**Written Testimony of Kenneth E. Bentsen, Jr., President and CEO**

**of the Securities Industry and Financial Markets Association (SIFMA)**

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**Financial Services Committee**

**Subcommittee on Capital Markets**

**Hearing Entitled:**

**"Examining the SEC's Agenda: Unintended Consequences for U.S. Capital Markets and Investors"**

**November 2, 2023**

Chairman Wagner, Ranking Member Sherman, and distinguished members of the Subcommittee, thank you for the opportunity to testify today on the unintended consequences of the regulatory agenda of the U.S. Securities and Exchange Commission (SEC or Commission). My name is Ken Bentsen, and I am the President and CEO of the Securities Industry and Financial Markets Association (SIFMA).[1]

The U.S. securities markets are the deepest and most liquid in the world. They are also the envy of the world. They are among the most regulated sectors of the U.S. economy. Unique to the U.S., 75% of commercial activity is financed through our markets. This allows companies to invest in plants and equipment, spurring job creation and economic growth. Corporations, farmers, ranchers, investors, and governments utilize our markets to manage all types of risks. Our mortgage-backed securities market allows families to lock in a mortgage rate before buying a home. Cities, states and non-profits fund infrastructure projects, schools, and hospitals through the municipal bond market. The U.S. government funds daily operations through the Treasury market. And American workers prepare for their retirement, directly and through investment vehicles like pension funds, by providing the investment capital that fuels our economy.

Therefore, it is critical that regulators tailor regulatory policies to address legitimate market failures without unnecessarily harming or disrupting markets, especially when our economy faces serious headwinds. However, the high volume and speed of regulatory change proposed by the Securities and Exchange Commission could result in negative consequences for the real economy in terms of output, employment, investment, and prices.

Throughout the last two years, stakeholders, academics and members of Congress from both sides of the aisle have expressed concerns with the volume and pace of new rule proposals from the SEC. The data[2] demonstrates that these concerns are well-founded. According to the Agency Rule List published by the Office of Management and Budget,[3] the SEC is on track to propose and finalize 63 new rules by the end of Chair Gensler's first four years in office. This represents a dramatic increase in the pace of rulemaking from the previous two Chairs, Mary Jo White and Jay Clayton, who finalized 22 rules and 43 rules, respectively, that they had proposed during their terms. Of the number of rules proposed over the last two years, only eight[4] have a specific Congressional mandate.

[1] SIFMA is the leading trade association for broker-dealers, investment banks and asset managers operating in the U.S. and global capital markets. On behalf of our industry's one million employees, we advocate on legislation, regulation and business policy affecting retail and institutional investors, equity and fixed income markets and related products and services. We serve as an industry coordinating body to promote fair and orderly markets, informed regulatory compliance, and efficient market operations and resiliency. We also provide a forum for industry policy and professional development. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA).

[2] https://www.sifma.org/wp-content/uploads/2023/09/SEC-Tracker-Comparison-of-Chairs-Rule-Proposals-and-Finalizations-SIFMA.xlsx

[3] The most recent Agency Rule List is Spring 2023, available at: https://www.reginfo.gov/public/do/eAgendaMain?operation=OPERATION_GET_AGENCY_RULE_LIST&currentPub=true&agencyCode=&showStage=active&agencyCd=3235&csrf_token=146681952D1842361ED10B0D4A0D14218AEB3D5308BD183158D7BD4BB98C0C7EBA42EBA35AF7A8F03DF0A00C12E1988B7AFA. Previous iterations of the Agency Rule List are available at: https://www.reginfo.gov/public/do/eAgendaHistory

[4] https://capmktsreg.org/wp-content/uploads/2023/08/CCMR-Statement-on-SEC-Agenda-Mapping-08.31.2023.pdf

As of November 1, 2023, of the 63 rules on the Commission's docket, 21 have been proposed and finalized, 31 have been proposed but not yet finalized, and 11 have not yet been proposed. In addition, the average public comment period for these SEC rule proposals has been only 47 days (measured from the date a proposal is published in the Federal Register). That is significantly fewer days than the average comment period during previous Commissions. In addition to concerns regarding the unprecedented volume of major rule proposals, commenters, including SIFMA, have expressed concern that truncated timelines for multiple overlapping rule proposals limit stakeholder's ability to analyze the collective impact of the proposals and impede their ability to sufficiently comment. The inability of the public to adequately analyze the cumulative effects of interconnected proposals, and the SEC staff's failure to do so, can result in conflicting and poorly drafted rules with the potential for negative impacts on capital markets and, importantly, investors and issuers.

