BETTER MARKETS

SEC

FACT SHEET

Working-Class Americans Elected President Trump, and His New SEC Chair Must Take Action to Protect Them

By Benjamin Schiffrin | *Director of Securities Policy*

January 16, 2025

The results of the 2024 presidential election have been described as a repudiation of elites by a multi-racial coalition of working-class Americans. Yet President Trump has filled his administration with wealthy individuals and Wall Street executives. So the question is whether these appointees will fulfill his promises to America's forgotten men and women.

The answer will depend in part on the Securities and Exchange Commission (SEC). Last summer, at the Republican National Convention, Vice President-elect JD Vance said that his party was done "catering to Wall Street" and would instead "commit to the working man." Yet after the nomination of Paul Atkins to head the SEC, the prevailing view is that Wall Street is cheering. The reason is that Atkins has long advocated for a lighter-touch regulatory regime. Such a regime would not favor the ordinary retail investor. Instead,

> an economic strategy predicated on showering big business and the super wealthy with lavish tax cuts and loose regulatory oversight, will ensure that whatever growth the Trump economy generates, the gains will accrue mainly at the top.

Naturally, the messaging around Atkins's nomination has not focused on his pro-Wall Street views. In nominating him, President Trump said that Atkins "is a proven leader for common sense regulations." If that's true, here are five common sense regulatory actions—and one common sense initiative the SEC should put on its enforcement agenda—that would benefit ordinary retail investors that the SEC should take in 2025.

Crypto frauds

The SEC should adopt a rule that says crypto assets that qualify as securities are subject to the same antifraud rules as other securities. It should do so because lost in the debate over whether the SEC or the CFTC should regulate crypto is why it matters. It matters because crypto is an industry rife with fraud, most people buy crypto as an investment, and, unlike the CFTC, the SEC's mission includes an investor protection mandate.

This mandate is especially important for everyday Americans because crypto proponents create "wealth for themselves by selling to less sophisticated investors who are ill-equipped to recover from major losses." Indeed, the FBI found that Americans lost $5.6 billion through crypto fraud schemes in 2023, and that Americans of all ages can be targets of such scams. And the ways in which people use crypto for fraud keep proliferating.

The SEC recently brought its first case in connection with a pig butchering scam. Pig butchering scams involve fraudsters who develop a relationship of trust with the victim and then convince the victim to invest in crypto with the intent of defrauding them out of their investment. The name derives from the practice of fattening a pig before slaughter.

For example, a company known as SpireBit ran a scam that targeted Russian-speaking seniors online. SpireBit used social media posts that promised lucrative investment returns, and after individuals responded to the posts company representatives used a supposedly shared background in the former Soviet Union to develop an online friendship. They would then urge the victims to invest in SpireBit's crypto investments. But the victims discovered it was a sham after they transferred large amounts of money into SpireBit's cryptocurrency wallets. One victim was a 75-year-old who lost his life savings of $340,000, which he had earned over decades as a small business owner.

One would think that a 75-year-old retiree who ran a small business would be exactly the type of "working man" that this administration—or any administration—would want to protect. The best way to do that would be for the SEC to adopt a rule clarifying that when investment frauds involve crypto assets that qualify as securities it has the authority to bring enforcement actions against the perpetrators as in any other securities fraud. This would level the playing field so that defrauded investors in crypto asset securities are just as protected as defrauded investors in other securities. It would also lay the groundwork for other rules that would subject firms that trade crypto assets that qualify as securities to the investor protection mechanisms that exist for firms that trade traditional securities, such as the need to eliminate conflicts of interest, implement robust and effective compliance systems, and protect customer funds. These mechanisms help protect ordinary Main Street investors from losing their life's savings in fraudulent schemes.

Private Markets

The SEC should not approve private credit exchange-traded funds (ETFs) unless they contain sufficient investor protection measures. In September, State Street and Apollo Global Management sought approval for a private credit ETF. ETFs are traditionally low-cost and low-risk investments that track a market index and therefore offer retail investors a way to diversify their risk by investing in the public markets. But a private credit ETF would be risky for retail investors because private credit involves illiquid loans that are hard to value, which is why private credit is usually open only to sophisticated market participants.

The State Street-Apollo filing does not meaningfully address the concerns about potentially unreliable valuations and a lack of liquidity for retail investors.

