

Testimony of Chair Gary Gensler  
Before the United States Senate  
Committee on Banking, Housing, and Urban Affairs  
Sept. 12, 2023

Good morning, Chairman Brown, Ranking Member Scott, and members of the Committee. Thank you for inviting me to testify today. As is customary, I'd like to note that my views are my own as Chair of the Securities and Exchange Commission, and I am not speaking on behalf of my fellow Commissioners or the SEC staff.

### **Protecting the Public for 90 Years**

For 90 years, the federal securities laws and the SEC's work to oversee them have played a crucial role for the public both in good times and in times of stress. The core principles of U.S. securities markets regulation have contributed to America's economic success and geopolitical standing around the globe.

At this remarkable agency, we serve investors building for a better future and issuers raising money to fund innovation, while overseeing the \$100 trillion capital markets where they meet. The essence of this is captured in our three-part mission to protect investors, maintain fair, orderly, and efficient markets, and facilitate capital formation.

The SEC is the cop on the beat watching out for your constituents. In the last year, we've filed approximately 750 enforcement actions and conducted approximately 3,000 examinations of registrants. We engage with more than 40,000 registrants—asset managers, brokers, dealers, exchanges, fund complexes, public companies, and many more.

The dedicated staff of this agency does extraordinary work with limited resources. In the face of significant growth in registrants, more involvement in our markets from individual investors, and increased complexity, the SEC's headcount actually shrank from 2016 through last year. The SEC this year is expected to be approximately three percent larger than it was in FY 2016.

I am proud of this agency. This year we were named the third-best place to work among midsized federal agencies, building on our ranking in the top five for the previous five years.<sup>1</sup>

### **Updating Our Rules to Meet the Challenges of Our Time**

We are blessed with the largest, most sophisticated, and most innovative capital markets in the world. But we cannot take this for granted. Even a gold medalist must keep training. As a seminal SEC report in 1963 said, "no regulation can be static in a dynamic society." The report

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<sup>1</sup> See Partnership for Public Service, "Best Places to Work in the Federal Government: Securities and Exchange Commission" (March 29, 2023), available at <https://bestplacetowork.org/rankings/detail/?c=SE00>.

continued, “unanticipated changes in the markets and the broader public participation should be accompanied by corresponding investor protection.”<sup>2</sup>

Six decades after the publication of that Special Study, that core idea still rings so true. That’s why we’re updating our rules for the technology and business models of the 2020s. That’s why we’re updating our rules to promote the efficiency, integrity, and resiliency of the markets. We do so with an eye toward investors and issuers alike, to ensure the markets work for them and not the other way around.

Focusing on the efficiency, integrity, and resiliency of markets helps lower costs. It enhances access and promotes financial stability. It encourages competition while at the same time lowering the fragility of the system. Two years ago, we laid out a unified regulatory agenda to do just that.<sup>3</sup> Included in that agenda were 10 items related to Congressional mandates, most from the Dodd-Frank Wall Street Reform and Consumer Protection Act and one from the Holding Foreign Companies Accountable Act. There were also items exercising new authorities granted under Dodd-Frank.

Each of the subsequent proposals we’ve made further our three-part mission and are based upon authorities granted by Congress. Our Division of Economic and Risk Analysis provides robust economic analyses, which consider costs and benefits as well as effects on efficiency, competition, and capital formation.

We greatly benefit from public input regarding the economics, the policies themselves, and the SEC’s legal authorities. In the last two years, we have provided the public ample time to comment, with an average of 70 days to comment from the time a proposal is published on our website. Since January 2022, we have provided a minimum of 60 days with some as long as 100-plus days from the day we a proposal is posted on our website.

In the last two years, we also reopened 18 of our rules for further public comment. When comment periods close, we often continue to get additional comments, through meetings and otherwise, which staff has considered as well.

Based on the public feedback, the staff and the Commission consider possible adjustments to the proposals and whether it’s appropriate to move forward to a final adoption. This process generally takes 12-24 months, and we move to adopt rules only when the staff and the Commission think they are ready to be considered. We’re focused on getting things right—based upon the economics, the Commission’s legal authorities, and promoting the SEC’s mission—not the clock.

