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Before the House Financial Services Committee
Subcommittee on Capital Markets
"From Wall Street To Main Street: The Future Of How America Invests"
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Chairman Hill, Ranking Member Waters, Chair Wagner, Ranking Member Sherman, and members of the Subcommittee:

Thank you for the opportunity to present testimony on behalf of my organization, Americans for Financial Reform. We are a nonpartisan, nonprofit organization founded by more than 200 civil rights, labor, consumer, business, investor, faith-based, and civic and community groups. Formed in the wake of the 2008 economic crisis, we are working to lay the foundation for a strong, stable, and ethical financial system – one that serves the economy and the nation as a whole.

My testimony focuses on the erosion of the passive investment infrastructure's ability to protect the millions of retirees, workers, and their families who invest their hard-earned money in low-cost index funds to secure a dignified retirement and meet other financial goals. I also discuss how investors and policymakers have advocated against these developments, and what would be necessary to robustly protect passive investors. If we do not reverse course quickly, passive investors will bear the risk of significant losses if a stock market bubble bursts.

## I. The Role of Passive Investing & the Cracks in its Infrastructure

According to the Investment Company Institute, an estimated 76 million U.S. households and 128.7 million individual investors owned shares of mutual funds or other US-registered investment companies in 2025.[1] A significant portion of these investments are in passive index funds invested in public equities. An estimated 33.5 percent of the U.S. stock market is passively owned.[2] In making these investments, millions of retirees, workers, and their families rely on a set of financial industry intermediaries, regulators, and lawmakers to preserve this investment strategy as a safe and conservative one.

The infrastructure that has historically made this possible is being eroded, posing significant risks to index fund investors. Index providers, exchanges, and asset managers have each changed their policies and practices in ways that weaken investor protection to the benefit of executives, directors,

[1] Investment Company Institute. "ICI Research Perspective: Ownership of Mutual Funds and Shareholder Sentiment, 2025." November 2025 at 1.
[2] Chinco, Alex and Marco Sammon. "The Passive Ownership Share Is Double What You Think It Is." Journal of Financial Economics. July 2024.

and other corporate insiders. Meanwhile, under the Trump administration, despite its statutory investor protection mission, the Securities and Exchange Commission (SEC) has changed policies and proposed rules that insulate corporate management from shareholder input and accountability, making investing in our public markets riskier for passive investors without insider information. Lastly, some states have been engaging in a race to the bottom, changing their corporate law to be more protective of insiders and less protective of regular shareholders.

**Index Providers:**
Index fund investors rely on index providers to supply diversified benchmarks reflecting the investable market, not speculative instruments they can gamble on. Despite the prominent role they play in our capital markets and in many people's retirement security, they are largely unregulated. Ahead of the SpaceX IPO and other megaIPOs expected in the coming months (Anthropic and OpenAI), major index providers changed their rules to fast-track inclusion of recently-public, large companies without a proper seasoning period, putting index investors at great risk of significant losses in the event sky-high share prices divorced from companies' fundamentals start trading at prices that better reflect those fundamentals.

Nasdaq changed its rules to allow recently-public companies to be included in the Nasdaq-100 index in fifteen trading days instead of the usual approximately three months if they would be amongst the 40 largest firms in the index by total market capitalization. Additionally, the Nasdaq-100 removed its minimum float requirement (requirement that a minimum amount of shares be made available to the public) and changed how it weighs large companies such that they can be weighed up to three times the float.[3] These changes have widespread ramifications for where passive investors' money is invested: $1.4 trillion in assets and portfolios track the Nasdaq-100.[4] Shortly after making these changes, Nasdaq received the SpaceX listing over the New York Stock Exchange.[5]

FTSE Russell and CRSP also changed their rules in ways that allow megacap companies to be included in a shortened timeline. Now, major Russell U.S. indexes can include large, recently-public companies whose float-adjusted market capitalization is within the top 500 in just *five trading days*. Additionally, Russell got rid of the five percent minimum float and public vote share requirements.[6] Over $12 trillion in assets are benchmarked to U.S. Russell indexes.[7] While CRSP already allowed some IPOs into the index in just five trading days, it recently changed its rules to loosen its 10 percent float requirement, allowing companies that have lower floats to be fast-tracked as well.[8] Over $3 trillion in assets track CRSP market indexes.[9]

