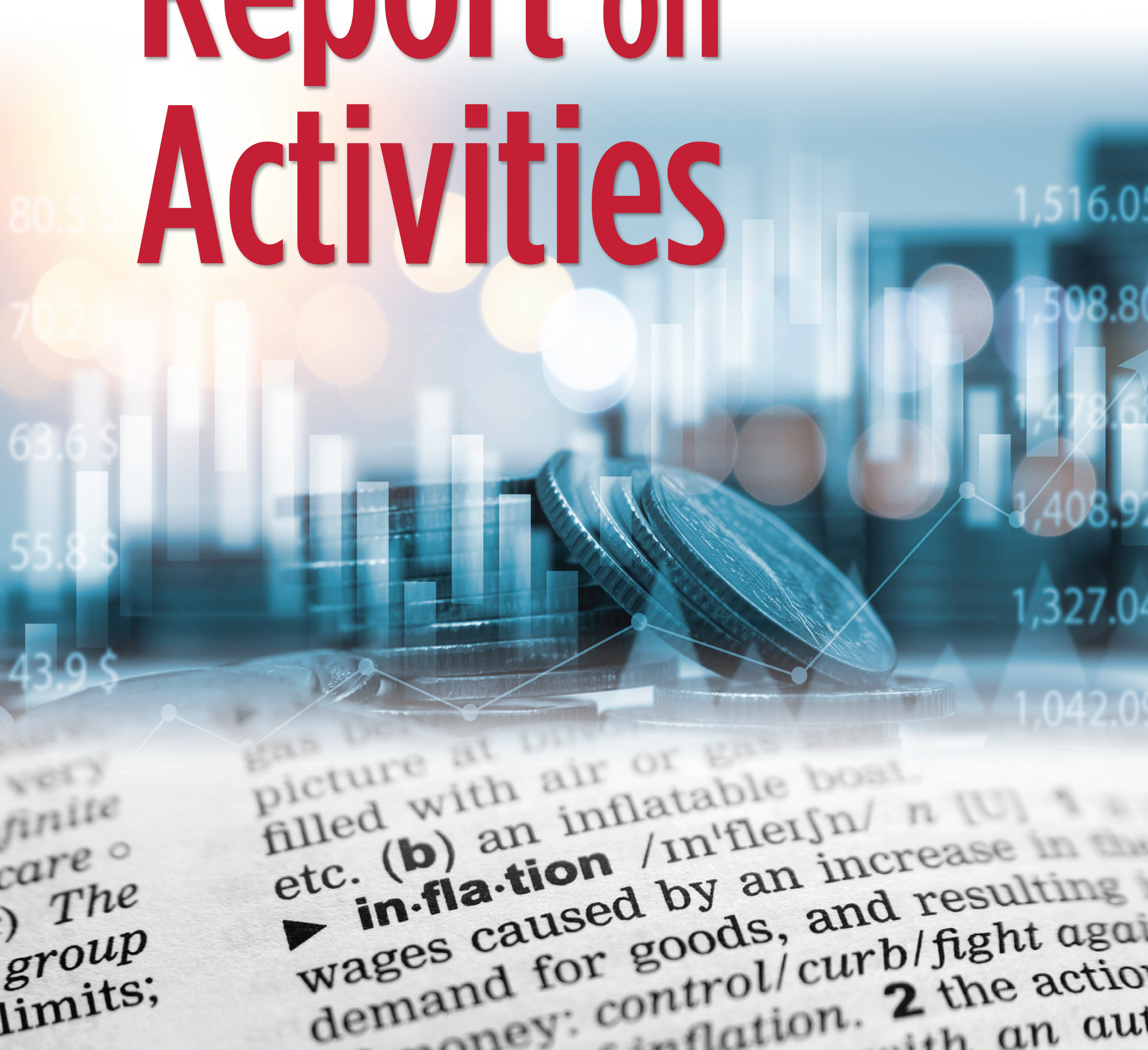
U.S. Securities and Exchange Commission

Office of the Investor Advocate

FISCAL YEAR 2022

Report on Activities



Office of the Investor advocate

REPORT ON ACTIVITIES

FISCAL YEAR 2022

Section 4(g)(6) of the Securities Exchange Act of 1934 (Exchange Act), 15 U.S.C. § 78d(g)(6), requires the Investor Advocate to file two reports per year with the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives.[1] The two reports are the mid-year Report on Objectives covering the forthcoming fiscal year and the end-of-year Report on Activities covering the preceding fiscal year.

A Report on Objectives is due no later than June 30 of each year, and its purpose is to set forth the objectives of the Investor Advocate for the following fiscal year.[2] On June 28, 2021, the Office of the Investor Advocate (Office) filed a Report on Objectives for Fiscal Year 2022, which corresponds to the activities carried out during Fiscal Year 2022 as reported herein.[3]

A Report on Activities is due no later than December 31 of each year.[4] The Report on Activities describes the activities of the Investor Advocate during the immediately preceding fiscal year.

This current Report on Activities for Fiscal Year 2022 includes, among other things, information about the steps the Investor Advocate has taken during Fiscal Year 2022 to improve the responsiveness of the Securities and Exchange Commission (Commission or SEC) and self-regulatory organizations (SROs) to investor concerns. This Report also contains a summary of the most serious problems encountered by investors during the reporting period and identifies actions taken by the Commission or SROs to address those problems. Where applicable, this Report advances recommendations, if any, for administrative and legislative actions to resolve problems encountered by investors.[5]

Functions of the Investor Advocate	Reporting Obligation
According to Exchange Act Section 4(g)(4), 15 U.S.C. § 78d(g)(4), the Investor Advocate shall: (A) assist retail investors in resolving significant problems such investors may have with the Commission or with SROs; (B) identify areas in which investors would benefit from changes in the regulations of the Commission or the rules of SROs; (C) identify problems that investors have with financial service providers and investment products; (D) analyze the potential impact on investors of proposed regulations of the Commission and rules of SROs; and (E) to the extent practicable, propose to the Commission changes in the regulations or orders of the Commission and to Congress any legislative, administrative, or personnel changes that may be appropriate to mitigate problems identified and to promote the interests of investors.	According to Exchange Act Section 4(g)(6)(B), 15 U.S.C. § 78d(g)(6)(B), the Investor Advocate shall submit to Congress, not later than December 31 of each year, a report on the activities of the Investor Advocate during the immediately preceding fiscal year. This "Report on Activities" must include the following: (I) appropriate statistical information and full and substantive analysis; (II) information on steps that the Investor Advocate has taken during the reporting period to improve investor services and the responsiveness of the Commission and SROs to investor concerns; (III) a summary of the most serious problems encountered by investors during the reporting period; (IV) an inventory of the items described in subclause (III) that includes— (aa) identification of any action taken by the Commission or the SRO and the result of such action; (bb) the length of time that each item has remained on such inventory; and (cc) for items on which no action has been taken, the reasons for inaction, and an identification of any official who is responsible for such action; (V) recommendations for such administrative and legislative actions as may be appropriate to resolve problems encountered by investors; and (VI) any other information, as determined appropriate by the Investor Advocate.

Disclaimer: Pursuant to Exchange Act Section 4(g)(6)(B)(iii), 15 U.S.C. § 78d(g)(6)(B)(iii), this Report on Activities is provided directly to Congress without any prior review or comment from the Commission, any Commissioner, any other officer or employee of the Commission outside of the Office of the Investor Advocate or the Office of Management and Budget. This Report on Activities expresses solely the views of the Investor Advocate. It does not necessarily reflect the views of the Commission, the Commissioners, or staff of the Commission, and the Commission disclaims responsibility for this Report on Activities and all analyses, findings, and conclusions contained herein.

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MESSAGE FROM THE OFFICE OF THE INVESTOR ADVOCATE

It is my privilege to present the Office of the Investor Advocate's Report on Activities for Fiscal Year 2022. This is the eighteenth in a series of semiannual reports that stretches back to the inception of our Office in 2014.

This year has been an *annus horribilis* for many investors, and there is no denying that 2022 has seen its share of financial challenges, with high inflation, market volatility, global conflicts, geopolitical tensions, (crypto) currency fluctuations, spectacular business failures, and the threat of recession, among a seemingly endless parade of negative financial developments. Amid this Pandora's Box of uncertainties, many investors remain hopeful for better times ahead as they struggle to fund, maintain, or defend their nest eggs, retirement savings, and investment portfolios, among other assets. While past performance is no guarantee of future results, history teaches us that this, too, shall pass.

The year 2022 has also been an eventful one for the Office of the Investor Advocate. Certainly, the departure of Rick Fleming, the SEC's first Investor Advocate, after more than eight solid years of service, was unprecedented for a relatively new office such as ours. Yet his legacy endures as the Office continues its important mission and activities, as described in this Report.

Among the notable activities we highlight in this Report is the investor research we conducted on the impact of fund performance benchmarks on investor decision-making. This independent research study examined market data and the results of a large behavioral experiment sampling a general population to understand how fund companies employ benchmarks and how individuals respond to the presentation of benchmarks. Following publication, the research study was cited repeatedly in the Commission's rulemaking on tailored shareholder reports. We will continue to conduct independent research and will seek additional opportunities to contribute to evidence-based rulemaking at the Commission.

Another significant activity that we address in this Report is our recommendation to certain major securities exchanges to consider revisiting their listing standards for special purpose acquisition companies (SPACs) to better protect investors during subsequent business combination transactions between SPACs and private operating companies—so-called "de-SPAC transactions" (as explained in greater detail in this Report). Our Office recommended that those exchanges consider amending their SPAC listing standards to prohibit consummation of a business combination when public SPAC shareholders exercise their conversion rights for a majority of the shares. One of those exchanges subsequently invited public comment regarding the recommended conversion rights threshold.

As we look forward to the appointment of the SEC's second Investor Advocate, we continue to work tirelessly on behalf of the investors we serve. Those investors range from individual investors to large sophisticated institutions. We strive to advocate for all investors, particularly retail investors, whose voices may sometimes go undetected amid the amplifications of their institutional counterparts.

From time to time, we are asked how the Office of the Investor Advocate fits within the SEC's overarching mission. In 1937, William O. Douglas, then the Commission's third Chairman and later a U.S Supreme Court justice, declared the SEC "the investor's advocate." Indeed, the SEC is the investor's advocate writ large. Congress, however, recognized the need to create an individual Investor Advocate within the SEC itself. This development does not diminish the SEC's role as the investor's advocate, but rather, imbues a single identifiable individual with the responsibility to advocate to the SEC and to Congress for policies that would serve the interests of investors with respect to securities and investor protection issues. Generally, the Investor Advocate provides a voice for investors, assists retail investors, studies investor behavior, and participates as a member on the SEC's Investor Advisory Committee. While the Investor Advocate has an independent role within the SEC, the Office of the Investor Advocate's statutory mandate is consistent with the Commission's three-part mission to protect investors, facilitate capital formation, and maintain fair, orderly, and efficient markets. The Office of the Investor Advocate is not limited to serving exclusively as an investor protection advocate (its foremost function). Nor is the Office solely an advocate for fair, efficient, and orderly markets, although that role is essential. Rather, the Office also is an advocate for capital formation and its facilitation through responsible regulation. By encompassing these three functions, the Office's advocacy efforts are in alignment with the SEC's mission.

Finally, the Office of the Investor Advocate could not have accomplished the activities described in this Report without the intensity, hard work, and dedication of our staff—especially during the interregnum between the departure of the first Investor Advocate and the arrival of the next one. All the while, our staff have continued seamlessly to review and comment on numerous Commission rulemakings, conduct significant investor research, respond to investor inquiries, provide technical assistance and logistical support to the SEC Investor Advisory Committee, draft a Congressional report, and generally advocate for the interests of investors, among myriad other activities on their behalf, as detailed in this Report. To paraphrase President Theodore Roosevelt's adage, we work hard at work worth doing. We remain focused on serving the interests of investors while we await the appointment of the new Investor Advocate, a welcome development that we hope to highlight in our next report to Congress.

Respectfully,

Marc Oorloff Sharma
Chief Counsel
Office of the Investor Advocate

ADVOCACY FOR INVESTORS

On June 28, 2021, the Office of the Investor Advocate[6] filed a Report on Objectives for Fiscal Year 2022.[7] That Report on Objectives identified nine policy areas that would be the primary focus of the Office during Fiscal Year 2022: (1) environmental, social, governance (ESG) disclosure; (2) Rule 10b5-1 plans; (3) capital raising alternatives; (4) equity market structure; (5) novel-exchange traded funds; (6) registered fund disclosure; (7) broker conduct; (8) financial exploitation of seniors; and (9) cryptocurrency. This section of our annual Report on Activities describes our activities relating to each of those policy areas from October 1, 2021 to September 30, 2022 (the Reporting Period), with the exception of cryptocurrency, which is discussed along with digital assets in the section on Problematic Investment Products and Practices.

ENVIRONMENTAL, SOCIAL AND GOVERNANCE (ESG) DISCLOSURE

As discussed in our prior reports, and mindful of the differing viewpoints surrounding the subject of ESG, there nonetheless is ample evidence of demand for ESG disclosure among many investors.[8] For example, a 2021 survey by a major auditing firm found that some investors are willing to take action if they believe certain companies are not adequately addressing ESG issues, including seeking to engage the company in dialogue, seeking inclusion of ESG targets in executive pay, voting against director appointments and/or executive compensation agreements, and even divesting their holdings.[9] In 2020, the SEC Investor Advisory Committee ("Investor Advisory Committee" or "IAC") recommended that the Commission begin serious efforts to update public company reporting requirements, rejecting voluntary private-sector reporting initiatives as insufficient and inadequate to meet investor demand for reliable, material ESG information.[10]

We believe that ESG information can be decision-useful, and we have a history of support for high-quality, consistent, and comparable disclosure, including ESG disclosure. Further, we have argued that, although principles-based ESG measures are more flexible and can generate information for investors that is most relevant within the context of a particular business, principles-based requirements tend to generate disclosures that can be difficult to compare across a variety of companies.[11] For that reason, we have advocated for reasonable prescriptive requirements to promote comparability wherever possible, particularly with respect to disclosure requirements for information that is material and objectively determinable.

In Fiscal Year 2022, the Commission issued a number of ESG disclosure proposals relating to issuers and funds. For instance, on March 21, 2022, the Commission proposed certain climate-related disclosures, partly in response to the intense and long-standing investor interest in ESG disclosure.[12]

The proposal, if adopted, would require registrants to provide certain climate-related information in their registration statements and annual reports, including information about climate-related financial risks and climate-related financial metrics in their financial statements.[13] According to the Commission, the disclosure of this information would provide consistent, comparable, and reliable—and therefore decision-useful—information to investors to enable them to make informed judgments about the impact of climate-related risks on current and potential investments.[14]

One particular area of focus in the proposal is greenhouse gas (GHG) emissions. The proposal would require public companies to disclose certain information about direct GHG emissions (Scope 1) and indirect GHG emissions from purchased electricity and other forms of energy (Scope 2). The proposal would also require disclosure of indirect emissions from upstream and downstream activities in a public company's value chain (Scope 3), if material, or if the public company has set a GHG emissions target or goal that includes Scope 3 emissions, in absolute terms, not including offsets, and in terms of intensity.[15] The proposal would not subject Scope 3 emissions disclosure to the attestation requirements that would apply to Scope 1 and Scope 2 emissions.[16]

As the Commission continues to work through this complicated rulemaking, including the more than 4,000 comment letters submitted to date in response to the proposed rules, we will help to ensure that investors' interests remain at the forefront of the discussion, while also being mindful of the diversity of viewpoints associated with ESG disclosure. We further note that it is unclear at this time whether and, if so, to what extent the recent ruling by the U.S. Supreme Court in *West Virginia v. EPA*,[17] in which the Court addressed the "major questions" doctrine, may have an impact on the Commission's approach to this rulemaking moving forward.

Additionally, on March 25, 2022, the Commission proposed amendments to rules and reporting forms intended to promote consistent, comparable, and reliable information for investors concerning funds' and investment advisers' incorporation of ESG factors.[18] We discussed the details of these proposed amendments in our Report on Objectives for Fiscal Year 2023.[19] We look forward to continuing our engagement with Division of Investment Management staff on this rulemaking, and expect to discuss any action taken with respect to the proposal in a future report.

RULE 10B5-1 PLANS

Another area of corporate disclosure that received our attention during the Reporting Period is the administration and composition of Rule 10b5-1 trading plans. Exchange Act Rule 10b-5 specifies that the purchase or sale of a security is "on the basis of" material nonpublic information, and thus potentially prohibited insider trading, if the purchaser or seller is aware of material nonpublic information when making the purchase or sale.[20] In 2000, the Commission adopted Rule 10b5-1, which allows a person (often a corporate insider) to establish a trading plan before coming into possession of material nonpublic information.[21] Rule 10b5-1 plans theoretically provide for continuous trading over time, without influence of new information, and thus offer traders an affirmative defense against insider trading claims.

In reality, evidence suggests some corporate insiders have used these plans to skirt the law and trade on information not available to the rest of the market.[22] Critics contend that some executives have, for example, established Rule 10b5-1 plans and made initial trades based on material nonpublic information already in their possession, or suddenly canceled or revised such plans based on newly-acquired information.[23] In a June 7, 2021 speech, SEC Chair Gary Gensler noted that, in his view, "these plans have led to real cracks in our insider trading regime."[24] Aside from misuse of Rule 10b5-1 plans, the market's lack of transparency into plan details may operate to the disadvantage of retail investors.[25]

On January 13, 2022, the Commission proposed amendments to Rule 10b5-1 that would add new conditions to the availability of the affirmative defense under Exchange Act Rule 10b5-1(c)(1).[26] The Commission also proposed, among other things, new or amended disclosure requirements with regard to (1) certain equity compensation awards, (2) company insider trading policies, (3) the adoption and termination of Rule 10b5-1 trading arrangements and certain other trading arrangements by directors, officers, and issuers, and (4) Exchange Act Forms 4 and 5. On December 14, 2022, the Commission adopted these amendments with certain modifications in response to public comments, including a modified "cooling-off" period for directors and officers before they may begin trading under a new or modified Rule 10b5-1 plan.[27] We observe that a number of these amendments are consistent with the recommendations made by the Investor Advisory Committee concerning Rule 10b5-1 plans,[28] and were supported by the Investor Advocate.[29]

Other Commission Rulemakings

During the Reporting Period, our Office also reviewed a number of Commission rulemakings that concern additional aspects of public company reporting, proxy voting, and other disclosure requirements.

- As discussed in our previous Report on Activities (filed December 2021), on November 17, 2021, the Commission adopted amendments to the proxy rules to require the use of "universal proxy cards" in non-exempt contested director elections.[30]
- On December 2, 2021, the Commission adopted amendments to finalize the interim final rules implementing the Holding Foreign Companies Accountable Act (HFCAA). The HFCAA requires the Commission to prohibit the listing of securities for companies whose auditors, or accounting firms engaged to assist in the audit, are located in jurisdictions that limit the ability of the Public Company Accounting Oversight Board (PCAOB) to inspect the auditors.[31]
- On December 15, 2021, the Commission proposed amendments to modernize and improve the disclosure requirements regarding repurchases of an issuer's equity securities that are registered under Exchange Act Section 12.[32]
- On February 10, 2022, the Commission proposed to amend certain rules that govern beneficial ownership reporting, including shortening the filing deadlines for initial and amended beneficial ownership reports filed on Schedules 13D and 13G.[33]
- On March 9, 2022, the Commission proposed rules and amendments to enhance and standardize public company disclosures regarding cybersecurity risk management, strategy, governance, and incident reporting.[34]
- On June 2, 2022, the Commission adopted amendments to mandate the electronic filing or submission of certain documents that currently are permitted to be filed or submitted in paper and to mandate the use of Inline eXtensible Business Reporting Language (Inline XBRL) in certain instances.[35]
- On July 13, 2022, the Commission adopted additional amendments to the proxy rules regarding proxy advisory firms, which are third-party vendors hired by institutional investors for advice and assistance in voting.[36] These amendments, among other things, rescind conditions that required that proxy voting advice be made available to subject companies prior to or at the time the advice is disseminated to their clients, and that these firms provide a mechanism by which their clients could be reasonably expected to become aware of written responses

by companies to such advice.[37] The Investor Advocate supported these amendments, which rescind the most problematic aspects of the Commission's 2020 rule amendments.[38]

- Also on July 13, 2022, the Commission proposed to revise three of the substantive bases for exclusion (the substantial implementation exclusion, the duplication exclusion, and the resubmission exclusion) of shareholder proposals under Exchange Act Rule 14a-8.[39]
- After reopening the comment period for the rulemaking on January 27, 2022, the Commission adopted amendments on August 25, 2022 to implement Exchange Act Section 14(i), as added by Section 953(a) of the Dodd-Frank Act, which directs the Commission to adopt rules requiring registrants to provide disclosure of pay versus performance.[40]
- On September 9, 2022, the Commission adopted rule amendments implementing the inflation adjustments required by the Jumpstart Our Business Startups (JOBS) Act, which increase the annual gross revenue threshold in the definition of "emerging growth company" and increase certain financial thresholds in Regulation Crowdfunding.[41]

CAPITAL RAISING ALTERNATIVES

As discussed in our prior reports, we have had concerns about the record numbers of special purpose acquisition companies (SPACs) in 2020 and 2021.[42] In general, a SPAC is a company with no operations that is organized for the purpose of merging with or acquiring one or more private operating companies (a de-SPAC transaction) within a certain time frame and that offers securities for cash in a firm commitment underwritten offering of $5 million or more in units consisting of redeemable shares and warrants. Following its initial public offering, a SPAC generally places all or substantially all of the offering proceeds into a trust or escrow account, and its shares and warrants begin trading on a national securities exchange. The SPAC then attempts to identify acquisition candidates and complete a de-SPAC transaction, after which the combined company will continue operations as a public company.[43]

Unlike the traditional IPO process in which a private operating company sells its securities at prices arrived at through market-based discovery, when a SPAC elects to acquire a private company, the SPAC's sponsors, directors, and officers decide how to value it and how much the SPAC will pay for it. That creates conflicts of interest that investors may not appreciate without clear disclosure. In addition, limitations on projections and other forward-looking statements present another potential difference between the protections afforded in traditional IPOs and those in de-SPAC transactions. The Private Securities Litigation Reform Act of 1995 (PSLRA) provides established, publicly-traded reporting companies a safe harbor against private lawsuits arising from forward-looking statements. Companies undergoing a traditional IPO cannot avail themselves of that safe harbor, but many argue SPACs and their merger targets can do so. Some companies may opt to go public through de-SPAC transactions in part because of the assumption the PSLRA limits investors' ability to pursue legal claims on overly optimistic projections. Similarly, the fact that de-SPAC transactions may not involve underwriters, which must operate within their own regulatory obligations[44] and reputational risk considerations, may lead some companies to believe that going public through a de-SPAC transaction will allow them to engage in more aggressive marketing.

On March 30, 2022, the Commission proposed rules intended to enhance investor protections in SPAC IPOs and in de-SPAC transactions.[45] Specifically, the Commission proposed new rules and amendments to existing rules and forms that, if adopted, would:

- Set forth specialized disclosure requirements with respect to, among other things, compensation paid to sponsors, conflicts of interest, dilution, and the fairness of de-SPAC transactions;
- Address the application of disclosure, underwriter liability, and other provisions in connection with de-SPAC transactions;
- Deem any business combination transaction involving a reporting shell company, including a SPAC, to involve a sale of securities to the reporting shell company's shareholders and amend a number of financial statement requirements applicable to transactions involving shell companies;
- Amend the definition of "blank check company" to make the liability safe harbor in the PSLRA for forward-looking statements, such as projections, unavailable in filings by SPACs and certain other blank check companies;
- Update the Commission's guidance regarding the use of projections in Commission filings generally and require additional disclosure regarding projections when used in connection with de-SPAC transactions; and
- Establish a new safe harbor under the Investment Company Act of 1940 that would provide that a SPAC that satisfies the conditions of the proposed rule would not be deemed to be an investment company under that Act.

