—the content, context and manner of presentation of potential stock investments, tailored to customers via an algorithm or artificial intelligence—can constitute a recommendation under Reg BI. This would require the broker-dealer to consider each recommendation in light of the particular customer's overall investment profile and may require heightened screening before customers are given access to margin, options trading, and other products or strategies that involve heightened risk. If Reg BI, as adopted, is not able to address this growing segment of the marketplace, we will advocate for enhancements to the rule.

As to broker migration and misconduct, studies show a strong correlation between the frequency with which a broker moves between firms and the risk posed by that broker to his or her customers.[116] Research has also identified a propensity for roving bad brokers to congregate at high-risk firms with other brokers of similar character (sometimes referred to as "cockroaching").[117]

In December 2020, FINRA proposed new Rule 4111 (Restricted Firm Obligations) targeting firms with a disproportionate history of broker and other misconduct relative to their similarly-sized peers. The new rule would impose, in certain instances, conditions or restrictions on member operations, including requirements for deposits of cash or qualified securities that could not be withdrawn without FINRA's prior written consent, if a firm exceeds a certain threshold calculation of broker or other misconduct.[118] We reviewed the comments received, analyzed the data behind the rule, and encouraged the Commission to favorably consider the rule. In Fiscal Year 2022, we anticipate monitoring the successful implementation of this rule.

Generally, we will continue to encourage FINRA to crack down on broker migration and misconduct. Effective regulation of bad actors, both individuals and firms, is critical to the safety of retail investors. For example, in December 2020, we were pleased that the Commission approved a separate FINRA proposal to address another set of risks presented by individual brokers with a significant history of misconduct.[119]

Issues related to broker conduct, including during the arbitration process, are the frequent subject of complaints that investors bring to the attention of SEC Ombudsman Tracey McNeil. Thus, other important issues involving broker conduct are included below in the Ombudsman's Report. Ombudsman McNeil and her staff will continue to dialogue with FINRA during Fiscal Year 2022 to address these issues.

FINANCIAL EXPLOITATION OF SENIOR INVESTORS

Currently pending before the U.S. Senate Committee on Banking, Housing, and Urban Development is a bill entitled "National Senior Investor Initiative Act of 2021," which passed the U.S. House of Representatives on April 20, 2021.[120] The bill is a bipartisan piece of House legislation that, if enacted, would establish a "Senior Investor Taskforce" within the Commission that would report on topics relating to investors who are over 65 years of age, including a review of industry trends and serious issues impacting those investors. The Taskforce would also make recommendations for legislative or regulatory actions to address problems encountered by senior investors.

The Taskforce would include staff from the Commission's Division of Enforcement, the Division of Examinations, and the Office of Investor Education and Advocacy. The bill directs the Taskforce to perform the following functions:

A. identify challenges that senior investors encounter, including problems associated with financial exploitation and cognitive decline;
B. identify areas in which senior investors would benefit from changes in the regulations of the Commission or the rules of SROs;
C. coordinate, as appropriate, with other Offices within the Commission, other taskforces that may be established within the Commission, SROs, and the Elder Justice Coordinating Council; and
D. consult, as appropriate, with State securities and law enforcement authorities, State insurance regulators, and other Federal agencies.

The Taskforce, in coordination with the Office of the Investor Advocate and SROs, and where appropriate, in consultation with State securities and law enforcement authorities, State insurance regulators, and Federal agencies, would be required to issue a report every two years to both the Senate Banking Committee and the Senate Special Committee on Aging, as well as to the House Financial Services Committee. In addition, the bill would require the General Accountability Office to submit the results of a study of financial exploitation of senior citizens (GAO Study) to both Congress and the Taskforce two years after the date of enactment. Generally, the GAO Study would include information about the economic costs of the financial exploitation of senior citizens, the frequency of senior financial exploitation and correlated or contributing factors, and policy responses and reporting of senior financial exploitation.

We support the creation of the Taskforce and its important mission, and we look forward to contributing relevant research to this effort as appropriate. More generally, we have long advocated for investor protection for vulnerable investors, including seniors, as reflected in our previous reports to Congress. We agree with Commissioner Elad Roisman, who has stated that with respect to "America's older investors, the need for protection is indeed a priority" and that senior financial exploitation, while oftentimes instantaneous, "can have financial, emotional, psychological effects that devastate victims for far longer."[121] We intend to work with Commissioner Roisman and others at the Commission to better understand and support senior investors.

OMBUDSMAN'S REPORT

As set forth in Exchange Act Section 4(g)(8), 15 U.S.C. § 78d(g)(8), the Ombudsman is required to: (i) act as a liaison between the Commission and any retail investor in resolving problems that retail investors may have with the Commission or with self-regulatory organizations; (ii) review and make recommendations regarding policies and procedures to encourage persons to present questions to the Investor Advocate regarding compliance with the securities laws; and (iii) establish safeguards to maintain the confidentiality of communications between investors and the Ombudsman.[122]

The Ombudsman is also required to "submit a semi-annual report to the Investor Advocate that describes the activities and evaluates the effectiveness of the Ombudsman during the preceding year" (Ombudsman's Report).[123] The Ombudsman's Report must be included in the semi-annual reports submitted by the Investor Advocate to Congress. To maintain reporting continuity, the Ombudsman's Report included in the Investor Advocate's June 30 Report on Objectives describes the Ombudsman's activities during the first six months of the current fiscal year and provides the Ombudsman's objectives for the following full fiscal year. The Ombudsman's Report included in the Investor Advocate's December 31 Report on Activities describes the activities and discusses the effectiveness of the Ombudsman[124] during the full preceding fiscal year.

Accordingly, this Ombudsman's Report provides a look back on the Ombudsman's activities for the six-month period of October 1, 2020 through March 31, 2021 (Reporting Period), and discusses the Ombudsman's objectives and outlook for Fiscal Year 2022, beginning October 1, 2021.

SERVICE BY THE NUMBERS

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

- listening to inquiries, concerns, complaints, and related issues;
- helping 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
- acting as an alternate channel of communication between retail investors and the SEC.

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

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

What Happens When You Contact the Ombudsman

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

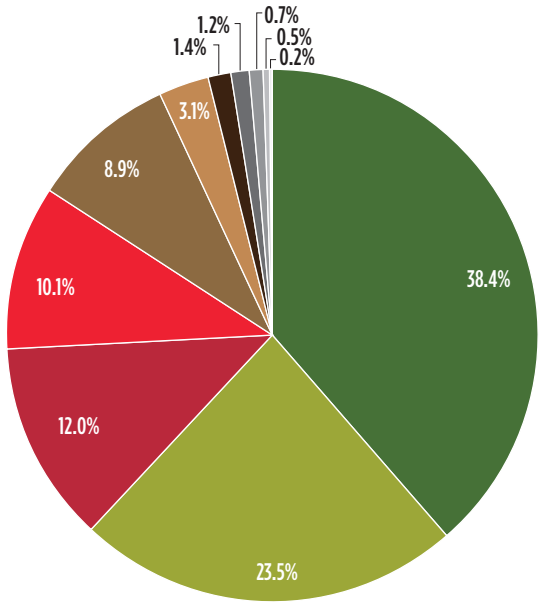
Inquiry volume is counted in terms of matters and contacts. A matter is created when an initial contact —a new, discrete inquiry—is received by or referred to the Ombudsman. When a matter is created, the Ombudsman reviews the facts, circumstances, and concerns, and assesses the staff engagement and resources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

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

Data across Primary Issue Categories

The Primary Issue Categories used below are broad descriptive labels that reflect the submitter's description or characterization of their complaint, based upon the information the submitter provided.[125] During the Reporting Period, retail investors, industry professionals, concerned citizens, and other interested persons contacted the Ombudsman for assistance on 1,202 matters covering 11 primary issue categories:

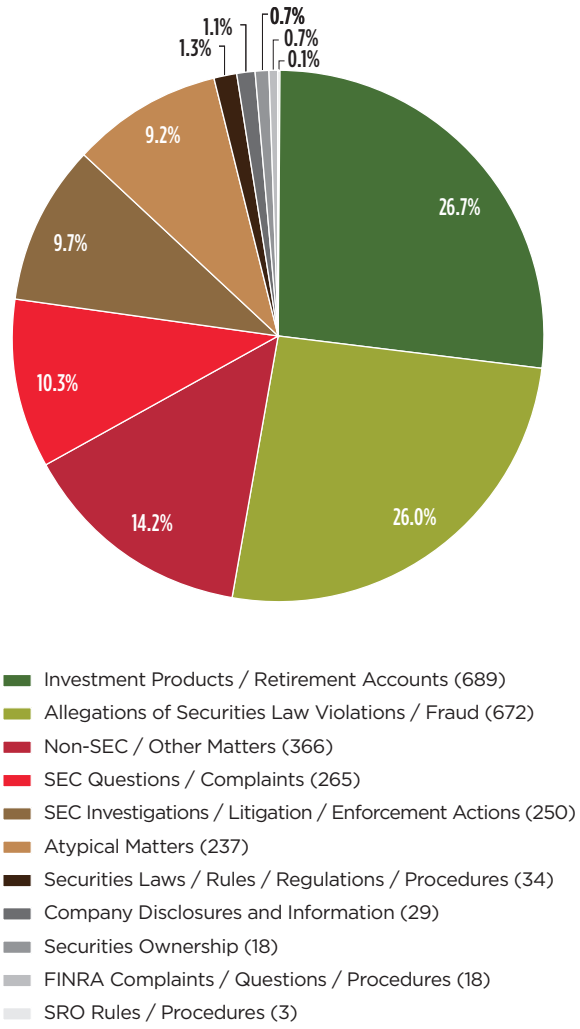
Matters by Primary Issue Category
October 1, 2020–March 31, 2021



- Allegations of Securities Law Violations / Fraud (462)
- Investment Products / Retirement Accounts (283)
- Non-SEC / Other Matters (144)
- SEC Questions / Complaints (121)
- SEC Investigations / Litigation / Enforcement Actions (107)
- Atypical Matters (37)
- Securities Laws / Rules / Regulations / Procedures (17)
- Company Disclosures and Information (15)
- FINRA Complaints / Questions / Procedures (8)
- Securities Ownership (6)
- SRO Rules / Procedures (2)

In addition to the 1,202 matters received, we fielded 1,379 contacts covering 11 primary issue categories during the Reporting Period, for a total of 2,581 contacts. The chart that follows displays the distribution of the 2,581 total contacts by primary issue category:

Contacts by Primary Issue Category
October 1, 2020–March 31, 2021



How the Numbers Inform Our Efforts

The Ombudsman 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 Ombudsman 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 matters and contacts across primary issue categories, the data also helps the Ombudsman identify potential areas of concern or interest and enables the Ombudsman to act as an early warning system, as necessary, on the potential impact of particular issues and concerns raised by retail investors and others.