While there may be justification for certain rules, such as the transition of the securities settlement cycle from two days to one, which SIFMA and the industry strongly support, or those mandated by the Dodd-Frank Act, we remain concerned that the SEC has not sufficiently prioritized its agenda, and in several cases is acting without clear evidence of market failure or direction from Congress. Lack of prioritization and pursuit of novel proposals has crowded other important mandates, such as the pending data security rule for the operation of the Consolidated Audit Trail (CAT), the largest securities transaction database ever created which collects trade data and customer personally identifiable information, or PII, on every stock and option transaction. That proposed rule has been pending for over three years, while trade data is being collected and shared with 25 self-regulatory organizations plus the SEC and their thousands of employees, with no apparent urgency to mandate policies for the security of the critical data that is held in the CAT system.

In addition, there is much more to implementing market rules than simply promulgating new regulatory text. In most cases, the industry must develop programs and processes, often with significant technology builds, as well as policies and procedures to comply with the new rules. As I noted, SIFMA and our partners at the Investment Company Institute and Depository Trust Clearing & Corporation (DTCC) are currently leading this effort to shorten the securities settlement cycle from two days to one day, as we previously did in 2017 when we shortened the settlement cycle from three days to two. This is a foundational rulemaking that impacts the vast majority of U.S. security transactions, as well as institutional and retail clients, both in the U.S. and internationally. We know from experience this is not a simple task. Many of the people working on this effort at our member firms are also working on systems to comply with the CAT and large trader reporting rules. With the recently finalized securities lending reporting rule and short position reporting rule, these same professionals will now be tasked with implementing those rules as well. If the SEC adopts a Treasury securities clearing mandate, shortened TRACE reporting for fixed-income securities, security-based swaps position reporting, and significant changes to the rules governing our equities markets, to name a few, the industry will face an unprecedented implementation situation.

Rushing to implement dozens of complex and far-reaching new regulations simultaneously absent prioritization, coordination, and robust cost-benefit analysis is not conducive to effective, enduring policymaking.

Regulators should ensure their rules keep pace with markets, but transformative changes must be thoughtfully crafted and fully vetted for indirect costs and cumulative effects, particularly at a time of economic stress and uncertainty. It is critical that any changes to the rules governing our capital markets are thoughtfully considered, or we risk damaging our markets' preeminent global status and harming investors.

**Equity Market Structure:**

Of the multitude of proposals issued by the SEC, perhaps most controversial and least considered are the SEC's equity market structure proposals.[5] These proposals would dramatically overhaul U.S. equity market structure and potentially undermine the recent expansion of market access that investors enjoy today. In issuing these proposals, the SEC seems to have abandoned its historic role of letting competition among trading centers lead to best execution and lower prices for investors. Instead, the SEC in a number of the proposals favors exchanges over other trading centers. Nowhere is this more evident than in the SEC's proposed Order Competition Rule (OCR) proposal, which would effectively require most segmented (i.e., retail) orders to be executed on exchanges.

The equity market plays a critical role in both helping companies expand and grow and in helping investors achieve their financial goals. U.S. equity markets are hyper competitive, and currently provide investors, particularly retail investors, with the best access and cost efficiency in history. Notwithstanding that, many stakeholders, including SIFMA, have supported efforts to enhance our markets through greater disclosure, increased transparency and even greater competition. However, at least three of the SEC's equity market structure proposals fail to identify any market failure and could well do more harm than good, particularly for the retail investor.

Going back to the late 1990s, Congress and in particular this Committee studied and proposed various changes to our equity market structure. In response, multiple Commissions undertook a methodical and deliberate approach to developing proposals and receiving public comment that culminated in Regulation National Market Structure (Reg NMS) in 2005. In developing Reg NMS, the Commission sought and received significant public and stakeholder feedback over a period of years before proceeding, including multiple public hearings, concept releases, and rule proposals to receive input from stakeholders. By contrast, the current Commission rejected requests to issue concept releases and has not held or scheduled any public hearings on the four proposals released on December 14, 2022.

