



Investor Choice Advocates Network

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Rep. Maxine Waters
2221 Rayburn House Office Building
Washington, DC 20515

June 13, 2024

Dear Representative Waters,

Thank you for your inquiry regarding my recent Congressional testimony on behalf of the Investor Choice Advocates Network (ICAN) during the House Financial Services Committee, Capital Markets Subcommittee hearing, "SEC Enforcement: Balancing Deterrence with Due Process."

I appreciate the opportunity to provide insight into how our work supports the freedom of retail investors to choose how to invest their money.

Rep. Waters: *The Investor Choice Advocates Network ("ICAN") has a mission statement that is intended to portray itself as a champion of small investors. However, this description does not appear to hold water upon closer inspection.*

ICAN was founded with the mission of advocating for small investors and entrepreneurs whose efforts are too often impeded by government regulation. As a nonprofit public interest litigation organization, we aim to highlight the crucial role robust capital markets play in creating a healthy, vibrant economy, where upward mobility is an opportunity available to all.

In pursuit of that mission, my testimony highlighted the adverse consequences to everyday people stemming from the SEC's "regulation by enforcement" approach. I illustrated the problems with this approach through the stories of two ICAN pro bono clients, Eric and Joseph, individuals in Los Angeles who could not afford counsel and who face financial and professional ruin in SEC proceedings despite not being accused of fraud or investor harm.

Eric, a financial services professional, became entangled in a nine year (and counting) legal battle after the SEC pursued a case against him based on disputed jurisdiction over a financial instrument. Similarly, Joseph is an entrepreneur who is facing a substantial monetary judgment after the SEC targeted him for a technical violation related to capital raising under the JOBS Act.

ICAN takes the position that the SEC's piecemeal enforcement strategy in cases like those against Eric and Joseph creates legal uncertainty, burdens individuals with costly litigation, and lacks transparency. In turn, that uncertainty and burden discourage everyday people from interacting with the capital markets.

Rep. Waters: ICAN calls itself a “nonprofit public interest litigation organization”, but its advocacy consistently supports positions of the for-profit industry groups seeking to nullify SEC pro-investor rules and enforcement actions. For example, ICAN joined with major trade groups like the U.S. Chamber of Commerce to challenge the SEC’s stock buybacks rule, designed to increase transparency surrounding a corporate practice often used to line executives’ pockets at the expense of investors. ICAN also supports a lawsuit against SEC’s short selling rule. Short sellers’ harmful practices, often at the expense of retail investors, were a focus of this Committee last Congress, especially during the GameStop events.

You take issue with ICAN having submitted amicus briefs in support of two recent challenges to SEC rules by industry groups: the share repurchase rules and the short selling rules. The fact is, SEC rules that harm industry sometimes also harm everyday investors.

Regarding the SEC’s stock buyback rule, ICAN’s position is rooted in promoting investor choice. Share repurchases are a simple method for publicly-traded companies to distribute cash back to shareholders who elect to participate. As we pointed out in our brief, “share repurchases provide an opportunity for investors to decide for themselves how best to pursue their own objectives by electing to sell their shares and deploy the company’s funds.” The SEC’s rules overlooked and hampered these benefits for everyday investors.

ICAN's support of the lawsuit against the SEC’s short selling rules is similarly motivated by a desire to protect the interests of retail investors. The SEC’s short selling rules will have a chilling effect on short selling, which will risk misleading market participants regarding the value of individual investments and decrease price discovery. Such market-distorting outcomes do not benefit retail investors and may in fact end up benefiting more data-savvy institutional investors.

When the SEC promulgates rules that restrict choices available to investors or that otherwise harm retail investors, ICAN will oppose such rules notwithstanding the fact that industry trade groups may join in that opposition.

Officers and Directors

Nicolas Morgan, Chair & President	Thomas A. Zaccaro, Secretary & Director Hueston Hennigan Counsel	David Banerjee, Treasurer & Director RND Resources CPA (Ret)	Dara Albright, Director DWealth Education Founder & President	Eleanor Mercado, Director Wilson Sonsini LLP Assoc. Gen. Counsel	Jorge Pesok, Director HBAR Foundation Chief Legal Officer
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Rep. Waters: Your organization also joined with billionaires Elon Musk and Mark Cuban to attack the SEC. What part of these above-mentioned lawsuits are in the interest of retail investors that ICAN purports to stand for?

Your mention of ICAN joining forces with individuals like Elon Musk and Mark Cuban to challenge the SEC’s policies raises an important aspect of our work—ensuring due process for *anyone* facing SEC regulatory proceedings.