Private credit ETFs are an especially risky way to expose retail investors to the private markets because retail investors expect ETFs to be highly liquid. The essential characteristics of ETFs are that they can be easily bought and sold on national securities exchanges and that they trade freely throughout the trading day. So "putting a liquid wrapper around less-liquid assets comes with obvious dangers."

The State Street-Apollo private credit ETF filing is part of a larger push to get retail investors to invest in the private markets. Those markets generally entail higher fees, less disclosure, and more risk, which is why sales are usually limited to institutional investors and wealthy individuals who can afford to lose most or all of an investment without going broke. Indeed, there is little dispute that private market funds are riskier than index funds, and are less liquid, making it difficult to get money out if the funds run into problems. But as the appetite of institutional investors for the private markets has decreased, the industry is desperate to find other investors to keep its profits high, resulting in intensified efforts to strip away the traditional protections for, and gain access to, ordinary retail investors.

> Main Street retirement savings are viewed by Wall Street investment giants as a way to boost demand for non-listed, illiquid bets that aren't traded on any public exchange.

Wall Street may want to boost demand for these riskier assets, but an administration that wanted to "commit to the working man" rather than "cater to Wall Street" would not remove the restrictions on selling to retail investors just so Wall Street could profit.

The SEC should not allow these efforts to succeed just because they are in Wall Street's interest. Instead, it should protect ordinary retail investors from these efforts. Otherwise, these investors will be left to fend for themselves, and it is the inability of retail investors to fend for themselves that is the basis for limiting the private markets to institutional investors and high net worth individuals in the first place. Indeed, even

> some private equity industry executives worry retirement savers will not have the ability to discern between credible funds and fly-by-night entrants chasing lucrative fees.

Retail investors already "need to be increasingly cautious about what they buy and who they buy it from." The SEC should not make things worse by exposing retail investors to products where it is "all but impossible" to identify the assets that belong in a portfolio.

This impossibility stems from the lack of disclosures that accompany private market investments, which is why the SEC should not allow private fund issuers to market their products to retail investors under the guise that it will provide them with the same opportunities as institutional investors and wealthy individuals. These latter investors have the resources to conduct the necessary due diligence even without mandated disclosures. So retail investors will not be on equal footing. The real "opportunity" would be for the private funds industry to sell their products to investors who are less equipped to evaluate them. The inevitable result will be retail investors faced with the "opportunity" to purchase the private market assets that their more experienced counterparts have rejected.

The opacity of the private markets generally and private credit specifically means that, rather than expanding access to retail investors, the SEC should be doing everything possible to curb the risks that private credit poses. That's because the risks are not limited to retail investors. Because private credit involves non-bank loans to riskier businesses, it raises some of the same red flags as the mortgage lending that led to the financial crisis. And because private credit firms borrow from banks, failures could have a cascading effect throughout the financial markets. This raises the specter of contagion. Private credit ETFs would only exacerbate the risks that private credit already poses to the financial system.

24/7 trading

The SEC should not allow stock exchanges to operate around the clock. The New York Stock Exchange is seeking approval to operate 22 hours a day, five days a week, and the SEC granted preliminary approval for a new exchange, 24X, to operate 23 hours a day, five days a week. These proposals would turn stock exchanges into casinos.

The consequences could be disastrous. The ability to bet on sports 24 hours a day, combined with the technology available to sports betting companies that allow them to know precisely when to prompt customers to bet, has created a national epidemic of sports betting addiction. It is easy to envision the same thing happening to retail investors. The financial industry is already able to use artificial intelligence and similar technologies to send customers tailored push notifications and other behavioral prompts to induce trading. The use of these technologies, combined with the ability of retail investors to trade at all hours of the day or night, has the potential to create retail trading addicts.

This concern is far from theoretical. Since the start of the COVID-19 pandemic, there has been a surge in individuals seeking treatment for stock trading addiction:

> Pennsylvania's gambling hotline has fielded more calls tied to gambling in stocks and crypto since 2021 than it did in the prior six years combined. At a New York-based treatment center, Safe Foundation, clinical director Jessica Steinmetz estimates about 10% of patients are seeking help for addictions tied to trading. Before 2020, there were no such patients.

This surge is tied to the proliferation of brokerage apps that make it easy to trade, and which have "gamified" trading to make it harder to understand the risks. And Wall Street already "keeps introducing newer and riskier ways to play the market through stock options or complex exchange-traded products that use borrowed money and compound the risk for investors.” One can only imagine what will happen if retail investors are able to use these apps to place trades on stock exchanges in the middle of the night.

