

Testimony of Gary Gensler  
Before the United States Senate  
Committee on Banking, Housing, and Urban Affairs  
Sept. 15, 2022  
Washington, D.C.

Good morning, Chairman Brown, Ranking Member Toomey, and members of the Committee. I'm honored to appear before you today as Chair of the Securities and Exchange Commission. I'd like to thank this Committee for helping to confirm our two new Commissioners, Mark Uyeda and Jaime Lizárraga. As is customary, I will note that my views are my own, and I am not speaking on behalf of my fellow Commissioners or the staff.

### **The Gold Standard of Capital Markets**

I'd like to open by discussing two key years in policymaking: 1933 and 1934.

It was the middle of the Great Depression. President Franklin Delano Roosevelt and Congress addressed this crisis through a number of landmark policies.

Amongst them, Congress and FDR came together to craft the first two federal securities laws. Additionally, in 1933, President Roosevelt formally suspended the use of the gold standard. The next year, institutions were prohibited from redeeming dollars for gold.

In other words, in those two key years, one could say we replaced one gold standard with another gold standard: the securities laws.

I believe the core principles of the securities markets have contributed to America's economic success and geopolitical standing around the globe.

Our \$100-trillion capital markets — the largest and most innovative in the world — represent about 40 percent of the globe's capital markets, exceeding our 24 percent share of the world's GDP.<sup>1</sup> The U.S. has been known for decades as the destination of choice for large issuers around the globe.

Though no other country's capital markets currently match our own, we cannot take our leadership for granted. Even gold medalists — especially gold medalists — constantly train to stay ahead of the competition.

Further, the nature of finance itself will constantly challenge even a gold standard. In recent years, we've seen as much — whether the market events of March 2020, the meme stock-related volatility, or the collapse of Archegos Capital Management, among other events. New financial

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<sup>1</sup> See Securities Industry and Financial Markets Association, "2022 SIFMA Capital Markets Fact Book" (July 2022), available at <https://www.sifma.org/wp-content/uploads/2022/07/CM-Fact-Book-2022-SIFMA.pdf>.

technologies and business models, from predictive data analytics to crypto, continue to change the face of finance.

As markets have evolved, our rules have continued to evolve as well. That helps us maintain the gold standard. That helps us sustain our geopolitical edge on the world stage. I think it also supports the standing of the U.S. dollar around the globe.

I think we should do everything we can to maintain and enhance that gold standard of our capital markets.

### **Maintaining the Gold Standard**

There are two broad ways to do that, in my view.

One is to ensure that the SEC is adequately resourced so we can remain the cop on the beat protecting investors and promoting trust in our capital markets. The SEC is deficit-neutral, collecting fees on securities transactions at a rate intended to fully offset our appropriation.

The other way is to work with the Commission and staff both to drive efficiencies in our capital markets and to modernize our rule sets for today's markets and technologies as we execute our mission: to protect investors, maintain fair, orderly, and efficient markets, and facilitate capital formation.<sup>2</sup> We must remain vigilant to opportunities to enhance competition, transparency, fairness, and resiliency.

Last year, in my testimony before this Committee, I covered some of the broad areas from the SEC's policymaking work,<sup>3</sup> along with that of our Divisions of Enforcement and Examinations and our resources. Today, I will provide an update on those items.

### **Market Structure**

In every generation, we have to look at how we can revisit our rule sets to better enhance the efficiency of our markets. Markets work best when they are transparent and competitive. Issuers and investors alike benefit from that competition because it lowers the cost of capital and increases returns.

Technology has transformed and continues to transform our markets. This has led to many good things. For example, retail investors have greater access to markets than in any time in the past.

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<sup>2</sup> See Gary Gensler, "Dynamic Regulation for a Dynamic Society" (Jan. 19, 2022), available at <https://www.sec.gov/news/speech/gensler-dynamic-regulation-20220119>.

<sup>3</sup> See Gary Gensler, "Testimony Before the United States Senate Committee on Banking, Housing, and Urban Affairs" (Sept. 21, 2021), available at <https://www.sec.gov/news/testimony/gensler-2021-09-14>.