SERVICE BEHIND THE NUMBERS

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

Among the most common problems and concerns brought to the Ombudsman are those from investors who are unfamiliar with the existing channels established to resolve the particular concerns they raise, unsure which resolution channel to use, or unable to get the specific outcome they want through the resolution channels available. Typically, investors who are unfamiliar with or unsure of the available resolution channels will thoughtfully consider the advantages and disadvantages of the resolution options the Ombudsman presents, and establish their expectations based upon the potential outcome each option offers. For these investors, the Ombudsman

serves a valuable resource function, but the investor retains responsibility for choosing how to proceed based on the resources the Ombudsman presents.

Investors who want a particular outcome or believe that the Ombudsman is permitted to do whatever they request can be more challenging to assist. The Ombudsman routinely receives requests from investors who want the Ombudsman to, for example, automatically grant them SEC whistleblower status and provide monetary awards, reveal confidential information relating to SEC investigations, stop a publicly traded company from taking certain corporate actions, prosecute a particular broker or investment adviser, overturn an arbitration decision, or terminate specific SEC or SRO personnel. At times, they resist the Ombudsman's efforts to engage in a productive dialogue and conclude that the only acceptable outcome is the particular outcome they want.

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

In early 2021, several online trading platforms used by retail investors halted the purchase of certain stocks that were surging in popularity, which led to an outpouring of complaints to the Ombudsman. A number of these complaints came from first-time investors who opened accounts and purchased stocks on margin to take advantage of perceived rising prices. When the platforms halted trading, these investors were forced to close their positions at lower prices. Many investors directed their frustration at the SEC for allowing these platforms to halt the purchase of certain stocks, and more broadly, for purportedly allowing hedge funds to manipulate the markets to the detriment of retail investors.

During the Reporting Period, the Ombudsman fielded matters relating to the FINRA arbitration process, including questions about arbitrator conduct, process concerns that may negatively impact arbitration outcomes, and the inability to appeal an arbitration award within the FINRA dispute resolution forum. While the volume of these matters was relatively low, the questions presented and challenges faced by these retail investors sparked important policy and research considerations. The Ombudsman and Investor Advocate intend to take a closer look at particular issues relating to the retail investor experience in the FINRA arbitration forum in Fiscal Year 2022.

SEC enforcement action press releases sparked complaints from investors reacting to the press releases themselves, and from investors reacting to related commentary on social media. Depending on the complaint and any specific requests for feedback or resolution, courtesy replies were issued as appropriate to provide general information about the SEC investigation and enforcement action process and links to related resources on the SEC.gov website.

Several retail investors contacted the Ombudsman with questions about old physical stock certificates. These investors often wanted to ascertain the value of, or receive updated documentation for, stock they or their relatives owned. The Ombudsman staff provided these investors with resources on the SEC's Investor.gov website that detail how to prove stock ownership and how to replace a physical stock certificate that is lost, stolen, or damaged. The Ombudsman staff also informed these investors that they could contact the SEC Office of Investor Education and Advocacy for additional guidance and assistance if needed.

Investors and others contacted the Ombudsman with questions and issues outside of the scope of SEC regulation, concerning, for example, certain foreign currency exchanges, home mortgages and loans, and retail banking products. The Ombudsman also received questions about healthcare issues and nursing homes, which are issues more appropriate for a long-term care ombudsman to address. When appropriate, the Ombudsman staff issued courtesy replies, answered general questions about the role of the SEC, and provided publicly available contact information for Federal agencies and other resources that may be better suited to address their concerns.

Investors unsure about the appropriate SEC division or office to contact continued to reach out to the Ombudsman for assistance. For example, investors contacted the Ombudsman for information on the status of Fair Fund distributions, for assistance with contacting unresponsive brokers, and for instructions on how to submit comments on proposed SEC rulemakings. For these matters, the Ombudsman staff generally directed the investors to resources and information on SEC.gov or to staff in the appropriate SEC division or office for further assistance. For investors with questions about the application or interpretation of specific SEC rules, the Ombudsman staff provided contact information for the rulemaking division responsible for interpreting the rule in question.

The Ombudsman routinely received communications from investors who were very upset about their investment decisions, the perceived impact of SEC policies and regulations, and other topics they felt warranted immediate, decisive action by the agency. In some instances, investors threatened violence against the SEC or harm to themselves. In each case, the Ombudsman staff promptly notified the SEC Office of Security Services and provided all of the information we received relating to the investor and their complaint. The Ombudsman is grateful that the Office of Security Services was always available, receptive, and responsive in these situations.

Many investors and others expressed concerns that they submitted questions to, or requested information from, the SEC and never received a reply. Some insisted that they received specific guidance from SEC staff, and although they were very certain about the guidance itself, they were uncertain about the SEC staff person who provided the guidance. In these instances, the Ombudsman attempted to provide resources to assist the investor and facilitate communication with appropriate SEC staff. Depending on the information provided, the Ombudsman staff was often able to identify errors, clarify miscommunications, and help the investor locate the appropriate division, office, and at times, agency to address their concerns. Investors were generally appreciative, and several thanked the Ombudsman staff for understanding their concerns and providing informative and timely responses.

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

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

STREAMLINED COMMUNICATIONS WITH RETAIL INVESTORS

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

Questions about online trading platforms contributed to an increase in matter submissions during this six month Reporting Period. Of the 1,202 matters received, 704 matters (58.6 percent) were submitted via the OMMS Form. As a comparison, of the 1,647 matters received during Fiscal Year 2020, 715 matters (43.4 percent) were submitted via the OMMS Form. During FY 2018, the first full fiscal year the OMMS Form was available to the public, of the 449 matters received, 164 matters (36.5 percent) were submitted via the OMMS Form.

The Ombudsman will continue to encourage persons to submit their inquiries via the OMMS Form, closely monitor questions and suggestions relating to the OMMS Form, and work with the Office of Information Technology, the technology contractor, and the Office of Public Affairs, with the goal of enhancing the OMMS user experience and the Ombudsman-related information and resources available to the public.

OMBUDSMEN ROLES AND STANDARDS OF PRACTICE

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

Ombudsmen at the Federal Financial Regulatory Agencies

CONSUMER FINANCIAL PROTECTION BUREAU (CFPB)

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

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

FEDERAL DEPOSIT INSURANCE CORPORATION (FDIC)

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

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

FEDERAL RESERVE BOARD (FRB)

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

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

NATIONAL CREDIT UNION ADMINISTRATION (NCUA)

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

NCUA's Ombudsman reviews consumer complaints and recommends possible solutions. The issues generally result from process concerns. As a consumer, you may choose to bring your concern to the Ombudsman after attempting to obtain resolution from the NCUA Consumer Assistance Center.

OFFICE OF THE COMPTROLLER OF THE CURRENCY (OCC)

OCCOmbudsman@occ.treas.gov | (202) 649-6800
www.occ.gov/about/who-we-are/organizations/office-of-enterprise-governance-and-the-ombudsman/index-office-of-enterprise-governance-and-the-ombudsman.html

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

U.S. SECURITIES AND EXCHANGE COMMISSION (SEC)

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

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

Similar to other ombudsmen at the federal financial regulatory agencies, the Ombudsman follows three core standards of practice:

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

The Ombudsman's Challenge

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

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

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

With these limitations in mind, when investors contact the Ombudsman with these, and similar requests, the Ombudsman staff routinely explains to investors that they have the ability to pursue other options, protect their interests, and preserve their legal rights in ways that the Ombudsman cannot. When appropriate, the Ombudsman may issue a courtesy reply to briefly explain the role of the Ombudsman and the SEC, summarize pertinent information in a way that can be easily understood by the investor, and inform the investor about additional resources and options available to help address their question or concern. For example, a courtesy reply may include links to information about particular securities law topics, other SEC or SRO resolution channels or processes, or legal services provided by law school investor advocacy clinics.

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

Assisting Investors through Advocacy

Even when we cannot help investors achieve the specific results they desire, the concerns we hear from investors help to shape the policy agenda of the Office of the Investor Advocate. We also stay current on policy issues that affect retail investors through our engagement with investor advocacy groups such as the North American Securities Administrators Association (NASAA), the Public

Investors Arbitration Bar Association (PIABA), and law school investor advocacy clinics that provide legal counseling and representation 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, such as FINRA. These difficulties might arise, for example, from the misconduct of industry professionals, or from the unintended consequences of certain rules and policies imposed by SROs.

As discussed in prior reports, the Ombudsman closely follows FINRA's rulemaking and dispute resolution forum activities that may have a direct and significant impact on retail investors. We also look for ways to improve SEC or SRO processes and regulations for the collective benefit of investors, and we advocate for those types of reforms. Selected areas of interest and importance to retail investors, including various matters relating to FINRA's dispute resolution forum, are discussed below.

AREAS OF INTEREST AND IMPORTANCE TO RETAIL INVESTORS

Discovery Abuse and Retail Investor Arbitration Outcomes

In 2020, breaking past annual records, retail investors opened more than 10 million new brokerage accounts.[127] While online trading and no-cost brokerages may have stimulated this activity,[128] these same factors may also subject these new retail investors to the potential misconduct of financial professionals.

