



UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

April 14, 2023

TO: Gary Gensler, Chair

FROM: *Katherine H. Reilly*
Katherine H. Reilly, Acting Inspector General

SUBJECT: *Final Management Letter: Review of SEC Controls Over Public Comments Submitted Online and Actions Taken in Response to a Known Error*

In 2022, the U.S. Securities and Exchange Commission (SEC, Commission, or agency) disclosed a technological error that resulted in a number of public comments submitted through the Commission's internet comment form (also known as a webform) not being received by the Commission. Subsequently, the Office of Inspector General (OIG) reviewed the SEC's (1) controls over public comment letters submitted online, and (2) actions and response efforts since notifying the OIG of the webform error in August 2022. We did not conduct an audit pursuant to generally accepted government auditing standards, nor did we perform an evaluation in accordance with standards promulgated by the Council of the Inspectors General on Integrity and Efficiency. However, we are providing this management letter to report our results, which we believe warrant management's attention. We are also requesting additional information to help us determine whether further action by the OIG is warranted.

Executive Summary

Rulemaking is the process by which federal agencies implement legislation passed by Congress and signed into law by the President. Federal agencies, including the SEC, are generally required to give interested persons an opportunity to participate in the rulemaking process through submission of written data, views, or arguments (referred to hereafter as comments or public comments). The SEC invites interested persons to comment on SEC proposed rules and self-regulatory organization (SRO) filings, among other matters, using several methods, including online through an internet comment form.

On August 31, 2022, SEC management reported to the OIG that a technological error prevented the agency from receiving a number of public comments submitted through the agency's internet comment form. We confirmed that this occurred because of an error between the SEC's email threat protection tool—managed by a vendor and used to scan emails and attachments for malicious content—and the agency's email servers. After learning of the error, the SEC worked with the vendor to deploy a fix, established a semi-manual workaround, and contacted certain commenters affected by the error to request that they resubmit their comments. Additionally, on October 7, 2022, the SEC reopened the comment periods until November 1, 2022, for 11 affected rulemaking releases (that is, proposed rules, none of which

had been finalized as of March 21, 2023¹) and 1 request for comment.^{2,3} The agency also notified the public that the technological error may have affected certain comments related to 8 SRO matters.⁴

Based on information available to date, the SEC's initial response to the technological error once the error was known appears sufficient and appropriate. Due to the SEC's corrective action, the technological error appears to be resolved and the agency recovered all but 1 of the 168 comments from 2021 and 2022 that were identified as affected by the error.

However, we are requesting confirmation of agency actions to post to the SEC's public website (as appropriate) and distribute to relevant rulemaking teams comment letters not initially received but subsequently recovered and/or resubmitted and determined to be comments regarding rulemaking releases. Doing so would allow those teams the opportunity to consider the comments when preparing a recommendation to the Commission regarding a final rulemaking. Moreover, we identified information technology (IT) control weaknesses that delayed the SEC's awareness of the technological error and magnified the error's overall impact, which may require additional attention and response. Specifically, the responsible Information System Owner and system administrators did not configure alerts or regularly monitor system logs, which would have permitted agency personnel to timely identify and respond to the error. The SEC also did not back up some data submitted through the internet comment form, which delayed recovery of comments. Strengthening IT controls in these areas could provide additional safeguards to prevent the loss of public comments submitted to the SEC as part of the rulemaking process—which may be classified as permanent records—and ensure such comments are received and processed as required. Finally, we identified another matter for management's consideration regarding comments that are not posted to the SEC's public website or promptly provided to rulemaking staff, and the overall efficiency of related processes.

Background

As stated in a 2017 SEC investor bulletin,⁵ from time to time, the SEC seeks comments from the public on a number of matters, including the SEC's rulemaking. Legislation, such as the Securities Act of 1933,⁶ the Securities Exchange Act of 1934 (Exchange Act),⁷ the Investment Company Act of 1940,⁸ the Sarbanes-Oxley Act of 2002,⁹ and the Dodd-Frank Wall Street

¹ While drafting this management letter on March 21, 2023, OIG personnel verified that all 11 affected rulemaking releases appeared on the SEC's public index of proposed rules.

² The request for comment was not a proposed rule. Instead, the SEC issued the request for comment to facilitate consideration of whether regulatory action is necessary and appropriate related to certain information providers acting as investment advisers.

