June 24, 2021

SEC Considers Improving Market Transparency, Beneficial Ownership Reporting

In an important speech yesterday, SEC Chair Gary Gensler expressed his interest in improving market transparency in respect of beneficial ownership reporting, derivative ownership and short selling, noting that information asymmetry under today's creaky regulatory regime can increase risk and reduce liquidity in our securities markets.

Chair Gensler's words were clear and direct, and consistent with our petition to the SEC and consistent urging for modernization in this area, to "update the transparency regimes to better reflect current business models and practices," as Chair Gensler put it. They bear repeating in full:

> I will briefly discuss how we might consider updating various rules related to transparency.
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> One such area is beneficial ownership. In 1968, our Congress mandated that large shareholders of public companies disclose information that helps the public understand their ability to influence or control that company. Under current rules, beneficial owners of more than 5 percent of a public company's equity securities who have control intent have 10 days to report their ownership.
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> We haven't updated that deadline in over 50 years. 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. I've asked staff how we might update these rules, including possibly shortening reporting deadlines.
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> Another area is around security-based swaps — essentially, derivatives on individual companies that provide exposure to the company without traditional equity ownership. The disclosures there aren't as robust as they are in the rest of the market. The collapse in March of the family office Archegos Capital Management is a reminder of why that could be relevant.
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> Thirdly, I think we can bring more transparency to short selling. We have unused authorities in that space that were granted by Congress nearly a dozen years ago.
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> Finally, I've asked staff to consider whether we should enhance transparency related to companies buying back their stock.
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> When investors cannot access critical information, particularly when some other market participants may have such information, such information asymmetry can increase risk and reduce liquidity. I believe we should update the transparency regimes to better reflect current business models and practices.

Misguided lobbying by vested interests has long confused the issues and delayed the taking of necessary action to improve the transparency and fairness of U.S. markets. These efforts may continue. As noted in the Wall Street Journal (citing and quoting our petition to the SEC for regulatory reform), "[a]ctivists may object to changes in the reporting timetable since they use the 10-day window to build positions and avoid having the stock price rise before they have built their stake." While the loophole is valuable for activist investors, the absence of a state-of-the-art disclosure and regulatory framework for beneficial ownership, derivatives and short selling have left long-term investors vulnerable to unexpected ownership and stock price swings, among other abuses. The recent Archegos debacle, and other developments prior to and since our 2011 rulemaking petition, have illustrated the need for reform, as we also note in our comments on the SEC's proposed modifications to the 13(f) reporting requirements.

We applaud the SEC's regulatory initiative and hope that investors in U.S. markets will soon be better protected and better informed.

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