Due to the inclusion of pre-dispute mandatory arbitration clauses in almost all brokerage account agreements,[129] harmed investors who seek recourse against their financial professionals are contractually required to arbitrate their claims in FINRA's dispute resolution forum.[130] To justify the mandatory nature of securities industry arbitration, proponents often assert that arbitration is "faster, cheaper and less complex" than litigation.[131] However, the parties' ability to resolve their differences in an efficient, cost-effective manner depends, in part, on the appropriate functioning of the FINRA arbitration discovery process.

The role of discovery—the exchange of documents and evidence between the parties prior to the arbitration hearing—is critical to retail investors' ability to prove their claims and recover damages arising from a financial professional's misconduct. The FINRA Code of Arbitration Procedure for Customer Disputes requires that the parties to an arbitration, i.e., the investor (claimant) and the financial professional (respondent), "must cooperate to the fullest extent practicable in the exchange of documents and information to expedite the arbitration."[132] However, a party's failure to comply with their discovery obligations could derail the discovery process and jeopardize the outcome of an arbitration. As noted in FINRA's 2021 Dispute Resolution Services Arbitrator's Guide, "[f]ailure to comply with the discovery rules hinders the efficient and cost-effective resolution of disputes and undermines the integrity and fairness of FINRA's forum."[133] For instance, if an investor alleges her broker executed high-risk trades in her account after she verbally instructed him not to do so, and the broker possesses evidence of the investor's verbal instructions but does not produce it, the investor might be unable to support her claim and the broker might prevail in the arbitration.

In a typical arbitration, brokers and other financial professionals possess information and documentation that could provide an informational advantage over retail investors.

As in the example above, if brokers strategically withhold documents to maintain this informational advantage, retail investors may be deprived of key information and evidence needed to support their claims. Consequently, retail investors may face disproportionately negative outcomes, such as dismissal or withdrawal of their claims, or only nominal recovery of damages. In such situations, retail investors not only suffer the damages arising from broker misconduct, but they also bear the costs of FINRA's dispute resolution forum fees as well as their own attorney fees.

Significantly, however, brokers' strategic discovery abuse is likely most harmful to retail investors who have the least financial resources and who are unable to retain legal representation. Law school securities arbitration clinics do not have the capacity to provide legal counsel to every harmed investor, and attorneys are often reluctant to represent investors who cannot pay for representation on an hourly basis or who have low dollar value claims. In many instances, these low dollar value claims represent significant losses to the retail investors who bring them. Retail investors who proceed to arbitration without legal representation are often less able to navigate the FINRA Code of Arbitration Procedure, less aware of the critical role of the discovery process, and less aware how to pursue discovery when faced with brokers' obfuscation. Consequently, retail investors with the least financial resources often face the greatest difficulties, obtain the least discovery, and potentially obtain the worst outcomes in arbitration.

If FINRA dispute resolution remains the primary venue through which harmed retail investors may seek recourse for the misconduct of financial professionals, ensuring the integrity and fairness of the forum is critically important for retail investor protection. Moreover, if financial professionals' strategic discovery abuse places retail investors at an informational disadvantage at the outset of an arbitration, that disadvantage will likely persist throughout the arbitration process. Discovery abuse likely has a waterfall effect on retail investors and how they fare in arbitration hearings. It may also have the interim effect of dissuading retail investors from pursuing arbitration altogether, or from seeing the process through to an evidentiary hearing.

Given the potentially significant implications of discovery abuse on arbitral outcomes for retail investors, we believe it would be beneficial to examine data relating to retail investors and the impact of discovery abuse on the cost, duration and disposition of FINRA customer arbitration cases. The data may help evaluate whether and to what extent arbitration is, in fact, faster, cheaper, and less complex than litigation, and whether the arbitration process is a beneficial alternative to litigation for retail investors. The data may also shed light on what, if any, practical changes to the discovery process and FINRA's dispute resolution forum should be considered to ensure that retail investors have adequate access to the evidence and information they need to support their claims and obtain fairer outcomes. We intend to undertake such an examination in Fiscal Year 2022.

Proposed Amendments to FINRA's Expungement Rules

On September 22, 2020, FINRA proposed a series of substantive modifications to the existing rules that govern the expungement of customer dispute information from the Central Registration Depository (CRD) and BrokerCheck.[134] As background, registered securities firms, brokers and regulatory authorities routinely submit customer dispute information to the CRD, including information about brokers' and associated persons' administrative, regulatory,

or criminal histories, as well as customer disputes, arbitration claims and court filings. FINRA makes much of the information in CRD available to the public through its BrokerCheck website. The information in CRD and BrokerCheck is useful to retail investors, regulators, employers, and others seeking to make informed decisions on a range of issues, including whether to hire or enter into a brokerage relationship with an associated person, or whether to take disciplinary action against an associated person. Frequently, the Commission encourages investors to review the background of financial professionals by accessing the records on BrokerCheck.[135]

FINRA aimed to establish a regulatory framework that would strike an appropriate balance between the public's need to access customer dispute information and associated persons' need to safeguard their professional reputations.[136] Recognizing that not all allegations against brokers have merit, FINRA Rule 2080[137] grants associated persons the ability to expunge certain customer dispute information from the CRD and BrokerCheck where: (1) the claim, allegation or information is factually impossible or clearly erroneous; (2) the registered person was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation or conversion of funds; or (3) the claim, allegation or information is false.[138] FINRA Rule 12805 also establishes procedural rules that an arbitration panel must follow during an expungement proceeding.

Over time, however, FINRA's regulatory framework for expungement has increasingly become the subject of scrutiny due, in part, to the lack of customer participation in expungement hearings, and associated persons' repeated requests to expunge customer dispute information after prior requests to expunge that information were denied.[139] Moreover, recent studies by PIABA showed that the high frequency with which arbitrators recommended expungement did not seemingly align with the "factually impossible or clearly erroneous" standards for granting expungement set forth under Rule 2080.[140]

In response to related criticisms, FINRA published Regulatory Notice 17-42 in December 2017,[141] in which it recommended changes to the existing expungement rules and solicited feedback on those recommended changes. FINRA received 70 comment letters both in support of and objecting to the recommendations in Regulatory Notice 17-42. The SEC Investor Advocate and the Ombudsman commented that the recommendations were a "first step in a larger review," but encouraged FINRA to continue working to "help expungement become the extraordinary remedy it was meant to be."[142]

On September 22, 2020, FINRA filed FINRA 2020-030 with the SEC, in which it proposed numerous amendments to the existing expungement rules.[143] Several of the proposed amendments resembled the recommendations in Notice 17-42. For example, FINRA 2020-030 would require associated persons that file expungement requests outside of a customer arbitration for the sole purpose of requesting expungement to file a claim against their member firm. For these so-called "straight-in" expungement requests, associated persons would have two years after the underlying customer case closed to file their expungement requests. The proposed amendments would also establish a roster of arbitrators with enhanced training and experience, from which a three-person panel would be randomly selected to decide straight-in expungement requests and expungement requests brought during a customer arbitration that settled prior to hearing.[144]

Notably, under FINRA 2020-030, if an associated person sought expungement of customer dispute information arising from a customer's statement of claim, the associated person would be required to either request expungement during the customer arbitration, or forfeit the opportunity to seek expungement of the same customer dispute information in any subsequent proceeding. The proposed rules would also impose certain requirements regarding the contents of and notice to customers regarding expungement requests. In addition, FINRA 2020-030 would require FINRA to notify state regulators within 30 days of receiving a complete expungement request, to help ensure that state securities regulators are timely notified of such requests.[145]

The SEC received eight comments in response to the proposals in FINRA 2020-030, some critical of the fact that FINRA 2020-030 had softened several aspects of the recommendations in Notice 17-42. Unlike the recommendation in Notice 17-42, FINRA 2020-30 would not require arbitrators to make an additional finding that the information to be expunged had "no investor protection or regulatory value" before recommending expungement. Furthermore, in contrast to the recommendation in Notice 17-42 that arbitrators' expungement recommendations be unanimous, FINRA 2020-30 would only require majority agreement for an arbitration panel to recommend expungement. FINRA 2020-30 would also permit a single arbitrator to make expungement decisions arising from simplified arbitration cases. Commenters also voiced broader concerns about the lack of customer participation in expungement hearings, the inability for state regulators to intervene in expungement recommendations, and the quasi-regulatory function being served by private arbitrators that make expungement recommendations.[146]

FINRA submitted its response to comments on December 18, 2020, and rebutted these criticisms.[147] However, FINRA also filed Partial Amendment No. 1 to the Proposal, which altered the original filing by requiring the Director of FINRA Dispute Resolution to provide additional notice to customers regarding the timing of prehearing conferences for expungement hearings and requiring that associated persons serve customers with their statements of claim for expungement and answers within a specified period of time.[148] Subsequently, nine additional comment letters were submitted, the majority of which again rejected the proposed amendments in FINRA 2020-030 as insufficient reforms to the current expungement process. Several commenters requested that the SEC hold a public hearing on the proposed amendments.[149]

On April 9, 2021, FINRA submitted its second response to commenters,[150] and separately filed Partial Amendment No. 2, in which it proposed to require the Director of Dispute Resolution to provide customers with access to all documents filed in an underlying arbitration that are relevant to an expungement request.[151] Notwithstanding Partial Amendment No. 2, FINRA rejected commenters' requests for broader reform of the expungement system, and expressed the belief that "enhancing the current expungement process is the appropriate course of action" to address commenters' concerns.[152] Nevertheless, FINRA stated it would continue to evaluate potential ways to further enhance the expungement process, would provide information on its website regarding expungement to increase transparency, and would engage with state securities regulators.[153]

On May 28, 2021, after consultation with SEC staff, FINRA temporarily withdrew FINRA 2020-030 to consider whether additional modifications to the filing were appropriate.[154]

FINRA stated that it "is committed to limiting the expungement process so that it operates as intended—as an extraordinary remedy, only appropriate in limited circumstances when the CRD information is clearly inaccurate."[155]

Expungement continues to be a heavily-debated issue, as it affects the investing public's ability to access potentially material information about broker misconduct. Without this information, retail investors may be less likely to make well-informed decisions about potential or existing relationships with financial professionals, and may unknowingly place themselves at a heightened risk of falling victim to brokers who repeatedly engage in misconduct. In our view, accurate records of customer dispute information should be readily available to retail investors. Thus, we will continue to engage with FINRA and other stakeholders to advocate for the availability and accuracy of this information in the CRD and for improvements to the expungement process.