This technological transformation, though, also has led to challenges, with respect to efficiency, competition, transparency, fairness, market integrity, and resiliency.

Thus, I have asked staff to take a look market structure-based projects across our \$100 trillion capital markets: the bond markets, equity markets, security-based swaps markets, and crypto asset markets.

### *Bond markets*

Let me begin with the \$50 trillion-plus U.S. bond markets.

The bond markets are incredibly important to individuals, companies, and governments in the U.S. and around the world. U.S. fixed income markets, particularly Treasury markets, money markets, and repurchase agreements (“repos”), are integral to how the Federal Reserve and other banks around the globe administer monetary policy. As individual investors start to approach retirement, they often turn to fixed income as a lower-risk investment.

The \$24 trillion Treasury market<sup>4</sup> — the deepest, most liquid market in the world — is the base upon which so much of our capital markets are built. Treasuries are embedded in money market funds; myriad other markets and financial products are priced off of Treasuries; and they are integral to monetary policy. They are how we, as a government and as taxpayers, raise money: We are the issuer.

During the start of the Covid crisis, liquidity conditions in the Treasury market deteriorated significantly. This wasn’t the first time we observed challenges in this market, though. Back in October of 2014, there was the Treasury “Flash Rally.” In the fall of 2019, we had significant dislocations in Treasury funding markets, called the Treasury repo market.

The SEC’s staff have worked, in consultation with our colleagues at the Department of the Treasury and the Federal Reserve, on proposals designed to enhance competition and resiliency in these markets. These proposals include:

- Ensuring that certain significant Treasury market platforms, including certain interdealer brokers, come into oversight and register;<sup>5</sup>
- Further defining certain activities that would cause someone engaging in those activities to register as a dealer; thus, principal trading firms engaging in important

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<sup>4</sup> See statistics from Securities Industry and Financial Markets Association, *available at* [https://www.sifma.org/resources/research/statistics/us-treasury-securities-statistics/#:~:text=Outstanding%20\(as%20of%20August\)%20%2423.7,%2C%20%2B8.0%25%20Y%2FY](https://www.sifma.org/resources/research/statistics/us-treasury-securities-statistics/#:~:text=Outstanding%20(as%20of%20August)%20%2423.7,%2C%20%2B8.0%25%20Y%2FY)

<sup>5</sup> See Gary Gensler, “Statement on Government Securities Alternative Trading Systems” (Jan. 26, 2022), *available at* <https://www.sec.gov/news/statement/gensler-ats-20220126>.

liquidity-providing roles in the securities markets, including in the U.S. Treasury market, would have to register with the SEC;<sup>6</sup>

- Ensuring that some of the most active participants in our markets be required to become a member of a national securities association;<sup>7</sup>
- Enhancing standards for clearing agencies of Treasuries regarding their membership requirements and risk management, and amending the broker-dealer customer protection rule regarding margin held at Treasury clearing agencies;<sup>8</sup> and
- Strengthening the governance of clearing agencies.<sup>9</sup>

I believe that, all told, these rules would enhance the resiliency, risk management, efficiency, transparency, and competition of our capital markets.

I also support consideration of work undertaken by the Financial Industry Regulatory Authority (FINRA) to bring greater efficiency and transparency to the nearly \$30 trillion non-Treasury fixed income markets.<sup>10</sup> These critical markets are more than 2.5 times larger than the commercial bank lending market. America turns more to bonds than to banks to fund their projects. Thus, it's worth considering how to ensure these markets are as efficient, competitive, and transparent as possible.

### *Equity markets*

Next, I believe it's appropriate to look at ways to freshen up the SEC's rules to ensure that our equity markets are as efficient and competitive as they can be.

We haven't updated key aspects of our national market system rules, particularly related to order handling and execution, since 2005. Think about that. When you reach into your pocket, you likely will find a phone that did not exist 17 years ago. How would you fare in your work and life if you still were using the latest technology from 2005?