[5] https://www.sec.gov/newsroom/market-structure-proposals-december-2022

The proposals also lack clear direction from Congress. As recently as 2021, this Committee held three hearings in response to the GameStop/meme stock phenomenon. The Committee issued a detailed report[6] proposing several policy recommendations for the SEC, FINRA and DTCC to undertake. None of the Commission's proposals are among those Congressional recommendations.

The proposals total over 1,600 pages but do not identify clear market failures that would necessitate such fundamental changes to U.S. market structure, outside of a long-overdue update to Rule 605.

The Commission has provided almost no analysis as to how the proposals relate to, or would operate with, each other and the anticipated cumulative effects on markets, intermediaries and investors if more than one proposal is adopted. As SIFMA notes in its comment letter[7] to the SEC, there is considerable risk that the proposals could jeopardize rather than enhance our world-leading capital markets, especially if they are adopted and/or implemented together. SIFMA's Asset Management Group (AMG), which represents institutional investors serving both retail and institutional clients, echoes these concerns in its comment letter,[8] noting the many proposed changes "will be both operationally complex and costly to implement, and it is unclear how these four proposals will interact with each other, let alone with the dozens of other proposals the Commission has promulgated."

Furthermore, the SEC's impact analysis of the proposals is based on data that is outdated, and, most problematic for commenters, not available to the public, which precludes anyone outside the SEC from conducting a sufficient review of its work. The SEC should make it possible for stakeholders to have access to such data, as SIFMA has requested but has not yet received a response from the SEC.

Even without access to this data, the work of several independent academics undermines the SEC's analysis and assumptions, while other academics even go so far as to argue that the changes contemplated in the proposals may well have the opposite effect and cost retail investors far more. One study[9] shows that the SEC's analysis relied on outdated data that fails to capture approximately $3.7 billion per year of financial benefits that our current market structure provides retail investors. Another study[10] found the "majority of retail orders are better off being routed to wholesalers" than to exchanges and moving retail flow to exchanges "would cost retail investors close to a billion dollars per month in additional trading costs." And a third study[11] found "that order-by-order auctions improve allocative efficiency among market makers, but a winner's curse problem in the auction can reduce retail investor welfare, particularly at times of limited liquidity." That study's findings are supported by an empirical

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[6] https://democrats-financialservices.house.gov/uploadedfiles/6.22_hfsc_gs.report_hmsmeetbp.irm.nlrf.pdf

[7] https://www.sifma.org/wp-content/uploads/2023/03/Market-Structure-Proposals.pdf

[8] https://www.sifma.org/wp-content/uploads/2023/03/Market-Structure-Proposals-SIFMA-AMG.pdf

[9] https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4304124

[10] https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4313095

[11] https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4300505

analysis of Retail Liquidity Programs (RLP) currently offered by exchanges, which "behave similarly to order-by-order auctions."

Stakeholders from all corners of the markets have voiced opposition to the proposals. The one exception is the proposal to update Rule 605, which has not been substantively updated since its adoption in 2000. SIFMA supports this proposed update and believes it is a natural starting point for the path forward. Once an amended Rule 605 is implemented, the Commission will have better access to the data it needs to fully assess market quality and to consider whether additional rulemaking is needed and how any such rulemaking should be designed.

As indicated, the order competition rule proposal has the clearest potential to raise costs for retail investors. By effectively requiring most segmented orders to execute on an exchange, the OCR is inconsistent with the SEC's role under the Exchange Act to facilitate, not to design, innovations in market structure. Rather than promote competition and protect investors and the public interest, the OCR would favor exchanges over other trading centers and make markets less efficient and less innovative by commanding through regulatory fiat that a certain set of orders (i.e., effectively, most retail orders) trade through exchange auctions. We also believe the SEC should withdraw this proposal.

The proposed changes to Regulation NMS on minimum pricing increments, access fees, and transparency of better priced orders require more careful consideration, analysis, and industry input. Modifications to the tick sizes for NMS stocks have significant implications for the trading of such securities and the issuers that rely on our stock markets, and it is critical that a data-driven analysis be undertaken to carefully consider and address to mitigate any potentially adverse or unintended consequences.