OMBUDSMAN OUTREACH AND ENGAGEMENT EFFORTS

OIAD Law School Clinic Outreach Program

The importance and impact of law school investor advocacy clinics have increased considerably since 1997, when then-SEC Chairman Arthur Levitt, Jr. announced the creation of two pilot law school investor advocacy clinics to help retail investors with small claim amounts obtain quality legal representation.[156] Today, there are 12 law school investor advocacy clinics across the United States that provide legal counseling and representation to retail investors involved in securities industry disputes, comment on rule proposals, and engage with many more investors through community-based presentations and informational materials.[157]

As discussed in prior Ombudsman's Reports, our Law School Clinic Outreach Program (LSCOP) was launched in 2016 to complement the Office's statutory mandate and core functions.[158] One goal of the LSCOP was, and remains, the exchange of information and ideas between the law school investor advocacy clinics and SEC staff. In their unique roles as counsel to retail investors with small claims or limited incomes, clinics are uniquely positioned to examine issues that confront retail investors from a perspective unavailable to SEC staff. The LSCOP allows the Office of the Investor Advocate to interact directly with the clinics, engage in meaningful policy discussions, and gain a better understanding of their views on suggested regulatory changes and policy initiatives. Our engagement with the law school clinics also provides an excellent opportunity to inform law students interested in securities law and investor protection issues about internships, externships, and career opportunities at the SEC. Moreover, our outreach program aligns with the SEC's diversity and inclusion efforts, creates an additional path to attract a diverse pool of potential applicants, and demonstrates the SEC's commitment to a diverse and inclusive workplace at all levels of the agency.

What began in 2016 as a series of on-site visits to the law school clinics continued with the attendance of clinic directors and law students at public meetings of the Investor Advisory Committee at SEC headquarters in 2017 and 2018, and subsequently culminated in the first SEC Investor Advocacy Clinic Summit at SEC headquarters, hosted by the Investor Advocate and the Ombudsman in 2019.[159] The LSCOP continues to provide opportunities for meaningful involvement between the law school clinics and SEC staff, such as the 2021 SEC Investor Advocacy Clinic Summit.

2021 SEC Investor Advocacy Clinic Summit

On March 25, 2021, the Investor Advocate and Ombudsman hosted the second SEC Investor Advocacy Clinic Summit (Summit). Law school investor advocacy clinics from across the country were invited to share their perspectives and engage with SEC staff on the some of the most pressing issues currently facing retail investors. Given the COVID-19 pandemic and the resulting work from home status of the agency, the Summit, unlike the 2019 SEC Investor Advocacy Clinic Summit[160] at SEC headquarters, was held as a virtual event.[161]

Pre-Summit Planning

In the fall of 2020, the Ombudsman and the SEC Office of Information Technology (OIT) evaluated the feasibility of hosting a virtual summit for a large and geographically diverse group of attendees. Beginning in September 2020, Ombudsman staff contacted law school clinic directors to assess their interest in attending a virtual summit, and to gauge anticipated student participation. All 12 clinic directors favored moving forward with the virtual Summit and confirmed that their students would participate and attend.[162] To minimize the logistical challenges of the virtual platform, Ombudsman staff worked closely with OIT to ensure that the law school clinic attendees, using various technologies, would be able to seamlessly connect to and participate in the Summit as attendees, panelists, and presenters.

The Summit

Before the substantive portion of the Summit began, the clinic directors, law students, and SEC staff engaged in a pre-Summit virtual networking session, where participants were able to interact in an informal setting, troubleshoot any technical issues, and ask general questions about the Summit. During the post-Summit virtual networking session, clinic directors, law students, and SEC staff were able to continue their earlier discussions, ask more in-depth questions about the panel topics and the SEC itself, and provide feedback on the Summit.

The Summit formally opened with remarks from then-Acting SEC Chair Lee, and featured remarks and question and answer sessions throughout the day with SEC Commissioners Peirce, Roisman, and Crenshaw. The Summit also included two panel discussions that highlighted recent challenges facing retail investors. During the first panel, "The Risks of Online Trading for Retail Investors," panelists addressed the rise of online brokerage platforms, the specific risks they pose to retail investors, as well as the manner in which social media amplifies those risks. The panel featured SEC senior staff from the Office of the Investor Advocate, the Division of Trading and Markets, and the Division of Enforcement. During the second panel, "Virtual Arbitration Hearings: Costs, Risks and Benefits to Retail Investors,"[163] panelists explored the difficulties and advantages of representing clients in remote FINRA arbitrations, as well as a recent study[164] that suggests virtual hearings might disproportionately result in negative outcomes for retail investors. The panel, moderated by Professor Nicole Iannarone,[165] included clinic directors from across the country and SEC senior staff from the Division of Examinations and the Office of the Investor Advocate.

A highlight of the Summit was a two-part panel entitled "Lessons Learned from Harmed Investors," during which law students discussed recent notable cases where the students and their professors represented retail investors in FINRA arbitrations.[166] The law students also identified lessons learned from similarly situated retail investors, as well as takeaways and future considerations for regulators. The law students shared their experiences and observations on an array of topics, including the clinics' representation of:

- A non-party customer in an expungement proceeding;
- A group of retirees defrauded by an unregistered investment adviser;
- Elderly clients whose investment adviser invested their money in illiquid and speculative real estate investment trusts, or "REITs";
- Affinity fraud victims, including clients victimized through a fraudulent investment club; and
- A low income client and a client with disabilities to whom unsuitable investment recommendations were made.

The law student presentations were presented in a compelling, thought-provoking manner that captured their views on existing regulations and posed challenging questions to the SEC staff. Moreover, the presentations demonstrated their impressive command of the applicable securities laws and their equally impressive dedication to protecting retail investors. After each presentation, the law students fielded questions from a panel of SEC staff across various divisions and offices. It was an enlightening experience for the law students and clinic directors, and for SEC staff who were impressed with the depth of knowledge, skill, and expertise the law students brought to their presentations and to their client representation and advocacy efforts.

Summit Feedback and Impact

One benefit of the virtual Summit format was an increase in overall participation. All investor advocacy clinics and a greater number of students were able to attend, as the cost and logistics of traveling to SEC headquarters were no longer a consideration. Ultimately, over 185 persons attended the Summit—including over 125 law students and clinic directors, and SEC staff from across the agency.

Following the Summit, the Office of the Ombudsman received tremendous positive feedback from the clinic directors, including the excerpts below:

> Your outreach to the clinics was once again so enlightening, invigorating and inspiring. I sincerely appreciate the kindness you extended to us. Your enthusiasm for your work is contagious! Thank you so much for another great Summit.

> Thank you again for putting on such a fantastic program for the students. I especially appreciated how much time the Commissioners gave to the students and how open they were to taking the students' questions. I also liked the format of the school presentations, with an opportunity for the staff to ask follow up questions.

> My students were engaged and enjoyed the experience—and so did I! It is challenging during these times, but you and your team . . . were amazing.

> My students were thrilled to be a part of the on-going discussion about how to protect retail investors. We look forward to seeing you in person next year!

The feedback from the law student participants was also overwhelmingly positive. One student comment in particular perfectly captured the feedback:

> Another opportunity that allowed me to gain a better understanding of securities law was the SEC Summit. I do not think I can put into words how impactful that day was to me. Hearing the commissioners and speakers speak and hearing the cases that other clinics have is something I will never forget.

Given the success of the 2019 and 2021 Summits, the Investor Advocate and the Ombudsman look forward to hosting future SEC Investor Advocacy Clinic Summits—whether virtual, in-person, or hybrid—as part of the larger Law School Clinic Outreach Program.

Internal Agency Engagement

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

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

OBJECTIVES AND OUTLOOK

The Office of the Ombudsman reached a peak staff level of five during this Reporting Period—the Ombudsman, one senior special counsel, one senior counsel, one senior law clerk contractor, and one senior paralegal contractor. While more staff resources are needed, the increased staff from September 2019 through December 2020 was instrumental in meeting our statutory requirements and responding to the rise in unanticipated, complex investor issues. The increased staff also expanded the Office's ability to focus on research and policy issues, collaborate with colleagues across the agency, and address the increased volume of retail investor concerns exacerbated by the use of social media and online brokerage platforms in financial planning and investing. Looking ahead, I plan to focus staff resources, as feasible, on additional SEC, SRO, and retail investor collaboration and engagement. In particular, these efforts may include an expanded use of virtual opportunities to connect with retail investors across the country and to solicit their feedback and diverse perspectives on issues they deem important.

My interactions with retail investors provide valuable insight into how they view my role and the role of the SEC as they make investment decisions. As Ombudsman, I will continue to foster an environment for their voices to be heard and their needs to be considered as a vital part of the regulatory process and the work of the agency. I will also continue to find appropriate ways to utilize the feedback and lessons learned through my one-one-one interactions with retail investors to inform targeted research, regulatory and policy recommendations, and engagement efforts that will make a meaningful difference to retail investors. I look forward to providing updates on our activities and progress in these areas in my next report.

