

Public Statement

Prepared Remarks Before the Investor Advisory Committee



Chair Gary Gensler

Sept. 9, 2021

Thank you for the kind introduction. I'd like to note that my views are my own, and I'm not speaking on behalf of my fellow Commissioners or the staff.

I'm glad to participate in my second meeting of the Investor Advisory Committee. I thank the members for your time and willingness to represent the interests of American investors. Investor protection is at the heart of the SEC's three-part mission.

Today, I'd like to discuss a few areas related to topics you're discussing today, including the behavioral design of online trading platforms, 10b5-1 plans, and SPACs. I also look forward to your readout from your panel discussion on the Public Company Accounting Oversight Board.

Behavioral Design of Online Trading Platforms

In the last few years we've seen a proliferation of trading apps, as well as wealth management apps and robo-advisers, that use various practices to develop and provide investment advice to retail investors.

While new financial technologies can bring increased efficiencies in finance and greater access, in many cases these individualized features may encourage investors to trade more often, invest in different products, or change their investment strategy.

Predictive analytics and other digital engagement practices (DEPs) often are designed, in part, to increase platform revenues, data collection, and customer engagement, leading to potential conflicts between the platform and investors.

We've put out a request for information and comment on the use of DEPs.^[1] I'm hopeful that today's panel discussion will augment that request and help us learn more about how these practices are used.

Elissa and Paul, I'm sure you've thought out some very important questions for our panelists, but, if I may, I'd like to add a few more:

How are investors protected in light of the potential conflicts of interest that may exist when DEPs optimize for platform revenues, data collection, or investor behavior?

How might that affect whether DEPs are making a recommendation or providing investment advice, which has implications in our securities laws?

How do these new business models ensure for fairness of access and pricing, particularly given underlying data used in the analytic models could reflect historical biases that may be proxies for protected characteristics, like race and gender?[2]

I look forward to hearing the panel's thoughts on these important questions and ask anybody who is listening to today's meeting submit comments to the request for comment on our website.

Recommendations Regarding Rule 10b5-1 Plans

Next, I'd like to turn to insider trading, and in particular 10b5-1 plans. I thank the members who helped formulate the draft recommendations on these plans for their thoughtfulness and care in identifying ways to strengthen our rules.

I believe plans under Exchange Act Rule 10b5-1 have exposed potential gaps in our insider trading enforcement regime. As staff considers recommendations for changes to the rule, you've pointed out some important areas that are in line with what I've asked staff to consider in a proposed rulemaking.

These include a mandatory cooling off period between adoption of a plan and the first trades under the plan; prohibitions against an insider having multiple plans at the same time; and enhanced public disclosure of 10b5-1 plans.

I look forward to hearing more detail about your recommendations. Updates to Rule 10b5-1 are on the unified agenda, and your feedback will assist our staff in formulating recommendations to freshen up the rule.

Recommendations Regarding Special Purpose Acquisition Companies

Also on the unified agenda are rules regarding special purpose acquisition companies (SPACs).

I appreciate this committee's draft recommendations on this topic.

I agree with your assessment that we can do more to strengthen SPAC disclosures, especially around dilution.[3] One recent study,[4] which you cited in your draft recommendations, shows that SPAC sponsors generate significant dilution and costs for investors. I've asked staff to look closely at each stage of the SPAC process to ensure that all investors are being protected. This includes developing rulemaking recommendations to elicit enhanced disclosures and conducting economic analysis to better understand how investors are advantaged or disadvantaged by SPAC transactions.

Conclusion

Beyond the topics you're discussing today, the unified agenda, published earlier this summer, touches on a number of areas related to investor protection. I encourage you all to be active participants as we develop those rulemakings and put them out to public comment — particularly as they affect investors.

Thank you.

[1] See <https://www.sec.gov/rules/other/2021/34-92766.pdf>.

[2] See Gary Gensler and Lily Bailey, "Deep Learning and Financial Stability," *available at* https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3723132.

[3] See <https://www.sec.gov/spotlight/investor-advisory-committee-2012/draft-recommendation-of-the-iap-and-iao-subcommittees-on-spacs-082621.pdf>.

[4] See Michael Klausner, Michael Ohlrogge and Emily Ruan, "A Sober Look at SPACs," *Yale Journal on Regulation* (forthcoming 2021), *available at* https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3720919.

