

October 16, 2022

The Honorable Gary Gensler
Chair
U.S. Securities and Exchange Commission
100 F Street NE
Washington, D.C. 20549

Dear Chair Gensler:

We write to express our concerns about the integrity of Securities and Exchange Commission (“SEC”) rulemakings under your tenure following the SEC’s October 7th announcement that a technical error prevented comment letters on proposed rules from being added to the public comment file.¹ Although this technological glitch is known to have occurred as far back as June 2021, the majority of affected commenters were impacted in August 2022.² This period of time overlaps with the recently adopted amendments to proxy rules governing proxy voting advice (“the proxy advisor rule”), which was proposed in November 2021 and adopted later in July 2022.³

In announcing the technical glitch and reopening certain comment periods, the SEC identified eleven affected rulemaking releases still in the proposed rule stage.⁴ It did not cite any adopted final rules.⁵ Additionally, the announcement did not describe how the SEC determined which specific rulemaking releases were impacted by the glitch.⁶ Given the scope and magnitude of this technical error, we are concerned that comments for the proxy advisor rule may have been affected as well as other rulemaking releases not listed.

As such, please respond to the following questions:

1. What was the process for determining whether a rulemaking release was impacted by the technical glitch? How was this process established? Was the entire Commission informed about the technical glitch prior to the SEC’s announcement? Was the entire Commission involved in the establishment of the process? Please provide a copy of the process.

¹ See SEC Press Release 2022-186, *SEC Reopens Comment Periods for Several Rulemaking Releases Due to Technological Error in Receiving Certain Comments* (Oct. 7, 2022) available at <https://www.sec.gov/news/press-release/2022-186>.

² *Id.*

³ See SEC Press Release 2021-236, *SEC Proposes Rule Amendments to Proxy Rules Governing Proxy Voting Advice* (Nov. 17, 2021) available at <https://www.sec.gov/news/press-release/2021-236>. See SEC Press Release 2022-120, *SEC Adopts Amendments to Proxy Rules Governing Proxy Voting Advice* (July 13, 2022) available at <https://www.sec.gov/news/press-release/2022-120>.

⁴ *Id.*

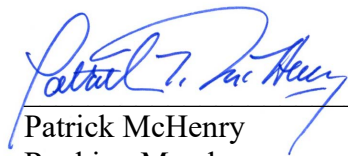
⁵ See SEC Press Release 2022-186, *supra* note 1.

⁶ *Id.*

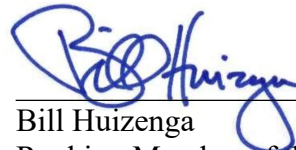
2. In particular, were all comments submitted for the proxy advisor rule received by the Commission? If you know that the proxy advisor rule was not affected by the glitch, please provide the analysis showing how the Commission reached this determination.
3. How did the SEC ensure that the process for determining which rulemaking releases were not impacted by the technical glitch were consistent with the requirements of the Administrative Procedure Act (“APA”)?
4. If the SEC never received a submitted comment for the proxy advisor rule or another rulemaking release, how can the SEC satisfy the APA’s consideration requirement?
5. Will you rescind the final proxy advisor rule and reopen the comment file?

I appreciate your attention to this critical matter. Please provide written responses to each of the questions outlined above no later than October 28, 2022. If you have any questions, please do not hesitate to contact McArn Bennett, Senior Counsel, at (202) 225-7502.

Sincerely,



Patrick McHenry
Ranking Member
Committee on Financial Services



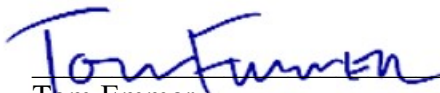
Bill Huizenga
Ranking Member of the
Subcommittee on Investor
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Ann Wagner
Committee on Financial Services



French Hill
Committee on Financial Services



Tom Emmer
Committee on Financial Services



Alexander X. Mooney
Committee on Financial Services



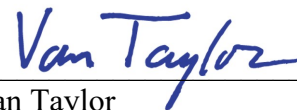
Warren Davidson
Committee on Financial Services



Anthony Gonzalez
Committee on Financial Services



Bryan Steil
Committee on Financial Services



Van Taylor
Committee on Financial Services

cc: The Hon. Maxine Waters, Chairwoman, Committee on Financial Services
The Hon. Hester M. Peirce, Commissioner
The Hon. Mark T. Uyeda, Commissioner
The Hon. Jaime Lizárraga, Commissioner
The Hon. Caroline A. Crenshaw, Commissioner