Retirement News Highlights

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EDITOR'S NOTE: It was brought to my attention that something seemed amiss with the second paragraph. Words were missing. They've been added and highlighted.

The SEC's Private Market Takeover

By The Editorial Board
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The Securities and Exchange Commission's power has diminished in tandem with public markets since Congress passed the Sarbanes-Oxley Act two decades ago. But rather than ease regulatory burdens on public companies, Chairman Gary Gensler is seeking more control over private markets.

Congress established the SEC during the Great Depression to oversee public stock exchanges and protect mom-and-pop investors from fraud. After the WorldCom and Enron accounting scandals, Congress gave the agency more power and increased public-company reporting requirements.

One result: More companies avoid public markets. Start-ups can raise money at low cost in private markets thanks to venture capital and private equity. Public pensions chasing higher returns have also piled into private equity and hedge funds; government pensions now account for about 35% of private-equity capital.

But public pensions complain that private fund managers have too much bargaining power, and that they risk being frozen out of high-yielding private investments if they demand more disclosure or lower fees. Unions want politicians to mandate what unions want.

Enter Mr. Gensler, who says he wants to "level the playing field and strengthen transparency" in private markets. One proposed regulation would impose fee, expense and performance disclosure requirements on private fund advisers similar to those for public advisers. They'd also require independent annual financial audits. More transparency, what's not to love?

First, says GOP Commissioner Hester Peirce, the proposal's focus on protecting private fund investors "is a departure from the Commission's historical view that these types of investors can fend for themselves."

She's right. The SEC doesn't exist to protect sophisticated investors. Mr. Gensler wants to expand the agency's mission from protecting Granny's life-savings to shielding deep-pocketed investors from risks they freely take. The California Public Employees' Retirement System (Calpers) manages more assets than KKR. How is it at a disadvantage?

Another proposed rule would bar indemnification clauses for simple negligence in investor contracts. This would increase private fund liability for business judgments made in good faith and increase the cost of insurance. It would mean higher costs for investors and less risk-taking by fund managers. But investors pay private managers to take more risks.

Mr. Gensler also wants private funds to report more information to the SEC—supposedly to better monitor systemic financial risks. One proposed rule would require large hedge fund advisers to report to the SEC within one business day significant events such as a loss in assets of 20% of more.

Dodd-Frank already requires hedge funds to file quarterly reports about their assets. Yet Mr. Gensler cites big losses last winter at hedge funds that took short positions in meme stocks. Melvin Capital was bailed out by Point72 Asset Management and Citadel. Private fund managers rescued another private fund. Where was the systemic risk?

"A regulator's desire for data is insatiable, but more data is not always better," says Ms. Peirce. "What will [the Financial Stability Oversight Council] and the SEC do with this information? Jump in to protect private fund investors from losses?" That's precisely what unions want the feds to do.

Ironically, another proposed SEC regulation pushed by unions could make private markets less resilient. It would prohibit private funds from giving some investors better terms based on the timing and size of their investment. Would Citadel and Point72 have rescued Melvin if they were offered the same terms as all other fund investors?

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Unions have a love-hate relationship with private asset managers. Their pension plans need higher returns to meet obligations to workers. But they dislike how private equity and hedge funds enforce market discipline, and how for the most part they ignore the left's environmental, social and governance (ESG) fad.

Mr. Gensler's goal is to erase the distinction between public and private companies so he can foist new ESG disclosures across the economy. He wants to impose costly new regulations that further discourage companies from going public, and then "level the playing field" by punishing companies that stay private.

Back to top