[3] Nasdaq Global Indexes. "Nasdaq-100 Index Methodology Changes." May 2026.
[4] Mackintosh, Phil and Pranay Dureja. "Assets and Liquidity in the Nasdaq-100 Ecosystem." May 14, 2026.
[5] Lawes, Toby. "SpaceX to IPO on Nasdaq after index rules adjusted - reports." ETF Stream. May 19. 2026.
[6] FTSE Russell: An LSEG Business. "Market Consultation: Russell US Equity Indexes IPO Fast Entry and Minimum Eligibility Requirements." May 26, 2026.
[7] FTSE Russell: An LSEG Business. "Russell US Equity Indexes, v7.0." May 2026 at 3.
[8] Center for Research in Security Prices. "April 2026 CRSP Market Indexes Methodology Guide Updates." April 27, 2026.
[9] Center for Research in Security Prices. "CRSP Market Indexes." Accessed on June 22, 2026.

S&P also considered major changes ahead of this year's megaIPOs for recently-public companies whose total market capitalization would be within the hundred largest companies in the S&P Total Market Index: getting rid of its profitability and minimum float requirements and allowing the companies to be included in the S&P 500, S&P MidCap 400, and S&P SmallCap 600 indexes in six months instead of twelve months.[10] The AFL- CIO[11] and Americans for Financial Reform Education Fund[12] strongly opposed these changes due to concerns over risks to index fund investors, including workers saving for retirement. Ranking Member Maxine Waters engaged with S&P on these proposals,[13] and S&P ultimately decided against making these changes[14] in a significant victory for the many workers saving for retirement whose investments track these indexes. There is over $13.5 trillion in indexed asset value and over $7.2 trillion in benchmarked asset value in those three indexes.[15]

This is not the first time there has been a flurry of changes in index provider rules. After significant investor outcry and pressure when Snap went public in 2017 with shares lacking voting rights, some index providers changed their rules to exclude companies that did not meet minimum voting rights requirements.[16] However, in 2023, some indexes reversed course and ended that exclusion.[17]

**Exchanges:**

Exchanges are self-regulatory organizations that promulgate listing standards that must be approved by the SEC. The SEC can also require exchanges to promulgate certain listing standards. Because exchanges compete to attract listings and corporate insiders decide where companies are listed, market pressures structurally favor the interests of corporate insiders over regular investors.[18] For example, in 1940, the New York Stock Exchange promulgated a rule that effectively barred most multi-class share structures due to public outcry over the practice.[19] However, following competitive pressures from the American Stock Exchange and Nasdaq, NYSE changed its rule. In 1994, all three

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[10] "S&P Dow Jones Indices Consultation on Treatment of MegaCap Companies." S&P Dow Jones Indices. April 30, 2026.

[11] AFL-CIO. "Comments Regarding Consultation on Treatment of MegaCap Companies." May 28, 2026.

[12] Americans for Financial Reform Education Fund. "S&P Dow Jones Indices Consultation on Treatment of MegaCap Companies." May 28, 2026.

[13] U.S. House Committee on Financial Services. Press Releases. "Ranking Member Maxine Waters Applauds S&P For Refusing to Lower Standards for America's Benchmark Indices." June 5, 2026.

[14] S&P Global. "S&P Dow Jones Indices Consultation on Treatment of MegaCap Companies - Results." June 4, 2026.

[15] S&P Global. "Investor Fact Book." July 22, 2025 at 61.

[16] Hall, Joseph A. & Michael Kaplan. Davis Polk & Wardwell LL. "Snap Decision: Leading Index Providers Nix Multi-Class Shares." Harvard Law School Forum on Corporate Governance. August 2, 2027; Hirst, Scott & Kobi Kastiel. "Corporate Governance and Index Inclusion." Boston University Law Review. May 2019.

[17] Bonnie, Joshua et al. "S&P Dow Jones Reverses Course on Index Eligibility for Multiple Share Class Structures." Simpson Thatcher. April 19, 2023.

[18] *See* Hirst, Scott & Kobi Kastiel. "Corporate Governance and Index Inclusion." Boston University Law Review. May 2019 at 1240-41.