Messrs. Cuban and Musk joined amicus briefs filed by ICAN in the United States Supreme Court in cases involving fundamental due process concerns: defendants’ access to federal courts to address constitutional violations (*SEC v Cochran*) and the right to a jury trial when the SEC seeks to impose civil penalties (*SEC v Jarkesy*). Our involvement in these actions demonstrates the universal interest we should all have in the rights of all market participants to due process (whether those market participants are billionaires or people of everyday means). We don’t view either case as an “attack” on the SEC; to the contrary, both cases seek to improve the SEC’s recognition of the rights of the people facing enforcement proceedings.

You also asked about the funding of ICAN. Our organization is supported by a diverse group of donors who share our commitment to promoting access to vibrant capital markets for small investors and entrepreneurs. We receive contributions from individuals, foundations, and other entities who believe in our mission. We respect our donors’ right to privacy and do not share such information except as required by law, but I can share that we have not received any funds from either Mr. Cuban or Mr. Musk. To be clear, ICAN would gladly accept such donations to help us represent more clients like Eric and Joseph who could not otherwise afford counsel.

Finally, you asked about my race and gender. Rather than respond, I would invite you to consider the disproportionately negative impact overbearing SEC regulations may have on people who have not traditionally participated in the capital markets. As we explained in a rule petition to the SEC nearly two years ago, many of the SEC’s regulations and legal positions “may have been originally rooted in the desire to protect individuals of modest means from making financially risky decisions, [but] the rules have had the negative effect of preventing such individuals, and particularly communities of color, from being able to make their own risk assessments and attempting to accrue wealth at a high level.”¹ While the SEC has not responded to our petition to break down barriers to capital markets, we

¹ Available at <https://www.sec.gov/files/rules/petitions/2022/petn4-796.pdf>

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June 13, 2024

invite you to join us and the other diverse voices who provided video testimonials in support of ICAN's rule petition.²

ICAN remains focused on maximizing the rights of everyday investors to choose how to invest their money.

Sincerely,



Nick Morgan
President
Investor Choice Advocates Network (ICAN)

² Video testimonials available here:

<https://www.youtube.com/watch?v=lqIDqGbxYpk&t=13s>

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PATRICK McHENRY, NC
CHAIRMAN



MAXINE WATERS, CA
RANKING MEMBER

United States House of Representatives
One Hundred Eighteenth Congress
Committee on Financial Services
2129 Rayburn House Office Building
Washington, DC 20515

June 4, 2024

Nick Morgan
President and Founder
Investor Choice Advocates Network
453 S Spring St., Suite 400
Los Angeles, CA 90013

Dear Mr. Morgan:

Thank you for testifying before the Subcommittee Capital Markets of the House Committee on Financial Services on May 7, 2024, at the hearing titled “SEC Enforcement: Balancing Deterrence with Due Process.” Per the instructions announced by the Chairman at the conclusion of the hearing, Members submitted additional questions for your response. Please respond to the questions below and submit your response by July 2, 2024.

Should you or your staff have any questions or need additional information, please contact Trish Halloran at (202) 225-7502.

Sincerely,

A handwritten signature in blue ink that reads "Patrick T. McHenry". The signature is fluid and cursive, with the first name "Patrick" being the most prominent.

Patrick McHenry
Chairman

Ranking Member Maxine Waters

Mr. Nick Morgan

1. Which of the following options best describes your self-identified race? (you may choose more than one)
 - a. White or Caucasian
 - b. Black or African American
 - c. Hispanic/Latinx
 - d. Asian
 - e. Middle Eastern/North African
 - f. Choose not to answer
 - g. Prefer to self-describe (please specify)

2. Which of the following options best describes your gender identity?
 - a. Woman
 - b. Man
 - c. Non-binary
 - d. Transgender Man
 - e. Transgender Woman
 - f. Choose not to answer
 - g. Prefer to self-describe (please specify)

3. The Investor Choice Advocates Network (“ICAN”) has a mission statement that is intended to portray itself as a champion of small investors. However, this description does not appear to hold water upon closer inspection. ICAN calls itself a “nonprofit public interest litigation organization”, but its advocacy consistently supports positions of the for-profit industry groups seeking to nullify SEC pro-investor rules and enforcement actions. For example, ICAN joined with major trade groups like the U.S. Chamber of Commerce to challenge the SEC’s stock buybacks rule, designed to increase transparency surrounding a corporate practice often used to line executives’ pockets at the expense of investors. ICAN also supports a lawsuit against SEC’s short selling rule. Short sellers’ harmful practices, often at the expense of retail investors, were a focus of this Committee last Congress, especially during the GameStop events. Your organization also joined with billionaires Elon Musk and Mark Cuban to attack the SEC. What part of these above-mentioned lawsuits are in the interest of retail investors that ICAN purports to stand for? Finally, who exactly funds your organization?