Notably, the proposed rule on best execution is not limited to equity markets – it will also apply to fixed income and listed options trading markets. Currently, the robust and well-understood FINRA and the Municipal Securities Rulemaking Board (MSRB) best execution rules in place work well to ensure best execution for investors. The FINRA and MSRB best execution rules did not occur in a vacuum. They are subject to SEC oversight and were implemented only after substantive review, comment and approval by the SEC, and they continue to evolve over time as markets and technology change. The SEC's introduction of an ill-fitting third best execution regime—where the SEC failed to identify a specific market problem that would necessitate such a redundant rule—may actually interfere with broker-dealers' ability to provide best execution. Moreover, the proposal does not adequately address the potential conflicts it may have with certain of the SEC's other proposals, such as the order competition (OCR) rule, or the differences in the way non-equity securities trade, as discussed in SIFMA's fixed income best execution comment letter.[12] We strongly believe the SEC should withdraw this proposal.

[12] https://www.sifma.org/wp-content/uploads/2023/03/Proposed-Regulation-Best-Execution.pdf

On October 18, 2023, the SEC issued a fifth proposal relating to equity market structure which would ban volume-based tiers for transaction pricing on stock exchanges. SIFMA is reviewing the proposal with its members but, as a general matter, we remain concerned that the SEC continues to propose wholesale changes to U.S. equity market structure without identifying a market failure or evidence of repeated market harm to investors.

While these equity market structure proposals serve as prime examples of the ways in which the SEC has rushed to rulemaking that could potentially harm investors and markets, there are several others.

**Securities-Based Swaps Large Position Reporting (10B-1)**:

The 10B-1 proposal requiring the reporting of securities-based swaps (SBS) large positions could materially harm SBS markets and the related swaps and cash markets. If adopted as proposed, it could impair the global capital formation ecosystem that depends on the vibrant SBS markets to hedge risk. The SEC fails to point to any market failure to provide justification for the proposal and does not quantify or describe how the benefits of public position-level disclosure under the proposed rule, on top of the already extensive transaction-level reporting under Regulation SBSR, would outweigh the costs and risks, in addition to the operational costs and burdens of establishing and maintaining new reporting systems and processes. The industry, including SIFMA[13] and SIFMA AMG[14], provided comments on both the original proposal and the re-proposal (SIFMA[15] and SIFMA AMG[16]), yet the SEC continues to fail to address concerns that the data captured by the proposed rule would be misleading and confusing when publicly disseminated. The SEC also does not address the risk that opportunistic traders could cherry-pick that data to reverse engineer and front run other market participants' trading strategies.

**Rule 192 – Conflicts of Interest in Securitizations:**

The SEC's proposed new Rule 192 would implement Section 621 of the Dodd-Frank Act, and is nominally intended to prevent the sale of asset-backed securities (ABS) that are tainted by material conflicts of interest. The SEC originally proposed a rule to implement Section 621 in September 2011 and re-proposed it in February 2023. The re-proposal makes frequent reference to SIFMA's comment letter of February 13, 2012,[17] yet the 2023 proposal remains extremely broad and vague and goes far beyond the scope of the mandate of Section 621. As noted in our March 2023 comment letter,[18] which encompasses the views of SIFMA, SIFMA AMG and the Bank Policy Institute (BPI), the rule proposed by the SEC threatens to disrupt very basic and commonplace activities within the securitization markets, which typically fund more

[13] https://www.sifma.org/wp-content/uploads/2022/03/SIFMA-ISDA-IIB-10B-1.pdf

[14] https://www.sifma.org/wp-content/uploads/2022/03/SIFMA-AMG-Comment-SEC-SBS-Large-Position-Reporting.pdf

[15] https://www.sifma.org/wp-content/uploads/2023/08/Position-Reporting-of-Large-Security-Based-Swap-Positions-SIFMA-IIB-and-ISDA.pdf

[16] https://www.sifma.org/wp-content/uploads/2023/08/Position-Reporting-of-Large-Security-Based-Swap-Positions-SIFMA-AMG.pdf

[17] https://www.sec.gov/comments/s7-38-11/s73811-26.pdf

[18] https://www.sifma.org/wp-content/uploads/2023/03/SIFMA-SIFMA-AMG-and-BPI-on-Request-for-Public-Comment-Regarding-Proposed-Rule-192.pdf

than 70% of residential mortgage lending and significant portions of auto, commercial mortgage, and other business and consumer lending. If implemented without significant modifications, Rule 192 would likely cause participants—including institutional investors—to exit or significantly limit their activity in securitization markets, which would drive up lenders' funding costs and thereby raise consumer costs.

