January 23, 2025

U.S. Securities and Exchange Commission
100 F Street NE
Washington, D.C. 20549

Dear Acting Chairman Uyeda and Commissioner Peirce:

The transition to a new administration gives the Securities and Exchange Commission (SEC) a chance to reassess its constitutional role and recalibrate its approach towards regulation and enforcement. The Gensler SEC used lawfare to intimidate and cajole American businesses, and that must never happen again.[1] That is patently unacceptable in a country that holds the rule of law, not *rule by law*, as sacrosanct. Now is the time for this SEC to enact reforms that end the agency's perpetual mission creep away from what Congress authorized.

I. Policy and Process Recommendations.

The American Securities Association[2] (ASA) urges the Commission to consider several key areas for immediate action that can begin to restore the public's trust and confidence in the SEC:

- Immediately end the requirement that broker-dealers send the personal and financial information of their customers to the Consolidated Audit Trail's (CAT) national registry until pending litigation[3] related to the legality and constitutionality of the CAT is resolved;[4]
- Make every effort to establish consistency, fairness, and equal treatment in all broker-dealer off-channel communication settlement agreements to ensure that all similarly situated regulated entities are treated equally under the law for engaging in the exact same administrative rule violations;

[1] https://www.whitehouse.gov/presidential-actions/2025/01/ending-the-weaponization-of-the-federal-government/

[2] ASA is a trade association that represents the retail and institutional capital markets interests of regional financial services firms who provide Main Street businesses with access to capital and advise hardworking Americans how to create and preserve wealth. ASA's mission is to promote trust and confidence among investors, facilitate capital formation, and support efficient and competitively balanced capital markets. This mission advances financial independence, stimulates job creation, and increases prosperity. ASA has a geographically diverse membership base that spans the Heartland, Southwest, Southeast, Atlantic, and Pacific Northwest regions of the United States.

[3] ASA & Citadel Securities File Lawsuit Against SEC Challenging Consolidated Audit Trail, October 2023, with accompanying information available here: https://www.americansecurities.org/post/asa-citadel-securities-file-lawsuit-against-sec-challenging-consolidated-audit-trail.

[4] ASA Demands SEC to Heed FBI Director Wray's CCP Cyber Threat Warnings and Remove PII from the Consolidated Audit Trail (February 2024) https://www.americansecurities.org/post/asa-demands-sec-to-heed-fbi-director-wray-s-ccp-cyber-threat-warnings-and-remove-pii-from-consolidat

- Amend the cyber disclosure rule[5] to allow firms who are being attacked by nation-state actors to seek assistance from the government and others during the period of the attack (i.e. denial of service or otherwise) without immediately publicly disclosing the attack;
- Stay the implementation of and reconsider the need for the Rule 15c3-3 amendments approved in late December 2024 because of its disproportionate impact on competition and the lack of focus on this aspect of the rule in the cost-benefit analysis section;[6]
- Eliminate delegated authority of any policy decision to career staff who are not subject to Senate confirmation and clearly define what is a policy decision and what is an administrative decision for the public;
- Require a minimum 90-day comment period for significant rulemakings;
- Reform the enforcement process to ensure due process and proportionality in investigations and penalties by publicly producing a transparent fine schedule;[7]
- Suspend recent rule changes, particularly in areas such as trade reporting[8], to ensure they are based on sound cost-benefit analyses and proper administrative procedures;
- Prioritize the protection of American investors over those of Chinese Communist Party-backed companies that solicit investment in the United States;[9]
- Remove all Chinese companies that do not comply with basic U.S. disclosure and audit requirements laws from our markets;[10]

[5] ASA Submits Comments to SEC on Cybersecurity Proposals, June 2023, available here: https://www.americansecurities.org/post/asa-submits-comments-to-sec-on-cybersecurity-proposals. Forcing immediate disclosure when a company asks the government for help against a nation-state cyber-attack is not only unworkable in reality, but it also puts a bullseye on companies who try to comply with it. This ill-conceived policy was a major error and it must be fixed as soon as possible.