> Unlike sports-betting apps such as FanDuel and DraftKings, most brokerage apps don’t post warnings about gambling or offer hotlines to seek help. . . . The [National Council on Problem Gaming’s] executive director, Keith Whyte, said NCPG reached out to apps like Robinhood to suggest they adopt consumer protections ingrained in gambling apps. ‘In some cases, the consumer protections in the gambling industry exceed that in the financial markets,” Whyte said.

That is astounding and should deeply concern anyone interested in (much less mandated to promote) investor protection—the fact that in some ways everyday Americans are better protected from the gambling industry than from the financial industry. This suggests that the SEC needs to enhance investor protection. 24/7 stock trading would do the opposite.

Indeed, aside from concerns about trading addiction, 24/7 stock trading would harm retail investors in other ways. Retail investors would receive worse prices during overnight trading sessions when there are fewer buyers and sellers and therefore less liquidity. And some firms won’t allow 24/7 trading in their client portfolios because they see that people make more impulsive decisions at night and make poor decisions when they are tired.

> Advisory firm Betterment isn’t a fan at all, refusing to allow 24/7 trading in its client portfolios. ‘We see more people make impulsive decisions after hours, especially if it’s on your phone,’ says Dan Egan, the firm’s vice president of behavioral finance and investing. Betterment has even coined a phrase for this behavior—‘slupid’—a combination of being sleepy and stupid. ‘Don’t trade slupid,’ Egan says.

Some say that the key question as to whether there will be 24/7 stock trading is “whether Wall Street can make a profit from extended hours trading.” But why is that the key question? The key question should be whether extended trading hours are good for ordinary retail investors, and the answer is that the risks far exceed any potential benefits.

Artificial intelligence

The SEC should adopt a rule that prevents broker-dealers and investment advisers from using artificial intelligence and similar technologies to harm investors. Under Gary Gensler, the SEC proposed a rule that would have required broker-dealers and investment advisers to eliminate, or neutralize the effects of, certain conflicts of interest associated with their use of artificial intelligence-like technologies in their interactions with investors. The industry vociferously opposed the rule on the grounds that regulating financial firms’ use of artificial intelligence would stifle innovation. The SEC certainly need not adopt the exact rule proposed under Chair Gensler. But if it is serious about protecting retail investors—the “working man”—then it must prevent financial firms from using AI to harm them.

The argument that regulating AI will stifle innovation mirrors the argument that prevented the regulation of social media in its infancy. The view that by adopting rules regulators would stifle innovation led social media's influence to grow past the point where it could be controlled. With the benefit of hindsight, though, it's now apparent that regulators "missed critical windows to install guardrails for the internet and social media."

That's because the failure to properly regulate social media companies has had widespread harmful consequences for tens of millions of everyday Americans. It allowed those companies to maximize their profits. But "as platforms grew, so did issues like online abuse, privacy breaches, and the spread of false information." And the risks of AI are largely the same but potentially on an even broader and more dangerous scale. AI can similarly be used to "influence consumers, generate disinformation, or reinforce bias."

So regulators cannot afford to make the same mistakes with AI. Nor would regulating AI stifle innovation, a catch-all club used to beat back all rules no matter how modest, sensible, or necessary. Rather, common sense, targeted, and tailored rules would allow AI to achieve its full potential while ensuring that the public is properly protected.

> AI has the potential to improve lives, create new industries, and solve complex problems. But without thoughtful regulation, it could also deepen inequalities, invade privacy, and make harmful decisions without human oversight.

The problem is that time is running out. AI is developing the same way the internet and social media developed, with the same regulatory gaps. "[K]ey questions are not being asked about the technology's impact on disadvantaged people, while the focus remains on profits."

The SEC cannot make the same mistakes that regulators made with social media and allow the industry's profit maximization incentives to prevent it from regulating the use of AI by financial firms. Even the creators of AI recognize that without regulation it will be used to manipulate the markets. The SEC must adopt a rule that prevents financial firms from using AI to benefit themselves at the expense of investors, markets and capital formation.

