BETTER MARKETS

FACT SHEET

The SEC Wants to Keep Investors in the Dark

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Introduction

The SEC exists to ensure that investors receive full disclosure of all significant information regarding companies that issue securities to the public. The idea is that, when armed with this information, investors will be able to evaluate investment opportunities and best allocate their capital. For this reason, the SEC spent over 90 years after its formation in 1934 promoting public company disclosures. This transparency has made U.S. capital markets the envy of the world. Today, however, investors face greater peril than at any other time in recent memory, because current SEC Chair Paul Atkins has made it his mission to eliminate disclosure requirements.

Semiannual Reporting

One of the bedrock disclosure requirements public companies face is the requirement to provide investors with quarterly financial reports. Since 1970, the SEC has required companies to provide these reports so investors receive continuous, frequent, and timely updates about the financial condition of the companies in which they invest. Indeed, when the SEC proposed quarterly reporting in a rule scheduled for publication 57 years ago today, it did so "to improve disclosure."

Now, Chair Atkins has proposed eliminating the requirement that public companies provide investors with quarterly reports. Instead, he wants to allow companies to file reports every six months. This means investors would receive half the information they do currently.

Chair Atkins says that the SEC can adopt semiannual reporting "without undermining fundamental investor protections." This isn't so, as quarterly reporting *is* a fundamental investor protection. The question is why the SEC would want investors to receive less information.

- The proposal would allow companies to continue to access the public markets to obtain investors' money while providing investors less information less frequently about their investments, which will impair their ability to make informed decisions to buy, sell or hold.
- The proposal would particularly disadvantage retail investors who, unlike institutional investors, will lack the resources and relationships to obtain the information they need.
- The proposal would reduce the efficient functioning of markets through timely disclosure because pricing will be more volatile and likely more frequently inaccurate.

If the SEC finalizes this proposal, it will do so after receiving over 200,000 comments, most from individual investors, with an overwhelming amount—99% by some estimates—opposing it.

Public Company Disclosures

The frequency with which investors receive disclosures from public companies is not the only change Chair Atkins wants to make. Chair Atkins also has proposed reducing the substance of the disclosures that public companies must provide investors, both when they sell securities to the public and on an ongoing basis thereafter. Although the SEC says it can reduce these disclosure obligations "while maintaining robust investor protections," this is again not the case.

- The SEC wants to increase by 60% the number of companies that may sell securities to the public while using an abbreviated offering document that provides only minimal disclosures.
- The SEC wants to vastly expand when companies can sidestep state law registration and qualification requirements that protect investors when they raise money from the public.
- The SEC wants to weaken the "gun jumping" rules that prevent companies from hyping their stock before investors get the disclosures required in an initial public offering.
- The SEC wants to allow more public companies to qualify for reduced disclosure obligations on an ongoing basis while acknowledging that doing so may make it "more difficult and costly for investors to make informed investment decisions."
- The SEC wants to eliminate requirements it previously deemed material to investors such as disclosures about insider trading, cybersecurity, and performance relative to an index.

The SEC is also apparently on the cusp of issuing a proposal that would cut back executive compensation disclosure requirements, which allow investors to decide if the CEOs and other corporate officers that run the companies in which they invest are paid fairly.

Climate-Related Risks

Chair Atkins wants to further rescind the climate risk disclosure rule requiring that companies inform investors of the climate-related risks that they face. The SEC now says the rule "harm[s] the very investors it seeks to protect" by requiring the disclosure of immaterial information. Investors say otherwise.

- Major asset managers and pension funds responded to the proposed rescission of the climate rule by saying that climate-related information is financially material.
- Companies that work with issuers recognize that investors expect climate disclosures.

- These perspectives reflect the view that the climate risk disclosure rule protects, rather than harms, investors because there can no longer be any serious dispute that the climate-related risks companies face matter for their future financial prospects.

Conclusion

The SEC has long viewed disclosure as the foundation of securities regulation in the United States, regardless of the political affiliation of the chair. For example, Jay Clayton, SEC Chair during President Trump's first term, testified before Congress that a "fundamental principle for the SEC and our capital markets has always been the importance of issuers providing investors with financial and operational disclosures that are clear, high-quality, and timely." Christoper Cox, SEC Chair during George W. Bush's second term, similarly testified that it was "the SEC's job to see to it that financial data and qualitative information about the issuers of securities are fully and fairly disclosed." And Richard Breeden, who was SEC Chair during George H.W. Bush's administration and for whom Chair Atkins served as chief of staff, said in his farewell remarks that those who created the SEC "knew that the efficiencies of the market would be greatest if they were coupled with an insistence on public disclosure of all the news, both good and bad." He also warned:

> I am absolutely certain that there will always be those who call for easing the fundamental core of the American system, which is full disclosure to the market. Disclosure is, after all, the most powerful disciplinary tool of all, since it exposes the good and the bad to the public's sense of right and wrong. By insisting on the values of honesty and openness in our capital markets, we have produced the 'cleanest' business community of any country. . . . However . . . there will always be those in this country who would trade the disinfectant power of sunshine for the comfort of life in the shadows. That is why there has to be an SEC, and why it has to be staffed with people who are willing to live for, and fight day by day, for the principles and values of which this agency is the guardian.

The fact that it is now Chair Atkins who calls for easing the fundamental core of disclosure at the center of U.S. securities regulation, Chair Atkins who would trade corporate transparency for public companies that operate in the shadows and keep investors in the dark, and Chair Atkins who is unwilling to uphold the SEC's principles and values, should be to his enduring shame.

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