In the proposing release, the Commission noted the concerns and recommendations of the Investor Advisory Committee regarding SPACs.[46] While the number of SPAC IPOs has declined in 2022,[47] we continue to believe that investors would benefit from enhanced disclosure requirements and other investor protections in SPAC IPOs and in de-SPAC transactions. We look forward to working with Commission staff as they evaluate comments on the proposed rules and as they consider recommending additional action in this area.

Relatedly, in reviewing the Commission's proposal, our Office evaluated the role of other gatekeepers that help provide retail investors with access to SPACs. As a result of our evaluation, on April 21, 2022, our Office sent recommendations to the New York Stock Exchange LLC ("NYSE") and the Nasdaq Stock Market LLC ("Nasdaq"), encouraging them to revisit their respective exchanges' listing standards for SPACs to better protect investors during de-SPAC transactions.[48] Specifically, our Office recommended that the exchanges amend their SPAC listing standards to prohibit consummation of a business combination when public SPAC shareholders exercise their conversion rights for a majority of the shares. Nasdaq subsequently invited public comment over the proposal to adopt the recommended conversion rights threshold.[49]

EQUITY MARKET STRUCTURE

During the Reporting Period, the Commission continued to take action on many aspects of the equity market.

In August 2021, the Commission approved a proposal from the exchanges and the Financial Industry Regulatory Authority (FINRA) to modernize the governance of National Market System (NMS) plans that produce public consolidated equity market data and that disseminate trade and quote data from trading venues.[50] This new governance structure could reduce inherent conflicts of interest, in no small part by providing for non-SRO voting representatives on the operating committees for the NMS plans. In July 2022, the US Court of Appeals for the D.C. Circuit vacated the order, finding one aspect of the plan that provided voting rights to non-SRO entities exceeded the Commission's statutory authority.[51] It is now incumbent upon the exchanges and FINRA to resubmit a proposal in keeping with the court decision.

More broadly on equity market trading data, in February 2022, the Commission instituted proceedings to determine whether to approve or disapprove the SROs' proposed fee schedule that would modernize the overall infrastructure for the collection, consolidation, and dissemination of market data for NMS stocks.[52] Commenters, while acknowledging the amendments could provide key upgrades to the content and infrastructure for "core data" consolidated and widely distributed by central securities processors (the SIP), raised significant issues with the current proposal from the exchanges, arguing that the fees are based on flawed methodologies and fail to provide a cost-based justification.[53] The Commission disapproved these proposals in September 2022.[54] We look forward to the exchanges and FINRA submitting an improved proposal that will address commenters concerns.

On February 9, 2022, the Commission proposed to shorten the security settlement period in the U.S. financial markets from a two-day settlement (referred to as T+2) to one-day (or shorter) for transactions in U.S. equities, corporate and municipal bonds, and unit investment trusts.[55] This proposal responds to the Investor Advisory Committee's 2015 recommendation on the matter,[56] and could reduce behind-the-scenes regulatory requirements that may have contributed to retail investor confusion and frustration during a period of volatile stock trading in January 2021.[57]

On February 25, 2022, the Commission proposed enhanced transparency in short selling[58] following up on the November 18, 2021 proposal to enhance transparency in the opaque network of stock lending and borrowing that facilitates the practice.[59] The period of volatile stock trading in January 2021, in several cases involving companies with significant short interest, raises a number of policy questions around these topics. Having a repository of relevant data could improve the Commission's ability to monitor this area of the market in real time. In Fiscal Year 2023, we will continue to monitor the Commission's progress in considering comments on these proposals.

There were a number of other rule proposals from SROs that we monitored closely during the Reporting Period.[60] For example, we reviewed a proposal from CboeBYX that made clarifying changes related to its periodic auction mechanism, potentially improving investor understanding of how the novel process would work.[61] We are also monitoring the Commission's consideration of the 24X National Exchange LLC application for registration as a national securities exchange, given the novel proposal to operate continually over twenty-four hours a day, seven days a week.[62]

We continue to monitor progress on the implementation of the Commission's Consolidated Audit Trail (CAT), which is intended to enhance, centralize, and generally update the regulatory data infrastructure available to market regulators.[63] Full implementation should occur in the near future,[64] and in Fiscal Year 2023, we will encourage the Commission to use CAT data to help improve its regulatory processes. We will also consider ways to enhance the CAT. For example, in October 2020, the Commission sought public comment on amendments to enhance data security for the CAT database,[65] and we continue to consider the helpful comments provided in response to that request.

NOVEL EXCHANGE-TRADED FUNDS

As anticipated in our Report on Objectives for Fiscal Year 2022 (published on June 28, 2021), we continued to focus on developments in the exchange-traded fund (ETF) marketplace during the Reporting Period. Regulation of the ETF market has changed dramatically in recent years, and we remain concerned that investor protection efforts may not necessarily be keeping pace with the introduction of increasingly complex and risky exchange-traded products. Without significantly altering existing investor protection safeguards, the Commission recently: (i) authorized the introduction of non-transparent ETFs into the marketplace;[66] (ii) made it easier for ETF sponsors to form and operate new leveraged and inverse ETFs;[67] and (iii) paved the way for ETF sponsors to bring to market exotic products branded as "single-stock ETFs."[68] These accelerating changes in the ETF marketplace present a number of investor protection concerns and warrant our continued scrutiny.

For decades following the Commission's approval of the first ETF in 1992, ETF sponsors relied on special relief from securities laws (known as exemptive orders) to form and operate ETFs as investment companies.[69] The approval process for this special relief helped ensure that ETFs complied with a number of conditions designed to protect investors, especially retail investors. Over time, the Commission grew comfortable enough with traditional ETFs to allow them to form and operate pursuant to a new rule (ETF Rule), adopted in 2019 to establish "a consistent, transparent, and efficient regulatory framework for ETFs."[70] The ETF Rule codified many of the conditions that were previously included in exemptive orders, including requiring an ETF to provide full daily portfolio transparency on its website.[71] The ETF Rule also included a provision expressly excluding leveraged and inverse ETFs from the rule's scope.[72] The ETF Rule's adopting release acknowledges that "leveraged/inverse ETFs are complex products that serve a markedly different investment purpose than most other ETFs," and indicates that it would be "premature" to permit sponsors to form and operate leveraged and inverse ETFs in reliance on the rule without first addressing certain investor protection concerns.[73]

The Commission's cautious approach towards leveraged and inverse ETFs in 2019 was consistent with many years of concern about these ETFs from SEC staff, Commissioners, and other market observers. The Commission ceased granting exemptive orders to any new would-be sponsors of leveraged and inverse ETFs in 2009.[74] That same year, the Commission's Office of Investor Education and Advocacy (OIEA) issued an alert "because individual investors may be confused about the performance objectives of leveraged and inverse [ETFs]."[75] FINRA issued a 2009 regulatory notice reminding firms of their sales practice obligations for leveraged and inverse ETFs, cautioning that "inverse and leveraged ETFs that reset daily typically are unsuitable for retail investors who plan to hold them for longer than one trading session."[76] In 2015, the Commission sought public comment on a broad range of issues relating to exchange-traded products, including comment on the extent to which individual investors understand the nature and operation of complex exchange-traded products such as leveraged/inverse ETFs.[77] Enforcement cases at the Commission and FINRA have demonstrated that even investment professionals often lack a basic understanding of these complex products.[78] Market observers including media outlets, consumer advocacy groups, and others have documented the confusion and harm leveraged and inverse ETFs may cause to unsuspecting retail investors.[79] SEC staff and Commissioners have routinely issued remarks expressing concerns about these ETFs.[80]

Despite all of these warnings, in recent years the Commission has encouraged increasingly complex innovation in the ETF market without addressing the Commission's longstanding investor protection concerns. After requiring daily portfolio transparency for ETFs seeking to rely on the ETF Rule, in 2019 the Commission granted special relief to several non-transparent ETFs, which allowed them to enter the ETF marketplace.[81] Then in late 2020, the Commission amended the ETF Rule to bring many leveraged and inverse ETFs within the rule's scope.[82] At the proposal stage, these amendments were paired with enhanced sales practice requirements for leveraged and inverse ETFs,[83] but the final adopted amendments scrapped such requirements.[84] Finally, ETF sponsors took advantage of the newly amended ETF Rule in 2022 to introduce ETFs that provide leveraged and inverse returns based on the daily performance of a single underlying stock (single-stock ETFs).[85]

We first highlighted the introduction of non-transparent ETFs, also known as portfolio-shielding ETFs, in our Report on Objectives for Fiscal Year 2022.[86] The goal of these ETFs is to allow portfolio managers to pursue active investment strategies without revealing their portfolio holdings on a daily basis. Novel variations on the traditional ETF arbitrage mechanism make this possible, and there is a risk that these variations may not function as anticipated.[87] Were non-transparent ETFs' alternative arbitrage mechanisms to fail, the ETFs' share prices could deviate from the intrinsic values of their portfolios, widening spreads and lessening liquidity. Non-transparent ETFs have now developed a track record in the marketplace without encountering these disruptions thus far, and we are cautiously optimistic that the products will continue to function as intended. We note, however, that these ETFs remain unproven in times of severe market distress, and believe the Commission should continue to monitor their operations and the risks they may present to investors. A lack of market demand has somewhat mitigated our concerns, as data shows non-transparent ETFs have captured only 1.5% of the active ETF market as of September 30, 2022.[88]

Leveraged and inverse ETFs, meanwhile, continue to present the same dangers that they threatened when first introduced. These ETFs rebalance their portfolios on a daily or other periodic basis in order to maintain a constant leverage ratio, and the resulting effects of compounding can result in performance that differs significantly from many investors' expectations of how index investing generally works.[89] A leveraged/inverse ETF can underperform a simple multiple of its index's performance over several days of volatile returns.[90] After asserting that leveraged and inverse ETFs should not be incorporated into the ETF Rule before investor protection concerns about them could be addressed,[91] the Commission did exactly that in 2020.[92] Years later, as even riskier ETFs continue to be introduced, investors are still waiting for the same investor protection concerns to be addressed.

The long-acknowledged dangers of leveraged and inverse ETFs are amplified by single-stock ETFs, first introduced into the marketplace during the Reporting Period. These ETFs function much like the leveraged and inverse ETFs discussed above, but they aim to provide daily returns reflecting a multiple or an inverse of the daily performance of an underlying single stock instead of the daily performance of an index.[93] As OIEA Director Lori Schock explains:

> Investors should be aware that if they were to hold these funds for longer than a day, the performance of these funds may differ significantly from the levered and/or inverse performance of the underlying stock during the same period of time. Additionally, unlike traditional ETFs, or even other levered and/or inverse ETFs, these levered and/or inverse single-stock ETFs track the price of a single stock rather than an index, eliminating the benefits of diversification. Because levered single-stock ETFs in particular amplify the effect of price movements of the underlying individual stocks, investors holding these funds will experience even greater volatility and risk than investors who hold the underlying stock itself.[94]

The considerable risks inherent in single-stock ETFs has led Commissioner Caroline Crenshaw to warn that "it would likely be challenging for an investment professional to recommend such a product to a retail investor while also honoring his or her fiduciary obligations or obligations under Regulation Best Interest."[95] Retail investors are likely to access these ETFs via self-directed trading, however, and as Commissioner Crenshaw noted, "While investors can gain similar upside and downside exposures to an equity security through the use of options and other derivatives, single-stock ETFs are likely to be uniquely accessible and convenient for self-directed retail investors, in particular."[96]

Cognizant of the risks of single-stock ETFs, on December 8, 2022 the Investor Advisory Committee hosted a panel to discuss these products.[97] The Commission continues to assess the risks of single-stock ETFs as well. Chair Gensler directed SEC staff to study "the potential risks of complex financial products that are listed and traded on exchanges" in 2021.[98] Similarly, in 2020, then-Chair Jay Clayton stated that SEC staff would "review the effectiveness of the existing regulatory requirements in protecting investors—particularly those with self-directed accounts—who invest in leveraged/inverse products and other complex products."[99] While we support these efforts, we are concerned that they have not yet resulted in tangible investor protection safeguards. As innovation in the ETF marketplace continues to accelerate, we look forward to working with our colleagues to ensure that investor protection efforts do not fall further behind.

REGISTERED FUND DISCLOSURE

During the Reporting Period, we continued to focus on the effectiveness of disclosure provided to investors in SEC-registered funds. As we have noted in prior reports, such disclosure is at the heart of the Commission's efforts to help ensure that investors are making thoughtful, well-informed decisions about their investments as they save for college expenses, look towards retirement, or plan for other goals. The Commission and its staff strive to provide registered fund investors with clear, concise disclosure regarding funds' investment strategies, risks, costs, and other attributes.

With these considerations in mind, we note that on October 26, 2022, the Commission finalized significant rule and form amendments affecting the disclosure that mutual fund and ETF shareholders receive. This rulemaking (Tailored Shareholder Reports) requires mutual funds and ETFs to transmit concise and visually engaging shareholder reports and to promote transparent and balanced presentations of fees and expenses in investment company advertisements.[100] More specifically, the final rule and form amendments require: (i) shareholder reports tailored to the needs of retail shareholders; (ii) availability of additional information on Form N-CSR and online; (iii) paper or online delivery of full shareholder reports rather than notices of availability; and (iv) certain changes to the presentation of fund fee and expense information in advertisements. We discuss briefly each of these requirements below. The rulemaking utilized investor research this Office conducted on the impact of fund performance decision-making, and we are hopeful that that this work will demonstrate the value of more data-driven, investor-tested policymaking efforts.

Shareholder Reports Tailored to the Needs of Shareholders

The rulemaking will require mutual funds and most ETFs to deliver concise and visually engaging annual and semiannual reports to shareholders, designed to highlight information that the Commission believes is particularly important for retail shareholders to assess and monitor their fund investments on an ongoing basis. This information will include—among other things—fund expenses, performance, and portfolio holdings.[101] Funds will have the flexibility to make electronic versions of their shareholder reports more user-friendly and interactive.[102] In addition, funds will be required to tag the information in their shareholder reports using Inline XBRL structured data language.[103]

Availability of Additional Information

Taking a layered approach to disclosure, the rulemaking requires additional information (relevant to financial professionals and other investors who desire more in-depth info) to be made available online. This information will be filed on a semi-annual basis with the Commission as well, on Form N-CSR.[104] The information includes, for example, the schedule of investments and other financial statement elements. The rulemaking also includes requirements designed to help ensure that investors can easily reach and navigate the information that appears online.[105]

Delivery of Full Shareholder Reports

The rulemaking includes amendments to exclude mutual funds and most ETFs from the scope of Investment Company Act Rule 30e-3. Rule 30e-3 generally permits certain registered investment companies to satisfy delivery requirements for shareholder reports by making these reports and other materials available online and by providing a notice of the reports' online availability, instead of providing the reports to shareholders directly.[106] The amendments excluding these funds from rule 30e-3 are intended to help ensure that more investors will experience the benefits of the new tailored shareholder reports.[107] Fund shareholders will directly receive the new tailored annual and semiannual reports in paper or, if the shareholder has so elected, electronically.

Fee and Expense Information in Advertisements

Finally, the rulemaking includes amendments requiring mutual funds, ETFs, and other types of funds to disclose fees and expenses in advertisements and sales literature in a manner consistent with relevant prospectus fee table presentations.[108] The fee and expense information presented must also be reasonably current.[109] Additionally, the rulemaking addresses representations of fees and expenses that could be materially misleading.[110]

The Tailored Shareholder Reports rulemaking had set forth additional disclosure changes at the proposal stage, which ultimately were not adopted. Perhaps most significantly, the proposed rulemaking would have provided a new alternative approach to satisfy prospectus delivery requirements for existing fund investors.[111] New investors would have received a fund prospectus in connection with their initial investment in a fund, as they currently do, but funds could have opted into an alternative approach under which they would not deliver annual prospectus updates to investors thereafter.[112] The proposed framework would instead have relied on shareholder reports and timely notifications to shareholders to keep investors informed about their fund investments. Additionally, the proposed rulemaking would have made certain changes to the funds' prospectus disclosure requirements related to fees, expenses, and risks.[113] The Commission indicated in its adopting release that, in light of the comments received related to these proposed changes, the changes would merit further consideration and would not be adopted at this time.

We believe the disclosure changes that have been adopted will help investors more easily digest the information they need to make informed investment choices, and we support the Division of Investment Management's (IM's) thoughtful approach to this rulemaking. We also agree with the decision to consider further the proposed disclosure changes to prospectus delivery requirements and prospectus fee, expense, and risk information before any such changes are finalized. In particular, we recognize the importance of comparability across the disclosure documents that investors receive, and hope that any final action in these areas will make it easier for investors to compare their current investment choices to alternative opportunities.

In addition to the substance of the rulemaking, we are encouraged that IM incorporated the investor research conducted by our Office into the process of developing the final rule and form amendments. As discussed more fully in the Research and Investor Testing section of this Report, the Tailored Shareholder Reports rulemaking utilized this research when considering investor preferences and behaviors in response to fund disclosure. The adopting release indicates that SEC staff will "evaluate investor preferences and behaviors as they evolve in the future, including through mechanisms such as investor testing and investor surveys where appropriate, taking into account relevant developments in connection with fund practices, investors' preferences, the fund industry, and financial markets in connection with any future regulatory initiatives."[114] This Office has long championed the use of investor testing to inform rulemaking initiatives, particularly those initiatives involving changes to disclosures provided to retail investors, and we look forward to working with our Commission colleagues to continue this progress.

BROKER CONDUCT

Since the implementation of Regulation Best Interest (Reg BI) in 2020, we have monitored how the Commission and FINRA have used the new regulatory tools to address unethical or abusive conduct in the brokerage business. As our Office stated at the time, Reg BI appears to be a step in the right direction because it includes several improvements over the suitability standard for broker-dealers.[115] However, the utility of Reg BI will ultimately depend upon how it is enforced by the Commission and FINRA. We continue to monitor its enforcement on behalf of investors.

We are also reviewing the comments received on the Commission's re-proposal of amendments to an existing exemption for certain "exchange-only" brokers from membership in FINRA.[116] Narrowing the exemption would extend FINRA oversight to potentially dozens of broker-dealers that currently rely on the exemption, and could potentially help protect investors by increasing SRO oversight of these brokers' cross-market trading activity.

More generally, we have monitored FINRA's rulemaking efforts to protect retail investors and were encouraged to see the Commission approve FINRA's proposal to enhance Rule 2165, governing the financial exploitation of specified adults in January 2022, as discussed in more detail below.[117] These amendments could benefit investors because they grant additional time for brokerage firms to resolve matters of suspected financial exploitation, and for adult protective service agencies, state regulators, and law enforcement to conduct thorough investigations.

More recently, FINRA submitted a proposal to release information on BrokerCheck related to a brokerage firm's designation as a "Restricted Firm" under FINRA Rule 4111 (Restricted Firm Obligations), which targets firms with a disproportionate history of misconduct relative to similarly sized peers.[118] As proposed, this amendment would allow FINRA to release information on BrokerCheck as to whether a particular firm is currently designated as a Restricted Firm pursuant to Rule 4111. This information could be useful to investors that use BrokerCheck to evaluate brokers, and we continue to review the comments received by the Commission as it evaluates this proposal.

We continue to review other initiatives by FINRA that remain outstanding. For example, in March 2022, FINRA requested comment on sales practice obligations for complex products and options.[119] As FINRA noted in the release, regulatory concerns arise when investors trade complex products without understanding their unique characteristics and risks, and it appears appropriate for FINRA to consider whether there may be more effective practices for brokers that deal with retail investors.

FINANCIAL EXPLOITATION OF SENIOR INVESTORS

On January 31, 2022, the Commission approved amendments to FINRA Rule 2165 (Financial Exploitation of Specified Adults).[120] Prior to the rule change, Rule 2165 permitted a brokerage firm to place a temporary hold on a disbursement from the account of a "specified adult" customer for up to 25 business days if the criteria of the rule are satisfied. A "specified adult" is defined as someone age 65 and older, or age 18 and older if the member firm reasonably believes that a mental or physical impairment has rendered the person incapable of protecting their own interests. As amended, FINRA Rule 2165 now permits firms to: (1) place a temporary hold on securities transactions, subject to the same terms and restrictions applicable to a temporary hold on disbursements of funds or securities; and (2) extend a temporary hold for an additional 30 business days, if the brokerage firm reports the matter to a state regulator or agency of competent jurisdiction, or a court of competent jurisdiction.

Also relevant for efforts to combat the financial exploitation of senior investors is a bill pending before the House Committee on Financial Services (H.R. 7923—Investor Justice Act of 2022).[121] If enacted, the bill would establish grants for qualified investor advocacy clinics associated with a law school or a tax-exempt organization to provide free legal representation to investors with securities arbitration and mediation claims pending before a registered national securities association. Such investor advocacy clinics frequently cater to senior investors, including those from minority and underserved communities who may lack the resources to pursue securities arbitration or mediation claims on their own. On June 9, 2022, the Investor Advisory Committee recommended that the Commission support this pending legislation.[122] Also on June 9, 2022, the Investor Advisory Committee issued a related recommendation supporting the funding of the qualified investor advocacy clinics as proposed in H.R. 7923.[123]

Additionally, during the Reporting Period, the Office of the Investor Advocate hosted the first-ever *SEC-North American Securities Administrators Association (NASAA) roundtable featuring AARP*, to explore financial topics related to older investors, including the financial exploitation of senior investors. This event allowed the SEC to hear directly from a diverse group of older, primarily retail investors, and to better anticipate that community's needs in the future.

