Statement for the Record of Micah Hauptman, Director of Investor Protection
Consumer Federation of America[1]

U.S. Public Markets Built for the 21st Century: Exploring Reforms to Make Our Public Markets Attractive to Small and Emerging Companies Raising Capital
Committee on Financial Services, Subcommittee on Capital Markets
March 9, 2023

We understand that the Subcommittee on Capital Markets will consider the so-called "Improving Disclosure for Investors Act of 2023" at this hearing.[2] While we would welcome improving disclosures for investors, nothing about this bill would do so. Rather, this bill would allow firms to default investors into electronic delivery (e-delivery) when there is no evidence that investors who prefer e-delivery face any difficulties in exercising that choice—it is a solution in search of a problem—and would do so without regard for extensive evidence that the change is likely to reduce investor readership of key disclosures. Accordingly, we urge you to oppose this misguided bill.

Based on the industry's own data, investors are increasingly electing e-delivery. For example, data from industry sources suggest that over 80% of investors choose to receive some documents electronically, such as shareholder reports and proxy voting forms. However, only about half of all investors choose to receive account statements and tax forms electronically. Still, the trend is clearly toward more electronic delivery. These elections closely track investor preferences. For example, recent survey data from the FINRA Investor Education Foundation found that email (38 percent) has overtaken physical mail (30 percent) as the most widely preferred method for receiving disclosures.[3] Investors' preference for email has trended upwards since 2015, while their preference for mail has decreased.[4]

Financial firms persistently seek to convert investors from paper to electronic delivery and they make it incredibly easy for investors to make this change. As a result, virtually all investors (98%+) are aware that electronic delivery is an option for receiving investor communications. After so much time has passed, however, it's clear that those investors who want communications by mail and have not chosen e-delivery have made a choice. Their choice should be respected. They should not be forced to jump through new hoops to make that choice again. Under the current e-delivery framework, financial firms also have strong incentives to improve their "user experience" with e-delivery and present shareholder disclosures on their

---

[1] CFA is a non-profit association of more than 250 national, state, and local pro-consumer organizations. It was formed in 1968 to represent the consumer interest through research, advocacy and education.
[2] To direct the Securities and Exchange Commission to promulgate rules with respect to the electronic delivery of certain required disclosures, and for other purposes. https://docs.house.gov/meetings/BA/BA16/20230309/115394/BILLS-118pih-ThisbilldirectstheSECtopromulgaterulespermittingfinancialfirmstoelectronicallydelivercertaindisclosurestoinvestors.pdf
[3] FINRA Investor Education Foundation's 2022 Survey, "Investors in the United States: The Changing Landscape," at page 17, https://www.finrafoundation.org/sites/finrafoundation/files/NFCS-Investor-Report-Changing-Landscape.pdf
[4] *Id.*

websites in more user-friendly ways because such innovations could encourage more investors to choose electronic delivery. Yet currently, most electronic deliveries of regulatory communications consist of email messages that provide a link to a login screen (often requiring a password) to access the same information that is presented in static PDFs. The multiple steps involved in this process introduce additional friction points that can frustrate or dissuade recipients from accessing and viewing important disclosures, especially for those investors with less tech savvy or limited or infrequent access to email and internet. Unsurprisingly, most electronic deliveries today from financial institutions result in very low click-through rates to the disclosures they provide. For example, the email click rate for the financial services industry is on average about 1%, meaning about 1% of people clicked a link within an email, relative to the number of emails that were successfully delivered.[5]

Recognizing that investor account statements are incredibly important disclosure documents that enable investors to see what's going on in their accounts and allow them to effectively monitor their outcomes, on March 2, 2023 the SEC's Investor Advisory Committee adopted a recommendation to the SEC that paper delivery continue as the delivery default, stating: "We recommend that account statements continue to be delivered to investors by paper as the default delivery method. For those investors who opt for electronic delivery of statements, the SEC and/or FINRA should encourage the use of technology to enhance disclosure and investor understanding of electronic account statements, such as the use of layered disclosure through embedded links, etc."[6]

Rather than following the Investor Advisory Committee's recommendation, this bill would go in the exact opposite direction. First, the bill would allow a "notice and access equals delivery" approach, allowing firms to make disclosures available online and providing a notice (typically through a link) of the disclosure's availability instead of directly mailing disclosures, including account statements, to investors. The bill would also appear to allow firms to use other delivery approaches that may not be appropriate for investors. Specifically, the bill would allow another "electronic method reasonably designed to ensure receipt of such regulatory document by the investor." Giving firms the ability to decide how to effectuate disclosure delivery could potentially include an "access equals delivery" approach, where firms wouldn't provide a link to the disclosure; instead, they would just post the document online and put the burden on the investor to find it. This would make it even more difficult for investors to find and read their disclosures.

