August 8, 2023

VIA ELECTRONIC SUBMISSION

Chair Gary Gensler
Securities and Exchange Commission
100 F Street N.E.
Washington, D.C. 20549

Re: The Commission's Segregated Consideration of Interconnected Rules Is Procedurally and Substantively Deficient; The Commission Must Recognize, Analyze and Provide the Public an Opportunity to Comment on Interconnections Prior to Issuing Final Rules

Dear Chair Gensler:

The American Investment Council ("AIC")[1] writes to further supplement its comments[2] on a series of interconnected rule proposals (the "Interconnected Rules")[3] issued by the U.S.

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1 AIC is an advocacy, communications, and research organization established to advance access to capital, job creation, retirement security, innovation, and economic growth by promoting responsible long-term investment. In this effort, AIC develops, analyzes, and distributes information about the private equity and private credit industry and its contributions to the U.S. and global economy. Established in 2007 and formerly known as the Private Equity Growth Capital Council, AIC is based in Washington, D.C. For further information about the AIC and its members, please visit our website at http://www.investmentcouncil.org.

2 We have commented extensively on rules that affect our members. *See, e.g.*, Comments of the American Investment Council, Release Nos. 33-11028, 34-94197; IA-5956; IC-34497; File No. S7-04-22 (May 22, 2022); Comments of the American Investment Council, Release No. IA-5955; File No. S7-03-22 (July 27, 2022); Comments of the American Investment Council, Release Nos. 33-11068; 34-94985, IA-6034, IC-34594; File No. S7-17-22 (Aug. 16, 2022); Comments of the American Investment Council, Release No. IA-6083; File No. S7-22-22 (Oct. 11, 2022); Comments of the American Investment Council, Release No. IA-6176; File No. S7-25-22 (Dec. 22, 2022); Comments of the American Investment Council, Release No. IA-6240; File No. S7-04-23 (May 8, 2023).

3 The Interconnected Rules encompass a number of proposals or now-finalized rules affecting our members and which contain overlapping or inconsistent substantive requirements, including but not limited to the updates to Form PF (*see infra* notes 25, 28), the private fund advisers proposal (*see infra* notes 13, 16–19, 22), the updates to the custody rule (*see infra* notes 15–16), the outsourcing proposal (*see infra* notes 27, 30–31), the proposal to expand the definition of "dealer" (*see infra* notes 16, 30), and the ESG-related proposals (*see infra* notes 26, 30). For further discussion of the above Interconnected Rules, as well as a broader set of Interconnected Rules that affect the capital markets and market participants including our members — such as the Commission's equity market structure proposals and cybersecurity proposals — please refer to Appendix A attached hereto.

Securities and Exchange Commission (the "Commission"). After enduring a two-year plethora of rule proposals, many with the potential to fundamentally alter many aspects of our capital markets, the AIC and its members have only recently been able to holistically review the Commission's proposed actions. The results are stark and it is now clear that the Commission's isolated and piecemeal approach to comprehensive rulemaking is substantively and procedurally flawed.

The Commission has not provided any meaningful analysis of the expected effects of the Interconnected Rules on each other or their cumulative effects on the capital markets. The Commission, knowing full well that regulations do not operate independently, should have recognized this fundamental flaw at the outset of its unprecedented series of major rulemakings. When the first proposals were published, the public was not privy to the breadth, scope and impact of the Interconnected Rules. Now that the package of Interconnected Rules is available the serious flaws in the Commission's segregated treatment of the Interconnected Rules are obvious.[4] The Commission can and should remedy these deficiencies.

Across the Interconnected Rules, the Commission fails to adequately inform itself about the markets it seeks to regulate. The Commission replaces rigorous substantive analysis with speculative theories of market dynamics and operations. This compounds the procedural deficiencies across the spectrum of proposals, as the public must educate and correct the Commission during the notice and comment process, which does not provide an adequate basis for final rulemaking. The Commission is obligated at the proposing stage to provide a well-informed analysis of how the markets operate, the likely effects of the changes it is proposing and why these changes are necessary and appropriate. The comment files across the Interconnected Rules demonstrate this glaring deficiency on the part of the Commission.