ACCOUNTING AND AUDITING

The Public Company Accounting Oversight Board (PCAOB) has launched an ambitious plan to overhaul audit standards, test the recent agreement with Chinese regulators on inspecting foreign audit firms, and shake up its management ranks. Recently, PCAOB opened for public comment its revisions to the attestation standards originally adopted on an interim basis from 2003 Association of International Certified Professional Accountants (AICPA) standards.[124] We expect PCAOB to address audit quality standards next. PCAOB has also reconstituted its advisory groups,[125] which have begun deliberations, and has appointed a new Investor Advocate, Saba Qamar,[126] as well as a new Director of Communications and Engagement, Kent Bonham.[127] Meanwhile, a recruitment search is underway for a new Director of Enforcement and Investigations.[128] In addition, PCAOB has begun to implement the Holding Foreign Companies Accountable Act (HFCAA) and its regulations, with numerous foreign companies having been identified conclusively by the SEC.[129] We are monitoring legislative developments, which, if enacted, would reduce the HFCAA time period required for delisting from three to two years.[130]

Similar to our interaction with PCAOB, we monitor actions of the Financial Accounting Standards Board (FASB) and auditing and accounting policies at the Commission. On October 22, 2022, the Commission adopted a rulemaking for listing standards of companies to implement their own policies for clawing back erroneous compensation.[131] An important development for the rulemaking is the guidance issued by the U.S. Department of Justice for corporate resolutions and the potential benefit to an issuer that has a policy for clawing back erroneous compensation.[132] We also await the much-anticipated FASB standard on supplier finance after an open comment period earlier this year.[133]

One area of particular interest has been the guidance from the Commission's Office of the Chief Accountant on the accounting for digital asset custodial obligations, commonly known as Staff Accounting Bulletin No. 121 (SAB 121).[134] For those entities that have obligations to safeguard digital assets[135] held for platform users, the guidance provides clear direction on how to record both a safekeeping asset (similar to an indemnification asset) and a safekeeping liability. Significantly, the guidance does not suggest recording the underlying digital assets themselves. There are differing views on SAB 121, which has met with mixed reactions. For instance, upon its release, Commissioner Hester Peirce accepted the substance of the guidance but disagreed with the manner in which it was issued as a staff accounting bulletin rather than as a new accounting standard subject to public comment.[136] Yet others contend the accounting standard has hindered the take-up of custody of digital assets by traditional financial institutions because, under that standard, bank custodians may have their safekeeping assets subjected to capital and liquidity requirements.[137]


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PROBLEMATIC INVESTMENT PRODUCTS AND PRACTICES

Among other statutory duties, the Investor Advocate is required to identify problems that investors have with financial service providers and investment products. Exchange Act Section 4(g)(6)(B) mandates that the Investor Advocate, within the annual Report on Activities, shall provide a summary of the most serious problems encountered by investors during the preceding fiscal year. The statute also requires the Investor Advocate to make recommendations for such administrative and legislative actions as may be appropriate to resolve those problems.[138]

To determine the most serious problems related to financial service providers and investment products, staff of the Office of the Investor Advocate reviewed information from the following sources:

- Investor Alerts, Tips, and Bulletins issued by the SEC, FINRA, and the North American Securities Administrators Association, Inc. (NASAA);
- SEC enforcement actions and FINRA disciplinary actions;
- NASAA's Activity Report,[139] 2021 Enforcement Report,[140] and Top Investor Threats;[141]
- Municipal Securities Regulatory Board's Annual Letter to the Office of the Investor Advocate identifying areas of concern in the municipal securities market;
- The SEC Division of Examinations' 2022 Examination Priorities;[142]
- SEC and SRO staff reports providing guidance and interpretations relating to investment products;
- Discussions with SRO staff; and
- Commissioner remarks.

The table below lists certain potentially problematic products or practices during Fiscal Year 2022 as reported by these sources. Although not exhaustive, the lists reflect some of the concerns of these organizations. Details regarding these products and practices are available on the organizations' websites.

SEC[143]	NASAA[144]	FINRA[145]	MSRB[146]
• Performance Claims • Social Media and Investment Fraud • Single-Stock Leveraged and Inverse ETFs • Foreign Companies Under the HFCAA	• The Metaverse • Finfluencers • Reassigned Investment Accounts • DeFi Defined	• Financial Fragility • Victim Blaming in Financial Fraud • Financial Literacy Declines	• Macroeconomic Conditions • Deeply Discounted Bonds • Exempt Limited Bond Offerings • Mutual Fund Flows • Asymmetric Information • Evolving ESG Considerations

Each of the products and practices listed above represents an area of concern for investors during the Reporting Period. Based on our review of the resources described above and consultations with knowledgeable practitioners, we profile the following two areas of concern: digital assets; and single stock leveraged and inverse ETFs. Previous reports have highlighted other issues, including payment for order flow,[147] meme stocks,[148] SPACs,[149] reverse factoring, dual-class share structures, the LIBOR transition, initial coin offerings, binary options, public non-traded REITS, municipal market disclosure practices, below-minimum denomination positions in municipal securities, Simple Agreements for Future Equity in crowdfunding investments,[150] the new-issue process for investment-grade corporate bonds, and leveraged and inverse exchange-traded funds.

DIGITAL ASSETS

The digital asset market, which includes cryptocurrencies, continues to evolve and expand into what is emerging as a new asset class. Despite a bear market in 2022, developers continue to innovate and bring new crypto products to market. Indeed, recent market conditions have tested the confidence of market participants, and the resulting fallout has perpetuated bankruptcies, restructurings, and investor class actions in the digital asset space.

We have advocated consistently for digital platforms to register as exchanges with the Commission as an investor protection measure. In our Report on Objectives for Fiscal Year 2022 (published on June 28, 2021), we warned that the lack of regulation of cryptocurrency exchanges could result in broad harm to investors.[151] We indicated that because so many crypto assets trade on unregulated exchanges, there is no government oversight of their trading rules, that these unregulated trading platforms can unfairly discriminate among their users, and that the platforms could have significant undisclosed conflicts of interest.[152] Absent registration, these digital asset platforms lack the same integrity as that provided by the regulated national securities exchanges.

Underscoring similar concerns, in a November 16, 2022 speech, Commissioner Jaime Lizárraga pondered whether "the digital asset market" has "truly developed into a viable alternative to traditional finance" and whether it offers "genuine financial inclusivity and robust protections for digital asset purchasers and investors." [153] He concluded that, "as of now, and despite the best intentions of many, the answer is no." [154] While some believe that existing regulations and guidance are adequate to address infractions in the digital asset marketplace, others consider attempts to enforce such regulations to constitute so-called "regulation-by-enforcement." Commissioner Hester Peirce observed in a November 10, 2022 public interview that the "lack of regulatory authority" in the digital asset space "is problematic" and such "ambiguity has not served the American public well either."[155] The ongoing upheavals in the digital asset marketplace may generate sufficient momentum for legislation or additional regulatory guidance to help ensure a clear and comprehensive regulatory framework for digital assets.

As the industry matures, we expect more digital asset platforms to pursue registration as national securities exchanges, many crypto asset transactions to be registered with regulators, and dozens of fintech firms to register as broker dealers, intermediaries, and custodians. It is our view that registration is the natural evolution of the digital asset market in terms of providing financial legitimacy, protecting investors, and facilitating capital formation. As with traditional financial products and practices, we believe that regulation begets confidence, confers a degree of investor protection and, by doing so, enhances trust in the system and thereby promotes capital formation.

The Commission has ramped up its efforts to police violations in the digital asset market. Notably, the Commission, along with thirty-two States, pursued action against digital asset platform BlockFi for violating the registration and antifraud provisions of the Securities Act of 1933 and the registration provisions of the Investment Company Act of 1940.[156] As a result of this action, BlockFi agreed to bring its business into compliance with the Investment Company Act.[157] Although the recent bankruptcy filing of BlockFi may significantly impact its business, that development will not diminish the significance of the action the Commission took against the platform.[158]

The Commission has also been building up its digital asset expertise. The Division of Corporation Finance recently announced the creation of a new disclosure office designated the Office of Crypto Assets.[159] The Division of Enforcement has doubled the number of staff in its Crypto Assets and Cyber Unit, which is under new leadership.[160] The Commission's hive for digital asset regulation is its Strategic Hub for Innovation and Financial Technology (FinHub), which continues to grow as more resources are devoted to its important efforts.[161] We support the Commission's focus on strengthening its resources to address matters associated with digital assets, and we believe that, ultimately, all Commission staff should become familiar with and trained to handle digital asset matters across divisions and offices on a multidisciplinary basis.

Beyond the Commission, we take notice of efforts across federal agencies, States, and standard setters in the digital asset space. For example, FASB has set out a path to develop a new accounting standard for one segment of the digital asset market, crypto assets.[162] The Department of Treasury has issued three reports pursuant to Executive Order 14067—"Ensuring Responsible Development of Digital Assets."[163] Those reports were released for public comment and the next steps will involve formulating any changes to policy.[164] Enforcement has broadened with recent coordinated actions by eight States' attorneys general against a particular crypto lending platform.[165] The pursuit of remedies has not been limited to public actions, however. In the first half of 2022, securities class actions against digital asset companies, their directors, and their officers have surged as investors endure a deep bear market and so-called crypto winter.[166]

As the market for digital assets continues to evolve, new developments seem to emerge on a regular basis. The FTX situation is a recent example. Although the collapse of FTX occurred after the Reporting Period, we cannot ignore the magnitude of its demise and its implications for the overall digital asset market. Once the fourth largest digital asset platform by volume, FTX has filed for bankruptcy, a pivotal event in the industry with serious ramifications for the regulation of digital asset platforms going forward. While we agree that retail investors have a responsibility to conduct basic due diligence and to understand any financial product before investing in that product, doing so does not diminish the necessity for a robust regulatory framework for digital assets, be it the current regulatory regime or an entirely new regulatory ecosystem for the asset class. It is our expectation that the FTX collapse will accelerate the

shift toward registration of digital asset platforms, which we believe would not only foster greater innovation and capital formation, but also enhance investor protection in the digital asset marketplace.

SINGLE-STOCK LEVERAGED AND INVERSE ETFS

As discussed earlier in the Advocacy for Investors section of this Report, single-stock ETFs entered the marketplace for the first time during the Reporting Period. These products can be problematic for retail investors for several reasons. First, by design, even more "traditional" index-based leveraged ETFs produce more dramatic swings in daily returns than the indexes underlying those ETFs. A hypothetical 2x ETF with underlying index ABC, for example, would typically lose 40% of its value on a day where the ABC index decreases by 20%. Second, while the volatility of an index-based leveraged ETF may be somewhat mitigated by a diversified collection of underlying securities (some of which may increase in value while others decrease), a single-stock ETF's performance is entirely dependent on the movement of just one security. This makes single-stock ETFs even more volatile than most leveraged ETFs. Third, volatility makes these products function differently than many investors may reasonably expect. If our hypothetical ABC index increases by 4% over the course of two days, for example, a buy-and-hold investor may expect the value of their investment in our corresponding 2x ETF to increase by 8% over those two days. In reality, however, the investor may see a return significantly less than 8%, and may even incur a loss. Finally, the risks of these ETFs are difficult to explain to investors in a concise, engaging manner. Traditional regulatory goals such as fully ensuring that all material risks are disclosed and that investors are making informed choices, therefore, are difficult to accomplish with respect to these products.

Assume for the sake of the following example that an investor purchases $10,000 worth of a 2x XYZ single-stock ETF. The ETF's stated investment objective is to provide daily returns equal to two times the daily performance of XYZ stock. Assume further that the ETF's underlying XYZ stock drops and returns to slightly more than its original value over the course of two days:

- Day 1: XYZ stock decreases from $100/share to $80/share (-20%)
- Day 2: XYZ stock increases from $80/share to $104/share (+30%)

The XYZ stock initially valued at $100 is now valued at $104/share at the end of day 2, an increase of 4%.

The investor's $10,000 investment in the 2x XYZ single-stock ETF, however, would change in value as follows:

- Day 1: $10,000 initial investment decreases by 2 x 20% (or 40%), making the investment equal to **$6,000** (i.e., the initial $10,000 lost $4,000, or 40% of $10,000)
- Day 2: $6,000 remaining investment increases by 2 x 30% (or 60%), making the investment equal to **$9,600** (i.e., the remaining $6,000 gained $3,600, or 60% of $6,000)

The initial $10,000 investment in the 2x XYZ Single-Stock ETF is now valued at $9,600, a decrease of 4%.

This example illustrates the issues that make single-stock ETFs so problematic for retail investors. First, by design, the daily returns of the ETF were more volatile than the performance of the underlying stock. Second, the performance of the ETF was based on the performance of one single security, making extreme swings more likely. Third, the "2x" ETF functioned differently than many investors may reasonably expect. At the end of two days, the underlying stock had increased 4% in value, but rather than increasing 8% (two times 4%), the corresponding single-stock ETF had *decreased* by 4%. While it may be possible to disclose these features of single-stock ETFs, the example shows that it can be very difficult, incorporating counterintuitive concepts. Advice from a registered financial professional may help an investor who is considering an investment in a single-stock ETF. As noted above, however, many financial professionals themselves do not fully understand these products[167] and many retail investors may purchase these ETFs without consulting a registered financial professional at all.[168]

INVESTOR ENGAGEMENT AND OUTREACH

The mission of the Office of the Investor Advocate is to help ensure that the concerns of investors are appropriately considered as decisions are being made and policies are being adopted at the Commission, at SROs, and in Congress. As required by statute, our Office analyzes the potential impact on investors of proposed rules and regulations, identifies areas in which investors would benefit from changes in rules and regulations, and proposes policies to resolve problems that investors have with financial service providers and investment products, among other things.[169] This engagement with investors more fully informs the Investor Advocate about the impact various rules or regulations may have on the investing public and helps us identify emerging issues that may merit further attention by policymakers.

To fulfill this mission, our Office conducts a number of engagement and outreach functions designed to engage with investors and potentially to receive feedback about policy questions and other important topics. During the Reporting Period, these meetings included consultations with individual investors, small business investors, institutional investors, and representatives from organizations that are comprised of, and represent the interests of, investors as well as other market participants and industry experts. There were also a number of public events conducted that support this mission, including investor roundtables, public meetings, and academic engagement. Of particular note was the Office's focus on diversity, equity, inclusion, and accessibility (DEIA), whereby we actively sought to include the voices of minority and underserved investors, Veterans and Military Spouses, investors with disabilities, investors from Native American/First Nations' communities, older American investors, and investors with a broad range of epistemological philosophies.

During Fiscal Year 2022, we hosted multiple events with investors designed to obtain their feedback on policy-related topics, including the first-ever *SEC-North American Securities Administrators Association (NASAA) roundtable featuring AARP*, to examine topics related to older investors. This event allowed the SEC to hear directly from a diverse group of older, primarily retail investors, and to better anticipate the community's needs in the future.

The Office of the Investor Advocate also serves as a resource for other Divisions and Offices within the Commission, by consulting on policy matters and providing input relating to investor issues. For example, in preparation for the development of the Division of Examinations' 2023 Exam Priorities, we gathered together relevant groups of investors and held confidential listening sessions with the Division of Examination's leadership, which encouraged investors to reflect on issues of importance to them (related to the SEC's examinations functions).

Another way in which our Office hears from investors is through the SEC's Investor Advisory Committee, on which the Investor Advocate serves as a statutory member. The IAC advises and consults with the Commission on regulatory priorities, including initiatives to protect investor interests, promote investor confidence, and maintain the integrity of the securities marketplace.[170] The IAC includes four subcommittees to help formulate its policies and recommendations: 1) Investor-as-Owner; 2) Investor-as-Purchaser; 3) Market Structure; and 4) Disclosure (established in Fiscal Year 2022). The IAC held four quarterly public meetings and approved six recommendations to the Commission in Fiscal Year 2022.

Looking ahead, the Office plans to continue to prioritize retail investor-related engagements and seek out broad input from the entire investor community. In 2023, we will engage investors on topics that are of interest to them, as well as on the yet-to-be-determined emerging topics of the future. We anticipate that digital assets, ESG-related investing, and capital formation opportunities, among other subjects, will remain on the forefront of investors' agenda.

RESEARCH AND INVESTOR TESTING*

The Policy-Oriented Stakeholder and Investor Testing for Innovative and Effective Regulation—or POSITIER—initiative was launched in 2017 to provide a toolkit to both the Office of the Investor Advocate (OIAD) and the Commission to better understand investors and to increase efficacy of policymaking activities for the benefit of investors and other stakeholders.

In designing POSITIER, we wanted to give investors a stronger voice in policymaking at the Commission. Generally, in rulemaking activities, the public notice and comment process can provide important feedback, but many of the comments submitted tend to represent the priorities of interested parties that oftentimes have massive resources to commit to following, understanding, and commenting on proposals. The general public, including households that invest as well as households that do not yet invest, may have a limited impact during this process because they may find it burdensome and complex to comment, given the legal or technical nature of many rulemaking releases. As such, POSITIER is designed to provide research and data that would help the Commission identify and understand issues that affect a broad cross section of investors and the general public.

We have aimed to provide a panoramic view of how investors and other stakeholders may be affected by the Commission's policy proposals and better understand how investors and stakeholders interact with the investment marketplace. The POSITIER infrastructure can enable OIAD and the Commission to, among other things: 1) more thoroughly "identify areas in which investors would benefit from changes in the regulations of the Commission or the rules of self-regulatory organizations"; 2) conduct pre-adoption (ex-ante) testing of potential policies, identifying areas in which investors would benefit from changes in regulation, and allowing the Commission to "analyze the potential impact on investors of proposed regulations of the Commission, . . . proposed rules of self-regulatory organizations . . . and . . . to the extent practicable, propose to the Commission changes in the regulations"; 3) conduct post-adoption (ex-post) evaluation of policies so that the Commission could more effectively conduct "retrospective analysis of rules" after they are rolled out;[171] 4) generate evidence for better organizational management and overall efficacy, particularly in the sense of "outcome" indicators of performance; and, 5) study and understand investor dynamics in order to serve as an early warning system to

* *The views expressed in this report on investor testing represent solely the views of the Office of Investor Research and do not necessarily represent the views of the Office of the Investor Advocate, the Commission, the Commissioners, or any other Commission staff. Note: figures herein are illustrative; for actual stimuli and question text, please refer to original reports.*

identify vulnerabilities for investors and other stakeholders in order to better "identify problems that investors have with financial service providers and investment products." [172]

As we designed POSITIER, we prioritized the following:

- **High-quality data collection methods—** inaccurate measures of efficacy, or biased views of investor reactions, might mislead policymakers about the benefits or costs of different policies. This is why we often focus on use of high-quality data collection methods that are conducive to population-generalizable conclusions;
- **Multi-modality data collection approaches—** recognizing that there are pros and cons to any particular methodology, and that many research and policy questions require multidimensional perspectives;
- **Studying outcomes that represent meaningful changes for investors—**to ensure our work will have an impact. For example, when thinking about questions such as the efficacy of how information is disclosed one might have to consider how proposed changes impact investor actions and whether the changes inhibit or empower action;
- **Making our work extremely cost-effective and rapid—**so that time and money are not a rationale for forgoing research and testing.

Over the years, we have enjoyed considerable support at the Commission level for our work, including the recognition that our research fills a substantial evidence gap. While Commission leadership may debate the best ways to create policy to serve the public interest, POSITIER takes an independent data-driven view and is neither a toolkit for more regulation nor less regulation, but rather, for what we consider to be "smarter" regulation. Our work provides concrete steps to help improve the usability of mandated disclosures and study emerging financial market products, as well as insight into the way that macroeconomic and market trends affect investors' finances and decisions. We have also studied methods to more accurately collect data from investors, which will allow us to improve the precision of future data collection activities and continually improve the Commission's perspective on how investors think and act.

As we look to the horizon to determine how to best position the Office of Investor Research (OIR), OIAD, and the Commission to best serve the interest of investors and the general public, we have realized that the policy challenges the Commission faces are multi-faceted and complex, and are not purely economic-study issues, but issues that are best addressed by combining the perspectives of multiple fields in the social sciences. For example, the fields of decision science, marketing, and psychology have long considered ways to raise individual attention to important information and how to better engage individuals with information. For their part, economics and finance contribute important tools to help understand and quantify important aspects of decision-making with economic and financial assets. Because of the interdisciplinary nature of our research demands, as we have started to build out our research team, we have sought to create a group that brings these various disciplinary perspectives to bear on highly complex problems. While our staffing resources have not yet been adequate to round out a team that investors may fully benefit from, our workgroup has incorporated expertise and perspectives from economics, decision science, marketing, and psychology, providing much richer depth to the problems we study.

Our productivity in terms of data collection and research execution is impressive. Since POSITIER's founding in June of 2017, we have conducted over 40 survey research projects, dozens of experiments, as well as nearly a dozen qualitative data collection projects and several other projects. The POSITIER toolkit is unique and flexible and has served as a model for government agencies working to implement the Evidence Act.[173] This year, the innovative nature of POSITIER was recognized governmentwide: OIAD Chief Economist Brian Scholl received the 2022 "Federal Evaluation Innovator Award" from the Evaluation Officer Council.[174] This award honors one evaluation innovator in the federal government who thinks of creative and "outside the box" evaluation ideas, helps design them, and sees them through to execution. The award recognizes the fact that POSITIER was uniquely designed to creatively and flexibly respond to issues faced by the SEC and investors, and ensure that these issues are addressed using best practices in research and evaluation science.

Several other important milestones were achieved in our research group during 2022. These include:

- The creation of the new Office of Investor Research, which houses the POSITIER initiative and our interdisciplinary research team. Created in 2022, this office officially establishes investor issues and investor testing as priority areas for the Commission. With the establishment of this office, we engaged in a long-term strategic planning process to codify our long-term research goals and determine how we can have the biggest impact for investors.
- Expansion and deepening of the research group. Our research team currently comprises team members with research backgrounds in communications, decision science, economics, marketing, and psychology.
- Completion of a novel, rigorous investor testing research project on mutual fund benchmarking that proved extremely useful to the Division of Investment Management in its rulemaking activities, while maintaining critical independence of OIAD's research team.

As always, there is much more work to be done to better serve the needs of investors and the Commission. Looking forward, we will continue to work to tirelessly promote the public's participation and trust in the investment marketplace. Using leading edge tools of scientific research, we will identify and analyze policies that enable the public to make better investment decisions and reach their goals. To that end, and as described below, our research expansively touches on interactions among individual investors, their decision context, and macroeconomic trends. The rest of this year's report on investor testing includes elaboration on some of the above points and presents results from several highly impactful research projects. We conclude with a brief discussion of ongoing challenges to our work as well as a sketch of some future directions for our research group.

Below we feature snapshots of several recent research projects. Together these projects showcase a variety of important findings about investor decisions and demonstrate POSITIER's ability to flexibly adapt methodologies for the benefit of investors.

PERFORMANCE BENCHMARKS

Historically, the Commission's analysis of rulemaking impact on investors has often been constrained by a lack of input from everyday investors. Through POSITIER, we have sought to give the SEC an alternative method for engaging directly with the public, and for learning what individual investors need to make informed investment decisions. This year, OIAD had the opportunity to inform policy through qualitative and quantitative testing related to mutual fund benchmarks. This research was heavily cited in the recently-adopted "Tailored Shareholder Reports" rule.[175] The research is described in full in the paper "How Do Consumers Understand Investment Quality? The Role of Performance Benchmarks."[176]

Funds are required to provide comparative information when presenting performance data in their shareholder reports. Funds that are presenting performance information must accompany their performance with an "appropriate broad-based securities market index" in annual shareholder reports that are provided to existing investors. The intention is to provide contextual information that investors can use to better evaluate the performance of the fund. Funds have the option of presenting performance relative to one or more additional indexes. These additional indexes can be "broad-based," as with the first, or more narrowly tailored to the assets and strategy of the fund; however, funds have considerable discretion on the choice of benchmarks.

Ultimately the choice of benchmarks might not make much difference if funds select different benchmark indices that essentially provide a similar frame of reference for the investor. At the same time, some comment writers suggested that funds should be able to use a narrow benchmark as their only benchmark.