**Custody Rule:**

The SEC's custody rule proposal, which regulates the safeguarding of advisory client assets, is a substantial departure from current industry practice and conflicts with numerous existing, well-functioning custodial regulatory frameworks already established by the SEC and other functional regulators. As noted in comment letters from SIFMA[19] and SIFMA AMG,[20] it would impose and shift substantial burdens and costs among advisers, their clients, and qualified custodians without demonstrating that any marginal improvement in asset protection would justify such burdens and costs. The impact of this would be a loss of services for advisory clients, reduced access to markets and products, and higher advisory and custodial fees. Because the custody proposal would have such far reaching implications for end users of financial services, we believe the SEC should withdraw, reevaluate, and if appropriate, repropose a modified rule proposal.

**Treasury Market Clearing:**

The U.S. Treasury market is the foundation of the broader market system, funds daily operations of the government and is fundamental to the conduct of monetary policy. Market participants need to have confidence in the structure of this market, that it is fit for purpose, that it will do what markets expect it to do, and that it can finance the government at low cost. SIFMA supports initiatives to enhance the resiliency and capacity of the Treasury market. Legitimate concerns around diminishing intermediation capacity in this market require remedy. In order to minimize unintended negative outcomes, however, this must be done through carefully calibrated reforms. The SEC's proposal to expand clearing in Treasury securities should, but fails to, take an incremental approach that will allow for appropriate assessments of costs and benefits before refashioning clearing requirements. SIFMA and the Institute of International Bankers raise these points in a joint comment letter[21] which also suggests that the SEC should explore other actions to improve the clearing environment—initiatives that enhance the existing infrastructure will allow for more clearing while other incentives and further study will assess whether clearing addresses market concerns in a resilient and efficient manner and in a way that minimizes unintended negative outcomes for market participants.

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[19] https://www.sifma.org/wp-content/uploads/2023/05/Safeguarding-Advisory-Client-Assets.pdf

[20] https://www.sifma.org/wp-content/uploads/2023/05/Safeguarding-Advisory-Client-Assets-SIFMA-AMG.pdf

[21] https://www.sifma.org/wp-content/uploads/2022/12/Standards-for-Covered-Clearing-Agencies-for-U.S.-Treasury-Securities-and-Application-of-the-Broker-Dealer-Customer-Protection-Rule-With-Respect-to-U.S.-Treasury-Securities.pdf

SIFMA AMG also shared its views in a comment letter[22] noting that the proposal, if implemented without first requiring certain enhancements to the current market infrastructure and time for cleared liquidity to build, could inadvertently reduce market liquidity while at the same time exposing market participants to additional credit exposures and risks. A whitepaper[23] from the DTCC also identifies a number of enhancements which would be needed before its infrastructure would be ready for a clearing mandate.

**Swing Pricing and Open-End Fund Liquidity Risk Management Programs:**

We are concerned that the swing pricing requirement and the attendant "hard close" elements of the proposal will have significant adverse consequences for the millions of investors who invest in mutual funds through intermediaries or retirement plans. The reach of the proposal is extensive, and what the SEC is proposing could cause material disruption to the mutual fund ecosystem. The proposal would have a direct detrimental impact on retail investors and retirement plan participants, the very investors the proposal is seeking to protect. The SEC rushed this proposal without due consideration of whether it would impact investors. SIFMA[24] and SIFMA AMG[25] filed comment letters expressing strong concern with the proposals; in addition, SIFMA AMG filed a comment letter[26] focused on the liquidity risk management aspect which expresses concerns that the proposal would fundamentally alter and dictate the way funds manage their portfolio, to the detriment of investors. The aggregate impact of the proposal would result in reduced returns, constraints on portfolio decision-making, and limited availability of strategies. We believe a re-proposal reflecting industry concerns is warranted, given the original proposal's potential to harm investors.

