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September 30, 2026

Via electronic submission

Vanessa A. Countryman, Secretary U.S. Securities and Exchange Commission 100 F Street NE Washington, DC 20549-1090

Re: Commission Quorum Requirement, Release No. 34-106537 (Sept. 30, 2026), amending 17 CFR 200.41 — Comment and Petition for Rulemaking under 5 U.S.C. 553(e) and Rule 192 of the Commission's Rules of Practice

Dear Secretary Countryman:

I strongly oppose the Commission's amendment to its quorum rule. The amendment would allow a single Commissioner to act for the Commission whenever every other Commissioner in office is disqualified from a matter. It was adopted without notice or opportunity for comment and takes effect on publication.

Because the Commission did not invite comment, I submit this letter both as a comment and as a petition under 5 U.S.C. 553(e) and Rule 192 of the Commission's Rules of Practice. I ask the Commission to rescind the amendment and restore the prior rule. At a minimum, it should suspend the amendment and publish it for notice and comment.

My interest. I am a long-term, diversified individual investor. For more than 25 years I have filed shareholder proposals and commented on Commission rulemakings, and I have comments pending in File No. S7-2026-32. Who decides those matters, and how, directly affects my rights as a shareholder and my participation in the Commission's proceedings.

In summary:

- Congress created a five-member, bipartisan commission. A quorum of one is not a commission.
- The amendment departs from the common-law quorum rule on which the D.C. Circuit relied in upholding the Commission's existing rule.
- Bipartisan, collegial decision-making tends to produce better-reasoned decisions. Members of the Senate Banking Committee made that point to the White House in June 2026, and Commissioners of both parties, including the Chairman, have stressed the value of differing perspectives on the Commission.

- A rule "designed to promote flexibility and finality of agency rulemaking" is not a matter solely of internal management. It affects every investor and regulated party.
- The timing matters. The amendment was adopted two days before a scheduled departure that would leave the Commission with two members, both of the same party.

I. What the amendment does, and when

Under the 1995 rule, three Commissioners constituted a quorum. When fewer than three were in office, the number in office did. When disqualifications left two Commissioners able to act on a matter, those two did. In adopting that rule, the Commission stated that it did not believe it necessary to provide that one Commissioner could constitute a quorum. Release No. 34-35548 (Mar. 30, 1995).

The amendment reverses that judgment. If the number of Commissioners in office, minus those who "have disqualified themselves . . . or are otherwise disqualified," is one, that one Commissioner is a quorum for the matter. The stated purpose is "to promote flexibility and finality of agency rulemaking."

The timing is significant. No Democratic Commissioner has served since early 2026. Two seats have remained vacant, although nothing prevents the President from nominating, and the Senate from confirming, Democrats to fill them. As the Senators wrote in June, "No practical barrier prevents the President from next appointing a Democrat to the SEC."

I believe Commissioner Peirce has announced her departure effective October 2, 2026, two days after this amendment was adopted. If no successor is confirmed, two Commissioners, both of the same party, will remain. Under the amendment, whenever one of them is disqualified, the other may act alone for the Commission.

I make no assumption about how any Commissioner would use this authority. The concern is structural: the rule would let one person exercise powers Congress gave to a bipartisan commission.

II. Congress created a bipartisan, collegial commission

Section 4(a) of the Exchange Act establishes a Commission "composed of five commissioners." "Not more than three" may be members of the same political party, and appointments of members of different parties are to be made "alternately as nearly as may be practicable." 15 U.S.C. 78d(a).

That structure is the point. Congress chose a multi-member, bipartisan body rather than a single administrator, so that the Commission's powers would be exercised through deliberation among members with different perspectives. A quorum rule exists to protect that design by ensuring decisions reflect the judgment of a collective body.

A quorum of one cannot do that. "Quorum" denotes the minimum number of members of a body who must be present to act. It is inherently plural; one person cannot deliberate with himself or herself. In *New Process Steel, L.P. v. NLRB*, 560 U.S. 674 (2010), the Supreme Court refused to let the National Labor Relations Board's authority be exercised by two members after its membership fell below the statutory quorum. Former FTC General Counsel Stephen Calkins and John Villafranco have made a similar argument about the FTC's quorum rule, concluding that single-Commissioner action conflicts with that agency's bipartisan, collegial design.