This bill would apply to the delivery of investors' personal account statements, even though there is strong evidence, discussed above, that many investors want to receive these disclosures in paper format. To the extent investors have already decided to receive these documents in paper, this bill would override their decision and force them to reaffirm the decision they have already made. Doing so would disrespect the decisions investors have already

---

[5] *See* "Comparison by Industry Chart," (as of February 2023), https://knowledgebase.constantcontact.com/articles/KnowledgeBase/5409-average-industry-rates?lang=en_US.

[6] Draft as of February 21, 2023, To be discussed at the March 2, 2023 meeting of the Investor Advisory Committee, Recommendation of the SEC Investor Advisory Committee's Disclosure Subcommittee to Improve Customer Account Statements to Better Inform Investors, https://www.sec.gov/files/20230221-recommendation-account-statements.pdf

made, forcing them to jump through new hoops to make their choice again because that choice doesn't align with financial firms' economic interests.

In addition, the bill could impede the Commission's ability to require written disclosures, in favor of oral disclosures instead. Specifically, the bill requires the Commission to review its rules and identify rules to eliminate regulatory references to any "in writing" requirement. Oral disclosures are not subject to oversight either by a firm or the SEC and are likely to lead to a host of quality control problems. Oral disclosures are also less likely to be salient and memorable for investors, which would likely result in less informed decision making.

Importantly, this bill would unwind the paper delivery of pro-investor disclosure improvements that the SEC finalized recently that would make shareholder reports more concise and visually appealing. The Tailored Shareholder Report Final Rule Release stated: "Rather than allowing fund managers to determine the transmission method for shareholder reports, the final rule ensures that all investors will receive the anticipated benefits of streamlined shareholder reports. We continue to believe that the new disclosure approach for shareholder reports represents a more-effective means of improving investors' ability to access and use fund information, and of preserving much of the expected cost savings to funds and investors that funds would experience by choosing to rely on rule 30e-3."[7] This bill, however, would allow firms to replace Tailored Shareholder Reports with rule 30e-3 "notices" that contain no content from the fund report and that require investors to take additional steps to access important information on their funds and ETFs. This would be a big regulatory step backwards. Recent experience with rule 30e-3 shows that investors are not taking the steps necessary to access key information, which is consistent with the evidence that requiring multiple steps to access electronic disclosures can dissuade recipients from accessing and viewing disclosures and that most electronic deliveries today from financial institutions result in very low click-through rates.

Finally, this bill would require the Commission to pass rules within a year to implement the bill, but if the Commission fails to hit that deadline, the bill would be self-effectuating. This undermines the Commission's ability to pass rules to implement the bill in a thoughtful manner, including by engaging in investor testing.

In sum, while we strongly support improving investor disclosures to make them more visually engaging and user-friendly to increase investor usage, comprehension, and decision making, this bill would accomplish none of this. Rather, it would allow financial firms to deliver disclosures in a way that makes it more difficult for investors to access them and would establish a default that is contrary to many investors' preferences. At worst, this bill could provide an avenue for financial firms to effectively hide information (e.g., fees and conflicts) from investors and provide vague, inaccurate, or misleading oral disclosures instead of accurate and reliable written disclosures, further undermining investors' ability to make informed decisions.

For these reasons, we urge you to oppose this misguided bill.

---

[7] Tailored Shareholder Reports for Mutual Funds and Exchange-Traded Funds; Fee Information in Investment Company Advertisements, Release Nos. 33-11125; 34-96158; IC-34731, October 26, 2022, https://www.sec.gov/rules/final/2022/33-11125.pdf