The SEC now has issued proposals for most of that unified agenda we laid out two years ago. We also have finalized 22 rulemakings, nearly all of which have changed based on public

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<sup>2</sup> See “Report of Special Study of Securities Markets of the Securities and Exchange Commission” (1963), p. IV, available at [https://www.sechistorical.org/collection/papers/1960/1963\\_SSMkt\\_Chapter\\_01\\_1.pdf](https://www.sechistorical.org/collection/papers/1960/1963_SSMkt_Chapter_01_1.pdf).

<sup>3</sup> See Office of Management and Budget, “Agency Rule List – Spring 2021” available at <https://www.reginfo.gov/public/do/eAgendaHistory>.

feedback. A recent news article notes that this number of finalized rules is less than a number of my predecessors in a comparable timeframe.<sup>4</sup>

In ensuring that markets best serve investors and issuers alike, the middle part of our mission speaks to promoting fair, orderly, and efficient markets. I'll speak to our work to enhance the efficiency, integrity, and resiliency of the markets.

## **Efficiency and Competition**

Congress both in the 1970s and again in the 1990s updated the securities laws, giving the SEC a specific role to promote competition and efficiency. In particular in 1996, Congress mandated that, in addition to investor protection and public interest, the SEC consider efficiency and competition, as well as capital formation, in formulating our rules.<sup>5</sup> Congress understood that lowering the cost in the middle of our capital markets would help lower costs for issuers and raise returns for investors.

In that context, we have put out to public comment proposals regarding securities lending,<sup>6</sup> short sale disclosures,<sup>7</sup> and large position reporting for securities-based swaps.<sup>8</sup>

I will take a moment to elaborate on our work in equity markets and private funds.

### *Equity Markets*

With some 68 million American households investing in the equity markets,<sup>9</sup> these markets are critical to issuers and investors alike. These markets also are experiencing rapidly changing technology. Thus, it's appropriate that the SEC freshen up its rules to promote efficiency and competition in the more than \$40 trillion equity markets.

Key aspects of our rules for the national market system haven't been updated since 2005. Yet so much has changed. Not only have we seen the electrification of markets, but also a

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<sup>4</sup> See Andrew Ramonas, Bloomberg Law, "Gensler Lags Predecessors in SEC Rulemaking as ESG Plans Linger" (Aug. 29, 2023), available at <https://www.bloomberglaw.com/product/blaw/bloomberglawnews/securities-law/>

<sup>5</sup> See Gary Gensler, "Competition and the Two SECs": Remarks Before the SIFMA Annual Meeting" (Oct. 24, 2022), available at <https://www.sec.gov/news/speech/gensler-sifma-speech-102422>.

<sup>6</sup> See Securities and Exchange Commission, "SEC Proposes Rule to Provide Transparency in the Securities Lending Market" (Nov. 18, 2021), available at <https://www.sec.gov/news/press-release/2021-239>.

<sup>7</sup> See Securities and Exchange Commission, "SEC Proposes Short Sale Disclosure Rule, Order Marking Requirement, and CAT Amendments" (Feb. 25, 2022), available at <https://www.sec.gov/news/press-release/2022-32>.

<sup>8</sup> See Securities and Exchange Commission, "SEC Proposes Rules to Prevent Fraud in Connection With Security-Based Swaps Transactions, to Prevent Undue Influence over CCOs and to Require Reporting of Large Security-Based Swap Positions" (Dec. 15, 2021), available at <https://www.sec.gov/news/press-release/2021-259>.

<sup>9</sup> The Federal Reserve Board's 2019 Survey of Consumer Finance finds that 53 percent of families own stock. "Family" as used in the Survey is similar to "household" as defined in Census data. Census data in 2019 estimated that there are 128.6 million households in the U.S; 53 percent of this figure is approximately 68 million households. See Federal Reserve Board, "Changes in U.S. Family Finances from 2016 to 2019: Evidence from the Survey of Consumer Finances," available at <https://www.federalreserve.gov/publications/files/scf20.pdf>. See also United States Census Bureau, "Historical Household Tables" (Nov. 2022), available at <https://www.census.gov/data/tables/time-series/demo/families/households.html>.

significant share of the markets has moved to wholesalers and other means of trading off exchange, otherwise known as the dark markets.

