

Congress of the United States

Washington, DC 20515

November 1, 2022

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

Dear Chair Gensler:

According to recent reports, the Securities and Exchange Commission (SEC) is fining companies for communicating about business matters on personal devices. These fines are curious in light of your history of skirting federal transparency and records laws,¹ as well as evidence that the SEC is currently using so-called “off-channel” communications platforms for official business. We write with questions about your commitment to transparency and accountability at the SEC.

In 2013, while you served as Chairman of the Commodity Futures Trading Commission (CFTC), the CFTC Office of Inspector General discovered how you used a personal email account to conduct official business.² During an investigation into your handling of the collapse of MF Global Holdings, the OIG found that you used your personal email 7,005 times to conduct official business related to that matter alone.³ Your defense to violating federal record-keeping requirements was that you apparently “did not know how to access [your] official email at home.”⁴

Recent reports suggest the SEC, under your leadership, is likewise failing to comply with federal record-keeping statutes.⁵ In particular, evidence uncovered during Freedom of Information Act (FOIA) litigation suggests the SEC is failing to identify and produce records of official business conducted on non-email or “off-channel” platforms, such as Signal, WhatsApp, Teams, and Zoom—regardless of whether the communication took place on a personal or

¹ See generally, Chris Horner, *Transparency for Thee, but Not the SEC*, WALL ST. J. (Oct. 12, 2022); Scott Patterson & Jamila Trindle, *CFTC, Gensler Criticized Over Handling of MF Global*, WALL ST. J. (May 21, 2013).

² Letter from Rep. Darrell Issa, Chairman, U.S. Comm. on Oversight & Gov. Reform, to the Hon. Gary Gensler, Chairman, U.S. Commodity Futures Trading Comm’n (May 20, 2013); Scott Patterson, *Gensler’s Personal Email Use Triggers Hill Inquiry*, WALL ST. J. (May 30, 2013).

³ Office of the Inspector Gen., U.S. Commodities Futures Trading Comm’n, *Review of the Commodity Futures Trading Commission’s Oversight and Regulation of MF Global, Inc.* (May 2013), at 45.

⁴ *Id.* at v.

⁵ Horner, *supra* note 1.

business device.⁶ As recounted by a FOIA litigator, the SEC is hiding its “off-channel” communications with environmental activists, even though the communications qualify as federal records.⁷

While the SEC is failing to comply with federal transparency and record-keeping laws, the SEC is aggressively enforcing record-keeping laws on private businesses. The SEC recently charged 16 firms more than \$1.1 billion combined for allegedly failing to maintain and preserve electronic communications.⁸ In a press release announcing the penalties, you ironically emphasized the importance of transparency, stating: “Finance, ultimately, depends on trust. By failing to honor their recordkeeping and books-and-records obligations, the market participants we have charged today have failed to maintain that trust.”⁹ The SEC’s Director of Enforcement similarly intoned that record-keeping requirements are “sacrosanct.”¹⁰

The SEC must practice the transparency and accountability it preaches. Federal record-keeping laws are vital to informing the public and to Congress’s ability to conduct oversight of the executive branch and independent agencies. To inform our oversight, please provide the following information:

1. Certify that the SEC is following all applicable federal record-keeping and transparency requirements;
2. Certify that you have never used a private email account or “off-channel communications” for official SEC business;
3. Certify that since your swearing in, you and your direct reports—including all SEC division and office heads and all employees in the Chair’s office—have never used private email accounts or “off-channel communications” for official SEC business;
4. Explain how the SEC defines “off-channel communications” for purposes of responding to FOIA requests and other federal transparency requirements; and
5. Explain whether any SEC employees, including yourself, have used “off-channel communications” to conduct official SEC business. If so, provide a list of all such platforms and all SEC employees who have used “off-channel” communications for official business.

Please provide this information as soon as possible, but no later than 5:00 p.m. on November 15, 2022.

⁶ *Id.*

⁷ *Id.*

⁸ Press Release, SEC Charges 16 Wall Street Firms with Widespread Recordkeeping Failures, U.S. Securities and Exchange Comm’n (Sept. 27, 2022).

⁹ *Id.*

¹⁰ *Id.*

The Honorable Gary Gensler

November 1, 2022

Page 3

Thank you for your prompt attention to this matter.

Sincerely,



Jim Jordan
Ranking Member
Committee on the Judiciary



James Comer
Ranking Member
Committee on Oversight and Reform



Patrick McHenry
Ranking Member
Committee on Financial Services



Tom Emmer
Ranking Member
Subcommittee on Oversight and
Investigations
Committee on Financial Services

cc: The Honorable Jerrold L. Nadler, Chairman, Committee on the Judiciary
The Honorable Carolyn B. Maloney, Chairwoman, Committee on Oversight and Reform
The Honorable Maxine Waters, Chairwoman, Committee on Financial Services