Tracey L. McNeil
Ombudsman

SUMMARY OF INVESTOR ADVISORY COMMITTEE RECOMMENDATIONS AND SEC RESPONSES

Congress established the Investor Advisory Committee (IAC) to advise and consult with the Commission on regulatory priorities, initiatives to protect investor interests, initiatives to promote investor confidence and the integrity of the securities marketplace, and other issues.[167] The IAC is composed of the Investor Advocate, a representative of state securities commissions, a representative of the interests of senior citizens, and not fewer than 10 or more than 20 members appointed by the Commission to represent the interests of various types of individual and institutional investors.[168]

Exchange Act Section 39 authorizes the IAC to submit findings and recommendations for review and consideration by the Commission.[169] 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.[170] While the Commission must respond to the IAC's recommendations, it is under no obligation to agree with or act upon the recommendations.[171]

In each of its reports to Congress, including this one, the Office of the Investor Advocate summarizes the IAC recommendations and the SEC's responses to them.[172] We continue to report on recommendations until we believe the Commission's response is final. For summaries of Commission activities related to previous IAC recommendations, please see our earlier reports to Congress. The Commission may be pursuing initiatives that are responsive to IAC recommendations but have not yet been made public. Commission staff—including the staff of this Office—are prohibited from disclosing nonpublic information.[173] Therefore, any such initiatives are not reflected in this Report.

Topic	Date	IAC Recommendation	SEC Response
Minority and Underserved Inclusion[174]	March 11, 2021	Support regulations, legislation, programs and other steps that increase acquisition of financial assets and services by minority communities. Through regulatory oversight of financial services, enable a more hospitable environment for minority investment. Continue and build upon SEC programs that are directed toward increasing financial literacy and supporting minority investment. Help registered financial services firms expand and improve their ability to encourage investment by under-represented communities.	Pending.
Credit Rating Agencies[175]	March 11, 2021	Identify in Office of Credit Rating (OCR) reports specific nationally recognized statistical rating organizations whose conduct was deemed to be materially deficient. Remodel OCR's annual examination reports to conform to the approach utilized in the Public Company Accounting Oversight Board's annual public inspection reports.	Pending.
Accounting and Financial Disclosure[176]	May 21, 2020	Reconsider a 2020 rulemaking proposal that would permit issuers to omit fourth quarter results in annual reports and that would eliminate the tabular presentation of contractual obligation information. Closely monitor issuers' use of non-GAAP (Generally Accepted Accounting Principles) metrics and accounting developments relating to reverse factoring.	On June 23, 2020, the SEC's Division of Corporation Finance staff published disclosure guidance addressing supplier finance programs in the context of pandemic-related disruptions.[177] On October 21, 2020, the Financial Accounting Standards Board (FASB) decided to add a project to its technical agenda to address the disclosure of supplier finance programs involving trade payables.[178] On November 19, 2020, the Commission adopted the amendments to Regulation S-K, largely as proposed.[179]

Topic	Date	IAC Recommendation	SEC Response
ESG Disclosure[180]	May 21, 2020	Commence an effort to update issuer reporting requirements to include material, decision-useful disclosure concerning environmental, social, and governance matters. Consider the utility of both principles-based and prescriptive reporting requirements.	On February 24, 2021, Acting Chair Lee directed the SEC's Division of Corporation Finance to enhance its focus on climate-related disclosure in public company filings.[181] On March 3, 2021, the SEC's Division of Examinations announced its 2021 examination priorities, which included a greater focus on climate-related risks.[182] On March 4, 2021, the Commission announced the creation of a Climate and ESG Task Force in its Division of Enforcement.[183] On March 15, 2021, Acting Chair Lee issued a call for public input on climate change disclosures.[184]
Disclosure Effectiveness[185]	May 21, 2020	Enhance the effectiveness of new and existing disclosure relied on primarily by retail investors by, among other things, adopting an iterative process that includes disclosure research, design, and testing.	On August 5, 2020, the Commission proposed comprehensive modifications to the mutual fund and exchange-traded fund disclosure framework.[186] The Office of the Investor Advocate is conducting investor research that may be relevant to this proposal.
SEC Guidance and Rule Proposals on Proxy Advisors and Shareholder Proposals[187]	Jan. 24, 2020	Revisit priorities in improving the proxy system, revise and republish the 2019 proxy voting rulemaking proposals, and reconsider the 2019 proxy voting guidance.	On July 22, 2020, the Commission adopted the amendments to the proxy rules without republishing them for further comment.[188] On September 23, 2020, the Commission adopted the amendments to Exchange Act Rule 14a-8 without republishing them for further comment.[189] On June 1, 2021, Chair Gensler directed Commission staff to consider whether to recommend further regulatory action regarding proxy voting advice, in particular whether to recommend the Commission revisit its related 2019 and 2020 actions.[190] Also on June 1, 2021, the Division of Corporation Finance issued a statement that it will not recommend enforcement action based on the 2019 guidance or the 2020 amendments while the Commission is considering further regulatory action in this area.[191]

Topic	Date	IAC Recommendation	SEC Response
Exchange Rebate Tier Disclosure[192]	Jan. 24, 2020	Require the national securities exchanges to provide the Commission with regular disclosures regarding rebate tiers offered to their members, and take steps to require monthly public disclosure of these rebate practices.	Pending.
Proxy Plumbing[193]	Sept. 5, 2019	Require end-to-end vote confirmations to end users of the proxy system, require all involved to cooperate in reconciling vote-related information, conduct studies on investor views on anonymity and share lending, and finalize the 2016 universal proxy rulemaking proposal.	On April 16, 2021, the Commission reopened the comment period on the proposed rules for the use of universal proxy cards in all non-exempt solicitations for contested director elections.[194]
Structural Changes to the US Capital Markets Regarding Investment Research in a Post-MiFID II World[195]	July 25, 2019	Prioritize certain concepts and guiding principles, including the following: (1) consumers of research, regardless of location, should be allowed to choose whether to purchase research "bundled" or "unbundled" from trading costs; and (2) there should be greater transparency regarding research costs and how those costs are borne.	On November 12, 2019, the Commission extended temporary no-action relief from compliance with registration under the Advisers Act for brokers that receive payments for research in hard dollars or through research payment accounts from managers subject to MiFID (Markets in Financial Instruments Directive) II through July 3, 2023.[196]
Human Capital Management Disclosure[197]	Mar. 28, 2019	Revise issuer disclosure requirements to elicit more insightful disclosure concerning how human capital within a firm is managed and incentivized.	On August 26, 2020, the Commission adopted rule amendments to modernize the description of business, legal proceedings, and risk factor disclosures that issuers are required to make pursuant to Regulation S-K. The amendments include the addition of human capital resources as a disclosure topic.[198]
Transaction Fee Pilot for NMS Stocks[199]	Sept. 13, 2018	Adopt a proposed Transaction Fee Pilot with the following conditions: (1) include a "no rebate" bucket; (2) permit companies to opt out of the pilot; and (3) consider consolidating Test Groups 1 and 2.	On December 19, 2018, Commission approved the adoption of new Rule 610T of Regulation NMS to conduct a Transaction Fee Pilot in NMS stocks.[200] On June 16, 2020, following a lawsuit filed by several exchanges, the transaction fee pilot was struck down in the U.S. Circuit Court of Appeals for the District of Columbia.[201]

Topic	Date	IAC Recommendation	SEC Response
Financial Support for Law School Clinics that Support Investors[202]	Mar. 8, 2018	Explore ways to improve external funding sources to the law school investor advocacy clinics. Work with FINRA, the North American Securities Administrators Association (NASAA), and other potential partners, and request legislation from Congress to consider permanent funding.	Pending.
Dual Class and Other Entrenching Governance Structures in Public Companies[203]	Mar. 8, 2018	Direct Division of Corporate Finance staff to scrutinize disclosure documents filed by issuers with dual class and other entrenching governance structures, comment on such documents so as to enhance the salience and detail of risk disclosure, and develop guidance to address a range of issues that such structures raise.	Pending.
Mutual Fund Cost Disclosure[204]	Apr. 14, 2016	Enhance investors' understanding of mutual fund costs and the impact of those costs on total accumulations over time. Provide standardized disclosure of actual dollar costs on customer account statements.	On June 5, 2018, the Commission published a request for comment on ways to enhance the delivery, design, and content of fund disclosures, including shareholder reports and prospectuses. The request for comment solicited investor feedback on fund fees and expenses, and it included other questions related to the IAC recommendation (*e.g.*, dollar vs. percentage disclosure, disclosure within account statements, etc.).[205] On Oct. 30, 2018, the Commission proposed amendments to help investors make informed investment decisions regarding variable annuity and variable life insurance contracts.[206] On March 11, 2020, the Commission adopted the amendments largely as proposed.[207]

Topic	Date	IAC Recommendation	SEC Response
Accredited Investor Definition[208]	Oct. 9, 2014	Evaluate whether the current definition achieves the goal of identifying a class of individuals who are able to make an informed investment decision and protect their interests without the protections of registration and disclosure. Consider other definitional approaches.	On August 26, 2020, the Commission adopted amendments to the definition of accredited investor.[209] Among other changes, the amendments allow individuals to qualify as accredited investors if they possess certain professional credentials or affiliations, even if they do not meet the income or net worth thresholds. The Commission chose not to modify the definition's income or net worth thresholds.
Impartiality in the Disclosure of Preliminary Voting Results[210]	Oct. 9, 2014	Ensure impartiality in the disclosure of preliminary voting results.	Pending.
Universal Proxy Ballots[211]	July 25, 2013	Allow universal ballots in connection with short-slate director nominations.	On October 26, 2016, the Commission proposed amendments to the proxy rules to require parties in a contested election to use universal proxy cards that would include the names of all board of director nominees.[212] On April 16, 2021, the Commission reopened the comment period on the proposed rules.[213]

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

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

15 SEC, Summary Draft: Preliminary Recommendations of ESG Subcommittee for the AMAC (Nov. 20, 2020), https://www.sec.gov/files/summary-draft-preliminary-recommendations-of-esg-subcommittee-for-the-amac-12012020.pdf.

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

17 *See*, *e.g.*, Letter from Jim Coburn, Senior Manager, Ceres, Inc. (May 5, 2020), SEC File No. S7-04-20, https://www.sec.gov/comments/s7-11-19/s71119-7239602-217099.pdf.

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

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

20 17 C.F.R. § 240.10b-5 (2020).

21 17 C.F.R. § 240.10b-5-1 (2020).