³ U.S. Securities and Exchange Commission, Press Release 2022-186, *SEC Reopens Comment Periods for Several Rulemaking Releases Due to Technological Error in Receiving Certain Comments*, and Resubmission of Comments and Reopening of Comment Periods for Several Rulemaking Releases Due to a Technological Error in Receiving Certain Comments, Release Nos. 33-11117, 34-96005, IA-6162, IC-34724 (October 7, 2022).

⁴ Resubmission of Comments and Reopening of Comment Periods for Several Rulemaking Releases Due to a Technological Error in Receiving Certain Comments, Release Nos. 33-11117, 34-96005, IA-6162, IC-34724 (October 7, 2022).

⁵ U.S. Securities and Exchange Commission, Investor Bulletin: *Suggestions for How Individual Investors Can Comment on SEC Rulemaking*; December 12, 2017.

⁶ 15 U.S.C. § 77a et seq.

⁷ 15 U.S.C. § 78a et seq.

⁸ 15 U.S.C. § 80a-1 et seq.

⁹ 15 U.S.C. § 7201 et seq.

Reform and Consumer Protection Act of 2010,¹⁰ provides the framework for the SEC's oversight of the securities markets, and the SEC creates or updates rules under these and other laws as part of its regulatory oversight responsibilities. The Administrative Procedure Act provides the procedures for rulemaking, and generally requires federal agencies to give interested persons notice of proposed rulemaking and an opportunity to participate in the rulemaking process.¹¹ In addition, Section 19 of the Exchange Act requires the Commission to give interested persons an opportunity to submit comments concerning proposed SRO rule changes.¹² To satisfy these requirements, the SEC invites comments on proposed rules, concept releases, SRO filings, Public Company Accounting Oversight Board rulemaking petitions, and other releases. Less frequently, comments are invited for final rules, interpretive releases, and policy statements. Interested persons can submit comments to the SEC's Office of the Secretary (OS) using one of the following three methods:

1. *Internet Comment Form* – Through the SEC's public website, interested persons can browse the various rules index pages, locate rules open for comment, and access the internet comment form by selecting the "Submit Comments" link within each proposed rule. The internet comment form automatically emails submissions to the designated email inbox. However, the SEC's email threat protection tool first scans the email (as well as any attachments provided) to detect and prevent malicious content from harming the SEC's network. Submissions and attachments determined to be safe are automatically transmitted to the designated email inbox for processing.
2. *Email* – Interested persons can send their comments, including attachments, directly to the SEC's designated email inbox.
3. *Paper* – Interested persons who wish to mail their comments must send three copies to the SEC's Secretary at the agency's headquarters address.

OS staff told us that about 60 percent of all commenters send their comments directly to the SEC's designated email inbox. Most other commenters use the internet comment form, as the agency receives very few paper comments. Regardless of the method used, public comments submitted in response to Commission rulemaking releases may be permanent records.¹³ Permanent records have enduring historical and informational value to warrant preservation in the National Archives, and federal agencies are required to establish safeguards against the removal or loss of such records.¹⁴ Additionally, once public comments are received, OS staff publish them to the SEC's public website (with some exceptions, as discussed on pages 8 and 9) and forward them to the appropriate agency division or office for consideration as the SEC determines its next steps.

¹⁰ Pub. L. No. 111-203, 124 Stat. 1376 (July 21, 2010), as amended.

¹¹ 5 U.S.C. § 553.

¹² 15 U.S.C. § 78s(b).

¹³ Pursuant to the SEC's Comprehensive Records Schedule, File Series Number 0120-01-01, "Public Comments Related to Agency Rulemaking," comment letters submitted by members of the public in response to Commission rulemaking releases, including proposed rules, concept releases, requests for comment, or other similar actions published in the Federal Register for which file number series S7 (file numbers assigned to Commission rules) is issued are permanent records. These records are to be transferred to the National Archives and Records Administration 15 years after the final rule is issued or upon compliance date, whichever is later.

¹⁴ 44 U.S.C. § 3105.