On behalf of our members, whose role in the U.S. economy is integral to job creation, innovation and economic growth, we request that the Commission, before finalizing any of the Interconnected Rules, (i) publish a reasonable assessment of the cumulative effects of the Interconnected Rules — accounting for interconnections and dependencies among them and any other rules the Commission has proposed or intends to propose in the near term, (ii) reopen the comment periods for the Interconnected Rules to provide the public an opportunity to assess holistically the Commission's proposals (and its justification for the proposals as a package), and (iii) then, with the benefit of an appropriate analysis and public comment, finalize the rules holistically, not one-at-a-time or in an isolated series, taking into account not just the expected effects on investors and our capital markets but also practical realities such as adoption timelines as well as information technology requirements.

Failing to take this common sense approach would be a violation of the Commission's obligations under the Administrative Procedures Act ("APA"). The approach also is inconsistent with the Commission's statutory mission. Making hasty and uninformed changes to our time-tested and well-functioning regulatory framework introduces risk to investors and to the

4 The Commission's failure to consider the Interconnected Rules holistically is a widespread concern among investors and advocacy groups. *See, e.g.*, Comments of the Managed Funds Association, Rel. No. 34–93784 (File No. S7–32–10) (July 21, 2023).

functioning of our capital markets, which fuel the economic growth essential to our future.[5] Notably, the Commission identifies no current or immediately expected harm that justifies a truncated and artificially segregated approach to the Interconnected Rules.

Our views on these important matters of law and process are set forth in more detail in Appendix A attached hereto.

AIC's members contribute to the long-term growth of the U.S. economy and retirement security of American workers. The U.S. private equity sector, its suppliers and related consumer spending employed or supported 31 million workers in 2022 and generated $4 trillion of gross domestic product during the same time period (approximately 15% of U.S. GDP).[6] The vast majority of companies supported by U.S. private equity were small businesses, the backbone of the U.S. economy.[7] Over 89% of U.S. public pensions serving 34 million American workers have exposure to U.S. private equity and have enjoyed returns that have outperformed other asset classes.[8] We believe the Commission's current approach to the Interconnected Rules may increase costs, curtail private equity investments, and adversely affect the millions of American businesses, workers and retirees that benefit from such investments. The Commission has not done the work, including engaging in informed dialogue with the public, to understand and consider these risks.

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5 The Commission has a three-part mission: protect investors; maintain fair, orderly, and efficient markets; and facilitate capital formation. *See* The U.S. Securities and Exchange Commission, "The Role of the SEC", https://www.investor.gov/introduction-investing/investing-basics/role-sec.

6 EY, "Economic Contribution of the U.S. Private Equity Sector" (April 2023) ("EY Report") at ii, https://www.investmentcouncil.org/wp-content/uploads/2023/04/EY-AIC-PE-economic-contribution-report-FINAL-04-20-2023.pdf; *see also* Chair Gary Gensler, A Century with a Gold Standard (May 6, 2022) (noting that "[p]rivate capital markets, such as venture capital, have brought new ideas to market faster and more flexibly than other capital markets").

7 EY Report, *supra* note 6, at 9. For a detailed analysis of U.S. private equity support of the U.S. economy, please refer to the EY Report.

8 American Investment Council, 2022 Public Pension Study (July 2022) at 2, https://www.investmentcouncil.org/wp-content/uploads/2022/07/22AIC002_2022-Report_SA-2226.pdf; *see* EY Report, *supra* note 6.

We stand ready to work with the Commission on all of the above and look forward to engaging with the Commission constructively to improve outcomes for American workers, retirees and our economy. If you have any questions, please contact me at (202) 465-7700.

