

MEMORANDUM

To: Members of the Committee on Financial Services, Capital Markets Subcommittee

From: Financial Services Republican Staff

Date: March 15, 2024

Subject: March 20, 2024, Subcommittee on Capital Markets Hearing Entitled “SEC Overreach: Examining the Need for Reform.”

On Wednesday, March 20, 2024, at 10:00 am, (ET) the Subcommittee on Capital Markets will hold a hearing titled “SEC Overreach: Examining the Need for Reform” in Room 2128 Rayburn House Office Building. Testifying at the hearing will be:

- **Jennifer Schulp**, Director of Financial Regulation Studies, Center for Monetary and Financial Alternatives, Cato Institute
- **David Burton**, Senior Fellow in Economic Policy, Thomas A. Roe Institute for Economic Policy Studies, The Heritage Foundation
- **John Gulliver**, Executive Director, Committee on Capital Markets Regulation
- **Alexandra Thornton**, Senior Director, Financial Regulation for Inclusive Economy, Center for American Progress

The Securities and Exchange Commission and Its Regulatory Process

During the peak of the Great Depression, Congress passed the Securities Act of 1933 (“Securities Act”) and the Securities and Exchange Act of 1934 (“Exchange Act”), which created the SEC. The SEC’s mission is to: (1) protect investors; (2) maintain fair, orderly, and efficient markets; and (3) facilitate capital formation. The SEC oversees more than 30,000 registered entities, including issuers, investment advisers, mutual funds and exchange traded funds, broker-dealers, national securities exchanges, credit rating agencies, clearing agencies, the Public Company Accounting Oversight Board (“PCAOB”), the Financial Industry Regulatory Authority (“FINRA”), the Municipal Securities Rulemaking Board (“MSRB”), the Securities Investor Protection Corporation, and the Financial Accounting Standards Board. The SEC also oversees over \$125 trillion in securities trading annually and reviews the disclosures of approximately 8,700 reporting companies.¹

¹ See Congressional Budget Justification and Annual Performance Plan; Fiscal Year 2022, Annual Performance Report (Mar. 13, 2023), available at https://www.sec.gov/files/fy-2024-congressional-budget-justification_final-3-10.pdf.

To carry out its statutory mission, the SEC maintains several authorities, including rulemaking and enforcement, to oversee the market and achieve policy goals. During the formal rulemaking process, the SEC must act within its statutory authority and carefully calibrate its initiatives to avoid undue harm or disruption. Transformative changes must be thoughtfully crafted and thoroughly vetted to minimize direct and indirect costs and accurately assess cumulative effects, particularly during periods of economic stress and uncertainty. The SEC must also comply with the Administrative Procedure Act, which includes notice and comment period requirements that allow interested stakeholders an opportunity to review a rule and provide meaningful feedback.

The SEC may also engage in informal measures outside of the formal rulemaking process that affect policy outcomes. For example, the SEC frequently releases guidance through staff accounting bulletins, legal bulletins, and through the no-action process. Additionally, market participants may interact with SEC staff to navigate regulatory compliance hurdles before registering or offering new products. While these tools are intended to provide the SEC flexibility and offer market participants clear instructions on how to enter or interact with the market, the SEC can use these tools irresponsibly and instill uncertainty in the market.

This hearing will examine Chair Gensler's approach to policymaking at the SEC, which has sparked significant concerns. This includes a rapid push to propose and finalize numerous new rules, insufficient comment periods, neglecting bipartisan congressional concerns, and finalizing new rules that exceed the SEC's statutory authority.

Legislative Proposals

- **HR _____, *the SEC Regulatory Accountability Act***, to require the SEC to consider specified factors before issuing regulations.
- **HR 7030, *the Review the Expansion of Government Act of 2024 or the REG Act of 2024***, to require the SEC to periodically review its final rules and report its findings with respect to each rule to Congress.
- **HR _____**, to require an assessment and report to Congress on the adequacy of the SEC's cost-benefit analysis with respect to major rulemakings.
- **HR _____**, to mandate minimum comment periods of at least 60 days for all SEC-initiated rulemakings, with certain exceptions, calculated from the date published in the Federal Register.
- **HR _____**, to require the SEC to submit a public, semi-annual report to Congress describing the details of certain meetings between SEC employees and international standards setters, and to clarify that certain agreements with international standards setters are subject to the requirements of the Administrative Procedure Act.
- **HR _____**, to require the Commission to review certain "reviewable actions" by SEC staff.

- **HR ____**, to require the semi-annual testimony of the Chairman of the SEC before the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate, with testimony on at least one instance to include the testimony of the entire Commission.
- **HR ____**, *the Streamlining Public Company Accounting Oversight Act*, to integrate the Public Company Accounting Oversight Board into the SEC through the Office of Public Accounting Oversight.
- **HR 4551**, *the Protecting Investors' Personally Identifiable Information Act*, to prohibit the SEC from requiring the collection of personally identifiable information (PII) under consolidated audit trail reporting requirements.
- **HR 6825**, *the Amendment for Crowdfunding Capital Enhancement and Small-business Support Act of 2023 or the ACCESS Act of 2023*, to raise the threshold for when Regulation Crowdfunding issuers are required to file financial statements reviewed by independent public auditors from \$100,000 to \$250,000.
- **HR 7902**, *the Protecting Private Job Creators Act*, to exempt certain fixed income securities from compliance with the requirements of Rule 15c2-11.
- **HR ____**, to require a study and report to Congress on the SEC's information technology infrastructure and handling of data.
- **H. J. Res. ____**, Providing for congressional disapproval under chapter 8 of title 5, United States Code, of the rule submitted by the Securities and Exchange Commission relating to "Private Fund Advisers; Documentation of Registered Investment Adviser Compliance Reviews."