According to agency staff, in fiscal year 2022, the SEC received 69,044 public comments, which is about 44,000 more than it expected to receive,¹⁵ and about 185 percent more than it received in the previous year.¹⁶ Notably, between April and June 2022, the number of public comments received increased from about 10,000 to about 24,000 per month. During this time, the SEC released six proposed rules, including rules related to (1) environmental, social, and governance disclosures for investment advisers and investment companies, and (2) the enhancement and standardization of climate-related disclosures for investors. In the months that followed, the number of public comments received declined.¹⁷

In August 2022, members of the public who had submitted comments to the SEC but did not see their comments posted to the agency's website contacted OS. OS and the SEC's Office of Information Technology (OIT) began investigating the issue and, on August 18, 2022, identified a problem. Specifically, OIT personnel reviewed available system log data and found a previously undetected error message indicating that, due to an error between the SEC's email threat protection tool and the agency's email servers, at least 168 public comments that were submitted through the internet comment form and included attachments were not transmitted to the SEC's designated email inbox for processing. Although most of the error messages occurred in August 2022, OIT found intermittent error messages dating back to June 2021. However, OIT was not able to determine exactly how far back the error occurred because the agency maintained only 2 years of system log data.¹⁸ Therefore, agency personnel cannot rule out the possibility that a message delivery failure affecting receipt of public comments submitted through the internet comment form, such as the error in question, occurred before August 2020.

There were 33 SEC proposed rules that had a comment period ending between June 2021 and August 2022, and the agency determined that 11 of those SEC proposed rules and 1 request for comment had been affected by the technological error. Each of the affected matters was still in the proposed rule stage and, according to information on the SEC's public website as of March 21, 2023, had not been finalized. We have attached to this management letter the distribution of the 168 public comments amongst the affected matters. On October 7, 2022, the SEC took steps to ensure that interested persons, including persons whose public comments had been affected by the technological error, had the opportunity to participate in the rulemaking process by reopening the comment periods for the 11 affected SEC proposed rules and 1 affected request for comment. The agency also notified the public that the technological error may have affected certain comments related to eight SRO matters.¹⁹ Notably, according to agency personnel, interested persons can submit public comments after the end of official comment periods and up to the date that the SEC finalizes its rules. In addition, just prior to the identification of the error in August 2022, the SEC initiated a project to migrate the internet comment form to an open source platform used for content management.

¹⁵ As stated in the SEC's fiscal year 2023 Congressional Budget Justification and Annual Performance Plan and fiscal year 2021 Annual Performance Report, the agency estimated it would process about 25,000 public comment letters in fiscal year 2022 but noted that OS had experienced significantly increased workload levels consistent with the agency's increased enforcement actions and rulemaking activity.

¹⁶ In fiscal year 2021, the SEC received 24,215 public comments.

¹⁷ Between October 2022 and February 2023, the SEC received 14,028 public comments.

¹⁸ According to an agency official, to comply with Office of Management and Budget Memorandum M-21-31, *Improving the Federal Government's Investigative and Remediation Capabilities Related to Cybersecurity Incidents* (August 27, 2021), on June 8, 2022, the SEC changed its log retention period from 24 months to 30 months. However, the relevant system logs before that date would have been subject to the prior 24-month window.

¹⁹ Agency officials told us that the comment periods for the eight SRO rules were not reopened because the timelines for SRO rulemaking approval are set by statute.

Agency personnel have stated that this should help further address the technological error because the platform does not generate the email format that initially resulted in the error. This change was contemplated in 2017 when the SEC migrated static webforms on its public website to the then new platform. However, agency personnel considered the internet comment form to be a dynamic and more complex webform and, therefore, out of scope of the 2017 project. The agency expects to deploy the new platform in June 2023.

Objective, Scope, and Methodology

Our objective was to review the SEC's (1) controls over public comment letters submitted online, and (2) actions and response efforts since notifying the OIG of the webform error in August 2022. To accomplish our objective, we met with SEC officials from OS, OIT, the Office of the General Counsel, the Division of Trading and Markets, the Office of Support Operations, and the Office of Legislative and Intergovernmental Affairs. We also reviewed relevant policies, procedures, rulemaking agendas, system log data, IT investment proposals, and other documentation.

We conducted our work between September 2022 and March 2023. Although we did not conduct an audit pursuant to generally accepted government auditing standards or an evaluation in accordance with standards promulgated by the Council of the Inspectors General on Integrity and Efficiency, we believe the results of our review warrant management's attention.