III. The amendment departs from the rule Falcon upheld

In *Falcon Trading Group, Ltd. v. SEC*, 102 F.3d 579 (D.C. Cir. 1996), the D.C. Circuit upheld the 1995 rule when only two Commissioners were in office. The court relied on the Commission's general rulemaking authority and on the common-law rule that, absent a contrary statute, "a majority of a quorum constituted of a simple majority of a collective body is empowered to act for the body." *FTC v. Flotill Products, Inc.*, 389 U.S. 179, 183 (1967).

Falcon does not support this amendment. It approved action by two Commissioners, a collective body, under a rule the Commission had expressly limited to stop short of one. The common-law rule it applied speaks of a collective body. A single Commissioner acting alone is neither a majority of a five-member Commission nor a collective body. The amendment rests on the Commission's own say-so, and I believe it is vulnerable on that ground.

IV. Bipartisan commissions make better decisions

On June 9, 2026, Senators Raphael Warnock and Chris Van Hollen, joined by Banking Committee Ranking Member Elizabeth Warren and other Democratic senators, wrote to the White House urging nominations to fill the minority-party seats on the SEC and other financial regulators. They wrote that "a full slate of commissioners and board members can bring a range of perspectives to policies that shape our markets," and that "the lack of Democratic voices thwarts congressional intent." They noted that Chairman Atkins has said he is "supportive of having a full complement of commissioners, as it helps with debates and everything else."

Commissioners themselves have repeatedly described that structure as essential to how the Commission works:

- Commissioner Uyeda, in 2022: "The Commission is structurally designed to promote regulation that is the product of consideration by five individuals with different perspectives."
- Commissioner Gallagher, in 2013: "Congress created the SEC as a bipartisan, five-member Commission and gave each Commissioner — including the Chairman — only one vote." He added that "the Commission's bipartisan structure insulates it from undue political influence."

- Commissioners Peirce, Crenshaw, and Uyeda, jointly, on Chair Gensler's departure in January 2025: "Although as Commissioners we approached policy issues from different perspectives, there was always dignity in our differences." They added that his commitment "to bipartisan engagement and a respectful exchange of ideas . . . has helped facilitate our service to the American public."

These Commissioners disagreed on much. They agreed that differing perspectives, weighed within a bipartisan body, are part of how the Commission serves the public. A quorum of one removes that entirely.

Deliberation among members who do not share the same assumptions tests the reasoning behind a decision before it becomes law. A dissent forces the majority to answer the strongest objections. It also gives Congress, courts, and the public a clear account of the choices made. Those benefits disappear when one person acts alone.

My own experience points the same way. In 1997 I testified before a California Senate committee about decisions made by a few public pension trustees at CalPERS behind closed doors. The problems those arrangements concealed took years to come to light. Decision-making by the fewest possible people, with the least possible scrutiny, is not a safeguard investors or the American public should accept.

The proper response to vacancies is to fill them, as Section 4(a) contemplates. It is not to redefine the Commission so that one member can act for all five.

V. The procedural exemption does not fit

The release invokes the Administrative Procedure Act's exception for rules of "agency organization, procedure, or practice." It asserts that the amendment relates "solely to agency management and organization" and *does "not substantially affect the rights or obligations of non-agency parties."* On that basis it skips notice and comment and treats the Congressional Review Act and Regulatory Flexibility Act as inapplicable.

Yet, the release's own summary contradicts that characterization. It says the amendment is "*designed to promote flexibility and finality of agency rulemaking.*" A rule designed to make it easier to finalize rules is aimed at outcomes that *bind* the public.

The amendment determines who may adopt rules, authorize enforcement actions, decide contested adjudications, and approve or disapprove self-regulatory organization filings. For registrants, investors, and respondents, whether those decisions come from a deliberating commission or one individual is not an internal housekeeping detail. The procedural exception does not reach rules that "encode a substantive value judgment" or substantially alter the rights and interests of regulated parties. *American Hospital Ass'n v. Bowen*, 834 F.2d 1037 (D.C. Cir. 1987). Replacing collective, bipartisan judgment with that of one member is such a value judgment.

The release identifies no emergency and claims no good cause for dispensing with comment. The Commission has operated under the 1995 rule for three decades. Nothing prevented the Commission from asking the public before changing it.

VI. "Otherwise disqualified" is undefined

The amendment counts Commissioners who "have disqualified themselves . . . pursuant to § 200.60" and those who "are otherwise disqualified." The release does not say what "otherwise disqualified" means, who decides, or how that decision is disclosed.