Right now, there isn't a level playing field among different parts of the market: wholesalers, dark pools, and lit exchanges.<sup>11</sup> Further, the markets have become increasingly

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<sup>6</sup> See Gary Gensler, "Statement on the Further Definition of a Dealer-Trader" (March 28, 2022), available at <https://www.sec.gov/news/statement/gensler-statement-further-definition-dealer-trader-032822>.

<sup>7</sup> See Gary Gensler, "Statement on Re-Proposed Amendments Regarding Exemption from National Securities Association Membership" (July 29, 2022), available at <https://www.sec.gov/news/statement/gensler-proposed-amendments-exemptions-national-securities-association-072922>.

<sup>8</sup> See Sunshine Act Notice for Sept. 14, 2022, Open Commission Meeting: <https://www.sec.gov/os/sunshine-act-notice-sunshine-act-notice-open-09142022>

<sup>9</sup> See Gary Gensler, "Statement on Proposal to Enhance Clearing Agency Governance" (Aug. 8, 2022), available at <https://www.sec.gov/news/statement/gensler-statement-proposal-enhance-clearing-agency-governance-080822>.

<sup>10</sup> See Gary Gensler, "The Name's Bond" (April 26, 2022), available at <https://www.sec.gov/news/speech/gensler-names-bond-042622>.

<sup>11</sup> See Gary Gensler, "Market Structure and the Retail Investor" (June 8, 2022), available at <https://www.sec.gov/news/speech/gensler-remarks-piper-sandler-global-exchange-conference-060822>.

hidden from view. In 2009, off-exchange trading accounted for approximately one-third of U.S. equity volume.<sup>12</sup> On February 9, 2021, during the height of the meme stock events, the percent of shares traded off-exchange was greater than 50 percent.<sup>13</sup> The average daily portion of shares traded off-exchange over the period from January 4, 2022, through February 26, 2022, was 47 percent.

Thus, last year I asked staff to take a cross-market view of how we might update our rules and drive greater efficiencies in our equity markets, particularly for retail investors.

So far, the Commission has voted to propose rules to strengthen the transparency of short positions for the investing public and regulators.<sup>14</sup> We also proposed rules for the public's feedback around enhancing central clearing, including shortening the settlement cycle to one day.<sup>15</sup>

Furthermore, staff is considering possible recommendations related to best execution; disclosure of order execution quality; the National Best Bid and Offer; minimum price increments ("tick size"); exchange access fees and rebates; payment for order flow; and order-by-order competition.<sup>16</sup> I think we should continue efforts to make our equity markets as fair, efficient, and competitive as possible for investors.

### *Security-based swaps markets*

The security-based swaps market is not a large market compared to the fixed income and equity markets, but it was at the core of the 2008 financial crisis. More recently, total return swaps were at the heart of the failure of Archegos Capital Management, a family office. Since I was with you last year, security-based swap dealers began to register with the SEC; the market also began to report security-based swaps data to swap data repositories. In February, certain data became available to the public.<sup>17</sup> In addition, the Commission proposed to increase the transparency and enhance the integrity of the security-based swaps market, in particular through security-based swap execution facilities.<sup>18</sup>

### *Crypto markets*

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<sup>12</sup> See Cboe Global Markets data, available at [https://www.cboe.com/us/equities/market\\_share/](https://www.cboe.com/us/equities/market_share/).

<sup>13</sup> *Ibid.*

<sup>14</sup> See Gary Gensler, "Statement on Rules to Increase Transparency of Short Sale Activity" (Feb. 25, 2022), available at <https://www.sec.gov/news/statement/gensler-statement-rules-increase-transparency-short-sale-activity-022522>.

<sup>15</sup> See Gary Gensler, "Statement on Rules Regarding Clearing and Settling" (Feb. 9, 2022), available at <https://www.sec.gov/news/statement/gensler-statement-rules-regarding-clearing-settling-020922>.

<sup>16</sup> See "Market Structure and the Retail Investor."

<sup>17</sup> See "Statement on Public Dissemination of Security-Based Swap Transactions" (Feb. 16, 2022), available at <https://www.sec.gov/news/statement/gensler-public-dissemination-sbs-transactions-202202>.