First, we issued for public comment a proposal that broker-dealers meet a Commission best execution standard—in essence, that broker-dealers seek the best execution for investors when they buy or sell securities. As proposed, this rule would cover all sectors of the securities markets, including equity, fixed-income, and crypto asset securities.<sup>10</sup>

Second, we proposed updating a 23-year-old rule, known as Rule 605, on disclosure of order execution quality.<sup>11</sup>

Third, we have a proposal to better level the playing field between dark and lit markets. We are seeking to harmonize the minimum price increment where stocks can be quoted and transacted as well as lower these minimum increments across the markets.<sup>12</sup>

Lastly, we put out a proposal to bring greater competition for a segment of the market related to individual investors' marketable orders.<sup>13</sup>

### *Private Funds*

Last month, we finalized a rule that, among other things, will require private fund advisers registered with the Commission to provide detailed disclosure to investors regarding fees, expenses, and performance.<sup>14</sup> Further, the rule addressed certain sales practices, conflicts, and compensation schemes of advisers to private funds. Enhancing advisers' transparency and integrity promotes greater competition and thereby efficiency in this important part of the markets.

Private funds and their advisers play a significant role for investors and issuers. They play an important role in nearly every sector of the capital markets. On one side are the funds' investors, such as retirement plans or endowments. Standing behind those entities are millions of investors like municipal workers, teachers, firefighters, professors, students, and more. On the other side are issuers raising capital from private funds, ranging from startups to late-stage companies.

After the 2008 financial crisis, Congress understood the important role that private funds and advisers play. In the Dodd-Frank Act of 2010, Congress effectively required most private fund advisers to register with the Securities and Exchange Commission. Congress also gave the Commission specific new authorities under the Investment Advisers Act of 1940 to prohibit or

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<sup>10</sup> See Securities and Exchange Commission, "SEC Proposes Regulation Best Execution" (Dec. 14, 2022), available at <https://www.sec.gov/news/press-release/2022-226>.

<sup>11</sup> See Securities and Exchange Commission, "SEC Proposes Amendments to Enhance Disclosure of Order Execution Information" (Dec. 14, 2022), available at <https://www.sec.gov/news/press-release/2022-223>.

<sup>12</sup> See Securities and Exchange Commission, "SEC Proposes Rules to Amend Minimum Pricing Increments and Access Fee Caps and to Enhance the Transparency of Better Priced Orders" (Dec. 14, 2022), available at <https://www.sec.gov/news/press-release/2022-224>.

<sup>13</sup> See Securities and Exchange Commission, "SEC Proposes Rule to Enhance Competition for Individual Investor Order Execution" (Dec. 14, 2022), available at <https://www.sec.gov/news/press-release/2022-225>.

<sup>14</sup> See Securities and Exchange Commission, "SEC Enhances the Regulation of Private Fund Advisers" (Aug. 23, 2023), available at <https://www.sec.gov/news/press-release/2023-155>.

restrict advisers' sales practices, conflicts, and compensation schemes.<sup>15</sup> This built upon our existing authorities to regulate advisers with respect to their books and records as well as with respect to fraudulent, deceptive, or manipulative practices, among others.<sup>16</sup>

The final rule was adjusted in multiple ways based on public feedback on the proposal.<sup>17</sup>

## **Integrity and Disclosure**

Market integrity and disclosure help protect investors and build trust in capital markets. Such trust helps lower the cost of capital for issuers and enhance returns for investors. It also helps increase participation in the capital markets. This is good for those investing for their future and for issuers. Integrity and disclosure facilitate what can be the best of capital markets and guard against the worst.

In this context, we have completed rules related to how insiders trade and sell their stock;<sup>18</sup> clawing back senior executives' compensation when based on faulty financials;<sup>19</sup> disclosure of executive pay versus performance;<sup>20</sup> stock buybacks;<sup>21</sup> as well as regarding fraud and manipulation in the security-based swaps market.<sup>22</sup>

We also have issued proposals with regard to special purpose acquisition companies,<sup>23</sup> investment fund names,<sup>24</sup> beneficial ownership disclosure,<sup>25</sup> and funds and advisers that incorporate environmental, social, and governance factors.<sup>26</sup>

In the wake of the Bernie Madoff scandal, Congress in the Dodd-Frank Act gave the SEC updated authorities that investment advisers should safeguard all client assets over which they have

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<sup>15</sup> Section 913(g)(2) of the Dodd-Frank Act added section 211(h) to the Advisers Act.

