DYNAMIS LLP

January 23, 2025

Via email: Secretarys-Office@sec.gov

Vanessa A. Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: Petition for Rulemaking—Trading After Public Commentary by Individual Investors

Dear Ms. Countryman:

We respectfully petition the U.S. Securities and Exchange Commission (the "Commission" or "SEC"), on behalf of our client, Mr. Andrew Left, to initiate rulemaking to clarify the Commission's regulation of trading by individual investors who publicly comment on securities.

Introduction

The last decade has seen digital media ascend to become the dominant form of communication for the American public, including on topics regulated by the Commission, such as stocks, financial markets, and crypto-assets. On social media sites such as Facebook, Reddit, and X (formerly Twitter), on online message boards and forums, and in podcasts and online newsletters, millions of market participants every day discuss the stock market. Put simply, individual investors trade stocks *and* talk about the stocks online that they are trading. These discussions contribute to market efficiency, expose frauds, and represent an important expression of First Amendment rights.

But recent enforcement actions raise significant concerns regarding the legality of this seemingly ordinary and otherwise acceptable public discourse. Specifically, the SEC has launched a series of actions where the actionable fraud is *not* lying about the specific companies under discussion (a form of securities fraud inapplicable to this petition). Rather, the defendants are accused of lying about their own personal opinions concerning the subject securities, with the predominant evidence in support of those accusations being trades entered into by the defendants that seemingly contradict the opinions previously made. In short, the SEC's enforcement actions make clear that the SEC can and may consider it fraud to say something positive (in support of a long position) or negative (in support of a short position) about a stock, and then trade in that security even weeks or months after a social media post, even in small quantities. This belief, which runs smack into the protections of the First Amendment, leaves individual investors with no guidance at all on a fundamental question: "**After publicly commenting on a security, how long must an individual wait to make a trade?**"

For example, take an individual investor who tweets positively about Apple (AAPL), a stock with a $3.31 trillion market cap and an average daily trading volume of more than 48 million shares. The investor believes, and tells his Twitter followers, that he owns AAPL and believes the stock will appreciate in price. At what point in time can this individual then sell any portion or all of his AAPL position? Must the investor wait one hour, or one day, or one week? As of now, the SEC has provided no guidance on what time frame is lawful for post-Tweet sales, or what number of shares sold (either as a percentage of AAPL's total volume or as a percentage of the Tweeter's total position) would render a person's Tweets material.

This is one of the most (if not the most) pressing issues facing individual investors right now. Over the past five years, millions of individual investors have exercised their freedom of speech and joined online discussions about stocks and cryptocurrency. In the past, these investors would be secure in the knowledge that as long as they did not intentionally lie about the companies, they would be free to speak and trade as they wished.[1] However, as recent actions make clear, even small purchases or sales of stocks well-after a Tweet or post can leave an individual open to an enforcement action by the SEC, under the guise that their later trades made their earlier professed opinions false when made. Making matters worse, unlike Wall Street institutions, individual investors do not typically have internal legal departments to protect them from potential enforcement actions, making the need for rulemaking that much more important.

This petition underscores the urgent need for the SEC to act decisively to protect individual investors' rights, and to establish clear rules to ensure that individual investors' voices are not silenced by the fear of being subject to an arbitrary enforcement action.

Background

For 23 years, Andrew Left has operated under the online moniker Citron Research, sharing his insights and opinions on stocks with the public. His work has been an essential part of the market's checks and balances, uncovering fraud and challenging inflated valuations of numerous companies. People follow Mr. Left on social media *not* because he manipulates stock prices, but because of his long history of success in predicting the trajectory of stock prices based on his own research. Indeed, in a recently filed lawsuit alleging securities fraud, the SEC did *not* accuse Mr. Left of making any false statements or fraudulent claims about any security. Instead, the SEC accused Mr. Left of, after publishing truthful information about securities, trading those securities in a manner that apparently contradicted his public statements. Specifically, the SEC accused Mr. Left of committing securities fraud by trading certain securities "immediately" after publicly commenting on them—with the SEC defining "immediately" to include trades made minutes after public comment, hours after public comment, or even days or weeks after public comment.

