
INTRODUCTION*

Well-functioning securities markets are critical to the stability of the U.S. financial system, yet they are changing rapidly. Both securities markets and investors have new complexions, adding to the conventional picture of domestic public trading. For example, an increasing number of transactions today are private. Worldwide, private investment grew more than 250% between 2010 and 2019 before dipping with the COVID-19 pandemic,¹ and in the United States, Regulation D² offerings roughly doubled in the decade from 1997 to 2017.³ Simultaneously, cross-border asset holdings have risen: between 2012 and 2021, American holdings of foreign securities have increased by about 100%,⁴ while foreign holdings of American securities have increased by about 125%.⁵ New investment strategies have gained

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¹ DAVID BABOOLALL ET AL., MCKINSEY & CO., A YEAR OF DISRUPTION IN THE PRIVATE MARKETS 7 exhibit 2 (2021), <https://www.mckinsey.com/~media/mckinsey/industries/private%20equity%20and%20principal%20investors/our%20insights/mckinseys%20private%20markets%20annual%20review/2021/mckinsey-global-private-markets-review-2021-v3.pdf> [<https://perma.cc/KEK6-S5S2>].

² 17 C.F.R. §§ 230.500–08 (2021).

³ SCOTT BAUGUESS, RACHITA GULLAPALLI & VLADIMIR IVANOV, CAPITAL RAISING IN THE U.S.: AN ANALYSIS OF THE MARKET FOR UNREGISTERED SECURITY OFFERINGS, 2009–2017, at 12 fig.2 (2018), https://www.sec.gov/files/DERA%20white%20paper_Regulation%20D_082018.pdf [<https://perma.cc/B2KL-CYED>].

⁴ BD. OF GOVERNORS OF THE FED. RSRV. SYS., FED. RSRV. SYS., U.S. RESIDENTS' HOLDINGS OF FOREIGN LONG-TERM SECURITIES BY SECURITY TYPE 1 (2021), <https://www.federalreserve.gov/releases/efa/international-portfolio-investment-figure4.pdf> [<https://perma.cc/9DHM-W2VS>].

⁵ BD. OF GOVERNORS OF THE FED. RSRV. SYS., FED. RSRV. SYS., FOREIGN RESIDENTS' HOLDINGS OF U.S. LONG-TERM SECURITIES BY SECURITY TYPE 1

popularity, too. Capital increasingly flows through institutions—which, in the United States, in 2019 held assets equal to 291.3% of U.S. GDP, up from 249.3% of GDP in 2012⁶—and into passive investment vehicles. Now, passive investment strategies tracking various indices of market or industry performance and traditional active management strategies each direct about 15 trillion in assets.⁷ Both retail⁸ and environmental, social, and governance investing,⁹ though

(2021), <https://www.federalreserve.gov/releases/efa/international-portfolio-investment-figure3.pdf> [<https://perma.cc/LZ7Z-A6D9>].

⁶ See ORG. FOR ECON. COOP. & DEV., OECD INSTITUTIONAL INVESTOR STATISTICS 10 tbls.1–3 (2020), https://read.oecd-ilibrary.org/finance-and-investment/oecd-institutional-investors-statistics-2020_9a827fb7-en (on file with the Columbia Business Law Review).

⁷ See Robin Wigglesworth, *Global Passive Assets Hit \$15tn as ETF Boom Heats Up*, FIN. TIMES (May 10, 2021) (on file with the Columbia Business Law Review), <https://www.ft.com/content/7d5c2468-619c-4c4b-b3e7-b0da015e939d>.

⁸ Illustrative of the trend is the number of new brokerage accounts opened at Charles Schwab in recent years.

2014	2015	2016	2017	2018	2019	2020
972K	1.07M	1.093M	1.441M	1.576M	1.568M	3.127M

See The Charles Schwab Co., Annual Report (Form 10-K), at 25 tbl. (Feb. 23, 2017); The Charles Schwab Co., Annual Report (Form 10-K), at 24 tbl. (Feb. 22, 2018); The Charles Schwab Co., Annual Report (Form 10-K), at 25 tbl. (Feb. 22, 2019); The Charles Schwab Co., Annual Report (Form 10-K), at 30 tbl. (Feb. 26, 2020); The Charles Schwab Co., Annual Report (Form 10-K), at 32 tbl. & n.2 (Feb. 24, 2021) (excluding brokerage accounts obtained by business combination).

