



Securities Arbitration Clinic
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Via email to rule-comments@sec.gov
Vanessa Countryman, Esq.
Office of the Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: [Release No. 34-95588] Draft 2022–2026 Strategic Plan for Securities and Exchange Commission

Dear Ms. Countryman:

Thank you for the opportunity to comment on the Commission’s Strategic Plan for FY 2022-2026 (the “Plan”). We are writing this comment on behalf of the Securities Arbitration Clinic at St. John’s University School of Law (the “Clinic”). The Clinic is part of the St. Vincent De Paul Legal Program, Inc., a not-for-profit legal services organization. The Clinic represents aggrieved investors with small dollar claims and is committed to investor education and protection. Accordingly, the Clinic has a strong interest in the SEC’s priorities, particularly in how they relate to protecting investors.

First, the Clinic supports the first goal of the Plan to “protect[] working families against fraud, manipulation, and misconduct.”¹ However, the Clinic notes the term “working families” is not inclusive and may be perceived to leave out other at-risk groups we often represent, including young investors and retirees. Therefore, the Clinic encourages the use of a more expansive term to ensure that it reflects the SEC’s mission to protect *all* investors.

¹ See SEC Strategic Plan, FY 2022-2026, August 24, 2022, available at https://www.sec.gov/files/sec_strategic_plan_fy22-fy26_draft.pdf (hereinafter *SEC Strategic Plan*).

Next, the Clinic strongly agrees with the Plan’s second goal to “develop and implement a robust regulatory framework that keeps pace with evolving markets, business models, and technologies.”² As innovation and new technology continue to shape capital markets, we agree that the SEC needs to develop specific regulations to keep investors informed and protected via a broad-based disclosure framework. The investors we represent at the Clinic may lack an understanding of and access to resources in the rapidly changing investment landscape, and we agree that improving disclosure may help investors to a limited extent. However, investors need more protection than disclosure alone. Last fall, the Clinic expressed concerns about the negative impacts of digital engagement practices and trading platforms³ and believes a more articulated approach than what the Plan currently provides, and one that goes beyond disclosure, is necessary to address this issue.

Finally, the Clinic agrees with the Plan’s third goal to “support a skilled workforce that is diverse, equitable, and inclusive and is fully equipped to advance agency objectives.”⁴ We understand the investor pool is growing more diverse as indicated in FINRA’s Consumer Insights report,⁵ and we support the SEC’s goal of changing the makeup of regulators to better reflect the investor community that the SEC has been tasked with protecting. The Clinic also believes that people are the agency’s “most important asset” and supports its aims to develop a workforce with the right mix of skills, experience, and expertise to further its mission. The Clinic further agrees that promoting collaboration within and between SEC offices will maximize flexibility and perspectives in response to market trends and industry innovations.

In addition to the goals already laid out by the Plan, the Clinic continues to suggest the SEC revisit the definition of “accredited investor.”⁶ The Clinic often represents elderly investors who have lost significant sums because a broker has improperly advised them to invest their retirement savings in private placements. For far too long, brokers have used qualification as an accredited investor as a proxy for suitability. As it stands, the definition of an accredited investor captures a far larger market segment than was originally intended when Regulation D was adopted in 1982 because the income and net worth criteria have never been adjusted for inflation.⁷ The intention of the accredited

² *See id.*

³ *See* St. John’s University School of Law Comment on File No. S7-10-21, October 1, 2021, available at <https://www.sec.gov/comments/s7-10-21/s71021-9316161-260075.pdf>.

⁴ *See* SEC Strategic Plan, *supra* note 1.

⁵ *See* Investing 2020: New Accounts and the People Who Opened Them, FINRA (February 2021), available at https://www.finrafoundation.org/sites/finrafoundation/files/investing-2020-new-accounts-and-the-people-who-opened-them_1_0.pdf.

⁶ *See* St. John’s University School of Law Comment on S7-25-19 (March 16, 2020), available at <https://www.sec.gov/comments/s7-25-19/s72519-6960330-212744.pdf>.

