

January 23, 2019

The Honorable Jay Clayton
Chairman
Securities and Exchange Commission
100 F St. NE, Washington DC 20549

The Honorable Robert Jackson, Hester Peirce, and Elad Roisman
Commissioners
Securities and Exchange Commission
100 F St. NE, Washington DC 20549

Dear Chairman Clayton:

I am writing to request information about the impact of the federal government shutdown on the Securities and Exchange Commission's (SEC) ability to effectively regulate and oversee the nation's financial markets. President Trump's shutdown is now the longest in United States history, and while other financial regulators are funded outside of the traditional appropriations process, your agency has been operating under shutdown plans with significantly reduced operations for over one month. Given the important role that your agency plays in overseeing financial markets and protecting investors, it is important that I fully understand the difficulties facing the SEC and the implications of a prolonged government shutdown.

The SEC serves as one of the primary agencies responsible for regulating financial markets and enforcing laws that protect consumers, investors, and the general public. The SEC is responsible for protecting investors by regulating securities markets and enforcing federal securities laws. As one of the primary units policing the industry, it is the SEC's duty to ensure a "market environment that is worthy of the public's trust."¹ Millions of Americans trust the SEC to protect their retirement funds, pension plans, college savings, and other investments.

The SEC uses a variety of tools to ensure stable markets and protect investors and the public. The agency enforces federal laws through investigation and litigation; it reviews and approves financial filings and registration; it issues rules to properly regulate the securities market; and it oversees self-regulatory organizations and initial public offerings. During the current partial government shutdown, the SEC is following a policy under which it only operates with "an extremely limited number of staff members available to respond to emergency situations involving the safety of human life or the protection of property."²

¹ SEC, "About the SEC," <https://www.sec.gov/about.shtml>.

² U.S. Securities and Exchange Commission, "Operations Plan Under A Lapse In Appropriations and Government Shutdown," December 2018, pp. 4, <https://www.sec.gov/files/sec-plan-of-operations-during-lapse-in-appropriations-2018.pdf>.

Virtually all SEC activities have ceased or decreased significantly. Enforcement actions have “slowed to a trickle,” and one lawyer representing a client before the SEC noted that “the pressure is off a little bit.”³ Employees at the Office of Compliance Inspections and Examinations are unable to travel to firms for onsite visits and inspections.⁴ The only litigation matters advancing are those facing deadlines.⁵ Investigations are not being started and most investigative testimony has stalled; review and approval of most registration applications and other filings have stopped; and all routine oversight of SROs has ceased.⁶ And companies have been delayed from opening in the IPO market.⁷ The SEC appears to be unable to meet its core mission of protecting investors and ensuring a safe and efficient market.

Recent reports also suggest that if the shutdown continues, first-quarter economic growth could come “close to or even below zero.”⁸ And some analysts believe the shutdown is “no longer just a political sideshow, it’s a real recession risk.”⁹ As the shutdown continues and the economy is destabilized, your agency’s role in regulating the securities markets, protecting investors, and safeguarding Americans’ savings will become even more important. In order to better understand the impact of the shutdown on the financial security of the American people, and to fully prepare for the risks of a further extended shutdown, I request answers to the following questions by February 2, 2019.

1. How has the current government shutdown affected your ability to oversee financial markets and protect investors? Please describe all operations that have ceased or decreased since December 27, 2018 as a result of the shutdown.
 - a. How many public filings has the Division of Corporation Finance and the Division of Investment Management reviewed since December 27, 2018? How many did they review during the same time period in 2017-18?
 - b. On how many occasions has the Division of Corporation Finance provided a company with assistance interpreting SEC rules since December 27, 2018? How many times did the division provide such assistance during the same time period in 2017-18?
 - c. How many new rules has the Division of Corporation Finance recommended to the SEC for adoption since December 27, 2018? How many rules did it recommend during the same time period in 2017-18?

³ Politico, “Shutdown’s hidden impact: Frozen inspections, fraud cases,” January 15, 2019, <https://www.politico.com/story/2019/01/15/shutdown-impact-inspection-finance-investigation-1079014>.

⁴ *Id.*

⁵ *Id.*

⁶ DLA Piper, “SEC, CFTC implement plans for the government shutdown,” Edward Johnsen, Deborah Meshulam, and Bradley Phipps, January 9, 2019, <https://www.dlapiper.com/en/us/insights/publications/2019/01/sec-cftc-implement-plans-for-the-government-shutdown/>.


⁷ Wall Street Journal, “How the Shutdown Is Hitting Business,” Gabriel T. Rubin, January 23, 2019, https://www.wsj.com/articles/shutdown-hits-industries-nationwide-11548075600?mod=article_inline&ns=prod/accounts-wsj.

⁸ Politico, “Recession warnings pile up as shutdown wraps up fourth week,” Ben White, January 17, 2019, <https://www.politico.com/story/2019/01/17/government-shutdown-recession-economy-1092089>.

⁹ *Id.*

- d. How many enforcement actions has the SEC initiated, how many settlements has it reached, and how many judgments has it secured since December 27, 2018? How many actions were taken during the same time period in 2017-18?
 - e. How many new rules and proposed rule changes to Self-Regulatory Organizations (“SROs”) has the Division of Trading and Markets reviewed since December 27, 2018? How many rules and rules changes did it review during the same time period in 2017-18?
 - f. How many investor complaints has the SEC receive and reviewed since December 27, 2018? How many complaints did the agency receive and review during the same time period in 2017-18?
 - g. How many new or amended rules has the SEC initiated, begun notice and comment for, or finalized since December 27, 2018? How many of these actions did the agency take during the same time period in 2017-18?
 - h. How many securities firms, investment advisers, and ratings agencies has the SEC inspected or overseen the inspection of since December 27, 2018? How many inspections did the agency lead or oversee during the same time period in 2017-18?
2. How would a continued lapse in appropriations impact your ability to effectively oversee financial markets?
 - a. Is the SEC at risk of having to shut down currently ongoing activities or send additional employees home?
 - b. Is the SEC at risk of losing the ability to effectively monitor for emergencies, including those that include “risk to the human life or protection of property[?]”
 3. How will you adapt in the event that the shutdown continues for additional weeks or months? Please list all options your agency has for continuing important operations in the event of a continued shutdown.
 4. Is your agency prepared to deal with an economic downturn during or in the aftermath of the government shutdown? Please describe any preparations or guidelines for dealing with such an emergency during a government shutdown.

Sincerely,



Elizabeth Warren
United States Senator