Security Prices

The SEC should adopt a rule requiring brokers to try to obtain the best prices for their customers. Chair Gensler's SEC proposed a rule that would have required brokers to use reasonable diligence to ascertain the best market for a security and to buy or sell in such a market so that the resulting price to the customer is as favorable as possible under prevailing market conditions. The industry opposed this rule primarily on the ground that FINRA, a self-regulatory organization of broker-dealers, already has a "best execution" rule. Leaving aside the ineffectiveness of that rule and its many unjustified loopholes, the securities industry itself should not be in charge of determining whether its own brokers are getting the best prices for their customers, which could reduce revenue, profits, and bonuses to those brokers and their employers who are FINRA members. Again, the SEC does not have to adopt the rule Chair Gensler proposed. But surely the SEC should have a rule it can enforce that says brokers have to try to get the best prices for their customers.

An SEC Chair that was in favor of “common sense regulations” should support such a rule. Indeed, there should be nothing controversial about saying that brokers must try their best to ensure that retail investors receive the best prices for their trades. Such a duty would seem to be fundamental to a broker’s role in the securities markets.

Unsurprisingly, the SEC has long recognized the importance of brokers trying to obtain the best prices for their customers. The SEC first raised the specter of a rule imposing such an obligation on brokers in 1972. Nonetheless, in the ensuing 50-plus years, it has not adopted a rule articulating this affirmative obligation or making the failure to abide by this obligation enforceable. The SEC, as part of its commitment to the working man rather than the interests of Wall Street, should act now so that ordinary retail investors know that their brokers are acting in their interest to obtain the best prices on their securities trades.

Individual Liability in Enforcement Actions

The SEC should prioritize individual liability in its enforcement actions. The SEC’s practice of bringing charges against the biggest financial firms and not the individuals responsible for and profiting from the lawbreaking at those firms is longstanding. And when people in the capital markets believe there is no meaningful personal penalty to breaking the law, lawbreaking increases, which can become pervasive and contribute to systemic risk.

Conversely, the best way to deter financial misconduct in the future is to punish people who have already committed such misconduct. As Emily Nix, professor of finance and business economics at the University of Southern California, recently said,

> If you are punishing the corporation through a slap-on-the-wrist financial penalty, that is maybe not going to be as strong a deterrence as if you punish the specific individual who defrauded millions of Americans out of their hard-earned savings.

An SEC Chair with a common-sense approach would prioritize holding individuals accountable. And it is not enough to do so in cases involving small firms. For example, one of the enduring mysteries of the 2008 financial crisis is why so few individuals at large financial institutions faced any consequences. This suggests an uneven playing field. The SEC must prioritize individual accountability in its cases involving big and small firms alike.

Conclusion

The Trump administration campaigned on a pro-Main Street, pro-worker, pro-investor message, not a pro-Wall Street message. Those messages, if not promises, now must be implemented in the agendas of the agencies and departments of the new administration. Few agencies are better positioned to turn that rhetoric into reality than the SEC.

As the new administration dawns, the SEC faces several issues that will force it to weigh the interests of Wall Street against the interests of Main Street and retail investors. As it confronts these issues, the SEC should be a champion of the retail investors whom it exists to protect. Time will tell whether it will fulfill this role consistent with its mission and whether there will be a match between the new administration's words and deeds.

BETTER MARKETS

Better Banks | Better Businesses

Better Jobs | Better Economic Growth

Better Lives | Better Communities

Better Markets is a public interest 501(c)(3) non-profit based in Washington, DC that advocates for greater transparency, accountability, and oversight in the domestic and global capital and commodity markets, to protect the American Dream of homes, jobs, savings, education, a secure retirement, and a rising standard of living.

Better Markets fights for the economic security, opportunity, and prosperity of the American people by working to enact financial reform, to prevent another financial crash and the diversion of trillions of taxpayer dollars to bailing out the financial system.

By being a counterweight to Wall Street's biggest financial firms through the policymaking and rulemaking process, Better Markets is supporting pragmatic rules and a strong banking and financial system that enables stability, growth, and broad-based prosperity. Better Markets also fights to refocus finance on the real economy, empower the buyside and protect investors and consumers.

For press inquiries, please contact us at press@bettermarkets.com or (202) 618-6430.

SUBSCRIBE to Our Monthly Newsletter

FOLLOW US ON SOCIAL

2000 Pennsylvania Avenue NW | Suite 4008 | Washington, DC 20006 | 202-618-6464 | www.bettermarkets.org