<sup>18</sup> See "SEC Proposes Rules for the Registration and Regulation of Security-Based Swap Execution Facilities," (April 6, 2022), available at <https://www.sec.gov/news/press-release/2022-59>.

Next, I'll turn to crypto assets.<sup>19</sup>

The core principles from the securities laws apply to all corners of the securities markets.<sup>20</sup> Investors and issuers in crypto markets ought to benefit from the same gold standard that has made our capital markets the most liquid and innovative in the world.

Of the nearly 10,000 tokens in the crypto market, I believe the vast majority are securities. Offers and sales of these thousands of crypto security tokens are covered by the securities laws, which require that these transactions be registered or made pursuant to an available exemption. Thus, I've asked the SEC staff to work directly with entrepreneurs to get their tokens registered and regulated, where appropriate, as securities. Given the nature of crypto investments, I recognize that it may be appropriate to be flexible in applying existing disclosure requirements.

Stablecoins have features similar to, and potentially competing with, money market funds, other securities, and bank deposits. Currently, they primarily are used as means to participate in, or as so-called settlement tokens inside of, crypto platforms. Depending on their attributes, such as whether these instruments pay interest, directly or indirectly, through affiliates or otherwise; what mechanisms are used to maintain value; or how the tokens are offered, sold, and used within the crypto ecosystem, they may be shares of a money market fund or another kind of security. If so, they would need to register and provide important investor protections.

Given that most crypto tokens are securities, it follows that many crypto intermediaries — whether they call themselves centralized or decentralized (e.g., DeFi) — are transacting in securities and have to register with the SEC in some capacity. I've asked staff to work with crypto intermediaries to ensure they register each of their functions — exchange, broker-dealer, custodial functions, and the like — which could result in disaggregating their functions into separate legal entities to mitigate conflicts of interest and enhance investor protections.

I also have asked staff to work with firms that have been operating in other well-regulated markets that want to enter the crypto market. Such traditional financial intermediaries have expressed an interest in providing services to investors in the crypto market and to do so in compliance with time-tested investor protection rules. Existing crypto security intermediaries need to do so in compliance with investor protection rules as well.<sup>21</sup> All intermediaries in our capital markets deserve to compete — and comply — on a fair playing field.

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<sup>19</sup> See Prepared Remarks of Gary Gensler On Crypto Markets, Penn Law Capital Markets Association Annual Conference (April 4, 2022), available at <https://www.sec.gov/news/speech/gensler-remarks-crypto-markets-040422>. See Gary Gensler, Remarks at Aspen Security Forum (Aug. 3, 2021), available at <https://www.sec.gov/news/speech/gensler-aspen-security-forum-2021-08-03>.

<sup>20</sup> See Gary Gensler, “Kennedy and Crypto” (Sept. 8, 2022), available at <https://www.sec.gov/news/speech/gensler-sec-speaks-090822>.

<sup>21</sup> See Gary Gensler, “The SEC Treats Crypto Like the Rest of the Capital Markets,” available at <https://www.wsj.com/articles/the-sec-treats-crypto-like-the-rest-of-the-capital-markets-disclosure-compliance-security-investment-mutual-fund-protections-blockfi-bankruptcy-bitcoin-11660937246>.

As I have stated previously, a small number of tokens likely are crypto non-security tokens, though they may represent a significant portion of the crypto market's aggregate value. Thus, I have asked staff, in working to register crypto security intermediaries, to recommend a pathway to allow both the crypto security and crypto non-security tokens to trade versus or alongside one another. To the extent that crypto intermediaries may need to one day register with both the SEC and the Commodity Futures Trading Commission (CFTC), I would note we currently have dual registrants in the broker-dealer space and in the fund advisory space.

I look forward to working with Congress on various legislative initiatives related to crypto markets, while maintaining the robust authorities we currently have. Let's ensure that we don't inadvertently undermine securities laws underlying \$100 trillion capital markets. The securities laws have made our capital markets the envy of the world.

