United States Senate
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS
WASHINGTON, DC 20510–6075

May 10, 2023

The Honorable Gary Gensler
Chair
U.S. Securities and Exchange Commission
100 F Street NE
Washington, D.C. 20549

Dear Chair Gensler:

We write to request information from the U.S. Securities and Exchange Commission ("SEC") regarding the SEC's aggressive rulemaking agenda under your leadership and the concerning impact these rules are likely to have on America's capital markets and its small and emerging businesses. The SEC's mandate is to "protect investors; maintain fair, orderly, and efficient markets; and facilitate capital formation."[1] This mandate has cultivated the strongest, deepest, and most liquid capital markets in the world and has helped to ensure that the United States is the most attractive place to start and grow a business. Therefore, we are deeply concerned that the SEC, under your leadership, has put America's capital markets framework into jeopardy by failing to properly scale, or tailor, your rules to ensure they do not disproportionately impact small businesses.

The strength of our capital markets system as it exists currently has allowed small businesses with big ideas to access the funding necessary to scale their organizations, create new jobs, spur innovative research and development, and invest in the communities in which they operate. These firms, which employ more than sixty-one million people[2] in the U.S., account for approximately 43.5 percent of our Nation's GDP[3]. As such, it is not an overstatement to say that the health of our small and emerging businesses is inextricably tied to the overall health of the U.S. economy.

Unfortunately, the aggressive and sprawling rule-making agenda put forth by the SEC under your leadership seeks to further burden these businesses, rather than making it easier for them to raise and deploy growth-driving capital. The SEC currently has over fifty items on its regulatory agenda, many of which will drastically change the operation, structure, and efficiency of U.S.

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[1] *See, e.g.*, *About the SEC*, U.S. Securities and Exchange Commission (last accessed Mar. 7, 2023), https://www.sec.gov/about.
[2] U.S. Small Business Administration Office of Advocacy, 2021 Small Business Profile, (30 Aug. 2021), https://cdn.advocacy.sba.gov/wp-content/uploads/2021/08/30144808/2021-Small-Business-Profiles-For-The-States.pdf.
[3] "Small Businesses Generate 44 Percent of U.S. Economic Activity." U.S. Small Business Administration Office of Advocacy, (30 Jan. 2019), https://advocacy.sba.gov/2019/01/30/small-businesses-generate-44-percent-of-u-s-economic-activity/.

capital markets[4]. The unprecedented volume, complexity, and interconnectedness of the SEC's rules will inevitably result in severe market disruptions that will harm our capital markets and the investors they serve, particularly small and emerging U.S. businesses and market participants.

As expressed previously, we are concerned with the SEC's failure to carry out thorough quantitative analyses of the economic impact of these proposals on small and emerging regulated entities, as required by law.[5] These essential and mandatory cost-benefit reviews offer policymakers a critical opportunity to evaluate whether certain requirements under a proposed rule could be appropriately scaled to address the specific risk-profile of a particular entity or system, rather than making firms of widely varying circumstances implement and comply with an overly broad and prescriptive regime.

Many concerned stakeholders also share these concerns. For example, last year the SEC was advised by the Small Business Administration Office of Advocacy to "take a holistic approach to its regulatory agenda with a focus on small business impacts."[6] Likewise, the SEC Office of the Advocate for Small Business Capital Formation rightly highlighted this concern to the Commission:

> …we recommend that the Commission, when considering new disclosure obligations for public companies, scale those obligations and delay compliance for small public companies. Scaling disclosure obligations helps to better balance the costs and benefits of the rules, particularly because the proportional expense of costs that are not scalable is higher for small public companies. Delaying compliance for small public companies helps to promote better initial disclosure for those companies, as they will benefit from seeing the disclosure that large public companies prepare in response to similar new requirements.[7]

Regrettably, the SEC has failed to adequately evaluate scalability in its rulemaking agenda, and the overall impact that these rules will have on capital formation, competition, and market efficiency for small and emerging businesses. This has generated regulatory uncertainty that will, undoubtably, incite market uncertainty.[8] These drastic changes to our robust capital markets will

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[4] For Instance*, The Enhancement and Standardization of Climate-Related Disclosures for Investors*, Proposed Rule of the Securities and Exchange Commission (proposed Mar. 21, 2022), https://www.sec.gov/rules/proposed/2022/33-11042.pdf.; and *Private Fund Advisers; Documentation of Registered Investment Adviser Compliance Reviews*, Proposed Rule of the Securities and Exchange Commission (proposed Mar. 24, 2022), https://www.federalregister.gov/documents/2022/03/24/2022-03212/private-fund-advisers-documentation-of-registered-investment-adviser-compliance-reviews.

[5] *See* Letter from Senators Tim Scott and Bill Hagerty, to Gary Gensler, Chair, Securities and Exchange Commission (Dec. 12, 2022), https://www.sec.gov/comments/s7-03-22/s70322-20152828-320499.pdf.

[6] Comment Letter Re: The Enhancement and Standardization of Climate-Related Disclosures for Investors – File Number S7-10-22, U.S. Small Business Administration Office of Advocacy (Jun. 17, 2022), https://cdn.advocacy.sba.gov/wp-content/uploads/2022/06/17125158/Comment-Letter-SEC-Climate-Disclosure-Rules-6-17-22.pdf.

[7] U.S. Securities and Exchange Commission Office of the Advocate for Small Business Capital Formation. (2022). Annual Report Fiscal Year 2022.

[8] Scott R. Baker, Nicholas Bloom, and Steven J. Davis. (2016). "Measuring Economic Policy Uncertainty." Quarterly Journal of Economics, vol 131(4), pages 1593-1636. ("On the macro level, innovations in policy uncertainty foreshadow declines in investment, output, and employment in the United States."

have resounding ripple effects that will disproportionately impact the most modest American investors.

Accordingly, to evaluate the SEC's rulemakings and their impact on small and emerging businesses, we request that you provide the following information by no later than June 7, 2023:

1. All analyses or other records[9] related to the economic impact that the proposed rule on "The Enhancement and Standardization of Climate-Related Disclosures for Investors" is expected to have on small and emerging businesses, if finalized.

2. All analyses or other records related to the economic impact that the proposed rule on "Private Fund Advisers; Documentation of Registered Investment Adviser Compliance Reviews" is expected to have on small and emerging businesses, if finalized.

3. A chart or list detailing (i) every rule promulgated or proposed by the SEC since January 20, 2021, and (ii) the approximate dollar amount of the economic impact that each such rule is expected to have on small and emerging businesses, if finalized.

Thank you for your attention to this matter.

Sincerely,

Tim Scott
Ranking Member

Mike Crapo
U.S. Senator

M. Michael Rounds
U.S. Senator

Thom Tillis
U.S. Senator

John Kennedy
U.S. Senator

Bill Hagerty
U.S. Senator

[9] The term "records" means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded or preserved, and whether original or copy.

Cynthia Lummis
U.S. Senator

Kevin Cramer
U.S. Senator

Steve Daines
U.S. Senator