⁷ If adjusted for inflation, the \$1 million net worth requirement adjusts to \$2.7 million in 2020 and the income requirements adjust from \$200,000 to \$547,000 and \$300,000 to \$820,000 in 2020. According to the SEC Staff Report on the Accredited Investor Definition, only 0.5% of U.S. households in 1983 met the individual income threshold that qualified them as an accredited investor, while only 1.7% of U.S. households met the net worth threshold. Both percentages dramatically increased by 2019, as 8.9% of U.S. households meet the individual income threshold and 9.4% of U.S. households meet the net worth threshold. The SEC’s purpose in setting those monetary requirements in 1982 is undermined as inflation increases and yet the thresholds remain the same. *See id.*

investor definition is to limit private market access to “those who are able to fend for themselves.”⁸ However, the current pool of investors who qualify as accredited investors under the existing financial thresholds include persons who are undoubtedly unable to “fend for themselves” and for whom private placements are simply not appropriate. The Clinic recommends that, as a first step, the income and net worth criteria be pegged to inflation to capture a smaller fraction of the investing public as the federal securities laws intended.

Finally, the Clinic believes the SEC should include a goal to ensure investors who are harmed by broker and adviser misconduct have a meaningful path to recovery. The Clinic recommends that the SEC adopt the Investor Advisory Committee’s (“IAC”) June 2022 recommendation to support the Investor Justice Act of 2022 and consider other ways to support Clinic funding.⁹ Establishing a grant program to fund qualified investor advocacy clinics with Congressionally appropriated funds will advance both the clinics’ and the Commission’s shared goal of protecting vulnerable investors.

Clinics like ours primarily represent elderly clients who are either retired, or nearing retirement age, and living on social security. Additionally, clinics represent young investors who are disabled, whose parents passed and left them small estates, or immigrants with limited English language skills. Most of our clients are working class investors with only between \$5,000 and \$100,000 in assets invested with their brokers. Clinics are immensely helpful in ensuring that these financially distressed investors either succeed in arbitration or do not bring frivolous claims and incur unnecessary additional costs. Our clients have claims of less than \$100,000, which are typically too low to be taken by a for-profit attorney but very significant for low-income and retired investors. As of 2018, clinics had formally represented 500 clients for whom they had recovered an estimated \$5,000,000.¹⁰ Additionally, Clinics close a substantial number of cases after a thorough investigation and counseling of clients which benefits FINRA and the industry by explaining to these investors why their claims may lack merit, thereby screening out non-viable claims.

Additionally, clinics have unique insight into the issues faced by these investors and are in a good position to advocate for those who would not otherwise have any representation in proposed FINRA and SEC rulemaking. The IAC reported that over 120 comment letters had been submitted from the securities clinics since their creation.¹¹ Clinics also engage in outreach and investor education efforts, including presentations, blog posts and informative videos.

⁸ *SEC v. Ralston Purina*, 346 U.S. 119, 125 (1953).

⁹ See *Recommendation of the SEC Investor Advisory Committee regarding Investor Advocacy Clinic Funding* (June 8, 2022), available at <https://www.sec.gov/spotlight/investor-advisory-committee-2012/draft-investor-clinic-recommendation-060822.pdf>.

¹⁰ See *Recommendation of the Investor Advisory Committee Financial Support for Law School Clinics that Support Investors 3* (Mar. 8, 2018), available at <https://www.sec.gov/spotlight/investor-advisory-committee-2012/law-clinics-recommendation.pdf>.

¹¹ *Id.* at 5.

A clinic typically receives 5 to 75 inquiries per year, but most claims are declined because of lack of clinic capacity or the location of the client.¹² The IAC estimated that entities need \$150,000 to \$200,000 per year to run an investor advocacy clinic with at least one full-time attorney.¹³ At full operating capacity, clinics were able to serve between 6 and 16 clients per year, but most have had to reduce their service to 4 to 7 clients per year due to a lack of funding.¹⁴ Additionally, there are far fewer clinics in operation today than there were a decade ago. At one time, there were 24 investor advocacy clinics, but currently, there are a total of 10 located in only 5 states and the District of Columbia.¹⁵ Accordingly, we ask that the SEC adopt a goal to ensure that investors who have small claims have some meaningful access to representation so that they may enforce their rights and have the capacity to seek redress.

The Clinic thanks the Commission for the opportunity to comment on these important strategic goals for FY 2022-2026. To the extent any further information is helpful, please feel free to contact us.

Respectfully Submitted,

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¹² *Id.* at 3.

¹³ *Id.* at 4.

¹⁴ *Id.*

¹⁵ See *How to Find an Attorney*, FINRA, <https://www.finra.org/arbitration-mediation/how-find-attorney> (last visited Sep. 27, 2022).