### **Predictive Data Analytics**

The next area is predictive data analytics.<sup>22</sup> I think the use of predictive data analytics in the 2020s is as transformative as the internet was in the 1990s. Coupled with differential marketing, differential pricing, and individually tailored behavioral prompts, these technologies — what we've called digital engagement practices (DEPs) — are increasingly shaping many parts of our economy. Finance is no exception. These DEPs are integrated into robo-advising, wealth management platforms, brokerage platforms, and other financial technologies.

To that end, the Commission last year put out a request for comment on DEPs. Based on that feedback, I've asked staff to make recommendations for the Commission's consideration around how to address conflicts of interest and sales practices in light of the increased use of predictive data analytics.

### **Issuers and Issuer Disclosure**

Next, I will turn to work related to issuers and issuer disclosure.

#### *Disclosures*

For the last 90 years, our capital markets have relied on a basic bargain.<sup>23</sup> Investors get to decide which risks to take as long as companies provide full, fair, and truthful disclosures. Congress tasked the SEC with overseeing this bargain. We do so through a disclosure-based regime, not a merit-based one. Over the decades, we have updated our rule set to elicit disclosures of information relevant to investors' decisions.

Increasingly, over the last number of years, investors are making investment decisions based upon factors that include the risks and opportunities related to climate and cybersecurity.

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<sup>22</sup> See Gary Gensler, "Investor Protection in a Digital Age" (May 17, 2022), available at <https://www.sec.gov/news/speech/gensler-remarks-nasaa-spring-meeting-051722>.

<sup>23</sup> See Gary Gensler, "Remarks at Financial Stability Oversight Council Meeting" (July 28, 2022), available at <https://www.sec.gov/news/speech/gensler-statement-financial-stability-oversight-council-meeting-072822>.

Today, climate-related factors and risks as well as cybersecurity risks both can affect a company's bottom line and its future, and therefore an investor's decision to buy, hold or sell a security or how to vote a proxy. Today, investors are already making decisions based upon information about climate and cyber risks. Hundreds of companies are already disclosing such information, pursuant to disparate frameworks, in a manner that lacks consistency and reliability.

Thus, the SEC has issued proposals to help bring investors greater consistency, comparability, and decision-usefulness to such disclosures and enhance the conversation that is already going on between issuers and investors. In March, we put out for comment a proposal to require disclosures from public companies about climate-related risks, and we received more than 14,000 comments.<sup>24</sup> In addition, in March, the Commission proposed rules that would enhance issuers' cybersecurity disclosures to help ensure investors are adequately informed about a company's cyber-related risks.<sup>25</sup> We received over 140 comments on that proposal.

### *China*

It's a privilege for foreign issuers to access our markets — the largest, deepest, most liquid markets in the world. If foreign issuers want access to our public capital markets, they must be on a level playing field with U.S. firms. Investors in U.S. markets should be protected — and have trust in a company's financial numbers — regardless of whether an issuer is foreign or domestic.

More than 50 jurisdictions have complied with the requirements that the Public Company Accounting Oversight Board (PCAOB) inspect and investigate audit firms of U.S. public companies, regardless of where the audit firm is based. Two have not: China and Hong Kong.

In August, the PCAOB signed a Statement of Protocol with the China Securities Regulatory Commission and the Ministry of Finance of the People's Republic of China that provides a framework for PCAOB inspections and investigations of audit firms based in China and Hong Kong.<sup>26</sup> The agreement brings specificity and accountability to effectuate Congress's intent, under the Holding Foreign Companies Accountable Act of 2020 (HFCAA), to ensure PCAOB inspection access across all relevant jurisdictions.

Make no mistake, though: The proof will be in the pudding. This agreement will be meaningful only if the PCAOB actually can inspect and investigate completely audit firms in China. If the PCAOB cannot, roughly 200 Chinese-based issuers will face prohibitions on trading of their securities in the U.S. if they continue to use those audit firms.

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<sup>24</sup> See "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>25</sup> See "SEC Proposes Rules on Cybersecurity Risk Management, Strategy, Governance, and Incident Disclosure by Public Companies" (March 9, 2022), available at <https://www.sec.gov/news/press-release/2022-39>.