Sincerely,

Rebekah Goshorn Jurata
General Counsel
American Investment Council

cc: Hester M. Peirce, Commissioner
Caroline A. Crenshaw, Commissioner
Mark T. Uyeda, Commissioner
Jaime Lizárraga, Commissioner
William A. Birdthistle, Director, Division of Investment Management
Erik Gerding, Director, Division of Corporation Finance
Jessica Wachter, Director, Division of Economic and Risk Analysis
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Megan Barbero, General Counsel

Appendix A

As the Commission considers our request to provide a notice and comment process for the Interconnected Rules that aligns with its mandate and obligations under the APA, please note the following deficiencies in the current process:

1. **The Commission's haste and failure to analyze and consider the interrelated and cumulative impacts of the Interconnected Rules is without precedent and is not justified by any exigencies or congressional mandate.**

The Commission has issued an onslaught of rule proposals since early 2021, proposing forty-six rules in the first two years of Chair Gensler's tenure, which far and away exceeds the rulemaking pace of the Commission in prior administrations.[9] The Commission's unprecedented rulemaking push is breathtaking in scope and affects the entire financial market ecosystem. Taken as a whole, the proposals would radically alter the regulatory framework applicable to private fund advisers, public companies, audit firms, custodians, national exchanges, security-based swap dealers, and broker-dealers, among others. The Commission is not acting in response to or in anticipation of market events. And the Commission lacks any exigencies or significant Congressional mandate for this regulatory onslaught of rules, including the Interconnected Rules: the overall incidence of rulemaking by the Commission far outstrips its rulemaking when implementing the transformative Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 in the wake of the 2008 financial crisis. Further, absent a clear rulemaking mandate from Congress, we believe the Commission has in some cases overstepped its authority in light of the Supreme Court's decision in *West Virginia* v. *EPA*, 142 S. Ct. 2587 (2022).[10] Congress does not delegate to agencies highly consequential powers—including the power to resolve major questions—in "modest words," "vague terms," "or subtle devices."[11] If Congress had intended to grant the Commission the authority to fundamentally alter the regulatory ecosystem for private funds, it would have provided "clear congressional authorization" to that effect.[12] It did not.

2. **The Commission's aggressive regulatory agenda is being conducted at a time when market participants are addressing significant new market stresses.**

This disjointed approach of regulatory actions, truncated comment periods and inadequate Commission analysis is noteworthy because it is being conducted at a time when American financial markets are under significant new stresses, including the effects of rapid

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[9] By comparison, the Commission had proposed 19 rules during the first two years of Chair White's tenure, and 24 rules during the first two years of Chair Clayton's tenure.

[10] For example, the Commission does not have the authority to fundamentally alter the longstanding, widely-accepted business practices of private funds. Congress has long recognized that the large, extremely sophisticated investors who invest in private funds are more than capable of appreciating and bearing the risks of their own investments and should not be subject to paternalistic prohibitions on longstanding, widely-accepted business practices. *See* Comments of the American Investment Council, Release Nos. IA-5955; File No. S7-03-22 (July 27, 2022).

[11] *West Virginia*, 143 S. Ct. at 2609.

[12] *Id.*

interest rate increases, inflation, supply chain disruption, and the uncertainty in U.S. fiscal and debt policy. Each of these external pressures occupy the time and attention of market participants and may prove to have lasting effects on our markets. None of these events have been adequately considered by the Commission in its proposals. Given the lack of any justification for its pursuit of a broad agenda on an aggressive timeframe, the Commission's actions are an undue distraction for market participants whose time and attention should remain focused on navigating the impact of these stresses on their clients and product offerings. Further, the resources of market participants are not infinite.[13] The Commission's unnecessary regulatory push adds unnecessary risk and will reduce competition.[14] We also expect it could limit investor choice, and by correlation, market efficiency. The Commission has not identified or analyzed these issues (and many others) adequately, placing an additional burden on the public in an already compressed timeframe. The Commission's hasty change for the sake of change approach adds unnecessary risk, will reduce competition and investor choice, and adversely affect capital formation.[15]

3. **The Commission has issued numerous proposals with material effects on investors, capital formation and market function without adequate cost-benefit analysis.**

The Commission's proposals fail to adequately inform itself about and assess the markets that the proposals seek to regulate,[16] and fail to reasonably and quantifiably estimate the