Results

Actions Taken in Response to the Technological Error. As previously stated, after being contacted by members of the public and alerted to a potential problem, OS and OIT personnel determined that, unbeknownst to the SEC, public comments that included attachments and were submitted through the internet comment form (particularly those submitted in August 2022) had not been delivered to the SEC's designated email inbox for processing. This occurred because the SEC's email threat protection tool—managed by a vendor which scanned the comments and associated attachments for viruses and malware—did not account for the email format used to encode online form attachments, causing the emails to be rejected by the SEC's email servers.²⁰ When each email was rejected, an error message was created and stored in the system logs. In September 2022, OIT personnel reviewed system log data and identified 344 instances of this error message from the previous 2 years, of which 168 instances related to public comments that were not delivered to the designated inbox.²¹ In response, the SEC (1) established a semi-manual workaround; (2) contacted certain commenters affected by the error to request that they resubmit their comments; and (3) reopened the comment periods for affected rulemaking releases (that is, proposed rules)

²⁰ Agency personnel have been unable to determine why the error occurred intermittently and then affected comments with attachments that were submitted through the internet comment form in August 2022. According to the vendor, the bug existed in the email threat protection tool since May 2015.

²¹ According to OIT, those instances of the error message that occurred between June 29, 2021, and September 22, 2022, but did not result in public comments that were undelivered included system tests, other messages that were not legitimate public comments for posting, and public comments that OIT was able to obtain using the semi-manual process.

and request for comment, notifying the public that the technological error also may have affected certain comments related to eight SRO matters.

Based on information available to date, the SEC's initial response to the technological error once the error was known appears sufficient and appropriate. We further describe each of the agency's actions in the sections that follow.

The SEC Established a Semi-Manual Workaround. After identifying the technological error, the SEC created and implemented a semi-manual process to ensure that public comments, including attachments, submitted through the agency's internet comment form are delivered to the designated email inbox for processing. Each night an automated script checks for message failures from the previous 24 hours and, for any failed emails, OIT personnel manually pull the corresponding backup to preserve and transmit public comments in a manner that bypasses the email threat protection tool. OS staff are then able to review the comments, forward them to the appropriate SEC divisions and offices, and publish them to the SEC's public website as appropriate. Although the SEC's vendor deployed the fix to the email threat protection tool on October 3, 2022, the SEC plans to continue the semi-manual workaround to monitor relevant data in the event the internet comment form rejects public comments again.

The SEC Requested Resubmission of Comments. OS reviewed the system log data provided by OIT and determined (1) which proposed rules were affected by the technological error between June 2021 and August 2022, and (2) the names and/or organizations of commenters whose public comments were not properly and timely received as a result. OS staff then used the agency's Comment Letter Log system to obtain contact information for those individuals and organizations that had previously commented on proposed rules, and searched online for other affected commenters' contact information. According to OS staff, they spent about a week contacting commenters and requesting that commenters resubmit their comments. In all but one case (which related to a comment to an SRO proposed rule for which OS staff did not have enough information to contact the commenter), OS was able to recover the affected comments.

The SEC Reopened Comment Periods. As previously stated, on October 7, 2022, the SEC reopened the comment periods until November 1, 2022, for 11 proposed rules and 1 request for comment. Subsequently, as the following table shows, the agency received a significant number of additional public comments.

Table. Number of Public Comments Received, by Affected Release Title

Release Title	A. No. of Comments Received Before October 7, 2022	B. No. of Comments Received Between October 7 and December 20, 2022 ^a	Total of Column A and Column B
Reporting of Securities Loans	692	3,348	4,040 ^b
Prohibition Against Fraud, Manipulation, or Deception in Connection with Security-Based Swaps; Prohibition against Undue Influence over Chief Compliance Officers; Position Reporting of Large Security-Based Swap Positions	1,395	1,223	2,618
Money Market Fund Reforms	97	29	126
Share Repurchase Disclosure Modernization	3,399	35	3,434
Short Position and Short Activity Reporting by Institutional Investment Managers	299	2,807	3,106 ^c
Cybersecurity Risk Management, Strategy, Governance, and Incident Disclosure	165	28	193 ^c
Private Fund Advisers; Documentation of Registered Investment Adviser Compliance Reviews	393	51	444
The Enhancement and Standardization of Climate-Related Disclosures for Investors	15,100	961	16,061 ^c
Special Purpose Acquisition Companies, Shell Companies, and Projections	99	17	116
Investment Company Names	129	26	155
Enhanced Disclosures by Certain Investment Advisers and Investment Companies About Environmental, Social, and Governance Investment Practices	231	41	272
Request for Comment on Certain Information Providers Acting as Investment Advisers	41	15	56

Source: *OIG-generated based on information provided by OS.*

^a OS provided the *OIG* with comment information as of December 20, 2022. As previously stated, interested persons can submit public comments after the end of official comment periods and up to the date that the SEC finalizes its rules.

^b This comment file contained two resubmissions (that is, two instances of comments from the original comment period and duplicates of those comments, which were resubmitted after the comment period was reopened).