<sup>26</sup> See Gary Gensler, "Statement on Agreement Governing Inspections and Investigations of Audit Firms Based in China and Hong Kong" (Aug. 26, 2022), available at <https://www.sec.gov/news/statement/gensler-audit-firms-china-hong-kong-20220826>.



I thank this Committee for its leadership, and all of Congress, for your continued attention to these important matters.

### *Other topics*

There are a number of other important topics relating to issuers that I'd like to highlight. These include proposals related to special purpose acquisition companies,<sup>27</sup> share repurchase disclosure,<sup>28</sup> beneficial ownership (Regulation 13D-G),<sup>29</sup> and trading by company insiders (10b5-1 plans).<sup>30</sup> Across these areas, I think we have opportunities to enhance market integrity, transparency, and fairness in our markets.

## **Funds and Investment Management**

The next area I will discuss is how we can drive greater efficiency, integrity, and resiliency in the funds and investment management space.

### *Efficiency*

Private fund advisers, through the funds they manage, touch so much of our economy. These funds, including hedge funds, private equity funds, venture capital funds, and liquidity funds, currently have approximately \$21 trillion in gross assets.<sup>31</sup> These funds matter because of what, or who, stands on either side of them. The funds pool the money of other people, including retirement plans, university endowments, and others. The people behind those funds and endowments often are teachers, firefighters, municipal workers, students, and professors. And who are the people on the other side of the private funds? They're entrepreneurs, small business owners, and managers of late-stage companies.

That's why I think it is important, using the tools of competition and transparency, to drive greater efficiencies in the private funds market. In this space, there may be somewhere in the range of \$250 billion in fees and expenses each year.<sup>32</sup> Thus, the Commission proposed rules to enhance transparency for private fund investors, such as with respect to advisers' fees, performance metrics, and side letter arrangements.

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<sup>27</sup> See "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>28</sup> See "SEC Proposes New Share Repurchase Disclosure Rules" (Dec. 15, 2021), available at <https://www.sec.gov/news/press-release/2021-257>.

<sup>29</sup> See "SEC Proposes Rule Amendments to Modernize Beneficial Ownership Reporting" (Feb. 10, 2022), available at <https://www.sec.gov/news/press-release/2022-22>.

<sup>30</sup> See "SEC Proposes Amendments Regarding Rule 10b5-1 Insider Trading Plans and Related Disclosures" (Dec. 15, 2022), available at <https://www.sec.gov/news/press-release/2021-256>.

<sup>31</sup> This represents registered investment adviser (RIA) private fund gross asset value reported on Form ADV as of December 2021.

<sup>32</sup> See Gary Gensler, Prepared Remarks At the Institutional Limited Partners Association Summit, Nov. 10, 2021, available at <https://www.sec.gov/news/speech/gensler-ilpa-20211110>.

## *Integrity*

In promoting integrity in our markets, it is crucial that investors can evaluate what stands behind a fund's marketing. Recently, we've seen a growing number of funds market themselves as "green," "sustainable," "low-carbon," and so on. What information stands behind those claims?

Thus, we proposed modernizing the 21-year-old Names Rule to help ensure that a fund's name aligns with the fund's characteristics and investing strategy.<sup>33</sup> As the fund industry has developed, gaps in the current Names Rule may undermine investor protection. The proposal would modernize this key rule for today's markets. Concurrently, we proposed a rule enhancing the disclosure requirements for advisers and investment companies marketing themselves using Environmental, Social, and Governance (ESG)-related labels.<sup>34</sup> This would help ensure that investors can see the information that stands behind funds' and advisers' claims.

## *Resiliency*

The nature, scale, and interconnectedness of funds pose issues for financial stability. We've seen such risks emanate from various fund sectors during the 2008 financial crisis, at the start of the COVID crisis in March 2020, and in 1998, when the hedge fund Long-Term Capital Management failed.<sup>35</sup>

Therefore, the Commission has proposed various rules related to resiliency.

In December, the Commission voted to propose amendments designed to increase resiliency of money market funds.<sup>36</sup> There were challenges in this market during the 2008 financial crisis. The SEC sought to address structural issues in these funds through a series of reforms adopted in 2010 and 2014. The events of March 2020, though, suggest that more can be done to improve the resiliency of money market funds.