<sup>16</sup> See, e.g., Advisers Act sections 206 and 204.

<sup>17</sup> See Gary Gensler, "Statement on Private Fund Advisers" (Aug. 23, 2023) available at <https://www.sec.gov/news/statement/gensler-statement-private-fund-advisers-082323>.

<sup>18</sup> See Securities and Exchange Commission, "SEC Adopts Amendments to Modernize Rule 10b5-1 Insider Trading Plans and Related Disclosures" (Dec. 14, 2022), available at <https://www.sec.gov/news/press-release/2022-222>.

<sup>19</sup> See Securities and Exchange Commission, "SEC Adopts Compensation Recovery Listing Standards and Disclosure Rules" (Oct. 26, 2022), available at <https://www.sec.gov/news/press-release/2022-192>.

<sup>20</sup> See Securities and Exchange Commission, "SEC Adopts Pay Versus Performance Disclosure Rules" (Aug. 22, 2022), available at <https://www.sec.gov/news/press-release/2022-149>.

<sup>21</sup> See Securities and Exchange Commission, "SEC Adopts Amendments to Modernize Share Repurchase Disclosure" (May 3, 2023), available at <https://www.sec.gov/news/press-release/2023-85>.

<sup>22</sup> See Securities and Exchange Commission, "SEC Adopts Rules to Prevent Fraud in Connection with Security-Based Swaps Transactions and Prevent Undue Influence over CCOs" (June 7, 2023), available at <https://www.sec.gov/news/press-release/2023-104>.

<sup>23</sup> See Securities and Exchange Commission, "SEC Proposes Rules to Enhance Disclosure and Investor Protection Relating to Special Purpose Acquisition Companies, Shell Companies, and Projections" (March 30, 2022), available at <https://www.sec.gov/news/press-release/2022-56>.

<sup>24</sup> See Securities and Exchange Commission, "SEC Proposes Rule Changes to Prevent Misleading or Deceptive Fund Names" (May 25, 2022), available at <https://www.sec.gov/news/press-release/2022-91>.

<sup>25</sup> See Securities and Exchange Commission, "SEC Proposes Rule Amendments to Modernize Beneficial Ownership Reporting" (Feb. 10, 2022), available at <https://www.sec.gov/news/press-release/2022-22>.

<sup>26</sup> See Securities and Exchange Commission, "SEC Proposes to Enhance Disclosures by Certain Investment Advisers and Investment Companies About ESG Investment Practices" (May 25, 2022), available at <https://www.sec.gov/news/press-release/2022-92>.

custody—not just funds or securities. Thus, earlier this year, the Commission proposed to expand and enhance the role of qualified custodians when registered investment advisers custody assets on behalf of their investors.<sup>27</sup>

I'm going to discuss two areas of emerging technology, predictive data analytics and crypto, and then turn to two issuer disclosure rules regarding climate and cyber risks.

### *Artificial Intelligence and Predictive Data Analytics*

We live in an historic, transformational age regarding predictive data analytics and the use of artificial intelligence. As we further automate pattern recognition and parts of human intelligence itself, this can create great efficiencies across the economy.

Today's predictive data analytics models also provide an increasing ability to make predictions about each of us as individuals. Such analytics and narrowcasting have the potential benefits of greater financial inclusion and enhanced user experience.

This also raises the possibilities that conflicts may arise to the extent, for example, that advisers or broker-dealers are optimizing to place their interests ahead of their investors' interests. If a firm's optimization function takes the interest of the firm into consideration as well as the interest of the investor, this can lead to conflicts of interest.

In July, we put out a proposal to require firms to analyze conflicts of interest that may emerge when using predictive data analytics to interact with investors.<sup>28</sup> Firms would need to identify any such conflicts that result in an investor interaction that places the firm's interests ahead of investors' interests. Firms then would need to eliminate or neutralize the effects of those conflicts.

