

ICI VIEWPOINTS

OCTOBER 3, 2023

The SEC's Multi-Rule Pileup

By Eric J. Pan

There's a reason that stoplights don't flash red, yellow and green at the same time—it's a surefire recipe for collisions and congestion. Overlaps and redundancies between the string of new rule proposals from Chair Gary Gensler's Securities and Exchange Commission are creating the same confusion for market participants and investors.

Americans hoping to save for their futures need to pay attention to the agency's efforts to remake US financial markets. Under Mr. Gensler's leadership, the SEC has launched the largest expansion of its jurisdiction in recent history while ignoring the sweeping impact these rules will have as they are being implemented all at the same time. This is unprecedented, and more troubling, it is happening without Congressional direction or approval.

Since 2021, the SEC has proposed 46 new rules and is on track to finalize and adopt 27 of these by the end of this year. This rate of activity is wildly out of step with Chair Gensler's predecessors over the same period in both Republican and Democratic administrations, with a 76 percent increase over the Trump Administration's Jay Clayton, and a 146 percent increase over the Obama Administration's Mary Jo White.

With this level of activity, Mr. Gensler has been the subject of several hearings, bipartisan letters, and scrutiny from Capitol Hill. Last week was no exception, as House Financial Services Committee Chair Patrick McHenry (R-NC) commented that the SEC's current approach to rulemaking jeopardizes the integrity of our financial markets and puts investors at risk. Criticism came from both sides of the aisle, as Rep. Gregory Meeks (D-NY) highlighted similar concerns when he questioned if the SEC considers how their proposed rules will interact with existing and draft rules during the rulemaking process, particularly when it comes to economic impact of the finalized and pending rules.

The SEC's approach to cost-benefit analysis to date merely attempts to evaluate each proposed rule individually and does not consider how the multitude of rules they are promulgating interconnect with each other. As many of these rules will fundamentally change the way our financial markets operate, the SEC is leading American investors into an unknown territory of market confusion by failing to even try to understand the economic impact of these new regulations as a group.

A key area of focus for the SEC's regulatory activity is to completely change the instruments that more than 100 million Americans use to save for their future: mutual funds. The SEC is hoping to change how they are named, how they are priced and how they manage their portfolios. These changes have the potential to threaten the very existence of a product that has for nearly 100 years helped American families build financial security. And these rules will hit the markets at the same time the SEC is mandating changes to trading market systems, securities settlement and technology usage.

Asset managers and other market participants will be tasked with implementing these rules without a full understanding of how they interact with each other and what the overall consequences will be to the broader economy if all these changes are made at once. This is not about whether the regulations are good or bad. This is about whether these regulations will actually serve their intended purpose and whether they will produce greater harm.

The SEC's own analysis (which frequently underestimates costs) predicts a significant hike in compliance costs as a result of this regulatory pileup, which will translate into higher costs for retail investors. There will also be an increased risk of market disruption, threats to innovation and competition and increased risk to the underlying financial stability of US markets.

The SEC has a duty to analyze how these proposed regulations will interact with each other, yet the present approach abdicates this critical responsibility. Based on his work in the public and private sectors, it's clear that Mr. Gensler knows much about markets, but his desire to change how they operate cannot trump the concerns of industry, Congress or thousands of retail investors who have provided critical feedback on the SEC's proposals.

One sign that the execution of a regulatory agenda is viewed as more important than getting things right is the well-documented pattern of shortened comment periods currently used by the SEC. Under the previous two presidential administrations, more than three-quarters of comment periods lasted at least 90 days. The current SEC, by contrast, has shortened them to 60 days or less. That leaves precious little time for companies to grasp the full effects of a coming mandate or whether pending rules will even work in concert with the latest changes.

With so many massive mandates coming down simultaneously, companies need more time—not less—to evaluate the cumulative impact, and the SEC should want this. Instead, recent proposals generally lack a meaningful discussion about compliance costs, underestimating the difficulty of implementation or downstream effects. In other words, the SEC is painting rosy pictures of a theoretical ideal that acknowledges none of the real turmoil that will roil asset managers and the retail investors they serve.

We all should ask why the SEC sees fit to promulgate an extensive array of reforms yet is willing to ignore the reality that so many massive and simultaneous changes will create market confusion and risk, some of which may have dire consequences. The stakes are high. Hundreds of millions of investors could be hurt.

Eric J. Pan is President and CEO of the Investment Company Institute.

Copyright © by the Investment Company Institute. All rights reserved. Information may be abridged and therefore incomplete. Communications from the Institute do not constitute, and should not be considered a substitute for, legal advice.