[6] ASA Comments on SEC's Daily Computation of Customer & Broker-Dealer Reserve Requirements Proposal, September 2023, available here: https://www.americansecurities.org/post/asa-comments-on-sec-s-daily-computation-of-customer-broker-dealer-reserve-requirements-proposal. We strongly urge the Commission to reconsider the need for recently adopted amendments to Rule 15c3-3. The accelerated adoption of this final rule raises significant concerns about its impact on competition, market efficiency, and increased liquidity risk. The shift from weekly to daily computations imposes substantial operational and liquidity burdens on many of the broker-dealer firms represented by the ASA without clear evidence of commensurate benefits to investor protection, despite the costs and the impact on competition being well-identified during the comment period. The failure of the SEC to account for the activity of retail investors and cash in motion, will force firms to implement enhanced systems, taking on additional risk, and financial burden. The SEC's own analysis indicates that this rule will quadruple the amount of time broker-dealers must allocate toward compliance. The reduction in aggregate debit item deductions from 3% to 2% for broker-dealers performing daily reserve computations is insufficient to offset the increased operational costs. We recommend delaying the rule and re-opening a public comment period to allow for a more thorough assessment and broader industry consultation to identify a hybrid calculation that addresses any actual risk while avoid significant burden and increasing liquidity risk.

[7] ASA Files Lawsuit Against SEC Under the Freedom of Information Act Regarding Off-Channel Communication Enforcement Actions (June 2024) https://www.americansecurities.org/post/asa-files-lawsuit-against-sec-under-the-freedom-of-information-act

[8] ASA Submits Multiple Comment Letters on One-Minute Trade Reporting Proposal, available here: https://www.americansecurities.org/post/asa-submits-comments-on-one-minute-trade-reporting-proposal.

[9] ASA Outlines Policy Recommendations to end China's Fraud on American Financial Markets (June 2020) https://www.americansecurities.org/post/asa-outlines-policy-recommendations-to-end-china-s-fraud-on-american-financial-markets

[10] https://www.americansecurities.org/post/asa-submits-testimony-to-u-s-china-commission

- Close the passive index loophole that allows companies who are listed on mainland Chinese stock exchanges and do not follow any U.S. laws to access U.S. capital markets through index-based exchange traded funds;[11]
- Restore the materiality standard for shareholder proposals to maintain focus on issues directly impacting company performance and shareholder value;
- Revive the Fixed Income Market Structure Advisory Committee (FIMSAC);
- Hold an off-channel communications public roundtable to discuss the term "business as such" and the SEC's compliance expectations of industry with respect to texting;
- Prioritize technological upgrades to critical systems like EDGAR to enhance market efficiency and reduce operational risks;
- Adopt a rule proposal to promote investor choice by allowing retail investors to have their communications sent to them electronically or by mail with the default option being receipt through electronic communication;
- Hold a roundtable on the compliance burdens related to small business capital formation and the reasons small business research coverage has decreased;[12]
- Revisit the impact of the global settlement on public company research coverage and enter into negotiations to end it exclusively through the Chairman's office;[13] and
- Modernize remote work and supervision rules and guidance for broker-dealers.[14]

II. Detailed Policy & Reform Recommendations.

With these priorities in mind, we submit the following detailed recommendations and reforms for your consideration:

A. Consolidated Audit Trail.

We urge the Commission to end the collection of personally identifiable information (PII) by the CAT national registry. The continued collection of the personal and financial information of every American investor is an invasion of privacy that poses cybersecurity risks to investors which outweigh *any* regulatory benefits. Investor protection is one prong of the SEC's three-part mission, and this Orwellian national registry needlessly exposes American investors and all they have worked for to a total loss.

[11] ASA Welcomes Congressional Action on Investor Protection from Fraudulent Companies (Nov 2022) https://www.americansecurities.org/post/asa-welcomes-congressional-action-on-investor-protection-from-fraudulent-companies
[12] ASA Calls on SEC to Refocus on Capital Formation (Oct 2022) https://www.americansecurities.org/post/asa-calls-on-sec-to-refocus-on-capital-formation
[13] ASA Submits Recommendations to Small Business Capital Formation Advisory Committee (Feb 2023) https://www.americansecurities.org/post/asa-submits-recommendations-to-sec-small-business-capital-formation-advisory-committee
[14] ASA Sends Letter to SEC on FINRA's Proposed Changes to Remote Inspections Pilot and RSL Proposal (May 2023) https://www.americansecurities.org/post/asa-sends-letter-to-sec-on-finra-s-proposed-changes-to-remote-inspections-pilot-and-rsl-proposals

B. Off-Channel Communications.

We agree with your joint statement[15] expressing significant concerns about the SEC's approach to off-channel communications enforcement and the need to re-evaluate the Commission's overall approach to off-channel communications issues.