22 *See* Letter from Allison Herren Lee, Acting Chair, SEC, to Elizabeth Warren, U.S. Senator (Apr. 14, 2021) [hereinafter Lee, Apr. 14, 2021 Letter] (listing recent Commission enforcement actions involving Rule 10b5-1 plans), https://www.warren.senate.gov/imo/media/doc/Warren%20et%20al%20-%20Rule%2010b5-1%20-%20ES159896%20Response.pdf.

23 Taylan Mavruk & H. Nejat Seyhun, *Do SEC's 10b5-1 Safe Harbor Rules Need to be Rewritten?*, 2016 Colum. Bus. L. Rev. 133, 181-82, https://journals.library.columbia.edu/index.php/CBLR/article/view/1734/754; *see also* Letter from Elizabeth Warren, Sherrod Brown & Chris Van Hollen, U.S. Senators, to Allison Herren Lee, Acting Chair, SEC (Feb. 10, 2021) [hereinafter Letter from Elizabeth Warren et al.], https://www.warren.senate.gov/imo/media/doc/02.10.2021%20Letter%20from%20Senators%20Warren,%20Brown,%20and%20Van%20Hollen%20to%20Acting%20Chair%20Lee.pdf.

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

25 17 C.F.R. § 240.10b5-1(c)(1)(B)(2) (2020).

26 *See* Letter from Elizabeth Warren et al., *supra* note 23 (discussing recent research findings).

27 *See* Lee, Apr. 14, 2021 Letter, *supra* note 22.

28 SEC Investor Advisory Committee, Meeting Agenda (June 10, 2021), https://www.sec.gov/spotlight/investor-advisory-committee/iac061021-agenda.htm.

29 SEC, Off. of the Inv. Advoc., Report on Activities, Fiscal Year 2020, at 6, https://www.sec.gov/files/sec-investor-advocate-report-on-activities-2020.pdf.

30 On December 22, 2020, the Commission approved a change to the New York Stock Exchange's listing requirements that expanded the scope of direct listings, allowing companies to raise capital through the issuance of new securities. *See* Order Setting Aside Action by Delegated Authority and Approving a Proposed Rule Change, as Modified by Amendment No. 2, to Amend Chapter One of the Listed Company Manual to Modify the Provisions Relating to Direct Listings, Exchange Act Release No. 90768 (Dec. 22, 2020), File No. SR-NYSE-2019-67.

31 *See* Ben Scent, *Wall Street's $100 Billion SPAC Boom Upends the League Table*, Bloomberg L. (Apr. 1, 2021, 4:10 PM EDT), https://www.bloomberg.com/news/articles/2021-04-01/wall-street-s-100-billion-spac-boom-is-resetting-the-rankings; John Coates, Acting Dir., SEC Div. of Corp. Fin., Public Statement: SPACs, IPOs, and Liability Risk Under the Securities Laws (Apr. 8, 2021) [hereinafter Coates, Public Statement on SPACs], https://www.sec.gov/news/public-statement/spacs-ipos-liability-risk-under-securities-laws.

32 In 2020 and 2021, the number of companies choosing SPACs skyrocketed. Over the course of 2020, 248 SPACs formed, a 420% increase over 2019's 59. In just the first half of 2021, at least 325 SPACs have launched. *See SPAC Statistics*, SPACInsider, https://spacinsider.com/stats/ (last visited May 21, 2021).

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

34 *Id.*

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

36 Coates, Public Statement on SPACs, *supra* note 31.

37 *See*, *e.g.*, Securities Act § 11, 15 U.S.C. § 77k; Securities Act § 12(a)(2), 15 U.S.C. § 771(a). Pursuant to the Commission's December 22, 2020 rule regarding the New York Stock Exchange's listing requirements, direct listings also do not require use of a firm-commitment underwriter. In a December 23, 2020 public statement, Commissioners Lee and Crenshaw discussed possible investor-protection risks arising from the absence of an underwriter. *See* Allison Herren Lee & Caroline A. Crenshaw, Comm'rs, SEC, Statement on Primary Direct Listings (Dec. 23, 2020), https://www.sec.gov/news/public-statement/lee-crenshaw-listings-2020-12-23.

38 Michael Klausner, Michael Ohlrogge & Emily Ruan, *A Sober Look at SPACs*, 39 Yale J. on Regul. (forthcoming 2021); SEC, Investor Advisory Committee Meeting Webcast (Mar. 11, 2021), https://www.sec.gov/video/webcast-archive-player.shtml?document_id=iac031121.

39 *See*, *e.g.*, Heather Somerville, *For Startup Leaders, SPACs Have Lost Their Allure*, Wall St. J. (May 23, 2021, 9:00 AM ET), https://www.wsj.com/articles/for-startup-leaders-spacs-have-lost-their-allure-11621774800; Amrith Ramkumar, *SPAC Selloff Bruises Individual Investors*, Wall St. J. (May 19, 2021, 9:32 AM ET), https://www.wsj.com/articles/spac-selloff-bruises-individual-investors-11621396808.

40 *See generally* Concept Release on Equity Market Structure, Exchange Act Release No. 61358, 75 Fed. Reg. 3594 (Jan. 21, 2010).

41 *See* Publication or Submission of Quotations Without Specified Information, Exchange Act Release No. 89891, 85 Fed. Reg. 68124 (Oct. 27, 2020), https://www.govinfo.gov/content/pkg/FR-2020-10-27/pdf/2020-20980.pdf.

42 *See* Market Data Infrastructure, Exchange Act Release No. 90610, 86 Fed. Reg. 18596 (Apr. 9, 2021), https://www.federalregister.gov/d/2020-28370.

43 Joint Industry Plan, Notice of Filing of a National Market System Plan Regarding Consolidated Equity Market Data, Exchange Act Release No. 90096, 85 Fed. Reg. 64565 (Oct. 13, 2020), https://www.govinfo.gov/content/pkg/FR-2020-10-13/pdf/2020-22467.pdf.

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

45 *See* Proposed Amendments to the National Market System Plan Governing the Consolidated Audit Trail to Enhance Data Security, Exchange Act Release No. 89632, 85 Fed. Reg. 65990 (Oct. 16, 2020), https://www.govinfo.gov/content/pkg/FR-2020-10-16/pdf/2020-18801.pdf.

46 *See* SEC, Recommendation of the Investor Advisory Committee: Shortening the Trade Settlement Cycle in U.S. Financial Markets (Feb. 12, 2015), https://www.sec.gov/spotlight/investor-advisory-committee-2012/settlement-cycle-recommendation-final.pdf.

47 *See* Commission Statement on Market Structure Innovation for Thinly Traded Securities, Exchange Act Release No. 87327, 84 Fed. Reg. 56956 (Oct. 24, 2019).

48 *See* Press Release, SEC, SEC Seeks Public Comment on Transfer Agent Rules (Dec. 22, 2015), https://www.sec.gov/news/pressrelease/2015-288.html.

49 *See* NYSE L.L.C. v. SEC, 962 F.3d 541 (D.C. Cir. 2020).

50 Cboe BYX Exchange, Inc.; Notice of Filing of Amendments No. 3 and No. 4, and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendments No. 3 and No. 4, to Introduce Periodic Auctions for the Trading of U.S. Equity Securities, Exchange Act Release No. 34-91423, 86 Fed. Reg. 17230 (Apr. 1, 2021), https://www.federalregister.gov/d/2021-06676.

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

52 *Id.* at section II.C.

53 *Id.* at section II.A.3; *see also* SEC, Off. of the Inv. Advoc., Report on Activities, Fiscal Year 2019, https://www.sec.gov/advocate/reportspubs/annual-reports/sec-investor-advocate-report-on-activities-2019.pdf.

54 *See* Investment Company Act Release No. 33477 (May 20, 2019) [hereinafter Precidian Order].

55 *See* Heather Bell, *New Era of Active ETFs Set to Begin*, ETF.COM (Mar. 31, 2020), https://www.etf.com/sections/features-and-news/new-era-active-set-begin?nopaging=1.

56 *See* Precidian Order, *supra* note 54.

57 *See* Investment Company Act Release No. 33710 (Dec. 10, 2019); Investment Company Act Release No. 33711 (Dec. 10, 2019); Investment Company Act Release No. 33712 (Dec. 10, 2019); Investment Company Act Release No. 33713 (Dec. 10, 2019).

58 *See* James Lord, *Fidelity Debuts Semi-Transparent ETFs with Triple Launch*, ETF STRATEGY (June 8, 2020), https://www.etfstrategy.com/fidelity-debuts-semi-transparent-etfs-with-triplelaunch-95487.

59 In a November 19, 2019 joint statement, Commissioners Robert J. Jackson Jr. and Allison Herren Lee observed that non-transparent ETFs "come with real risk that, in moments of limited liquidity, ordinary investors will face wider spreads and hence get prices that do not accurately reflect the value of their shares." Robert J. Jackson Jr. & Allison Herren Lee, Comm'rs, SEC, Public Statement: Statement of Commissioners Jackson and Lee on Non-Transparent Exchange Traded Funds (Nov. 15, 2019), https://www.sec.gov/news/public-statement/statement-jackson-lee-2019-11-15. Commissioners Jackson and Lee also expressed concern over the appropriate disclosure regime for non-transparent ETFs, stating, "in particular, we wonder whether additional disclosure of the risks, as well as enhanced board oversight of the efficiency of these ETFs, is necessary . . . we are only in the early stages of determining the information investors need to evaluate the unique risks of nontransparent ETFs, including mechanisms to ensure accuracy and price efficiency." *See id*.

60 *See* Use of Derivatives by Registered Investment Companies and Business Development Companies, Investment Company Act Release No. 34084 [hereinafter Derivatives Rule], https://www.sec.gov/rules/final/2020/ic-34084.pdf.

61 *See id*. at section II.F.6.

62 *See id*. at section II.F.5.