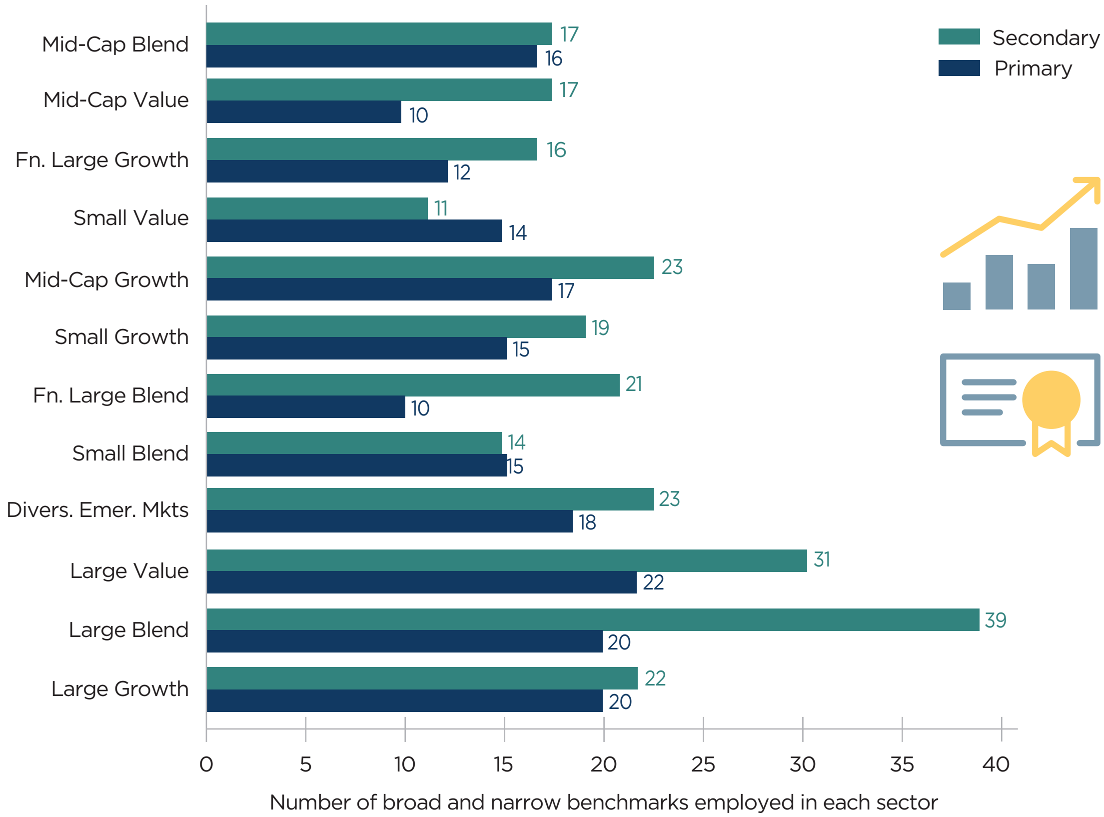
Important questions for this rulemaking are "To what extent do benchmarks affect investor choices?" and "Do investors prefer broad benchmarks, narrow, or both?" These research questions are not entirely straightforward to answer. From the perspective of economic theory, benchmarks do not offer a clear path to affecting investor decisions because they presumably contain information that is easily accessible to the investor elsewhere. The inclusion of additional information on the fund would seem ignorable in many economic modeling contexts, with no clear path to it affecting a person's evaluation of a fund. At the same time, given human nature, it seems entirely possible that a fund's performance relative to a benchmark may make the fund seem relatively better or worse.

To better understand how benchmarks are used by funds and affect investor decision-making, our research project involved four separate data sources. First, we studied market data on funds and their benchmarks, as well as funds' usage of benchmarks. Second, we conducted in-depth one-on-one interviews with a small group of investors that hold mutual funds, exchange traded funds, or similar investments to help us better understand how investors think about benchmarks. Third, we ran a large and innovative experiment to more scientifically understand how investor decision-making was affected by different ways a benchmark can be presented on a performance graph of the type that was under consideration in the rule proposal. Finally, we collected survey data that helped us to better understand the preferences and beliefs of ordinary people with respect to benchmark presentation and usage.[177]

Analysis of Market Data

Our analysis of market data was important for understanding funds' actual choices of benchmarks under the pre-rule regulatory framework. Our data captures "primary" and "secondary" benchmarks, which provide an imperfect mapping to "broad"

Figure 1: **The Number of Unique Benchmarks by Type Used by Mutual Funds in Various Sectors**

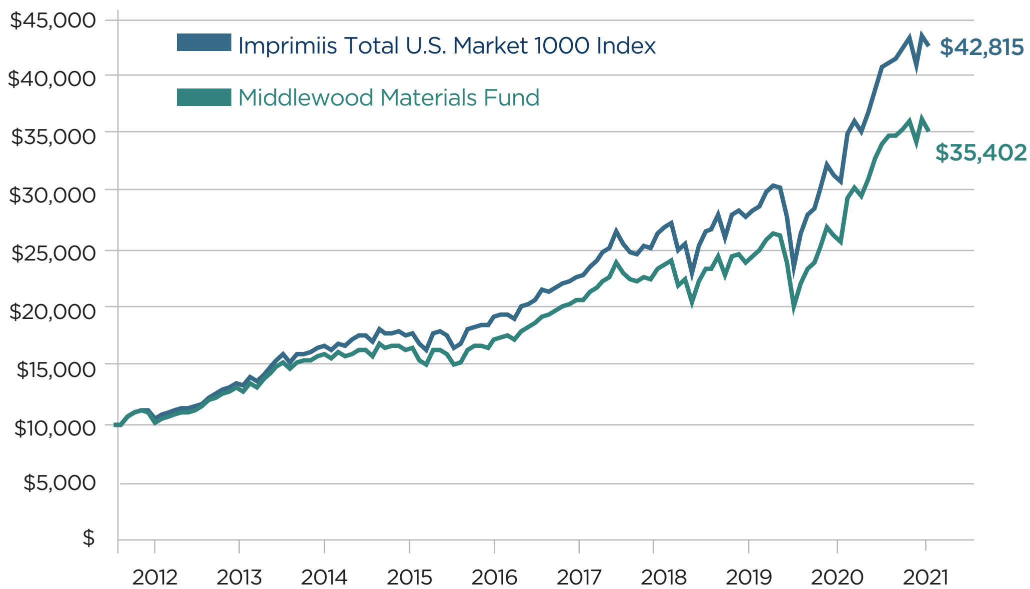


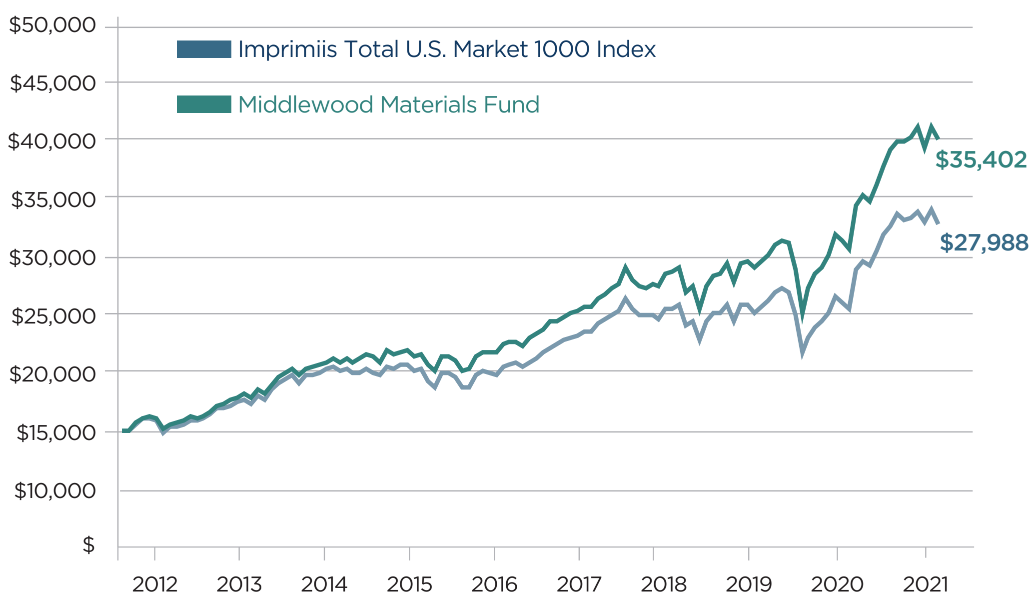
and "narrow" indexes as described in regulatory requirements.[178] Consistent with the rules providing funds with discretion over their choice of benchmarks, the number of different primary benchmarks used in a sector ranges from 10 to 22. One important question is: do benchmarks help investors compare performance to a meaningful metric? Perhaps undermining this line of thinking, we found great variety in the benchmarks that funds use, even within a sector. The most recent ten-year return for the best performing benchmark for large growth funds was over 480% greater than the returns for the poorest performing benchmark in this sector. We found similar patterns for other sectors. Yet, without follow-up testing, we did not understand if benchmarks had the potential to affect investors' decisions.

In-Depth Interviews

To begin to explore investors' responses, we started with in-depth, one-on-one interviews. In the interviews, we showed participants a mock-up shareholder report for a hypothetical fund. We showed participants a variety of performance graphs with different benchmark information, in a layered approach that allowed us to begin to understand how their thinking might evolve with additional benchmark information. All interviewees commented about relative performance between the fund and its benchmark(s) as affecting their perception of the fund. For example, one interviewee noted, "Clearly the fund has outperformed the [index shown], fairly significantly over time." These interviews were not sufficient evidence on their own to make strong conclusions

Figure 2: **Examples of Stimuli Used in Experiment**



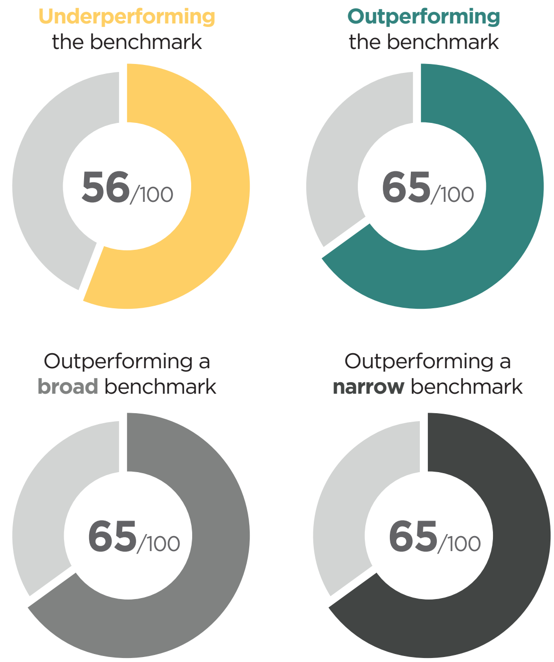


about the role of benchmarks in investor decision-making. However, they provided a preliminary suggestion about the importance of relative performance in determining investor evaluations of funds, which we sought to study more directly in a follow-up experiment.

Experimental Evidence

Qualitative testing provides rich impressionistic data, but the labor-intensive method means that we typically can only interview a limited number of respondents. To provide a more comprehensive view on how benchmarks affect respondents, we also conducted a large-scale experiment that we designed based on the intuition gained in the interviews. For this experiment, we recruited over 4,000 participants using a nationally representative probability-based survey panel. Most experiments only have a few hundred participants,[179] but we required more participants to explore several different experimental conditions while having enough participants in each condition for a statistically viable sample. The experiment varied benchmarks in presentations with the same fund to see how benchmarks affect investor opinions and decisions. Whether the benchmarks were broad or narrow was also changed. Our presentations included one, two, or no benchmarks. For presentations with two benchmarks, one benchmark was outperforming the fund and one was underperforming. While having the fund between two benchmarks may appear a special situation, in reality, the experimental conditions we created represent a large fraction of presentation conditions observed in actual market data. Figure 2 illustrates features of two of our presentations: one with a benchmark outperforming the fund and one with a benchmark underperforming the fund.

Figure 3: **Average Attractiveness Ratings by Selected Experimental Conditions**



Average subjective attractiveness ratings by selected experimental conditions. Top pair: attractiveness rating for fund underperforming the benchmark (i.e. benchmark performs better than fund; left figure) vs. fund outperforming benchmark (i.e. fund performs better than benchmark; right figure).

A key finding is that providing a benchmark that outperforms the fund has a large, negative impact on investor perceptions. For participant ratings of the fund on a zero to one hundred scale, the average rating was 56 when the fund underperformed the benchmark (i.e. benchmark performance was better than fund performance) versus 65 when the fund was better than the benchmark (Figure 3). We also see that, when given the opportunity in a choice task designed to simulate real-world decisions, participants invested less in the fund after viewing performance alongside a benchmark that outperformed the fund. These findings suggest a meaningful impact of benchmarks on investor perceptions and decision-making. When comparing responses for broad and narrow benchmarks, decisions were similar whether the benchmark was broad or narrow. We did not find any evidence that investors differentiated between broad and narrow benchmarks. Average ratings of the fund when the fund outperformed the benchmark were the same for broad and narrow benchmarks. This is in contrast to a claim by some commenters that the narrow benchmark is a better reference point than the broad benchmark. The results suggest that benchmarks can influence investor decisions.

Survey

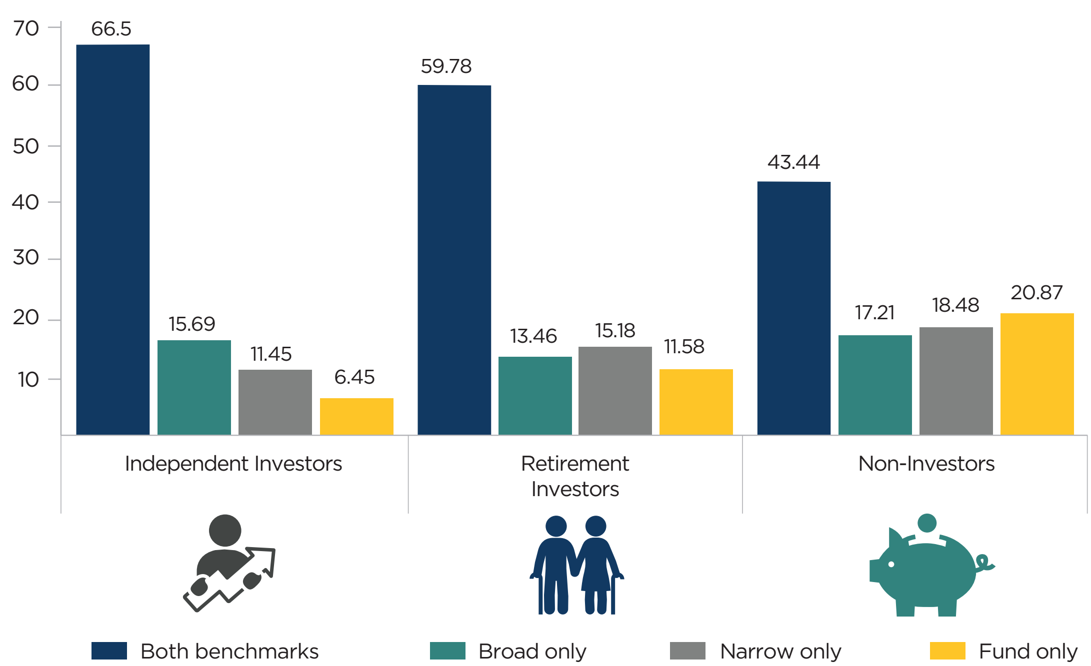
Finally, we also collected some survey data from a nationally representative, probability-based panel. Our survey asked various questions, including some measuring preferences for benchmark information. In response to these questions, participants expressed a preference for seeing both broad and narrow benchmarks (Figure 4). When shown a performance graph with two benchmarks (a broad and a narrow), most respondents expressed the belief that the performance graph was a reliable source of information and not simply designed to make the fund look good (Figure 5). This survey data must be interpreted carefully because participants may not have a full ability to internalize the context of the hypothetical situation in a non-decision-making context, but the survey data do suggest investors' interest in contextualizing the fund's performance alongside both broad and narrow benchmark performance information.

Using a novel, large-scale experiment with a national sample, as well as in-depth analysis of real-world benchmark use, our paper presents a comprehensive set of findings on how funds use benchmarks and how investors may react to them. While this topic deserves further research to understand other dimensions of how investors respond to benchmarks, the research summarized in this paper highlights the complex ways in which information provided by firms affects investor perceptions and decisions.

MENU COMPLEXITY

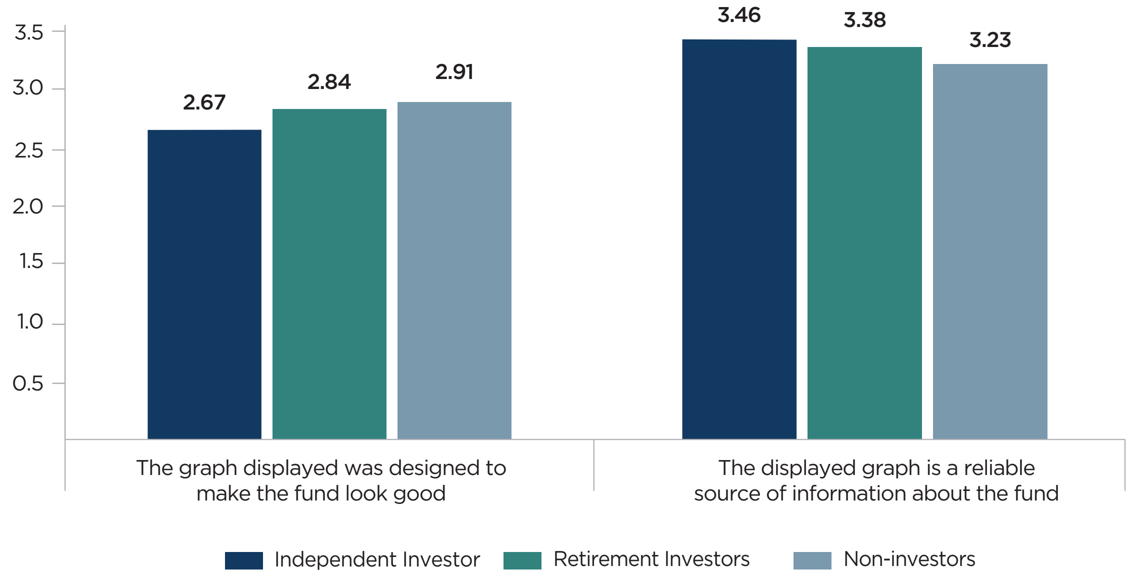
While U.S. financial markets are extremely broad and deep, not every investor can access every type of investment instrument. For example, investors in brokerage or retirement accounts may have only a handful of mutual funds and ETFs to consider. More

Figure 4: **Stated Preferences for Benchmark Presentation by Investor Type**



Percentage of each investor status group (independent investor, retirement investor, non-investor) that expressed a preference for presentation of broad benchmark only, narrow benchmark only, fund only (no benchmarks), or both broad and narrow benchmarks.

Figure 5: **Perceptions of Performance Graphs, by Investor Type**



Survey respondents were shown a performance graph with two benchmarks (one broad, one narrow). Graph provides average response by investor status group (independent investor, retirement investor, non-investor) that stated agreement with the associated survey question (answers on a 1–5 point scale from 1=strongly disagree to 5=strongly agree).

limited choice is not necessarily bad if the choices are well-curated for the investor, but some menus may offer some poor options to investors. Moreover, the fund menus themselves may be confusing to investors in a number of ways.

A recent experimental study[180] examined one particular area of potential confusion for investors: whether or not the complexity of evaluating tradeoffs between features of menu items might contribute to worse decision-making by investors. For example, in some “low complexity” menus, investors may face a set of choices such that one option is better in terms of all features (e.g., fees, performance, risk), so that worse options are quite obvious. In a high complexity menu, the investor may need to weigh one feature against another to make a choice that seems right for them. To the researcher, it is not obvious how the consumer will decide.

In an experiment we conducted, study participants were randomly assigned menus of five index mutual funds. The choice set here is important: as index funds tracking the same index, the funds have nearly identical returns and risk, but have one important distinguishing feature: fees. Fees can differ dramatically in this market and lead to substantially different long-run returns even though the pre-fee returns and risk of the funds is substantively similar; at a 7 percent annual return over 25 years, an initial $100,000 balance will grow to about $400,000 for the highest fee fund we identified versus almost $540,000 for the lowest fee fund—a difference of about $140,000, or about 35 percent. As this example illustrates, and is widely recognized in the household finance literature,[181] the best choice among the options that the study curated was to pick the lowest fee fund on the menu. The menus that were curated allowed for a fine-tuning of the complexity tradeoff on the menu.

What the paper found was quite remarkable. By increasing from the lowest level of complexity to the highest level, study participants paid considerably more in fees—and, because the funds were index funds, the extra fees offered no benefit to the investor in terms of risk and return. This suggests that the way menus are constructed could have an impact on investor choices. At the same time, few participants selected the cheapest fund on the menu. In fact, even at the lowest level of complexity offered, many participants paid much higher than the optimal amount in fees. The implication here is that investors not only may be easily confused by complexity, but that even at the lowest levels of complexity, investors find it difficult to choose funds from a menu. This choice set is considered relatively simple because in most real-world menus, the investor would be expected to evaluate many more dimensions of choice and many more investment options than they did in this experiment—for example, by evaluating the investment sectors of different options, the different risks, returns, brands, and so forth.

Another remarkable feature about the results from this paper is that this complexity effect largely holds across different subgroups. The more investment-savvy subgroups that were examined (e.g. higher education, higher financial literacy) tended to pay lower fees than the less savvy groups, but in most cases still made worse choices when they were faced with higher levels of complexity.

While the preliminary findings of this research paper do not aim to offer any concrete policies for consideration, it does help to document an aspect of the complexity of financial decisions, and could help the Commission think more about financial literacy interventions. The specific issue may be too subtle to educate individual investors on, yet the findings highlight the importance of menu construction and thus may be informative to, for example, company decision-makers offering retirement accounts to their employees. These firms are often seeking to provide retirement options for their employees, but may not be aware of how difficult the choice environment is for those employees. In addition to identifying this potential concern, another important contribution of the paper has been to develop a research methodology for incentivized decision-making that has enabled OIAD to pursue several additional projects.

HELPING INVESTORS MAKE DECISIONS ABOUT MUTUAL FUNDS USING VISUAL AIDS

Over the past several years, OIAD has tried to identify ways that decision aids could be introduced into disclosures to help investors become more aware of the importance of fees and make it easier for investors to make good decisions about their investments. A new OIR paper develops a prototype for a mutual fund decision aid. The goal of this new aid is to help investors compare fees across funds. Motivated by other agencies' successful use of cost comparisons (e.g., the Federal Trade Commission's "Energy Guide" cost rating scale) and other academic research on "nudges" that can assist consumer decision making, we developed a mutual fund fee visual that depicts the distribution of fees within a fund type.