As a result, we ask the Commission to use the tools at its disposal to make certain that every regulated entity who entered into an off-channel communication settlement *prior to* January 1, 2025, is treated the same as those regulated entities who entered into such agreements *after* January 1, 2025, with respect to the future obligations set forth in such agreements. Similarly situated regulated entities must be treated consistently and equally under the law.

We also support a more pragmatic and achievable regulatory framework that considers the realities of modern communication technologies, and the challenges firms face in maintaining full compliance.

Our ongoing Freedom of Information Act (FOIA) litigation regarding off-channel communications could be resolved if the Commission (1) makes the original fine matrix it used as a template for the off-channel recordkeeping fines public, and (2) agrees to propose new guidelines outlining its approach to imposing fines in the future.

C. Elimination of Delegated Authority.

We urge the Commission to eliminate the practice of delegating policy making authority to career staff. This practice has led to a lack of accountability and transparency in the regulatory process and hidden much of the SEC's regulatory and enforcement agenda from Congress and the general public.

Requiring all policy decisions to be made by the full Commission ensures that each action receives proper scrutiny and reflects the collective wisdom of the public and the Senate confirmed Commissioners. This also promotes more balanced and well-considered policies, reduces the potential for overreach by individual staff members, and increases public confidence in the SEC's decision-making process.

D. Minimum 90-Day Comment Period for Substantive Rulemaking.

Unlike the Gensler SEC, this SEC should implement a mandatory minimum 90-day comment period for all substantive rulemakings. The current practice of shorter comment periods makes a mockery of due process because it does not provide sufficient time for stakeholders to thoroughly analyze proposed rules and provide comprehensive feedback.

[15] A Catalyst: Statement on Qatalyst Partners LP, Commissioner Hester M. Peirce & Commissioner Mark T. Uyeda, Sept. 24, 2024, available here: https://www.sec.gov/newsroom/speeches-statements/statement-peirce-uyeda-qatalyst-09242024

A 90-day minimum would ensure that market participants, industry experts, and the public have ample opportunity to review, assess, and comment on proposed regulations. This extended period would lead to more informed rulemaking, better-crafted regulations, and ultimately, more effective and efficient capital markets. It would also demonstrate the SEC's commitment to thorough public consultation and evidence-based policymaking.

E. Reforming the Enforcement Process.

Reforming the SEC enforcement process is crucial to safeguarding due process and proportionality in investigations and penalties.[16] The Gensler SEC 'regulation by enforcement' approach has led to overly aggressive enforcement actions and disproportionate fines that do not align with the severity of violations.

The SEC's recent enforcement actions have severely damaged the SEC's credibility as the public rightfully views the SEC as caring more about grabbing headlines than holding actual fraudsters accountable.

To address these issues, we propose implementing a more transparent and balanced enforcement framework. This would include establishing clear public guidelines for initiating investigations, ensuring that enforcement actions are approved by the full Commission rather than delegated to staff, and developing a transparent and objective fine schedule to provide notice, process, and consistency in penalties.

Furthermore, it is imperative that the enforcement and examination teams at the SEC reassess their approach to disclosure requirements. The Gensler practice of informing regulated entities that their disclosure is not sufficient through enforcement actions, examinations, and speeches is problematic because it deprives firms of due process and violates the law.

Suggesting that disclosure is inadequate, and using the enforcement process to influence the behavior of regulated entities is unconstitutional. It is crucial for the SEC to adhere to the law and focus on enforcing existing disclosure requirements rather than imposing subjective and arbitrary standards that exceed legal obligations. In doing so, the SEC can foster a transparent and fair regulatory environment, where regulated entities can operate with clarity and confidence in their compliance efforts.