[19] Shorter, Gary. "Dual Class Stock: Background and Policy Debate." Congressional Research Service. December 8, 2021.

exchanges adopted similar rules, whereby companies are allowed to list with a multi-class share structure but not adopt one after listing.[20]

**Asset Managers:**

Index fund investors rely on the asset managers that manage the funds they are invested in to watch out for their best interests. Indeed, under the Investment Advisers Act, asset managers owe fiduciary duties to the index funds they manage.[21] These duties include providing advice and monitoring investments in the best interest of their clients. However, many asset managers of index funds effectively outsource their duties to index providers, even though they are largely unregulated, and use their voting power to rubber stamp management decisions, regardless of how short-sighted or risky they might be.

As a recently issued legal memorandum from Gupta Wessler LLP notes, while "[a]n index mandate shapes the adviser's duty,....[t]he adviser's decision to implement an index change, trade into newly added securities, manage tracking error, and determine whether to use replication, representative sampling, substitutes, or other disclosed techniques remain fiduciary decisions."[22] Given these duties, the new fast-entry index rules, SpaceX's governance structure, and its limits on shareholder lawsuits, the memorandum concludes that asset managers of index funds that track indexes that fast track SpaceX "will likely need to independently decide whether to track SpaceX."[23]

Similarly, asset managers have a duty to vote shares in the best interest of their clients,[24] and they cannot outsource that duty to corporate management. However, given actions by some state financial officers (including through the State Financial Officers Foundation), state attorneys general, state legislatures, congressional committees,[25] and a recent SEC change in guidance (discussed further bellow),[26] large asset managers face pressure to vote in alignment with corporate management regardless of the best interest of their clients. This can mean voting in favor of reincorporation into states with less shareholder rights, conflicted board members, and excessive executive pay. It can also mean voting against shareholder proposals that attempt to push management to address important issues.

**SEC:**

Under the Trump administration, the SEC has scuttled its investor protection mission with a series of actions that make passive investments in public markets riskier. In February 2025, the agency

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[20] *Id.*

[21] *See* Gupta Wessler LLP. "Index-fund advisers' fiduciary duties regarding SpaceX IPO." June 10, 2026 at 2.

[22] *Id.*

[23] *Id.* at 7.

[24] Securities and Exchange Commission. "Proxy Voting by Investment Advisers." Final Rule. February 7, 2003.

[25] *See* Renta, Natalia. "Roadmap to Protect Public Pensions: How States Can Fight Back Against Federal Attacks." Americans for Financial Reform Education Fund. January 2025 at 17-20.

[26] Securities and Exchange Commission. "Exchange Act Sections 13(d) and 13(g) and Regulation 13D-G Beneficial Ownership Reporting." July 11, 2025.

changed existing guidance to suggest that asset managers with more than a five percent ownership stake in public companies could be subjected to heightened regulation if they engaged with companies on important issues such as workers' rights, climate, racial equity, political spending, and executive pay.[27] The guidance is not clear on what behavior would push asset managers over the line and trigger extra requirements or SEC action against them, which has had a chilling effect on these engagements.[28] This guidance effectively puts the thumb on the scale in favor of large asset managers siding with management regardless of how risky their behavior might be, and against regular shareholders attempting to push management to address important risks.

In September 2025, the SEC made an about-face on forced arbitration, blocking a powerful shareholder tool to combat corporate fraud and misconduct. The agency went from disfavoring forced arbitration provisions to explicitly allowing them to be included by establishing a policy against taking such provisions into consideration when deciding whether to accelerate the effectiveness of a registration statement.[29] Chair Atkins highlighted the fact that Delaware law may prohibit forced arbitration provisions while other states do not, seemingly attempting to pressure Delaware to change its law.[30]

This policy change harms passive investors in the public markets, as it limits their ability to recover losses, even when they do not participate in the litigation. Since the enactment of the Private Securities Litigation Reform Act, investors have recovered approximately $100 billion from securities class actions.[31] Lawsuits filed by the SEC and the private bar in major corporate frauds like WorldCom, Enron, and Tyco led to more than $21.15 billion recouped for investors.[32] During the financial crisis, securities fraud lawsuits recovered over $8.5 billion for investors.[33] Passive investors who did not take any action in the litigation still benefited from it. Also, the fact that shareholders can bring these lawsuits serves as a deterrent for fraud, which benefits passive investors.