Next, in response to the 2008 financial crisis, Congress mandated the SEC and CFTC to establish reporting requirements for advisers to private funds through Form PF, an important reporting tool used to protect investors and monitor systemic risk. We've learned a lot, though, since Form PF was first adopted. Thus, over the last year, the Commission has proposed two sets of rules regarding Form PF.

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<sup>33</sup> See "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>34</sup> See "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/statement/gensler-statement-esg-disclosures-proposal-052522>.

<sup>35</sup> See "Statement before the Financial Stability Oversight Council on Money Market Funds, Open-End Bond Funds, and Hedge Funds" (Feb. 4, 2022), available at <https://www.sec.gov/news/speech/gensler-fsoc-statement-020422>.

<sup>36</sup> See Gary Gensler, "Statement on Money Market Fund Reform" (Dec. 15, 2021), available at <https://www.sec.gov/news/statement/gensler-mmf-20211215>.

In January, the Commission proposed amendments to the SEC-only sections of Form PF.<sup>37</sup> That proposal would, among other things, require certain advisers to private funds to provide current reporting of key events, and enhance reporting requirements for large private equity and large liquidity fund advisers. In August, we proposed to amend the SEC and CFTC’s joint portions of Form PF to expand the reporting requirements for large hedge fund advisers on their large hedge funds, among other things.<sup>38</sup> Together, these proposals, if adopted, would improve the quality of the information we receive from filers, including hedge funds and private equity funds.

Third, in February, the Commission proposed new rules that would require registered investment advisers, registered investment companies, and business development companies to enhance their cybersecurity practices.<sup>39</sup> Such rules would improve advisers’ and funds’ cybersecurity risk management and incident reporting.

Finally, with respect to open-end funds, I’ve asked staff whether there are improvements we can consider to enhance fund liquidity, pricing, and resiliency during periods of stress.

### **Enforcement and Examinations**

Maintaining the gold standard of the capital markets means examining against the rules and being the cop on the beat. About half of SEC staff work in the Divisions of Examinations and Enforcement, ensuring that firms are inspected and wrongdoers are held accountable for their misconduct.

Without examination against and enforcement of our rules and laws, we can’t instill the trust necessary for our markets to thrive. Preventing fraud, manipulation, and abuse lowers risk in the system. It protects investors and reduces the cost of capital. The whole economy benefits from that.

The Commission has brought a number of important cases based on allegations of books and records violations, complex products, and crypto assets.<sup>40</sup> That being said, the Division of Enforcement shrank 5 percent from Fiscal Year (FY) 16 to FY21. The number of full-time

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<sup>37</sup> See “SEC Proposes Amendments to Enhance Private Fund Reporting” (Jan. 26, 2022), *available at* <https://www.sec.gov/news/press-release/2022-9>.

<sup>38</sup> See “SEC Proposes to Enhance Private Fund Reporting” (Aug. 10, 2022), *available at* <https://www.sec.gov/news/press-release/2022-141>.

<sup>39</sup> See “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>.

<sup>40</sup> See, e.g., “JPMorgan Admits to Widespread Recordkeeping Failures and Agrees to Pay \$125 Million Penalty to Resolve SEC Charges” (Dec. 17, 2021) (settled order), *available at* <https://www.sec.gov/news/press-release/2021-262>; “SEC Charges Allianz Global Investors and Three Former Senior Portfolio Managers with Multibillion Dollar Securities Fraud” (May 17, 2022) (settled orders as to Allianz; civil action pending as to certain individual defendants), *available at* <https://www.sec.gov/news/press-release/2022-84>; “SEC Charges Infinity Q Founder with Orchestrating Massive Valuation Fraud” (Feb. 17, 2022) (civil action pending), *available at* <https://www.sec.gov/news/press-release/2022-29>; “SEC Charges Archegos and its Founder with Massive Market Manipulation Scheme” (April 27, 2022) (civil action pending), *available at* <https://www.sec.gov/news/press-release/2022-70> and “BlockFi Agrees to Pay \$100 Million in Penalties and Pursue Registration of its Crypto Lending Product” (Feb. 14, 2022) (settled order), *available at* <https://www.sec.gov/news/press-release/2022-26>.

equivalents (FTEs) supported by the FY23 budget request for the agency would still be 1 percent shy of where we were in 2016.