Finally, the SEC should focus on enforcement actions that target actual fraud rather than broad industry sweeps, which can unfairly burden compliant firms. By implementing these reforms, the SEC can maintain its investor protection mandate while fostering a fairer and more predictable regulatory environment for all market participants.

[16] ASA Statement Ahead of House Financial Services Hearing on SEC Enforcement (May 2024) https://www.americansecurities.org/post/asa-statement-ahead-of-financial-services-hearing-on-sec-enforcement

F. Shareholder Proposals/Proxy Advisory Firms.

This SEC must remove political, ideological, and cultural issues from our capital markets and sanction any organization that purports to make such issues a basis for interfering in the management of public companies.

For starters, this SEC needs to revoke the Gensler-directed Staff Legal Bulletin 14L "broad societal impact" standard for shareholder proposals and immediately reinstate the materiality standard in shareholder proposals that served investors so well for decades.[17]

The Gensler standard gave well-funded political groups the green light to waste the investment dollars of working families and retirees. It forced public companies to spend millions of dollars of investor money on meritless political shareholder proposals that were not relevant to the company's business operations or financial performance.[18] It also breathed life into a political cottage industry, the ESG-Industrial Complex, that cost shareholders so much money a federal court felt compelled to step in and stop it.[19]

Returning to a materiality-based standard is the only way to ensure that shareholder proposals remain focused on issues that meaningfully impact the company and its shareholders. This removes the agency from being a moral arbiter of shareholder proposals.

The SEC should also adopt a policy to make certain that unaccountable career staff can never be directed by the Chairman to impose such a costly policy on the American investing public again. After that, the SEC should get out of the business of deciding what proposals deserve a shareholder vote and return the power to oversee matters of corporate governance to the states.

The SEC should also reinstate the important accountability measures for proxy advisory firms that were originally adopted by the Commission in 2020. ASA believes proxy advisors must be (1) regulated by the SEC as fiduciaries providing investment advice, (2) required to give public companies the opportunity to respond to their recommendations to correct any errors, (3) required to properly disclose conflicts of interest that may influence their voting recommendations, and (4) subject to the SEC's anti-fraud rules if they make false or misleading statements in those recommendations.

G. Trade Reporting.

[17] https://www.washingtontimes.com/news/2021/dec/3/sec-unleashes-political-activists-american-economy/

[18] ASA Submits Letter on SEC Shareholder Proposal Rule (September 2022) https://www.americansecurities.org/post/asa-submits-letter-on-sec-s-shareholder-proposal-rule

[19] https://www.plansponsor.com/american-airlines-failed-to-protect-workers-401ks-in-esg-case-federal-court-finds/ The court found the public company and its benefits committee mismanaged 401(k) funds by allowing investment managers to pursue ESG-focused agendas through proxy voting and shareholder activism.

The Commission should immediately revoke the 1-minute trade reporting rule for fixed income securities because a policy decision cannot be delegated to and approved by an unconfirmed career staffer with no accountability to the public.

After directing the self-regulatory organizations to write the rule, the previous Chairman purposefully delegated the power of the commission to an unconfirmed career staffer to adopt the rule. He did this to avoid the public transparency and scrutiny that Congress demands of agency rulemaking under the Administrative Procedure Act (APA). Not only did the Commissioners have their voice stripped away from them by Chairman Gensler, but he also approved the staffer's adoption of the rule without the SEC following the necessary APA processes or conducting a comprehensive cost-benefit analysis.[20]

This flawed and illegal process is a perfect example of why American voters distrust administrative state technocrats and their "by any means necessary" approach.

H. SEC Budget Allocation.

We recommend allocating a greater portion of the SEC's enforcement budget towards technology upgrades for critical systems like EDGAR. Improving the Commission's technological infrastructure would enhance market efficiency and reduce operational risks for regulators and market participants.

III. Conclusion.

The ASA looks forward to working with you and your staff to address these important issues. Addressing these matters will immediately enhance investor protection, end the politicization of our capital markets, stop the weaponization of the agency, and promote fair and efficient regulation.

Sincerely,

Christopher A. Iacovella

Christopher A. Iacovella
President and CEO
American Securities Association

[20] ASA has filed a lawsuit against the SEC to prevent this rule from taking effect in the 11th Circuit Court of Appeals.