Additionally, the SEC has proposed four rules in quick succession currently out for public comment that would make passive investing in public equities riskier. One proposal would allow companies to opt into filing semiannual reporting instead of quarterly reporting.[34] Another would exempt all companies that have been public for less than five years regardless of size and companies with under

[27] *Id.*
[28] Johnson, Lamar. "SEC updates guidance on ESG engagement disclosures, prompts temporary confusion." ESG Dive. February 25, 2025.
[29] Securities and Exchange Commission. "Acceleration of Effectiveness of Registration Statements of Issuers with Certain Mandatory Arbitration Provisions." Final rule; Policy statement. September 19, 2025.
[30] Atkins, Paul S. Securities and Exchange Commission. "Open Meeting Statement on Policy Statement Concerning Mandatory Arbitration and Amendments to Rule 431 of the Commission's Rules of Practice." September 17. 2025.
[31] American Association for Justice. "SEC Policy Change to Gut Shareholder Rights: AAJ Response." Press Release. October 17, 2025 at note xiv and associated text.
[32] *Id.* at note xv and associated text.
[33] *Id.* at notes xvi-xvii and associated text.
[34] Securities and Exchange Commission. "SEC Proposes Amendments to Permit Optional Semiannual Reporting by Public Companies." May 5, 2026.

$2 billion in public float — 81 percent of public companies — from the full suite of reporting requirements.[35] These companies would not have to disclose risk factors or provide many executive pay disclosures including CEO to median worker pay ratios and pay versus performance. They also would not be required to have say on pay votes or get auditor attestation of internal control over financial reporting. Another proposal would allow much greater flexibility for public companies in the timing and communications around their securities offerings, opening the door for market manipulation, and preempt state securities laws for registered offerings.[36] Lastly, the SEC's proposal to rescind the climate-risk disclosure rule would have impacts far beyond climate-related risks. The proposal would not only undermine the ability of investors to get critical information about climate-related risks but would also limit the SEC's ability to require disclosures on many additional topics of great importance to investors.[37] These proposals, if finalized, would tilt the playing field further in favor of insiders and others who get nonpublic information through business or personal relationships, and against retail and index fund investors.

**State Corporate Law:**

A race to the bottom in state corporate law is also undermining the safety of passive investing by insulating corporate insiders from input and accountability.

- **Texas:** Texas now allows companies incorporated there to require a three percent ownership threshold to bring shareholder derivative lawsuits,[38] a critical tool for regular shareholders to hold corporate insiders accountable for wrongdoing. This is the first time a minimum shareholding requirement for these types of lawsuits has been introduced. While three percent may not sound significant, it can be prohibitive in the case of some large companies, creating a threshold of tens of billions of dollars. Officers and directors are also protected from liability by a high legal standard requiring proof of fraud, intentional misconduct, or knowing violation of law.[39] Shareholders also cannot gain access to a company's internal documents through books and records requests if doing so to explore litigation, and they cannot access emails and texts under almost any circumstances.[40] Texas also allows companies to get a court opinion regarding the independence of directors reviewing related party transactions, making any future lawsuits regarding those transactions more difficult.[41] Lastly, Texas allows companies to require a three percent or $1 million ownership threshold to file shareholder proposals.[42]

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[35] Securities and Exchange Commission. "SEC Proposes Transformative Reforms to Help Public Companies Conduct Registered Offerings and Simplify Reporting Requirements." May 19, 2026.
[36] *Id.*
[37] Securities and Exchange Commission. "SEC Proposes Rescission of Climate-Related Disclosure Rules." May 29, 2026.
[38] TBOC § 21.552.
[39] TBOC § 21.419.
[40] TBOC § 21.218.
[41] TBOC § 21.4161.
[42] TBOC § 21.373.

- **Nevada:** Nevada has similarly extreme protections for corporate insiders, with University of Virginia Professor of Law Michal Barzuza finding that "Nevada corporate law effectively forecloses shareholder litigation eliminating the shareholder rights and management accountability that have long characterized American corporate law."[43] In addition to shielding directors and officers from accountability, Nevada also shields controlling shareholders.[44]

- **Delaware:** Delaware remains the state of choice for public companies to incorporate in, especially non-controlled companies. While significantly better for regular investors than Texas and Nevada, Delaware made changes to its corporate law in 2024 and 2025 that tilted the scales in favor of corporate insiders and against regular shareholders, including those invested in index funds.