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13 Neither are the Commission's resources infinite, and the Commission's astonishing rulemaking pace is likely contributing to the lack of quality in its proposals. For example, the Commission did not sufficiently consider market realities in its private fund advisers proposal. The Commission's description of how an after-tax clawback operates is inconsistent with how most private equity funds structure such provisions and would fail to restore the adviser and investors to their agreed-upon economic sharing arrangement. *See* Private Fund Advisers; Documentation of Registered Investment Adviser Compliance Reviews, 87 Fed. Reg. 16,886 (Mar. 24, 2022) ("Private Fund Advisers Proposal"); Comments of the American Investment Council, Release Nos. 33-11068; 34-94985, IA-6034, IC-34594; File No. S7-17-22 (Aug. 16, 2022) at 45 (explaining the typical net of tax cap clawback provision).

14 Committee on Capital Markets Regulation, "A Competitive Analysis of the U.S. Private Equity Fund Market" (April 2023) at 34–40, https://capmktsreg.org/wp-content/uploads/2023/04/CCMR-Private-Equity-Funds-Competition-Analysis-04.11.20231.pdf.

15 For example, the Commission has proposed to fundamentally, and for no reason, upend the advisers' custody rule in its proposed updates to that rule, Safeguarding Advisory Client Assets, 88 Fed. Reg. 14,672 (Mar. 9, 2023) ("Safeguarding Proposal"), and do so in a manner that will likely shrink the number of entities willing to be qualified custodians. Highlighting the Safeguarding Proposal's serious flaws, the chairs and ranking members of the Senate Agriculture Committee and House Agriculture Committee sent a bipartisan letter to the Commission requesting that it withdraw the proposal. *See* Letter to the Honorable Gary Gensler from Senate Agriculture Committee Chairwoman Stabenow (D-MI) and Ranking Minority Member Boozman (R-AR), and House Agriculture Committee Chairman Thompson (R-PA) and Ranking Minority Member Scott (D-GA) (July 20, 2023).

16 For example, the Commission's proposal to update the definition of "dealer", Further Definition of "As a Part of a Regular Business" in the Definition of Dealer and Government Securities Dealer, 87 Fed. Reg. 23,054 (April 18, 2022) (the "Dealer Definition Proposal"), fails to take into account that common activities undertaken by investment advisers, including managing distinct client accounts that follow similar investment objectives and strategies, could subject those accounts to be treated as "dealers" under the Exchange Act. Unfortunately, the proposal does not consider how those accounts could, from a practical or common sense standpoint, comply with being designated as "dealers". The Dealer Definition Proposal also fails to address how designating private fund accounts as dealers would interact with (i)

expected or potential effects on investors, capital formation and market function. Unsurprisingly, the Commission's failure has led to proposals that are not appropriately tailored and threaten to create unnecessary costs and regulation, and serious unintended consequences to American investors and U.S. capital markets. The Commission's proposals have eschewed rigorous quantitative cost-benefit analyses in favor of qualitative speculation and conclusory statements.[17] This runs contrary to the Commission's obligations under the APA. The Commission's proposals do not adequately assess the current vulnerabilities (if any) of affected markets[18] or reasonably estimate the effects on investors,[19] market function,[20] or capital formation.[21] The proposals

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broker-dealer net capital requirements and liquidity rights frequently granted to investors, (ii) customer asset and sales practice protections that are not currently available to broker-dealers under applicable SEC and FINRA regulations, and (iii) existing FINRA regulations relating to restricted access to the U.S. IPO market for broker-dealers and certain owners of broker-dealers. In another example, the Safeguarding Proposal fails to perform the analysis necessary to understand that many types of assets will be unduly burdensome or impossible to custody (*e.g.*, non-security contractual investments, real estate, and loans). The Safeguarding Proposal also threatens to completely shut down the prime brokerage market for no discernable reason, as it would prohibit rehypothecation of collateral by broker-dealers acting as qualified custodians, even when rehypothecation is otherwise permitted under applicable SEC regulations. In yet another example, the Commission's Private Fund Advisers Proposal fails to appreciate that it may hold fund advisers to higher duties than directors and officers of public companies, by prohibiting contractual indemnification and exculpation remedies otherwise available under state law. *See* New York Law Journal, "Hidden Implications of SEC's Proposed Private Funds Rules (Apr. 27, 2022).