While the Division is doing more with less, we do need more resources. For example, more cases are being litigated and going to trial. The SEC has tried the same number of cases to verdict in federal courts in FY22 (14) as we did in the prior three fiscal years combined.

Further, in FY21, we received 46,000 tips, complaints, and referrals from members of the public, up from about 16,000 five years earlier.

Moreover, the Division of Examinations' work is essential to ensuring strong compliance across the board. For example, that includes work to test for compliance with Regulation Best Interest, which helps to ensure retail customers receive unbiased recommendations from their broker-dealers that are truly in the customer's best interest. The Division also plays a key role in monitoring risk and informing policy, which are especially important during times of increased market volatility, geopolitical turmoil, and interconnectedness.

In the most recent completed fiscal year, this Division exceeded the previous year's numbers by completing more than 3,000 examinations and hundreds of non-exam registrant engagements responding to market events.<sup>41</sup> The Division of Examinations grew modestly (4 percent) since FY16. The FY23 budget request supports an additional 4 percent increase in FTEs compared with FY21.

## Resources

The SEC oversees 24 national securities exchanges, 99 alternative trading systems, 10 credit rating agencies, seven active registered clearing agencies, five self-regulatory organizations and other external entities. We review the disclosures and financial statements of more than 8,200 reporting companies.<sup>42</sup>

Markets don't stand still. The world isn't standing still. Our resources can't stand still, either.

For example, since 2016, the number of private funds managed by registered investment advisers has increased 40 percent, to 50,000.

In addition, the amount of data that the SEC processes has swelled by 20 percent annually for each of the last two years.

And yet, our agency has shrunk. Last year, the agency had 4 percent fewer staff than it did in 2016. We can't shrink when we're trying to maintain a gold standard.

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<sup>41</sup> See Division of Examinations, 2022 Examination Priorities, available at <https://www.sec.gov/files/2022-exam-priorities.pdf>.

<sup>42</sup> See Gary Gensler, "Testimony at Hearing before the Subcommittee on Financial Services and General Government U.S. House Appropriations Committee" (May 17, 2022), available at <https://www.sec.gov/news/testimony/gensler-testimony-fsgg-subcommittee>.

Thanks to the work of the remarkable staff, the SEC has faced the challenges of limited resources well. For the SEC to continue to succeed in carrying out our mission, our personnel level must continue to grow commensurate with the expansion and complexity in the capital markets around the world. To fund our operations, the agency collects fees on securities transactions at a rate intended to fully offset our appropriation.

Our capital markets are a national treasure. We, at the SEC, must work to maintain them as the envy of the world. But we can't do it alone. We need the help of Congress.

### **Conclusion**

In considering how to maintain the world's best markets in the 2020s and the 2030s, I can't help but think about the establishment of the federal securities regime in the 1930s. These foundational laws help us maintain our competitiveness on the world stage. They are the gold standard. Let's do everything we can to keep them that way in the future.

I'm often asked to prioritize the remaining items on our rulemaking agenda. When will we vote on what?

At their core, those questions are more about sequencing than prioritization. Staff is working diligently on remaining proposals and possible adopting releases. When they and my fellow Commissioners think proposals are ready, we'll put them out for public comment and, when appropriate, finalize items.

In all our work, we are anchored by the laws Congress has passed, the courts' interpretations of those laws, economic analysis, and public input.<sup>43</sup> As a Commission, we benefit greatly from that public input. As staff prepares recommendations for the Commission, they take those comments into close consideration and consider changes based upon that public feedback.

Every day, as we consider these policy areas, we are motivated by our three-part mission, as directed by Congress: to protect investors, maintain fair, orderly, and efficient markets, and facilitate capital formation.

Thank you and I look forward to answering your questions.

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<sup>43</sup> See "Remarks at Financial Stability Oversight Council Meeting."