  In 2024, the Delaware legislature passed SB 313, allowing founders, private equity firms, and other investors to obtain special contractual rights to override and effectively control boards of directors. Shareholder contracts can now require that a particular shareholder pre-approve certain board decisions, or they can allow a shareholder to veto board decisions. These decisions can include incurring new debt, issuing new stock, approving new investments, removing or appointing officers, declaring dividends, amending the certificate of incorporation, and many others.[45]

  In 2025, the Delaware legislature passed SB 21 following threats by Musk[46] and Zuckerberg[47] to reincorporate their companies elsewhere. This major overhaul makes it easier for corporate insiders to escape scrutiny for conflicted transactions that can harm regular shareholders. More specifically, the law makes it easier for companies to cleanse conflicted transactions and more difficult for shareholders to access unofficial documents like emails and texts through books and records requests.[48]

## II. SpaceX Illustrates Erosion of Passive Investment Infrastructure's Ability to Protect Investors

SpaceX's IPO earlier in June illustrates the impact of these attacks — many of which Musk and other insiders drove or benefited from — on investor protections within the passive investment infrastructure. The company went public at a $1.77 trillion valuation, a sky-high figure wholly

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[43] Barzuza, Michal. "Nevada v. Delaware: The New Market for Corporate Law." Harvard Law School Forum on Corporate Governance. February 26, 2026.
[44] Barzuza, Michal. "In Nevada, Controlling Shareholders Are Off the Hook." CLS Blue Sky Blog. March 3, 2026.
[45] Delaware State Senate. 152nd General Assembly. Senate Bill No. 313.
[46] Kolodny, Lora. "After Elon Musk's Delaware exit, state lawmakers weigh bill to overhaul corporate law." CNBC. March 15, 2025.
[47] Kolodny, Lora. "Meta's potential exit from Delaware had governor worried enough to call special weekend meetings." CNBC. March 19, 2025.
[48] Delaware State Senate. 153nd General Assembly. Senate Bill No. 21.

divorced from the company's fundamentals, with a price almost 100 times sales even after reporting a $4.3 billion loss in this year's first quarter and making unrealistic claims about growth opportunities through AI data centers in space and factories on the moon.[49]

However, SpaceX is expected to soon start appearing in index funds without a proper seasoning period due to the recent rule changes by index providers discussed above, setting the stage for early investors to cash out while leaving retirement savers holding the bag through their index funds. As noted above, index funds that track the S&P 500 and two other S&P indexes are the notable exception.

To make matters worse, most SpaceX investors may have close to no tools for redress in the event they are harmed by wrongdoing on the part of the company, Musk, or other insiders. SpaceX is pushing the boundaries on how much a company can insulate itself and insiders from shareholder lawsuits by trying to ban class actions and force lawsuits into Texas Business Court or arbitration (both notoriously insider-friendly fora).[50] Additionally, shareholders would have to own three percent of the company — again, tens of billions of dollars in SpaceX shares — to file shareholder derivative claims.[51]

In the meantime, regular shareholders are being structurally shut out of providing meaningful input. Elon Musk retains 85 percent voting power[52] in a multi-class share structure where holders of one class of shares have 10x the voting rights of shares available to the public, along with special governance rights.[53] One of the implications of this structure is that only Musk can fire himself as CEO, board chair, or board member. Additionally, shareholders would have to own three percent of the company — tens of billions of dollars in SpaceX shares — and meet other requirements to file shareholder proposals to bring important issues to the attention of management.[54]

## III. Investors and Policymakers Have Raised Concerns

Investors and policymakers have expressed concerns about these developments that make passive investing riskier.

**Investors and State Financial Officers Raise Alarms:**
Although the SpaceX registration statement was filed confidentially, following leaks of its contents, New York State Comptroller Thomas DiNapoli, New York City Comptroller Mark Levine, and Chief Executive Officer of the California Public Employees' Retirement System (CalPERS) Marcie Frost wrote to Musk and other SpaceX executives expressing "serious concerns with the reported

[49] Mac, Ryan and Mike Isaac. "Is SpaceX Worth $1.77 Trillion? It's a Pie in the Sky, Some Investors Say." The New York Times. June 11, 2026.
[50] Space Exploration Technologies Corp. S-1 Registration Statement. May 20, 2026 at 61-63.
[51] *Id.* at 60.
[52] *Id.* at 248.
[53] *Id.* at 2.
[54] *Id.* at 60-61.

novel and extreme governance structure and provisions"[55] and urging they make specific changes ahead of the registration statement becoming public.[56]

When the registration statement became public with none of the recommended changes, the Council of Institutional Investors (CII) sent a letter — co-signed by some of its members — to Musk and the SpaceX board of directors expressing concern that SpaceX was poised to go public "with a combination of governance and shareholder litigation provisions that, taken together, would leave public investors in Class A common stock with little ability to hold the board and management accountable."[57] It urged SpaceX to make changes before going public.