### *Crypto*

There is nothing about the crypto asset securities markets that suggests that investors and issuers are less deserving of the protections of our securities laws.

Congress could have said in 1933 or in 1934 that the securities laws applied only to stocks and bonds. Yet Congress included a long list of 30-plus items in the definition of a security, including the term "investment contract." As I've previously said, without prejudging any one token, the vast majority of crypto tokens likely meet the investment contract test.

Given that most crypto tokens are subject to the securities laws, it follows that most crypto intermediaries have to comply with securities laws as well.

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<sup>27</sup> See Securities and Exchange Commission, "SEC Proposes Enhanced Safeguarding Rule for Registered Investment Advisers (Feb. 15, 2023), available at <https://www.sec.gov/news/press-release/2023-30>.

<sup>28</sup> See Securities and Exchange Commission, "SEC Proposes New Requirements to Address Risks to Investors From Conflicts of Interest Associated With the Use of Predictive Data Analytics by Broker-Dealers and Investment Advisers" (July 26, 2023), available at <https://www.sec.gov/news/press-release/2023-140>.

These laws have been on the books for decades. Sections 5, 15(a), and 17A(b) of the Securities Exchange Act of 1934 require that intermediaries acting as securities exchanges, brokers and dealers, and clearing agencies are subject to the securities laws, and must register or satisfy requirements for an exemption.

Given this industry’s wide-ranging noncompliance with the securities laws, it’s not surprising that we’ve seen many problems in these markets. We’ve seen this story before. It’s reminiscent of what we had in the 1920s before the federal securities laws were put in place.

Thus, we have brought a number of enforcement actions—some settled, and some in litigation—to hold wrongdoers accountable and promote investor protection.

The SEC also has addressed the crypto security markets through rulemaking. We issued a reopening release that reiterated the applicability of existing rules to platforms that trade crypto asset securities, including so-called “DeFi” systems. This release also provided supplemental information for systems that would be included in a new, proposed exchange definition.<sup>29</sup>

While our current investment adviser custody rule already applies to crypto funds and securities, our proposal updating it would cover all crypto assets and enhance the protections that qualified custodians provide.<sup>30</sup>

These are just two examples of the rules we’ve proposed that touch the crypto markets.

While I’m happy to discuss the SEC’s work, I will not be able to comment on any active, ongoing litigation.

### *Climate Risk Disclosure*

The SEC has no role as to climate risk itself. We, however, do have an important role in helping to ensure that public companies make full, fair, and truthful disclosure about the material risks they face.

Our federal securities laws lay out a basic bargain in our markets. Investors get to decide which risks to take, so long as public companies raising money from the public make what President Franklin Roosevelt called “complete and truthful disclosure.”

Under the securities laws, the SEC is merit neutral. Investors get to decide what investments they make and risks they take based upon those disclosures. The SEC focuses on the disclosures about, not the merits of, the investment.

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<sup>29</sup> See Securities and Exchange Commission, “SEC Reopens Comment Period for Proposed Amendments to Exchange Act Rule 3b-16 and Provides Supplemental Information” (April 14, 2023), available at <https://www.sec.gov/news/press-release/2023-77>.

<sup>30</sup> See Securities and Exchange Commission, “SEC Proposes Enhanced Safeguarding Rule for Registered Investment Advisers” (Feb. 15, 2023), available at <https://www.sec.gov/news/press-release/2023-30>.

Already today, issuers are making climate risk disclosures, and investors are making investment decisions based on those disclosures. Indeed, a majority of the top thousand issuers by market cap already make such disclosures, including what's known as Scope 1 and Scope 2 greenhouse gas emissions.<sup>31</sup> Further, investors representing tens of trillions of dollars in assets are making decisions relying on those disclosures.

Thus, in fulfilling the Commission's important role, we put out for comment a proposal about climate-related disclosure to bring consistency and comparability to such disclosures.<sup>32</sup>

We are considering carefully the more than 15,000 comments we've received on the proposal. We greatly benefit from public input and, given the economics and the law, will consider adjustments to the proposed rule that the staff, and ultimately the Commission, think are appropriate in light of those comments.