Because disqualifications now determine whether one person may act alone, they carry new weight. The Commission should define the term, state who makes the determination, and publicly disclose each disqualification that produces a single-member quorum, with the reason.

VII. Monumental rulemakings need a bipartisan Commission

The Commission has major rulemakings pending. Its proposal to rescind Rule 14a-8 (File No. S7-2026-32) would end a federal requirement shareholders have relied on since 1942. Together with the proposed Rule 14a-4(c) amendments, it would also change how shares are voted on proposals left off the company's proxy card. Under the quorum amendment, a final rule of that consequence could be adopted by a single Commissioner if the others were disqualified. Even without the amendment, it could be adopted by a Commission with no member outside the majority party.

Rules that reverse decades of settled policy are where the deliberation Congress required matters most. *A bipartisan Commission is better positioned to test the evidence, weigh reliance interests, and consider narrower alternatives, the issues courts examine closely when an agency changes course.* A major rule adopted by one Commissioner, or by members of one party alone, is also more exposed to reversal by a future Commission. That undercuts the very "finality" the amendment seeks.

Investors are entitled to expect that rules of this significance reflect the deliberation of a bipartisan commission, not the judgment of one official.

VIII. Requests

I respectfully ask the Commission to:

1. **Rescind the amendment** and restore 17 CFR 200.41 as adopted in 1995.
2. **At a minimum, suspend it** and publish it for notice and comment, with a reasoned response to the issues raised here.
3. **If any single-member authority is retained,** limit it to ministerial or time-critical matters that cannot await a quorum. Exclude rulemaking, enforcement authorizations, and contested adjudications, and add a sunset date.
4. **Define "otherwise disqualified"** and publicly disclose each disqualification that results in a one- or two-member quorum, and each action taken under it.
5. **Defer final action on major pending rulemakings,** including the proposed rescission of Rule 14a-8, until the Commission has at least three sitting members, including at least one member who is not of the majority party.

I also join the Senators in urging that vacancies on the Commission be filled as Section 4(a) contemplates, with members of both parties.

Thank you for your consideration.

Sincerely,

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Sources

- SEC, Commission Quorum Requirement, Release No. 34-106537 (Sept. 30, 2026), amending 17 CFR 200.41.
- SEC, Establishment of Commission Quorum Requirement, Release No. 34-35548 (Mar. 30, 1995), 60 FR 17201.
- Securities Exchange Act of 1934 § 4(a), 15 U.S.C. 78d(a).
- Letter from Sen. Raphael Warnock, Sen. Chris Van Hollen, et al. to Dan Scavino, Director, White House Office of Presidential Personnel (June 9, 2026).
- *Falcon Trading Group, Ltd. v. SEC*, 102 F.3d 579 (D.C. Cir. 1996).
- *FTC v. Flotill Products, Inc.*, 389 U.S. 179 (1967).
- *New Process Steel, L.P. v. NLRB*, 560 U.S. 674 (2010).
- *American Hospital Ass'n v. Bowen*, 834 F.2d 1037 (D.C. Cir. 1987).
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- "Hester Peirce's exit puts the SEC's unfinished crypto agenda in two hands," crypto.news (reporting departure effective Oct. 2, 2026).
- "Senate Democrats Want the White House to Fill SEC Vacancies," TheCorporateCounsel.net (June 2026).
- 5 U.S.C. 553(b), (e); 5 U.S.C. 804(3)(C); SEC Rules of Practice, Rule 192, 17 CFR 201.192.
- Commissioner Mark T. Uyeda, Remarks at the "SEC Speaks" Conference 2022 (Sept. 9, 2022).
- Commissioner Daniel M. Gallagher, Remarks (Feb. 22, 2013).
- Commissioners Hester M. Peirce, Caroline A. Crenshaw, and Mark T. Uyeda, Statement on the Departure of Chair Gary Gensler (Jan. 20, 2025).

Holland & Knight, "Low Tide at the SEC: From Five Commissioners to Two"

cc: Senator Raphael Warnock, Senator Chris Van Hollen, Senator Angela D. Alsobrooks, Senator Ruben Gallego, Senator Andy Kim, Senator Mark R. Warner, Senator Tina Smith, Senator Catherine Cortez Masto, Senator Lisa Blunt Rochester, Senator Jack Reed, Senator Elizabeth Warren. Senate Committee on Banking, Housing, and Urban Affairs, 534 Dirksen Senate Office Building, Washington, DC 20510

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