

## MEMORANDUM

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

From: Financial Services Republican Staff

Date: May 2, 2024

Subject: May 7, 2024, Subcommittee on Capital Markets Hearing Entitled “SEC Enforcement: Balancing Deterrence with Due Process.”

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On Tuesday, May 7, 2024, at 10:00 am, (ET) the Subcommittee on Capital Markets will hold a hearing titled “SEC Enforcement: Balancing Deterrence with Due Process” in Room 2128 Rayburn House Office Building. Testifying at the hearing will be:

- **Andrew Vollmer**, Senior Affiliated Scholar at the Mercatus Center and former SEC Deputy General Counsel
- **Nick Morgan**, President and Founder, Investor Choice Advocates Network
- **Paul Eckert**, Professor of the Practice of Law, College of William & Mary Law School
- **John Reed Stark**, President, John Reed Stark Consulting and former Chief of the SEC Office of Internet Enforcement

### **The Securities and Exchange Commission and Its Enforcement Division**

The Securities and Exchange Commission (“SEC”) is responsible for enforcing the federal securities laws. The SEC does this through its Division of Enforcement (the “Division” or “Enforcement Division”), which was established in 1972.<sup>1</sup> The Division investigates potential violations of federal securities laws and prosecutes these cases in federal courts or in administrative proceedings before the SEC’s own administrative law judges.

The SEC is a civil enforcement agency that pursues civil money penalties, disgorgement of illicit profits, and injunctions to prohibit future violations. The SEC cannot bring criminal charges itself, although it can refer cases for criminal prosecution to the Justice Department. The Division does have broad subpoena authority for documents and testimony from individuals and entities accused of violating federal securities laws, or who may have information relevant to a fraud investigation.

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<sup>1</sup> Prior to 1972, the SEC’s enforcement function was administered by its individual operating divisions. *See* SEC, ABOUT THE DIVISION OF ENFORCEMENT, available at <https://www.sec.gov/divisions/enforce/about.htm>.

On June 29, 2021, Gurbir Grewal was appointed Director of the SEC’s Division of Enforcement, effective July 26, 2021.<sup>2</sup> In November 2023, the Division announced that it filed 784 total enforcement actions in fiscal year 2023.<sup>3</sup> According to the SEC, the actions “spanned the securities industry. . . from public companies and investment firms to gatekeepers and social media influencers.”<sup>4</sup> The SEC recovered nearly \$5 billion in penalties and disgorgements in connection with these actions, representing the second highest amount in SEC history, and returned roughly \$1 billion to harmed investors.<sup>5</sup>

## Legislation

- **H.R. 6695, the *Due Process Restoration Act of 2023***, to authorize private parties to compel the Securities and Exchange Commission to seek sanctions by filing civil actions, and for other purposes.
- **[H.R. \_\_\_\_]**, to clarify what constitutes a violation of the federal securities laws for purposes of determining penalty amounts.
- **[H.R. \_\_\_\_]**, to clarify the Securities and Exchange Act of 1934 with respect to civil money penalties and the authority to seek disgorgement.
- **[H.R. \_\_\_\_]**, to repeal the policy of the Securities and Exchange Commission set forth in 17 C.F.R. § 202.5(e).
- **[H.R. \_\_\_\_]**, to clarify that, like with actions brought under the Securities Exchange Act of 1934, certain actions filed under the Securities Act of 1933 are required to be heard in federal court.
- **[H.R. \_\_\_\_]**, to codify the process to obtain waivers from certain disqualifications under the federal securities laws.
- **[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 “Reporting of Securities Loans.”
- **[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 “Short Position and Short Activity Reporting by Institutional Investment Managers.”
- **[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 “Further Definition of ‘As a Part of a Regular Business’ in the Definition of Dealer and Government Securities Dealer in Connection With Certain Liquidity Providers.”

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<sup>2</sup> See SEC Press Release 2021-114, *SEC Appoints New Jersey Attorney General Gurbir S. Grewal as Director of Enforcement* (June 29, 2021) available at <https://www.sec.gov/news/press-release/2021-114>.

<sup>3</sup> See SEC Press Release 2023-234, *SEC Announces Enforcement Results for FY 2023* (Nov. 14, 2023) available at <https://www.sec.gov/news/press-release/2023-234>.

<sup>4</sup> *Id.*

<sup>5</sup> Robert Stern and Daniel L. Stein, *SEC Announces 2023 Division of Enforcement Results*, Weil Securities Litigation Alert (Nov. 21, 2023), available at: <https://www.weil.com/-/media/files/pdfs/2023/november/2023-11-21--sec-announces-2023-division-of-enforcement-results.pdf>.

- **[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 “Form PF; Reporting Requirements for All Filers and Large Hedge Fund Advisers.”