

SEC Office of the Investor Advocate Issues Annual Report on Objectives for 2022 Fiscal Year

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On June 28, 2021, the SEC's Office of the Investor Advocate (OIA) issued its annual report on objectives for the 2022 fiscal year. The OIA is tasked with, among other things, identifying problems investors have with financial service providers and products and areas in which investors would benefit from changes in financial regulations. The OIA focuses on reviewing SEC and relevant self-regulatory organization rulemaking but prioritizes certain issues to maximize its impact for investors. Among other things, the annual report outlines the following areas of focus for the 2022 fiscal year:

- **Environmental, Social and Governance (ESG) Disclosure.** Noting increased investor and regulatory interest in ESG matters, OIA favors a balance of prescriptive and principles-based ESG disclosure requirements, in particular with respect to ESG-related risk disclosure, to promote comparability to the extent possible, particularly with respect to required disclosures of objective facts.
- **Rule 10b5-1 Plans.** Rule 10b5-1 Plans, which allow insiders to trade during blackout periods without violating insider-trading laws, have come under scrutiny following evidence that some executives may have misused such plans to effectively trade on the basis of material non-public information. OIA proposes to study the rule and its application to assess, among other things, whether trading under to these plans should be paused during a set “cooling off” period, or whether companies or their executives should be required to disclose plan details.
- **Capital-Raising Alternatives.** OIA will study whether investors receive adequate disclosures with respect to certain novel capital-raising methods, such as direct listings and special purpose acquisition companies (SPACs), and whether such methods implicate other investor-protection considerations. In particular, OIA will work with the SEC to assess whether SPAC investors would benefit from additional guidance, regulatory changes or clarification on the scope of the relevant securities laws.

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- **Equity Market Structure.** OIA intends to continue engagement on initiatives related to: (1) shortening the current two-day security settlement period in U.S. financial markets; (2) pilot programs for thinly traded securities to explore the effects of restricting unlisted trading privileges; (3) enhancing rules governing transfer agents; (4) studying and addressing potential conflicts of interest relating to payments of exchange fees and rebates in connection with broker-dealer order routing behavior as well as the impact of payments for order flow by market makers when broker-dealers route orders off exchanges; and (5) enhancing transparency in short selling and the related practices of stock lending and borrowing.
 - **Novel Exchange-Traded Funds (ETFs).** OIA will maintain a focus on whether non-transparent ETFs are functioning as intended and will monitor developments related to leveraged and inverse ETFs, specifically regarding the application of new Rule 18f-4 (the Derivatives Rule) to those ETFs.
 - **Registered Fund Disclosure.** OIA will continue to help the SEC develop effective and efficient disclosure regulations by using surveys, focus groups and other methods to gather information regarding investor behavior and to provide data on disclosure-related policy choices.
 - **Cryptocurrency.** Noting recent developments and regulatory statements in the cryptocurrency area, OIA will continue to monitor matters regarding cryptocurrencies, including pending applications for cryptocurrency-focused ETFs, to help investors access new investment opportunities while maintaining appropriate investor protections. OIA cited custody issues associated with digital assets and unregulated trading platforms as the most significant obstacles to the launch of a well-regulated cryptocurrency ETF.
 - **Broker Conduct.** OIA highlighted two issues relevant to broker-dealer conduct: (1) the SEC's recently adopted "best interest" standard of conduct for recommendations under Regulation BI and (2) broker migration and misconduct. Among other things, OIA encourages regulators, such as the SEC and FINRA, to consider whether the structure of online-only broker-dealers could constitute a recommendation under Regulation BI and to continue to enforce regulations designed to protect investors against bad actors.
 - **Financial Exploitation of Senior Investors.** OIA advocates for investor protections for vulnerable investors, including seniors, and will work with the SEC to better understand and support senior investors.

The report also contains a summary of the services and activities of the Ombudsman, who acts as a liaison between the SEC and any retail investor to resolve problems that retail investor may have with the SEC or any self-regulatory organization, reviews and recommends policies and procedures to encourage dialogue with the OIA regarding securities law compliance and establishes safeguards to maintain the confidentiality of communications between investors and the Ombudsman. In addition, the report includes a summary of the recommendations of the Investor Advisory Committee (IAC), which is supported by the OIA, and the SEC's responses during the preceding fiscal year.

The complete OIA Report is available [here](#).

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