17 *See, e.g.*, Private Fund Advisers Proposal at 16,948 (admitting that the Commission "lack[s] … data on the extent to which advisers engage in certain of the activities that would be prohibited under the [proposal]" and that it is "difficult to quantify the benefits of these prohibitions" due to "a lack of data regarding how and to what extent the changed business practices of advisers would affect investors").

18 The Private Fund Advisers Proposal, for example, is a solution in search of a problem, and fails to identify any salient market vulnerability, as investment decision makers are highly sophisticated, and are often represented by highly sophisticated counsel. *See* Comments of the American Investment Council, No. IA-5955; File No. S7-03-22 (Apr. 25, 2022) at 21.

19 The Private Fund Advisers Proposal fails to adequately consider how its implementation may entirely preclude the participation of public institutional investors in private funds, and how that harms their dependents. *See* Comments of the American Investment Council, Release Nos. IA-5955; File No. S7-03-22 (June 13, 2022) at 5.

20 For example, the Commission proposed three separate amended rules that would radically alter equity market structure without any meaningful discussion in its cost-benefit analyses of how the rules, if implemented together, would alter such cost-benefit analyses and how such rules would cumulatively affect the equity market. *See* Disclosure of Order Execution Information, 88 Fed. Reg. 3,786 (Jan. 20, 2023) ("Rule 605 Proposal"); Regulation NMS: Minimum Pricing Increments, Access Fees, and Transparency of Better Priced Orders, 87 Fed. Reg. 80,266 (Dec. 29, 2022) ("Rule 610/612 Proposal"; together with the Rule 605 Proposal, the "NMS Proposals"); Order Competition Rule, 88 Fed. Reg. 128 (Jan. 3, 2023) ("Order Competition Proposal"; the Order Competition Proposal, together with the NMS Proposals, the "Equity Market Structure Proposals"). Notably, the U.S. Department of Justice commented on this deficiency. Comment Letter, Antitrust Division of the U.S. Department of Justice, File Nos. S7-29-22; S7-31-22; and S7-32-22 (April 11, 2023) at 6 ("The Antitrust Division encourages the Commission to carefully consider potential interactions among the Proposed Rules when preparing their final versions, planning for the rules' implementation timelines, and evaluating the actual effects of the rules once they go into effect.").

21 Private equity investment is a key source of financing for many small businesses – in fact, the median private equity-backed business is modest in size and employs 69 employees. EY Report, *supra* note 6, at 9. The proposals, if enacted in their current form, risk unnecessarily shrinking a sector of the U.S. economy

ignore or unfairly discount alternatives that could achieve the Commission's purpose.[22] The Commission's reliance on idiosyncratic, insubstantial or speculative information makes providing meaningful public comment difficult or impossible, degrading the notice and comment process. Compounding these deficiencies is the inappropriately short comment periods. Affected market participants have not had adequate time for meaningful comment.[23] The proposals are therefore deficient and warrant a reopening, accompanied by rigorous analyses of the current state of affected markets and the effects of the proposals on those markets, investors, and continued capital formation. The Commission cannot disregard its obligations under the APA.[24]

4. The comment process is deficient when proposals that target the same or similar parts of the market do not acknowledge or analyze interconnections and dependencies.

When the Commission's proposals are viewed as a whole, the deficiencies in the Commission's rulemaking process are amplified. The proposals address and impact deeply interconnected and interdependent aspects of our markets. A series of interrelated, consequential proposals most affect our members, including the Form PF Proposal and now-finalized Form PF Rule,[25] the Dealer Definition Proposal, the Safeguarding Proposal, the Private Fund Advisers Proposal, the ESG Proposal[26] and the Outsourcing Proposal.[27] The Commission has failed to consider the collective burdens that these proposals would impose, which risk harm to capital

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that serves to channel investment in private companies across the United States large and small, fueling economic growth. Nowhere was this accounted for in the Commission's cost-benefit analyses, and more importantly, this represents a failure of the Commission's mandate to facilitate capital formation.

