

# Congress of the United States

Washington, DC 20515

January 10, 2022

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

Dear Chair Gensler:

We are concerned that the Securities and Exchange Commission (“SEC”) rulemakings under your tenure have consistently provided unreasonably short comment periods, which will harm the quality of public comment and may run afoul of the Administrative Procedure Act. The SEC should remedy this disturbing and unprecedented pattern – which contradicts executive orders from both Democratic and Republican administrations meant to encourage deliberative rulemakings – by extending the comment period of all proposed rulemakings that have been released during your time at the SEC.

The notice-and-comment process is critical to effective SEC rulemaking. The opportunity to comment on proposed rulemakings ensures the public can provide substantive analysis, warn of unintended negative consequences, and suggest alternative approaches with rationale for the SEC to consider. This commentary helps refine and improve adopted rulemakings – and in some cases provides a basis for the SEC to rethink or scrap imprudent rulemakings entirely.

Moreover, properly scrutinizing a proposed rulemaking often requires a significant investment of time and resources. This is especially true when a proposal consists of several hundred pages and is intended to interact with complicated financial markets and existing securities laws. Truncated comment periods pose particular difficulties—and are of particular concern—when overlapping with holidays, year-end operational or regulatory obligations, or other times when commenters’ staff are expected to manage other deadlines.

President Obama’s White House appropriately recognized that public comment periods on most rulemakings should be at least 60 days.<sup>1</sup> Extended comment periods, for example, for 90 days or

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<sup>1</sup> Executive Order 13563, Improving Regulation and Regulatory Review (Jan. 18, 2011), 76 Fed. Reg. 3821 (Jan. 21, 2011); *see also* Executive Order 12866, Regulatory Planning and Review (Sept. 30, 1993), 58 Fed. Reg. 51735 (Oct. 4, 1993) (“each agency should afford the public a meaningful opportunity to comment on any proposed regulation, which in most cases should include a comment period of not less than 60 days”); Memorandum for the Heads of Executive Departments and Agencies, Modernizing Regulatory Review (Jan. 20, 2021), 86 Fed. Reg. 7223 (Jan. 26, 2021) (“This memorandum reaffirms the basic principles set forth in [Executive Order 12866] and in Executive Order 13563 of January 18, 2011 (Improving Regulation and Regulatory Review), which took important steps towards modernizing the regulatory review process. When carried out properly, that process can help to advance regulatory policies that improve the lives of the American people.”).

120 days, are also appropriate when taking up particularly complex rulemakings or when numerous rulemakings are simultaneously outstanding.<sup>2</sup> The Administrative Conference of the United States, an independent federal agency within the executive branch charged with recommending improvements to administrative process and procedure, similarly endorses a comment period of at least 60 days for significant regulatory actions.<sup>3</sup>

Despite these recommended practices, the majority of SEC proposals put forward under your chairmanship have thus far allowed less than 60 days for public comment. Two proposals provide 60-day comment periods, three proposals provide 45-day comment periods, and six proposals provide 30-day comment periods.<sup>4</sup> Moreover, several of these proposals with shorter comment periods coincide with federal holidays (Christmas, New Year's Day, and/or Martin Luther King Jr. Day) yet do not allot extra days in light of those holidays.<sup>5</sup> While the money market fund reform proposal from last month provides a 60-day comment period, that is still an insufficient amount of time for such significant revisions to money market fund rules.<sup>6</sup>

We urge you to immediately extend all comment periods for the SEC's proposed rules of significance to at least 60 days, including reopening the comment filing for those rulemakings

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<sup>2</sup> Commissioner Hester M. Peirce Public Statement: Rat Farms and Rule Comments – Statement on Comment Period Lengths (Dec. 10, 2021), available at <https://www.sec.gov/news/statement/peirce-rat-farms-and-rule-comments-121021>.

<sup>3</sup> See Administrative Conference of the United States, Rulemaking Comments, Recommendation No. 2011-2 (June 16, 2011), available at <https://www.acus.gov/recommendation/rulemaking-comments>.