Background Context

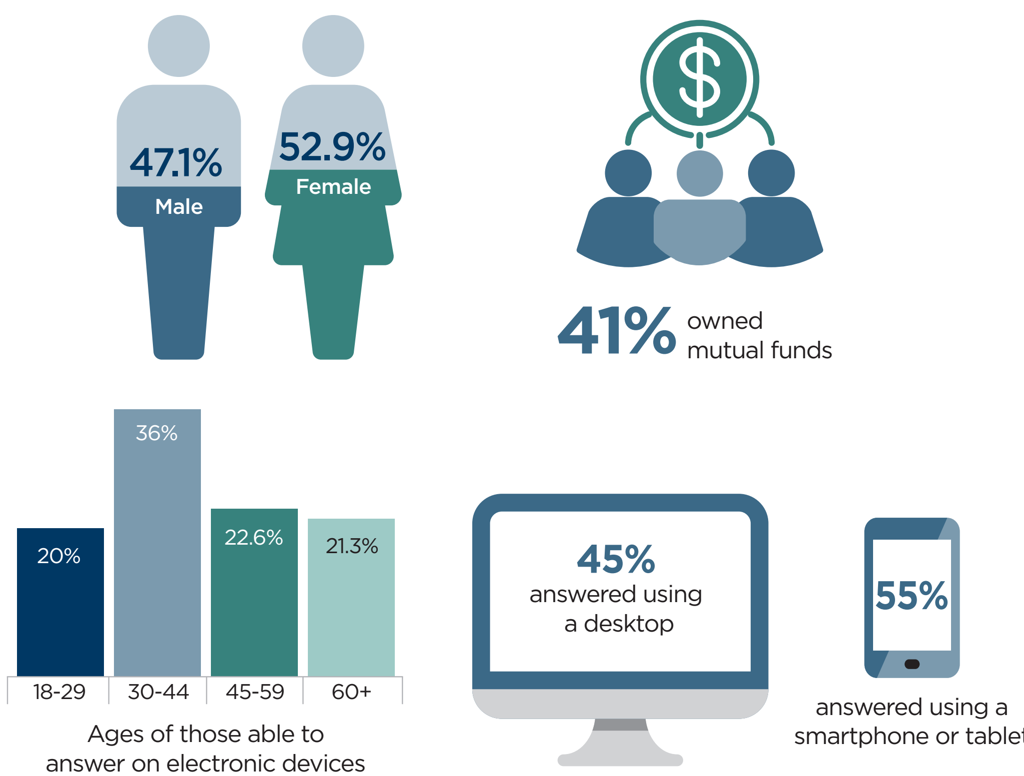
There has been extensive policy and academic concern that investors are paying too much in mutual fund fees.[182] Investors too frequently prioritize past performance in their selection of mutual funds, despite decades of academic research demonstrating that very few funds consistently outperform the market.[183, 184] Performance is an investor's ultimate goal, but it is also difficult to predict: a top performing fund in one year may be mediocre or low-performing in the next. By contrast, fees are easy to predict and have an enormous impact on investors' long run investment performance.[185]

Because of the investor emphasis on returns,[186] policymakers have introduced specific disclosure statements or guidance such as a warning that "Past performance is no guarantee of future results." Yet, buried in a long financial document and extensive fine print, these textual statements may go unnoticed by investors. Even if disclosure statements are noticed, they may not be understood. These labels may not be sufficient to help investors overcome their deep-rooted biases toward past investment performance in decision-making.

Additional efforts to encourage consumers to use mutual fund costs in their decisions by providing simplified prospectus documents have also shown less than hoped-for results across a range of tests from the academic community.[187] Given that performance remains a central focus with fees too infrequently considered, we developed a prototype decision aid that we hoped would lead consumers to consider fees in their decisions. We then tested whether the aid was more effective than legally compliant short form disclosure documents. The design of this visual was motivated by an existing decision aid from the Federal Trade Commission.

The Federal Trade Commission's Energy Guide label helps consumers compare products' energy costs with a black and yellow scale that depicts the average annual cost for that product.[188] This cost can be directly compared to another product in the same store. In other contexts, aids of this kind have been used to help consumers make decisions better aligned with their preferences.[189, 190]

Figure 6: **Participant Characteristics for Fee Visuals Study 1**



Investor Testing: Fee Visual Prototypes

When an investor is faced with a mutual fund decision, they may not know whether 0.1%, 1%, or even 10% in annual expenses is too much to pay. Visuals that convey costs may help investors—in the moment and without having to do more research—understand that picking the wrong fund might end up costing more than necessary. Academic literature has demonstrated that visuals provide the most benefit when they speak to a decision maker's goals, provide relative comparisons between options, and provide information with numbers that convey impact.[191] This research tests whether a mutual fund fee visual, like visual decision aids in other domains, can have a positive impact on investment decisions.

To test a prototype fee visual, we conducted three interrelated studies on nationally representative samples in which investors received mutual fund performance information and fee information with summary prospectus documents that meet current disclosure requirements and decided how to invest money across several funds.

Additionally, some of the participants would view the prototype fee visual. Figure 7 provides a sample fee visual for one of the anonymized funds that participants viewed. For each Low-to-High scale, we depict the range of mutual fund expenses for a particular fund sector (S&P 500 index funds, in this case), with fund fees above the median shaded in red to both serve as a warning about the fee's relative level and to capture attention, prompting decision makers to think about fees in general. In this example, fees are depicted in dollar amounts, rather than basis points, to help convey the impact that fees could have on financial goals. Using an experimental methodology developed in our other research, the participants were asked to choose from menus in which they should have a preference for minimizing fees as much as possible, because the choices we asked them to choose between only differed on cost.

We measured the fees that investors would pay over the next year, assuming they held the funds for that period. Across our studies, we consistently observed that when investors saw the fee visuals, they invested more money in the less-expensive funds.

Figure 7: **Sample Fee Visual Graphic**

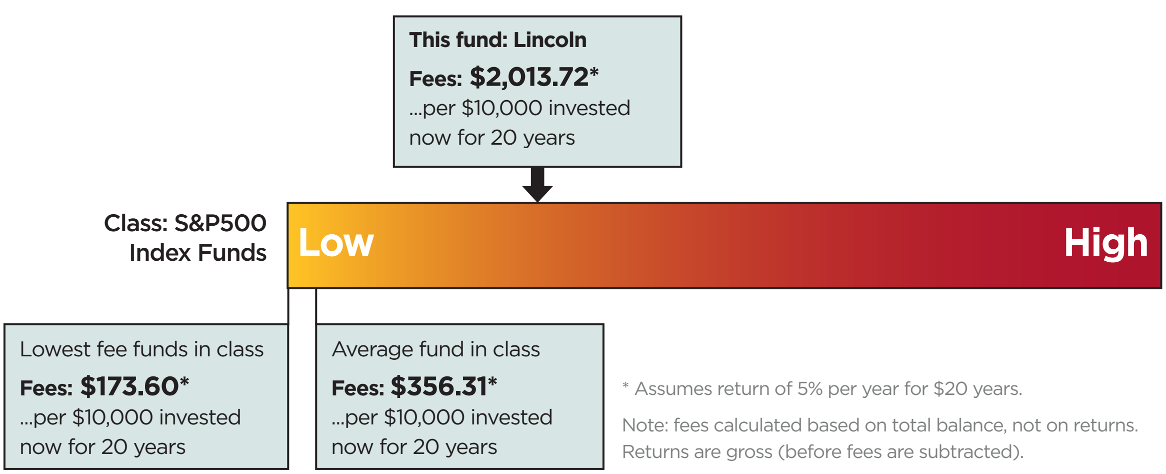
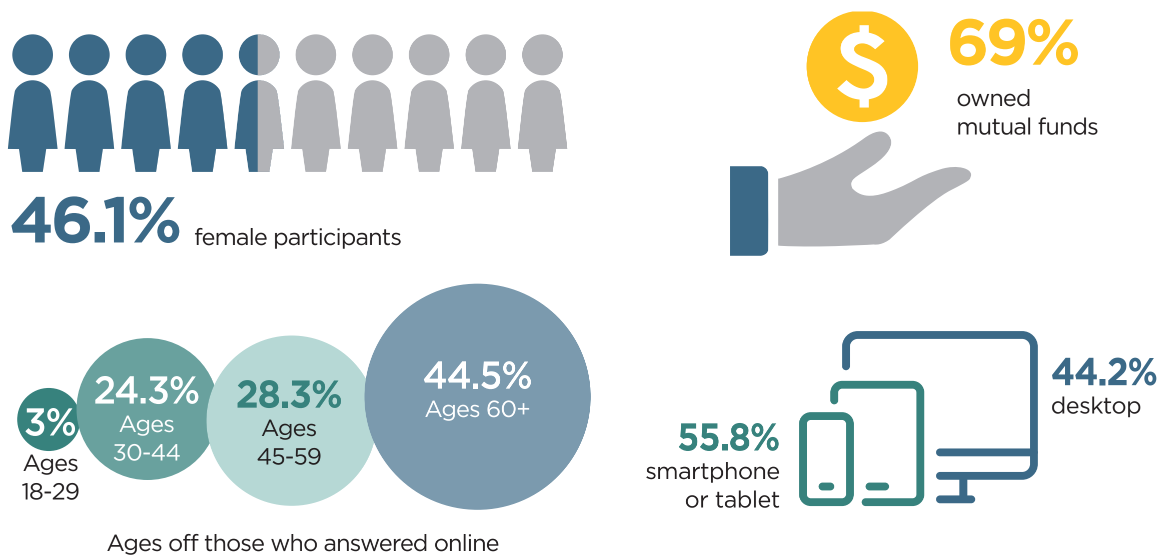


Figure 8: **Participant Characteristics for Fee Visual Study 2**



Additional statistical tests in a follow-up study examined whether visual element variations impacted the visuals' effectiveness. Figure 8 represents characteristics of the sample for one of those studies.

While we observed minor differences in the effectiveness of specific elements (e.g., scale labeling), all fee visual variants showed significant improvement compared to the summary prospectus document. For example, in our first study, we observed a 27% (approximately nine basis points) total fee reduction for the visual condition compared to the summary prospectus document condition. The figure below depicts the results for the allocations to each fund. The fee visual reduced investment in the most expensive fund in the study (one costing 50 basis points) and increased investment to the least expensive fund (one costing 3 basis points). Critically, the fee visual did not result in less "participation." Participants did not opt more for a cash option (with no associated expense) when presented with a fee visual compared to the summary prospectus document. If adopted by the SEC and applied to the $25 trillion mutual fund industry, even a modest nine basis point reduction in fees could possibly save investors in the range of $22 billion annually.

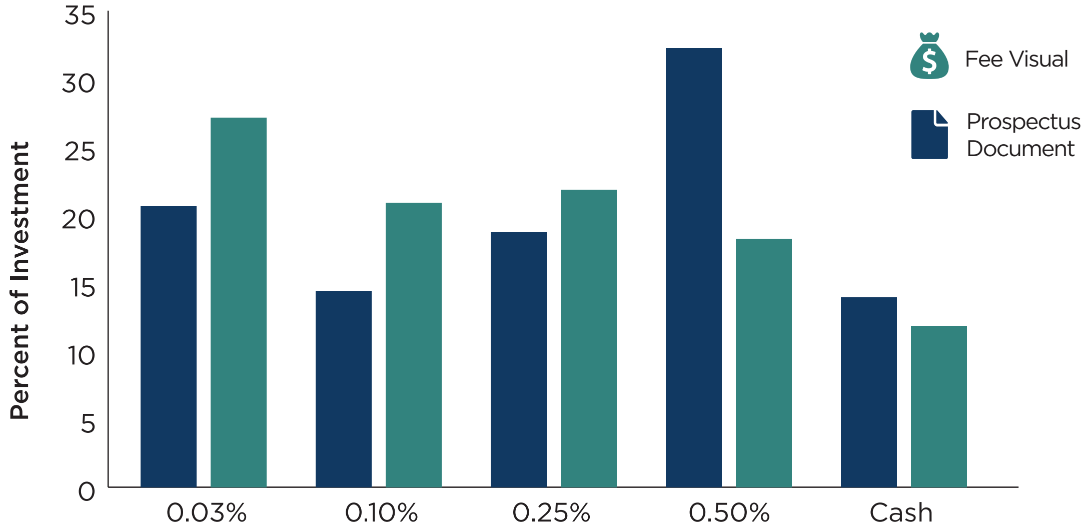
Looking Forward/Policy Implications

While these fee visual prototype tests were successful, we do not claim to have identified the optimal design. However, our results provide an important demonstration that such decision aids may augment disclosure documents and help investors prioritize cost information in their decisions. Ultimately, having more awareness of costs will facilitate better investment decisions.

COVID-19

Investment decisions are influenced by household balance sheets. People are more likely to invest when they have disposable income available. Conversely, people who have recently faced emergency shocks may be less likely to invest, and may draw down on investment assets in a time of need.

Figure 9: **Fee Visuals Reduce Investment in Expensive Funds**



This figure shows average percent allocation to each fund by condition. Fee visuals reduced allocation to the expensive (.5%) fund and increased allocation to less expensive funds (.03% and .1%).

The COVID-19 pandemic caused a large macroeconomic shock that potentially reverberated through many households. Some immediate impacts of the pandemic were that many jobs were lost and many people were unable to get to work safely. Aid that was made available to households during this time may have helped with sudden financial hardships; however, the pandemic had other, far-reaching effects. For some households, the pandemic may have led to lasting issues such as the death of a breadwinning spouse.

To better understand the evolution of household finances during this crisis, OIAD conducted regular, monthly surveys on a wide range of topics. Building off an initial survey of 6,000 households in September 2019, POSITIER conducted a nationally representative panel study from July 2020 through June 2021. This monthly panel tracked the evolution of household perceptions, including their finances, investment activity and health status during the COVID-19 pandemic. These data help shed light on how Americans fared during the crisis. The POSITIER infrastructure and the fortuitous collection of survey data in 2019 offered a unique opportunity for OIAD to both paint a before-and-after picture and to rapidly launch a high frequency survey at a time when conventional economic data sources such as gross domestic product (GDP) were simply too slow and infrequent to be meaningful in such a rapidly changing environment.

The data show that the onset of the pandemic was a difficult time for many households. The number of households experiencing a large income drop tripled compared with the 2019 survey. Rates of hospitalization more than doubled. Self-reported cases of having lost money in an investment fraud scheme also increased with the rate of households experiencing fraud tripling. There were also large changes in households' net worth with households exposed to COVID having the greatest decreases.

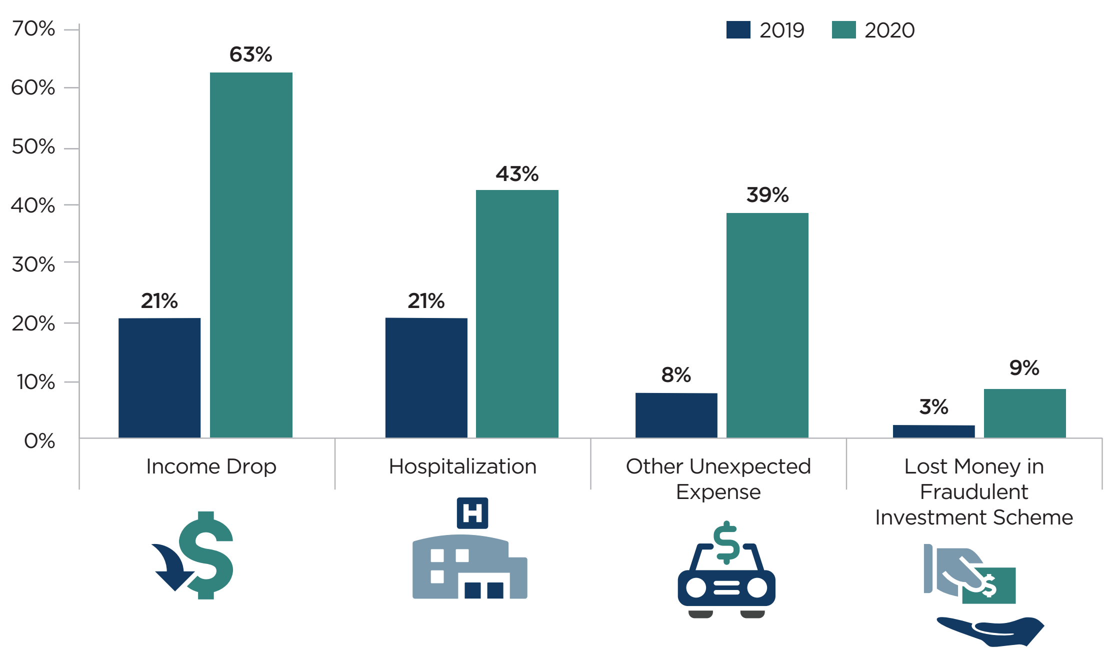
Despite an increase in social sector supports for many households, households responded to these shocks by drawing down their savings. Those with eight months of unemployment were twice as likely to spend money out of savings than those that were not unemployed during this period. Figure 11 shows the increased likelihood of having spent money out of savings as the number of months unemployed increased. Concerns about being able to pay for housing and get medical care increased as members of households spent more time unemployed. Many households that sold securities reported doing so to pay for large expenses.

To evaluate the overall impact on households, we also measured households' self-reported financial well-being.[192] We did not see much change in this measure over the course of the pandemic. This could be due to social sector supports for households, or it could suggest that the financial well-being index we used is simply not sensitive to changes in a household's financial circumstances. More research is needed to better understand this observation.

According to our data, there was also an increase in investment trading during the pandemic. In December 2019, 4% of households reported having traded during that month, compared with 17% of households in December of 2020. The increased trading activity lasted throughout our data on the pandemic. From the end of 2020 to June 2021, there was a steady increase of investors reporting that they purchased securities because they believed that overall market returns were increasing.

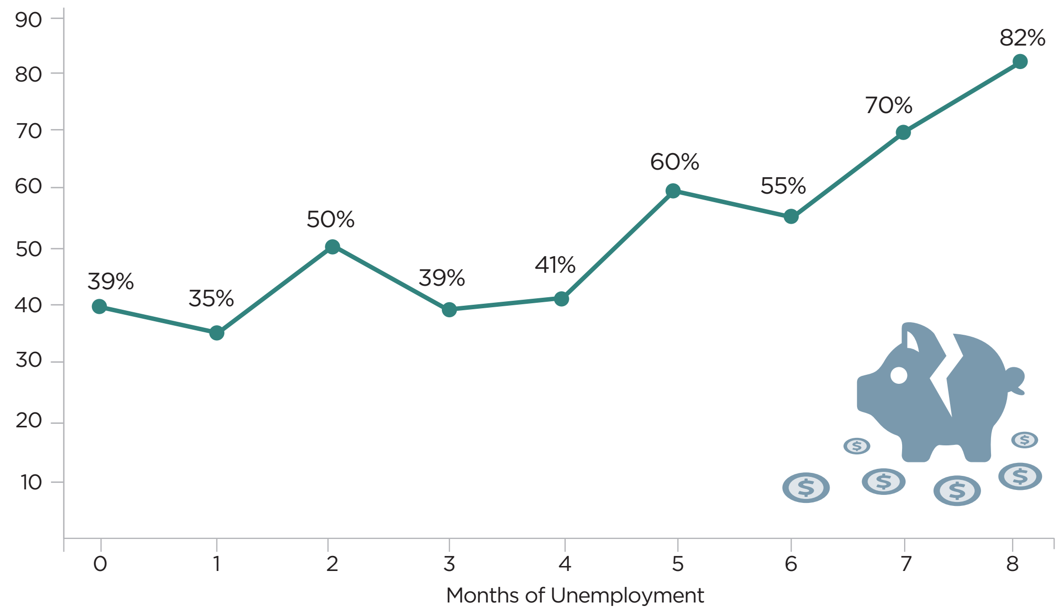
POSITIER surveys enabled OIAD to evaluate the impact that the pandemic had on investors, capital formation, and the maintenance of fair, orderly

Figure 10: **Respondents Reporting a Financial Shock, by Shock Type 2019 vs. 2020**



Estimated percent of households having experienced the respective shock in 2019 compared with 2020.

Figure 11: **Percent of Households Reporting Spending Savings by Duration of Unemployment**



The figure represents the fraction of individuals reporting having spent money out of their savings by the number of consecutive months of unemployment they were experiencing at the time. Households with eight consecutive months of unemployment had more than double the rate of spending savings than households that were not experiencing unemployment.

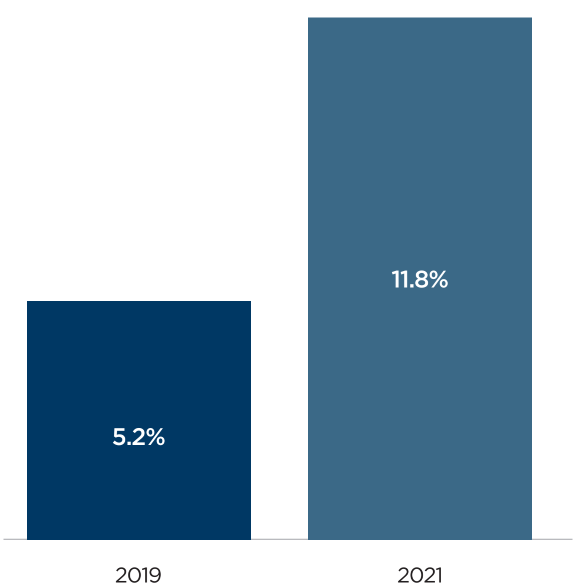
and efficient markets. The pandemic's effects were large and far-reaching with many households experiencing decreases in their income. Our survey results quantified many of the challenges that households faced during this time, and offered the opportunity to provide data to the Commission on many unpredictable market movement or economic shock issues that investors may face going forward. Additional leveraging of these survey resources would provide the Commission with valuable insight into investors and the problems they face, as well as insight on impediments to capital formation and market fairness and efficiency, and overall offer the potential to provide the Commission with an early warning system on a wide range of investor and market issues.

DIGITAL ASSETS

Consumer interest in digital assets, including cryptocurrencies (DAC) has increased substantially in the last few years. In an effort to better understand use of these products, including which demographic groups use them and how retail investors view them, we conducted complementary survey and qualitative research regarding DACs. In our survey research, we fielded two surveys of the U.S. population, one in fall of 2019 and another in spring of 2021, asking whether respondents owned DACs. Additionally, we conducted a qualitative study with a small group of owners of DACs in summer of 2020 to provide more depth on how they viewed these products.

Our surveys reveal significant growth in the proportion of the U.S. population that owns DACs. From the fall of 2019, to the spring of 2021, estimated ownership of DACs grew from 5.2 percent to 11.8 percent of households in the US, as shown in Figure 12. The general trend of increasing ownership occurred widely, with increases for most sociodemographic groups, including across income and net worth categories. However, there were some persistent trends in ownership across groups. Younger people were much more likely to own DACs. People who are 18–29 have approximately 10 times higher ownership rates than people who are 60 or older. Examining ownership by race and ethnicity, we find the lowest rates of DAC ownership among non-Hispanic white people relative to the other race and ethnicity groups collected and highest among African Americans in 2021. Finally, DAC ownership rates are higher for people who have retirement accounts, relative to those without retirement accounts, and higher still for people who have non-retirement investment accounts (e.g., a brokerage accounts). It will be important to continue tracking ownership of DACs, with particular attention to who owns these assets and the relationship between DAC ownership and other investing.

Figure 12: **DAC Ownership Rates Over Time**



DAC ownership rates in 2019 and 2021.

In the qualitative study, our small group of participants first reported their perceived level of expertise regarding DACs; we split the respondents into “self-identified expert” and “self-identified novice” groups. Each group was given its own message board to discuss their views of DACs. Some DAC owners view DACs as both investments and currencies. The owners tend to get their information about DACs from social media and check for fraud by reviewing the DAC’s website. To better understand people’s ability to detect fraudulent DACs, they were directed to a mock Initial Coin Offering (ICO) website, one meant to mimic a coin offering, but also designed to include features common in fraud. The website was originally designed to help raise awareness about potential fraud schemes that may be masked as initial coin offerings. About three-quarters of our self-reported DAC experts said they would be likely to invest in the mock ICO, while only 16% of self-reported novices said they would be likely to invest. This is quite surprising since we would expect experts to be more familiar with DACs and be wary of the unreasonably good terms offered on the website, such as a guaranteed rate of return, leading them to be less likely to invest. Unfortunately, it is difficult to generalize from these findings since they come from a very small sample of individuals. Yet, the findings highlight investors’ susceptibility to fraudster tricks. More data will need to be collected before we are able to have a firm understanding of how investors engage with DACs.

CHALLENGES TO TESTING AND FULFILLING OIAD'S STATUTORY MISSION

Despite an impactful research program, OIR faces significant headwinds in attempting to fulfill OIAD's statutory mandate. Headwinds include:

- **Extended approval process for the release of research:** the approval process for many of the projects discussed above took longer than we had anticipated.
- **Resource constraints:** while the Commission has many important competing interests for scarce resources, and OIR has been recognized to have made impactful contributions with extremely limited budgetary and human resources, we believe that with a level of support comparable to research programs in other agencies and other research teams at the Commission, we could provide considerable additional benefits to the Commission, investors and other stakeholders.
- **Institutional culture:** our independent benchmarking research project was deemed important enough to be heavily cited by the Division of Investment Management in its Tailored Shareholder Reports Rulemaking. We have made some encouraging strides in communicating the benefits of our independent research to other policymaking divisions, but this may require additional efforts on our part to help them better understand the ways in which they can leverage our work and skills.