^c This comment file contained one resubmission (that is, a comment from the original comment period and a duplicate of that comment, which was resubmitted after the comment period was reopened).

We also observed a change in the expected date for final action for several of the proposed rules between the Spring and Fall 2022 Regulatory Flexibility Agendas; however, we were unable to determine whether the revised date for final action was due to the reopening of the comment periods. According to the SEC, agendas reflect the current intent to complete a number of rulemakings in the next year; however, the precise dates for each rulemaking are uncertain.

IT Controls Over Public Comments Submitted Online Through the Internet Comment Form. Although the SEC took actions to respond to the technological error once the error was known, we identified IT control weaknesses that delayed the agency’s awareness of the error and magnified the error’s overall impact, which may require additional attention and response. As further described below, the responsible Information System Owner and system administrators did not configure alerts or regularly monitor system logs, which would have

permitted agency personnel to timely identify and respond to the error. The SEC also did not back up some data submitted through the internet comment form, which delayed recovery of the public comments. Strengthening IT controls in these areas could provide additional safeguards to prevent the loss of public comments submitted to the SEC as part of the rulemaking process—which may be classified as permanent records—and ensure such comments are received and processed as required.

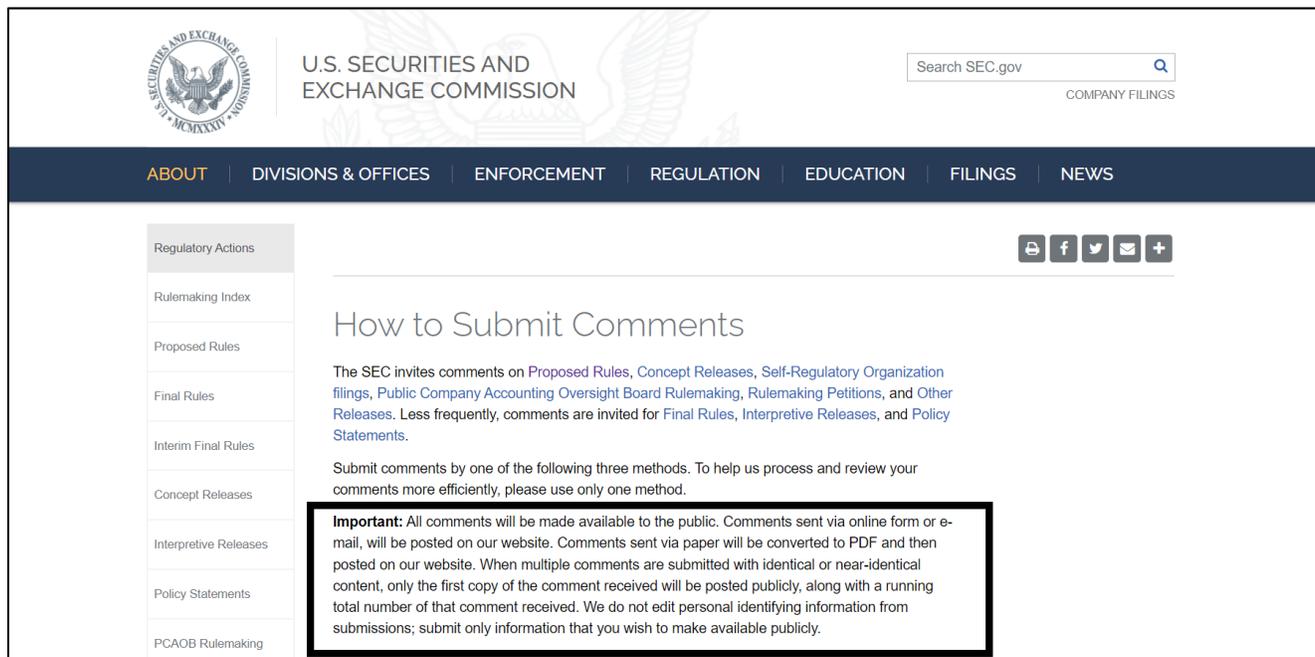
The Information System Owner and System Administrators Did Not Configure Alerts or Regularly Monitor System Logs. The SEC did not timely identify and respond to the first instance of the technological error because the responsible Information System Owner did not configure alerts or other notifications that recognized failed delivery messages related to the internet comment form as unusual activity that needed review. Additionally, because system administrators did not regularly monitor system logs, they did not notice the error messages that were being created and stored in system log data each time the SEC's email threat protection tool caused emails containing public comments (including attachments) from the internet comment form to be rejected. Without alerts or regular monitoring of system logs, the SEC was not aware that at least 168 public comments were not received as intended.