**Predictive Data Analytics:**

The SEC's predictive data analytics (PDA) proposal would require the elimination or neutralization of the use of predictive data analytics and PDA-like technologies by broker-dealers and RIAs. This is another proposal which would likely impact the investors the SEC is charged with protecting. The proposal imposes unreasonable and unworkable requirements on brokers and advisors and would limit their ability to use technology to provide valuable information and services to their clients. As noted in the SIFMA and SIFMA AMG comment letter,[27] the existing regulatory regime for investor communications by brokers and advisers is substantial and effective, and the SEC has not shown any evidence or reason to justify new rules for their current or future uses of technology. The proposal would burden many uses of technology that are unrelated to the Commission's limited stated concerns and prevent a vast

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[22] https://www.sifma.org/wp-content/uploads/2022/12/Standards-for-Covered-Clearing-Agencies-for-U.S.-Treasury-Securities-and-Application-of-the-Broker-Dealer-Customer-Protection-Rule-with-Respect-to-U.S.-Treasury-Securities-SIFMA-AMG.pdf

[23] https://www.dtcc.com/-/media/Files/Downloads/WhitePapers/Accessing-Potential-Expansion-US-Treasury-Clearing-White-Paper.pdf

[24] https://www.sifma.org/wp-content/uploads/2023/02/SIFMA-FINAL-SEC-Comment-Letter-Hard-Close-and-Swing-Pricing-S7-26-22.pdf

[25] https://www.sifma.org/wp-content/uploads/2023/02/Open-End-Fund-Liquidity-Risk-Management-Programs-and-Swing-Pricing-SIFMA-AMG.pdf

[26] https://www.sifma.org/wp-content/uploads/2023/02/Open-End-Fund-Liquidity-Risk-Management-Programs-and-Swing-Pricing-Comments-on-Proposal-to-Amend-Liquidity-Risk-Management-and-Reporting-Rules-SIFMA-AMG.pdf

[27] https://www.sifma.org/wp-content/uploads/2023/10/Conflicts-of-Interest-Associated-with-the-Use-of-Predictive-Data-Analytics-by-Broker-Dealers-and-Investment-Advisers-SIFMA-and-SIFMA-AMG.pdf

array of beneficial investor interactions and advisory practices. SIFMA is strongly urging the Commission not to move forward with the proposed framework, and instead consider more appropriate ways to address potential risks related to the use of PDA-like technologies.

**Reg SCI:**

The SEC has proposed to expand Reg SCI—a rule designed to monitor the security and capabilities of U.S. securities markets' technological infrastructure—to apply to registered broker-dealers that exceed either a total assets threshold or a transaction activity threshold in certain securities entities, a group for which the rule was neither designed nor originally intended. The proposed expansion has not addressed the critical distinctions that the Commission recognized when originally setting the scope for and adopting Reg SCI. Entities who would be potential SCI broker-dealers under the proposal have already developed robust technological resiliency as a result of the various existing regulatory obligations they are subject to, and they have done so without the imposition of additional requirements established by the SEC under Reg SCI. SIFMA's comment letter[28] notes the proposed thresholds used to define SCI broker-dealers are arbitrary, anticompetitive, and burdensome; Reg SCI was not meant for and cannot simply be imposed on broker-dealers as is; the enormous cost of Reg SCI is not justified by any tangible benefits identified by the Commission; and the Commission has not considered or incorporated the experience of Reg SCI thus far in writing this proposal. Again, the SEC has proposed something that is wholly unworkable with no justification.