CII and CalPERS had also urged the Delaware legislature not to pass SB 21 in 2025. CII argued that "the enactment of SB 21 could make Delaware substantially less attractive to institutional investors when evaluating where the corporations that they own should be incorporated."[58] CalPERS expressed concern that SB 21 "would overturn several decades of decisions from the Delaware Court of Chancery and the Delaware Supreme Court that provide meaningful protection for investors."[59]

Several state financial officers also wrote to Nasdaq[60] and FTSE Russell,[61] outlining concerns about the risks posed by their recent changes allowing SpaceX and other large companies to be fast-tracked, requesting they answer various questions, and urging a pause in the implementation of the recent changes.

**Congressional Leaders Express Concerns About Index Provider Changes and SEC Review of SpaceX Registration Statement:**

Ranking Member Waters engaged with S&P on its proposals to get rid of its profitability and minimum float requirements for megacap companies and allow them to be included in the S&P 500, S&P MidCap 400, and S&P SmallCap 600 indexes in six months instead of twelve months.[62] S&P decided against making these changes,[63] in a significant victory for the many workers saving for retirement whose investments track the affected indexes. As mentioned above, there is more than

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[55] DiNapoli, Thomas, Marcie Frost, and Mark D. Levine. Letter to Mr. Musk, Ms. Shotwell, and Mr. Johnsen on the SpaceX IPO. May 13, 2026 at 1.
[56] *Id.* at 4-5.
[57] Davis, Glenn et al. Council of Institutional Investors. "Corporate Governance Provisions in the Proposed Initial Public Offering of Space Exploration Technologies Corp." June 9, 2026 at 2.
[58] Mahoney, Jeff. Council of Institutional Investors. "Letter on Delaware Senate Bill SB 21." March 12, 2025.
[59] Jacobs, Matthew G. California Public Employees' Retirement System. "Delaware Senate Bill No. 21." March 14, 2025 at 2.
[60] Lierman, Brooke, Elizabeth Steiner, and Michael Frerichs. "Request for Answers Concerning the Nasdaq-100 Fast-Entry Rule." June 10, 2026.
[61] DiNapoli, Thomas P. et al. "Letter to the London Stock Exchange Group and FTSE Russell Re: SpaceX." June 11, 2026.
[62] U.S. House Committee on Financial Services. Press Releases. "Ranking Member Maxine Waters Applauds S&P For Refusing to Lower Standards for America's Benchmark Indices." June 5, 2026.
[63] S&P Global. "S&P Dow Jones Indices Consultation on Treatment of MegaCap Companies - Results." June 4, 2026.

$13.5 trillion in indexed asset value and over $7.2 trillion in benchmarked asset value in those three indexes.[64]

Additionally, Senate Banking, Housing, and Urban Affairs Committee Ranking Member Warren wrote to index providers asking a series of questions and expressing concerns that the recent changes "have the potential to destabilize markets and create significant risks for American investors, especially retirees and other individuals that rely on index funds for their savings."[65] Warren also wrote a detailed letter to SEC Chairman Atkins asking questions about the SpaceX IPO and arguing that the agency "should not accelerate the effectiveness of SpaceX's registration without serious scrutiny of SpaceX's financial statements, governance structure, and the impact it may have on retail investors, including through index funds."[66]

## IV. Looking Ahead

If rules, guardrails, and protections for passive investors continue to be undermined, passive investment vehicles will increasingly serve as a way for the wealthy and well-connected to offload inflated assets onto everyday investors, who will be left to bear the losses when there is a market correction.

**Market Pressures:**
As discussed above, institutional investors and state financial officers are raising the alarm and calling on companies and index providers to better protect their rights and interests. Additionally, New York City Comptroller Mark Levine recently announced a search for asset managers to provide public equity passive investment services.[67] Our view is that other financial officers and institutional investors should follow suit.