The SEC Did Not Back Up Some Data Submitted Through the Internet Comment Form. The SEC was unable to recover all undelivered public comments caused by the technological error and had to ask commenters to resubmit their comments because backups of internet comment form data did not exist between April 30 and August 19, 2022. In addition, the agency may not have had alerts to notify staff that backups of the data were not occurring as intended. Agency personnel explained that an operating system update was performed on April 30, 2022, and, unbeknownst to responsible personnel, the new operating system applied security restrictions that prevented the backup process for the internet comment form from running as intended. OIT did not discover the lack of backups until August 2022 when personnel were researching the technological error. Once discovered, OIT took steps to address the issue and backups immediately resumed.

We note that the National Institute of Standards and Technology's Contingency Planning Guide for Federal Information Systems (SP 800-34, Rev. 1, section 3.4.2) states that system data should be backed up regularly and policies should specify the minimum frequency and scope of backups based on criticality and the frequency that new information is introduced. The SEC's Information Security Controls Manual, Control CP-9, also states that the SEC shall conduct daily backups of user-level and system-level information contained in the information system. Finally, the Manual requires the SEC to test sample backup information quarterly to verify media reliability and information integrity.

Other Matter for Management's Consideration. Although outside the scope of our review, we identified another matter for management's consideration regarding certain comments that are not posted to the SEC's public website or promptly provided to rulemaking staff. Specifically, as the figure below shows, at the time of our review, the SEC's webpage that informs the public how to submit comments stated, "All comments will be made available to the public. Comments sent via online form or e-mail, will be posted on our website. Comments sent via paper will be converted to PDF and then posted on our website. . . We do not edit personal identifying information from submissions; submit only information that you wish to make available publicly."

Figure. Screenshot of SEC Webpage, *How to Submit Comments*



Source: <https://www.sec.gov/regulatory-actions/how-to-submit-comments> (accessed on January 27, 2023). The OIG added the black box around the text for emphasis.

Despite these statements on the SEC’s webpage, OS policy instructs staff not to publicly post comment letters under certain circumstances. For example, among other reasons, OS staff will not post to the SEC’s public website comments that contain security threats; obscenities; or racial, religious, or gender slurs; are clearly “prank” letters intended to deceive; are not related to the pending proposal or release; are not from the purported commenter; or that constitute tips or complaints rather than comments on a proposed rule.²² OS policy further indicates that, if it is determined that public comments cannot be posted to the SEC’s public website or cannot be posted without redactions, OS staff should enter the comments into the Comment Letter Log and forward the comments to the staff attorney working on the rulemaking matter (that is, the rulemaking staff) with an indication that the comments either have not been posted or were posted with redactions.

Notwithstanding OS’s policy statements, rulemaking staff have reported to the OIG that commenters contact the rulemaking staff to inquire why their comments were not made public, and rulemaking staff themselves may not always be aware of when and why certain comments were not posted to the SEC’s public website. This creates potential inefficiencies as concerned rulemaking staff then follow-up with OS staff to inquire about specific comments and to ensure that comments were properly handled and not “missed,” which could prevent members of the public from having an opportunity to participate in the rulemaking process as required by the Administrative Procedure Act.

We encourage management to ensure that the SEC’s *How to Submit Comments* webpage makes clear that the agency does not, in fact, make available to the public all comments received. Additionally, given the increased number of comments received in response to the

²² U.S. Securities and Exchange Commission, Office of the Secretary, *Policies for Posting/Redaction/Removal of Comment Letters on the Commission’s Public Website*; June 30, 2021.

recent increase in SEC rulemaking activities, agency management should ensure processes for handling public comments are, overall, as efficient as is practicable.

Conclusion

Based on information available to date, the SEC's initial response to the technological error once the error was known appears sufficient and appropriate. Due to the SEC's corrective action, the technological error appears to be resolved and the agency recovered all but 1 of the 168 comments from 2021 and 2022 that were identified as affected by the error.

On March 22, 2023, we provided SEC management with a draft of our management letter for review and comment. On April 12, 2023, management provided some additional information in response to our observations, and noted that the agency has already updated the SEC's *How to Submit Comments* webpage. Management's complete response is reprinted as an attachment to this final management letter.