Looking Forward

For policies that have a direct impact or interface with investors, a serious, data-driven evidentiary basis should be the starting point for policy development. Over OIAD's past several Reports on Activities, the Reports on Investor Testing therein have outlined ways in which the Commission could be more effective at doing this.[193] In our view, considerable cultural and process change is key to more effective Commission policymaking. The POSITIER architecture, along with the interdisciplinary OIR team, was designed to provide specific capacities that will enable the Commission to maximize effectiveness, and in particular to support inclusion of investor perspectives in the policymaking process.

As OIR continues to shape out a vision to the Commission and to extol the benefits of social science and testing, our work progresses on other fronts, particularly our quest to provide deep insights to the Commission that would help to better identify problems investors face and test potential solutions. Our forthcoming internal strategic plan outlines priority areas in realms such as investor and household characteristics and capabilities; information provision and delivery context; and macroeconomic and financial market factors affecting investors. We are ever continuing in our pursuit of deep knowledge and research to help the Commission better protect investors, maintain fair, orderly, and efficient markets, and facilitate capital formation.


98.30
82.49
January
Febuary
March
April
May
June
July
September
October
December
52.87
40.28
40.25

OMBUDSMAN'S REPORT

As set forth in Exchange Act Section 4(g)(8), 15 U.S.C. § 78d(g)(8), the Ombudsman is required to: (i) act as a liaison between the Commission and any retail investor in resolving problems that retail investors may have with the Commission or with self-regulatory organizations; (ii) review and make recommendations regarding policies and procedures to encourage persons to present questions to the Investor Advocate regarding compliance with the securities laws; and (iii) establish safeguards to maintain the confidentiality of communications between investors and the Ombudsman.[194]

The Ombudsman is also required to "submit a semi-annual report to the Investor Advocate that describes the activities and evaluates the effectiveness of the Ombudsman during the preceding year" (Ombudsman's Report).[195] The Ombudsman's Report must be included in the semi-annual reports submitted by the Investor Advocate to Congress. To maintain reporting continuity, the Ombudsman's Report included in the Investor Advocate's June 30 Report on Objectives describes the Ombudsman's activities during the first six months of the current fiscal year and provides an overview of the Ombudsman's objectives for the following full fiscal year. The Ombudsman's Report included in the Investor Advocate's December 31 Report on Activities describes the activities and discusses the effectiveness of the Ombudsman[196] during the full preceding fiscal year. Accordingly, this Ombudsman's Report describes the activities and discusses the effectiveness of the Ombudsman for the full fiscal year from October 1, 2021 through September 30, 2022 (the Reporting Period), and provides a brief outlook for Fiscal Year 2023.

OMBUDSMAN ROLE AND STANDARDS OF PRACTICE

The SEC Ombudsman is a confidential, impartial, and independent resource who serves as a liaison to help retail investors resolve problems they may have with the SEC or with the self-regulatory organizations (SROs) the SEC oversees. The Ombudsman also reviews and recommends policies and procedures to encourage persons to present questions and feedback about the securities laws, and establishes safeguards to maintain the confidentiality of communications between individuals and the Ombudsman. Specific assistance the Ombudsman may provide includes, but is not limited to, the following:

- listening to inquiries, concerns, complaints, and related issues;
- helping persons explore available SEC options and resources;

- clarifying certain SEC decisions, policies, and practices;
- taking objective measures to informally resolve matters that fall outside of the established resolution channels and procedures at the SEC; and
- providing periodic updates to SEC leadership so that they are aware of trends and significant emerging issues that are brought to our attention, and otherwise acting as an alternate channel of communication between retail investors and the SEC.

In practice, individuals often seek the Ombudsman's assistance as an initial point of contact to resolve their inquiries or as a subsequent or ongoing point of contact when they are dissatisfied with the outcome, rate of progress, or resolution of previous inquiries. The broad role and function of the Ombudsman is somewhat similar to the broad roles and functions of ombudsmen at other federal financial regulators.

Like ombudsmen at other federal financial regulators, the Ombudsman follows three core standards of practice:

Confidentiality	Impartiality	Independence
The Ombudsman has established safeguards to protect confidentiality, including the use of an electronic platform for receiving inquiries, a separate email address, dedicated telephone and fax lines, and secure file storage. The Ombudsman generally treats matters as confidential, and takes reasonable steps to maintain the confidentiality of communications. The Ombudsman also attempts to address matters without sharing information outside of the Ombudsman staff, unless given permission to do so. However, the Ombudsman may need to contact other SEC divisions or offices, SROs, entities, and/or individuals and share information without permission under certain circumstances including, but not limited to: a threat of imminent risk or serious harm; assertions, complaints, or information relating to violations of the securities laws; allegations of government fraud, waste, or abuse; or if otherwise required by law.	The Ombudsman does not represent or act as an advocate for any individual or entity, and does not take sides on any issues. The Ombudsman maintains a neutral position, considers the interests and concerns of all involved parties, and works to resolve questions and complaints by clarifying issues and procedures, facilitating discussions, and identifying options and resources.	By statute, the Ombudsman reports directly to the Investor Advocate, who reports directly to the Chairman of the SEC. However, the Office of the Investor Advocate and the Ombudsman are designed to remain somewhat independent from the rest of the SEC. Through the Congressional reports filed every six months by the Investor Advocate, the Ombudsman reports directly to Congress without any prior review or comment by the Commission or other Commission staff.

The Ombudsman's Challenge

The mission statement of the SEC is to "protect investors, maintain fair, orderly, and efficient markets and facilitate capital formation."[197] A predictable question we encounter, then, is what can the Ombudsman do to protect investors? Among many other things, staff in our Office submits tips, complaints and referrals regarding credible allegations of securities law violations to the Division of Enforcement. We conduct independent research and craft tailored solutions for an investor's question or problem. We monitor trends in retail investor complaints to identify emerging areas of concern. Sometimes, however, our staff is unable to provide investors with the assistance or relief they request. For instance, the Ombudsman Office may not:

- decide the facts in a dispute that the investor has with the Commission or an SRO, or in a dispute before an SRO, such as an arbitration or mediation;
- intervene on behalf of, or represent the interest of, an investor in a formal dispute or investigation process;
- provide advice on how the federal securities laws may impact their particular investments or legal options; or
- change formal outcomes, including decisions about whether to investigate an allegation of wrongdoing, settle an enforcement action, or create a Fair Fund.

Given these limitations, when investors contact our Office with such requests, we may identify other means to protect their interests and preserve their legal rights. When appropriate, our staff may direct investors to other SEC resources that will address their questions or concerns, or we may direct investors to external avenues of assistance. For example, when an investor contacts the Ombudsman with concerns that fall under the purview of another federal financial regulator, our staff may, after obtaining consent from the investor, facilitate communication between the investor and the ombudsman from the appropriate regulatory agency to resolve the matter.

In addition to responding to investor complaints, requests and concerns on an *ad hoc* basis, Ombudsman staff also stays current on policy issues that affect retail investors by engaging with investor advocacy groups and law school securities arbitration clinics that provide legal services to harmed investors. Through this engagement, we gain a deeper understanding of potential legal and structural difficulties retail investors may face as they interact with industry professionals and with SROs. This understanding may prompt broader Ombudsman action and advocacy on behalf of retail investors, such as research into a particular area of investor concern.

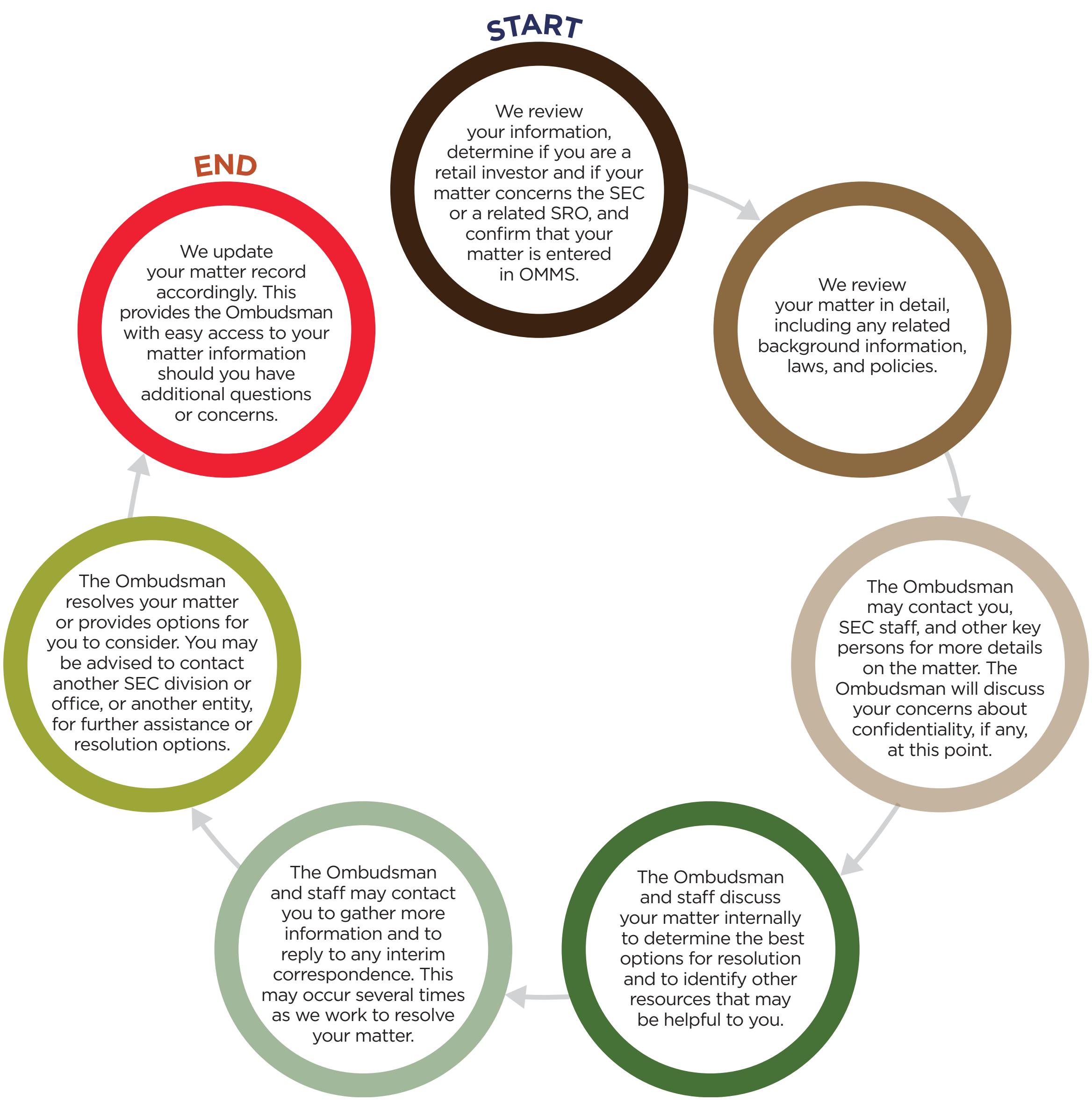
STREAMLINED COMMUNICATIONS WITH RETAIL INVESTORS

The Ombudsman Matter Management System (OMMS) is an electronic platform for receiving inquiries, tracking and analyzing matter and contact information, and ensuring our Office meets all necessary data management, confidentiality, and reporting requirements. The OMMS Form, a web-based, mobile-friendly form permitting the submission of inquiries, complaints, and documents directly to the Ombudsman, guides the submitter through a series of questions specifically designed to elicit information concerning matters within the scope of the Ombudsman's function. In addition, the OMMS Form allows submitters to easily upload and submit related documents for staff review. When an OMMS matter record is created, Ombudsman staff can review the matter details and communicate with the investor via the OMMS platform. OMMS also enables the Ombudsman and staff to search and analyze matters and contacts by submitter, primary issue, fiscal year, and a number of other categories, and to review data and customize specific reports when a deeper examination is required.

While the Ombudsman encourages persons to submit their inquiries via the OMMS Form, persons who do not wish, or are unable, to use the OMMS Form may contact the Ombudsman by email, telephone, fax, and mail.

The following graphic illustrates the general lifecycle of what happens when investors or other interested persons contact the Ombudsman for assistance:

Figure 12: **What Happens When You Contact the Ombudsman.**



SERVICE BY THE NUMBERS

To respond to inquiries effectively and efficiently, Ombudsman staff monitors the volume of inquiries and the resources devoted to addressing the particular concerns raised. Ombudsman staff tracks all inquiries received by, or referred to, the Ombudsman Office, as well as all related correspondence and communications to and from Ombudsman staff. We track the status of the inquiry from its receipt to its resolution or referral, and we monitor the staff engagement and resources utilized to respond to the inquiry. This helps our Office identify systemic or problematic issues, analyze matter volume and trends, and provide data-driven support for recommendations to the Investor Advocate.

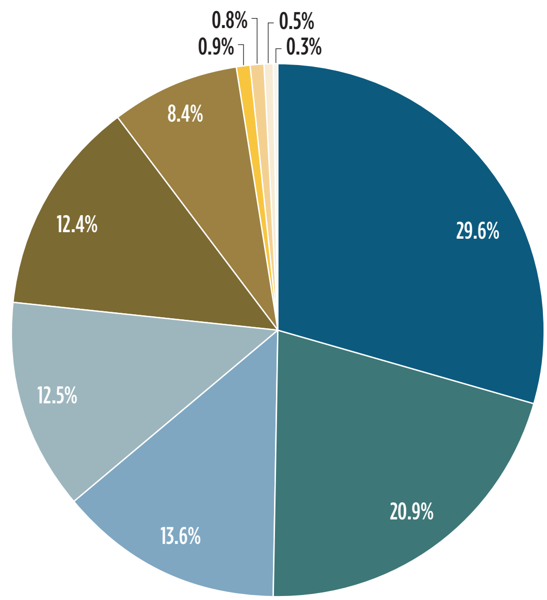
Inquiry volume is measured in terms of matters and contacts. A matter is created when an initial contact—a new, discrete inquiry—is received by or referred to the Ombudsman. When a matter is created, Ombudsman staff reviews the facts, circumstances, and concerns, and assesses the staff engagement and resources that may be required to respond to, refer, or resolve the matter.

To note, a single matter may generate numerous subsequent contacts—related inquiries and communications to or from the Ombudsman staff deriving from the matter. These contacts often require staff to answer additional investor questions, to explain or clarify proposed resolution options, or to discuss issues with appropriate SEC or SRO staff.

Data across Primary Issue Categories

The Primary Issue Categories identified below are broad descriptive labels that reflect the nature of the primary issue raised in a submission, in light of the information in that submission. During this Reporting Period, retail investors, industry professionals, concerned citizens, and other interested persons contacted the Ombudsman for assistance on 2,780 matters covering 12 primary issue categories:

Figure 13: **Matters by Primary Issue Category**[198]
October 1, 2021 – March 31, 2022



- Investment Products / Retirement Accounts (407)
- SEC Questions / Complaints (287)
- Allegations of Securities Law Violations / Fraud (187)
- SEC Investigations / Litigation / Enforcement Actions (172)
- Non-SEC / Other Matters (171)
- Atypical Matters (115)
- Securities Laws / Rules / Regulations / Procedures (13)
- FINRA Complaints / Questions / Procedures (11)
- Company Disclosures and Information (7)
- Securities Ownership (4)

Total Matters **2780**

We note that the volume of matters received increased from 2,401 in FY 2021 to 2,780 in FY 2022, or an increase of almost 16%. We attribute this increase, in part, to the growing market participation of retail investors and accompanying retail investor interest in SEC activities, as well as a heightened awareness of the SEC Ombudsman's role. For instance, we are aware that users of various Reddit fora have directed retail investors to our Office for assistance or to voice complaints about SEC action or inaction. With the prospect of amplified exposure for this Office in the future, we expect the trend toward a greater volume of investor matters to continue.

How the Numbers Inform Our Efforts

The Ombudsman Office tracks matter and contact data to maintain a comprehensive view of the allocation of staff resources and to identify matters and contacts that significantly alter workflow volumes, call for the realignment of Ombudsman staff assignments, or require added staff support. The data also informs staff resource allocation considerations related to proposed program development, training, and outreach efforts. By tracking data across primary issue categories, the Ombudsman may more easily identify potential areas of concern for retail investors, and may act as an early warning system about the impact of particular issues or policies on retail investors and others.

While the numbers above capture the volume and categories of submissions our Office receives, the data does not capture the full value of the services that Ombudsman staff provides to the investing public. Assisting just one investor with one issue can make a significant difference to that investor, and at times, may inform our Office's approach as we examine SEC or SRO policies and rulemakings.

AREAS OF INTEREST AND IMPORTANCE TO RETAIL INVESTORS

During the Reporting Period, Ombudsman staff received just under 2,800 submissions, and initiated thousands more contacts by telephone and email with persons who came to our office for assistance. The summaries that follow are simplified composite descriptions of inquiries and complaints, with details generalized, modified, or removed to avoid the disclosure of nonpublic or confidential information. These summaries should help the reader better understand the variety of submissions we receive, as well as how we respond to those submissions.

- A group of investors complained of an SRO's purported negligence, which allegedly caused their financial loss. Ombudsman staff gathered information relevant to the allegations and provided it to the Division of Enforcement.
- We offered guidance to persons seeking to remove or redact certain personal information from historical SEC publications.
- We assisted harmed investors seeking to recoup their losses from an established SEC Fair Fund.
- We educated interested parties about the status of proposed and adopted Commission rulemakings.
- We thwarted fraudulent investment schemes after identifying several red flags in communications to investors.
- We alerted appropriate FINRA and SEC staff when investors were targeted by FINRA or SEC impersonators.
- We helped investors understand their choices when they were dissatisfied with the processes or outcome of their arbitrations.

ACTING IN THE INTERESTS OF RETAIL INVESTORS

To sufficiently address issues that affect retail investors, our Office may participate in or undertake an objective analysis of those issues, and, when possible, we may identify ways to improve existing SEC and SRO policies or processes.

Toward this end, during the Reporting Period, Ombudsman staff continued its study of the incidence and potential effects of discovery abuse in the FINRA forum. We conducted a preliminary review of the usage of mandatory pre-dispute arbitration clauses in investment advisory agreements. We additionally monitored other policy areas that affect retail investors, such as FINRA's proposal to amend the rules relating to expungement. We discuss each of these efforts below.

Mandatory Arbitration Clauses in Investment Advisory Agreements

Our Office is aware of the growing concern surrounding the usage of mandatory arbitration clauses in investment advisory agreements.[199] The proliferation of such clauses in the brokerage industry and, we understand, among certain SEC-registered RIAs flows from the notion that arbitration is a lower cost and more efficient means of dispute resolution than litigation.[200] Proponents of mandatory arbitration sometimes assert that customers would prefer to arbitrate their disputes, benefitting from the efficiencies of arbitration, rather than to litigate their disputes.[201] And for industry participants, mandatory arbitration provides certainty about the forum in which disputes will be resolved, as well as clarity and control over the costs associated with dispute resolution.[202] However, critics of RIA arbitration have argued that the advantages of arbitrating a dispute might be undermined by cost-prohibitive private forum fees that might preclude claimants from filing a claim.[203] Other critics have posited that arbitral fora have a financial incentive to adopt rules that make them seem favorable to RIAs, and, assuming RIAs select arbitral fora that are likely to treat them favorably, arbitration outcomes might be industry-biased.[204] Commenters have also pointed out that, in contrast to arbitration through FINRA Dispute Resolution Services, arbitrations in other private fora are opaque, where neither the SEC nor an SRO has oversight of or insight into the processes or outcomes of those private arbitrations.[205] For instance, while FINRA makes its dispute resolution statistics publicly available,[206] other private arbitration fora do publish similar statistics.

Notably, with the introduction of the Financial Services and General Government Appropriations Act,[207] on June 28, 2022, the U.S. House of Representatives submitted a report that would direct the SEC to "gather detailed information about how such [pre-dispute arbitration] contracts are used by SEC-registered investment advisers and the effect such contracts have on investors who are harmed by the conduct of advisers."[208] As introduced, the House Report would require the SEC to collect information about the following:

- whether a dispute resolution forum has been designated;
- whether particular forum rules are designated;
- whether a venue is designated;
- whether a class action waiver is included;
- whether there are limitations on claims that may be asserted or damages that may be awarded;
- whether the contract includes any fee shifting provision;
- whether any complaints have been filed against the advisor in accordance with the contract; and
- whether the firm has any arbitration awards or unpaid arbitration awards in the last five years.[209]

Recognizing the significant impact that mandatory arbitration might have on RIA clients, the Ombudsman Office—with the assistance of staff from the Office of the Investor Advocate—recently completed a preliminary review of a random sampling of SEC-registered investment advisory agreements. With this information, we look forward to participating in the broader conversation about RIA arbitration in the near future.

Discovery Abuse in FINRA Arbitration

Because arbitrators act as gatekeepers for the distribution of information between parties in an arbitration, it is critical that arbitrators ensure the parties "cooperate to the fullest extent practicable in the exchange of documents and information to expedite the arbitration."[210] A party's lack of access to discovery will likely impede that party's ability to present its case. Viewed more broadly, as FINRA recently noted, "[f]ailure to comply with the discovery rules hinders the efficient and cost-effective resolution of disputes and undermines the integrity and fairness of FINRA's forum."[211]

During the Reporting Period, Ombudsman staff finalized preparations and document collection for a wide-ranging study to identify what correlations might exist, if any, between the parties' failure to comply with FINRA's discovery rules and the cost, duration, and outcome of FINRA arbitrations. We will advance our efforts with this study in FY 2023.

Newly Proposed Revisions to FINRA's Expungement Rules: FINRA 2022-24

The expungement of customer dispute information from the Central Registration Depository (CRD) system and from FINRA BrokerCheck (BrokerCheck) has been the subject of industry debate for some time.