63 *See*, *e.g.*, Jay Clayton, Chairman, SEC, Public Statement: Taking Significant Steps to Modernize Our Regulatory Framework (Sept. 26, 2019), https://www.sec.gov/news/public-statement/clayton-2019-09-26-three-rulemakings ("I believe it would be premature to include leveraged and inverse ETFs within the scope of [the ETF Rule] before the Commission has addressed the investor protection concerns that have been raised regarding these products."). We note that the Derivatives Rule amends the ETF Rule to include leveraged and inverse ETFs within its scope before the Commission has addressed the investor protection concerns that have been raised regarding these products. *See* Derivatives Rule, *supra* note 60, at section II.D.6.

64 *See*, *e.g.*, Press Release, SEC, SEC Charges Wells Fargo in Connection with Investment Recommendation Practices (Feb. 27, 2020), https://www.sec.gov/news/press-release/2020-43 ("The order finds that some Wells Fargo brokers and advisers did not fully understand the risk of losses these complex products posed when held long term. As a result, certain Wells Fargo investment advisers and registered representatives made unsuitable recommendations to certain clients to buy and hold single-inverse ETFs for months or years. According to the order, a number of these clients were senior citizens and retirees who had limited incomes and net worth, and conservative or moderate risk tolerances."); In the Matter of Morgan Wilshire Securities Inc., Exchange Act Release No. 89979 (Sept. 24, 2020), https://www.sec.gov/litigation/admin/2020/34-89979.pdf ("During the relevant period, certain Morgan Wilshire registered representatives recommended that a number of their retail customers buy inverse ETFs without regard to holding periods. Based on these recommendations, Morgan Wilshire customers purchased and held these inverse ETFs for longer than a single day, and in many cases, months, or years. Those registered representatives did not adequately understand all of the features and risks of inverse ETFs.").

65 *See*, *e.g.*, Chris Flood, *SEC Decision on Leveraged ETFs Sparks Concern for Retail Investors*, FIN. TIMES (Oct. 29, 2020), https://www.ft.com/content/f607fc5d-8b10-4c09-9274-d040e617caa6 (noting that, despite the single-day investment horizon for leveraged/inverse ETFs, "about a quarter of the investors in some popular leveraged ETFs held on to these positions for more than a month while 8 percent owned their holdings for three months.").

66 *See* Derivatives Rule, *supra* note 60, at sections II.F.1-2.

67 *See id*. at section II.F.5.

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

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

70 *See id.*

71 Request for Comment on Fund Retail Investor Experience and Disclosure, Securities Act Release No. 10503, Exchange Act Release No. 83376, Investment Company Act Release No. 33113 (June 5, 2018).

72 *See* Updated Disclosure Requirements and Summary Prospectus for Variable Annuity and Variable Life Insurance Contracts, Securities Act Release No. 10765, Exchange Act Release No. 88358, Investment Company Act Release No. 33814, 85 Fed. Reg. 25964 (May 1, 2020), https://www.federalregister.gov/documents/2020/05/01/2020-05526/updated-disclosure-requirements-and-summary-prospectus-for-variable-annuity-and-variable-life.

73 *See* SEC, Recommendation of the Investor Advisory Committee on Disclosure Effectiveness (May 21, 2020), https://www.sec.gov/spotlight/investor-advisory-committee-2012/disclosure-effectiveness-recommendation.pdf.

74 *See* Peter Santilli, Caitlin Ostroff & Paul Vigna, *From Bitcoin to Dogecoin: What's Driving Cryptocurrencies' Rise and the Challenges Ahead*, Wall St. J. (May 17, 2021, 5:30 AM ET), https://www.wsj.com/articles/the-factors-driving-crypto-markets-boom-and-the-challenges-ahead-11621243809.

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81 *See, e.g.*, Baris Balci, *Turkey's Crypto Pain Grows With Second Exchange Collapse*, Bloomberg (Apr. 24, 2021, 11:38 PM PDT), https://www.bloomberg.com/news/articles/2021-04-24/turkey-s-cryptocurrency-pain-grows-with-second-exchange-collapse; Taylan Bilgic & Firat Kozok, *Turkish Crypto Exchange Goes Bust as Founder Flees Country*, Bloomberg (Apr. 22, 2021, 2:39 AM PDT), https://www.bloomberg.com/news/articles/2021-04-22/turks-suspect-massive-crypto-losses-as-exchange-ceo-goes-missing.

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111 *See* Avi Salzman, *Why Some Experts Think a Bitcoin ETF Will Be Delayed*, Barron's (May 12, 2021), https://www.barrons.com/articles/why-some-experts-think-a-bitcoin-etf-will-be-delayed-51620853749 ("At least six Bitcoin ETF applications have been submitted to the Securities and Exchange Commission.").

112 *See supra* notes 95-101 and accompanying text.

113 *See id.*

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

115 *See* SEC, Off. of the Inv. Advoc., Report on Objectives for Fiscal Year 2020, at 12, https://www.sec.gov/files/sec-office-investor-advocate-report-on-objectives-fy2020.pdf.

116 Jean Eaglesham & Rob Barry, *More Than 5,000 Stockbrokers From Expelled Firms Still Selling Securities*, Wall St. J. (Oct. 4, 2013, 2:02 AM ET), https://www.wsj.com/articles/SB10001424052702303643304579107442831410708#:~:text=Dwyer%20is%20one%20of%20more,of%20more%20than%20550%2C000%20stockbrokers.

117 *See* Mark Egan, Gregor Matvos & Amit Seru, *The Market for Financial Adviser Misconduct*, 127 J. Pol. Econ. 217, 233 (2019), https://www.journals.uchicago.edu/doi/pdfplus/10.1086/700735 (noting that "relative to other advisors who left the same firm at the same time, advisors who engaged in misconduct are hired by firms that employ a greater percentage of other advisers with past misconduct records").

118 Financial Industry Regulatory Authority, Inc.; Notice of Filing of a Proposed Rule Change to Adopt FINRA Rule 4111 (Restricted Firm Obligations) and FINRA Rule 9561 (Procedures for Regulating Activities Under Rule 4111), Exchange Act Release No. 90527, 85 Fed. Reg. 78540 (Dec. 4, 2020), https://www.govinfo.gov/content/pkg/FR-2020-12-04/pdf/2020-26594.pdf.

119 *See* Financial Industry Regulatory Authority, Inc.; Order Approving a Proposed Rule Change, as Modified by Amendment No. 1, to Address Brokers with a Significant History of Misconduct, Exchange Act Release No. 90635, 85 Fed. Reg. 81540 (Dec. 16, 2020), https://www.federalregister.gov/d/2020-27626.

120 *See* National Senior Investor Initiative Act of 2021, H.R. 1565, 117th Cong. (2021).

121 See Elad L. Roisman, Comm'r, SEC, Remarks at the Elder Justice Coordinating Council Fall 2019 Meeting (Dec. 3, 2019), https://www.sec.gov/news/speech/roisman-remarks-elder-justice-coordinating-council-fall-2019-meeting.

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

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

124 As used in this report, the term "Ombudsman" may refer to the Ombudsman, the Ombudsman and staff in the Office of the Ombudsman, and, at times, to staff, contractors, and interns in the Office of the Investor Advocate directly supporting the ombudsman function.

125 The Primary Issue Category labels are similar to the category labels used by other divisions and offices in public reports, where the category labels are based upon the submitter's own characterization or description of the issue. See, for example, SEC, Off.

of the Whistleblower, Whistleblower Program 2020 Annual Report to Congress, at 28 and related footnote 80: "This breakdown reflects the categories selected by whistleblowers and, thus, the data represents the whistleblower's own characterization of the violation type." The exceptions in this Ombudsman's Report are the "Non-SEC/Other Matters" category label used for matters not under the jurisdiction of the SEC, and the "Atypical Matters" category label used for matters where the submitter's characterization or description of the issue makes it difficult to determine the nature of the complaint.

126 *What We Do*, SEC, https://www.sec.gov/about/what-we-do (last visited June 3, 2021).

127 Caitlin McCabe, *New Army of Individual Investors Flexes Its Muscle*, Wall St. J. (Dec. 30, 2020, 7:00 AM ET), https://www.wsj.com/articles/new-army-of-individual-investors-flexes-its-muscle-11609329600.

128 *See* Mark Lush et al., *Investing 2020: New Accounts and the People Who Opened Them*, Consumer Insights: Money & Investing 2 (Feb. 2021), https://www.finrafoundation.org/sites/finrafoundation/files/investing-2020-new-accounts-and-the-people-who-opened-them_1_0.pdf.

129 While virtually all brokerage account agreements contain pre-dispute mandatory arbitration clauses that require investors to arbitrate claims through the FINRA dispute resolution forum, other financial professionals also include such clauses in their account agreements.

130 *See* SEC Off. of Inv. Educ. & Advoc., Investor Bulletin: Broker-Dealer/Customer Arbitration (Dec. 20, 2016), https://www.sec.gov/oiea/investor-alerts-bulletins/ib_arbitration.html.

131 *See* FINRA, What to Expect: FINRA's Dispute Resolution Process 2 (2012), https://www.finra.org/sites/default/files/Education/p117487_0_0.pdf.

132 FINRA Rule 12505.

133 *See* FINRA, 2021 FINRA Dispute Resolution Services Arbitrator's Guide 41 (Feb. 2021), https://www.finra.org/sites/default/files/arbitrators-ref-guide.pdf.

134 Exchange Act Release No. 90000 (Sept. 25, 2020), 85 Fed. Reg. 62142 (Oct. 1, 2020) (Notice of Filing of File No. SR-FINRA-2020-030) (hereinafter Initial Filing), https://www.finra.org/sites/default/files/2020-10/SR-FINRA-2020-030-federal-register-notice.pdf.

135 *See*, *e.g.*, *Investor.gov*, SEC, https://www.investor.gov/; *see also Welcome to Investor.gov/CRS*, SEC, https://www.investor.gov/CRS.

136 Initial Filing, *supra* note 134, at 62143.

137 In April 2004, FINRA's predecessor, the National Association of Securities Dealers (NASD), implemented NASD Conduct Rule 2130, in which the NASD codified standards for granting expungement relief to brokers in arbitration proceedings. *See* NASD, Notice to Members 04-16, https://www.finra.org/rules-guidance/notices/04-16. NASD Rule 2130 was incorporated into FINRA's rulebook as Rule 2080.

