

# Congress of the United States

Washington, DC 20510

April 29, 2022

Gary Gensler  
Chairman  
U.S. Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549

Dear Chairman Gensler:

While we come from different ideological perspectives and hold diverse views on how the Securities and Exchange Commission can best promote the optimal market environment, we share a common purpose in ensuring the Commission achieves its core mission – protecting investors; maintaining fair, orderly and efficient markets; and facilitating capital formation. Because of that mutual commitment, we are compelled to convey our serious concerns about Proposed Rule 10B-1 that is inadequately informed by data, research and analysis and ironically would, at the same time, discourage market participants from being informed by data, research and analysis, harming investors and making the markets decidedly less fair, orderly and efficient.

To promote the best interests of investors and the general public, the Commission's regulations need to be well-informed – directly related to the stated objectives; grounded in data, research and analysis; effectively weighing the costs and benefits; and considering potentially less disruptive alternative approaches. Sadly, Proposed Rule 10B-1 fails in all these regards:

- **Unrelated to and misaligned with stated objectives** – Proposed Rule 10B-1 argues that it relies on three justifications. The first, the dynamics of the credit default swaps market, would be entirely unaffected by the proposal and are unrelated to the *security-based* swaps market that would be impacted. The second and third, the benefits gained by counterparties and regulators from more transparency, are entirely relevant and laudable objectives but do not explain why the Commission wants to go much further to require investors' private information to be widely exposed and subject to exploitation by others.
- **Ungrounded in data, research and analysis** – In compliance with recent regulations, market participants started reporting transaction details to security-based swap data repositories only a few short months ago. Once collected and analyzed, this information has the potential to provide the Commission with a significantly better understanding of the operations of the security-based swaps market and the consequences of certain regulatory actions like Proposed Rule 10B-1. Surely it would be wiser to have the benefit of one or two years of collection and analysis of the data the Commission has requested before it hastily advances an untested disclosure regime that could cause harmful unintended consequences.
- **Failing to effectively weigh costs and benefits** – The benefits of confidential counterparty and regulator disclosure are obvious and the downsides are remote, but the same cannot be said for the broad divulgence and dissemination of investors' private information. Fairness dictates that when individuals and firms invest in research, whether on their own behalf or

in accordance with their duty to act in the best interest of others, they should be able to benefit from their own labors and insights *before* others who have not borne the expense and effort. Proposed Rule 10B-1 would discourage such informed investing, as it would require an investor to nearly immediately reveal the acquisition of a small amount of security-based swaps, enabling speculators to exploit the investor's work and insights before the investor has been able to gain enough economic exposure to justify the time and resources. Similarly, the proposal would also discourage shareholder engagement, the benefits of which have long been recognized by Commissioners of both parties. The Commission needs to thoroughly weigh these and other unintended consequences that could do far more harm than good to investors and both the security-based swaps and securities markets.

- **Failing to consider alternative approaches** – The Commission could have tailored Proposed Rule 10B-1 to its stated objectives, advancing helpful counterparty and regulator transparency to improve pricing and reduce risk to market participants and the market as a whole, without undermining the incentives to engage in quality research. The Commission should explore such alternatives, such as the CFTC's confidential reporting framework under the Large Trader Reporting Rule that was adopted under Chairman Gensler's leadership and both promoted healthy transparency and protected the private information and trade secrets of market participants.

When the Commission has carefully collected and analyzed the data it has requested, it should thoughtfully consider appropriate confidential counterparty and regulator disclosure that would benefit both interacting market participants and the market broadly, but it should not hastily undermine its own mission by eliminating incentives for informed investing, thereby harming investors and making the markets decidedly less fair. In light of our shared concerns, we respectfully urge you not to adopt Proposed Rule 10B-1.

Sincerely,



Josh Gottheimer  
Member of Congress



Bill Huizenga  
Member of Congress