

Congress of the United States
Washington, D.C. 20515

February 16, 2021

The Honorable Allison Herren Lee
Acting Chair
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Dear Acting Chair Lee:

Congratulations on your designation as Acting Chair of the Securities and Exchange Commission (SEC) and thank you for your willingness to serve. We hope that you will be a steady and effective caretaker of the SEC's tripartite mission of protecting investors, maintaining fair, orderly, and efficient markets, and facilitating capital formation. In the spirit of President Biden's inaugural commitment to unity, we write to highlight some good government initiatives that the SEC should immediately undertake to advance its mission and the interests of investors.

- *Report on faster settlement of equity securities.* In 2017, the SEC unanimously adopted a rule updating the settlement cycle for equity securities from three business days (T+3) to two business days (T+2). The preamble of that rule called for the SEC staff to prepare a report within three years to evaluate, among other items, the potential impacts associated with movement to a shorter settlement cycle than T+2 and the identification of technological and operational improvements that can be used to facilitate a movement to a shorter settlement cycle. The recent equity market volatility involving GameStop, AMC, and other issuers has brought renewed attention to the securities settlement process. During this market volatility, brokers were required to provide increased deposits to their clearinghouses as part of the settlement process, which contributed to their decisions to limit the ability of retail investors to trade in certain stocks. In light of these events and their impact on retail investors, the SEC should make public any report it has prepared to evaluate a settlement cycle shorter than T+2. If the SEC has not prepared such a report, it should prepare one and publicly release it.
- *Modernize transfer agent regulations.* In 2015, the SEC issued an advance notice of proposed rulemaking (ANPRM) that would have modernized the regulation of transfer agents, who help facilitate the settlement of securities for issuers. The ANPRM stated that “[t]he first transfer agent rules were adopted in 1977 and remain essentially unchanged. At the same time, transfer agents now operate in a market structure that bears little resemblance to the structure in 1977.”¹ When the ANPRM was announced, then-SEC Chair Mary Jo White stated: “Transfer agents increasingly play critical roles in the securities markets and our rules need to be updated and enhanced to ensure that investors and our markets are optimally served. The need for transfer agent reform has been recognized and supported by all of the [SEC] Commissioners and today’s

¹ Transfer Agent Regulations, 80 FR 81948 (Dec. 31, 2015).

recommendations are a significant step forward.”² Unfortunately, the SEC did not proceed with a rulemaking after receiving public comments on this ANPRM. Given the important roles played by transfer agents, the SEC should modernize its outdated rules now before a crisis hits that puts them to the test.

- *Research analyst rules.* The SEC should adopt new uniform rules to prevent conflicts of interest between the investment banking and securities research services at brokerage firms. Currently, these rules are derived from the 2003 global research analyst settlement between the SEC and certain brokerage firms at which investment banking interests allegedly had an undue influence on securities research. Even though only 10 firms—two of which have since ceased operations—agreed to this settlement, it has essentially been applied to brokerage firms that were not subject to it. We find this development concerning since the terms of this settlement have never been subject to the notice and comment process required by the Administrative Procedure Act. The SEC should propose new uniform rules through the notice and comment rulemaking process and as part of that process conduct a retrospective review of the effects of this settlement on investment research during the past 18 years.
- *Remote working modernization.* The COVID-19 crisis forced many companies to shift to a remote working environment and increase the use of technology. These changes may not immediately subside after the crisis is over. The SEC should take steps that recognize this shift, including by eliminating outdated requirements to hold in-person board meetings and provide “wet” signatures on paper. The SEC should further update its rules to reflect current filing practices, such as by deleting requirements like Rule 402 under the Securities Act that mandate filing multiple copies in paper.
- *Proxy plumbing.* In 2010, the SEC issued an ANPRM regarding “proxy plumbing.” Concerns about under-voting, over-voting, and verification of proxy votes have not been fully addressed through changes to SEC rules. The SEC should move forward with efforts to ensure the integrity of the proxy voting process.
- *Rules mandating obsolete technology or favoring specific private entities.* The SEC should review and modify its rules so that they do not entrench specific types of technologies, formats, or proprietary products. For example, Rule 17a-4 under the Securities Exchange Act places additional requirements on the use of electronic storage media other than optical disk technology such as CD-ROM. The SEC should also review and eliminate, where appropriate, any rule that entrenches products or services from specific private entities, such as the use of CUSIP, XBRL, or private market indexes.
- *Cybersecurity and data.* The SEC should take measures to improve its IT and cybersecurity systems against data breaches and unauthorized access, especially in light of the SEC’s role in handling confidential pre-IPO filings, Form PF data, and other non-public data. Similarly, the SEC should continue to work on modernizing data collection

² SEC Seeks Public Comment on Transfer Agent Rules, press release 2015-288 (Dec. 22, 2015), available at: <https://www.sec.gov/news/pressrelease/2015-288.html>.

and data standards, particularly to enhance data security and consistency and coordination between agencies.

Thank you for consideration of these suggestions.

Sincerely,

A handwritten signature in blue ink that reads "Pat Toomey". The signature is stylized with a large, sweeping initial "P" and a long horizontal stroke.

Pat Toomey
Ranking Member
Senate Committee on Banking, Housing,
and Urban Affairs

A handwritten signature in blue ink that reads "Patrick McHenry". The signature is written in a cursive style with a prominent "P" and "M".

Patrick McHenry
Ranking Member
House Committee on Financial Services

cc: The Honorable Hester M. Peirce, Commissioner
The Honorable Elad L. Roisman, Commissioner
The Honorable Caroline A. Crenshaw, Commissioner