### *Cyber Risk Disclosure*

In July, we finalized rules regarding cybersecurity disclosures by public companies.<sup>33</sup> The rules will require periodic disclosures regarding companies' risk management, strategy, and governance with respect to cybersecurity risks. This will help investors more effectively assess these risks and make informed investment decisions. The rules also will require disclosure of material cybersecurity incidents.

Based upon public feedback, the final rules were changed from the proposal in a number of ways, streamlining required disclosures for both periodic and incident reporting. For example, the final rules will require issuers to disclose an incident's material impacts, nature, scope, and timing, whereas the proposal would have required additional details, not explicitly limited by materiality.

Further, based upon public comment, the adopting release included limited delays for disclosures of material cybersecurity incidents that the U.S. Attorney General determines could pose a substantial risk to national security or public safety. It provides that if the Attorney General indicates that further delay is necessary, the Commission will consider additional requests for delay and may grant such relief through possible exemptive orders.

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<sup>31</sup> According to the Governance and Accountability Institute, 81 percent of Russell 1000 companies published sustainability disclosures in 2021 and 57 percent disclosed Scope 1 and 2 emissions. *See* Governance and Accountability Institute "New G&A Institute Research Shows Sustainability Reporting by Largest U.S. Public Companies Reached All-Time Highs in 2021" (Nov. 16, 2022), *available at* <https://www.globenewswire.com/en/news-release/2022/11/16/2557344/0/en/New-G-A-Institute-Research-Shows-Sustainability-Reporting-by-Largest-U-S-Public-Companies-Reached-All-Time-Highs-in-2021.html>. *See also* "The Enhancement and Standardization of Climate-Related Disclosures for Investors," Release No. 33-11042 (Mar. 21, 2022), [87 FR 21334 (Apr. 11, 2022)].

<sup>32</sup> *See* Securities and Exchange Commission, "SEC Proposes Rules to Enhance and Standardize Climate-Related Disclosures for Investors" (March 21, 2022), *available at* <https://www.sec.gov/news/press-release/2022-46>.

<sup>33</sup> *See* Securities and Exchange Commission, "SEC Adopts Rules on Cybersecurity Risk Management, Strategy, Governance, and Incident Disclosure by Public Companies" (July 26, 2023), *available at* <https://www.sec.gov/news/press-release/2023-139>.

## Resiliency

History is replete with times when fires in one corner of the financial system or at one financial institution spread to the broader economy. When this happens, the American public inevitably gets hurt.

Such fires, though too many to name, have started from both the banking and nonbanking sectors.

The financial fires of 2008 led to more than eight million Americans losing their jobs, millions of families losing their homes, and small businesses across the country folding.

Promoting financial resiliency goes to the core of the SEC's three-part mission. It's the essence of fair, orderly, and efficient markets. In normal times, it helps promote trust in capital markets. In times of stress, it protects investors and issuers alike.

Thus, I'm proud that the SEC has taken up a number of projects to enhance the resiliency of our capital markets.

We already finalized a rule to shorten the settlement cycle in securities markets in half, which lowers risk and promotes efficiency as well as greater liquidity in the markets.<sup>34</sup> We also finalized a rule to enhance cross-market and off-exchange oversight for some of the most active participants in the capital markets.<sup>35</sup>

We have proposals with regard to clearinghouse governance, risk management, use of service providers, and recovery and wind-down plans.<sup>36</sup>

We also have proposals related to cybersecurity and technological resiliency in the financial sector.<sup>37</sup>

Separately, we also put out proposals for public comment on open-end fund liquidity.<sup>38</sup>

I'd like to take a moment to elaborate on our work on Treasury markets, money market funds, and private funds.

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<sup>34</sup> See Securities and Exchange Commission, "SEC Finalizes Rules to Reduce Risks in Clearance and Settlement" (Feb. 15, 2023), available at <https://www.sec.gov/news/press-release/2023-29>.

<sup>35</sup> See Securities and Exchange Commission, "SEC Adopts Amendments to Exemption From National Securities Association Membership" (Aug. 23, 2023), available at <https://www.sec.gov/news/press-release/2023-154>.