[1] This petition does not seek to shield or in any way condone the dissemination of false or misleading information about the companies themselves. Lying, fabricating data, and manipulating markets should of course remain subject to penalties and enforcement by the Commission. Rather, this petition seeks only to protect the ability of individual investors to engage in trading activity while contributing to the public discourse, without fear of unknowable or arbitrary regulatory enforcement.

The SEC's lawsuit against Mr. Left, which raises core First Amendment concerns, has caused alarm across the investment community because it injects vast uncertainty into how the SEC will view individual trading decisions of non-regulated market participants juxtaposed against their various public statements. No longer will individual investors be free to "take profits," reduce the size of a position, or even cover a short position without closely scrutinizing their prior public statements and attempting to figure out if the undisclosed trade (no matter how small or how long after a statement) somehow contradicts a previously made Tweet or post.

Because of this extreme uncertainty, which necessarily results in the suppression of free speech, even the New York Times emphasized the importance of this issue for market participants, publishing an article titled: "Criminal Charge Against Outspoken Short Seller Unsettles Wall St."[2] This petition is not just about one individual being charged with securities fraud based on truthful statements about companies—it is about protecting the fundamental rights of millions of Americans who contribute to the vibrancy and transparency of our markets by engaging in regular and needed public discourse, as guaranteed by the First Amendment to the United States Constitution.[3]

Rulemaking also would help accomplish the SEC's own policy goals. The SEC has repeatedly emphasized that public commentary regarding securities increases price efficiency and disincentivizes corporate fraud. In fact, the SEC has officially acknowledged the importance of activist short-selling in preventing overpricing, noting in Rule 13f-2: "Short sellers have incentive to uncover negative information and to trade in order to profit from that information," which "improve[s] the amount of information that investors have to value a stock – increasing price efficiency."[4] Thus, protecting retail investors—a core goal of the SEC—is facilitated by short sellers' injection of accurate information about frauds and malfeasance into the marketplace. Additionally, while Rule 13f-2 emphasizes adding transparency to activist short-selling by institutional investment managers, it fails to address key issues such as any requisite holding period after publishing reports. These gaps leave room for abuse and inconsistent enforcement, which disincentives market research and commentary, and undermines the SEC's policy goals.

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[2] Matthew Goldstein, *Criminal Charges Against Outspoken Short Seller Unsettles Wall St.*, N.Y. Times (Sept. 9, 2024), https://www.nytimes.com/2024/09/09/business/andrew-left-citron-short-selling.html.

[3] Notably, the SEC's allegations against Mr. Left did not involve statements about, or the trading of, penny stocks or other speculative, thinly traded securities. Rather, the SEC sued Mr. Left for making truthful statements about, and then trading in, some of the most heavily traded stocks in the market, such as Meta, Tesla and Nvidia. These are stocks with billions of dollars of daily trading volume and constant scrutiny by institutional and individual investors alike. If the SEC's regulatory reach extends to truthful public comments about such widely held and high-profile securities, it is reasonable to assume that millions of individual investors who engage in market commentary are now also at risk.

[4] *Short Position and Short Activity Reporting by Institutional Investment Managers*, 88 Fed. Reg. 75100 (Nov. 1, 2023).

Issues Requiring Clarification to Protect Individual Investors

The SEC's recent enforcement actions raise a host of serious questions which the Commission should answer through rulemaking to protect individual investors. To be clear, this petition seeks guidance not to clarify some minor ambiguity in how regulations are interpreted by the SEC, but rather because there are no rules *at all* regarding the below-mentioned questions, amongst others.

1. Trading Restrictions Following Public Commentary

    - If an investor provides truthful information to the public about a stock or crypto-asset, and advocates for a long or short position, how long must the investor wait to effect a trade?
    - For example, if an investor posts on social media that they believe a security will rise in value, does the investor need to wait for a certain number of days to elapse, or for the security to reach a specific price, before the investor can sell shares of the security?
    - Likewise, if an investor with a short position predicts that the price of a security will go down, at what point can the investor cover their position?
    - Does it matter if the investor intends to sell only a small portion of their position—*i.e* a sale of 10% of their position vs. a sale of 75% of their position? Are there certain numerical thresholds that provide a "safe harbor" where individual investors will not be charged? And does it matter if the investor intends to re-purchase the shares in the future?

