

Congress of the United States
Washington, DC 20515

March 16, 2022

The Honorable Gary Gensler
Chair
Securities and Exchange Commission
100 F Street NE
Washington, D.C. 20549

Dear Chair Gensler:

We have questions regarding the Securities and Exchange Commission's (the Commission) utilization of Division of Enforcement and Division of Examination authorities to obtain information related to cryptocurrency and blockchain firms. Those authorities are better suited to the SEC's divisions charged with seeking public commentary as part of the rulemaking process.

The SEC's regulatory functions, while broad, are limited to the extent of its statutorily mandated jurisdiction. Enforcement powers, while conceptually broader with respect to non-SEC regulated entities, are still circumscribed by statute, federal judicial review, congressional oversight and the Commission's own policies and procedures for initiating and conducting inquiries and investigations. It appears there has been a recent trend towards employing the Enforcement Division's investigative functions to gather information from unregulated cryptocurrency and blockchain industry participants in a manner inconsistent with the Commission's standards for initiating investigations.

We have reason to believe these requests might be at odds with the Paperwork Reduction Act (PRA). The Securities and Exchange Commission Division of Enforcement: Enforcement Manual from 2017 states that during an inquiry or investigation, SEC staff may utilize Form 1662 to request voluntary production of documents, the voluntary creation of documents, and voluntary interviews and testimonies from regulated entities. The Commission's Division of Examination may utilize Form 2866 for voluntary document production as well. We understand that the fruits of these requests will help the staff assess the merits of an investigation at its earliest stage; however, pursuant to the PRA, in seeking information from the American public, federal agencies must be good stewards of the public's time, and not overwhelm them with unnecessary or duplicative requests for information.

To help us understand how and why the SEC is soliciting information from private firms related to cryptocurrency and blockchain, we ask you please respond to the following questions as soon as possible, but no later than April 29, 2022:

1. Over the past five years, how many voluntary document requests has the SEC sent to individuals, project teams, entities, or the like regarding activities related to cryptocurrency, digital assets, or other uses of blockchain technology (Relevant Entities)?

Please provide a year-by-year breakdown of these requests or an approximation if such a breakdown is not available.


2. On average, year-by-year for the past five years, how many questions did the SEC ask in each voluntary document request to Relevant Entities?
3. Year-by-year, what is the average timeline for each company to respond to these requests? Please provide an approximation if such a breakdown is not available.
4. On average, year-by-year for the last five years, what are the expected compliance costs imposed on Relevant Entities to respond to your Commission's voluntary document requests?
5. Has the SEC conducted a cost-benefit analysis to determine the fairness and efficacy of its requests?
6. Have any Relevant Entities elected not to respond to SEC voluntary document requests? If so, how many? Have any of these firms directly or indirectly been penalized for not responding to the voluntary document request?
7. While Form 1662 and 2866 are provided with voluntary document requests, could the voluntary nature of the request be made clearer to the recipient? Does the request articulate the indirect consequences of no response?
8. When a voluntary document request is sent, does the SEC indicate to the firm whether the SEC has already launched an informal investigation into the company?
9. What proportion of all approximate number of hours spent over the past five years on these voluntary document requests over the past five years are allocated toward crypto and blockchain subject matter as compared to all other SEC-interested subject matters?
10. When deciding to open a Matter Under Inquiry (MUI), the SEC lists basic considerations and affords SEC staff initiating a MUI significant discretion. After SEC staff initiate a MUI, what process occurs to craft and send a voluntary document request? What level of SEC staff compose the document, who at the SEC approves the requests, and does the SEC receive final approval from the Office of Management and Budget?
11. The SEC is required to determine a specific objective met by the collection of information and develop a plan for future use of the information. Is the requested firm clearly made aware of the specific objective and the SEC's plan for future use of the information collected?
12. Is there a limit to the number of voluntary document requests the SEC can send per year?
13. During your tenure, has the SEC tested the collection method of information specifically on the crypto and blockchain industry through a pilot program? What have these tests illuminated?

Thank you for your attention to this important matter. Your response will help provide us with a better understanding of the SEC's authority to secure the information and transparency it feels it requires while also ensuring these types of requests are not overburdensome, unnecessary, and do not stifle innovation. Please contact Lizzy Fallon at lizzy.fallon@mail.house.gov to make arrangements to respond or with any questions about this request.

Sincerely,



Tom Emmer
Member of Congress



Darren Soto
Member of Congress



Warren Davidson
Member of Congress



Jake Auchincloss
Member of Congress




Byron Donalds
Member of Congress



Josh Gottheimer
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