<sup>36</sup> See Securities and Exchange Commission, "SEC Proposes Rules to Improve Clearing Agency Governance and to Mitigate Conflicts of Interest" (Aug. 8, 2022), available at <https://www.sec.gov/news/press-release/2022-138>.

<sup>37</sup> See Securities and Exchange Commission, "SEC Proposes Cybersecurity Risk Management Rules and Amendments for Registered Investment Advisers and Funds" (Feb. 9, 2022), available at <https://www.sec.gov/news/press-release/2022-20>. See also "SEC Proposes New Requirements to Address Cybersecurity Risks to the U.S. Securities Markets" (March 15, 2023), available at <https://www.sec.gov/news/press-release/2023-52>. See also "SEC Proposes to Expand and Update Regulation SCI" (March 15, 2023), available at <https://www.sec.gov/news/press-release/2023-53>.

<sup>38</sup> See Securities and Exchange Commission, "SEC Proposes Enhancements to Open-End Fund Liquidity Framework" (Nov. 2, 2022), available at <https://www.sec.gov/news/press-release/2022-199>.

## *Treasury Markets*

The \$25 trillion Treasury markets<sup>39</sup> are the base upon which so much of our capital markets are built. Myriad markets and financial products are priced off of treasuries. Treasuries are embedded in money market funds. They are integral to monetary policy. They are how we, as a government and as taxpayers, raise money: We are the issuer.

Though Roosevelt and Congress initially didn't give the SEC a significant role in the Treasury markets, market events and failures at government securities firms in the early 1980s led Congress to give us an important role with regard to these markets.<sup>40</sup> In normal times these markets function well, but they have had repeated moments of instability, whether the flash crash in 2014, problems in the Treasury funding markets in 2019, or the dash for cash in 2020. Events in the Treasury markets this year are yet again a reminder that even the vast Treasury markets can experience significant volatility and lessened liquidity.

All of this is why the SEC has worked with the Department of the Treasury, the Federal Reserve System, and other agencies to enhance the efficiency and resiliency of the Treasury markets.<sup>41</sup> These proposals include registering and regulating Treasury dealers and platforms, as well as facilitating greater clearing of treasuries in both cash and funding markets.<sup>42</sup>

## *Money Market Funds*

In July, we adopted a rule to enhance money market funds' liquidity and investor protection.<sup>43</sup> It will enhance these funds' resiliency and ability to protect against dilution.

Money market funds—nearly \$6 trillion in size today—provide millions of Americans with a deposit alternative to traditional bank accounts. Using these funds, shareholders can get market-based returns, fully backed dollar-for-dollar by readily marketable securities.

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<sup>39</sup> See Securities Industry and Financial Markets Association, "US Treasury Securities Statistics" available at <https://www.sifma.org/resources/research/us-treasury-securities-statistics/>.

<sup>40</sup> See Gary Gensler, "Prepared Remarks at U.S. Treasury Market Conference" (Nov. 17, 2021), available at <https://www.sec.gov/news/speech/gensler-us-treasury-market-conference-20211117>.

<sup>41</sup> See Gary Gensler, "'The Beatles and the Treasury Market': Remarks Before the U.S. Treasury Market Conference" (Nov. 16, 2022), available at <https://www.sec.gov/news/speech/gensler-speech-treasury-market-conference-111622>.

<sup>42</sup> See Securities and Exchange Commission, "SEC Proposes Rules to Improve Risk Management in Clearance and Settlement and to Facilitate Additional Central Clearing for the U.S. Treasury Market" (Sept. 14, 2022), available at <https://www.sec.gov/news/press-release/2022-162>. See also "SEC Proposes Amendments to Include Significant Treasury Markets Platforms Within Regulation ATS" (Jan. 26, 2022), available at <https://www.sec.gov/news/press-release/2022-10>. See also "SEC Reopens Comment Period for Proposed Amendments to Exchange Act Rule 3b-16 and Provides Supplemental Information" (April 14, 2023), available at <https://www.sec.gov/news/press-release/2023-77>. See also "SEC Proposes Rules to Include Certain Significant Market Participants as 'Dealers' or 'Government Securities Dealers'" (March 28, 2022), available at <https://www.sec.gov/news/press-release/2022-54>.