2. Scope of Applicability

    - Do these restrictions apply only to individuals whose statements are disseminated to a sufficiently large audience? If so, how large of an audience is necessary to trigger these restrictions?
    - Do these restrictions apply universally to all individual investors, or only to registered brokers, analysts, or professionals bound by fiduciary or other obligations?
    - If applied universally, what reporting mechanisms must individual investors use to comply with such rules? Is the process the same for retail investors, registered brokers, and other securities professionals?

3. Sufficiency of Disclaimers

    - If an investor publicly comments about a stock online, and assuming the commentary about the stock is truthful, can the investor utilize a disclaimer to tell readers that the investor may trade in that security? Is that disclaimer sufficient to preclude an enforcement action?
    - If not, what language in a disclaimer would be sufficient?

4. Free Speech and Property Rights

    - How can individuals protect themselves from regulatory penalties while exercising both free speech and property rights in commenting on and trading securities, assuming that the information provided to the public about the company is truthful?

Without clear answers, these uncertainties risk silencing millions of market participants who contribute valuable insights across all asset classes.

Proposed Rulemaking

To resolve these open questions and provide individual investors with the clarity needed to engage in market commentary while trading, we request that the SEC propose and adopt rules to:

1. **Define Restrictions on Trading for Individuals Who Comment on Securities**
    - The SEC should provide clear, unambiguous guidance on lawful trading activity for individual investors who publicly comment on securities, ensuring that market participants understand their rights, obligations, and potential liabilities.
    - Most importantly, if information publicly posted is positive about a security (*i.e.* a prediction that the stock price will increase), the SEC should define exactly how long an investor must hold all stock before selling any shares. Likewise, if information publicly posted is negative a security (*i.e*. a prediction that the stock price will decrease), the SEC should define exactly when and in what circumstances an investor can cover their short positions.
    - To the extent that there are any safe harbor rules for selling or purchasing stock—for example, an individual investor cannot be liable if the sales or purchases involve less than 25% of their total position—those safe harbors should be made clear.

2. **Allow Disclaimers to Provide Safe Harbor**
    - The SEC should establish that truthful disclaimers, such as statements disclosing potential trading activity in conjunction with public comments, are sufficient to preclude enforcement action.

3. **Establish Practical Standards**
    - The SEC should develop practical standards for compliance that are accessible to individual investors without the need for extensive legal or regulatory expertise.

4. **Affirm Free Speech Protections**
    - The SEC should explicitly affirm that sharing truthful information about securities constitutes protected speech under the First Amendment and does not, standing alone, violate securities laws and regulations.

5. **Focus Enforcement on False Statements**
    - The SEC should ensure that enforcement efforts target individuals who make false statements, fabricate data, manipulate markets, and otherwise commit fraud, not individuals who make truthful statements while legally participating in the market.

Conclusion

The evolving role of individual investors and public discourse in financial markets requires regulatory clarity to preserve the vibrancy and transparency of our markets. The SEC must act decisively to provide individual investors with the clear legal framework they need to participate in markets—as commentors and traders—without fear of arbitrary enforcement.

The proposed rules should not give any credence to pump-and-dump or short-and-distort schemes. All securities laws apply, and individuals cannot lie about a company or employ fraudulent information designed to deceive. However, the SEC must recognize and address the chilling effect of its actions on individual investors exercising their freedom of speech and engaging in lawful market activities.

By issuing clear, practical rules, the SEC can ensure that individual investors like Andrew Left—and millions of others—can confidently engage in market conversations and trading activity across all asset classes. This petition is a call to safeguard the rights of individual investors and uphold the integrity of our financial markets. We urge the Commission to address this critical issue without delay.

We appreciate the Commission's attention to this matter and are available to address any questions the Commission or its staff may have regarding this petition.

Sincerely,

Eric S. Rosen

DYNAMIS LLP
Eric S. Rosen
Michael B. Homer

Counsel for Andrew Left

cc: The Honorable Paul Atkins, Incoming Chair and Former Commissioner
The Honorable Hester M. Peirce, Commissioner
The Honorable Caroline A. Crenshaw, Commissioner
The Honorable Mark T. Uyeda, Commissioner