In order to protect workers' pensions, our view is that searches for index fund asset managers should include robust requirements that asset managers exercise their independent fiduciary judgment on whether or not to track recently-public large companies with sky-high valuations divorced from their fundamentals, little to no governance rights for regular shareholders, and extreme limits on lawsuits. The asset managers must exercise this fiduciary judgment in the best interests of pension beneficiaries, instead of outsourcing to largely unregulated index providers. Pensions must also demand their asset managers use their voting power in the best interest of long-term index fund investors — including voting against reincorporation into states with less shareholder rights — instead of rubber stamping management's decisions, regardless of how short-sighted or risky they are. Institutional investors should also consider bringing their passive

[64] S&P Global. "Investor Fact Book." July 22, 2025 at 61.
[65] Warren, Elizabeth. Committee on Banking, Housing, and Urban Affairs Ranking Member. Letter to Index Providers re SpaceX IPO Rules. June 11, 2026 at 1-2.
[66] Warren, Elizabeth. Committee on Banking, Housing, and Urban Affairs Ranking Member. Letter to SEC re SpaceX IPO. June 9, 2026 at 11.
[67] New York City Comptroller Mark Levine. "NYC Comptroller Levine and Pension Boards Announce Search for Asset Managers to Provide Passive Indexing Investment Services." June 12, 2026.

investment strategies in house to altogether avoid financial intermediaries chasing incentives that conflict with their clients' interests.

**Future Regulation:**

Unfortunately, the passive investment infrastructure is increasingly shutting off avenues for regular investors to get their voices heard and further their interests. Instead, corporate insiders are exerting market pressure with great effect — pitting different entities and jurisdictions against each other in a race to the bottom.

As discussed above, to win listings, exchanges have watered down corporate governance requirements. It is also possible that to win listings for their exchange, the index provider under the same roof has watered down its rules. For example, Nasdaq-100 changed its index inclusion rules and then shortly thereafter Nasdaq won the exchange listing, raising conflict of interest concerns when an index provider and an exchange are under one roof. Meanwhile, asset managers of index funds largely outsource their duties to index providers and overwhelmingly side with management when voting due to inappropriate regulatory pressures in addition to market pressures from political actors.

State policymakers face incentives to make their corporate law more insider friendly to get franchise fees to feed their state budgets. And this administration's SEC is acting in ways contrary to its investor protection mission, shifting power away from regular investors (including index fund investors) and toward corporate insiders by weakening tools for regular investors to provide input into corporate decision-making, hold corporate insiders accountable, or even have robust visibility into companies.

Given these realities, Congress and future regulators need to step in — ideally before regular investors suffer significant losses.

- **Index Providers:** Index providers shape how trillions of dollars are invested, yet they are largely unregulated. This is an untenable situation for passive investors.

  One option would be to regulate index providers as investment advisers under the Investment Advisers Act. Indeed, in 2022, the SEC issued a request for comment "on certain information providers whose activities, in whole or in part, may cause them to meet the definition of 'investment adviser' under the Investment Advisers Act of 1940."[68] Index providers were one of the three information providers the SEC sought comment on.

  The request references the Supreme Court case *Lowe v. SEC*,[69] which interpreted the

[68] Securities and Exchange Commission. "Request for Comment on Certain Information Advisers Acting as Investment Advisers." June 15, 2022.
[69] 472 U.S. 181 (1985).

"publishers' exclusion," a statutory exclusion from the definition of investment adviser covering the "publisher of any bona fide newspaper, news magazine or business or financial publication of general and regular circulation."[70] The Court held that one of the requirements of the exclusion is that "the publications have been 'regular' in the sense important to the securities market: there is no indication that they have been timed to specific market activity, or to events affecting or having the ability to affect the securities industry."[71] The Supreme Court noted that the publishers' exclusion Congress passed "does not sweep in bulletins that are issued from time to time in response to episodic market activity" or "advertisements that 'tout' particular issues."[72]

The timing and substance of the indexing rule changes, in addition to the language used when making these changes, strongly suggest that they *are* timed to specific market activity — namely the highly-anticipated SpaceX, Anthropic, and OpenAI IPOs. These facts also raise questions about whether the changes could be considered to "'tout' particular issues." Regulators should therefore reconsider whether index providers are indeed investment advisers that fall outside the publishers' exclusion.

