

MEMORANDUM

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

From: Financial Services Staff

Date: October 30, 2023

Subject: November 2, 2023, Subcommittee Hearing

On Thursday, November 2, 2023, the Capital Markets Subcommittee will hold a hearing titled “Examining the SEC’s Agenda: Unintended Consequences for U.S. Capital Markets and Investors.” Testifying at the hearing will be:

- **S.P. Kothari**, Gordon Y Billard Professor of Accounting and Finance, MIT Sloan School of Management.
- **Dalia Blass**, Partner, Sullivan & Cromwell LLP
- **Tom Quadman**, Executive Vice President, Center for Capital Markets Competitiveness, U.S. Chamber of Commerce
- **Ken Bentsen**, President and CEO, SIFMA
- **Amy Borrus**, Executive Director, Council of Institutional Investors

Background

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 Securities and Exchange Commission (“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 investment advisers, mutual funds and exchange traded funds, broker-dealers, national securities exchanges, credit rating agencies, clearing agencies, the Public Company Accounting Oversight Board, 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.

SEC Rulemaking Process

The U.S. capital markets stand as the deepest and most liquid in the world. However, they also represent one of the most heavily regulated sectors within the U.S. economy. Consequently, it is imperative for regulators to carefully calibrate their interventions to address market deficiencies and ensure that their actions do not inadvertently cause undue harm or disruption.

This hearing will delve into Chair Gensler’s approach to rulemaking, which has sparked significant concerns. This includes a rapid push to propose and finalize numerous new rules, provide insufficient comment periods, neglect bipartisan congressional concerns, and push the bounds of the SEC’s statutory authority.

SEC Divisions and Rulemakings

This hearing will also discuss the regulatory approaches pursued by each of the Commission’s divisions and examine the regulatory activities the Commission has undertaken since January 2021.

Division of Corporation Finance

In support of the SEC’s mission, the Division of Corporation Finance seeks to ensure that investors are provided with material information in order to make informed investment decisions. This includes when a company initially offers its securities to the public and on an ongoing basis as it continues to give information to the marketplace. The Division also forms and makes recommendations to the Commission regarding new rules and revisions to existing rules. In addition, the Division provides advice to companies, investors, and their advisors by issuing Staff Legal and Accounting Bulletins, staff Disclosure Guidance Topics, updates to the Division’s Financial Reporting Manual, no-action and interpretive letters and Compliance and Disclosure Interpretations.²

Division of Trading and Markets

The Division of Trading and Markets is responsible for establishing and maintaining standards for fair, orderly, and efficient markets. It regulates major securities market participants, including securities exchanges, broker-dealers, self-regulatory organizations (“SROs”) such as FINRA and the MSRB, clearing agencies that facilitate trade settlement, transfer agents, and credit rating agencies. The Division also oversees the SEC’s financial integrity program for broker-dealers; reviews proposed new rules and proposed changes to existing rules filed by SROs; assists the SEC in rulemaking and provides interpretation on matters affecting the operation of the securities markets; and monitors the market.³

² See About the Division of Corporation Finance at <https://www.sec.gov/divisions/corpfin/cfabout>.

³ See About Trading and Markets available at <https://www.sec.gov/about-trading-and-markets>.

Division of Investment Management

The Division of Investment Management is responsible for administering the Investment Company Act of 1940 and the Investment Advisers Act of 1940. It assumes regulatory jurisdiction over mutual funds, including money market funds, closed-end funds, business development companies, unit investment trusts, variable insurance products, and exchange traded funds. As mutual funds and exchange traded funds rise in popularity with American investors, including the millions of Americans saving for retirement, the role of the Division of Investment Management grows.⁴

⁴ See About Investment Management, available at <https://www.sec.gov/investment-management>.