Initially, FINRA intended for expungement to be only an "extraordinary remedy."[212] Nonetheless, a 2014 study by the Public Investors Advocate Bar Association (PIABA) found that, of cases where expungement was requested, expungement was granted in the vast majority (87.8%) of these cases.[213] PIABA's 2021 follow-up study also found that the frequency with which arbitrators recommended expungement did not align with FINRA's "factually impossible or clearly erroneous" standard for granting expungement prescribed in FINRA Rule 2080.[214]

Prompted by requests for reform in this area, in 2017, FINRA issued Regulatory Notice 17-42 ("Notice 17-42"), seeking comment on a number of recommended expungement rule changes.[215] In September 2020, FINRA filed with the Commission SR-FINRA 2020-030 ("FINRA 2020-030"), which proposed various amendments to the existing expungement rules.[216] FINRA received a number of comment letters[217] objecting to the proposals in FINRA 2020-30, primarily from parties who believed that the newly proposed rules would not sufficiently raise the threshold for obtaining expungement relief.[218] After proposing additional amendments based on commenter concerns,[219] FINRA withdrew FINRA 2020-30 from SEC review in May of 2021.[220]

In August 2022, FINRA filed SR-FINRA 2022-24 ("FINRA 2022-24") with the SEC, re-proposing changes to its expungement rules.[221] The proposals in FINRA 2022-24 are distinct from FINRA's previously proposed changes and existing rules in several key respects, as outlined below.[222]

Panel Size and Composition

FINRA 2022-24 provides that all expungements, including simplified arbitrations,[223] be decided by three arbitrators selected from a Special Arbitrator Roster.[224] To be eligible for the Special Arbitrator Roster, an arbitrator would need to complete FINRA's chairperson training and: (1) have a law degree, bar membership in at least one jurisdiction, and prior experience serving as an arbitrator through award on at least one arbitration administered by an SRO in which hearings were held; or (2) have prior experience serving as an arbitrator through award on at least three arbitrations administered by an SRO in which hearings were held.[225]

In Notice 17-42, FINRA originally recommended establishing a roster of public chairpersons from which a panel of three arbitrators would be chosen.[226] However, FINRA 2020-30 would have permitted a single arbitrator to make expungement decisions in simplified arbitrations.[227]

While FINRA 2022-24's three-arbitrator requirement has been generally well received, commenters have split on the question of the qualifications for the Special Arbitrator Roster. For instance, one commenter recommended that the Roster not be limited to chair-qualified public arbitrators, asserting that understanding the value of a customer complaint should be the most important qualification.[228] Another commenter expressed concerns that the proposed amendments did not require arbitrators to possess substantive securities experience, without which the arbitrators may struggle to understand the nuances of investors' complaints.[229]

Unanimous vs Majority Decision for Expungement [230]

FINRA 2022-24 would require an arbitration panel to unanimously agree that expungement relief was merited,[231] a departure from the proposal in FINRA 2020-030 that a mere majority of the panel could grant expungement relief.[232]

Commenters varied in their support of a unanimous arbitrator decision. One supporter of the proposal argued that a unanimous decision more closely aligns with the view of expungement as an extraordinary remedy.[233] Some critics of the proposal asserted a single arbitrator's power to veto an expungement decision would likely result in the failure to remove inaccurate CRD data,[234] and a unanimity requirement was unnecessary, as unanimous decisions are commonplace[235] and already encouraged.[236]

Notification to State Regulators

A third notable aspect of FINRA 2022-24 is the enhanced notification requirement to allow customers and State regulators to attend and participate in expungement hearings.[237] While FINRA-2020-030 introduced the requirement that state regulators be given notice of expungement proceedings within 30 days of receiving an expungement request,[238] FINRA 2022-24 makes further allowance for state regulatory participation by providing state regulators with earlier notice of expungement hearings.[239]

In its comment letter, the North American Securities Administrators Association (NASAA) acknowledged the potential benefit of earlier notice of expungement hearings for state regulators, but noted that state regulatory representation in expungement proceedings might be limited due to limited resources and state-specific procedural requirements.[240]

Time Limits for Expungement Requests

Under the provisions of FINRA 2022-24, expungement requests filed separately from a customer arbitration ("straight-in requests") would need to be filed within three years after the date the customer complaint was initially reported in the CRD system, and within two years after the close of any customer-initiated arbitration or civil litigation associated with the customer dispute.[241]

Supporters of this proposed change regard it as an important step in limiting the number of complaints an associated person may seek to expunge,[242] and in improving the parties' ability to produce relevant documents relating to more recent disputes.[243] Critics of this proposal, many of whom are registered broker-dealer representatives and registered investment advisers, generally expressed the view that financial professionals should have the necessary time to seek expungement relief, particularly where customer complaints are withdrawn or where a financial professional is unfamiliar with expungement as a remedy.[244]

FINRA 2022-24's proposed limits are more generous than Notice 17-42's recommendation of a one-year limitation period after the underlying customer case closed,[245] but more restrictive than the two-year time limit proposed by FINRA 2020-30.[246]

Status of Proposal

On September 27, 2022, the SEC extended the time for the Commission to take action on FINRA 2022-24 until November 11, 2022.[247] The Ombudsman Office continues to monitor developments with respect to this rulemaking, given its impact on retail investors' access to the customer dispute information needed to make an informed decision when hiring a financial professional.

OMBUDSMAN OUTREACH AND ENGAGEMENT EFFORTS

2022 Investor Advocacy Clinic Summit

The Office of the Ombudsman and the Division of Enforcement's Retail Strategy Task Force (RSTF) hosted the third SEC Investor Advocacy Clinic Summit (the Summit) on March 31, 2022. Because the agency was operating under a mandatory telework posture at the time, the event was held virtually.[248]

The Summit consisted of a public outreach event, livestreamed on www.sec.gov, and a closed session for SEC staff and invited guests. During the closed session, students from law school investor advocacy clinics across the country presented on various issues of importance to retail investors, and engaged in collaborative sessions with senior SEC staff. In addition to opening remarks from SEC Chair Gary Gensler, the Summit also featured remarks from Commissioners Caroline Crenshaw, Allison Herren Lee, Hester Peirce, then-SEC Investor Advocate Rick Fleming, and Gerri Walsh, President of FINRA's Investor Education Foundation and Senior Vice President of Investor Education. Over 400 viewers joined the livestreamed portion of the event, and over 150 viewers joined the closed session through the virtual platform, making this year's Summit the most widely attended to date.

"Safeguarding the Golden Years: Avoiding Financial Fraud"

The SEC's RSTF hosted the public outreach portion of the event, titled "*Safeguarding the Golden Years: Avoiding Financial Fraud.*" During this part of the program, law students from Fordham University's Securities Arbitration and Litigation Clinic discussed ways that predatory financial professionals might target senior investors. Law students from the University of Miami's Investor Rights Clinic discussed the importance of establishing a caregiver plan. Panelists from the SEC, AARP and the FINRA Investor Education Foundation provided expert advice on how seniors and their caregivers might avoid predatory financial professionals, and responded to moderated questions and questions submitted through a designated Summit Inbox.

Given the success of this first collaboration with RSTF, Ombudsman staff looks forward to working with RSTF in future efforts to further retail investor interests.

Clinic Student Presentations

The closed portion of the program featured presentations from nine law school clinics about areas of complexity and concern for retail investors. Each presentation was followed by question and answer sessions with a panel of SEC subject matter experts in these areas.

In the first panel, "Speculative Investing: Digital Assets and Meme Stocks," students from the University of Pittsburgh School of Law Securities Arbitration Clinic, Cornell Law School Securities Law Clinic, and the Seton Hall University School of Law FINRA Investor Advocacy Project presented on the risks for retail investors when investing in digital assets, meme stocks, and non-fungible tokens (NFTs).

The second panel focused on the "Risks of Options and Margin Trading." Students from Howard University School of Law Investor Justice and Education Clinic, Cardozo Law School Securities Arbitration Clinic, and St. John's University School of Law Securities Arbitration Clinic discussed real life hazards for retail investors who trade in options and on margin, and identified potential gaps for regulatory consideration.

During the third panel, "Gamification and Investor Behavior," students from Northwestern Pritzker School of Law's Investor Protection Center, New York Law School's Securities Arbitration Clinic, and Pace University Elisabeth Haub School of Law's RealFi Investor Rights Clinic addressed the impact of "gamification" on their own experiences as novice investors, as well as its impact on clinic clients. After identifying various "gamification" techniques used by investing apps, the students suggested possible ways to address these techniques through regulation and other app features.

Closing, Feedback and Future Summit Planning

In a Post-Summit Networking and Debriefing Session, SEC staff answered clinic students' questions and expressed appreciation for the clinic directors and students' commitment to protecting retail investors. The clinic directors highlighted the funding challenges they faced, along with the difficulty in meeting the needs of potential and actual clinic clients. They shared that, without additional funding, some clinics were under pressure to reduce or cease operations. The clinics serve an essential role in retail investor protection by providing retail investors access to free, quality legal representation in securities industry disputes. The Ombudsman Office will continue to promote public awareness of the clinics' efforts, and to support greater clinic funding.

Feedback about the Summit—and, more specifically, about the student presentations—was uniformly positive. Viewers and panelists commended the students' mastery of the applicable securities laws, the professional quality of their presentations, and their thought-provoking suggestions.

In the wake of such positive feedback and increased Summit participation year over year, Ombudsman staff have already begun planning for the fourth annual Investor Advocacy Clinic Summit in the spring of 2023. We look forward to leveraging the institutional knowledge of talented SEC staff, listening to the perspectives of our guest speakers, and learning from the unique experiences of the students and clinic directors on the front lines of retail investor protection.

Additional Engagement Activities

In addition to the Summit, Ombudsman staff participated in and attended select securities industry events with the goal of improving our service to retail investors and educating external groups about the assistance our Office can provide. These events included the Coalition of Federal Ombudsman 2021 Annual Conference, SEC Speaks 2022, quarterly meetings with the Public Investors Arbitration Bar Association (PIABA), and the 2022 Securities Arbitration Clinic Directors Annual Roundtable.

In Fiscal Year 2023, we hope to expand the footprint of this Office by more actively participating in external securities industry activities, and by establishing and fortifying relationships with other SEC divisions and offices through enhanced internal engagement efforts.

OBJECTIVES AND OUTLOOK

This Reporting Period has been a time of much transition and accompanying challenges for our Office. In this vein, we would like to express our gratitude to Latisha Brown, who previously served as Acting Ombudsman, and who gracefully helped guide Ombudsman staff through this period of change.

We would also like to thank our Senior Counsel Nancy Doty, who transferred to the Office of Investor Education and Advocacy in Fiscal Year 2022. Nancy was an invaluable member of the Ombudsman team and a principal influence in how we serve investors. In her place, it has been our pleasure to welcome Lisa Skrzycki as Senior Counsel. Lisa has already made significant contributions during her short time in the Office, and, together with Joshua Tolbert-Smith (Senior Law Clerk, (Contractor)) and Charity Miti-Kavuma (Senior Paralegal (Contractor)), she rounds out our capable team. We hope to grow our team with the addition of another Attorney Adviser in Fiscal Year 2023.

Despite staffing challenges and an increasing portfolio of responsibilities, our team continues to provide thoughtful and timely assistance to the retail investors that ask for our help. We continue to meet these new responsibilities with enthusiasm and a deep commitment to public service. As the role of the Office grows and evolves, we look forward to the new ways that we will provide effective and compassionate assistance to those most in need.

Stacy A. Puente
Acting Ombudsman

SUMMARY OF INVESTOR ADVISORY COMMITTEE RECOMMENDATIONS AND SEC RESPONSES

Congress established the Investor Advisory Committee (IAC) to advise and consult with the Commission on regulatory priorities, initiatives to protect investor interests, initiatives to promote investor confidence and the integrity of the securities marketplace, and other issues.[249] The IAC is composed of the Investor Advocate, a representative of state securities commissions, a representative of the interests of senior citizens, and not fewer than 10 or more than 20 members appointed by the Commission to represent the interests of various types of individual and institutional investors.[250]

Exchange Act Section 39 authorizes the IAC to submit findings and recommendations for review and consideration by the Commission.[251] The statute also requires the SEC "promptly" to issue a public statement assessing each finding or recommendation of the IAC and disclosing the action, if any, the Commission intends to take with respect to the finding or recommendation.[252] While the Commission must respond to the IAC's recommendations, it is under no obligation to agree with or act upon the recommendations.[253]

In each of its reports to Congress, including this one, the Office of the Investor Advocate summarizes the IAC recommendations and the SEC's responses to them.[254] We continue to report on recommendations until we believe the Commission's response is final. For summaries of Commission activities related to previous IAC recommendations, please refer to our earlier reports to Congress. The Commission may in fact be pursuing initiatives that are responsive to IAC recommendations, but such initiatives may not yet be public. Commission staff—including the staff of this Office—are prohibited from disclosing nonpublic information.[255] Therefore, any such initiatives are not reflected in this Report.

Topic	Date	IAC Recommendation	SEC Response
Accounting Modernization	Sept. 21, 2022	Establish an Advisory Committee on Accounting Modernization that can assist the FASB in its standard-setting process. Require that the FASB study the costs of delayed rulemaking, and urge the FASB to create a single searchable database of its authoritative literature that would be freely available to the public.	Pending.

Topic	Date	IAC Recommendation	SEC Response
Climate-Related Disclosure	Sept. 21, 2022	Add a requirement of a "Management Discussion of Climate-Related Risks & Opportunities;" add a required disclosure of material facility locations; and eliminate the disclosure requirement around board expertise.	Pending.
Cybersecurity Disclosure	Sept. 21, 2022	Require companies to disclose the key factors used to determine the materiality of a cybersecurity incident; extend certain disclosure provisions to registration statements; and reconsider the disclosure requirement around board cybersecurity expertise.	Pending.
Protecting Elder Investors	June 9, 2022	Propose various reforms to improve the deterrence and prosecution of investment fraud against seniors.	Pending.
Funding Investor Advocacy Clinics	June 9, 2022	Renewing a 2018 IAC recommendation to provide grants to law school clinics which represent investors.	Pending.
Individual Retirement Accounts (IRAs)[256]	Dec. 2, 2021	Encourage federal agencies to address portability and force-outs; have the SEC address the use of alternative investments in IRAs; and coordinate with other federal and state regulators to improve investor protections over retirement savings.	Pending.
Special Purpose Acquisition Companies (SPACs)[257]	Sept. 9, 2021	Enhance disclosure requirements regarding the SPAC sponsor, potential conflicts of interest, mechanics of the SPAC and de-SPAC transactions, the target search process, and any additional funding. Publish an analysis of SPAC participants, their compensation, and their incentives.	On March 30, 2022, the SEC proposed adding and amending rules to enhance investor protection and disclosure related to SPAC and de-SPAC transactions.[258]
Rule 10b5-1 Plans[259]	Sept. 9, 2021	Require a "cooling off" period and prohibit overlapping Rule 10b5-1 plans. Require enhanced plan reporting and disclosures.	On Jan. 13, 2022, the SEC proposed amendments to Rule 10b5-1, including enhancements to plan reporting and disclosure.[260] On December 14, 2022, the Commission adopted these amendments with certain modifications in response to public comments.

Topic	Date	IAC Recommendation	SEC Response
Minority and Underserved Inclusion[261]	March 11, 2021	Support regulations, legislation, programs and other steps that increase acquisition of financial assets and services by minority communities. Continue and build upon SEC programs that are directed toward increasing financial literacy and supporting minority investment.	In process. Among other things, the SEC's Strategic Plan for Fiscal Years 2022-2026 identifies one of its goals as supporting a skilled workforce that is diverse, equitable, and inclusive. The Strategic Plan states expressly that the Commission will focus on the workforce to increase capabilities, leverage shared commitment to investors, and promote diversity, equity, inclusion, accessibility, and equality of opportunity. Consistent with its support of steps that increase acquisition of financial assets and services by minority communities, SEC Chair Gary Gensler and other Commissioners welcomed the establishment of an access and inclusion working group within the Investor Advisory Committee in December 2022.
Credit Rating Agencies[262]	March 11, 2021	Identify in Office of Credit Ratings (OCR) reports specific nationally recognized statistical rating organizations whose conduct was deemed to be materially deficient. Remodel OCR's annual examination reports to conform to the approach utilized in the Public Company Accounting Oversight Board's annual public inspection reports.	Pending.
Accounting and Financial Disclosure[263]	May 21, 2020	Reconsider a 2020 rulemaking proposal to amend Regulation S-K that would permit issuers to omit fourth quarter results in annual reports and that would eliminate the tabular presentation of contractual obligation information. Closely monitor issuers' use of non-GAAP metrics and accounting developments relating to reverse factoring.	On June 23, 2020, the SEC's Division of Corporation Finance staff published disclosure guidance addressing supplier finance programs in the context of pandemic-related disruptions.[264] On October 21, 2020, the FASB decided to add a project to its technical agenda to address the disclosure of supplier finance programs involving trade payables.[265] On November 19, 2020, the Commission adopted the amendments to Regulation S-K, largely as proposed.[266] On December 20, 2021, FASB proposed new disclosures of supplier finance programs.[267]

Topic	Date	IAC Recommendation	SEC Response
ESG Disclosure[268]	May 21, 2020	Commence an effort to update issuer reporting requirements to include material, decision-useful disclosure concerning environmental, social, and governance matters. Consider the utility of both principles-based and prescriptive reporting requirements.	On February 24, 2021, Acting Chair Allison Lee directed the SEC's Division of Corporation Finance to enhance its focus on climate-related disclosure in public company filings.[269] On March 3, 2021, the SEC's Division of Examinations announced its 2021 examination priorities, which included a greater focus on climate-related risks.[270] On March 4, 2021, the Commission announced the creation of a Climate and ESG Task Force in its Division of Enforcement.[271] On March 15, 2021, Acting Chair Lee issued a call for public input on climate change disclosures.[272] On March 21, 2022, the SEC proposed a new disclosure rule for climate-related information in public company filings.[273] On May 25, 2022, the SEC proposed amendments to rules and reporting forms intended to promote consistent, comparable, and reliable information for investors concerning funds' and advisers' incorporation of ESG factors.[274]
Disclosure Effectiveness[275]	May 21, 2020	Enhance the effectiveness of new and existing disclosure relied on primarily by retail investors by, among other things, adopting an iterative process that includes disclosure research, design, and testing.	On October 26, 2022, the Commission adopted rule and form amendments to require mutual funds and exchange-traded funds to transmit concise and visually engaging shareholder reports and to promote transparent and balanced presentations of fees and expenses in investment company advertisements.[276]

Topic	Date	IAC Recommendation	SEC Response
SEC Guidance and Rule Proposals on Proxy Advisors and Shareholder Proposals[277]	Jan. 24, 2020	Revisit priorities in improving the proxy system, revise and republish the 2019 proxy voting rulemaking proposals, and reconsider the 2019 proxy voting guidance.	On July 22, 2020, the Commission adopted the amendments to the proxy rules without republishing them for further comment.[278] On September 23, 2020, the Commission adopted the amendments to Exchange Act Rule 14a-8 without republishing them for further comment.[279] On June 1, 2021, Chair Gensler directed Commission staff to consider whether to recommend further regulatory action regarding proxy voting advice, in particular whether to recommend the Commission revisit its related 2019 and 2020 actions.[280] Also on June 1, 2021, the Division of Corporation Finance issued a statement that it will not recommend enforcement action based on the 2019 guidance or the 2020 amendments while the Commission is considering further regulatory action in this area.[281] On November 17, 2021, the Commission proposed additional amendments to the rules governing proxy advice in light of, among other things, feedback from market participants and certain developments in the market for proxy voting advice.[282] On July 13, 2022, the Commission adopted these amendments.[283]
Exchange Rebate Tier Disclosure[284]	Jan. 24, 2020	Require the national securities exchanges to provide the Commission with regular disclosures regarding rebate tiers offered to their members, and take steps to require monthly public disclosure of these rebate practices.	Pending.

Topic	Date	IAC Recommendation	SEC Response
Proxy Plumbing[285]	Sept. 5, 2019	Require end-to-end vote confirmations to end users of the proxy system, require all involved to cooperate in reconciling vote-related information, conduct studies on investor views on anonymity and share lending, and finalize the 2016 universal proxy rulemaking proposal.	On April 16, 2021, the Commission reopened the comment period on the proposed rules for the use of universal proxy cards in all non-exempt solicitations for contested director elections.[286] On November 17, 2021, the Commission adopted rule and form amendments to require the use of a universal proxy card in all non-exempt director election contests, except those involving registered investment companies and business development companies.[287]
Structural Changes to the US Capital Markets Regarding Investment Research in a Post-MiFID II World[288]	July 25, 2019	Prioritize certain concepts and guiding principles, including the following: (1) consumers of research, regardless of location, should be allowed to choose whether to purchase research "bundled" or "unbundled" from trading costs; and (2) there should be greater transparency regarding research costs and how those costs are borne.	On November 12, 2019, the Commission extended temporary no-action relief from compliance with registration under the Advisers Act for brokers that receive payments for research in hard dollars or through research payment accounts from managers subject to MiFID II through July 3, 2023.[289]
Human Capital Management Disclosure[290]	Mar. 28, 2019	Revise issuer disclosure requirements to elicit more insightful disclosure concerning how human capital within a firm is managed and incentivized.	On August 26, 2020, the Commission adopted rule amendments to modernize the description of business, legal proceedings, and risk factor disclosures that issuers are required to make pursuant to Regulation S-K. The amendments include the addition of human capital resources as a disclosure topic.[291]
Financial Support for Law School Clinics that Support Investors[292]	Mar. 8, 2018	Explore ways to improve external funding sources to the law school investor advocacy clinics. Work with FINRA, NASAA, and other potential partners, and request legislation from Congress to consider permanent funding.	Pending.

Topic	Date	IAC Recommendation	SEC Response
Dual Class and Other Entrenching Governance Structures in Public Companies[293]	Mar. 8, 2018	Direct Division of Corporation Finance staff to scrutinize disclosure documents filed by issuers with dual class and other entrenching governance structures, comment on such documents so as to enhance the salience and detail of risk disclosure, and develop guidance to address a range of issues that such structures raise.	Pending.
Shortening the Settlement Cycle[294]	Feb. 12, 2015	Shorten the security settlement period in the U.S. financial markets from a three-day settlement cycle (referred to as T+3) to a one-day settlement cycle (T+1) for "at least" transactions in U.S. equities, corporate and municipal bonds, and unit investment trusts	On February 9, 2022, the Commission proposed to shorten the settlement cycle to T+1 for equities, corporate bonds and other non-exempt securities.[295]
Accredited Investor Definition[296]	Oct. 9, 2014	Evaluate whether the current definition achieves the goal of identifying a class of individuals who are able to make an informed investment decision and protect their interests without the protections of registration and disclosure. Consider other definitional approaches.	On August 26, 2020, the Commission adopted amendments to the definition of accredited investor.[297] Among other changes, the amendments allow individuals to qualify as accredited investors if they possess certain professional credentials or affiliations, even if they do not meet the income or net worth thresholds. The Commission chose not to modify the definition's income or net worth thresholds.
Impartiality in the Disclosure of Preliminary Voting Results[298]	Oct. 9, 2014	Ensure impartiality in the disclosure of preliminary voting results.	Pending.

Topic	Date	IAC Recommendation	SEC Response
Universal Proxy Ballots[299]	July 25, 2013	Allow universal ballots in connection with short-slate director nominations.	On October 26, 2016, the Commission proposed amendments to the proxy rules to require parties in a contested election to use universal proxy cards that would include the names of all board of director nominees.[300] On November 17, 2021, the Commission adopted final rules relating to the use of universal proxy cards in contested director elections.[301]

ENDNOTES

1 Exchange Act § 4(g)(6), 15 U.S.C. § 78d(g)(6).

2 Exchange Act § 4(g)(6)(A)(i), 15 U.S.C. § 78d(g)(6)(A)(i).

3 *See* SEC, Off. of the Inv. Advoc., Report on Objectives, Fiscal Year 2022 (June 28, 2021) [hereinafter Report on Objectives, Fiscal Year 2022], https://www.sec.gov/files/sec-office-investor-advocate-report-on-objectives-fy2022.pdf.

4 Exchange Act § 4(g)(6)(B)(i), 15 U.S.C. § 78d(g)(6)(B)(i).

5 *Id.* Exchange Act Section 4(g)(6)(B) requires the Report on Activities to include an "inventory" of the most serious problems encountered by investors during the Reporting Period. The inventory must identify any action taken by the Commission or an SRO to resolve each problem, the length of time that each item has remained on our inventory and, for items on which no action has been taken, the reasons for inaction and an identification of any official who is responsible for such action.

6 The Office of the Investor Advocate was established pursuant to Section 915 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act).

