

April 19, 2021

The Hon. Gary Gensler
Chairman
U.S. Securities and Exchange Commission
100 F St NE
Washington, D.C., 20549

Chairman Gensler:

Congratulations on your becoming the 33rd Chair of the U.S. Securities and Exchange Commission. As you and your fellow Commissioners work to set your agenda, we request a timely response detailing your priorities for 2021–2022. In developing your priorities, there are a number of important issues that are critical to fulfilling the SEC’s mission.

Modernize Our Markets

On February 16, 2021, Ranking Member McHenry and Senate Banking Committee Ranking Member Pat Toomey wrote to then-Acting Chair Lee requesting that the Commission focus its efforts on a number of good-governance initiatives. The included a request that the Commission publicly release the staff report, required to be completed by September 2020, on the potential impacts associated with movement to a shorter settlement cycle beyond T+2.¹ We reiterate that request again. If such report is not yet completed, your confirmation that you will prioritize its completion and release to the public by the end of this year.

Additionally, we request your comment on each of the proposed good-governance initiatives from the February 16, letter as well as discussion on whether you intend for those projects to be part of your agenda as Chairman. For any project discussed in that letter that you do not intend to prioritize, we request an explanation of why, in your view, such items are not worthy of near-term focus and completion.

In addition to the letter, the Consolidated Appropriations Act of 2021 included two bills previously passed by the U.S. House of Representatives during the 116th Congress: H.R. 2919, the Improving Investment Research for Small and Emerging Issuers Act, and H.R. 3050, the

¹ See Letter from Ranking Member Pat Toomey and Ranking Member Patrick McHenry to Acting Chair Allison Lee dated February 16, 2021, *available at* https://www.banking.senate.gov/imo/media/doc/Toomey_McHenry_SEC_GoodGovernment.pdf.

Expanding Investment in Small Businesses Act. Both reports will provide necessary information to examine the impact of removing regulatory barriers for our small companies, helping them better access much-needed capital. We request your confirmation that these two reports will be promptly completed by the end of June, as required by Sections 106 and 107 of the Consolidated Appropriations Act of 2021.

Promote Greater Transparency

The Commission's transparent rulemaking agenda is paramount to the Commission's effectiveness. Investors, issuers, market participants, financial regulators, and Congress should have a clear understanding of the Commission's roadmap. An important tool to accomplish this is the Regulatory Flexibility Agenda.

We urge you to follow the lead of former Chairman Clayton and continue to use the "Reg Flex" agenda to publicize the most pressing Commission rulemaking initiatives. This includes projects that you expect to complete in the near-term (one year) and the long-term (more than one year). After years of Reg Flex agendas that did not reflect what was likely or even possible in terms of upcoming SEC rulemakings, former Chairman Clayton laudably narrowed the laundry-list of *potential* rulemakings to focus on what were *likely* rulemakings within the appropriate timeframes. This approach, focused on heightened transparency, increases cross-agency coordination as well as accountability to the American people. We request a confirmation of your commitment to adhere to this common-sense approach when developing your "Reg Flex" agendas.

Avoid Mission Creep

During the past six weeks, former-Acting Chair Lee announced a number of initiatives centered around the Commission's "enhanced focus" on climate-related and other ESG priorities, including a review of public companies' adherence to the Commission's 2010 climate-related guidance.² Commissioner Lee also requested public feedback on whether the public company disclosure regime should be modified to incorporate new climate-related disclosures.³

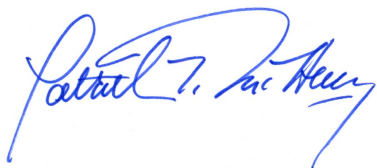
To the extent that as Chairman you intend to continue this "enhanced focus" on climate and other ESG-related issues, we insist that the Commission ensure any changes to the Commission's disclosure regime are consistent with the historical practice of requiring only disclosures of information that are actually material to investors. The Commission's touchstone standard of materiality is one of the reasons the U.S. capital markets are the envy of the world. It would be an abuse of the Commission's authority to stray beyond the materiality standard to achieve non-investment-related social goals, particularly when such issues are better addressed by Congress or other regulators.

² See Allison Herren Lee, Statement on the Review of Climate-Related Disclosure (Feb. 24, 2021), *available at* <https://www.sec.gov/news/public-statement/lee-statement-review-climate-related-disclosure>.

³ See Allison Herren Lee, A Climate for Change: Meeting Investor Demand for Climate and ESG Information at the SEC (Mar. 15, 2021), *available at* <https://www.sec.gov/news/speech/lee-climate-change>.

Finally, in the period before the Commission implements any ESG-related regulatory changes through a process consistent with the Administrative Procedures Act, we note that federal law requires that the current standards and disclosure requirements continue to apply to all public companies and that such standards are applied consistently with past practice.⁴ We ask for your confirmation that: (1) any ESG-related changes to the SEC's disclosure regime will be rooted in the SEC's historical touchstone materiality standard, and (2) the SEC will not effectively engage in ESG-related rulemaking through new enforcement or examination standards in the interim period before any relevant regulatory changes are completed through the notice-and-comment rulemaking process.

We look forward to your response and continuing our discussion on these critical issues.



PATRICK McHENRY
Ranking Member
Committee on Financial Services

Sincerely,



BILL HUIZENGA
Ranking Member
Subcommittee on Investor Protection,
Entrepreneurship, and Capital Markets
Committee on Financial Services

cc: The Honorable Hester M. Peirce
The Honorable Elad L. Roisman
The Honorable Allison Herren Lee
The Honorable Caroline A. Crenshaw

⁴ Cf. Hester M. Peirce and Elad L. Roisman, Enhancing Focus on the SEC's Enhanced Climate Change Efforts (Mar. 4, 2021), *available at* <https://www.sec.gov/news/public-statement/roisman-peirce-sec-focus-climate-change>.