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June 24, 2021

SEC Chair Gensler Speech on SEC Rulemaking Agenda

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TO: ICI Members
ICI Global Members
Derivatives Markets Advisory Committee
Equity Markets Advisory Committee
ESG Advisory Group
ESG Task Force
SEC Rules Committee SUBJECTS: Disclosure
ESG
Financial Stability
Money Market Funds
Trading and Markets RE: SEC Chair Gensler Speech on SEC Rulemaking Agenda

Chair Gensler delivered prepared remarks yesterday on the SEC's rulemaking agenda, including those related to ESG, market structure, short sales, and securities lending.[1] His remarks are summarized below.

Public Company and Fund ESG-Related Disclosure

Chair Gensler indicated that the staff is developing recommendations on mandatory company disclosures on climate risk and on human capital. He noted that investors increasingly want to understand the climate risks and are looking for "consistent, comparable, decision-useful information to determine whether to invest, sell, or make a proxy vote one way or another." The recommendations will cover "governance, strategy, and risk management related to climate risk... [and] a range of specific metrics, such as greenhouse gas emissions [as well as] considering potential requirements for companies that have made forward-looking climate commitments, or that have significant operations in jurisdictions with national requirements to achieve specific, climate-related targets."

In addition, Chair Gensler noted that staff is considering "the ways that funds are marketing themselves to investors as sustainable, green, and "ESG," and what factors undergird those claims."

With respect to human capital, staff will be proposing recommendations for the

Commission's consideration that "could include a number of metrics, such as workforce turnover, skills and development training, compensation, benefits, workforce demographics including diversity, and health and safety."

Market Structure

Chair Gensler indicated that he has asked staff to consider the impact that technology has had on the equity and fixed income markets, "including Treasury markets, corporate bonds, municipal bonds [to] ensure that we bring the greatest competition and efficiency to those markets for investors and issuers." He specifically mentioned that staff is considering payment for order flow. In connection with that, he noted that other jurisdictions had banned payment for order flow and observed that while "the public generally thinks of lit markets when they think of buying or selling equities markets like Nasdaq and the New York Stock Exchange those big public exchanges only accounted for about 53 percent of trading volume in January" and that as a result "significant trading interest on these platforms is not necessarily being reflected in the commonly cited National Best Bid and Offer quote." He went on to state that staff is considering "whether this equity market structure, as currently composed, best promotes efficiency and competition."

In addition, staff is considering bringing "greater transparency and resiliency to the ways in which U.S. Treasury securities are bought and sold across the market," working with staff at Treasury, the Federal Reserve, and the CFTC. He mentioned that "this work could build on Commission action last year to increase operational transparency to a subset of platforms as well as previous reforms regarding post-trade reporting and that he has asked staff to consider the potential benefits of central clearing in the Treasury cash and repo markets."

Transparency

Chair Gensler noted that staff is considering updating various rules related to transparency, including shortening the time period (from 10 days) for 13D reporting for beneficial owners with more than 5 percent of a public company's equity securities with the intent to control or influence the company reporting their ownership. He stated that those "rules might've been appropriate for the 1970s, but I have my doubts about whether they continue to make sense given the rapidity of current markets and technologies."

He also indicated interest in enhancing transparency around security-based swaps, short selling, and buybacks, reasoning that risk will be reduced and liquidity enhanced if the transparency regimes better reflect current business models and practices.

Finally, Chair Gensler stated concerns with the use of the Bloomberg Short-Term Bank Yield Index (BSBY) as a LIBOR replacement rate, stating that it "has many of the same flaws as LIBOR, relying on short-term, unsecured, bank-to-bank lending, which is "a relatively thin market that tends to disappear in times of stress." He went on to state that like "LIBOR, we're seeing a modest market, shouldering the weight of hundreds of trillions of dollars in transactions. When a benchmark is mismatched like that, there's a heck of an economic incentive to manipulate it."

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endnotes

[1] Chair Gensler, Prepared Remarks: London City Week (June 23, 2021), *available at* https://www.sec.gov/news/speech/gensler-speech-london-city-week-062321.