⁹ Estimates of the growth of ESG assets under management vary, probably in part because of the difficulty of determining which investments should receive the ESG label. A widely-reported aggressive estimate put the growth rate in recent years at an annualized 19.3%. See, e.g., Cheryl Winokur Munk, *The New Math of Social Responsible Investing*, WALL ST. J. (June 27, 2021, 8:00 AM) (on file with the Columbia Business Law Review), <https://www.wsj.com/articles/socially-responsible-investing-11624288038>.

Even if one prefers to adjust this figure downward, it suggests a striking enthusiasm for ESG investing that justifies further monitoring of the practice in addition to analysis of related long-term trends as more data become available.

heretofore less successful in generating investment, have made notable strides of late, as well.

This landmark Symposium issue brings together regulators, market participants, and scholars to respond to the changing conditions of the securities markets. The Symposium grew out of an ongoing set of interviews with current and former regulators at the SEC, CFTC, and FINRA, economists at stock exchanges, and financial and legal industry leaders (the “Stakeholder Survey”).¹⁰

The Stakeholder Survey is being conducted as part of a New Special Study (the “Study”) on securities markets, which was overseen by the chairs of the Program in the Law and Economics of Capital Markets (the “Program”) at Columbia University, Merritt Fox, Edward Greene, and Lawrence Glosten.¹¹ The Study is patterned after the last such Special Study completed in 1963, which had a huge influence over the development of the securities laws for several succeeding decades.¹² The Study is guided by a Steering Committee consisting of many of the world’s most prominent securities markets scholars and practitioners and will culminate in a final report to be delivered to Congress and regulators that will guide policymaking in the years to come. The Program partnered with the *Columbia Business Law Review* to publish the Symposium across two issues.

The Symposium issues cover a range of topics in an attempt to address the many changes in securities markets due to technological development, globalization, and regulatory reform. The papers that will be published across the two issues address—and take various positions on—

¹⁰ See Merritt B. Fox et al., *Distributed Ledger Technology and the Securities Markets of the Future: A Stakeholder Survey*, 2021 COLUM. BUS. L. REV. 652, 657–59.

¹¹ *About Us*, COLUM. L. SCH.: THE PROGRAM IN THE L. & ECON. OF CAP. MKTS., <https://capital-markets.law.columbia.edu/content/about-us> [<https://perma.cc/Q2F2-W2EX>] (last visited July 5, 2021).

¹² See Edward F. Greene et al., *The Need for a Comprehensive Approach to Capital Markets Regulation*, 2021 COLUM. BUS. L. REV. 714, 725 & n.33.

environmental, social, and governance (ESG) investing,¹³ the rise of ordinary, “unsophisticated” investors driven by online investing platforms and discussion forums,¹⁴ the growth of the private market,¹⁵ distributed ledger technology and blockchain,¹⁶ federal forum provisions,¹⁷ the future of securities litigation at the Supreme Court,¹⁸ and more.

The Symposium intends to jumpstart scholarly efforts to develop guidance for courts, lawmakers, and market participants. As markets experience unprecedented turmoil and regulators face wholly new challenges, the Symposium incorporates real-time thinking helping market participants, regulators, and academics come adapt to a changing world.

¹³ Compare John C. Coffee, Jr., *The Future of Disclosure: ESG, Common Ownership, and Systematic Risk*, 2021 COLUM. BUS. L. REV. 602 with Paul G. Mahoney and Julia D. Mahoney, *The New Separation of Ownership and Control: Institutional Investors and ESG*, 2021 COLUM. BUS. L. REV. 841.

¹⁴ See, e.g., generally Jonathan R. Macey, *Securities Regulation and Class Warfare*, 2021 COLUM. BUS. L. REV. 796.

¹⁵ See, e.g., generally Greene et al., *supra* note 12.

¹⁶ See, e.g., generally Fox et al., *supra* note 10.

¹⁷ See generally William B. Chandler III et al., *FAQ's re: FFPs: Frequently Asked Questions About Federal Forum Provisions*, 2021 COLUM. BUS. L. REV. 569.

¹⁸ See generally A.C. Pritchard & Robert B. Thompson, *The Future of Securities Law in the Supreme Court*, 2021 COLUM. BUS. L. REV. 882.