

United States Senate

WASHINGTON, DC 20510

October 27, 2022

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

Dear Chairman Gensler,

We write to you today regarding information on the operations of the U.S. Securities and Exchange Commission (SEC). Specifically, we are deeply concerned about the operational integrity of the SEC following the recent release of the *Inspector General's Statement on the SEC's Management and Performance Challenges, October 2022* (report) by the SEC Inspector General (IG)¹.

As you are well aware, the report was submitted to your office on October 13, 2022. This statutorily-required and non-biased report is designed to identify the “most serious management and performance challenges facing the SEC.”² Unfortunately, portions of the report detail grave deficiencies within the SEC, especially pertaining to its workforce, level of rulemaking experience, and the length of public comment periods. Cumulatively, these deficiencies make it hard to understand how the SEC is adequately performing the necessary due-diligence and analysis required for its many pending rules.

Since the beginning of this year through August 29, 2022, the final date the report covers, the SEC introduced twenty-six new rule proposals.³ At over three rules per month, the twenty-six rules of 2022 are more than double the number introduced in the entirety of 2021 and the highest total in each of the past five years. Despite many outside groups repeatedly requesting the SEC slow its rulemaking tempo to ensure proper time for stakeholder feedback and deliberation, you publicly shrugged-off these concerns by characterizing the rulemaking pace under your leadership as “right in the zone” of your predecessors.⁴

Unfortunately, this characterization stands in stark contrast to the realities described in the IG's report. In meetings with the IG team, managers across several of the SEC's internal divisions – including Trading and Markets, Investment Management, Corporation Finance, and Economic and Risk Analysis – “raised concerns about increased risks and difficulties managing resources and other mission-related work because of the increase in the SEC's rulemaking activities.”⁵

¹ *The Inspector General's Statement on the SEC's Management and Performance Challenges*, October 13, 2022, <https://www.sec.gov/files/inspector-generals-statement-sec-mgmt-and-perf-challenges-october-2022.pdf>

² *Id.*

³ *Id.*

⁴ Soyoung Ho, *SEC Chair Gensler Defends Fast-Paced Rulemaking*, Thomson Reuters, October 5, 2022, <https://tax.thomsonreuters.com/news/sec-chair-gensler-defends-fast-paced-rulemaking/>

⁵ *The Inspector General's Statement on the SEC's Management and Performance Challenges*, October 13, 2022, <https://www.sec.gov/files/inspector-generals-statement-sec-mgmt-and-perf-challenges-october-2022.pdf>

One particularly alarming excerpt of the report stands out. When compiling SEC division manager feedback, the IG's report found:

"...some reported an overall increase in attrition...and difficulties hiring individuals with rulemaking experience. In the interim, managers reported relying on detailees, in some cases with little or no experience in rulemaking. Others told us that they may have not received as much feedback during the rulemaking process, either as a result of shortened timelines during the drafting process or because of shortened public comment periods. ...some believed that the more aggressive agenda—particularly as it relates to high-profile rules that significantly impact external stakeholders—potentially (1) limits the time available for staff research and analysis, and (2) increases litigation risk. Finally, some managers noted that fewer resources have been available to complete other mission-related work, as rulemaking teams have borrowed staff from other organizational areas to assist with rulemaking activities."⁶

Additional sources beyond the SEC IG's report also indicate the report does not represent an outlier opinion. In a September 28th blog post entitled "Gensler's SEC Brain Drain," the union representing SEC employees notes:

"According to information the union has obtained from the SEC, our professional staff currently is leaving the agency at more than twice the rate prior to Gensler's arrival, and the pace of departures is continuing to accelerate. As you read this, in areas that are central to the Chair's agenda—rule making and enforcement—staff attrition is off the charts... In this environment, the agency will have all it can do to meet its basic enforcement and regulatory needs, let alone the Chair's historically ambitious policy agenda."⁷

If true, these reports speak to a deep level of dysfunction within the SEC. Employees leave, roles go unfilled or are staffed by inexperienced detailees, rules are pushed through without adequate time to conduct research and analysis – both for policy and legal implications – and other mission-related work is neglected.

Given the importance of the SEC's work, we request written answers to the following questions no later than November 11, 2022.

1. Were you aware of any of the challenges outlined in the IG's report prior to its publication?
 - a. If so, what specific challenges were you aware of and when? Please provide records of all instances of correspondence related to these challenges.
2. Do you disagree with the feedback reported to the IG's team by employees of the SEC?

⁶ *The Inspector General's Statement on the SEC's Management and Performance Challenges*, October 13, 2022, <https://www.sec.gov/files/inspector-generals-statement-sec-mgmt-and-perf-challenges-october-2022.pdf>

⁷ *Gensler's SEC Brain Drain*, September 29, 2022, <https://www.secunion.org/news/genslers-sec-brain-drain>

3. What conversations, if any, have you had with SEC division managers regarding the challenges they face managing resources and meeting their mission-related work?
 - a. If conversations have occurred, what steps, if any, have you taken in consultation with SEC staff to improve the challenges reported in the IG's report?
4. What assurances can you provide that you will consider all possible solutions to the challenges stated in the SEC IG's report to ensure the SEC can effectively operate and fulfill its mission?
5. Will you commit to slowing the pace of SEC rulemaking or extending public comment periods if SEC staff still report the challenges detailed in the SEC IG's report have not alleviated?

America's public securities markets are the envy of the world, serving as tremendous sources of opportunity for businesses and individual Americans alike. Moreover, given the growing bifurcation of international markets and the rise of peer and near-peer competitors across the globe, it is imperative that the SEC works to ensure all regulatory actions it undertakes are well-conceived and allow U.S. markets to maintain their strategic edge. Any efforts to ram through hurried rulemaking without proper analysis, deliberation or consideration of downstream negative impacts is nothing short of regulatory malpractice. Instead, the SEC should focus on ensuring it meets its mission requirements to protect investors, maintain fair, orderly, and efficient markets, and facilitate capital formation.

Sincerely,



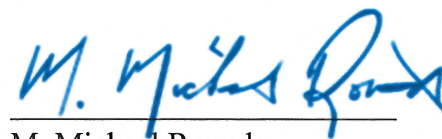
Thom Tillis
United States Senator



Mike Crapo
United States Senator



Tim Scott
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M. Michael Rounds
United States Senator



Bill Hagerty
United States Senator



Steve Daines
United States Senator