To help us determine whether further action by the OIG is warranted, we request that management provide the OIG, no later than June 1, 2023, a detailed description of any actions the SEC has taken or plans to take to provide additional safeguards and prevent the loss of public comments as discussed in this letter. We are particularly interested in agency actions to:

1. Post to the SEC's public website (as appropriate) and distribute to relevant rulemaking teams comment letters not initially received but subsequently recovered and/or resubmitted and determined to be comments regarding rulemaking releases, so that rulemaking teams will have an opportunity to consider the comments when preparing a recommendation to the Commission regarding a final rulemaking.
2. Configure alerts and/or other types of system monitoring to permit timely identification of and response to errors affecting the public's ability to submit comments online as a part of the SEC's rulemaking.
3. Configure automated alerts to inform system administrators of problems with the backup storage of submitted webform comments, including attachments.
4. Review processes for handling public comments to ensure processes are as efficient as is practicable.

We appreciate the courtesies and cooperation extended to us. If you have questions, please contact me or Rebecca L. Sharek, Deputy Inspector General for Audits, Evaluations, and Special Projects.

Attachments

cc: Amanda Fischer, Chief of Staff, Office of Chair Gensler
Heather Slavkin Corzo, Policy Director, Office of Chair Gensler
Kevin Burris, Counselor to the Chair and Director of Legislative and Intergovernmental Affairs
Scott Schneider, Counselor to the Chair and Director of Public Affairs
Philipp Havenstein, Operations Counsel, Office of Chair Gensler
Ajay Sutaria, Legal Counsel, Office of Chair Gensler
Hester M. Peirce, Commissioner
 Benjamin Vetter, Counsel, Office of Commissioner Peirce
Caroline A. Crenshaw, Commissioner
 Malgorzata Spangenberg, Counsel, Office of Commissioner Crenshaw
Mark T. Uyeda, Commissioner
 Holly Hunter-Ceci, Counsel, Office of Commissioner Uyeda
Jaime Lizárraga, Commissioner
 Laura D'Allaird, Counsel, Office of Commissioner Lizárraga
 Parisa Haghshenas, Counsel, Office of Commissioner Lizárraga
Megan Barbero, General Counsel
 Lisa Helvin, Principal Deputy General Counsel for Adjudication and Oversight, Office of
 the General Counsel
 Elizabeth McFadden, Deputy General Counsel General Litigation/Acting Managing
 Executive, Office of the General Counsel
Kenneth Johnson, Chief Operating Officer
Shelly Luisi, Chief Risk Officer
 Jim Lloyd, Assistant Chief Risk Officer/Audit Coordinator, Office of the Chief Risk Officer
David Bottom, Director/Chief Information Officer, Office of Information Technology
Jeff Finnell, Chief Counsel, Office of Information Technology
 Ileana Ciobanu, Senior Special Counsel, Office of the Chief Counsel to the CIO,
 Office of Information Technology
James Scobey, Chief Information Security Officer, Office of Information Technology
Bridget Hilal, Branch Chief, Cyber Risk and Governance Branch, Office of Information
Technology
Olivier Girod, Director, Office of Support Operations
 David Brown, Assistant Director/Archivist, Office of Records Management Services
 Curtis Francisco, Records Officer, Office of Records Management Services, Office of
 Support Operations
Vanessa Countryman, Secretary
 J. Matt DeLesDernier, Deputy Secretary, Office of the Secretary
Haoxiang Zhu, Director, Division of Trading and Markets
 Andrea Orr, Deputy Director, Division of Trading and Markets
 Roxanne Ramnauth, Managing Executive, Division of Trading and Markets

Attachment 1. Distribution of the 168 Public Comments Impacted by the Technological Error

SEC Rulemaking Releases		
Release Title	File Number	No. of Comments Impacted
Reporting of Securities Loans	S7-18-21	1
Prohibition Against Fraud, Manipulation, or Deception in Connection with Security-Based Swaps; Prohibition against Undue Influence over Chief Compliance Officers; Position Reporting of Large Security-Based Swap Positions	S7-32-10	1
Money Market Fund Reforms	S7-22-21	2
Share Repurchase Disclosure Modernization	S7-21-21	2
Short Position and Short Activity Reporting by Institutional Investment Managers	S7-08-22	1
Cybersecurity Risk Management, Strategy, Governance, and Incident Disclosure	S7-09-22	1
Private Fund Advisers; Documentation of Registered Investment Adviser Compliance Reviews	S7-03-22	6
The Enhancement and Standardization of Climate-Related Disclosures for Investors	S7-10-22	8
Special Purpose Acquisition Companies, Shell Companies, and Projections	S7-13-22	1
Investment Company Names	S7-16-22	47
Enhanced Disclosures by Certain Investment Advisers and Investment Companies About Environmental, Social, and Governance Investment Practices	S7-17-22	74
Request for Comment on Certain Information Providers Acting as Investment Advisers	S7-18-22	15