22 For instance, the Commission failed to consider whether reasonable, less restrictive alternatives to the Private Fund Advisers Proposal could meet its objectives, including whether the rule could be tailored to apply to a subset of funds with the most vulnerable investors. *See* Comments of the American Investment Council, No. IA-5955; File No. S7-03-22 (Apr. 25, 2022) at 25.

23 The Commission has historically provided longer comment periods for rulemakings with material market impacts. The public under Chair Gensler has had an average of 38 days to review and comment on a rule proposal. The vast majority of comment periods under Chairs White and Clayton were over 60 days (96 percent and 85 percent of the time, respectively), while 82 percent and 76 percent of comment periods were over 90 days, respectively. If the Interconnected Rules are as consequential as the Commission no doubt believes, they deserve at least as much time and public review and debate as rulemaking under prior Commission chairs.

24 *See, e.g.*, Chair Jay Clayton, Remarks at the Economic Club of New York (July 12, 2017) ("the SEC . . . is committed to performing rigorous economic analyses of our rules"); Chair Mary Jo White, The SEC after the Financial Crisis: Protecting Investors, Preserving Markets, Remarks at the Economic Club of New York (Jan. 17, 2017) (noting that the Commission undertakes exhaustive economic analysis); Chair Mary Schapiro, Speech by SEC Chairman: Applying the Lessons (Nov. 9, 2009) (remarking that comment period is a "vital" phase in rulemaking process as it "makes our rules all the more better").

25 Amendments to Form PF to Amend Reporting Requirements for All Filers and Large Hedge Fund Advisers, 87 Fed. Reg. 35,938 (Sept. 1, 2022) ("Form PF Proposal"); Form PF; Event Reporting for Large Hedge Fund Advisers and Private Equity Fund Advisers; Requirements for Large Private Equity Fund Adviser Reporting, 88 Fed. Reg. 38,146 (June 12, 2023) ("Form PF Rule").

26 Environmental, Social, and Governance Disclosures for Investment Advisers and Investment Companies, 87 Fed. Reg. 36,654 (June 17, 2022) ("ESG Proposal").

27 Outsourcing by Investment Advisers, 87 Fed. Reg. 68,816 (Nov. 16, 2022) ("Outsourcing Proposal").

formation and economic growth.[28] Prior Commissions have done holistic rulemakings that rightfully accounted for interconnections and dependencies including with respect to proxy voting advice, standards of conduct for financial professionals, swaps, and market structure.[29] These complex, interrelated rules benefited from roundtables, thorough analysis of their interconnected nature, and robust comment periods.

This pattern repeats itself across the entire range of the Commission's recent proposals.[30] Further, the Commission's piecemeal approach of regulating through disconnected rules is dangerous and creates risk.[31] As a result, the Commission has not met its obligations under the APA.

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28 For example, the cost-benefit analysis in the Form PF Proposal does not account for the costs associated with the cost of building new reporting systems and the now-finalized and closely related Form PF Rule — which covers changes to the same form — issued in June 2023. Based on anecdotal comments from certain members, we believe these costs are understated by a magnitude of 10. Comments of the American Investment Council, Release No. IA-6083; File No. S7-22-22 (Oct. 11, 2022) at 10.

29 *See, e.g.*, Chair Jay Clayton, Statement at Open Meeting on Commission Actions to Enhance and Clarify the Obligations Financial Professionals Owe to our Main Street Investors (June 5, 2019) (noting extensive review of data in promulgation of Regulation Best Interest); U.S. Securities and Exchange Commission, Comments on Proposed Rule: Regulation Best Interest, https://www.sec.gov/comments/s7-07-18/s70718.htm (including transcripts from investor roundtables, among other meetings with relevant market participants).

