October 25, 2022

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

Re: Senators' Letter on Rulemakings and Comment Periods

Dear Chairman Gensler:

We read with interest the recently reported undated letter sent to you by twelve U.S. Senators regarding the length of the comment periods applicable to SEC rulemakings. As a small nonprofit advocating for the public interest at the financial regulatory agencies, we have participated in hundreds of rulemakings since 2010 (almost 150 at the SEC alone), and we agree with the Senators' recognition of the importance of the SEC's vital work. However, we would add a number of other important considerations, including the high stakes for the country in making sure the U.S. capital markets remain the broadest, deepest, and most liquid securities markets in the world.

We Agree with the Senators That the SEC's Work Is Vital.

First, we agree with the Senators' observations about the importance of the SEC's ongoing rulemaking efforts. For example, they note that "[t]he SEC has important work to do to strengthen transparency and accountability in our markets, promote efficiency and competition, and foster the innovation and access to capital that contribute to economic growth." And they add that "[y]our mission protecting investors, facilitating capital formation, and maintaining fair, orderly, and efficient capital markets is fundamental to the functioning of our economy."

They are right. You and the entire staff of the SEC are engaged in enormously important regulatory and enforcement work to protect investors, the integrity of our securities markets, and financial stability. That work encompasses a wide range of measures necessary to ensure that our public and private market structures, trading platforms, investor protections, corporate governance requirements, and disclosure regimes are fair, transparent, and stable. That, in large part, is why the US has the broadest, deepest, and most liquid securities markets in the world.

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The preeminence of the US capital markets, however, is not guaranteed. Investor and consumer protections, along with financial stability measures, are the foundation for our capital markets and critical to capital formation and allocation. Without the faith, trust, and confidence of investors—who are the capital providers—and their willingness to invest their money, those markets will not continue to be deep, broad, or liquid. That will hurt capital formation and allocation, which will drive down standards of living and create a vicious cycle in which confidence continues to fall, investment drops further, fewer businesses and jobs are created, innovation suffers, standards of living go down, and the cycle repeats, multiplying all of these harms.

Investor faith, trust, and confidence come from clear rules applicable to all, a level playing field, fair enforcement of the rules, and meaningful punishment and deterrence for lawbreakers. Put differently, protecting investors (capital allocators) and consumers (end product purchasers) while also promoting financial stability (the framework enabling predictable financial transactions) are what the entire capital formation, allocation, and creation system depend on. That's why the role, mission, and success of the SEC are vitally important to all Americans: U.S. markets are the envy of the world because they are well-regulated by the SEC and others.

<u>We Agree with the Senators That the Notice and Comment process Is Key.</u>

Second, we also wholeheartedly agree with the Senators' emphasis on the importance of the notice and comment process that governs rulemaking at the SEC and other federal agencies. For example, they observe that "[a]dequate input and public comment is central to ensuring that the SEC's rules and regulations reflect the perspectives and needs of all stakeholders." They further note that "[i]t is critical that, as the SEC moves through the rulemaking processes, there is adequate time to evaluate each individual rule as well as how those rules interact with existing and other proposed rules." In this regard, the Senators emphasize the importance of providing "a sufficient time period for notice and comment as you consider rules that will impact [their] constituents." Finally, they affirm their "belief that a thorough and thoughtful comment process will only yield better results for investors and our economy."

There is no doubt that the notice and comment process is not only required under the law but also critically important from a policy standpoint. Such public engagement promotes transparency and accountability in the rulemaking process; leads to better rules by providing the agency with insights, opinions, and data from various stakeholders; and ultimately creates a record on which one can better assess the basis and rationale for each final rule.