<sup>4</sup> See Money Market Fund Reforms, Rel. No. IC-34441, Dec. 15, 2021 (60-day comment period); Enhanced Reporting of Proxy Votes by Registered Management Investment Companies; Reporting of Executive Compensation Votes by Institutional Investment Managers, Rel. No. 34-93169, Sept. 29, 2021 (60-day comment period); Prohibition Against Fraud, Manipulation, or Deception in Connection with Security-Based Swaps; Prohibition against Undue Influence over Chief Compliance Officers; Position Reporting of Large Security-Based Swap Positions, Rel. No. 34-93784, Dec. 15, 2021 (45-day comment period); Share Repurchase Disclosure Modernization, Rel. No. 34-93783, Dec. 15, 2021 (45-day comment period); Rule 10b5-1 and Insider Trading, Rel. No. 33-11013, Dec. 15, 2021 (45-day comment period); Electronic Recordkeeping Requirements for Broker-Dealers, Security-Based Swap Dealers, and Major Security-Based Swap Participants, Rel. No. 34-93614, Nov. 18, 2021 (30-day comment period); Reporting of Securities Loans, Rel. No. 34-93613, Nov. 18, 2021 (30-day comment period); Proxy Rules Governing Proxy Voting Advice, Rel. No. 34-93595, Nov. 17, 2021 (30-day comment period); Updating EDGAR Filing Requirements, Release No. 33-11005, Nov. 4, 2021 (30-day comment period); Electronic Submission of Applications for Orders under the Advisers Act and the Investment Company Act, Confidential Treatment Requests for Filings on Form 13F, and Form ADV-NR; Amendments to Form 13F, Rel. No. 34-93518, Nov. 4, 2021 (30-day comment period); Reopening of Comment Period for Listing Standards for Recovery of Erroneously Awarded Compensation, Rel. No. 33-9861, Oct. 14, 2021 (30-day comment period).

<sup>5</sup> See Reporting of Securities Loans, Rel. No. 34-93613, Nov. 18, 2021 (30-day comment period includes Christmas Day and New Year's Day); Updating EDGAR Filing Requirements, Rel. No. 33-11005, Nov. 4, 2021 (30-day comment period included Thanksgiving Day); Enhanced Reporting of Proxy Votes by Registered Management Investment Companies; Reporting of Executive Compensation Votes by Institutional Investment Managers, Rel. No. 34-93169, Sept. 29, 2021 (60-day comment period included Thanksgiving Day). Depending on when the four proposals advanced by the Commission last month are published in the Federal Register, their comment periods may coincide with the upcoming Dr. Martin Luther King Jr. Day and Presidents' Day holidays.

<sup>6</sup> See Money Market Fund Reforms, Rel. No. IC-34441, Dec. 15, 2021.

with shorter comment periods that have closed prematurely. Finally, we request that you extend the comment period on the money market fund rule revisions to at least a 90-day comment period, consistent with the process for the most recent prior significant substantive revisions to the money market fund rule.<sup>7</sup>

We request that you respond in writing to these requests by January 24, 2022. Included in your response should be an explanation of how you intend to take corrective action. Thank you in advance for your attention to this important matter.

Sincerely,



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Patrick McHenry  
Ranking Member  
House Committee on Financial Services



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Pat Toomey  
Ranking Member  
Senate Committee on Banking,  
Housing, and Urban Affairs

cc: The Honorable Hester M. Peirce, Commissioner  
The Honorable Elad L. Roisman, Commissioner  
The Honorable Allison Herren Lee, Commissioner  
The Honorable Caroline A. Crenshaw, Commissioner  
Ms. Sharon Block, Acting Administrator, Office of Information and Regulatory Affairs  
Mr. Matthew L. Weiner, Acting Chairman, Administrative Conference of the United States

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<sup>7</sup> Press Release 2013-101, SEC, June 5, 2013, <https://www.sec.gov/news/press-release/2013-2013-101.htm>.