**Reg ATS:**

The SEC, through this proposal and a subsequent supplemental release, seeks to amend Regulation ATS and Rule 3b-16 under the Securities Exchange Act of 1934 in a number of ways, most notably by expanding the definition of an "exchange" in several significant respects, including to require "communication protocol systems"—a term the Commission does not define—to either register as exchanges or operate as alternative trading systems (ATSs). SIFMA broadly supports the policy goal of ensuring that rules governing trading venues keep pace with technological and market developments but continues to believe that the Proposal is not appropriately tailored to these ends. Both the scope of proposed Rule 3b-16 and the Commission's reasons for expanding the Commission's interpretation of an "exchange" remain unclear. SIFMA remains concerned that the proposed interpretation of an "exchange" lacks conceptual coherence and has become untethered to how actual exchanges operate. We believe the Commission should take an incremental approach to any expansion of Rule 3b-16 and Regulation ATS, such as by first extending Regulation ATS to systems supporting trading in government securities. As a process matter, it was difficult to comment meaningfully on the

[28] https://www.sifma.org/wp-content/uploads/2023/06/Regulation-Systems-Compliance-and-Integrity.pdf

proposal and subsequent release, given the sea of choices in different proposed Rule 3b-16 text. Both SIFMA[29] and SIFMA AMG[30] filed comments raising deep concerns with the proposal.

**Dealer Definition:**

The Commission seeks to amend the definitions of "dealer" and "government securities dealer" via a proposal which is far more broad than necessary and will capture more entities than it seems to be targeting. While we believe some participants in the government securities markets who perform the functions of dealers should be subject to additional regulatory requirements, SIFMA[31] and SIFMA AMG[32] raise significant concerns that the breadth of the proposal will force some market participants to face tremendous costs which may not be justified. To avoid the substantial initial and ongoing costs of becoming a dealer or a government securities dealer, some market participants may change or abandon certain investment or trading strategies. This could harm price discovery and impair market liquidity and exacerbate volatility in either, or both, the securities and government securities markets, with spillover effects to futures and OTC derivatives markets.

**SPAC:**

Proposed Rule 140a, which relates to gatekeepers in de-SPAC transactions, contradicts and disregards the extensive legislative and judicial precedent regarding what it means to be a statutory underwriter. SPAC IPO and de-SPAC transactions are two entirely separate distributions of securities, which the SEC does not recognize in its proposal. In a comment letter,[33] SIFMA expresses its view that the SEC lacks the statutory authority to enact proposed Rule 140a. The proposal stretches the statutory definition of "underwriter" in Section 2(a)(11) of the Securities Act beyond its limits, runs afoul of multiple other provisions of the Securities Act, conflicts with the Commission's proposed Rule 145a, conflicts with longstanding policies and practices of the SEC and its staff, and violates the Administrative Procedure Act.

**Capital Rules:**

While not on point for this hearing, the recently proposed Basel III Endgame proposal from the Federal Reserve, FDIC and OCC will have a deleterious impact on U.S. capital markets and investors and issuers who utilize those markets. As such, that proposal warrants Congress' and this Committee's close attention. As proposed, the new rules would increase capital requirements on large dealer banks' trading activities by at least 75% with absolutely no justification. Given that the dealer banks subject to the rule comprise the vast majority of market share financing corporates, municipals, mortgage-backed securities, securitizations,

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[29] https://www.sifma.org/wp-content/uploads/2022/04/SIFMA-ATS-Proposal-Comment-Letter-4-18-22.pdf

[30] https://www.sifma.org/wp-content/uploads/2022/04/SIFMA-AMG-SEC-Reg-ATS-Comment-FINAL.pdf

[31] https://www.sifma.org/wp-content/uploads/2022/06/SIFMA-provides-comments-to-SEC-on-Further-Definition-of-As-a-Part-of-a-Regular-Business-in-the-Defintion-of-Dealer-and-Government-Securities-Dealer.pdf

[32] https://www.sifma.org/wp-content/uploads/2022/05/SIFMA-AMG-SEC-Dealer-Definition-Comment-FINAL-05_27_22.pdf

[33] https://www.sifma.org/resources/submissions/special-purpose-acquisition-companies-shell-companies-and-projections/

equities, options and derivatives there is little question that product price and dealer capacity will be negative impacted.

**<u>Summary</u>**:

While we support some of the Commission's proposals, we believe others fail to identify a market failure and lack clear direction from Congress. The agenda also lacks prioritization and sufficient cost benefit analysis, particularly the cumulative impact. Just as the Commission has a duty to ensure fair, orderly and efficient markets, rushing to do too much too quickly could result in poor policy outcomes and overwhelm market infrastructure.