<sup>43</sup> See Securities and Exchange Commission, "SEC Adopts Money Market Fund Reforms and Amendments to Form PF Reporting Requirements for Large Liquidity Fund Advisers" (July 12, 2023), available at <https://www.sec.gov/news/press-release/2023-129>.

Money market funds, though, have a potential structural liquidity mismatch. Investors can redeem their money market fund holdings on a daily basis, even if those funds keep some of their holdings in securities with less liquidity.

As a result, when markets enter times of stress, some investors—fearing dilution or illiquidity—may try to escape the bear.<sup>44</sup> This can lead to large amounts of rapid redemptions. We have observed this play out in times of stress, including during the 2008 financial crisis and the “dash for cash” in March 2020. Left unchecked, such stress can undermine these critical funds.

Taking into account public comment, the final money market fund rules, as adopted, will require liquidity fees instead of the originally proposed swing pricing requirement. Liquidity fees, compared with swing pricing, offer many of the same benefits and fewer of the operational burdens.

### *Form PF*

In response to the 2008 crisis, Congress mandated that the SEC and the Commodity Futures Trading Commission (CFTC), working with the member regulators of the Financial Stability Oversight Council (FSOC), establish reporting requirements for private funds “as necessary and appropriate in the public interest and for the protection of investors, or for the assessment of systemic risk.”<sup>45</sup> Thus, in 2011, along with the CFTC, we created Form PF, an important tool the Commission uses to oversee private fund advisers.

In the 12 years since we first adopted Form PF, private funds have evolved significantly in their business practices, complexity, and investment strategies. Private funds today are ever more interconnected with our broader capital markets.

Private funds nearly have tripled in size in the last decade to approximately \$26 trillion<sup>46</sup> in gross assets. This compares to the U.S. commercial banking industry of approximately \$23 trillion.<sup>47</sup> This makes visibility into these funds critical.

In May, we finalized a rule amending Form PF.<sup>48</sup>

Among other things, the final rule requires, for the first time, that large hedge fund and private equity fund advisers make current reports on certain events to the Commission. These new, more-timely reports—within 72 hours from large hedge fund advisers and quarterly from private equity fund advisers—will inform financial regulators on certain events that may indicate significant stress or otherwise signal for systemic risk or investor harm.

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<sup>44</sup> See Gary Gensler, “Bear in the Woods” Remarks before the Investment Company Institute” (May 25, 2023), available at <https://www.sec.gov/news/speech/gensler-remarks-investment-company-institute-05252023>.

<sup>45</sup> 15 U.S.C. 80b-4(b); see also 15 U.S.C. 80b-11(e).

<sup>46</sup> Staff analysis of Form ADV data, inclusive of assets attributable to securitized asset funds, as of year-end 2022.

<sup>47</sup> See Board of Governors of the Federal Reserve System, “Assets and Liabilities of Commercial Banks in the United States” (Sept. 1, 2023), available at <https://www.federalreserve.gov/releases/h8/current/default.htm>. Total assets of approximately \$22.8 trillion as of Aug. 23, 2023 (Table 2, Line 33).

<sup>48</sup> See Securities and Exchange Commission, “SEC Adopts Amendments to Enhance Private Fund Reporting” (May 3, 2023), available at <https://www.sec.gov/news/press-release/2023-86>.

These amendments will improve visibility into private funds, helping protect investors and promote financial stability.

We also have a joint proposal with the CFTC to improve the quality of the information we receive from all Form PF filers, with a particular focus on large hedge fund advisers. The staffs of the SEC and CFTC are currently reviewing comments that we received on this proposal and are working on a potential joint recommendation for their respective commissions.

## **Conclusion**

Though we are blessed with the largest, most sophisticated, and most innovative capital markets in the world, even a gold medalist must keep training.

Technology, markets, and business models continue to change dramatically. We now live in the age of electronic trading and generative AI. We've had dramatic growth in the scale, size, and interconnectedness of our capital markets, with individual investors participating more than ever before. Further, there are other fast-growing economies that, if they can, may seek to supplant us.

I am grateful to work alongside this remarkable staff and my fellow Commissioners to promote the efficiency, integrity, and resiliency of the markets.