

Congress of the United States
House of Representatives

COMMITTEE ON OVERSIGHT AND ACCOUNTABILITY

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October 12, 2023

The Honorable Gary Gensler
Chair
U.S. Securities and Exchange Commission
100 F St., NE
Washington, DC 20549

Dear Chair Gensler,

The House Committee on Oversight and Accountability has been conducting oversight of the Securities and Exchange Commission (SEC), especially actions taken to circumvent Congress to further an agenda that harms American taxpayers. As the SEC Chair, you have obstructed and continue to obstruct congressional oversight. If you do not begin cooperating with the Committee's oversight, the Committee has no choice but to consider the use of the compulsory process.

Senator Tim Scott and I wrote you on June 5, 2023, seeking documents and information on your agency's involvement in the development of European social engineering initiatives disguised as disclosure and due diligence directives being developed by the European Union (EU).¹ This Administration has hidden behind "interoperability of disclosure regimes" as its justification for global coordination. However, it is not clear that the law provides such authority and we must determine whether legislation is necessary to ensure our government works for the American taxpayer and not on behalf of foreign interests. Despite our patience, we have not received the information requested for almost four months, as the SEC has continuously delayed and misdirected.

To date, the SEC has not produced documents that are substantively responsive, and to date the overwhelming majority of documents produced have been publicly available on the SEC's website, publicly available comments to rulemaking, or documents that were already released pursuant to the Freedom of Information Act. These purported "productions" are not responsive to our request. The Committee is unpersuaded by the SEC's repeated insinuation to my Congressional staff that Congress is unable to obtain non-public information without a vote of the full Commission authorizing the disclosure. At the House Financial Services Committee

¹ Letter from Tim Scott, Ranking Member, Sen. Comm. on Banking, Housing, and Urban Affairs, et. al. to Gary Gensler, Chair, U.S. Sec. and Exch. Comm'n (June 5, 2023), available at <https://oversight.house.gov/wp-content/uploads/2023/06/6.5.23-Letter-to-SEC-on-EU-ESG-Engagement-FINAL.pdf>.

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hearing on September 27, 2023,² in response to a question related to your agency's continued obstruction of Congressional oversight, you reiterated that Section 24 of the Securities Exchange Act of 1934 prohibits the release of non-public information, unless authorized by a vote of the Commission.³

To be clear, the ability of Congress to conduct oversight over the Executive Branch is inherent in its legislative powers enumerated in the U.S. Constitution and exists independently of any vote of the SEC.⁴ The Commission may not at whim suspend or immunize itself from the exercise of that power. Additionally, the arguments made by the SEC are in direct contradiction of statute. Section 24(g) of the Securities Exchange Act, as amended, explicitly states, "Nothing in this section shall... (2) authorize the Commission to withhold information from the Congress..."⁵ Yet the SEC has chosen to do so for months based on an apparently inaccurate or incomplete reading of the agency's authorizing statute.

The SEC—an agency whose entire regulatory regime is built on disclosure and transparency—seems to do everything it can to stonewall our investigation and prevent disclosure and transparency. In fact, the SEC publicly touts its enforcement results. In its press release about its Fiscal Year 2022 enforcement, the SEC stated:

Tangible cooperation that significantly aids enforcement investigations and litigation can yield meaningful benefits. Assistance from cooperators can help expedite investigations and bring to light important evidence.⁶

Also, as recently as this month, the SEC fined Goldman Sachs \$6 million for withholding information from the agency. The SEC's press release stated:

Firms must provide complete and accurate blue sheet data in response to our requests,' said Thomas P. Smith Jr., Associate Regional Director in the New York Regional Office. 'Blue sheet data is vital to the Commission's ability to carry out its enforcement and regulatory functions and to protect investors and maintain market integrity.'⁷

Despite the SEC's expectation of transparency and cooperation from registrants, your agency is delaying, misleading, and blocking access to the records the Committee. Certainly, the SEC would not tolerate similar action by registrants.

² *Oversight of the Securities and Exchange Commission: Hearin before the H. Comm. on Financial Services*, 118th Cong. 1 (statement of Gary Gensler, Chair, U.S. Securities and Exchange Commission).

³ See 15 U.S.C. § 78x.

⁴ See e.g. *McGrain v. Daugherty*, 273 U.S. 135 (1927).

⁵ 15 U.S.C. § 78x(g).

⁶ Press Release: U.S. SEC. AND EXCH. COMM'N, *SEC Announces Enforcement Results for FY22* (Nov. 15, 2022), available at <https://www.sec.gov/news/press-release/2022-206>.

⁷ Press Release: U.S. SEC. AND EXCH. COMM'N, *Goldman to Pay SEC \$6 Million in Penalties for Providing Deficient Blue Sheet Data* (Sept. 22, 2023), available at <https://www.sec.gov/news/press-release/2023-191>.

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The Committee's frustration with the SEC's lack of cooperation with our reasonable oversight requests is clear. When you and I first met early in the 118th Congress, you committed to working in good faith with our Committee and my staff. That promise of cooperation has not been realized. I expect nothing less than full cooperation with our inquiry, which begins with SEC providing documents actually responsive to our requests. If the SEC continues to fail to produce the requested documents by October 19, 2023, I will consider other measures, including the use of the compulsory process, to gain compliance. Thank you for your attention to this important matter.

Sincerely,

A handwritten signature in black ink that reads "James Comer". The signature is written in a cursive style with a horizontal line underneath the name.

James Comer

Chairman

Committee on Oversight and Accountability

cc: The Honorable Jamie Raskin, Ranking Member
Committee on Oversight and Accountability

The Honorable Tim Scott, Ranking Member
Senate Committee on Banking, Housing, and Urban Affairs