138 *See* FINRA Rule 2080(b)(1).

139 Initial Filing, *supra* note 134, at 62143-62144.

140 *See*, *e.g.*, PIABA & The PIABA Found., *2021 Updated Study on FINRA Expungements – A Seriously Flawed Process That Should Be Fixed Now to Protect the Integrity of the Public Record* (May 2021), https://www.sec.gov/comments/sr-finra-2020-030/srfinra2020030-8815751-238026.pdf; *see also* Pub. Invs. Arb. Bar Ass'n, *Expungement Study of the Public Investors Arbitration Bar Association* (Oct. 2013), https://piaba.org/system/files/2018-01/REPORT%20-%20Expungement%20Study%20of%20the%20Public%20Investors%20Arbitration%20Bar%20Association.pdf; Pub. Invs. Arb. Bar Ass'n, *Update to the 2013 Expungement Study of the Public Investors Arbitration Bar Association* (Oct. 2015), https://piaba.org/sites/default/files/newsroom/2015-10/Update%20on%20the%202013%20Expungement%20Study%20of%20PIABA%20%28October%2020%2C%202015%29.pdf.

141 *See* FINRA, Regulatory Notice 17-42: Expungement of Customer Dispute Information (Dec. 6, 2017), https://www.finra.org/sites/default/files/notice_doc_file_ref/Regulatory-Notice-17-42.pdf.

142 *See* Letter from Rick A. Fleming, Inv. Advoc., SEC, and Tracey L. McNeil, Ombudsman, SEC, to Marcia E. Asquith, Off. of the Corp. Sec'y, FINRA, at 2 (Feb. 15, 2018), https://www.finra.org/sites/default/files/notice_comment_file_ref/17-42_SEC_comment.pdf.

143 *See* Initial Filing, *supra* note 134.

144 *See generally id*. at 62145-62156.

145 *See id*.

146 *See*, *e.g.*, Letter from Lisa Hopkins, President, NASAA, Gen. Couns. & Senior Deputy Comm'r of Sec., W. Va., to Vanessa Countryman, Secretary, SEC (Oct. 22, 2020), https://www.sec.gov/comments/sr-finra-2020-030/srfinra2020030.htm; Letter from David P. Meyer, President, PIABA, to Brent J. Fields, Secretary, SEC (Oct. 23, 2020), https://www.sec.gov/comments/sr-finra-2020-030/srfinra2020030.htm.

147 *See* Letter from Mignon McLemore, Assistant Gen. Couns., FINRA, to Vanessa Countryman, Secretary, SEC (Dec. 18, 2020), https://www.finra.org/sites/default/files/2020-12/SR-FINRA-2020-030-response-to-comments.pdf.

148 *See* Partial Amendment No. 1 to FINRA 2020-30 (Dec. 18, 2020), https://www.finra.org/sites/default/files/2020-12/sr-finra-2020-030-amendment1.pdf. On December 28, 2020, the SEC published a notice and order in the Federal Register to solicit comments on SR—FINRA—2020-030, as modified by Partial Amendment No. 1, and to institute proceedings to determine whether to approve or disapprove the proposal, as modified by Partial Amendment No. 1. *See* Exchange Act Release No. 90734 (Dec. 18, 2020), 85 Fed. Reg. 84396 (Dec. 28, 2020) (Order Instituting Proceedings to Determine Whether to Approve or Disapprove File No. SR-FINRA-2020-030), https://www.govinfo.gov/content/pkg/FR-2020-12-28/pdf/2020-28509.pdf. On March 15, 2021, FINRA extended the deadline for Commission action on SR—FINRA—2020-030 to May 28, 2021. *See* Letter from Mignon McLemore, Assoc. Gen. Couns., Regul. Practice & Pol'y, Off. of Gen. Couns., FINRA, to Lourdes Gonzalez, Assistant Chief Couns., Off. of Chief Couns., Div. of Trading and Mkts., SEC (Mar. 15, 2021), https://www.finra.org/sites/default/files/2021-03/SR-FINRA-2020-030-Extension2.pdf.

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150 *See* Letter from Mignon McLemore, Assoc. Gen. Couns., Regul. Practice & Pol'y, Off. of Gen. Couns., FINRA, to Vanessa Countryman, Secretary, SEC (Apr. 9, 2021) [hereinafter FINRA Rebuttal Letter], https://www.finra.org/sites/default/files/2021-04/SR-FINRA-2020-030-response-to-comments.pdf.

151 *See* FINRA, Partial Amendment No. 2 to Rule 2020-030 (Apr. 9, 2021), at 5-6, https://www.finra.org/sites/default/files/2021-04/SR-FINRA-2020-030-Amendment2.pdf.

152 *See* FINRA Rebuttal Letter, *supra* note 150, at 5.

153 *Id.* at 5-6. On May 18, 2021, FINRA submitted a letter at the request of SEC staff to: (1) explain the circumstances under which FINRA would waive the requirement pursuant to Rule 2080 to be named as a party when associated persons seek judicial confirmation of an arbitration award for expungement; and (2) clarify the grounds on which arbitrators may recommend expungement. *See* Letter from Mignon McLemore, Assoc. Gen. Couns., Regul. Practice & Pol'y, Off. of Gen. Couns., FINRA, to Vanessa Countryman, Secretary, SEC (May 18, 2021), https://www.sec.gov/comments/sr-finra-2020-030/srfinra2020030-8811356-238001.pdf.

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155 *Id.*

156 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), https://www.sec.gov/news/press/pressarchive/1997/97-101.txt.

157 For more information on the work of law school investor advocacy clinics, see Off. of the Inv. Advoc., Report on Activities, Fiscal Year 2019, *supra* note 54, at 33-34.

158 For an overview of the Law School Clinic Outreach Program (LSCOP), see SEC, Off. of the Inv. Advoc., Report on Objectives, Fiscal Year 2021, at 33, https://www.sec.gov/files/sec-office-investor-advocate-report-on-objectives-fy2021.pdf.

159 For a timeline highlighting the Ombudsman's formal outreach and engagement efforts from the start of the LSCOP in October 2016 through June 2019, and a discussion of the postponed 2020 Investor Advocacy Clinic Summit, see *id.* at 34-35.

160 *See* Off. of the Inv. Advoc., Report on Activities, Fiscal Year 2019, *supra* note 54, at 34.

161 Preparation for the 2020 Investor Advocacy Clinic Summit was in the final stages during the first week of March 2020 when unfortunately, due to information relating to the spread of the COVID-19 virus and out of an abundance of caution, the Summit was postponed. *See* Off. of the Inv. Advoc., Report on Objectives, Fiscal Year 2021, *supra* note 158, at 36.

162 The 12 law school investor advocacy clinics include Cardozo School of Law, Cornell University, Fordham University, Howard University, University of Miami, New York Law School, Northwestern University, Pace University, St. John's University, Seton Hall University, University of Nevada Las Vegas, and the University of Pittsburgh.

163 Due to the COVID-19 pandemic, FINRA has moved to virtual arbitration proceedings. *See* Off. of the Inv. Advoc., Report on Activities, Fiscal Year 2019, *supra* note 53, at 46. It should be noted that on May 10, 2021, FINRA announced that in-person arbitration hearings will resume in all but seven of their hearing locations on July 5, 2021. The remaining hearing locations will resume in-person arbitration hearings on July 30, 2021. *See Coronavirus Impact on Arbitration & Mediation Hearing*, FINRA, https://www.finra.org/rules-guidance/key-topics/covid-19/hearings/impact-on-arbitration-mediation.

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

165 Professor Nicole G. Iannarone is an Assistant Professor of Law at the Drexel University Thomas R. Kline School of Law. *See Nicole Iannarone*, Drexel Univ. Thomas R. Kline Sch. of L., https://drexel.edu/law/faculty/fulltime_fac/nicole-iannarone/. Prior to joining the Drexel law faculty, Professor Iannarone was a member of the faculty at Georgia State University College of Law and the director of its Investor Advocacy Clinic. The Ombudsman is extremely appreciative of the time and effort that Professor Iannarone devoted to preparing for, and moderating, this very timely and impactful panel discussion.

166 Presenting law school clinics included: University of Nevada Las Vegas, University of Miami, Pace University, Northwestern University, Fordham University, New York Law School, and Cardozo School of Law. While other law school clinics did want to make presentations, some were not able to given the nature of their clinic structure (semester versus full academic year) and the limited range of opportunities to represent retail investors due to the COVID-19 pandemic.

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

168 *Id*.

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

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

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

172 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."

173 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).

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

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

178 *See* Julie Steinberg, *FASB to Explore Greater Disclosure of Supply-Chain Financing*, Wall St. J. (Oct. 22, 2020, 6:05 AM ET), https://www.wsj.com/articles/fasb-to-explore-greater-disclosure-of-supply-chain-financing-11603361147.

179 *See* Management's Discussion and Analysis, Selected Financial Data, and Supplementary Financial Information, Securities Act Release No. 10890 (Nov. 19, 2020), https://www.sec.gov/rules/final/2020/33-10890.pdf.

180 SEC, Recommendation of the Investor Advisory Committee Regarding Recommendation of the Investor as Owner Subcommittee on ESG Disclosure (May 14, 2020), https://www.sec.gov/spotlight/investor-advisory-committee-2012/esg-disclosure.pdf.

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182 Press Release, SEC, Division of Examinations Announces 2021 Examination Priorities (Mar. 3, 2021), https://www.sec.gov/news/press-release/2021-39.

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

184 Allison Herren Lee, Acting Chair, SEC, Public Input Welcomed on Climate Change Disclosures (Mar. 15, 2021), https://www.sec.gov/news/public-statement/lee-climate-change-disclosures.

185 SEC, Recommendation of the Investor Advisory Committee Regarding Recommendation on Disclosure Effectiveness (May 21, 2020), https://www.sec.gov/spotlight/investor-advisory-committee-2012/disclosure-effectiveness.pdf.

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

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