SRO Matters		
File Description	File Number	No. of Comments Impacted
BOX Exchange LLC; Proposed Rule Change, as Modified by Amendment No. 1, to Amend Rule 12140 (Imposition of Fines for Minor Rule Violations), to Expand the List of Violations Eligible for Disposition under the Exchange's Minor Rule Violation Plan and to Update the Fine Schedule Applicable to Minor Violations of Certain Rules	SR-BOX-2022-08	1
Cboe BZX Exchange, Inc.; Proposed Rule Change, as Modified by Amendment No. 2, to Amend Rule 25.3, Which Governs the Exchange's Minor Rule Violation Plan, in Connection with Certain Minor Rule Violations and Applicable Fines	SR-CboeBZX-2021-083	1
Financial Industry Regulatory Authority, Inc.; Proposed Rule Change to Amend FINRA Rule 6750 Regarding the Publication of Aggregated Transaction Information on U.S. Treasury Securities	SR-FINRA-2022-017	1
Financial Industry Regulatory Authority, Inc.; Proposed Rule Change To Amend the Codes of Arbitration Procedure to Modify the Current Process Relating to the Expungement of Customer Dispute Information	SR-FINRA-2022-024	1
MEMX LLC; Proposed Rule Change to Establish a Retail Midpoint Liquidity Program	SR-MEMX-2021-10	1
NYSE Arca, Inc.; Proposed Rule Change to Amend Rule 6.64P-O	SR-NYSEARCA-2022-52	1
NYSE National, Inc.; Proposed Rule Change to Extend the Pilot Related to the Market-Wide Circuit Breaker in Rule 7.12	SR-NYSENAT-2021-19	1
The Options Clearing Corporation; Advance Notice Related to a Master Repurchase Agreement as Part of The Options Clearing Corporation's Overall Liquidity Plan	SR-OCC-2022-802	2

Source: OIG-generated based on information provided by OS and OIT.

Attachment 2. Management Comments



UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

MEMORANDUM

To: Rebecca L. Sharek, Deputy Inspector General for Audits, Evaluations, and Special Projects, Office of Inspector General

From: Kenneth A. Johnson, Chief Operating Officer

Date: April 12, 2023

Subject: Management Response to *Review of SEC Controls Over Public Comments Submitted Online and Actions Taken In Response To a Known Error*

KENNETH
JOHNSON

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KENNETH JOHNSON
Date: 2023.04.12
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Thank you for the opportunity to comment on the Office of Inspector General (OIG) draft management letter related to its review of the SEC's actions in response to the technological error that affected the SEC's receipt of some public comments.

I am pleased your letter found the technological error has been resolved and the SEC's response to the technological error was sufficient and appropriate. As OIG describes, the SEC reached out to commenters affected by the error, reopened the comment period for affected rulemaking releases, and established a regular review to watch for any recurrence of the issue.

Turning to some of the specific observations from your letter, first, we are pleased to share with you that all affected submissions determined to be comments on rulemaking releases have been posted to the Commission's public website and distributed to relevant rulemaking teams for consideration in connection with recommendations for any final rule. Second, we appreciate your suggestion to revise the Commission's *How to Submit Comments* webpage, and we have updated it to clarify that staff may redact or withhold from publication any content in comment letter submissions that is obscene or thought to be subject to copyright protection. Third, we welcome your suggestion that staff continue efforts to ensure that the processes for handling public comments are as efficient as possible. To that end, in the coming months, staff are deploying a new application that allows for more efficient processing of comment letters. In addition, we are on track to complete the migration of the comment letter webform to a new platform by Spring 2023—a project that had been initiated on August 8, 2022, shortly before we learned of the technological error.

We very much appreciate the professionalism and courtesies provided by the OIG during this inquiry. We also would be happy to provide all the information you need to conduct the next phase of OIG's work in this area as described in your letter.

cc: David Bottom, Chief Information Officer, Office of Information Technology
Vanessa Countryman, Secretary, Office of the Secretary
Elizabeth McFadden, Deputy General Counsel, Office of the General Counsel