In addition to considering whether index providers should be regulated as investment advisers, policymakers should consider taking other steps,[73] including enforcing a strict separation between index provision and exchange administration, as having these businesses under one roof poses a significant conflict of interest.

- **Corporate Governance Floor:** Exchanges and states have incentives that favor insiders over regular investors. Law professors Scott Hirst and Kobi Kastiel explain the issue well:

> A long debate regarding state competition for incorporations has shown that competition for incorporations and listings will lead states and exchanges to follow the preferences of those that make incorporation and listing decisions—in this case corporate insiders. Because those insiders prefer the freedom to use arrangements that outsiders may nonetheless disfavor, states and exchanges will refrain from limiting those choices.[74]

To effectively disrupt this set of incentives and protect long-term investors deploying passive strategies, Congress needs to step in and create a corporate governance floor. Requiring exchanges to implement strict listing standards guaranteeing governance and litigation rights

[70] 15 U.S.C. 80b-2(a)(11)(D).
[71] 472 U.S. at 209.
[72] *Id.* at 206 n. 51.
[73] For a comprehensive discussion of benchmark-linked investments (including index funds) and how policymakers should approach regulating benchmark providers (including index providers), *see* Healthy Markets Association. "Benchmark-Linked Investments: Managing Risks and Conflicts of Interest." March 7, 2019.
[74] Hirst, Scott & Kobi Kastiel. "Corporate Governance and Index Inclusion." Boston University Law Review. May 2019 at 1240-41.

for regular shareholders could be one mechanism. Another mechanism could be requiring companies over a certain size to apply for a federal charter with its own requirements.[75] Such arrangements could include additional requirements, such as union neutrality and a certain percentage of workers on corporate boards.[76]

- **Asset Managers:** Large asset managers have been called pseudo regulators due to the outsized influence they have on the governance of public companies through their voting power.[77] Unfortunately, developments in the last few years have all but guaranteed that these entities overwhelmingly use their power to rubber stamp corporate management decisions regardless of how short-sighted or risky they are, undermining the interests of passive, long-term investors. Congress should consider regulating large asset managers in ways similar to self-regulatory organizations, so they promulgate and abide by rules designed to further the best interests of passive investors.

- **SEC:** The SEC should recommit to its investor protection mission by requiring robust disclosures, disallowing forced arbitration provisions, and having a more public, thorough process for reviewing registration statements.

  Congress should consider setting more explicit and stringent requirements for the SEC to prevent the backsliding on its investor protection mission we are seeing today. Congress should also consider eliminating or sharply curtailing the SEC's exemptive authority. In addition to facilitating special treatment for certain market actors, this SEC is deploying it in ways that undermine congressional intent. For example, it is difficult to believe that Congress included mandates for public companies in the Dodd-Frank Act that they would consent to 81 percent of companies being exempted from.[78]

- **Do Not Bail Out Insiders:** Increasingly, passive investments — especially 401(k)s — are at risk of becoming exit liquidity, as insiders and other powerful financial players sell at arguably inflated prices to workers saving for retirement. Regular investors are being put in position to bear the losses in the event that there is a drastic market correction when the price of overvalued securities comes down to more closely reflect their fundamentals. In other words, in the event of a bubble bursting, regular investors will likely be left holding the bag. Should these events transpire, Congress and other policymakers must *not* bail out the insiders and powerful financial players that benefited from this arrangement, and instead focus on protecting regular investors, families, and communities harmed by the impacts of a burst bubble.

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[75] *See* Accountable Capitalism Act. S. 5493. 118th Cong. (2024).
[76] *See* Accountable Capitalism Act. S. 5493. 118th Cong. § 6 (2024); Reward Work Act. H.R. 8612. 119th Cong. § 3 (2026).
[77] Lund, Dorothy. Columbia Law School. "Asset Managers as Regulators." University of Pennsylvania Law Review. 2022.
[78] *See* Securities and Exchange Commission. "SEC Proposes Transformative Reforms to Help Public Companies Conduct Registered Offerings and Simplify Reporting Requirements." May 19, 2026.

Thank you for the opportunity to provide testimony on these urgent issues. I look forward to answering any questions Members may have about my testimony today.