<u>The SEC's Comment Periods Have Enabled All Stakeholders to Participate in the Process.</u>

To the extent there is a suggestion that the SEC has failed to provide adequate notice and opportunity to comment on its proposed rules, we respectfully disagree. We say that for several reasons. As an initial matter, the SEC has of course always complied with the legal requirements governing explicit comment periods for proposed rules, including the generally applicable 30-day timeframe. In most cases, the SEC has established a comment period longer than the explicit minimum requirement. And, importantly, the actual time periods for comment have invariably extended well past 30 days (and every other officially designated comment period), because it takes weeks if not longer after the SEC publicly adopts, releases, and publishes a proposed rule for the Federal Register to publish it, which is the start date for the explicit comment period. Thus, the actual comment period from the time of the SEC's public action until the close of the explicit comment period invariably extends beyond any minimum time period. While in days gone by, the public may only have learned of a proposed rule by reading it in the Federal Register, that is simply no longer the case in the age of the internet and very broad, real-time public notice of agency actions, including the SEC. Thus, when considering the length of time for the public to comment, the de facto time period should be the relevant benchmark.

The SEC's Current Rulemaking Is Consistent with Past Periods.

Third, to the extent there are concerns expressed regarding the amount of rulemaking, it is clear that the current volume of rulemaking is consistent with the volume of rulemaking under previous Chairs. Indeed, while your tenure as Chair is still young, the pace of rulemaking so far has actually been less frenetic than that seen during periods when the SEC was led by other chairs, including Mary Schapiro, Mary Jo White, and Jay Clayton. Note that according to the Federal Register, 147 rules were finalized under Chair Mary Schapiro; 99 rules were finalized under Chair Mary Jo White; and 118 rules were finalized under Chair Jay Clayton. As of today, the Federal Register shows that 29 rules have been finalized under Chair Gensler.

Industry Objections to the Pace of Rulemaking Are Without Basis.

Fourth, to the extent there is a suggestion that the financial industry has an insufficient opportunity to comment on proposed rules, that is simply not credible given its army of lobbyists and lawyers, which include more than 30 DC-based trade groups and budgets of hundreds of millions of dollars a year, every year. Day in and day out, year after year, financial firms, including brokers, advisers, and banks, are well-equipped to digest, analyze, and prepare comments on any rule within virtually any time frame, and certainly within the ample time frames for proposed SEC rules. Ironically, if anyone had a legitimate basis to complain here, it would be nonprofit advocacy organizations like Better Markets, which have very limited resources and are often stretched thin as they respond simultaneously to proposals from the SEC, CFTC, FDIC, OCC, Federal Reserve, and other agencies. After more than 12 years and more than 300 rulemakings, Better Markets and numerous other similarly underfunded and understaffed organizations have kept up with the regulators' activities with few complaints. It is also worth noting that we do not recall the industry or others complaining about very short time periods, if any, during the Trump administration when deregulation, neglect, and non-enforcement was the rule at the financial regulatory agencies.

The SEC's Rulemaking Agenda Is Necessary to Fulfill Its Statutory Mandate.

Fifth, it must be remembered that the SEC's rulemaking agenda is dictated by the need to address serious gaps and weaknesses in the current regulatory framework as well as to meet its statutory mandate to protect investors and markets while promoting capital formation. That agenda was unfortunately enlarged after four years of neglect if not backsliding during the prior administration. But, even if that was not the case, the financial markets are constantly evolving and presenting new regulatory challenges, often engendered by new technologies, and the SEC simply must be on the frontlines of those changes if it is to fulfill its statutory mission.

Additionally, issues, information, and data that are material to investors evolve over time and the SEC is required to ensure that investors always have the material information they need to make informed investment decisions.

Conclusion.

As you recognize, there is a need to move as expeditiously as possible with critically important new rules—while scrupulously adhering to the legal requirements governing notice and comment—if the SEC is to fulfill its mission and statutory mandate of protecting investors, markets, and financial stability while promoting capital formation. We are pleased to see that the Senators who sent you the letter agree. Working together, the well-regulated U.S. capital markets will undoubtedly remain the broadest, deepest, and most liquid securities markets in the world.

Thanks to you and the entire staff of the SEC for working tirelessly on behalf of the American people.

Sincerely,

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