7 Report on Objectives, Fiscal Year 2022, *supra* note 3.

8 *See* SEC, Off. of the Inv. Advoc., Report on Objectives, Fiscal Year 2023 (June 30, 2022) [hereinafter Report on Objectives, Fiscal Year 2023], https://www.sec.gov/files/sec-office-investor-advocate-report-objectives-fy2023.pdf at 12.

9 *See* James Chalmers, Emma Cox, & Nadja Picard, The Economic Realities of ESG, PwC (Oct. 28, 2021) (highlighting results of PwC 2021 Global Investor Survey).

10 SEC, Recommendation of the Investor Advisory Committee Relating to ESG Disclosure (May 21, 2020), https://www.sec.gov/spotlight/investor-advisory-committee-2012/esg-disclosure.pdf.

11 Report on Objectives, Fiscal Year 2022, *supra* note 3, at 5, https://www.sec.gov/files/sec-officeinvestor-advocate-report-on-objectives-fy2022.pdf.

12 *See* The Enhancement and Standardization of Climate-Related Disclosures for Investors, Securities Act Rel. No. 11042, Exchange Act Rel. No. 94478, 17 C.F.R. pts. 210, 229, 232, 239, 249 (Mar. 21, 2022) https://www.sec.gov/rules/proposed/2022/33-11042.pdf [hereinafter Climate Release].

13 *Id.*

14 *Id.*

15 SEC, Fact Sheet, The Enhancement and Standardization of Climate-Related Disclosures for Investors at 2, https://www.sec.gov/files/33-11042-fact-sheet.pdf.

16 In addition, the proposal offers some accommodations for Scope 3 emissions disclosure: (1) a safe harbor for Scope 3 emissions disclosure from certain forms of liability under the federal securities laws; (2) an exemption for smaller reporting companies (SRCs) from the Scope 3 emissions disclosure provision; and (3) a delayed compliance date for Scope 3 emissions disclosure. Climate Release, *supra* note 12, at 210.

17 *West Virginia v. EPA*, 597 U.S. __ (2022).

18 *See* Enhanced Disclosures by Certain Investment Advisers and Investment Companies about Environmental, Social, and Governance Investment Practices, Investment Adviser Act Release No. 6034, Investment Company Act Release No. 34594, 17 C.F.R. pts. 200, 230, 232, 239, 249, 274, 279 (May 25, 2022), https://www.sec.gov/rules/proposed/2022/ia-6034.pdf [hereinafter Adviser ESG Release].

19 *See, e.g.*, Report on Objectives, Fiscal Year 2023, *supra* note 8, at 10.

20 17 C.F.R. § 240.10b-5 (2020).

21 17 C.F.R. § 240.10b5-1 (2020).

22 See Letter from Allison Herren Lee, Acting Chair, SEC, to Elizabeth Warren, U.S. Senator (Apr. 14, 2021) [hereinafter Lee, Apr. 14, 2021 Letter] (listing recent Commission enforcement actions involving Rule 10b5-1 plans), https://www.warren.senate.gov/imo/media/doc/Warren%20et%20al%20-%20Rule%2010b5-1%20-%20ES159896%20Response.pdf.

23 Taylan Mavruk & H. Nejat Seyhun, Do SEC's 10b5-1 Safe Harbor Rules Need to be Rewritten?, 2016 Colum. Bus. L. Rev. 133, 181-82, https://journals.library.columbia.edu/index.php/CBLR/article/view/1734/754; *see also* Letter from Elizabeth Warren, Sherrod Brown & Chris Van Hollen, U.S. Senators, to Allison Herren Lee, Acting Chair, SEC (Feb. 10, 2021) [hereinafter Letter from Elizabeth Warren et al.], https://www.warren.senate.gov/imo/media/doc/02.10.2021%20Letter%20from%20Senators%20Warren,%20Brown,%20and%20Van%20Hollen%20to%20Acting%20Chair%20Lee.pdf.

24 Gary Gensler, Chair, SEC, Prepared Remarks, CFO Network Summit (June 7, 2021), https://www.sec.gov/news/speech/gensler-cfo-network-2021-06-07.

25 Under the rule, for example, plans may provide that if company shares hit a predetermined price level, company executives will automatically sell previously-determined portions of their shares. 17 C.F.R. § 240.10b5-1(c)(1)(B)(2) (2020). These potentially large sales may then limit or depress share value after positive news, which purchasing investors have no ability to predict. See Letter from Elizabeth Warren et al., *supra* note 23 (discussing research findings).

26 *See* Rule 10b5-1 and Insider Trading, Securities Act Rel. No. 33-11013, 17 C.F.R. pts. 229, 232, 240 and 249 (Jan. 13, 2022), https://www.sec.gov/rules/proposed/2022/33-11013.pdf.

27 *See* Insider Trading Arrangements and Related Disclosures, Securities Act Rel. No. 33-xxxxx, 17 C.F.R. pts. 229, 232, 240 and 249 (Dec. 14, 2022), https://www.sec.gov/rules/final/2022/__________.pdf.

28 SEC, Recommendation of the Investor Advisory Committee Regarding Recommendation of the Investor-as-Owner Subcommittee on Rule 10b5-1 Plans (Sept. 9, 2021), https://www.sec.gov/spotlight/investor advisory-committee-2012/draft-recommendation-of the-iao-subcommittee-on-10b5-1-plans-082621.pdf.

29 *See, e.g.*, SEC, Off. of the Inv. Advoc., Report on Activities, Fiscal Year 2021 (Dec. 16, 2021) [hereinafter Report on Activities, Fiscal Year 2021], https://www.sec.gov/files/FY21_OIAD_SAR_ACTIVITIES_REPORT_FINAL_508.pdf at 5.

30 *See* Universal Proxy, Exchange Act Rel. No. 93596, 17 C.F.R. pt. 240 (Nov. 17, 2021), https://www.sec.gov/rules/final/2021/34-93596.pdf.

31 *See* Holding Foreign Companies Accountable Act Disclosure, Exchange Act Rel. No. 93701, 17 C.F.R. pts. 200, 232, and 249 (Dec. 2, 2021), https://www.sec.gov/rules/final/2021/34-93701.pdf.

32 *See* Share Repurchase Disclosure Modernization, Exchange Act Rel. No. 34-93783, 17 C.F.R. pts. 229, 232, 240, 249, and 274 (Dec. 15, 2021), https://www.sec.gov/rules/proposed/2021/34-93783.pdf.

33 *See* Modernization of Beneficial Ownership Reporting, Securities Act Rel. No. 11030, 17 C.F.R. pts. 232 and 240 (Feb. 10, 2022), https://www.sec.gov/rules/proposed/2022/33-11030.pdf.

34 *See* Cybersecurity Risk Management, Strategy, Governance, and Incident Disclosure, Securities Act Rel. No. 33-11038, Exchange Act Rel. No. 34-94382, 17 C.F.R. pts. 229, 232, 239, 240, and 249 (Mar. 9, 2022), https://www.sec.gov/rules/proposed/2022/33-11038.pdf. Over the years, we have monitored the efforts of the Commission in addressing cybersecurity risks affecting the securities markets, and we are generally supportive of the Commission's proposed rules in this area.

35 *See* Updating EDGAR Filing Requirements and Form 144 Filings, Securities Act Rel. No. 11070, 17 C.F.R. pts. 230, 232, 239, 240 and 249 (June 2, 2022), https://www.sec.gov/rules/final/2022/33-11070.pdf.

36 *See* Proxy Voting Advice, Exchange Act Rel. No. 95266, 17 C.F.R. pts. 240 and 276 (Jul. 13, 2022), https://www.sec.gov/rules/final/2022/34-95266.pdf.

37 *See id.* In addition, the Commission removed paragraph (e) of the note to Exchange Act Rule 14a-9 in order to avoid any misperception that the addition of Note (e) to Rule 14a-9 purported to determine or alter the law governing that rule's application and scope, including its application to statements of opinion.

38 *See* Report on Activities, Fiscal Year 2021, *supra* note 29 at 7.

39 *See* Substantial Implementation, Duplication, and Resubmission of Shareholder Proposals Under Exchange Act Rule 14a-8, Exchange Act Rel. No. 95267, 17 C.F.R. pt. 240 (Jul. 13, 2022), https://www.sec.gov/rules/proposed/2022/34-95267.pdf.

40 *See* Pay Versus Performance, Exchange Act Rel. No. 95607, 17 C.F.R. pts. 229, 232, and 240 (Aug. 25, 2022), https://www.sec.gov/rules/final/2022/34-95607.pdf.

41 *See* Inflation Adjustments under Titles I and III of the JOBS Act, Securities Act Rel. No. 11098, 17 C.F.R. pts. 227, 230, 239, and 240 (Sept. 9, 2022), https://www.sec.gov/rules/final/2022/33-11098.pdf.

42 Over the course of 2020, 248 SPACs were formed, a 420% increase over 2019's 59. In 2021, 613 SPACs were launched. *See* SPAC Statistics, SPACInsider, https://spacinsider.com/stats/ (last visited November 9, 2022).

43 SEC, Div. of Corp. Fin., Disclosure Guidance: Topic No. 11, Special Purpose Acquisition Companies (Dec. 22, 2020), https://www.sec.gov/corpfin/disclosure-special-purpose-acquisition-companies.

44 *See, e.g.*, Securities Act § 11, 15 U.S.C. § 77k; Securities Act § 12(a)(2), 15 U.S.C. § 77*l*(a)(2). Pursuant to the Commission's December 22, 2020 approval of a listing rule from the New York Stock Exchange, direct listings also do not require use of a firm-commitment underwriter. In a December 23, 2020 public statement, Commissioners Lee and Crenshaw discussed possible investor protection risks arising from the absence of an underwriter. See Allison Herren Lee & Caroline A. Crenshaw, Comm'rs, SEC, Statement on Primary Direct Listings (Dec. 23, 2020), https://www.sec.gov/news/public-statement/lee-crenshaw-listings-2020-12-23.

45 *See* Special Purpose Acquisition Companies, Shell Companies, and Projections, Securities Act Rel. No. 11048, 17 C.F.R. pts. 210, 229, 230, 232, 239, 240, 249, and 270 (Mar. 30, 2022), https://www.sec.gov/rules/proposed/2022/33-11048.pdf.

46 *See id.* at 16.

47 As of November 9, 2022, there were 82 SPAC IPOs in 2022. *See* SPAC Statistics, SPACInsider, https://spacinsider.com/stats/ (last visited November 9, 2022).

48 SEC, Recommendation of the Investor Advocate to NYSE concerning SPAC Listing Standards (Apr. 21, 2022), https://www.sec.gov/about/offices/investorad/recommendation-of-the-investor-advocate-nyse-spac-listing-standards-042122.pdf; SEC, Recommendation of the Investor Advocate to NASDAQ concerning SPAC Listing Standards (Apr. 21, 2022), https://www.sec.gov/about/offices/investorad/recommendation-of-the-investor-advocate-nasdaq-spac-listing-standards-042122.pdf.

49 *See* NASDAQ Listing Qualifications, Invitation to Share Views: SEC Investor Advocate Letter Related to SPAC Listing Standards (2022), https://listingcenter.nasdaq.com/assets/Invitation%20to%20Share%20Views%20-%20SEC%20Investor%20Advocate%20Letter%20Related%20to%20SPAC%20Listing%20Standards.pdf.

50 Joint Industry Plan, Order Approving, as Modified, a National Market System Plan Regarding Consolidated Equity Market Data, Exchange Act Release No. 92586, 86 Fed. Reg. 44,142 (Aug. 11, 2021), https://www.federalregister.gov/d/2021-17113.

51 *See* The Nasdaq Stock Mkt. LLC v. SEC, 38 F.4th 1126 (D.C. Cir. 2002).

52 *See*, *e.g.*, Consolidated Tape Association, Order Instituting Proceedings to Determine Whether to Approve or Disapprove the Twenty-Fifth Charges Amendment to the Second Restatement of the CTA Plan and Sixteenth Charges Amendment to the Restated CQ Plan, Exchange Act Release No. 94309, 87 Fed. Reg. 11,763 (Mar. 2, 2022), https://www.federalregister.gov/d/2022-04334.

53 *See id.* at 11,766.

54 *See*, *e.g.*, Consolidated Tape Association, Order Disapproving the Twenty-Fifth Charges Amendment to the Second Restatement of the CTA Plan and Sixteenth Charges Amendment to the Restated CQ Plan, Exchange Act Release No. 95851, 87 Fed. Reg. 58,613 (Sept. 27, 2022), https://www.federalregister.gov/d/2022-20833.

55 *See* Proposed Rule, Shortening the Settlement Cycle, Exchange Act Release No. 94196 (Feb. 9, 2022), 87 Fed. Reg. 10,436 (Feb. 24, 2022), https://www.federalregister.gov/d/2022-03143.

56 *See* SEC, Recommendation of the Investor Advisory Committee: Shortening the Trade Settlement Cycle in U.S. Financial Markets (Feb. 12, 2015), https://www.sec.gov/spotlight/investor-advisory-committee-2012/settlement-cycle-recommendation-final.pdf.

57 See SEC, Staff Report on Equity and Options Market Structure Conditions in Early 2021 (Oct. 14, 2021), https://www.sec.gov/files/staff-report-equity-options-market-struction-conditions-early-2021.pdf.

58 *See* Proposed Rule, Short Position and Short Activity Reporting by Institutional Investment Managers, Exchange Act Release No. 94313, 87 Fed. Reg. 14,950 (Mar. 16, 2022), https://www.federalregister.gov/d/2022-04670.

59 *See* Proposed Rule, Reporting of Securities Loans, Exchange Act Release No. 93613, 86 Fed. Reg. 69,802 (Dec. 8, 2021), https://www.federalregister.gov/d/2021-25739.

60 In addition to reviewing Commission rulemakings, the Office of the Investor Advocate is responsible for analyzing the potential impact on investors of proposed rules of self-regulatory organizations (SROs). *See* Exchange Act § 4(g)(4), 15 U.S.C. § 78d(g)(4).

61 *See* Self-Regulatory Organizations; Cboe BYX Exchange, Inc.; Notice of Filing of Amendment No. 2 and Order Approving on an Accelerated Basis a Proposed Rule Change, as Modified by Amendment No. 2, To Make Clarifying Changes Regarding Its Periodic Auctions, Exchange Act Release No. 94012, 87 Fed. Reg. 4,060 (Jan. 26, 2022), https://www.federalregister.gov/d/2022-01465.

62 *See* In the Matter of the Application of 24X National Exchange LLC for Registration as a National Securities Exchange; Order Instituting Proceedings to Determine Whether to Grant or Deny an Application for Registration as a National Securities Exchange Under Section 6 of the Securities Exchange Act of 1934, Exchange Act Release No. 95651 (Sept. 1, 2022), 87 Fed. Reg. 54736 (Sept 7, 2022) (File No. 10-239).

63 *See* Joint Industry Plan, Order Approving the National Market System Plan Governing the Consolidated Audit Trail, Exchange Act Release No. 79318 (Nov. 15, 2016), https://www.sec.gov/rules/sro/nms/2016/34-79318.pdf.

64 *See* Timeline, Consolidated Audit Trail, *available at* https://www.catnmsplan.com/timeline (last visited Oct. 19, 2022); *see also* Full CAIS Production Certification and Compliance Deadlines Extended, Consolidated Audit Trail, https://www.catnmsplan.com/announcements/full-cais-production-certification-and-compliance-deadlines-extended (last visited Oct. 19, 2022).

65 *See* Proposed Amendments to the National Market System Plan Governing the Consolidated Audit Trail to Enhance Data Security, Exchange Act Release No. 89632, 85 Fed. Reg. 65,990 (Oct. 16, 2020), https://www.govinfo.gov/content/pkg/FR-2020-10-16/pdf/2020-18801.pdf.

66 *See* Investment Company Act Release No. 33477 (May 20, 2019); Investment Company Act Release No. 33710 (Dec. 10, 2019); Investment Company Act Release No. 33711 (Dec. 10, 2019); Investment Company Act Release No. 33712 (Dec. 10, 2019); Investment Company Act Release No. 33713 (Dec. 10, 2019).

67 *See* Use of Derivatives by Registered Investment Companies and Business Development Companies, Investment Company Act Release No. 34084 (Oct. 28, 2020), https://www.sec.gov/rules/final/2020/ic-34084.pdf [hereinafter Derivatives Adopting Release], at section II.F.6.

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77 *See* Request for Comment on Exchange-Traded Products, Exchange Act Release No. 75165 (Jun. 12, 2015), available at https://www.sec.gov/rules/other/2015/34-75165.pdf.

78 *See, e.g.*, Press Release, SEC, SEC Charges Wells Fargo in Connection with Investment Recommendation Practices (Feb. 27, 2020), https://www.sec.gov/news/press-release/2020-43 ("The order finds that some Wells Fargo brokers and advisers did not fully understand the risk of losses these complex products posed when held long term. As a result, certain Wells Fargo investment advisers and registered representatives made unsuitable recommendations to certain clients to buy and hold single-inverse ETFs for months or years. According to the order, a number of these clients were senior citizens and retirees who had limited incomes and net worth, and conservative or moderate risk tolerances."); In the Matter of Morgan Wilshire Securities Inc., Exchange Act Release No. 89979 (Sept. 24, 2020), https://www.sec.gov/litigation/admin/2020/34-89979.pdf ("During the relevant period, certain Morgan Wilshire registered representatives recommended that a number of their retail customers buy inverse ETFs without regard to holding periods. Based on these recommendations, Morgan Wilshire customers purchased and held these inverse ETFs for longer than a single day, and in many cases, months, or years. Those registered representatives did not adequately understand all of the features and risks of inverse ETFs.").

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103 *Id*. at II.H.

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113 *See* Tailored Shareholder Reports Proposing Release, *supra* note 111, at sections II.H.1.b-e.

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223 Simplified arbitrations are those involving $50,000 or less, exclusive of interest and expenses. *See* FINRA, Rule 12800, Simplified Arbitration, https://www.finra.org/rules-guidance/rulebooks/finra-rules/12800.

224 *See* 87 Fed. Reg. 50,170, *supra* note 221, at 50,179.

225 *Id*.

226 *See* Notice 17-42, *supra* note 215, at 10.

227 *See* 85 Fed. Reg. 62,142, *supra* note 216, at 62,169.

228 *See* Letter from Celiza Bragança, President, PIABA and Jason R. Doss, Past-President and Founding Director, PIABA to Deputy Secretary J. Matthew DeLesDernier, SEC at pp. 2-3 (Sept. 6, 2022), https://www.sec.gov/comments/sr-finra-2022-024/srfinra2022024-20138354-308386.pdf.

229 *See* Letter from Robin M. Traxler, Senior Vice President, Policy & Deputy General Counsel, Financial Services Institute to Secretary, SEC, at 4 (Sept. 6, 2022), https://www.sec.gov/comments/sr-finra-2022-024/srfinra2022024-20138366-308399.pdf.

230 We note that, unlike Notice 17-42, neither FINRA 2020-030 nor FINRA 2022-24 would require an arbitrator panel to find the information to be expunged had no investor protection or regulatory value. *See* Notice 17-42, *supra* note 215, at 4.

231 *See* 87 Fed. Reg. 50,170, *supra* note 221, at 50,184.

232 *See* 85 Fed. Reg. 62142, *supra* note 216, at 62,169.

233 See Letter from Michael S. Edmiston, President, PIABA, to Vanessa Countryman, Secretary, SEC, p. 2 (Sept. 6, 2022), https://www.sec.gov/comments/sr-finra-2022-024/srfinra2022024-20138300-308359.pdf.

234 *See* Letter from Robin M. Traxler, *supra* note 229, at 5; *see also* Letter from Kevin M. Carroll, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association to Vanessa Countryman, Secretary, SEC, at 7 (Sept. 2, 2022), https://www.sec.gov/comments/sr-finra-2022-024/srfinra2022024-20138245-308330.pdf.

235 See Letter from Kevin M. Carroll, *supra* note 234.

236 *See* Letter from Robin M. Traxler, *supra* note 229, at 5.

237 *See* 87 Fed. Reg. 50,170, *supra* note 221, at 50,185.

238 *See* 85 Fed. Reg. 62,142, *supra* note 216, at 62,154.

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240 See Letter from Melanie Senter Lubin, President and Maryland Securities Commissioner, to J. Matthew DeLesDernier, Assistant Secretary, SEC, at 3 (Sept. 6, 2022), https://www.sec.gov/comments/sr-finra-2022-024/srfinra2022024-20138300-308359.pdf.

241 *See* 87 Fed. Reg. 50,170, *supra* note 221, at 50,181.

242 *See* Letter from Scott Eichhorn, Acting Director, University of Miami, School of Law et al. to Deputy Secretary J. Matthew DeLesDernier, SEC, at 5 (Sept. 6, 2022), https://www.sec.gov/comments/sr-finra-2022-024/srfinra2022024-20138359-308392.pdf, but cf. Letter from Hennion & Walsh, https://www.sec.gov/comments/sr-finra-2022-024/srfinra2022024-20138364-308397.pdf (“Time limits for filing an expungement request should mirror those provided to customers [–] a six-year period of eligibility with expansion for good cause”). See also Letter from AdvisorLaw, https://www.sec.gov/comments/sr-finra-2022-024/srfinra2022024-20137306-307869.pdf (“The amount of time that passes after allegations are cast have absolutely nothing to do with whether the allegations are ‘factually impossible, clearly erroneous, or false, [n]or whether the associated person was not involved in the alleged misconduct’”).

243 *See* Letter from Seth A. Miller, General Counsel, President, Advocacy & Administration, Cambridge Investment Research, Inc. to Vanessa Countryman, Secretary, SEC, at 2 (Sept. 6, 2022), https://www.sec.gov/comments/sr-finra-2022-024/srfinra2022024-20138303-308362.pdf.

244 *See e.g.*, Letter from Frederick Dawson, Raymond James Financial Services, https://www.sec.gov/comments/sr-finra-2022-024/srfinra2022024-308140.htm (noting he recently received a grant of expungement for an aged complaint, as he only recently became aware of the availability of expungement proceedings); Letter from Trish Howe, CFP, https://www.sec.gov/comments/sr-finra-2022-024/srfinra2022024-308131.htm (requesting an expungement process for convictions that occurred greater than 15 years ago or complaints later withdrawn by clients).

245 *See* Notice 17-42, *supra* note 215, at 6.

246 *See* 85 Fed. Reg. 62,142, *supra* note 216, at 62,161. Additionally, FINRA 2020-30 provided that where there was no customer arbitration or civil litigation, a six-year limit from the date of entry of complaint into CRD would apply.

247 *See* SEC Form 19-b, File No. SR-FINRA 2022-24 (Sept. 27, 2022), https://www.finra.org/sites/default/files/2022-09/sr-finra-2022-024-extension1.pdf.

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249 Exchange Act § 39(a), 15 U.S.C. § 78pp(a).

250 *Id.*

251 Exchange Act § 39(a)(2)(B), 15 U.S.C. § 78pp(a)(2)(B).

252 Exchange Act § 39(g), 15 U.S.C. § 78pp(g).

253 Exchange Act § 39(h), 15 U.S.C. § 78pp(h).

254 According to Exchange Act Section 4(g)(6)(B)(ii), 15 U.S.C. § 78d(g)(6)(B)(ii), a Report on Activities must include several enumerated items, and it may include "any other information, as determined appropriate by the Investor Advocate."

255 17 C.F.R. §§ 200.735-3(b)(2)(i), 230122 (2014); Exchange Act § 24(b), 15 U.S.C. § 78x; 5 U.S.C. § 552a(i)(1); SECR18-2, Section 8.5 (Nonpublic Information) (July 31, 2005).

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