30 For example, it is unclear how the Rule 605 disclosure requirements in Regulation NMS would apply to a system which may be potentially captured by the Commission's outstanding proposal to broaden the definition of "exchange"; how tightening spreads (from the Commission's proposed reductions to pricing increments in the NMS Proposals) would affect the number of orders sent to wholesalers subject to the Order Competition Proposal; how the recently adopted shortening of the standard settlement cycle to T+1 will impact intersecting portions of the Commission's Equity Market Structure Proposals; how the proposal expanding Regulation Systems Compliance and Integrity would interact with the Commission's proposals to expand the definition of "dealer" and "exchange"; or how the proposed rule on security-based swap position reporting interacts with proposals related to expanded beneficial ownership reporting, reporting of short positions, and securities loans. *See* Amendments Regarding the Definition of "Exchange" and Alternative Trading Systems (ATSs) That Trade U.S. Treasury and Agency Securities, National Market System (NMS) Stocks, and Other Securities, 87 Fed. Reg. 15,496 (March 18, 2022); Dealer Definition Proposal, *supra* note 16; Regulation Systems Compliance and Integrity, 88 Fed. Reg. 23,146 (April 14, 2023) ("Regulation SCI Proposal"); Position Reporting of Large Security-Based Swap Positions, 87 Fed. Reg. 6,652 (Feb. 4, 2022); Modernization of Beneficial Ownership Reporting, 87 Fed. Reg. 13,846 (March 10, 2022); Short Position and Short Activity Reporting by Institutional Investment Managers, 87 Fed. Reg. 14,950 (March 16, 2022); Reporting of Securities Loans, 86 Fed. Reg. 69,802 (Dec. 8, 2021).

Another example is the Commission's proposed extensive ESG disclosures for funds, advisers, and public companies without analyzing interdependencies or whether its regulatory objectives could have been otherwise accomplished. The ESG Proposal is dependent on public company disclosures in the Climate Disclosure Proposal. The ESG Proposal also overlaps with requirements under the proposed amendments to the Names Rule and the Outsourcing Proposal. *See* ESG Proposal, *supra* note 26; The Enhancement and Standardization of Climate-Related Disclosures for Investors, 87 Fed. Reg. 21,334 (April 11, 2022) ("Climate Disclosure Proposal"); Investment Company Names, 87 Fed. Reg. 36,594 (June 17, 2022); Outsourcing Proposal, *supra* note 27.

31 The Commission itself has started to realize the importance of this analysis. *See, e.g.*, Reopening of Comment Period for "Cybersecurity Risk Management for Investment Advisers, Registered Investment Companies, and Business Development Companies; Reopening of Comment Period," 88 Fed. Reg. 16,921 (March 21, 2023) (Commission reopening comment period for the purpose of receiving comments as to how the proposal interrelates with (1) Cybersecurity Risk Management Rule for Broker-Dealers, Clearing

5. **The Commission's sequential release of interconnected proposals renders the comment process deficient and signals that the Commission will take the same ill-advised approach on adoption.**

If the Commission adopts rules without evaluating their effect on subsequent rules *and* the cumulative effects of related rules, it may cause undue harm to markets, investors, future job creation and the returns of retirement accounts of millions of Americans, which could take decades to remedy. The Commission should have recognized this reality at the outset. Past Commissions have approached many proposed rulemakings holistically to address the very concerns presented by the Commission's isolated treatment of the Interconnected Rules. Whether or not this has been a conscious decision on the part of the Commission to avoid dealing with the complexity of its overall regulatory approach, or a mere oversight because it has failed to recognize interconnections, the Commission has failed to meet its obligations under the APA. The process and record for these rules are deficient.

Agencies, Major Swap-Based Swap Participants, the Municipal Securities Rulemaking Board, National Securities Associations, National Securities Exchanges, Security-Based Swap Data Repositories, Security-Based Swap Dealers, and Transfer Agents, 88 Fed. Reg. 20,212 (Apr. 5, 2023); (2) the Regulation SCI Proposal, *supra* note 30; (3) Regulation S-P: Privacy of Consumer Financial Information and Safeguarding Customer Information, 88 Fed. Reg. 20,616 (Apr. 6, 2023); and (4) the Outsourcing Proposal, *supra* note 27. However, reopening a set of rules for the public to undertake the Commission's job is not adequate.